Vol. 10

File No. 20-3-1-6

Department of External Affairs

CLASSIFIED

File No. 20-3-1-6

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

Vol. 10
From 3 MAR/69
To APR 15/69

References to Related Files

File No.	Subject

PAC

PUBLIC RECORDS ORDER
P.C. 1966 - 1749 - AUTHORITY
PUBLIC ARCHIVES APPROVALS
NOS 68/001 & 69/063

RETENTION PERIOD AND DISPOSITION
10 yrs 2A-8D
AND... THEN TRANSFER TO P.A.C. FOR SELECTIVE RETENTION

DIVISIONAL SYMBOL
LORD

003438

CANADA

DATED FROM MAR 1/69 FILE No. 20-3-1-6

TO APR. 15/69 VOLUME No. 10

CLOSED VOLUME

DO NOT PLACE ANY CORRESPONDENCE ON THIS FILE

FOR SUBSEQUENT CORRESPONDENCE SEE:

FILE No. 20-3-1-6 VOLUME No. 11

PLEASE KEEP ATTACHED TO TOP OF FILE

7540-21-562-8210

Div. Diary
Tel File
File
Diary

MESSAGE

20-3-1-6

DATE	FILE/DOSSIER	SECURITY SECURITE
APR.15/69	~~20-3-16~~	CONFIDENTIAL

FM/DE EXT/OTT

	NO	PRECEDENCE
TO/A ~~CANADIAN DELEGATION,~~ VIENNA	L-487	PRIORITY
INFO		

REF TEL FM KLMPR 527 APR 15/69

SUB/SUJ LAW OF TREATIES-ARTICLE 5

FOR CDN DELEGATION

PLEASE ADVISE IF YOU WISH US TO RESPOND TO REFTEL WHICH WAS COPIEDTO YOU.

2. MEMO TO MINISTER RE INSTRUCTIONS FOR CANADIAN DELEGATION TO LAW OF TREATIES FORCE SIGNED BY UNDER SECRETARY APRIL 14 AND WILL PRESUMABLY BE APPROVED BY MINISTER NEXT WEEK WHEN HE RETURNS FROM OFFICIAL VISIT TO TOKYO.

DISTRIBUTION
LOCAL/LOCALE NO. STD.

ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	APPROVED/AUTORISE
SIG B.MAWHINNEY	LEGAL	2-9553	SIG

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

003440

return to BM

M. D. COPITHORNE

20-3-1-6

FM VIENN APR15/69 RESTR NO/NO STANDARD

TO TT EXTEROTT 282 PRIORITY DE PARIS

INFO TT BERN DE PARIS

FOLLOWING FOR MAWHINNEY, LEGAL DIV DE STANFORD

LAW OF TREATIES-ARTICLE 5-SWITZERLAND

PLEASE ASK DE DARDEL, COUNSELLOR AT SWISS EMB, WHEN HIS AMBASSADOR EXPECTS TO REPLY TO SSEAS REQUEST FOR INDICATION OF SWISS POSITION ON ARTICLE 5(2).

2. VOTE ON 5(2) MAY COME NEXT WEEK AND, UNLESS SWISS REPLY TO SSEA BY END OF PRESENT WEEK WE SHALL HAVE TO RESUME APPROACH TO SWISS DEL HERE WITHOUT AWAITING REPLY IN OTT.''''

2/1.6/4

Report to Vienna
Cdn del.
Law of Treaties

M. D. COPITHORNE

ACTION COPY

L 20-3-1-6
21

FM KLMPR APR15/69 CONFD NO/NO STD

TO EXTER 527 IMMED

REF OURTELS 490 APR10 496 APR11

LAW OF TREATIES-ARTICLE 5

RAMANI CALLED ME IN THIS MORNING TO DISCUSS INFO GIVEN US LAST WEEK BY AYATHURAY ON MALAYSIAN APPROACH TO ARTICLE 5.IT WOULD APPEAR THAT AYATHURAY WHEN HE SPOKE TO US LAST WEEK DID NOT/NOT FULLY UNDERSTAND RAMANIS INTENTIONS OR BRIEF SUBMITTED TO MALAYSIAN CABINET.THIS MORNING RAMANI WAS AT GREAT PAINS TO EXPLAIN THAT HE HOPES THAT CDA WILL TAKE INITIATIVE RE SUGGESTED AMENDMENT GIVEN IN PARA3 OF OURTEL 490.

2.RAMANI SAID THAT HE FELT THAT TACTICALLY IT WOULD BE DIFFICULT TO PERSUADE THOSE ATTENDING CONFERENCE TO DELETE PARA2 OF ARTICLE 5 BUT THAT CDA AND OTHER FEDERAL STATES WERE FACED WITH A QUOTE REAL SITUATION UNQUOTE AND THAT IT WOULD BE BEST TO PROTECT POSITION OF FEDERAL STATES LIKE CDA WHILE TAKING INTO ACCOUNT RELTIES THAT PREVAIL IN OTHER FEDERAL STATES.HE SUGGESTED THAT AMENDMENT QUOTED IN OUR 490 WOULD HIS VIEW MEET THESE QUOTE REALTIES UNQUOTE.HE POINTED OUT THAT STATES SUCH AS ARGENTINA MEXICO VENEZUELA SWITZERLAND AUSTRIA AND USSR SPECIFICALLY PROVIDE IN THEIR CONSTITUTIONS FOR RIGHT OF CONSTITUENT UNITS TO ENTER DIRECTLY INTO TREATY RELATIONS AND THAT DOCUS PREPARED FOR CONSIDERATION BY DELS TO CONFERENCE TAKE SPECIAL NOTE OF THIS.

3.HE IS SUGGESTING THEREFORE THAT CDA TAKE INITIATIVE IN INTRODUCING HIS SUGGESTED AMENDMENT TO ARTICLE 5 AND HE PROMISED THAT CDA

...2

10/15/4

WOULD HAVE MALAYSIAS QUOTE SUPPORT AND ADVOCACY UNQUOTE AT CONFERENCE FOR AMENDMENT IF WE DO DECIDE TO TAKE INITIATIVE.HE SAID THAT AS MALAYSIA IS NOT/NOT FACED WITH SAME KIND OF PROBLEM AS IS CDA AND SOME OTHER FEDERAL STATES HE THEREFORE DID NOT/NOT FEEL THAT MALAYSIA SHOULD TAKE INITIATIVE IN VIENA RE AMENDMENT.

4.RAMANI IS DUE TO LEAVE FOR LDN APR23 ON PRIVATE BUSINESS AND THEN IS GOING TO VIENA AROUND MAY7 OR 8 TO ASSUME LEADERSHIP OF MALAYSIAN DEL.HE HOPES THAT IT MIGHT BE POSSIBLE FOR YOU TO GIVE PRELIMINARY REACTION TO HIS SUGGESTION BEFORE HE DEPARTS FOR LDN. HE ADDED THAT HE LOOKS FORWARD TO DISCUSSING THE PROBLEM OF ARTICLE 5 WITH CANDEL IN VIENA AND THAT HE WISHES TO WORK CLOSELY WITH US ON PROBLEM OF THIS ARTICLE.

5.I TOLD RAMANI THAT WE HAD RECEIVED AS YET NO/NO REACTION TO WHAT AYATHURARY HAD TOLD US LAST WEEK AND RPTD THAT MY UNDERSTANDING WAS THAT CDA FELT THAT PARA2 OF ARTICLE 5 SHOULD BE DELETED.I THEN ASKED RAMANI DIRECTLY WHETHER IN EVENT CDA PUSHED FOR DELETION OF PARA2 OF ARTICLE 5 MALAYSIA WOULD SUPPORT US.HIS ANSWER WAS AN UNEQUIVOCAL QUOTE YES UNQUOTE BUT THAT HE CONTINUED TO FEEL THAT TACTICALLY IT WOULD BE BETTER TO LEAVE PARA2 IN ARTICLE AND ADD HIS SUGGESTED PROVISON TO ARTICLE.

6.GRATEFUL FOR YOUR PRELIMINARY REACTIONS.IF IT IS POSSIBLE THAT ARTICLE 5 MIGHT BE RAISED IN VIENA BEFORE RAMANI ARRIVES AND AS IT IS CLEAR THAT HE IS VERY MUCH IN CHARGE OF MALAYSIAN DEL IT WOULD BE ADVANTAGEOUS TO PUT OUR VIEWS TO RAMANI NOW SO THAT HE CAN ADVISE MEMBERS OF HIS DEL ALREADY IN VIENA

SHORTLIFFE

Diary
Circ.
File

M Mawhinney F. Mathy

TO: M Stanford
FROM REGISTRY
APR 18 1969
FILE CHARGED OUT
TO:

EXTERNAL AFFAIRS AFFAIRES EXTÉRIEURES

20-3-1-6

UNCLASSIFIED

TO
À

The Canadian Embassy,
Vienna, AUSTRIA

FROM
De

The Permanent Mission of Canada
to the United Nations, NEW YORK

I-65

SECURITY
Sécurité

DATE

April 15, 1969

NUMBER
Numéro

313

REFERENCE
Référence

SUBJECT
Sujet

Vienna Conference on the Law of Treaties

FILE	DOSSIER
OTTAWA 20-3-1-6	
MISSION 37	8

ENCLOSURES
Annexes

DISTRIBUTION

Ottawa ✓

We have received a note No. 60 together with a Note Verbale from the Mission of Spain to the United Nations stating that the Spanish Delegation at the Vienna Conference on the Law of Treaties intends to submit a proposal for the settlement of disputes on the Convention presently under discussion at the Conference.

2. We attach both the note (in Spanish) and the Note Verbale, the content of which should be known to you by now.

GORDON E. COX

Permanent Mission

18/18/4

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

Misión permanente de España
en las Naciones Unidas

Núm. 60.

La Misión Permanente de España en las Naciones Unidas saluda atentamente a la Misión Permanente de Canadá en las Naciones Unidas y, con relación a la Conferencia de las Naciones Unidas sobre el Derecho de los Tratados que se está celebrando en Viena, tiene la honra de informarle que la Delegación española se propone presentar una propuesta para la solución de las controversias sobre la futura convención codificadora del Derecho de los Tratados, y de remitirle texto de dicha propuesta.

La Misión Permanente de España aprovecha esta oportunidad para reiterar a la Misión Permanente de Canadá el testimonio de su más alta consideración.

Nueva York, 9 de abril de 1969

Misión Permanente de Canadá
en las Naciones Unidas
Nueva York

NOTE VERBALE

The Spanish Delegation at the Vienna Conference on the Law of Treaties intends to submit a proposal for the settlement of disputes on the Convention, the provisional text of which is attached to the present Note, and which consists of an article 62 bis, a new article and an Annex to the Convention.

The Spanish Government believes that the encouraging result of the Conference's work in its first ---- session is bound to stimulate all Governments in facing the continuance of the Conference's tasks next April. . It would indeed be most regrettable if the Conference were to conclude its work, without achieving the adoption of a Convention on the Law of Treaties, that would codify principles and rules in this sphere, which is - essential for relations between States.

Throughout the 1968 deliberations of the Conference, it was possible to observe the opposition of several delegations to Part V of the Draft Articles, which was deemed prejudicial to the stability of international - conventional relations. There also appeared a seemingly inflexible opposition on the part of certain delegations, whose vote, in favour of the adoption of the future Convention, was made dependent on the establishment of an obligatory system of solving disputes about the validity of international treaties. This policy gives rise to apprehensions that, unless a formula satisfactory to -- this group of delegations is devised, it may prove --- difficult to achieve the required two-thirds majority for the adoption of the text of the future codifying - Convention.

The Spanish Government is not unware of the se-- rious difficulties involved in finding a generally --- acceptable procedure for the settlement of disputes -- between States. Fist of all, it would be necessary to surmont States' natual unwillingness to submit questions affecting their vital interests to an international organ, especially if that submission is not accompanied

troversies in the field of international treaties:

1.- The control of the application of the legal rules contained in the Convention would be entrusted to the institutional system of the United Nations, as the highest contemporary organizational form of the - international Community. To that end, a United Nations Commission for Treaties, truly representative of the International community, would be created, as a permanent organ of the General Assembly, with the functions and faculties specified in the Annex to the Convention. The Vienna Conference would recommend to the General - Assembly the creation of this Commission.

2.- Any dispute about the interpretation or application of the Convention, and especially those arising out of Part V, should they not be settled by --- means of solution chosen by the Parties, would be treated in two distinct phases, both controlled by the -- Treaties Commission. In the first phase, predominantly political, the Commission would attempt an amicable - and equitable solution, by way of recommendation to - the parties. It could also appoint a reduced organ, a conciliation Commission in the composition of which - the intervention of the parties would be greater. The Spanish Delegation's view is that, in the course of - time, the work of this Commission will provide a dynamic and progressive element, of which the international legal order, for its peaceful and just evolution, stands in need.

3.- The passage to the second phase, which is of an arbitral nature and must conclude in a binding decision, is also subject to the Commission's control, through its power to qualify a controversy as legal. Only such controversies, or such aspects of a controversy, that deserve such a qualification will in due course become the subject of a decision by the Arbitration Tribunal.

4.- A most important element in this system is - the appointment of Chairmen, either of the Arbitration Tribunal or of the special conciliation Commissions, by the United Nations Commission for Treaties itself.

In the Spanish Delegation's view, this ensures the highest possible degree of objectivity and impartiality in such appointments.

Guided by a spirit of good will and a desire to surmount the difficulties which seem to be confronting the Conference, the Spanish Government hopes that these proposals will meet with a favourable reception from the delegations present at Vienna. The Spanish delegation would be grateful if observations concerning the foregoing suggestions are conveyed to it as soon as possible.

Text of the Spanish Proposals

Article 62 bis

If the parties have not been able to come to an agreement, in accordance with the provisions of article 62, upon a means of reaching a solution during the four months following the date on which the objection was framed, or if they have agreed upon a method or settlement other than a judicial or arbitral decision and have not, by that method of settlement, arrived at a solution within the twelve months following the date of the agreement, either party may then apply, through the Secretary General of the United Nations, for the commencement of the procedure set forth in the annex to the present Convention.

Annex

Article 1.- 1. It is established a "United Nations Commission for Treaties" (hereinafter called "the Commission") as a permanent subsidiary organ of the General Assembly, composed of the representatives of [illegible] Member States, chosen in such a manner as to ensure a wide geographical distribution and the appropriate representation of the world's major legal, political and social systems.

2. The States elected as members of the Commission shall appoint it possible, as their representatives, persons of recognized prominence and of the highest legal competence.

3. The members of the Commission shall be elected for nine years and may be re-elected. The Commission shall be renewable as to one-third by elections every three years-

Article 2.- 1. The Commission shall adopt its own rules of procedure.

2. Resolutions of the Commission shall be made by majority of votes.

3. The Secretary-General will provide the Commission with all necessary assistance and facilities. The expenses of the Commission will be defrayed by the United Nations.

Article 3.- The Commission shall consider the controversies submitted to it in accordance with the provisions of the Convention by the States which are parties in those controversies, and shall establich the facts and make proposals to the parties, for the purpose of solving the dispute in an amicable and equitative manner.

Article 4.- 1. The Commission may discharge the function conferred in the foregoing article in plenary session. It may also set up a Special conciliation Commitee, if the Commission itself so decides, or if all the parties to the controversy so request.

2. For the appointment of the Special conciliation Commissions, the Secretary-General of the United Nations will draw up a permanent list of conciliators composed of qualified jurisconsults. To this end he will invite every State Member of the United Nations or party to the present Convention to designate two conciliators for a period of five years, which shall be renewable.

3. When the setting up of a Special conciliation Commission has been decided upon, each of the parties to the dispute shall appoint two conciliators from among the members of the list, of which only one may be of its own nationality. The Chairman shall be chosen by the Commission from among the members of the list.

4. The conciliators chosen by the parties must be designated within a period of one / two / months from the date when the creation of the Special conciliation Commission shall have been decided upon. The appointment of the Chairman of the Special conciliation Commission must be made within the same period. Should the nomination of conciliators not have been made within the period indicated above, it will devolve upon the Commission to nominate them.

5. The Special conciliation Commission shall establish the facts and make proposals to the parties so as to arrive at a solution of the dispute in a friendly and equitative manner. They will send a report on their action to the Commission.

Article 5.- If after three months from the date on which the Commission, or the special conciliation Commission as the case may be, has made proposals to the parties for solving the dispute and these proposals have not been accepted by the parties, nor have the latter agreed during that period on any means of arbitral or judicial decision, the Commission shall decide whether the controversy should be qualified as a legal controversy, and if so, will submit it to an arbitration Tribunal.

Article 6.- 1. The arbitration tribunal shall be composed of one / two / member /s/ nominated by each of the parties / only one of whom may be of the party's own nationality / and a Chairman chosen by the Commission.

2. The members of the arbitration tribunal must be appointed within the period of three months from the date on which the Commission decided to submit the question to arbitration. The Chairman must likewise be nominated within a period of three months from the said date.

3. If the appointment of the members of the arbitration tribunal shall not have been made by the parties within the said period, it will be for the Commission to appoint them.

4. The arbitration tribunal shall determine its own rules of procedure. Its decisions shall be adopted by majority of votes and its sentence shall be final and binding.

5. The Secretary-General will provide the arbitration tribunal with any assistance and facilities it may need. The costs of the arbitration court shall be defrayed by the United Nations Organization.

/ Article 7.- 1. States which are parties to a dispute are entitled to be heard before the Commission in all proceedings connected with that controversy.

2. When the Commission is considering a controversy to which a State represented on the Commission is a party, such State shall abstain from voting on any resolution related to that controversy. /

/ Article 8.- 1. If a State considers that it interests may be affected by the conciliation or arbitral procedure envisaged in the foregoing articles, it may ask the Commission to allow it to intervend in the proceedings. The Commission will decide regarding such petition.

2. Should the dispute relate to a multilateral treaty, it is to be understood that the States parties to such treaty are entitled to intervend in the procedure for exercising such right. /

Article 9.- The Commission shall report annually on its activities to the General Assembly and may make recommendations thereto on any matter related to its functions.

New article

Disputes on the interpretation or application of the Convention, which are not the disputes referred to in Article 62, and have not been submitted by the parties to a different method of settlement, may be submitted by any of them, through the Secretary-General of the United Nations, to the procedure envisaged in the Annex to the present Convention.

file 20-3-1-6

Embajada de España

Ottawa, April 15, 1969

I-66

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The Emba ssy of Spain presents its compliments to the Department of External Affairs and has the honour to inform the Department of the following:

On April 9, 1969, the second phase of the United Nations Conference on the Law of Treaties began in Vienna. The first session of this Conference was held last spring. It is possible to foresee that the result of the deliberations will be the approval of a Convention on the Law of Treaties, codifying the International Law on this matter. Such a decision is of extraordinary importance since it probably supposes the most complete benefit until now, in the field of codification of International Law.

For that reason and because the project to be approved of, essentially gathers juridical conceptions on the matter, Spain is interested in that the future Convention obtains the greatest acceptation possible among the States. At the moment, the principal obstacle against it is constitued by the disparity of points of view, on the solution of the controversies that may have its origins in the application and interpretation of the Convention, especially of Part V (Nullity and termination of the Treaties). Partisans and non-partisans of the binding judicial solution for the internationak conflicts were confronted in the last Session of the Conference, without reaching an agreement.

If a compromise should not be possible, this might suppose the failure of the codifying effort, since an important group of countries would refuse to agree to the Convention in such conditions.

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PAL 4/22/4

Embajada de España

Such a contingency is considered as undesirable and thus, it would be convenient to make an effort to find a ground of understanding which would respect the requirements of all concerned. With that spirit, the Spanish delegation at the Conference intends to state a proposal, containing a system of solution of the controversies on the future Convention. Such proposal is thought to be generally acceptable and is contained in the enclosed Verbal Note.

The Embassy of Spain would very much appreciate if the Department would kindly communicate to the Spanish Government or to the Spanish Delegation at the Conference the observations, ideas or suggestions the Department might consider convenient.

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

Ottawa, April 16, 1969

Department of External Affairs
East Block
Ottawa.

Embajada de España

NOTE VERBALE

The Spanish Delegation at the Vienna Conference on the Law of Treaties intends to submit a proposal for the settlement of disputes on the Convention, the provisional text of which is attached to the Present Note, and which consists of an article 62 bis, a new article and an Annex to the Convention.

The Spanish Governemnt believes that the encouraging result of the Conference's work in its first session is bound to stimulate all Governments in facing the continuance of the Conference's tasks next April. It would indeed be most regrettable if the Conference were to conclude its work, without achieving the adoption of a Convention on the Law of Treaties, that would codify principles and rules in this spherem which is essential for relations between States.

Throughout the 1968 deliberations of the Conference, it was possible to observe the opposition of several delegations to Part V of the Draft Articles, which was deemed prejudicial to the stability of international conventional relations. There also appeared a seemingly inflexible opposition on the part of certain delegations, whose vote, in favour of the adoption of the future Convention, was made dependent on the establishment of an obligatory system of solving disputes about the validity of international treaties. This policy gives rise to apprehensions that, unless a formula satisfactory to this group of delegations is devised, it may prove difficult to achieve the required two-thirds majority for the adoption of the text of the future codifying Convention.

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Embajada de España

The Spanish Government is not unaware of the serious difficulties involved in finding a generally acceptable procedure for the settlement of disputes between States. First of all, it would be necessary to overpower States' natural unwillingness to submit questions affecting their vital interests to an international organ, especially if that submission is not accompanied by the necessary guarantees of impartiality and justice in the decision. Account should also be taken of the need for due separation of controversies of a legal type from those which have an essentially political character.

The States interested in the development of international Law will assuredly be able to sacrifice these objections to the public weal of the international Community and to the public weal of the international Community and to the consideration that a suitable system for the settlement of disputes may become the most efficient way to overcome some States' resistance to renouncing advantages based on treaties which are legally vitiated or void. But this sacrifice must be accepted subject to an essential condition, that is, the organ which is to decide the controversy shall furnish the parties with adequate guarantees of its objectivity , so that its resolutions shall not favour situations which perpetuate injustice, but shall on the contrary provide adequate solutions, in which the present aspirations of States for a juster international order shall be realized.

The Spanish Governement has carefully examined the various proposals submitted to the Converence's Committee of the whole, which aim at establishing a system for the solution of controversies going beyond what is contemplated in Article 62

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of the Draft Articles. All of them contain some valuable contributions, but also some points not readily acceptable, so far for one reason or another no text can be described as satisfactory to all the delegations taking part in the Conference. Hence it may be asked whether it should not be possible to devise a formula that would satisfy the different interests present in this subject , by taking as a basis those points on which an agreement in principle seems to exist among the delegations. Bearing this in mind, the Spanish Government considers it important to draw the attention of your Government to the following points, which might serve as a basis for an attitude towards this problem of the solution of controversies in the field of international treaties:

1.- The control of the application of the legal rules contained in the Convention would be entrusted to the institutional system of the United Nations, as the highest contemporary organizational form of the international Community. To that end, a United Nations Commission for Treaties, truly representative of the International community, would be created, as a permanent organ of the General Assembly, with the functions and faculties specified in the Annex to the Convention. The Vienna Conference would recommend to the General Assembly the creation of this Commission.

2.- Any dispute about the interpretation or application of the Convention, and especially those arising out of Part V , should they not be settled by means of solution chosen by the Parties, would be treated in two distinct phases, both controlled by the Treaties Commission. In the first phase,

Embajada de España

predominantly political, the Commission would attempt an amicable and equitable solution, by way of recommendation to the parties. It could also appoint a reduced organ, a conciliation Commission in the composition of which the intervention of the parties would be greater. The Spanish Delegation's view is that, in the course of time, the work of this Commission will provide a dynamic and progressive element, of which the international legal order, for its peaceful and just evolution , stands in need.

3.- The passage to the second phase, which is of an arbitral nature and must conclude in a binding decision, is also subject to the Commission's control, through its power to qualify a controversy as legal. Only such controversies, or such aspects of a controversy, that deserve such a qualification will in due course become the subject of a decision by the Arbitration Tribunal.

4.- A most important element in this system is the appointment of Chairman, either of the Arbitration Tribunal or of the special conciliation Commissions, by the United Nations Commission for Treaties itself. In the Spanish Delegation's view, this ensures the highest possible degree of objectivity and impartiality in such appointments.

Guided by a spirit of good will and a desire to surmont the difficulties which seem to be confronting the Conference, the Spanish Governement hopes that these proposals will meet with a favourable reception from the delegations present at Vienna. The Spanish delegation would be grateful if observations concerning the foregoing suggestions are conveyed to it as soon as possible

Embajada de España

Text of the Spanish Proposals

Article 62 bis

If the parties have not been able to come to an agreement, in accordance with the provisions of article 62, upon a means of reaching a solution during the four months following the date on which the objection was framed, or if they have agreed upon a method or settlement other than a judicial or arbitral decision and have not, by that method of settlement, arrived at a solution within the twelve months following the date of the agreement, either party may then apply, through the Secretary General of the United Nations, for the commencement of the procedure set forth in the annex to the present Convention.

Annex

Article 1.- 1. It is established a "United Nations Commission for Treaties" (hereinafter called "the Commission") as a permanent subsidiary organ of the General Assembly, composed of the representatives of (. . .) Member States, chosen in such a manner as to ensure a wide geographical distribution and the appropriate representation of the world's major legal, political and social systems.

2. The States elected as members of the Commission shall appoint it possible, as their representatives, persons of recognized prominence and of the highest legal competence.

3. The members of the Commission shall be elected for nine years and may be re-elected. The Commission shall be renewable as to one-third by elections every three years.

Embajada de España

Article 2.- 1. The Commission shall adopt its own rules of procedure.

2. Resolutions of the Commission shall be made by majority of votes.

3. The Secretary-General will provide the Commission with all the necessary assistance and facilities. The expenses of the Commission will be defrayed by the United Nations.

Article 3.- The Commission shall consider the controversies submitted to it in accordance with the provisions of the Convention by the States which are parties in those controversies, and shall establish the facts and make proposals to the parties, for the purpose of solving the dispute in an amicable and equitative manner.

Article 4.- 1. The Commission may discharge the function conferred in the foregoing article in plenary session. It may also set up a Special conciliation Committee, if the Commission itself so decides, or if all the parties to the controversy so request.

2. For the appointment of the Special conciliation Commissions, the Secretary-General of the United Nations will draw up a permanent list of conciliators composed of qualified jurisconsults. To this end he will invite every State Member of the United Nations or party to the present Convention to designate two conciliators for a period of five years, which shall be renewable.

3. When the setting up of a Special conciliation Commission has been decided upon, each of the parties to the dispute

Embajada de España

shall appoint two conciliators from among the members of the list, of which only one may be of its own nationality. The Chairman shall be chosen by the Commission from among the members of the list.

4. The conciliators chosen by the parties must be designated within a period of one (two) months from the date when the creation of the Special conciliation Commission shall have been decided upon. The appointment of the Chairman of the Special conciliation Commission must be made within the same period. Should the nomination of conciliators not have been made within the period indicated above, it will devolve upon the Commission to nominate them.

5. The Special conciliation Commission shall establish the facts and make proposals to the parties so as to arrive at a solution of the dispute in a friendly and equitative manner. They will send a report on their action to the Commission.

Article 5. - If after three months from the date on which the Commission, or the special conciliation Commission as the case may be, has made proposals to the parties for solving the dispute and these proposals have not been accepted by the parties, nor have the latter agreed during that period on any means of arbitral or judicial decision, the Commission shall decide whether the controversy should be qualified as a legal controversy, and if so, will submit it to an arbitration Tribunal.

Article 6. - The arbitration tribunal shall be composed of one - two - member -s- nominated by each of the

parties (only one who may be of the party's own nationality) and a Chairman chosen by the Commission.

2. The members of the arbitration tribunal must be appointed within the period of three months from the date on which the Commission decided to submit the question to arbitration. The Chairman must likewise be nominated within a period of three months from the said date.

3. If the appointment of the members of the arbitration tribunal shall not have been made by the parties within the said period, it will be for the commission to appoint them.

4. The arbitration tribunal shall determine its own rules of procedure. Its decisions shall be adopted by majority of votes and its sentence shall ve final and binding.

5. The Secretary-General will provide the arbitration tribunal with any assistance and facilities it may need. The costs of the arbitration court shall be defrayed by the United Nations Organization.

(Article 7.- 1. States which are parties to a dispute are entitled to be heard before the Commission in all proceedings connected with that controversy.

2. When the Commission is considering a controversy to which a State represented on the Commission is a party, such State shall abstain from voting on any resolution related to that controversy.)

(Article 8. - 1. If a State considers that its interests may be affected by the conciliation or arbitral procedure envisaged in the foregoing articles, it may ask the Commission to

. / .

allow it to intervene in the proceedings, The Commission will decide regarding such position.

2. Should the dispute relate to a multilateral treaty, it is to be understood that the States parties to such treaty are entitled to intervene in the procedure for exercising such right.)

Article 9. - The Commission shall report annually on its activities to the General Assembly and may make recommendations thereto on any matter related to its functions.

New article

Disputes on the interpretation or application of the Convention, which are not the disputes referred to in Article 62, and have not been submitted by the parties to a different method of settlement, may be submitted by any of them, through the Secretary-General of the United Nations, to the procedure envisaged in the Annex to the present Convention.

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M. Beesley
M. Stefford
M. Robertson
& file

EXTERNAL AFFAIRS  **AFFAIRES EXTÉRIEURES**

TO / **À**: The Canadian Embassy, Vienna, AUSTRIA

FROM / **De**: The Permanent Mission of Canada to the United Nations, NEW YORK

REFERENCE / **Référence**:

SUBJECT / **Sujet**: Vienna Conference on the Law of Treaties

SECURITY / **Sécurité**: UNCLASSIFIED

DATE: April 15, 1969

NUMBER / **Numéro**: 313

FILE	DOSSIER
OTTAWA	20-3-1-6
MISSION	

ENCLOSURES / **Annexes**:

DISTRIBUTION

Ottawa

We have received a note No. 60 together with a Note Verbale from the Mission of Spain to the United Nations stating that the Spanish Delegation at the Vienna Conference on the Law of Treaties intends to submit a proposal for the settlement of disputes on the Convention presently under discussion at the Conference.

2. We attach both the note (in Spanish) and the Note Verbale, the content of which should be known to you by now.

Permanent Mission

Ext. 407B/Bil.

Misión permanente de España
en las Naciones Unidas

Núm. 60.

La Misión Permanente de España en las Naciones Unidas saluda atentamente a la Misión Permanente de Canadá en las Naciones Unidas y, con relación a la Conferencia de las Naciones Unidas sobre el Derecho de los Tratados que se está celebrando en Viena, tiene la honra de informarle que la Delegación española se propone presentar una propuesta para la solución de las controversias sobre la futura convención codificadora del Derecho de los Tratados, y de remitirle texto de dicha propuesta.

La Misión Permanente de España aprovecha esta oportunidad para reiterar a la Misión Permanente de Canadá el testimonio de su más alta consideración.

Nueva York, 9 de abril de 1969.

Misión Permanente de Canadá
en las Naciones Unidas
Nueva York

NOTE VERBALE

The Spanish Delegation at the Vienna Conference on the Law of Treaties intends to submit a proposal for the settlement of disputes on the Convention, the provisional text of which is attached to the present Note, and which consists of an article 62 bis, a new article and an Annex to the Convention.

The Spanish Government believes that the encouraging result of the Conference's work in its first session is bound to stimulate all Governments in facing the continuance of the Conference's tasks next April. It would indeed be most regrettable if the Conference were to conclude its work, without achieving the adoption of a Convention on the Law of Treaties, that would codify principles and rules in this sphere, which is essential for relations between States.

Throughout the 1968 deliberations of the Conference, it was possible to observe the opposition of several delegations to Part V of the Draft Articles, which was deemed prejudicial to the stability of international conventional relations. There also appeared a seemingly inflexible opposition on the part of certain delegations, whose vote, in favour of the adoption of the future Convention, was made dependent on the establishment of an obligatory system of solving disputes about the validity of international treaties. This policy gives rise to apprehensions that, unless a formula satisfactory to this group of delegations is devised, it may prove difficult to achieve the required two-thirds majority for the adoption of the text of the future codifying Convention.

The Spanish Government is not unware of the serious difficulties involved in finding a generally acceptable procedure for the settlement of disputes between States. Fist of all, it would be necessary to surmont States' natural unwillingness to submit questions affecting their vital interests to an international organ, especially if that submission is not accompanied

by the necessary guarantees of impartiality and justice in the decision. Account should also be taken of the need for due separation of controversies of a legal type from those which have an essentially political character.

The States interested in the development of international Law will assuredly be able to sacrifice these objections to the public weal of the international Community and to the public weal of the international Community and to the consideration that a suitable system for the settlement of disputes may become the most efficient way of overcoming some States' resistance to renouncing advantages based on treaties which are legally vitiated or void. But this sacrifice must be accepted subject to an essential condition, that is, that the organ which is to decide the controversy shall furnish the parties with adequate guarantees of its objectivity, so that its resolutions shall not favour situations which perpetuate injustice, but shall on the contrary provide adequate solutions, in which the present aspirations of States for a juster international order shall be realized.

The Spanish Government has carefully examined the various proposals submitted to the Conference's Commitee of the whole, which aim at establishing a system for the solution of controversies going beyond what is contemplated in article 62 of the Draft Articles. All of them contain some valuable contributions, but also some points not readily acceptable, so that for one reason or another no text can be described as satisfactory to all the delegations taking part in the Conference. Hence it may be asked whether it should not be possible to devise a formula that would satisfy the different interests present in this subject, by taking as a basis those points on which an agreement in principle seems to exist among the delegations. Bearing this in mind, the Spanish Government considers it important to draw the attention of your Government to the following points, which might serve as a basis for an attitude towards this problem of the solution of con-

troversies in the field of international treaties:

1.- The control of the application of the legal rules contained in the Convention would be entrusted to the institutional system of the United Nations, as the highest contemporary organizational form of the - international Community. To that end, a United Nations Commission for Treaties, truly representative of the International community, would be created, as a permanent organ of the General Assembly, with the functions and faculties specified in the Annex to the Convention. The Vienna Conference would recommend to the General - Assembly the creation of this Commission.

2.- Any dispute about the interpretation or application of the Convention, and especially those arising out of Part V, should they not be settled by --- means of solution chosen by the Parties, would be treated in two distinct phases, both controlled by the -- Treaties Commission. In the first phase, predominantly political, the Commission would attempt an amicable - and equitable solution, by way of recommendation to - the parties. It could also appoint a reduced organ, a conciliation Commission in the composition of which - the intervention of the parties would be greater. The Spanish Delegation's view is that, in the course of - time, the work of this Commission will provide a dynamic and progressive element, of which the international legal order, for its peaceful and just evolution, stands in need.

3.- The passage to the second phase, which is of an arbitral nature and must conclude in a binding decision, is also subject to the Commission's control, through its power to qualify a controversy as legal. Only such controversies, or such aspects of a controversy, that deserve such a qualification will in due course become the subject of a decision by the Arbitration Tribunal.

4.- A most important element in this system is - the appointment of Chairmen, either of the Arbitration Tribunal or of the special conciliation Commissions, by the United Nations Commission for Treaties itself

In the Spanish Delegation's view, this ensures the -- highest possible degree of objectivity and impartiality in such appointments.

Guided by a spirit of good will and a desire to surmount the difficulties which seem to be confronting the Conference, the Spanish Government hopes that these proposals will meet with a favourable reception from - the delegations present at Vienna. The Spanish delegation would be grateful if observations concerning the foregoing suggestions are conveyed to it as soon as -- possible.

Text of the Spanish Proposals

Article 62 bis

If the parties have not been able to come to an agreement, in accordance with the provisions of article 62, upon a means of reaching a solution during the four months following the date on which the objection was - framed, or if they have agreed upon a method or settlement other than a judicial or arbitral decision and -- have not, by that method of settlement, arrived at a solution within the twelve months following the date of - the agreement, either party may then apply, through the Secretary General of the United Nations, for the commencement of the procedure set forth in the annex to the - present Convention.

Annex

Article 1.- 1. It is established a "United Nations Commission for Treaties" (hereinafter called "the Commission") as a permanent subsidiary organ of the General Assembly, composed of the representatives of [illegible] Member States, chosen in such a manner as to ensure a wide geographical distribution and the appropriate representation of the world's major legal, political and social systems.

2. The States elected as members of the Commission shall appoint it possible, as their representatives, - persons of recognized prominence and of the highest legal competence.

3. The members of the Commission shall be elected for nine years and may be re-elected. The Commission shall be renewable as to one-third by elections every three years-

Article 2.- 1. The Commission shall adopt its own rules of procedure.

2. Resolutions of the Commission shall be made by majority of votes.

3. The Secretary-General will provide the Commission with all necessary assistance and facilities. The expenses of the Commission will be defrayed by the United Nations.

Article 3.- The Commission shall consider the controversies submitted to it in accordance with the provisions of the Convention by the States which are parties in those controversies, and shall establich the facts and make proposals to the parties, for the purpose of solving the dispute in an amicable and equitative manner.

Article 4.- 1. The Commission may discharge the function conferred in the foregoing article in plenary session. It may also set up a Special conciliation Commitee, if the Commission itself so decides, or if all the parties to the controversy so request.

2. For the appointment of the Special conciliation Commissions, the Secretary-General of the United Nations will draw up a permanent list of conciliators composed of qualified jurisconsults. To this end he will invite every State Member of the United Nations or party to the present Convention to designate two conciliators for a period of five years, which shall be renewable.

3. When the setting up of a Special conciliation Commission has been decided upon, each of the parties to the dispute shall appoint two conciliators from among the members of the list, of which only one may be of its own nationality. The Chairman shall be chosen by the Commission from among the members of the list.

4. The conciliators chosen by the parties must be designated within a period of one / two / months from the date when the creation of the Special conciliation Commission shall have been decided upon. The appointment of the Chairman of the Special conciliation Commission must be made within the same period. Should the nomination of conciliators not have been made within the period indicated above, it will devolve upon the Commission to nominate them.

5. The Special conciliation Commission shall establish the facts and make proposals to the parties so as to arrive at a solution of the dispute in a friendly and equitative manner. They will send a report on their action to the Commission.

Article 5.- If after three months from the date on which the Commission, or the special conciliation Commission as the case may be, has made proposals to the parties for solving the dispute and these proposals have not been accepted by the parties, nor have the latter agreed during that period on any means of arbitral or judicial decision, the Commission shall decide whether the controversy should be qualified as a legal controversy, and if so, will submit it to an arbitration Tribunal.

Article 6.- 1. The arbitration tribunal shall be composed of one / two / member /s/ nominated by each of the parties / only one of whom may be of the party's own nationality / and a Chairman chosen by the Commission.

2. The members of the arbitration tribunal must be appointed within the period of three months from the date on which the Commission decided to submit the question to arbitration. The Chairman must likewise be nominated within a period of three months from the said date.

3. If the appointment of the members of the arbitration tribunal shall not have been made by the parties within the said period, it will be for the Commission to appoint them.

4. The arbitration tribunal shall determine its own rules of procedure. Its decisions shall be adopted by majority of votes and its sentence shall be final and binding.

5. The Secretary-General will provide the arbitration tribunal with any assistance and facilities it may need. The costs of the arbitration court shall be defrayed by the United Nations Organization.

/ Article 7.- 1. States which are parties to a dispute are entitled to be heard before the Commission in all proceedings connected with that controversy.

2. When the Commission is considering a controversy to which a State represented on the Commission is a party, such State shall abstain from voting on any resolution related to that controversy. /

/ Article 8.- 1. If a State considers that it interests may be affected by the conciliation or arbitral procedure envisaged in the foregoing articles, it may ask the Commission to allow it to intervend in the proceedings. The Commission will decide regarding such petition.

2. Should the dispute relate to a multilateral treaty, it is to be understood that the States parties to such treaty are entitled to intervend in the procedure for exercising such right. /

Article 9.- The Commission shall report annually on its activities to the General Assembly and may make recommendations thereto, on any matter related to its functions.

New article

Disputes on the interpretation or application of the Convention, which are not the disputes referred to in Article 62, and have not been submitted by the parties to a different method of settlement, may be submitted by any of them, through the Secretary-General of the United Nations, to the procedure envisaged in the Annex to the present Convention.

ACTION REQUEST
FICHE DE SERVICE

TO — À: Legal (Miller)

DATE: 29/4/69

LOCATION — ENDROIT:

FROM — DE: J Shaupe / [illegible]

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Working for [illegible] [illegible] of [illegible]

I take it Biron "aggression" or another legal subject!

(This is the wrong file number)

003477

file 20-3-1-6

EXTERNAL AFFAIRS AFFAIRES EXTÉRIEURES

MEMORANDUM

TO À FILE

FROM De Mr. A.W. Robertson

REFERENCE Référence

SUBJECT Sujet Western Group Meeting: April 14, 1969.

SECURITY Sécurité RESTRICTED

DATE April 15, 1969

NUMBER Numéro

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

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The Western Group met April 13 to discuss Articles 5 bis, 62 bis and the draft final clauses. Although the Chairman had also suggested that it might consider the French proposals concerning Article 50, it did not have time to do so.

Article 5 bis

The Group sought to clarify what would be the Chairman's approach to voting on 5 bis in the Committee of the Whole. There seemed to be universal agreement that it was in the interests of the Western Group to vote on this Article as soon as reasonably possible and to prevent the Eastern Europeans Group from deferring the vote until after the consideration of Article 62 bis.

It appeared that Chairman Elias planned to conclude the debate on Article 5 bis at the morning session on April 15 and not to have an afternoon session (especially since the Afro-Asian Group wished to meet that same afternoon). While it was uncertain whether or not he planned to discuss Article 12 as well, in any event it appeared to be his intention to have the voting on 5 bis take place no later than April 16. The Chairman of the Group, in company with representatives of a few of the more influential members of the group, will inform him of their view that he should hold a vote during the morning session on April 16th.

Article 62 bis

The Group then discussed the Spanish proposals concerning Article 62 bis. The view of the more realistic members was that, although in an ideal world the Spanish proposals would have had much to recommend them, thet were essentially non-starters under the present circumstances, in fact they might not only interfere with current efforts being made within the 13 states group, but might also serve to further divide the Western Group itself. Moreover there were certain political difficulties in the Spanish proposals, particularly relating to the distinction they sought to draw between disputes of a purely political character and those of a purely legal character. As Australia suggested, almost all disputes are in fact political in character, and the real question is as to whether they are or are not also legally compelling. Moreover Switzerland commented that the proposed Treaty Commission was to be drawn only from U.N. members and, noting that it was not a member itself, suggested that it be open to all parties to the Convention.

Some delegations present including the Italian, made proposals to the effect that a reconciliation between the drafts of Japan, Switzerland the 13 powers, and the Spanish text, might be possible. Clearly however this is

Ext. 407C/Bil.

unrealistic.

Reporting on the activities of the 13 power group of states the Netherlands indicated that their aim was still to agree on a text which would serve as an acceptable compromise. Further to the current negotiations, moreover, the co-sponsors group might increase in size to some 20 to 28 states.

Final Clauses

The British circulated draft final clauses (at present only intended as a basis for discussion within the Group) and also a draft preamble. It was agreed that the Secretariat's paper on Final Clauses does not in itself constitute a proposal and that therefore if such clauses are to come before the Committee of the Whole, there will have to be some tabled at some point.

A.W. Robertson.

C.C. to M.McKinnon
P.C.01,
April 23-69 itl

INFO ONLY

M. D. COPITHORNE

FM VIENN APR14/69 CONFD NO/NO STANDARD

TO TT HAGUE 277 PRIORITY DE PARIS

INFO TT EXTEROTT DE PARIS

REF YOURLET 515 NOV29/68

LAW OF TREATIES CONFERENCE-ARTICLE 5

ESHAUSIER, OF NETHERLANDS DEL SAYS THAT IMMEDLY PRIOR TO DELS DEPARTURE FOR VIENN PROF RIPHAGEN SUSPENDED INSTRUCTIONS ON ARTICLE 5 REFERRED TO IN YOURTEL 575 OCT4/68. QUESTION IS APPARENTLY BEING RECONSIDERED IN CONTEXT OF POSSIBILITY THAT LTD SEPARATE TREATY-MAKING POWER MAY BE EXTENDED TO SURINAM. AT MY REQUEST ESCHAUSIER IS REQUESTING EARLY DECISION ON CONFIRMATION OF INSTRUCTIONS FROM THE HAGUE.

2. PLEASE SEEK INTERVIEW WITH RIPHAGEN URGENTLY AND REVIEW MATTER WITH HIM, STRESSING IN PARTICULAR FOLLOWING POINTS (A) WHATEVER ARRANGEMENTS NETHERLANDS GOVT MAY HAVE IN MIND RE SURINAM WILL NOT/NOT BE IMPEDED BY ABSENCE OF 5(2) FROM TREATIES CONVENTION: (B) ASSUMING SPECIAL CONSTITUTIONAL ARRANGEMENTS ARE MADE FOR SURINAM, PRESUMABLY DUTCH ARE NO/NO MORE ANXIOUS THAN WE ARE TO HAVE THIRD STATES INTERPRETING THESE ARRANGEMENTS INDEPENDENTLY OF DUTCH GOVT, BUT 5(2) IN PRESENT FORM MAY GENERATE THIS KIND OF ABUSIVE PRACTICE BECAUSE IT AWARDS NO/NO ULTIMATE CONTROL TO CENTRAL GOVT. (C) A DECISION BY NETHERLANDS TO WITHDRAW SUPPORT FROM US AT THIS TIME COULD HAVE MOST UNFAVOURABLE CONSEQUENCES FOR OUR POSITION. ON LAST POINT, IF RIPHAGEN DECLINES TO PROMISE DUTCH SUPPORT FOR DELETION OF PARA2, YOU SHOULD STRESS IMPORTANCE WE ATTACH TO SUPPORT AT LEAST FOR OUR REQUEST FOR SEPARATE

...2

10/14/4

PAGE TWO 277 CONFD NO/NO STANDARD

VOTE ON PARA2.

