FILE NO. 5475-AX-25-46

PLEASE KEEP ATTACHED TO TOP OF FILE

FILE CLOSED

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ALL FURTHER CORRESPONDENCE IS TO BE PLACED ON THE APPROPRIATE FILE WITHIN THE NEW FILE SERIES.

20-15-1

D.R.[illegible]/Europe/C.H.Bedard/Legal/Leg

26692

[illegible]
[illegible]
[illegible]
[illegible]con Services
Legal Div.
File
Daily
Diary

CONFIDENTIAL

August 24, 1983.

Mr. Fournier.
[illegible]
Division ordering

CONFIDENTIAL

Claire Carol French Ambassador's Demarche

On Friday afternoon the French Ambassador called on Mr. Codieux to inform us that [redacted] was now in St. Pierre and Miquelon, and that he had requested political asylum from the French authorities. In the course of the interview the Ambassador made the following points:

(a) France had no desire to keep [redacted] on French territory, nor did the French authorities wish to be faced with a demand for his extradition;

s.19(1)

(b) his authorities had considered the possibility of helping [redacted] to proceed to a third country (perhaps Spain), but this idea had now been discarded;

(c) the French Government would therefore be willing to co-operate in returning [redacted] to Canada, provided that they could be assured that the courts would not impose an unduly harsh sentence on him if he were found guilty.

I might add that this was the first contact the Department has had with the French Embassy on this matter since the latter's informal approach to us last week.

2. As you may know, [redacted] has been charged (in connection with the May 13 bombing of an IBM building in Montreal) with damaging property contrary to Section 372 of the Criminal Code and conspiracy to commit such damage, and with performing an act with intent to cause an explosion likely to result in serious bodily harm or death or damage to property contrary to Section 79 (1) (a), and with conspiracy to commit such an act. [redacted] has been out on bail for some time; his trial is not due until mid-September. Under the 1976 Treaty of Extradition between Great Britain and France, which would be relevant to this case, [redacted] could be liable for extradition on one or more of the above charges. It should be noted, however, that this treaty does not apply to political offences.

3. In keeping with your instructions on my memo of August [illegible] (copy attached), I complained to [redacted] present legal position along the lines of paragraph 2 above, adding that in our view there would be no cause for granting political asylum in his case unless and until a formal request for his extradition had been made. Furthermore

..2

BEST COPY AVAILABLE

told the Ambassador that, if at the time of his trial [redacted] jumped bail and he received a request from the Quebec authorities for his extradition, he did not see how he could avoid making this request of the French authorities. I assured the Ambassador that, in keeping with the high standards of Canadian justice, all persons charged with FLQ terrorist activities would be treated with exactly the same degree of consideration and fairness at their trials. I assured the Ambassador that we could give careful consideration to his demarche, and that I would be in touch with him again as soon as possible.

4. The Assistant Deputy Minister of Justice, Mr. MacDonald, has since called to inform me that, after a careful review of the situation, [redacted] was very strongly opposed to the granting of political asylum to [redacted]. I told MacDonald of M. Bousquet's demarche, and asked whether he thought that the fact that [redacted] had sought asylum on foreign territory would prejudice his case if he returned in time for trial. MacDonald's off-the-cuff reaction was that in these circumstances he could hardly conceive how this factor would work against Cinier. I am inclined to agree.

5. I do not believe that we should go as far as [redacted] suggests in that there are French citizens in that country who have been active in the OAS in respect of whom we might be faced with requests for extradition by the French authorities if the latter became aware of their presence here. By avoiding having to ask the French not to grant political asylum to Cinier's co-accused we could retain greater freedom of action for the future. I would therefore suggest that we merely tell the French Ambassador that we welcome their initiative to facilitate Cinier's return, but that we could, of course, give no formal assurances as to the sentence or otherwise of his sentence if he should eventually be convicted. At the same time I would propose that we tell M. Bousquet informally that, as far as [redacted] flight is concerned, we could hardly conceive that this fact would be held against him if he returns to Canada for his trial. Do you agree?

6. If [redacted] is returned, it is unlikely that he would apply for a Canadian passport (our records show that he does not hold one at present) since he would almost certainly wish to avoid giving notice of any possible intention to leave the country again. I would nevertheless suggest, if you agree, that the Passport Office be instructed to watch carefully for any such application from Cinier, and if one is received, to refer it to you.

MacBrien. Aug 26

Mr Chevrier thought we should indicate to Fr Amb that we would be agreeable to his suggestion of returning B.

Minister agreed.

Cadieux asked us to contact Macdonald - inform him of Minister's decision and suggest that steps might be taken to cancel B's bail on return.

I discussed this instruction with Bedard who undertook to pass on to MacDonald

J.A.H.

26 Aug. Don Christie. Justice.

Did not like the idea of suggesting changes in bail [illegible] Quebec. This is entirely their affair. Legal - Bedard - does not think it is our duty to inform Quebec through Justice of the time + place of B's landing in Cda.

On instructions from Cadieux.

26 Aug Phoned Christie myself - He said that he would have no objection to providing the time + date of B's arrival in Cda to Quebec Attorney General + adding the phrase: in case they may wish to make any changes in the bail arrangements.

(Does not want to get into the act more than necessary.)

26 Aug Phoned Paul Blanc + informed him of Ministers decision - + asked for prior info re place + time of B's arrival in Cda. He agreed. When he asked whether we had any preference regarding t + p - I said no but that we would assume that he would be handed in Quebec.

SEEN BY THE MINISTER

European

Aug 26/63

CONFIDENTIAL

August 24, 1963.

5475-AX-25-40

SSCA indicated on p.2 his agreement with paras 5 & 6

MEMORANDUM FOR THE MINISTER

[redacted]

On Friday afternoon the French Ambassador called on Mr. Cadieux to inform us that [redacted] was now in St. Pierre and Miquelon, and that he had requested political asylum from the French authorities. In the course of our interview the Ambassador made the following points:

s.19(1)

(a) France had no desire to keep [redacted] on French territory, nor did the French authorities wish to be faced with a demand for his extradition;

(b) his authorities had considered the possibility of helping [redacted] to proceed to a third country (perhaps Spain), but this idea had now been discarded;

(c) the French Government would therefore be willing to co-operate in returning [redacted] to Canada, provided that they could be assured that the courts would not impose an unduly harsh sentence on him if he were found guilty.

file D-7

I might add that this was the first contact the department has had with the French Embassy on this matter since the latter's informal approach to us last week.

