

# Department of External Affairs

# CLASSIFIED

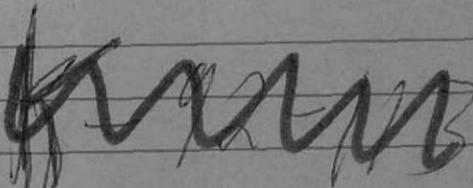
File No. 20-3-1-6

Subject: POLITICAL AFFAIRES -  
TREATIES AND AGREEMENTS - TREATY  
MAKING POWERS - LAW OF TREATIES -  
ILC CODIFICATION PROJECT

Vol. 6  
From 2 AUG 68  
To 15-Oct-68

REPLACES FILE 5475-AX-8-40  
References to Related Files

File No. 20-3-1-6

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

PUBLIC RECORDS ORDER

P.C. 1719 - AUTHORITY  
PL. ... WALS

NOS 68,001 & 67,003

RETENTION PERIOD AND DISPOSITION

10 YRS 2A 8D  
AND... THEN TRANSFER TO P.A.C.  
FOR SELECTIVE RETENTION

DIVISIONAL CONTROL



*[Handwritten initials]*



DATED FROM 1 AUG 68 FILE No. 20-3-1-6  
TO OCT 15 68 VOLUME No. 6

# CLOSED VOLUME

DO NOT PLACE ANY CORRESPONDENCE ON THIS FILE

FOR SUBSEQUENT CORRESPONDENCE SEE:

FILE No. 20-3-1-6 VOLUME No. 7

PLEASE KEEP ATTACHED TO TOP OF FILE

9

*We should make  
up a following list for  
B.F. [unclear]*

*Boffey, [unclear]  
file 21/10*

EXTERNAL AFFAIRS



AFFAIRES EXTERIEURES

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

FROM  
De  
The Canadian Embassy,  
SAN JOSE.

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

SUBJECT  
Sujet  
LAW OF TREATIES CONFERENCE - ARTICLE

SECURITY  
Sécurité  
CONFIDENTIAL

DATE  
October 15th, 1968

NUMBER  
Numéro  
296

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

ENCLOSURES  
Annexes

DISTRIBUTION

We spoke to Sr. Antillon, the Director-General of Political and International Affairs at the MEA, about our position on Article 5 of the Draft Convention on the Law of Treaties. Sr. Antillon is the Senior permanent official at the MEA. Copies of the Aide Memoire in Spanish and English were left with him.

2. The points raised in your letter were carefully followed in our remarks to Sr. Antillon. There was no real discussion of the issue on his part and he had no questions. However, in reply to our question, he did say that no other similar representations had yet been received. Sr. Antillon commented that the Latin American countries which have federal systems are, in practice, quite centralized.

3. While aware of the forthcoming Conference, Sr. Antillon said that he and his colleagues had not had a chance to discuss issues that might be raised. We said we would contact him again in a few weeks concerning our request that paragraph 2 of Article 5 be omitted from the Convention.

4. With reference to your telegram No. L-812 of September 16th, we expect to discuss this matter with the Honduran Government during the week of October 21st.

*[Signature]*

The Ambassador.

Received  
OCT 21 1968  
In Legal Division  
Department of External Affairs

TO: MR STANFORD  
FROM REGISTRY  
OCT 18 1968  
FILE CHARGED OUT  
TO: MR STANFORD

*L.*

13-21-10

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

TO  
À The Under-Secretary on *return*

SECURITY  
Sécurité CONFIDENTIAL

FROM  
De Legal Division

DATE October 4, 1968

REFERENCE  
Référence

NUMBER  
Numéro

SUBJECT  
Sujet Law of Treaties Conference - Article 5

FILE	DOSSIER
OTTAWA	20-3-1-6
MISSION	

ENCLOSURES  
Annexes

DISTRIBUTION

At the first session of the Law of Treaties Conference earlier this year, the representative of the Holy See abstained on the first vote on Article 5, paragraph 2 (the federal states provision) but voted in favour of the paragraph on the second vote and then voted in favour of Article 5 as a whole.

2. It would therefore appear desirable to make representations to the Holy See to request that they vote against paragraph 2 or, failing that, at least abstain on the voting. In addition we would wish to assure that the Holy See will support a proposal for a separate vote on paragraph 2. As matters now stand it appears that we can defeat paragraph 2 only if we are able to secure a separate vote on the paragraph. This will require a simple majority in favour of a separate vote.

3. The most effective method of making the necessary representations to the Holy See would appear to be through the Apostolic Delegate in Ottawa. If you agree, you may wish to raise this question with him when he next has occasion to call on you. Attached for your information is a copy of multiple letter L-737 of September 10 detailing the position we are taking in representations to governments. Also attached for delivery to the Apostolic Delegate is a copy of the Aide Memoire which we are transmitting to governments.

*Frank Beasley*  
Legal Division

M. Cadieux/PS



*Legat  
to see of file  
85*

20-3-1-6

Ottawa, le 15 octobre 1968

Excellence,

Je ne permets de vous transmettre sous ce pli un Aide-Mémoire concernant l'attitude du Canada au sujet de l'Article 5, paragraphe 2, du projet de convention internationale sur le droit des traités. Cette question est importante pour le Canada à cause des problèmes constitutionnels qu'elle soulève. Je serais très heureux si une occasion prochaine se présentait pour que nous puissions l'étudier plus à fond. Je pourrais ainsi, peut-être, vous fournir les renseignements supplémentaires qui pourraient vous être utiles.

Et je pourrais poursuivre avec vous un dialogue amical commencé il y a déjà quelque temps et que pour ma part je serais très heureux de reprendre.

Je vous prie d'agréer, Excellence, l'assurance de mes sentiments respectueux.

M. CADIEUX

M. Cadieux.

Son Excellence Mgr Emanuele Clarizio,  
Le Délégué apostolique au Canada,  
Manor House,  
Rockcliffe Park,  
O T T A W A.

15.10.48(us)

*ma [unclear]  
in [unclear]*

OTT386

*Jul 20-3-1-6  
17/10*

**ACTION COPY**

*L*

STG5/15

20-3-1-6		
32		

*done Oct. 17/68  
38.*

FM STAGO OCT15/68

TO EXTER 298

REF OURTEL 285 OCT9

PLEASE SEND BY AIRMAIL THREE COPIES, ENGLISH TEXT, OF WHITE  
PAPER QUOTE FEDERALISM AND INTERNATIONAL RELATIONS UNQUOTE.

*14.13.10*

NNNN

VVVVV

fil 20-3-1-6

Legal Div

2 sur les apostoles heb. at 3 p m  
on Oct 24. It has most sympathetic.  
He will send a memo to Roue + as  
the es going thru in a few weeks  
the next raise et with the Sec of State

- April 9. May 21st
- date of article (24th)
- note 3rd week on Oct 5.
- Vienna.

9/20/68

MC

Ottawa, le 15 octobre 1968

BEST COPY AVAILABLE

20-3-1-6  
MS

Excellence,

Je me permets de vous transmettre sous ce pli un Aide-Mémoire concernant l'attitude du Canada au sujet de l'Article 5, paragraphe 2, du projet de convention internationale sur le droit des traités. Cette question est importante pour le Canada à cause des problèmes constitutionnels qu'elle soulève. Je serais très heureux si une occasion prochaine se présentait pour que nous puissions l'étudier plus à fond. Je pourrais ainsi, peut-être, vous fournir les renseignements supplémentaires qui pourraient vous être utiles.

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Je vous prie d'agréer, Excellence, l'assurance de mes sentiments respectueux.

M. CADIEUX

M. Cadieux.

Received  
OCT 25 1968  
In Legal Division  
Ministry of External Affairs

Son Excellence Mgr Emanuele Clarizio,  
Le Délégué apostolique au Canada,  
Manor House,  
Rockcliffe Park,  
OTTAWA.

48

*cc Jatin Am Deir Buel...*  
*done*  
*Feb 27/10*

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

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

SECURITY  
Sécurité

CONFIDENTIAL

FROM  
De The Canadian Embassy, Quito

DATE October 11, 1968

REFERENCE  
Référence Your Letter L-737(M) of September 10, 1968 and  
Telegrams L-808 and L-897 of September 16 and  
October 4

NUMBER  
Numéro 159

SUBJECT  
Sujet Law of Treaties Conference - Article 5

FILE	DOSSIER
OTTAWA	
20-3-1-6	
MISSION	
32 11	

*J-110*

ENCLOSURES  
Annexes

DISTRIBUTION

Bogota

In the absence of the Legal Advisor, Dr. Luis Valencia Rodriguez (who is away in London on a "Law Officers Course" of five months' duration sponsored by the Foreign Office) I spoke with the Acting Legal Advisor of the Ministry of External Relations, Dr. Humberto García Ortiz, leaving with him a copy of the aide-memoire forwarded with your letter. Dr. García first observed that he had been a member of the Ecuadorian delegation to the Vienna meeting last spring and recalled that Mr. Wershof had been the head of our delegation. Dr. García also expected to attend the second session scheduled for next April and May.

2. I explained our position and wishes with respect to Article 5, as outlined in your letter, and Dr. García carefully read the aide-memoire (I provided him with a translation as well as the English language original). He said that he would of course have to study the matter and consult with others in the Ministry before he could give us a reply, but he thought that Ecuador would find no difficulty in supporting us. He said that he would try to let us have a reply as soon as possible, and hoped that it would be favourable, but added with a smile that "perhaps the offer of support will be conditional upon reciprocal Canadian support for an article which Ecuador considers very important". I said only that I believed that I knew what he was talking about, but that I was not in a position to discuss the matter at the present time.

3. Dr. García's remark confirms my suspicion, implicit in my telegram 125 of October 1, that in return for support on our wishes with respect to Article 5 Ecuador may well ask for our support on Article 49, concerning the nullity of treaties obtained through the threat or use of force (with reference to the Rio Protocol of 1942).

4. In this latter connection, I can understand your reluctance, as described in your telegram No. L-897, to enter into a commitment with regard to Article 49, or even to discuss it. But I think that we should not overlook the fact that countries do very often think in terms of reciprocity in these matters. I have been to the Ministry of External

**Received**  
OCT 21 1968  
In Legal Division  
Department of External Affairs

TO: MR STANFORD  
FROM REGISTRY  
OCT 18 1968  
FILE CHARGED OUT  
TO: MR STANFORD

...2

*12-21-70*

CONFIDENTIAL

- 2 -

Relations three or four times this year to request Ecuador's support for our candidate or position in one or other United Nations or Specialized Agency vote, but not once have I been authorized or able to offer anything in return. I do not think that we can realistically expect to continue to obtain such support unless some element of reciprocity forms part of our approach, particularly when it is requested as I am now almost sure will be done in this instance.



G. C. Cook,  
Chargé d'Affaires, a.i.

COORDINATION DW ① ② ③

A52 vsvzyrbyl 17m1044p

Chevrier 475

USA (M. Baker)  
20-3-1-3-Can  
copy  
dist  
etc

LAFAYETTE, La. AP -Lionel Chevrier, Canadian ambassador-at-large, said here Thursday people of the United States cannot expect Canada to mirror American policies.

"Canada is your closest friend and ally," said Chevrier in a Civic Club speech.

"It is not and cannot be a mere northern extension of the United States, a blind follower."

Lafayette, deep in the French-speaking region of south Louisiana, was the final stop in a goodwill tour of the United States by Chev

He said the United States, being the richest power in the world, can afford a certain foreign policy.

"Canada is at best a middle power that must live within the realities of its position," Chevrier said.

As an example, he said, Canada exports wheat to China for economic reasons, while the United States does not trade with the Communist country on political grounds.

Chevrier said his country had been taken for granted for many years by the United States.

"Canadianu accept the fact that you take us more or less for granted-we regard it as a very great compliment."

However, Canada has demanded the attention of the United States and the world beginning with the success of Expo 67 in Montreal followed by a change in government and the success of a colorful new prime minister.

U322 vsvzyrbylbyl . . . minister.

Chevrier also touched on the bilingual nature of Canada, a subject shared by his audience in the bilingual Acadian region of Louisiana.

Chevrier, speaking in English, said the French and English cultures of Canada lived together for two centuries "in a relative tranquility but in stony silence."

He said the greatly outnumbered French-speaking Canadians sought to protect their culture by withdrawing inward. But "the explosion in communications made the enclave system of preserving culture impossible."

The coming of the "affluent society" brought the realization to the French-speaking Canadians that they no longer had to accept a secondary role in their country.

Chevrier acknowledged that the emergency of the French culture has brought friction between the two peoples.

"It is French Canada that feels threatened today," he said. "Some 6,500,000 French-speaking people are in a country of 20,000,000 in a continent of over 200,000,000, all of whom are English-speaking."

He said, however, a constructive dialogue has developed between Canada's two cultural groups.

"The abrasiveness slowly diminished and a situation that might have threatened the unity of Canada began to be seen as an opportunity for a new beginning and a richer future."

A223 vsvbylbylzyr . . . future."

He also called for closer ties between French-speaking Canada and French-speaking Louisiana.

Movements and programs, some of them government-sponsored at the state and federal levels are under way in Louisiana to promote and preserve the French heritage of the state.

Louisiana's French flavor comes primarily from French-Canadian influence. Those French immigrants who left the most lasting mark on Louisiana were those expelled from Nova Scotia in the mid-1700s by the British, fearful of a war with France.

*3m Beasley  
on 11/10/68*

**ACTION COPY**

*L file 20-3-1-6  
11/16/10*

FM PSPAN OCT11/68 CONF D NO/NO STANDARD  
TO EXTER 1648 IMMED  
REF YOURTEL L680 AUG19

20-3-1-6  
11/16/10

LAW OF TREATIES CONFERENCE: ATTENDANCE BY BARBADOS  
BARBADOS GOVT HAVE NOW TOLD US AT OFFICIAL LEVEL THAT THEY ARE  
NOT/NOT PLANNING TO ATTEND SECOND SESSION OF TREATIES CONFERENCE.  
APPARENTLY BARBADOS DID NOT/NOT ATTEND FIRST SESSION BECAUSE  
GOVT FELT COST WAS TOO GREAT AND THIS IS LIKELY REASON FOR NON  
PARTICIPATION IN SECOND SESSION.

2. HIGHCOM IS PLANNING VISIT TO BARBADOS OCT17-18. ARE THERE ANY  
SPECIAL POINTS WHICH YOU WOULD LIKE HIM TO RAISE PERSONALLY WITH  
PM BARROW REGARDING BARBADOS ATTENDANCE? IF SO GRATEFUL FOR REPLY  
BY OCT16.

*For Ben to know  
whether they will go or  
we ask them to  
lets discuss  
JP*

4.15.10

file 20-3-1-6  
9/15/10

20-3-1-6

~~SECRET~~

ACTION COPY

FM SAIGM OCT11/68 CONFD NO/NO STANDARD

TO EXTER(LEGAL AND FAREAST DIVS)1136 PRIORITY

REF YOURLET L737(M)SEP10 YOURTEL L811 SEP16 AND OURTEL 1097 OCT1

LAW OF TREATIES CONFERENCE:ARTICLE5

WE FINALLY WERE ABLE ON OCT10 TO PRESENT AIDE MEMOIRE CONTAINED IN YOURLET TO KY,LEGAL ADVISER IN FOREIGN MINISTRY,ALTHOUGH MINISTRY HAD HAD MORE THAN TWO WEEKS TO PREPARE BACKGROUND FOR KY (WHO HAS JUST RETURNED FROM GENEV CONFERENCE OF NON-NUCLEAR POWERS) HE DID NOT/NOT APPEAR FAMILIAR WITH POSITION TAKEN PREVIOUSLY BY SVN ON PARA2 OF ARTICLE5 OF DRAFT CONVENTION AND OUTLINED IN YOURTEL.HE TOOK AIDE MEMOIRE ON BOARD AND SAID THAT WHILE PARA2 OF ARTICLE5 MIGHT BE DEFENSIBLE ON PURELY LEGAL GROUNDS,HE RECOGNIZED POLITICAL IMPLICATIONS FOR FEDERAL COUNTRIES.HE FELT THAT SUCH POLITICAL IMPLICATIONS MIGHT EVEN BE OF DIRECT INTEREST TO VIETNAM IN EVENT THAT EVENTUAL SETTLEMENT OF VIETNAM WAR INVOLVED SOME FORM OF COOPERATION OR EVEN FEDERATION BETWEEN NORTH AND SOUTH.

2.WHILE KY FELT THAT SVN REP AT NEXT VIENN CONFERENCE WOULD BE INSTRUCTED TO MAINTAIN POSITION TAKEN IN PAST(IE TO OPPOSE PARA2, ARTICLE5),IT IS OBVIOUS THAT VERY LITTLE ATTN HAS BEEN GIVEN TO THIS MATTER IN FOREIGN MINISTRY SO FAR.AS INDICATED IN OURTEL 1097,IT HAS NOT/NOT YET EVEN BEEN DECIDED WHETHER SVN WILL BE REPRESENTED AT SECOND VIENN CONFERENCE.IT WOULD THEREFORE BE WISE TO FOLLOW MATTER UP AGAIN IN FEW MONTHS TIME IN ORDER TO ENSURE (IN EVENT SVN ATTENDS CONFERENCE)CONSISTENCY OF SVN INSTRUCTIONS WITH POSITION TAKEN AT FIRST VIENN CONFERENCE.

...

BEST COPY AVAILABLE

12.11.10

**MESSAGE**

BEST COPY AVAILABLE

FM/DE	EXTERNAL OTT	DATE	FILE/DOSSIER	SECURITY
		OCT. 10/ 1968	26-3-1-6	SECURITE
TO/A	KUALA LUMPUR	NO	L-916	CONFID.
				PRECEDENCE
INFO				ROUTINE

REF YOURTEL 1173 OCT. 9/68  
SUB/SUJ LAW OF TREATIES CONFERENCE - BURMA

WE AGREE WITH PROPOSAL IN REPTEL. YOU SHOULD ENQUIRE FIRST WHETHER BURMA EXPECTS TO ATTEND SECOND SESSION AND, UNLESS THEY INDICATE THEY WILL DEFINITELY NOT ATTEND, MAKE REPRESENTATIONS RE PARA. 2 OF ARTICLE 5.

2. YOU SHOULD INFORM BURMESE THAT, BECAUSE BURMA IS A FEDERAL STATE, WE ATTACH PARTICULAR IMPORTANCE TO POSITION THEY TAKE ON THIS ISSUE. YOU SHOULD ALSO STRESS POINT THAT WE WOULD HOPE BURMA WOULD EXAMINE ART. 5(2) NOT JUST IN TERM OF <sup>ITS</sup> CONSTITUTION, WHICH APPEARS TO DEAL CLEARLY WITH QUESTION OF TREATY-MAKING, BUT AS A RULE OF UNIVERSAL APPLICATION TO ALL FEDERAL STATES. YOU SHOULD MENTION THAT A GREAT MANY FEDERAL STATES (AUSTRALIA, AUSTRIA, BRAZIL, CANADA, FRG, INDIA, MALAYSIA, MEXICO, U.S.A. AND VENEZUELA) EXPRESSED DISSATISFACTION WITH ART. 5(2) AT FIRST SESSION. *You should state that particular problems arise in applying para 2 to federal states, such as Canada, whose constitution is only partly in written form, with part having evolved from constitutional practice.*

*no standard*

DISTRIBUTION  
 LOCAL/LOCALE

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

Diary copy  
Div. diary  
file copy

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

TO  
À  
CANADIAN EMBASSY,  
TUNIS.

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

REFERENCE  
Référence  
Your letter No. 244 of October 2, 1968

SUBJECT  
Sujet  
LAW OF TREATIES CONFERENCE - Article 5

SECURITY  
Sécurité  
CONFIDENTIAL

DATE  
October 10, 1968

NUMBER  
Numéro  
L-924

FILE	DOSSIER
OTTAWA	
	20-3-1-6
MISSION	30

ENCLOSURES  
Annexes

DISTRIBUTION

Thank you for the very useful report on your discussions with Ambassador Khelil. As requested, we enclose three copies of the French version of the white paper "Federalism and International Relations". We hope to raise the question of Article 5 with the Head of the Legal Service of the Tunisian Foreign Ministry while he is in New York. Meanwhile the following information is provided for use when next you discuss this question with Ambassador Khelil.

2. Of the federal states represented at the first session, ten (Australia, Austria, Brazil, Canada, the Federal Republic of Germany, India, Malaysia, Mexico, the U.S.A. and Venezuela) expressed varying degrees of dissatisfaction with paragraph 2. Only three federal States wished to retain the paragraph in its present form; the USSR (which sees it as a further safeguard of the international legal status of Byelorussia and the Ukraine), Switzerland (which accepted the paragraph on the ground that it did not conflict with the Swiss constitution) and Nigeria (which believes its constitution is a complete answer to any claims by Biafra of international legal status). We are making high level representations in both Berne and Lagos in an effort to have the latter two governments reconsider their position. As the aide-mémoire states, no one has suggested that the deletion of paragraph 2 would impair the rights of members of a federal state, whereas many federal States have indicated that its inclusion would create difficulties for them.

3. Should Ambassador Khelil's generally negative attitude continue to be evident when you next discuss this matter with him, you should stress two points. First, paragraph 2 raises a political issue seemingly of no direct interest to Tunisia and we would therefore hope that, if Tunisia cannot support us, it would at least not oppose us. We would hope that Tunisia might at least abstain on paragraph 2. Second, with respect to a separate vote on paragraph 2, the two paragraphs

- 2 -

of Article 5 deal with quite distinct issues. Paragraph 1 is really redundant since it deals with the treaty making capacity of sovereign States, whether unitary or federal, a right which is not open to question. Paragraph 2 deals with the capacity of entities which are not sovereign States, i.e. the individual members of a federal State, and may therefore be ultra vires since Article 1 expressly provides that the scope of the Convention is confined to States and only States. A great many states which oppose paragraph 2 have no objection to paragraph 1. However failure to deal with the two issues separately (through a separate vote on paragraph 2) may well lead to the deletion of the whole article rather than just paragraph 2.

*W. A. BEESLEY*

Under-Secretary of State  
for External Affairs.

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

TO  
À  
THE CANADIAN EMBASSY,  
THE HAGUE, NETHERLANDS

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

REFERENCE  
Référence  
Your Telegram No. 575 of October 4,  
1968

SUBJECT  
Sujet  
LAW OF TREATIES CONFERENCE

SECURITY  
Sécurité  
CONFIDENTIAL

DATE  
October 10, 1968

NUMBER  
Numéro  
L-917

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

ENCLOSURES  
Annexes

DISTRIBUTION

We are grateful for the complete report contained in your telegram under Reference. The favourable reaction of Professor Riphagen is certainly encouraging. The purpose of this letter is to provide information to enable you to reply to Professor Riphagen's enquiry concerning the Canadian position on the compulsory settlement of disputes, referred to in paragraph 4 of your telegram under reference.

2. As was stated by the Canadian Delegation during the first session of this Conference, Canada attaches great importance to the inclusion in the proposed Convention on the Law of Treaties of an Article providing for the compulsory settlement of disputes arising out of the application of the Articles in the Convention which deal with the invalidity and termination of treaties. In fact we and a number of other western delegations have indicated that, without a provision for the compulsory settlement of disputes, the Articles on invalidity and termination would not be acceptable to us. Canada is therefore favourable to the principle underlying the thirteen-power proposal for the settlement of disputes referred to by Professor Riphagen. We would like to see some role accorded, in the disputes settlement article, to the International Court of Justice. We realize, however, that it may be extremely difficult to obtain a provision of this kind in view of the present lack of popularity of the ICJ among Afro-Asian Governments.

3. We would be particularly interested to know whether, as far as the Dutch are aware, the thirteen-power proposal has attracted support from Asian countries or from African countries other than the sponsors of the proposal.

4. Should Professor Riphagen enquire whether Canada would be prepared to lobby on behalf of the thirteen-power proposal, you should indicate that for the time being we are concentrating our efforts on paragraph 2 of Article 5, but that at a later date, we would be quite prepared to

- 2 -

consider joining in with other western countries in lobbying for support for an article on the compulsory settlement of disputes arising out of the application of the invalidity and termination articles. You should not indicate at this time that we would be prepared to lobby specifically for the thirteen-power proposal. We would wish to consider that proposal in the light of any other similar proposals which may be placed before the Conference, including the proposal by the U.S.A. referred to by Professor Riphagen.

J. A. BEESLEY

Under-Secretary of State  
for External Affairs.

**MESSAGE**

Diary copy  
 Div. diary  
 file copy

Tel. file  
 1 extra copy

EXTERNAL OTT

FM/DE

DATE	FILE/DOSSIER	SECURITY SECURITE
OCT. 10 /68	20-3-1-6	CONFIDENTIAL

TO/A

BRUSSELS

NO

PRECEDENCE

L-918

ROUTINE

INFO

REF YOURTEL 1904 OCT. 9/68

SUB/SUJ LAW OF TREATIES CONFERENCE - LUXEMBOURG

WE DID NOT ASK YOU EARLIER TO MAKE REPRESENTATIONS TO LUXEMBOURG BECAUSE YOURTEL 1573 OF AUG. 23 IN REPLY TO OUR <sup>TEL</sup> L-674 OF AUG. 19 STATED IT WAS VERY UNLIKELY LUXEMBOURG WOULD SEND A REPRESENTATIVE TO SECOND SESSION.

2. IF IT APPEARS, HOWEVER, THAT LUXEMBOURG WILL SEND A REPRESENTATIVE TO SECOND SESSION, OR THAT LUXEMBOURG WOULD CONSIDER ARTICLE 5 TO BE A PARTICULARLY IMPORTANT QUESTION FOR WHICH THEY WOULD SEND A REPRESENTATIVE ESPECIALLY TO VIENNA (YOURTEL 1573 REFERS), THEN WE AGREE ENTIRELY WITH YOUR PROPOSAL TO APPROACH LUXEMBOURG AUTHORITIES DIRECT. IN ORAL PRESENTATION ACCOMPANYING DELIVERY OF AIDE-MEMOIRE YOU SHOULD MENTION THAT LARGE MAJORITY OF FEDERAL STATES AT FIRST SESSION, INCLUDING AUSTRALIA, AUSTRIA, BRAZIL, CANADA, FRG, INDIA, MALAYSIA, MEXICO, U.S.A. AND VENEZUELA, EXPRESSED DISSATISFACTION WITH ART. 5(2) AT FIRST SESSION.

DISTRIBUTION  
 LOCAL/LOCALE

*no standard*

ORIGINATOR/REDACTEUR

DIVISION

TELEPHONE

APPROVED/AUTORISE

SIG.....  
*J.S. Stanford/ta*

Legal

2-5406

SIG.....  
*A. BEESLEY*

ACTION COPY

*nu Greedy*

*L cc Langford's stop food  
Done 11/10/9  
20-3-1-6*

FM BONN OCT 10/68 CONFID NO/NO STANDARD

TO EXTER 1215

REF OURTEL 1140 SEP20

26-3-1-6  
32

*file 11/10*

LAW OF TREATIES CONFERENCE ARTICLE V

IN ABSENCE OF DR BLOMEYER DEPUTY HEAD LEGAL DIV FO WE CALLED  
YESTERDAY ON HIS ASST DR FLEISCHHAUER WHO WAS ABLE TO GIVE US A  
DEFINITE ANSWER TO YOUR ENQUIRY.

2. AS MENTIONED IN REFTEL THE GERMAN POSITION HAS NOT/NOT CHANGED  
SINCE THE FIRST SESSION OF THE CONFERENCE AND IF SEPARATE VOTE IS  
TAKEN ON ARTICLE V PARA TWO THE GERMAN DEL WILL CONTINUE TO OPPOSE  
THIS PARA. IN THE EVENT THAT A SEPARATE VOTE IS NOT/NOT TAKEN ON  
PARA TWO AND ARTICLE V IS VOTED ON AS A WHOLE THE GERMANS AGREE WITH  
US THAT DISADVANTAGES OF PARA TWO OUTWEIGHT ADVANTAGES OF PARA ONE  
AND THEREFORE WOULD OPPOSE ARTICLE V AS A WHOLE.

3. DR FLEISCHHAUER ALSO MENTIONED THAT AUSTRIAN DEL WOULD LIKE TO  
AMEND PARA TWO ALONG LINES THAT IF MEMBERS OF A FEDERAL UNION SHOULD  
SIGN TREATIES WITH FOREIGN STATES SUCH ACTION WOULD BE SUBJ TO  
APPROVAL BY THE FEDERAL AUTHORITY. DR FLEISCHHAUER SAID THAT IF THIS  
AMENDMENT SHOULD BE INTRODUCED THEY WILL VOTE AGAINST IT.

4. WE SHOULD RECEIVE NEXT WEEK A NOTE VERBALE FROM FO CONFIRMING  
ABOVE(PARA2) WHICH WILL BE FORWARDED TO YOU IN DUE COURSE.

*M.B.*

*2.11.10*

Feb 20-3-1-6 Mr. Priddy  
M/s/10 Mr. [unclear]

copy to  
A.E. GOTLIEB

**ACTION COPY**

20-3-1-6  
30 / 11 4

TANDT =  
Finishes and  
Jobs

FM PSPAN OCT 10/68 CONF D NO/NO STANDARD  
TO EXTER 1645 IMMED  
REF YOURLET 737 SEP 10 AND YOURTEL L807 SEP 16  
LAW OF TREATIES CONFERENCE

WE LEFT AIDE MEMOIRE WITH T. BADEN-SEMPER LEGAL ADVISER MEA, WHO  
ATTENDED FIRST SESSION OF ILC CONFERENCE IN VIENNA. BADEN-SEMPER  
NOT/NOT IN POSITION TO GIVE DEFINITIVE ANSWER BUT IN GENERAL DID  
NOT/NOT SEEM OPPOSED IN PRINCIPLE TO ANY OF VARIOUS DEGREES OF  
SUPPORT WHICH WE WERE REQUESTING. HE ANTICIPATED THAT TANDT WOULD  
ATTEND SECOND SESSION AND IF HE HAD NOT/NOT BEEN POSTED BY THAT  
TIME WOULD LIKELY BE MEMBER OF TANDT DEL. BADEN-SEMPER MADE FOL-  
LOWING COMMENTS ON BASIS OF OUR ORAL PRESENTATION: (A) IMPLIED  
SEN RICHARDS CAST FIRST VOTE IN FAVOUR OF WHOLE OF ARTICLE 5  
WITHOUT FULL BRIEFING ON IMPLICATIONS (B) TANDT ABSTENTION ON  
SECOND VOTE REFLECTED THEIR DESIRE TO STAY OUT OF ISSUE WHICH  
FROM STRICTLY LEGAL POINT OF VIEW THEY FELT HAD MERIT ON BOTH  
SIDES AND WHICH SEEMED TO DRAW THEM INTO EAST/WEST POLITICAL ISSUE  
OF NO/NO CONCERN TO THEM, (C) BADEN-SEMPER IMPRESSED BY OUR LEGAL  
ARGUMENTS (I) IN OPPOSING PARA 2 AND (II) THAT PARA 1 OF ARTICLE 5 NOT/  
NOT ABSOLUTELY ESSENTIAL TO CONVENTION ALTHOUGH THEY HOPED IT COULD  
BE INCLUDED, (D) TANDT WAS PREPARED TO SUPPORT SEPARATE VOTE ON PARA 1  
AND PARA 2 AND HE EXPECTED THAT SEPARATE VOTE WOULD IN FACT BE  
HELD, (E) MEA WOULD GIVE VERY CAREFUL STUDY TO OUR AIDE MEMOIRE  
AND LET US KNOW WHAT THEIR POSITION WOULD BE.

2. WE AGREED WITH BADEN-SEMPER THAT CDA WAS ASKING FOR TANDT  
...2

14-11-10

PAGE TWO 1645 CONFD NO/NO STANDARD

SUPPORT ON THIS ITEM AS MATTER OF VITAL CONCERN TO CDA AND THAT WE HOPED THEY WOULD VIEW IT IN THIS SENSE AND NOT/NOT IN LIGHT OF EAST/WEST OR ANY OTHER BROADER CONSIDERATIONS. ATTACHED TO THIS OF COURSE WAS OUR FIRM CONVICTION OF SOUNDNESS OF OUR POSITION IN INTERNATL LAW. BADEN-SEMPER SEEMED TO ACCEPT SIGNIFICANCE OF THIS ARTICLE FOR CDA AND SAID HE WOULD KEEP IT VERY MUCH IN MIND IN CONSIDERING QUESTION.

3. ATTORNEY GENERAL RICHARDS WILL LIKELY HEAD TANDT DEL TO CONFERENCE AND HIGHCOM WILL SEE HIM WHEN HE RETURNS FROM VACATION IN BRIT IN EARLY NOV ALONG WITH ANYONE ELSE AT POLITICAL LEVEL WHO WOULD SEEM LIKELY TO INFLUENCE GOVT TO GIVE CDA FULL SUPPORT ON ARTICLE 5.

4. WE WILL REPLY TO YOURTEL L760 AUG19 SEPARATELY.

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

*File 17/10*

*cc Envelope done Oct 17*

TO  
À The Under-Secretary of State for External Affairs

SECURITY  
Sécurité CONFIDENTIAL

FROM  
De The Canadian Embassy, Lisbon

DATE October 10, 1968

REFERENCE  
Référence Your letter L-737(M) of September 10, 1968

NUMBER  
Numéro 338

*J-38*

SUBJECT  
Sujet Law of Treaties Conference - Article 5

FILE	DOSSIER
OTTAWA	20-3-1-6
MISSION	<del>3320-3</del>

ENCLOSURES  
Annexes

DISTRIBUTION

Representations along the lines of your referenced letter were made on October 9 to the Head of the International Political Organization Section of the Foreign Ministry, Dr. Antonio Patricio, with whom a copy of your aide-memoire was left. Dr. Patricio expressed surprise at the earliness of our approach, inasmuch as the Second Session of the Conference on the Law of Treaties would not be held until April 1969. We told him that this advance attention was indicative of the very great importance with which the Canadian government regarded the point at issue. At his request, we also left a copy of the white paper on "Federalism and International Relations".

TO: MR STANFORD  
 FROM REGISTRY  
 OCT 16 1968  
 FILE CHARGED OUT  
 TO: MR STANFORD

2. In reply to our representations, Dr. Patricio said that the Canadian views would be given due consideration when the Portuguese undertake the preparation of their positions for the second session of the Conference. This preparatory work would not be done until shortly before the Conference, since it was only at that time that the Foreign Ministry would be able to assess all relevant factors. A priori, however, Dr. Patricio said he saw no reason why the Portuguese delegate should alter his previous opposition to the inclusion of Article 5 paragraph 2 in the Convention.

3. There is one extraneous factor which we should mention, however. Dr. Patricio picked out of the Aide-Memoire the assertion that no State would consider acceptable the practice of other states assuming the right to interpret for themselves the constitutions of federal states. Why then, Dr. Patricio asked, does Canada arrogate to itself the right to interpret the Portuguese constitution, which says that the overseas provinces are integral parts of Portugal? He admitted that this consideration was not relevant to the point of our representation on the question of federalism. We doubt that the Portuguese would attempt to pursue this loose analogy to seek reciprocal comprehension for their constitutional theses, but we raise it as a possibility.

Received  
 OCT 17 1968  
 In Local Division  
 Department of External Affairs

*[Signature]*  
 The Embassy.

*10.17.10*

*copy letter to 9/10* *Buddy*

**ACTION COPY**

**L**

*file 20-3-1-6*  
*9/10/10*

FM KLMPR OCT9/68 CONFD

TO EXTER 1173

REF YOURLET L737(M) SEP10

LAW OF TREATIES CONFERENCE

20-3-1-6  
32 11

ALTHOUGH BURMA DID NOT/NOT ATTEND FIRST SESSION OF CONFERENCE  
ON LAW OF TREATIES CONVENTION, WE WONDER IF YOU WOULD AGREE  
THAT IT WOULD BE ADVANTAGEOUS TO EXPLAIN CDN POSITION ON  
PARA2 OF ART5 OF PROPOSED CONVENTION WHEN JAMES IS IN RANGOON  
IN MID-NOV. WE COULD ALSO ASCERTAIN AT THAT TIME WHETHER BURMA  
INTENDS TO ATTEND SECOND SESSION OF CONFERENCE. WE EXPECT BURMA  
WOULD SUPPORT CDN POSITION IN ANY CASE.\*\*\*\*\*

*4.9.10*

ACTUAL COPY

*M. Speerley*  
*Stagford*

L

*c.c. L. A. Div*

*Done 11/10/77*  
*11/10*

20-3-1-6		
30		

FM STAGO OCT 9/68 CONFD

TO EXTER 285

REF YOURTEL L813 SEP 16

LAW OF TREATIES CONFERENCE

I CALLED TODAY ON EDMUNDO VARGAS, LEGAL ADVISER TO FOREIGN  
MINISTRY. HE IS NOT SURE IF HE WILL ATTEND WITH CHILEAN DEL  
SECOND SESSION AT VIENNA AS IT MAY CONFLICT WITH A HUMAN RIGHTS  
CONFERENCE WHICH HE MAY HAVE TO ATTEND BUT HE IS IN CHARGE OF  
DRAFTING INSTRUCTIONS FOR CHILEAN DEL TO VIENNA.

2. MR VARGAS SAID HE IS FULLY IN ACCORD WITH CDM ARGUMENTS AND  
EXPECTS CHILE TO MAINTAIN ITS POSITION OF VOTING AGAINST  
PARA 2 OF ARTICLE 5.

3. VARGAS ALSO AGREED THAT CHILE SHOULD SUPORT A SEPARATE VOTE  
ON PARA 2 ARTICLE 5 BUT HE WAS NOT AT PRESENT PREPARED TO  
COMMIT HIMSELF AS TO ATTITUDE CHILE WOULD TAKE IF THERE WERE NO  
SEPARATE VOTE AND ARTICLE 5 SHOULD BE VOTED ON AS A WHOLE. HE DID  
AGREE TO TAKE INTO ACCOUNT IN DRAFTING INSTRUCTIONS REPRESENTATIONS  
I MADE THAT DISADVANTAGES OF PARA 2 OUTWEIGHED ADVANTAGES  
OF PARA 1 AND THAT WHOLE ARTICLE SHOULD BE DELETED.

4. I ASKED HIM TO ADVISE ME FORMALLY WHEN DECISION ON INSTRUCTIONS  
HAS BEEN TAKEN AND HE PROMISED TO DO SO. IN MEANTIME  
HE MADE IT PERFECTLY CLEAR THAT POSITION WHICH IT  
IS PROPOSED TO ADOPT IS TO VOTE AGAINST PARA 2. WILL ADVISE  
FURTHER IN DUE COURSE

SUMMERS

3.11.10

**ACTION COPY.**

*Feb 20-3-1-6  
JH/10*

*L*

FM BRU OCT9/68 CONFD

TO EXTER 1904

BAG COPEN DE LDN

REF OURTEL 1744 SEP16

*20-3-1-6  
JH/10*

LAW OF TREATIES CONFERENCE

DENIS OF LEGAL DIV MFA INFORMED US TODAY IN ONE OF OUR PERIODIC FOLLOW-UP DISCUSSIONS SINCE PRESENTING AIDE-MEMOIRE ON SEP16 THAT MINISTERIAL APPROVAL WILL SHORTLY BE SOUGHT TO OBTAIN BELGIAN SUPPORT OF CDN POSITION. MFA IS MAKING FAVOURABLE RECOMMENDATION AND ANTICIPATES POSITIVE RESPONSE.

2. AS YOU KNOW LUXEMBOURG DID NOT/NOT ATTEND FIRST SESSION OF CONFERENCE BUT DENIS UNDERSTANDS LUXEMBOURG WILL BE SEPARATELY REPRESENTED AT THE SECOND SESSION IN APR/69. WHILE DENIS IS REASONABLY CERTAIN LUXEMBOURG WILL VOTE IN PARALLEL WITH BELGIAN DEL IT WOULD IN OUR OPINION BE DESIRABLE TO APPROACH THEM DIRECT. WE SHOULD ACCORDINGLY BE GRATEFUL FOR YOUR AUTHORITY TO SUBMIT AIDE-MEMOIRE ALONG THE LINES OF YOURLET L737(M) OF SEP10 TO LUXEMBOURG AUTHORITIES SO AS TO ENSURE THEY ARE FULLY COGNIZANT OF CDN POSITION.

3. DENIS ALSO INFORMED US THAT CONSULTATIONS HAD TAKEN PLACE BETWEEN EUROPEAN COUNTRIES IN STRASBOURG TO PREPARE FOR THE FIRST SESSION HELD IN VIENN LAST SPRING. HE THOUGHT THERE HAD ALSO BEEN FURTHER CONSULTATION BETWEEN WIDER GROUP OF WESTERN COUNTRIES INCLUDING USA AND CDA IN PARIS SHORTLY BEFORE FIRST SESSION OPENED AND DENIS RECALLED SOME DISCUSSION IN VIENN ABOUT CONVENING SIMILAR CONSULTATIVE MTG BEFORE THE SECOND SESSION TAKES PLACE NEXT SPRING. HE

*2.10.10*

PAGE TWO 1904 CONFD

PERSONALLY HAD HEARD NO/NO MORE ABOUT THIS AND HE WONDERED WHETHER  
WE HAD ANY NEWS ABOUT MTG TO CONCERT WESTERN APPROACH BEFORE FINAL  
SESSION OF CONFERENCE.

cc: Berne

MEMO FOR FILE:

20-3-1-6

RESTRICTED

October 9, 1968

SUBJECT: Law of Treaties Conference

On Monday October 7, Mr. de Dardel, Counsellor at the Swiss Embassy, called on me to discuss the Swiss position concerning the forthcoming second session of the Law of Treaties Conference. On the instruction of his Government, he informed me that Switzerland was concerned about the section of the proposed Convention which deals with the invalidity and termination of treaties. In particular Switzerland wishes to obtain a more favourable formulation of Article 50, which deals with jus cogens, and Article 62 bis on the compulsory settlement of disputes. He asked me to indicate the Canadian position on these two Articles.

/to assure  
adoption of

2. With respect to Article 50, I replied that while there had been some improvement in the text effected the first Session, the present text was certainly far from perfect. Quite apart from the political issues involved, the formulation of Article 50 presents a difficult legal problem in that it is far from easy to determine which rules of general international law are properly considered rules of jus cogens. I added that Canada would probably favour any amendment to the text of Article 50 which would serve to define more clearly the question of which rules of international law are rules of jus cogens, provided this definition were in the direction of restricting the application of Article 50.

3. With respect to Article 62 bis, I said that Canada strongly favoured the incorporation in the proposed Convention on the Law of Treaties of an Article providing for the compulsory settlement of disputes arising out of the application of the Articles on invalidity and termination of treaties. I added that, while Canada would very much like to see a provision of this kind include a role for the International Court of Justice, we believe that there would be difficulty in securing this objective in view of the Afro-Asian antipathy towards the ICJ at the present time.

4. I took advantage of Mr. de Dardel's visit to inform him of the importance which we attach to the deletion of paragraph 2 of Article 5. I informed him that our principal representations to the Swiss Government on this subject were being made by our Embassy in Berne, nevertheless I reviewed with him our position as set out in the multiple numbered letter and Aide-Mémoire which we had distributed to posts. Mr. de Dardel observed that, while our representation in Berne would doubtless bring the matter effectively to the attention of the appropriate Swiss authorities, he was perhaps better able to appreciate our concern on this point because he is in Canada and aware of the practical

- 2 -

considerations which lead us to attach so much importance to this issue.

5. In concluding I informed Mr. de Dardel that we would be interested in learning, in due course, of any plans which the Swiss Government may have for lobbying in favour of an Article on the compulsory settlement of disputes.



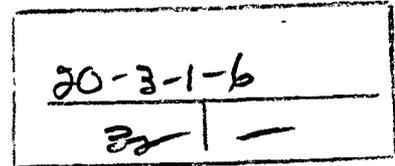
J.S. Stanford

cc: Kuala Lumpur

Diary copy

Div. diary

file copy



Ottawa, October 9, 1968.

Dear Mr. Blackwood,

At the request of Mr. Hadwen, we enclose  
3 copies of the Governments White Paper "Federalism and  
International Relations". These are provided for  
distribution to Singapore authorities concerned with the  
United Nations Conference on the Law of Treaties.

Yours sincerely,

J.S. Stanford  
Treaty Section  
Legal Division

Office of the High Commissioner for Canada,  
International Building,  
360 Arthur Road, P.O. Box 845,  
SINGAPORE.

Attention: Mr. Blackwood

**ACTION COPY**

*file 20-3-1-6 8/10*

*my copy stamped*

20-3-1-6  
32 | 11

L

FM KLMPR OCT8/68 CONF D

TO EXTER 1164 PRIORITY

REF YOURLET L1314 SEP10 YOURTEL 7927 SEP16

LAW OF TREATIES CONFERENCE-ART 5

WHILE IN SPORE ON OCT1 I DISCUSSED THIS SUBJECT ON SAME LINES AS IN KLMPR WITH BARKER MINISTER OF LAW, WITH ACTING PERMSEC MFA NATHAN, AND WITH CHAO HICK TIN LEGAL ADVISER ATTORNEY GEN CHAMBERS WHO HAD ATTENDED PREVIOUS MTGS.

2. I LEFT COPIES OF OUR AID MEMORE WITH ALL THESE AUTHORITIES. THEY WERE MOST RECEPTIVE AND COOPERATIVE. BARKER INSTRUCTED MR CHAO DURING OUR MTG TO PREPARE INSTRUCTIONS WHICH WOULD ENABLE SPORE DEL TO MAINTAIN SAME POSITION THAT IT HAD AT PREVIOUS MTGS. IN ADDITION BARKER THOUGHT THAT SPORE WOULD OBVIOUSLY AGREE WITH US WITH RESPECT TO VOTING ON ART5 IF PARA2 WERE SOMEHOW TO BE RETAINED.

3. BARKERS ARGUMENT WAS THAT SPORE HAD A STRONG VESTED INTEREST IN KEEPING INTERNATL LAW OF TREATIES ON A SOUND BASIS. ITS RELATIONS WITH MALAYSIAN AND WITH OTHER FEDERAL STATES SUCH AS CDA MADE IT OBVIOUS HE SAID THAT HIS GOVT WOULD TAKE SAME POSITION THAT WE WERE TAKING.

4. I THINK YOU CAN COUNT ON FULL COOPERATION FROM SPORE AUTHORITIES. GRATEFUL IF YOU COULD AIRMAIL THREE COPIES OF WHITE PAPER ON FEDERALISM AND INTERNATL RELATIONS TO BLACKWOOD IN SPORE FOR DISTR

*Done 8/10/68*

HADWEN\*\*\*\*

ZYH 1. 8. 10

*m. [unclear]*  
*m. [unclear]*

*file J 17/10*

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

TO Under-Secretary of State for External Affairs  
A OTTAWA

SECURITY CONFIDENTIAL  
Sécurité

DATE October 7, 1968

FROM Office of the High Commissioner for Canada  
De DAR ES SALAAM

NUMBER 445  
Numéro

REFERENCE Your letter No. L-737 (M) of September 10 and  
Référence your telegram L-775 of September 13

*J-39*

SUBJECT Law of Treaties Conference - Article 5  
Sujet

FILE	DOSSIER
OTTAWA	
	20-3-1-6
MISSION	
<del>20-4</del>	11

ENCLOSURES  
Annexes

DISTRIBUTION

We submitted today the Aide-Memoire on this subject to the appropriate legal authorities of the Tanzanian Foreign Ministry. In doing so, we emphasized the importance of this matter to Canada. We asked that we be informed in due course of the position the Tanzanian Government will take on Article 5 at the second session of the Law of Treaties Conference. We will follow up with the Foreign Ministry after discreet interval to ensure that we get a reply.