3. AS ARTICLE 5 MAY COME UP FOR VOTE EARLY NEXT WEEK, PLEASE URGE UPON RIPHAGEN IMPORTANCE OF INSTRUCTIONS BEING RECEIVED IN VIENN BY BEGINNING OF NEXT WEEK

WERSHOF.

c.c. M.McKinnon,
P.C.O.,
April 23/69 itl

file 20-3-1-6

M. D. COPITHORNE

Mr. Mawhinney

20-3-1-6
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FM VIENN APR14/69 NO/NO STANDARD

TO EXTEROTT 278

LAW OF TREATIES CONFERENCE: FIRST WEEKLY SUMMARY: APR9-11.

IN THESE TELS CW MEANS CTTEE OF WHOLE AND DC MEANS DRAFTING CTTEE.

ON APR8 (DAY BEFORE SCHEDULED OPENING OF SECOND SESSION OF CONFERENCE) UN LEGAL COUNSEL STAVROPOLOUS CONVENED MTG OF REPS OF SOME TWO DOZEN STATES, REFLECTING VARIOUS GEOGRAPHICAL AND POLITICAL GROUPINGS AT CONFERENCE, TO HOLD PRELIMINARY DISCUSSIONS OF METHOD OF WORK TO BE ADOPTED FOR FIRST FEW WEEKS. IN DUE COURSE AGREEMENT WAS REACHED THAT FOLLOWING FORMAL OPENING CW SHOULD RESUME ITS WORK AND DEAL WITH ARTICLES LEFT OVER FROM FIRST SESSION, ON UNDERSTANDING THAT THIS TASK SHOULD BE COMPLETED BY APR25.

2. FORMAL PLENARY OPENING OF SECOND SESSION (6TH PLENARY MTG) TOOK PLACE AFTERNOON WED, APR9. FOLLOWING HORTATORY INTRODUCTORY STATEMENT BY PRESIDENT AGO OF ITALY TO STRESS LTD TIME AVAILABLE AND SERIOUSNESS OF REMAINING TASKS CONFERENCE DECIDED AS FOLLOWS WITHOUT OBJECTION (1) ON A PROPOSAL BY GHANA AND INDIA (REFLECTING PREVIOUS DAYS DECISION): TO ADOPT PROGRAMME OF WORK (A/CONF 39/L.2) PROVIDING THAT FROM APR10 TO APR23-25 CW DEAL WITH ARTICLES 8,17,26,36,37,55,66,2; CONTROVERSIAL ARTICLES 5BIS,12,62 BIS AND 76; AND FINAL CLAUSES: AND ADOPT RAPPORTEURS REPORTS. (2) THAT DC PREPARE PREAMBLE FOR SUBMISSION TO PLENARY; (A/CONF 39/12). (3) THAT SECRETARIAT IN DUE COURSE PREPARE DRAFT FINAL ACT FOR SUBMISSION TO DC.

3. CW HELD THREE MTGS AT WHICH FOLLOWING TRANSPIRED. FRANCE ANNOUNCED IT WOULD WITHDRAW ALL 8 AMENDMENTS TABLED AT FIRST SESSION RELATING

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1/15/4

TO CONCEPT OF RESTR MULTILATERAL TRATIES AND AFFECTING ARTICLES 2,8,17,26,36,37,55,65, AND 66.

ARTICLE 8: AUSTRIA(L.379) AND AUSTRALIA(K.380) INTRODUCED AMENDMENTS. FRANCE(L.30) AND CZECHO(L.102) WITHDREW THEIR AMENDMENTS. UKRAINIAN AMENDMENT(L.51 REV 1) WITHDRAWN. CW DECIDED TO REFER AUSTRIA(L.379) AND AUSTRALIA(L.380) AMENDMENTS TO DC TO BE CONSIDERED TOGETHER WITH THOSE OTHER AMENDMENTS REFERRED TO IT AT FIRST SESSION.

ARTICLE 17: CZECHO(L.84) AND FRANCE(L.112) WITHDREW THEIR AMENDMENTS. TEXT OF ARTICLE17 TENTATIVELY SUBMITTED BY DC IN 1968 AND AS AMENDED BY CW AT FIRST SESSION WAS THEN ADOPTED BY CW BY A VOTE(REQUESTED BY USSR) OF 60(CDA)-15-13.

ARTICLE 26: PENDING FRENCH AMENDMENT(L.44) WAS WITHDRAWN: CW DECIDE DC SHOULD THERFORE CONSIDERARTICLE TOGETHER WITH THOSE AMENDMENTS REFERRED TO IT AT FIRST SESSION.

ARTICLE 36: FRENCH AMENDMENT(L.45) WITHDRAWN: CW DECIDED DC SHOULD THEREFORE CONSIDER ARTICLE TOGETHER WITH NETHERLANDS AMENDMENT(L.232) REFERRED TO IT AT FIRST SESSION.

ARTICLE 37: FRENCH AMENDMENT (L.46) WITHDRAWN. AUSTRALIA RESUBMITTED ITS AMENDMENT (L.237) WHICH WAS REJECTED BY CW BY VOTE OF 4(AUSTRALIA AND CDA)-62(US)-22(UK, USSR). DC WILL CONSIDER ARTICLE TOGETHER WITH THOSE OTHER AMENDMENTS REFERRED TO IT AT FIRST SESSION.

ARTICLE 55: FRANCE(L.47) AND AUSTRALIA (L.324) WITHDREW THEIR AMENDMENTS, PERUVIAN AMENDMENT(L.395) AGAIN REFERRED TO DC. CW ADOPTED ARTICLE IN PRINCIPLE.

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PAGE THREE 278 NO/NO STANDARD

ARTICLE 66: FRANCE WITHDREW ITS AMENDMENT (L.49). AS THERE WERE NO/ NO OTHER AMENDMENTS ARTICLE IS BEFORE DC IN ORIGINAL ILC TEXT.

4. BEGINNING APR14 CW IS SCHEDULED FIRST TO CONSIDER ARTICLES 2, 5BIS, 12, AND 62 BIS, AND THEN (BEFORE APR25 AT LATEST) FINAL CLAUSES INCLUDING ARTICLE 76 AD ADOPTION OF REPORTS.

NNNN

c.c. M.McKinnon,
P.C.O.,
April 23/69 itl

M. D. CORBITT

INFO ONLY

Mr Macphinney

file 30-3-1-6

FM SAIGN APR14/69 CONFD NO/NO STANDARD

TO TT VIENN 382 PRIORITY DE OTT

INFO EXTER PRIORITY

REF YOURTEL 270 APR11

LAW OF TREATIES CONFERENCE-ARTICLE 5

WE SPOKE TO KY OF MFA ALONG LINES OF YOURTEL. HE SHOWED FAMILIARITY WITH SUBJ THAT WAS LACKING IN OUR EARLIER MTGS AND ASSURED US THAT HE FULLY UNDERSTOOD OUR POSITION AND WAS IN BASIC AGREEMENT WITH IT. HE ALSO CONCEDED PRINCIPLE OF CONSISTENCY REQUIRED GVN DEL TO VOTE AGAINST PARA2.

2. IN LINE WITH THIS REASONING, ACCORDING TO KY, MFA HAS NOW SENT INSTRUCTION TO THEIR DEL(A) TO SUPPORT SEPARATE VOTE FOR PARA2 AND (B) TO VOTE AGAINST PARA2 IF THIS APPEARS TO BE PREFERENCE OF MAJORITY OR OF SUBSTANTIAL MINORITY. ONLY IF IT APPEARS THAT VIETNAMESE WOULD BECOME ISOLATED WITHIN SMALL MINORITY SHOULD THEY CHANGE POSITION ON EITHER(A) OR(B). SHOULD SEPARATE VOTE NOT/NOT TAKE PLACE ON PARA2, GVN DEL HAVE BEEN GIVEN WHAT KY DESCRIBED-QUOTE CARTE BLANCHE UNQUOTE IN VOTING ON ARTICLE AS A WHOLE.'''

5/14/4

ACTION REQUEST
FICHE DE SERVICE

FILE NO. / DOSSIER No.

TO — À: Leg Division

DATE: April 22,1969

LOCATION — ENDROIT:

FROM — DE: O/SSEA/ASMcGill/fl

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See SSEA's comment: "I approve of thes proposals"

003488

File
20-3-1-6
37 23/4/69
BN notify

CONFIDENTIAL

April 14, 1969.

MEMORANDUM FOR THE MINISTER on return

Law of Treaties Conference
Instructions for the Canadian Delegation

This memorandum seeks your approval for instructions to the Canadian Delegation to the second session of the Law of Treaties Conference on certain matters other than the federal states issue.

The "All States" Question

Soviet bloc countries (supported by a number of developing countries) will seek to have included in the Convention on the Law of Treaties a provision that "all States" are entitled, as a matter of right, to sign all general multilateral treaties of interest to them. In addition they will seek to have an article inserted authorizing "all States" to accede to the Treaties Convention. The effect of the inclusion of the special provision on "all States" is, of course, to enable entities such as East Germany, whose status as a State is disputed, to purport to accede thereafter to all general multilateral treaties, thereby enhancing their claims to the international status of a sovereign State. Because of its implications for East Germany, this issue is of particular importance to the Government of the Federal Republic of Germany, which has left with us an Aide Memoire requesting Canadian support:

(a) for the omission from the Treaties Convention of any article establishing the right of "all States" to become parties to general multilateral treaties; and

(b) for an accession clause in the Treaties Convention along the lines of that used in most multilateral U.N. Conventions, (i.e. member-state of the U.N. or its Specialized Agencies and States especially invited by the General Assembly to become parties.)

I approve these proposals
WS
9.4.23/US) WSM

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Recent disarmament treaties have, however, included an "all States" accession clause and have made provision for multiple depositaries, thus enabling the East Germans, for example, to deposit an instrument of accession with the Soviet Union as one of the depositaries.

Recommendation

On the basis of the foregoing considerations, I should be grateful for your approval of the following instructions for the Canadian delegation to the second session of the U.N. Conference on the Law of Treaties:

All States

(a) To oppose the adoption of any article seeking to establish that "all States" may adhere to all general multilateral Conventions;

(b) To oppose, initially, at least, an "all States" final clause on accession to the Treaties Convention;

(c) In the event of an impassee on the accession clause, to concur in any compromise proposal for a multiple depositaries accession clause acceptable to the Western group generally, unless the West German Government continues to oppose a compromise, in which case the delegation should seek further instructions.

Reservations

The articles on reservations provisionally adopted at the first session of the Law of Treaties Conference have the practical effect, in respect of the Treaties Convention, that any State would be free to make virtually any reservation it wishes, and that such a State will become a party to the Convention if at least one other State accepts the reservation. A third State may prevent the treaty from coming into force between it and the reserving State, however, by objecting to the reservation. The dangers of a broad reservation provision of this kind are that any State adhering to the Treaties Convention may enter a reservation in respect of those articles of which it does not approve, whether or not such provisions are central to the scheme of the treaty. The result could leave the Law of Treaties

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in a chaotic state. It is unlikely, however, that sufficient support can be obtained for an article prohibiting all reservations or for an article allowing only certain minor reservations. Moreover, it may be the western states might themselves find it necessary to make reservations to certain provisions. In the circumstances, therefore, it may be necessary to accept a broad provision on reservations, while making every effort possible to prevent abuse of the reservations provision.

Recommendation

On the basis of the foregoing considerations, I should be grateful for your approval of the following instructions for the Canadian delegation to the second session of the U.N. Conference on the Law of Treaties:

Reservations

(a) To support, initially at least, the general Western position that there be no final clause on reservations;

(b) To intervene in the debate on reservations to urge that governments exercise restraint in the formulation of reservations to avoid creating disorder in the Law of Treaties;

(c) If a proposal emerges which would restrict the possible dangers of unlimited reservations and which has general support, to seek new instructions.

Retroactivity

The majority of Western States are of the view that the new rules of law contained in the Treaties Convention should not apply to treaties which entered into force prior to the entry into force of the Treaties Convention. The majority view of the Afro-Asian States at the first session was that the Treaties Convention should apply to all treaties, including those already in force; however it is understood that the views of many of this latter group of States on this issue may have changed since that time. The effect of the application of the ordinary rules of treaty law to this question leaves the position ambiguous. It, therefore, appears desirable to seek a specific article of non-retroactivity if this is possible. If this does not prove possible, that "fall back" position would be to have no article on retroactivity. While this would leave the position uncertain, it would be preferable to having a specific article giving the treaty retroactive effect.

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Recommendation

On the basis of the foregoing considerations, I should be grateful for your approval of the following instructions for the Canadian delegation to the second session of the U.N. Conference on the Law of Treaties:

Retroactivity

(a) To support any initiative for a specific non-retroactivity article if that initiative appears likely to obtain significant support in both the Western and "third world" groups;

(b) Failing such an initiative, to acquiesce in the general Western position that there be no specific article on retroactivity in the final clause.

Peaceful Settlement of Disputes

The Treaties Convention will probably contain a number of "open-ended" articles establishing grounds on the basis of highly subjective criteria, for declaring a treaty invalid or terminating it. Most Western delegates have already indicated that, while they support these rules, in principle, they are not prepared to have them adopted in practice unless a procedure is established for compulsory third party adjudication of any dispute arising over the application of the articles on invalidity and termination. This position is based on apprehension that the articles will be abused if each State is permitted to declare unilaterally that a treaty to which it is a party is invalid, or is to be terminated, on the basis of the provisions of the Treaties Convention.

The need for an article on compulsory settlement of disputes is probably the most important single issue for the Western group as a whole. The Soviet bloc delegates are the chief opponents of a compulsory arbitration article. The Afro-Asian States were also generally opposed at the first session; however as a result of initiatives taken by Britain and the United States, it appears that at the second session there may be significant support among Afro-Asian States for a compulsory arbitration or conciliation article.

Recommendation

On the basis of the foregoing considerations, I should be grateful for your approval of the following instructions for the Canadian Delegation to the second session of the U.N. Conference on the Law of Treaties:

.... 5

Peaceful Settlement of Disputes

(a) To inform other delegations, as appropriate, that Canada would find it exceedingly difficult to accept a Convention containing the proposed articles on invalidity and termination unless a satisfactory provision for the automatic independent adjudication of disputes arising from the application of these articles were included in the Convention;

(b) To co-sponsor, if it appeared appropriate to do so, an article on the settlement of disputes provided other co-sponsors include at least some major Afro-Asian States as well as Western states;

(c) Not to take part in public debate or active private lobbying on this issue prior to the Plenary vote on the Federal States article, in order to avoid alienating Afro-Asian support for our position on that article.

M.C.

File ✓
Diary
Div. Diary
O/SSEA
O/USSEA
Parl Sec.
Press Office
J.S.S.

Legal Division/Division juridique

CONFIDENTIAL

April 14, 1969.

20-3-1-6
21

MEMORANDUM FOR THE MINISTER

Law of Treaties Conference
Instructions for the Canadian Delegation

This memorandum seeks your approval for instructions to the Canadian Delegation to the second session of the Law of Treaties Conference on certain matters other than the federal states issue.

The "All States" Question

Soviet bloc countries (supported by a number of developing countries) will seek to have included in the Convention on the Law of Treaties a provision that "all States" are entitled, as a matter of right, to sign all general multilateral treaties of interest to them. In addition they will seek to have an article inserted authorizing "all States" to accede to the Treaties Convention. The effect of the inclusion of the special provision on "all States" is, of course, to enable entities such as East Germany, whose status as a State is disputed, to purport to accede thereafter to all general multilateral treaties, thereby enhancing their claims to the international status of a sovereign State. Because of its implications for East Germany, this issue is of particular importance to the Government of the Federal Republic of Germany, which has left with us an Aide Memoire requesting Canadian support:

(a) for the omission from the Treaties Convention of any article establishing the right of "all States" to become parties to general multilateral treaties; and

(b) for an accession clause in the Treaties Convention along the lines of that used in most multilateral U.N. Conventions, (i.e. member-state of the U.N. or its Specialized Agencies and States especially invited by the General Assembly to become parties.)

.... 2

Peaceful Settlement of Disputes

(a) To inform other delegations, as appropriate, that Canada would find it exceedingly difficult to accept a Convention containing the proposed articles on invalidity and termination unless a satisfactory provision for the automatic independent adjudication of disputes arising from the application of these articles were included in the Convention;

(b) To co-sponsor, if it appeared appropriate to do so, an article on the settlement of disputes provided other co-sponsors include at least some major Afro-Asian States as well as Western states;

(c) Not to take part in public debate or active private lobbying on this issue prior to the Plenary vote on the Federal States article, in order to avoid alienating Afro-Asian support for our position on that article.

M. CADIEUX

M.C.

Recent disarmament treaties have, however, included an "all States" accession clause and have made provision for multiple depositaries, thus enabling the East Germans, for example, to deposit an instrument of accession with the Soviet Union as one of the depositaries.

Recommendation

On the basis of the foregoing considerations, I should be grateful for your approval of the following instructions for the Canadian delegation to the second session of the U.N. Conference on the Law of Treaties:

All States

(a) To oppose the adoption of any article seeking to establish that "all States" may adhere to all general multilateral Conventions;

(b) To oppose, initially, at least, an "all States" final clause on accession to the Treaties Convention;

(c) In the event of an impassee on the accession clause, to concur in any compromise proposal for a multiple depositaries accession clause acceptable to the Western group generally, unless the West German Government continues to oppose a compromise, in which case the delegation should seek further instructions.

Reservations

The articles on reservations provisionally adopted at the first session of the Law of Treaties Conference have the practical effect, in respect of the Treaties Convention, that any State would be free to make virtually any reservation it wishes, and that such a State will become a party to the Convention if at least one other States accepts the reservation. A third State may prevent the treaty from coming into force between it and the reserving State, however, by objecting to the reservation. The dangers of a broad reservation provision of this kind are that any State adhering to the Treaties Convention may enter a reservation in respect of those articles of which it does not approve, whether or not such provisions are central to the scheme of the treaty. The result could leave the Law of Treaties

.... 3

in a chaotic state. It is unlikely, however, that sufficient support can be obtained for an article prohibiting all reservations or for an article allowing only certain minor reservations. Moreover, it may be the western states might themselves find it necessary to make reservations to certain provisions. In the circumstances, therefore, it may be necessary to accept a broad provision on reservations, while making every effort possible to prevent abuse of the reservations provision.

Recommendation

On the basis of the foregoing considerations, I should be grateful for your approval of the following instructions for the Canadian delegation to the second session of the U.N. Conference on the Law of Treaties:

Reservations

(a) To support, initially at least, the general Western position that there be no final clause on reservations;

(b) To intervene in the debate on reservations to urge that governments exercise restraint in the formulation of reservations to avoid creating disorder in the Law of Treaties;

(c) If a proposal emerges which would restrict the possible dangers of unlimited reservations and which has general support, to seek new instructions.

Retroactivity

The majority of Western States are of the view that the new rules of law contained in the Treaties Convention should not apply to treaties which entered into force prior to the entry into force of the Treaties Convention. The majority view of the Afro-Asian States at the first session was that the Treaties Convention should apply to all treaties, including those already in force; however it is understood that the views of many of this latter group of States on this issue may have changed since that time. The effect of the application of the ordinary rules of treaty law to this question leaves the position ambiguous. It, therefore, appears desirable to seek a specific article of non-retroactivity if this is possible. If this does not prove possible, that "fall back" position would be to have no article on retroactivity. While this would leave the position uncertain, it would be preferable to having a specific article giving the treaty retroactive effect.

.... 4

Recommendation

On the basis of the foregoing considerations, I should be grateful for your approval of the following instructions for the Canadian delegation to the second session of the U.N. Conference on the Law of Treaties:

Retroactivity

(a) To support any initiative for a specific non-retroactivity article if that initiative appears likely to obtain significant support in both the Western and "third world" groups;

(b) Failing such an initiative, to acquiesce in the general Western position that there be no specific article on retroactivity in the final clause.

Peaceful Settlement of Disputes

The Treaties Convention will probably contain a number of "open-ended" articles establishing grounds on the basis of highly subjective criteria, for declaring a treaty invalid or terminating it. Most Western delegates have already indicated that, while they support these rules, in principle, they are not prepared to have them adopted in practice unless a procedure is established for compulsory third party adjudication of any dispute arising over the application of the articles on invalidity and termination. This position is based on apprehension that the articles will be abused if each State is permitted to declare unilaterally that a treaty to which it is a party is invalid, or is to be terminated, on the basis of the provisions of the Treaties Convention.

The need for an article on compulsory settlement of disputes is probably the most important single issue for the Western group as a whole. The Soviet bloc delegates are the chief opponents of a compulsory arbitration article. The Afro-Asian States were also generally opposed at the first session; however as a result of initiatives taken by Britain and the United States, it appears that at the second session there may be significant support among Afro-Asian States for a compulsory arbitration or conciliation article.

Recommendation

On the basis of the foregoing considerations, I should be grateful for your approval of the following instructions for the Canadian Delegation to the second session of the U.N. Conference on the Law of Treaties:

.... 5

Copy sent to Canadian Delegation
Law of Treaties Conference, VIENNA
April 11 - itl

M. D. COPITHORNE

ACTION COPY

20-3-1-6

FM KLMPR APR11/69 RESTR NO/NO STD

TO EXTER 496 PRIORITY

REF OURTEL 490 APR10

LAW OF TREATIES CONFERENCE

MALAYSIAN DEL TO NEXT SESSION OF CONFERENCE WILL BE LED BY R RAMANI WHO IS WELL KNOWN TO YOU. MFA ADVISES THAT RAMANI WILL NOT/NOT ARRIVE TO ASSUME HIS RESPONSIBILITIES AS LEADER OF MALAYSIAN DEL UNTIL NEAR END OF APR AND MFA OBSERVES THAT IT IS POSSIBLE OF COURSE THAT CONFERENCE WILL HAVE ALREADY DEALT WITH ARTICLE 5 BEFORE RAMANIS ARRIVAL. RAMANI STILL ACTS AS LEGAL ADVISER TO MFA BUT NO/NO LONGER HOLDS TITLE. HE WAS APPOINTED A SENATOR SOME WEEKS AGO AND UNDER MALAYSIAN SYSTEM CANNOT/NOT HOLD AS WELL A CIVIL SERVICE OFFICE. HE HAS OFFICIALLY QUOTE RETIRED UNQUOTE FROM MFA IN CONSEQUENCE BUT STILL SPENDS A GOOD PART OF WORKING DAY IN HIS MFA OFFICE.

2. M O ARIFF SENIOR FEDERAL COUNSEL IN ATTORNEY GENS DEPT WILL BE ALTERNATE LEADER OF DEL. LAST MEMBER OF DEL IS LC VOHRAH ALSO A SENIOR FEDERAL COUNSEL TO ATTORNEY GENS DEPT. WE UNDERSTAND THIS LATTER GENTLEMAN IS ALREADY IN VIENA.

1/11/4

c.c. M.McKinnon,
P.C.O.,
April 23/69 itl

M. D. COPITHORNE

20-3-1-6

FM VIENN APR11/69 CONFD NO/NO STANDARD

TO TT SAIGON 270 DE OTT

INFO EXTEROTT

REF YOURTEL 290 MAR21

LAW OF TREATIES CONFERENCE-ARTICLE 5

WE SPOKE TODAY TO PHEM,SOUTH VIETNAMESE REP AT CONFERENCE,CONCERNING HIS POSITION ON ARTICLE 5,PARA2.HE INFORMED US THAT ON THE BASIS OF HIS INSTRUCTIONS HE WAS UNABLE TO GIVE US FIRM ASSURANCES OF SUPPORT EITHER ON REQUEST FOR SEPARATE VOTE OR ON VOTE AGAINST PARA2.

2.PHEM IS WRITING SAIGON FOR SUPPLEMENTARY INSTRUCTIONS ON ARTICLE 5.GRATEFUL THERFORE IF YOU COULD REVIEW QUESTION AGAIN WITH FOREIGN MINISTRY,LAYING PARTICULAR STRESS ON (A)OUR REQUEST FOR SUPPORT FOR SEPARATE VOTE ON PARA 2 AND (B)FACT THAT IN ASKING VIETNAM TO VOTE AGAINST PARA2 WE ARE SIMPLY ASKING THEM TO MAINTAIN POSITION THEY ADOPTED AT FIRST SESSION LAST YEAR,WHEN THEY VOTED AGAINST PARA 2 ON BOTH OCCASIONS ON WHICH IT WAS PUT TO VOTE.PLEASE EXPRESS HOPE THAT CLEAR INSTRUCTIONS WILL BE GIVEN TO PHEM ON THESE POINTS.

WERSHOF

19/11/4

Copy sent to Canadian Delegation
Law of Treaties-
Vienna
Done April 10/1969/itl

Mr Macchinney

ACTION COPY

20-3-1-6

FM KLMPR APR10/69 CONFD NO/NO STD

TO EXTER 490 IMMED

c.c. M.McKinnon,PCO
April 23 itl

REF YOURTEL L323 MAR7 OURTEL 375 MAR20

LAW OF TREATIES-ARTICLE 5

AYATHURAY HEAD OF NORTHAMERICAN DIV MFA HAS ADVISED THAT MALAYSIAN CABINET YESTERDAY APPROVED INSTRUCTIONS FOR MALAYSIAN DEL TO NEXT SESSION OF LAW OF TREATIES CONFERENCE. PART OF DEL HAS LEFT FOR VIENA AND REMAINDER LEAVES THIS WEEKEND. WILL FORWARD NAMES OF DEL WHEN WE RECEIVE THEM FROM MFA.

2. RE ARTICLE 5: CABINET HAS APPROVED BRIEF FOR DEL WHICH NOTES CAREFULLY CDN POSITION ON PARA2 OF THIS ARTICLE. (RELEVENT PORTIONS OF BRIEF WERE READ HASTILY OVER PHONE TO US TODAY). HOWEVER BRIEF NOTES THAT SOME NATIONS PROVIDE IN THEIR CONSTITUTIONS FOR RIGHT OF CONSTITUENT PARTS OF FEDERAL STATES TO ENTER UNDER CERTAIN CONDITIONS INTO INTERNATL TREATIES AND MALAYSIAN BRIEF SUGGESTS THAT PERHAPS ARTICLE 5 SHOULD TAKE THIS FACTOR INTO ACCOUNT. IN DISCUSSING QUOTE CDN CONCERNS UNQUOTE BRIEF GOES ON TO NOTE THAT PRESENT WORDING OF ARTICLE 2 COULD LEAD TO UNILATERAL INTERPRETATIONS OF THE CONSTITUTIONS OF FEDERAL STATES BY THIRD PARTIES. (SPECIFIC MENTION IS MADE AT THIS POINT IN THE BRIEF OF DE GAULLE AND QUEBEC).

3. TO MEET CDN POINT BUT ALSO TAKE INTO ACCOUNT DIFFERENT CONDITIONS IN OTHER FEDERAL STATES BRIEF SUGGESTS THAT MALAYSIAN DEL ATTEMPT AT NEXT SESSION OF CONFERENCE TO MAKE AMENDMENT TO ARTICLE 5 AS FOLLOWS: BEGINS FOR THE PURPOSES OF THIS ARTICLE THE TERM QUOTE

...2

1/10/4

STATE UNQUOTE SHALL BE DEEMED TO INCLUDE A CONSTITUENT UNIT OF A FEDERAL STATE THE CONSTITUTION OF WHICH IN EXPLICIT TERMS RESERVES THE POWER TO SUCH UNITS TO ENTER DIRECTLY INTO TREATY RELATIONS WITH ANY OTHER STATE OUTSIDE THE FEDERATION WITHIN THE STRICT LIMITS OF THE POWER SO RESERVED ENDS.

4. AYATHURAY TOLD ME THAT MALAYSIAN DEL HAS BEEN GIVEN QUOTE CERTAIN FLEXIBILITY UNQUOTE IN DEALING WITH ARTICLE 5 AT NEXT SESSION OF LAW OF TREATIES CONFERENCE. IN RESPONSE TO QUESTIONS AYATHURAY SAID THAT IF MALAYSIAN AMENDMENT WAS NOT/NOT ACCEPTED MALAYSIAN DEL COULD VOTE FOR DELETION OF PARA2 OF ARTICLE 5. DEL WOULD SUPPORT PARA BY PARA VOTE ON ARTICLE 5. I NOTED MY UNDERSTANDING WAS THAT CDN POSITION REMAINED AS GIVEN IN EARLIER MSGS RECEIVED FROM YOU IE THAT WE HOPED THAT MALAYSIA WOULD SUPPORT MOVE TO DELETE PARA2 OF ARTICLE 5 AND IF REQUIRED DELETION OF THE WHOLE OF ARTICLE 5. AYATHURAY RESPONDED BY SUGGESTING THAT CANDEL CONTACT MALAYSIAN DEL SOONEST CONCERNING YOUR REACTIONS TO SUGGESTED AMENDMENT TO ARTICLE 5 DESCRIBED ABOVE.

5. GRATEFUL FOR ANY COMMENTS YOU HAVE WHICH YOU WOULD WISH US TO PASS TO MFA. FROM WHAT AYATHURAY SUGGESTED THIS MORNING IT WOULD APPEAR THAT INSTRUCTIONS TO MALAYSIANS DEL DO HAVE ENOUGH FLEXIBILITY TO ENABLE DEL TO DROP PROPOSED AMENDMENT AND SUPPORT CDN POSITION IF WE PRESS HARD

SHORTLIFFE

EXTERNAL AFFAIRS

AFFAIRES EXTÉRIEURES

MEMORANDUM

TO
À FILE

FROM
De A.W. Robertson

REFERENCE
Référence

SUBJECT
Sujet Law of Treaties - Western Group Meeting April 9.

SECURITY
Sécurité RESTRICTED

DATE April 10, 1969

NUMBER
Numéro

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

File 6/5/69.

ENCLOSURES
Annexes

DISTRIBUTION

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A meeting of the Western Group of States took place Wednesday morning, April 9. The Chairman (Verosta) of the Austrian delegation opened the meeting by welcoming the delegates. It was then agreed that the Chairmanship of the Group should in future, as at the 1st Session, rotate between the heads of the British and French delegations and that, in the absence of the head of the British delegation (who is not expected until later in the month), Prof. Hubert of France would take the chair.

2. Assuming the chairmanship, Prof. Hubert then spoke at considerable length. He announced that France had decided to withdraw all 8 of its proposed amendments concerning restricted Multilateral Treaties. It would, however, present a new amendment concerning Article 50 "jus cogens". Although he explained at length the defects which France foresaw in the application of the present text of the article, which did not specify which rules of law might be considered or alleged to constitute "jus cogens", nevertheless the logic of the new French proposal was inconsistant. It would give individual states the right to challenge the application of the article by proving that they themselves had not accepted that a given rule of law allegedete constitute jus cogens. He also explained that the French proposal would not constitute a general veto. Nevertheless to the Canadian representatives present it seemed unlikely (as indeed had been made clear to the French Ambassador in Ottawa at a recent interview on this proposal) that the French proposal could be accepted.

was in fact so.

3. Since no delegates present were prepared to discuss in a substantive manner the problems concerning Articles 5 bis and 62 bis, the head of the USA delegation (Kearney) instead reported on the April 8 meeting on working methods called by Stavrolopous and went on to state that in his delegation's view there would be no real difficulties with the concept of "general multilateral treaties" in the consideration by the Committee of the Whole of the less controversial of the articles it was to take up. That was because if the USSR was eventually successful in getting 5 bis adopted, their wishes would have been met in any event, while if they failed and it were defeated, the references would be unnecessary.

4. In the ensuing discussions the UK explained that they had certain technical matters, relating to Articles 15 and 25 which they would wish to discuss in the Committee of the Whole. Italy stressed that the Group should ensure that there be no marchandise with the Eastern Europeans as between Articles 5 bis and 62 bis.

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Ext. 407C/Bil.

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[illegible] ay of Treaties - Western Group Meeting April 9.

April 10, 1959

A meeting of the Western Group of States took place yesterday, April 9. The Chairman (Verosta) of the Austrian delegation opened the meeting by welcoming the delegates. It was then agreed that the Chairmanship of the Group should in future, as at the last Session, rotate between the heads of the British and French delegations and that, in the absence of the head of the British delegation (who is not expected until later in the month), Prof. Hubert of France would take the chair.

2. Assuming the chairmanship, Prof. Hubert then spoke at considerable length. He announced that France had decided to withdraw all 8 of its proposed amendments concerning restricted multilateral treaties. It would, however, present a new amendment concerning Article 50 "jus cogens". Although he explained at length the defects which France foresaw in the application of the present text of the article, which did not specify which rules of law might be considered or alleged to constitute "jus cogens", nevertheless the logic of the new French proposal was inconsistent. It would give individual states the right to challenge the application of the article by proving that they themselves had not accepted that a given rule of law (alleged) constituted jus cogens. He also explained that the French proposal would not constitute a general veto. Nevertheless to the Canadian representatives present it seemed unlikely (as it had been made clear to the French Ambassador in Ottawa at a recent interview on this proposal) that the French proposal could be accepted.

3. Since no delegates present were prepared to discuss in a substantive manner the problems concerning Articles 5 bis and 62 bis, the head of the USA delegation (Kearney) instead reported on the April 6 meeting on working methods called by Bartholomew and went on to state that in his delegation's view there would be no real difficulties with the concept of "general multilateral treaties" in the consideration by the Committee of the Three of the less controversial of the articles it was to take up. That was because if the USA was eventually successful in getting 5 bis adopted, their wishes would have been met in any event, while if they failed and it were defeated, the reference would be unnecessary.

4. In the ensuing discussions the U.K. delegation (Jacob) stated that certain concrete matters, relating to Articles 15 and 25 which they would wish to discuss in the Committee of the Whole. Italy expressed that the Group should ensure that there be no misunderstanding in the Assembly regarding the bracketing of Articles 5 bis and 62 bis.

5. Concerning 62 bis, Sweden reported that the purpose of the 13 power amendment, which had been tabled at the end of the last session, had been to attempt to reduce the tensions and concerns arising in connection with Chapter V, and was only one of the several proposed amendments (USA, Switzerland, Japan). The Western Group members of the 13 power text co-sponsor group (Sweden and the Netherlands) had since spoken with the Americans and were prepared to try to persuade the other co-sponsors to amend the text so as to make it more generally acceptable and in the hope of securing American approval. They would soon hold a meeting for that purpose. The Netherlands representative confirmed this fact. The Swiss representative then indicated that their proposal concerning 62 bis, although unlikely to succeed, would not be withdrawn since they dealt with a matter of principle. However, Japan and Switzerland might possibly combine their two drafts. He further indicated that Switzerland is also still attracted to the possibility (at least as a last resort) of splitting up the convention.

6. The Spanish representative then announced that Spain, although itself in favour of a compulsory arbitration clause, doubted that one would be acceptable. They had therefore prepared a settlement of disputes procedure of their own, which was being distributed to other states in Madrid and through its embassies abroad. Since none of the delegates present had yet received the Spanish proposal, it was agreed they would therefore be considered at a later date.

A.W. Robertson.

Mr Macchinney

EXTERNAL AFFAIRS  AFFAIRES EXTÉRIEURES

MEMORANDUM

TO / À FILE

FROM / De Mr. A.W. Robertson

REFERENCE / Référence

SUBJECT / Sujet Law of Treaties Conference Second Session - First Plenary Meeting.

TO: Mr. Stanford
FROM REGISTRY
APR 22 1969
FILE CHARGED OUT
TO:

SECURITY / Sécurité UNCLASSIFIED

DATE April 10, 1969

NUMBER / Numéro

FILE	DOSSIER
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MISSION	5

ENCLOSURES / Annexes

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The first Plenary meeting of the session opened with a hortatory introductory statement by the President (Ago of Italy).

2. Ghana's proposals (co-sponsored by India) for a programme of work (L.2) were then adopted without any objection. It was further decided that the Conference should follow the same working hours as last year -- from 10.30 to 1.00 and 3.00 to 6.00 P.M. There could if necessary be night meetings on Tuesdays and Thursdays, and there could also be meetings on Saturday mornings. As both May 1 (May Day) and May 5 (visit of Her Majesty Queen Elizabeth) are State Holidays in Austria, there will be no meetings then.

May 5 was not a State holiday, but as the Hofburg was being used in connection with the Queen's visit the 2nd conference did not meet

3. The Conference further agreed as follows:

(1) that the Drafting Committee should prepare a text of a preamble and that this should be submitted to Plenary;

(2) that the Secretariat should prepare a text of the final act which should be submitted first to the Drafting Committee and then by the Drafting Committee (revised as necessary) to Plenary.

A.W. Robertson.

12/22/4

Ext. 407C/Bil.

ACTION COPY
Stamped O.R.
20-3-76

FM SDMGO APR10/69 CONFD

TO EXTEROTT 65 IMMED

INFO TT VIENN DE OTT

REF OURTEL 64 APR10

LAW TREATY ARTICLE 5

PRESIDENT YESTERDAY DESIGNATED AS DOMINICAN DEL WITH RANK AMBASSADOR THEODOR SCHMIDT DOMINICAN DOCTOR HONARY CONGEN(SWITZERLAND?) AND APPROVED INSTRUCTIONS WHICH MFA LEGAL ADVISER PACHECO ASSURES US INCLUDES CONSULTATION CANDEL RE ARTICLE 5.THIS HAS ALL BEEN DONE SO LATE IN THE DAY CHIEF OF STAFF INSTRUCTIONS MAY NOT/NOT GO INTO KIND OF DETAILS WE HAVE TAKEN SUCH PAINS TO PRESENT HERE.CONSEQUENTLY PERFORMANCE DOMINICAN DEL MAY DEPEND LARGELY ON BRIEFING OF AND PERSONAL RELATIONSHIP CANDEL MAY BE ABLE TO ESTABLISH WITH SCHMIDT IN VIENN.

21-14-4

ACTION REQUEST
FICHE DE SERVICE

FILE NO. / POSSER No.

TO — À: Legal Division

DATE: Apr. 11/69

LOCATION — ENDROIT

FROM — DE: O/SSEA/R.E.Moore/JF

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- [ ] SEE ME / ME VOIR
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- [ ] YOUR REQUEST / À VOTRE DEMANDE
- [ ] _____

For your information.

003510

L'Ambassadeur de Suisse

Legal (info.)

Stanford O.R.

Hans W. Gasser

20-3-1-6
21

Ottawa, April 9, 1969

Sir,

Your temporary absence from Ottawa unfortunately prevents me from calling on you personally to let you know of my government's reaction to your remarks on the significance for Canada of article 5, paragraph 2, of the proposed convention which is now being discussed in Vienna.

I have been informed of my authorities' full understanding for the Canadian position; for their part, they hope that the proposals put forward by Switzerland will receive the active support of the Canadian delegation (my counsellor had already been assured of this by Mr. Stanford of your Legal Division on March 12).

The Swiss delegation will contact the Canadian delegation in Vienna regarding a mutually satisfactory course of action.

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

H. W. Gasser

The Honourable Mitchell Sharp
Secretary of State for External Affairs

Ottawa

APR APR 1969 1969

ACTION COPY

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20-3-1-6

37 c.c. M.McKinnon, P.C.O.

April 23 it

FM VIENN APR9/69 CONFD

TO EXTEROTT (LEGAL DIV) 256

BAG LAGOS DE OTT

LAW OF TREATIES CONFERENCE- ARTICLE 5 NIGERIA

DR ELIAS INFORMED US YESTERDAY THAT NIGERIA WILL SUPPORT OUR REQUEST FOR A SEPARATE VOTE ON PARA2 AND WILL ABSTAIN ON THE SUBSTANTIVE NOTE ON THAT PART.

2. ELIAS REFERRED TO 2 FACTORS WHICH HAD LED THE NIGERIANS TO WITHDRAW (IN PART) THEIR OPPOSITION TO OUR POSITION ON PARA2. THE FIRST WAS THAT QUOTE CDA HAS DONE A GREAT DEAL FOR US UNQUOTE. THE SECOND FACTOR, STRESSED BY ELIAS, WAS THE HIGH ESTEEM IN WHICH OUR HIGHCOMM IN LAGOS IS HELD BY THE NIGERIAN GOVT

WERSHOF

Briefing memo

file 20-3-1-6

ACTION COPY

FM MVDEO APR8/69 CONFD

TO TT EXTER 54 PRIORITY DE NY

VIENN PRIORITY DE OTT

REF YOURLET L424 MAR25

LAW OF TREATIES CONFERENCE

REGRET I DID NOT/NOT FORESEE THAT FOREIGN MINISTRY WOULD BE CLOSED FROM TIME REFLET ARRIVED FOR ENTIRE WEEK OF EASTER. I SPOKE TO AMBASSADOR CIASULLO TODAY. THERE IS NO/NO CHANGE IN FIRM SUPPORT OF CDN POSITION WHICH IS WELL UNDERSTOOD. JIMINEZ DE ARECHAGA WHO RESIGNED AS MINISTER OF INTERIOR SOME MONTHS AGO IS ATTENDING CONFERENCE

LANGILLE

17/9/4

M. D. COPITHORNE

ACTION COPY

ORL

20-3-1-6

26.

c.c. to M.McKinnon
P.C.O.
April 23 itl

DE ROME AVR8/69 RESTR

A EXTER 411

INFO TT VIENN DE PARIS

REF VOTRETEL L395 MAR19

CONFERENCE DE VIENN SUR LE DROIT DES TRAITES--SANMARINO

VOICI PRINCIPAUX PASSAGES DE LA NOTE QUE NOUS VENONS DE RECEVOIR DU SECRETARIAT DETAT POUR LES AFFAIRES ETRANGERES DE SANMARINO EN REPONSE A NOTRE PROPRE NOTE NUMERO 2-69 QUE NOUS LUI ADRESSIONS LE MAR21 DERNIER ET DONT NOUS VOUS AVIONS TRANSMIS LA COPIE: CIT EN PRENANT ACTE DE LATTITUDE DU GOUVT CDN AU SUJET DE LA PROPOSITION VISANT A INSERER UN ARTICLE CINQ BIS DANS LE PROJET DE CONVENTION SUR LE DROIT DES TRAITES ET, PAR CONSEQUENT, AU SUJET DES AMENDEMENTS PROPOSES AUX ARTICLES DEUX ET DOUZE DE CE PROJET, LE SECRETARIAT DETAT A LHONNEUR DE COMMUNIQUER QUIL A DONNE LES INSTRUCTIONS SUIVANTES A LA DEL DE SAINT-MARIN A LA CONFERENCE SUSDITE: (1) DE VOTER AFIN QUE DEUX SCRUTINS SEPARES AIENT LIEU SUR LARTICLE CINQ, LUN SUR LE PREMIER ET LAUTRE SUR LE DEUXIEME PARA DE LARTICLE; (2) DANS LE CAS OU CELA SE PRODUIRAIT, DE VOTER POUR LE PREMIER PARA ET CONTRE LE DEUXIEME; (3) DANS LE CAS OU LE RESULTAT DECRIT AU POINT (1) NE SERAIT PAS OBTENU, DE VOTER POUR LA SUPPRESSION DE TOUT LARTICLE CINQ. LE SECRETARIAT DETAT EST HEUREUX QUE LE GOUVT DE SAINT-MARIN AIT PU PRENDRE AU SUJET DE CE QUI PRECEDE LATTITUDE QUE LE GOUVT CDN SOUHAITAIT ET SAISIT CETTE OCCASION ETC FINCIT.''''''''

1/9/4

MESSAGE

file

DATE	FILE/DOSSIER	SECURITY SECURITE
APR8	20-3-1-6	RESTR
	37	

FM/DE EXTERNAL OTT

APR 9 00 21 '69

NO	PRECEDENCE
G-123	IMMEDIATE

TO/A VIENNA

INFO

REF

SUB/SUJ LAW OF TREATIES CONFERENCE

FRENCH EMBASSY HAS INFORMED US THAT FRENCH DELEGATION TO VIENNA CONFERENCE WILL CONVENE WESTERN GROUP AT 11 A.M. ON APR9 AT HOFBURG (RITTERSAL). FRENCH EMBASSY HOPE THAT CDN DELEGATION WILL BE ABLE TO PARTICIPATE IN THIS FIRST MTG OF WESTERN GROUP.

DISTRIBUTION LOCAL/LOCALE NO STANDARD C.C. LEGAL DIV (DONE O/USSEA)

ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	APPROVED/AUTORISE
SIG. PABISSONNETTE/MMM	O/USSEA	2-6876	SIG. PABISSONNETTE

EXT 18/BIL (REV 5/64) (COMMUNICATIONS DIV) 8.4.67/US)

003516

ACTION COPY

L

Mr Hambling
Could you please follow up on this?

OTT098

PAR080

GVE 39

VNA3/8

RR OTT

DE VNA

R 081245Z

FM VIENN APR8/69

TO EXTEROTT 252

2ND COPY SENT TO "R" DIV FOR INFO

20-3-1-6
37
8/4/69

REF FINANCE DIV MEMO TO LEGAL DIV MAR5(OTT FILE 20-3-1-6)

LAW OF TREATIES CONFERENCE: DEL ENTERTAINMENT

YOUR REF MEMO INFORMED US OFFICERS SERVING ABROAND AND ALSO WITH CDN DEL TO TREATIES CONFERENCE CANNOT/NOT BE REIMBURSED FROM CONFERENCE FUNDS FOR ENTERTAINMENT PROVIDED BY THEM. ASIDE FROM HEAD OF DEL ONLY OTHER MEMBER FALLING IN THIS CATEGORY IS AW ROBERTSON(FIRST SEC PRMNY).

2. WHILE PREPARED TO DRAW ON HIS POST ENTERTAINMENT ALLOWANCES TO SUPPLEMENT CONFERENCE ENTERTAINMENT WHILE IN VIENN PLEASE CONFIRM AT WHICH RATES ROBERTSON MAY CLAIM FOR SUCH ENTERTAINMENT. PARA5 REF MEMO LISTS PERCAPITA COST CEILINGS IMPOSED BY TB FOR DEL ENTERTAINMENT. WHILE MORE REALISTIC THESE ARE CONSIDERABLY HIGHER THAN EXISTING RATES BOTH FOR NY ANDESPECIALLY VIENN. SHOULD HE THEREFORE CLAIM AT PARA5 RATES, NY RATES OR THE RATES WHICH WOULD BE APPLICABLE IF HE WERE POSTED IN VIENN?