2. As you may know, [redacted] has been charged (in connection with the May 13 bombing of an RCAF building in Montreal) with damaging property contrary to Section 372 of the Criminal Code and conspiracy to commit such damage, and with performing an act with intent to cause an explosion likely to result in serious bodily harm or death or damage to property contrary to Section 79 (1) (a), and with conspiracy to commit such an act. [redacted] has been out on bail for some time; his trial is not due until mid-September. Under the 1876 Treaty of Extradition between Great Britain and France, which would be relevant to this case, [redacted] could be liable for extradition on one or more of the above charges. It should be noted, however, that this treaty does not apply to political offenses.

3. In keeping with your instructions on our memo of August 20 (copy attached), we explained to [redacted] present legal position along the lines of paragraph 2 above, adding that in our view there would be no cause for granting political asylum in his case unless and until a formal request for his extradition had been made. We furthermore

..2

P.M.

26.8.3(US)

told the Ambassador that, if at the time of his trial [redacted] jumped bail and we received a request from the Quebec authorities for his extradition, we did not see how we could avoid making this request of the French authorities. We assured the Ambassador that, in keeping with the high standards of Canadian justice, all persons charged with FLQ terrorist activities would be treated with exactly the same degree of consideration and fairness at their trials. We assured the Ambassador that we would give careful consideration to his demarche, and that we would be in touch with him again as soon as possible.

4. The Assistant Deputy Minister of Justice, Mr. MacDonald, has since called to inform us that, after a careful review of the situation, [redacted] was very strongly opposed to the granting of political asylum to Bizier. We told MacDonald of M. Bousquet's demarche, and asked whether he thought that the fact that [redacted] had sought asylum on foreign territory would prejudice his case if he returned in time for trial. MacDonald's off-the-cuff reaction was that in these circumstances he could hardly conceive how this factor would work against Bizier. I am inclined to agree.

s.19(1)

5. I do not believe that we should go as far as [redacted] suggests in that there are French citizens in this country who have been active in the OAS in respect of whom we might be faced with requests for extradition by the French authorities if the latter became aware of their presence here. By avoiding having to ask the French not to grant political asylum in Bizier's case, we would retain greater freedom of action for the future. I would therefore suggest that we merely tell the French Ambassador that we welcome their initiative to facilitate [redacted] return, but that we could, of course, give no formal assurances as to the harshness or otherwise of his sentence if the should eventually be convicted. At the same time I would propose that we tell M. Bousquet informally that, as far as Bizier's flight is concerned, we could hardly conceive that this fact would be held against him if he returns to Canada for his trial. Do you agree?

6. If [redacted] is returned, it is unlikely that he would apply for a Canadian passport (our records show that he does not hold one at present) since he would almost certainly wish to avoid giving notice of any possible intention to leave the country again. I would nevertheless suggest, if you agree, that the Passport Office be instructed to watch carefully for any such application from Bizier, and if one is received, to refer it to you.

Agreed P.M.

N.A.R.

ACTION REQUEST

TO: 1) [redacted] ~~Gadieux~~
2) Legal Division
3)

DATE: August 22/63

LOCATION:

FROM: O/SSEA/

RE FILE NO.

FOR: ~~ANDRÉ COUVRETTE~~

	ACTION		NOTE & FORWARD
	APPROVAL		NOTE & RETURN
	COMMENTS		P.A. ON FILE
	DRAFT REPLY		REPLY DIRECTLY
	INFORMATION		REPLY, PLEASE
	INVESTIGATE AND REPORT		SEE ME, PLEASE
	INVESTIGATION		SIGNATURE
	MAKE.....COPIES		TRANSLATION
	MORE DETAILS		YOUR REQUEST
	NOTE AND FILE		.....

PREPARE MEMO TO:.....

REPLY FOR SIGNATURE OF:.....

REMARKS: Granting Asylum in France to Canadians Involved with the Quebec Separatist Movement

The Minister approved the recommendations in the attached memorandum, August 21, 1963.

000547

CGSB 6-GP-12 P.P.&S. CAT. 3433

Mr. Cadieux
European Div.

CONFIDENTIAL

Legal Div.

August 20, 1963.

MEMORANDUM FOR THE MINISTER

Granting Asylum in France to Canadians Involved with the Quebec Separatist Movement

Last week our Legal Division was informed by the French Embassy that three or four Canadians (unnamed) had applied for asylum in France because their continued stay in Canada was being made difficult due to their association with Quebec Separatist Movements. Before taking any action on these applications the French Government wishes to have the views of the Canadian Government on an informal basis.

2. At the end of the week a Montreal newspaper reported that [redacted] who had been charged in the Quebec Courts with the May 13 time-bombing of an RCAF building and released on bail a few weeks ago, had travelled to St. Pierre and Miquelon and had applied for political asylum. We have been in touch with the Department of Justice who are preparing a memorandum on the [redacted] for [redacted] Pending receipt of a copy of this memorandum, we have no direct information on Mr. Bizier's status.

3. There seem to be two questions which should concern us at present:

(1) What informal reply should be given to the French Embassy?

(2) What should be said to the press?

4. I am attaching a memorandum on the legal aspects of asylum and extradition. You will note that in international law a State has the right either to grant or refuse political asylum and is at liberty to do whatever it chooses within its own territory without reference to the wishes of other States, as long as its acts are not directly injurious to them. It is therefore clearly the responsibility of the French Government to decide on the applications which are received from Canadians. On the other hand, there is an extradition treaty in force between Canada and France under which the Canadian government can apply for the return of one of its citizens charged with an extraditable offence. Should such application be made in the case of [redacted] the French authorities would have to decide whether the offence with which he is charged, if extraditable, had sufficient political connotations to permit their granting him asylum.