2. Representation on this subject will be made to Zambian Government when the High Commission makes his next visit to Lusaka which is scheduled tentatively for early November.

*Anthony Small*

Office of the High Commissioner  
for Canada

Received  
OCT 17 1968  
In Legal Division  
Department of External Affairs

TO: MR STANFORD  
FROM: REGISTRY  
OCT 16 1968  
FILE CHARGED OUT  
TO: MR STANFORD

File  
Diary  
Div. Diary

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

TO  
À

The Canadian Embassy,  
Tehran, Iran

SECURITY  
Sécurité

CONFIDENTIAL

FROM  
De

The Under-Secretary of State for External Affairs

DATE

October 7, 1968

REFERENCE  
Référence

Yourlot 298 - September 21, 1968

NUMBER  
Numéro

L-904

SUBJECT  
Sujet

Law of Treaties

FILE	DOSSIER
OTTAWA 20-3-1-6	
MISSION	

ENCLOSURES  
Annexes

DISTRIBUTION

Thank you for your full report on your discussions with Dr. Kazemi. We are encouraged by the generally favourable reaction to your presentation.

2. You have asked for our views on the possibility of an amendment to paragraph 2 which would make it clear that the federal State itself was the only one which would interpret its own constitution. An amendment of this kind, to be satisfactory to us, must incorporate a procedure to assure its effective application; a merely hortatory paragraph in the article that federal States are to interpret their own constitution would not remove the practical difficulties inherent in the present text of paragraph 2.

3. At the first session the Austrian delegation introduced an amendment of a kind that would have been acceptable to us. This amendment was to add the following sentence to paragraph 2: "For the purpose of concluding a treaty, the extent of such capacity is to be confirmed by an authority of the federal union competent under Article 6<sup>o</sup>, i.e., head of State, head of Government or Minister of Foreign Affairs of the federal State or Government. This amendment was defeated at the first session, which does not encourage us to believe that efforts to secure a similar amendment at the second session would be successful. Moreover there is the tactical consideration that the support of only one-third of the representatives, plus one, is required to effect deletion of paragraph 2, whereas the support of two-thirds of the representations present would be required to effect an amendment to the paragraph.

4. We have noted and will pass to the Canadian delegation your suggestion that Dr. Kazemi be cultivated during the Conference.

5. It would appear that, through an oversight, a copy of your letter to Dr. Partash was not enclosed with your letter under reference. We should be grateful if a copy of this letter could be forwarded to us in due course.

*E. A. DRESBY*

Under-Secretary of State  
for External Affairs.

MESSAGE

FM/DE	EXTERNAL OTT	DATE	FILE/DOSSIER	SECURITY SECURITE
		OCT.4/68	20-3-1-6 32	CONFED.
TO/A	QUITO		NO	PRECEDENCE
			L-897	ROUTINE
INFO				

REF

YOURTEL 125 OF OCTOBER 1, 1968

SUB/SUJ

LAW OF TREATY CONFERENCE

WE WOULD PREFER NOT TO RAISE THE QUESTION OF ARTICLE 49 DEALING WITH THE INVALIDITY OF TREATIES PROCURED BY THE THREAT OR USE OF FORCE. SHOULD THE ECUADORIAN AUTHORITIES RAISE THIS QUESTION WITH YOU HOWEVER DURING YOUR DISCUSSIONS ON ARTICLE 5, YOU SHOULD INDICATE THAT THE CANADIAN DELEGATION STATED AT THE FIRST SESSION THAT IT WAS IN FAVOUR, IN PRINCIPLE, OF ARTICLE 49 PROVIDED SATISFACTORY PROVISIONS ARE INCLUDED IN THE CONVENTION FOR COMPULSORY THIRD PARTY SETTLEMENT OF DISPUTES ARISING OUT OF THE APPLICATION OF THE INVALIDITY ARTICLES OF THE CONVENTION.

2. ATTEMPT BY ECUADOR TO RELATE ARTICLE 49 TO A 1942 TREATY RAISES THE COMPLEX QUESTION OF WHETHER

DISTRIBUTION  
LOCAL/LOCALE

*Lat Am (done in SW)*

ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	APPROVED/AUTORISE
SIG.....			SIG..... <i>J.A. BEESLEY</i>

J.S. STANFORD/TS.  
EXT 18/BIL (REV 8/84)  
(COMMUNICATIONS DIV)

LEGAL

2-5406

*J.A. BEESLEY*

- 2 -

THE NEW CONVENTION IS TO APPLY TO TREATIES CONCLUDED  
BEFORE IT ENTERS INTO FORCE. WE WOULD HOPE TO AVOID  
ANY DISCUSSION OF THIS VERY DIFFICULT ISSUE WITH THE  
ECUADORIANS AT THIS TIME.

ACTION COPY

file 20-3-1-6  
L5 / 4/10

DE BERUT OCT4/68 RESTR

A EXTER 759 PRIORITE

REF NOTRETEL 734 SEP25

CONF SUR LE DROIT DES TRAITES

CONTRAIREMENT A CE QUI AVAIT ETE ANNONCE AU PREALABLE, LE SECGEN  
DU MAE LIBANAIS, NAGIB SADAQA, N'ACCOMPAGNE PAS LE MINISTRE DES AE  
LIBANAIS A LAGNU MAIS IRA REMPLACER CELUI-CI A LA  
TETE DE LA DEL LIBANAISE LORSQUE LE MINISTRE RENTRERA A BERUT,  
PROBABLEMENT VERS LA FIN DU MOIS.

4. 4.10

Diary  
Div. Diary  
File

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

TO  
A The Under-Secretary *en return*

SECURITY **CONFIDENTIAL**  
Sécurité

FROM  
De Legal Division

DATE October 4, 1968

REFERENCE  
Référence

NUMBER  
Numéro

SUBJECT  
Sujet Law of Treaties Conference - Article 5

FILE	DOSSIER
OTTAWA	80-3-1-6
MISSION	80

ENCLOSURES  
Annexes

DISTRIBUTION

At the first session of the Law of Treaties Conference earlier this year, the representative of the Holy See abstained on the first vote on Article 5, paragraph 2 (the federal states provision) but voted in favour of the paragraph on the second vote and then voted in favour of Article 5 as a whole.

2. It would therefore appear desirable to make representations to the Holy See to request that they vote against paragraph 2 or, failing that, at least abstain on the voting. In addition we would wish to assure that the Holy See will support a proposal for a separate vote on paragraph 2. As matters now stand it appears that we can defeat paragraph 2 only if we are able to secure a separate vote on the paragraph. This will require a simple majority in favour of a separate vote.

3. The most effective method of making the necessary representations to the Holy See would appear to be through the Apostolic Delegate in Ottawa. If you agree, you may wish to raise this question with him when he next has occasion to call on you. Attached for your information is a copy of multiple letter L-737 of September 10 detailing the position we are taking in representations to governments. Also attached for delivery to the Apostolic Delegate is a copy of the Aide Memoire which we are transmitting to governments.

J. A. BEESLEY

Legal Division

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

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

### La Constitution fédérale est une loi interne

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

### La Constitution fédérale selon le droit international

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

- 2 -

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

### Pratique des Etats

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

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

### Portée de la Convention

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

### Conclusion

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

*copy in deleted 5110*

**ACTION COPY**

*file 20-3-1-6 JH/10*

*M. Wesley  
# Stafford*

FM HAGUE OCT4/68 CONFD NO/NO STANDARD

TO EXTER 575

BAG COPEN DE HAGUE

20-3-1-6	
32	11

REF YOURLET L737(M)SEP10 AND YOURTEL L788 SEP13

LAW OF TREATIES CONFERENCE

WE CALLED TODAY ON PROF RIPHAGEN, LEGAL ADVISER MFA, IN ACCORDANCE WITH YOUR INSTRUCTIONS AND LEFT AIDE MEMOIRE, AS WELL AS CONVEYING ORALLY POINTS CONTAINED IN REFLET AND TEL. RIPHAGEN SAID THAT HE SAW NO/NO REASON FOR NETHERLANDS GOVT TO DEPART FROM POSITION IT ADOPTED AT VIRST VIENA CONFERENCE ON LAW OF TREATIES. SPECIFICALLY, HE SAID(A)NETHERLANDS WOULD SUPPORT MOVE FOR SEPARATE VOTE ON ARTICLE 5, PARA TWO, (B) THAT NETHERLANDS FAVOURED DELETION OF PARA TWO FROM CONVENTION AND(C) THAT, IF NECESSARY, NETHERLANDS WOULD VOTE AGAINST WHOLE OF ARTICLE 5 IF SEPARATE VOTE ON PARA TWO WERE DENIED.

2. RIPHAGEN HAS BEEN APPOINTED AD HOC JUDGE OF INTERNATL COURT FOR BARCELONA TRACTION CASE AND IF COURTS HEARING OF CASE CONFLICTS WITH VIENA CONFERENCE, HE WILL HAVE TO REMAIN IN HAGUE AND SOMEONE ELSE WILL LEAD DUTCH DEL. IN THIS EVENT, HOWEVER, RIPHAGEN WILL WRITE INSTRUCTIONS FOR DEL AND HE INDICATED THAT DUTCH POSITION ON ARTICLE 5 WOULD BE UNLIKELY TO CHANGE, EVEN IF HE DID NOT/NOT HEAD DEL.

3. COMMENTING ON AIDE MEMOIRE, RIPHAGEN OBSERVED THAT CDN ARGUMENTS OUTLINED IN PARA HEADED QUOTE SCOPE OF THE CONVENTION UNQUOTE WERE QUITE VALID, BUT HE WONDERED WHETHER THOUGHT SHOULD BE GIVEN TO DEFINING WORD QUOTE STATE UNQUOTE IN ARTICLE ONE TO MAKE QUITE CLEAR THAT CONVENTION DEALT WITH SOVEREIGN STATES. WHILE ATTEMPT TO ADD

...2

*26, 4, 10*

PAGE TWO 575 CONFD NO/NO STANDARD

SUCH A DEFINITION MIGHT CAUSE POLITICAL DIFFICULTIES, RIPHAGEN THOUGHT IT WAS WORTH AT LEAST THINKING ABOUT.

4. RIPHAGEN WENT ON TO OUTLINE IMPORTANCE DUTCH ATTACH TO 13 POWER PROPOSAL RE SETTLEMENT OF DISPUTES OVER INVALIDITY OF TREATIES BY CONCILIATION AND ARBITRATION AND WONDERED WHETHER CDN AUTHORITIES HAD GIVEN ANY THOUGHT TO THIS MATTER. WE SAID WE HAD NO/NO INFO ON SUBJ. RIPHAGEN REVIEWED BACKGROUND FOR OUR BENEFIT AND WENT ON TO SAY THAT HE HAD LEARNED IN CONFIDENCE THAT USA WAS ABOUT TO TAKE INITIATIVE ON THIS PROPOSAL, AND WILL SOON PROPOSE TO A NUMBER OF COUNTRIES THAT THE PROPOSAL BE AMENDED TO PROVIDE FOR CREATION OF UN COMMISSION WHICH COULD IN TURN REQUEST ADVISORY OPINIONS FROM INTERNATL COURT. RIPHAGEN THOUGHT AMERICANS PROPOSAL STOOD LITTLE CHANCE OF ACCEPTANCE AND THAT, IN ANY CASE, USA WAS NOT/NOT BEST PLACED COUNTRY TO TAKE INITIATIVE. HE THOUGHT CDA WELL PLACED TO LOBBY WITH AFROASIANS, ESPECIALLY INDIA IN THIS RESPECT. WE UNDERTOOK TO ENQUIRE WHETHER YOU HAD GIVEN CONSIDERATION TO MATTER AND, IF SO, WHAT YOUR VIEWS WERE ...

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

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

FROM REGISTRY

OCT 11 1968

FILE CHARGED OUT

TO:

CONFIDENTIAL

TO

Under-Secretary of State for External Affairs, Ottawa

SECURITY / Sécurité

FROM / De

Canadian Embassy, Bern, Switzerland

DATE

October 3, 1968

REFERENCE / Référence

Your Telegram No. L849 of September 20, 1968

NUMBER / Numéro

346

SUBJECT / Sujet

Law of Treaties Conference

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

ENCLOSURES / Annexes

DISTRIBUTION

You may be wondering why you have not heard from us ere this on the important subject under reference. The Head of the Legal Division of the FPD, whom we know very well, told us that the Law of Treaties Conference is not his subject and was handled personally by the Legal Adviser of the Department, who corresponds to ~~the~~ Assistant Under-Secretary with us. The Legal Adviser, Dr. Rudolf Binschedler was the Swiss chief delegate at the Conference of Non-Nuclear States. We were in touch with him in Geneva and agreed, in principle, to meet in Bern on his return. However, on the day of his return, he reported to the Federal Council (Cabinet) on the CNNS and was inducted the very next day into the Army for his two weeks' service. With the Swiss Militia system, this is a hazard to which every Swiss male in good health is subject on a moment's notice, up to the age of 52, even those in the highest positions. Our choice was, therefore, to go to the desk officer in the Legal Division, who follows the Law of Treaties Conference or to wait for Binschedler's return on October 15. The desk officer, by chance, was on his back with flu and in any case Binschedler had expressed the wish from Geneva to see us personally on the subject. In the circumstances we have thought it best to hold fire until Binschedler's return, particularly as the next session in Vienna begins only next April, and we feel fairly confident that Swiss strategy has not been finally formulated. We, therefore, propose to follow up the matter with Binschedler when the Army releases him.

2. The Swiss militia system seems incredible, even to us here on the spot, but its object is to have a people's army ready to fight at a moment's notice and hence the sudden call ups. The Israeli army, incidentally, modelled itself on the Swiss and its performances to date have indicated that the system, despite its apparent absurdities, really works.

3. You may be sure that we have this important subject very much in mind and will follow up at the first available opportunity.

Received

OCT 11 1968

In Legal Division

Department of External Affairs

*[Signature]*

The Embassy

002287

16.11.10

*om 1307/ley*  
*slant foca*  
ACTION COPY

*file 20-3-1-6*

*L*

FM VIENN OCT 3/68 CONFD NO/NO STANDARD

TO EXTEROTT 949

REF MYTEL 908 SEP19

LAW OF TREATIES:DRAFT ARTICLE 5

20-3-1-6		
30		11

VEROSTA RETURNED BRIEFLY BUT LEAVES FOR UNGA TODAY.I HAVE HAD

SHORT TALK WITH HIM.HE SAID AUSTRIA WILL TRY TO FIND WAY OF

SATISFYING ITS OWN AND ALSO CDAS INTERESTS.WE WILL HAVE MORE

DETAILED TALK AFTER HIS RETURN IN NOV.HE WONDERED IF SOVIET

ACTION IN CZECHOSLOVAKIA MIGHT NOT/HAVE EFFECT OF POSTPONING

SECOND SESSION PLANNED FOR NEXT SPRING.

2.I DO NOT/NOT KNOW ZEMANEK AND UNLESS YOU THINK I SHOULD MAKE

POINT OF SEEING HIM SOON I WOULD PREFER TO WAIT FOR VEROSTA WHO

SEEMS TO BE KEY MAN ON AUSTRIAN SIDE

MCCORDICK.

*from 154-511*  
14-3-10

*file 20-3-1-6  
JH 2/10*

*m. [unclear]  
m. [unclear]*

20-3-1-6	
20	—

DESK OFFICER

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

TO OTT SVC 2859  
REF QUITO 125 OCT1  
LAW OF TREATY CONFERENCE  
AMEND: LINE 10 TO READ QUOTE  
ECUADOR BY PERU AFTER A BRIEF WAR, AND WHICH COST ECUADOR UNQUOTE  
LINE 14 TO QUOTE TO BE ABLE TO SAY CDA WILL SUPPORT ECUADOR BY  
VOTING <sup>in favour</sup> OF THIS ARTICLE..UNQUOTE

UFOE

18. 2. 10

*[Handwritten signature]*

EXTERNAL AFFAIRS



TO: MR STANFORD  
 FROM: REGISTRY  
 OCT 9 1968  
 AFFAIRES EXTERIEURES  
 FILE CHARGED OUT  
 TO: MR STANFORD

*Perhaps A.E.S. should follow up in N.Y. (no par) c.c. to REC 10/10*

SECURITY / Sécurité CONFIDENTIAL

DATE October 2, 1968

NUMBER / Numéro 244

*8-37*

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

FROM / De The Canadian Embassy, Tunis

REFERENCE / Référence Your letter L-737 (M) of September 10 and your telegram L-822 of September 16

SUBJECT / Sujet Law of Treaties Conference - Article 5 on Federal States

FILE	DOSSIER
OTTAWA	80-3-1-6
MISSION	32

ENCLOSURES / Annexes

DISTRIBUTION

I called on the Secretary-General, Ambassador Khelil, this morning to discuss Article 5 of the Draft Convention and to present the Canadian viewpoint on sub-paragraph 2. I decided to make my approach at this level because of the importance of the subject matter to Canada and because this mission has not had contact with the two officials mentioned in your telegram under reference. Furthermore, the Head of the Legal Service of the Foreign Ministry, Mr. Abdelmajid Ben Messaouda, is at present in New York as a member of the Tunisian delegation to the United Nations General Assembly.

2. Mr. Khelil listened carefully to the thesis which I advanced on the basis of your circular letter. He seemed to be aware of the work of the first session of the Conference held in Vienna last spring though I very much doubt whether he was aware, until I so informed him, that Tunisia had voted in favour of paragraph 2. I quickly added that their vote might well have been decided by the Tunisian experts on technical ground without specific instructions since this matter would not interest a unitary state as much as it concerns Canada. I, of course, specifically asked that they change their position and preferably vote against paragraph 2, or at least abstain at the meeting which will be held in Vienna in the Spring of 1969. I explained the idea of a separate vote and the nature of the majority needed. I obtained no commitment from him and he simply said that the matter would be examined.

3. Incidentally, he did not seem to know about the African-Asian Legal Consultative Group mentioned in your paragraph 11. He did not know whether Tunisia actually belonged but he observed that this committee seemed to be of no importance. I said that we were not requesting that Article 5 be in fact discussed at the meeting of this Group which you state is to convene immediately following the Twenty-third General Assembly.

4. Speaking, at least partly as the devil's advocate, Khelil said that it seemed to him that such provision as is contained in paragraph 2 seemed to be necessary, even if in a modified form, to

Received  
OCT 10 1968

.../2

*6. 10. 10*

- 2 -

indicate that the members of a Federal Union could in certain circumstances have the right to negotiate and conclude treaties. I contended that this was not necessarily so since a Federal State could at any time indicate that a member of the union was authorized to conclude a specific agreement. He then mentioned the German Länder and together we looked at the final pages of the annex to the pamphlet in French on "Federalism and International Relations". I contended that a Land could only conclude an agreement with specific authority from the Federal Government.

5. When I said to him that we would like a separate vote on paragraph 2, we then turned to look at paragraph 1. He seemed to think this was important and that perhaps it could not stand alone without some mention of federal States. I said that we had no objection to paragraph 1 if it were voted on separately, though it might not even be necessary. I mentioned that the two existing Vienna Conventions did not include specific articles dealing with the right of States to send or receive diplomats or consuls. These basic ideas were implied in each Convention and it could be said that the same reasoning applied to the Convention now being negotiated.

6. Mr. Khelil concluded that they would have a look at this matter but he made no commitment as to what their answer might be or when I might hear from him. He did say that Tunisia in its dealings with others, including Canada, always dealt only with the federal authorities. This has certainly been true in our case. (I might mention that at one stage they were contemplating the recognition of Biafra.)

7. When seeking the interview I had said that I wanted to raise a legal problem but this did not seem to get through. Khelil was accompanied only by a junior who is in fact the Canada desk officer in the political division covering the Americas.

8. I think it might be necessary to follow this up, presumably again with Khelil himself. There are still of course some months to prepare the ground before the meeting in Vienna next April 9. If I were to return to him I would wish to have some additional material. It would be useful if you could expand on the status and practice of the Länder in this matter. The annex to the paper on Canadian federalism and international relations is, of course, a Canadian statement. Presumably it is not at variance in any way with what the federal states in question would say themselves. It would also be helpful if you could indicate whether the Canadian position on Article 5 is being supported by other federal states. I was not asked this but your failure to mention the position of others rather suggests that other federal states can live with the existing paragraph 2.

9. Originally we received only one copy in English and one copy in French of the white paper "Federalism and International Relations" (we asked for additional copies in French in our telegram 26 of February 20 but never received a reply or any further copies). Because of his mention of the Länder I felt that I had to leave our one French copy with Mr. Khelil. Please, however, send further copies to us by airmail in the French version only. I suggest three additional copies.

.../3

002291

- 3 -

*10 of Art 5: We sent to  
Dunlop the French version  
of the Aide-Mémoire.*

10. I naturally left with Khelil your Aide-Mémoire. During our discussion we used the official text in English and our own office translation of Article 5 since we could not readily locate the official text of this Article in French.

*A. J. Pick*  
A. J. Pick  
Ambassador

Jul 20-3-1-6 M B...  
St 2/10 St...

# ACTION COPY

L

20-3-1-6  
30 | 11

FM SIKHM OCT2/68 CONFD

TO TT EXTER 469 IMMED DE HAGUE

REF OURTEL 445 SEP24

LAW OF TREATIES CONFERENCE

SAW BLIX TODAY OCT2 AND LEFT COPY OF AIDE MEMOIRE AS PER YOURLET L737 SEP10 AND MADE POINTS MENTIONED YOURTEL L817 SEP16. ALSO LEFT COPY OF WHITEPAPER.

2. BLIX CONFIRMED THAT SWEDES HAD VOTED AGAINST PARA2 AND WOULD NO/NO DOUBT DO SO AGAIN. HE AGREED THAT PARA1 WAS UNNECESSARY AND SAID THEY WERE INDIFFERENT ON WHETHER OR NOT/NOT IT WAS INCLUDED. HE BELIEVED SWEDEN WOULD VOTE FOR SEPARATION OF TWO PARAS, AND IF THAT SUCCEEDED, VOTE AGAINST PARA2 AND FOR PARA1. IF SEPARATION VOTE FAILED THEY COULD NOT/NOT GUARANTEE THEY WOULD VOTE AGAINST ARTICLE 5 AS A WHOLE BUT CONSIDERING THEIR DISLIKE OF PARA2 AND THEIR NEUTRAL ATTITUDE ON PARA1, HE THOUGHT A NEGATIVE VOTE MIGHT BE LIKELY; IN ANY EVENT HE THOUGHT THEY WOULD AT WORST ABSTAIN. APART FROM SUPPORT FOR SEPARATION OF TWO PARAS AND THEN A VOTE AGAINST PARA2 ALONE, HE WAS CAREFUL NOT/NOT TO GIVE ANY FIRM ASSURANCES ON SWEDISH POSITION.

Good enough

3. BLIX SAID THAT SWEDES MAIN OBJECTIONS WERE IN ANOTHER ARTICLE DEALING WITH IMPLEMENTATION OF TREATIES WHICH IN PRESENT DRAFT ATTEMPTS TO DEAL WITH INTERNAL CONSTITUTIONAL PROCEDURES AS A CAUSE OF DELAY IN IMPLEMENTATION. BLIX THINKS THAT EXISTING INTERNATL CRITERIA CAN AND SHOULD BE APPLIED TO QUESTION OF IMPLEMENTATION RATHER THAN INTERNAL CONSTITUTIONAL CRITERIA. FOR THIS REASON HE AGREED WITH

43?

...2

7. 2. 10

PAGE TWO 469 CONFID

POINT MADE YOURTEL L817. HE NOTED, HOWEVER, THAT ALTHOUGH THE SWEDISH LINE OF ARGUMENT LED TO SAME CONCLUSION AS OURS IN RESPECT OF PARA2, IT WAS ARRIVED AT FROM A DIFFERENT DIRECTION. HE WAS NOT/NOT SURE FOR EXAMPLE GOTLIEB WOULD AGREE THAT THERE WERE SUFFICIENT INTERNATL CRITERIA IN EXISTENCE RESPECTING COMPETENCE OF MEMBERS OF FEDERATIONS IN TREATY-MAKING AND THAT REF TO INTERNAL CONSTITUTIONAL ARRANGEMENT WAS MERELY UNNECESSARY. HE AGREED, HOWEVER, WITH SUGGESTION THAT ON GENERAL PRINCIPLES IT WAS UNDESIRABLE BOTH TO HAVE INTERNATL COMMUNITY INTERPRET CONSITIUTIONAL LAW OF ONES OWN COUNTRY AND, EQUALLY, TO BE REQUIRED TO TAKE A POSITION ON CONSTITUTIONAL LAW OF ANOTHER COUNTRY.

4. ON BASIS OF OUR CONVERSATION WZ CAN TAKE IT SWEDES WILL(A) VOTE FOR SEPARATION OF TWO PARAS AND IF QHIS SUCCEEDS, VOTE AGAINST PARA2(B) IF EFFORT TO SEPARATE TWO PARAS FAILS, THEY MAY WELL VOTE AGAINST ARTICLE AS A WHOLE AND IN ANY EVENT ABSTAIN

ANDREW

RETURN TO LEGAL DIV. 560

FILE  
DIARY  
IV DIARY

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

The Canadian Embassy, HELSINKI

CONFIDENTIAL

TO  
À

SECURITY  
Sécurité

October 2, 1968

FROM  
De

DATE

NUMBER  
Numéro

L-883

REFERENCE  
Référence

Your telegram 415 of September 24, 1968

SUBJECT  
Sujet

Law of Treaties Conference - Article 5

FILE	DOSSIER
OTTAWA 20-3-1-6	
MISSION	

ENCLOSURES  
Annexes

DISTRIBUTION

We appreciate the political considerations which the Finnish Government must take into account in determining its position on Article 5.

2. Nigeria, Switzerland and the USSR, the only federal States which, at the first session, indicated that paragraph 2 was acceptable in its present form, all explained their position in terms of the fact that the article satisfactorily reflected the legal position under their individual constitutions. However, the ten other major federal States which expressed dissatisfaction with paragraph 2 (Australia, Austria, Brazil, Canada, Federal Republic of Germany, India, Malaysia, Mexico, USA and Venezuela) pointed out that the mere fact that paragraph 2 was in accord with a few federal constitutions did not justify its adoption as a rule of law applicable to all federal States.

3. Should the Finnish Government be disposed to justify a difference in their position from that of the USSR on purely legal grounds, they may wish to stress the fact that the Conference should not be expected to elevate the Soviet constitutional position into a general rule of international law, and that there is no reason to believe deletion of the paragraph would in any way impair the position in international law of Byelorussia and the Ukraine.

4. We should be grateful if you could convey these points to Mr. Gustafsson on an appropriate occasion.

J. A. BEESLEY  
Under-Secretary of State  
for External Affairs

*released by European  
R.D.J. Tessier  
3.10.68*

*Joe*  
*Should we*  
*present re USSR?*  
*Need we submit the*  
*USSR constitution*  
*position into the*  
*international law*  
*applicable to all?*  
*JS*  
*Mr. Stangord*

FM HSNKI SEP24/68 CONFID

TO TT EXTER 415 PRIORITY DE HAGUE

BAG COPEN OSLO STKHM

REF YOURLET L737(M)SEP13 AND YOURTEL L779 SEP13

LAW OF TREATIES CONFERENCE-ARTICLE 5

ON FRI SEP20 WE CALLED ON MR PAUL GUSTAFSSON DIRECTOR OF LEGAL AFFAIRS DEPT OF FINN MFA AND PRESENTED HIM WITH A COPY OF AIDE MEMOIRE ATTACHED TO YOUR REFLET. WE ALSO LEFT HIM A COPY OF GOVTS WHITE PAPER ON FEDERALISM AND INTERNATL RELATIONS AND SPOKE TO HIM ALONG LINES SET FORTH IN YOUR REFLET.

2. MR GUSTAFSSON SEEMED WELL INFORMED ON ARTICLE 5 OF THE INTERNATL LAW COMMISSION DRAFT AND WAS AWARE OF CDAG PARTICULAR INTEREST IN PARAG OF THAT ARTICLE. SPEAKING PERSONALLY HE REMARKED THAT AS A LAWYER HE HAD LITTLE INTEREST OR RESPECT FROM LEGAL POINT OF VIEW FOR ARTICLES AS A WHOLE. UNFORTUNATELY OTHER COUNTRIES (PARTICULARLY QUOTE OUR BIG BROTHER UNQUOTE) AND OTHER CONSIDERATIONS IN MIND AND MATTER THEREFORE HAD DEVELOPED PRONOUNCED POLITICAL ASPECTS WHICH FINLAND COULD NOT/NOT IGNORE. AGAIN SPEAKING PERSONALLY HE SPECIFICALLY REFERRED TO CONCERN WHICH USSR APPARENTLY HAD EXPRESSED REGARDING POSITION OF CONSTITUENT REPUBLICS OF USSR PARTICULARLY IN UN AND EFFECT WHICH DELETION OR AMENDMENT OF PARAG OF THIS ARTICLE MIGHT OR MIGHT NOT/NOT HAVE IN THIS RESPECT HE REFERRED US TO STATEMENT MADE BY FINN DEL OF FINLAND ON ARTICLE 5 (COPY GOING FORWARD BY BAG) AND NOTED THAT IF POSSIBLE HE WOULD DISCUSS MATTER THIS WEEK IN STKHM WHEN HE WOULD BE MTG OTHER LEGAL REFS OF NORDIC

...2

19.24.9

BEST COPY AVAILABLE

PAGE TWO 415 CONF

COUNCIL ON CERTAIN MATTERS OF COMMON CONCERN (POSSIBLE OIL FIELDS IN BALTIC SEA). HE UNDERTOOK TO LET US KNOW RESULTS OF HIS DISCUSSIONS IN OCT OR PERHAPS EARLY NOV. IT WAS HIS OPINION HOWEVER THAT IN VIEW OF CLOSE VOTE ON PARA 2 THERE WAS A GOOD CHANCE THAT IT WOULD NOT/NOT BE PASSED AT LEAST IN ITS PRESENT FORM. MOREOVER HE COULD SEE NO/NO REASON AT PRESENT WHY FINLAND SHOULD NOT/NOT ABSTAIN IN ANY FUTURE VOTE ON PARA 2 OF ARTICLE 5. HE WOULD NOT/NOT SAY HOWEVER WHETHER FINLAND WOULD OR WOULD NOT/NOT VOTE AGAINST IT.

3. WE WILL SPEAK TO MR GUSTAFSSON LATER IN OCT TO ASK WHAT DEVELOPMENTS MAY HAVE TAKEN PLACE AS A RESULT OF HIS CONVERSATIONS WITH HIS SCANDINAVIAN COLLEAGUES'/'

BEST COPY AVAILABLE

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

TO  
A The Permanent Mission of Canada to the  
United Nations, NEW YORK, N.Y.

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

REFERENCE  
Référence Our multiple letter L-737 (M) of September 10, 1968

SUBJECT  
Sujet Law of Treaties Conference -- Article 5

SECURITY  
Sécurité CONFIDENTIAL

DATE October 2, 1968

NUMBER  
Numéro L-885

FILE	DOSSIER
OTTAWA	20-3-1-5
MISSION	<i>[Handwritten initials]</i>

ENCLOSURES  
Annexes

DISTRIBUTION

Our Embassy in Beirut has discussed this question with Hassuin El-Jisr, Director of Political Affairs in the Lebanese Ministry of Foreign Affairs. Mr. El-Jisr's initial reaction was favourable, but the Embassy has expressed the view that it would be useful if you were to discuss the question with Mr. Nagib Sadaka, Secretary General of the Ministry of Foreign Affairs, who is a member of the Lebanese delegation to the 23rd General Assembly.

2. We should be grateful if you could raise this question with Mr. Sadaka on a suitable occasion. At the first session of the Law of Treaties Conference, Lebanon abstained on the first vote on paragraph 2 and voted in favour of paragraph 2 at the time of the second vote. You should indicate to Mr. Sadaka that abstention is not really helpful to us though it is, of course, preferable to a vote in favour of paragraph 2. You should stress in particular the importance of permitting a separate vote on paragraph 2.

J. A. BEESLEY

Under-Secretary of State  
for External Affairs

*164-811*

**ACTION COPY**

*file 20-3-1-6 JH 3/10*

*L*

*What is the new name  
in terms of membership  
required?*

FM OSLO OCT2/68 CONFD NO/NO STANDARD

TO TT EXTER 310 DE HAGUE

REF OURLET 384 SEP20

20-3-1-6  
30 | |

LAW OF TREATIES CONFERENCE-ARTICLE 5

OFSTAD DEPUTY HEAD OF MFA INFORMED US TODAY THAT NORWAY WOULD FULLY SUPPORT CDAS POSITION ON ARTICLE 5 PARA2 AND ALSO IN DELETING ARTICLE 5 ENTIRELY IF SEPARATE VOTE ON PARA2 IS REFUSED'''

*2.3.10*

**ACTION COPY**

*reply dictated 3/10*

*m. [unclear]  
m. [unclear]*

*file 11/4/10*

70-3-1-6L  
88

*File and  
raise it. If they  
do we shall have  
to look our reply to  
neutral attendees  
(third party)  
proceeds*

FM QUITO OCT1/68 CONFD NO/NO STANDARD

TO IT EXTER 125 PRIORITY DE NY

REF YOURTEL L808 SEP16

LAW OF TREATY CONFERENCE

AS YOU MAY BE AWARE ECUADOR ATTACHES GREAT IMPORTANCE TO APPROVAL OF ARTICLE IN PROPOSED CONVENTION WHICH PROVIDES TREATY REACHED THROUGH THREAT OR USE OF FORCE, IN VIOLATION OF PRINCIPLES OF INTERNATL LAW AS EMBODIED IN CHARTER OF UN, SHALL BE NULL AND VOID. THIS RELATES OF COURSE TO RIO PROTOCOL OF 1942, FORCED UPON ECUADOR BY PERU AFTER A BRIEF <sup>WAR,</sup> ~~PARTICIPATION~~, AND WHICH COST ECUADOR A LARGE PART OF HER EASTERN TERRITORY.

*correction  
rec'd  
from  
Committee  
2/10*

2. IN APPROACHING FOREIGN MINISTRY FOR SUPPORT IN OUR WISH TO HAVE PARA2 OF ARTICLE FIVE OMITTED IT WOULD HELP A GREAT DEAL

TO BE ABLE TO SAY CDA WILL SUPPORT ECUADOR <sup>VOTING</sup> BY MANOEUVRED IN FAVOUR OF INADEQUACY OF THIS ARTICLE SO DESIRED BY ECUADOR. PLEASE ADVISE IF I

*Thought in Committee  
encouraging to - well  
check this out. 2/10*

MAY DO SO

*correction  
rec'd from  
Committee 2/10*

COOK

**Received**  
OCT 1 1968  
In Legal Division  
Department of External Affairs

*Beatty*  
*Stanford*  
*4/10*

EXTERNAL AFFAIRS



AFFAIRES EXTERIEURES

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

FROM  
De The Canadian Embassy, Guatemala.

REFERENCE  
Référence Your Numbered Letter L-737(M) of September 10, 1968

SUBJECT  
Sujet Law of Treaties Conference - Article 5

SECURITY  
Sécurité CONFIDENTIAL

DATE October 1, 1968

NUMBER  
Numéro 114

FILE	DOSSIER
OTTAWA	20-3-1-6
MISSION	<i>32-59</i> 11

*835*

ENCLOSURES  
Annexes

DISTRIBUTION

In accordance with the instructions in your above-referenced numbered letter of September 10, 1968, I had an interview with Licenciado Luis Aycinena Salazar, Chief of the Legal Department of the Foreign Ministry, on Thursday, September 26. As soon as I had explained to Licenciado Aycinena the Canadian Government's concern over Article 5, he said immediately that he saw no reason whatever why the Guatemalan Government could not fully support Canada's position. In view of this, I did not pursue at any length the questions listed in the summary of paragraph 12 of your above numbered letter. I instead left with Licenciado Aycinena the Aide-Memoire and a Spanish office translation.

2. In the course of our conversation, Licenciado Aycinena went on to say that the question of the International Treaty Law in general is of great interest to him personally. As well it is interesting to the Guatemalan Government in view of the possibility of some sort of eventual federal union amongst the five members of the Central American Common Market. In any case, he said that he would study the Aide-Memoire and deliver a decision to us in the next three weeks or so.

3. We would appreciate it if you could arrange to forward to us immediately by air mail two copies of the Government white paper "Federalism and International Relations" so that we may present one to Licenciado Aycinena for his personal use.

In the absence of the Chargé d'Affaires a.i.,

*[Signature]*  
J.S.A. Sotvedt,  
Third Secretary.

*This could lead them to doubt again us*

*Dore 4/10/68*

Received  
OCT 4 1968  
In Legal Division  
Department of External Affairs

TO: MR STANFORD  
FROM REGISTRY  
OCT 4 1968  
FILE CHARGED OUT  
TO: MR STANFORD

*12.4.10*

**ACTION COPY**

L

*Feb 20 3-1-6*  
*2/10*  
*m. Boffley*  
*Staplewood*

FM ANKRA OCT 1/68 CONFD NO/NO STANDARD  
TO EXTER 924  
REFYOURTEL L763 SEP12  
LAW OF TREATIES CONFERENCE

20-3-1-6	
30	11

I PRESENTED AIDE-MEMOIRE APPENDED TO YOURLET L737(M) TO SEC GEN OF MFA TODAY. I ALSO LEFT WITH SEC GEN COPY OF TALKING POINTS WHICH I HAD USED IN PRESENTING CDN CASE. I MADE IT CLEAR THAT, IN ASKING TURK GOVT TO RECONSIDER ITS POSITION, WE WERE BASING OURSELVES NOT/NOT ONLY ON LEGAL ARGUMENTS SET OUT IN AIDE-MEMOIRE BUT ON VERY GREAT IMPORTANCE WHICH WAS ATTACHED TO THIS MATTER BY CDA.

2. SEC GEN SAID HE WOULD TAKE CAREFUL NOTE OF POINTS I HAD MADE. HIS FIRST IMPRESSION, ON READING ARTICLE IN QUESTION, WAS THAT IT DID NOT ATTEMPT TO DO MORE THAN STATE TWO PROPOSITIONS OF FACT. HOWEVER, HE WOULD HAVE A DETAILED LOOK AT IMPLICATIONS OF ARTICLE IN LIGHT OF ARGUMENTATION PRESENTED IN OUR AIDE-MEMOIRE. HE SAID HE COULD NOT/NOT SAY OFFHAND WHY TURK HAD VOTED AS IT DID WHEN ARTICLE 5 WAS CONSIDERED AT FIRST SESSION OF CONFERENCE EARLIER THIS YEAR. HE DID NOT/NOT EXCLUDE POSSIBILITY OF ARTICLE BEING IN SOME WAY RELATED IN TURK MINDS TO THEIR PREOCCUPATIONS WITH CYPRUS CONSTITUTION WHICH, ALTHOUGH IT DID NOT/NOT PROVIDE FOR FEDERAL STATE IN ANY TERRITORIAL SENSE, NEVERTHELESS HAD SOME OF THE ASPECTS OF A FEDERAL CONSTITUTION. HE SEEMED TO HAVE IN MIND, IN PARTICULAR, CONTINGENCIES WHICH MIGHT ARISE UNDER ARTICLE 108.

3. I HAD A BRIEF WORD WITH TALAT MIRAS BEFORE I SAW SEC GEN. MIRAS SAID ...2

*9.2.10*  
*Is this word following up?*

PAGE TWO 924 CONFID NO/NO STANDARD

HE WOULD BE GLAD TO DISCUSS MATTER INFORMALLY WITH ME BUT THAT, AS  
SPECIAL ADVISER AND AMBASSADOR-DESIGNATE TO ARGENTINA, HE WOULD  
NOT/NOT BE IN A POSITION TO RECEIVE FORMAL REPRESENTATIONS

GOLDSCHLAG

*file*  
20-7-1-6  
7/10 11

*Staff*

FM WLGTN OCT01/68 CONF NO/NO STANDARD

TO EXTER 708

INFO CNBRA

REF YOURLET L737(M)SEP10

LAW OF TREATIES CONFERENCE-ARTICLE 5

AS REQUESTED WE DISCUSSED WITH FA SMALL HEAD LEGAL DIV NZDEA DESIRABILITY OF DELETING DRAFT ARTICLE 5 PARA 2 OF PROPOSED INTERNATIONAL CONVENTION ON LAW OF TREATIES. HE WAS (NOT/NOT SURPRISINGLY) COMPLETELY IN SYMPATHY WITH POINTS OF PRINCIPLE PRESENTED AND OUR INQUIRIES WERE THEREFORE AIMED AT DETERMINING EXTENT TO WHICH NZ DEL WOULD GO IN SUPPORTING CDN POSITION IN VIENNA NEXT APRIL.

2. SMALL MADE IT CLEAR THAT NZ HAD BEEN REPRESENTED AT VIENNA LAST SPRING QUOTE SOLELY TO HELP FRIENDS UNQUOTE. WHILE HE COULD NOT/NOT PREJUDGE MINISTERS DECISION ON NZ REPRESENTATION NEXT YEAR HE THOUGHT IT VERY LIKELY THAT NZ WOULD AGAIN BE REPRESENTED QUOTE FOR SAME REASON UNQUOTE. HE SAID THERE WOULD BE LITTLE DOUBT THAT NZ WOULD VOTE IN FAVOUR OF SPLITTING ARTICLE 5S TWO PARAS FOR VOTING PURPOSES. WHILE PERSONALLY SYMPATHETIC HE PREFERRED HOWEVER TO HAVE WORD WITH HIS DEPTL COLLEAGUES BEFORE GIVING DEFINITE INDICATION OF NZ WILLINGNESS TO VOTE FOR DELETION OF WHOLE OF ARTICLE 5 SHOULD THIS PROVE NECESSARY.

3. SMALL THOUGHT THAT CDA SHOULD HAVE NO/NO DIFFICULTY MARSHALLING NECESSARY SUPPORT TO DELETE OFFENSIVE PARA. HE COMMENTED THAT MANY DELS AT VIENNA HAD LITTLE UNDERSTANDING OF SIGNIFICANCE OF THIS PARA

...2

1. 2. 10

PAGE TWO 798 CONF NO/NO STANDARD

AND MOREOVER THERE COULD HARDLY BE MANY COUNTRIES WITH REAL INTEREST  
IN RETAINING IT. HE MADE POINT THAT HE WAS FULLY AWARE THAT PROPONENTS  
OF INTERNATL STATUS FOR QUEBEC HAD MADE USE OF THIS PARA AND HE  
(STATED?) THAT IT WOULD BE USEFUL IN THIS CONTEXT FOR PARA  
TO BE STRONGLY DEFEATED.

*M. B...*  
*St...*

*Feb* 20-3-1-6  
*JM 7/10*  
*32*

CONFIDENTIAL COPY

L

FM SAIGN OCT11/68 CONFD NO/NO STANDARD  
TO EXTER 1097 PRIORITY  
REF YOURLET L737(M) SEP10 AND YOURTEL L811 SEP16  
LAW OF TREATIES CONFERENCE:ARTICLE 5  
IN VIEW OF RECENT CHANGES IN FM PERS IT HAS NOT/NOT YET BEEN  
POSSIBLE FOR US TO ARRANGE SUITABLE APPOINTMENT TO DELIVER AIDE  
MEMOIRE CONTAINED IN YOUR REFLET AND MAKE POINTS OUTLINED IN  
REFTEL.WE HOPE TO DO SO HOWEVER EITHER WITH SEC GEN OR LEGAL ADVISER  
IN FM SOMETIME THIS WEEK.  
2.AT RECENT SOCIAL GATHERING WE LEARNED FROM SEC GEN TRIEN THAT  
SVN GOVT HAD NOT/NOT YET DECIDED ON FURTHER PARTICIPATION IN LAW OF  
TREATIES CONFERENCE.

4.2.10

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

*L file 20-3-1-6*  
*M/1/10*

FM MDRID SEP30/68 CONFID

TO EXTER 1208

REF YOURTEL L797 SEP16

LAW OF TREATIES CONFERENCE

20-3-1-6	
30	11

I HAD THOROUGHLY SATISFACTORY DISCUSSION WITH FEDERICO DE  
CASTRO AND SANTIAGO MARTINEZ TODAY. THEY ASSURED ME THAT AT  
NEXT SESSION OF CONFERENCE SPAIN WOULD SUPPORT SEPARATE VOTE ON  
PARA2 AND THEN WOULD VOTE AGAINST PARA2

ROGERS

29.9.30

*m. [unclear]*  
*m. [unclear]*  
*file [unclear]*

20-3-1-6

*L*

FM MANIL SEP30/68 CONFD NO/NO STANDARD

TO EXTER 306

REF YOURTEL(L7.87)SEP16

20-3-1-6  
32/1 11

LAW OF TREATIES CONFERENCE

YOURLET L737(M)SEP10 RECEIVED.WILL MAKE REQUESTED RE-

PRESENTATIONS TO INGLES WHO IS CURRENTLY ACTING SEC-

RETARY OF FOREIGN AFFAIRS.HOWEVER MAY BE SOME DELAY IN

SECURING APPOINTMENT OWING TO HIS PRE-OCCUPATION WITH SABAH

ISSUE AND RELATED DEVELOPMENTS.

11-30-9

*m. R. P. P.*  
*m. [unclear]* *Feb 27/11/10/68*

FM KLMPR SEP30/68 CONFD NO/NO STANDARD  
TO EXTER 1119 PRIORITY  
REF OURTEL 1075 SEP20 YOURTEL L792 SEP16  
LAW OF TREATIES CONFERENCE-ART 5

L

20-3-1-6	
<i>20</i>	11

WHEN I CALLED ON GHAZALI PERMSEC MFA ON SEP30 TO DISCUSS A VARIETY OF QUESTIONS I WENT OVER WITH SAME GROUND AS WITH RAMANI REPORTED IN OUR REFTEL. GHAZALI HAD BEEN BRIEFED AND SEEMED PREPARED TO TAKE DECISION. IN MY PRESENCE HE INSTRUCTED HEAD OF UN AND NORTHAMERICAN (DIVS TO) PREPARE A SUBMISSION TO MALAYSIAN CABINET RECOMMENDING THAT PARA2 OF ART5 BE OPPOSED AND THAT ART AS A WHOLE BE OPPOSED IF FOR ANY REASON PARA2 WAS ADOPTED.

2. GHAZALI SAID THAT MALAYSIAN POSITION FOR A VARIETY OF REASONS WOULD BE IDENTICAL WITH OURS AND THAT MALAYSIAN DEL COULD BE COUNTED UPON TO WORK CLOSELY WITH OUR DEL

HAEWEN\*\*\*\*

10.30.9

*M. J. ...*  
*M. ...*  
*file # 17/10*

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

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

FROM De The Canadian Embassy,  
SAN JOSE.