8.8.4.

Miss Lindman
24174

File
Diary
Div. Diary

MESSAGE

DATE	FILE/DOSSIER	SECURITY SECURITE
APRIL 8/69	26-3-1-6	
	37	SAME

FM/DE EXTERNAL OTTAWA

NO	PRECEDENCE
L-467	ROUTINE

TO/A VIENNA

INFO

REF YOURTEL 252 April 8/69

SUB/SUJ LAW OF TREATIES CONFERENCE: DEL ENTERTAINMENT

WHILE ON CONFERENCE DUTY ROBERTSON STILL SUBJECT TO PER CAPITA COST CEILINGS FOR ENTERTAINMENT APPLICABLE TO HIS POST IN N.Y. SEE SEC. 2.24.8 MANUAL OF REGS.

BEST COPY AVAILABLE

DISTRIBUTION LOCAL/LOCALE FINANCE DIV. (YOUNG), PERSONNEL OPERATIONS (LADMAN, ALLOWANCE POLICY SEC.) (Done in Div.)

NO STANDARD

ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	APPROVED/AUTORISE
SIG. D.MAWHINNEY/Ital	LEGAL	2-9553	SIG. J.A. BEESLEY J.A. BEESLEY

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

MESSAGE

file 20-3-1-6

DATE	FILE/DOSSIER	
APR8	20-3-1-6	
	75	—

RESTR

FM/DE EXTERNAL OTT

NO	PRECEDENCE
G-123	IMMEDIATE

TO/A VIENNA

INFO

REF

SUB/SUJ LAW OF TREATIES CONFERENCE

FRENCH EMBASSY HAS INFORMED US THAT FRENCH DELEGATION TO VIENNA CONFERENCE WILL CONVENE WESTERN GROUP AT 11 A.M. ON APR9 AT HOFBURG (RITTERSAL). FRENCH EMBASSY HOPE THAT CDN DELEGATION WILL BE ABLE TO PARTICIPATE IN THIS FIRST MTG OF WESTERN GROUP.

DISTRIBUTION
LOCAL/LOCALE NO STANDARD C.O. LEGAL DIV (DONE O/USSEA)

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

M. D. COPITHORNE

TO: m Stanford
FROM REGISTRY
APR 18 1969
FILE CHARGED OUT
TO:

EXTERNAL AFFAIRS

AFFAIRES EXTÉRIEURES

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

SECURITY / Sécurité: Unclassified

FROM / De: Canadian Embassy, San Jose

DATE: April 7, 1969

REFERENCE / Référence:

NUMBER / Numéro: 127

SUBJECT / Sujet: Law of Treaties Conference - Article 5

File 21/4/69

FILE	DOSSIER
OTTAWA 20-37-6	
MISSION 37 24-1	8

ENCLOSURES / Annexes: 2

DISTRIBUTION

... Attached is a copy of the First Person Note No. 4,

... along with the unofficial Spanish translation, to the Panamanian Minister of External Relations regarding the Second Session of the Conference on Law of Treaties to be held in Vienna in April and May of this year. This Note will be delivered by Mr. Munro in Panama when he goes there this week to present his Credentials.

Donald W. Munro
The Embassy.

20/18/4

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

003521

CANADIAN EMBASSY  AMBASSADE DU CANADA

No. 4

San José, Costa Rica
March ~~12~~, 1969
31

Excellency,

I have the honour to refer to the Embassy's Note No. 61 of December 11, 1968 under cover of which you received an Aide-Memoire dealing with the proposed International Convention on Treaties which is to be considered at the Second Session of the Conference that will be held in Vienna in April and May of this year. The Aide-Memoire laid stress on dangers inherent in paragraph 2 of Article 5 of the treaty, as at present drafted, indicating some of the difficulties that could arise for Federal States if that particular paragraph were to be agreed upon as it now reads.

During the First Session of the Conference, when this particular Article was being drafted, the majority of Federal States participating opposed in a roll-call vote the present wording, the only Federal States supporting its retention being Nigeria, Switzerland, the U.S.S.R. and Yugoslavia. As is pointed out in the Aide-Memoire, the wording of paragraph 2 of Article 5, in its present form, leaves open to question the doctrine that a Federal constitution is an internal law and that its interpretation therefore falls within

His Excellency,
Nonder A. Pitty Velásquez,
Minister of External Relations,
Panama, Panama.

.../2

the exclusive jurisdiction of the internal tribunals of the Federal State having jurisdiction in constitutional matters. In consequence, if that paragraph were to be adopted as it now stands, a practice could grow up which no State would consider acceptable, namely, that other States may assume the right to interpret for themselves the constitutions of Federal States. Such a practice, were it to gain ground, particularly in cases where the constitutional provision regarding treaty-making became the subject of dispute, would constitute a clear case of interference by the outside State in the internal affairs of the Federal States.

Although not a Federal State and therefore not directly affected should such a practice become general, Panama would, I am confident, deplore any development of this sort which would lessen international respect for the domestic nature of constitutional law.

As a result of these various considerations, the Canadian Delegation to the Second Session of the Conference on the Law of Treaties will be instructed to do what it can to insure that Section 5 of the draft treaty will be voted on paragraph by paragraph and to secure, if possible, the deletion of paragraph 2 of that Section. It is my Government's hope that the Canadian Delegation will be able to count on the support of the Panamanian Delegation in this endeavour.

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

G. D. MacKinnon
Chargé d'Affaires.

D W MUNRO/R GURDIAN/gl

External

TRADUCCION NO OFICIAL

No. 4

San José, Costa Rica,
~~32~~ 31 de marzo de 1969.

Excelencia:

Tengo el honor de referirme a la Nota No. 61 de esta Embajada fechada el 11 de diciembre de 1968, con la cual Vuestra Excelencia recibió un "Aide-Mémoire" que trata sobre la propuesta Convención Internacional sobre el Derecho de los Tratados que se discutirá en la Segunda Sesión de la Conferencia de las Naciones Unidas sobre el Derecho de los Tratados que tendrá lugar en Viena en abril y mayo de este año. El "Aide-Mémoire" enfáticamente expuso los peligros inherentes del inciso 2 del artículo 5 del tratado, tal y como aparece redactado en la actualidad, e indicó algunas de las dificultades que podrían presentárseles a los Estados Federales si dicho inciso fuera aceptado con la redacción que tiene en su forma actual.

Durante la primera sesión de la conferencia, cuando este artículo estaba siendo redactado, la mayoría de los Estados Federales participantes se opusieron - por votación nominal - a la

...2

Excelentísimo Señor,
Lic. Nonder A. Pitty Velásquez,
Ministro de Relaciones Exteriores,
Panamá, República de Panamá.

redacción actual; los únicos Estados Federales que la apoyaron en ese momento fueron Nigeria, Suiza, la Unión Soviética y Yugoeslavia. Como se advierte en el "Aide-Mémoire", la redacción del inciso 2 del artículo 5, en su forma actual, podría poner en duda la doctrina según la cual una constitución federal es una ley interna cuya interpretación está bajo la jurisdicción exclusiva de los tribunales internos del Estado Federal que tengan jurisdicción en asuntos de órden constitucional. Por lo tanto, si dicho inciso fuera aceptado con su redacción actual, podría dar pié al empleo de un procedimiento que ningún Estado consideraría aceptable, cual es, que otros Estados se otorguen el derecho de interpretar por sí, las constituciones de Estados Federales. Si semejante proceder tomara fuerza, particularmente en casos en que disposiciones constitucionales relativas a la manera de cómo hacer un tratado fueran objeto de discusión, constituiría un caso claro de interferencia del Estado extranjero en los asuntos internos de los Estados Federales.

Aunque Panamá no es un Estado Federal y que por lo tanto no sería directamente afectado si un procedimiento semejante se generalizara, tengo la certidumbre que Panamá deploraría el desarrollo de actuaciones de esta índole, que menoscabaría el respeto internacional de la naturaleza nacionalística del Derecho constitucional.

...3

Como resultado de estas consideraciones, la delegación canadiense a la Segunda Sesión de la Conferencia sobre el Derecho de los Tratados, tendrá instrucciones de hacer todo lo que pueda para que la sección 5 del tratado preliminar sea puesta a votación inciso por inciso y obtener, si posible, la abrogación del inciso 2 de dicha sección. Mi gobierno tiene la esperanza que la delegación canadiense pueda contar en sus propósitos, con el apoyo de la delegación de Panamá.

Ruégole, aceptar, Excelencia, las seguridades de mi más alta y distinguida consideración.

Donald W. Munro,
Embajador.

ACTION COPY

FM PSPAN APR5/69 RESTR NO/NO STANDARD

TO EXTER 681 IMMED

INFO TT VIENA(LAW OF TREATIES CONF DEL) IMMED DE OTT

REF OURTEL 539 MAR17

EK ROOPNARINE, AG SOLICTOR GEN OF TANDT WHO LEAVES TODAY(APR5)
FOR VIENA TO HEAD TANDT DEL UNTIL ATTORNEY GEN RICHARDS ARRIVES
SOME TIME LATER ON, ADVISED US THAT TANDT DEL WILL SUPPORT IN
GENERAL CDN POSITION ON ARTICLE5 UP TO AND INCLUDING VOTE AGAINST
PARA2 AND VOTE IN FAVOUR OF ANY AMENDMENT WE MIGHT INTRODUCE TO
PARA2 IF THAT IS NECESSARY.

4/8/3

Mr Bailey
Stanford

ACTION COPY

L

file 20-3-1-6
3 IV

FM WLGTN APR3/69 RESTR NO/NO STD

TO EXTER 223 PRIORITY

INFO TT PRMNY DE OTT

REF YOURTEL L450 MAR31

LAW OF TREATIES CONFERENCE NZ DEL

BROOKS, ACTING HEAD LEAGAL DIV NZDEA, TOLD US THAT HIS DEPT HAD UNSUCCESSFULLY TRIED TO OBTAIN TREASURY APPROVAL FOR TWO DELEGATES. IN HIS PERSONAL VIEW(PLSE PROTECT) MATTER HAD NOT/NOT BEEN PARTICULARLY STRONGLY PRESSED BECAUSE OF DESIRE ON PART OF DEA OFFICIALS RESPONSIBLE TO ENSURE TREASURY APPROVAL OF DELS TO OTHER UNRELATED CONFERENCES. ACCORDING TO BROOKS ONLY WAY IN WHICH MATTER COULD NOW BE REOPENED WOULD BE IF WE PRESENTED NZDEA WITH CAREFULLY REASONED AIDE-MEMOIRE EXPLAINING BOTH IMPORTANCE OF CONFERENCE TO WESTERN COUNTRIES AND DIFFICULTIES WHICH ONE-MAN DEL WOULD FACE IN VIENNA. NZDEA WOULD PASS THIS AIDE-MEMOIRE TO TREASURY WITH LIST NOW IN HAND SHOWING HOW FEW AND HOW INSIGNIFICANT ARE COUNTRIES WITH ONE MAN DELS. HE WAS NOT/NOT SANGUINE ABOUT PROBABLE RESULT OF THIS PROCEDURE BUT HE DID SAY THAT ANYTHING LESS WOULD BE WASTE OF TIME.

This would be a bit presumptuous I think

1. 3.4

ACTION COPY

20-3-1-6
37 | 26 c.c.

M.McKinnon
P.C.O.,
April 23 itl

FM BERUT APR3/69 CONFD NO/NO STANDARD

TO TT EXTER 328 PRIORITY DE PARIS

INFO TT GENEV DE PARIS

REF OURTEL 148 FEB11 AND 231 MAR11

UN LAW OF TREATIES CONF--ARTICLE FIVE--LEBANON

FM SECGEN SADAKA CALLED ME THIS MORNING TO DESCRIBE POSITION WHICH LEBANESE WILL ADOPT AT CONF ON THIS QUESTION. POSITION, WHILE NOT/NOT BAD, IS NOT/NOT AS SATISFYING AS THAT WHICH HAD BEEN OUTLINED TO US IN PRELIMINARY FORM IN OUR TWO REFTELS.

2. SADAKA EXPLAINED THAT LEBANESE DEL IS IN QUANDARY FOR HAVING VOTED IN FAVOUR OF ARTICLE FIVE AS IS AT PREVIOUS MTG. HEREFORE, IF PROPOSAL IS NOW PUT TO CONF TO OMIT PARA TWO OF ARTICLE FIVE, LEBANESE EL WILL NOT/NOT OPPOSE IT AND SHOULD ABSTAIN. IF, HOWEVER, IT BECAME EVIDENT THAT SUCH PROPOSAL TO OMIT PARA TWO COULD COME NO/NO WHERE NEAR OBTAINING MAJORITY, THEN LEBANESE WILL VOTE WITH MAJORITY

HARDY

21.3.4

2ND COPY TO

Mr Beesley
Stanford

P.A. DISCRIMINATE

20-3-1-6

ACTION COPY

FM LIMA APR2/69 CONFD NO/NO STANDARD

TO EXTER 176 PRIORITY

REF YOURTEL L322 MAR7

LAW OF TREATIES CONFERENCE-ARTICLE 5-PERU AND BOLIVIA

FOLLOW-UP NOTE PRESENTED TO BOLIVIANS LAST WEEK. ACCORDING TO OFFICIAL OF MFA, STUDIES ARE NOT/NOT YET COMPLETED AND INSTRUCTIONS FOR BOLIVIAN DEL NOT/NOT FINALIZED. THEY PROMISED TO REPLY TO NOTE, HOPEFULLY THIS WEEK. OUTSIDE OF EXPRESSION OF SYMPATHY FOR CDAS POSITION, NO/NO CONCRETE INDICATION WAS GIVEN.

2. WE ARE ALSO TRYING TO GET FIRMER VIEWS FROM PERUVIANS, AND SHALL REPORT SEPARATELY.

3.3.4

cc: Affaires d'Europe

B/SSEAE/PABissonnette/jd

M. Cadieux

To see d/f/o

MEMOIRE

Le 2 avril 1969

A LA DIRECTION DES AFFAIRES JURIDIQUES

Droit des traités et "jus cogens" 20-3-1-6

J'ai téléphoné à l'Ambassadeur de France cet après-midi pour lui faire part de notre réaction à la proposition française sur le "jus cogens", telle que contenue dans l'Aide Mémoire français du 27 mars. J'ai d'abord dit à l'Ambassadeur que nous partageons leurs craintes et leurs objectifs, en particulier celui d'exclure de la notion de "jus cogens" les résolutions de l'Assemblée Générale des Nations Unies. Nous n'avions aucun doute que la formule qu'il proposait aurait cet effet, mais nous nous demandions si cette même formule n'aurait pas aussi l'effet de nier la notion même du "jus cogens". Si cela était, nous nous attendrions à ce que les afro-asiens réagissent violemment à une telle proposition.

2. Si donc il était bien vrai que la formule française niait la notion même de "jus cogens", il devenait alors difficile pour les puissances occidentales d'en faire une condition sine qua non de la signature de la Convention. Une telle position serait en effet difficilement acceptable pour l'opinion publique occidentale. Par contre, nous nous rendions très bien compte que l'alternative qui consisterait à définir d'une façon précise la notion du "jus cogens" était peut-être difficile à réaliser. Des efforts avaient été faits dans ce sens par le groupe occidental, mais sans succès jusqu'à maintenant. Dans les circonstances il nous semblait donc important que le groupe occidental se réunisse le plus tôt possible dès l'ouverture de la Conférence à Vienne pour étudier en profondeur cette question et tâcher d'en arriver à une position qui satisfasse les intérêts occidentaux. Nous comprenions que la France serait président du groupe occidental pour les deux premières semaines de la Conférence de Vienne. Si le président proposait que cette question soit étudiée dès le début, c'est avec plaisir que nous lui donnerions notre support.

3. L'Ambassadeur m'a répondu, mais sans argument convainquant, qu'il ne croyait pas que la formule française, à toute fin pratique, puisse en arriver à nier l'existence même du "jus cogens". Il a ajouté qu'il informerait Paris de notre réaction.

P.A. BISSONNETTE

R.A.B.

ACTION COPY

Bappel L Stafford file 20-3-1-6 2/IV

20-3-1-6
37 TSB

This is ridiculous

FM ANKRA APR2/69 CONFD NO/NO STANDARD

TO EXTER 446 PRIORITY

INFO TT COPEN DE HAGUE

REF MYTEL 288 MAR5

LAW OF TREATIES CONFERENCE

I SPOKE TO HAYTA THIS MORNING.HE TOLD ME HE HAD NOW COMPLETED REVIEW OF MATERIAL.IN COURSE OF HIS REVIEW,HE HAD PAID VERY CAREFUL ATTN TO POINTS WE HAD PUT TO TURK GOVT.HE HAD CONCLUDED THAT,ON MATTER OF SUBSTANCE,IT WOULD NOT/NOT BE POSSIBLE FOR TURK TO ACCOMMODATE US. TURK ATTACHED IMPORTANCE TO WHOLE OF ARTICLE 5 AND WOULD SUPPORT IT AS NOW DRAFTED.AS REGARDS MATTER OF PROCEDURE,HE THOUGHT HE COULD BE MORE OPTIMISTIC SAYING IT WAS TURK ASSESSMENT THAT SEPARATE VOTE ON TWO PARAS OF ARTICLE MIGHT BE AGREED WITHOUT FORMAL CHALLENGE.BUT WHEN I ASKED HIM WHETHER,IN CASE THERE WAS SUCH A CHALLENGE, WE COULD ASSUME TURK WOULD SUPPORT SEPARATE VOTE,HE REFUSED TO COMMIT HIMSELF BEYOND SAYING THAT PROCEDURE IN THIS CASE HAD AN EVIDENT BEARING ON POINT OF SUBSTANCE AND THAT TURK DEL WOULD CONSIDER ITS POSITION IN LIGHT OF CIRCUMSTANCES AT THE TIME.MY JUDGEMENT,FOR WHAT IT IS WORTH,IS THAT TURKS WILL NOT/NOT VOTE FOR SEPARATE CONSIDERATION OF TWO PARAS OF ARTICLE 5 BUT THAT,IF WE PRESS THEM HARD,WE MAY BE ABLE TO PREVAIL ON THEM TO ABSTAIN

GOLDSCHLAG

22.2.4

PERSONAL AND CONFIDENTIAL

Ottawa, April 2, 1969

Dear Don:

Many thanks for your thoughtful (and thought-provoking) letter of March 14 concerning our representations on Article 5(2) of the draft Convention on the Law of Treaties. It is encouraging to know that our efforts on this issue have engaged the personal (in addition to official) attention of at least one of our Ambassadors.

I am inclined to agree with your remarks concerning the application to the particular circumstances of our problem of the rule that "what is not expressly forbidden is permitted" raised by the Honduran Ambassador. Our objection to paragraph 2 however is not that it necessarily authorizes, in any legal sense, abuses of the kind we fear. We are more concerned that its inadequacies are likely to lead to the same practical effect. What particularly troubles us is that the paragraph, by referring to the federal constitution without recognizing the exclusive right of the competent internal tribunal to interpret the constitution, will unavoidably lead to the practice of other states interpreting the federal constitution for themselves. The article does not take into account the recognition aspects of the matter at all. Canada is particularly vulnerable on this score because the provisions of our constitution which deal with competence in international affairs are not spelled out in the B.N.A. Act but are based in the development of constitutional practice. Interpretation of the Canadian constitution on this issue requires more than a simple capacity to read and understand a written document. It requires also an understanding of the legal implications of constitutional practice and of documents such as the Governor General's Letters Patent, as well as familiarity with such unusual legal concepts as the Royal Prerogative. Small wonder, then, that we wish to avoid a situation where others may feel free to interpret the Canadian constitution (as did Gabon) or, in cases of differing views within Canada, to choose that interpretation which best serves their political objectives, (as France has done in the dispute over the international capacity of Quebec).

Internally Article 5(2), as drafted, could have the effect that in order to achieve international status and capacity Quebec has only to argue that the constitution permits it to conduct its own international relations. You will be interested to know that in a working paper on Quebec's status in

.... 2

in international affairs presented at last February's constitutional conference, the Quebec Government relied solely on Article 5(2) in support of the international law aspects of its position. Our counter-arguments that ever since the 1920's, when Canada acquired independence, no one has recognized the provinces as having a distinct international capacity can be dismissed as irrelevant because Article 5(2) says nothing about recognition.

Our concern, therefore, is both practical and legal. But because our audience is made up largely of lawyers, and because we wish to avoid placing too much emphasis on our domestic problems, we have stressed in our presentation the strictly legal inadequacies which undoubtedly exist in the present text of the paragraph. The results of our efforts so far are moderately encouraging. We shall let you know, in due course, how it all turns out.

Yours sincerely,

J. A. BEESLEY

J. A. Beesley.

Mr. D. W. Munro,
The Canadian Ambassador
San José, Costa Rica

ACTION COPY

File 20-3-1-6

A.. ..ICOS APR2/69 CONFD

TO EXTER 189 PRIORITY

REF YOURTEL L329 MAR 7

LAW OF TREATIES CONFERENCE ARTICLE 5

CYPRUS AUTHORITIES PLAN ON FOLLOWING TACTICS:

(1)THEY WILL SUPPORT PROCEDURAL MOTION FOR SEPARATE VOTE ON PARA 2. good

(2)CYPRUS DEL WILL VOTE AGAINST PARA 2 IN A SEPARATE VOTE. good

(3)RATHER THAN VOTE AGAINST ARTICLE 5 AS WHOLE CYPRUS GOVT WILL ATTEMPT TO HAVE IT REDRAFTED.SHOULD THIS FAIL THEY WILL LIKELY VOTE AGAINST INCLUSION ARTICLE 5. o/c

21.2.4

B/SSEAE/PABissonnette/jd

file 20-3-1-6

MEMOIRE

Le 2 avril 1969

A LA DIRECTION DES AFFAIRES JURIDIQUES

file - 20-3-1-6

Droit des Traités et "jus cogens"

J'ai téléphoné à l'Ambassadeur de France cet après-midi pour lui faire part de notre réaction à la proposition française sur le "jus cogens", telle que contenue dans l'Aide Mémoire français du 27 mars. J'ai d'abord dit à l'Ambassadeur que nous partageons leurs craintes et leurs objectifs, en particulier celui d'exclure de la notion de "jus cogens" les résolutions de l'Assemblée Générale des Nations Unies. Nous n'avions aucun doute que la formule qu'il proposait aurait cet effet, mais nous nous demandions si cette même formule n'aurait pas aussi l'effet de nier la notion même du "jus cogens". Si cela était, nous nous attendrions ~~donc~~ à ce que les afro-asiens réagissent violemment à une telle proposition.

2. Si donc il était bien vrai que la formule française niait la notion même de "jus cogens", il devenait alors difficile pour les puissances occidentales d'en faire une condition sine qua non de la signature de la Convention. Une telle position serait en effet difficilement acceptable pour l'opinion publique occidentale. Par contre, nous nous rendions très bien compte que l'alternative qui consisterait à définir d'une façon précise la notion du "jus cogens" était peut-être difficile à réaliser. Des efforts avaient été faits dans ce sens par le groupe occidental, mais sans succès jusqu'à maintenant. Dans les circonstances il nous semblait donc important que le groupe occidental se réunisse le plus tôt possible dès l'ouverture de la Conférence à Vienne pour étudier en profondeur cette question et tâcher d'en arriver à une position qui satisfasse les intérêts occidentaux. Nous comprenions que la France serait président du groupe occidental pour les deux premières semaines de la Conférence de Vienne. Si le président proposait que cette question soit étudiée dès le début, c'est avec plaisir que nous lui donnerions notre support.

3. L'Ambassadeur m'a répondu, mais sans argument convainquant, qu'il ne croyait pas que la formule française, à toute fin pratique, puisse en arriver à nier l'existence même du "jus cogens". Il a ajouté qu'il informerait Paris de notre réaction.

P.A.B.

003537

16.3.4

27 mars 1969

AIDE MEMOIRE

La conférence des Nations Unies sur le Droit des Traités se réunira à nouveau à Vienne du 9 avril au 21 mai prochain. Ses travaux tendent à la rédaction d'un projet de convention qui entend introduire dans le droit des traités des règles nouvelles dont la plus grave est celle selon laquelle serait nul tout traité en contradiction avec certaines "normes impératives" du droit international acceptées par la communauté internationale des Etats dans son ensemble. Ces normes constituent ce que l'on est convenu d'appeler le "jus cogens", et elles ne sont pas autrement précisées. Les critères qui permettraient de les identifier ne sont déterminés nulle part.

Cette imprécision comporte le risque de voir déclarer certaines règles comme étant de "jus cogens" par une majorité d'Etats sans l'accord des autres Etats, ces règles pouvant ensuite être opposées aux gouvernements de cette minorité contre leur gré pour annuler des traités auxquels ils seraient partie. Tel serait en particulier le cas si l'on prétendait donner force contraignante à des principes incorporés dans des résolutions des Nations Unies votées à de larges majorités, mais que certains Etats membres n'auraient pas approuvés. On voit l'argument que certaines normes sur "la souveraineté des Etats sur leurs ressources naturelles" pourraient fournir aux gouvernements désireux de réviser des accords internationaux

.../...

économiques, lors même qu'ils les ont conclus en toute indépendance. C'est dire l'intérêt que certains pays portent au "jus cogens".

D'une manière générale ces préoccupations sont partagées par les Etats occidentaux. Mais ceux-ci déplorent plus qu'ils ne cherchent à modifier la tendance mentionnée plus haut : on se borne souvent à faire porter tous ses efforts sur la construction minutieuse d'un système obligatoire de règlements des différends pouvant surgir à propos de la détermination de ces règles nouvelles, et l'on attend de ce système qu'il limite dans la pratique les inconvénients d'un principe de base dont la formulation est imprécise. Une telle attitude revient à céder pour l'essentiel à la pression exercée par certains pays et à accepter des dispositions de nature à ébranler les engagements internationaux sur lesquels reposent les relations entre Etats.

Les pays animés par ces préoccupations fondamentales devraient donc en prévision d'une négociation avec les tenants du "jus cogens", convenir d'une attitude commune très ferme.

Certes, l'élaboration et la défense d'un système de règlement obligatoire des différends représentent un aspect important du problème, mais cette mesure ne saurait assurer une protection suffisante des conventions librement négociées. En effet, les arbitres qui, le cas échéant, auraient à se prononcer sur l'annulation d'un traité ne sont guidés par aucune définition claire ou aucun critère précis. Il apparaît donc essentiel de compléter l'article 50 du projet de convention sur le droit des traités, qui dispose que tout traité contraire à une "norme impérative du droit inter-

.../...

national" est nul et qui indique le sens à donner à cette dernière expression. On pourrait ajouter qu'une telle norme, tout en étant reconnue par la communauté internationale des Etats dans son ensemble "n'est pas opposable à un Etat qui peut faire la preuve qu'il ne l'a pas acceptée expressément en tant que telle". Ce faisant, on pourrait accepter que de telles normes soient reconnues et appliquées par le plus grand nombre, conformément à la volonté de la majorité, mais la possibilité serait donnée à tel ou tel Etat de montrer qu'il n'a pas participé à leur acceptation et que, par conséquent, la règle en question, s'il n'y consent pas, ne peut être invoquée contre lui. Il s'agit donc là d'une clause de sauvegarde indispensable. Faute d'obtenir une satisfaction de cette nature, les pays intéressés devraient marquer nettement qu'ils n'accepteront pas l'article 50, quelle que soit la majorité qui se dégagerait en sa faveur, et qu'ils sont décidés à ne pas signer la convention si cette disposition devait être maintenue dans sa rédaction actuelle.

Les Etats occidentaux ne représentent sans doute pas un nombre de voix permettant de faire valoir ces vues (une vingtaine environ sur 126) mais leur importance est sans commune mesure avec ces chiffres. Au surplus, il n'a jamais été admis que des votes majoritaires puissent imposer des règles de droit international. Celles-ci doivent être acceptées par les Etats auxquels elles s'appliqueraient. C'est pourquoi la règle du consensus et non celle de la majorité a été choisie pour les décisions de divers comités des Nations Unies. C'est ce concept que les Etats occidentaux

.../...

ont su faire admettre en matière de commerce et de développement.

Ainsi les partisans du "jus cogens" devraient donc être avertis qu'ils se trouveront placés devant l'alternative suivante : ou bien avoir une convention qui liera, certes, les membres de la majorité, mais à l'écart de laquelle se tiendront la plupart des puissances occidentales ; ou bien rechercher avec celles-ci sur ce problème du "jus cogens" la solution qui leur permettra d'obtenir l'adhésion de ces puissances./.

EXTERNAL AFFAIRS  AFFAIRES EXTÉRIEURES

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

FROM / De: The Canadian Embassy, SAN JOSE.

REFERENCE / Référence: Our Letter No. 99 of March 18, 1969 and related correspondence

SUBJECT / Sujet: LAW OF TREATIES CONFERENCE - ARTICLE 5

SECURITY / Sécurité: CONFIDENTIAL

DATE: April 1, 1969

NUMBER / Numéro: 124

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

ENCLOSURES / Annexes

DISTRIBUTION

The first official reply to our representations on this subject in Costa Rica, Honduras and Nicaragua comes from Costa Rica and an office translation is attached. Also attached is a copy of the original Note in Spanish. We would suggest that you read the reply in the Chinese manner or at least start at the end of the Note. In this way, the third and fourth paragraphs, while still very alarming, will not come as such a shock.

2. We have not discussed with the Ministry their Governments' point of view that "the international capacity of a State member of a Federal Union should be conferred or bestowed according to rules of International Law and not by the rules of internal law as established by the Federal Constitution"; nor would we consider it opportune to do so until after the Conference has taken place. However, you will probably agree that it would be important to determine the background of such a viewpoint (unless you are already aware of it); It is possible that what the Costa Ricans have in mind is their status in any future Central American political union. The use of the word, "Estado" in their statement of the situation is perhaps the key.

3. There is a slight error in the Note as a result of the Spanish translation of our Aide Memoire. In the latter, the interpretive phrase 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 was put in quotes thus giving the appearance that this wording was Article 5 verbatim. As you will see from paragraph 2 of the Note, the same error was repeated.

4. No replies have been received from Nicaragua and Honduras and we are, accordingly, on the point of making further representations.

Donald D. Muir
The Embassy.

12/8/4

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

EXTERNAL AFFAIRS  AFFAIRES EXTÉRIEURES

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FROM / De: The Canadian Embassy, SAN JOSE.

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MISSION:

ENCLOSURES / Annexes:

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D. W. MUNRO

The Embassy.

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

REPUBLICA DE COSTA RICA
MINISTERIO DE RELACIONES EXTERIORES Y CULTO

Dirección General de Asuntos Exteriores
N° 57681-AE-

24-1

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San José, 26 de Marzo de 1969.

Excelentísimo señor:

Me es muy grato referirme a la Nota N° 17 de 12 de Marzo en curso, relativa a la Convención Internacional sobre el Derecho de los Tratados que se verificará en Viena en los meses de abril y mayo del presente año, y hacer del conocimiento de Vuestra Excelencia nuestra opinión en lo relativo a la omisión del inciso 2) del artículo 5 del Proyecto de Convención que dispone lo siguiente:

"La capacidad contractual internacional de un miembro de un Estado Federal será determinada por la Constitución Federal"

Según nuestro punto de vista, la capacidad internacional de un Estado componente de una Unión Federal, corresponde atribuirla o determinarla según las normas de Derecho Internacional, y nó por disposiciones de Derecho interno de la Constitución Federal.

En cierto sentido la redacción propuesta en el inciso 2) del artículo 5 del proyecto de Convención, viene a restringir la facultad que tienen los terceros Estados de reconocer la subjectividad jurídico-internacional de un Estado, parte de una Federación,

Excelentísimo Señor
Donald Wallace Munro
Embajador del Canadá
Ciudad.-

REPUBLICA DE COSTA RICA
MINISTERIO DE RELACIONES EXTERIORES Y CULTO

Dirección General de Asuntos Exteriores

en el ámbito de los asuntos que caen directamente en la órbita del gobierno autónomo de dichos Estados.

Teniendo en cuenta además, que en el curso de los debates del primer período de sesiones de la Conferencia de las Naciones Unidas sobre el derecho de los Tratados que se celebró en Viena el año pasado, un gran número de los más importantes Estados que tienen formas federativas votaron en contra de la inclusión del inciso 2) del artículo 5 del proyecto de Convención, creemos que Costa Rica no tendría especial interés en la inclusión de dicho inciso 2); y está dispuesto a apoyar la solicitud de esa Honorable Embajada, contenida en el "Aide-Mémoire" de 9 de Octubre de 1968.

Aprovecho la oportunidad para renovar a Vuestra Excelencia seguridades de mi más alta y distinguida consideración,

Fernando Lara
Ministro de Relaciones Exteriores

MINISTERIO DE RELACIONES EXTERIORES Y CULTO

Dirección General de Asuntos Exteriores

N° 57681-AE-

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Ciudad.-

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MINISTERIO DE RELACIONES EXTERIORES Y CULTO

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Fernando Lara
Ministro de Relaciones Exteriores

Legal Division/J.S. Stanford/bp

EXTERNAL AFFAIRS

AFFAIRES EXTÉRIEURES

Memorandum

Mr. Bissonnette to see
2/4

TO / À: File

FROM / De: J.S. Stanford

REFERENCE / Référence:

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

SECURITY / Sécurité: CONFIDENTIAL

DATE: April 1, 1969

NUMBER / Numéro:

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

ENCLOSURES / Annexes

DISTRIBUTION

Mr.Bissonnette
Far Eastern
(Harrington)

On April 1, Mr. Z.A. Tandjung, Counsellor at the Indonesian Embassy, called on me at my request to discuss the Indonesian position on Article 5 paragraph 2. After giving him general background information concerning the U.N. Conference and the Draft Convention, I reviewed briefly the legal objections to paragraph 2. I then went on to discuss in some detail the political implications of paragraph 2 for Canada and to explain to Mr. Tandjung that our objective in supplementing our Embassy's efforts in Djakarta by an approach to the Indonesian Embassy here was to seek to assure that the decision on the Indonesian position on Article 5 took into account the political as well as the purely legal considerations. We also discussed at some length the question of a separate vote on paragraph 2 and a special request was made for Indonesian support on this issue.

Our discussion lasted about 45 minutes. I informed Mr. Tandjung that the vote on Article 5 would probably take place on or about April 25 and that I hoped his report of our discussions would reach Djakarta in time to be considered in the preparation of the instructions for the Indonesian delegate in Vienna.

J.S. Stanford

Ext. 407A/Bil.

file

Legal/J.A.Beesley/jl

Defence Liaison (2) Division

RESTRICTED

Legal Division

April 1, 1969

Pormisny tel 758 March 24, PO 982 March 26 and
Pewis tel 801 March 27

Vienna Law of Treaties Conference: Possible Side Trips
to Eastern Europe

20-3-1-6
37

I shall be participating in the conference on the Law of Treaties only for the first two to three weeks, until the Article touching on the right of the component units of federal states to make treaties is disposed of one way or another. I should be grateful if you would let me know whether I may participate in any side trips to Eastern European countries arranged by the conference organizers if such opportunities arise during the period of my stay in Vienna.

J. A. BEESLEY

Legal Division

MESSAGE

DATE	FILE/DOSSIER	SECURITY SECURITE
APR1	20-3-1-6 / 37	UNCLAS

FM/DE EXT OTT

NO	PRECEDENCE
L-457	ROUTINE

TO/A COPEN AND VIENNA

INFO

REF

SUB/SUJ LAW OF TREATIES CONFERENCE: ARRIVAL OF BEESLEY

DUE TO HAVING JUST RETURNED FROM NY FROM SEABED AND AGGRESSION CTTEES AND consequently PRESSURE OF WORK IN OTT IT WILL NOT BE POSSIBLE FOR BEESLEY TO ATTEND INITIAL DELEGATION MTG OR OPENING SESSION OF CONFERENCE. HE WILL ARRIVE INSTEAD ON FLIHHT AC874 11:20 AM APR 10. PLS ALTER HOTEL RESERVATION ACCORDINGLY.

DISTRIBUTION
LOCAL/LOCALE J. S. STANFORD

NO SED

ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	APPROVED/AUTORISE
SIG. J.A.BEESLEY/JF	LEGAL	2-2728	SIG. J. A. BEESLEY

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

ACTION COPY

L

20-3-1-6

FM BNGKK APR1/69 CONFD

TO EXTER 295 PRIORITY

INFO TT VIENN PRIORITY DE OTT

REF MYTEL 226 MAR17

LAW OF TREATIES CONFERENCE

RTG SYMPATHETIC ON CDN POSITION AND DR MANU WHO WILL HEAD THAI DEL AT SECOND SESSION OF CONFERENCE,INDICATED TO ME TODAY THAT HE CANNOT/NOT MAKE ANY COMMITMENTS UNTIL HE CONSULTS HIS DEL IN VIENN.HE INDICATED THAT IT IS UNLIKELY THAT RTG WILL VOTE ON SECRET DOCUS PARA2(ARTICLE FIVE)BUT FEELS LIKELY THAT DECISION WILL BE TAKEN BY DEL TO ABSTAIN.DR MANU SAID HE WOULD CONTACT CDN DEL WHEN THAI DEL HAD REACHED DECISION

BRITTON'''

3|2|1

EXTERNAL AFFAIRS  AFFAIRES EXTÉRIEURES

Memorandum

TO / À: File

FROM / De: J.S. Stanford

REFERENCE / Référence:

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

SECURITY / Sécurité: CONFIDENTIAL

DATE: April 1, 1969

NUMBER / Numéro:

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

ENCLOSURES / Annexes:

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(Harrington)

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J. S. STANFORD

J.S. Stanford

Ext. 407D/Bil.
[redacted]
(Admin. Services Div.)

ACTION COPY

L

file 20-3-1-6

FM CLMBO MAR31/69 RESTR NO/NO STANDARD

TO EXTER 210

REF YOURTEL L324 MAR7

LAW OF TREATIES CONFERENCE-ART 5

WE SPOKE INFORMALLY TO PINTO, LEGAL ADVISER, WHO WILL ATTEND VIENNA CONFERENCE. HE CONFIRMED CEYLON WOULD SUPPORT A REQUEST FOR A SEPARATE VOTE ON PARA2, AND THEN VOTE FOR OMISSION OF THAT PARA.

2. HE COULD NOT/NOT SAY WHETHER, IN EVENT REQUEST FOR SEPARATE VOTE IS DEFEATED(WHICH HE THOUGHT UNLIKELY), CEYLON WOULD SUPPORT DELETION OF ART5 AS A WHOLE. HOWEVER, AS CEYLON ATTACHED LITTLE IMPORTANCE TO INCLUSION OF PARA1, AND HAD SUPPORTED A MEXICAN PROPOSPAL AT LAST CONFERENCE TO DELETE ART5, HE SAID THERE WAS QUOTE A VERY STRONG LIKELIHOOD UNQUOTE, CEYLONS REP WOULD AGAIN DO SO IF IT CAME TO A VOTE.

3. PINTO SAID USSR HAD SOUGHT CEYLONESE SUPPORT AT LAST CONFERENCE FOR INCLUSION OF PARA2, BUT THAT REQUEST HAD BEEN MORE OF A SOUNDING AND THEY HAD NOT/NOT SINCE FOLLOWED UP. CEYLON HAD BEEN IMPRESSED BY WERSHOFS ARGUMENTATION FOR OMISSION OF PARA2. ACCORDING TO PINTO DISCUSSION OF ART57 NEVER CAME UP AT RECENT AFRO-ASIAN LEGAL CONSULTATIVE GROUP MTG.

8/31

File ✓
Diary
Div. Diary
Ref. Tel
J.S.S.

MESSAGE

DATE	FILE/DOSSIER	SECURITY SECURITE
MAR 31/69	20-3-1-6 / 37	RESTR

FM/DE EXTERNAL OTT

NO	PRECEDENCE
L-449	ROUTINE

TO/A VIENNA

INFO

REF

SUB/SUJ LAW OF TREATIES CONFERENCE

WE UNDERSTAND AGENCY DESIGNATED BY AUSTRIAN GOVT IS ARRANGING ACCOMMODATION FOR MOST DELS TO CONFERENCE. GRATEFUL IF YOU COULD OBTAIN FROM THIS AGENCY ADDRESSES IN VIENNA OF FOLLOWING DELS ARGENTINA, AUSTRALIA, BRAZIL, FRG, INDIA, MALAYSIA, MEXICO, VENEZUELA. IF NAME OF HEADS OF THESE DELS (OTHER THAN AUSTRALIA) ARE READILY AVAILABLE THIS INFO WOULD ALSO BE HELPFUL.

2. INFO NEED NOT BE REPORTED TO US, BUT SHOULD BE TRANSMITTED TO CDN DEL ON ARRIVAL IN VIENNA APRIL 7.

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

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

File ✓
Diary
Div. Diary
J.S.S.

MESSAGE

DATE	FILE/DOSSIER	SECURITY SECURITE
MAR 31/69	20-3-1-6 / 37	RESTR

FM/DE OTT EXTERNAL

	NO	PRECEDENCE
TO/A WELLINGTON	L-450	ROUTINE
INFO Permis		

REF

SUB/SUJ LAW OF TREATIES CONFERENCE - NZ DEL

LAW OF TREATIES CONFERENCE SECOND SESSION TAKES PLACE IN VIENNA APRIL 9-MAY 21. IN COURSE OF ENQUIRING ABOUT COMPOSITION OF OTHER DELS WE HAVE LEARNED THAT NZ DEL WILL CONSIST OF ONE PERSON ONLY.

2. WHILE NZ HAD ONLY ONE REP AT FIRST SESSION LAST YEAR, PACE OF SECOND SESSION WILL BE MUCH MORE INTENSE SINCE CONVENTION MUST BE ADOPTED AND OPENED FOR SIGNATURE. MOREOVER THERE ARE A NUMBER OF QUESTIONS INVOLVING VITAL WESTERN INTERESTS AT STAKE, ESPECIALLY ESTABLISHMENT OF PROCEDURES FOR DETERMINING INVALIDITY OF TREATIES.

3. SHOULD OPPORTUNITY ARISE TO DO SO, TACTFULLY, PLEASE INFORM NZDEA ~~WE CONSIDER~~ of our view that DEMANDS ON WESTERN DELS AT SECOND SESSION WILL BE ~~TOO~~ very GREAT FOR ONE DELEGATE. GENERAL WESTERN INTERESTS SUGGEST A DEL OF AT LEAST TWO REPS AND WE WOULD HOPE NZ COULD FIELD A SECOND REP UP IF AT ALL POSSIBLE.

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LOCAL/LOCALE NO STANDARD

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

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

file

EXTERNAL AFFAIRS  AFFAIRES EXTÉRIEURES

TO / À: Memorandum
Legal Adviser

FROM / De: Legal Division

REFERENCE / Référence:

SUBJECT / Sujet: Law of Treaties - Federal States Article - Switzerland

SECURITY / Sécurité: CONFIDENTIAL

DATE: March 28, 1969

NUMBER / Numéro:

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

ENCLOSURES / Annexes:

DISTRIBUTION

O/SSEA
O/USSEA
European
Embassy
Berne
Mr.
Mawhinney

The Swiss Ambassador called on the Minister yesterday afternoon to discuss the question of the Swiss position on Article 5, paragraph 2 of the draft law of treaties convention. The Minister spoke almost entirely from the notes prepared for him, laying particular stress on three points: first, the political implications of paragraph 2 for Canada; second, that the fact paragraph 2 was in accord with the Swiss constitution should not be the sole factor determining the Swiss position on this paragraph; and third, that of all the federal states in western Europe, Asia and North and South America, Switzerland was the only one opposing the Canadian position on this paragraph.

2. At the conclusion of Mr. Sharp's presentation, the Swiss Ambassador asked whether we had an Aide Memoire to give him. He was informed an Aide Memoire had already been presented to his Government in Berne and a copy had been provided to his Embassy here. However the Minister handed to the Ambassador the notes from which he had spoken.

3. The Swiss Ambassador expressed complete personal understanding of the Canadian position and it can be expected that his report to Berne will be sympathetic to our views. The Minister specifically asked the Ambassador to inform him of the Swiss position on this article as much in advance as possible of the vote on Article 5, expected to take place on or about April 25, 1969.

Legal Division

Ext. 407A/Bil.

31.3.51(05)

Legal Division/L.S. Stanford/bp

file

EXTERNAL AFFAIRS  AFFAIRES EXTÉRIEURES

Memorandum

TO / À: Legal Adviser

FROM / De: Legal Division

REFERENCE / Référence:

SUBJECT / Sujet: Law of Treaties - Federal States Article - Switzerland

SECURITY / Sécurité: CONFIDENTIAL

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OTTAWA	20-3-1-6
MISSION	37

ENCLOSURES / Annexes:

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Embassy
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Mr.
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T. A. BEESLEY

Legal Division

Ext. 407D/Bil.
[redacted]
(Admin. Services Div.)

L

Stanford

file 20-3-1-6
77/3

FM PRMNY MAR27/69 SECRET NO/NO STANDARD

TO EXTER(DL2-RETTIE)801 DONE

INFO LEGAL DIV(STANFORD-BEESLEY)TT PRGUE VIENN DE PARIS

BAG COPEN DE LDN DONE

REF YOURTEL P0982 MAR26 COPY SENT TO PO

AW ROBERTSON:POSSIBLE VISITS EASTERNEUROPE

OURTEL 758 MAR24 SOUGHT(WITHIN LIMITS OF SECTION 606 MANUAL SECURITY INSTRUCTIONS)TO HAVE DEPT GIVE AT LEAST SOME ADVANCE CONSIDERATION TO POSSIBILITY THAT CDN DELS TO LAW OF TREATIES CONFERENCE(PARTICULARLY ROBERTSON)MIGHT WISH TRAVEL BPEST PRGUE WITH TOURS ARRANGED FOR DELS.HEAD OF DEL DID SO LAST YEAR.