... 2

s.19(1)

Minister approves recommendations
Aug 20

21.8.6(05)

5. While we do not as yet have full information, it would appear that [redacted] while freed on bail, has had no restriction placed on his movement by the Quebec courts. Therefore, at present he is not in default and will not be in default unless he fails to appear in court on the required date (in September). While we cannot forecast what action may be taken if [redacted] fails to appear in court on the required date, it is clear that, if the offence with which he is charged is an extraditable one under the treaty (which it appears to be), the decision to request his extradition - and the initiative in doing so - would fall upon the Attorney General of Quebec. The request for extradition would be sent to the Attorney General of Canada who in turn would ask us to forward it in the normal manner to the French Government.

s.19(1)

6. It seems clear that this Department has no requirement or even responsibility for taking the initiative in connection with these cases. In view of the delicacy of the problem involved, I have felt that it would be preferable to give no indication to the French Government as to how they should respond to the applications for asylum pending a decision of the Quebec Attorney General. The Department of Justice, however, considers that the French Government should be requested to take no action on the granting of political asylum in the case of [redacted] at least until a decision has been taken on whether a request for extradition should be made,- so as not to face us with a fait accompli which would render extradition proceedings more difficult if not impossible. I suggest that we might do this by indicating to the French Embassy that there would be no cause for their granting political asylum [redacted] unless and until a request for his extradition is submitted to them. Apart from this, I would suggest that we make no further response to the French Embassy's enquiry pending a clarification of the situation. Nor do I think it would be wise to give any additional indication to the French Government of our wishes concerning the three or four unnamed Canadians who have apparently applied for asylum.

O.K. P.M.

7. With regard to the press, we have up to the present taken the following line:

(1) The only information which is now available to the Department concerning [redacted] is from the newspapers. The Department has no confirmation that [redacted] has left Canada or is on French territory.

O.K. P.M.

(2) As a Canadian citizen, [redacted] is free to travel wherever he pleases and there is no requirement under Federal law for a person in his condition to seek permission to travel abroad unless, of course, the court, when granting him bail, issued any direction which would serve to curtail his movements. We are not aware that this was done in [redacted] If asked whether [redacted] will be extradited should he jump his bail, we are replying that this is a hypothetical question on which we cannot comment.

P.M.

... 3

(3) If we are asked whether [redacted] has been the subject of representations by the French Embassy, or by this Department to the French authorities, we are replying in the negative. (The French Embassy's approach was informal and did not concern Bizier explicitly).

(4) If asked whose responsibility it would be to extradite [redacted] we are replying that extradition would normally be requested by the Attorney General of Quebec to the Federal Department of Justice.

(5) We are giving no indication of what the Department's attitude would be if [redacted] were to be granted political asylum by the French authorities.

8. While you may consider that this general line is adequate for the present and until the situation is clarified, it may be envisaged that questions concerning the government's attitude toward the appropriateness of the French Government granting asylum to Canadians may be pressed either by correspondents or possibly in Parliament. You may wish to consider whether it will be sufficient to refer to the position in international law which gives the receiving State the right either to grant or to refuse asylum and which leaves the receiving state at liberty to do whatever it chooses within its own territory, without reference to the wishes of other States, as long as its acts are not directly injurious to them.

Do you agree?

M.C.

s.19(1)

Legal/C.M.Bedard/ap

DEPARTMENT OF EXTERNAL AFFAIRS

MEMORANDUM

TO: EUROPEAN DIVISION
U.N. DIVISION
D.L. (2) DIVISION
CONSULAR DIVISION

FROM: Legal Division

REFERENCE: Our Note for File of August 13, 1963

Security CONFIDENTIAL

Date August 20, 1963

File No. 5475-AX-25-40

SUBJECT: Granting Asylum in France to Canadians involved with the Quebec Separatist Movement

You will no doubt have received a copy of the note under reference in which we tell of the request received from the French Embassy for an informal expression of Canadian views on the eventual granting of asylum in France to Canadians involved with the Quebec Separatist Movement.

2. The situation with regard to asylum, from the standpoint of international law, may be summarized as follows:- a State has the right either to grant or to refuse political asylum; it is at liberty to do whatever it chooses within its own territory, without reference to the wishes of other States, as long as its acts are not directly injurious to them.(1) The right of sovereign States to grant asylum on their own territory is based on the principles of non-intervention and the absolute control of States within their own frontiers. Any State may therefore admit into its territory fugitives from justice who are nationals of another State.

3. Political asylum being left to the discretion of the receiving State and being based on the concept of the territorial sovereignty, it follows that there is no general principle of international law whereby a refugee could demand asylum as a matter of right; States are at liberty to refuse or to grant asylum. The right of asylum, it has been said, is, strictly speaking, "nothing but the competence of every State to allow a prosecuted alien to enter and to remain on its territory under its protection and thereby to grant asylum to him" (Oppenheim's International law, 8th Edition, Vol. I, page 678).

4. These principles do not mean, however, that the State granting asylum has no duties with regard to the State of which the political refugee is a national: "La terre d'asile ne doit pas être un lieu d'entreprise ou de complot contre ses droits ou intérêts; dès l'instant ou le fugitif pénètre sur le sol du pays étranger ce dernier doit faire due diligence pour empêcher "l'asilé", comme on dit quelquefois, de devenir une source de danger pour l'Etat contre lequel il cherche protection: un engagement formel pourrait être exigé du réfugié de s'abstenir de toute action politique contraire à son état; mieux encore une surveillance continue et, au besoin, une résidence fixe pourront lui etre

CIRCULATION

Mr. Cadieux
Mr. Wershof

(1) See: Hall "International Law" 8th Edition, page 264 and Departmental Circular Document No. B-45 of April 29, 1950

Ext.326A (6/56)

imposées" (Sibert "Traité de Droit international public" Vol. I Note 2, page 574).(2) On the other hand, the sovereignty of a State with regard to asylum may have been limited by the State concerned by multi-lateral convention establishing a right of asylum, by extradition treaties or by renunciations, with regard to certain categories of refugees of its sovereign right of granting asylum by way of a special provision in a multilateral or bilateral treaty. The only conventional tie of this nature existing between Canada and France and which could limit the Sovereignty of both countries in the field of asylum is the "Treaty between Great Britain and France for the mutual surrender of fugitive criminals" signed in Paris on August 14, 1876 and amended four times since.