REFERENCE Référence

SUBJECT Sujet UNITED NATIONS LAW OF TREATIES -  
SECOND SESSION

SECURITY Sécurité UNCLASSIFIED

DATE September 28th, 1968

NUMBER Numéro 276

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

ENCLOSURES Annexes

DISTRIBUTION

In a note of September 16th, the Ministry of External Relations of El Salvador has informed us that El Salvador will be represented at the above conference "if circumstances permit it". We shall attempt to solicit more definite details on this matter in a few months at which time we hope the Government of El Salvador will be in a better position to inform us of their intentions.

*S. J. ...*

THE EMBASSY.

TO: MR STANFORD
FROM: REGISTRY
OCT 16 1968
FILE CHARGED OUT
TO:

26-16-10

ACTION COPY

✓  
Stallford  
Sam. 0-0-  
file 20-3-1-6  
M 2/10/68

FM MEXICO SEP27/68 RESTR NO/NO STANDARD

TO EXTER 932

REF YOURTEL L799 SEP16

LAW OF TREATIES CONFERENCE

20-3-1-6  
30 | ||

WE CALLED ON AMBASSADOR CASTANEDA, DIRECTOR IN CHIEF OF MULTI-  
LATERAL AND CULTURAL AFFAIRS (ROUGHLY EQUIVALENT TO ASST UNDER-  
SECRETARY IN CDN TERMS, REGARDING ARTICLE. HE CONFIRMED THAT  
MEXICO WAS OPPOSED TO ARTICLE 2 FOR EXACTLY SAME REASONS AS WE GAVE  
IN OUR AIDE MEMOIRE. HE THOUGHT THERE WAS EXCELLENT PROSPECT OF  
BLOCKING PARA 2 PROVIDING SEPARATE VOTE COULD BE ARRANGED. HE  
SUGGESTED THAT IN VIEW OF IDENTITY OF VIEWPOINT MEXICO AND CDA  
CONSULT REGARDING TACTICS SHORTLY BEFORE OPENING OF SECOND  
SESSION. HE EXPECTS THAT HE MAY BE MEXICO'S DEL. (AS YOU KNOW HE IS  
MEMBER OF INTERNATL LAW COMMISSION).

2. HE SAID THAT THERE WERE TWO OTHER CONTROVERSIAL ARTICLES--  
REGARDING PEACEFUL SETTLEMENT AND INVALIDITY OF TREATIES--CONCERNING  
WHICH HE WOULD ALSO WELCOME EXCHANGE OF VIEWS.

3.30.9

*file 20-3-1-6*  
*JH 4/10/68*

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

FM ISBAD SEP27/68 CONFD  
TO EXTER 958

20-3-1-6  
32 | 1

REF YOURTEL L809 SEP16

LAW OF TREATIES CONFERENCE

TODAY MAD REPS TO SAMAD MFA LEGAL ADVISER ACCORDING TO INSTRUCT-  
IONS YOURLET L737(M)SEP10 AS SUPPLEMENTED BY REFTEL. HE UNDERTOOK  
TO REVIEW MATTER AND WHEN POSSIBLE INFORM ME OF POSITION PAK  
WILL TAKE ON ART5 AT SECOND CONFERENCE SESSION NEXT SPRING

MCGAUGHEY\*

9-30-9

*mi 12/21/68*  
*L started*  
*file 11/10/68*

**ACTION COPY**

20-3-1-6
3/11

FM DBLIN SEP26/68 CONFD NO/NO STANDARD

TO EXTER 271

REF MYLET 249 SEP19

TREATY CONFERENCE - ARTICLE 5

DISCUSSED QUESTION WITH WALDRON AND HAYES SEP23, LEFT AIDE MEMOIRE AND EXPRESSED APPRECIATION FOR PREVIOUS IRISH POSITION.

2. HAYES CONFIRMED IRISH VOTED AGAINST INCLUSION PARA2 BUT SAID IRELAND ABSTAINED ON VOTE ON ARTICLE AS A WHOLE. I EXPRESSED HOPE THAT THIS ABSTENTION COULD BE CONVERTED TO NEGATIVE VOTE AT FORTHCOMING CONFERENCE.

3. IRISH HAVE UNDERTAKEN TO TELL US AS SOON AS POSSIBLE WHAT THEIR POSITION WILL BE ON ALL POINTS. THEY WILL PROBABLY SUPPORT SEPARATE VOTE, CONTINUE TO OPPOSE PARA2, AND WILL CONSIDER QUESTION OF OPPOSING ENTIRE ARTICLE. BELIEVE IRISH IN SYMPATHY WITH CDN POSITION GENERALLY AND WALDRON AND HAYES REGARDED CHANCES OF ELIMINATING PARA2 AS VERY GOOD.

6.30.9

*Mr. Capiehouse*  
*Mr. Stafford*  
*file 20-3-1-6*  
*7/27/0*

FM LAGOS SEP27/68 CONFD NO/NO STANDARD

TO EXTER 1938 PRIORITY

REF YOURTEL L793 SEP16

LAW OF TREATIES CONFERENCE

20-3-1-6  
30

REPRESENTATIONS IN REFTEL WERE PRESENTED TODAY TO ELIAS FMG ATTORNEY GEN. HE WAS THOROUGHLY FAMILIAR WITH PROBLEM.

2. ELIAS SAID OUT OF DEFERENCE FOR CDA FMG WAS PREPARED TO RECONSIDER ITS POSITION ON ARTICLE 5. HE APPRECIATED ARTICLE AS IT STOOD WAS NOT/NOT NECESSARILY BEST THAT COULD BE WRITTEN. PROBLEM FACED BY NIGERIA AND CDA IN REGARD TO ARTICLE WAS DIFFERENT SINCE NIGERIAN CONSTITUTION CLEARLY ESTABLISHED SOLE RIGHTS OF THE CENTRAL GOVT IN TREATY-MAKING FIELD. THIS POWER WOULD BE INCORPORATED IN NEW CONSTITUTION WHICH BASICALLY WOULD BE SAME AS OLD BUT WOULD INCREASE AUTHORITY OF THE CENTRAL GOVT SINCE NEW REGIONAL COMPONENTS WOULD BE SMALLER AND WEAKER.

3. ELIAS EXPECTS TO ATTEND SECOND SESSION ON DRAFT CONVENTION IN VIENNA. I TOLD HIM I WOULD BE IN TOUCH WITH HIM AGAIN BEFORE THEN.

4. ELLIOTT HAS DISCUSSED OUR POSITION WITH APPROPRIATE OFFICIAL IN MEA

MALONE

Received  
SEP 27 1968  
In Legal Division  
Department of External Affairs

13.27.9

20-3-1-6  
30/9 H

L

~~Mr. Copeland~~  
Mr. S. [unclear]  
/

FM TAVIV SEP27/68 CONFD NO/NO STANDARD  
TO EXTER 827 PRIORITY  
REF YOURTEL L820 SEP16

LAW OF TREATIES CONFERENCE-ARTICLE 5

I CALLED ON MERON, LEGAL ADVISER OF MFA, YESTERDAY AS INSTRUCTED TO MAKE REPRESENTATIONS IN ACCORDANCE WITH YOURLET L737(M)SEP10, LEAVING AIDE MEMOIRE PLUS SUMMARY OF TALKING POINTS SUMMARIZED IN PARA12 OF YOUR REFLET. MERON SAID THAT HE WAS SURE THERE WOULD BE NO/NO DIFFICULTY ABOUT ISRAEL CONTINUING TO OPPOSE PARA2 OF ART 5. HE ALSO THOUGHT WE COULD RELY ON ISRAELI SUPPORT IN SEEKING SEPARATE VOTE ON PARAS 1 AND 2 OF ART 5, WHICH HE SAID WE WERE SURE TO GET IN ANY CASE. HE WAS MUCH MORE GUARDED OVER GIVING COMMITMENT TO VOTE AGAINST ART 5 AS A WHOLE IF OUR ATTEMPTS TO ELIMINATE PARA2 BY OTHER MEANS ARE UNSUCCESSFUL. WHILE HE AGREED IN PRINCIPLE THAT THERE WAS NO/NO REAL NEED TO ASSERT RIGHT OF STATES TO CONCLUDE TREATIES, HE DESCRIBED PARA1 AS STATEMENT OF TRUTH WHICH MANY STATES WOULD WANT TO SEE RETAINED. I THINK HE ALSO HAD A BASIC DESIRE TO SEE IT RETAINED, BUT HE DID SAY THAT SERIOUSNESS WITH WHICH CDN GOVT VIEWED PARA2 WOULD CARRY GREAT WEIGHT WITH ISRAELI GOVT.

2. MERON WILL BE HEADING ISRAELI DEL FOR APR BUT ROSENNE WHO IS AT PRESENT ON ISRAELI DEL TO UN WILL TAKE OVER IN MAY. MERON THOUGHT THAT ART 5 WOULD PROBABLY BE DISCUSSED DURING HIS CHAIRMANSHIP OF ISRAELI DEL BUT OF COURSE COULD NOT/NOT BE SURE. HE PROMISED TO GET IN TOUCH WITH ME WHEN HE HAD ANYTHING MORE TO SAY.

...2

17.27.9

PAGE TWO 827 CONFD NO/NO STANDARD

3. IF WE WANT ISRAEL TO GO WHOLE WAY WITH US THERE MAY BE PRICE TAG  
AS SUBJECT IS ONE IN WHICH ISRAELIS THEMSELVES HAVE NO/NO DIRECT  
INTEREST AND WOULD IN EFFECT BE DOING FAVOUR FOR US

ROGERS

*filed 1/10/68 M. Beasley Stanford*

EXTERNAL AFFAIRS



AFFAIRES ÉTRANGÈRES

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

FROM  
De  
The Canadian Embassy, SANTO DOMINGO

REFERENCE  
Référence  
Your letter L737(M) of Sept. 10/68 and  
Your tel L814 of Sept. 16/68

SUBJECT  
Sujet  
Law of Treaties Conference

SECURITY CONFIDENTIAL  
Sécurité

DATE September 25, 1968

NUMBER 390  
Numéro

FILE	DOSSIER
OTTAWA	
	20-3-1-6
MISSION	32 11

ENCLOSURES  
Annexes

DISTRIBUTION

In the absence of the Head of the Legal Division of the Ministry of External Relations, I called today on Ambassador Nicolas Silva, Head of the Division for UN and OAS Affairs and International Conferences. A very junior secretary from the Legal Division was also present. I left with Ambassador Silva copies of the Aide Memoire attached to your letter under reference and verbally made the points suggested in your instructions. Ambassador Silva, while feeling that he understood our position fully, requested a written summary of my verbal representations, which I will be happy to supply in the form of a personal and informal letter. Unofficially, he said he thought personally that there should be no difficulty in the Dominican Government supporting the Canadian position as I had outlined it.

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

Received  
SEP 30 1968  
In Legal Division  
Department of External Affairs

TO MR STANFORD  
FROM REGISTRY  
SEP 27 1968  
RECEIVED OUT

*Beech* *Stanford*

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*plg/2/4/9*  
20-3-1-6 L  
32 | H

FM GRGTN SEP25/68 CONFD

TO EXTER 854 PRIORITY

REF YOURLET L737(M)SEP10 YOURTEL L779 SEP13

LAW OF TREATIES CONFERENCE-ARTICLE 5

SAW JACKSON ACTING PERMSEC MINISTRY OF EXTER TODAY AND LEFT WITH HIM AIDE MEMOIRE AS REQUESTED. POLLARD LEGAL ADVISER MFA IS IN NY. OUTLINED TO JACKSON OUR CONCERN RE PARA2, ARTICLE 5, WHO APPRECIATED PROBLEM. HE DID NOT/NOT RAISE QUESTION OF ABSTENTION NOR DID HE EVINCE ANY PARTICULAR INTEREST IN THE PRACTICE OF OTHER FEDERAL STATES. I SAID THAT PARTICULARLY AS GUYANA WAS NOT/NOT A FEDERAL STATE AND THEREFORE SINCE PARA2 WOULD NOT/NOT AFFECT ITS OWN CONSTITUTIONAL POSITION I HOPED IT COULD SEE ITS WAY CLEAR TO SUPPORT CDN REQUEST.

2. IN CONCLUSION I ASKED JACKSON SPECIFICALLY (A) IF GUYANA WOULD SUPPORT PROPOSAL FOR A SEPARATE VOTE ON PARA2 (B) IF THIS WAS AGREED TO AT CONFERENCE WOULD GUYANA THEN VOTE AGAINST PARA2 AND (C) IF CONFERENCE DID NOT/NOT AGREE TO SEPARATE VOTE WOULD GUYANA VOTE AGAINST ARTICLE 5 AS A WHOLE.

3. JACKSON SAID HE WILL TAKE MATTER UP IMMEDLY WITH RAMPHAL ATTORNEY GENERAL AND MINISTER OF STATE RESPONSIBLE FOR EXTER WHO IS ATTENDING UNGA IN NY AND WOULD GIVE US GUYANAS REACTION AS SOON AS POSSIBLE. MY IMPRESSION IS THAT HE IS SYMPATHETIC TO OUR POSITION AND I THINK WE CAN COUNT ON GUYANAS SUPPORT

DOUGAN

5-26.9

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

*pl 4/10*

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

FROM  
De The Office of the High Commissioner  
for Canada, Nicosia

REFERENCE  
Référence Your letter L-737(M) September 10;  
your telegram L-804 September 16

SUBJECT  
Sujet Law of Treaties Conference - Article 5

SECURITY  
Sécurité Confidential

DATE September 25, 1968

NUMBER  
Numéro 237

FILE	DOSSIER
OTTAWA 20-3-1-6	
MISSION 20-3-CYP 32	11

ENCLOSURES  
Annexes

DISTRIBUTION

As instructed, an approach was made to Andreas J. Jacovides of the Ministry of Foreign Affairs to request the continued support of the Government of Cyprus for the omission of paragraph 2 of Article 5 of the Treaty.

2. Jacovides was understandably hesitant to promise anything next April but he did state that, unless there was a complete change in the interim, Cyprus would continue to oppose paragraph 2. In enlarging upon this Jacovides reminded us that as Cyprus was not a federal state the paragraph in question did not really concern them but they were in full agreement with the Canadian view and would do their best to give us their full support. Jacovides felt that the question of a separate vote on paragraph 2 was at the moment hypothetical but he felt the Cyprus delegation would vote against inclusion of paragraph 2 should the question come up. In the event that a separate vote on paragraph two was not possible Cyprus would likely vote against inclusion of the whole of Article 5 in the Treaty providing they were not in the minority.

While Jacovides himself will be posted to New York before the Treaty comes under active consideration next spring, he was sure that his successor would continue on the same lines and give us a firm decision some time after the new year.

Received  
OCT 4 1968  
In Legal Division  
Department of External Affairs

TO: MR STANFORD  
FROM: REGISTRY  
OCT 4 1968  
FILE CHARGED OUT  
TO:

*P. Marley*  
Canadian High Commission

17.4.10

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ACTION COPY

*file # 26/9 L*

20-3-1-6  
32

FM LIMA SEP25/68 CONFID

TO EXTER 448 PRIORITY

INFO TT WSHDC DE OTT

REF YOURTEL L794 SEP16

LAW OF TREATIES CONFERENCE

IN ABSENCE OF HEAD OF LEGAL DIV I SPOKE TO DR PEREZ, SEC GEN OF PERUVIAN FOREIGN MINISTRY, AND CONVEYED REMARKS MADE

IN REFTEL AND YOURLET L737(M) SEP10. DR PEREZ IS

HIMSELF A SPECIALIST IN INTERNATL AND DIPLO LAW SO THAT I HAD

NO/NO DIFFICULTY IN HAVING HIM UNDERSTAND REASONS FOR CDAS CONCERN

OVER PARA2 OF ARTICLE 5 OF PROPOSED CONVENTION ON LAW

OF TREATIES. HE PROMISED TO HAVE THIS MATTER STUDIED WITHOUT

DELAY BY OFFICIALS CONCERNED AND TO LET US HAVE HIS

GOVTS VIEWS ON THIS SUBJ.

2. DR LUIS ALVARADO IS AT PRESENT PERUS REP TO THE OAS IN WSHDC. HE

SERVED FOR SEVERAL YEARS AS MINISTER-COUNSELLOR AT PERUVIAN

EMB IN OTT AND AS FOREIGN MINISTER UNDER LATE PRESIDENT

MANUEL PRADO. ACCORDING TO DR PEREZ, DR ALVARADO WILL ATTEND SECOND

SESSION IN VIENN. PERHAPS OUR EMB IN WSHDC SHOULD FOLLOW UP

THIS MATTER WITH DR ALVARADO HIMSELF.

*I wonder if it  
will not be preferable  
to let Peruvian FM Section  
consult as he feels  
necessary.*

3. I PROPOSE TO DELIVER AIDE-MEMOIRE TO BOLIVIAN FOREIGN MINISTRY

ON MY NEXT VISIT TO LAPAZ. SHOULD THIS HAVE TO BE DELAYED FOR

TOO LONG I SHALL FORWARD AIDE MEMOIRE THROUGH BOLIVIAN EMB IN

LIMA. FOR YOUR INFO DR ENRIQUE KEMPF MERCADO WAS UNTIL

RECENTLY BOLIVIAN AMBASSADOR IN ROME BUT HAS NOW RETURNED TO FOREIGN

MINISTRY IN LAPAZ WHERE HE IS EXPECTED TO SERVE IN AN ADVISORY

...2

002320

2.26.9

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PAGE TWO 448 CONF

CAPACITY. ACCORDING TO BOLIVIAN AMBASSADOR IN LIMA DR KEMPF MAY  
DECIDE HOWEVER TO RETURN TO PRIVATE ACTIVITIES. HE IS  
BROTHER OF PRESIDENT OF SENATE IN BOLOVIA, MANFREDO KEMPF  
MERCADO, WHO SEEMS TO BE A SUPPORTER OF PRESIDENT BARRIENTOS

HOUE

*Mr. Stafford*

**ACTION COPY**

*✓ file 20-3-1-6*

*27/9*

FM KNGTN SEP25/68 CONFD NO/NO STANDARD

TO EXTER 421

REF YOURTEL 1790 SEP13 AND YOURLET L737M SEP10

20-3-1-6  
30 | 11

LAW OF TREATIES CONFERENCE

SPOKE TO LC FRANCIS LEGAL ADVISER MEA THIS MORNING AND OUTLINED  
OUR CONCERN ABOUT PARA2 ARTICLE 5. FRANCIS SAID HE WANTED TO  
DISCUSS ISSUE WITH OTHER LEGAL PEOPLE IN MEA BEFORE COMMITTING  
HIMSELF BUT IMPRESSION HE GAVE LEADS TO OPTIMISM THAT JAMAICAN  
DEL WILL SUPPORT US. HE SAID AT PREVIOUS CONFERENCE JAMAICAN  
DEL HAD BEEN PRAGMATIC AND VOTED WITH ITS FRIENDS SINCE QUESTION  
WAS OF NO/NO CONSEQUENCE TO JAMAICA. AMONG FRIENDS MENTIONED  
WERE MXICO, AUSTRALIA AND CDA

STONE

**Received**  
SEP 27 1968  
In Legal Division  
Department of External Affairs

*12.27.9*

002322

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

*July 20-3-1-6*

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

SECURITY  
Sécurité CONFIDENTIAL

FROM  
De The Canadian Embassy  
Athens, Greece.

DATE September 25, 1968.

REFERENCE  
Référence Your letter No. L-737(M) of September 10  
and your tel L-762 of September 12, 1968.

NUMBER  
Numéro *439*

SUBJECT  
Sujet Law of Treaties Conference - Article 5

FILE	DOSSIER
OTTAWA	
	<i>20-3-1-6</i>
MISSION	<i>82 11</i>

ENCLOSURES  
Annexes

DISTRIBUTION

The instructions outlined in your letter and telegram under reference were carried out on September 20. An Aide-Memoire was left with Professor C. Eustathiadis, Head of the Legal Department. He was personally sympathetic and well disposed to the Canadian arguments. He promised to do everything possible to maintain a negative Greek vote on para 2 of Article 5 and he would confirm this in due course.

2. In passing he noted that it might be difficult under certain unforeseen circumstances to prevent a separate vote on para 2 of Article 5 or to muster enough support to delete the whole article. In this event he assumed Canada would have an alternative wording for para 2 which he was confident could meet Canadian requirements. He hastened to add however that his Delegation would support the Canadian position as long as possible.

*Should we think about this? Yes, we should have to have an amendment ready.*

Received  
OCT 4 1968  
In Legal Division  
Department of External Affairs

*M. Weaver*  
The Embassy

TO: MR STANFORD  
FROM REGISTRY  
OCT 4 1968  
FILE CHARGED OUT  
TO: MR STANFORD

ACTION COPY

file 20-3-1-6  
JH/10

L  
Mr. Beffay  
Mr. Stangord

DE BERUT SEP25/68 CONFD NO/NO STANDARD

A EXTER 734 PRIORITE

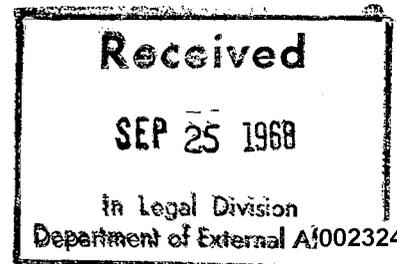
REF NOTRETEL 725 DU 23 SEP

CONF SUR LE DROIT DES TRAITES

20-3-1-6  
82. 1 11

ME FOUAD AMMOUN QUI REPRESENTE LE LIBAN A LA COUR INTERNATLE  
DE JUSTICE DE LAHAYE. ET ANCIEN MINISTRE DES AE, MA CONFIRME HIER  
SOIR QUE SELON SON EXPERIENCE LE SEGEN DU MAE SERAIT LA PERSONNE  
LA MIEUX PLACEE POUR EMETTRE RAPIDEMENT UN AVIS MOTIVE SUR LA  
POSITION LIBANAISE CONCERNANT LE DROIT DES TRAITES.

2. INCIDEMMENT LE DR ANTOINE FATTAL FAIT MAINTENANT PARTIE DES  
CADRES DU SECRETARIAT PERM DE LUNESCO A PARIS ET NA PAR  
CONSEQUENT PLUS DE LIENS AVEC AUCUN ORGANISEM OFFICIEL LIBANAIS  
MONTPETIT''''



7.25.9

file 20-3-1-6  
32 5/9 11

ACTION COPY

Mr. Beatty  
Mr. Stanford

L

OTT305

C3A4/25

RR OTT

DE C3A

R 250052Z

F CNERA SEP25/68

TO EXTER 1363

REF ~~Y~~<sup>MY</sup> RTTEL 1357 SEP24

REQUEST FOR COPIES OF WHITE PAPERS ON FEDERALISM AND INTERNATL  
RELATIONS

DURING OUR DISCUSSIONS WITH BRAZIL DESCRIBED OUR REFTL WE HANDED  
HIM COPY OF WHITE PAPER ON FEDERALISM AND INTERNATL RELATIONS.

BRAZIL EXPRESSED INTEREST IN SECURING SEVERAL COPIES THIS DOCU FOR  
DEA. GRATEFUL IF YOU COULD FORWARD TO US THREE COPIES FOR HIS  
RETENTION, AS WELL AS THREE COPIES OF WHITE PAPER ON FEDERALISM AND  
INTERNATL CONFERENCES ON EDUCATION.

2.25.9

NNNN VVVVV

002325



Quant au par.2 de l'art.5 de notre projet, il prête également à la critique dans le sens inverse sa portée étant trop restreinte. Pourquoi on y traite seulement un cas des Etats composés, à savoir, la position des Etats membres d'une union fédérale? Il a existé et il peut exister à l'avenir d'autres cas d'unions d'Etats, où les membres possèdent une capacité plus au moins étendue de conclure des traités internationaux. Il semble qu'il y ait encore une autre lacune au par.2 qui parle seulement de la constitution fédérale en négligeant les actes constitutifs qui ont éventuellement précédés l'adoption de la constitution comme p.ex. les accords internationaux entre les Etats devenus membres d'une union fédérale. En outre, la disposition du par.2 peut causer de difficultés d'ordre constitutionnel auxquelles certains Gouvernements ont déjà fait allusion dans leurs observations sur notre projet.

Toutefois, la Délégation finlandaise ne désire pas maintenir son amendement jusqu'au point de proposer la suppression de l'art.5. Elle serait satisfaite, si son libellé soit amélioré en vue d'éliminer les imprécisions et lacunes auxquelles je viens de faire allusion. Ainsi la Délégation de Finlande tient à soumettre à l'appréciation de la Commission plénière et du Comité de Rédaction les suggestions suivantes sans insister au vote sur elles. Nous aimerions re-manier le texte de la manière suivante. Au par. 1 il faudrait insérer les mots "sujet de droit international" après les mots "Tout Etat", afin de limiter cette expression trop large et vague. Il ressort du par.4 du Commentaire de la Commission du Droit International que c'était aussi son intention - la Commission dit à la fin de ce paragraphe "il s'agit de l'Etat aux fins du droit international" -, mais il faut le dire dans le texte même de l'art.5. Je constate que la Délégation du Congo (Brazzaville) vient de déposer un amendement (L.80) de même contenu. Quant au par. 2 sa portée devrait être élargée de façon qu'il embrasse tous les cas pertinents d'Etats composés et qu'il tienne compte de tous les actes constitutifs relatifs à la création de tels Etats. - L'art.5 pourrait ainsi avoir le libellé suivant :

✓ "1. Tout Etat sujet de droit international a la capacité de conclure des traités.

2. Les Etats membres d'une union d'Etats peuvent avoir une capacité de conclure des traités si cette capacité est admise par la constitution ou les autres actes constitutifs de l'union et dans les limites indiquées dans lesdits actes."

- Il s'agit à notre avis en premier lieu d'une modification d'ordre rédactionnel.

*Handwritten notes:*  
quo  
pour  
l'union  
sujet

1.1 2-1-6

*Belsky, Stanford*  
**ACTION COPY**

*L file 20-3-1-6  
JH #10/68*

80-3-1-6  
32

FM CNBRA SEP24/68 CONF D

TO EXTER 1357 PRIORITY

REF YOUR MULTIPLE LET L737(M) AND YOURTEL L771

LAW OF TREATIES CONFERENCE

WE DELIVERED AIDE MEMOIRE TO BRAZIL, LEGAL ADVISER DEA TODAY AND HAD DISCUSSION WITH HIM ALONG LINES SUGGESTED IN YOUR LET.

2. HE REMADE POINT THAT AUSTRALIA IS COMPLETELY OPPOSED TO PARA TWO WHICH IT CONSIDERED QUOTE MISCHIEVOUS UNQUOTE AND WOULD CONTINUE TO OPPOSE IT AT THE SECOND SESSION. HOWEVER WHEN WE ASKED HIM IF AUSTRALIA WOULD ITSELF MAKE REPRESENTATIONS IN OTHER CAPITALS HE SAID AUSTRALIAN THINKING HAD NOT/NOT GONE THAT FAR AT PRESENT. BRAZIL IMPLIED THAT AUSTRALIAN CIRCUMSTANCES ARE A LITTLE DIFFERENT FROM THOSE PERTAINING TO CDA AND HE WAS NOT/NOT SURE IF A DIPLO OFFENSIVE ON SUBJ OF PARA TWO BY AUSTRALIA AT LEAST THIS EARLY WAS REALLY NECESSARY. HE LEFT IMPRESSION THAT AUSTRALIA WILL PROBABLY SAVE ITS STRENGTH IN THIS REGARD FOR ACTUAL CONFERENCE, BUT HE PROMISED TO LET US KNOW IF IT WAS DECIDED TO MAKE REPRESENTATIONS.

3. USING ARGUMENTS IN YOUR REFLET WE ASKED BRAZIL IF AUSTRALIA WOULD VOTE AGAINST THE WHOLE OF ARTICLE FIVE IF INITIATIVE FOR A SEPARATE VOTE ON PARA TWO WAS DEFEATED. HE REPLIED THAT A FINAL DECISION ON THIS WOULD BE MADE NEARER THE TIME OF THE CONFERENCE. HOWEVER HE POINTED OUT THAT AUSTRALIA VOTED AGAINST THE WHOLE ARTICLE AT THE FIRST SESSION (ALTHOUGH IT VOTED IN FAVOUR OF PARA ONE AS A SEPARATE ITEM). AGAIN HE PROMISED TO ADVISE US OF THEIR FINAL DECISION ON THE VOTING PATTERN WHEN IT WAS DECIDED.

4. IN GENERAL BRAZIL WAS OPTIMISTIC THAT PARA TWO WOULD NOT/NOT FIND THE NECESSARY TWO THIRDS MAJORITY.

5.24.9

19.24.7

file 20-3-1-6  
9/2/10

ACTION COPY

Doc 2519

*Spec*  
*Should we apply a*  
*points re USSR?*  
*Need us write the*  
*USSR constitution*  
*position into the*  
*international law*  
*applicability to all?*  
*AS*  
*Mr. [Signature]*  
*Stangor*

20-3-1-6  
82 | 11

FM HSNKI SEP24/68 CONFD  
TO TT EXTER 415 PRIORITY DE HAGUE  
BAG COPEN OSLO STKHM  
REF YOURLET L737(M)SEP10 AND YOURTEL L739 SEP13  
LAW OF TREATIES CONFERENCE-ARTICLE 5

ON FRI SEP20 WE CALLED ON MR PAUL GUSTAFSSON DIRECTOR OF LEGAL AFFAIRS DEPT OF FINN MFA AND PRESENTED HIM WITH A COPY OF AIDE MEMOIRE ATTACHED TO YOUR REFLET. WE ALSO LEFT HIM A COPY OF GOVTS WHITE PAPER ON FEDERALISM AND INTERNATL RELATIONS AND SPOKE TO HIM ALONG LINES SET FORTH IN YOUR REFLET.

2. MR GUSTAFSSON SEEMED WELL INFORMED ON ARTICLE 5 OF THE INTERNATL LAW COMMISSION DRAFT AND WAS AWARE OF CDAS PARTICULAR INTEREST IN PARA2 OF THAT ARTICLE. SPEAKING PERSONALLY HE REMARKED THAT AS A LAWYER HE HAD LITTLE INTEREST OR RESPECT FROM LEGAL POINT OF VIEW FOR ARTICLE 5 AS A WHOLE. UNFORTUNATELY OTHER COUNTRIES (PARTICULARLY QUOTE OUR BIG BROTHER UNQUOTE) HAD OTHER CONSIDERATIONS IN MIND AND MATTER THEREFORE HAD DEVELOPED PRONOUNCED POLITICAL ASPECTS WHICH FINLAND COULD NOT/NOT IGNORE. AGAIN SPEAKING PERSONALLY HE SPECIFICALLY REFERRED TO CONCERN WHICH USSR APPARENTLY HAD EXPRESSED REGARDING POSITION OF CONSTITUENT REPUBLICS OF USSR PARTICULARLY IN UN AND EFFECT WHICH DELETION OR AMENDMENT OF PARA2 OF THIS ARTICLE MIGHT OR MIGHT NOT/NOT HAVE IN THIS RESPECT HE REFERRED US TO STATEMENT MADE BY FINN DEL OF FINLAND ON ARTICLE 5 (COPY GOING FORWARD BY BAG) AND NOTED THAT IF POSSIBLE HE WOULD DISCUSS MATTER THIS WEEK IN STKHM WHEN HE WOULD BE MTG OTHER LEGAL REPS OF NORDIC

...2

19.24.9

PAGE TWO 415 CONFD

COUNCIL ON CERTAIN MATTERS OF COMMON CONCERN (POSSIBLE OIL FIELDS IN BALTIC SEA). HE UNDERTOOK TO LET US KNOW RESULTS OF HIS DISCUSSIONS IN OCT OR PERHAPS EARLY NOV. IT WAS HIS OPINION HOWEVER THAT IN VIEW OF CLOSE VOTE ON PARA2 THERE WAS A GOOD CHANCE THAT IT WOULD NOT/NOT BE PASSED AT LEAST IN ITS PRESENT FORM. MOREOVER HE COULD SEE NO/NO REASON AT PRESENT WHY FINLAND SHOULD NOT/NOT ABSTAIN IN ANY FUTURE VOTE ON PARA2 OF ARTICLE 5. HE WOULD NOT/NOT SAY HOWEVER WHETHER FINLAND WOULD OR WOULD NOT/NOT VOTE AGAINST IT.

3. WE WILL SPEAK TO MR GUSTAFSSON LATER IN OCT TO ASK WHAT DEVELOPMENTS MAY HAVE TAKEN PLACE AS A RESULT OF HIS CONVERSATIONS WITH HIS SCANDINAVIAN COLLEAGUES'/'

file 20-3-1-6  
9/25/68

There is a  
friendly  
relation

L  
Mr. Powell  
Mr. Stafford

FM STKHM SEP24/68 CONFD NO/NO STANDARD  
TO TT EXTER 445 PRIORITY DE HAGUE  
REF YOURTEL L817 SEP16  
LAW OF TREATIES CONFERENCE  
BOTH HANS BLIX AND HEAD OF LEGAL DIV ABSENT FROM STKHM UNTIL OCT 1.  
UNLESS YOU INSTRUCT US OTHERWISE PROPOSE TO HOLD ACTION UNTIL  
BLIX RETURNS.

Received  
SEP 24 1968  
In Legal Division  
Department of External Affairs

002332

14.24.9

# ACTION COPY

*Bl...*  
20-3-1-6  
M 7/10

20-3-1-6
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DE BERUT SEP23/68 CONFD NO/NO STANDARD  
A EXTER 725 PRIORITE

REF VOTRELET L737(M)DU SEP10 ET VOTRETEL L765 DU SEP12  
CONF SUR LE DROIT DES TRAITES

LE CHEF DE LA DIRECTION DES AFFAIRES JURIDIQUES DU MAE ETANT EN  
CONGE PLUS OU MOINS PERMANENT JE ME SUIS ENTRETENU LE VEN SEP20  
AVEC HUSSEIN EL-JISR DIR DES AFFAIRES POLITIQUES, A QUI JAI REMIS  
LAIDE-MEMOIRE JOINT A VOTRE REFLET, AINSI QUE L'EXEMPLAIRE DE NOTRE  
LIVRE BLANC SUR CIT LE FEDERALISME ET LES RELATIONS INTERNATLES  
FINCIT.

2. APRES AVOIR LU ATTENTIVEMENT LAIDE-MEMOIRE ET ENTENDU LES ARGU-  
MENTS QUE JE LUI AI PRESENTES ORALEMENT EL-JISR MA DECLARE QUIL  
LUI SEMBLAIT QUE NOTRE POSITION ETAIT PRIMA FACIE CIT PARFAITEMENT  
LOGIQUE FINCIT. IL SEST DIT SURPRIS D'APPRENDRE QUE LE REP LIBANAIS,  
CIT QUI EST UN GARCON INTELLIGENT FINCIT, AVAIT VOTE EN FAVEUR DE  
L'INCLUSION DU PARA2 DE L'ART5 AU DEUXIEME TOUR DE SCRUTIN APRES  
SETRE ABSTENU AU PREMIER LORS DE LA CONF TENUE A VIENNE LE PRINTEMPS  
DERNIER.

3. EL-JISR A AJOUTE QUE SANS ETRE UN EXPERT EN LA MATIERE, IL LUI  
SEMBLAIT QUA LA LUMIERE DES DOCUS QUE JE LUI AVAIS SOUMIS CIT IL  
FAUDRAIT QUE NOUS (C-A-D LE LIBAN) FASSIONS UNE ETUDE COMPLETE DU PRO-  
BLEME AFIN D'ETABIR NOTRE POSITION SUR DES BASES JURIDIQUES AUSSI  
BIEN ETCOFFEES QUE LES VOTRES FINCIT. TOUT EN ME PROMETTANT DE FAIRE  
CETTE RECOMMANDATION A SON MINISTRE, EL-JISR A EVIDEMMENT REFUSE  
DE S'ENGAGER SUR LA TENEUR DE LA DECISION QUI SERAIT EVENTUELLEMENT

...2  
1.24.9

PAGE DEUX 725 CONFD NO/NO STANDARD

ADOPTÉE PAR LES AUTORITÉS LIBANAISES.

4. SI LELEMENT TEMPS VOUS SEMBLE IMPORTANT DANS CETTE AFFAIRE,  
IL SERAIT PROFITABLE QUE VOUS FASSIEZ SUIVRE MA DEMARCHE PAR UNE  
INTERVENTION AUPRES DU SEGEN DU MAE, NAGIB SADAKA, QUI FERA PARTIE  
DE LA DEL LIBANAISE A LA 24E SESSION DE LAGNU. NI LEFFICACITE NI  
LA RAPIDITE NE SONT LES QUALITES PRINCIPALES DU MAE LIBANAIS ET IL  
VAUT MIEUX BATTRE LE FER PENDANT QU'IL EST CHAUD EN INTERVENANT  
DIRECTEMENT AUPRES D'UN HAUT FONCTIONNAIRE CAPABLE DE METTRE RAPIDE-  
MENT UN AVIS MOTIVE. SADAKA POURRA DAILLEURS CONSULTER IMMEDIATEMENT SON  
MINISTRE, FOUAD BOUTROS, QUI DIRIGERA LA DEL LIBANAISE A LAGNU.

5. VOUS SAURAI S GRÉ ME FAIRE PARVENIR UN NOUVEL EXEMPLAIRE DE NOTRE  
LIVRE BLANC SUR LE FEDERALISME ET RELATIONS INTERNATIONALES

MONTPETIT

*Joe: I wonder if we should  
follow up in 2 y with  
some countries  
J*



EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

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

J-30

SECURITY  
Sécurité

CONFIDENTIAL

FROM The Canadian Ambassador, Canadian Embassy,  
Do COPENHAGEN

DATE September 23, 1968

REFERENCE Your Let. L-737(M) of Sept.10,1968 and your  
Référence Tel L774 of Sept.13,1968.

NUMBER  
Numéro

457

SUBJECT Law of Treaties Conference - Article 5.  
Sujet

FILE	DOSSIER
OTTAWA	
	80-8-1-6
MISSION	32 11

ENCLOSURES  
Annexes

DISTRIBUTION

The Legal Adviser of the Foreign Ministry, Professor Sørensen, will not be available until about October 7. (Professor Sørensen was the Head of the Danish Delegation at the Vienna Conference this spring.) As there is no other high legal official, I thought it would be useful to present our Aide Memoire in the meantime to the No.2 political officer of the Ministry, Mr. Oldenburg.

2. I did that on September 20 and explained some of the background to him. He will be passing our representations to Professor Sørensen and I will follow up with the latter as soon as he is available in October.

*M. Oldenburg*  
Ambassador

Received  
OCT 1 1968  
Legal Division  
Department of External Affairs

TO: MR STANFORD  
FROM REGISTRY  
SEP 30 1968  
FILE CHARGED OUT  
TO: MR STANFORD

6-1-10

cc. P.C.O. (Ded/Hoo/Rel)  
Mr. Yalden  
Mr. Harpente  
Dissemination  
of file  
23/9

done Sept 23/68  
28 20-3-1-6

m. Beatty  
Stamp

(5)

# ACTION COPY

L Enrolled

FM DELHI SEP23/68 CONFED NO/NO STANDARD  
TO EXTER 3176  
REF YOURTEL L776 SEP13  
LAW AND TREATIES CONFERENCE

20-3-1-6  
28 | ||

CN SEP21 I SAW DR KRISHNA RAO, LEGAL ADVISOR MEA, WHO REAFFIRMED THAT GOI WOULD CONTINUE TO OPPOSE PARA2 OF ARTICLE FIVE. HE SAID HE WOULD SUPPORT A SEPARATE VOTE ON PARA2 BUT IF THIS WAS NOT/NOT ACHIEVED HE WOULD OPPOSE ARTICLE FIVE AS A WHOLE. HE KNOWS OF NO/NO PLANS FOR LAW OF TREATIES TO BE DISCUSSED AT AFRICAN-ASIAN CONSULTATIVE GROUP BUT UNDERSTANDS THAT THERE WILL BE PRIVATE CONSULTATIONS AMONG COUNTRIES CHIEFLY INTERESTED DURING UNGA. HE HOPES HE WILL TAKE PART IN THESE CONSULTATION.

2. I THANKED DR RAO AND SAID I WAS GLAD THAT AS FEDERAL STATES WITH SIMILAR INTERESTS OUR POSITIONS SEEMED TO BE ALMOST IDENTICAL. HE PROMISED TO KEEP IN CLOSE TOUCH WITH OUR SIXTH CTTEE REP DURING UNGA.

3. RAO WOULD BE GRATEFUL FOR OUR SUPPORT FOR HIS DECLARATION ON PEACEFUL USES OF SEA BED AND OCEAN FLOOR PROPOSED LAST MAY. AS A RESULT OF HIS VISIT TO MOSCO LAST MONTH AND FURTHER TALKS IN DELHI DURING INDC-SOVIET MTC OF CONSULTATION LAST WEEK, USSR HAS NOW AGREED TO SUPPORT INDIA'S DECLARATION WITH MINOR CHANGES AND HAS GIVEN UP THE IDEA OF TREATING IT AS A DISARMAMENT MEASURE

GEORGE

1. 23.9

*reply letter dictated 1/10*

*m. [signature]*  
*m. [signature]*

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

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

SECURITY  
Sécurité Confidential

FROM  
De Canadian Embassy,  
Tehran.

DATE September 21, 1968

REFERENCE  
Référence Our telegram 611 of September 21, 1968

NUMBER  
Numéro 298

*J-33*

SUBJECT  
Sujet Law of Treaties Conference

FILE	DOSSIER
OTTAWA	20-3-1-6
MISSION	<i>32</i> 20-PROV )

ENCLOSURES  
Annexes

1

DISTRIBUTION

*not enclosed*

As reported in our telegram under reference, I called today on the Head of the Treaties and Legal Affairs Division of the Imperial Ministry of Foreign Affairs, Dr. Ezzeddin Kazemi, to explain the Canadian views on paragraph 2, Article 5 of the draft International Convention on the Law of Treaties and to leave with him a copy of the Aide Memoire provided in your letter L-737(M) of September 10. I told Dr. Kazemi that as the matter was primarily legal, at least in origin, I was calling on him but because of the importance of the matter to Canada, I was informing Dr. Fartash, Political Director General inter alia for Canadian affairs. I left a copy of my letter to Dr. Fartash with Dr. Kazemi and attach a copy for your information. You will note that the text deliberately does not go into all details of the question, particulars of which were dealt with during my talk with Dr. Kazemi. In particular, there is no reference in the letter to the possibility of an Iranian abstention on paragraph 2 since it did not seem desirable at this stage to give away this point in writing. I did, however, mention it to Dr. Kazemi along the lines of paragraph 7 of letter L-737(M).

2. The discussion with Dr. Kazemi appeared to go along quite well. He was receptive and understanding of the issues involved. He recognized the undesirability of taking steps which might permit, in fact, interference in the internal affairs of federal States. He also recognized that this could pose problems not just for federal States but for other States wishing to conclude treaties with federal States. Dr. Kazemi indicated several times that in one way or another "this loophole" should be closed and mentioned the possibility of an amendment to paragraph 2 which would make it clear that the federal State itself was the only one which could interpret its own constitution. I should be grateful for your views on this idea as Dr. Kazemi mentioned it several times and it may well come up again.

3. As it transpired that Iran may be represented at the African-Asian Legal Consultative Group I made the points in paragraph 11 of letter L-737(M). Dr. Kazemi said that our views would be taken into account should the matter come up but noted that we would prefer that it not be raised. He suggested however that it might come up as we were presumably discussing this matter with a number of countries.

TO: MR STANFORD  
FROM: REGISTRY  
OCT 1 1968  
FILE CHARGED OUT  
TO: MR STANFORD

.../2

4. While it is certainly too soon to conclude that we can count on Iran changing its vote on this matter next Spring, it would appear from today's conversation that the probable leader of the Iranian delegation at the Second Session of the Law of Treaties Conference is quite sympathetic to our point of view. He would seem to be one delegate worth cultivating in the period up to and during the Conference. It may prove difficult to get firm views from Dr. Kazemi before the Conference begins, as he suggested that the Iranian position on the proper way to deal with this matter might depend on the way it was handled during the Conference. Nevertheless, I reiterated that you would be most interested in having Iranian views before the Conference if at all possible and it was agreed we should get in touch with Dr. Kazemi after he has had a chance to consider the material left with him.

A handwritten signature in cursive script, appearing to read "B. Lee".

The Embassy.

ACTION COPY

*mi 15/10/68*  
*Stalder*  
*pl 20-3-1-6*  
*pl 1/10/68*

20-3-1-6  
80

L

FM TERAN SEP21/68 CONF D

TO EXTER 611

REF YOURLET L737(M) SEP18 AND YOURTEL L816 SEP16

LAW OF TREATIES CONFERENCE

MOST GRATEFUL PROMPT AND HELPFUL RESPONSE IN YOURTEL L836 SEP18.

2.SAW KAZEMI TODAY AS PLANNED.SPOKE AS INSTRUCTED REFLET AND  
REFTEL AND HANDED OVER AIDEMEMOIRE GIVEN REFLET.ALSO SENT LET  
TO FARTASH MENTIONED PARAI OURTEL 605 SEP18(TEXT BY BAG).

3.KAZEMI WAS FRIENDLY AND CLEARLY FULLY FAMILIAR WITH MATTER.HE  
INDICATED THAT IN GENERAL TERMS AT LEAST IRAN WAS SYMPATHETIC  
TO CDN POINT OF VIEW(DESPITE THEIR VOTE AT FIRST SESSION OF  
CONF).HE TOOK NOTE OF ALL POINTS YOU WISHED MADE TO IRANIANS AND  
SAID HE WOULD GO OVER MATERIAL CAREFULLY(INCLUDING COPY OF QUOTE  
FEDERALISM AND INTERNATL RELATIONS UNQUOTE WE LEFT WITH HIM).IT  
WAS AGREED WE SHOULD BE IN TOUCH AFTER HE HAD CHANCE TO STUDY  
MATTER.

4.LET FOLLOWS.

PD LEE

*file 11/10/68*  
~~CONFIDENTIAL~~

20-3-1-6  
30

*me Haggley*  
*Stewart*  
*remittance*

FMTOKYO SEP21/68 CONF D

TO EXTER 1252 PRIORITY

REF YOURLET L737 SEP10 AND TEL 1321 SEP16

LAW OF TREATIES CONF

FUJISAKI IS NOW JPNSE AMBASSADOR TO HAGUE. WE CALLED ON OTSUKA, HEAD OF LEGAL AFFAIRS DIV RESPONSIBLE FOR THE LAW OF TREATIES. JPN NOT/NOT ONLY VOTED AGAINST PARA2 OF ART5 BUT WAS EVEN ONE OF THE FEW COUNTRIES TO VOTE AGAINST ART5 AS A WHOLE. ITS OBJECTION TO PARA2 IS BASED ON THE CONCERN THAT A STATE WITH WHOM JPN HAD NEGOTIATED IN GOOD FAITH MIGHT LATER CLAIM THAT A TREATY WAS INVALID BECAUSE THE MATTER NEGOTIATED WAS NOT/NOT WITHIN THE TREATY-MAKING POWERS OF THE FEDERAL GOVT. OTSUKA SAID HE SAW NO/NO PROSPECT OF ANY CHANGE IN JPNSE POSITION OR EVEN THAT JPN MIGHT MODIFY ITS STAND ON ART5 IN ORDER TO GAIN OTHER COUNTRIES SUPPORT ON OTHER ARTS IN WHICH IT WAS MORE DIRECTLY INTERESTED.