2.GIVEN CONFERENCE WORK LOAD IMPOSSIBLE FORECAST MORE THAN SHORT PERIOD IN ADVANCE POSSIBILITY ANY DEL IN FACT BEING ABLE TO AVAIL HIMSELF OF SUCH TOURS.THUS IT SEEMED TO US NECESSARY TO SEEK APPROVAL IN PRINCIPLE(SUBJ TO VIEWS OF PRGUE AND VIENN(MISSIONS CONCERNED) BEING SOUGHT IMMEDLY PRIOR TO ANY SUCH TOUR)IN ADVANCE.FULL ITINERARIES ETC CAN BE MADE AVAILABLE FROM VIENN AT RELEVANT TIMES SINCE DISTANCES INVOLVED NOT/NOT GREAT AND TOUR SCHEDULES PUBLISHED.

File ✓
Diary
Div. Diary
J.S.S.

Legal Division/J.S.Stanford/itl

MEMORANDUM

The Under-Secretary
(through the Legal Adviser)

Legal Division

CONFIDENTIAL

March 27, 1969

Law of Treaties - Supplementary Instructions - Retroactivity

20-3-1-6
37

One of the issues arising in connection with the final clauses of the treaties convention is whether to include an article on the retroactivity of the convention itself.

2. The majority of western states are of the view that the treaties convention should not apply to treaties which entered into force prior to the entry into force of the treaties convention. This, of course, is without prejudice to the application to existing treaties of existing rules of international law which happen to have been codified in the treaties convention. Such pre-existing rules have force independent of the convention.

3. The problem arises over the best method of securing this objective. One way, of course, would be a specific non-retroactivity article in the final clauses of the convention. Most western delegates believe it would be impossible to secure a specific article of this kind and the fear has been expressed that any unsuccessful effort to secure an article would result only in a record in the travaux préparatoires unfavourable to the opponents of retroactivity. These representatives, which include the U.S. and the U.K., suggest that there be no article on retroactivity in the final clauses and that the issue be governed by the general article on retroactivity (Article 24) in the body of the convention. Japan and Australia have pointed out, however, that it is by no means clear that Article 24 would have the desired effect.

4. Some delegates are of the view that "third world" support can be obtained for a non-retroactivity article. Two considerations support this view. First, there are many technical articles, not politically controversial, which obviously should not have retroactive effect (the articleson reservations provide one example). Second, we understand some of the Afro-Asian opposition to a compulsory settlement of disputes article would be removed if it were made clear that the article did not apply to existing disputes. It is possible that these two points could be developed into support for a general non-retroactivity article.

.... 2

5. Our own view is that Article 24, as it applies to this question, is not clear and that it should be accepted as governing the present convention only if it is not possible to secure a specific non-retroactivity article in the final clauses. We therefore recommend that the Canadian delegation be instructed:

(a) to support any initiative for a specific non-retroactivity article if that initiative appears likely to obtain significant support in both the Western and "third world" groups

(b) failing such an initiative, the delegation should acquiesce in the general western position that there be no specific article on retroactivity in the final clauses.

6. We should be grateful to know whether you approve these instructions.

M.D. Copithorn

Legal Division.

File ✓
Diary
Div. Diary
J.S.S.

Legal Division/J.S.Stanford/itl

MEMORANDUM

Commonwealth Division

CONFIDENTIAL

Legal Division

March 27, 1969

Your Memorandum of March 4, 1969

Briefing for Prime Minister on occasion of Australian Prime Minister's Visit

20-3-1-6
37

1

Mr.Bissonnette
O/USSEA

Although your memorandum under reference was not referred to this Division, you may wish to include in the briefing for the Prime Minister a Talking Point relating to the U.N. Conference on the Law of Treaties, in particular the proposed article concerning treaty making by members of federal states. We have therefore prepared the attached material for your consideration.

M.D. Copithorne

Legal Division.

DRAFT SALIENT POINTS

Law of Treaties - Federal State Clause

Canada very much appreciates the support which Australia provided at the First Session of the Law of Treaties Conference, and has undertaken to provide at the Second Session (April - May 1969), to the Canadian effort to delete from the draft convention on the Law of Treaties the proposed paragraph which would purport to confer upon members of a federal state an independent treaty making capacity in certain circumstances.

Canada attaches a great deal of importance to the deletion of Article 5, paragraph 2 of the draft convention on the Law of Treaties. We consider that this paragraph, if adopted, could well produce two very undesirable results:

first, it could lead to the practice of outside states purporting to interpret for themselves the constitutions of federal states. This would be an unacceptable interference in the internal affairs of the federal state; and

second, it could lead to the fragmentation of the international personality of federal states, with each member of the federation pursuing a separate course in international affairs.

Canada is relying on the support of Australia and other like-minded federal states in its efforts to secure the deletion of this paragraph from the proposed convention.

BEST COPY AVAILABLE

Mr Bailey to see & return pls. JSS 31/3

The French Ambassador left this with Mr Beaudoin and me last Sunday 28/3 - Mr B. will be phoning him tomorrow to give a reply which will not go beyond what we told him Sunday
(a) we agree this is a problem
(b) this word must be quoted in dealing with it
(c) tactics, i.e. the best kind of approach to secure our objectives, will have to be worked out in the WEO Group in Vienna
(d) we have difficulty with the concept of the French approach, which seems to make jus cogens dependent upon acceptance by each individual state, e.g. Iran is in trouble with the concept; and is inconsistent with the Jennings view of the consensual nature of international law & contrary to the theory of the developing countries (and Latin - American) JH 31/3

Feb 20-3-1-6

Mr Rampton

27 mars 1969

AIDE MÉMOIRE

20-3-1-6
35

La conférence des Nations Unies sur le Droit des Traités se réunira à nouveau à Vienne du 9 avril au 21 mai prochain. Ses travaux tendent à la rédaction d'un projet de convention qui entend introduire dans le droit des traités des règles nouvelles dont la plus grave est celle selon laquelle serait nul tout traité en contradiction avec certaines "normes impératives" du droit international acceptées par la communauté internationale des Etats dans son ensemble. Ces normes constituent ce que l'on est convenu d'appeler le "jus cogens", et elles ne sont pas autrement précisées. Les critères qui permettraient de les identifier ne sont déterminés nulle part.

Cette imprécision comporte le risque de voir déclarer certaines règles comme étant de "jus cogens" par une majorité d'Etats sans l'accord des autres Etats, ces règles pouvant ensuite être opposées aux gouvernements de cette minorité contre leur gré pour annuler des traités auxquels ils seraient partie. Tel serait en particulier le cas si l'on prétendait donner force contraignante à des principes incorporés dans des résolutions des Nations Unies votées à de larges majorités, mais que certains Etats membres n'auraient pas approuvés. On voit l'argument que certaines normes sur "la souveraineté des Etats sur leurs ressources naturelles" pourraient fournir aux gouvernements désireux de réviser des accords internationaux

.../...

économiques, lors même qu'ils les ont conclus en toute indépendance. C'est dire l'intérêt que certains pays portent au "jus cogens".

D'une manière générale ces préoccupations sont partagées par les Etats occidentaux. Mais ceux-ci déplorent plus qu'ils ne cherchent à modifier la tendance mentionnée plus haut : on se borne souvent à faire porter tous ses efforts sur la construction minutieuse d'un système obligatoire de règlements des différends pouvant surgir à propos de la détermination de ces règles nouvelles, et l'on attend de ce système qu'il limite dans la pratique les inconvénients d'un principe de base dont la formulation est imprécise. Une telle attitude revient à céder pour l'essentiel à la pression exercée par certains pays et à accepter des dispositions de nature à ébranler les engagements internationaux sur lesquels reposent les relations entre Etats.

Les pays animés par ces préoccupations fondamentales devraient donc en prévision d'une négociation avec les tenants du "jus cogens", convenir d'une attitude commune très ferme.

Certes, l'élaboration et la défense d'un système de règlement obligatoire des différends représentent un aspect important du problème, mais cette mesure ne saurait assurer une protection suffisante des conventions librement négociées. En effet, les arbitres qui, le cas échéant, auraient à se prononcer sur l'annulation d'un traité ne sont guidés par aucune définition claire ou aucun critère précis. Il apparaît donc essentiel de compléter l'article 50 du projet de convention sur le droit des traités, qui dispose que tout traité contraire à une "norme impérative du droit inter-

.../...

national" est nul et qui indique le sens à donner à cette dernière expression. On pourrait ajouter qu'une telle norme, tout en étant reconnue par la communauté internationale des Etats dans son ensemble "n'est pas opposable à un Etat qui peut faire la preuve qu'il ne l'a pas acceptée expressément en tant que telle". Ce faisant on pourrait accepter que de telles normes soient reconnues et appliquées par le plus grand nombre, conformément à la volonté de la majorité, mais la possibilité serait donnée à tel ou tel Etat de montrer qu'il n'a pas participé à leur acceptation et que, par conséquent, la règle en question, s'il n'y consent pas, ne peut être invoquée contre lui. Il s'agit donc là d'une clause de sauvegarde indispensable. Faute d'obtenir une satisfaction de cette nature, les pays intéressés devraient marquer nettement qu'ils n'accepteront pas l'article 50, quelle que soit la majorité qui se dégagerait en sa faveur, et qu'ils sont décidés à ne pas signer la convention si cette disposition devait être maintenue dans sa rédaction actuelle.

Les Etats occidentaux ne représentent sans doute pas un nombre de voix permettant de faire valoir ces vues (une vingtaine environ sur 126) mais leur importance est sans commune mesure avec ces chiffres. Au surplus, il n'a jamais été admis que des votes majoritaires puissent imposer des règles de droit international. Celles-ci doivent être acceptées par les Etats auxquels elles s'appliqueraient. C'est pourquoi la règle du consensus et non celle de la majorité a été choisie pour les décisions de divers comités des Nations Unies. C'est ce concept que les Etats occidentaux

ont su faire admettre en matière de commerce et de développement.

Ainsi les partisans du "jus cogens" devraient donc être avertis qu'ils se trouveront placés devant l'alternative suivante : ou bien avoir une convention qui liera, certes, les membres de la majorité, mais à l'écart de laquelle se tiendront la plupart des puissances occidentales ; ou bien rechercher avec celles-ci sur ce problème du "jus cogens" la solution qui leur permettra d'obtenir l'adhésion de ces puissances./.

O/SSEA
O/USSEA (Mr. Bissonette)
European Division
Embassy, Berne
Parl. Sec.
Press Office
Diary
Div. Diary
J.S.S.
File
O/USSEA

Legal Division, J.S.Stanford/11

20-3-1-4
37

CONFIDENTIAL

March 26, 1969.

MEMORANDUM FOR THE MINISTER

Law of Treaties - Federal
States Article - Switzerland

The Swiss Ambassador will be calling on you, at our request, on Thursday, March 27 at 5:30 p.m., to discuss the Canadian request for Swiss support in our efforts to delete Article 5, paragraph 2, of the draft law of treaties convention. This paragraph, you will recall, would recognize that in certain circumstances a member of a federal state may have an independent treaty making capacity.

At the first session of the law of treaties conference Switzerland was one of the active supporters of paragraph 2. Since that time a number of contacts have been made with senior Swiss officials in an attempt to secure a change in the Swiss position, but so far without success.

It appears that the Swiss position is based entirely upon the views of the Swiss Foreign Office Legal Adviser, Dr. Bindschedler, on the legalities of the situation. Briefly, his view appears to be that paragraph 2 does not conflict with the Swiss constitution and is therefore acceptable to Switzerland.

The object in summoning the Swiss Ambassador to discuss this issue with you is to seek to impress upon the Swiss Government the political importance which Canada attaches to the deletion of paragraph 2 so that political, as distinct from purely legal, considerations will be brought to bear within the Swiss Foreign Office in the formulation of the Swiss position on this article at the second session of the law of treaties conference which is to begin in Vienna April 9.

As a result of support promised from other friendly states, it appears that we shall secure the deletion of paragraph 2 if we can secure a simple majority in favour of a separate vote on paragraph 2. This procedural vote has thus become the focal point of our efforts. The minimum we seek from the Swiss, therefore, is that if a procedural vote is necessary on our request for a separate vote on paragraph 2, they vote in favour of allowing a separate vote even though they may subsequently vote to retain the paragraph.

... 2

Attached are talking points and notes to which you may wish to refer in your discussion with the Ambassador.

It would, I believe, be very useful if you were to indicate to the Ambassador that you would expect to receive from him in due course (within the next few weeks, since the work schedule of the Conference calls for the vote on Article 5 to take place on or about April 24 or 25) an indication of the Swiss Government's position on Article 5. It is probably only in this way that we can obtain from the Swiss a firm commitment which will bind the Swiss representative at Vienna and prevent him from acting in accordance with his own personal views, which are to oppose our position every step of the way, including our request for a separate vote.

M. CAMPBELL

M. C.

TALKING POINTS

1. Canada considers paragraph 2 of Article 5 to be of major political significance for a federation such as Canada, whose constitution is only partly written.

   Paragraph 2 says that members of a federal union may have a treaty making capacity if the federal constitution extends such capacity. But the paragraph does not say who shall interpret the constitution, nor does it say that the exercise of such capacity is subject to the control or approval of the central government. Consequently the paragraph may have two major effects upon federal states.

   1. It may encourage other states to interpret the federal constitution for themselves, which is an unacceptable interference in the federal state's internal affairs.

   2. It may promote the fragmentation of the international personality of federal states, with the member units acting independently in international affairs.

   Proponents of a separate international capacity for Quebec have already referred to the ILC Article 5(2) and accompanying commentary in support of their position.

2. Canada attaches particular importance to the position of Switzerland on this issue and would consider Swiss opposition to our efforts in Vienna particularly unfortunate.

   Switzerland is one of the three states (the others being the Federal Republic of Germany and the U.S.S.R.) whose practice forms the basis for the proposed paragraph. Germany has joined us in opposing the paragraph. Switzerland is therefore the only federal state in Western Europe, North and South America and Asia which is opposing the Canadian position on Article 5(2) (Austria voted once against and once for para 2 at the first session. We have since been informed that the vote in favour of the paragraph was made in error and that Austria will oppose para 2 at the second session.) Because

of Switzerland's position as a responsible neutral federal state and because the Swiss representative in Vienna, Dr. Bindschedler, is a highly regarded and influential representative, Swiss opposition in Vienna would make our task considerably more difficult. There is, of course, the additional factor that, as Liechtenstein normally votes with Switzerland, the Swiss have in effect two votes.

3. Canada would very much hope that Switzerland would reconsider its position and join Canada and the other Western, Latin American and Asian federal states in seeking the deletion of paragraph 2.

Canada recognizes that paragraph 2 presents no problem for Switzerland. But paragraph 2 may well cause serious problems for Canada, whereas its deletion would cause no problem for Switzerland. We would hope Switzerland would judge paragraph 2 not on its acceptability in terms of the Swiss constitution alone, but on its acceptability to federal states as a whole. The large majority of federal states opposed paragraph 2 at the first session and will oppose it at the second session.

4. Even if Switzerland cannot support the position of Canada and the other federal states in Vienna, Canada would hope that, as a bare minimum, the Swiss Government would agree

a) not to actively oppose the efforts of Canada and others to delete paragraph 2,

b) to support Canada's request for a separate vote on paragraph 2 of Article 5.

The Canadian Government would find it very difficult to understand if Switzerland were to work actively against Canada and others in a matter which offered no significant advantage to Switzerland but which deeply involved Canada's national interest.

Both in the International Law Commission and at the first session of the Vienna conference it was recognized

that the two paragraphs of Article 5 dealt with separate issues and in both bodies there were separate votes on each of the two paragraphs. This is a procedural matter quite distinct from the question whether one supports or opposes paragraph 2. The Canadian Government would find it very difficult to understand if Switzerland were not to support Canada's request for a separate vote.

EXTERNAL AFFAIRS  AFFAIRES EXTÉRIEURES

TO / À: The Under-Secretary of State for External Affairs (through the Legal Adviser)

FROM / De: Legal Division

REFERENCE / Référence:

SUBJECT / Sujet: Law of Treaties - Supplementary Instructions - Reservations

SECURITY / Sécurité: RESTRICTED

DATE: March 26, 1969

NUMBER / Numéro:

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

ENCLOSURES / Annexes

DISTRIBUTION

During the preliminary meetings of the Western European and Others group to prepare for the second session of the Law of Treaties Conference there was considerable discussion concerning a possible final clause on reservations.

2. The instructions for the Canadian delegation to the first session of the conference were concerned particularly with the compulsory settlement of disputes article which, if adopted, is the article most likely to attract reservations. Representatives at London and Paris were of the view that, while it may prove possible to obtain an article providing for compulsory independent adjudication of disputes concerning invalidity and termination of treaties, it is exceedingly unlikely that the Western group could go on to secure an article prohibiting reservations in respect of that article.

3. The inclination of many members of the Western group was not to seek any final article on reservations to the treaties convention. The absence of such a provision would mean that the treaties convention would be subject to the general rules regarding reservations to treaties set out in the body of the convention. In practical terms this would mean, in effect, that any State would be free to make any reservation it wishes and as long as at least one other State were to accept the reservation the reserving State would become a party to the convention. The dangers of this kind of approach are obvious. If the U.S. formulates a reservation in respect of the articles on interpretation, which it has opposed, and for the same reason the French reserve on jus cogens, the British and Chileans on use of force, etc., the result could leave the law of treaties in a chaotic state.

4. The practical alternatives are very limited, however. At this stage, when so much uncertainty surrounds the eventual contents of the treaties convention, no one is prepared to accept an article prohibiting all reservations. In addition, such an article would almost certainly reduce the number of adherances to the treaties convention. The view at Paris was that any attempt to formulate an article permitting reservations respecting specific articles would immediately reopen all the disputes which had arisen in preparing the body of the convention, as States sought to have the articles

.../2

Ext. 407D/BII.
[redacted]
(Admin. Services Div.)

to which they were opposed included in the list of those in respect of which reservations were to be permitted. In any event, any article limiting reservations is likely to be opposed by the U.S. on the ground that any limitation on the U.S. Senate's ability to impose conditions on U.S. ratification will be unpopular with that body.

5. We propose, therefore, that the Canadian delegation be instructed:

(a) to support, initially at least, the general Western position that there be no final clause on reservations.

(b) to intervene in the debate on reservationsto urge that governments exercise great restraint in the formulation of reservations in order to avoid the chaotic position referred to in paragraph 3 above.

(c) if a proposal emerges for an article which would restrict the possible dangers of unlimited reservations and which has broad support, to seek fresh instructions.

6. We should be grateful to know whether you approve these instructions.

M. D. COPITHORNE

Legal Division

EXTERNAL AFFAIRS AFFAIRES EXTÉRIEURES

TO / À: The Under-Secretary of State for External Affairs (through the Legal Adviser and European Division)

FROM / De: Legal Division

REFERENCE / Référence:

SUBJECT / Sujet: Law of Treaties - Supplementary Instructions - the "All States" Issue

SECURITY / Sécurité: RESTRICTED

DATE: March 26, 1969

NUMBER / Numéro:

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

ENCLOSURES / Annexes:

DISTRIBUTION: European Div.

The "all states" question is one of the controversial issues which will be debated in Committee of the Whole prior to the Plenary vote on Article 5 and on which Canada will wish to "keep its head down". Nevertheless it will be necessary for Canada to take a position, at least in voting, on this issue which is of considerable importance to West Germany and its friends.

2. The "all states" issue arises twice in the treaties convention. Not only does it arise in connection with the final clause on accession, but the Eastern Europeans, with some support from the "third world", have put forward a three-part package which would have the effect of establishing the "all states" principle as a general rule of international law applicable to all multilateral treaties of general interest. The three parts are (a) a proposed definition, in Article 2, of a "general multilateral treaty" as one "which deals with matters of general interest for the international community of states"; (b) a proposed Article 5 bis providing that "All states have the right to participate in general multilateral treaties in accordance with the principle of sovereign equality."; and (c) a proposed addition to Article 12 of a paragraph stating that "The consent to be bound by a general multilateral treaty may be expressed by accession by any State. Any State also has the right to become, by accession, a party to a multilateral treaty which affects its legitimate interests."

3. The general feeling at Paris was that a blocking third could be mustered at Vienna against the "all states" package in the body of the convention but that there would be greater difficulty in respect of the final clause on accession. While the West could probably muster a blocking third on an "all states" accession clause, the eastern and third world states could also muster a blocking third against an accession clause patterned on the Vienna formula, i.e. "States members of the United Nations or any of its Specialized Agencies..." The result would be an impasse, with the threat of a convention without an accession clause. Many representatives at Paris considered that in such a position and in the light of the incorporation of the all state formula in the disarmament

.../2

treaties, it would be exceedingly difficult for western States to insist on the Vienna formula, particularly if alternatives proposing the use of multiple depositories (even if only for a short initial period) were put forward. In such circumstances it might become impossible for western States to avoid a compromise which could well take a form resulting in East German accession. The FRG indicated at Paris, however, that it is even more strongly opposed to East German participation in the treaties convention because it will be such an important multilateral law-making convention.

4. We therefore propose that the Canadian delegation be instructed:

(a) to vote against the "all states" package in the body of the convention, but not to lobby actively in support of the western position prior to the Plenary vote on Article 5;

(b) to oppose, initially at least, an "all states" final clause on accession;

(c) in the event of an impasse on the accession clause leading to a division of views within the Western group, to concur in any compromise proposal accepted by the U.S. and the U.K. of an accession clause providing for multiple depositories.

5. We should be grateful to know whether you approve these instructions.

M. D. COPITHORNE

Legal Division

File ✓
Diary
Div. Diary
J.S.S.

Legal Division, J.S.Stanford/itl

MEMORANDUM

Mr. Bissonnette, Legal Adviser
O/USSEA

Legal Division

RESTRICTED

March 26, 1969

Law of Treaties Articles 50 and 61--Jus Cogens

20-3-1-6
37

3

We attach the following documents for your information in connection with the French Ambassador's call on you, scheduled for 3:00 p.m., Friday, March 28, to discuss the question of jus cogens in the law of treaties convention:

i) ILC draft Article 50 and commentary;

ii) Extract from the commentary and instructions for the Canadian delegation relating to Articles 50 and 61;

iii) Extract from the report of the Canadian delegation to the first session of the law of treaties conference.

2. At the first session, Article 50 was adopted by the Committee of the Whole by a vote of 72 for, 3 opposed and 18 abstentions. Canada and France abstained. Monaco, Switzerland and Turkey were the only states which voted against the Article. Article 61 was adopted by the Committee of the Whole without a vote.

3. As you will see from the attached material, the basic problem in connection with jus cogens is that of determining which rules of international law fall within this category. The report on the first session shows the formula finally agreed upon. At the preliminary meetings of the Western European and Others group in Paris last month, the French representative stated that his government was studying the question of introducing new criteria for identifying rules on jus cogens and would inform other delegates of the results of its studies. It is probable, therefore, that the French Ambassador will not be asking us to oppose Articles 50 and 61 but will be seeking our support for a French amendment to Article 50. He may even ask us to co-sponsor a French amendment, in which case we could not delay a decision on the French request until after the Plenary vote on Article 5.

... 2

4. As you requested, Mr. Stanford will be present for your meeting with the French Ambassador.

M. D. COPITHORNE

Legal Division.

ACTION REQUEST
FICHE DE SERVICE

TO — À: Leg Division

DATE: March 28

LOCATION — ENDROIT:

FROM — DE: O/SSEA/ASMcGill/fl

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Please note SSEA's comment:
"I left the talking points with the Swiss Ambassador,"

003579

file 20-3-1-6

CONFIDENTIAL

March 26, 1969.

MEMORANDUM FOR THE MINISTER

Law of Treaties - Federal
States Article - Switzerland

The Swiss Ambassador will be calling on you, at our request, on Thursday, March 27 at 5:30 p.m., to discuss the Canadian request for Swiss support in our efforts to delete Article 5, paragraph 2, of the draft law of treaties convention. This paragraph, you will recall, would recognize that in certain circumstances a member of a federal state may have an independent treaty making capacity.

At the first session of the law of treaties conference Switzerland was one of the active supporters of paragraph 2. Since that time a number of contacts have been made with senior Swiss officials in an attempt to secure a change in the Swiss position, but so far without success.

It appears that the Swiss position is based entirely upon the views of the Swiss Foreign Office Legal Adviser, Dr. Bindschedler, on the legalities of the situation. Briefly, his view appears to be that paragraph 2 does not conflict with the Swiss constitution and is therefore acceptable to Switzerland.

The object in summoning the Swiss Ambassador to discuss this issue with you is to seek to impress upon the Swiss Government the political importance which Canada attaches to the deletion of paragraph 2 so that political, as distinct from purely legal, considerations will be brought to bear within the Swiss Foreign Office in the formulation of the Swiss position on this article at the second session of the law of treaties conference which is to begin in Vienna April 9.

As a result of support promised from other friendly states, it appears that we shall secure the deletion of paragraph 2 if we can secure a simple majority in favour of a separate vote on paragraph 2. This procedural vote has thus become the focal point of our efforts. The minimum we seek from the Swiss, therefore, is that if a procedural vote is necessary on our request for a separate vote on paragraph 2, they vote in favour of allowing a separate vote even though they may subsequently vote to retain the paragraph.

I left the talking points with the Swiss Ambassador
25.3.69 (US) asm

... 2

Attached are talking points and notes to which you may wish to refer in your discussion with the Ambassador.

It would, I believe, be very useful if you were to indicate to the Ambassador that you would expect to receive from him in due course (within the next few weeks, since the work schedule of the Conference calls for the vote on Article 5 to take place on or about April 24 or 25) an indication of the Swiss Government's position on Article 5. It is probably only in this way that we can obtain from the Swiss a firm commitment which will bind the Swiss representative at Vienna and prevent him from acting in accordance with his own personal views, which are to oppose our position every step of the way, including our request for a separate vote.

M. C.

TRANSMITTAL SLIP

J. A. BREWLEY

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

FROM: The Canadian Embassy, Buenos Aires.

Security: RESTRICTED

Date: March 26, 1969

Air or Surface: BY AIR BAG

No. of enclosures: 1

The documents described below are for your information.

Despatching Authority: E.D.WILGRESS/DOL

20-3-1-6
37

Copies	Description	Also referred to:
1	Re: Your tel L376 of Mar14/69 Letter to Ministro Ernesto de la Guardia	TO: M Stanford FROM REGISTRY APR 8 1969 FILE CHARGED OUT TO:

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

INSTRUCTIONS

1. This form may be used in sending material for informational purposes from the Department to posts abroad and vice versa.

2. This form should *NOT* be used to cover documents requiring action.

3. The name of the person responsible for authorizing the despatch of the material should be shown opposite the words "Despatching Authority". This may be done by signature, name stamp or by any other suitable means.

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RESTRICTED

Casilla de Correo 1598,
Buenos Aires, Argentina.

March 26, 1969.

Dear Mr. La Guardia,

You will recall that during our recent telephone conversation you expressed some doubt on whether our delegation to the Second Session of the Law of Treaties Conference will be successful in their efforts to obtain deletion of Para 2 of Article 5 of the Law of Treaties Convention.

You may be interested to know that my Ministry has recently advised us that the results of their representations indicate that provided a separate vote on Para 2 can be secured there is good reason to believe that it will not secure the majority required for adoption. If a separate vote is refused the probable outlook on the vote of the Article as a whole is at present uncertain.

As you know on the two votes on Para 2 at the first session of the Conference the vote was as follows:

First vote 45(in favour); 38(against); 10(abstentions)

Second vote 46(in favour); 39(against); 8(abstentions)

Yours sincerely,

E. D. Wilgress,
Counsellor.

S.E. el Consejero Legal
Ministro Ernesto de la Guardia,
Ministerio de relaciones exteriores y culto,
Palacio San Martín,
CAPITAL.

19/8/4

M. D. COPITHORNE / Stanford

ACTION COPY

file 20-3-1-6
37

FM MANIL MAR25/69 CONFD NO/NO STANDARD

TO EXTER EX37

REF YOURTEL L343 MAR7

LAW OF TREATIES CONFERENCE SECOND SESSION-ARTICLE 5

SPOKE WITH PLANA AS SUGGESTED MAR10 AND AGAIN TODAY.HE CONFIRMED THAT AT FIRST SESSION PHIPPINES DEL VOTED AGAINST PARA2 AND(HE SAID)AGAINST ARTICLE 5 AS A WHOLE.HE CONSIDERED VERY UNLIKELY ANY CHANGE THIS STANCE AT FORTHCOMING SESSION.

2.IN RESPONSE TO A DIRECT QUESTION HE ASSURED ME PHILIPPINE DEL WOULD SUPPORT A REQUEST FOR SEPARATE VOTE ON PARA2 AND IF THIS DENIED WOULD VOTE AGAINST ARTICLE 5 IN TOTO.

7/25/3

OFFICE TRANSLATION
(SAN JOSE)

REPUBLIC OF COSTA RICA
MINISTRY OF EXTERNAL RELATIONS

No. 57681-AU-

San Jose, March 26,1969

Your Excellency,

It is with pleasure that I refer to your Note No. 17 of last March 12th, relative to the International Convention of the Law of Treaties which will be held in Vienna in the months of April and May of this year and communicate to Your Excellency our opinion with regard to the omission of paragraph 2, Article 5, of the draft Convention which provides as follows:

" The treaty-making capacity of a member of a federal State is to be determined by reference to the federal constitution ".

According to our point of view, the international capacity of a State member of a Federal Union should be conferred or bestowed according to rules of International Law and not by the rules of the internal law established by a Federal Constitution.

In a way, paragraph 2, Article 5, as drafted in the proposed Convention will restrict the faculties which third States possess to interpret (to consider - to judge) the international juridical subjectivity of a State member of a Federation in the range of matters which fall directly within the orbit of the autonomous government of the said States.

However, considering that during the course of the discussions on the occasion of the first period of sessions at the Conference of the United Nations on the Law of Treaties held in Vienna last year, a great number of the most important States which have federative characteristics, voted against the inclusion of paragraph 2, Article 5, of the draft Convention, we believe that Costa Rica would have no particular interest in the inclusion of the said paragraph 2; and is willing to support the request of that Honorable Embassy as per "Aide-mémoire" of the 9th of October, 1968.

May I take this opportunity to renew to Your Excellency, the assurances of my highest and most distinguished consideration.

Fernando Lara
Minister of External Relations

Your Excellency Donald Wallace Munro,
Ambassador of Canada,
San José.

OFFICE TRANSLATION
(SAN JOSE)

CANADIAN EMBASSY  AMBASSADE DU CANADA

REPUBLIC OF COSTA RICA
MINISTRY OF EXTERNAL RELATIONS

No. 57681-AE-

San Jose, March 26,1969

Your Excellency,

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CANADIAN EMBASSY  AMBASSADE DU CANADA

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May I take this opportunity to renew to Your Excellency, the assurances of my highest and most distinguished consideration.

Fernando Lara
Minister of External Relations

Your Excellency Donald Wallace Munro,
Ambassador of Canada,
San José.

M. D. COPITHORNE

ACTION COPY

L

file 20-3-1-6 27/3
37

FM KNSHA MAR25/69 CONFD

TO EXTER 232

REF OURTEL 89 JAN24 AND YOURTEL L328 MAR7

LAW OF TREATIES

CALLED ON BULAMBO AND KALONJI IN GENERAL SECRETARIAT CONGOLESE MFA. CONGOLESE HAVE NOT/NOT YET DECIDED ON POSITION RE PARA 2 ARTICLE 5 OR EVEN ON QUESTION OF PROCEDURAL VOTE. BULAMBO SAID THEY HAD RECEIVED SEVERAL AIDES-MEMOIRE AND WERE DISCUSSING DIFFERENT POINTS OF VIEW. THEY UNDERSTAND THAT QUESTION IMPORTANT FOR US BUT THEY GAVE IMPRESSION THAT CONGOLESE MIGHT NOT/NOT ADOPT POSITION UNTIL THEY SEE HOW THINGS DEVELOP AT SECOND SESSION. SHALL FOLLOW UP.

3/26/3

M. D. CORTHORNE

ACTION COPY

file 20-3-1-6

37

27/3

L

FM BERUT MAR25/69 CONFD

TO EXTER 279 PRIORITY

REF YOURTEL L412 MAR20

UN LAW OF TREATIES CONF ARTICLE V - JORDAN

INFO REFTEL PASSED TODAY TO DAJANI, WHO SAID HE HOPED TO INFORM US OF JORDANIAN POSITION SHORTLY.

2. INDICATIONS ARE THAT JORDAN WILL SUPPORT US.

18/25/3

cc European Division

Mr Stanford
I told Mr. Fabricius who handed me this that we would support their position generally. In particular I expressed the view that 5 bis may not give as much trouble as they think; that our starting position would be the UN formula; that we would consistently oppose the open all-states formula; but that my own view is that we might be forced back on the double depositary solution. JPB

Botschaft
der
Bundesrepublik Deutschland

Aide-mémoire

The German Government is at present reviewing the results of the first phase of the Conference on the Law of Treaties convened by the United Nations, and is making its preparations for the second phase. In so doing, it feels particular concern over some of the questions not discussed in the first phase, viz. that of the possibilities of participation in general multilateral treaties, and the accession clause to the proposed Convention on the Law of Treaties. The German Government would consider it a grave mistake to insert in the Convention special provisions concerning participation in general multilateral treaties. It would also regard it as very serious if the Convention on the Law of Treaties were given an accession clause other than that normally included in UN treaties (the so-called Vienna formula) and contained also in the other codification conventions prepared at Vienna. The German Government attaches considerable political significance to the said questions, and the decision made on them is likely to influence the attitude of the Federal Republic of Germany to the prospective Vienna Convention as a whole. The German Government feels therefore that already at this stage it should again explain its views to the Government of Canada.

I.

The adoption of Article 5 bis as newly proposed by a number of States (participation in general multilateral treaties always to be open to all States) and of the amendments related thereto would be likely to create considerable uncertainties in the relations among States and would be detrimental to multilateral co-operation within the framework of international treaties. For, the adoption of these proposals would afford every territorial entity designating

24.2.4

itself a State the opportunity to participate in general multilateral treaties unilaterally and regardless of any invitation or request to do so. Since there is no international body to give a binding decision on what constitutes a State, the political disputes arising, as experience has shown, wherever contested territorial entities adopt an independent role on the international scene, would permeate the entire sphere of multilateral co-operation within the framework of major treaties. Added to this is the fact that it is neither clear what is to be understood by 'participation' within the meaning of Article 5 bis, nor does there exist an unambiguous definition of the term 'general multilateral treaty'. The definition of this term as suggested by various States is not at all clear.

The adoption of Article 5 bis would furthermore constitute a restriction of the sovereignty of States which would have to put up with the fact that every territorial entity designating itself a State would be able to participate in major treaties regardless of the will of the family of nations even if only of the majority of them. Moreover, it would aid insurgents and rebels having unlawfully seceded from their home State and asserting the independence of the regions under their control, and would enable them to upgrade their position by allowing them access to multilateral treaties.

Nor is Article 5 bis required as a means of enforcing the principle of sovereign equality. It on the contrary constitutes an abuse of that principle since contested territorial entities are not on an equal footing with States. It is a legitimate right of the family of nations to decide for themselves whether and to what extent contested territorial entities designating themselves States should be admitted to a treaty.

International treaty practice, and especially UN treaty practice, shows that the introduction of Article 5 bis is not necessary to safeguard the principle of universality either. The universality of major multilateral treaties can be ensured without any provision in the convention for unilateral possibilities of adherence for any entity designating itself a State. This is particularly evident in UN practice. The standard formula used in treaties drawn up by the United Nations, affords the possibility of unilateral adherence to all Members of the United Nations and its Specialized Agencies, that is to all uncontested members of the family of nations. Moreover, it provides the possibility of inviting those territorial entities whose participation is thought desirable at least by the majority of the family of nations.

For the above reasons, it is the German Government's considered view that Article 5 bis and the other proposals for amendments referring thereto should be rejected.

II.

The attitude of the German Government regarding the question of accession clauses in major multilateral treaties is well-known. The German Government attaches special importance, however, to the manner in which accession to the Convention on the Law of Treaties is regulated since that regulation is likely to be adopted for a large number of future conventions. The German Government therefore re-emphasizes that it would consider the incorporation in the convention of an all-States clause extremely detrimental. Owing to the prejudicial character of the Convention on the Law of Treaties, an all-States clause in that Convention would lead to the incorporation of identical clauses in other large-scale conventions and hence have practically the same effect as the adoption of Article 5 bis. Like Article 5 bis, an all-States clause in the Convention on the Law of Treaties would be a source of considerable

uncertainty in inter-State relations; it would be detrimental to multilateral co-operation and restrict the sovereignty of States without at the same time being a practical or legal necessity.

The combination of the all-States clause with a multi-depositary solution would neither eliminate nor reduce the disadvantages of the all-States clause. Such a solution would still leave the possibility of unilateral and unsolicited participation by any one territorial entity designating itself a State. Hence, even the designation of several depositaries would not mitigate the political and practical dangers involved in the all-States clause.

It is true that the all-States clause combined with the multi-depositary solution has been incorporated in a number of treaties in the most recent past. But one cannot from that infer any justification for inserting an all-States clause in the Convention on the Law of Treaties. The said treaties are all based on a Soviet-American compromise and affect specific disarmament and outer-space questions. The rules of accession to these treaties are not transferable to general codification conventions like the Convention on the Law of Treaties, since the latter are not comparable to these treaties whether as to their genesisi or their subject-matter.

The German Government rather holds the view that the Convention on the Law of Treaties should be given the same provisions for accession as are contained in the codification conventions so far prepared in Vienna. In creating possibilities for unilateral adherence by all Members of the United Nations and its Specialized Agencies and in making it possible for other States to be invited to accede by the United Nations General Assembly, this clause ensures the principle of universality. It at the same time meets the

requirements of the sovereignty of States and of the principle of sovereign equality, and its practical application presents no difficulties. It also ensures the function of the United Nations Secretary General as the central depositary.

Ottawa, March 24th, 1969

Botschaft
der
Bundesrepublik Deutschland

Aide-mémoire

Le Gouvernement allemand examine actuellement les résultats de la première phase de la Conférence sur le Droit des Traités convoquée par l'Organisation des Nations Unies et se prépare à la seconde phase de cette Conférence. Il se préoccupe tout particulièrement des questions non examinées lors de la première phase, concernant les possibilités de participation aux "traités généraux multilatéraux" ainsi que la clause d'adhésion à la Convention envisagée sur le droit conventionnel. Le Gouvernement allemand considérerait comme une grave erreur d'introduire dans la Convention sur le droit conventionnel des dispositions spéciales sur les possibilités de participation aux "traités généraux multilatéraux". Le Gouvernement allemand estimerait également très grave que la Convention contienne une clause d'adhésion autre que la clause usuelle dans les traités des Nations Unies (formule de Vienne), qui figure aussi dans les autres conventions de codification élaborées à Vienne. Le Gouvernement allemand attache à ces questions une importance politique considérable; la décision prise à ce sujet pourra influencer l'attitude de la République fédérale d'Allemagne vis-à-vis de la future Convention de Vienne dans son ensemble. Aussi le Gouvernement allemand désirerait-il, dès le stade actuel, exposer à nouveau ses vues au Gouvernement du Canada.

1)

L'adoption du nouvel article 5 bis proposé par un certain nombre d'Etats (selon lequel les "traités généraux multilatéraux" seraient toujours ouverts à participation de tous les Etats), et les amendements, créerait une insécurité considérable dans les relations entre les Etats

et porterait préjudice à la coopération multilatérale dans le cadre des traités internationaux. En effet, l'adoption de ces propositions permettrait à chaque entité territoriale qui se qualifie elle-même d'Etat, de participer unilatéralement et sans y être spécialement invitée ou incitée, à des "traités généraux multilatéraux". Vu qu'il n'existe pas d'instance internationale qui puisse décider avec force obligatoire ce qu'est un Etat, les différends politiques liés, on le sait, à l'apparition autonome, sur le plan international, d'entités territoriales contestées pénétreraient dans tout le domaine de la coopération multilatérale dans le cadre des grands traités. A cela s'ajoute que l'on ne sait pas bien au juste ce qu'il faut entendre par "participation" au sens de l'article 5 bis et qu'il n'existe pas de définition précise de la notion de "traité général multilatéral". La définition de cette notion proposée par certains Etats est absolument vague. En outre, l'adoption de l'article 5 bis restreindrait la souveraineté des Etats qui devraient accepter que toute entité territoriale qui se qualifie elle-même d'Etat puisse participer à d'importants traités sans même qu'il soit tenu compte de la volonté de la majorité de la communauté des Etats. En outre, du fait de l'adoption de l'article 5 bis des insurgés ou révoltés qui se sont détachés illégitimement de leur Etat d'origine et affirment l'indépendance des régions qu'ils dominent, se trouveraient favorisés. Ils pourraient revaloriser leur statut en adhérant à des traités multilateraux. L'article 5 bis n'est pas non plus nécessaire pour tenir compte du principe d'égalité souveraine. Il représente, au contraire, un abus de ce principe parce que des entités territoriales contestées ne sont pas équivalentes à des Etats. La communauté des Etats a le droit légitime de décider elle-même si et dans quelle mesure des entités territoriales contestées qui se qualifient elle-mêmes d'Etats peuvent être admis à un traité.

La pratique des Etats en matière des traités internationaux et, avant tout, celle des Nations Unies montre qu'il n'y a pas nécessité d'introduire l'article 5 bis, même pour garantir le principe de l'universalité. L'universalité des grands traités multilatéraux peut être garantie même sans l'insertion de possibilités d'adhésion unilatérales pour quiconque se qualifie lui-même d'Etat. Cela ressort avant tout de la pratique des Nations Unies. La formule standard, employée dans les grands traités élaborés par les Nations Unies accorde, en se référant à tous les membres des Nations Unies et des institutions spécialisées, des possibilités d'adhésion unilatérale pour tous les membres incontestés de la communauté des Etats et prévoit, en outre, une possibilité d'invitation en faveur des entités territoriales dont le concours est souhaité, en tout cas, par la majorité des Etats.

Le Gouvernement allemand est donc absolument d'avis que l'article 5 bis et les autres propositions complémentaires y afférentes devraient être rejetés.

2)

On connaît l'attitude du Gouvernement allemand dans la question de clauses d'adhésion aux grands traités multilatéraux. Néanmoins, le Gouvernement allemand attache une importance particulière à la réglementation de l'adhésion à la Convention sur le Droit des Traités, vu que cette réglementation sera vrai-semblablement reprise dans un grand nombre de conventions futures. Aussi le Gouvernement allemand désire-t-il souligner à nouveau qu'il considérerait comme extrêment préjudiciable qu'une clause "tous Etats" soit insérée dans la Convention sur le Droit des Traités. En raison du caractère préjudiciel de la Convention sur le Droit des Traités, l'insertion de la clause "tous Etats" dans cette Convention entraînerait l'insertion de clauses analogues dans d'autres grandes conventions et équivaudrait donc, pratiquement, à l'adoption de l'article 5 bis. Comme

l'article 5 bis, l'insertion d'une clause "tous Etats" dans la Convention sur le Droit des Traités créerait une insécurité considérable dans les relations entre les Etats, porterait préjudice à la coopération multilatérale et restreindrait la souveraineté des Etats, sans être en même temps nécessaire, ni pratiquement ni juridiquement.

Combiner la clause "tous Etats" avec une solution de multi-dépositaires n'exclurait pas ou ne limiterait pas les inconvénients de la clause "tous Etats". La possibilité de participation unilatérale et spontanée de toute entité territoriale qui se qualifie elle-même d'Etat resterait la même du fait d'une telle solution. Les danger politiques et pratiques de la clause "tous Etats" ne seraient donc pas amoindris non plus par la nomination de plusieurs dépositaires.

Il est exact que la clause "tous Etats", accompagnée d'une solution de multi-dépositaires, a été appliquée tout récemment dans un certain nombre de traités. Mais cela ne saurait justifier que l'on insère une clause "tous Etats" dans la Convention sur de Droit des Traités. Car les traités en question étaient tous basés sur un compromis soviéto-américain et touchaient aux domaines particuliers du désarmement et des questions spatiales. Les règles d'adhésion prévues par ces traités ne peuvent être transposées à des conventions générales de codification telle que la Convention sur le Droit des Traités, qui ne leur sont comparables ni par leur origine, ni par leur objet.

Le Gouvernement allemand estime, au contraire, qu'il devrait être inséré dans la Convention sur le Droit des Traités la même règle d'adhésion que celle contenue dans les conventions de codification élaborées jusqu'ici à Vienne. En établissant des possibilités d'adhésion unilatérales pour tous les membres des Nations Unies et de

leurs institutions spécialisées et en créant d'autres possibilités d'invitation par l'Assemblée générale des Nations Unies, cette clause garantit le principe d'universalité. Elle tient compte aussi bien de la souveraineté des Etats que du principe d'égalité souveraine des Etats, et son application pratique ne fait pas de difficultés. Elle garantit en même temps la fonction centrale de dépositaire du Secrétaire général de l'organisation des Nations Unies.

Ottawa, le 24 mars 1969

ACTION COPY

L

Copenhaver
Stafford

Tel 20-3-1-6

37

FM LAGOS MAR24/69 CONFD NO/NO STANDARD

TO EXTER 660

REF YOURTEL L86 JAN10

LAWS OF TREATIES CONF-SIERRA LEONE POSITION

CDN VIEWS SUBMITTED TO SIERRA LEONE MEA WHO REPLIED IN NOTE

DATED FEB12 RECEIVED HERE MAR17 THAT VIEWS HAD BEEN NOTED

AND SIERRA LEONE GOVT WOULD QUOTE GIVE MATTER FULL

CONSIDERATION UNQUOTE.