5. It would appear, therefore, that, as long as the acts of those Canadians involved in the Separatist movement and who may be granted political asylum in France do not become directly injurious to Canada (3) and as long as their acts, while they were in Canada did not constitute offences extraditable (4) under the Extradition Treaty in force with France, France is entirely free (at least from the angle of international law) to deal with these refugees as it deems fit.

6. We should be grateful for your comments on the above points as well as the French Embassy's (Mr. Blanc) démarche. In particular it is proposed, if you agree, that we call Mr. Blanc in again and advise him orally along the lines of paragraph 5 of this Memorandum.

Legal Division

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(2) "For it is the duty of every state to prevent individuals living on its territory from endangering the safety of other States by organizing hostile expeditions or preparing common crimes against its head, members of its Government or its property. And, if a State grants asylum to a prosecuted alien, this duty becomes of special importance" (See Oppenheim "International Law" Vol. I 7th Edition page 618).

(3) Such acts as organizing hostile expeditions or preparing common crimes against Canada's Head, members of its Government or its property could be deemed directly injurious to Canada. However, as far as I know, the Separatist movement of Quebec does not advocate the use of such methods aimed at breaking the Canadian Confederation by force and it can be properly considered as a political secessionist movement. Perhaps the view of the RCMP and the Department of Justice should be sought on this. In any

(3) and (4) continued on page 3.

event, the assurance given by the Embassy (Mr. Blanc) that "France granted asylum to any political refugee on condition that the refugee would refrain from engaging in any further political activity as long as he remained in France" appears to cover adequately eventual openly seditious activities by "activistes".

(4) Under the Treaty (Article III), extraditable offences cover a wide range of offences, including most common crimes, such as murder, attempt to murder, manslaughter, wounding or inflicting greivous bodily harm, perjury, fraud, etc.

European/F.G. Hooton/MR

DEPARTMENT OF EXTERNAL AFFAIRS

MEMORANDUM

TO: The Under-Secretary of State for External Affairs

FROM: European Division

REFERENCE: Our Memorandum for the Minister of August 20

SUBJECT: Granting Asylum in France to Canadians Involved with the Quebec Separatist Movement - [redacted]

Security: CONFIDENTIAL

Date: August 22, 1963

File No.

We are attaching for your information a copy of the Department of Justice memorandum of August 20 on the [redacted]. While it takes the same general line as our memorandum under reference, we would draw your attention to the penultimate paragraph, which sets out in some detail the Department of Justice view on what should should be said to the French Embassy.

2. In the light of whatever comments the Minister may make on our memorandum, we shall no doubt have to take this Department of Justice view into consideration and ensure that the line we proposed to the Minister is adequate.

European Division.

s.19(1)

CIRCULATION
Legal Div.

Ext. 326 (6/56)

23.8.14(05)

5475-AX-25-10

RESTRICTED

EXTRACT from memorandum on "Soviet Observance of Diplomatic Courtesies and Privileges", Soviet Section, Foreign Office Research Department, July 1954

FILE COPY

The Question of Asylum in Diplomatic Premises arises from the foregoing. There has been no striking development in recent years which could be regarded as modifying Satow's dictum that "it is now an established doctrine in Europe that no right to give asylum to political refugees in the house of a diplomatic agent exists" (§ 201). Most Latin American States still grant foreign envoys the right to afford asylum to political refugees in time of revolution, but it is acknowledged that this right is merely based upon a local usage, and not upon a rule of International Law (Oppenheim § 390, Note 3; of Foreign Office circular to His Majesty's Representatives in Latin America of February 13, 1932, re-affirmed in 1944 (A S 5853/5853/51)). The United States, although not recognising a right to asylum, nevertheless permits its envoys to grant, at their discretion, "unsanctioned asylum" to a person in immediate danger in an "exceptional situation", such as "obviously illegal actions by the duly constituted authorities". (Feller and Hudson. A Collection of the Diplomatic and Consular Laws and Regulations of Various Countries, Vol. II, p. 1264). The Soviet Union, however, maintains a strictly negative attitude on this question. The decree of 1927 explicitly states: "the immunity of these premises does not confer the right to detain anybody therein by force, or to afford asylum in them to persons in regard to whom decisions have been taken with regard to their arrest by authorised organs of the USSR or its Constituent Republics" (Article 4). Levin categorically declares that "diplomatic asylum is completely denied in Soviet doctring" (op. cit. p. 379), and vigorously criticises His Majesty's Government for allowing Radescu, the Rumanian Prime Minister, to take refuge in His Majesty's Embassy in Bucharest on the formation of the Groza Government (February 1945).

European Division

DEPARTMENT OF EXTERNAL AFFAIRS

MEMORANDUM

FILE

TO: .....

.....

European Division

FROM: .....

REFERENCE: .....

.....

SUBJECT: .....

CONFIDENTIAL

Security .....

August 26, 1963.

Date .....

File No. 5475-AX-25-49

27	—	—

In discussion with Mr. Cadieux on Saturday morning about our memo of August 24 to the Minister on [redacted] Mr. Cadieux made the following points:

(a) He had considered the possibility of recommending to the Minister that, if the French are prepared to return [redacted] we might ask them to delay his return until just before the trial, so as to avoid the possibility of a further attempt at flight with all the ensuing international complications. On reflection, however, he believed that this was an unreasonable demand to make of the French.

(b) In view of this possibility, he was disposed to speak informally with the Department of Justice around the time of [redacted] return to see whether they could tak any steps vis-à-vis the Quebec authorities to encoura the latter to take appropriate measures, e.g. increas bail, or placing some restriction on Bizier's movemen to render impossible any further attempt at flight.

D. R. HILL

s.19(1)

D.R.Hill,
European Division.