2. JPN WILL ATTEND THE AFRICAN ASIAN LEGAL CONSULTATIVE GROUP MTGS TO BE HELD IN KRCHI IN JAN. OTSUKA EXPLAINED THAT THE SEC OF THE GROUP WAS AN INDIAN CALLED SEN WHO WAS SUCCESSFUL IN VNA IN ACHIEVING A-A SOLIDARITY ON MANY POINTS AT ISSUE. IN PARTICULAR SEN REGARDED THE LAW OF TREATIES AS A MEANS OF PERMITTING A-A COUNTRIES TO SHAKE OFF OBLIGATIONS IMPOSED BY FORMER COLONIAL POWERS. THIS HIT DIRECTLY AT ONE OF JPNS MAIN CONCERNS WHICH WAS THE WEAKNESS OF PART V AS A WHOLE AND ART 62 IN PARTICULAR. JPN INTENDED AS A RESULT TO SEND A STRONG DEL TO KRCHI AND WAS CONSIDERING WHETHER TO CONSULT IN ADVANCE WITH QUOTE MODERATE UNQUOTE A-A COUNTRIES SUCH AS THE PHILIPPINES AND THAILAND IN ORDER TO PRESS FOR IMPROVEMENTS IN THE PRESENT LANGUAGE OF PART V.

5.23.9 ...2

PAGE TWO 1252 CONFD

OTSUKA DID NOT/NOT THINK THAT ART V WOULD BE RAISED, MAINLY BECAUSE AFRICAN COUNTRIES DID NOT/NOT UNDERSTAND THE CONSEQUENCES OF THE ART. HE ASSURED US HOWEVER THAT THE JPNSE DEL WOULD ARGUE AGAINST PARA2 SHOULD IT PROVE NECESSARY TO DO SO.

3. OTSUKA REITERATED THAT JPN CONTINUED TO BE CONSIDERABLY WORRIED BY PART V AS A WHOLE AND ART 52 IN PARTICULAR. HE SAID JPN WOULD BE HAPPY FOR THE OPPORTUNITY TO CONSULT WITH CDA, ESPECIALLY IF WE HAD ANY NEW IDEAS ON HOW TO DEAL WITH THE PROBLEM.

20-3-1-6  
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11/10/69

ACTION COPY

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FM BAIRS SEP20/68 CONFD

TO EXTEROTT 911 PRIORITY

REF YOURTEL L769 AUG12 YOURLET L737(M)SEP10

LAW OF TREATIES CONFERENCE

IN ABSENCE OF DR DE LA GUARDIA WHO IS NOW IN NY ATTENDING  
CONFERENCE WE CALLED ON DR CANDIOTTI TEMPORARY HEAD OF LEGAL  
DIV AT MINISTRY OF FOREIGN AFFAIRS AND LEFT WITH HIM AIDE MEMOIRE  
ENCLOSED WITH YOUR REFLET. DR CANDIOTTI CONFIRMED THAT ARGENTINAS  
POSITION WAS THAT PARA TWO DEALS WITH INTERNAL LAW OF FEDERAL STATE  
AND THAT ITS DELETION WOULD NOT/NOT IMPAIR TREATY-MAKING CAPACITY OF  
MEMBERS OF FEDERAL STATES WHICH NOW ENJOY SUCH CAPACITY. HE ALSO SAID  
THAT PARA ONE WAS NOT/NOT REALLY NECESSARY SINCE RIGHT OF STATES TO  
MAKE TREATIES IS CLEAR FROM CONVENTION AS A WHOLE. HE BELIEVED THERE-  
FORE THAT ARGENTINA WOULD SUPPORT CDA IN OPPOSING PARA TWO AT SECOND  
SESSION; IN VOTING FOR A SEPARATE VOTE ON PARA TWO AND IN VOTING FOR  
DELETION OF WHOLE OF ARTICLE 5 SHOULD THIS VOTE BE DENIED. HE  
SAID HOWEVER THAT WE SHOULD CONFIRM THIS POSITION WITH DR DE LA  
GUARDIA WHEN HE RETURNS FROM NY AT BEGINNING OF OCT SINCE HE  
WILL PROBABLY BE ON ARGENTINE DEL TO SECOND SESSION. WE SHALL  
THEREFORE GIVE YOU THEIR CONSIDERED VIEW ON THIS MATTER AT  
THAT TIME.

*m. B. Stanley*  
*Stark*

*John H. ...*

20-3-1-6	
30	11

L

FM BONN SEP20/68 CONFD

TO EXTER 1140

REF YOURLET 737(M)

LAW OF TREATIES CONFERENCE-ARTICLE5

IN ACCORDANCE WITH YOUR INSTRUCTIONS WE CALLED THIS AFTERNOON ON DR BLOMEYER DEPUTY HEAD OF LEGAL DIV IN THE FO. DR THEIRFELDER RECENTLY WAS APPOINTED AMB IN AKRA AND HIS SUCCESSOR DR GROEPPEN HAS ONLY JUST TAKEN UP HIS APPOINTMENT.

2. THE AIDE-MEMOIRE WAS LEFT WITH DR BLOMEYER AND HE PROMISED TO GIVE US A MORE DEFINITE ANSWER BY NEXT WEEK. HE MADE IT CLEAR HOWEVER THAT THE GERMAN POSITION ON ARTICLE 5 PARA2 HAS NOT/NOT CHANGED AND THEIR VOTE ON PARA2 WOULD BE THE SAME AS DURING THE FIRST SESSION OF THE CONFERENCE. DR BLOMEYER EMPHASIZED THAT GERMANS SHARED OUR VIEWS ON PRINCIPLE INVOLVED ALTHOUGH PROVISIONS OF THEIR CONSTITUTION MADE IT SOMEWHAT DIFFICULT FOR THEM TO OPPOSE PARA2. THEIR OTHER REASON FOR OPPOSING INCLUSION OF PARA WAS SUPPORT REQUESTED BY CDA.

3. BLOMEYER WAS UNCERTAIN OF POSITION GERMANS WILL TAKE IF VOTE IS TAKEN ON ARTICLE5 AS A WHOLE. HE EXPECTED TO BE ABLE TO LET US KNOW NEXT WEEK.

3.13.9

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

J-31

good

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

SECURITY CONFIDENTIAL  
Sécurité

FROM  
De The Canadian Embassy,  
OSLO.

DATE September 20, 1968

REFERENCE  
Référence Your letter No. L737(M) of September 10,  
1968 and Your Telegram No. L805 of  
September 16, 1968.

NUMBER  
Numéro 384

SUBJECT  
Sujet Law of Treaties Conference - Article 5.

FILE	DOSSIER
OTTAWA	20-3-1-6
MISSION	<del>32-204</del> 11

ENCLOSURES  
Annexes

DISTRIBUTION

The Ambassador, accompanied by the Third Secretary, today presented an Aide-Memoire as outlined in your letter under reference to Mr. E. F. Ofstad, Deputy Head of Norwegian Foreign Ministry Legal Department. Mr. P. Motzfeldt, who attended first session of Law of Treaties Conference, was also present.

2. Mr. Ofstad informed us that Norway would continue to oppose paragraph 2 of Article 5 as it had at the first session. He was also quite sure that Norway would support a separate vote on paragraph 2. Although Ofstad could not state Norway's position on the possibility of deleting Article 5 as a whole if a separate vote is refused on paragraph 2 with any firmness without looking into the matter, he was quite sure that Norway would favour deletion. Motzfeldt stated that in Norwegian eyes Article 5 was really superfluous. Mr. Ofstad promised to give us a definite reply on Norway's position shortly.

3. During the discussion Mr. Ofstad told us that he and Mr. Motzfeldt would represent Norway at the second session of the Conference next year.

*[Handwritten Signature]*  
The Embassy.

Received  
OCT 1 1968  
In Legal Division  
Department of External Affairs

TO: MR STANFORD  
FROM REGISTRY  
SEP 30 1968  
FILE CHARGED OUT  
TO: MR STANFORD

7.1.10

File Diary  
Div. Diary JSS  
Tel. File

**MESSAGE**

DATE	FILE/DOSSIER	SECURITY SECURITE
20 SEPT/68	20-3-1-6	CONFID.
	<i>32</i>	

EXTERNL OTT

FM/DE

BERN

TO/A

NO  
1-849

PRECEDENCE  
PRIORITY

INFO

**REF** YOURTEL 526 SEPT 19

**SUB/SUJ** LAW OF TREATIES CONFERENCE

WE CONCUR IN THE PROCEDURE PROPOSED IN PARAS 2 AND 3 OF REFTEL.

2. FRENCH TEXT OF INTERNATIONAL LAW COMMISSION REPORT ON SECOND PART OF ITS 17TH SESSION and ON ITS 18th SESSION, WHICH CONTAINS ILC DRAFT ARTICLES AND COMMENTARY, BEING FORWARDED TO YOU DIRECT FROM PERMIS NEW YORK BY AIR.
3. TWELVE COPIES OF FRENCH EDITION OF "FEDERALISM AND INTERNATIONAL RELATIONS" FORWARDED TO YOU TODAY BY AIR.

DISTRIBUTION NO STANDARD  
LOCAL/LOCALE

ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	APPROVED/AUTORISE
SIG.....J.S. STANFORD/zs.....	LEGAL	2-5406	M. D. COPP THORNE

File Diary  
 Tel. File JSS  
 Div. Diary

**MESSAGE**

DATE	FILE/DOSSIER	SECURITY SECURITE
20 SEPT/68	20-3-1-6	
		UNCLSF.

FM/DE EXTERNL OTT

TO/A PERMISNY

NO  
 L-848  
 PRECEDENCE  
 ROUTINE

INFO

REF STANFORD-CROTEAU TELECON.

SUB/SUJ ILC REPORT ON THE LAW OF TREATIES

PLEASE OBTAIN BY PURCHASE IF NECESSARY ONE COPY IN FRENCH REPEAT FRENCH  
 OF ILC REPORT ON THE SECOND PART OF ITS 17TH SESSION AND ON ITS 18th SESSION.  
 DOCUMENT REFERENCE IS GENERAL ASSEMBLY OFFICIAL RECORDS: 21ST SESSION AM  
 SUPPLEMENT NO. 9 (A/6309/REV.1).

2. THIS DOCUMENT SHOULD BE FORWARDED BY AIR DIRECT TO CANADIAN EMBASSY, BERNE.

DISTRIBUTION NO STANDARD  
 LOCAL/LOCALE

ORIGINATOR/REDACTEUR

DIVISION

TELEPHONE

APPROVED/AUTORISE

SIG..... J. S. STANFORD, ZS.....

LEGAL

2-5406

SIG..... M. D. COPITHORNE.....  
 M. D. COPITHORNE

cc P.C.O. (Ded. Priv. (A))

Mr Yalden

4 file off 23/9

done Sept 23/68

20-3-1-6

ACTION COPY

L

M. Copithorne

Stasford

20-3-1-6  
70

FM KLMPR SEP20/68 CONF NO/NO STANDARD

TO EXTER 1076 PRIORITY.

REF YOURLET L737(M)SEP 10 AND YOURTEL L792 SEP16

LAW OF TREATIES CONFERENCE ARTICLE 5

I CALLED ON RAMANI, LEGAL ADVISER TO MFA, ON SEP27, LEFT AIDE MEMOIRE AND MADE ORAL PRESENTATION ALONG LINES OF PARA12 OF YOUR REFLET.

2. IN ORAL PRESENTATION, I STRESSED CDAS APPRECIATION OF WAY MALAYSIA HAD VOTED ON BOTH OCCASIONS AT FIRST SESSION OF CONFERENCE.

I ALSO POINTED OUT THAT CDA CONSIDERS THIS ISSUE IS AN IMPORTANT INTERNATL LEGAL ISSUE WHICH WILL BE OF SERIOUS CONCERN TO ALL FEDERAL STATES AND INDEED ALL STATES WHETHER FEDERAL OR NOT/NOT CONCERNED WITH THE FUTURE OF INTERNATL ORGANIZATIONS AND THE ORDERLY DEVELOPMENT OF INTERNATL LAW. I SAID THAT AS HE KNEW, CDA FACED ITS OWN PROBLEMS IN THIS FIELD BUT THAT OUR REASONS FOR MAKING SUCH AN APPROACH WERE BASED MAINLY ON THE BROADER REASONS I HAD MENTIONED.

PARA 3 I ASKED FOR AN INDICATION IN DUE COURSE OF THE POSITION MALAYSIA WOULD ADOPT AT SECOND SESSION OF CONFERENCE AND IN PARTICULAR HOW MALAYSIA WOULD VOTE ON A REQUEST FOR A SEPARATE VOTE FOR PARA 2 OF ARTICLE 5 AND ON ARTICLE 5 AS A WHOLE, IF A SEPARATE VOTE IS DENIED.

3. RAMANI WAS NOT/NOT OF COURSE ABLE TO GIVE A FORMAL REPLY IMMEDLY, HE IS INCIDENTALLY ONLY INDIVIDUAL IN MFA WHO HAS BACKGROUND TO DEAL WITH THIS SUBJ AS MFA OPERATES NO/NO LEGAL DIVISION AND IN FACT POSSESSES LITTLE INTERNATL LEGAL EXPERTISE. RAMANI PROMISED TO CONVEY A MORE FORMAL RESPONSE TO OUR AIDE MEMOIRE THROUGH THE UN

...2

PAGE TWO 1276 CONF NO/NO STANDARD

DEL IN NYK. HE DEPARTS ON SEP21 TO ATTEND 23RD UNGA, PARTICULARLY TO DEAL WITH THE EXPECTED PHILIPPINES INITIATIVE ON SABAH DISPUTE. YOU MAY WISH TO ASK PRMNY TO OBTAIN A MORE FORMAL REPLY TO OUR AIDE MEMOIRE IN DUE COURSE. WE WILL ALSO FOLLOW UP HERE.

4. HE LEFT US IN NO/NO DOUBT, HOWEVER THAT MALAYSIA CONCURS COMPLETELY WITH CDN POSITION ON ARTICLE 5 AND THAT AT SECOND SESSION OF CONFERENCE, MALAYSIA WILL BE PLEASED TO JOIN CDA IN WORKING FOR THE DEFEAT OF PARA 2. MALAYSIA, HE THOUGHT, WOULD SUPPORT A MOVE FOR A SEPARATE VOTE ON PARA 2 AND WOULD VOTE AGAINST ARTICLE 5 AS A WHOLE IF THIS PROPOSAL IS DENIED. RAMANI NOTED THAT PARTICULARLY IN THE CONTEXT OF PHILIPPINES CLAIM TO SABAH, MALAYSIA STRONGLY SUPPORTS VIEW THAT THE TREATY MAKING POWER LIES ONLY WITH FEDERAL AUTHORITY IN A FEDERAL STATE.

5. RAMANI MADE CLEAR THAT HE CONSIDERS THAT THERE SHOULD BE CLOSE CONSULTATION AMONG FEDERAL STATES ATTENDING CONFERENCE BEFORE BEGINNING OF SECOND SESSION. HE SUGGESTED, IN FACT, THAT CDA, MALAYSIA AND OTHER FEDERAL STATES SHOULD MEET TO WORK OUT TACTICS FOR HANDLING THIS ISSUE IN FORTHCOMING SESSION AND THAT HE HOPED CDA WOULD TAKE A LEAD IN THIS REGARD. I REPLIED THAT WE HAD NOT/NOT YET BEEN BRIEFED ON YOUR VIEWS CONCERNING THE PRECISE TACTICAL SITUATION BUT ADDED THAT IT WAS CLEAR YOU BELIEVED PARA 2 COULD BE DEFEATED.

*Copthorne, Stanford*  
**ACTION COPY**

*revised 2/9'*  
Feb 20-3-1-6  
30  
|| *2 action*

FM PRET SEP20/68 CONFJ

TO EXTER 368

REF YOURLET L-737(M)SEP10

LAW OF TREATIES-ARTICLE 5

WE CALLED ON FINCHAM UNDERSECRETARY FOR LEGAL AND TREATIES DIV AND LEFT AIDE-MEMOIRE AS INSTRUCTED MAKING POINTS SUGGESTED BY YOU IN OUR ORAL PRESENTATION.

2. FINCHAM SAID HE WAS INTERESTED IN OUR POSITION. PARA2 ARTICLE 5 WAS ONE ON WHICH SOUTHAFRICANS HAD HAD MIXED FEELINGS AND THEIR OWN FUTURE POSITION WAS UNDER STUDY. THEY WOULD PAY CLOSE ATTN TO CDN ARGUMENTS AND HE ASKED US TO LEAVE COPY OF WHITE PAPER ON FEDERALISM AND INTERNL RESS. WHOLE TONE OF DISCUSSION WAS VERY CORDIAL AND OUR GUESS IS THAT FINCHAM'S RECOMMENDATION TO SOUTHAFRICAN AUTHORITIES WILL BE TO SUPPORT CDN POSITION.

3. HE EXPLAINED CHANGE IN SOUTHAFRICAN VOTE FROM NEGATIVE TO POSITIVE AS RESULT OF EXPLANATORY STATEMENT BY CHAIRMAN ON IMPORT OF TEXT OF PARA 2 AS IT EMERGED FROM DRAFTING CTTEE. SOUTHAFRICAN AUTHORITIES HAD BEEN CONCERNED THAT IN ORIGINAL FORM PARA2 MIGHT HAVE RESTR TERRITORIES SUCH AS TRANSKEI OR OTHER FUTURE BANTUSTANS FROM CONCLUDING TREATIES. HE SAID AUSTRALIAN DEL AS WELL AS MR WERSHOF HAD NOT/NOT HIDDEN THEIR DISPLEASURE ON SOUTHAFRICA CHANGED VOTE.

4. HIS OWN VIEW WAS THAT PARA2 COULD BE DELETED WITHOUT HARM TO TREATY. HE DID NOT/NOT THINK SEPARATE VOTE ON THIS PARA COULD BE REFUSED IN VIEW OF NUMBER OF STATES HAVING GREAT INTEREST (IN IT?). HE ALSO TOOK POINT ABOUT ABSTENTION BEING OF MUCH LESS VALUE THAN NEGATIVE VOTE SINCE IT WOULD NOT/NOT COUNT FOR BLOCKING THIRJ. HE PRO-

...2

*15-20.9*

PAGE TWO 368 CONFID

MISED TO LET US KNOW IN DUE COURSE DECISION ON SUTHAFRICAN POS-  
ITION.

5. HE ASKED US INFORMALLY IF WE HAD ANY INFO ON WHAT POSITION CDA  
WOULD TAKE ON ARTICLE 5 BIS WHICH PROVIDES THAT ALL STATES MAY  
BECOME PARTIES TO MULTILATERAL CONVENTIONS. THIS PROPOSAL WHICH HAD  
BEEN INTRODUCED BY COMMUNIST BLOC AND VIOLENTLY OPPOSED BY USA HAD  
BECOME QUOTE A HOT POTATOE UNQUOTE. HIS OWN VIEW WAS THAT IT WAS  
BETTER TO WORK TOWARDS UNIVERSALITY IN MULTILATERAL TREATIES AS IN  
OTHER MATTERS.

6. GRATEFUL IF YOU COULD LET US HAVE CDN VIEWS ON 5 BIS TO PASS ON  
TO FINCHAM SINCE THIS MIGHT EXPEDITE RECIPROCAL ACTION ON SOUTH  
AFRICAN PART REGARDING THEIR POSITION ON PARA2 ARTICLE 5.

7. GRATEFUL ALSO ADDITIONAL COPY WHITE PAPER BY NEXT AIR ENVELOPE.



17

**MESSAGE**

FM/DE	EXT OTT	DATE	FILE/DOSSIER	SECURITY SECURITE
		SEPT. 20 1968	20-3-16 82	RESTR
TO/A	PRETORIA	NO		PRECEDENCE
		L-853		ROUTINE
INFO				

**REF** YOUR TEL 368 SEPTEMBER 20, 1968

**SUB/SUJ** LAW OF TREATIES

ADDITIONAL COPY OF WHITE PAPER QUOTE FEDERALISM AND INTERNATIONAL RELATIONS UNQUOTE GOING TO YOU BY NEXT AIR ENVELOPE AS REQUESTED.

2. RE YOUR PARA 5, WE ANTICIPATE THAT INITIAL INSTRUCTIONS TO CANADIAN DEL AT SECOND SESSION WILL BE TO JOIN IN TRADITIONAL WESTERN OPPOSITION TO THE QUOTE ALL STATES UNQUOTE FORMULA BOTH IN ARTICLE 5 BIS AND IN THE FINAL ARTICLE ON ACCESSION. WHILE THIS POSITION WILL BE SUBJECT TO REVIEW IN THE LIGHT OF DEVELOPMENTS AT THE SECOND SESSION, YOU SHOULD NOT INFORM SOUTH AFRICA OF OUR PRESENT POSITION ON THIS ISSUE (WHICH APPEARS TO DIFFER FROM THEIR OWN) IF YOU BELIEVE THERE IS ANY POSSIBILITY IT MIGHT PREJUDICE FAVOURABLE SOUTH AFRICAN REPLY TO OUR REPRESENTATIONS ON ARTICLE 5.

BEST COPY AVAILABLE

DISTRIBUTION LOCAL/LOCALE NO STD.

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

**MESSAGE**

DATE	FILE / DOSSIER	SECURITY SECURITE
20 SEPT/68	20-3-1-6	UNCLSF.

FM/DE EXTERNL OTT

TO/A COPENHAGEN

NO	PRECEDENCE
L-847	ROUTINE

INFO

REF YOURTEL 444 SEPT.19

SUB/SUJ LAW OF TREATIES CONFERENCE

TWO ENGLISH COPIES OF QUOTE FEDERALISM AND INTERNATIONAL RELATIONS" FORWARDED  
 TO YOU TODAY BY AIR.

DISTRIBUTION NO STANDARD  
 LOCAL / LOCALE

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

Feb 20-3-1-68  
MS

FACULTY OF LAW  
THE LIBRARIAN



McGILL UNIVERSITY  
MONTREAL

CHANCELLOR DAY HALL  
3644 PEEL STREET  
MONTREAL 2, QUEBEC  
CANADA

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

20th September, 1968.

Dear Mr. Stanford,

I just wanted to let you know that we have returned to you, under separate cover, the complete draft Report of the Committee of the Whole from the First Session of the Law Treaties Conference. We have made xerox copies and are most grateful that you have made them available to us so that we may now have this very useful collection in the Law Library.

Please accept my apologies for the delay at this end, but it is always very busy the first week of term.

Sincerely,

Marianne Scott,  
Law Librarian.

MS/pm.

*Mr. Stanford*  
*S. Stanford*  
*10/7/10*

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

TO  
A The Under-Secretary of State for External Affairs,  
O t t a w a

SECURITY  
Sécurité CONFIDENTIAL

FROM  
De The Canadian Ambassador, Addis Ababa, Ethiopia

DATE September 19, 1968

REFERENCE  
Référence Your Letter L-737(M) of September 10, 1968

NUMBER  
Numéro 862

SUBJECT  
Sujet Law of Treaties Conference - Article 5

*5-36*

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

ENCLOSURES  
Annexes

DISTRIBUTION

I called today on the Chief Legal Advisor at the Ministry of Foreign Affairs, Ato Getachew Kibret, and left with him two copies of the Aide-Mémoire attached to your letter under reference. Ato Getachew was apparently already aware of our concern about Article 5. After reading the Aide-Mémoire, he stated, as follows, the present Ethiopian position on that article, adding that it was unlikely to be changed.

- a) Ethiopia favours maintaining paragraph 1 of Article 5 for "historical and sentimental reasons" such as their controversy with Italy over the latter's claimed past ability to have entered into treaties on behalf of Ethiopia, and feels that the principle enunciated in paragraph 1 of Article 5 needs "explicit assertion."
- b) Ethiopia favours and can be counted on voting for a separate vote on the two paragraphs of Article 5. ✓
- c) In the event that a separate vote on the two paragraphs of Article 5 should take place, Ethiopia will vote for on paragraph 1 and against on paragraph 2. ✓
- d) In the event that there is no majority supporting a separate vote, Ethiopia may abstain but she is more likely to vote in favour of the whole Article 5 because of the importance she attaches to paragraph 1. I have naturally, but without success, used the argument of paragraph 10 of your letter under reference to dissuade them. x

*McCauley*

Ambassador

TO: MR STANFORD  
FROM: REGISTRY  
OCT 4 1968  
FILE CHANGED ONE  
TO: MR STANFORD

Received  
OCT 4 1968  
In L. 1 Division  
of External Affairs

*24.4.10*

*mm / 10/10/68*

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

*pub 9/7/10*

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

FROM  
De Canadian Embassy  
Addis Ababa, Ethiopia

REFERENCE  
Référence Yourlet L-737(m) of September 10

SUBJECT  
Sujet White Paper on "Federalism and  
International Relations"

*J-32*

SECURITY  
Sécurité UNCLASSIFIED

DATE September 19, 1968

NUMBER  
Numéro 863

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

ENCLOSURES  
Annexes

DISTRIBUTION

It would be appreciated if you could send us immediately; by airmail, two copies each in English and French, and by sea mail, six copies each in English and French of the subject white paper.

*done Oct 1/68-35*

*M. Stawford*

The Embassy

**Received**  
OCT 1 1968  
In Local Division  
Department of External Affairs

TO: MR STAWFORD  
FROM REGISTRY  
SEP 30 1968  
FILE CHARGED OUT  
TO: MR STAWFORD

*8-1-10*

NWNN

ACTION COPY

file 20-3-1-6  
20/9

OTT012

LDN017 BRU030

HAG19/19

COP07/19

PP OTT

DE COP

P 191800Z

FY COPEN SEP19/68

TO EXTER 444

REF YOURTEL L774 SEP13

LAW OF TREATY CONFERENCE

PLS AIRMAIL ONE OR TWO ENGLISH COPIES OF QUOTE FEDERALISM

AND INTERNATIONAL RELATIONS UNQUOTE.

20-3-1-6	
30	

L

4.20.9

*cc Mr. Alden (OUSA) -  
P.C.O. (Swiss hel.)  
Done 20/9 J*

*ACTION COPY. Stanford*

*pl 20-3-1-6  
J 20/9*

FM BERN SEP19/68 CONF D

TO EXTER 526 IMMED

REF VOTRETEL L801 SEP16

*20-3-1-6  
32 | 11*

CONVENTION SUR LOI DES TRAITES

PRESIDENT CONFEDERATION HELVETIQUE ET CHEF DEPT POLITIQUE FEDERAL  
SONT UNE SEULE ET MEME PERSONNE, M WILLY SPUHLER. VOTRETEL L737(M)  
SEP10 NOUS EST BIEN PARVENUE PAR DERNIERE VALISE.

2. VU QUE QUESTION EST ASSEZ TECHNIQUE, QUE M SPUHLER EST SURCHARGE  
TRAVAIL ETANT DONNE CONSEIL NATL ET CONSEIL DES ETATS SIEGENT EN  
CE MOMENT, CROYONS BON AVOIR DISCUSSION PRELIMINAIRE AVEC CONSEILLER  
JURIDIQUE DU DPF AVANT DOBTENIR AUDIENCE AVEC SPUHLER A  
LAQUELLE ESPERONS CONSEILLER JURIDIQUE ASSISTERA. CETTE PROCEDURE  
INDIQUERAIT IMPORTANCE VOUS ATTACHEZ A CETTE QUESTION, PERMETTRAIT  
AU PRESIDENT SAISIR POINTS ESSENTIELS ET AUX EXPERTS SE PENCHER SUR  
VOS ARGUMENTS PLUS TECHNIQUES.

*Des 203  
off.*

3. SEUL PROBLEME EST QUE CONSEILLER JURIDIQUE EST A LA TETE DE DEL  
SUISSE A CONFERENCE DES NON NUCLEAIRES A GENEV ET POUR MENER  
LAFFAIRE A BIEN DEVRONS PEUT-ETRE COMPTER SUR UN DELAI DE DEUX A TROIS  
SEMAINES. VU QUE DEUXIEME SESSION CONFERENCE NAURA LIEU QUEN AVRIL  
PROCHAIN SOMMES DAVIS QUIL VAUT MIEUX PROCEDER LENTEMENT MAIS  
SUREMENT, CE QUI EST DAILLEURS TRES SUISSE.

*no extra  
copy in  
English*

4. INCIDEMMENT IL NOUS SERAIT UTILE OBTENIR PROJET CONVENTION EN  
FRANCAIS RPT EN FRANCAIS DANS MEILLEURS DELAIS CAR NOS CONVERSA-  
TIONS AURONT LIEU EN FRANCAIS OU EN ALLEMAND ET IL EST GENANT  
REFERER AU TEXTE ANGLAIS. AVONS UN BON STOCK BROCHURE CIT  
FEDERALISME ET CONFERENCES INTERNATLS SUR LEDUCATION FINCIT MAIS

...2

28.19.9

PAGE DEUS 526 CONFD

IL NE NOUS RESTE MALHEUREUSEMENT QUUN EXEMPLAIRE CIT FEDERALISM  
AND INTERNATL RELATIONS FINCIT ET NOUS APPRECIERIONS VIVEMENT  
RECEVOIR DOUZE EXEMPLAIRES CETTE DERNIERE BROCHURE EN LNAGUE  
FRANCAISE PAR AVION.

ACTION COPY

*Stanford*  
file 20-3-1-6  
*[Handwritten signature]*  
*[Handwritten initials]*

FM VIENN SEP19/68 CONF D NO/NO STANDARD

TO EXTER 908

REF YOURTEL L823 SEP16

LAW OF TREATIES DRAFT ART 5

SAW EDUARD SCHILLER TODAY AND CARRIED OUT INSTRS. GENERAL REACTION  
SYMPATHETIC, BUT SCHILLER INDICATED IT WOULD TAKE SOME TIME FOR  
AUSTRIAN POSITION TO BE REEXAMINED.

2. MFA ALREADY HAS COPY OF QUOTE FEDERALISM AND INTERNATL RELATIONS  
UNQUOTE.

3. VEROSTA AND ZEMANEK ARE AWAY. SCHILLER WILL PUT THEM IN PICTURE  
ON RETURN, AND MTG WITH ME WILL PROBABLY ENSUE

MCCORDICK

*Copy to [unclear]*  
ACTION COPY

L file 20-3-1-6  
19/6

V

FM TERAN SEP18/68 CONFD

TO EXTER 605 IMMED

REF YOURLET L737(M) SEP10 AND YOURTEL L816 SEP16

LAW OF TREATIES CONFERENCE

HAVE APPOINTMENT WITH KAZEMI SEP21. HE IS SENIOR OFFICIAL IN IMFA CONCERNED WITH LEGAL QUESTIONS. IF THEN SEEMS APPROPRIATE MAY SEND COPY OF AIDE MEMOIRE UNDER LET TO FARTASH IMFA DIRGEN INTER ALIA FOR NORTH AMERICA (INCLUDING CDA), IN VIEW SERIOUSNESS THIS MATTER FROM CDN VIEWPOINT. FARTASH ALSO HAS MUCH EXPERIENCE IN INTERNATL ORGANIZATIONS AFFAIRS.

2. WOULD FIND IT USEFUL TO HAVE BEFORE SAT BRIEF INDICATION OF OVERALL VOTE ON ARTICLE 5 PARA2 AT FIRST SESSION LAW OF TREATY CONF. NOT/NOT CLEAR FROM PARA2 REFLET WHETHER DRAFT PARA2 WAS THEN ADOPTED IN FACT BY MAJORITY OF TWO THIRDS OR MERELY BY SIMPLE MAJORITY IE QUITE APART FROM WHAT WE GATHER TO BE PROCEDURAL REQUIREMENT ON THAT RPT THAT VOTE OF SIMPLE MAJORITY ONLY. IN OTHER WORDS COULD KAZEMI RESPOND TO OUR REPRESENTATIONS BY NOTING THAT AS PARA2 ONLY WON SIMPLE MAJORITY AT LAST VOTE THERE WOULD BE NO/NO NEED FOR IRAN TO CHANGE ITS VOTE SINCE WE ALREADY HAVE BLOCKING THIRDS. FURTHER QUESTION THEN MIGHT BE WHETHER YOU HAVE ANY REASON TO BELIEVE SOME STATES MAY BE THINKING OF CHANGING VOTE OTHER WAY IE TO VOTE IN FAVOUR PARA2 ARTICLE 5.

3. GATHER YOU DO NOT/NOT WISH US TO APPROACH IRAQ AND KUWAIT.

4. GRATEFUL IF YOU WOULD AIRMAIL US TWO ADDITIONAL COPIES OF QUOTE FEDERALISM AND INTERNATL RELATIONS UNQUOTE.

9.18.9

PD LEE

002361

*Mr. Copthorne*

*ORIGINAL COPY stamped*  
*L* *→*

*20-3-1-6*  
*JH*  
*2/20/9*

OTT115

ENØ17

MON3/19

OO OTT

DE MON

FM VMVDEO SEP19/68

TO EXTER 18Ø IMMED

YOURTEL L8ØØ SEP16

LAST SENTENCE OF FIRST PARA REFTEL APPEARS TO HAVE BEEN  
SOMEWHAT GRBLED IN TRANSMISSION. THAT SENTENCE MIGHT BE  
CLEAR WHEN YOURLET L737(M) OF SEPOXXX SEP1Ø IS RECD HERE SEP27.

PLEASE ENCLOSE COPY OF REFTEL IN BAG WHICH PROBABLY CLOSES  
IN OTT ON SEP24.

*sent 20/9*  
*JH*

2 1. 19. 9

*cc Mr Yalder (division) - done 20/9/68  
Sept 38  
P.C.O. (Int. Adv. Rel. Sect.)  
file 20/9/68*

*Winters, Bedford*

**ACTION COPY**

20-3-1-6  
32 | 1  
L

FM WSHDC SEP19/68 CONF D NO/NO STANDARD  
TO EXTER 3390 PRIORITY  
REF YOURTEL L824 SEP16 AND YOURLET L737(N)SEP10  
LAW TREATIES CONFERENCE

AS INSTRUCTED WE CALLED TODAY ON AMBASSADOR KEARNEY AND ON BASIS OF YOUR VERY HELPFUL LET OUTLINED TO HIM YOUR VIEWS ON ARTICLE 5 OF DRAFT CONVENTION ON LAW OF TREATIES. HE SAID THAT BECAUSE PARA2 DOES NOT/NOT PRESENT ANY CONSTITUTIONAL PROBLEMS TO USA AND BECAUSE OF DEFENSIVE ATTITUDE OF A NUMBER OF AFROASIAN DELS TO VARIOUS USA INITIATIVES LAST YEAR USA WOULD NOT/NOT TAKE LEAD IN OPPOSING IT AT NEXT SESSION OF CONFERENCE. HOWEVER WHILE THEY WOULD LEAVE IT TO US TO BREAK GROUND THEY WOULD CERTAINLY SPEAK AND QUOTE MODERATELY UNQUOTE LOBBY AGAINST PARA2.

2. ON QUESTION OF PROCEDURE AMBASSADOR KEARNEY CONSIDERED IT UNLIKELY THAT CONFERENCE WOULD OPPOSE PARA BY PARA VOTE. INDEED HE THOUGHT THAT THIS WAS CALLED FOR BY CONFERENCE RULES BUT AFTER CHECKING THEM ADMITTED THAT THIS ASPECT WAS NOT/NOT APPARENTLY COVERED. TO GET AROUND THIS OMISSION HE SUGGESTED INFORMALLY THAT CONSIDERATION SHOULD BE GIVEN AT BEGINNING OF SESSION TO TABLING A MOTION THAT ALL ARTICLES CONTAINING SEPARATE PARAS BE VOTED ON PARA BY PARA. AS HE OBSERVED SOME DELS MIGHT BE IN SAME POSITION VIS A VIS OTHER ARTICLES AS WE ARE ON ART5 AND WOULD BE HAPPY TO SUPPORT SUCH A MOTION TO SERVE THEIR OWN ENDS.

3. IF THIS APPROACH DOES NOT/NOT PROVE TO BE SUCCESSFUL HE SAID ...2

7.20.9

PAGE TWO 3390 CONFD NO/NO STANDARD

THAT ALTHOUGH USA POSITION HAD NOT/NOT BEEN GIVEN TOP LEVEL APPROVAL HE THOUGHT HE COULD GIVE US EVERY ASSURANCE THAT USA NOT/NOT ONLY WOULD OPPOSE PARA2 AS INDICATED ABOVE BUT IF SEPARATE VOTE WAS NOT/NOT ALLOWED WOULD ALSO VOTE AGAINST WHOLE OF ARTICLE5. THEY REGARDED PARA1 IN ANY CASE AS SUPERFLUOUS AS IT IS IMPLICIT IN VERY NATURE OF STATE THAT IT POSSESSES CAPACITY TO CONCLUDE TREATIES ALTHOUGH HE DID OBSERVE THAT WHETHER THIS WAS SO OR NOT/NOT REITERATION OF THIS FACT HAD CONSIDERABLE APPEAL TO AFRICANS AMONGST OTHERS. THUS WHILE SOME STATES MIGHT BE PREPARED TO VOTE AGAINST PARA2 ON A SEPARATE VOTE THEY MIGHT HAVE RESERVATIONS ABOUT VOTING AGAINST WHOLE ARTICLE.

4. AS TO NEXT SESSION IN GENERAL HE ASKED US TO TELL YOU THAT STATE DEPT IS WORKING ON A SERIES OF PAPERS ON THIRD PARTY SETTLEMENT OF DISPUTES AND ARE CONSIDERING MAKING HIGH LEVEL REPRESENTATION IN ALL CAPITALS TAKING 13-STATE PROPOSAL AS BASIS AND SUGGESTING CERTAIN IMPROVEMENTS. HE THOUGHT THAT THESE PAPERS WOULD BE READY IN NEXT FEW WEEKS.

...

*Mr. Doherty*  
*Mr. Stafford*

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

*file 25/19*

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

SECURITY  
Sécurité

CONFIDENTIAL

FROM  
De The Canadian Embassy  
DUBLIN, Ireland

DATE

September 19, 1968

REFERENCE  
Référence Your letter L-737(M) of September 10 and  
your telex L-778 of September 13

NUMBER  
Numéro

249

SUBJECT  
Sujet Law of Treaties Conference - Article 5

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

ENCLOSURES  
Annexes

DISTRIBUTION

I shall speak to Dermot Waldron or Frank Hayes in the next few days about Ireland's vote and will express appreciation. It should be possible to report back to you in next week's bag, leaving Dublin Thursday, September 26.

2. As the information contained in your telex was not needed before receipt of the letter, may I suggest that it could more appropriately have come with the letter, or at least as a telegram bagged from London? As it was, it arrived here on the week-end during a naval visit and had to be decyphered (Dublin has only book cypher facilities) at a time when the mission had more than enough to do already.

TO: MR STAFFORD  
FROM: REGISTRY  
SEP 24 1968  
FILE CHARGED OUT  
TO:

*Alan Buid*  
Chargé d'Affaires a.i.

Received  
SEP 24 1968  
In Legal Division  
Department of External Affairs

26.24.9

20-3-1-6

30		
----	--	--

*Capitaine, [illegible]*  
~~ACTION COPY~~

L

*Feb 11, 1979*

FM HAGUE SEP18/68 CONFD

TO EXTER 540

REF YOURTEL L788 SEP13 YOURLET L737(M)SEP10

LAW OF TREATIES CONFERENCE

PROFESSOR RIPHAGEN WILL BE ABSENT UNTIL SEP26. UNLESS YOU SEE ANY  
OBJECTION WE THINK IT WOULD BE PREFERABLE TO AWAIT HIS RETURN AND  
MAKE REPRESENTATIONS TO HIM PERSONALLY''''

13.18.9

File  
Diary  
Div. Diary

RETURN TO LEGAL DIV. DCO

*when released*

EXTERNAL AFFAIRS

AFFAIRES EXTÉRIEURES



MEMORANDUM

TO  
A  
Commonwealth Division  
(through the Legal Adviser)

SECURITY SECRET  
Sécurité

FROM  
De  
Legal Division

BEST COPY AVAILABLE DATE September 18, 1968

REFERENCE  
Référence  
Your memorandum of September 10, 1968

NUMBER  
Numéro

SUBJECT  
Sujet  
Briefing for the Prime Minister on Mrs. Gandhi's Visit

FILE	DOSSIER
OTTAWA	20-3-1-6
MISSION	

ENCLOSURES  
Annexes

-2-

DISTRIBUTION

FCO (Fed.-Prov.  
Sec)  
Mr. Getlieb  
Mr. Yalden  
(O/USSEA)

We believe it would be useful to include among the subjects which either the Prime Minister or the Minister will raise with Mrs. Gandhi an item on the Law of Treaties Conference. There are two separate points concerning the Conference which may be discussed under this heading.

--2. Attached is a copy of multiple-numbered letter L-737(M) of September 10, 1968. This letter explains the background of the Conference. It also explains in detail one of the two issues arising in the Conference which we consider of sufficient importance to warrant discussion at the Prime Ministerial level, namely, Article 5(2) on the treaty-making capacity of federal States. As you will see from telegram No. L-776 of September 12 (attached), the Indians supported our position on this question at the first session of the Conference. Our purpose in suggesting it be raised with Mrs. Gandhi is to assure that the Indians maintain their favourable position at the second session. This is particularly important because of the considerable influence which the Indian delegation exercises among the large Afro-Asian group at the Conference. The reference to the Article 5(2) question by the Prime Minister could be very brief, designed primarily to make the Indians aware of the importance we attach to this question rather than to engage Mrs. Gandhi in a discussion of the substantive issues involved.

3. The second point is a matter of importance to Western governments generally. It concerns the method to be adopted for settlement of disputes arising out of the proposed Convention on the Law of Treaties. The proposed new Convention will codify for the first time the legal grounds for invalidating a treaty. These include a great many grounds (e.g., error, fraud, corruption, coercion, breach of the treaty, change of circumstances) capable of highly subjective interpretation. It is important that the Convention contain safeguards against abusive interpretation and application of the articles on invalidity.

...2

BEST COPY AVAILABLE

4. There are two reasons for attaching major importance on this issue. First, relations between States are, to an ever-increasing extent, governed by treaties. If the new Convention establishes a number of broad grounds for avoiding treaty obligations without at the same time establishing safeguards against their abuse, this will necessarily reduce the confidence which States can place in the stability of their treaty relations. The demoralizing effect on international relations generally could be most unfortunate.

5. Second, most of the States which conclude the largest number of treaties, such as the U.S., Britain and France, have indicated that a Convention without a satisfactory disputes procedure would be unacceptable to them. If most of these States decline to become parties to the proposed new Convention, the acceptance of the principles which it contains, including many principles of particular interest to the newer States, into the general body of international law will be greatly impeded.

6. Canada would therefore hope that India could exercise its considerable influence at this Conference to support a procedure of conciliation and arbitration which will assure the equitable application of the rules of law to be embodied in the new Law of Treaties Convention.

M. D. COPITHORNE

Legal Division.

BEST COPY AVAILABLE

File  
Diary  
Tel. File  
Div. Diary  
JSS

# MESSAGE

FM/DE EXTERNL OTT

DATE	FILE/DOSSIER	SECURITY SECURITE
18 SEPT/68	20-3-1-6	SECRET

TO/A TEHRAN

NO	PRECEDENCE
L-836	IMMED.

INFO

Received  
SEP 19 1968

**REF** YOURTEL 605 SEPT 18

In Legal Division  
Department of External Affairs

**SUB/SUJ** LAW OF TREATIES CONFERENCE

FIRST VOTE ON PARA 2 IN COMMITTEE OF THE WHOLE RESULTED IN RETENTION OF PARA BY SIMPLE MAJORITY (45-38-10) SECOND VOTE IN COMMITTEE OF THE WHOLE, WHICH OCCURRED DURING CONSIDERATION OF DRAFTING COMMITTEE'S REPORT ON ART.5, ALSO RETAINED PARA 2 BY SIMPLE MAJORITY (46-39-8). ARTICLE 5 AS A WHOLE WAS THEN VOTED UPON AND RETAINED (54-17-22).

2. WE HAVE SEVERAL PURPOSES IN MIND IN MAKING REPRESENTATIONS TO IRANIANS AND OTHERS WHO VOTED IN FAVOUR OF PARA 2 AT FIRST SESSION. FOR YOUR INFORMATION ONLY, WE ANTICIPATE THERE WILL BE A PREDISPOSITION AT SECOND SESSION TO RETAIN ARTICLES APPROVED AT FIRST SESSION. WE THEREFORE WISH TO PERSUADE AS MANY STATES AS POSSIBLE WHICH VOTED IN FAVOUR OF PARA 2 AT FIRST SESSION TO OPPOSE IT OR, FAILING THAT, TO ABSTAIN TO COMPENSATE FOR POSSIBLE DEFECTIONS FROM RANKS OF OPPONENTS OF PARA 2. SECOND REASON, WHICH YOU MAY COMMUNICATE TO IRANIANS, IS THAT WE NATURALLY WISH TO OBTAIN AS MUCH SUPPORT AS POSSIBLE FOR POSITION THAT PARA 2 OUGHT TO BE OMITTED FROM CONVENTION.

3. FACT THAT PARA 2 WAS ADOPTED BY SIMPLE MAJORITY AT FIRST SESSION DOES NOT, OF COURSE, PREDETERMINE TWO ADDITIONAL ISSUES ON WHICH WE SEEK IRANIAN

.....2

DISTRIBUTION LOCAL/LOCALE NO STANDARD

ORIGINATOR/REDACTEUR

DIVISION

TELEPHONE

APPROVED/AUTORISE

SIG..... J.S. STANFORD/zs

LEGAL

2-5406

SIG..... M.D. COPITHORNE

SUPPORT, I.E. SEPARATE VOTE ON PARA 2 AND OPPOSITION TO ART. 5 AS A WHOLE IF SEPARATE VOTE IS DENIED ON PARA 2. AS NOTED ABOVE, ART. 5 AS A WHOLE WAS RETAINED AT FIRST SESSION BY MORE THAN TWO-THIRDS MAJORITY.

4. YOU SHOULD NOT APPROACH IRAQ AND KUWAIT at THIS TIME, THOUGH WE MAY WISH TO MAKE REPRESENTATIONS TO THEM AT A LATER STAGE.

5. TWO COPIES FEDERALISM AND INTERNATIONAL RELATIONS FORWARDED BY AIR BAG TODAY.

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

TO  
À

SECURITY  
Sécurité CONFIDENTIAL

FROM  
De The Under-Secretary of State for External Affairs

DATE September 10, 1968

REFERENCE  
Référence

NUMBER  
Numéro L-737(M)

SUBJECT  
Sujet Law of Treaties Conference -Article 5

FILE	DOSSIER
OTTAWA 20-3-1-6	
MISSION	

ENCLOSURES  
Annexes

- 1 -

DISTRIBUTION

The purpose of this letter is to request that you make a high-level approach to the Legal Branch or Division of the Foreign Ministry as soon as possible on a matter of considerable importance to Canada. The nature of the approach and the background are explained below.

2. In 1966 the International Law Commission of the United Nations adopted 75 Draft Articles on the Law of Treaties. The twenty-first and twenty-second General Assemblies recommended that an international conference be held, in two sessions, to draft a Convention on the Law of Treaties. The basic proposal before this Conference was the ILC Draft Convention. The first session of this conference, held in Vienna from March 26 to May 24, 1968, succeeded in giving first reading to all seventy-five articles, and most were given preliminary approval. The second session, which is expected to adopt the Convention, is to take place in Vienna from April 9 to May 21, 1969. Final approval of the Articles will be given at that session.