23.25.3

M. D. COPITHORNE
ACTION COPY

file 20-3-1-6

M

FM DSLAM MAR24/69 RESTR

TO EXTER 159

REF YOURTEL L351 MAR7

ARTICLE 5 LAW OF TREATIES CONFERENCE

WE ARE IN REGULAR CONTACT WITH TANZANIAN FOREIGN MINISTRY OFFICER RESPONSIBLE FOR THIS QUESTION AND IN RESPONSE TO RPTD REQUESTS ABOUT TANZANIAN REPLY TO OUR REPRESENTATIONS WE WERE INFORMED TODAY THAT WE COULD EXPECT TO RECEIVE REPLY IN WRITING BY END OF THIS WEEK.

2.WE HAVE SENT TEL THROUGH ZAMBIAN HIGHCOM HERE TO ZAMBIAN CHIEF OF PROTOCOL TO WHOM WE SUBMITTED AIDE-MEMOIRE ON THIS SUBJ DEC9/68 REQUESTING EARLY RESPONSE TO OUR REPRESENTATIONS.IN VIEW OF DIFFICULTIES OF COMMUNICATIONS WITH LUSAKA AND DILATORY NATURE OF ZAMBIAN BUREAUCRACY WE HAVE NO/NO IDEA WHEN,IF EVER,WE WILL RECEIVE REPLY.

L/25/3

M. D. COPITHORNE

INFO ONLY

file 20-3-1-6 25/3

20-3-1-6
371

FM LDN MAR24/69 RESTR NO/NO STANDARD

TO TT COPEN 1341 DE HAGUE

INFO EXTER PRMNY PARIS

REFYOURTEL 151 MAR21

LAW OF TREATIES CONFERENCE

VALLATT WILL NOT/NOT BE HEADING BRIT DEL FOR FIRST TWO WEEKS OF CONFERENCE AND THEREFORE BRITS HAVE ASKED FRENCH TO CHAIR WEO MTGS FOR FIRST TWO WEEKS OF CONFERENCE. IAN SINCLAIR WILL BE HEADING BRIT DEL DURING THIS PERIOD BUT HE WILL NOT/NOT ARRIVE IN VIENN UNTIL NOON HOUR APR8. SINCE NUMBER OF DELS WILL NOT/NOT BE ARRIVING VIENN UNTIL APR9 SINCLAIR DID NOT/NOT CONSIDER IT FEASIBLE TO HAVE WEO MTG IN ADVANCE OF INFORMAL MTG WITH STAVROPOULOS. BRIT DEL WILL BE STAYING AT HOTEL DE FRANCE.

8/25/3

File
Div. Diary
Diary
J.S.B.

Legal Division/J.S.Stanford/lti

EXTERNAL AFFAIRS

AFFAIRES EXTÉRIEURES

TO / À: The Canadian Embassy
MONTEVIDEO, URUGUAY

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

REFERENCE / Référence: Your letter No. 41 of March 14

SUBJECT / Sujet: Law of Treaties Conference

SECURITY / Sécurité: CONFIDENTIAL

DATE: March 24, 1969

NUMBER / Numéro: L-424

FILE / DOSSIER: OTTAWA 20 - 3 - 1 - 6

MISSION: 37

ENCLOSURES / Annexes:

DISTRIBUTION:

We understand your point that any "reminders" must be made in a way which would not give offence.

2. You may wish to inform Ambassador Ciasullo that Mr. Wershof, who was head of the Canadian delegation at the first session of the conference will also head the delegation at the second session. In addition Mr. Beesley, who did not attend the first session, expects to be present for the first half of the second session.

3. Mr. Eduardo Jiminez de Aréchaga of Uruguay was a member of the International Law Commission when it adopted the draft articles on the law of treaties. He was also elected Rapporteur of the Committee of the Whole at the first session but was obliged to leave Vienna before the end of the first session when he was made a member of the Uruguayan Government. We should be very interested in learning whether Mr. Jiminez de Aréchaga expects to attend all or part of the second session.

M.D. Copithorne

Under-Secretary of State
for External Affairs.

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

CANADIAN CONSULATE CONSULAT DU CANADA

cc Ministère des Affaires extérieures,
Ottawa

N. 2-69

File 8/4/69

Le Consulat du Canada près la République de Saint-Marin présente ses compliments au Secrétariat d'Etat pour les Affaires étrangères et a l'honneur de se référer à la Note n. 3600/Aa/349 en date du 11 mars 1969 du Secrétariat d'Etat, ainsi qu'à la Note n. 1-69 en date du 11 mars du Consulat, relatives à l'Article 5 du projet de Convention sur le droit des traités qui devra être discuté au cours de la Deuxième session de la Conférence de Vienne au début d'avril prochain.

Le Consulat n'a pas manqué dès réception de transmettre par télégramme, aux Autorités canadiennes, le contenu de la Note précitée du Secrétariat. Les Autorités canadiennes apprécient l'attitude que la Délégation de Saint-Marin adoptera durant la Conférence de Vienne au sujet de l'Article 5.

Les Autorités canadiennes se souviennent que la Délégation de Saint-Marin a voté contre l'Article 5 dans son entier, lors de la Première session de la Conférence. Aussi espèrent-elles que durant la Deuxième session, la Délégation de Saint-Marin adoptera la même attitude au sujet de l'Article 5 dans son entier, dans le cas où l'on refuserait d'accorder un scrutin séparé sur les deux paragraphes.

D'autre part, le Secrétariat d'Etat dans sa Note précitée avait demandé de connaître le point de vue du Gouvernement canadien sur la proposition avancée par un groupe d'Etats, d'insérer un Article 5 dans le projet de Convention sur le droit des traités. A ce propos, les Autorités canadiennes sont d'avis que cet amendement constitue un élément d'un "package" qui inclut une proposition de la Hongrie, la Pologne et l'Ukraine, d'ajouter à l'Article 2 (qui contient des définitions de certains termes employés dans le projet de Convention), la définition d'un "traité général multilatéral" (document L-19 de la Conférence) et un amendement de la Tchécoslovaquie à l'Article 12 qui prévoit que "tout Etat a le droit de devenir, pas accession, partie à un traité multilatéral qui affecte ses intérêts légitimes".

./.

17/8/4

De l'avis des Autorités canadiennes, le but de ce "package" est de permettre à certaines entités qui généralement ne sont pas reconnues comme Etat par la communauté internationale (par exemple l'Allemagne de l'Est), d'accéder à des traités ou accords multilatéraux. La position des pays occidentaux en général, y compris le Canada, est de s'opposer à ce "package" pour deux raisons.

Premièrement, le Canada considère que les Etats qui négocient un accord quelconque doivent être libres de décider eux-mêmes, au moment des négociations, qui peut devenir partie à cet accord ou à ce traité; il ne convient donc pas de formuler une règle de droit limitant cette liberté des Etats qui négocient des accords ou des traités. Deuxièmement, la possibilité d'accéder à des conventions multilatérales renforcerait la prétention de l'Allemagne de l'Est et de certaines autres entités qui généralement ne sont pas reconnues comme Etats - d'être considérés comme des Etats souverains et comme des membres de plein droit de la communauté internationale.

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

Rome, le 21 mars 1969.

CANADIAN CONSULATE - CONSULAT DU CANADA
PIERRE DUMAS
SAN MARINO

Le Secrétariat pour les Affaires étrangères,
Palais du Gouvernement,
San Marino,
République de San Marino.

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Rome, le 21 mars 1969.

CANADIAN CONSULATE - CONSULAT DU CANADA
PIERRE DUMAS
SAN MARINO

Le Secrétariat pour les Affaires étrangères,
Palais du Gouvernement,
San Marino,
République de San Marino.

25

INFO ONLY

file 20-3-1-6
21/3

20-3-1-6
371

F COPEN MAR21/69 RESTR NO/NO STANDARD

TO TT LDN 151 DE HAGUE

TT PARIS DE HAGUE

INFO TT EXTER PRMNY DE HAGUE

LAW OF TREATIES CONFERENCE VIENNA OPENING APR9

PLEASE INFORM APPROPRIATE LEGAL OFFICIALS LDN/PARIS THAT CANDEL ARRIVES VIENNA APR7 AND WILL BE AT HOTEL BRISTOL. AS STAVROPOULOS CALLING INFORMAL MTG OF DELS 3 PM APR8 I WONDER WHETHER BRIT OR FRENCH HEADS OF DEL WILL CONSIDER WHETHER WE DELS SHOULD MEET IN ADVANCE. I AM MERELY ASKING AND NOT NOT PRESSING. AT WHICH HOTELS WILL BRIT/FRENCH STAY?

WERSHOF

16/21/3

M. D. COPITHORNE

ACTION

file 20-3-1-6

20-3-1-6
37 | 8

FM SDMGO MAR21/69CONFD

TO EXTER 56

REF YOURTEL L330 MAR10

LAW TREATY CONFERENCE ART5

CALLED TODAY ON PACHECO FOREIGN OFFICE LEGAL ADVISER WHO ASSURED ME HE HAS VERY MUCH IN MIND OUR REPRESENTATION MADE DEC19 IN DRAFT INSTRUCTION FOR DR DEL ON WHICH HE IS CURRENTLY WORKING.DR DEL NOT/NOT YET SELECTED AND DEL CHIEF NORMALLY PARTICIPATES IN PREPARATION FOR FINAL DRAFT FOR MINISTER.HE AGREED TO INCLUDE IN DRAFT AN INSTRUCTION TO DR DEL TO CONSULT CLOSELY WITH CDN DEL REGARDING ART5 AND WILL CALL ME WHEN INSTRUCTIONS HAVE BEEN APPROVED BY MINISTER.

ACTION COPY

L Stanford

file 20-3-1-6

25/3

20-3-1-6
37 | 8

FM SAIGN MAR21/69 CONFD NO/NO STANDARD

TO EXTEROTT 290 PRIORITY

LEGAL AND ~~FE~~ TCO DIVS

REF YOURTEL L345 MAR7 AND OURTEL 1136 OCT11/68

LAW OF TREATIES CONFERENCE ARTICLE 5

KY, LEGAL ADVISOR IN FM TELLS US THAT DECISION TO SEND VIETNAMESE DEL TO VIENA CONFERENCE IS EXPECTED WITHIN A FORTNIGHT. WE REVIEWED OUR POSITION ON ARTICLE5 AND AT KYS REQUEST LEFT HIM A SUPPLEMENTARY NOTE TO OUR AIDMEMOIRE EXPLAINING IMPORTANCE WE ATTACH TO PROCEDURAL QUESTION OF SEPARATE VOTE ON PARA2.

2. KY WAS SYMPATHETIC BUT DID NOT/NOT APPEAR TO BE CONVERSANT WITH ISSUES INVOLVED AND SAID VIETNAMS FINAL POSITION WOULD BE ADOPTED IN LIGHT OF CONSULTATION WITH FRIENDLY DELS AT CONFERENCE ITSELF.

3. WE SUGGEST THEREFORE THAT CANDEL LOBBY VIETNAMESE EARLY IN PROCEEDINGS SINCE IT APPEARS UNLIKELY THEY WILL ARRIVE IN VIENA WITH FORMAL INSTRUCTIONS ON ARTICLE 5

20-21. 3.

ACTION COPY

L

file 20-3-1-6
37 28/3

V

FM KLMPR MAR20/69 RESTR NO/NO STD

TO EXTER 375

REF YOURTEL L323 MAR7

LAW OF TREATIES- ARTICLE 5

WE ARE KEEPING IN TOUCH WITH RAMANI MFA ON THIS SUBJ AND HAVE TAKEN RECENT OCCASION TO STRESS TO HIM POINTS MENTIONED IN YOUR REFTEL. RAMANI ADVISES US THAT INSTRUCTIONS FOR MALAYSIAN DEL WILL DEAL WITH PROBLEM OF ARTICLE 5 AND HAS PROMISED TO INDICATE TO US NATURE OF THESE INSTRUCTIONS WHEN THEY ARE DRAFTED. MALAYSIA IS JUST BEGINNING PROCESS OF ORGANIZING ITS DEL TO VIENA CONFERENCE AND PREPARING INSTRUCTIONS FOR DEL. CONFIDENT THAT MALAYSIAN POSITION AS REFLECTED IN INSTRUCTIONS FOR ITS DEL WILL ACCORD CLOSELY WITH OUR OWN.

9/20/3

File ✓
Diary
Div. Diary
J.S.S.

EXTERNAL AFFAIRS

AFFAIRES EXTÉRIEURES

MEMORANDUM

TO / À: AFRICAN AND MIDDLE EASTERN DIVISION

FROM / De: Legal Division

REFERENCE / Référence:

SUBJECT / Sujet: U.N. Law of Treaties Conference Article V-Jordan

SECURITY / Sécurité: RESTRICTED

DATE: March 20, 1969.

NUMBER / Numéro:

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

ENCLOSURES / Annexes: 1

DISTRIBUTION

Protocol Div.

Attached is a copy of Beirut telegram No. 251 of March 18 in which the suggestion is made that the Canadian position on Article V of the proposed U.N. convention on the Law of Treaties be raised with Jordanian Ambassador at the time he presents his credentials.

2. If you consider it appropriate that matters of substance be raised at the time of presentation of credentials, we would very much like to take advantage of this opportunity to support the representations which have been made to the Jordanian government by our ambassador in Beirut. If you consider Beirut's suggestion to be a good one, please let us know and we will prepare talking points to serve as a basis for discussion of this item at the presentation of credentials.

[illegible]

Legal Division.

Ext. 407D/BIL
[redacted]
(Admin. Services Div.)

ACTION COPY

Copenhagen | Mayford

L

File 20-3-1-6

37 2/3

FM COPEN MAR20/69 RESTR NO/NO STANDARD

TO TT PRMNY 148 PRIORITY DE HAGUE

INFO EXTER PRIORITY DE HAGUE

REF YOURTEL MAR19

LAW OF TREATIES CONFERENCE-SECOND SESSION

WERSHOF WILL ATTEND MTG IN HOFBURG 3PM TUE APR8'''

2/21/3

Ref. Tel
File ✓
Diary
Div. Diary
J.S.S.
EXTERNL OTT

MESSAGE

DATE	FILE/DOSSIER	SECURITY SECURITE
MAR 20/69	20-3-1-6 / 37	CONFD

FM/DE

	NO	PRECEDENCE
TO/A BERUT	L-412	ROUTINE
INFO		

REF YOURTEL 251 MAR 18

SUB/SUJ UN LAW OF TREATIES CONFERENCE ARTICLE V - JORDAN

FOLLOWING IS INFORMATION REQUESTED CONCERNING POSITION OF FEDERAL STATES ON ARTICLE V.

2.THERE WERE TWO ROLL CALL VOTES ON PARA 2 AT THE FIRST SESSION, ONE BEFORE IT WAS REFERRED TO THE DRAFTING COMMITTEE AND ONE AFTER IT HAD BEEN CONSIDERED BY THE DRAFTING COMMITTEE. ON THE FIRST VOTE THE PARA WAS RETAINED BY 45 VOTES TO 38 WITH 10 ABSTENTIONS. ON SECOND VOTE THE PARA WAS RETAINED BY 46 VOTES TO 39 WITH 8 ABSTENTIONS. OF THE FEDERAL STATES REPRESENTED AT THE FIRST SESSION, 9 (AUSTRIA, BRAZIL, CANADA, GERMANY, INDIA, MALAYSIA, MEXICO, USA, VENEZUELA) VOTED AGAINST PARA 2 ON BOTH OCCASIONS. ALL HAVE INDICATED THEY WILL VOTE AGAINST PARA 2 AT SECOND SESSION. TWO OTHERS (ARGENTINA AND AUSTRIA) VOTED AGAINST PARA 2 ON FIRST VOTE AND VOTED FOR IT ON SECOND VOTE. BOTH HAVE INDICATED THEY WILL VOTE AGAINST PARA 2 AT SECOND SESSION. ONLY 4 FEDERAL STATES (NIGERIA, SWITZERLAND, USSR, YUGOSLAVIA) VOTED FOR PARA 2 ON BOTH OCCASIONS. BOTH NIGERIA AND SWITZERLAND ARE AT

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ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	APPROVED/AUTORISE
SIG. J.S.Stanford/il	LEGAL	2-5406	SIG. [illegible]

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

PRESENT REVIEWING THEIR POSITION IN THE LIGHT OF OUR PRESENTATIONS. NO REPRESENTATIONS HAVE BEEN MADE TO USSR AND YUGOSLAVIA.

3.USSR SUPPORTS PARA 2 AS ADDITIONAL CONFIRMATION OF THE INTERNATIONAL PERSONALITY OF BYELORUSSIA AND THE UKRAINE. OUR VIEW IS THAT OMISSION OF PARA 2 WOULD NOT IMPAIR THE TREATY MAKING CAPACITY OF BYELORUSSIA, THE UKRAINE, SWISS CANTONS AND GERMAN LAENDER WHICH IS ALREADY WELL ESTABLISHED IN INTERNATIONAL LAW. THIS VIEW IS CONFIRMED BY THE FACT THAT FRG IS ABLE TO SUPPORT OUR POSITION. OUR OBJECTION IS THAT PROPOSED PARA 2 SHOULD NOT BE MADE A RULE OF GENERAL INTERNATIONAL LAW APPLICABLE ~~BUT OF~~ TO ALL FEDERAL STATES SIMPLY BECAUSE IT HAPPENS TO REFLECT ACCURATELY THE CONSTITUTIONAL POSITIONS OF THREE FEDERAL STATES.

4.ONE COPY EACH ENGLISH AND FRENCH EDITIONS FEDERALISM AND INTERNATIONAL RELATIONS BEING FORWARDED TO YOU IMMEDIATELY.

M. D. COPITHORNE

Mr. Stafford

INFO ONLY

20-3-1-6

file 20-3-1-6 RB

37 19/3

FM PRMNY MAR19/69 RESTR

TO TT COPEN(WERSHOF)703 DE HAGUE

INFO EXTER

LAW OF TREATIES CONFERENCE:SECOND SESSION

STAVROPOULOS HAS WRITTEN TO PROPOSE AN INFORMAL MTG AMONG DELS 3PM TUE APR8 AT THE HOFBURG.PLEASE CONFIRM AVAILABILITY WERSHOF TO ATTEND.

19/19/3

ACTION COPY

M. D. COPITHORNE

cc AOHQ div.
(see exp para 2)
Done 19/3

20/3

20-3-1-6
37

FM BERUT MAR18/69 CONFD NO/NO STANDARD

TO EXTER 251 PRIORITY

REF YOURTEL L-52 JAN7

UN LAW OF TREATIES CONF SECOND SESSION ARTICLE FIVE

DURING FIRST VISIT TO AMMAN SINCE RECEIVING INSTRUCTIONS REFTEL, WE PRESENTED AIDE MEMOIRE TO DR NAJIEDDIN DAJANI, ACTING UNDER-SECRETARY AND HEAD OF INNATL ORGANIZATIONS SECTION OF FM ON MAR16. DAJANI SAID THAT ALTHOUGH FM HAD RECOMMENDED PARTICIPATION IN CONF, GOVT HAD NOT/NOT YET TAKEN FINAL DECISION. IF AS SEEMED LIKELY JORDAN DID ATTEND, REP WOULD LIKELY BE FROM POST IN AREA.

2. DAJANI LISTENED SYMPATHETICALLY TO BRIEF DESCRIPTION OF CDN POSITION AND PROMISED THAT OUR REQUEST WOULD BE GIVEN CAREFUL CONSIDERATION AFTER FM LEGAL EXPERTS HAD STUDIED AIDE MEMOIRE AND WHITE PAPER WHICH WE LEFT WITH HIM. HE EXPRESSED SURPRISE AT IMPLICATIONS OF PARA TWO WHICH HE SAID SEEMED CONTRARY TO INNATL PRACTICE. AND WAS OBVIOUSLY INTERESTED IN KNOWING WHICH COUNTRIES HAD SPONSORED THIS PARA AND POSITION OF OTHER FEDERAL STATES PARTICULARLY USA AND USSR. DAJANI SEEMED TO CONSIDER THAT A SEPARATE VOTE ON PARA TWO MIGHT BE EASILY OBTAINED. FINALLY, HE SUGGESTED THAT ARTICLE FIVE MIGHT BE RAISED AT TIME OF PROPOSED PRESENTATION OF CREDENTIALS BY JORDANIAN AMB WHICH WOULD SEEM TO SUGGEST THAT JORDANIANS HOPE ACCREDITATION CAN BE ARRANGED WITHIN NEXT MONTH. (OURTEL 249 MAR 18 REFERS.)

do reply

3. IN SUMMARY, DAJANI WAS EXTREMELY SYMPATHETIC WHILE NOT/NOT OF COURSE COMMITTING HIMSELF AS TO JORDANIAN POSITION. HE PROMISED TO TRY TO GIVE US IN DUE COURSE UNOFFICIAL INDICATION OF HOW JORDAN

...2

8/18/3

MIGHT VOTE.

4. GRATEFUL FOR INFO TO PASS TO JORDANIAN FM ON VOTING POSITION OF OTHER FEDERAL STATES AT FIRST SESSION AND THEIR LIKELY POSITION DURING SECOND SESSION.

5. GRATEFUL RECEIVE ONE COPY EACH ENGLISH AND FRENCH EDITIONS OF QUOTE FEDERALISM AND INNATL RELATIONS UNQUOTE.

cc Pers Ops Div
Immigration Div
(Grand Section)
mar 21/69

RESTRICTED

March 18, 1969

20-3-1-6

21/3/69

MEMORANDUM FOR THE MINISTER

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

This memorandum seeks your approval for the size and composition of the Canadian delegation to the second session of the U.N. Conference on the Law of Treaties, to be held in Vienna from April 9 to May 21, 1969.

You will recall previous memoranda to you on this question requesting your authority to make diplomatic representations in friendly capitals to seek support for the Canadian effort to delete from the draft convention paragraph 2 of Article 5, which would establish as a rule of general international law the principle that the member units of a federal state (in the case of Canada, the provinces) may in certain circumstances have the capacity to conclude treaties. This, of course, has serious implications for the Quebec problem, and the Prime Minister has expressed interest in the outcome of our efforts to delete the offending paragraph.

Our representations to date have had favourable results, but will have to be pursued vigorously among delegates of the more than 100 states to be represented in Vienna during the second session if our efforts are to have a reasonable chance of success.

At the first session held last spring and at which no major lobbying was carried out by our delegation, it was found that the delegation required a minimum of three officers to function effectively. I propose therefore that the delegation to the second session, which will be shorter but a great deal more intense and controversial than the first, consist of three officers, supplemented by a fourth officer for the first half of the session, i.e. the period prior to the final vote, in Plenary session on Article 5. This fourth officer will be necessary to enable the delegation to carry on effective lobbying on Article 5 among the large number of delegates during the limited time available prior to the Plenary vote.

If you agree with the size, I recommend the following as members of the delegation.

approve
MS

.../2

003622

19.3.23(05) ASM

Head of Delegation: Max H. Wershof, Q.C., formerly Assistant Under-Secretary of State for External Affairs and Legal Adviser, now Canadian Ambassador to Denmark. Mr. Wershof was head of the Canadian delegation at the first session

J.A. Beesley, Head of Legal Division. Mr. Beesley has extensive experience at international conferences and I propose that he be the "fourth" member referred to, to be present in Vienna until the Plenary vote on Article 5 (approximately three weeks)

A.W.J. Robertson, First Secretary at the Canadian Permanent Mission to the U.N. in New York. Mr. Robertson was a member of the Canadian delegation to the first session

J.S. Stanford, Head of the Treaty and Economic Section of Legal Division. Mr. Stanford took part in the preparation of the commentary and instructions for the Canadian delegation and was a member of the delegation at the first session.

I should be grateful to know whether you approve the foregoing recommendations. This does not appear to be a matter requiring consideration by Cabinet.

M.C.

cc: USSEA
SSEA
PARL. SEC.
PRESS OFC.

Legal Division/J.S. Stanford/bp

RESTRICTED

March 18, 1969

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.../2

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I should be grateful to know whether you approve the foregoing recommendations. This does not appear to be a matter requiring consideration by Cabinet.

M. CADIEUX

N.C.

File
Diary
Div. Diary
Tel. Diary
T.S.S.

MESSAGE

DATE	FILE/DOSSIER	SECURITY SECURITE
Mar 18/69	20-3-1-6 37	RESTR

FM/DE EXTERNAL OTT

NO	PRECEDENCE
L-395	ROUTINE

TO/A ROME

INFO

REF YOUR TEL 287 MARCH 14

SUB/SUJ U.N. CONFERENCE OF THE LAW OF TREATIES - SAN MARINO

MOST GRATEFUL FOR ENCOURAGING INFO CONTAINED IN REFTEL CONCERNING SAN MARINO POSITION ON ARTICLE FIVE AT SECOND SESSION. SHOULD YOU HAVE OCCASION TO DISCUSS THIS QUESTION FURTHER WITH SAN MARINO OFFICIALS, YOU MAY WISH TO REMIND THEM THAT SAN MARINO VOTED AGAINST ARTICLE FIVE AS A WHOLE AT THE FIRST SESSION AND WE WOULD HOPE THAT AT SECOND SESSION THEY COULD MAINTAIN SAME POSITION ON ARTICLE FIVE AS A WHOLE IF A SEPARATE VOTE IS REFUSED.

2.WITH RESPECT TO PROPOSED ARTICLE FIVE BIS, THIS AMENDMENT IS ONE ELEMENT IN A PACKAGE WHICH INCLUDES A PROPOSAL BY HUNGARY, POLAND AND UKRAINE TO ADD TO ARTICLE TWO (WHICH CONTAIN DEFINITIONS OF CERTAIN TERMS USED IN THE DRAFT CONVENTION) A DEFINITION OF A QUOTE GENERAL MULTILATERAL TREATY UNQUOTE (CONFERENCE DOCUMENT L 19) AND AN AMENDMENT BY CZECH TO ARTICLE TWELVE WHICH WOULD PROVIDE THAT QUOTE ANY STATE HAS THE RIGHT TO BECOME, BY ACCESSION, A PARTY TO A MULTILATERAL TREATY WHICH AFFECTS ITS LEGITIMATE INTEREST UNQUOTE

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SIG J.S.STANFORD/il	Legal	2-5406	SIG M. D. CORITHO

(DOCUMENT L104).

2.THE OBJECT OF THIS PACKAGE IS TO MAKE IT POSSIBLE FOR ENTITIES WHICH ARE NOT RECOGNIZED ~~BY~~ AS STATES BY THE INTERNATIONAL COMMUNITY GENERALLY (EG EAST GERMANY) NEVERTHELESS TO ACCEDE TO MULTILATERAL TREATIES.

3.THE POSITION OF WESTERN STATES IN GENERAL, INCLUDING CANADA, IS TO OPPOSE THIS PACKAGE FOR TWO REASONS. FIRST, WE CONSIDER THAT STATES NEGOTIATING A PARTICULAR TREATY SHOULD BE FREE TO DECIDE FOR THEMSELVES AT THE TIME OF THE NEGOTIATIONS WHO IS TO BE PERMITTED TO BECOME A PARTY TO THE TREATY AND THAT IT WOULD BE IMPROPER TO FORMULATE A RULE OF LAW WHICH WOULD RESTRICT THIS FREEDOM OF THE NEGOTIATING STATES. SECOND, THE ABILITY TO ACCEDE TO MULTILATERAL CONVENTIONS WOULD ENHANCE A CLAIM OF EAST GERMANY AND OTHER ENTITIES NOT GENERALLY RECOGNIZED AS STATES TO BE CONSIDERED AS SOVEREIGN STATES AND FULL MEMBERS OF THE INTERNATIONAL COMMUNITY. YOU WILL APPRECIATE, THAT BECAUSE OF THIS SECOND CONSIDERATION, THE FGR ATTACHES PARTICULAR POLITICAL IMPORTANCE TO THE DEFEAT OF THE PACKAGE OF WHICH ARTICLE FIVE BIS IS A PART. AS THERE WAS NO DISCUSSION CONCERNING ARTICLE FIVE BIS AT THE FIRST SESSION OF THE CONFERENCE, WE ARE NOT AWARE OF THE POSITION OF THE GOVERNMENT OF SAN MARINO ON THIS QUESTION.

Latin American Division
Law of Treaties

Copy to Mr Stanford

EXTERNAL AFFAIRS

AFFAIRES EXTÉRIEURES

TO / À	Under-Secretary of State for External Affairs, Ottawa	SECURITY / Sécurité	RESTRICTED
FROM / De	Canadian Embassy, San Jose	DATE	March 18, 1969
REFERENCE / Référence	Your telegram No. L-327 of March 7, 1969	NUMBER / Numéro	99
SUBJECT / Sujet	Law of Treaties Conference Article 5 - Representations in Honduras, Nicaragua and Costa Rica.	FILE / DOSSIER	OTTAWA 20-3-1-6 "L" MISSION 24-1

ENCLOSURES / Annexes: 6

DISTRIBUTION

Mr Stanford to see

cc of letter no 99 to Latin American Div

VIC 27/3/69

More by good fortune than by anything else the Honduran Ambassador returned his courtesy call only last week while I was in the process of drafting the letters to the three Foreign Ministers of Honduras, Nicaragua and Costa Rica on the Law of Treaties. The Honduran Ambassador, Sr. Policarpo Callejas, had for two years been on the Honduran Delegation to the United Nations. Prior to becoming a member of the Honduran foreign service, he had legal training in the United States. His English is fluent, indeed colloquial. I mentioned to him that these representations were being made and discussed with him the most effective way of presenting the case, particularly the manner of framing the final paragraph. He was quite interested in the line we were taking and said it would be quite impossible for a Central American State to take issue with us. It was he who reminded me of the precept in law that that which is not expressly forbidden is considered by some to be permitted. Applying this precept to our present concern it would seem evident that the permissive quality of the International Convention (even if conditional), coupled with a possible absence of a prohibition in a constitution, could lead to many disputes and misunderstandings - in fact, to the dangers that we foresee by allowing paragraph 2 of Article 5 of the Draft Convention to remain.

2. Having consulted him to this extent on these representations which I was planning to make to his Minister, I enlisted his co-operation as well in ensuring that the Note reached Tegucigalpa, because he had said he was leaving the following day for his country's capital. With so much uncertainty in this country over the mails, I thought it would be advisable to make use of his readiness to act as courier. He accordingly took it with him when he left San Jose by air on Friday, March 14. The text in English and in Spanish of the Note as addressed to the Minister of External Relations in Honduras is attached.

...

3. I was able to personalize the First Person Note that I addressed to the Minister of External Relations in Managua by recalling that I had left the Aide-Memoire in the first instance when I met him on January 13 to arrange for the presentation of my Letters of Credence. This letter in both English and Spanish was sent by Registered Airmail to-day. A copy of the text in both English and Spanish is attached.

...

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.../2

22.21.3

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

Under-Secretary of State for External Affairs

RESTRICTED

March 18, 1969

4. I called on Sr. Fernando Lara Bustamente, the Minister of External Relations here in San Jose, on Monday morning, March 17, to leave with him an English text and an unofficial Spanish translation. I had warned his officials before-hand that I would be making an arrangement to call on the Minister and told them the reason for my visit, suggesting that it would be helpful to me if their Minister could be provided with an advance briefing. This apparently was done and the Minister and I had a good 15 or 20 minutes discussing the problem. Sr. Lara said that we should not be too concerned about paragraph 2 of Article 5 because of the conditional clause it contains; if, in other words, a Federal constitution contains no reference to the capacity of component States to conclude international agreements, that capacity cannot be claimed. I urged upon him, nonetheless, that in our view the entire paragraph should be removed from the Convention because the mere fact that it is included in an international agreement could give rise to pressures within Federal States to have the constitution amended in such a way as to permit constituent members to enter into agreements having an international character. The Minister is aware of our concern and, while he gave me no assurance of the support I was seeking, he indicated that the Canadian Delegation to the Conference should maintain close relations with the Costa Rican Delegation. The Costa Rican representative at the meeting in Vienna will almost certainly be a member of one of the Costa Rican Missions in Europe. If I discover his name in time for it to be of any use I shall inform you. A copy of the text, both in English and Spanish, left with Sr. Lara is attached.

5. After discussing this matter with Sr. Lara, I outlined for him the scheme we are developing to have certain selected documents of Canadian origin left with the Ministry here. (See our letter No. 83 of March 4, 1969). Sr. Lara was delighted with this scheme and expressed his appreciation for our thoughtfulness. He also undertook to observe the ground rules which I mentioned, namely that they were being given to the Ministry here in confidence and were to be available only to those persons who had a need to know.

Donald McCarthy,
The Ambassador.

CANADIAN EMBASSY  AMBASSADE DU CANADA

No. 6

San José, Costa Rica
March 12, 1969

Excellency,

I have the honour to refer to the Aide-Memoire dated October 9, 1968 left with Sr. Herrera of the International Organizations Division of your Ministry, by the Second Secretary of this Embassy, Mr. G. D. MacKinnon. The Aide-Memoire, which outlined the position of the Canadian Government on Article 5 of the draft agreement on the Law of Treaties to be considered at the Second Session of the Conference that will meet in Vienna in April and May of this year, laid stress on dangers inherent in paragraph 2 of that Article, as at present drafted, indicating some of the difficulties that could arise for Federal States if that particular paragraph were to be agreed upon as it now reads.

During the First Session of the Conference, when this particular Article was being drafted, the majority of Federal States participating opposed in a roll-call vote the present wording, the only Federal States supporting its retention being Nigeria, Switzerland, the U.S.S.R. and Yugoslavia. As is pointed out in the Aide-Memoire, the wording of paragraph 2 of Article 5, in its present form, leaves open to question the doctrine that a Federal constitution is an internal law and that its interpretation therefore falls within

His Excellency,
Tiburcio Carías Castillo,
Minister of External Relations,
Tegucigalpa D.C., Honduras.

.../2

the exclusive jurisdiction of the internal tribunals of the Federal State having jurisdiction in constitutional matters. In consequence, if that paragraph were to be adopted as it now stands, a practice could grow up which no State would consider acceptable, namely, that other States may assume the right to interpret for themselves the constitutions of Federal States. Such a practice, were it to gain ground, particularly in cases where the constitutional provision regarding treaty-making became the subject of dispute, would constitute a clear case of interference by the outside State in the internal affairs of the Federal States.

Although not a Federal State and therefore not directly affected should such a practice become general, Honduras would, I am confident, deplore any development of this sort which would lessen international respect for the domestic nature of constitutional law.

As a result of these various considerations, the Canadian Delegation to the Second Session of the Conference on the Law of Treaties will be instructed to do what it can to insure that Section 5 of the draft treaty will be voted on paragraph by paragraph and to secure, if possible, the deletion of paragraph 2 of that Section. It is my Government's hope that the Canadian Delegation will be able to count on the support of the Honduran Delegation in this endeavour.

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

Donald W. Munro

Donald W. Munro
Ambassador.

TRADUCCION NO OFICIAL

No. 6

San José, Costa Rica,
12 de marzo de 1969.

Excelencia:

Tengo el honor de referirme al "Aide-Mémoire" de fecha 9 de octubre de 1968 que el Segundo Secretario de esta Embajada señor G. D. MacKinnon le entregó al señor Herrera de la División de Organismos Internacionales de vuestro Ministerio. El "Aide-Mémoire", que expuso el punto de vista del gobierno canadiense sobre el artículo 5 del convenio preliminar sobre el Derecho de los Tratados que será discutido en la Segunda Sesión de la Conferencia de las Naciones Unidas sobre el Derecho de los Tratados que tendrá lugar en Viena en abril y mayo de este año, enfáticamente expuso los peligros inherentes del inciso 2 de dicho artículo 5, tal y como aprece redactado en la actualidad, e indica algunas de las dificultades que podrían presentárseles a los Estados Federales si dicho inciso fuera aceptado con la redacción que tiene en su forma actual.

Durante la primera sesión de la conferencia, cuando este artículo estaba siendo redactado, la mayoría de los Estados Federales

...2

Excelentísimo Señor,
Lic. Tiburcio Carías Castillo,
Ministro de Relaciones Exteriores,
Tegucigalpa, D.C., Honduras.

participantes se opusieron - por votación nominal - a la redacción actual; los únicos Estados Federales que la apoyaron en ese momento fueron Nigeria, Suiza, la Unión Soviética y Yugoeslavia. Como se advierte en el "Aide-Mémoire", la redacción del inciso 2 del artículo 5, en su forma actual, podría poner en duda la doctrina según la cual una constitución federal es una ley interna cuya interpretación está bajo la jurisdicción exclusiva de los tribunales internos del Estado Federal que tengan jurisdicción en asuntos de órden constitucional. Por lo tanto, si dicho inciso fuera aceptado con su redacción actual, podría dar pié al empleo de un procedimiento que ningún Estado consideraría aceptable, cual es, que otros Estados se otorguen el derecho de interpretar por sí, las constituciones de Estados Federales. Si semejante proceder tomara fuerza, particularmente en casos en que disposiciones constitucionales relativas a la manera de cómo hacer un tratado fueran objeto de discusión, constituiría un caso claro de interferencia del Estado extranjero en los asuntos internos de los Estados Federales.

Aunque Honduras no es un Estado Federal y que por lo tanto no sería directamente afectado si un procedimiento semejante se generalizara, tengo la certidumbre que Honduras deploraría el desarrollo de actuaciones de esta índole, que menoscabaría el respeto internacional de la naturaleza nacionalística del Derecho contitucional.

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D W MUNRO/R GURDIAN/gl

Como resultado de estas consideraciones, la delegación canadiense a la Segunda Sesión de la Conferencia sobre el Derecho de los Tratados, tendrá instrucciones de hacer todo lo que pueda para que la sección 5 del tratado preliminar sea puesta a votación inciso por inciso y obtener, si posible, la abrogación del inciso 2 de dicha sección. Mi gobierno tiene la esperanza que la delegación canadiense pueda contar en sus propósitos, con el apoyo de la delegación de Honduras.

Ruégole aceptar, Excelencia, las seguridades de mi más alta y distinguida consideración.

D. W. MUNRO

Donald W. Munro,
Embajador.

DW MUNRO/mk

File: 24-1
Diary
Mrs. Libby (Note file)

EXTERNAL

No. 8

San José, Costa Rica
March 12, 1969

Excellency,

I have the honour to refer to an Aide-Memoire which I left with you on January 13 when making arrangements with you to present to the President of the Republic my Letters of Credence. The Aide-Memoire, which deals with the proposed International Convention on Treaties to be considered at the Second Session of a Conference that will meet in April and May of this year in Vienna, laid stress on dangers inherent in paragraph 2 of Article 5 of the treaty, as at present drafted, indicating some of the difficulties that could arise for Federal States if that particular paragraph were to be agreed upon as it now reads.

During the First Session of the Conference, when this particular Article was being drafted, the majority of Federal States participating opposed in a roll-call vote the present wording, the only Federal States supporting its retention being Nigeria, Switzerland, the U.S.S.R. and Yugoslavia. As is pointed out in the Aide-Memoire, the wording of paragraph 2 of Article 5, in its present form, leaves open to question the doctrine that a Federal constitution is an internal law and that its interpretation therefore falls within

His Excellency,
Lorenzo Guerrero,
Minister of External Relations,
Managua, Nicaragua.

.../2

the exclusive jurisdiction of the internal tribunals of the Federal State having jurisdiction in constitutional matters. In consequence, if that paragraph were to be adopted as it now stands, a practice could grow up which no State would consider acceptable, namely, that other States may assume the right to interpret for themselves the constitutions of Federal States. Such a practice, were it to gain ground, particularly in cases where the constitutional provision regarding treaty-making became the subject of dispute, would constitute a clear case of interference by the outside State in the internal affairs of the Federal States.

Although not a Federal State and therefore not directly affected should such a practice become general, Nicaragua would, I am confident, deplore any development of this sort which would lessen international respect for the domestic nature of constitutional law.

As a result of these various considerations, the Canadian Delegation to the Second Session of the Conference on the Law of Treaties will be instructed to do what it can to insure that Section 5 of the draft treatywill be voted on paragraph by paragraph and to secure, if possible, the deletion of paragraph 2 of that Section. It is my Government's hope that the Canadian Delegation will be able to count on the support of the Nicaraguan Delegation in this endeavour.

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

D. W. MUNRO

Donald W. Munro
Ambassador.

D W MUNRO/ R CURRIAN/ el

External

TRANSCRIPT OFFICIAL

No. 8

San José, Costa Rica,
12 de marzo de 1969.

Excelencia:

Tengo el honor de referirme a un "Aide-Mémoire" de fecha 9 de octubre de 1968 que le entregué a usted el 13 de enero cuando hacíamos los preparativos para presentarle al Presidente de la República mis Cartas Credenciales. El "Aide-Mémoire", que trata sobre la propuesta Convención Internacional sobre el Derecho de los Tratados que se discutirá en la Segunda Sesión de la Conferencia de las Naciones Unidas sobre el Derecho de los Tratados que se celebrará en abril y mayo de este año en Viena, enfáticamente expuso los peligros aparentes del inciso 2 del artículo 5 del tratado, tal y como aparece redactado en la actualidad, e indicó algunas de las dificultades que podrían presentársele a los Estados Federales si dicho inciso fuera aceptado con la redacción que tiene en su forma actual.

Durante la primera sesión de la conferencia, cuando este artículo estaba siendo redactado, la mayoría de los Estados Federales participantes se opusieron - por votación nominal - a la

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Excelentísimo Señor,
Doctor Lorenzo Guerrero,
Ministro de Relaciones Exteriores,
Managua, Nicaragua.

redacción actual; los únicos Estados Federales que la aplicaban en ese momento fueron Alemania, Suiza, la Unión Soviética y Yugoeslavia. Como se advierte en el "Aide-Mémoire", la redacción del inciso 2 del artículo 5, en su forma actual, podría poner en duda la doctrina según la cual una constitución federal es una ley interna cuya interpretación está bajo la jurisdicción exclusiva de los tribunales internos del Estado Federal que tengan jurisdicción en asuntos de índole constitucional. Por lo tanto, si dicho inciso fuera aceptado con su redacción actual, podría dar pié al empleo de un procedimiento que ningún Estado consideraría aceptable, cual es, que otros Estados se otorguen el derecho de interpretar por sí, las constituciones de Estados Federales. Si semejante proceder tomara fuerza, particularmente en casos en que disposiciones constitucionales relativas a la manera de cómo hacer un tratado fueran objeto de discusión, constituiría un caso claro de intervención del Estado extranjero en los asuntos internos de los Estados Federales.

Aunque Nicaragua no es un Estado Federal y que por lo tanto no sería directamente afectado si un procedimiento semejante se generalizara, tengo la certidumbre que Nicaragua diplomacía el desarrollo de actuaciones de esta índole, que menoscabaría el respeto internacional de la naturaleza nacionalística del Derecho constitucional.

...]

Como resultado de estas consideraciones, la delegación canadiense a la Segunda Sesión de la Conferencia sobre el Derecho de los Tratados, tendrá instrucciones de hacer todo lo que pueda para que la sección 5 del tratado preliminar sea puesta a votación inciso por inciso y obtener, si posible, la eliminación del inciso 2 de dicha sección. El gobierno tiene la esperanza que la delegación canadiense pueda contar en sus propósitos, con el apoyo de la delegación de Nicaragua.

Ruégole aceptar, Excelencia, las seguridades de mi más alta y distinguida consideración.

D. W. MUNRO

Donald W. Munro,
Embajador.

CANADIAN EMBASSY  AMBASSADE DU CANADA

No. 17

San José, Costa Rica
March 12, 1969

Excellency,

I have the honour to refer to this Embassy's Note No. 69 of December 11, 1968 by which your Ministry received a copy of an Aide-Memoire dealing with the proposed International Convention on Treaties which is to be considered at the Second Session of the Conference that will be held in Vienna in April and May of this year. The Aide-Memoire laid stress on dangers inherent in paragraph 2 of Article 5 of the treaty, as at present drafted, indicating some of the difficulties that could arise for Federal States if that particular paragraph were to be agreed upon as it now reads.

During the First Session of the Conference, when this particular Article was being drafted, the majority of Federal States participating opposed in a roll-call vote the present wording, the only Federal States supporting its retention being Nigeria, Switzerland, the U.S.S.R. and Yugoslavia. As is pointed out in the Aide-Memoire, the wording of paragraph 2 of Article 5, in its present form, leaves open to question the doctrine that a Federal constitution is an internal law and that its interpretation therefore falls within

His Excellency,
Fernando Lara Bustamente,
Minister of External Relations,
SAN JOSE.

.../2

the exclusive jurisdiction of the internal tribunals of the Federal State having jurisdiction in constitutional matters. In consequence, if that paragraph were to be adopted as it now stands, a practice could grow up which no State would consider acceptable, namely, that other States may assume the right to interpret for themselves the constitutions of Federal States. Such a practice, were it to gain ground, particularly in cases where the constitutional provision regarding treaty-making became the subject of dispute, would constitute a clear case of interference by the outside State in the internal affairs of the Federal States.

Although not a Federal State and therefore not directly affected should such a practice become general, Costa Rica would, I am confident, deplore any development of this sort which would lessen international respect for the domestic nature of constitutional law.

As a result of these various considerations, the Canadian Delegation to the Second Session of the Conference on the Law of Treaties will be instructed to do what it can to insure that Section 5 of the draft treaty will be voted on paragraph by paragraph and to secure, if possible, the deletion of paragraph 2 of that Section. It is my Government's hope that the Canadian Delegation will be able to count on the support of the Costa Rican Delegation in this endeavour.

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

Donald W. Munro

Donald W. Munro
Ambassador.

TRADUCCION NO OFICIAL

No. 17 San José, 12 de marzo de 1969.

Excelencia:

Tengo el honor de referirme a la Nota No. 69 de esta Embajada fechada el 11 de diciembre de 1968, por medio de la cual Vuestro Ministerio recibió una copia de un "Aide-Mémoire" que trata sobre la propuesta Convención Internacional sobre el Derecho de los Tratados que se discutirá en la Segunda Sesión de la Conferencia de Las Naciones Unidas sobre el Derecho de los Tratados que tendrá lugar en Viena en abril y mayo de este año. El "Aide-Mémoire" enfáticamente expuso los peligros inherentes del inciso 2 del artículo 5 del tratado, tal y como aparece redactado en la actualidad, e indica algunas de las dificultades que podrían presentírseles a los Estados Federales si dicho inciso fuera aceptado con la redacción que tiene en su forma actual.