ULATION
GAL DIV.
r. Hooton
r. Cadieux

Ext. 326 (6/56)

DEPARTMENT OF JUSTICE

Ottawa, August 20, 1963

MEMORANDUM FOR: MINISTER OF JUSTICE

FROM: T. D. MacDONALD

[redacted] s.19(1)

A member of the French Embassy has approached External Affairs to ascertain informally whether Canada would likely take umbrage if France were to grant political asylum to persons taking part in FLQ terrorism. Although the question was general it may have a concrete application to the case of Richard Bisier who is rumoured to have gone to St. Pierre or Miquelon.

[redacted] in connection with the May 13 time-bombing of the R.C.A.F. #11 Technical Services Unit Building in Montreal has been charged with damaging property contrary to section 372 of the Criminal Code and conspiracy to commit such damage; and with doing an act with intent to cause an explosion likely to cause serious bodily harm or death or damage to property contrary to section 79(1)(a) and with conspiracy to do such an act. He is out on bail and his trial does not come up until next month.

Canada is subject to the 1876 Extradition Treaty between Great Britain and France, as amended. This Treaty covers the usual extradition offences including murder, manslaughter, wounding or inflicting grievous bodily harm or malicious injury to property and participation in such crimes. One or more of the offences charged against [redacted] is therefore an extraditable offence.

The Treaty excludes political offences and the (Canadian) Extradition Act likewise provides that a fugitive is not liable to surrender where the offence is one of a political character.

LaForest on Extradition, treating of the question at pages 44 to 47, inclusive and page 46 points out that it is not easy to define what is an offence of a political character and that the authorities are not consistent, but he states that "to fall within the term the act charged must have been committed as an incident or in furtherance of a political end". In the limited time I have had to consider the matter I should be inclined to think that Bisier's offences could be said to be of a political character.

An officer in the Office of the Assistant Deputy Attorney General at Montreal, Mr. Poliquin, has told me over the telephone today that one of the defence lawyers told him that [redacted] is simply holidaying in St. Pierre-Miquelon and will be back to take his trial in due course. I understand, however, from External Affairs, that persons other than [redacted] may also have been in touch with the French Authorities as to whether or not they would be granted political asylum.

These cases are being prosecuted by the Provincial Authorities and no inquiry relating to extradition, or request for Canada to seek extradition, has been received from such Authorities by the Federal Authority. The Crown Prosecutor at Montreal is reported as saying that [redacted] who is out on $2,500.00 bail, is not wanted at the moment and that no special effort was being made by the Crown to determine whether reports of his departure from the Country were correct.

I should think that Canada would wish, at this stage, to keep its position as open as possible and to reply, informally, to the French Embassy, to the effect that these are provincial prosecutions; that no requests or inquiries have so far been received from the Provincial Authorities relating to extradition; but that if any such requests were received relating to extraditable offences in the future, Canada would naturally like to find the situation to be that France was in a position to deal with the matter on the merits and in the light of the Extradition Treaty and any representations that might properly be made and without the situation having been prejudiced by any steps taken by France, in the meantime, to confer a status of political asylum.

... Attached is the clipping from the Montreal Gazette for August 20, 1963.

s.19(1)

Attach. T.D.M.

s.19(1)

Division juridique/C. Bédard/ep.

CONFIDENTIEL

5475-AX-25-40
9

le 23 août 1963

NOTE POUR LE DOSSIER

[redacted] - Demande d'asile politique à Saint-Pierre et Miquelon.

L'Ambassadeur de France a rendu visite cet après-midi à Monsieur Cadieux pour s'entretenir avec lui du cas [redacted] qui est actuellement aux Iles St-Pierre et Miquelon et qui vient de faire une demande d'asile politique au Gouvernement français. Au cours de la conversation, l'Ambassadeur a mis en relief les deux points suivants:

a) La France n'a aucun désir de garder [redacted] en territoire français. Elle préfère éviter, étant donné les grandes complications qui accompagnent ordinairement ces procédures, d'avoir à faire face à une demande d'extradition du Gouvernement canadien dans le cas de Bizier.

b) On a examiné, en l'écartant, la possibilité d'envoyer [redacted] vers un pays tiers (éventuellement l'Espagne) et le Gouvernement français offre maintenant de retourner [redacted] au Canada, mais il désirerait auparavant obtenir l'assurance que si ce jeune homme rentrait chez-lui il ne serait pas traité plus durement qu'il l'aurait été s'il n'avait pas cherché refuge en France.

2. Monsieur Cadieux après avoir expliqué la situation en ce qui concerne le statut actuel [redacted] (sa libération sous cautionnement) et le fait que le gouvernement fédéral n'aurait d'autre choix que celui de transmettre au Gouvernement français une requête en extradition, si la Province de Québec réclamait Bizier, a assuré l'Ambassadeur que toutes les procédures judiciaires seraient respectées dans le cas de [redacted] comme dans celui de tous les autres détenus FLQ, et qu'il n'avait aucune raison de croire qu'il serait traité de façon moins humaine que les autres. Il a ajouté que le Gouvernement canadien allait considérer avec toute l'attention qu'elles méritent les représentations faites par le Gouvernement français au sujet de Bizier et qu'il communiquerait de nouveau avec lui à ce sujet.

3. L'entrevue terminée l'Ambassadeur s'est rendu à mon bureau où je lui ai remis une copie du Traité d'extradition entre la Grande Bretagne et la France du 14 août 1876, en vigueur avec le Canada.