3. The International Law Commission draft contained an article, Article 5, which dealt with the capacity of States to conclude treaties, and which is of some importance to Canada's constitutional position. The second paragraph of this draft article dealt specifically with the treaty-making capacity of members of a federal State. Article 5, as adopted by the International Law Commission, reads as follows:

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

At the first session of the conference the ILC text was amended by deleting the word "States" in paragraph 2. Subject to that amendment, paragraph 2 was adopted in Committee of the Whole by a simple majority. At the second session, when all the Articles will be reviewed in Plenary, each article must be adopted by a two-thirds majority to be included in the Convention.

4. The inclusion of paragraph 2 of this Article in the Convention as finally adopted could have serious implications for Canada, as it could lead to the practice of other States purporting to interpret the federal constitutions of Canada and other federal states. It is the view of Canada, and

-2- CONFIDENTIAL

indeed of all federal States, that the federal constitution is an internal law of the federal State and can be interpreted only by the internal tribunal of the federal State having jurisdiction in constitutional matters. The problems created by this Article are more difficult for Canada than for most other federal States because Canada's Constitution is partly written (The British North America Act) and partly unwritten, having been developed by constitutional practice. Indeed almost the whole of Canada's evolution to independent nationhood took place through the development of constitutional practice, very little of which has been incorporated in any written instrument.

5. The Minister has therefore instructed that representations be made to a large number of friendly governments seeking their support for the omission of paragraph 2 from the text to be adopted at the second session. You should therefore seek an early appointment at an appropriate senior level of the government to which you are accredited (preferably the Legal Branch or Division of the Foreign Ministry) to discuss the position which the government proposes to take in respect of Article 5 at the second session. Attached is the text of an Aide-Memoire which you should leave with the official upon whom you call. (Posts accredited to more than one government should make representations only to the government of the country in which they are resident unless the supplementary telegram referred to in the next paragraph instructs otherwise.)

6. A separate telegram is being sent to each post receiving this letter reporting on the way in which the representative of the government or governments to which you are to make representations voted on Article 5 at the first session and referring to any specific points, additional to those discussed below, which you should make in your discussions at the time you deliver the Aide-Memoire. If the supplementary telegram indicates that the representative of the government to which you are accredited opposed the adoption of paragraph 2 at the first session you should make a point of expressing, during your discussion, Canada's appreciation for the support which the government gave to the Canadian position and the hope that the government will be able to confirm in due course that its representative will continue to oppose the adoption of paragraph 2 at the second session. If the supplementary telegram indicates that the government representative supported paragraph 2 at the first session you should stress Canada's hope that, even if the government is unable to agree with the legal position of the Aide-Memoire and does not share Canada's apprehension over the possible consequences of adopting paragraph 2, the government would nevertheless agree to oppose the adoption of paragraph 2 in view of the importance which Canada attaches to this question.

7. If the supplementary telegram indicates that the government representative supported paragraph 2 on the occasion of both votes on that paragraph at the first session, you may indicate that an abstention on paragraph 2, while not as helpful as we would hope, would nevertheless be preferable to a vote in favour of paragraph 2. In all other cases you should indicate that abstention is not very helpful to us since abstentions are not included in calculating the final result. Paragraph 2, to be deleted, must be opposed by more than one-third of all representatives

...3

002372

-3- CONFIDENTIAL

present and voting for or against the paragraph.

8. While you should, in discussion, stress the importance which Canada attaches to this issue, we do not expect you to engage in a substantive discussion of the legal issues referred to in the Aide-Memoire. As the Aide-Memoire, particularly the section on State Practice, may give rise to some questions, however, you should review Chapter II and the Annex of the Government's white paper on "Federalism and International Relations" prior to your call on officials. While we do not suggest that a copy of the white paper be attached as an appendix to the Aide-Memoire, you should bring a copy of the white paper with you at the time of your call on officials and leave it with them if they indicate an interest in either the Canadian constitutional position or the practice of other federal States. The latter is summarized in the appendix to the white paper.

9. In your discussions with officials you should refer specifically to the question of a separate vote on paragraph 2 of Article 5. You should say that Canada realizes the importance which a great many States attach to paragraph 1 of Article 5. Canada has no wish to interfere with paragraph 1 and we would therefore hope that the government's representative would support a request for a separate vote on paragraph 2. Such a request, to be granted, must be supported by more than half of the representatives voting for or against the request.

10. You should go on to say that, if a separate vote on paragraph 2 should be refused and the only vote taken is on Article 5 as a whole, it would be Canada's view (which we hope the government would share), that the disadvantages of paragraph 2 outweigh the advantages of paragraph 1 and that the whole article should be deleted. In this connection you should refer to the fact that the 1961 Vienna Convention on Diplomatic Relations and the 1963 Vienna Convention on Consular Relations do not include a specific article dealing with the right of States to send or receive diplomats or consuls, and consequently there would appear to be no need for the present Convention to include a specific article on the right of States to make treaties. This right is clear from the Convention as a whole.

11. At the conclusion of your discussion you should ask officials to inform you, in due course, of the position which their government will take on Article 5 at the second session. If our delegation at the second session is to function with maximum effectiveness on this issue, it must be as well-informed as possible on the positions likely to be taken by other representatives. Posts making representations to governments who will be sending representatives to the meeting of the African-Asian Legal Consultative Group, immediately following the conclusion of the Twenty-third General Assembly, should express the hope that the Canadian representations will be taken into account should Article 5 be raised during discussion of the Law of Treaties Conference at that meeting. (You should emphasize that we are not, of course, asking that Article 5 be discussed at that meeting. In fact, for your information, we would prefer that it not be raised.)

-4- CONFIDENTIAL

12. To summarize briefly, therefore, your oral presentation accompanying delivery of the Aide-Memoire should deal with the following points:

1. reference to the government's vote at the first session, including our appreciation for past support (where appropriate) and hope for support at the second session (see paragraph 6 above);
2. the question of abstention (unless the government opposed paragraph 2 on the occasion of both votes at the first session, in which case no reference need be made to abstention) (see paragraph 7 above);
3. State practice, if officials question you on this point (see paragraph 8 above);
4. The question of a separate vote on paragraph 2 (see paragraph 9 above).
5. The question of the vote on Article 5 as a whole if a separate vote is refused. (see paragraph 10 above).
6. Any additional matters referred to in the supplementary telegram.
7. Your wish for an indication, in due course, of the government's position (a) on paragraph 2; (b) on a separate vote for paragraph 2, and (c) on Article 5 as a whole if a separate vote is denied. (see paragraph 11 above).
8. For certain posts, the question of the meeting of the African-Asian Legal Consultative Group. (see paragraph 11 above).

*W. C. C. C.*

Under-Secretary of State  
for External Affairs.

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

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

The Federal Constitution is Internal Law

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

The Federal Constitution in International Law

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

State Practice

An examination of State practice reveals that no federal constitution authorizes the constituent parts of the federation to

- 2 -

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

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

#### Scope of the Convention

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

#### Conclusion

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

File  
Diary  
Div. Diary  
Tel. File  
JBS

**MESSAGE**

FM/DE	EXTERNAL OTTAWA	DATE	FILE/DOSSIER	SECURITY
		12 Sept. <del>XXXX</del> 1968	20-3-1-6	SECURITE
TO/A	NEW DELHI	NO		PRECEDENCE
		L-776		PRIORITY
BEST COPY AVAILABLE				
INFO				

REF COUNCIL L-737(X) SEPT. 10/68

SUB/SUJ LAW OF TREATIES CONFERENCE

REFLET SHOULD REACH YOU BY NEXT BAG. GRATEFUL IF IT COULD RECEIVE YOUR EARLY ATTENTION. FOLLOWING IS SUPPLEMENTARY INFORMATION REFERRED TO THEREIN.

2. INDIA OPPOSED PARA TWO ON BOTH OCCASIONS ON WHICH IT CAME TO VOTE AT FIRST SESSION. YOU SHOULD THEREFORE EXPRESS OUR APPRECIATION AND NEED NOT RAISE QUESTION OF POSSIBLE ABSTENTION.

3. WE ATTACH CONSIDERABLE IMPORTANCE TO INDIAN POSITION ON THIS QUESTION BECAUSE OF INFLUENCE WHICH INDIA DEL, ALONG WITH GHANA AND KENYA DELS, APPEARS TO HAVE AMONG AFRO-ASIAN GROUP AT CONFERENCE. YOUR APPROACH SHOULD THEREFORE BE AT VERY SENIOR LEVEL.

4. INDIA IS KNOWN TO ATTACH CONSIDERABLE IMPORTANCE TO PARA ONE. YOU SHOULD REASSURE OFFICIALS THAT WE HAVE NO OBJECTION TO PARA ONE BUT STRESS IMPORTANCE IN ORDER TO PRESERVE PARA ONE, OF PERMITTING SEPARATE VOTE ON PARA TWO. YOU SHOULD ALSO MENTION FACT THAT HEAD OF INDIAN DEL. DR. K. KRISHNA RAO, IN DEBATE ON ARTICLE FIVE, MADE POINT REFERRED TO IN AIDE MEMOIRE THAT PARA TWO DEALS WITH WHAT IS ESSENTIALLY A DOMESTIC MATTER.

/2

DISTRIBUTION NO STANDARD  
LOCAL/LOCALE

ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	APPROVED/AUTORISE
SIG..... J.S. STANFORD/88	LEGAL	2-5406	SIG..... J.A. BEESLEY J.R. STANLEY

-2- CONFIDENTIAL

5. PLEASE MAKE REPRESENTATIONS ALSO TO GOVERNMENT OF NEPAL BY WHATEVER MEANS YOU CONSIDER WOULD BE ADEQUATE TO ACHIEVE DESIRED RESULT. NEPAL OPPOSED PARA TWO ON FIRST OCCASION ON WHICH IT CAME TO VOTE BUT DID NOT VOTE ON SECOND OCCASION. YOU SHOULD EXPRESS APPRECIATION AND NEED NOT RAISE QUESTION OF POSSIBLE ABSTENTION.

6. NEPALESE DEL TO FIRST SESSION WAS SARDAR BHIM BAHADUR PANDU, NEPALESE AMBASSADOR TO AUSTRIA.

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

MEMORANDUM

TO  
À  
Commonwealth Division  
(through the Legal Adviser)  
FROM  
De  
Legal Division  
REFERENCE  
Référence  
Your memorandum of September 10, 1968  
SUBJECT  
Sujet  
Briefing for the Prime Minister on Mrs. Gandhi's Visit

*file*

SECURITY SECRET  
Sécurité

DATE September 18, 1968

NUMBER  
Numéro

FILE	DOSSIER
OTTAWA	20-3-1-6
MISSION	

ENCLOSURES  
Annexes

-2-

DISTRIBUTION

PCO (Fed.-Prov.  
Sec)  
Mr. Gotlieb  
Mr. Yalden  
(O/USSEA)

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--2. Attached is a copy of multiple-numbered letter L-737(M) of September 10, 1968. This letter explains the background of the Conference. It also explains in detail one of the two issues arising in the Conference which we consider of sufficient importance to warrant discussion at the Prime Ministerial level, namely, Article 5(2) on the treaty-making capacity of federal States. As you will see from telegram No. L-776 of September 12 (attached), the Indians supported our position on this question at the first session of the Conference. Our purpose in suggesting it be raised with Mrs. Gandhi is to assure that the Indians maintain their favourable position at the second session. This is particularly important because of the considerable influence which the Indian delegation exercises among the large Afro-Asian group at the Conference. The reference to the Article 5(2) question by the Prime Minister could be very brief, designed primarily to make the Indians aware of the importance we attach to this question rather than to engage Mrs. Gandhi in a discussion of the substantive issues involved.

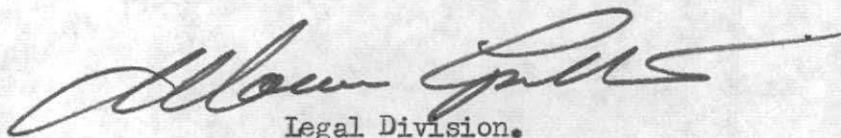
3. The second point is a matter of importance to Western governments generally. It concerns the method to be adopted for settlement of disputes arising out of the proposed Convention on the Law of Treaties. The proposed new Convention will codify for the first time the legal grounds for invalidating a treaty. These include a great many grounds (e.g., error, fraud, corruption, coercion, breach of the treaty, change of circumstances) capable of highly subjective interpretation. It is important that the Convention contain safeguards against abusive interpretation and application of the articles on invalidity.

...2

4. There are two reasons for attaching major importance on this issue. First, relations between States are, to an ever-increasing extent, governed by treaties. If the new Convention establishes a number of broad grounds for avoiding treaty obligations without at the same time establishing safeguards against their abuse, this will necessarily reduce the confidence which States can place in the stability of their treaty relations. The demoralizing effect on international relations generally could be most unfortunate.

5. Second, most of the States which conclude the largest number of treaties, such as the U.S., Britain and France, have indicated that a Convention without a satisfactory disputes procedure would be unacceptable to them. If most of these States decline to become parties to the proposed new Convention, the acceptance of the principles which it contains, including many principles of particular interest to the newer States, into the general body of international law will be greatly impeded.

6. Canada would therefore hope that India could exercise its considerable influence at this Conference to support a procedure of conciliation and arbitration which will assure the equitable application of the rules of law to be embodied in the new Law of Treaties Convention.

  
Legal Division.

cc P.C.O. (Int. Sec.)  
Mr. Golden (O/SSEA) 8.  
done 18/9/78

ACTION COPY

repeated to  
Permp. NY (for Brasby)  
Done 18/9/78  
file 19/9/78 20-3-1-6

FM LDN SEP 17/68 CONF NO/NO STANDARD  
TO EXTER 4538  
INFO TT COPEN (WERSHOF) DE HAGUE  
REF YOURTEL L796 SEP 16  
LAW OF TREATIES CONFERENCE

L

20-3-1-6  
32 | ||

WE CALLED ON SIR FRANCIS VALLAT AND LEFT WITH HIM COPY OF AIDE  
MEMOIRE AND EXPLAINED TO HIM NATURE OF DEMARCHES YOU HAVE  
PLANNED IN VARIOUS CAPITALS IN LINE WITH VIEWS CONTAINED IN YOUR  
LET L737(M) OF SEP 10.

2. VALLAT ASSURED US OF CONTINUED BRIT SUPPORT FOR CDN POSITION ON  
ARTICLE 5(2). HE THOUGHT THERE WOULD BE A GOOD CHANCE OF OBTAINING  
A SEPARATE VOTE ON ARTICLE 5(2) ALTHOUGH HE ACKNOWLEDGED THAT SOME  
COUNTRIES WOULD HESITATE TO SUPPORT SEPARATE VOTE BECAUSE OF PRE-  
CEDENT IT WOULD CREATE WITH RESPECT TO OTHER ARTICLES SUCH AS ARTI-  
CLE 41. HE AGREED ENTIRELY WITH VIEW EXPRESSED IN PARA 10 YOURLET  
L737(M) THAT IF A SEPARATE VOTE ON ARTICLE 5(2) SHOULD BE REFUSED  
THEN THE WHOLE ARTICLE SHOULD BE DELETED. HE WAS NOT/NOT SURE HOWEVER  
WHETHER A BLOCKING THIRD COULD BE OBTAINED TO DEFEAT THE ADOPTION  
OF THE WHOLE ARTICLE. HE MENTIONED THAT TO HAVE SOME DOUBTS ABOUT  
ACCEPTABILITY OF ARTICLE 5(1) BECAUSE OF ITS IMPLICATIONS FOR SOME  
OF THEIR REMAINING COLONIES AND THE ASSOCIATED STATES.

3. VALLAT ENQUIRED IF WERSHOF WOULD BE RETURNING FOR THE SECOND  
PART OF THE CONFERENCE AND SUGGESTED THAT PRE-CONFERENCE  
CONSULTATIONS BE HELD IN LDN AND PARIS SIMILAR TO THOSE  
WHICH TOOK PLACE BEFORE THE FIRST HALF OF LAW OF TREATIES  
CONFERENCE. AT THAT STAGE, DEPENDING ON NATURE OF REPLIES TO CDN

...2

4.18.9

PAGE TWO 4538 CONFD

APPROACHES IN VARIOUS CAPITALS, HE THOUGHT CONSIDERATION MIGHT HAVE TO BE GIVEN TO SOME FALL-BACK POSITION INVOLVING AMENDMENTS TO WATERDOWN ARTICLE 5(2) ALTHOUGH HE AGREED THAT YOUR INITIAL APPROACH THAT ARTICLE 5(2) SHOULD BE DELETED IS ~~TACTICALLY~~ TACTICALLY BETTER THAN DISCUSSING AMENDMENTS TO ARTICLE 5(2). IN CONCLUDING HE HAZARDED PERSONAL GUESS THAT CDA WOULD BE SUCCESSFUL IN OBTAINING DELETION OF ARTICLE 5(2) ALTHOUGH HE STRESSED THAT MUCH WOULD DEPEND ON HOW PRESIDENT OF CONFERENCE PRESENTED QUESTION TO DELS AND ON THE SPECIFIC TACTICS WHICH ARE FOLLOWED DURING THE CONFERENCE.

4. VALLAT WAS PLEASED TO LEARN THAT YOU ARE APPROACHING FOREIGN MINISTRIES ABOUT THIS MATTER AT THIS TIME. HE WAS SURE THAT THIS WAS THE RIGHT THING TO DO AND HE ASKED US TO KEEP FO INFORMED OF NATURE OF REPLIES RECEIVED FROM VARIOUS FOREIGN MINISTRIES TO CDN APPROACH. WHILE VALLAT IS RETIRING FROM FO AT END OF SEP WE WERE TOLD IN CONFIDENCE THAT PROVIDED FOREIGN SECRETARY AGREED HE WOULD BE RETAINED AS EXPERT ON LAW OF TREATIES WITH VIEW TO HEADING UK DEL TO SECOND PART OF TREATIES CONFERENCE NEXT SPRING.

File  
Diary  
Tel. File  
Div. Diary  
JSS

# MESSAGE

FM/DE      EXTERNL OPT

DATE	FILE / DOSSIER	SECURITY SECURITE
17 SEPT/68	20-3-1-6	CONFID.
	MA	

TO/A      ANKARA

NO	PRECEDENCE
L-831	ROUTINE

INFO

REF      YOURTEL 864 SEPT 16

SUB/SUJ      LAW OF TREATIES CONFERENCE

WE AGREE THAT REPRESENTATIONS TO TURKISH GOVERNMENT SHOULD AWAIT AMBASSADOR'S RETURN TO ANKARA.

2. TWO ADDITIONAL COPIES OF FEDERALISM AND INTERNATIONAL RELATIONS FORWARDED TODAY BY AIR ENVELOPE.

DISTRIBUTION      NO STANDARD  
LOCAL / LOCALE

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

*reply dated 17/9  
file 7/17/9*

**ACTION COPY**

*Stanford*

70-3-1-6



20-3-1-6  
MFA

FM ANKRA SEP16/68 CONFD NO/NO STANDARD  
TO EXTER 864 PRIORITY

INFO TT GENEV(GOLDSCHLAG)PRIORITY DE LDN

REF YOURLET L737(M)SEP10 YOURTEL L763 SEP12

LAW OF TREATIES CONFERENCE

AS YOU KNOW AMBASSADOR WILL NOT/NOT RETURN FROM GENEV UNTIL SEP24.

VIEW HIGH LEVEL APPROACH MENTIONED FIRST PARA AND DATES MENTIONED

SECOND PARA REFLET AND BECAUSE TALAT MIRAS HAS RANK OF AMBASSADOR

WE WILL NOT/NOT RAISE ISSUE WITH TURK MFA BEFORE AMBASSADORS RETURN

UNLESS SPECIFICALLY INSTRUCTED TO DO SO.

2.VIEW YOUR SUGGESTION PARA8 REFLET THAT COPY OF WHITE PAPER ON

FEDERALISM AND INTERNATL RELATIONS MIGHT BE LEFT WITH MIRAS, GRATEFUL

IF YOU WOULD FORWARD AT LEAST TWO ADDITIONAL COPIES BY AIR TO ARRIVE

AS SOON AS POSSIBLE AFTER SEP24.

5.17.9

Diray  
Div. Diary  
Tel file  
File

**MESSAGE**

DATE	FILE/DOSSIER	SECURITY SECURITE
SEP16/68	20-3-1-6 88	CONFID

FM/DE EXT OTT

TO/A BERNE

NO	PRECEDENCE
L-801	IMMED

INFO

REF YOUR TEL 514 SEP13  
SUB/SUJ LAW OF TREATIES CONFERENCE

YOUR APPROACH SHOULD BE MADE AT LEVEL OF FOREIGN MINISTER  
OR HIS DEPUTY, RATHER THAN PRESIDENT.

2. WE CONCUR IN YOUR PROPOSAL TO AWAIT RECEIPT OF OUR  
LET L-737 (M) SEP10. PLS INFORM US, HOWEVER, IF IT IS IN BAG WHICH  
YOU RECEIVE ON TUES SEP17.

DISTRIBUTION  
LOCAL/LOCALE

NO STD

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

File  
 Tel. File  
 Diary  
 Div. Diary  
 JSS

**MESSAGE**

FM/DE EXTERNL OTT

DATE	FILE / DOSSIER	SECURITY SECURITE
16 SEPT/68	20-3-1-6	CONF

TO/A TOKYO

NO	PRECEDENCE PRIORITY
L-821	

INFO

REF OURLET L-737(M) SEPT. 10

SUB/SUJ LAW OF TREATIES CONFERENCE

REFLET SHOULD REACH YOU BY NEXT BAG. GRATEFUL IF IT COULD RECEIVE YOUR EARLY ATTENTION. FOLLOWING IS SUPPLEMENTARY INFORMATION REFERRED TO THEREIN.

2. JAPAN OPPOSED PARAGRAPH TWO ON BOTH OCCASIONS ON WHICH IT CAME TO VOTE AT FIRST SESSION. YOU SHOULD THEREFORE EXPRESS OUR APPRECIATION AND YOU NEED NOT RAISE QUESTION OF ABSTENTION.

3. YOU SHOULD MAKE REPRESENTATIONS, IF POSSIBLE, TO MOSATO FUJISAKI OF MFA, WHO WAS DEPUTY HEAD OF JAPANESE DEL AT FIRST SESSION.

4. YOU SHOULD ALSO MAKE REPRESENTATIONS TO KOREAN GOVERNMENT WHEN YOU NEXT VISIT SEOUL. KOREA ALSO OPPOSED PARA TWO ON BOTH OCCASIONS ON WHICH IT CAME TO VOTE AT FIRST SESSION. YOU SHOULD EXPRESS OUR APPRECIATION AND YOU NEED NOT RAISE QUESTION OF POSSIBLE ABSTENTION.

DISTRIBUTION LOCAL/LOCALE NO STANDARD

ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	APPROVED/AUTORISE
SIG..... J.S. STANFORD:ZS.....	LEGAL	2-5406	3/0 D. COPITHORNE ..... J.A. BEESLEY

File  
 Diary  
 Tel. File  
 Div. Diary  
 JSS

**MESSAGE**

FM/DE EXTERNL OTT

DATE	FILE / DOSSIER	SECURITY SECURITE
16 SEPT/68	20-3-1-6	CONFID

TO/A VIENNA

NO	PRECEDENCE
L-823	PRIORITY

INFO

**REF** OURLET L-737(M) SEPT 10/68

**SUB/SUJ** LAW OF TREATIES CONFERENCE

REFLET SHOULD REACH YOU BY NEXT BAG. GRATEFUL IF IT COULD RECEIVE YOUR EARLY ATTENTION. FOLLOWING IS SUPPLEMENTARY INFORMATION REFERRED TO THEREIN.

2. AUSTRIA WAS ONE OF FOUR DELS WHICH, FOR REASONS FOR WHICH ARE NOT CLEAR, VOTED AGAINST PARA TWO ON ONE OCCASION WHEN IT CAME TO VOTE AND VOTED IN FAVOUR OF PARA TWO AT TIME OF SECOND VOTE. VOTE IN FAVOUR OF PARA TWO MAY HAVE BEEN INFLUENCED BY DESIRE NOT TO OFFEND MEMBER GOVTS OF AUSTRIAN FEDERATION. YOU SHOULD THEREFORE STRESS THAT, WHILE WE REALIZE PARA TWO MAY BE ACCEPTABLE TO AUSTRIA IN TERMS OF THEIR OWN CONSTITUTION, PARA TWO WOULD LAY DOWN RULES APPLICABLE TO ALL FEDERAL STATES, NOT ONLY AUSTRIA, CONSEQUENTLY AUSTRIANS IN DECIDING THEIR POSITION ON PARA TWO SHOULD CONSIDER WHETHER IT IS SATISFACTORY IN RELATION TO ALL FEDERAL CONSTITUTIONS, NOT JUST THEIR OWN. A GREAT MANY FEDERAL STATES (MEXICO, BRAZIL, FGR, AUSTRALIA, USA, MALAYSIA, VENEZUELA, INDIA AS WELL AS CANADA) INDICATED THAT PARA TWO WAS UNSATISFACTORY. YOU SHOULD MENTION THAT THE AUSTRALIAN REP, WHEN SPEAKING IN SUPPORT OF AUSTRIAN AMENDMENT TO PARA TWO (WHICH WAS NOT ACCEPTED) SAID THAT UNDER PARA TWO IN ITS PRESENT FORM THE OTHER PARTY TO A TREATY WOULD

...2

DISTRIBUTION LOCAL/LOCALE NO STANDARD

ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	APPROVED/AUTORISE
SIG..... J.S. STANFORD/ss.....	LEGAL	2-5406	SIG... M. D. COPITHORNE ..... J.A. BEESLEY.....

BE OBLIGED TO EXAMINE THE INTERNAL LAW OF THE FEDERAL STATE TO WHICH ITS TREATY PARTNER BELONGED. WE CANNOT SEE HOW ANY FEDERAL STATE COULD ACCEPT THIS SITUATION IN WHICH ANOTHER STATE WAS ENABLED INDEED REQUIRED TO INTERPRET FOR ITSELF THE FEDERAL CONSTITUTION WHICH IS AN INTERNAL LAW OF THE FEDERAL STATE.

3. YOU SHOULD INDICATE THAT ABSTENTION, WHILE PREFERABLE TO A VOTE IN FAVOUR OF PARA TWO, WOULD NOT PROVIDE US WITH THE SUPPORT WHICH WE WOULD HOPE TO OBTAIN FROM THE AUSTRIANS ON THIS QUESTION OF GREAT IMPORTANCE TO FEDERAL STATES.

4. EDUARD SCHILLER OF MFA WAS DEPUTY HEAD OF AUSTRIAN DEL AT FIRST SESSION AND YOU MAY WISH TO MAKE FORMAL REPRESENTATIONS TO HIM. HOWEVER, YOU SHOULD SEEK OCCASION TO DISCUSS THIS QUESTION ALSO WITH PROF. STEPHEN VEROSTA AND PROF. KARL ZEMANEK<sup>M</sup>, BOTH OF THE UNIVERSITY OF VIENNA. VEROSTA WAS HEAD OF AUSTRIAL DEL AT FIRST SESSION.

File  
 Diary  
 Div. Diary  
 Tel. File  
 JSS

**MESSAGE**

FM/DE	EXTERNAL OTT	DATE	FILE/DOSSIER	SECURITY SECURITE
		16 SEPT/68	20-3-1-6	CONFID.
TO/A	TUNIS	NO		PRECEDENCE
		L-822		PRIORITY
INFO				

**REF** OURLET L-737(M) SEPT.10.

**SUB/SUJ** LAW OF TREATIES CONFERENCE

REFLET SHOULD REACH YOU BY NEXT BAG. GRATEFUL IF IT COULD RECEIVE YOUR EARLY ATTENTION. FOLLOWING IS SUPPLEMENTARY INFORMATION REFERRED TO THEREIN.

2. TUNISIA VOTED FOR PARA TWO ON BOTH OCCASIONS ON WHICH IT CAME TO VOTE AT FIRST SESSION. WE ARE THEREFORE SEEKING TO PERSUADE TUNISIA TO CHANGE THEIR VOTE. YOU SHOULD INDICATE THAT ABSTENTION, WHILE NOT PROVIDING SUPPORT WE SEEK, WOULD BE PREFERABLE TO VOTE IN FAVOUR OF PARA TWO. WE WILL BE PARTICULARLY INTERESTED TO KNOW WHETHER TUNISIANS WOULD SEEK TO PREVENT SEPARATE VOTE ON PARA TWO.

3. HEAD OF TUNISIAN DEL WAS HAMAD ABADE, SOUS-DIRECTEUR AU SECRETARIAT D'ETAT A LA PRESIDENCE. OTHER MEMBER OF TUNISIAN DEL WAS ABDELAZIS SASSAB OF MFA. YOU MAY MAKE REPRESENTATIONS TO EITHER OF THESE PERSONS IF YOU CONSIDER THEM SUFFICIENTLY SENIOR.

DISTRIBUTION  
 LOCAL/LOCALE NO STANDARD

ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	APPROVED/AUTORISE
SIG..... J.S. STANFORD/zs	LEGAL	2-5406	SIG..... M. D. COPITHORNE ..... J.A. BEESIEY

File  
Diary  
Tel. File  
Div. Diary

# MESSAGE

FM/DE	EXTERNAL OTT	DATE	FILE/DOSSIER	SECURITY SECURITE
		16 SEPT/68	20-3-1-6	CONFID
TO/A	WASHINGTON DC	NO	PRECEDENCE	
		L 824	PRIORITY	
INFO				

REF OURLET L-737(M) SEPT 10

SUB/SUJ LAW OF TREATIES CONFERENCE

REFLET SHOULD REACH YOU BY NEXT BAG. GRATEFUL IF IT COULD RECEIVE YOUR EARLY ATTN. FOLLOWING IS SUPPLEMENTARY INFORMATION REFERRED TO THEREIN.

2. UNITED STATES GOVERNMENT OPPOSED PARA TWO ON BOTH OCCASIONS ON WHICH IT CAME TO VOTE AT FIRST SESSION. YOU SHOULD EXPRESS OUR APPRECIATION AND YOU NEED NOT RAISE QUESTION OF POSSIBLE ABSTENTION.
3. YOUR REPRESENTATIONS SHOULD BE MADE, IF POSSIBLE, TO RICHARD KEARNEY OF STATE DEPARTMENT WHO WAS HEAD OF US DEL AT FIRST SESSION.

DISTRIBUTION NO STANDARD  
LOCAL/LOCALE

ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	APPROVED/AUTORISE
SIG..... J. S. STANFORD/zs.....	LEGAL	2-5406	SIG..... M. D. COPITHORNE ..... J. A. BESSLEY.....



# ACTION REQUEST

## FICHE DE SERVICE

FILE NO. — DOSSIER N°

20-3-1-6

TO — À

Legal S/R

DATE

Sept. 16/68

LOCATION — ENDROIT

FROM — DE

*Skunta - Legal Div*

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

Please attach to file copy of  
File:20-3-1-6 (Numbered letter L-737(M)  
dated September 10, 1968 and destroy  
previous list sent down for attachment.

Thanks.

(Z.Skunta, Legal Div. Room 526)

*ZS*

002391

MULTIPLE NUMBERED LETTER L-737(M) of  
SEPTEMBER 10, 1968 re: Law of Treaties  
sent to:

File: 20-3-1-6

File  
Diary  
Div. Diary  
JSS

ACCRA, GHANA  
ADDIS ABABA, ETHIOPIA  
ANKARA, TURKEY  
ATHENS, GREECE  
BANGKOK, THAILAND  
BEIRUT LEBANON (F)  
BERNE, SWITZERLAND (also re Liechtenstein) (F)  
BOGOTA, COLOMBIA  
BONN, GERMANY  
BRUSSELS, BELGIUM (F)  
BUENOS AIRES, ARGENTINA (~~ARGENTINA~~)  
CANNBERRA, AUSTRALIA  
CARACAS, VENEZUELA  
COLOMBO, CEYLON  
COPENHAGEN, DENMARK  
DAR-ES-SALAAM, TANZANIA (also re Zambia)  
DELHI, New, INDIA (also re Nepal)  
DJAKARTA, INDONESIA  
DUBLIN, IRELAND  
GEORGETOWN, GUYANA  
GUATEMALA CITY, GUATEMALA  
HAAGUE, THE NETHERLANDS  
HELSINKI, FINLAND  
KINGSTON, JAMAICA  
KINSHASA, CONGO (F)  
KUALA LUMPUR, MALAYSIA (also re Singapore)  
LAGOS, NIGERIA (also re Sierra Leone)  
LIMA, PERU (also re Bolivia)  
LISBON, PORTUGAL  
LONDON, England  
MADRID, SPAIN  
MANILA, PHILIPPINES  
MEXICO CITY, MEXICO  
MONTEVIDEO, URUGUAY  
NAIROBI, KENYA  
NEW YORK (PERMIS) re Guinea and Liberia)  
NICOSIA, CYPRUS  
OSLO, NORWAY  
PRETORIA, SOUTH AFRICA (also re Lesotho)  
PORT OF SPAIN, TRINIDAD & TOBAGO  
QUITO, ECUADOR  
RAWALPINDI, PAKISTAN  
ROME, ITALY (also re San Marino & Malta)  
SAIGON, VIETNAM (F)  
SAN JOSE, COSTA RICA (also re Honduras)  
SANTIAGO, CHILE  
SANTO DOMINGO, DOMINICAN REPUBLIC  
STOCKHOLM, SWEDEN  
TEHRAN, IRAN  
TEL AVIV, ISRAEL  
TOKYO, JAPAN (also re Korea)  
TUNIS, TUNISIA (F)

VIENNA, AUSTRIA  
WASHINGTON, D.C.  
WELLINGTON, NEW ZEALAND

cc:  
Co-ordination Division  
European Division  
Pays Francophones Div.  
African & Middle Eastern Div.  
Mr. Yalden (O/USSEA)  
Commonwealth Div.  
Far Eastern Div.  
Latin American Div  
U.N. Division  
Press Office

(F) designates French version of Aide-Memoire

File  
 Diary  
 Tel. File  
 Div. Diary  
 JSS

**MESSAGE**

DATE	FILE/DOSSIER	SECURITY SECURITE
16 SEPT/68	20-3-1-6	CONFID
	32	

FM/DE EXTERNL OTT

TO/A WELLINGTON

NO  
 L-825  
 PRECEDENCE  
 PRIORITY

INFO

REF OURIET L-737(M) SEPT. 10/68

SUB/SUJ LAW OF TREATIES CONFERENCE

REFLET SHOULD REACH YOU BY NEXT BAG. GRATEFUL IF IT COULD RECEIVE YOUR EARLY ATTN. FOLLOWING IS SUPPLEMENTARY INFORMATION REFERRED TO THEREIN.

2. NEW ZEALAND OPPOSED PARAGRAPH TWO ON BOTH OCCASIONS ON WHICH IT CAME TO VOTE AT FIRST SESSION. YOU SHOULD EXPRESS APPRECIATION AND YOU NEED NOT RAISE QUESTION OF POSSIBLE ABSTENTION. YOUR REPRESENTATIONS SHOULD BE MADE, IF POSSIBLE, TO MR. F.A. SMALL OF DEA WHO WAS NEW ZEALAND REP AT FIRST SESSION.

DISTRIBUTION NO STANDARD  
 LOCAL/LOCALE

ORIGINATOR/REDACTEUR

DIVISION

TELEPHONE

APPROVED/AUTORISE

SIG..... J.S. STANFORD/zs .....

LEGAL

2-5406

M. D. COPITHORNE  
 SIG..... J.A. BEESLEY .....

FILE  
Diary  
Tel. File  
Div. Diary  
I.S.S.

# MESSAGE

FM/DE      EXTERNL OTT  
            **TELXAVIV**

DATE	FILE / DOSSIER	SECURITY SECURITE
16 SEPT/68	20-3-1-6	
	<i>82</i>	CONFID

TO/A      TEL AVIV

NO  
L-820  
PRECEDENCE  
priority

INFO

**REF**    OURLET L-737(M) SEPT 10

**SUB/SUJ**    LAW OF TREATIES CONFERENCE

REFLET SHOULD REACH YOU BY NEXT BAG. GRATEFUL IF IT COULD RECEIVE YOUR EARLY ATTENTION. FOLLOWING IS SUPPLEMENTARY INFORMATION REFERRED TO THEREIN.

2. ISRAEL OPPOSED PARA TWO ON BOTH OCCASIONS ON WHICH IT CAME TO VOTE AT FIRST SESSION. YOU SHOULD EXPRESS OUR APPRECIATION AND YOU NEED NOT RAISE QUESTION OF POSSIBLE ABSTENTION.

3. YOU SHOULD MAKE REPRESENTATIONS TO DR. THEODOR MERON, LEGAL ADVISER MFA, WHO WAS MEMBER (AND FOR PART OF THE TIME HEAD) OF ISRAELI DEL AT FIRST SESSION.

DISTRIBUTION      NO STANDARD  
LOCAL/LOCALE

ORIGINATOR/REDACTEUR

DIVISION

TELEPHONE

APPROVED/AUTORISE

SIG.....  
.....**J.S. STANFORD/zs**.....

LEGAL

2-5406

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

**MESSAGE**

DATE	FILE / DOSSIER	SECURITY SECURITE
16 SEPT	20-3-1-6	CONFID

FM/DE EXTERNL OTT

TO/A TEHRAN

NO	PRECEDENCE
L-816	PRIORITY

INFO

**REF** OURLET L-737(M) SEPT 10

**SUB/SUJ** LAW OF TREATIES CONFERENCE

REFLET SHOULD REACH YOU BY NEXT BAG. GRATEFUL IF IT COULD RECEIVE YOUR EARLY ATTENTION. FOLLOWING IS SUPPLEMENTARY INFORMATION REFERRED TO THEREIN.

2. IRAN VOTED IN FAVOUR OF PARA TWO ON BOTH OCCASIONS ON WHICH IT CAME TO VOTE AT FIRST SESSION. WE ARE THEREFORE SEEKING TO PERSUADE IRANIANS TO CHANGE THEIR VOTE. YOU SHOULD MENTION THAT ABSTENTION, WHILE NOT PROVIDING SUPPORT WE SEEK, WOULD BE PREFERABLE TO VOTE IN FAVOUR OF PARA TWO. WE WILL BE PARTICULARLY INTERESTED TO LEARN WHETHER IRANIANS WOULD AGREE TO SEPARATE VOTE ON PARA TWO.

3. E. KAZEMI, DIRECTOR OF TREATY AND LEGAL DEPARTMENT, MFA, WAS MEMBER OF IRANIAN DEL TO FIRST SESSION. YOU MAY MAKE REPRESENTATIONS TO HIM IF YOU CONSIDER HIM SUFFICIENTLY SENIOR.

DISTRIBUTION NO STANDARD  
LOCAL / LOCALE

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

File  
Diary  
Tel File  
Div. Diary  
SS

# MESSAGE

EXTERNL OTT

DATE	FILE / DOSSIER	SECURITY SECURITE
16 SEPT	20-5-1-0	CONF.

FM/DE

STOCKHOLM

NO  
L 817

PRECEDENCE  
PRIORITY

TO/A

INFO

GURLET L-737(M) SEPT 10

REF

LAW OF TREATIES CONFERENCE

SUB/SUJ

REFLET SHOULD REACH YOU BY NEXT BAG. GRATEFUL IF IT COULD RECEIVE YOUR EARLY ATTENTION. FOLLOWING IS SUPPLEMENTARY INFORMATION REFERRED TO THEREIN.

2. SWEDEN OPPOSED PARA TWO ON BOTH OCCASIONS ON WHICH IT CAME TO VOTE AT FIRST SESSION. YOU SHOULD EXPRESS OUR APPRECIATION FOR SWEDISH SUPPORT AND YOU NEED NOT RAISE QUESTION OF POSSIBLE ABSTENTION. YOU SHOULD MENTION THAT SWEDISH REP IN DISCUSSION ON ARTICLE FIVE MADE POINT REFERRED TO IN AIDE MEMOIRE THAT CAPACITY UNDER INTERNATIONAL LAW COULD NOT BE EQUATED WITH CAPACITY UNDER INTERNAL LAW.

3. YOU SHOULD MAKE REPRESENTATIONS, IF POSSIBLE, TO HANS BLIX, SPECIAL LEGAL ADVISER MFA, WHO WAS HEAD OF SWEDISH DEL AT FIRST SESSION.

DISTRIBUTION  
LOCAL / LOCALE

NO STANDARD

ORIGINATOR/REDACTEUR

DIVISION

TELEPHONE

APPROVED/AUTORISE

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

LEGAL

2-5406

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

# MESSAGE

DATE	FILE/DOSSIER	SECURITY SECURITE
SEPT. 16/68	20-3-1-6	
		CONFID.

EXTERNL OTT

FM/DE

MONTEVIDEO

TO/A

NO

PRECEDENCE

L-800

PRIORITY

INFO

**REF** OURIET L-737(M) SEPT. 10/68

**SUB/SUJ** LAW OF TREATIES CONFERENCE

REFLET SHOULD REACH YOU BY NEXT BAG. GRATEFUL IF IT COULD RECEIVE YOUR EARLY ATTENTION. FOLLOWING IS SUPPLEMENTARY INFORMATION REFERRED TO THEREIN.

2. URUGUAY OPPOSED PARA TWO ON BOTH OCCASIONS ON WHICH IT CAME TO VOTE AT FIRST SESSION. YOU SHOULD THEREFORE EXPRESS OUR APPRECIATION AND YOU NEED NOT RAISE QUESTION OF POSSIBLE ABSTENTION. YOU SHOULD MENTION IN DISCUSSION THAT URUGUAYAN REP, IN DEBATE ON ARTICLE FIVE, POINTED OUT THAT PARA TWO WOULD PLACE INTERNAL LAW ABOVE INTERNATIONAL LAW, TAKES NO ACCOUNT OF IMPORTANCE OF RECOGNITION AND COULD RESULT IN DISTORTED NATIONAL REPRESENTATION ON INTERNATIONAL BODIES. THESE ARE POINTS MADE IN OUR AIDE MEMOIRE.

3. URUGUAYAN REP AT FIRST SESSION WAS EDUARDO JIMENEZ DE ARECHAGA, *an extremely able international lawyer* WHO WAS ALSO MEMBER OF ILC WHEN TREATY ARTICLES WERE ADOPTED AND IS RAPPOREUR OF THE COMMITTEE OF THE WHOLE AT THIS CONFERENCE. WE UNDERSTAND MR JIMENEZ DE ARECHAGA IS NOW A MEMBER OF URUGUAYAN GOVERNMENT AND YOU MAY WISH TO CONSIDER WHETHER, IN VIEW OF HIS NEW POSITION, HE WOULD BE APPROPRIATE PERSON TO RECEIVE YOUR REPRESENTATIONS.

DISTRIBUTION NO STANDARD  
LOCAL/LOCALE

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
		SEPT .16/68	20-3-1-6	CONFID.
TO/A	NAIROBI	NO		PRECEDENCE
		L-802		PRIORITY
INFO				

**REF** OURIET L-737(M) SEPT.10/68

**SUB/SUJ** LAW OF TREATIES CONFERENCE

REFLET SHOULD REACH YOU BY NEXT BAG. GRATEFUL IF IT COULD RECEIVE YOUR EARLY ATTENTION. FOLLOWING IS SUPPLEMENTARY INFORMATION REFERRED TO THEREIN.

2. KENYA VOTED IN FAVOUR OF PARA TWO ON BOTH OCCASIONS ON WHICH IT CAME TO VOTE AT FIRST SESSION. BECAUSE OF INFLUENCE WHICH KENYAN DEL, ALONG WITH INDIA AND GHANA, EXERCISED ON THE AFRO-ASIAN GROUP AT THIS CONFERENCE WE ATTACH PARTICULAR IMPORTANCE TO OUR EFFORT TO PERSUADE KENYA TO CHANGE THEIR VOTE ON THIS ISSUE. WHILE STRESSING THAT WE WOULD HOPE FOR KENYAN VOTE AGAINST PARA TWO, YOU SHOULD INDICATE THAT ABSTENTION WOULD, OF COURSE, BE PREFERABLE TO VOTE IN FAVOUR OF PARA TWO. YOU SHOULD ALSO LAY PARTICULAR STRESS ON OUR DESIRE FOR SEPARATE VOTE ON PARA TWO IN ORDER THAT OUR OPPOSITION TO PARA TWO WILL NOT HAVE ADVERSE EFFECT ON PARA ONE. WE SHALL BE VERY INTERESTED TO LEARN WHETHER KENYANS WOULD SEEK TO PREVENT SEPARATE VOTE ON PARA TWO.

3. HEAD OF KENYAN DEL TO FIRST SESSION MALUKI KATILI MWENDWA, SOLICITOR GENERAL, INDERJACT SINGH BHOI, UNDER SECRETARY IN MFA WAS MEMBER OF KENYA DEL.

DISTRIBUTION LOCAL/LOCALE NO STANDARD

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

File  
Tel. File  
Diary  
Div. Diary  
JSS

# MESSAGE

FM/DE      EXTERNL OTT

DATE	FILE / DOSSIER	SECURITY SECURITE
SEPT. 16/68	20-3-1-6	CONFID.

TO/A      PERMISNY

NO	PRECEDENCE PRIORITY
L-803	

INFO

**REF**    OURLET L-737(M) SEPT. 10/68

**SUB/SUJ**    LAW OF TREATIES CONFERENCE

REFLET SHOULD REACH YOU BY NEXT BAG. GRATEFUL IF IT COULD RECEIVE YOUR EARLY ATTENTION. FOLLOWING IS SUPPLEMENTARY INFORMATION REFERRED TO THEREIN.

2. GRATEFUL IF YOU COULD MAKE REPRESENTATIONS ALONG LINES DESCRIBED IN REFLET TO PERM REPS OF GUINEA AND LIBERIA. GUINEA AND LIBERIA BOTH VOTED IN FAVOUR OF PARA TWO ON BOTH OCCASIONS ON WHICH IT CAME TO VOTE AT FIRST SESSION. WE ARE THEREFORE SEEKING TO PERSUADE BOTH GOVERNMENTS TO CHANGE THEIR VOTE. YOU SHOULD INDICATE THAT ABSTENTION, WHILE IT WOULD NOT PROVIDE THE SUPPORT WE SEEK, WOULD BE PREFERABLE TO VOTE IN FAVOUR OF PARA TWO AT SECOND SESSION.

DISTRIBUTION      NO STANDARD  
LOCAL / LOCALE

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

File  
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 JSS

**MESSAGE**

DATE	FILE/DOSSIER	SECURITY SECURITE
SEPT. 16/68	20-3-1-6 <i>32</i>	CONFID.

FM/DE EXTERNL OTT

TO/A NICOSIA

NO <i>L-804</i>	PRECEDENCE PRIORITY
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INFO

**REF** OURLET L-737(M) SEPT. 10/68

**SUB/SUJ** LAW OF TREATIES CONFERENCE

REFLET SHOULD REACH YOU BY NEXT BAG. GRATEFUL IF IT COULD RECEIVE YOUR EARLY ATTENTION. FOLLOWING IS SUPPLEMENTARY INFORMATION REFERRED TO THEREIN.