Durante la primera sesión de la conferencia, cuando este artículo estaba siendo redactado, la mayoría de los Estados Federales participantes se opusieron - por votación nominal - a la redacción

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Excelentísimo Señor,
Lic. Fernando Lara Bustamante,
Ministro de Relaciones Exteriores,
San José.

actual; los únicos Estados Federales que la apoyaron en ese momento fueron Nigeria, Suiza, la Unión Soviética y Yugoeslavia. Como se advierte en el "Aide-Mémoire", la redacción del inciso 2 del artículo 5, en su forma actual, podría poner en duda la doctrina según la cual una constitución federal es una ley interna cuya interpretación está bajo la jurisdicción exclusiva de los tribunales internos del Estado Federal que tengan jurisdicción en asuntos de órden constitucional. Por lo tanto, si dicho inciso fuera aceptado con su redacción actual, podría dar pié al empleo de un procedimiento que ningún Estado consideraría aceptable, cual es, que otros Estados se otorguen el derecho de interpretar por sí, las constituciones de Estados Federales. Si semejante proceder tomara fuerza, particularmente en casos en que disposiciones constitucionales relativas a la manera de cómo hacer un tratado fueran objeto de discusión, constituiría un caso claro de interferencia del Estado extranjero en los asuntos internos de los Estados Federales.

Aunque Costa Rica no es un Estado Federal y que por lo tanto no sería directamente afectado si un procedimiento semejante se generalizara, tengo la certidumbre que Costa Rica deploraría el desarrollo de actuaciones de esta índole, que menoscabaría el respeto internacional de la naturaleza nacionalística del Derecho constitucional.

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D W MUNRO/ R GURDIAN/ gl

~~External~~

Como resultado de estas consideraciones, la delegación canadiense a la Segunda Sesión de la Conferencia sobre el Derecho de los Tratados, tendrá instrucciones de hacer todo lo que pueda para que la sección 5 del tratado preliminar sea puesta a votación inciso por inciso y obtener, si posible, la abrogación del inciso 2 de dicha sección. Mi gobierno tiene la esperanza que la delegación canadiense pueda contar en sus propósitos, con el apoyo de la delegación de Costa Rica.

Ruégole aceptar, Excelencia, las seguridades de mi más alta y distinguida consideración.

D. W. MUNRO

Donald W. Munro,
Embajador.

CC TU P.A. BISSONNETTE

Capathorne, Stafford

ACTION COPY

file 20-3-1-6

37

FM LSBON MAR18/69 RESTR NO/NO STANDARD

TO TT EXTER 173 DE LDN

REF YOURTEL L344 MAR7

LAW OF TREATIES CONF-ART 5

DR ANTONIO PATRICIO HEAD OF INNATL ORGANIZATIONS SECTION OF MFA TOLD US THAT PORTUGUESE CONTINUED TO BE WELL DISPOSED TO OUR WISH TO HAVE PARA2 OF ART 5 OMITTED FROM DRAFT CONVENTION. PORTUGUESE REP HAD VOTED AGAINST INCLUSION OF PARA2 AT FIRST SESSION AND WOULD CONTINUE TO DO SO AT SECOND SESSION.

2. PATRICIO WHO HAD ATTENDED AD HOC MTG OF WESTERN GROUP IN PARIS SAID THAT INSTRUCTIONS WOULD BE GIVEN TO PORTUGUESE REP TO TAKE LEAD FROM CDN DEL IN ALL VOTES CONCERNING ART5. THUS WE CAN EXPECT PORTUGUESE SUPPORT AS WELL ON PROCEDURAL VOTE TO OBTAIN SEPARATE VOTE ON PARA2.

3. PORTUGUESE REP AT SECOND SESSION WILL BE MINISTER COUNSELLOR IN VIENA DR SA NOGUEIRA UNTIL APR24 WHEN DR CRUZ DE ALMEIDA LAW PROFESSOR AT COIMBRA UNIVERSITY WILL BE FREE TO TAKE PART. IT WAS CRUZ DE ALMEIDAS OPINION FOLLOWING FIRST SESSIOC THAT PARA2 WOULD FAIL TO WIN ENOUGH SUPPORT AT SECOND SESSION TO BE INCLUDED IN CONVENTION.''

6.19.3

CC TO - P.A. BISSONNETTE, Copenhaver, Stanford

ACTION COPY

1/69

FM TERAN MARS~~DIXY~~O CONFD NO/NO STANDARD

TO EXTER 141

REF YOURTEL L336 MAR7

LAW OF TREATIES CONF - ART 5

File 20-3-1-6 18 25/3

TODAY SAW DR EZZEDIN KAZEMI HEAD TREATIES AND LEGAL AFFAIRS DIV OF IMFA. HE SUGGESTED PARA TWO PERHAPS SERVED SOME GOOD PURPOSE IN THAT IT COVERED SUCH CASES AS RIGHT UNDER SWISS CONSTITUTION OF GENEV CANTON TO MAKE CERTAIN AGREEMENTS WITH FRANCE, SEEMED INCLINED TO ASSUME OTHER STATES WOULD NOT/NOT TAKE IT ON SELVES TO INTERPRET FED CONSTITUTIONS AND AGAIN REFERRED TO POSSIBILITY OF IMPROVING PARA TWO BY AMENDMENT.

2. I THEREFORE REFRESHED HIS MEMORY OF FOUR MAIN LEGAL ARGUMENTS AGAINST PARA TWO IN OUR SEP 19 AIDE-MEMOIRE. I ALSO MENTIONED WE ALREADY HAD EXPERIENCE OF OTHER STATES ASSUMING ROLE OF INTERPRETERS OF FED CONSTITUTIONS AND POINTED OUT THAT FATE OF AUSTRIAN AMENDMENT AT FIRST SESSION AND NEED FOR TWO-THIRDS OF VOTES MADE AMENDMENT COURSE SEEM UNPROFITABLE. HE SEEMED QUITE ATTRACTED BY POINTS UNDER HEADINGS QUOTE FED CONSTITUTION IS INNATL LAW UNQUOTE AND QUOTE STATE PRACTICE UNQUOTE IN AIDE-MEMOIRE.

3. THEN TOLD HIM THAT SINCE MATTER OF GREAT IMPORTANCE TO CDA WE WERE WEEKING SUPPORT OF FRIENDLY COUNTRIES FOR DELETION OF PARA TWO AND ALSO FOR SEPARATE VOTE ON IT.

4. AFTER FURTHER DISCUSSION HE GAVE AND REPEATED FIRM ASSURANCE IRAN WILL JOIN US ON SEEKING SEPARATE VOTE ON PARA TWO. SAID HOWEVER THAT WHILE QUOTE SYMPATHETIC TO OUR VIEW ABOUT DELETION,

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7.19.3

IRANIAN DEL WOULD WISH TO SEE HOW OTHER DELS FELT ABOUT PARA TWO BEFORE DECIDING TO VOTE FOR OR AGAINST DELETION. STATED HE HAD OPEN MIND ON LATTER QUESTION WHICH HE SAID WAS NATURALLY OF LESS INTEREST TO UNITARY STATE AND HE SEEMED CONFUSED AS TO HOW TO VOTE ON IT.

5. HE WILL NOT/NOT BE IN VIENN FOR OPENING STAGE BUT SAID HE WOULD DEFINITELY INSTRUCT KARDAN OF HIS DIV, WHO HE SAID WILL BE QUOTE ACTIVE UNQUOTE MEMBER OF DEL, TO SUPPORT SEPARATE VOTE (SENATOR A. MATINE-DAFTARY WHO ALREADY IN EUROPE WILL BE DEL HEAD).

6. I DID NOT/NOT AGAIN RAISE OUR PREFERENCE FOR ABSTENTION AS AGAINST VOTE FOR RETENTION IN VOTING ON PARA TWO OR OUR DESIRE FOR SUPPORT IN DELETING WHOLE ARTICLE IF SEPARATE VOTE DENIED. CONSIDERED FIRST POINT MIGHT ENCOURAGE DECISION IN FAVOUR OF MERE ABSTENTION AT TOO EARLY A STAGE, THAT SECOND POINT MIGHT ALIENATE HIM IN VIEW OF WIDE SUPPORT FOR PARA ONE AND THAT THESE POINTS COULD BE MOST EFFECTIVELY RAISED WITH IRANIAN DEL WHEN IT IS CLEAR WHETHER CONFERENCE WILL DECIDE FOR OR AGAINST SEPARATE VOTE ON PARA TWO.

7. WHILE AT PRESENT IRANIAN DEL SEEMS LIKELY FOLLOW CROWD ON MATTERS OF SUBSTANCE I SHOULD THINK THERE IS SLIGHTLY BETTER THAN FIFTY FIFTY CHANCE IT COULD BE PERSUADED VOTE FOR DELETION IF SEPARATE VOTE AGREED TO BUT THAT IT WOULD PROBABLY BE APPRECIABLY MORE DIFFICULT PERSUADE IT VOTE FOR DELETION OF ART 5 IF THERE WERE INDICATIONS RETENTION WAS FAIRLY WIDELY FAVOURED BECAUSE OF PARA

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ONE.

8. IN REPLY TO QUESTION KAZEMI SAID NO/NO OTHER COUNTRIES HAD MADE REPS HERE FOR OR AGAINST PARA TWO.

EBERTS

20: External Affairs
Ottawa

Copy to E.A., AWR & Le

UNITED NATIONS NATIONS UNIES

NEW YORK

CABLE ADDRESS · UNATIONS NEWYORK · ADRESSE TELEGRAPHIQUE

Fil 20-3-1-6
27/3

REFERENCE:

7 March 1969

My dear Robertson,

At the end of some informal meetings among delegations concerning the Conference on the Law of Treaties which were held during the last session of the General Assembly, it was decided that a further informal meeting might be held before the second session of the Conference, either in Geneva or Vienna.

I now understand that it is considered useful that such an informal meeting be held. I would therefore like to ask you to invite Ambassador Wershof to come to the meeting, which will take place at 3 p.m. on Tuesday, 8 April 1969, at the Hofburg in Vienna. It would be appreciated if you could inform me at your earliest convenience whether Ambassador Wershof will attend.

Yours sincerely,

Constantin A. Stavropoulos
The Legal Counsel

Mr. A.W.J. Robertson
First Secretary
Permanent Mission of Canada to the
United Nations
866 United Nations Plaza
New York, N.Y. 10017

6.27.3

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FM PSPAN MAR17/69 RESTR NO/NO STANDARD

TO EXTER 539 PRIORITY

REF YOURTEL L339 MAR7

LAW OF TREATIES CONF:ART 5

I CALLED ON ROBINSON,MINISTER EXTER AFFAIRS,WHO HAD WITH HIM BADEN-SEMPER,LEGAL ADVISER,ON MAR14.LATTER ALTHOUGH NOT/NOT MINISTER APPEARED FULLY FAMILIAR WITH CDN POSITION ON ARTS SO I TOOK OPPORTUNITY OF REVIEWING MATTER IN DETAIL WITH ROBINSON,STRESSING SPECIAL IMPORTANCE OF PROCEDURAL VOTE ON QUESTION OF SEPARATE VOTE ON PARA2.

2.IN OUR EXPERIENCE TANDT POSITIONS ON INTERNATL CONF QUESTIONS ARE SELDOM DEVELOPED UNTIL LAST MINUTE AND FREQUENTLY CONSIDERABLE DISCRETION IS LEFT TO THEIR REPS THEMSELVES.THEY HAVE NOT/NOT YET DESIGNATED REP FOR VIENNA:ROBINSON SAID THAT AT EARLIER STAGE THERE HAD BEEN SOME POSSIBILITY THAT HE WOULD ATTEND HIMSELF BUT THIS WAS NOW UNLIKELY.AS AT FIRST CONF,IT WOULD PROBABLY BE ATTORNEY GEN RICHARDS.ROBINSON INDICATED THEY WERE FULLY SEIZED OF IMPORTANCE OF ART 5 TO US AND THAT QUESTION WOULD BE COVERED IN TANDT DELS INSTRUCTIONS.

3.IN SUMMARY WE HAVE NO/NO COMMITTMENT AS YET FROM TANDT ON ART5 QUESTION BUT WILL CONTINUE TO PRESS FOR ONE OVER NEXT FEW WEEKS. I INTEND TO SEE REP HOPEFULLY RICHARD AS SOON AS HE HAS BEEN FORMALLY NAMED

MCKINNEY

2.18.3

20-3-1-6
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20-3-1-6
25/3

FM BNGKK MAR17/69 RESTR

TO EXTEROTT 226 PRIORITY

REF YOURTEL L348 MAR7

LAW OF TREATIES CONFERENCE

WE HOPE TO HAVE EARLY DISCUSSION OF RTG POSITION ON ART 5 WITH DOCTOR MANU DIRGEN OF TREATY AND LEGAL DEPT MINISTRY OF FOREIGN AFFAIRS WHO WILL HEAD RTG DEL TO SECOND SESSION CONFERENCE. INFORMAL DISCUSSIONS AT DESK LEVEL HAVE NOT/NOT REVEALED RTG POSITION'''

5.19.3

Stamped

ACTION COPY

FM CPTWN MAR17/69 RESTR

TO EXTER 116

REF YOURTEL L340 MAR7

LAW OF TREATIES CONF-ARTICLE5

DFA HERE NOT/NOT FAMILIAR QUESTION BUT TELEXED PRET AND HAVE INFORMED THAT SOUTHAFRICAN DEL BRIEF WILL CERTAINLY CONTAIN INSTRUCTIONS ON ARTICLE 5.THEY HOPE TO GIVE FIRM INDICATION OF WHAT INSTRUCTIONS WILL BE QUOTE VERY SOON UNQUOTE.

18.17.3

EXTERNAL AFFAIRS AFFAIRES EXTÉRIEURES

TO / À: Le Sous-secrétaire d'Etat aux Affaires extérieures, Ottawa

FROM / De: l'Ambassade du Canada, Rome

REFERENCE / Référence: Notre télégramme 287 du 14 mars 1969

SUBJECT / Sujet: Article 5 du projet de Convention sur le droit des traités - Deuxième session de la Conférence de Vienne - San Marino

SECURITY / Sécurité: sans cote

DATE: le 14 mars 1969

NUMBER / Numéro: 152

FILE	DOSSIER
OTTAWA 20-3-1-6	
MISSION 20-5-2-5 37/20-San Marino 8	

ENCLOSURES / Annexes

DISTRIBUTION

Comme suite à notre télégramme sous rubrique, veuillez trouver ci-joint le texte de la Note que le Secrétariat d'Etat pour les Affaires étrangères de San Marino nous a adressée sur le sujet précité et que nous avons reçue aujourd'hui.

l'Ambassade.

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

22.27.3

c o p i e

République de Saint-Marin
Secrétaire d'Etat pour les
Affaires étrangères
n. 3600/Aa/349

Le Secrétariat d'Etat pour les Affaires étrangères présente ses compliments au Consulat du Canada et, en se référant à la Note du 28 novembre 1968 et à sa Note du 23 décembre, a l'honneur de communiquer ce qui suit:

Le Gouvernement de Saint-Marin a examiné avec grande attention les propositions avancées par le Gouvernement canadien au sujet de l'Article 5 du projet de Convention sur le droit des traités qui devra être discuté au cours de la Deuxième session de la Conférence de Vienne et, à ce propos, partage les perplexités et les inquiétudes de ceux qui ont soutenu et qui soutiennent que le Paragraphe 2 de cet Article, dans sa formulation actuelle, serait susceptible de créer des difficultés et de causer des incertitudes dans la pratique internationale.

Un petit Etat tel que Saint-Marin, qui a fondé son existence et sa conduite uniquement sur la force du Droit, ne peut que soutenir la nécessité que la vie et les relations internationales soient fondées sur le droit. L'affirmation que "les subdivisions politiques d'une union fédérale peuvent conclure des traités au cas où la Constitution intérieure de l'Union le permettrait" porterait préjudice à ce principe car elle obligerait l'une des Parties d'un Traité à la tâche difficile d'interpréter cette Constitution et les interprétations pourraient être différentes suivant la Partie qui entend procéder à la conclusion

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d'un traité avec la partie constitutive de l'Union. Dans ce cas, non seulement un ou plusieurs états s'arrogeraient la faculté d'interpréter la Constitution d'un autre Etat - ce qui, à l'avis du Gouvernement de Saint-Marin, relève exclusivement de la compétence de ce dernier - mais déterminerait aussi, dans une Convention internationale, la priorité du Droit intérieur sur le Droit international.

Ceci, sans considérer les conséquences négatives qui se produiraient dans les relations entre l'Union et l'Etat qui aurait conclu un traité avec une partie constitutive de cette Union, dans le cas où cette dernière retiendrait que la Constitution n'accorde point ce pouvoir à ses parties constitutives.

C'est pour toutes ces raisons que Saint-Marin confirme l'attitude déjà prise au sein de la Commission plénière de la Première Session de la Conférence de Vienne et appuiera par son vote la proposition de voter séparément les deux paragraphes formant l'Article 5 du Traité et la proposition de supprimer le Paragraphe 2 de cet Article.

Quant à la demande subordonnée avancée par le Gouvernement canadien de supprimer entièrement l'Article 5 au cas où l'on ne pourrait pas arriver à un scrutin séparé sur les deux paragraphes, le Gouvernement de Saint-Marin se réserve d'appronfondir encore le problème étant donné qu'à son avis dans une Convention qui se propose la codification de règles de droit international général et coutumier et le développement progressif des règles du droit

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des Traités afin de le rendre plus conforme aux besoins de la Communauté internationale, l'affirmation de principe contenue au Paragraphe 1 de l'Article 5 présente une valeur et une signification particulière.

Le Secrétariat d'Etat saisit cette occasion pour communiquer que le Gouvernement de Saint-Marin aimerait connaître, en temps utile, le point de vue du Gouvernement canadien sur la propisition avancée par un groupe d'états (Ceylan, Hongrie, Inde, Mongolie, RAU, etc) d'insérer un Article 5 bis (Doc. A Conf. 39/C.1/L.74) dans le projet de Convention sur le droit des traités.

Le Secrétariat d'Etat saisit cette occasion pour exprimer au Consulat du Canada les sentiments de sa très haute considération.

Copy to Rome, Stanford

ACTION COPY

file 20-3-1-6 19/3

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DE ROME MAR14/69 RESTR

A EXTER 287

REF NOTRETEL265 MAR11

CONFERENCE DE VIENN SUR LE DROIT DES TRAITES--SANMARINO

SEC DETAT POUR LES AFFS ETRANGERES DE SANMARINO NOUS CONFIRME PAR NOTE RECUE AUJOURDHUI QUE DEL DE CE PAYS A CONFERENCE DE VIENN APPUIERA PAR SON VOTE LA PROPOSITION DE VOTER SEPAREMENT LES DEUX PARAS FORMANT LARTICLE CINQ DU TRAITE, ET LA PROPOSITION DE SUPPRIMER LE DEUXIEME PARA DE CET ARTICLE.

2. LE SEC DETAT PAR CONTRE EXPRIME DES RESERVES QUANT A VOTRE DEMANDE SUBORDONNEE DE SUPPRIMER ENTIEREMENT LARTICLE CINQ AU CAS OU LON NE POURRAIT PAS ARRIVER A UN SCRUTIN SEPARE SUR LES DEUX PARAS. NOTE DECLARE A CE SUJET CE QUI SUIT CIT LE GOUVT DE SANMARINO SE RESERVE DAPPRONFONDIR ENCORE LE PROBLEME ETANT DONNE QUA SON AVIS DANS UNE CONVENTION QUI SE PROPOSE LA CODIFICALION DE REGLES DE DROIT INNERNATL GENERAL ET COUTUMIER ET LE DEVELOPPEMENT PROGRESSIF DESREGLES DE DROIT DES TRAITES AFIN DE LE RENDRE PLUS CONFORME AU BESOIN DE LA COMMUNAUTE INNERNATLE, LAFFIRMATION DE PRINCIPE CONTENUE AU PREMIERE PARA DE LARTICLE CINQ PRESENTE UNE VALEUR ET UNE SIGNIFICATION PARTICULIERES.

3. DAUTRE PART LE SEC DETAT NOUS DIT QUIL AIMERAIT CONNAITRE, EN TEMPS UTILE, LE POINT DE VUE DU GOUVT CDN SUR LA PROPOSITION AVANCEE PAR UN GROUPE DETATS (CEYLAN, HONGRIE, INDE, MONGOLIE, RAU, ETC) DINSERER UN ARTICLE CINQ BIS (DOCU A CONFERENCE 39/C.1/L.74) DANS LE PROJET DE CONVENTION SUR LE DROIT DES TRAITES. VU LATTITUDE POSITIVE ADOPTEE PAR SANMARINO RELATIVEMENT A VOS DEMANDES, VOUS SAURIONS GRE DE NOUS FAIRE CONNAITRE SANS TROP TARDER VOTRE PROPRE REACTION A CETTE REQUETE.

4. VOUS ENVOYONS PAR COURRIER TEXTE COMPLET DE NOTE PRECITEE.''

6.17.3.

ACTION

file 20-3-1-6

FM GRGTN MAR14/69 RESTR NO/NO STANDARD

TO EXTER 354

REF YOURTEL L357 MAR7 OURTEL 989 NOV18/68

LAW OF TREATIES CONFERENCE-ARTICLE 5

JACKSON, ACTING PERMSEC, MINISTRY OF EXTER, HAS AGAIN CONFIRMED GOVT OF GUYANA WILL SUPPORT OUR POSITION ON ARTICLE 5. POLLARD, WHO WILL HEAD GUYANA DEL, WILL BE IN GRGTN NEXT WEEK FOR DISCUSSIONS WITH EXTER AND JACKSON PROMISED TO RECONFIRM INSTRCUTIONS WITH HIM AT THAT TIME.

5.17.3

file
diary
[redacted]v.diary

Legal Div./JSStanford/bp/zs

EXTERNAL AFFAIRS

AFFAIRES EXTÉRIEURES

Memorandum

TO / À: Finance Division

Legal Division

FROM / De: Your memorandum of March 5, 1969 and subsequent Young-Stanford telephone conversation

REFERENCE / Référence:

SUBJECT / Sujet: U.N.Conference on the Law of Treaties-Second Session, Vienna, April 9-May 21, 1969 - Entertainment Expenses

SECURITY / Sécurité: RESTRICTED

DATE: March 14, 1969

NUMBER / Numéro:

FILE / OTTAWA: 20-3-1-6 DOSSIER

MISSION: 37

ENCLOSURES / Annexes:

DISTRIBUTION
Mr.Wershof
Copenhagen
Mr.Robertson
PermisNY

We understand that, under present Treasury Board Regulations it will not be possible for you to make a general allocation to the Canadian delegation at the second session in order to enable the Delegation to give a reception as was done at the first session. We further understand that all entertainment given by Messrs. Wershof and Robertson must, under present regulations, be paid for by them out of their representational allowances and that you can allocate funds to the delegation only to meet entertainment expenses incurred by Messrs. Beesley and Stanford.

2. On the basis of the foregoing, we should be grateful if you could allocate the sum of $700 to meet entertainment expenses to be incurred by Messrs. Beesley and Stanford. As was explained in our memorandum of February 26, the Canadian delegation to the second session will be very active in lobbying for support in respect of an issue arising at the Law of Treaties Conference which involves questions touching on Canadian unity (namely, the treaty-making capacity of the provinces). (In this connection we refer you to the Under-Secretary's handwritten notation on the memorandum attached to our memorandum of February 26.) It is expected that Mr. Beesley will have special responsibility in connection with this lobbying (and that is, in fact, the main reason for his inclusion in the delegation) and that a large portion of the entertainment expenses incurred in connection with lobbying will be incurred by him, albeit on behalf of the delegation. There are more than one hundred States represented at this conference. Our lobbying efforts are expected to involve luncheons and dinners with about 115 delegates. It is on this basis, and the per capita luncheon and dinner costs set out in your memorandum under reference, that we have calculated the figure of $700 referred to above.

J. A. BEESLEY

Legal Division.

Ext. 407D/Bil.
[redacted]
(Admin. Services Div.)

reply for Gp in final 21/3

Capitalize

TO Mr Stanford
FROM REGISTRY
MAR 21 1969
FILE CHARGED OUT
TO: Mr Stanford
L

EXTERNAL AFFAIRS

AFFAIRES EXTÉRIEURES

TO / À: UNDER-SECRETARY OF STATE FOR EXTERNAL AFFAIRS, OTTAWA.

SECURITY / Sécurité: CONFIDENTIAL

FROM / De: CANADIAN EMBASSY, MONTEVIDEO.

DATE: March 14, 1969.

REFERENCE / Référence: Your telegram L-352 of March 7, 1969.

NUMBER / Numéro: 41

J.60

SUBJECT / Sujet: Law of Treaties Conference.

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

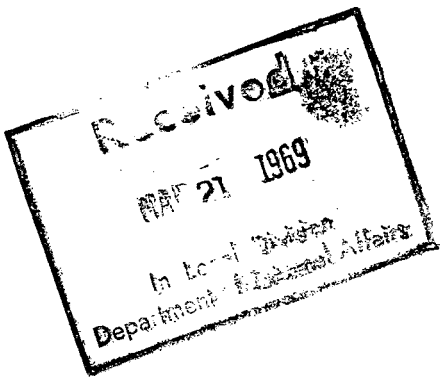
ENCLOSURES / Annexes

DISTRIBUTION

Ambassador Ciasullo, the Legal Adviser in the Ministry of Foreign Affairs, is an able and efficient officer and in view of the firm assurances of Uruguay's position which is already given might well resent an approach, however informal, seeking "renewed assurances". Since the Second Session does not begin until April 9 I believe we can safely delay making an approach for another two weeks. I believe I can best make this approach if I were the bearer of new information. If you could let me have by return courier, by the one which will close in Ottawa either the afternoon of March 25 or first thing in the morning of March 26, a brief run down on the Canadian Delegation it would be quite natural for me to pass this along informally to Ambassador Ciasullo. I could then on a "by the way" basis obtain a new reading on the Uruguayan position.

2. I will take prompt action once you give me any sort of pretext on which to once again approach the Legal Adviser.

Chargé d'Affaires a.i.



23.21.3

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

003660

Letter for Pg to 14 2 IV

Mr Begley to see O/R

file 20-3-1-6.

CANADIAN EMBASSY

AMBASSADE DU CANADA

Apartado 4136,
San Jose, Costa Rica.

PERSONAL & CONFIDENTIAL

March 14, 1969

Dear Alan and/or Maurice:

I've spent the last day or so on my ten letters (5 English and 5 Spanish) on the paragraph 2 Article 5 of the Draft Convention on the Law of Treaties. I went back into the argumentation quite carefully so that I could be sure, first of all of my English version and then also of my Spanish translations. Copies of the two will reach you separately. The Spanish text (an unofficial translation) I worked over quite carefully and am reasonably satisfied it says as much and with the same force, clarity and meaning as the English. Whether the message produces the desired effect, even though presented in the form of First Person Notes, remains to be seen. Here in Costa Rica I hope to call on the Minister on Monday and talk the whole deal over with him; I've alerted his staff, too, so that they can brief him in advance. I'll let you know what happens.

My enquiries into this whole question - coupled with a reasonable familiarity of what causes our concern - makes me wonder if we're not, perhaps, making unduly heavy weather of the whole issue. Wait a minute! Paragraph 2 of the offensive Article (5) reads:

"members of federal states may.....etc.....if.....etc."

Surely that "may" coupled with the "if" could give us the assurances we need. Because of that combination we have a conditionally permissive article in an international convention; it is permissive only if a certain condition is fulfilled. It is my feeling, therefore, that we should not be concerned at all about the coming into play of the doctrine: "What is not explicitly forbidden is permitted." I am at a bit of a loss to see that that could happen with both "may" and "if".

This doesn't answer our fundamental objection to 5(2) that it (a) makes the constitution the sole criterion, and (b) doesn't say who is to interpret the constitution. It will be argued to say that in reason and in law only the fed. state may interpret its own constitution but we know from sad experience that (a) in practice others will interpret our constitution for their own purposes and (b) 5(2) will simply encourage this practice even be interpreted as legitimizing it

Perhaps I've been looking at it all too long and beginning to suffer from blurry vision - or logic. But just try it on, to examine what that paragraph would mean if any other form of the verb were used and lacking the proviso. From this it should be possible to conclude that 'as it stands' the paragraph does not permit anyone from outside Canada entering into treaty arrangements with one of our component parts, nor for one of our component parts being entitled under law to take an outward initiative.

Joe: Perhaps you make this points to Don & point out also the additional complicating factor that our constitution is unwritten is a crucial point JP

Head,
Legal Division,
Department of External Affairs,
OTTAWA.

Head, Legal Division

PERSONAL & CONFIDENTIAL

March 14, 1969

What I am saying, perhaps, is that, in the absence of an "accord cadre", some international acts performed in Canada have to be considered as ultra vires. This, of course, is the core of our thesis in all these matters. At the same time we have to recognize that there is no unanimous agreement in the country on whether or not such actions are ultra vires, and that even if it is, "intra potentes" can always be brought into play since, whenever political considerations enter the field, it is pretty safe to say that he who feels potens is not going to be deterred by the absence of vires.

This, then, may be the crux of our misgiving and would explain why we are going at it with such determination to rally support for the elimination of paragraph 2. I hope one or the other of my letters will help. The Honduran Ambassador here, who has had some U.N. experience, is a lawyer. I discussed the question with him and he was convinced by the arguments I trotted out verbally. He may even speak to his Minister about our case - and in favour of it - because I enlisted his co-operation yesterday in preparing the draft letters. He became quite enthralled. His name is Polycarpo Callejas. He is to take the Honduran letter to Tegucigalpa to-day.

In any event, the Canadian Delegation should, I think contact the Delegations from the five members of my diocese: Panama, Costa Rica, Nicaragua, Honduras and El Salvador. I don't really expect answers to my letters before the gathering in Vienna. But we have put our case forward - and, I like to think, in a pretty convincing manner, despite the reservations I mention in this letter to you. Good luck!

Yours sincerely,

Donald W. Munro

EXTERNAL AFFAIRS  AFFAIRES EXTÉRIEURES

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

FROM / De: Canadian Embassy, San Jose

REFERENCE / Référence: Your telegram No. L-327 of March 7, 1969

SUBJECT / Sujet: Law of Treaties Conference Article 5 - Representations in Honduras, Nicaragua and Costa Rica.

SECURITY / Sécurité: RESTRICTED

DATE: March 18, 1969

NUMBER / Numéro: 99

FILE / DOSSIER: OTTAWA

MISSION: 24-1

ENCLOSURES / Annexes: 6

DISTRIBUTION

Costa Rica

More by good fortune than by anything else the Honduran Ambassador returned his courtesy call only last week while I was in the process of drafting the letters to the three Foreign Ministers of Honduras, Nicaragua and Costa Rica on the Law of Treaties. The Honduran Ambassador, Sr. Policarpo Callejas, had for two years been on the Honduran Delegation to the United Nations. Prior to becoming a member of the Honduran foreign service, he had legal training in the United States. His English is fluent, indeed colloquial. I mentioned to him that these representations were being made and discussed with him the most effective way of presenting the case, particularly the manner of framing the final paragraph. He was quite interested in the line we were taking and said it would be quite impossible for a Central American State to take issue with us. It was he who reminded me of the precept in law that that which is not expressly forbidden is considered by some to be permitted. Applying this precept to our present concern it would seem evident that the permissive quality of the International Convention (even if conditional) coupled with a possible absence of a prohibition in a constitution could lead to many disputes and misunderstandings - in fact, to the dangers that we foresee by allowing paragraph 2 of Article 5 of the Draft Convention to remain.

2. Having consulted him to this extent on these representations which I was planning to make to his Minister, I enlisted his co-operation as well in ensuring that the Note reached Tegucigalpa because he had said he was leaving the following day for his country's capital. With so much uncertainty in this country over the mails, I thought it would be advisable to make use of his readiness to act as courier. He accordingly took it with him when he left San Jose by air on Friday, March 14. The text in English and in Spanish of the Note as addressed to the Minister of External Relations in Honduras is attached.

...

3. I was able to personalize the First Person Note that I addressed to the Minister of External Relations in Managua by recalling that I had left the Aide-Memoire in the first instance when I met him on January 13 to arrange for the presentation of my Letters of Credence. This letter in both English and Spanish was sent by Registered Airmail to-day. A copy of the text in both English and Spanish is attached.

...

.../2

27 003663

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

Under-Secretary of State for External Affairs

RESTRICTED

March 18, 1969

4. I called on Sr. Fernando Lara Bustamente, the Minister of External Relations here in San Jose, on Monday morning, March 17, to leave with him an English text and an unofficial Spanish translation. I had warned his officials before-hand that I would be making an arrangement to call on the Minister and told them the reason for my visit, suggesting that it would be helpful to me if their Minister could be provided with an advance briefing. This apparently was done and the Minister and I had a good 15 or 20 minutes discussing the problem. Sr. Lara said that we should not be too concerned about paragraph 2 of Article 5 because of the conditional clause it contains; if, in other words, a Federal constitution contains no reference to the capacity of component States to conclude international agreements, that capacity cannot be claimed. I urged upon him, nonetheless, that in our view the entire paragraph should be removed from the Convention because the mere fact that it is included in an international agreement could give rise to pressures within Federal States to have the constitution amended in such a way as to permit constituent members to enter into agreements having an international character. The Minister is aware of our concern and, while he gave me no assurance of the support I was seeking, he indicated that the Canadian Delegation to the Conference should maintain close relations with the Costa Rican Delegation. The Costa Rican representative at the meeting in Vienna will almost certainly be a member of one of the Costa Rican Missions in Europe. If I discover his name in time for it to be of any use I shall inform you. A copy of the text, both in English and Spanish, left with Sr. Lara is attached.

5. After discussing this matter with Sr. Lara, I outlined for him the scheme we are developing to have certain selected documents of Canadian origin left with the Ministry here. (See our letter No. 83 of March 4, 1969). Sr. Lara was delighted with this scheme and expressed his appreciation for our thoughtfulness. He also undertook to observe the ground rules which I mentioned, namely that they were being given to the Ministry here in confidence and were to be available only to those persons who had a need to know.

D. W. MUNRO

The Ambassador.

ACTION COPY

FM NY MAR13/69 RESTR

TO OTT SVC642 PRIORITY

TT COPEN DE HAGUE

REF OURTEL 637 MAR12

LAW OF TREATIES CONFERENCE:SECOND SESSION:USA DEL

AMEND SECOND SENTENCE TO READ IN PART QUOTE PROBABLY HARGROVE

OR ROSENSTOCK FROM USA PERMIS.UNQUOTE.

28/13/3

Capelle, Stafford

ACTION COPY

20-3-1-6

FM STAGO MAR 13/69 RESTR

TO EXTER 109

REF YOURTEL L325 MAR7

LAW TREATY CONFERENCE

VARGAS CONFIRMS CHILE WILL VOTE AGAINST PARA2 ARTICLE 5 AND FOR (1GRP CORRUPT) SEPARATE VOTE. HE WILL BE MEMBER OF CHILEAN DEL.

2. VARGAS STATED CHILEAN SUPPORT FOR CDN POSITION IS GESTURE OF FRIENDSHIP AS CHILE HAS NO/NO FEDERAL PROBLEM. HOWEVER CHILE HAS MAJOR INTEREST IN ARTICLE 49 AND OPPOSES TEXT APPROVED WHICH WILL BE RECONSIDERED. CHILE HOPES TO LIMIT ITS APPLICATION TO TREATY SUBSEQUENT TO UN CHARTER. HE SEEKS CDN SUPPORT FOR CHILEAN POSITION ON ARTICLE 49 AS RECIPROCAL GESTURE AND WILL LATER SUBMIT DETAILED AGRUMENTS. WE KNOW MATTER IS OF HIGH POLITICAL IMPORTANCE FOR CHILE AND HOPE YOU CAN FAVOURABLY CONSIDER REQUEST.

11.17.3.

file

MESSAGE

DATE	FILE/DOSSIER		SECURITY SECURITE
MAR.13/69	20-3-1-6	37	RESTRICTED

FM/DE EXT/OTT

NO	PRECEDENCE
XL-376	ROUTINE

TO/A BAIRS

INFO

REF YOUR TEL 273 MARCH 11

SUB/SUJ LAW OF TREATIES CONFERENCE ARTICLE 5

IN VIEW OF DE LA GUARDIA'S PESSIMISM CONCERNING EVENTUAL FATE OF PARAGRAPH 2 YOU MAY WISH TO REMIND HIM THAT, ON TWO VOTES ON PARAGRAPH 2 AT FIRST SESSION, PARAGRAPH WAS RETAINED BY NARROW MAJORITY. FIRST VOTE WAS 45-38-10. SECOND VOTE WAS 46-39-8. YOU MAY ALSO WISH TO INFORM HIM ~~THAT~~ RESULTS OF OUR REPRESENTAT~~IVES~~IONS INDICATE THAT, PROVIDED WE CAN SECURE SEPARATE VOTE ON PARAGRAPH 2, THERE IS GOOD REASON TO BELIEVE THAT PARAGRAPH WILL NOT SECURE 2/3 MAJORITY REQUIRED FOR ITS ADOPTION. PROBABLE OUTCOME OF VOTE ON ARTICLE 5 AS A WHOLE IF SEPARATE VOTE IS REFUSED IS AT PRESENT UNCERTAIN.

DISTRIBUTION
LOCAL/LOCALE

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

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

ACTION COPY

FM ATHNS MAR13/69 RESTR

TO EXTER 88

REF YOURTEL L333 MAR7

LAW OF THEATRES

IN VIEW OF GREAT DIFFICULTY IN REACHING EUSTATHIADIS WE DISCUSSED ART 9 WITH ECONOMIDES DIRECTEUR DE LA DIRECTION JURIDIQUE. HE WAS AU COURANT WITH PROBLEM AND PROMISED TO REPEAT GIST OF OUR POSITION TO EUSTATHIADIS WHO WILL BE GREEK DEL.

30/13/3

Legal Division/J.S.Stanford/itl

Mr. Beaupre to see
o/a/ampl
31/3

EXTERNAL AFFAIRS AFFAIRES EXTÉRIEURES

MEMORANDUM

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

FROM / De: Legal Division

REFERENCE / Référence:

SUBJECT / Sujet: Law of Treaties - Supplementary Instructions - Retroactivity

SECURITY / Sécurité: CONFIDENTIAL

DATE: March 27, 1969

NUMBER / Numéro:

FILE	DOSSIER
OTTAWA 20-3-1-6	
MISSION	

ENCLOSURES / Annexes

DISTRIBUTION

One of the issues arising in connection with the final clauses of the treaties convention is whether to include an article on the retroactivity of the convention itself.

2. The majority of western states are of the view that the treaties convention should not apply to treaties which entered into force prior to the entry into force of the treaties convention. This, of course, is without prejudice to the application to existing treaties of existing rules of international law which happen to have been codified in the treaties convention. Such pre-existing rules have force independent of the convention.

3. The problem arises over the best method of securing this objective. One way, of course, would be a specific non-retroactivity article in the final clauses of the convention. Most western delegates believe it would be impossible to secure a specific article of this kind and the fear has been expressed that any unsuccessful effort to secure an article would result only in a record in the travaux préparatoires unfavourable to the opponents of retroactivity. These representatives, which include the U.S. and the U.K., suggest that there be no article on retroactivity in the final clauses and that the issue be governed by the general article on retroactivity (Article 24) in the body of the convention. Japan and Australia have pointed out, however, that it is by no means clear that Article 24 would have the desired effect.

4. Some delegates are of the view that "third world" support can be obtained for a non-retroactivity article. Two considerations support this view. First, there are many technical articles, not politically controversial, which obviously should not have retroactive effect (the articles on reservations provide one example). Second, we understand some of the Afro-Asian opposition to a compulsory settlement of disputes article would be removed if it were made clear that the article did not apply to existing disputes. It is possible that these two points could be developed into support for a general non-retroactivity article.

.... 2

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

27.3.4 (08)

5. Our own view is that Article 24, as it applies to this question, is not clear and that it should be accepted as governing the present convention only if it is not possible to secure a specific non-retroactivity article in the final clauses. We therefore recommend that the Canadian delegation be instructed:

(a) to support any initiative for a specific non-retroactivity article if that initiative appears likely to obtain significant support in both the Western and "third world" groups yes/no

(b) failing such an initiative, the delegation should acquiesce in the general western position that there be no specific article on retroactivity in the final clauses. yes/no

6. We should be grateful to know whether you approve these instructions.

Legal Division.

Mr. Bailey
to see & return
JSS 31/3

EXTERNAL AFFAIRS  AFFAIRES EXTÉRIEURES

TO / À: The Under-Secretary of State for External Affairs (through the Legal Adviser)

FROM / De: Legal Division

REFERENCE / Référence:

SUBJECT / Sujet: Law of Treaties - Supplementary Instructions - Reservations

SECURITY / Sécurité: RESTRICTED

DATE: March 26, 1969

NUMBER / Numéro:

FILE	DOSSIER
OTTAWA	
MISSION	

ENCLOSURES / Annexes

DISTRIBUTION

During the preliminary meetings of the Western European and Others group to prepare for the second session of the Law of Treaties Conference there was considerable discussion concerning a possible final clause on reservations.

2. The instructions for the Canadian delegation to the first session of the conference were concerned particularly with the compulsory settlement of disputes article which, if adopted, is the article most likely to attract reservations. Representatives at London and Paris were of the view that, while it may prove possible to obtain an article providing for compulsory independent adjudication of disputes concerning invalidity and termination of treaties, it is exceedingly unlikely that the Western group could go on to secure an article prohibiting reservations in respect of that article.

3. The inclination of many members of the Western group was not to seek any final article on reservations to the treaties convention. The absence of such a provision would mean that the treaties convention would be subject to the general rules regarding reservations to treaties set out in the body of the convention. In practical terms this would mean, in effect, that any State would be free to make any reservation it wishes and as long as at least one other State were to accept the reservation the reserving State would become a party to the convention. The dangers of this kind of approach are obvious. If the U.S. formulates a reservation in respect of the articles on interpretation, which it has opposed, and for the same reason the French reserve on jus cogens, the British and Chileans on use of force, etc., the result could leave the law of treaties in a chaotic state.

4. The practical alternatives are very limited, however. At this stage, when so much uncertainty surrounds the eventual contents of the treaties convention, no one is prepared to accept an article prohibiting all reservations. In addition, such an article would almost certainly reduce the number of adherances to the treaties convention. The view at Paris was that any attempt to formulate an article permitting reservations respecting specific articles would immediately reopen all the disputes which had arisen in preparing the body of the convention, as States sought to have the articles

.../2

27.3.10(US)

to which they were opposed included in the list of those in respect of which reservations were to be permitted. In any event, any article limiting reservations is likely to be opposed by the U.S. on the ground that any limitation on the U.S. Senate's ability to impose conditions on U.S. ratification will be unpopular with that body.

5. We propose, therefore, that the Canadian delegation be instructed:

(a) to support, initially at least, the general Western position that there be no final clause on reservations. yes/hc

(b) to intervene in the debate on reservations to urge that governments exercise great restraint in the formulation of reservations in order to avoid the chaotic position referred to in paragraph 3 above. yes/hc

(c) if a proposal emerges for an article which would restrict the possible dangers of unlimited reservations and which has broad support, to seek fresh instructions. yes/hc

6. We should be grateful to know whether you approve these instructions.

Legal Division

at the appropriate moment we should consult the minister in these cases, particularly when they may have political implications. In the meantime, we may have to go to cabinet. hc.

EXTERNAL AFFAIRS  AFFAIRES EXTÉRIEURES

TO / À: The Under-Secretary of State for External Affairs (through the Legal Adviser and European Division)

FROM / De: Legal Division

REFERENCE / Référence:

SUBJECT / Sujet: Law of Treaties - Supplementary Instructions - the "All States" Issue

SECURITY / Sécurité: RESTRICTED

DATE: March 26, 1969

NUMBER / Numéro:

FILE	DOSSIER
OTTAWA	
MISSION	

ENCLOSURES / Annexes:

DISTRIBUTION

European Div.

The "all states" question is one of the controversial issues which will be debated in Committee of the Whole prior to the Plenary vote on Article 5 and on which Canada will wish to "keep its head down". Nevertheless it will be necessary for Canada to take a position, at least in voting, on this issue which is of considerable importance to West Germany and its friends.

2. The "all states" issue arises twice in the treaties convention. Not only does it arise in connection with the final clause on accession, but the Eastern Europeans, with some support from the "third world", have put forward a three-part package which would have the effect of establishing the "all states" principle as a general rule of international law applicable to all multilateral treaties of general interest. The three parts are (a) a proposed definition, in Article 2, of a "general multilateral treaty" as one "which deals with matters of general interest for the international community of states"; (b) a proposed Article 5 bis providing that "All states have the right to participate in general multilateral treaties in accordance with the principle of sovereign equality."; and (c) a proposed addition to Article 12 of a paragraph stating that "The consent to be bound by a general multilateral treaty may be expressed by accession by any State. Any State also has the right to become, by accession, a party to a multilateral treaty which affects its legitimate interests."

3. The general feeling at Paris was that a blocking third could be mustered at Vienna against the "all states" package in the body of the convention but that there would be greater difficulty in respect of the final clause on accession. While the West could probably muster a blocking third on an "all states" accession clause, the eastern and third world states could also muster a blocking third against an accession clause patterned on the Vienna formula, i.e. "States members of the United Nations or any of its Specialized Agencies..." The result would be an impasse, with the threat of a convention without an accession clause. Many representatives at Paris considered that in such a position and in the light of the incorporation of the all state formula in the disarmament

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27.3.11(US)

treaties, it would be exceedingly difficult for western States to insist on the Vienna formula, particularly if alternatives proposing the use of multiple depositories (even if only for a short initial period) were put forward. In such circumstances it might become impossible for western States to avoid a compromise which could well take a form resulting in East German accession. The FRG indicated at Paris, however, that it is even more strongly opposed to East German participation in the treaties convention because it will be such an important multilateral law-making convention.