4. Il s'est également enquis des chefs d'accusation contre [redacted] et des peines que ce jeune homme pourrait éventuellement encourir s'il était condamné par le tribunal canadien. Je lui ai alors fait part que [redacted] était accusé [sous l'Article 79 (1.) a) du Code Criminel] d'avoir accompli ou d'avoir conspiré pour accomplir "un acte avec l'intention de causer l'explosion d'une substance explosive qui est susceptible de causer des lésions corporelles graves ou la mort à des personnes, ou de causer des dommages graves à la propriété" et que, pour ce, il pouvait être passible de l'emprisonnement à perpétuité. J'ai également mentionné qu'il

...2/

était aussi accusé [sous l'Article 372 (1) a)] d'avoir commis ou conspiré pour commettre un méfait en détruisant ou détériorant volontairement un bien et que, pour ce, il pouvait être passible d'un emprisonnement de quatorze ans ou de l'emprisonnement à perpétuité si le méfait commis cause un danger réel pour la vie des gens. *

5. J'ai reçu en fin d'après-midi un téléphone de Monsieur Cadieux qui m'a appris que le Ministère de la Justice (M. MacDonald) avait communiqué avec lui et lui avait fait savoir que [redacted] n'était pas d'accord du tout pour que la France accorde à Bizier le statut de refugié politique. Monsieur Cadieux a également discuté avec Monsieur MacDonald de la question soulevée par Monsieur Bousquet en ce qui a trait à l'attitude du tribunal envers [redacted] Son interlocuteur lui a fait savoir que nous pouvions d'ores et déjà assurer l'Ambassadeur que, à notre avis, il est difficile de concevoir comment le fait que [redacted] soit refoulé du territoire français puisse entrer en ligne de compte dans son procès, s'il revient avant la date fixée pour son procès.

s.19(1)

C. Bédard

* Je lui ai expliqué que, dans ces deux cas, il s'agissait de sentences maxima, et que, en fait, Bizier, s'il est trouvé coupable, pourrait bien n'écoper que de quelques années ou de quelques mois.

Legal/P.Charpentier/ep

U.N.Division

Confidential

August 20,1963

Legal Division

c.c. ~~5475-C-19-40~~ 5475-AA-25-40

Your Memorandum of August 15, 1963

18thUNGA -- Draft Declaration on the Right of Asylum

We have considered the alternative amendments to Article 3 of the Draft Declaration put forward in the letter of August 8, 1963 from the Acting Director of Immigration and found that the form of words suggested in their sub-paragraph (b) would be the simpler one. This would have Article 3 read:

> "No one seeking or enjoying asylum in accordance with the Universal Declaration of Human Rights should.... be subjected to measures such as rejection at the frontier, return or expulsion which would result in compelling him to return to or remain in a territory if <u>he can satisfy the competent authorities of the state of potential asylum that</u> there is well-founded fear of persecution endangering his life, physical integrity or liberty in that territory."

2. We are in sympathy with the plan to discuss this proposed amendment with a number of friendly delegations before deciding to introduce it formally. We remain of the view, noted in previous Commentaries, that, in the context of this Declaration and in the present state of international law, Article 3 as it stands does not impair the right of a State, in the exercise of its sovereignty, to grant or not to grant asylum. This view is, if anything, reinforced by the addition at the Seventeeth Session of a third paragraph to Article 1 which reads:

> "It shall rest with the State granting asylum to evaluate the grounds for the grant of asylum."

3. Now that the Department of Citizenship and Immigration seem reconciled to eventual endorsement of the Declaration as a whole, the better course might be to refrain from pressing for an amendment to Article 3 if the Soviet Bloc attempt to switch the sense of the Article. The draft article on the right of asylum which they submitted at the last Session for inclusion in the Draft Covenants on Human Rights purports to <u>guarantee</u> the right of asylum to "persons persecuted for their activities in support of peace and in the defence of democratic interests, for their participation in the struggle for national liberation of for their scientific work". If their tactics are to revise Article 3 of the Declaration along such lines, the Canadian Delegation might have to argue in favour of keeping the article as it stands.

Legal Division

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Div Diary
Opinions Index

EUROPEAN DIVISION
U.N. DIVISION
D.L.(2) DIVISION
CONSULAR DIVISION

CONFIDENTIAL

August 16, 1963

Legal Division

Mr. Kingstone's Note for File of August 13, 1963

5475-AX-25-40
91

Granting Asylum in France to Canadians involved with the Quebec Separatist Movement

You will no doubt have received a copy of the note under reference in which Mr. Kingstone tells of the request he received from the French Embassy for an informal expression of Canadian views on the eventual granting of asylum in France to Canadians involved with the Quebec Separatist Movement.

2. The situation with regard to asylum, from the standpoint of international law, may be summarized as follows:- A State has the right either to grant or to refuse political asylum; it is at liberty to do whatever it chooses within its own territory, without reference to the wishes of other States, as long as its acts are not directly injurious to them.(1) The right of sovereign States to grant asylum on their own territory is based on the principles of non-intervention and the absolute control of States within their own frontiers. Any State may therefore admit into its territory fugitives from justice who are nationals of another State.

3. Political asylum being left to the discretion of the receiving State and being based on the concept of the territorial sovereignty, it follows that there is no general principle of international law whereby a refugee could demand asylum as a matter of right; States are at liberty to refuse or to grant asylum. The right of asylum, it has been said, is, strictly speaking, "nothing but the competence of every State to allow a prosecuted alien to enter and to remain on its territory under its protection and thereby to grant asylum to him" (Oppenheim's International law, 8th Edition, Vol. I, page 670).

4. These principles do not mean, however, that the State granting asylum has no duties with regard to the State of which the political refugee is a national: "La terre d'asile ne doit pas etre un lieu d'entreprise ou de complot contre ses droits ou interets; des l'instant ou le fugitif penetre sur le sol du pays etranger ce dernier doit faire due diligence pour empecher "l'asile",

Mr. Callaum
Mr. Merchof

(1) See: Hall "International Law" 8th Edition, page 204 and Departmental Circular Document No. D-45 of April 29, 1950

comme on dit quelquefois, de devenir une source de danger pour l'Etat contre lequel il cherche protection: un engagement formel pourrait etre exige du refugie de s'abstenir de toute action politique contraire a son etat; mieux encore une surveillance continue et, au besoin, une résidence fixe pourront lui etre imposées" (Sibert "Traité de Droit international public" Vol. I Note 2, page 574).(2) On the other hand, the sovereignty of a State with regard to asylum may have been limited by the State concerned by multi-lateral convention establishing a right of asylum, by extradition treaties or by renunciations, with regard to certain categories of refugees of its sovereign right of granting asylum by way of a special provision in a multilateral or bilateral treaty. The only conventional tie of this nature existing between Canada and France and which could limit the Sovereignty of both countries in the field of asylum is the "Treaty between Great Britain and France for the mutual surrender of fugitive criminals" signed in Paris on August 14, 1876 and amended four times since.