2. CYPRUS OPPOSED PARAGRAPH TWO ON FIRST VOTE AT FIRST SESSION BUT DID NOT PARTICIPATE IN SECOND VOTE. YOU SHOULD EXPRESS APPRECIATION FOR SUPPORT ON FIRST VOTE AND NEED NOT RAISE QUESTION OF POSSIBLE ABSTENTION.

3. ANDREAS J. JACOVIDES OF MFA WAS DEPUTY HEAD OF CYPRIAN DELEGATION TO FIRST SESSION AND YOU MAY WISH TO MAKE REPRESENTATIONS TO HIM IF YOU CONSIDER HIM SUFFICIENTLY SENIOR.

DISTRIBUTION NO STANDARD  
 LOCAL/LOCALE

ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	APPROVED/AUTORISE
SIG..... JSS ANFORD/29	LEGAL	2-5406	SIG..... J. A. BEESLEY

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**MESSAGE**

FM/DE	EXTERNAL OPT	DATE	FILE/DOSSIER	SECURITY SECURITE
		SEPT. 16/68	2-3-1-6 <i>32</i>	CONFID.
TO/A	OSIO	NO		PRECEDENCE
		L-805		PRIORITY
INFO				

**REF** OURLET L-737(M) SEPT 10/68

**SUB/SUJ** LAW OF TREATIES CONFERENCE

REFLET SHOULD REACH YOU BY NEXT BAG. GRATEFUL IF IT COULD RECEIVE YOUR EARLY ATTENTION. FOLLOWING IS SUPPLEMENTARY INFORMATION REFERRED TO THEREIN.

2. NORWAY OPPOSED PARA TWO ON BOTH OCCASIONS ON WHICH IT CAME TO VOTE AT FIRST SESSION. YOU SHOULD THEREFORE EXPRESS OUR APPRECIATION AND YOU NEED NOT RAISE QUESTION OF POSSIBLE ABSTENTION.

3. PETER MOTZFELDT AND BJARNE SOLHEIM OF MFA WERE MEMBERS OF NORWEGIAN DEL TO FIRST SESSION. YOU MAY MAKE REPRESENTATIONS TO THEM IF YOU CONSIDER THEM SUFFICIENTLY SENIOR.

DISTRIBUTION NO STANDARD  
 LOCAL/LOCALE

ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	APPROVED/AUTORISE
SIG..... JSSTANFORD/zs	LEGAL	2-5406	SIG..... J. A. BEESLEY

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 Diary  
 Div. Diary  
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**MESSAGE**

DATE	FILE/DOSSIER	SECURITY SECURITE
SEPT 16/68	20-3-1-6	CONFID.

FM/DE EXTERNL OTT

TO/A PRETORIA

NO L-806	PRECEDENCE PRIORITY
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INFO

**REF** OURLET L-737(M) SEPT 10

**SUB/SUJ** LAW OF TREATIES CONFERENCE

REFLET SHOULD REACH YOU BY NEXT BAG. GRATEFUL IF IT COULD RECEIVE YOUR EARLY ATTENTION. FOLLOWING IS SUPPLEMENTARY INFORMATION REFERRED TO THEREIN.

2. SOUTH AFRICA WAS ONE OF FOUR COUNTRIES WHICH, FOR REASONS WHICH ARE NOT CLEAR, VOTED AGAINST PARA TWO ON ONE OCCASION WHEN IT CAME TO VOTE AND VOTED IN FAVOUR OF PARA TWO ON THE OTHER OCCASION. YOU SHOULD INDICATE THAT ABSTENTION, WHILE PREFERABLE TO VOTE IN FAVOUR OF PARA TWO, WOULD NOT REALLY PROVIDE THE SUPPORT WE SEEK.

3. MR. C.B.H.FINCHAM, UNDER SECRETARY MFA, WAS MEMBER OF SOUTH AFRICAN DEL TO FIRST SESSION. YOU MAY WISH TO MAKE REPRESENTATIONS TO HIM IF YOU CONSIDER HIM SUFFICIENTLY SENIOR.

4. PLEASE MAKE REPRESENTATIONS TO GOVT. OF LESOTHO IN WHATEVER MANNER YOU BELIEVE WOULD BE MOST APPROPRIATE TO ACHIEVE DESIRED RESULT. AS YOU KNOW, LESOTHO DID NOT SEND REP TO FIRST SESSION BUT HAS INDICATED IT MAY SEND REP TO SECOND SESSION.

DISTRIBUTION LOCAL/LOCALE NO STANDARD

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

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Div. Diary  
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**MESSAGE**

FM/DE	EXTERNAL OTT	DATE	FILE / DOSSIER	SECURITY
		SEPT 16	20-3-1-6	SECURITE
TO/A	PORT OF SPAIN	NO		PRECEDENCE
		L-807		PRIORITY
INFO				

REF OURLET L-737(M) SEPT 10

SUB/SUJ LAW OF TREATIES CONFERENCE

REFLET SHOULD REACH YOU BY NEXT BAG. GRATEFUL IF IT COULD RECEIVE YOUR EARLY ATTENTION. FOLLOWING IS SUPPLEMENTARY INFORMATION REFERRED TO THEREIN.

2. TRINIDAD VOTED IN FAVOUR OF PARAGRAPH TWO ON FIRST OCCASION ON WHICH IT CAME TO VOTE AT FIRST SESSION BUT ABSTAINED ON SECOND VOTE. YOU SHOULD INDICATE TO TRINIDADIAN THAT ABSTENTION, WHILE PREFERABLE TO VOTE IN FAVOUR OF PARA TWO, WOULD NOT PROVIDE US WITH THE SUPPORT WHICH WE WOULD HOPE TO RECEIVE FROM TRINIDAD AT SECOND SESSION.

3. CHAIRMAN OF TRINIDAD DEL TO FIRST SESSION WAS SENATOR G.A. RICHARDS ATTORNEY GENERAL AND MINISTER FOR LEGAL AFFAIRS. WHILE YOUR FORMAL REPRESENTATIONS SHOULD BE MADE TO MEA, YOU SHOULD ALSO SEEK OPPORTUNITY TO DISCUSS THE MATTER WITH SENATOR RICHARDS IF HE IS TO BE TRINIDAD REP AT SECOND SESSION.

DISTRIBUTION NO STANDARD  
LOCAL / LOCALE

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

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**MESSAGE**

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16 Sept. 28	20-3-1-6	CONFID

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FM/DE

QUITO

TO/A

NO

PRECEDENCE

L-808

PRIORITY

INFO

REF OURLET L-737(M) SEPT. 10

SUB/SUJ LAW OF TREATIES CONFERENCE

REFLET SHOULD REACH YOU BY NEXT BAG. GRATEFUL IF IT COULD RECEIVE YOUR EARLY ATTENTION. FOLLOWING IS SUPPLEMENTARY INFORMATION REFERRED TO THEREIN.

2. ECUADOR ABSTAIN/D ON FIRST VOTE ON PARA TWO BUT VOTED IN FAVOUR OF PARA TWO ON SECOND VOT. YOU SHOULD INDICATE THAT ABSTENTION, WHILE PREFERABLE TO VOTE IN FAVOUR OF PARA TWO, WOULD NOT PROVIDE US WITH SUPPORT WE SEEK.

DISTRIBUTION NO STANDARD  
 LOCAL/LOCALE

ORIGINATOR/REDACTEUR

DIVISION

TELEPHONE

APPROVED/AUTORISE

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

LEGAL

2-5406

SIG..... J. A. BEESLEY

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Diary  
Tel. File  
Div. Diary

# MESSAGE

FM/DE EXTERNL OTT

TO/A RAWALPINDI

INFO

DATE	FILE / DOSSIER	SECURITY SECURITE
SEPT 16/68	20-3-1-6 <i>32</i>	CONFID
	NO	PRECEDENCE
	L-809	PRIORITY

**REF** OURLET L-737(M) SEPT. 10

**SUB/SUJ** LAW OF TREATIES CONFERENCE

REFLET SHOULD REACH YOU BY NEXT BAG. GRATEFUL IF IT COULD RECEIVE YOUR EARLY ATTENTION. FOLLOWING IS SUPPLEMENTARY INFORMATION REFERRED TO THEREIN.

2. PAKISTAN VOTED IN FAVOUR OF PARA TWO WHEN IT FIRST CAME TO VOTE AT FIRST SESSION BUT ABSTAINED ON SECOND VOTE. YOU SHOULD INDICATE THAT ABSTENTION, WHILE PREFERABLE TO VOTE IN FAVOUR OF PARA TWO, DOES NOT PROVIDE SUPPORT WE SEEK.

3. M.A. SAMAD, LEGAL ADVISER TO MFA WAS ALTERNATE HEAD OF PAKISTANI DEL TO FIRST SESSION. YOU SHOULD MAKE REPRESENTATIONS TO HIM IF YOU CONSIDER HIM SUFFICIENTLY SENIOR.

DISTRIBUTION LOCAL/LOCALE NO STANDARD

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

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 Div. Diary  
 SS

**MESSAGE**

DATE	FILE / DOSSIER	SECURITY SECURITE
SEPT. 16/68	20-3-166	CONF'D

FM/DE                      EXTERNL OTT

TO/A                      ROME

NO	PRECEDENCE
L-816	PRIORITY

INFO

REF      COURLET L-737(M) SEPT 10

SUB/SUJ      LAW OF TREATIES CONFERENCE

REFLET SHOULD REACH YOU BY NEXT BAG. GRATEFUL IF IT COULD RECEIVE YOUR EARLY ATTENTION. FOLLOWING IS SUPPLEMENTARY INFORMATION REFERRED TO THEREIN.

2. ITALY OPPOSED PARA TWO ON BOTH OCCASIONS ON WHICH IT CAME TO VOTE AT FIRST SESSION. YOU SHOULD EXPRESS OUR APPRECIATION AND YOU NEED NOT RAISE QUESTION OF POSSIBLE ABSTENTION.

3. ROBERTO AGO, PROFESSOR AT UNIVERSITY OF ROME, WAS HEAD OF ITALIAN DEL AT FIRST SESSION, AND IS PRESIDENT OF THE CONFERENCE. YOU MAY MAKE REPRESENTATIONS TO ADOLFO MARESCA OF MFA, SECOND RANKING MEMBER OF ITALIAN DEL, IF YOU CONSIDER HIM SUFFICIENTLY SENIOR.

3. PLEASE MAKE REPRESENTATIONS ALSO TO SAN MARINO THROUGH APPROPRIATE CHANNELS. SAN MARINO REP AT FIRST SESSION ALSO OPPOSED PARA TWO ON BOTH OCCASIONS UPON WHICH IT CAME TO VOTE.

4. PLEASE MAKE SIMILAR REPRESENTATIONS TO GOVT. OF MALTA ON THE OCCASION OF YOUR NEXT VISIT TO MALTA. AS YOU KNOW, MALTA WAS NOT PRESENT AT FIRST SESSION BUT HAS INDICATED IT MAY SEND REP TO SECOND SESSION. YOU NEED NOT DISCUSS POSSIBILITY OF ABSTENTION AT THIS STAGE.

DISTRIBUTION                      NO STANDARD  
 LOCAL / LOCALE

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

**MESSAGE**

DATE	FILE / DOSSIER	SECURITY SECURITE
SEPT 16	20-3-1-6	CONFID
	<i>W</i>	

FM/DE EXTERNL OTT

TO/A SAIGON

NO	PRECEDENCE
L- 811	PRIORITY

INFO

**REF** OURLET L-737(M) SEPT. 10

**SUB/SUJ** LAW OF TREATIES CONFERENCE

REFLET SHOULD REACH YOU BY NEXT BAG. GRATEFUL IF IT COULD RECEIVE YOUR EARLY ATTENTION. FOLLOWING IS SUPPLEMENTARY INFORMATION REFERRED TO THEREIN.

2. REP OF VIETNAM OPPOSED PARA TWO ON BOTH OCCASIONS ON WHICH IT CAME TO VOTE AT FIRST SESSION. YOU SHOULD EXPRESS OUR APPRECIATION FOR SUPPORT AND YOU NEED NOT RAISE QUESTION OF POSSIBLE ABSTENTION. YOU SHOULD MENTION THAT VIETNAMESE REP IN DEBATE ON ARTICLE FIVE, SPECIFICALLY RAISED POINT, REFERRED TO IN AIDE MEMOIRE, THAT PARAGRAPH TWO MIGHT LEAD TO INTERFERENCE BY OTHER STATES IN DOMESTIC AFFAIRS OF FEDERAL STATES.

DISTRIBUTION  
LOCAL / LOCALE

NO STANDARD

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

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# MESSAGE

FM/DE EXTERNL OTT

DATE	FILE / DOSSIER	SECURITY SECURITE
16 SEPT	20-3-1-6	CONFID

TO/A SAN JOSE

NO	PRECEDENCE PRIORITY
L-812	

INFO

**REF** OURLET L-737(M) SEPT 10

**SUB/SUJ** LAW OF TREATIES CONFERENCE

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REFLET SHOULD REACH YOU BY NEXT BAG. GRATEFUL IF IT COULD RECEIVE YOUR EARLY ATTENTION. FOLLOWING IS SUPPLEMENTARY INFORMATION REFERRED TO THEREIN.

2. COSTA RICA DID NOT PARTICIPATE IN EITHER VOTE ON PARA TWO. YOU SHOULD NOT DISCUSS POSSIBILITY OF ABSTENTION UNLESS THIS IS RAISED BY COSTA RICAN OFFICIALS.

3. YOU SHOULD ALSO MAKE REPRESENTATIONS TO HONDURAN GOVERNMENT WHEN YOU NEXT VISIT HONDURAS. HONDURAS VOTED IN FAVOUR OF PARA TWO ON FIRST VOTE AT FIRST SESSION BUT DID NOT PARTICIPATE IN SECOND VOTE. YOU SHOULD INDICATE THAT ABSTENTION, WHILE IT DOES NOT PROVIDE SUPPORT WE SEEK, IS PREFERABLE TO VOTE IN FAVOUR OF PARA TWO.

DISTRIBUTION LOCAL/LOCALE NO STANDARD

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

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Tel. File  
Div. Diary  
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# MESSAGE

FM/DE

EXTERNL OTT

DATE	FILE / DOSSIER	SECURITY SECURITE
16 SEPT	20-3-1-6	CONF'D

SANTIAGO

TO/A

NO	PRECEDENCE
L-813	PRIORITY

INFO

REF OURLET L-737(M) SEPT. 10

SUB/SUJ LAW OF TREATIES CONFERENCE

REFLET SHOULD REACH YOU BY NEXT BAG. GRATEFUL IF IT COULD RECEIVE YOUR EARLY ATTN. FOLLOWING IS SUPPLEMENTARY INFO REFERRED TO THEREIN.

2. CHILE ABSTAINED ON FIRST VOTE ON PARA TWO BUT OPPOSED PARA TWO ON SECOND VOTE. YOU SHOULD EXPRESS APPRECIATION FOR SUPPORT ON SECOND VOTE AND YOU NEED NOT DISCUSS QUESTION OF ABSTENTION UNLESS IT IS RAISED BY CHILEANS.

3. DON EDMUNDO VARGAS OF MFA WAS MEMBER (AND FOR PART OF THE TIME HEAD) OF THE CHILEAN DEL TO FIRST SESSION. YOU SHOULD MAKE REPRESENTATIONS, IF POSSIBLE, TO HIM IF YOU CONSIDER HIM SUFFICIENTLY SENIOR.

DISTRIBUTION NO STANDARD  
LOCAL/LOCALE

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

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 Div. Diary  
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**MESSAGE**

DATE	FILE / DOSSIER	SECURITY SECURITE
16 SEPT	20-3-2-6	CONF D

FM/DE EXTERNL OTT

TO/A SANTO DOMINGO

NO	PRECEDENCE
L-814	PRIORITY

INFO

**REF** OURLET E-737(M) SEPT 10

**SUB/SUJ** LAW OF TREATIES CONFERENCE

REFLET SHOULD REACH YOU BY NEXT BAG. GRATEFUL IF IT COULD RECEIVE YOUR EARLY  
 ATTN. FOLLOWING IS SUPPLEMENTARY INFO REFERRED TO THEREIN.

2. DOMINICAN REPUBLIC REP OPPOSED PARA TWO ON THE OCCASION OF BOTH VOTES AT  
 FIRST SESSION. YOU SHOULD EXPRESS OUR APPRECIATION AND YOU SHOULD NOT RAISE  
 QUESTION OF POSSIBLE ABSTENTION

DISTRIBUTION LOCAL/LOCALE NO STANDARD

ORIGINATOR/REDACTEUR

DIVISION

TELEPHONE

APPROVED/AUTORISE

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

LEGAL

2-5405

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

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**MESSAGE**

FM/DE

EXTERNL OTT

DATE	FILE/DOSSIER	SECURITY SECURITE
16 SEPT 1968	20-3-1-6	CONFID
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TO/A

ACCRA

NO	PRECEDENCE
L-8/5	PRIORITY

INFO

REF OURLET L-737(M) SEPT. 10

SUB/SUJ LAW OF TREATIES CONFERENCE

REFLET SHOULD REACH YOU BY NEXT BAG. GRATEFUL IF IT COULD RECEIVE YOUR EARLY ATTN. FOLLOWING IS SUPPLEMENTARY INFO REFERRED TO THEREIN.

2. GHANA ABSTAINED ON BOTH VOTES ON PARA TWO AT FIRST SESSION. YOU SHOULD INDICATE THAT ABSTENTION, WHILE PREFERABLE TO A VOTE IN FAVOUR OF PARA TWO, DOES NOT PROVIDE THE SUPPORT WE SEEK.

3. HEAD OF GHANAIAN DEL WAS VICTOR OWOSU, COMMISSIONER FOR JUSTICE AND ATTORNEY GENERAL. DEPUTY HEAD OF DEL WAS E.K. DADZIE OF MEA. YOU MAY MAKE REPRESENTATIONS TO DADZIE IF YOU CONSIDER HIM SUFFICIENTLY SENIOR. WE ATTACH PARTICULAR IMPORTANCE TO POSITION OF GHANA BECAUSE OF INFLUENCE WHICH GHANAIAN DEL EXERCISES IN AFRO-ASIAN GROUP AT THIS CONFERENCE. WE WILL BE PARTICULARLY INTERESTED TO KNOW WHETHER GHANA WOULD SUPPORT PROPOSAL FOR SEPARATE VOTE ON PARA TWO.

DISTRIBUTION LOCAL/LOCALE NO STANDARD

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

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 Div. Diary  
 JSS

**MESSAGE**

DATE	FILE / DOSSIER	SECURITY SECURITE
SEPT. 16/68	20-3-1-6	CONF. ✓

FM/DE EXTERNL OTT

TO/A MANILA

NO  
L-798  
PRECEDENCE  
PRIORITY

INFO

**REF** OURLET L-737(M) SEPT 10/68

**SUB/SUJ** LAW OF TREATIES CONFERENCE

REFLET SHOULD REACH YOU BY NEXT BAG. GRATEFUL IF IT COULD RECEIVE YOUR EARLY ATTENTION. FOLLOWING IS SUPPLEMENTARY INFORMATION REFERRED TO THEREIN.

2. PHILIPPINES DID NOT VOTE WHEN PARAGRAPH TWO FIRST CAME TO VOTE BUT OPPOSED PARAGRAPH TWO ON SECOND <sup>VOTE</sup>. YOU SHOULD EXPRESS APPRECIATION OF PHILIPPINES SUPPORT AND YOU NEED NOT RAISE QUESTION OF ABSTENTION.

3. DR. JOSE D. INGLES, UNDER SECRETARY OF FOREIGN AFFAIRS AND JOSE IRA PLANA OF MFA WERE BOTH MEMBERS OF PHILIPPIAN DEL TO FIRST SESSION. YOU MAY MAKE REPRESENTATIONS TO THEM IF YOU CONSIDER THEM SUFFICIENTLY SENIOR.

DISTRIBUTION NO STANDARD  
 LOCAL/LOCALE

ORIGINATOR/REDACTEUR DIVISION TELEPHONE APPROVED/AUTORISE

SIG.....  
 J. S. STANFORD/ZS

LEGAL

2-5406

SIG.....  
 J. S. STANFORD/ZS

**MESSAGE**

FM/DE

EXTERNL OTT

DATE	FILE/DOSSIER	SECURITY SECURITE
SEPT. 16/68	20-3-1-6	
	32	CONFID.

TO/A

MEXICO CITY

NO	PRECEDENCE
L-799	PRIORITY

INFO

**REF** OURLET L-737(M) SEPT. 10/68

**SUB/SUJ** LAW OF TREATIES CONFERENCE

REFLET SHOULD REACH YOU BY NEXT BAG. GRATEFUL IF IT COULD RECEIVE YOUR EARLY ATTENTION. FOLLOWING IS SUPPLEMENTARY INFORMATION REFERRED TO THEREIN.

2. MEXICO OPPOSED PARAGRAPH TWO ON BOTH OCCASIONS ON WHICH IT CAME TO VOTE AT FIRST SESSION. YOU SHOULD THEREFORE EXPRESS OUR APPRECIATION FOR MEXICAN SUPPORT AND YOU NEED NOT RAISE QUESTION OF ABSTENTION. IN DISCUSSIONS WITH MEXICANS YOU SHOULD MENTION THAT MEXICAN REP, IN DEBATE ON ARTICLE FIVE SPECIFICALLY RAISED POINT REFERRED TO IN AIDE MEMOIRE THAT PARAGRAPH TWO DEALS WITH MATTERS WHICH ARE WITHIN THE DOMESTIC INTERNAL LAW OF THE FEDERAL STATE.

DISTRIBUTION NO STANDARD  
 LOCAL/LOCALE

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

**MESSAGE**

FM/DE	EXTERNAL OTT	DATE	FILE / DOSSIER	SECURITY SECURITE
		13 SEPT/68	20-3-1-6	CONFID
TO/A	KUALA LUMPUR	NO		PRECEDENCE
		L-792		PRIORITY
INFO				

**REF** OURLET L-737(M) SEPT. 10/68

**SUB/SUJ** LAW OF TREATIES CONFERENCE

REFLET SHOULD REACH YOU BY NEXT BAG. GRATEFUL IF IT COULD RECEIVE YOUR EARLY ATTENTION. FOLLOWING IS SUPPLEMENTARY INFORMATION REFERRED TO THEREIN.

2. MALAYSIAN DEL VOTED AGAINST PARA TWO ON BOTH OCCASIONS ON WHICH IT CAME TO VOTE AT FIRST SESSION. YOU SHOULD EXPRESS APPRECIATION AND YOU NEED NOT RAISE QUESTION OF POSSIBLE ABSTENTION.

3. HEAD OF MALAYSIAN DEL TO FIRST SESSION WAS M.O. ARIFF, SENIOR FEDERAL COUNSEL CONSUL, ATTORNEY GENERAL'S CHAMBERS. S. VENUGOPAL OF MFA WAS MEMBER OF MALAYSIAN DEL, HOWEVER, YOU MAY WISH TO MAKE REPRESENTATIONS AT MORE SENIOR LEVEL.

4. WE WOULD LIKE YOU ALSO TO MAKE REPRESENTATIONS TO GOVERNMENT OF SINGAPORE ON THE OCCASION OF YOUR NEXT VISIT TO SINGAPORE. SINGAPORE OPPOSED PARA TWO ON BOTH OCCASIONS ON WHICH IT CAME TO VOTE AT FIRST SESSION. YOU SHOULD EXPRESS OUR APPRECIATION FOR SUPPORT AND YOU NEED NOT RAISE QUESTION OF POSSIBLE ABSTENTION.

5. SINGAPORE REP TO FIRST SESSION WAS MR. CHAO HICK TIM, LEGAL ADVISER, ATTORNEY GENERAL'S CHAMBERS. YOUR REPRESENTATIONS HOWEVER SHOULD BE AT SENIOR LEVEL IN MFA.

DISTRIBUTION  
 LOCAL/LOCALE NO STANDARD

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

**MESSAGE**

EXTERNL OTT

FM/DE

DATE	FILE / DOSSIER	SECURITY SECURITE
13 SEPT/68	20-3-1-6	
		CONFID

TO/A

LIMA

NO

PRECEDENCE

L-794

PRIORITY

INFO

**REF** OURLET L-737(M) SEPT.10/68

**SUB/SUJ** LAW OF TREATIES CONFERENCE

REFLET SHOULD REACH YOU BY NEXT BAG. GRATEFUL IF IT COULD RECEIVE YOUR EARLY ATTENTION. FOLLOWING IS SUPPLEMENTARY INFORMATION REFERRED TO THEREIN.

2. PERU DID NOT VOTE WHEN PARAGRAPH TWO FIRST CAME TO VOTE AT FIRST SESSION BUT PERUVIAN REP OPPOSED PARAGRAPH TWO ON THE OCCASION OF SECOND VOTE. YOU SHOULD EXPRESS APPRECIATION FOR SUPPORT ON SECOND VOTE. YOU NEED NOT RAISE QUESTION OF POSSIBLE ABSTENTION.

3. HEAD OF PERUVIAN DEL TO FIRST SESSION WAS DR. LUIS ALVARADO, HOWEVER WE DO NOT KNOW WHAT POSITION HE OCCUPIES IN PERUVIAN GOVERNMENT.

4. PLEASE MAKE REPRESENTATIONS ALSO TO GOVERNMENT OF BOLIVIA BY WHATEVER MEANS YOU CONSIDER APPROPRIATE TO ACHIEVE DESIRED RESULT. BOLIVIA OPPOSED PARAGRAPH TWO WHEN IT FIRST CAME TO VOTE AT FIRST SESSION BUT ABSTAINED ON SECOND VOTE. YOU SHOULD INDICATE THAT ABSTENTION, WHILE PREFERABLE TO VOTE IN FAVOUR OF PARA TWO, WOULD NOT PROVIDE THE SUPPORT WE WOULD HOPE TO OBTAIN FROM BOLIVIA. HEAD OF BOLIVIAN DEL TO FIRST SESSION WAS ENRIQUE KEMPPF MERCADO, HOWEVER, WE DO NOT KNOW HIS POSITION IN BOLIVIAN GOVERNMENT.

DISTRIBUTION  
 LOCAL / LOCALE

NO STANDARD

ORIGINATOR / REDACTEUR

DIVISION

TELEPHONE

APPROVED / AUTORISE

SIG..... I. S. STANFORD / zs .....

LEGAL

2-5406

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

File Diary  
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 Div. Diary

**MESSAGE**

DATE	FILE/DOSSIER	SECURITY SECURITE
13 SEPT/68	20-3-1-6	CONF.

FM/DE EXTERNL OTT

TO/A LISBON

NO	PRECEDENCE
L-795	PRIORITY

INFO

**REF** OURLET L-737(M) SEPT.10/68

**SUB/SUJ** LAW OF TREATIES CONFERENCE

REFLET SHOULD REACH YOU BY NEXT BAG. GRATEFUL IF IT COULD RECEIVE YOUR EARLY ATTENTION. FOLLOWING IS SUPPLEMENTARY INFORMATION REFERRED TO THEREIN.

2. PORTUGAL OPPOSED PARAGRAPH TWO ON BOTH OCCASIONS ON WHICH IT CAME TO VOT AT FIRST SESSION. YOU SHOULD EXPRESS APPRECIATION FOR PORTUGUESE SUPPORT AND NEED NOT RAISE QUESTION OF POSSIBLE ABSTENTION.

DISTRIBUTION NO STANDARD  
 LOCAL/LOCALE

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

**MESSAGE**

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13 SEPT/68	20-3-1-6	CONFID.

EXTERNL OTT

FM/DE

LAGOS

TO/A

NO

PRECEDENCE

L-793

PRIORITY

INFO

**REF** OURLET L-737(M) SEPT.10/68

**SUB/SUJ** LAW OF TREATIES CONFERENCE

REFLET SHOULD REACH YOU BY NEXT BAG. GRATEFUL IF IT COULD RECEIVE YOUR EARLY ATTENTION. FOLLOWING IS SUPPLEMENTARY INFORMATION REFERRED TO THEREIN.

2. NIGERIA VOTED IN FAVOUR OF PARA TWO ON BOTH OCCASIONS ON WHICH IT CAME TO VOTE AT FIRST SESSION. WE ARE THEREFORE SEEKING TO PERSUADE NIGERIANS TO CHANGE THEIR VOTE. WHILE PRESSING FOR VOTE AGAINST PARA TWO, YOU SHOULD INDICATE THAT ABSTENTION, WHILE NOT PROVIDING SUPPORT WE SEEK, WOULD BE PREFERABLE TO VOTE IN FAVOUR OF PARA TWO. YOU SHOULD ALSO STRESS PARTICULARLY THE IMPORTANCE OF SEPARATE VOTE ON PARA TWO. WE ARE PARTICULARLY INTERESTED IN WHETHER NIGERIANS WOULD SEEK TO PREVENT SEPARATE VOTE ON PARA TWO.

3. WHILE YOU SHOULD RAISE THIS MATTER AT SENIOR LEVEL IN MFA, YOU SHOULD ALSO SEEK OCCASION TO DISCUSS QUESTION WITH DR. T.O.ELIAS, ATTORNEY GENERAL OF THE FEDERATION AND COMMISSIONER FOR JUSTICE. DR. ELIAS IS CHAIRMAN OF COMMITTEE OF THE WHOLE AT THIS CONFERENCE AND WAS MEMBER OF ILC WHEN TREATY ARTICLES WERE ADOPTED. WE ATTACH PARTICULAR IMPORTANCE TO NIGERIAN POSITION BECAUSE NIGERIA <sup>IS AN</sup> AFRICAN FEDERAL STATE AND BECAUSE OF IMPORTANT ROLE WHICH DR. ELIAS PLAYS AT CONFERENCE.

.. /2

DISTRIBUTION  
LOCAL/LOCALE

NO STANDARD

ORIGINATOR/REDACTEUR

DIVISION

TELEPHONE

APPROVED/AUTORISE

SIG..... J. S. STANFORD/zs

LEGAL

2-5406

SIG..... J. A. BEESLEY

4. SOMETIME AFTER DISCUSSION OF ARTICLE FIVE AT FIRST SESSION, MR. WERSHOF, HEAD OF CANADIAN DEL, HAD DR. ELIAS TO LUNCH FOR SPECIFIC PURPOSE OF DISCUSSING NIGERIAN POSITION ON PARAGRAPH TWO. DURING THIS DISCUSSION IT APPEARED THAT NIGERIAN POSITION WAS CLOSELY RELATED TO BIAFRA SITUATION. NIGERIANS WISHED TO OBTAIN ACCEPTANCE OF PRINCIPLE THAT MEMBER OF FEDERATION COULD NOT HAVE TREATY MAKING POWER IF FEDERAL CONSTITUTION DID NOT CONFER IT. THIS WOULD ENABLE FEDERAL NIGERIAN GOVERNMENT TO REFER TO NIGERIAN CONSTITUTION IN OPPOSING ANY SUGGESTION THAT BIAFRANS HAD INDEPENDENT INTERNATIONAL CAPACITY.

5. IN DISCUSSING THIS QUESTION WITH NIGERIANS, AND IN PARTICULAR WITH DR. ELIAS, YOU SHOULD STRESS THREE POINTS. FIRST, YOU SHOULD ASSURE THE NIGERIANS THAT, IN OUR VIEW, DELETION OF PARA TWO WOULD IN NO WAY PRECLUDE A FEDERAL GOVT. FROM REFERRING TO FEDERAL CONSTITUTION IN ANSWER TO CLAIM TO TREATY MAKING CAPACITY BY A MEMBER OF THE FEDERAL STATE. WE BELIEVE THAT THERE ARE TWO REQUIREMENTS BOTH OF WHICH MUST BE MET BEFORE A MEMBER OF A FEDERAL STATE MAY POSSESS CAPACITY TO MAKE TREATIES. FIRST REQUIREMENT IS THAT FEDERAL CONSTITUTION MUST PURPORT TO CONFER THIS POWER. IF THE PRESENT OR ANY FUTURE NIGERIAN FEDERAL CONSTITUTION DOES NOT PURPORT TO CONFER SUCH A POWER, THEN THAT IS A COMPLETE ANSWER TO ANY CLAIM BY A MEMBER FOR TREATY MAKING CAPACITY. BUT EVEN WHERE THE CONSTITUTION DOES PURPORT TO CONFER TREATY MAKING CAPACITY THERE IS THE SECOND REQUIREMENT, NAMELY, THAT THIS CAPACITY MUST BE RECOGNIZED BY THE INTERNATIONAL COMMUNITY. THE FAILURE OF PARA TWO TO REFER TO THE ELEMENT OF RECOGNITION IS IN OUR VIEW A SERIOUS LEGAL DEFECT IN A RULE INTENDED TO BE OF UNIVERSAL APPLICATION TO FEDERAL STATES AND THEIR MEMBERS.

\*\*\*\*3

6. SECOND POINT IS ONE TO WHICH NIGERIANS SHOULD BE PARTICULARLY RECEPTIVE, WHERE A MEMBER OF A FEDERAL STATE SEEKS TO ACQUIRE INDEPENDENT INTERNATIONAL STATUS EITHER IN LIMITED FIELD ONLY OR BY SECEDING FROM FEDERATION AND BECOMING A FULLY INDEPENDENT STATE, QUESTION OF STATUS OF MEMBER MUST, IN FIRST INSTANCE BE RESOLVED WITHIN THE FEDERAL STATE AS AN INTERNAL MATTER. ANY ATTEMPT BY ANOTHER STATE TO INFLUENCE THE OUTCOME OF THIS INTERNAL DISPUTE, PARTICULARLY BY PROMOTING OR SUPPORTING THE DISSIDENT MEMBER, IS PROPERLY REGARDED AS AN IMPROPER AND ILLEGAL INTERVENTION IN THE INTERNAL AFFAIRS OF THE FEDERAL STATE. HOWEVER PARAGRAPH TWO, BY MAKING THE FEDERAL CONSTITUTION (AN INTERNAL LAW) THE CONCLUSIVE FACTOR WHILE FAILING TO INCLUDE ANY PROVISION GIVING THE FEDERAL GOVERNMENT CONTROL, AT THE INTERNATIONAL LEVEL, OVER INTERPRETATION AND APPLICATION OF THE CONSTITUTION IN THE FEDERAL STATE'S INTERNATIONAL RELATIONS, PROVIDES A LEGAL BASIS UPON WHICH OTHER STATES MAY SUPPORT AND ENCOURAGE THE DISSIDENT MEMBER'S QUEST FOR INTERNATIONAL RECOGNITION. THE OTHER STATE MAY, AS PARA TWO MAY NOW ENTITLE IT TO DO, ~~EXERCISE~~ QUOTE INTERPRET UNQUOTE THE FEDERAL CONSTITUTION AS CONFERRING TREATY MAKING CAPACITY ON THE DISSIDENT MEMBER AND PROCEED TO CONCLUDE TREATIES WITH IT INDEPENDENT OF THE NATIONAL GOVERNMENT, THUS UNDERMINING THE INTEGRITY OF THE FEDERAL STATE AND THE INTERNATIONAL AUTHORITY OF THE FEDERAL GOVERNMENT.

7. THIRD POINT CAN BE PUT IN THE FORM OF A QUESTION. IF THE NIGERIAN FEDERAL GOVERNMENT SHOULD HAVE TO SIT DOWN WITH BIAFRANS OR OTHERS TO NEGOTIATE REVISION OF THE FEDERAL CONSTITUTION, DO THEY REALLY BELIEVE IT WOULD BE HELPFUL TO THEIR POSITION TO HAVE THE PRINCIPLE ESTABLISHED IN INTERNATIONAL LAW THAT A FEDERAL CONSTITUTION MAY PERMIT MEMBERS OF A FEDERAL STATE TO ENJOY AN INDEPENDENT TREATY MAKING CAPACITY? IN OUR VIEW THE

TO/A LAGOS

-4- CONFIDENTIAL

ESTABLISHMENT OF SUCH A PRINCIPLE OF INTERNATIONAL LAW CANNOT FAIL TO GIVE RISE TO DEMANDS ON THE PART OF MEMBERS OF THE FEDERATION FOR SUCH INDEPENDENT TREATY MAKING CAPACITY EVEN IF ONLY IN RELATION TO CERTAIN SUBJECTS.

8. YOU SHOULD ALSO MAKE REPRESENTATIONS TO GOVERNMENT OF SIERRA LEONE ON THE OCCASION OF YOUR NEXT VISIT TO FREETOWN. SIERRA LEONE ABSTAINED ON FIRST OCCASION ON WHICH PARA TWO CAME TO VOTE AT FIRST SESSION AND OPPOSED PARA TWO ON SECOND VOTE. YOU SHOULD EXPRESS APPRECIATION FOR SUPPORT ON SECOND VOTE AND SAY THAT ABSTENTION, WHILE PREFERABLE TO VOTE IN FAVOUR OF PARA TWO, WOULD NOT PROVIDE SUPPORT WHICH WE WOULD HOPE TO RECEIVE FROM SIERRA LEONE. FOR YOUR INFORMATION, ABU A. KOROMA, ATTORNEY GENERAL ~~DE~~ AND P.E.B. DOHERTY OF DEA WERE MEMBERS OF SIERRA LEONE DEL TO FIRST SESSION. HEAD OF DEL WAS COLE, SIERRA LEONE PERM REP NEW YORK.

*B. Jeffrey*  
ACTION COPY

20-3-1-6  
32/11/19

FM BERN SEP13/68 CONFD NO/NO STANDARD

TO EXTER 514 PRIORITY

REF YOURTEL L766 SEP12

LAW OF TREATIES CONFERENCE

WE TAKE IT FROM YOUR PARAI THAT IT IS NOT/NOT ENTIRELY CERTAIN

YOURLET L737(M)SEP10 WILL REACH US IN BAG ARRIVING NEXT TUE. WHILE

IDEALLY WE SHOULD SEEK APPOINTMENT WITH PRESIDENT NOW, IF WE WISH TO

SEE HIM NEXT WEEK, WE BELIEVE IT SAFER IN CIRCUMSTANCES TO WAIT TILL

YOURLET RECEIVED. WE EXPECT WE COULD SEE PRESIDENT WITHIN 3 OR

4 WORKING DAYS AFTER ITS RECEIPT. IF QUESTION MORE URGENT WE

COULD SET UP APPOINTMENT IMMEDIATELY WITH HEAD OF LEGAL DIV NOW FOR

NEXT WE. HE IS WELL DISPOSED TOWARDS CDA AND PROBABLY DRAFTED

RUEGGERS INSTRUCTION IN FIRST PLACE. PLEASE ADVISE.

*closed Wed 1900  
ie after our letter  
was delivered to mail  
room*

~~17~~ 17-13-9

file 20-3-1-6  
38/11/9

AM Copithorne  
Stanford  
↑

~~VPCW/74~~

FM BRU SEP16/68 CONFD

TO EXTER 1744

REF YOURTEL L770 SEP13 AND LET L737(M) SEP10

LAW OF TREATIES CONFERENCE

AIDE MEMOIRE AND ORAL PRESENTATION WAS MADE 3:30 PM TODAY TO DE KLERCK, LEGAL DIV MFA, IN ABSENCE OF DE VADDER AT HUMAN RIGHTS CONFERENCE AND ABSENCE OF OTHER MEMBERS OF BELGIAN DEL TO FIRST SESSION (DENIS IS ILL AND PROF SUY IS IN LOUVAIN PREPARING HIS INTERNATL LAW COURSES FOR REOPENING OF ACADEMIC YEAR).

2. DE KLERCK WILL PASS ON AIDE MEMOIRE AND NOTES HE TOOK OF OUR ORAL PRESENTATION TO DE VADDER WHO RETURNS MFA MON SEP23 AND WILL ARRANGE INTERVIEW FOR US WITH DE VADDER AS SOON AS POSSIBLE THEREAFTER. DE KLERCK FORESAW FEW DIFFICULTIES IN OBTAINING CONTINUED BELGIAN SUPPORT FOR CDN POSITION WITHIN MFA. FURTHERMORE DE KLERCK DOUBTED INTERMINISTERIAL CONSULTATION WILL BE REQUIRED ON THIS QUESTION; HE ASSUMES FM HARMEL CAN APPROVE POLICY IN THIS REGARD AND ALSO ASSUMES HARMELS REACTION WILL BE RECEPTIVE SINCE PROF SUY IS LEGAL ADVISER ON HARMELS PERSONAL STAFF.

3. WILL INFORM YOU OF RESULTS OF OUR FOLLOW-UP NEXT WEEK

MACLELLAN

File ✓  
Diary  
D12, Diary

Tel. File  
JSS

# MESSAGE

DATE	FILE/DOSSIER	SECURITY SECURITE
13 SEPT/68	20-3-1-6	CONF.

FM/DE EXTERNL OPT

TO/A LONDON

NO  
L-796

PRECEDENCE  
PRIORITY

INFO

**REF** OURLET L-737(M) SEPT.10/68

**SUB/SUJ** LAW OF TREATIES CONFERENCE

REFLET SHOULD REACH YOU BY NEXT BAG. GRATEFUL IF IT COULD RECEIVE YOUR EARLY ATTENTION. FOLLOWING IS SUPPLEMENTARY INFORMATION REFERRED TO THEREIN.

2. BRITAIN OPPOSED PARA TWO ON BOTH OCCASIONS ON WHICH IT CAME TO VOTE AT FIRST SESSION. YOU SHOULD EXPRESS OUR APPRECIATION FOR BRITISH SUPPORT AND YOU NEED NOT RAISE QUESTION OF POSSIBLE ABSTENTION.

3. REPRESENTATIONS SHOULD BE MADE TO SIR FRANCIS VALLATT, LEGAL ADVISER, F.O.

DISTRIBUTION  
LOCAL/LOCALE

NO STANDARD

ORIGINATOR/REDACTEUR

DIVISION

TELEPHONE

APPROVED/AUTORISE

SIG.....  
.....J. G. STANFORD/se

LEGAL

2-5406

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

File  
 Diary  
 Tel. File  
 Div. Diary  
 JSS

**MESSAGE**

<b>DATE</b>	<b>FILE / DOSSIER</b>	<b>SECURITY</b>
13 SEPT 1968	20-3-1-6	SECURITE
		CONFID.

FM/DE EXTERNL OTT

MADRID

TO/A

NO

PRECEDENCE

L-797

PRIORITY

INFO

**REF** OURIET L-737(M) SEPT.10/68

**SUB/SUJ** LAW OF TREATIES CONFERENCE

REFIET SHOULD REACH YOU BY NEXT BAG. GRATEFUL IF IT COULD RECEIVE YOUR EARLY ATTENTION. FOLLOWING IS SUPPLEMENTARY INFORMATION REFERRED TO THEREIN.

2. SPAIN ABSTAINED ON FIRST VOTE ON PARAGRAPH TWO AT FIRST SESSION BUT OPPOSED PARAGRAPH TWO ON SECOND VOTE. YOU SHOULD EXPRESS APPRECIATION FOR SPANISH SUPPORT ON SECOND VOTE AND INDICATE THAT ABSTENTION, WHILE PREFERABLE TO VOTE IN FAVOUR OF PARAGRAPH TWO, WOULD NOT PROVIDE SUPPORT WE WOULD HOPE TO OBTAIN FROM SPAIN ON THIS ISSUE.

3. YOUR REPRESENTATIONS SHOULD BE MADE, IF POSSIBLE, TO D. FEDERICO DE CASTRO OF MFA, WHO WAS HEAD OF SPANISH DEL TO FIRST SESSION.

DISTRIBUTION NO STANDARD  
 LOCAL / LOCALE

<b>ORIGINATOR/REDACTEUR</b>	<b>DIVISION</b>	<b>TELEPHONE</b>	<b>APPROVED/AUTORISE</b>
SIG..... J.S. STANFORD.....	LEGAL	2-5406	SIG..... J.A. BEESLEY..... J.A. BEESLEY

File  
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**MESSAGE**

EXTERNL OTTAWA

~~GUATEMALA CITY~~

FM/DE

GUATEMALA CITY

TO/A

INFO

DATE	FILE / DOSSIER		SECURITY SECURITE
	13 SEPT/68	20-3-1-6	CONFID.
		NO	PRECEDENCE
		L- 787	PRIORITY

**REF** OURLET L-737(M) SEPT.10/68

**SUB/SUJ** LAW OF TREATIES CONFERENCE

REFLET SHOULD REACH YOU BY NEXT BAG. GRATEFUL IF IT COULD RECEIVE YOUR EARLY ATTENTION. FOLLOWING IS SUPPLEMENTARY INFORMATION REFERRED TO THEREIN.

2. GUATEMALA WAS ONE OF FOUR DELS WHICH, FOR REASONS NOT CLEAR, VOTED IN FAVOUR OF PARA TWO ON ONE OCCASION AND AGAINST IT ON THE OTHER. WHILE PRESSING FOR A VOTE AGAINST PARA TWO AT SECOND SESSION YOU SHOULD INDICATE THAT ABSTENTION, <sup>though</sup> NOT REALLY HELPFUL TO US, <sup>is</sup> ~~though~~ PREFERABLE, OF COURSE, TO VOTE IN FAVOUR OF PARA TWO. YOU SHOULD STRESS IMPORTANCE OF PERMITTING A SEPARATE VOTE ON PARA TWO.

DISTRIBUTION LOCAL/LOCALE NO STANDARD

ORIGINATOR/REDACTEUR

DIVISION

TELEPHONE

APPROVED/AUTORISE

SIG.....  
 J. S. STANFORD/zs.....

LEGAL

2-5406

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

# MESSAGE

DATE	FILE/DOSSIER	SECURITY SECURITE
13 SEPT/68	20-3-1-6	
	<i>22</i>	CONFID.

FM/DE      EXTERNL OTT

TO/A      THE HAGUE

INFO

NO	PRECEDENCE
L-788	PRIORITY

REF    OURLET L-737(M) SEPT.10/68

SUB/SUJ    LAW OF TREATIES CONFERENCE

REFLET SHOULD REACH YOU BY NEXT BAG. GRATEFUL IF IT COULD RECEIVE YOUR EARLY ATTENTION. FOLLOWING IS SUPPLEMENTARY INFORMATION REFERRED TO THEREIN.

2. NETHERLANDS OPPOSED PARA TWO ON BOTH OCCASIONS ON WHICH IT CAME TO VOTE AT FIRST SESSION. YOU SHOULD EXPRESS OUR APPRECIATION AND YOU NEED NOT RAISE QUESTION OF ABSTENTION.

3. YOU SHOULD MAKE REPRESENTATIONS, IF POSSIBLE, TO PROF. W. RIPHAGEN, LEGAL ADVISER MFA, WHO WAS HEAD OF NETHERLANDS DEL TO FIRST SESSION.

DISTRIBUTION      NO STANDARD  
LOCAL/LOCALE

ORIGINATOR/REDACTEUR

DIVISION

TELEPHONE

APPROVED/AUTORISE

SIG.....J.S.STANFORD/zs.....

LEGAL

2-5406

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

File  
Diary  
JSS

Tel File  
Div. Diary

# MESSAGE

FM/DE	EXTERNL OTTAWA	DATE	FILE/DOSSIER	SECURITY SECURITE
		13 SEPT/68	20-3-1-6	
TO/A	HELSINKI	NO		CONF
		L-789		PRECEDENCE PRIORITY
INFO				

**REF** OURLET L-737(M) SEPT 10/68

**SUB/SUJ** LAW OF TREATIES CONFERENCE

REFLET SHOULD REACH YOU BY NEXT BAG. GRATEFUL IF IT COULD RECEIVE YOUR EARLY ATTENTION. FOLLOWING IS SUPPLEMENTARY INFORMATION REFERRED TO THEREIN.