4. We therefore propose that the Canadian delegation be instructed:

(a) to vote against the "all states" package in the body of the convention, but not to lobby actively in support of the western position prior to the Plenary vote on Article 5; yes

(b) to oppose, initially at least, an "all states" final clause on accession; yes

(c) in the event of an impasse on the accession clause leading to a division of views within the Western group, to concur in any compromise proposal accepted by the U.S. and the U.K. of an accession clause providing for multiple depositories.

5. We should be grateful to know whether you approve these instructions.

Legal Division

I would prefer the following formula instead of the underlined phrase in sub-para. 4 (c) above:

"to concur in any compromise proposal for a multiple depositaries accession clause acceptable to the Western group generally, but if the West Germans continue to hold out, to refer back for further instructions."

Legal Division is prepared to accept this. OK PE

JN

Legal Div./JSStanford/zs

EXTERNAL AFFAIRS  AFFAIRES EXTÉRIEURES

Memorandum

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

FROM / De: Legal Division

REFERENCE / Référence:

SUBJECT / Sujet: Instructions for the Law of Treaties Conference - Second Session Peaceful Settlement of Disputes

SECURITY / Sécurité: CONFIDENTIAL

DATE: March 12, 1969

NUMBER / Numéro:

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

ENCLOSURES / Annexes:

DISTRIBUTION:

While the Canadian Delegation to the second session of the Law of Treaties conference will continue to be guided, in matters of substance, by the instructions prepared prior to the opening of the conference, the recent meetings of the Old Commonwealth and the Western European and Others groups in London and Paris have identified a number of areas where supplementary instructions, primarily on matters of tactics are desirable.

2. The present memorandum is confined to the question of the peaceful settlement of disputes. However, there arises a consideration which will also have a bearing on a number of the other points on which supplementary instructions are required. You will recall that the Committee of the Whole did not dispose, at the first session, of a number of controversial questions, including

a) an article providing that "all States" may adhere to "general multilateral treaties"

b) provision for the compulsory settlement of disputes arising out of the application of the invalidity and termination provisions of the treaties convention

c) final clauses, including the number of ratifications for entry into force, reservations, retroactivity and, of course, the "all States" question again as it concerns the accession article of this convention.

3. There will be other controversial questions discussed at the second session, of course, but because the above questions were not disposed of in Committee of the Whole at the first session, they must be considered during the first two weeks of the second session, when the conference will again be meeting in Committee of the Whole. This means that

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12.3.45(US)

there will be a great deal of controversial discussion taking place during the period prior to the Plenary vote on Article 5, i.e. the period during which the Canadian delegation will be lobbying for support for the Canadian position on paragraph 2 of Article 5.

4. On many of these controversial issues the Canadian position is in conflict with that of a great many Afro-Asian states. In order to avoid alienating support from these states for our position on Article 5 when it comes up in Plenary, we recommend that, during this period, the delegation confine its lobbying activities to Article 5(2) and that, while Canada would continue to support agreed western positions on these various issues, it would not as a general rule take an active part in public discussion or private lobbying on these issues at the Committee of the Whole stage, i.e. prior to the Plenary vote on Article 5. We should be grateful to know whether you agree with this general approach.

5. To turn to the specific issue to which this memorandum is directed, it will probably not be possible for the Canadian delegation to remain completely silent during Committee discussion of the issue of an article for the compulsory third-party settlement of disputes arising in the application of the articles providing for the invalidity and termination of treaties. Some representatives at the Paris meetings, reporting information received concerning the discussion on the law of treaties at the January meeting in Karachi of the African-Asian Legal Consultative Committee, indicated that a number of Afro-Asian States were prepared to compromise on the issue of compulsory adjudication of disputes if such a compromise proved necessary in order to obtain adoption of a convention at the second session. As a result, a great deal of importance is attached to a solid western front on this issue at the second session and it will consequently be important that Canada not lag behind the western group as a whole during Committee discussion of this issue.

6. We propose, therefore, that the Canadian delegation be instructed:

(a) to reply to queries from other delegations about the Canadian position on this issue by saying that Canada would find it exceedingly difficult to accept a convention

..3

containing the proposed articles on invalidity and termination unless a satisfactory provision for the automatic independent adjudication of disputes arising from the application of these articles were included in the convention; yes

(b) to co-sponsor, if it appeared appropriate to do so, an article on the settlement of disputes provided other co-sponsors include at least some major Afro-Asian states; and yes

(c) not to take part in public debate or active private lobbying on this issue prior to the Plenary vote on Article 5. yes.

We should be grateful to know whether you approve these instructions. Items (b) and (c) are in accord with the position which you authorized Messrs. Wershof and Stanford to take on this question at the recent London and Paris meetings.

Alan Beesley
Legal Division.

file, diary, div.diary

Legal Div./JSStanford/zs

EXTERNAL AFFAIRS AFFAIRES EXTÉRIEURES

Memorandum

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

FROM / De: Legal Division

REFERENCE / Référence:

SUBJECT / Sujet: Instructions for the Law of Treaties Conference - Second Session
Peaceful Settlement of Disputes

SECURITY / Sécurité: CONFIDENTIAL

DATE: March 12, 1969

NUMBER / Numéro:

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

ENCLOSURES / Annexes

DISTRIBUTION

While the Canadian Delegation to the second session of the Law of Treaties conference will continue to be guided, in matters of substance, by the instructions prepared prior to the opening of the conference, the recent meetings of the Old Commonwealth and the Western European and Others groups in London and Paris have identified a number of areas where supplementary instructions, primarily on matters of tactics are desirable.

2. The present memorandum is confined to the question of the peaceful settlement of disputes. However, there arises a consideration which will also have a bearing on a number of the other points on which supplementary instructions are required. You will recall that the Committee of the Whole did not dispose, at the first session, of a number of controversial questions, including

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c) final clauses, including the number of ratifications for entry into force, reservations, retroactivity and, of course, the "all States" question again as it concerns the accession article of this convention.

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[redacted]
(Admin. Services Div.)

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..3

containing the proposed articles on invalidity and termination unless a satisfactory provision for the automatic independent adjudication of disputes arising from the application of these articles were included in the convention;

(b) to co-sponsor, if it appeared appropriate to do so, an article on the settlement of disputes provided other co-sponsors include at least some major Afro-Asian states; and

(c) not to take part in public debate or active private lobbying on this issue prior to the Plenary vote on Article 5.

We should be grateful to know whether you approve these instructions. Items (b) and (c) are in accord with the position which you authorized Messrs. Wershof and Stanford to take on this question at the recent London and Paris meetings.

J. A. BEESLEY

Legal Division.

Reply / Répondre

ACTION COPY

L 20-3-1-6

13/3

FM PRMNY MAR12/69 RESTR

TO EXTER 637

INFO TT COPEN DE HAGUE

LAW OF TREATIES CONF:SECOND SESSION:USA DEL

AMERICANS INFORM US THAT QUOTE PROFESSORS UNQUOTE WILL NOT/NOT BE ON THEIR DEL TO SECOND SESSION. INSTEAD KEARNEY WILL BE SUPPORTED BY HERB REIS AND PROBABLY HARGROVE FROM USA PERMIS.

3/13/3

Bapty / Blanford

ACTION COPY

FM PSPAN MAR12/69 RESTR NO/NO STANDARD

TO EXTER 517

REF YOURTEL L2241 FEB18

LAW OF TREATIES CONFERENCE-BARBADOS-ART5

I DELIVERED AIDE MEMOIRE AND MADE ORAL REPRESENTATIONS TO PM BARROW IN BARBADOS YESTERDAY. JACKMAN PERMSEC MEA WAS ALSO PRESENT DURING BRIEF DISCUSSION. BARROW OBSERVED ONLY HALF SERIOUSLY THAT HE THOUGHT OUR ARGUMENT AGAINST INTERPRETATION OF CDN FEDERAL CONSTITUTION BY OTHER STATES WAS WEAKENED BY FACT THAT AUTHORITY TO AMEND BNA ACT WAS STILL VESTED IN WESTMINSTER: HE UNDERSTOOD POSITION BUT WOULD LATIN AMERICANS, FOR EXAMPLE?

2. BARROW INDICATED WE COULD COUNT ON THEIR SUPPORT BUT FOR GREATER CERTAINTY I HAVE ARRANGED WITH JACKMAN TO HAVE THIS SPECIFICALLY CONFIRMED BEFORE VIENA CONFERENCE WITH RESPECT TO ALL THREE POINTS IE PARA2 SEPARATE VOTE ON PARA2 AND ART5 AS A WHOLE.

3. BARBADOS REP AT VIENA WILL BE GCR MOE SR CROWN COUNSEL IN ATTORNEY GENS DEPT WHO WILL ATTEND THROUGHOUT CONFERENCE

MCKINNEY

1 | 13/3

ACTION COPY

20-3-1-6

FM ISBAD MAR12/69 CONFD NO/NO STD

TO EXTER 214 PRIORITY

REF YOURTEL L342 MAR7 OURTEL 209 MAR11

LAW OF TREATIES CONFERENCE-ARTICLE 5

WE SPOKE TO MFA ALONG LINES INDICATED IN YOUR REFTEL

2. CURRENT NEGOTIATIONS BETWEEN PRESIDENT AYUB AND OPPOSITION ON CONSITUTIONAL FUTURE OF PAK WITH POSSIBILITY OF DRASTIC ALTERATION OF CONSITUTIONAL PATTERN(SEE OUR REFTEL)LEAVES MFA IN QUANDRY ON QUESTIONS LIKE ARTICLE5(2). THERE SEEMS TO BE NO/NO GOP POSITION, AND MFA HESITATES TO COMMIT ITSELF TO FIXED POSITION BECAUSE OF CONSTITUTIONAL UNCERTAINTY. SUBJ TO HAZARDS OF CURRENT CONSTITUTIONAL STATE OF FLUX, PRESENT QUOTE INCLINATION UNQUOTE OF MFA IS TO FAVOUR DELETION OF PARA2, AND OTHER THINGS BEING EQUAL(WHICH THEY MAY NOT/NOT BE)IT IS QUOTE INCLINED UNQUOTE TO INSTRUCT ITS DEL TO VOTE IN FAVOUR OF DELETION AT PLENARY QUOTE IF MAJORITY MANIFESTS ITSELF IN THAT DIRECTION UNQUOTE.

3. MFA WILL NOT/NOT GO BEYOND THAT IN DIRECT REPLY TO QUESTIONS, BUT WE GAINED IMPRESSION THAT IF MAJORITY DID NOT/NOT SO MANIFEST ITSELF, PAK DEL WOULD PROBABLY ABSTAIN.

4. ON QUESTION OF PROCEDUARAL VOTE FOR SEPARATE VOTE ON PARA2, MFA THINKING SEEMS VAGUE. THEY SEEM TO THINK THAT SEPARATE VOTE IS FOREGONE CONCLUSION, BUT ARE UNWILLING TO SAY FIRMLY HOW PAK DEL MIGHT VOTE IN PROCEDURAL VOTE IF IT HAD TO. IMPRESSION WE GOT FROM EVASIVE REPLIES TO RPTD QUESTIONING ON THIS POINT WAS THAT MFA HAS

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18/12/3

NOT/NOT THOUGHT MUCH ABOUT IT, HAS NO/NO INSTRUCTIONS FOR ITS DEL ON IT, AND THAT PAK DEL WOULD PROBABLY VOTE FOR SEPARATE VOTE ON PARA2 IF IT LOOKED AS IF MAJORITY LEANED THAT WAY.

5. GENERAL TONE OF CONVERSATION WAS THAT IT WAS UNFAIR TO EXPECT MFA TO SAY ANYTING ABOUT ITS INTENTIONS ON ARTICLE5(2) AT TIME WHEN IT IS CLEAR THAT PRESENT CONSTITUION IS DOOMED, AND WHEN THERE IS POSSIBILITY THAT FUTURE CONSTITUION MAY NOT/NOT LEAVE CENTRAL GOVT WITH ANY POWERS TO SPEAK OF. IT WAS NOT/NOT CLEAR WHETHER INSTRUCTIONS ARE BEING PREPARED FOR PAKDEL, AND FINAL INSTRUCTIONS TO DEL ON ARTICLE5 MAY WELL TURN OUT TO BE NO/NO MORE THAN TO KEEP ITS HEAD WELL DOWN

MCGUAGHEY

L

FM JKRTA MAR11/69 CONFD NO/NO STANDARD

TO EXTEROTT 106 PRIORITY

REF YOURTEL L075 FEB06

GRATEFUL FOR HELPFUL INFO IN REFTEL WHICH WE CONVEYED ORALLY AND BY AID MEMOIRE TO MISS LAURENS ON MAR10. SHE WAS TAKEN SOMEWHAT ABACK BY OUR FACTUAL(OR CORRUPT) STATEMENT THAT CDA SEEMED TO BE ALONE IN ACTIVELY OPPOSING PARA0. SHE ADMITTED HER COMMENTS HAD BEEN MADE WITHO BENEFIT OF DETAILED RESEARCH REFLECTED IN REFTEL. (WE HAD REVIEWED VOTING RECORD ON PARA2 AT OUR PREVIOUS MTG OF COMMUNICATIONS BUT UNFORTUNATELY DID NOT/NOT HAVE DETAILED INFO PROVIDED IN REFTEL.)

SHE ALSO SAID CDA HAD BEEN ONLY STATE TO DATE TO MAKE REPRESENTATION TO MFA ON PARA2.

3. WE DISCUSSED AGIAN WHOLE RANGE OF CDN REPRESENTATION ON PARA2. MISS LAURENS SEEMED LESS CATEGORICALLY THAN PREVIOUS ON INDONESIAS POSITION RE SUBSTANCE OF PARA2 AND QUESTIONED SEPARATE NOTE. SHE ASSURED US THAT CDN VIEW WOULD BE CAREFULLY STUDIED AGAIN, BUT INDONESIANS POSITION ON POINTS RAISED BY US WOULD BE FINALLY DETERMINED IN LIGHT OF DEVELOPMENTS AT SECOND SESSION.''''''

ACTION COPY

FM ADDIS MAR11/69 CONFD NO/NO STANDARD

TO TT EXTER 227 PRIORITY DE PARIS

REF YOURTEL L331 MAR7

LAW TREATY CONFERENCE

KIBRET CONFIRMED THAT THEIR POSITION ON ARTICLE 5 HAD NOT/NOT CHANGED AND ASSURED US THAT IF CDA OR OTHER COUNTRY PRESSES FOR SEPARATE VOTE ON EACH PARA OF ARTICLE 5 ETHIOPIA WOULD SUPPORT SUCH A MOVE.

2.12.3

ACTION COPY

20-3-1-6

37

FM TUNIS MAR11/69 RESTR

TO TT EXTER 150 PRIORITY DE PARIS

REF YOURTEL L349 MAR7

LAW TREATY CONFERENCE-ARTICLE 5

WE HAVE NOT/NOT PUT TO TUNISIAN ARGUMENT CONTAINED IN YOURLET L127 JAN20 SINCE IT ARRIVED AFTER WE HAD RECEIVED TUNISIAN REPLY(OURLET 12 JAN22)WHICH SEEMED TO US TO MEET YOUR REQUIREMENTS. TUNISIAN POSITION REPORTED IN OURLET JAN22 WAS OUTLINED IN UNEQUIVOCAL TERMS, BUT IF YOU WISH, WE WILL APPROACH LEGAL ADVISER AGAIN. IN DOING SO, COULD WE(A)EXPRESS YOUR THANKS FOR HELPFUL TUNISIAN POSITION OUTLINED JAN22 AND(B)EXPLAIN YOU HAVE CONSIDERED AND REJECTED IDEA OF AMENDMENT OF ARTICLE 5 PARA2.

...

8.12.3

ACTION COPY

Mr Bentley
Stafford

L

20-3-1-6
37

FM ROME MAR11/69 RESTR

TO EXTER 265

REF YOURTEL L346 MAR7

LAW OF TREATIES CONFD--ART 5--SANMARINO

IN VIEW OF ABSENCE OF REPLY(OTHER THAN THEIR NOTE OF DEC23/68 REPORTED IN OURTEL1539 DEC30/68)TO OUR EARLIER REPS,HAVE WRITTEN TODAY TO SANMARINO SECSTATE FOR FA,FREDERICO BIGI,TO CONFIRM IMPORTANCE WHICH CDA ATTACHES TO THIS QUESTION AND REQUEST THAT APPROPRIATE INSTRUCTIONS BE GIVEN TO SANMARINO DEL TO VIENN CONFERENCE.SHALL KEEP YOU INFORMED OF HIS REACTION.

2.SHOULD THIS APPROACH FAIL THERE MAY BE FOR US AN OPPORTUNITY TO APPEAL PERSONALLY TO BIGI IF DUMAS AS CONSUL TO SANMARINO CAN MAKE HIS FIRST OFFICIAL VISIT TO SMALL REPUBLIC AT BEGINNING OF APR,IN REPLY TO SANMARINO GOVT INVITATION,ON OCCASION OF SEMIANNUAL CEREMONIES ATTENDED BY ALL MEMBERS OF DIPLO AND CONSULAR CORPS ACCREDITED TO SANMARINO.'''''''

6.12.3

M Hassey
Stamped

ACTION COPY.

tel dated 13/3

20/3

20-3-1-6
37

FM BAIRS MAR11/69 RESTR

TO EXTEROTT 273

REF YOURTEL L321 MAR7

LAW OF TREATIES CONFERENCE-ARTICLE 5

DE LA GUARDIA CONFIRMED THEIR INSTRUCTIONS FOR THEIR DEL TO LAW OF TREATIES CONFERENCE WILL INDICATE SUPPORT FOR CDA IN OPPOSING PARA2 ARTICLE 5 AND IN VOTING FOR SEPARATE VOTE ON PARA2. LA GUARDIA WHO WILL PROBABLY BE ON ARGENTINE DEL TO CONFERENCE REITERATED HIS FULL SUPPORT FOR CDN POSITION. HE ADDED HOWEVER THAT HE SAW NO/NO HOPE OF CDA WINNING SUFFICIENT SUPPORT FOR OBTAINING DELETION PF PARA2 BECAUSE OF LARGE MAJORITY WHICH SUPPORTED IT AT FIRST CONFERENCE.

It is worth telling him know in general terms that if all our supporters stand firm we may make it

003689

7,12.3

cc Aff. Ext., Ottawa

CANADIAN CONSULATE - CONSULAT DU CANADA
SAN MARINO

Rome, le 11 mars 1969

20-3-1-6
37

Monsieur le Secrétaire d'Etat,

J'ai l'honneur d'attirer votre attention de façon toute particulière, sur la demande que mon Gouvernement a présentée au Gouvernement de San Marino le 28 novembre dernier, au sujet de la Conférence Internationale chargée de rédiger la "Convention sur le Droit des Traités" qui doit s'ouvrir à Vienne le 9 avril prochain.

Le Secrétariat d'Etat des Affaires étrangères a bien voulu informer mon Gouvernement le 23 décembre dernier qu'il étudirait avec attention la demande du Canada, et qu'il communiquerait au Consulat la décision du Gouvernement de San Marino à ce sujet, aussitôt que possible.

Puisqu'il reste très peu de temps avant l'ouverture de cette Conférence, et que le Canada attache la plus grande importance à cette question, je vous saurais vivement gré, Monsieur le Secrétaire d'Etat, de bien vouloir examiner avec sympathie la demande du Canada, dans l'espoir que la délégation de San Marino puisse appuyer la position canadienne au sujet de l'Article 5, telle que décrite dans la Note ci-annexée.

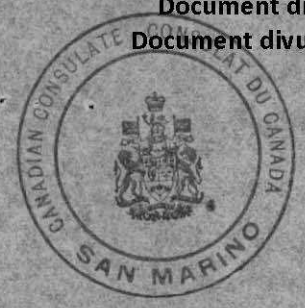
Osant espéré qu'il sera possible à Votre Excellence de répondre favorablement et bientôt à la demande du Gouvernement du Canada, je vous prie d'agréer, Monsieur le Secrétaire d'Etat, les assurances de ma très haute considération et de mes meilleurs sentiments.

Le Consul du Canada près de San Marino,

Pierre Dumas
Pierre Dumas

S.E. Monsieur le Professeur Frederico Bigi,
Secrétaire d'Etat pour les Affaires étrangères,
Palais du Gouvernement,
San Marino,
République de San Marino.

24.19.3



cc Aff. Ext., Ottawa

No. 1-69

Le Consulat du Canada près la République de San Marino présente ses compliments au Secrétariat d'Etat pour les Affaires étrangères et a l'honneur de se référer à la Note n. 1858/Aa/349/369 en date du 23 décembre 1968 du Secrétariat d'Etat. Cette Note répondait à la Note en date du 28 novembre 1968, que le Consulat du Canada avait adressée (avec aide-mémoire annexé) au Secrétariat d'Etat, au sujet de la deuxième session de la Conférence Internationale chargée de rédiger la "Convention sur le Droit des Traités", qui doit avoir lieu à Vienne du 9 avril au 21 mai 1969.

Dans sa Note précitée, le Secrétariat d'Etat a bien voulu assurer le Consulat du Canada qu'il lui communiquerait la décision du Gouvernement de San Marino relativement à l'attitude que la délégation de San Marino adoptera durant ladite conférence au sujet de l'Article 5.

Vu l'importance, déjà expliquée, que le Canada accorde à cette question, le Consulat du Canada saurait gré au Gouvernement de la République de San Marino de bien vouloir appuyer la position canadienne lorsque la délégation du Canada demandera l'omission du Paragraphe 2 de l'Article 5, lors de l'examen de l'Article 5 en séance plénière. De même, le Consulat du Canada espère que le représentant de San Marino appuiera également la position canadienne en faveur d'un scrutin distinct au sujet du Paragraphe 2. Enfin, dans le cas où l'on refuserait d'accorder un scrutin séparé sur le Paragraphe 2, le Consulat du Canada saurait gré au représentant de San Marino de voter alors pour l'omission complète de l'Article 5.

..

Etant donné que cette Conférence doit s'ouvrir à Vienne dans moins d'un mois, le Consulat du Canada serait vivement reconnaissant au Secrétariat d'Etat de bien vouloir lui faire part aussitôt que possible de l'attitude que le représentant de la République de San Marino adoptera sur les questions précitées.

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

Rome, le 11 mars 1969.

Le Secrétariat d'Etat pour les Affaires étrangères,
Palais du Gouvernement,
San Marino,
République de San Marino.

6 ACTION COPY

20-3-1-6

11/3

DE BERUT MAR11/69 CONFD

A EXTER 231 PRIORITE

REF MONTEL 229 MAR7

POSITION LIBANAISE TOUCHANT ARTICLE 5-DROITS DES TRAITES

SECGEN DES AE MA APPELE LUI-MEME CE MATIN POUR ME CONFIRMER QUE, MEME SI LA POSITION LIBANAISE RELATIVEMENT AUX DIFFERENTES QUESTIONS QUI SERONT TRAITEES A LA DEUXIEME SESSION DE LA CONFERENCE DES NATIONS UNIES SUR LES DROITS DES TRAITES NEST PAS ENCORE TOUT A FAIT FERME, TOUT INDIQUE QUE LE LIBAN APPUIERA LA THESE CONNE QUI DEMANDE DOMETTRE LALINEA 2 DE LARTICLE 5 DE LA CONVENTION

HARDY....

26/11/3

M. D. COPITHORNE

TRANSMITTAL SLIP

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

FROM: The Canadian Embassy, Tel Aviv, Israel.

The documents described below are for your information.

Despatching Authority: R. L. Rogers/fmc.

Security: UNCLASSIFIED

Date: March 10, 1969.

Air or Surface: Air

No. of enclosures: 1

20-3-1-6
37

Copies	Description	Also referred to:
1	Ref; Your telegram L 337, March 7/69 Letter from Canadian Ambassador, Tel Aviv to Legal Adviser, MFA, re Law of Treaties Conference. 10/3 Copy	FROM REGISTRY MAR 18 1969 FILE CHARGED OUT TO:

Ext. 250/Eng. (Rev. 10/51)
(Admin. Services Div.)

(Instruction on Reverse Side)

INSTRUCTIONS

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2. This form should *NOT* be used to cover documents requiring action.

3. The name of the person responsible for authorizing the despatch of the material should be shown opposite the words "Despatching Authority". This may be done by signature, name stamp or by any other suitable means.

4. The form should bear the security classification of the material it covers.

5. The column for "Copies" should indicate the number of copies of each document transmitted. The space for "No. of Enclosures" should show the total number of copies of all documents covered by the transmittal slip. This will facilitate checking on despatch and receipt of mail.

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20-3-1-6

FM DELHI MAR10/69 RESTR

TO EXTER 769

REF YOURTEL L335 MAR7

LAW OF TREATIES CONF-ARTICLE 5

KRISHNA RAO CONFIRMED TODAY THAT INDIA WOULD SUPPORT US ON ARTICLE 5 INCLUDING SEPARATE VOTE ON PARA2.

2.IN KATHMANDU LAST WEEK FOREIGN SEC KHANAL TOLD ME NEPALESE GOVT IS CONSIDERING OUR REQUEST SYMPATHETICALLY AND WILL PROBABLY SUPPORT US BUT HE WANTED TO CHECK NEXT WEEK WITH HIS EXPERT AMB PANDE WHO IS RETURNING FROM BONN BEFORE BEING POSTED TO DELHI

GEORGE

1.10.3

84 Hahashmonaim St.,
Tel Aviv, Israel.

March 10, 1969.

Dear Mr. Meron,

My people in Ottawa are very happy with the assurances you were able to give me on October 22 on the attitude the Israeli delegation is expected to take on the problem of Article 5 at the Second Session of the Law of Treaties Conference. They are particularly happy at the prospect of Israeli support for a separate vote on the second paragraph of Article 5 because this procedural vote is of prime importance to the Canadian efforts to delete paragraph 2.

I should like to thank you for your courtesy in making time to hear me on this subject and for the care and thought you have given to this problem.

Yours sincerely,

R. L. Rogers,
Ambassador.

Mr. Theodor Meron,
Legal Adviser,
Ministry for Foreign Affairs,
Jerusalem.

17/18/3

TRANSMITTAL SLIP

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

FROM: Canadian Embassy, Vienna

Security: UNCLASSIFIED

Date: March 7, 1969

Air or Surface:

No. of enclosures: 2

The documents described below are for your information.

Despatching Authority: J.A. McCordick/hmp

20-3-1-6
37

Copies	Description	Also referred to:
	Letter dated February 28, 1969 from Dr. Erik Nettel, Federal Ministry of Foreign Affairs, Vienna 54: Law of Treaties - Article V.	

Ext. 250/Eng. (Rev. 10/51)
(Admin. Services Div.)

(Instruction on Reverse Side)

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BUNDESMINISTERIUM
FÜR
AUSWÄRTIGE ANGELEGENHEITEN
Legationsrat Dr. Erik Nettel
Zl. 101.071-VR/69

WIEN, February 28, 1969

Your Excellency,

Permit me to acknowledge receipt of your letter dated February 25, 1969. As you have pointed out I have had an extensive and very fruitful talk with Ambassador Wershof in Paris. As I have indicated to him our plan to table anew an amendment to article 5 of the Draft Convention of the Law of Treaties was only meant to help states which have Federal constitutions like your country and mine. Ambassador Wershof, however, has convinced me that his proposal to try for a separate vote on article 5 paragraph 2 might be a better way to achieve our purposes.

I shall be in close contact with the Canadian delegation during the Conference and I am quite sure that our delegations will co-operate not only as concerns article 5 but on other crucial questions.

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

Erik Nettel

His Excellency
John Alexander McCordick
Ambassador of Canada
Vienna

12/13/3

Mr Secretary
Stan Pope

ACTION COPY

L

20-3-1-6

FM ACCRA MAR7/69 CONFD

TO EXTEROTT 294 IMMED

INFO TT COPEN DE LDN

REF COPEN TEL 17 JAN15 YOURLET L122 JAN16

LAW OF TREATIES ARTICLE 29-GHANA VIEWS

SPOKE TO VANDERPUJE, HEAD LEGAL DIV MFA TODAY. OWUSU COMMENTS ON CDN POSITION HAD NOT/NOT REACHED MFA BUT VANDERPUJE SAID HE WOULD PREPARE INSTRUCTIONS FOR INCLUSION IN BRIEF FAVOURING SEPARATE VOTE AND DELETION OF PARA(2), ON ASSUMPTION OWUSU WILL APPROVE. GHANAIAN ABSTENTIONS HAD BEEN BASED ON VIEW THIS WAS MATTER FOR FEDERAL STATES TO DECIDE BUT HE AGREED WE NEEDED ASSISTANCE OF OUR FRIENDS TO REMOVE OFFENDING CLAUSE

HICKS

003701

3,10.3

Mr. Wright
Mr. Stanford

ACTION COPY

file 20-3-1-6

FM BERUT MAR7/69 CONFD

TO EXTER 229 PRIORITY

REF YOURTEL L52 JAN7 AND OURTEL 148 FEB11

UN LAW OF TREATIES CONFERENCE SECOND SESSION-ARTICLE 5

I SAW FM SECGEN THIS MORNING. IT IS THIRD TIME WE RAISED MATTER WITH FOREIGN MINISTRY. HE SAID THAT INSTRUCTIONS HAD NOT/NOT YET BEEN ISSUED TO LEBANESE DEL BUT WOULD SOON BE DRAFTED. HE INDICATED THAT HE WAS WELL AWARE OF PROBLEMS WHICH PARA2 ARTICLE 5 WOULD CREATE FOR FEDERAL STATES AND EVEN FOR OTHER STATES DEALING WITH THEM. WHILE HE WOULD NOT/NOT COMMIT HIMSELF AT THIS STAGE I GOT IMPRESSION THAT HE WAS FAVOURABLE TO OUR POSITION. WE WILL SEEK FURTHER INFO AGAIN SOON

HARDY

...

10.7.3

file, diary, div.diary, JSS
Tel.file

MESSAGE

DATE	FILE/DOSSIER		SECURITY SECURITE
7 MAR/69	20-3-1-6		RESTRICTED
	37		

FM/DE: EXTERNL OTT

NO	PRECEDENCE
L-~~385~~ 357	ROUTINE

TO/A: GEORGETOWN

INFO

REF YOURTEL 989 Nov. 18/68

SUB/SUJ LAW OF TREATIES CONF.-ARTICLE 5

GUYANESE ARE PRESUMABLY NOW PREPARING INSTRUCTIONS FOR THEIR DEL TO LAW OF TREATIES CONF.SECOND SESSION. IN VIEW OF LAPSE OF TIME SINCE YOUR DISCUSSIONS WITH GUYANESE OFFICIALS, PLEASE TAKE EARLY OPPORTUNITY TO REMIND THEM INFORMALLY OF YOUR EARLIER DISCUSSIONS TO ASSURE INSTRUCTIONS INCLUDE REF. TO GUYANESE DELS POSITION ON ARTICLE 5, INCLUDING PROCEDURAL VOTE ON OUR REQUEST FOR SEPARATE VOTE ON PARA. 2. THIS PROCEDURAL VOTE IS OF PRIME IMPORTANCE TO ~~EXH~~ SUCCESS OF OUR EFFORTS TO DELETE PARA. 2.

DISTRIBUTION
LOCAL/LOCALE

NO STD.

ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	APPROVED/AUTORISE
SIG J.S.STANFORD:ZS	LEGAL	25406	SIG M. D. COPITHORNE J.A.BEESLEY

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

file, diary, div.diary, JSS
tel.file

MESSAGE

DATE	FILE/DOSSIER	SECURITY SECURITE
7 MAR/69	20-3-1-6 37	RESTRICTED

FM/DE EXTERNL OTT

TO/A	NO	PRECEDENCE
GUATEMALA	L-334	ROUTINE

INFO

REF YOURLET 114 - OCT.1/68

SUB/SUJ LAW OF TREATIES CONF.-ARTICLE 5

GUATEMALANS ARE PRESUMABLY NOW PREPARING INSTRUCTIONS FOR THEIR DEL TO LAW OF TREATIES CONF. SECOND SESSION. IN VIEW OF LAPSE OF TIME SINCE YOUR DISCUSSIONS WITH CHIEF LEGAL DEPT. IN MFA LAST SEPT., PLEASE TAKE EARLY OPPORTUNITY TO REMIND HIM INFORMALLY OF YOUR EARLIER DISCUSSIONS TO ASSURE INSTRUCTIONS INCLUDE REF. TO GUATEMALAN DELS POSITION ON ARTICLE 5, INCLUDING PROCEDURAL VOTE ON OUR REQUEST FOR SEPARATE VOTE ON PARA 2. THIS PROCEDURAL VOTE IS OF PRIME IMPORTANCE TO SUCCESS OF OUR EFFORTS TO DELETE PARA. 2.

DISTRIBUTION
LOCAL/LOCALE

NO STD.

ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	APPROVED/AUTORISE
SIG. JSSTANFORD:ZS	LEGAL	25406	SIG. M. D. COMMISSIONG J.A.BEESLEY

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

FM PRMNY MAR7/69 RESTR

TO EXTER 575

INFO TT COPEN DE HAGUE

LAW OF TREATIES:SECOND SESSION VIENN CONFERENCE:FRENCH DEL

AS DEBRESSONS NEW DUTIES PRECLUDE HIS ATTENDANCE AT SECOND

SESSION WE HAVE BEEN SEEKING FROM FRENCH PERMIS INFO ON THEIR DEL.

2.MISS ALVAREZ HAS NOW INFORMED US IT WILL PROBABLY CONSIST OF A

MR HUBERT(ANCIEN CHEF DES SERVICES JURIDIQUES)AS HEAD OF DEL

ASSISTED BY PROF REVTER AND MESSRS DELEAU AND HADOT.

4.10.3

file, diary, div.diary, JSS
Tel.file

MESSAGE

DATE	FILE/DOSSIER	SECURITY SECURITE
7 MAR/69	20-3-1-6 37	RESTRICTED

FM/DE EXTERNL OTT

	NO	PRECEDENCE
TO/A NICOSIA	L-329	ROUTINE
INFO		

REF OuRTEL L-47 JAN 7/69

SUB/SUJ LAW OF TREATIES - ARTICLE 5

CYPRIOTS ARE NOW PRESUMABLY PREPARING INSTRUCTIONS FOR THEIR DEL TO LAW OF TREATIES CONFERENCE SECOND SESSION. IN VIEW OF LAPSE OF TIME SINCE YOUR DISCUSSIONS WITH JACOVIDES LAST SEPT., PLEASE TAKE EARLY OPPORTUNITY TO REMIND CYPRIOTS INFORMALLY OF YOUR EARLIER DISCUSSIONS TO ASSURE INSTRUCTIONS INCLUDE REF. TO CYPRIOT DELS POSITION ON ARTICLE 5, INCLUDING PROCEDURAL VOTE ON OUR REQUEST FOR SEPARATE VOTE ON PARA 2. THIS PROCEDURAL VOTE IS OF PRIME IMPORTANCE TO SUCCESS OF OUR EFFORTS TO ~~EXX~~ DELETE PARA.2.

DISTRIBUTION
LOCAL/LOCALE

ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	NO STD APPROVED/AUTORISE
SIG J.S.STANFORD:ZS	LEGAL	2-5406	SIG M. D. COPITHORNE J.A.BEESLEY

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

file, diary, div.diary, JSS
Tel.file

MESSAGE

DATE	FILE/DOSSIER	SECURITY SECURITE
7 MAR/69	20-3-1-6 37	RESTRICTED

FM/DE EXTERNL OTT

TO/A	NO	PRECEDENCE
SANTO DOMINGO	L-330	ROUTINE
INFO		

REF YOURLET No.574 DEC.19/68

SUB/SUJ LAW OF TREATIES CONF.-ARTICLE 5

DOMINICANS ARE PRESUMABLY NOW PREPARING INSTRUCTIONS FOR THEIR DEL TO LAW OF TREATIES CONF. SECOND SESSION. IN VIEW OF LAPSE OF TIME SINCE YOUR DISCUSSIONS WITH DOMINICAN OFFICIALS, PLEASE TAKE EARLY OPPORTUNITY TO REMIND THEM INFORMALLY OF YOUR EARLIER DISCUSSIONS TO ASSURE INSTRUCTIONS INCLUDE REF. TO DOMINICAN DELS POSITION ON ARTICLE 5, INCLUDING PROCEDURAL VOTE ON OUR REQUEST FOR SEPARATE VOTE ON PARA. 2. THIS PROCEDURAL VOTE IS OF PRIME IMPORTANCE TO SUCCESS OF OUR EFFORTS TO DELETE PARA 2.

DISTRIBUTION
LOCAL/LOCALE

NO STD.

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

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

file, diary, div.diary, JSS
Tel.File

MESSAGE

DATE	FILE/DOSSIER		SECURITY SECURITE
7 MAR/69	20-3-1-6		RESTRICTED
	37		

FM/DE EXTERNL OTT

TO/A	NO	PRECEDENCE
ADDIS ABABA	L-331	ROUTINE

INFO

REF YOURLET 862 SEPT.19/68

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

ETHIOPIANS ARE PRESUMABLY NOW PREPARING INSTRUCTIONS FOR THEIR DEL TO LAW OF TREATIES CONF SECOND SESSION. IN VIEW OF LAPSE OF TIME SINCE YOUR DISCUSSIONS WITH KIBRET LAST SEPT., PLEASE TAKE EARLY OPPORTUNITY TO REMIND HIM INFORMALLY OF YOUR EARLIER DISCUSSIONS TO ASSURE INSTRUCTIONS INCLUDE REFERENCE TO ETHIOPIAN DELS POSITION ON ARTICLE 5, INCLUDING PROCEDURAL VOTE ON PARA 2. THIS PROCEDURAL VOTE IS OF PRIME IMPORTANCE TO SUCCESS OF OUR EFFORTS TO DELETE PARA. 2

DISTRIBUTION
LOCAL/LOCALE

NO STD.

ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	APPROVED/AUTORISE
SIG. J.S.STANFORD:ZS	LEGAL	25406	M. D. COPITHORNE SIG. J.A.BEESLEY

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

file, diary, div.diary, JSS
Tel.File

MESSAGE

DATE	FILE/DOSSIER	SECURITY SECURITE
7 MAR/69	20-3-1-6	RESTRICTED
	37	

FM/DE EXTERNL OTT

	NO	PRECEDENCE
TO/A ACCRA	L-332	ROUTINE
INFO		

REF OURLET L-122 JAN 16/69

SUB/SUJ LAW OF TREATIES CONF.-ARTICLE 5

GHANAIANS ARE PRESUMABLY NOW PREPARING INSTRUCTIONS FOR THEIR DEL TO LAW OF TREATIES CONF. SECOND SESSION. PLEASE TAKE EARLY OPPORTUNITY TO REMIND APPROPRIATE GHANAIAN OFFICIALS INFORMALLY OF CANADIAN REPRESENTATIONS TO THEM CONCERNING ARTICLE 5 AND WERSHOF'S DISCUSSIONS WITH OWUSU IN LDN IN JAN (COPEN TEL 17 JAN.15/69 REFERS). PURPOSE OF REMINDER IS TO ASSURE INSTRUCTIONS INCLUDE REFERENCE TO GHANAIAN DELS POSITION ON ARTICLE 5, INCLUDING PROCEDURAL VOTE ON OUR REQUEST FOR SEPARATE VOTE ON PARA 2. THIS PROCEDURAL VOTE IS OF PRIME IMPORTANCE TO SUCCESS OF OUR EFFORTS TO DELETE PARA. 2.

DISTRIBUTION
LOCAL/LOCALE NO STD.

ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	APPROVED/AUTORISE
SIG J.S.STANFORD:ZS	LEGAL	25406	SIG M. D. COPITHORNE J.A.BEESLEY

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

File, diary, div.diary, JSS
Tel.file

MESSAGE

7 MAR/69 20-3-1-6

TERNL OTT

DATE	FILE/DOSSIER	RESTRICTED SECURITE
	20-3-1-6	
	37 L-335	ROUTINE

FM/DE DELHI

NO	PRECEDENCE

TO/A

INFO

~~YOURTEL 3176 SEPT.23/68~~

~~LAW OF TREATIES CONF.-ARTICLE 5~~

REF

SUB/SUJ

INDIANS ARE PRESUMABLY NOW PREPARING INSTRUCTIONS FOR THEIR DEL TO LAW OF TREATIES CONF. SECOND SESSION. IN VIEW OF LAPSE OF TIME SINCE YOUR DISCUSSIONS WITH RAO LAST SEPT., YOU MAY CONSIDER IT APPROPRIATE TO TAKE EARLY OPPORTUNITY TO REMIND INDIANS INFORMALLY OF YOUR EARLIER DISCUSSIONS TO ASSURE INSTRUCTIONS INCLUDE REF. TO INDIAN ~~RX~~ DELS POSITION ON ~~ARTICLE~~ ARTICLE 5, INCLUDING PROCEDURAL VOTE ON OUR REQUEST FOR SEPARATE VOTE ON PARA 2. THIS PROCEDURAL VOTE IS OF PRIME IMPORTANCE TO SUCCESS OF OUR EFFORTS TO DELETE PARA 2.

2. YOU MAY ALSO CONSIDER IT DESIRABLE TO SEND FOLLOW-UP LETTER TO NEPALESE.

NO STD.

DISTRIBUTION
LOCAL/LOCALE

ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	APPROVED/AUTORISE
JSSTANFORD:ZS	LEGAL	25406	J.A.BEESLEY
SIG.			SIG. M.D. COPELAND

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

file, diary, div.diary, JSS
tel.file

MESSAGE

DATE	FILE/DOSSIER	SECURITY SECURITE
7 MAR/69	~~20-3-1-6~~ 20-3-1-6	RESTRICTED

FM/DE: EXTERNL OTT

TO/A: TEHRAN

NO	PRECEDENCE
L-336	ROUTINE

INFO

YOURTEL 675 NOV.6/68

REF

SUB/SUJ: LAW OF TREATIES CONF.-ARTICLE 5

IRANIANS ARE PRESUMABLY NOW PREPARING INSTRUCTIONS FOR THEIR DEL TO LAW OF TREATIES CONF. SECOND SESSION. IN VIEW OF LAPSE OF TIME SINCE YOUR DISCUSSIONS WITH IRANIAN OFFICIALS, PLEASE TAKE EARLY OPPORTUNITY TO REMIND THEM INFORMALLY OF YOUR EARLIER DISCUSSIONS TO ENSURE INSTRUCTIONS INCLUDE REF TO IRANIAN DELS POSITION ON ARTICLE 5. WE UNDERSTAND IRANIAN DESIRE TO REFRAIN FROM GIVING FIRM COMMITMENT ON ISSUES OF SUBSTANCE AT THIS TIME, HOWEVER, YOU SHOULD SEEK TO OBTAIN FROM IRANIANS AT LEAST AN UNDERTAKING TO SUPPORT OUR PROCEDURAL REQUEST FOR SEPARATE VOTE ON PARA. 2. THIS PROCEDURAL VOTE IS OF PRIME IMPORTANCE TO SUCCESS OF OUR EFFORTS TO DELETE PARA 2 AND, IF IRANIANS ARE PREPARED TO SUPPORT OUR REQUEST, YOU SHOULD EXPRESS HOPE THAT INSTRUCTIONS WILL DEAL WITH THIS POINT.

DISTRIBUTION
LOCAL/LOCALE

NO STD.

ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	APPROVED/AUTORISE
SIG JSSTANFORD:ZS	LEGAL	25406	SIG J.A.BEESLEY

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

file, diary, div.diary, JSS
tel.file

MESSAGE

DATE	FILE/DOSSIER	SECURITY SECURITE
7 MAR/69	20-3-1-6 37	RESTRCTD.

FM/DE EXTERNL OTT

TO/A	NO	PRECEDENCE
ATHENS	L-333	ROUTINE

INFO

REF YOURLET 439 SEPT.25/68

SUB/SUJ LAW OF TREATIES CONF.-ARTICLE 5

GREEKS ARE PRESUMABLY NOW PREPARING INSTRUCTIONS FOR THEIR DEL TO LAW OF TREATIES CONF.SECOND SESSION. IN VIEW OF LAPSE OF TIME SINCE YOUR DISCUSSIONS WITH EUSTATHIADIS LAST SEPT., PLEASE TAKE EARLY OPPORTUNITY TO REMIND HIM INFORMALLY OF YOUR EARLIER DISCUSSIONS TO ASSURE INSTRUCTIONS INCLUDE REF. TO GREEK DELS POSITION ON ARTICLE 5, INCLUDING PROCEDURAL VOTE ON OUR REQUEST FOR SEPARATE VOTE ON PARA. 2. THIS PROCEDURAL VOTE IS OF PRIME IMPORTANCE TO SUCCESS OF OUR EFFORTS TO DELETE PARA.2.

DISTRIBUTION
LOCAL/LOCALE

NO STD.

ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	APPROVED/AUTORISE
SIG. JSSTANFORD:ZS	LEGAL	25406	SIG. J.M. BEGGEY SCRITHORNE

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

file, diary, div.diary,
tel. file JSS

MESSAGE

DATE	FILE/DOSSIER	SECURITY SECURITE
7 MAR/69	20-3-1-6 / 37	RESTRICTED

FM/DE: EXTERNL OTT

TO/A	NO	PRECEDENCE
TEL AVIV	L-337	ROUTINE

INFO

REF: TOURTEL 916 OCT.23/68

SUB/SUJ: LAW OF TREATIES CONF.-ARTICLE 5

ISRAELIS ARE PRESUMABLY NOW PREPARING INSTRUCTIONS FOR THEIR DEL TO LAW OF TREATIES CONF.SECOND SESSION. IN VIEW OF LAPSE OF TIME SINCE YOUR DISCUSSIONS WITH MERON, PLEASE TAKE EARLY OPPORTUNITY TO REMIND HIM INFORMALLY OF YOUR EARLIER DISCUSSIONS TO ASSURE INSTRUCTIONS INCLUDE REF. TO ISRAELI DELS POSITION ON ARTICLE 5, INCLUDING PROCEDURAL VOTE ON OUR REQUEST FOR SEPARATE VOTE ON PARA 2. THIS PROCEDURAL VOTE IS OF PRIME IMPORTANCE TO SUCCESS OF OUR EFFORTS TO DELETE PARA 2.