5. It would appear, therefore, that, as long as the acts of those Canadians involved in the Separatist movement and who may be granted political asylum in France do not become directly injurious to Canada (3), and as long as their acts, while they were in Canada did not constitute offences extraditable (4) under the Extradition Treaty in force with France, France is entirely free (at least from the angle of international law) to deal with these refugees as it deems fit.

6. We should be grateful for your comments on the above points as well as on Mr. Blanc's demarche. In particular it is proposed, if you agree, that Mr. Kingstone call Mr. Blanc in again and advise him orally along the lines of paragraph 5 of this Memorandum.

H. COURTNEY KINGSTONE

Legal Division

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(2) "For it is the duty of every state to prevent individuals living on its territory from endangering the safety of other States by organizing hostile expeditions or preparing common crimes against its head, members of its Government or its property. And, if a State grants asylum to a prosecuted alien, this duty becomes of special importance" (See Oppenheim "International Law" Vol. I, 7th Edition page 618)

(3) and (4) continued on page 3

(3) Such acts as organizing hostile expeditions or preparing common crimes against Canada's Head, members of its Government or its property could be deemed directly injurious to Canada. However, as far as I know, the Separatist movement of Quebec does not advocate the use of such methods aimed at breaking the Canadian Confederation by force and it can be properly considered as a political secessionist movement. Perhaps the view of the RCMP and the Department of Justice should be sought on this. In any event, the assurance given by the Embassy (Mr. Blanc) that "France granted asylum to any political refugee on condition that the refugee would refrain from engaging in any further political activity as long as he remained in France" appears to cover adequately eventual openly seditious activities by "activistes".

(4) Under the Treaty (Article III), extraditable offences cover a wide range of offences, including most common crimes, such as murder, attempt to murder, manslaughter, wounding or inflicting greivous bodily harm, perjury, fraud, etc.

Legal/Gen Pol

DEPARTMENT OF EXTERNAL AFFAIRS

MEMORANDUM

TO: EUROPEAN DIVISION
U.N. DIVISION
D.L.(2) DIVISION
CONSULAR DIVISION

FROM: Legal Division

REFERENCE: Mr. Kingstone's Note for File of August 13, 1963

Security CONFIDENTIAL

Date August 16, 1963

File No. 5475-AX-25-40

SUBJECT: Granting Asylum in France to Canadians involved with the Quebec Separatist Movement

You will no doubt have received a copy of the note under reference in which Mr. Kingstone tells of the request he received from the French Embassy for an informal expression of Canadian views on the eventual granting of asylum in France to Canadians involved with the Quebec Separatist Movement.

2. The situation with regard to asylum, from the standpoint of international law, may be summarized as follows:- A State has the right either to grant or to refuse political asylum; it is at liberty to do whatever it chooses within its own territory, without reference to the wishes of other States, as long as its acts are not directly injurious to them.(1) The right of sovereign States to grant asylum on their own territory is based on the principles of non-intervention and the absolute control of States within their own frontiers. Any State may therefore admit into its territory fugitives from justice who are nationals of another State.

3. Political asylum being left to the discretion of the receiving State and being based on the concept of the territorial sovereignty, it follows that there is no general principle of international law whereby a refugee could demand asylum as a matter of right; States are at liberty to refuse or to grant asylum. The right of asylum, it has been said, is, strictly speaking, "nothing but the competence of every State to allow a prosecuted alien to enter and to remain on its territory under its protection and thereby to grant asylum to him" (Oppenheim's International law, 8th Edition, Vol. I, page 678).

4. These principles do not mean, however, that the State granting asylum has no duties with regard to the State of which the political refugee is a national: "La terre d'asile ne doit pas être un lieu d'entreprise ou de complot contre ses droits ou intérêts; des l'instant où le fugitif pénètre sur le sol du pays étranger ce dernier doit faire due diligence pour empêcher "l'asilé",

CIRCULATION
Mr. Cadieux
Mr. Wershof

(1) See: Hall "International Law" 8th Edition, page 264 and Departmental Circular Document No. B-45 of April 29, 1950

Ext. 326A (6/56)

comme on dit quelquefois, de devenir une source de danger pour l'Etat contre lequel il cherche protection: un engagement formel pourrait être exigé du refugié de s'abstenir de toute action politique contraire à son etat; mieux encore une surveillance continue et, au besoin, une résidence fixe pourront lui etre imposées" (Sibert "Traité de Droit international public" Vol. I Note 2, page 574).(2) On the other hand, the sovereignty of a State with regard to asylum may have been limited by the State concerned by multi-lateral convention establishing a right of asylum, by extradition treaties or by renunciations, with regard to certain categories of refugees of its sovereign right of granting asylum by way of a special provision in a multilateral or bilateral treaty. The only conventional tie of this nature existing between Canada and France and which could limit the Sovereignty of both countries in the field of asylum is the "Treaty between Great Britain and France for the mutual surrender of fugitive criminals" signed in Paris on August 14, 1876 and amended four times since.

5. It would appear, therefore, that, as long as the acts of those Canadians involved in the Separatist movement and who may be granted political asylum in France do not become directly injurious to Canada (3), and as long as their acts, while they were in Canada did not constitute offences extraditable (4) under the Extradition Treaty in force with France, France is entirely free (at least from the angle of international law) to deal with these refugees as it deems fit.

6. We should be grateful for your comments on the above points as well as on Mr. Blanc's demarche. In particular it is proposed, if you agree, that Mr. Kingstone call Mr. Blanc in again and advise him orally along the lines of paragraph 5 of this Memorandum.

H. Cornelius Kingstone.

Legal Division

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(4) Under the Treaty (Article III), extraditable offences cover a wide range of offences, including most common crimes, such as murder, attempt to murder, manslaughter, wounding or inflicting greivous bodily harm, perjury, fraud, etc.