2. FINLAND VOTED IN FAVOUR OF PARA TWO ON FIRST OCCASION ON WHICH IT CAME TO VOTE AND ABSTAINED ON SECOND OCCASION. WHILE PRESSING FOR VOTE AGAINST PARA TWO, YOU SHOULD INDICATE THAT ABSTENTION, THOUGH IT WOULD NOT PROVIDE SUPPORT WE SEEK, WOULD NEVERTHELESS BE PREFERABLE TO VOTE IN FAVOUR OF PARA TWO.

3. YOU SHOULD MAKE REPRESENTATIONS TO MR. PAUL GUSTAFSSON, DIRECTOR OF LEGAL AFFAIRS, M.F.A., IF YOU CONSIDER HIM SUFFICIENTLY SENIOR. MR. GUSTAFSSON WAS MEMBER OF FINNISH DEL TO FIRST SESSION.

DISTRIBUTION LOCAL/LOCALE NO STANDARD

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

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Div. Diary

Diary  
JSS

# MESSAGE

	DATE	FILE/DOSSIER	SECURITY SECURITE
	13 SEPT/68	20-3-1-6	
FM/DE	EXTERNAL OTT		CONFID
	KINGSTON, JAMAICA	NO	PRECEDENCE
TO/A		L-790	PRIORITY
INFO			

**REF** OURLET L-737(M) SEPT. 10/68

**SUB/SUJ** LAW OF TREATIES CONFERENCE

REFLET SHOULD REACH YOU BY NEXT BAG. GRATEFUL IF IT COULD RECEIVE YOUR EARLY ATTENTION. FOLLOWING IS SUPPLEMENTARY INFORMATION REFERRED TO THEREIN.

2. JAMAICA ABSTAINED IN FIRST VOTE ON PARAGRAPH TWO AND OPPOSED PARAGRAPH ON THE OCCASION OF SECOND VOTE. YOU SHOULD EXPRESS APPRECIATION FOR JAMAICAN SUPPORT ON SECOND VOTE AND INDICATE THAT ABSTENTION, WHILE PREFERABLE TO VOTE IN FAVOUR OF PARA TWO, WOULD NOT PROVIDE US WITH THE SUPPORT WHICH WE WOULD HOPE TO RECEIVE FROM JAMAICA.

3. JAMAICAN REPS AT FIRST SESSION WERE L.B. FRANCIS, LEGAL ADVISER MEA AND DR. K.O. RATTRAY, ASSISTANT ATTORNEY GENERAL. YOU MAY MAKE REPRESENTATIONS TO FRANCIS IF YOU CONSIDER HIM SUFFICIENTLY SENIOR.

DISTRIBUTION LOCAL/LOCALE NO STANDARD

ORIGINATOR/REDACTEUR

DIVISION

TELEPHONE

APPROVED/AUTORISE

SIG..... J.S. STANFORD/zs.....

LEGAL

2-5406

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

File  
Diary  
Div. Diary  
Tel. File  
JSS

# MESSAGE

FM/DE	EXTERNAL OTT	DATE	FILE/DOSSIER	SECURITY SECURITE
		13 SEPT/68	20-3-1-6	CONFID
TO/A	KINSHASA	NO		PRECEDENCE
		L-791		PRIORITY
INFO				

**REF** OURLET L-737(M) SEPT.10/68

**SUB/SUJ** LAW OF TREATIES CONFERENCE

REFLET SHOULD REACH YOU BY NEXT BAG. GRATEFUL IF IT COULD RECEIVE YOUR EARLY ATTENTION. FOLLOWING IS SUPPLEMENTARY INFORMATION REFERRED TO THEREIN.

2. CONGO(KIN) VOTED IN FAVOUR OF PARA TWO ON FIRST OCCASION ON WHICH IT CAME TO VOTE AND ABSTAINED ON SECOND VOTE. WHILE PRESSING FOR VOTE AGAINST PARA TWO YOU SHOULD INDICATE THAT ABSTENTION, THOUGH IT WOULD NOT PROVIDE THE SUPPORT WE SEEK, WOULD OF COURSE BE PREFERABLE TO VOTE IN FAVOUR OF PARA TWO.
3. HEAD OF CONGO(KIN) DEL TO FIRST SESSION WAS VINCENT MUTALE.

DISTRIBUTION LOCAL/LOCALE ~~XXXX~~ NO STANDARD

ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	APPROVED/AUTORISE
SIG..... J.A. BEESLEY/zs .....	LEGAL	2-5406	SIG..... J.A. BEESLEY .....

MESSAGE

FM/DE	EXTERNL OTT	DATE	FILE/DOSSIER	SECURITY SECURITE
		12 SEPT/68	20-3-1-6	CONFID
TO/A	DJAKARTA	NO		PRECEDENCE
		L-777		PRIORITY
INFO				

**REF** OURLET L-737(M) SEPT.10/68

**SUB/SUJ** LAW OF TREATIES CONFERENCE

REFLET SHOULD REACH YOU BY NEXT BAG. GRATEFUL IF IT COULD RECEIVE YOUR EARLY ATTENTION. FOLLOWING IS SUPPLEMENTARY INFORMATION REFERRED TO THEREIN.

2. INDONESIA VOTED FOR PARA TWO ON BOTH OCCASIONS UPON WHICH IT CAME TO VOTE AT FIRST SESSION. WE ARE THEREFORE SEEKING TO CHANGE INDONESIAN VOTE. WHILE PRESSING FOR VOTE AGAINST PARA TWO AT SECOND SESSION, YOU SHOULD INDICATE THAT ABSTENTION, <sup>it would</sup> <sup>e</sup> ~~NOT PROVIDING~~ SUPPORT WE SEEK, WOULD NEVERTHELESS BE PREFERABLE TO VOTE IN FAVOUR OF PARA TWO. WE WILL BE PARTICULARLY INTERESTED TO KNOW WHETHER INDONESIANS WOULD SEEK TO PREVENT SEPARATE VOTE ON PARA TWO. IN YOUR DISCUSSIONS WITH INDONESIANS YOU SHOULD REFER TO THE FACT THAT THE SOVIET UNION AND ITS ALLIES ARE THE MOST ACTIVE SUPPORTERS OF PARA TWO IN ITS PRESENT FORM AND YOU SHOULD SEEK TO ASSESS WHAT INFLUENCE THIS IS LIKELY TO HAVE ON INDONESIAN POSITION.

3. MISS E. H. LAURENS, CHIEF OF LEGAL AND CONSULAR AFFAIRS BUREAU, M.F.A. WAS MEMBERS OF INDONESIAN DEL TO FIRST SESSION, HOWEVER YOU SHOULD MAKE REPRESENTATIONS AT MORE SENIOR LEVEL IF POSSIBLE. PLEASE ENQUIRE WHO WILL BE INDONESIAN REP TO SECOND SESSION.

DISTRIBUTION NO STANDARD  
LOCAL/LOCALE

ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	APPROVED/AUTORISE
SIG..... J.A. STANFORD/28 .....	LEGAL	2-5406	SIG..... J.A. BEESEY .....

**MESSAGE**

DATE	FILE/DOSSIER	SECURITY SECURITE
12 SEPT/68	20-3-1-6	CONFID.

FM/DE EXTERNL OTT

CARACAS

TO/A

NO

PRECEDENCE

L-772

PRIORITY

INFO

**REF** OURLET L-737(M) SEPT.10/68

**SUB/SUJ** LAW OF TREATIES CONFERENCE

REFLET SHOULD REACH YOU BY NEXT BAG. GRATEFUL IF IT COULD RECEIVE YOUR EARLY ATTENTION. FOLLOWING IS SUPPLEMENTARY INFORMATION REFERRED TO THEREIN.

2. VENEZUELA OPPOSED PARA TWO ON BOTH OCCASIONS UPON WHICH IT CAME TO VOTE AT FIRST SESSION. YOU SHOULD EXPRESS OUR APPRECIATION AND NOT DISCUSS QUESTION OF POSSIBLE ABSTENTION UNLESS RAISED BY VENEZUELAN.

3. FOR YOUR INFO, DR. RAFAEL ARMANDO ROJAS WAS HEAD OF VENEZUELAN DEL TO FIRST SESSION. DR. ARMANDO MOLINA LANDAETA OF MFA WAS A MEMBER OF DEL.

DISTRIBUTION LOCAL/LOCALE NO STANDARD

ORIGINATOR/REDACTEUR

DIVISION

TELEPHONE

APPROVED/AUTORISE

SIG..... J.S. STANFORD/za.....

LEGAL

2-5406

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

File  
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Div. Diary  
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**MESSAGE**

DATE	FILE/DOSSIER	SECURITY SECURITE
12 SEPT/68	2-3-1-6	

FM/DE EXTERNL OTTAWA

CONFID.

TO/A COLOMBO

NO

PRECEDENCE

L-773

PRIORITY

INFO

REF OURLET L-737(M) SEPT. 10/68

SUB/SUJ LAW OF TREATIES CONFERENCE

REFLET SHOULD REACH YOU BY NEXT BAG. GRATEFUL IF IT COULD RECEIVE YOUR EARLY ATTENTION. FOLLOWING IS SUPPLEMENTARY INFORMATION REFERRED TO THEREIN.

2. CEYLON OPPOSED PARA TWO ON BOTH OCCASIONS ON WHICH IT CAME TO VOTE AT FIRST SESSION. YOU SHOULD THEREFORE EXPRESS APPRECIATION AND SHOULD NOT DISCUSS QUESTION OF POSSIBLE ABSTENTION UNLESS IT IS RAISED BY CEYLONESE. YOU SHOULD REFER, IN DISCUSSION, TO FACT THAT SIR LALIT RAJAPAKSE, HEAD OF CEYLONESE DEL TO FIRST SESSION, SPECIFICALLY MENTIONED IN HIS INTERVENTION IN DEBATE POINT, MADE IN AIDE MEMOIRE, THAT STATE PRACTICE IS NOT YET SUFFICIENTLY DEVELOPED TO PERMIT CODIFICATION OF INTERNATIONAL LAW ON THIS QUESTION AT THIS TIME.

3. YOU SHOULD MAKE REPRESENTATIONS TO CHRISTOPHER W. PINTO, LEGAL ADVISER, MFA, WHO WAS MEMBER OF CEYLONESE DEL TO FIRST SESSION, IF YOU CONSIDER HIM TO BE SUFFICIENTLY SENIOR.

DISTRIBUTION  
LOCAL/LOCALE

NO STANDARD

ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	APPROVED/AUTORISE
SIG..... J. S. STANFORD/28	LEGAL	2-5406	SIG..... BEESLEY J. A. BEESLEY

✓ File  
 Diary  
 Tel. File  
 Div. Diary

**MESSAGE**

DATE	FILE/DOSSIER	SECURITY SECURITE
12 SEPT/68	20-3-1-6	CONFID.

FM/DE EXTERNL OTT

CANBERRA

TO/A

NO

PRECEDENCE

L-771

PRIORITY

INFO

**REF** OURLET L-737(M) SEPT.10/68

**SUB/SUJ** LAW OF TREATIES CONFERENCE

REFLET SHOULD REACH YOU BY NEXT BAG. GRATEFUL IF IT COULD RECEIVE YOUR EARLY ATTENTION. FOLLOWING IS SUPPLEMENTARY INFORMATION REFERRED TO THEREIN.

2. AUSTRALIAN REP OPPOSED PARA TWO ON BOTH OCCASIONS UPON WHICH IT CAME TO VOTE AT FIRST SESSION. YOU SHOULD EXPRESS OUR APPRECIATION AND YOU NEED NOT RAISE QUESTION OF POSSIBLE ABSTENTION.

3. YOU MAY WISH TO MAKE REPRESENTATIONS TO PATRICK BRAZIL, LEGAL ADVISER, DEA, WHO WAS MEMBER OF AUSTRALIAN DEL TO FIRST SESSION.

4. WE BELIEVE AUSTRALIANS ALSO ATTACH SOME IMPORTANCE TO DELETION OF PARA 2 AND WOULD BE INTERESTED TO KNOW WHETHER THEY PLAN TO MAKE REPRESENTATIONS IN CAPITALS PRIOR TO SECOND SESSION.

DISTRIBUTION LOCAL/LOCALE NO STANDARD

ORIGINATOR/REDACTEUR

DIVISION

TELEPHONE

APPROVED/AUTORISE

SIG..... J.S. STANFORD/zs.....

LEGAL

2-5406

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

File  
 Diary  
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 Div. Diary  
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**MESSAGE**

FM/DE EXTERNL OTTAWA

DATE	FILE / DOSSIER	SECURITY SECURITE
12 SEPT 1968	20-3-1-6	CONFID.
	<i>22</i>	

TO/A COPENHAGEN

NO	PRECEDENCE
L-774	PRIORITY

INFO

REF OURIET L-737(M) SEPT. 10/68

SUB/SUJ LAW OF TREATIES CONFERENCE

REFLET SHOULD REACH YOU BY NEXT BAG. GRATEFUL IF IT COULD RECEIVE YOUR EARLY ATTENTION. FOLLOWING IS SUPPLEMENTARY INFORMATION REFERRED TO THEREIN.

2. AS YOU KNOW, DENMARK ABSTAINED ON PARA TWO WHEN IT WAS FIRST VOTED UPON IN COMMITTEE OF THE WHOLE BUT VOTED AGAINST THE PARA ON SECOND VOTE. YOU SHOULD THEREFORE EXPRESS APPRECIATION FOR DANISH SUPPORT ON SECOND VOTE. YOU NEED NOT RAISE QUESTION OF POSSIBLE ABSTENTION UNLESS YOU CONSIDER IT APPROPRIATE TO DO SO.

DISTRIBUTION LOCAL/LOCALE NO STANDARD

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

File  
 Tel. File  
 Diary  
 Div. Diary  
 JSS

**MESSAGE**

FM/DE	EXTERNL OTTAWA	DATE	FILE/DOSSIER	SECURITY SECURITE
		12 SEPT 1968	20-3-1-6 <i>82</i>	CONFID
TO/A	DAR-ES-SALAAM	NO		PRECEDENCE
		L-775		PRIORITY
INFO				

**REF** OURLET L-737(M) SEPT 10/68

**SUB/SUJ** LAW OF TREATIES CONFERENCE

REFLET SHOULD REACH YOU BY NEXT BAG. GRATEFUL IF IT COULD RECEIVE YOUR EARLY ATTENTION. FOLLOWING IS SUPPLEMENTARY INFORMATION REFERRED TO THEREIN.

2. TANZANIA VOTED FOR PARA TWO ON FIRST OCCASION ON WHICH IT CAME TO VOTE AT FIRST SESSION AND ABSTAINED ON SECOND OCCASION. WHILE YOU SHOULD PRESS FOR A VOTE AGAINST PARA TWO AT SECOND SESSION, YOU SHOULD INDICATE THAT AN ABSTENTION, THOUGH NOT PROVIDING THE SUPPORT WE WOULD HOPE FOR, WOULD BE PREFERABLE TO A VOTE <sup>IN FAVOUR OF</sup> ~~FOR~~ PARA TWO.

3. FOR YOUR INFO, HEAD OF DEL AT FIRST SESSION WAS DR. E. E. SEATON, JUDGE OF THE HIGH COURT. TWO OF DEL MEMBERS WERE S. T. MALITI AND J. S. WARIOBA.

4. PLEASE MAKE REPRESENTATIONS ALSO TO ZAMBIAN GOVERNMENT ON THE OCCASION OF YOUR NEXT VISIT TO LUSAKA. ZAMBIA OPPOSED PARA TWO ON BOTH OCCASIONS ON WHICH IT CAME TO VOTE. YOU SHOULD THEREFORE EXPRESS OUR APPRECIATION. YOU NEED NOT RAISE QUESTION OF POSSIBLE ABSTENTION. YOU MAY WISH TO MAKE REPRESENTATIONS TO LAVU MULIMBA OF MFA, WHO WAS HEAD OF ZAMBIAN DEL TO FIRST SESSION. OTHER MEMBERS OF DEL WAS VISHAKAN KRISHNADASAN, ALSO OF MFA.

DISTRIBUTION LOCAL/LOCALE NO STANDARD

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

File  
 Diary  
 Div. Diary  
 Tel. File  
 JSS

**MESSAGE**

DATE	FILE/DOSSIER	SECURITY SECURITE
12 Sept. <del>12/12/68</del> 1968	20-3-1-6	
		CONFID

FM/DE EXTERNL OTTAWA

TO/A NEW DELHI

INFO

NO	PRECEDENCE
L-776	PRIORITY

**REF** OURLET L-737(M) SEPT. 10/68

**SUB/SUJ** LAW OF TREATIES CONFERENCE

REFLET SHOULD REACH YOU BY NEXT BAG. GRATEFUL IF IT COULD RECEIVE YOUR EARLY ATTENTION. FOLLOWING IS SUPPLEMENTARY INFORMATION REFERRED TO THEREIN.

2. INDIA OPPOSED PARA TWO ON BOTH OCCASIONS ON WHICH IT CAME TO VOTE AT FIRST SESSION. YOU SHOULD THEREFORE EXPRESS OUR APPRECIATION AND NEED NOT RAISE QUESTION OF POSSIBLE ABSTENTION.

3. WE ATTACH CONSIDERABLE IMPORTANCE TO INDIAN POSITION/ ON THIS QUESTION BECAUSE OF INFLUENCE WHICH INDIA DEL, ALONG WITH GHANA AND KENYA DELS, APPEARS TO HAVE AMONG AFRO-ASIAN GROUP AT CONFERENCE. YOUR APPROACH SHOULD THEREFORE BE AT VERY SENIOR LEVEL.

4. INDIA IS KNOWN TO ATTACH CONSIDERABLE IMPORTANCE TO PARA ONE. YOU SHOULD REASSURE OFFICIALS THAT WE HAVE NO OBJECTION TO PARA ONE BUT STRESS IMPORTANCE IN ORDER TO PRESERVE PARA ONE, OF PERMITTING SEPARATE VOTE ON PARA TWO. YOU SHOULD ALSO MENTION FACT THAT HEAD OF INDIAN DEL. DR. K. KRISHNA RAO, IN DEBATE ON ARTICIE FIVE, MADE POINT REFERRED TO IN AIDE MEMOIRE THAT PARA TWO DEALS WITH WHAT IS ESSENTIALLY A DOMESTIC MATTER.

/2

DISTRIBUTION NO STANDARD  
 LOCAL/LOCALE

ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	APPROVED/AUTORISE
SIG..... J.S. STANFORD/zs .....	LEGAL	205406	SIG..... J. A. BEESLEY J.A. BEESLEY.....

-2- CONFIDENTIAL

5. PLEASE MAKE REPRESENTATIONS, ALSO TO GOVERNMENT OF NEPAL BY WHATEVER MEANS YOU CONSIDER WOULD BE ADEQUATE TO ACHIEVE DESIRED RESULT. NEPAL OPPOSED PARA TWO ON FIRST OCCASION ON WHICH IT CAME TO VOTE BUT DID NOT VOTE ON SECOND OCCASION. YOU SHOULD EXPRESS APPRECIATION AND NEED NOT RAISE QUESTION OF POSSIBLE ABSTENTION.

6. NEPALESE DEL TO FIRST SESSION WAS SARDAR BHIM BAHADUR PANDE, NEPALESE AMBASSADOR TO AUSTRIA.

File Tel.File  
 Diary JSS  
 Div.Diary

**MESSAGE**

DATE	FILE/DOSSIER	SECURITY SECURITE
12 SEPT/68	20-3-1-6	CONFID.

FM/DE EXTERNL OTT

TO/A DUBLIN

NO	PRECEDENCE
L-778	PRIORITY

INFO

**REF** OURIET L-737(M) SEPT 10/68

**SUB/SUJ** LAW OF TREATIES CONFERENCE

REFLET SHOULD REACH YOU BY NEXT BAG. GRATEFUL IF IT COULD RECEIVE YOUR EARLY ATTENTION. FOLLOWING IS SUPPLEMENTARY INFORMATION REFERRED TO THEREIN.

2. IRELAND OPPOSED PARA TWO ON BOTH OCCASIONS UPON WHICH IT CAME TO VOTE AT FIRST SESSION. YOU SHOULD THEREFORE EXPRESS APPRECIATION AND SHOULD NOT RAISE QUESTION OF ABSTENTION.

3. YOU SHOULD MAKE REPRESENTATIONS TO D. P. WALDRON OR F.M. HAYES, LEGAL ADVISER AND ASST. LEGAL ADVISER RESPECTIVELY IN DEA, WHO WERE IRISH REPS TO FIRST SESSION.

DISTRIBUTION LOCAL/LOCALE NO STANDARD

ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	APPROVED/AUTORISE
SIG..... J.A. BEESLEY/zs.....	LEGAL	2-5406	J. A. BEESLEY SIG..... J.A. Beesley.....

File  
 Diary  
 Tel. File  
 Div. Diary  
 J.S.S.

**MESSAGE**

DATE	FILE/DOSSIER	SECURITY SECURITE
12 SEPT/68	20-3-1-6	CONFID

EXTERNL OTT

FM/DE

TO/A GEORGETOWN

NO

PRECEDENCE

L-779

PRIORITY

INFO

**REF** OURLET L-737(M) SEPT 10-68

**SUB/SUJ** LAW OF TREATIES CONFERENCE

REFLET SHOULD REACH YOU BY NEXT BAG. GRATEFUL IF IT COULD RECEIVE YOUR EARLY ATTENTION. FOLLOWING IS SUPPLEMENTARY INFORMATION REFERRED TO THEREIN.

2. GUYANA REP WAS NOT PRESENT FOR EITHER VOTE ON PARA TWO AT FIRST SESSION. PLEASE ENQUIRE WHETHER THEY EXPECT TO BE PRESENT FOR PART OR WHOLE OF SECOND SESSION. YOU NEED NOT DISCUSS POSSIBILITY OF ABSTENTION UNLESS GUYANESE RAISE IT, IN WHICH CASE YOU SHOULD STATE THAT ABSTENTION, ~~WHICH~~ <sup>in favour of</sup> PREFERABLE TO A VOTE ~~FOR~~ PARA TWO, WOULD NOT PROVIDE US WITH THE SUPPORT WE WOULD HOPE TO RECEIVE FROM GUYANA.

3. D.E.E. POLLARD, LEGAL ADVISER, M.F.A. WAS MEMBER OF GUYANESE DEL TO FIRST SESSION.

DISTRIBUTION LOCAL/LOCALE NO STANDARD

ORIGINATOR/REDACTEUR

DIVISION

TELEPHONE

APPROVED/AUTORISE

SIG..... J.S. STANFORD/zs

LEGAL

2-5406

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

File  
 Tel. File  
 Diary  
 Div. Diary  
 JSS

**MESSAGE**

EXTERNL OTT

FM/DE

DATE	FILE/DOSSIER	SECURITY SECURITE
12 SEPT/68	20-3-1-6	CONFID.

TO/A

ANKARA

NO	PRECEDENCE
L-763	PRIORITY

INFO

**REF** OURLET L-737(M) SEPT.10/68

**SUB/SUJ** LAW OF TREATIES CONFERENCE

REFLET SHOULD REACH YOU BY NEXT BAG. GRATEFUL IF IT COULD RECEIVE YOUR EARLY ATTENTION. FOLLOWING IS SUPPLEMENTARY INFORMATION REFERRED TO THEREIN.

2. TURKEY SUPPORTED PARA TWO ON BOTH OCCASIONS ON WHICH IT CAME TO VOTE AT FIRST SESSION. WE ARE THEREFORE SEEKING TO PERSUADE TURKS TO CHANGE THEIR VOTE. YOU SHOULD INDICATE THAT ABSTENTION, WHILE NOT AS SOON AS WE WOULD HOPE FOR, WOULD BE PREFERABLE TO VOTE FOR PARA TWO.

3. YOUR REPRESENTATIONS SHOULD BE MADE, IF POSSIBLE, TO TALAT MIRAS OF MFA WHO WAS HEAD OF TURKISH DEL AT FIRST SESSION.

DISTRIBUTION  
 LOCAL/LOCALE

NO STANDARD

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

**MESSAGE**

DATE	FILE/DOSSIER	SECURITY SECURITE
12 SEPT/68	20-3-1-6	
		CONFID.

FM/DE EXTERNL. OTT

TO/A BANGKOK

NO	PRECEDENCE
L-764	PRIORITY

INFO

**REF** OURLET L-737(M) SEPT 10/68

**SUB/SUJ** LAW OF TREATIES CONFERENCE

REFLET SHOULD REACH YOU BY NEXT BAG. GRATEFUL IF IT COULD RECEIVE YOUR EARLY ATTENTION. FOLLOWING IS SUPPLEMENTARY INFORMATION REFERRED TO THEREIN.

2. THAILAND VOTED FOR PARA TWO ON FIRST VOTE AND ABSTAINED ON SECOND VOTE. YOU SHOULD INDICATE ABSTENTION NOT REALLY HELPFUL TO US THOUGH PREFERABLE, OF COURSE, TO ~~NEGATIVE~~ VOTE. *FOR PARA TWO.*

3. MESSRS. JALICHANDRA AND ROHANAPHRUH OF TREATY AND LEGAL DEPARTMENT MFA WERE MEMBERS OF THAI DEL TO FIRST SESSION BUT YOUR REPRESENTATIONS SHOULD, IF POSSIBLE, BE MADE AT MORE SENIOR LEVEL.

DISTRIBUTION  
 LOCAL/LOCALE

NO STANDARD

ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	APPROVED/AUTORISE
SIG..... <i>J. S. STANFORD/RS</i>	LEGAL	2-5406	SIG..... <i>J. A. REESLEY</i>

File  
Tel. File  
Diary  
Div. Diary

# MESSAGE

DATE	FILE / DOSSIER	SECURITY SECURITE
12 SEPT/68	20-3-1-6	
		CONFID

FM/DE      EXTERNL OTT

TO/A      BEIRUT

NO	PRECEDENCE
L-765	PRIORITY

INFO

**REF**    OURLET L-737(M) SEPT 10/68

**SUB/SUJ**    LAW OF TREATIES CONFERENCE

REFLET SHOULD REACH YOU BY NEXT BAG. GRATEFUL IF IT COULD RECEIVE YOUR EARLY ATTENTION. FOLLOWING IS SUPPLEMENTARY INFORMATION REFERRED TO THEREIN.

2. LEBANON ABSTAINED ON FIRST VOTE ON PARA TWO AND VOTED FOR PARA ON SECOND VOTE. YOU SHOULD INDICATE ABSTENTION NOT REALLY HELPFUL TO US THOUGH PREFERABLE, OF COURSE, TO VOTE FOR PARA. YOU SHOULD STRESS IMPORTANCE OF PERMITTING A SEPARATE VOTE ON PARA. TWO.

3. HEAD OF LEBANESE DEL TO FIRST SESSION WAS DR. ANTOINE FATTAL, DIRECTOR GENERAL OF THE COUNCIL OF THE PUBLIC SERVICE AND PROFESSOR OF INTERNATIONAL LAW. AS IT DOES NOT APPEAR HE IS CONNECTED WITH MFA WE ASSUME HE WOULD NOT BE APPROPRIATE PERSON TO RECEIVE YOUR REPRESENTATIONS.

DISTRIBUTION  
LOCAL / LOCALE

NO STANDARD

ORIGINATOR / REDACTEUR

DIVISION

TELEPHONE

APPROVED / AUTORISE

SIG.....J. S. STANFORD/zs.....

LEGAL

2-5406

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

File  
 Diary  
 Div. Diary  
 Tel. File  
 JSS

**MESSAGE**

FM/DE	EXTERNAL OTT	DATE	FILE / DOSSIER	SECURITY SECURITE
		12 Sept 1968	<del>203</del> 20-3-1-6	CONFED.
TO/A	BERNE	NO		PRECEDENCE
		L-766		PRIORITY
INFO				

**REF** OURLET L-737(M) SEPT.10/68

**SUB/SUJ** LAW OF TREATIES CONFERENCE

REFLET SHOULD REACH YOU BY NEXT BAG. GRATEFUL IF IT COULD RECEIVE YOUR EARLY ATTENTION. FOLLOWING IS SUPPLEMENTARY INFORMATION REFERRED TO THEREIN.

2. SWITZERLAND VOTED FOR RETENTION OF PARA TWO ON BOTH OCCASIONS ON WHICH IT CAME TO VOTE AT FIRST SESSION. WE ATTACH PARTICULAR IMPORTANCE TO POSITION OF SWITZERLAND ON THIS ISSUE BECAUSE IT IS ONE OF FEW FEDERAL STATES WHOSE MEMBERS EXERCISE LIMITED TREATY MAKING CAPACITY. YOU SHOULD THEREFORE MAKE REPRESENTATIONS AT HIGHEST POSSIBLE LEVEL. POINT TO STRESS IS THAT, WHILE WE REALIZE PARA TWO MAY BE ACCEPTABLE TO SWISS IN TERMS OF THEIR OWN CONSTITUTION, PARA TWO WOULD LAY DOWN RULES APPLICABLE TO ALL FEDERAL STATES, NOT ONLY SWITZERLAND. CONSEQUENTLY SWISS, IN DECIDING THEIR POSITION ON PARA TWO, SHOULD CONSIDER WHETHER IT IS SATISFACTORY IN RELATION TO ALL FEDERAL CONSTITUTIONS, NOT JUST THEIR OWN. A GREAT MANY FEDERAL STATES (MEXICO, BRAZIL, FGR, AUSTRALIA, USA, MALAYSIA, VENEZUELA, INDIA AND AUSTRIA, AS WELL AS CANADA) INDICATED THAT PARA TWO WAS UNSATISFACTORY.

3. YOU SHOULD INDICATE ABSTENTION, WHILE NOT REALLY HELPFUL TO US, WOULD OF COURSE BE PREFERABLE TO VOTE FOR PARA TWO. YOU SHOULD ALSO ASK THAT CANADIAN

..2

DISTRIBUTION  
 LOCAL / LOCALE

NO STANDARD

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

-2- CONFIDENTIAL

VIEWS BE CONVEYED TO APPROPRIATE AUTHORITIES OF LIECHTENSTEIN WHICH HAS  
SEPARATE DEL AT CONFERENCE.

4. FOR YOUR INFORMATION, HEAD OF SWISS DEL TO FIRST SESSION WAS MR. PAUL  
RUEGGER. *OF MFA*

File  
Diary  
Tel File  
Div. Diary  
SS

# MESSAGE

FM/DE      EXTERNL OTT

DATE	FILE / DOSSIER	SECURITY SECURITE
12 SEPT 1968	20-3-1-6	CONFID.

TO/A      BOGOTA

NO	PRECEDENCE
L-767	PRIORITY

INFO

**REF**      OURLET L-737(M) SEPT.10/68

**SUB/SUJ**      LAW OF TREATIES CONFERENCE

REFLET SHOULD REACH YOU BY NEXT BAG. GRATEFUL IF IT COULD RECEIVE YOUR EARLY ATTENTION. FOLLOWING IS SUPPLEMENTARY INFORMATION REFERRED TO THEREIN.

2. COLUMBIA REP VOTED FOR PARA TWO ON FIRST VOTE AND DID NOT VOTE ON SECOND OCCASION PARA TWO CAME TO VOTE. WE ARE THEREFORE SEEKING TO PERSUADE COLUMBIANS TO CHANGE THEIR VOTE. WHILE PRESSING FOR VOTE AGAINST PARA TWO AT SECOND SESSION, YOU SHOULD REFER TO FACT THAT ABSTENTION, WHILE NOT REALLY HELPFUL, WOULD BE PREFERABLE TO VOTE FOR PARA.TWO.

3. YOUR REPRESENTATIONS SHOULD BE MADE, IF POSSIBLE, TO DR. HUMBERTO RUIZ VARELA, HEAD OF THE LEGAL OFFICE, MFA, WHO WAS MEMBER OF COLOMBIAN DEL TO FIRST SESSION.

DISTRIBUTION  
LOCAL/LOCALE      NO STANDARD

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

File JSS  
Diary  
Div. Diary  
Tel. File

# MESSAGE

EXTERNL OTT

FM/DE

DATE	FILE/DOSSIER	SECURITY SECURITE
12 Sept 1968	20-3-1-6 <i>gry</i>	CONFID.

BONN

TO/A

NO	PRECEDENCE
L-768	PRIORITY

INFO

**REF** OURLET L-737(M) SEPT. 10/68

**SUB/SUJ** LAW OF TREATIES CONFERENCE

REFLET SHOULD REACH YOU BY NEXT BAG. GRATEFUL IF IT COULD RECEIVE YOUR EARLY ATTENTION. FOLLOWING IS SUPPLEMENTARY INFORMATION REFERRED TO THEREIN.

2. FGR OPPOSED PARA TWO ON BOTH OCCASIONS ON WHICH IT CAME TO VOTE AT FIRST SESSION. YOU SHOULD MAKE SPECIAL POINT OF EXPRESSING OUR APPRECIATION AND MENTION THE IMPORTANCE WE ATTACH TO GERMAN POSITION BECAUSE THEY ARE ONE OF FEW FEDERAL STATES WHOSE MEMBERS ENJOY LIMITED TREATY MAKING CAPACITY. GERMANS, UNLIKE THE SWISS, HAVE ADOPTED WHAT WE VIEW AS CORRECT APPROACH IN ASSESSING PARA TWO IN TERMS OF ITS ACCEPTABILITY IN THE LIGHT OF ALL FEDERAL CONSTITUTIONS, NOT JUST THEIR OWN. YOU SHOULD NOT DISCUSS QUESTION OF ABSTENTIONS UNLESS GERMANS RAISE IT.

3. YOUR REPRESENTATIONS SHOULD BE MADE, IF POSSIBLE, TO DR. RUDOLF THIERFELDER, MINISTERIAL DIRECTOR, LEGAL DIVISION MFA WHO WAS HEAD OF GERMAN DEL TO FIRST SESSION.

DISTRIBUTION NO STANDARD  
LOCAL/LOCALE

ORIGINATOR/REDACTEUR

DIVISION

TELEPHONE

APPROVED/AUTORISE

SIG.....  
..... J. S. STANFORD/zs.....

LEGAL

2-5406

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

File  
Tel File  
Diary  
Div. Diary  
JSS

# MESSAGE

FM/DE EXTERNL OTT

DATE	FILE/DOSSIER	SECURITY SECURITE
12 SEPT 1968	20-3-1-6	CONF. <i>20</i>

TO/A BUENOS AIRES

NO	PRECEDENCE
L-769	PRIORITY

INFO

**REF** OURLET L-737(M) SEPT 10/68

**SUB/SUJ** LAW OF TREATIES CONFERENCE

REFLET SHOULD REACH YOU BY NEXT BAG. GRATEFUL IF IT COULD RECEIVE YOUR EARLY ATTENTION. FOLLOWING IS SUPPLEMENTARY INFORMATION REFERRED TO THEREIN.

2. ARGENTINA WAS ONE OF FOUR DELS WHICH, FOR REASONS WHICH ARE NOT CLEAR, VOTED FOR PARA TWO ON ONE OCCASION ON WHICH IT CAME UP FOR VOTE AND AGAINST IT ON THE OTHER. YOU SHOULD <sup>mention in discussion with officials</sup> NOTE THAT DR. DE LA GUARDIA, MEMBER OF ARGENTINE DEL WHO SPOKE IN DEBATE ON ARTICLE FIVE, REFERRED SPECIFICALLY TO POINTS, MENTIONED IN OUR AIDE-MEMOIRE, THAT PARA TWO DEALS WITH THE INTERNAL LAW OF THE FEDERAL STATE AND THAT DELETION OF PARA TWO WOULD NOT IMPAIR THE TREATY MAKING CAPACITY OF MEMBERS OF FEDERAL STATES WHICH NOW ENJOY SUCH CAPACITY. WE WOULD HOPE THAT, FOR THESE AND OTHER REASONS MENTIONED IN AIDE-MEMOIRE, ARGENTINA WILL OPPOSE PARA TWO AT SECOND SESSION. IF ARGENTINA OFFICIALS RAISE QUESTION OF ABSTENTION YOU SHOULD INDICATE IT IS NOT REALLY HELPFUL, THOUGH PREFERABLE TO A VOTE FOR PARA TWO.

3. AS INDICATED ABOVE, DR. ERNESTO DE LA GUARDIA, LEGAL ADVISER IN THE MFA, WAS MEMBER OF ARGENTINE DEL TO FIRST SESSION. YOU MAY WISH TO MAKE REPRESENTATION TO HIM IF YOU CONSIDER HIM SUFFICIENTLY SENIOR.

DISTRIBUTION LOCAL/LOCALE NO STANDARD

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

File  
 Diary  
 Div. Diary  
 Tel. File  
 JSS

**MESSAGE**

FM/DE EXTERNL OTT

DATE	FILE/DOSSIER	SECURITY SECURITE
12 SEPT 1968	20-3-1-6	CONFID.

TO/A BRUSSELS

NO	PRECEDENCE
L-770	PRIORITY

INFO

**REF** OURLET L-737(M) SEPT. 10/68

**SUB/SUJ** LAW OF TREATIES CONFERENCE

REFLET SHOULD REACH YOU BY NEXT BAG. GRATEFUL IF IT COULD RECEIVE YOUR EARLY ATTENTION. FOLLOWING IS SUPPLEMENTARY INFORMATION REFERRED TO THEREIN.

2. BELGIAN REP OPPOSED PARA TWO ON BOTH OCCASIONS ON WHICH IT CAME TO VOTE AT FIRST SESSION. YOU SHOULD EXPRESS OUR APPRECIATION. YOU NEED NOT REFER TO POSSIBILITY OF ABSTENTION UNLESS BELGIANS RAISE IT.

3. YOUR REPRESENTATIONS SHOULD BE MADE, IF POSSIBLE, TO M.Y. DEVADDER OF MFA WHO WAS HEAD OF BELGIAN DEL TO FIRST SESSION.

DISTRIBUTION NO STANDARD  
 LOCAL/LOCALE

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

File Diary  
 Div. Diary  
 Tel. File  
 J.S.S.

**MESSAGE**

DATE	FILE / DOSSIER	SECURITY SECURITE
12 SEPT. 1968	20-3-1-6	CONFID.

FM/DE EXTERNL OTT

TO/A ATHENS NO PRECEDENCE  
 I-762 PRIORITY

INFO

**REF** OURLET L-737(M) SEPT.10/68

**SUB/SUJ** LAW OF TREATIES CONFERENCE

REFLET SHOULD REACH YOU BY NEXT BAG. GRATEFUL IF IT COULD RECEIVE YOUR EARLY ATTENTION. FOLLOWING IS SUPPLEMENTARY INFORMATION REFERRED TO THEREIN.

2. GREECE OPPOSED PARA TWO ON BOTH OCCASIONS IT CAME TO VOTE IN COMMITTEE OF THE WHOLE. YOU SHOULD THEREFORE EXPRESS OUR APPRECIATION. YOU SHOULD MAKE NO REFERENCE TO POSSIBILITY OF ABSTENTION UNLESS GREEKS RAISE IT, IN WHICH CASE YOU SHOULD INDICATE ABSTENTION NOT REALLY HELPFUL.

3. YOUR REPRESENTATIONS SHOULD BE MADE, IF POSSIBLE, TO CONSTANTIN EUSTATHIADES, HEAD OF LEGAL DEPARTMENT, MFA, WHO WAS HEAD OF GREEK DEL AT FIRST SESSION.

DISTRIBUTION  
 LOCAL / LOCALE

NO STANDARD

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

File  
Diary  
Div. Diary

Tel. File  
J.S.S.

# MESSAGE

DATE	FILE / DOSSIER	SECURITY SECURITE
12 Sept 1968	20-3-1-6	CONFID

EXTERNL OTT

FM/DE

ADDIS ABABA

TO/A

NO  
L-742

PRECEDENCE  
PRIORITY

INFO

REF OURLET L-737(M) SEPT. 10/68

SUB/SUJ LAW OF TREATIES CONFERENCE

REFLET SHOULD REACH YOU BY NEXT BAG. GRATEFUL IF IT COULD RECEIVE YOUR EARLY ATTENTION. FOLLOWING IS SUPPLEMENTARY INFORMATION REFERRED TO THEREIN.

2. ETHIOPIA OPPOSED PARA TWO ON BOTH OCCASIONS IT CAME TO VOTE. YOU SHOULD THEREFORE EXPRESS OUR APPRECIATION. YOU SHOULD MAKE NO REFERENCE TO ABSTENTION UNLESS ETHIOPIANS RAISE IT, IN WHICH CASE YOU SHOULD INDICATE ABSTENTION NOT REALLY HELPFUL.

3. ETHIOPIANS ATTACH IMPORTANCE TO PARA ONE. YOU SHOULD THEREFORE EMPHASIZE POINT THAT WE DO NOT WISH TO INTERFERE WITH PARA ONE BUT STRESS IMPORTANCE, IF PARA ONE IS TO BE RETAINED, OF SUPPORTING SEPARATE VOTE ON PARA TWO (PARA NINE REFLET REFERS).

4. YOUR REPRESENTATIONS SHOULD BE MADE IF POSSIBLE TO MR. GETACHEW KEBRETH, PRINCIPAL LEGAL ADVISER, MFA, WHO WAS HEAD OF ETHIOPIAN DEL AT FIRST SESSION.

DISTRIBUTION  
LOCAL / LOCALE

NO STANDARD

ORIGINATOR/REDACTEUR

DIVISION

TELEPHONE

APPROVED/AUTORISE

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

LEGAL

2-5406

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



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

# ACTION REQUEST FICHE DE SERVICE

FILE NO / DOSSIER N°  
20-3-1-6

TO — À

Legal Registry

DATE

Sept. 11-68

LOCATION — ENDRIT

FROM — DE

Legal Division

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

Please attach this list to original signed  
copy of Multiple Numbered Letter -L-737(M)

Thanks.

(Miss Skunta)

002451

CONFIDENTIAL

LIST OF ADDRESSES FOR MULTIPLE NUMBERED LETTER  
L-737(M) of 10 September, 1968 - re LAW OF TREATIES

Ottawa File: 20-3-1-6

Addis Ababa, Ethiopia ✓  
Ankara, Turkey ○  
Athens, Greece ✓  
Bangkok, Thailand ~  
Beirut (F) Lebanon ~  
Berne (also re Liechtenstein) / (F) Switzerland ✓  
Bogota, Colombia ✓  
Bonn, Germany ✓  
Brussels, Belgium (F) ✓  
Buenos Aires, Argentina / (also re Uruguay) ✓  
Canberra, Australia ✓  
Caracas, Venezuela ✓  
Colombo, Ceylon ✓  
Copenhagen, Denmark ✓  
Dar-es-Salaam, Tanzania / (also re Zambia) ✓  
New Delhi, India / (also re Nepal) ○  
Djakarta, Indonesia ○  
Dublin, Ireland ✓  
Georgetown, Guyana ✓  
Guatemala City, Guatemala ✓  
Hague, The Netherlands ✓  
Helsinki, Finland ~  
Kingston, Jamaica ✓  
Kinshasa, Congo (F) ✓  
Kuala Lumpur, Malaysia / (also re Singapore) ✓  
Lagos, Nigeria / (also re Sierra Leone) ○  
Lima, Perus / (also re Bolivia) ✓  
Lisbon, Portugal ✓  
London, England ✓  
Madrid, Spain ✓  
Manilla, Philippines ✓  
Mexico City, Mexico ✓  
Nairobi, Kenya ~  
New York - Permis (re Guinea and Liberia) ✓  
Nicosia, Cyprus ✓  
Oslo, Norway ✓  
Pretoria, South Africa ✓  
Port of Spain, Trinidad & Tobago ✓  
Quito, Ecuador ○  
Rawalpindi, Pakistan ✓  
Rome, Italy / (also re San Marino) ✓  
Saigon, VietNam (F) ✓  
San José, Costa Rica / (also re Honduras) ✓  
Santiago, Chile ✓  
Santo Domingo, Dominican Republic ✓  
Stockholm, Sweden ✓  
Teheran, Iran ✓  
Tel Aviv, Israel ✓  
Tokyo, Japan (also re Korea) ✓  
Tunis, Tunisia (F) ~  
Vienna, Austria ✓  
Washington, D.C. (USA) ✓  
Wellington, New Zealand ✓

32 | -

002452

(F) designates French version of Aide-Memoire

File  
 Diary  
 Div. Diary

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

TO  
 À

SECURITY  
 Sécurité CONFIDENTIAL

FROM  
 De The Under-Secretary of State for External Affairs

DATE September 10, 1968

REFERENCE  
 Référence

NUMBER  
 Numéro L-737(M)

SUBJECT  
 Sujet Law of Treaties Conference -Article 5

FILE	DOSSIER
OTTAWA 20-3-1-6	
MISSION	

ENCLOSURES  
 Annexes

- 1 -

DISTRIBUTION

The purpose of this letter is to request that you make a high-level approach to the Legal Branch or Division of the Foreign Ministry as soon as possible on a matter of considerable importance to Canada. The nature of the approach and the background are explained below.

2. In 1966 the International Law Commission of the United Nations adopted 75 Draft Articles on the Law of Treaties. The twenty-first and twenty-second General Assemblies recommended that an international conference be held, in two sessions, to draft a Convention on the Law of Treaties. The basic proposal before this Conference was the ILC Draft Convention. The first session of this conference, held in Vienna from March 26 to May 24, 1968, succeeded in giving first reading to all seventy-five articles, and most were given preliminary approval. The second session, which is expected to adopt the Convention, is to take place in Vienna from April 9 to May 21, 1969. Final approval of the Articles will be given at that session.

3. The International Law Commission draft contained an article, Article 5, which dealt with the capacity of States to conclude treaties, and which is of some importance to Canada's constitutional position. The second paragraph of this draft article dealt specifically with the treaty-making capacity of members of a federal State. Article 5, as adopted by the International Law Commission, reads as follows:

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

At the first session of the conference the ILC text was amended by deleting the word "States" in paragraph 2. Subject to that amendment, paragraph 2 was adopted in Committee of the Whole by a simple majority. At the second session, when all the Articles will be reviewed in Plenary, each article must be adopted by a two-thirds majority to be included in the Convention.

4. The inclusion of paragraph 2 of this Article in the Convention as finally adopted could have serious implications for Canada, as it could lead to the practice of other States purporting to interpret the federal constitutions of Canada and other federal states. It is the view of Canada, and

-2- CONFIDENTIAL

indeed of all federal States, that the federal constitution is an internal law of the federal State and can be interpreted only by the internal tribunal of the federal State having jurisdiction in constitutional matters. The problems created by this Article are more difficult for Canada than for most other federal States because Canada's Constitution is partly written (The British North America Act) and partly unwritten, having been developed by constitutional practice. Indeed almost the whole of Canada's evolution to independent nationhood took place through the development of constitutional practice, very little of which has been incorporated in any written instrument.

5. The Minister has therefore instructed that representations be made to a large number of friendly governments seeking their support for the omission of paragraph 2 from the text to be adopted at the second session. You should therefore seek an early appointment at an appropriate senior level of the government to which you are accredited (preferably the Legal Branch or Division of the Foreign Ministry) to discuss the position which the government proposes to take in respect of Article 5 at the second session. Attached is the text of an Aide-Memoire which you should leave with the official upon whom you call. (Posts accredited to more than one government should make representations only to the government of the country in which they are resident unless the supplementary telegram referred to in the next paragraph instructs otherwise.)