DISTRIBUTION
LOCAL/LOCALE

NO STD.

ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	APPROVED/AUTORISE
SIG JSSTANFORD:ZS	LEGAL	25406	SIG M. D. COPITHORNE / J.A.BEESLEY

EXT 18/BIL (REV 8/64)
(COMMUNICATIONS DIV)

file, diary, div.diary, JSS
tel.file

MESSAGE

DATE	FILE/DOSSIER	SECURITY SECURITE
7 MAR/69	20-3-1-6 37	RESTRICTED

FM/DE EXTERNL OTT

TO/A	NO	PRECEDENCE
KINGSTON	L-338	ROUTINE

INFO

REF YOURTEL 421-SEPT.25

SUB/SUJ LAW OF TREATIES CONF.-ARTICLE 5

JAMAICANS ARE PRESUMABLY NOW PREPARING INSTRUCTIONS FOR THEIR DEL TO LAW OF TREATIES CONF. SECOND SESSION. IN VIEW OF LAPSE OF TIME SINCE YOUR DISCUSSIONS WITH FRANCIS, PLEASE TAKE EARLY OPPORTUNITY TO REMIND JAMAICANS INFORMALLY OF YOUR EARLIER DIS-~~EXXX~~ CUSSIONS TO ASSURE INSTRUCTIONS INCLUDE REF TO JAMAICAN DELS POSITION ON ARTICLE 5 INCLUDING PROCEDURAL VOTE ON OUR REQUEST FOR SEPARATE VOTE ON PARA 2. THIS PROCEDURAL VOTE IS OF PRIME IMPORTANCE TO SUCCESS OF OUR EFFORTS TO DELETE PARA 2.

DISTRIBUTION
LOCAL/LOCALE

NO STD.

ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	APPROVED/AUTORISE
SIG JSSTANFORD:ZS	LEGAL	25406	SIG M. D. CORNTHORNE J.A.BEESLEY

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

Tel. file, file, diary, div.diary, JSS

MESSAGE

DATE	FILE/DOSSIER	SECURITY SECURITE
7 MAR/69	20-3-1-6	RESTRICTED
	37	

FM/DE EXTERNL OTT

NO	PRECEDENCE
L-339	ROUTINE

TO/A PORT OF SPAIN

INFO

REF YOURTEL 1645-OCTOBER 10/68

SUB/SUJ LAW OF TREATIES CONFØ-ARTICLE 5

TRINIDADIANS ARE PRESUMABLY NOW PREPARING INSTRUCTIONS FOR THEIR DEL TO LAW OF TREATIES CONF. SECOND SESSION. IN VIEW OF LAPSE OF TIME SINCE YOUR DISCUSSIONS WITH OFFICIALS, PLEASE TAKE EARLY OPPORTUNITY TO REMIND THEM INFORMALLY OF YOUR EARLIER DISCUSSIONS TO ASSURE INSTRUCTIONS INCLUDE REF TO TRINIDADIAN DELS POSITION ON ARTICLE 5, INCLUDING PROCEDURAL VOTE ON OUR REQUEST FOR SEPARATE VOTE ON PARA 2.XX THIS PROCEDURAL VOTE IS OF PRIME IMPORTANCE TO SUCCESS OF OUR EFFORTS TO DELETE PARA.2.

DISTRIBUTION
LOCAL/LOCALE

NO STANDARD

ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	APPROVED/AUTORISE
SIG. JSSTANFORD:ZS	LEGAL	25406	SIG. M. D. COPITHORNE J.A.BEESLEY

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

file, diary, div.diary, JSS
Tel.File.

MESSAGE

DATE	FILE/DOSSIER	SECURITY SECURITE
7 MAR/69	20-3-1-6 37	RESTRICTED

FM/DE EXTERNL OTT

TO/A	NO	PRECEDENCE
MONTEVIDEO	L-352	ROUTINE
INFO		

REF
YOURLETTER 258 -OCT. 23/68
SUB/SUJ
LAW OF TREATIES CONF.-ARTICLE 5

URUGUAYANS ARE PRESUMABLY NOW PREPARING INSTRUCTIONS FOR THEIR DEL TO LAW OF TREATIES CONF. SECOND SESSION. IN VIEW OF LAPSE OF TIME SINCE YOUR DISCUSSIONS WITH AMBASSADOR CIASULLO, PLEASE TAKE EARLY OPPORTUNITY TO REMIND HIM INFORMALLY OF YOUR EARLIER DISCUSSIONS TO ASSURE INSTRUCTIONS INCLUDE REF TO URUGUAYAN DELS POSITION ON ARTICLE 5, INCLUDING PROCEDURAL VOTE ON OUR REQUEST FOR SEPARATE VOTE ON PARA 2. THIS PROCEDURAL VOTE IS OF PRIME IMPORTANCE TO SUCCESS OF OUR EFFORTS TO DELETE PARA 2.

DISTRIBUTION
LOCAL/LOCALE

ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	NO. STANDARD APPROVED/AUTORISE
SIG			SIG M. D. COPITHORNE
JSSTANFORD:ZS	LEGAL	25406	J.A.DEESLEY

EXT 18/BIL (REV 6/64)
(COMMUNICATIONS DIV)

Tel.File, file, diary, div.diary
JSS

MESSAGE

DATE	FILE/DOSSIER	SECURITY SECURITE
7 MAR 1969	20-3-1-6 / 37	RESTRICTED

FM/DE: EXTERNL OTT

TO/A	NO	PRECEDENCE
DAR ES SALAAM	L-351	ROUTINE

INFO

REF YOURTEL 22-JAN.9/69

SUB/SUJ LAW OF TREATIES CONF-ARTICLE 5

TANZANIANS ARE PRESUMABLY NOW PREPARING INSTRUCTIONS FOR THEIR DEL TO LAW OF TREATIES CONF. SECOND SESSION. YOU MAY THEREFORE WISH TO RENEW YOUR EARLIER REPRESENTATIONS ON ARTICLE 5. ASSUMING TANZANIANS WILL SUPPORT CANADIAN POSITION IN WHOLE OR IN PART, YOU SHOULD EXPRESS HOPE INSTRUCTIONS WILL INCLUDE REF TO TANZANIAN DELS POSITION ON ARTICLE 5, INCLUDING PROCEDURAL VOTE ON OUR REQUEST FOR SEPARATE VOTE ON PARA 2. THIS PROCEDURAL VOTE IS OF PRIME IMPORTANCE TO SUCCESS OF OUR EFFORTS TO DELETE PARA 2.

2. YOU MAY ALSO CONSIDER IT DESIRABLE TO SEND FOLLOW-UP LETTER TO ZAMBIAN OFFICIALS.

DISTRIBUTION
LOCAL/LOCALE NO STANDARD

ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	APPROVED/AUTORISE
SIG. J.S.STANFORD:ZS	LEGAL	25406	SIG. M. D. COPITHORNE J.A.BEESLEY

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

Tel file, file, diary, div.diary, JSS

MESSAGE

DATE	FILE/DOSSIER	SECURITY SECURITE
7 MAR/69	20-3-1-6 37	RESTRICTED

FM/DE EXTERNL OTT

TO/A	NO	PRECEDENCE
CAIRO	L-350	ROUTINE

INFO

REF YOURTEL 122-JAN.30/69

SUB/SUJ LAW OF TREATIES CONF-ARTICLE 5

UAR AUTHORITIES ARE PRESUMABLY NOW PREPARING INSTRUCTIONS FOR THEIR DEL TO LAW OF TREATIES CONF. SECOND SESSION. YOU MAY THEREFORE CONSIDER IT APPROPRIATE TO RENEW REPRESENTATIONS MADE IN JANUARY. ASSUMING UAR IS PREPARED TO SUPPORT CANADIAN POSITION IN WHOLE OR IN PART, YOU SHOULD EXPRESS HOPE INSTRUCTIONS WILL INCLUDE REF TO UAR DELS POSITION ON ARTICLE 5, INCLUDING PROCEDURAL VOTE ON OUR RX REQUEST FOR SEPARATE VOTE ON PARA 2. THIS PROCEDURAL VOTE IS OF PRIME IMPORTANCE TO SUCCESS OF OUR EFFORTS TO DELETE PARA. 2.

DISTRIBUTION
LOCAL/LOCALE NO STANDARD

ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	APPROVED/AUTORISE
SIG. J.S. STANFORD-ZS	LEGAL	25406	SIG. M. D. COPITHORNE J.A. BEDSLEY

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

Tel. filo, diary, filo, div.diary, JSS

MESSAGE

DATE	FILE/DOSSIER	SECURITY SECURITE
7 MAR/69	20-3-1-6	RESTRICTED
	37	

FM/DE: EXTERNL OTT

TO/A	NO	PRECEDENCE
TUNIS	L-349	ROUTINE

INFO

REF YOURTEL 42-JAN 22/69

SUB/SUJ LAW OF TREATIES CONF.-ARTICLE 5

TUNISIANS ARE PRESUMABLY NOW PREPARING INSTRUCTIONS FOR THEIR DEL TO LAW OF TREATIES CONF. SECOND SESSION. IF YOU CONSIDER IT APPROPRIATE, PLEASE TAKE EARLY OPPORTUNITY TO REMIND TUNISIANS INFORMALLY OF YOUR EARLIER DISCUSSIONS TO ASSURE INSTRUCTIONS INCLUDE REF TO TUNISIAN DELS POSITION ON ARTICLE 5, INCLUDING PROCEDURAL VOTE ON OUR REQUEST FOR EXX SEPARATE VOTE ON PARA 2. THIS PROCEDURAL VOTE IS OF PRIME IMPORTANCE TO SUCCESS OF OUR EFFORTS TO DELETE PARA 2.

DISTRIBUTION
LOCAL/LOCALE

NO STANDARD

ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	APPROVED/AUTORISE
SIG. J.S.STANFORD:ZS	LEGAL	25406	SIG. M. D. COPITHORN J.A.DEESLEY

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

Tel.File, file, diary, div.diary, JSS

MESSAGE

FM/DE: EXTERNL OTT BANGKOK	DATE: 7 MAR/69	FILE/DOSSIER: 20--3-1-6 / 37	SECURITY SECURITE: RESTRICTED
TO/A: BANGKOK		NO: L-348	PRECEDENCE: ROUTINE
INFO			

REF YOURTEL 25-JAN.10/69

SUB/SUJ LAW OF TREATIES CONF.-ARTICLE 5

THAI AUTHORITIES ARE PRESUMABLY NOW PREPARING INSTRUCTIONS FOR THEIR DEL TO LAW OF TREATIES CONF. SECOND SESSION. IF YOU CONSIDER IT APPROPRIATE, PLEASE TAKE EARLY OPPORTUNITY TO REMIND THAI OFFICIALS INFORMALLY OF YOUR EARLIER DISCUSSIONS TO ASSURE INSTRUCTIONS INCLUDE REF TO THAI DELS POSITION ON ARTICLE 5, INCLUDING PROCEDURAL VOTE ON OUR REQUEST FOR SEPARATE VOTE ON PARA 2. THIS PROCEDURAL VOTE IS OF PRIME IMPORTANCE TO SUCCESS OF OUR EFFORTS TO DELETE PARA 2.

DISTRIBUTION
LOCAL/LOCALE

No STD.

ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	APPROVED/AUTORISE
SIG JSSTANFORD:ZS	LEGAL	25406	SIG A. D. COPITHORNE J.A.BEESLEY

EXT 18/BIL (REV 8/64)
(COMMUNICATIONS DIV)

Tel File
File, diary, div.diary, JSS

MESSAGE

DATE	FILE/DOSSIER	SECURITY SECURITE
7 MAR/69	20-3-1-6	RESTRICTED
	37	

FM/DE EXTERNL OTT

TO/A MADRID

NO	PRECEDENCE
L-347	ROUTINE

INFO

REF YOURTEL 1208-SEPT.30/68

SUB/SUJ LAW OF TREATIES CONF.-ARTICLE 5

SPANISH ARE PRESUMABLY NOW PREPARING INSTRUCTIONS FOR THEIR DEL TO LAW OF TREATIES CONF.SECOND SESSION. IN VIEW OF LAPSE OF TIME SINCE YOUR DISCUSSIONS WITH OFFICIALS LAST SEPT., PLEASE TAKE EARLY OPPORTUNITY TO REMIND THEM INFORMALLY OF YOUR EARLIER DISCUSSIONS TO ASSURE INSTRUCTIONS INCLUDE REF TO SPANISH DELS POSITION ON ARTICLE 5, INCLUDING PROCEDURAL VOTE ON OUR REQUEST FOR SEPARATE VOTE ON PARA 2. THIS PROCEDURAL VOTE IS OF PRIME IMPORTANCE TO SUCCESS OF OUR EFFORTS TO DELETE PARA 2.

DISTRIBUTION
LOCAL/LOCALE

NO STD.

ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	APPROVED/AUTORISE
SIG JSSTANFORD:ZS	LEGAL	25406	SIG M. D. COPITHORNE J.A.BEESLEY

EXT 18/BIL (REV 8/64)
(COMMUNICATIONS DIV)

Tel.file, file, diary, div.diary, JSS

MESSAGE

	DATE	FILE/DOSSIER	SECURITY SECURITE
FM/DE: EXTERNL OTT	7 MAR/69	20-3-1-6 / 37	RESTRICTED

	NO	PRECEDENCE
TO/A: ROME	L-346	ROUTINE
INFO		

REF YOURTEL 1539 DEC 30/68

SUB/SUJ LAW OF TREATIES CONF.-ARTICLE 5 - SAN MARINO

SAN MARINO OFFICIALS ARE PRESUMABLY NOW PREPARING INSTRUCTIONS FOR THEIR DEL TO LAW OF TREATIES CONF. SECOND SESSION. IN VIEW OF ABSENCE OF REPLY TO YOUR EARLIER REPRESENTATIONS, PLEASE TAKE EARLY OPPORTUNITY TO REMIND SAN MARINO AUTHORITIES OF YOUR REPRESENTATIONS TO ASSURE INSTRUCTIONS INCLUDE REF TO SAN MARINO DELS POSITION ON ARTICLE 5, INCLUDING PROCEDURAL VOTE ON OUR REQUEST FOR SEPARATE VOTE ON PARA 2. THIS PROCEDURAL VOTE IS OF PRIME IMPORTANCE TO SUCCESS OF OUR EFFORTS TO DELETE PARA 2.

DISTRIBUTION
LOCAL/LOCALE

NO STD.

ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	APPROVED/AUTORISE
SIG JSSTANFORD:ZS	LEGAL	25406	SIG D. CORNE / J.A. BEESLEY

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

file, diary, div.diary, JSS
Tel. File

MESSAGE

DATE	FILE/DOSSIER	SECURITY SECURITE
7 MAR/69	20-3-1-6	RESTRICTED
	37	

FM/DE EXTERNL OTT

TO/A	NO	PRECEDENCE
SAIGON	L-345	ROUTINE

INFO

REF YOURTEL 1097 - OCT.1/68

SUB/SUJ LAW OF TREATIES CONF.-ARTICLE 5

SOUTH VIETNAMESE ARE PRESUMABLY NOW PREPARING INSTRUCTIONS FOR THEIR DEL TO LAW OF TREATIES CONFERENCE SECOND SESSION. IN VIEW OF LAPSE OF TIME SINCE YOUR DISCUSSIONS WITH OFFICIALS, PLEASE TAKE EARLY OPPORTUNITY TO REMIND THEM INFORMALLY OF YOUR EARLIER DISCUSSIONS TO ASSURE INSTRUCTIONS INCLUDE REF TO SOUTH VIETNAMESE DELS POSITION ON ARTICLE 5, INCLUDING PROCEDURAL VOTE ON OUR REQUEST FOR ~~EEX~~ SEPARATE VOTE ON PARA 2. THIS PROCEDURAL VOTE IS OF PRIME IMPORTANCE TO SUCCESS OF OUR EFFORTS TO DELETE PARA 2.

DISTRIBUTION
LOCAL/LOCALE NO STD.

ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	APPROVED/AUTORISE
SIG JSSTANFORD:ZS	LEGAL	25406	SIG J.A.BEESLEY/PITHORNE

EXT 18/BIL (REV 8/64)
(COMMUNICATIONS DIV)

file, diary, div.diary, JSS
Tel.file

MESSAGE

DATE	FILE/DOSSIER	SECURITY SECURITE
7 MAR/69	20-3-1-6 37	RESTRICTED

FM/DE XXXXXX EXTERNL OTT

NO	PRECEDENCE
L-344	ROUTINE

TO/A LISBON

INFO

REF YOURLET 338-OCTOBER 10/68

SUB/SUJ LAW OF TREATIES CONF.-ARTICLE 5

PORTUGUESE ARE PRESUMABLY NOW PREPARING INSTRUCTIONS FOR THEIR DEL TO LAW OF TREATIES CONF. SECOND SESSION. IN VIEW OF LAPSE OF TIME SINCE YOUR DISCUSSIONS WITH PORTUGUESE OFFICIALS LAST OCTOBER, PLEASE TAKE EARLY OPPORTUNITY TO REMIND THEM INFORMALLY OF YOUR EARLIER DISCUSSIONS TO ASSURE INSTRUCTIONS INCLUDE REF. TO PORTUGUESE DELS POSITION ON ARTICLE 5, INCLUDING PROCEDURAL VOTE ON OUR REQUEST FOR SEPARATE VOTE ON PARA 2. THIS PROCEDURAL VOTE IS OF PRIME IMPORTANCE TO SUCCESS OF OUR EFFORTS TO ~~DRXXX~~ DELETE PARA 2.

DISTRIBUTION
LOCAL/LOCALE NO STD.

ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	APPROVED/AUTORISE
SIG. JSSTANFORD:ZS	LEGAL	25406	SIG. M. D. COPITHORNE J.A.BEESLEY

EXT 18/BIL (REV 6/64)
(COMMUNICATIONS DIV)

File, diary, div.diary, JSS
tel.file

MESSAGE

DATE	FILE/DOSSIER	SECURITY SECURITE
7 MAR/69	20-3-1-6 / 37	RESTRICTED

FM/DE EXTERNL OTT

TO/A	NO	PRECEDENCE
MANILA	L-343	ROUTINE

INFO

REF YOURTEL 10-Jan. 17/69

SUB/SUJ LAW OF TREATIES CONF.-SECOND SESSION-ARTICLE 5

PHILIPPINE OFFICIALS ARE PRESUMABLY NOW PREPARING INSTRUCTIONS FOR THEIR DEL TO LAW OF TREATIES CONF. SECOND SESSION. AS THEY HAVE NOT YET REPLIED TO YOUR REPRESENTATIONS, PLEASE TAKE EARLY OPPORTUNITY TO REMIND THEM OF YOUR EARLIER DISCUSSIONS. ASSUMING PHILIPPINES WILL SUPPORT CANADIAN POSITION IN WHOLE OR IN PART, YOU SHOULD EXPRESS HOPE THAT INSTRUCTIONS WILL INCLUDE REFERENCE TO PHILIPPINE POSITION ON ARTICLE 5, INCLUDING PROCEDURAL VOTE ON OUR REQUEST FOR SEPARATE VOTE ON PARA 2. THIS PROCEDURAL VOTE IS OF PRIME IMPORTANCE TO SUCCESS OF OR EFFORTS TO DELETE PARA 2.

DISTRIBUTION
LOCAL/LOCALE

NO STD.

ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	APPROVED/AUTORISE
SIG JSSTANFORD:ZS	LEGAL	25406	M. D. COPITHORNE SIG J.A.BEESLEY

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

file, diary, div.diary, JSS
Tel.file

MESSAGE

DATE	FILE/DOSSIER	SECURITY SECURITE
7 MAR/69	20-3-1-6 37	RESTRICTED

FM/DE EXTERNL OTT

	NO	PRECEDENCE
TO/A ISLAMABAD	L-342	ROUTINE
INFO		

REF YOURTEL 37 JAN 14/69

SUB/SUJ LAW OF TREATIES CONF.-ARTICLE 5

PAKS ARE PRESUMABLY NOW PREPARING INSTRUCTIONS FOR THEIR DEL TO LAW OF TREATIES CONF. SECOND SESSION. AS PAK AUTHORITIES HAVE NOT YET INDICATED THEIR POSITION ON ARTICLE 5, PLEASE TAKE EARLY OPPORTUNITY TO RENEW YOUR REPRESENTATIONS. ASSUMING PAKS WILL SUPPORT CANADIAN POSITION IN WHOLE OR IN PART, YOU SHOULD EXPRESS HOPE INSTRUCTIONS WILL INCLUDE REFERENCE TO ARTICLE 5, INCLUDING PROCEDURAL VOTE ON OUR REQUEST FOR SEPARATE VOTE ON PARA 2. THIS PROCEDURAL VOTE IS OF PRIME IMPORTANCE TO SUCCESS OF OUR EFFORTS TO DELETE PARA 2.

DISTRIBUTION
LOCAL/LOCALE

NO STD.

ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	APPROVED/AUTORISE
SIG JSSTANFORD:ZS	LEGAL	25406	M. D. COPITHORNE SIG J.A.BEESLEY

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

file, diary, div.diary, JSS
tel.file

MESSAGE

DATE	FILE/DOSSIER		SECURITY SECURITE
7 MAR/69	20-3-1-6		RESTRICTED
	37		

FM/DE EXTERNL OTT

NO	PRECEDENCE
L-340	ROUTINE

TO/A PRETORIA

INFO

REF YOUR LETTER NO.9 JAN.9/69

SUB/SUJ LAW OF TREATIES CONF.-ARTICLE 5

SOUTH AFRICANS ARE PRESUMABLY NOW PREPARING INSTRUCTIONS FOR THEIR DEL TO LAW OF TREATIES CONF SECOND SESSION. PLEASE TAKE EARLY OPPORTUNITY TO REMIND SOUTH AFRICAN OFFICIALS INFORMALLY OF YOUR EARLIER DISCUSSIONS TO ASSURE INSTRUCTIONS INCLUDE REF TO SOUTH AFRICAN DELS POSITION ON ARTICLE 5, INCLUDING PROCEDURAL VOTE ON OUR REQUEST FOR SEPARATE VOTE ON PARA 2. THIS PROCEDURAL VOTE IS OF PRIME IMPORTANCE TO SUCCESS OF OUR EFFORTS TO DELETE PARA 2.

2... YOU MAY ALSO CONSIDER IT APPROPRIATE TO SEND FOLLOW-UP LETTER TO LESOTHO AUTHORITIES.

DISTRIBUTION
LOCAL/LOCALE NO STD.

ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	APPROVED/AUTORISE
SIG JSSTANFORD:ZS	LEGAL	25406	SIG M.D. COPPTHORNE JABEESLEY

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

file, diary, div.diary, jss.
tel file.

MESSAGE

DATE	FILE/DOSSIER	SECURITY SECURITE
~~6 MARCH~~ 1969	~~20-3-1-6~~ 20-3-1-6	RESTRICTED
	37	

FM/DE: TERNL OTT ~~EXTXX~~

TO/A: SANTIAGO

NO: L-325

PRECEDENCE: ~~ROUTINE~~

INFO:

~~YOURLET 311 NOV.12/68~~

REF:

SUB/SUJ: LAW OF TREATIES CONF.-ARTICLE 5

CHILEANS ARE PRESUMABLY NOW PREPARING INSTRUCTIONS FOR THEIR DEL TO LAW OF TREATIES CONF. SECOND SESSION. IN VIEW OF LAPSE OF TIME SINCE YOUR DISCUSSIONS WITH VARGAS, PLEASE TAKE EARLY OPPORTUNITY TO REMIND CHILEANS INFORMALLY OF YOUR EARLIER DISCUSSIONS TO ASSURE INSTRUCTIONS INCLUDE REFERENCE TO CHILEAN DELS POSITION ON ARTICLE 5, INCLUDING PROCEDURAL VOTE ON OUR REQUEST FOR SEPARATE VOTE ON PARA 2. THIS PROCEDURAL VOTE IS OF PRIME IMPORTANCE TO SUCCESS OF OUR EFFORTS TO DELETE PARA 2.

DISTRIBUTION
LOCAL/LOCALE

NO STANDARD

ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	APPROVED/AUTORISE
SIG. ~~J.S. STANFORD:ZS~~	LEGAL	25406	SIG. J. A. BEESLEY

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

File, diary, div.diary, JSS
Tel. file

MESSAGE

DATE	FILE/DOSSIER	SECURITY SECURITE
6 MAR 1969	20-3-1-6 / 37	RESTRICTED

FM/DE: EXTERNL OTT

TO/A	NO	PRECEDENCE
KUALA LUMPUR	L-323	ROUTINE

INFO

REF YOURTEL 68 - JAN 20/69

SUB/SUJ LAW OF TREATIES - ARTICLE 5

MALAYSIANS ARE PRESUMABLY NOW PREPARING INSTRUCTIONS FOR THEIR DEL TO LAW OF TREATIES CONF.SECOND SESSION. IF YOU THINK IT NECESSARY OR DESIRABLE, YOU MAY WISH TO TAKE EARLY OPPORTUNITY TO REMIND MALAYSIANS INFORMALLY OF YOUR EARLIER DISCUSSIONS TO ASSURE INSTRUCTIONS INCLUDE REFERENCE TO MALAYSIAN DELS POSITION ON ARTICLE 5, INCLUDING PROCEDURAL VOTE ON OUR REQUEST FOR SEPARATE VOTE ON PARA.2. THIS PROCEDURAL VOTE IS OF PRIME IMPORTANCE TO SUCCESS OF OUR EFFORTS TO DELETE PARA.2.

2. YOU MAY ALSO CONSIDER IT DESIRABLE TO WRITE SINGAPORE AND BURMESE OFFICIALS WITH WHOM YOU HAVE DISCUSSED ARTICLE 5 TO ASSURE THAT THEIR REPS INSTRUCTIONS DEAL WITH ARTICLE 5.

DISTRIBUTION
LOCAL/LOCALE

NO STANDARD

ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	APPROVED/AUTORISE
SIG. JSSTANFORD/ss	Legal	25406	SIG. J. A. BEESLEY J.A.Beesley

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

003729

file, diary, div.diary, JSS
Tel file.

MESSAGE

DATE	FILE/DOSSIER	SECURITY SECURITE
6 MAR. 1969	20-3-1-6 / 37	RESTRICTED

FM/DE EXTERNL OTT

NO	PRECEDENCE
L 322	ROUTINE

TO/A LIMA

INFO

REF YOURTEL 22 - JAN 10/69

SUB/SUJ LAW OF TREATIES CONFERENCE -ARTICLE 5-PERU & BOLIVIA

PERUVIANS ARE PRESUMABLY NOW PREPARING INSTRUCTIONS FOR THEIR DELEGATION TO LAW OF TREATIES CONF. SECOND SESSION. PLEASE TAKE EARLY OPPORTUNITY TO REMIND DR. PEREZ OF YOUR EARLIER DISCUSSIONS TO ASSURE INSTRUCTIONS INCLUDE REFERENCE TO PERUVIAN DELS POSITION ON ARTICLE 5, INCLUDING PROCEDURAL VOTE ON OUR REQUEST FOR SEPARATE VOTE ON PARA 2. THIS PROCEDURAL VOTE IS OF PRIME IMPORTANCE TO SUCCESS OF OUR EFFORTS TO DELETE PARA 2.

2. BOLIVIANS ARE PRESUMABLY ALSO NOW PREPARING INSTRUCTIONS FOR THEIR DELEGATION TO SECOND SESSION. IT IS THEREFORE OF CONSIDERABLE IMPORTANCE THAT, IF YOU HAVE NOT ALREADY DONE SO, YOU MAKE REPRESENTATIONS TO BOLIVIAN AUTHORITIES AS SOON AS POSSIBLE BY WHATEVER MEANS ARE AVAILABLE TO YOU. YOUR REPRESENTATIONS SHOULD LAY PARTICULAR STRESS ON OUR REQUEST FOR SEPARATE VOTE ON PARA 2 FOR REASONS INDICATED ABOVE.

DISTRIBUTION
LOCAL/LOCALE

NO STD.

ORIGINATOR/REDACTEUR	DIVISION	TELEPHONE	APPROVED/AUTORISE
SIG. JSSTANFORD:ZS	Legal	2-5406	SIG. J. A. BEESLEY J. A. BEESLEY

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

file, diary, div.diary, J.S.S.
tel. file

MESSAGE

	DATE	FILE/DOSSIER	SECURITY SECURITE
FM/DE: EXTERNL OTT	6 Mar 1969	20-3-1-6 / 37	RESTRICTED

	NO	PRECEDENCE
TO/A: CÒLOMBO CEYLON	L-324	ROUTINE
INFO		

REF YOURLET -JAN.5/69

SUB/SUJ ~~XXX~~ LAW OF TREATIES CONF.-ARTICLE 5

CEYLONESE ARE PRESUMABLY NOW PREPARING INSTRUCTIONS FOR THEIR DEL TO LAW OF TREATIES CONF SECOND SESSION. IF YOU CONSIDER IT DESIRABLE, PLEASE TAKE EARLY OPPORTUNITY TO REMIND CEYLONESE INFORMALLY OF YOUR EARLIER DISCUSSIONS TO ASSURE INSTRUCTIONS INCLUDE REFERENCE TO CEYLONESE DELS POSITION ON ARTICLE 5, INCLUDING PROCEDURAL VOTE ~~M~~ ON OUR REQUEST FOR SEPARATE VOTE ON PARA 2. THIS PROCEDURAL VOTE IS OF PRIME IMPORTANCE TO SUCCESS OF OUR EFFORTS TO DELETE PARA 2.

DISTRIBUTION
LOCAL/LOCALE

NO STD.

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

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

file, diary, div.diary, jss
tel. file

MESSAGE

DATE	FILE/DOSSIER	SECURITY SECURITE
6 Mar. 1969	20-3-1-6 / 37	RESTRICTED

FM/DE EXTERNL OTT

NO	PRECEDENCE
L-328	ROUTINE

TO/A KINSHASA

INFO

REF YOURTEL 89 - JAN.24/69

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

CONGOLESE ARE PRESUMABLY NOW PREPARING INSTRUCTIONS FOR THEIR DEL TO LAW OF TREATIES CONFERENCE SECOND SESSION. PLEASE TAKE EARLY OPPORTUNITY TO REMIND CONGOLESE OFFICIALS OF YOUR EARLIER DISCUSSIONS TO ASSURE INSTRUCTIONS INCLUDE REFERENCE TO CONGOLESE DELS POSITION ON ARTICLE 5. YOU SHOULD INFORM CONGOLESE WE ATTACH GREAT IMPORTANCE TO PROCEDURAL VOTE ON OUR REQUEST FOR SEPARATE VOTE ON PARA 2 AND EXPRESS HOPE THAT THEY WILL INSTRUCT THEIR DEL TO SUPPORT OUR REQUEST FOR SEPARATE VOTE.

DISTRIBUTION NO STD.
LOCAL/LOCALE

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

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

file, diary, div.diary, JSS
tel.file.

MESSAGE

DATE	FILE/DOSSIER		SECURITY SECURITE
6 MAR 1969	20-3-1-6	37	RESTRICTE

FM/DE EXTERNL OTT

NO	PRECEDENCE
L-327	ROUTINE

TO/A SAN JOSE

INFO

REF YOURTEL 13 - Jan. 10/69

SUB/SUJ LAW OF TREATIES CONF. ARTICLE 5

COSTA RICANS ARE PRESUMABLY NOW PREPARING INSTRUCTIONS FOR THEIR DEL TO LAW OF TREATIES CONF. SECOND SESSION. IN VIEW OF ABSENCE OF COSTA RICAN REPLY TO YOUR REPRESENTATIONS, PLEASE TAKE EARLY OPPORTUNITY TO RAISE QUESTION WITH COSTA RICAN AUTHORITIES AND SECURE THEIR REACTION TO YOUR REQUEST FOR SUPPORT OF CANADIAN POSITION ON ARTICLE 5.

2. ASSUMING COSTA RICANS ARE PREPAR~~ING~~ED TO SUPPORT CANADIAN POSITION IN WHOLE OR IN PART, YOU SHOULD EXPRESS HOPE THAT INSTRUCTIONS TO THEIR DEL WILL INCLUDE REFERENCE TO ARTICLE 5. YOU SHOULD STRESS THAT WE ATTACH PARTICULAR IMPORTANCE TO THE PROCEDURAL VOTE ON OUR REQUEST FOR SEPARATE VOTE ON PARA. 2. THIS PROCEDURAL VOTE IS OF PRIME IMPORTANCE TO SUCCESS OF OUR EFFORTS TO DELETE PARA. 2.

3. PLEASE ALSO MAKE SIMILAR REPRESENTATIONS TO HONDURAS AND NICARAGUA, EITHER PERSONALLY OR BY LETTER AS SOON AS POSSIBLE.

DISTRIBUTION
LOCAL/LOCALE

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

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

file, diary, div.diary, JSS
Tel.File

MESSAGE

DATE	FILE/DOSSIER	SECURITY SECURITE
6 MAR/69	20-3-1-6 / 37	RESTRICTED

FM/DE: EXTERNL OTT

TO/A	NO	PRECEDENCE
BUENOS AIRES	L-321	ROUTINE

INFO

REF YOURTEL 1214 DEC.6/68

SUB/SUJ LAW OF TREATIES CONF.-ARTICLE 5

ARGENTINIANS ARE PRESUMABLY NOW PREPARING INSTRUCTIONS FOR THEIR DELEGATION TO LAW OF TREATIES CONFERENCE SECOND SESSION. IN VIEW OF LAPSE OF TIME SINCE YOUR DISCUSSIONS WITH DELA GUARDIA AND CANDIOTTI, PLEASE TAKE EARLY OPPORTUNITY TO REMIND THEM INFORMALLY OF YOUR EARLIER DISCUSSIONS IN ORDER TO ASSURE THEIR INSTRUCTIONS INCLUDE REFERENCE TO ARGENTINIAN DELS POSITION ON ARTICLE 5, INCLUDING PROCEDURAL VOTE ON OUR REQUEST FOR SEPARATE VOTE ON PARA 2. THIS PROCEDURAL VOTE IS OF PRIME IMPORTANCE TO SUCCESS OF OUR EFFORTS TO DELETE PARA 2.

DISTRIBUTION
LOCAL/LOCALE

NO STANDARD

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

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

ACTION COPY

file 20-3-1-6

FM ANKRA MAR5/69 CONFD NO/NO STANDARD

TO EXTER 288 PRIORITY

INFO TT COPEN DE HAGUE

REF MYTEL 230 FEB20

LAW OF TREATIES CONFERENCE

I SAW HAYTA THIS MORNING. HE SAID HE HAD REVIEWED TURK POSITION ON ARTICLE 5(2) WHICH, AS EXPECTED, WAS RELATED IN PART BUT NOT/NOT SOLELY TO TURK GOVTS CYPRUS POLICY. HE RECOGNIZED THAT, AS WERSHOF HAD EXPLAINED TO HIM, OMISSION OF THIS PARA WOULD NOT/NOT IN ANY REAL SENSE DETRACT FROM WHATEVER VIEWS TURK GOVT HELD ABOUT POTENTIAL CAPACITY OF MEMBER OF A NATL FEDERAL UNION IN CYPRUS TO CONCLUDE TREATIES. HOWEVER, TURK POSITION HAD ALSO BEEN FORMULATED WITH A VIEW TO MAINTAINING CONSISTENCY OF OVERALL CONCEPTS EMBODIES IN PROPOSED LAW OF TREATIES WITH JURIDICIAL CONCEPTS WHICH TURK REPUBLIC HAS ESPOUSED SINCE ITS INCEPTION. IN RESPONSE TO MY QUESTION WHETHER THERE WAS ANY SPECIFIC PRECEDENT FOR CONCEPT FORMULATED IN ARTICLE 5(2) WHICH CALLED FOR CONSISTENCY ON PART OF TURK GOVT, HAYTA REPLIED IN THE NEGATIVE SAYING THAT HE SIMPLY WANTED ME TO KNOW THAT, IF TURK FOUND ON FURTHER REVIEW IT COULD NOT/NOT SUPPORT OUR POSITION, IT WAS NOT/NOT NECESSARILY BECAUSE OF CYPRUS CONSIDERATIONS ALONE; I TOOK THIS TO MEAN THAT TURK GOVT WILL PROBABLY MAINTAIN ITS POSITION ON SUBSTANCE OF ARTICLE 5(2) BUT IS RELUCTANT TO BE DRAWN INTO ARGUMENT PUT BY WERSHOF TO HAYTA AT RECENT MTG IN PARIS.

2. IN LIGHT OF DISAPPOINTING REACTION TO OUR REQUEST FOR SUPPORT ON MATTER OF SUBSTANCE, I EXPRESSED HOPE THAT TURKS WOULD AT LEAST SEE

...2

18/7/3

THEIR WAY CLEAR TO SUPPORTING US ON MATTER OF PROCEDURE. I POINTED OUT THAT THERE WERE GOOD GROUNDS FOR SEPARATE CONSIDERATION OF TWO PARAS OF ARTICLE 5 SINCE THEY RELATED TO DIFFERENT THINGS, FIRST PARA RELATING TO CAPACITY OF INDEPENDENT SOVEREIGN STATES AND SECOND TO CAPACITY OF ENTITIES WHICH, AS MAJORITY VOTE AT FIRST SESSION HAD CONFIRMED, WERE NOT/NOT INDEPENDENT SOVEREIGN STATES BUT CONSTITUENT MEMBERS OF SUCH STATES. HAYTA SAID THAT, OF COURSE, IN A CASE SUCH AS THIS, ONE COULD NOT/NOT TOTALLY DIVORCE MATTERS OF SUBSTANCE FROM MATTERS OF PROCEDURE. NEVERTHELESS, HE COULD TELL ME ON CONFD BASIS AND WITHOUT PREJUDICE TO FINAL POSITION TURK MIGHT TAKE ON THIS POINT, THAT THEY WERE TRYING TO SEE WHETHER THEY COULD MEET US ON OUR PROCEDURAL REQUEST. HE HOPED TO BE ABLE TO LET ME KNOW OUTCOME OF THEIR CONSIDERATION BEFORE END OF MONTH. I PUT IT TO HIM THAT, EVEN IF AS A RESULT OF DIVERGENT ASSESSMENTS OF OUR RESPECTIVE NATL INTEREST, TURKS FOUND THAT THEY COULD NOT/NOT ACCOMMODATE US ON POINT OF SUBSTANCE, I VERY MUCH HOPED THAT, AS FRIENDS AND ALLIES, THEY COULD TAKE ACCOUNT OF VERY GREAT IMPORTANCE WHICH CDA ATTACHED TO THIS MATTER BY ACCOMMODATING US ON POINT OF PROCEDURE. I SAID I KNEW THAT CDN AUTHORITIES WOULD GREATLY APPRECIATE TURK SUPPORT FOR A REQUEST TO HAVE SEPARATE VOTE ON PARA2.

3. HAYTA ASKED WHETHER I HAD ANY INFO ON REACTIONS TO OUR APPROACHES IN OTHER CAPITALS. I SAID I DID NOT/NOT AND THAT I DID NOT/NOT EXPECT TO BE SUBSTANTIVELY INVOLVED IN EXCHANGES WHICH WERE BEING CONDUCTED ON THIS MATTER BETWEEN CDN AUTHORITIES AND OUR OTHER REPS ABROAD

GOLDSCHLAG

Finance/A.J.Young/mjl
27395

EXTERNAL AFFAIRS

AFFAIRES EXTÉRIEURES

file 20-3-1-6

TO / À: Legal Division

SECURITY / Sécurité: RESTRICTED

DATE: March 5, 1969

FROM / De: Finance Division

NUMBER / Numéro:

REFERENCE / Référence: Your memorandum of February 26, 1969

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

SUBJECT / Sujet: U.N. Conference on the Law of Treaties Second Session, Vienna April 9-May 21, 1969
Entertainment expenses

ENCLOSURES / Annexes

DISTRIBUTION

We have noted your comments on the importance of the negotiations at the 2nd Session of the U.N. Conference and the need for representational funds.

2. The allotment of hospitality funds normally has a direct relationship to the size and composition of the Delegation as well as its purpose. The Treasury Board directive on Hospitality places certain restrictions on the provision of hospitality and excludes from reimbursement of hospitality expenses to persons ".... who, pursuant to the Foreign Service Regulations or any other enactment, is paid or is eligible to be paid an allowance part or all of which is intended to be used for entertaining or representation." Thus, where a Head of Post or any other officer serving abroad is named as Head of Delegation or forms part of a delegation, he cannot be reimbursed from conference funds for hospitality extended by him. It also would be considered inappropriate for delegation hospitality, other then casual entertainment, to be extended by a member of the Delegation other than the Head of Delegation. In these circumstances officers sent from Ottawa to serve on this delegation normally would be restricted to extending casual hospitality at the discretion of the Head of Delegation and the total amount allocated for this purpose must take into account the number and seniority of other officers on the Delegation who are in receipt of representational allowances.

3. Since the conference will extend for a period of approximately two months, we assume that more than the usual amount of casual entertainment will be required. Nevertheless, with only two members of the Delegation eligible to be reimbursed for hospitality, the allocation of funds for entertainment will have to be considered carefully.

4. In your memorandum under reference, you asked for a sum larger than $500.00 allocated for the first session. If an official reception is to be held, presumably Mr. Wershof, as Head of Delegation, would be the host and we would be unable to reimburse him under present regulations.

. . . 2

Ext. 407A/Bil.

6.6.3

5. You also might wish to bear in mind the per capita cost limitations imposed by the Treasury Board in relation to hospitality expenses. These are:

Luncheon	$5.00	Canadian
Dinner	8.00	"
Reception	3.00	"
Luncheon - Reception	7.00	"
Dinner - Reception	10.00	"

6. There is no limitation on the number of guests entertained, other than the amount allocated for hospitality. Mr. Beesley, for example, could entertain 10 guests at a luncheon - reception and be reimbursed up to $70.00 or 10 guests at a dinner-reception and be reimbursed up to $100.00.

7. In view of the above considerations, we would appreciate a more precise estimate of the amount and type of hospitality Messrs. Beesley and Stanford anticipate they may have to extend at this Conference before allocating funds for this purpose.

Finance Division

20-3-1-6

37 | MR

ACTION COPY

L

FM BRU MAR5/69 RESTR

TO EXTER 423

BAG COPEN VIENN DE OTT

REF YOURTEL L252 FEB20 AND OURTEL 363 FEB26

LAW OF TREATIES CONFERENCE-ARTICLE5-LUXEMBOURG

WE HAVE HAD A FURTHER WORD WITH HOSTERT OF LUXEMBOURG MFA WHO INFORMS US LUXEMBOURG WILL SUPPORT CDN POSITION ON ARTICLE5.

2. HOSTERT REQUESTED THAT CDN DEL GET IN TOUCH WITH HIM PERSONALLY A VIENN CONFERENCE.

34/35/3

Becky Stanford

cc TO — P.A. BISSONNETTE

file JM 6 III

good news

ACTION COPY
20-3-1-6
1 MR

FM PSPAN MAR5/69 RESTR NO/NO STANDARD

TO EXTER 437

REF YOURTEL L2241 FEB18

LAW OF TREATIES CONF: BARBADOS ATTENDANCE

BARBADOS WILL BE REPRESENTED AT CONF AND I EXPECT TO MAKE REPRES-
ENTATIONS INCLUDING DELIVERY AIDE MEMOIRE NEXT TUE, MAR11

MCKINNEY

V

2.6.3

file, diary, div.diary
tel file, JSS

MESSAGE

DATE	20-3-FILE/DOSSIER	SECURITY SECURITE
5 MARCH 1969	20-3-1-6	RESTRICTED
	37	

FM/DE: EXTERNL OTT

TO/A: BEIRUT

NO	PRECEDENCE
L-211	PRIORITY

INFO

~~YOURTEL 215 MARCH 4~~

REF

SUB/SUJ: UN LAW OF TREATIES CONF-ARTICLE 5

JORDAN WAS NOT/NOT REPRESENTED AT FIRST SESSION (SEE OURTEL L-672 AUG.19/68).

DISTRIBUTION
LOCAL/LOCALE

NO STANDARD

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

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

Copy to Mr. Ford

ACTION COPY

5/III

20-3-1-6

MR.

FM BERUT MAR4/69 CONFD NO/NO STANDARD

TO EXTER 215 PRIORITY

UN LAW OF TREATIES CONF SECOND SESSION ARTICLE FIVE

GRATEFUL TO KNOW HOW JORDAN VOTED AT FIRST SESSION.

36/4/3

File

MESSAGE

DATE	FILE/DOSSIER		SECURITY SECURITE
MAR.3/69	20-3-1-6 37		RESTRICTED

FM/DE EXT/OTT

NO	PRECEDENCE
XL-377	ROUTINE

TO/A TUNIS

INFO

REF YOURTEL 150 MARCH 11

SUB/SUJ LAW OF TREATIES CONFERENCE ARTICLE 5

UNLESS YOU CONSIDER IT WOULD GIVE OFFENCE TO THE TUNISIANS, WE BELIEVE IT WOULD BE USEFUL FOR YOU TO DISCUSS MATTER AGAIN BRIEFLY WITH LEGAL ADVISOR IN ORDER TO ASSURE THAT UNDERTAKINGS WHICH HE GAVE YOU CONCERNING TUNISIA'S POSITION ON ARTICLE 5, INCLUDING PROCEDURAL VOTE, ARE INCLUDED IN INSTRUCTIONS TO TUNISIAN DEL AT VIENNA. WE AGREE ENTIRELY WITH YOUR SUGGESTION THAT YOUR APPROACH INCLUDE AN EXPRESSION OF OUR APPRECIATION FOR TUNISIAN ASSISTANCE AND A REFERENCE TO THE CONSIDERATIONS REFERRED TO IN OUR LETTER L-127 JAN. 20 WHICH HAVE CONVINCED US THAT EFFORT TO SEEK SATISFACTORY AMENDMENT TO PARAGRAPH 2 WOULD BE UNSUCCESSFUL.

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