6. A separate telegram is being sent to each post receiving this letter reporting on the way in which the representative of the government or governments to which you are to make representations voted on Article 5 at the first session and referring to any specific points, additional to those discussed below, which you should make in your discussions at the time you deliver the Aide-Memoire. If the supplementary telegram indicates that the representative of the government to which you are accredited opposed the adoption of paragraph 2 at the first session you should make a point of expressing, during your discussion, Canada's appreciation for the support which the government gave to the Canadian position and the hope that the government will be able to confirm in due course that its representative will continue to oppose the adoption of paragraph 2 at the second session. If the supplementary telegram indicates that the government representative supported paragraph 2 at the first session you should stress Canada's hope that, even if the government is unable to agree with the legal position of the Aide-Memoire and does not share Canada's apprehension over the possible consequences of adopting paragraph 2, the government would nevertheless agree to oppose the adoption of paragraph 2 in view of the importance which Canada attaches to this question.

7. If the supplementary telegram indicates that the government representative supported paragraph 2 on the occasion of both votes on that paragraph at the first session, you may indicate that an abstention on paragraph 2, while not as helpful as we would hope, would nevertheless be preferable to a vote in favour of paragraph 2. In all other cases you should indicate that abstention is not very helpful to us since abstentions are not included in calculating the final result. Paragraph 2, to be deleted, must be opposed by more than one-third of all representatives

-3- CONFIDENTIAL

present and voting for or against the paragraph.

8. While you should, in discussion, stress the importance which Canada attaches to this issue, we do not expect you to engage in a substantive discussion of the legal issues referred to in the Aide-Memoire. As the Aide-Memoire, particularly the section on State Practice, may give rise to some questions, however, you should review Chapter II and the Annex of the Government's white paper on "Federalism and International Relations" prior to your call on officials. While we do not suggest that a copy of the white paper be attached as an appendix to the Aide-Memoire, you should bring a copy of the white paper with you at the time of your call on officials and leave it with them if they indicate an interest in either the Canadian constitutional position or the practice of other federal States. The latter is summarized in the appendix to the white paper.

9. In your discussions with officials you should refer specifically to the question of a separate vote on paragraph 2 of Article 5. You should say that Canada realizes the importance which a great many States attach to paragraph 1 of Article 5. Canada has no wish to interfere with paragraph 1 and we would therefore hope that the government's representative would support a request for a separate vote on paragraph 2. Such a request, to be granted, must be supported by more than half of the representatives voting for or against the request.

10. You should go on to say that, if a separate vote on paragraph 2 should be refused and the only vote taken is on Article 5 as a whole, it would be Canada's view (which we hope the government would share), that the disadvantages of paragraph 2 outweigh the advantages of paragraph 1 and that the whole article should be deleted. In this connection you should refer to the fact that the 1961 Vienna Convention on Diplomatic Relations and the 1963 Vienna Convention on Consular Relations do not include a specific article dealing with the right of States to send or receive diplomats or consuls, and consequently there would appear to be no need for the present Convention to include a specific article on the right of States to make treaties. This right is clear from the Convention as a whole.

11. At the conclusion of your discussion you should ask officials to inform you, in due course, of the position which their government will take on Article 5 at the second session. If our delegation at the second session is to function with maximum effectiveness on this issue, it must be as well-informed as possible on the positions likely to be taken by other representatives. Posts making representations to governments who will be sending representatives to the meeting of the African-Asian Legal Consultative Group, immediately following the conclusion of the Twenty-third General Assembly, should express the hope that the Canadian representations will be taken into account should Article 5 be raised during discussion of the Law of Treaties Conference at that meeting. (You should emphasize that we are not, of course, asking that Article 5 be discussed at that meeting. In fact, for your information, we would prefer that it not be raised.)

-4- CONFIDENTIAL

12. To summarize briefly, therefore, your oral presentation accompanying delivery of the Aide-Memoire should deal with the following points:

1. reference to the government's vote at the first session, including our appreciation for past support (where appropriate) and hope for support at the second session (see paragraph 6 above);
2. the question of abstention (unless the government opposed paragraph 2 on the occasion of both votes at the first session, in which case no reference need be made to abstention) (see paragraph 7 above);
3. State practice, if officials question you on this point (see paragraph 8 above);
4. The question of a separate vote on paragraph 2 (see paragraph 9 above).
5. The question of the vote on Article 5 as a whole if a separate vote is refused. (see paragraph 10 above).
6. Any additional matters referred to in the supplementary telegram.
7. Your wish for an indication, in due course, of the government's position (a) on paragraph 2; (b) on a separate vote for paragraph 2, and (c) on Article 5 as a whole if a separate vote is denied. (see paragraph 11 above).
8. For certain posts, the question of the meeting of the African-Asian Legal Consultative Group. (see paragraph 11 above).

M. CADIEUX

Under-Secretary of State  
for External Affairs.

Legal/J.S.Stanford/ts.

*file 10/4*

EXTERNAL AFFAIRS

AFFAIRES EXTÉRIEURES



TO  
À  
The Under-Secretary  
(through the Legal Adviser)  
*P.C.G.*

FROM  
De  
Legal Division

REFERENCE  
Référence

SUBJECT  
Sujet  
LAW OF TREATIES CONFERENCE - Article 5

SECURITY  
Sécurité  
CONFIDENTIAL

DATE  
September 10, 1968

NUMBER  
Numéro

FILE	DOSSIER
OTTAWA 20-3-1-6	
MISSION <i>32</i>	

ENCLOSURES  
Annexes

DISTRIBUTION

Attached for your signature is the multiple numbered letter and enclosed Aide-Mémoire which you approved yesterday in draft, instructing posts to make representations to governments concerning Article 5 of the draft Convention on the Law of Treaties.

2. Also attached is a list of the posts to which the numbered letter is to be sent. The letter (F) indicates that the post in question is to receive the Aide-Mémoire in its French version which is now being prepared in Translation Services.

*Hamberley*  
Legal Division

List of Addresses for Multiple Numbered Letter L-737- of 10 Sept. - Law of Treaties  
(M) 1968

Addis Ababa  
Ankara  
Athens  
Bangkok  
Beirut (F)  
Berne (also re Liechtenstein) (F)  
Bogota  
Born  
Brussels (F)  
Buenos Aires (also re Uruguay)  
Canberra  
Caracas  
Colombo  
Copenhagen  
Dar-es-Salaam (also re Zambia)  
Delhi (also Nepal)  
Djakarta  
Dublin  
Georgetown  
Guatemala City  
Hague  
Helsinki  
Kingston  
Kinshasa (F)  
Kuala Lumpur (also re Singapore)  
Lagos (also re Sierra Leone)  
Lima (also re Bolivia)  
Lisbon  
London  
Madrid  
Manilla  
Mexico City  
Nairobi  
New York - Permia (re Guinea and Liberia)  
Nicosia  
Oslo  
Pretoria  
Port of Spain  
Quito  
Rawalpindi  
Rome (also re San Marino)  
Saigon (F)  
San José (also re Honduras)  
Santiago  
Santo Domingo  
Stockholm  
Teheran  
Tel Aviv  
Tokyo (also re Korea)  
Tunis (F)  
Vienna  
Washington  
Wellington

65

*file 20-3-1-6*  
*M/10/9*

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

TO  
À

SECURITY  
Sécurité

CONFIDENTIAL

FROM  
De

The Under-Secretary of State for External Affairs

DATE

September 10, 1968

REFERENCE  
Référence

NUMBER  
Numéro

L-737(M)

SUBJECT  
Sujet

Law of Treaties Conference -Article 5

FILE	DOSSIER
OTTAWA 20-3-1-6	
MISSION	<i>32</i>

ENCLOSURES  
Annexes

- 1 -

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-2- CONFIDENTIAL

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-3- CONFIDENTIAL

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-4- CONFIDENTIAL

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3. State practice, if officials question you on this point (see paragraph 8 above);
4. The question of a separate vote on paragraph 2 (see paragraph 9 above).
5. The question of the vote on Article 5 as a whole if a separate vote is refused. (see paragraph 10 above).
6. Any additional matters referred to in the supplementary telegram.
7. Your wish for an indication, in due course, of the government's position (a) on paragraph 2; (b) on a separate vote for paragraph 2, and (c) on Article 5 as a whole if a separate vote is denied. (see paragraph 11 above).
8. For certain posts, the question of the meeting of the African-Asian Legal Consultative Group. (see paragraph 11 above).



Under-Secretary of State  
for External Affairs.

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

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

### The Federal Constitution is Internal Law

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

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### The Federal Constitution in International Law

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

### State Practice

An examination of State practice reveals that no federal constitution authorizes the constituent parts of the federation to

- 2 -

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

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

#### Scope of the Convention

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

#### Conclusion

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

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TO EXTER 282

REF YOURTEL L678 AUG20

UN LAW OF TREATIES CONFERENCE SECOND SESSION

IN A LET AUG29 TO AMBASSADOR ICELANDIC FOREIGN MINISTRY SEC GEN

INFORMED US THAT ICELAND WILL NOT/NOT SEND A REP TO SECOND SESSION.

8.9.68

August 30, 1968

File

20:3-1-6

LAW OF TREATIES

Canada participated actively in the first session of the United Nations Conference on the Law of Treaties which took place in Vienna from March 26 to May 24 of this year. As you may know, the General Assembly decided that this Conference to codify the Law of Treaties should take place in two sessions. The second session will be held, also in Vienna, from April 9 to May 21, 1969.

The basic proposal before the Conference is the International Law Commission draft articles on the Law of Treaties adopted in 1966. The first session of the Conference, sitting in Committee of the Whole, considered all 75 of the ILC articles plus 7 or 8 new ones. It accepted most but not all of the articles, deferring to the second session action on a number of the more controversial items. The only article deleted at the first session was Article 38 which provided for the amendment of treaties by subsequent practice. The provision in Article 27 that reference may be had to subsequent practice to interpret treaties was retained.

In the section on invalidity and termination, the Committee of the Whole adopted articles introducing the concepts of fraud, coercion and invalidity for conflict with a norm of jus cogen. But the question of compulsory settlement of disputes was put over to the second session, as was the "all States" question which arises in this Conference as a substantive issue in the body of the draft convention rather than only in relation to the final clauses on accession.

The Western states regard a satisfactory compulsory settlement of disputes article as indispensable if the treaty is to contain specific articles on invalidity and termination. Unfortunately there was little indication at the first session of a willingness on the part of the Afro-Asian states to accommodate the Western powers on this point. Efforts are being made between sessions to induce a more favourable attitude to this question by the "third world". Soviet bloc opposition in principle to compulsory settlement is of long standing and unlikely to be changed in the context of the present Conference.

The ultimate fate of Article 5, paragraph 2, dealing with the capacity of members of federal states to conclude treaties, is uncertain. The ILC formulation, which would recognize such a treaty making capacity in certain circumstances, was adopted in slightly amended form in Committee of the Whole by a simple majority, largely due to intensive lobbying by the U.S.S.R. and its friends. However, many federal states expressed objection to the paragraph and it is by no means certain that it will receive the two-thirds majority required for adoption in Plenary at the second session.

cc: Mr. Gotlieb,  
Mr. Beesley (O/R)  
File  
Diary  
Div. Diary

Legal/J.S. Stanford/zs

20-3-1-6  
32 | -

CONFIDENTIAL

OTTAWA, August 30, 1968.

Dear Mr. Wershof,

I enclose a copy of the report of the Canadian Delegation on the first session of the U.N. Conference on the Law of Treaties. This has just been received from Production Services. Upon reading it, it occurs to me that the presentation might have been improved by including a title page and a table of contents. However, I hope you will find the report satisfactory notwithstanding these shortcomings.

Copies of this report have been provided to Messrs. Cadieux, Gotlieb, Beesley, Robertson and McKinnon and to European, African and Middle Eastern, Co-ordination and Commonwealth Divisions. I should be grateful if you could let me know whether there are any other persons or divisions to which the report should be addressed.

You will have received by now a copy of the Memorandum to the Minister requesting authority (which he granted) to make representations to friendly governments on the question of Article 5, paragraph 2. I am now in the process of preparing, in consultation with Messrs. Gotlieb and Beesley, a telegram of instructions and Aide-Memoire on this question and I would hope that we could begin our representations within the next few weeks, prior to the opening of the General Assembly.

Yours sincerely,

J. S. STANFORD

J. S. Stanford.

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

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INFO PRMNY

REF YOURTEL L672 AUG19

UN LAW OF TREATIES CONF SECOND SESSION

JORDANIAN EMB TELLS US THAT JORDAN PRESENTLY

PLANS TO SEND REP TO LAW OF TREATIES CONF VIENA APR-MAY/68.

1. 26.8

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INFO PERMISNY GENEV

REF VOTRE TEL L682 AUG19

CONFERENCE DES ONU SUR LE DROIT DES TRAITES-DEUXIEME SESSION  
MINISTERE DU COMWEL ET DES AFFAIRES ETRANGERES DE MALTE NOUS COMMU-  
NIQUE QUE MALTE PARTICIPERA FORT PROBABLEMENT A LA SECONDE SESSION  
DE LA CONFERENCE PRECITEE QUI DOIT AVOIR LIEU A VIENE DU AVR9 AU  
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ACTION CO

file 20-3-1-6  
30/8/82

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8. 8.26

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A EXTER 1573  
INFO PRMNY  
REF VOTRETEL L674 AOUT19

CONFERENCE SUR LA LOI DES TRAITES DE LONU, DEUXIEME SESSION  
MAES, DIRECTION DE LA POLITIQUE INTERNATL DU MINISTERE DES AFFAIRES  
ETRANGERES, NOUS A EXPLIQUE QUIL EST TRES PEU PROBABLE QUE LE  
LUXEMBOURG DELEGUE UN REP A LA DEUXIEME SESSION QUI AURA LIEU A  
VIENN EN AVR-MAI 1969. MAES NOUS A RAPPELE QUE LE LUXEMBOURG N'AVAIT  
PAS/PAS PARTICIPE A LA PREMIERE SESSION, ET QUE LE MINISTERE DES  
AFFAIRES ETRANGERES MANQUAIT MALHEUREUSEMENT DE PERS. LA DECISION  
FINALE DOIT ETRE PRISE EN FEV 1969 ET IL EST POSSIBLE QUE LE MAE  
ENVMIE AU COURS DE LA CONFERENCE UN REP QUI ASSURERAIT UNE PRESENCE  
LUXEMBOURGEOISE AU MOMENT OU SE DISCUTERONT DES QUESTIONS  
PARTICULIEREMENT IMPORTANTES. IL EST PROBABLE QUE LE MAE COMPTE SUR  
LA DEL BELGE POUR SE TENIR AU COURANT DES TRAVAUX DE LA CONFERENCE.

Received

AUG 26 1968

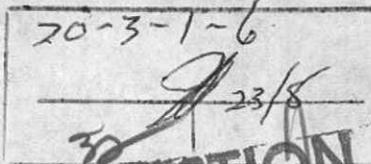
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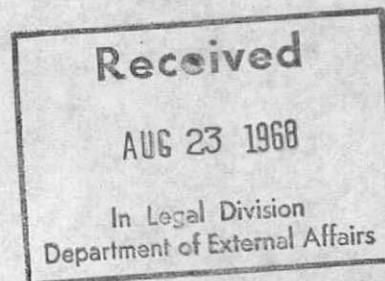
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INFO PRMNY

REF YOURTEL L684 AUG19

UN LAW OF TREATIES CONFERENCE-SECOND SESSION

EMB RWANDA DOES NOT/NOT KNOW WHETHER ITS GOVT EXPECTS TO BE  
REPRESENTED AT THAT CONFERENCE. THEY WILL ENQUIRE AND LET US KNOW.

2. SINCE MAURITANIA BROKE DIPLO RELATIONS WITH USA IN SPRING OF  
1967 DURING MIDEAST CRISIS, IT HAS HAD NO/NO REP HERE. PRMNY COULD  
PERHAPS OBTAIN INFO REQUIRED.

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

*Jul 21/13/19*

TO  
À Le Sous-Secrétaire d'Etat aux  
Affaires extérieures - Ottawa.

FROM  
De L'Ambassade du Canada  
Port-au-Prince - Haiti.

REFERENCE  
Référence Votre télégramme L 679 du 19 août 1968.

SUBJECT  
Sujet Deuxième session de la Conférence des  
Nations Unies sur le Droit des Traités.

SECURITY  
Sécurité RESERVE

DATE le 23 août 1968

NUMBER  
Numéro 280

FILE	DOSSIER
OTTAWA	20-3-1-6
MISSION	32 24-12-2

*J. 29*

ENCLOSURES  
Annexes

DISTRIBUTION

Permis NY

Le Directeur des Affaires Juridiques au Département des Affaires Etrangères qui semblait totalement ignorer qu'il y ait eu une première session de la Conférence des Nations Unies sur le Droit des Traités et qu'il doit y en avoir une deuxième se montra peu empressé de vérifier auprès du Ministre des Affaires Etrangères "très occupé par le temps qui court" si la République d'Haiti serait représentée ou non à Vienne en avril et mai prochains. Pour être certains (sic) que le Département des Affaires Etrangères répondrait à notre question, il valait mieux, suggéra-t-il, que nous adressions une note au Département à ce sujet. D'où notre note no 68 du 23 août 1968, ci-jointe.

2. Etant donné que la décision d'envoyer une délégation ou de se faire représenter à la Conférence en question relève exclusivement du Président Duvalier qui décide sur tout quand bon lui semble, il est possible qu'une délégation ne soit formée que peu de temps avant le début de la deuxième session à supposer qu'il décide d'en envoyer une. Nous vous transmettons la réponse du Département des Affaires Etrangères dès que nous l'aurons reçue.

*André Patrin*

Chargé d'Affaires a.i.

**Received**

SEP 4 1968

In Legal Division  
Department of External Affairs

TO: MR STANFORD

FROM REGISTRY

SEP 3 1968

FILE CHARGED OUT

TO: MR STANFORD

BEST COPY AVAILABLE

No 68/68

L'Ambassade du Canada présente ses compliments au Département des Affaires Etrangères de la République d'Haiti et a l'honneur de lui faire part que le Ministère des Affaires extérieures du Canada aimerait savoir si la République d'Haiti sera représentée par une délégation officielle à la deuxième session de la Conférence des Nations Unies sur le Droit des Traités qui se tiendra à Vienne en avril et mai 1969.

L'Ambassade du Canada sera heureuse de transmettre sans délai au Ministère des Affaires extérieures du Canada la réponse que le Département des Affaires Etrangères d'Haiti voudra bien lui communiquer en temps opportun à ce sujet.

L'Ambassade du Canada saisit cette occasion pour renouveler au Département des Affaires Etrangères de la République d'Haiti les assurances de sa très haute considération.

Port-au-Prince  
le 23 août 1968.



J2-2/645

20-3-1-6  
30/8  
EMBASSY OF THE UNION OF BURMA

OTTAWA

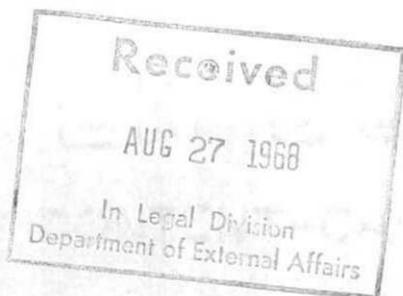
The Embassy of the Union of Burma presents its compliments to the Department of External Affairs and has the honour to acknowledge with thanks receipt of the Department's Note No.L-692 dated August 21, 1968 enquiring whether the Government of the Union of Burma expects to send a representative to the second session of the United Nations Conference on the Law of Treaties to be held in Vienna from April 9 to May 27, 1969.

The Department's enquiry has been referred to the appropriate authorities of the Government of the Union of Burma and as soon as the required information is obtained, the Embassy would be glad to transmit it to the Department.

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

Ottawa, August 23, 1968.

The Department of External Affairs,  
OTTAWA.



12.27.8

002474

EMBASSY OF THE UNION OF BURMA

OTTAWA

J2-2/645

The Embassy of the Union of Burma presents its compliments to the Department of External Affairs and has the honour to acknowledge with thanks receipt of the Department's Note No.L-692 dated August 21, 1968 enquiring whether the Government of the Union of Burma expects to send a representative to the second session of the United Nations Conference on the Law of Treaties to be held in Vienna from April 9 to May 27, 1969.

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

Ottawa, August 23, 1968.

The Department of External Affairs,  
OTTAWA.

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NO. L-692

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

M. D. COPITHORNE

OTTAWA, August 21, 1968

①

NNVVVV

*Mr. Copthorn  
Stanford*

*file 20-3-1-6  
JM 21/8*

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DE PTR

R 201355Z

FM PRET AUG20/68

TO EXTER 297

REF YOURTEL L681 AUG19

UN LAW OF TREATIES CONFERENCE SECOND SESSION

MEA MASERU HAS REPLIED REGARDING YOUR INQUIRY QUOTE WE THINK IT  
WILL BE POSSIBLE TO SEND REP UNQUOTE.

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NNNNVVVVV

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DATE	FILE / DOSSIER	SECURITY SECURITE
AUG. 19/68	20-3-1-6	UNCLSSFD.

TO/A BRUSSELS

NO	PRECEDENCE
L- 074	ROUTINE

INFO PERMISNY

REF

SUB/SUJ

U.N. LAW OF TREATIES CONFERENCE SECOND SESSION

GRATEFUL IF YOU COULD DETERMINE WHETHER LUXEMBOURG INTENDS TO SEND REPRESENTATIVE TO SECOND SESSION LAW OF TREATIES CONFERENCE VIENNA APRIL MAY 1969. LUXEMBOURG WAS NOT REPRESENTED AT FIRST SESSION OF CONFERENCE IN VIENNA EARLIER THIS YEAR.

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TO/A CAIRO

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**SUB/SUJ** U.N. LAW OF TREATIES CONFERENCE SECOND SESSION

GRATEFUL IF YOU COULD DETERMINE WHETHER SUDAN INTENDS TO SEND REPRESENTATIVE TO SECOND SESSION LAW OF TREATIES CONFERENCE VIENNA APRIL MAY 1969. SUDAN WAS NOT REPRESENTED AT FIRST SESSION OF CONFERENCE IN VIENNA EARLIER THIS YEAR.

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SIG..... M. D. COPITHORNE  
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U.N. LAW OF TREATIES CONFERENCE SECOND SESSION

GRATEFUL IF YOU COULD DETERMINE WHETHER UGANDA INTENDS TO SEND REPRESENTATIVE TO SECOND SESSION LAW OF TREATIES CONFERENCE VIENNA APRIL MAY 1969. UGANDA WAS NOT REPRESENTED AT FIRST SESSION OF CONFERENCE IN VIENNA EARLIER THIS YEAR.

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GRATEFUL IF YOU COULD DETERMINE WHETHER ICELAND INTENDS TO SEND REPRESENTATIVE TO SECOND SESSION LAW OF TREATIES CONFERENCE VIENNA APRIL MAY 1969. ICELAND WAS NOT REPRESENTED AT FIRST SESSION OF CONFERENCE IN VIENNA EARLIER THIS YEAR.

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U.N. LAW OF TREATIES CONFERENCE SECOND SESSION

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GRATEFUL IF YOU COULD DETERMINE WHETHER HAITI INTENDS TO SEND REPRESENTATIVE TO SECOND SESSION LAW OF TREATIES CONFERENCE VIENNA APRIL MAY 1969. HAITI WAS NOT REPRESENTED AT FIRST SESSION OF CONFERENCE IN VIENNA EARLIER THIS YEAR.

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**SUB/SUJ** U.N. LAW OF TREATIES CONFERENCE SECOND SESSION

GRATEFUL IF YOU COULD DETERMINE WHETHER BARBADOS INTENDS TO SEND REPRESENTATIVE TO SECOND SESSION LAW OF TREATIES CONFERENCE VIENNA APRIL MAY 1969. BARBADOS WAS NOT REPRESENTED AT FIRST SESSION OF CONFERENCE IN VIENNA EARLIER THIS YEAR.

DISTRIBUTION  
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 .....J. S. STANFORD:ZS.....

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SIG.....M. D. COPITHORNE.....

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**SUB/SUJ** U.N. LAW OF TREATIES CONFERENCE SECOND SESSION

GRATEFUL IF YOU COULD DETERMINE WHETHER LESOTHO INTENDS TO SEND REPRESENTATIVE TO SECOND SESSION LAW OF TREATIES CONFERENCE VIENNA APRIL MAY 1969. LESOTHO WAS NOT REPRESENTED AT FIRST SESSION OF CONFERENCE IN VIENNA EARLIER THIS YEAR.

DISTRIBUTION LOCAL/LOCALE

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U.N. LAW OF TREATIES CONFERENCE SECOND SESSION

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GRATEFUL IF YOU COULD DETERMINE WHETHER MALTA INTENDS TO SEND REPRESENTATIVE TO SECOND SESSION OF LAW OF TREATIES CONFERENCE VIENNA APRIL MAY 1969. MALTA WAS NOT REPRESENTED AT FIRST SESSION OF CONFERENCE IN VIENNA EARLIER THIS YEAR.

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ORIGINATOR/REDACTEUR

J. S. STANFORD

SIG.....J. S. STANFORD/zs.....

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M. D. COPITHORNE

SIG.....

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TO/A SAN JOSE

NO	PRECEDENCE
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**SUB/SUJ** U.N. LAW OF TREATIES CONFERENCE SECOND SESSION

GRATEFUL IF YOU COULD DETERMINE WHETHER NICARAGUA, EL SALVADOR AND PANAMA INTEND TO SEND REPRESENTATIVES TO SECOND SESSION LAW OF TREATIES CONFERENCE VIENNA APRIL MAY 1969. THESE COUNTRIES WERE NOT REPRESENTED AT FIRST SESSION OF CONFERENCE IN VIENNA EARLIER THIS YEAR.

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WASHINGTON

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684

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**REF**

**SUB/SUJ** U.N. LAW OF TREATIES CONFERENCE SECOND SESSION

PLEASE ASK EMBASSIES OF MAURITANIA and RWANDA WHETHER THEIR GOVERNMENTS  
 EXPECT TO BE REPRESENTED AT U.N. LAW OF TREATIES CONFERENCE SECOND SESSION  
 VIENNA APRIL MAY 1969. NEITHER COUNTRY WAS REPRESENTED AT FIRST SESSION  
 OF CONFERENCE IN WIENNA EARLIER THIS YEAR.

DISTRIBUTION  
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DATE	FILE/DOSSIER	SECURITY SECURITE
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TO/A BEIRUT

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 L- 672  
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INFO PERMISNY

**REF**

**SUB/SUJ** U.N. LAW OF TREATIES CONFERENCE SECOND SESSION

GRATEFUL IF YOU COULD DETERMINE WHETHER JORDAN INTENDS TO SEND REPRESENTATIVE TO SECOND SESSION LAW OF TREATIES CONFERENCE VIENNA APRIL MAY 1969. JORDAN WAS NOT REPRESENTED AT FIRST SESSION OF CONFERENCE IN VIENNA EARLIER THIS YEAR.

DISTRIBUTION  
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TO/A BUENOS AIRES

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**SUB/SUJ**

U.N. LAW OF TREATIES CONFERENCE SECOND SESSION

GRATEFUL IF YOU COULD DETERMINE WHETHER PARAGUAY INTENDS TO SEND REPRESENTATIVE TO SECOND SESSION LAW OF TREATIES CONFERENCE VIENNA APRIL MAY 1969. PARAGUAY WAS NOT REPRESENTED AT FIRST SESSION OF CONFERENCE IN VIENNA EARLIER THIS YEAR.

DISTRIBUTION  
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DIVISION

TELEPHONE

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SIG..... J. S. STANFORD  
 J. S. STANFORD/SS

LEGAL

2-5406

SIG..... M. D. COPITHORNE

*Mr. Beaudette (PR)*  
*Return pls. Feb 20-3-1-6*  
*J. [Signature]*



McGILL UNIVERSITY  
MONTREAL

CHANCELLOR DAY HALL  
3644 PEEL STREET  
MONTREAL 2, QUEBEC  
CANADA

FACULTY OF LAW  
THE DEAN

August 16, 1968

Personal

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

Dear Mr. Stanford:

How kind of you to send me the materials on the  
Law of Treaties Conference. I shall keep the extra copies  
listed -

- L.370
- L.370/Add.1 (Part B)
- L.370/Add.2
- L.370/Add.3 (Part B)
- L.370/Add.3 (Part D)
- L.370/Add.4
- L.370/Add.5
- L.370/Add.6

and return the others after I have had them xeroxed.

We are very grateful to you for all the trouble you  
have taken.

Sincerely yours,

Maxwell Cohen

MC:sl

*Jim Bishop*

*Mr. Stephens*

O/SSEA  
O/USSEA  
Parliamentary Secretary  
Press Office  
Co-Ordination Division  
U.N. Division  
European Division  
Mr. Yalden (O/USSEA)

INFO  
NO RUSH

CONFIDENTIAL

20-3-1-6

August 14, 1968

"J"  
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To see: *(circled)* *(circled)* *(circled)*  
French note  
USSR stand.  
*(circled S)*

MEMORANDUM FOR THE MINISTER

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

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

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

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

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

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

- 2 -

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

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

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

- 3 -

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

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

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CONFIDENTIAL

- 4 -

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

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

M. CADIBUN

M.C.

BEST COPY AVAILABLE

*Beefrey, Stanford**file 20-3-1-6 11/15/8*

OTT035

80-3-1-6		
30		11

PAR033GVA19

**ACTION COPY**

PP OTT PP COP PP NYK

DE GVA

P 151051Z

FM GENEV AUG15/68 NO/NO STANDARD

TO EXTER 1037 PRIORITY

COPEN PRMNY PRIORITY

REF YOURTELS L646 AUG9 AND L656 AUG14

LAW OF TREATIES CONFERENCE; DOCUMENTATION

DOCUS ENUMERATED IN PARA ONE OF YOURTEL L646 WERE DISPATCHED UNDER TS JUL29 BY AIRFREIGHT TO EXTER ONLY. SRS ENUMERATED IN PARA TWO WERE ALSO INCLUDED IN SAME LOT EXCEPT FOR SR76 WHICH WAS DISPATCHED UNDER TS AUG14 TO ALL ADDRESSEES.

2. IN ORDER TO AVOID DUPLICATING SHIPMENTS GRATEFUL IF PRMNY AND COPEN WOULD RPT REQUEST FOR ANY PARTICULAR DOCUS THEY MAY BE LACKING.

*2.15.8*

20-3-1-6  
32 | /

OTTAWA, August 14, 1968.

Dear Dean Cohen,

Since I spoke to you on Friday we have received from Geneva the remaining documentation relating to the first session of the Law of Treaties Conference.

-- I enclose the complete Draft Report of the Committee of the Whole on its work at the first session of the Conference and the Provisional Summary Records of all meetings (except the 76th) of the Committee of the Whole.

As I explained to you on the telephone, we do not have extra copies of most of the Conference documents. The following portions of the Draft Report are extra copies and may be retained by you:

L.370  
L.370/Add. 1 (Part B)  
L.370/Add. 2  
L.370/Add. 3 (Part B)  
L.370/Add. 3 (Part D)  
L.370/Add. 4  
L.370/Add. 5  
L.370/Add. 6

I should be grateful if the remaining portions of the Draft Report and all of the Provisional Summary Records could be returned to us after you have had them reproduced.

Yours sincerely,

J. S. STANFORD

J. S. Stanford.

Dean Maxwell Cohen,  
Faculty of Law,  
McGill University,  
MONTREAL, P. Q.

*thru Mr Yalden*

RETURN TO LEGAL DIV. DSC

CONFIDENTIAL

August 14, 1968

20-3-1-6  
32 | —

O/SSEA  
G/USSEA  
Parliamentary Secretary  
Press Office  
Co-Ordination Division  
U.N. Division  
European Division  
Mr. Yalden (O/USSEA)  
File  
Diary  
Div. Diary

MEMORANDUM FOR THE MINISTER

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

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

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

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

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

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

14. 8. 36 (U.S.)

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

As a consequence of these developments the word "States" was deleted from paragraph 2, but the paragraph thus amended was retained by a simple majority (46 for the article, 39 against, 3 abstentions). At the second session next spring, every article in order to be accepted for inclusion in the final draft treaty must be adopted by a two-thirds majority of the vote in Plenary, as opposed to a simple majority in Committee of the Whole at the first session. Although Article 5(2) did not receive a two-thirds majority at the first session, it may be expected that there will exist at the second session a general bias in favour of articles adopted at the first session. It cannot be assumed, therefore, that Article 5(2) will be rejected in the absence of a determined effort by its opponents to defeat it.

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

- 3 -

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

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

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M. CADIEUX

M.C.

*Legat*  
*G'* *20-3-16*  
*20/8*

*20-3-1-6*  
*30* | *30*

**ACTION COPY**

*Mr. Stamford*  
*Legal*

FM CNBRA AUG14/68 CONFD  
TO EXTER 1201

PLEASE PASS FOLLOWING TO AE GOTLIEB FROM IVAN HEAD  
OPPORTUNITY AROSE HERE TO INFORM BRAZIL AND BRAY OF DEA OF DEC  
MTG IN KRCHI OF ASIA-AFRICAN LEGAL CONSULTATIVE CTTEE.THEY HAD  
NOT/NOT HEARD OF IT.

2.BRAZIL STATED THAT AUSTRALIAN DEL TO GENERAL ASSEMBLY WILL SPEAK  
WITH KEY DELS IN NY CONCERNING THE FEDERAL-STATE CLAUSE BUT NO/NO  
OTHER INITIATIVES CONTEMPLATED PRIOR TO VIENNA CONFERENCE.IN HIS  
VIEW THE FRENCH-SPEAKING STATES ARE THE MOST IMPORTANT IN THIS  
RESPECT.

*20.19.8 (Legal)*  
*14.8.1 (U.S).*

**Received**  
AUG 19 1968  
In Legal Division  
Department of External Affairs  
002502

file 20-3-1-6  
JL 24/6

A copy of this memo  
including my agreement should  
be sent to the P of J for his  
information

Done  
15/8 ADM

WJ

*file 20-3-1-6*  
*J. 20/6*

CONFIDENTIAL

August 14, 1968

MEMORANDUM FOR THE MINISTER

20-3-1-6  
52 | —

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

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

*J. 20/6*  
*MS*

...2

*17-8-26/45) Rom*

- 2 -

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

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

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...3

- 3 -

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**CONFIDENTIAL**

- 4 -

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M.C.

File  
Tel. File  
Diary  
Div. Diary

J.S. Stanford

**MESSAGE**

FM/DE	EXTERNAL OTT	DATE	FILE/DOSSIER	SECURITY SECURITE
		Aug. 13/68	20-3-1-6 82	UNCLASSIFIED
TO/A	GENEVA	NO L-656	PRECEDENCE ROUTINE	
			INFO	COPENHAGEN, PERMIS NY.

**REF** OUR TELEGRAM L-646 OF AUGUST 9, 1968

**SUB/SUJ** LAW OF TREATIES CONFERENCE FIRST SESSION DOCUMENTATION

TRANSMITTAL SLIP OF JULY 29 WITH ADDITIONAL DOCUMENTATION RECEIVED TODAY

MANY THANKS FOR YOUR ASSISTANCE.

DISTRIBUTION LOCAL/LOCALE		NO STANDARD		
ORIGINATOR/REDACTEUR J.S. STANFORD	DIVISION	TELEPHONE	APPROVED/AUTORISE	
SIG.....J.S. STANFORD/ZS.....	LEGAL	2-5406	SIG.....J.S. STANFORD.....	

File  
Tel. File  
Diary  
Div. Diary

# MESSAGE

DATE		FILE/DOSSIER		SECURITY SECURITE	
Aug. 9/68		20-3-1-6		UNCLASSIFIED	
FM/DE		EXTERNAL OTT		PRECEDENCE	
TO/A		GENEVA		NO L-646	
INFO		COPENHAGEN, PERMISNY		IMMEDIATE	

**REF**

**SUB/SUJ** LAW OF TREATIES CONFERENCE FIRST SESSION DOCUMENTATION

THANK YOU FOR TRANSMITTAL SLIP JULY 31 ENCLOSING TWO COPIES EACH OF L370/ADD 1 (PART A) and L370/ADD 7. HOWEVER WE APPEAR STILL TO BE MISSING L370/ADD 3(PART A) and L370/ADD 3(PART C). GRATEFUL IF YOU COULD OBTAIN COPIES OF THESE DOCUMENTS FOR US AS WELL AS FOR COPENHAGEN AND PERMISNY.

2. GRATEFUL ALSO FOR SUMMARY RECORDS OF 57, 76, 78, 80, 82 AND SUBSEQUENT MEETINGS OF THE COMMITTEE OF THE WHOLE AND THE CLOSING MEETING OF THE PLENARY ON MAY 24.

DISTRIBUTION  
LOCAL/LOCALE

NO STANDARD

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

*Mr. Rogerson  
to see*

*Mr. [unclear]  
Standford*

**ACTION COPY**  
*file 20-3-1-6*  
*5/8*  
*21/4*

FM GENEV AUG7/68 CONF D

TO EXTER 1007 IMMED

REF YOURTEL L630 AUG2

ILC DISCUSSION ON STATE SUCCESSION

AS SUGGESTED IN YOUR REFTEL WE CONTACTED USA AMBASSADOR RICHARD KEARNEY CONCERNING DISCUSSIONS OF INTERNATL LAW COMMISSION WHICH ENDED FRI AUG2. FOLLOWING OBSERVATIONS RESULT FROM OUR TALK WITH KEARNEY.

2. TWENTIETH SESSION OF ILC WHICH LASTED TEN WEEKS WAS PRINCIPALLY MOPPING-UP EXERCISE FOLLOWING VIENN CONFERENCE ON LAW OF TREATIES. HOWEVER, APART FROM SUBJECTS SUCH AS PERMISS, DELS TO ORGANS OF INTERNATL ORGANIZATIONS AND PERM OBSERVERS MTG SPENT ABOUT TWO WEEKS DEALING WITH IMPORTANT AND INTERESTING SUBJECT OF STATE SUCCESSION. THESE DISCUSSIONS CENTERED UPON THREE PAPERS PRESENTED BY (A) USTOR OF HUNGARY (B) SIR HUMPHREY WALDOCK AND (C) ALGERIAN MINISTER OF JUSTICE.

3. HUNGARIAN PAPER DEALT WITH MOST FAVOURED NATION CLAUSE IN TREATIES AND WAS VERY PRELIMINARY IN NATURE AND THEREFORE DID NOT/NOT ATTRACT MUCH DISCUSSION.

4. WALDOCKS PAPER DEALT WITH STATE SUCCESSION IN RESPECT OF TREATIES AND WAS CHARACTERIZED BY WELL-BALANCED APPROACH. HE ALSO SUBMITTED FOUR DRAFT ARTICLES.

5. ALGERIAN PAPER, WHICH ATTRACTED MOST ATTENTION, WAS DESCRIBED AS BEING ON RADICAL SIDE. IT CONCERNS STATE SUCCESSION IN RESPECT OF MATTERS OTHER THAN TREATIES AND INCLUDED PROBLEMS OF ACQUIRED RIGHTS, CONCESSION AGREEMENTS, GOVTL CONTRACTS AND STATUS OF ALIENS.

...2

*4.8.8.*

PAGE TWO 1007 CONFD

ALGERIAN APPROACH WAS AIMED AT APPEALING TO EX-COLONIES AND DID NOT/NOT MISS ITS MARK. SUPPORT FOR HIS SUGGESTIONS CAME FROM MIDDLE EAST, AFRICAN AND SOCIALIST REPS AND, TO LESSER EXTENT, BY LATINOS. IT IS IMPORTANT TO RECALL HERE THAT ALL MEMBERS SPOKE IN THEIR INDIVIDUAL CAPACITIES. CONSERVATIVE MEMBERS EXPRESSED CONSIDERABLE DOUBT ABOUT THIS PROPOSAL BUT TRIED TO AVOID GETTING INTO DETAILED ANALYSIS OF SUBSTANTIVE PROBLEMS. HOWEVER SUPPORTERS OF ALGERIAN DID TAKE THESE MATTERS UP.

6. WITH REGARD TO YOUR REQUEST FOR TEXT OF USA STATEMENT, KEARNEY SAID HE DID NOT/NOT SPEAK FROM WRITTEN TEXT BUT RECALLED THAT IN TWO STATEMENTS HE DID MAKE HE CENTERED ON OBJECTIONAL CONSEQUENCES OF TRYING TO DRAFT INTERNATL LAW BASED PRINCIPALLY ON EXPERIENCE OF EX-COLONIES BOTH FROM STANDPOINT OF COMPLETENESS AND UTILITY. HE CLAIMS THAT ALGERIAN MINISTER DREW BACK A BIT AT THIS POINT BUT INDICATED NEVERTHELESS THAT HE WOULD BE PREPARING DRAFT ARTICLES ON ECONOMIC AND FINANCIAL ASPECTS OF STATE SUCCESSION (EG STATE PROPERTY) FOR NEXT YEARS SESSION.

7. WE HOPE TO OBTAIN COPIES OF THREE PAPERS PRESENTED AT MTG WHICH WE WILL FORWARD TO YOU. POSSIBILITY OF GETTING SRS COVERING THESE DISCUSSIONS ARE NOT/NOT AS GOOD AS THEY ARE UNLIKELY TO BE RELEASED BEFORE MEMBERS HAVE HAD OCCASION TO SUBMIT CORRECTIONS.

file JAL 15/18

Wanted for  
let's discuss

ACTION COPY

20-3-1-6  
A.E. GOTLIEB  
22 | 11

G

Mr. A. P. P. Stanley  
Legal Div. Mr. Stanley

Received  
AUG 6 1968  
In Legal Division  
Department of External Affairs

FM KLMPR AUG5/68 CONFID

TO EXTER 841 PRIORITY

PLEASE TRANSMIT FOLLOWING TO AE GOTLIEB FROM IVAN HEAD

VISIT OF PROF HEAD-LAW OF TREATIES

IN COURSE OF RESEARCH ACTIVITIES, I HAVE HAD OPPORTUNITY TO

TALK UNOFFICIALLY ABOUT LAW OF TREATIES TO SAMAD, KRISHNA RAO,

PINTO AND RAMANI, LEGAL ADVISERS RESPECTIVELY OF PAK, INDIA,

1-56)mcw before DC 00 abs 00 abs  
2-56)mcw after DC  
3-21500000 after DC  
CEYLON AND MALAYSIA, PLUS ABAS, MALAYSIAN SOLICITOR GENERAL.

THEIR ATTITUDE IN ALL CASES WAS SYMPATHETIC TO CDN POSITION.

2. IT WAS SUGGESTED TO ME THAT ANY CDN REQUESTS TO THESE GOVTS

FOR SUPPORT ON FEDERAL STATE CLAUSE BE COMMUNICATED EARLY AS

LEGAL ADVISERS WILL ALL PROCEED DIRECT FROM GEN ASSEMBLY TO

MTG OF ASIAN AFRICAN LEGAL CONSULTATIVE CTTEE IN KIRCHI IN DEC.

THERE COMWEL REPS EXPECT TO CAUCUS AND DISCUSS POSITIONS TO BE

TAKEN IN VIENA FOLLOWING SPRING.

3. INDIAN ATTITUDE TOWARD USSR AT PRESENT QUITE COOL AS A RESULT

OF ARMS TO PAK AND SOME SPIRITED SUPPORT OF CDA NOT/NOT IM-

POSSIBLE.

6-87 (U.S.)

11.6.8 (Legal)

*file 11/13/6*

*20-3-66  
20-3-1-66  
32*

*Mr. Stewart  
re Jul 5 - Jan 1*

**Received**  
AUG 14 1968  
In Legal Division  
Department of External Affairs

FM CNBRA AUG14/68 CONFD  
TO EXTER 1201

PLEASE PASS FOLLOWING TO AE GOTLIEB FROM IVAN HEAD  
OPPORTUNITY AROSE HERE TO INFORM BRAZIL AND BRAY OF DEA OF DEC  
MTG IN KRCHI OF ASIA-AFRICAN LEGAL CONSULTATIVE CTTEE. THEY HAD  
NOT/NOT HEARD OF IT.

2. BRAZIL STATED THAT AUSTRALIAN DEL TO GENERAL ASSEMBLY WILL SPEAK  
WITH KEY DELS IN NY CONCERNING THE FEDERAL-STATE CLAUSE BUT NO/NO  
OTHER INITIATIVES CONTEMPLATED PRIOR TO VIENNA CONFERENCE. IN HIS  
VIEW THE FRENCH-SPEAKING STATES ARE THE MOST IMPORTANT IN THIS  
RESPECT.

*original  
being held  
for Mr. Sothick  
(Mr. Barton has seen)  
DC -*

*14.8.1 (U.S.)*

Legal/J.S. Stanford/gp

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

MEMORANDUM

TO  
À  
**Mr. J. Demers**

FROM  
De  
**Mr. J. S. Stanford**

REFERENCE  
Référence  
**Your Memorandum of July 31, 1968**

SUBJECT  
Sujet  
**Expected Development at the 23rd Session of the  
UNGA - Law of Treaties**

SECURITY UNCLASSIFIED  
Sécurité

DATE **August 2, 1968**

NUMBER  
Numéro

FILE	DOSSIER
OTTAWA 20-3-1-6	
MISSION	<i>32</i>

ENCLOSURES  
Annexes

The following paragraph on the law of treaties might be included in the exposé referred to in your memorandum:

DISTRIBUTION

In 1966 the International Law Commission produced an extensive draft convention on the law of treaties. The UNGA decided in 1966 and again in 1967 that the ILC draft should form the basis for an international conference to prepare a convention on the law of treaties. The General Assembly further decided that this conference should take place in two sessions, one in the spring of 1968 and the second in the spring of 1969. The first session of this conference took place in Vienna from March 26 to May 24, 1968. At the conclusion of the first session the conference recommended that the second session take place, also in Vienna, from April 9 to May 21, 1969. It is unlikely that the Sixth Committee will take any action with respect to the law of treaties other than to concur in the proposal for the second session of the international conference.

J. S. STANFORD

J. S. Stanford.

NNNNVVVVV

file 20-3-1-6  
M 19/8

ACTION COPY

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PAR105

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RR OTT RR COP RR NYK

DE GVA

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FM GENEV AUG1/68 NO/NO STANDARD

TO EXTER 979

INFO COPEN PRMNY

REF COPEN TEL 359 JUL30

20-3-1-6	
32	32

LAW OF TREATIES CONFERENCE FIRST SESSION DOCUMENTATION

WE LEARNED FROM HEAD OF UN DOCU DIV THAT DOCUS REQUESTED WERE OUT OF PRINT IN GENEV AND THAT STENCILS WERE IN NY. FOLLOWING UP WERSHOF'S SUGGESTION WE OBTAINED ON EXCEPTIONAL BASIS UN FILE COPIES OF THESE DOCUS FOR PURPOSE OF REPRODUCING NECESSARY NUMBER OF COPIES AT OUR MISSION. TWO COPIES WILL BE FORWARDED TO EXTER AND ONE TO COPEN.

2. UN CONFIRMED THAT ADD 7 IS LAST PORTION OF L370.

17, 1, 8