DEPARTMENT OF EXTERNAL AFFAIRS

MEMORANDUM

TO: MR. CADIEUX
(Through Mr. Wershof)

FROM: Liaison Services Section

REFERENCE:

SUBJECT: [redacted]

Security: CONFIDENTIAL

Date: August 19, 1963

File No. 11488-A-40

As recommended at the meeting held in your office at noon, the following line will be taken in reply to press enquiries about [redacted]

s.19(1)

1. The only information which is now available to this Department about [redacted] is through the newspapers. The Department has no confirmation that [redacted] has left Canada or is on French territory.

2. As a Canadian citizen [redacted] is free to travel wherever he pleases and there is no requirement under federal law for a person in his condition to seek any permission to travel abroad. If I am asked whether [redacted] will be extradited should he jump his bail, I will reply that this is a hypothetical question on which I cannot comment.

3. If I am asked whether [redacted] has been the subject of representations by the French Embassy or by this Department to the French authorities, the answer will be "no".

...2

Unless the Cabinet issue a very direction to this, and we are not aware that this was done

CIRCULATION

Ext. 325 (6/55)

4. I should not reply either to any other question, which has already been asked, on what the Department's attitude will be if [redacted] is granted political asylum by the French authorities.

5. If I am asked whose responsibility it will be to extradite [redacted], may I reply that this would normally be requested by the Attorney General of Quebec to the Federal Department of Justice. Yes.

Liaison Services Section

s.19(1)

Legal/R. Courtney Kingstone/ec

5475-AX-25-40
5C1

CONFIDENTIAL

August 13, 1963

NOTE FOR FILE

FSH

Granting asylum in France to Canadians involved with the Quebec Separatist Movement

Mr. Paul Blanc, First Secretary at the French Embassy, called to see me in my office this morning. He explained that, on behalf of his Government, he was informally consulting with us concerning the following matter:

> Three or four Canadians, whom he did not name, had applied for asylum in France because their continued stay in Canada was being made difficult due to their association with one or other of the Quebec separatist movements.

Before taking any action in respect of these applications, the French Government wishes to have the views of the Canadian Government on an informal basis.

2. Mr. Blanc went on to explain that in line with the general principles of asylum applied in the Western world, France granted asylum to any political refugee on condition that the refugee would refrain from engaging in any further political activity as long as he remained in France. He said that in particular a great number of Spanish refugees had been permitted entry into France on this basis and that this particular group of refugees had found difficulty in complying with this condition because of their natural inclinations to engage in political activities

/2....

cc: Mr. Cadieux
Mr. Ucrchof
European Division
U.N. Division
D.L.(2) Division

at least to the extent anyway of writing political pamphlets.

3. Mr. Blanc said that the French Government obviously found itself faced with a new type of situation when it was presented with these applications for asylum from Canadians. He went on to state that the inclination of the French Government was to grant these Canadians asylum on the same basis as asylum was being granted to political refugees from other states in line with the general asylum principles followed by Western states. However, the French Government, before taking any decision as to what to do about these applications and having in mind also the possibility that it might receive in the near future many more similar applications wished to have the informal reaction of the Canadian Government.

4. I told Mr. Blanc that I had taken careful note of his representations and that he would, of course, appreciate that I was not in a position to express my views at this time but that I would be communicating with him further as soon as possible.

H. Courtney Kingstone

CC: EMBASSY, Paris

European Div.

Consular/B.J.Wallis/EDB

CONFIDENTIAL

File: 5475-AX-25-40

CC: ~~4-1-10-10~~

PLEASE RETURN TO
CONSULAR DIVISION

s.19(1)

Ottawa, April 30, 1963.

Acting Director of Immigration,
Department of Citizenship and Immigration,
Ottawa.

[redacted] who has been moving from country to country, may conceivably at some future time try to enter Canada. We think it would be desirable, therefore, if our two Departments should give some preliminary thought to what should be done in such an eventuality and in due course submit the matter to our respective Ministers for consideration.

2. [redacted] has recently obtained a visa to enter Brazil, and press reports indicate that he agreed not to engage in any political activities during his sojourn in that country. There is no indication how long [redacted] plans to stay in Brazil. [redacted] is President of the CNR (Conseil National de la Resistance), an organization which advocates the overthrow of the present French Government. The CNR is directly linked with the OAS (Organization de l'Armée Secrete) a terrorist group the main objective of which is the assassination of the President of the French Republic, General de Gaulle. Thus we believe it could be maintained that the OAS-CNR constitutes a subversive organization dedicated to the overthrow of democracy in France.

3. If it is eventually decided that [redacted] should be denied entry to Canada, we would assume that Section 5 (1) of the Immigration Act might be considered

..2

applicable, or possibly Section 5 (d). We attach copies of the following correspondence to substantiate the contention that [redacted] could be considered a person advocating or promoting "subversion by force or other means of democratic government ..." under Section 5 (1) of the Immigration Act: Embassy Paris letters, No. 2 of January 2, 1962, No. 4 of January 2, 1962, No. 244 of March 29, 1963. Regarding the possible applicability of Section 5 (d), applying to persons who have been convicted of or admit having committed any crime involving moral turpitude, we attach Embassy Paris Telegram 834 of June 18, 1962.

4. We should be glad to know if you think it could be maintained successfully--in the event that our Ministers will wish to keep [redacted] out of Canada--that [redacted] is prohibited from entering Canada under Section 5 (1) or possibly Section 5 (d) of the Immigration Act. Which section, in your view, is more applicable?

5. If the Government decides that [redacted] should not stay in Canada, we think it would be easier to effect this by trying to prevent his admission in the first place since, once on Canadian territory, he could appeal a deportation order and involve your Department in extensive court action. If you agree with this view, we assume that all transportation companies would have to be warned that [redacted] was inadmissible to Canada, possibly by a public announcement. Would you consider such a course, if favoured by our Ministers, to be feasible and desirable?

6. We shall send you our further views after hearing from you on the points raised in this memorandum.

s.19(1)

ROGER CHAPUT

Under-Secretary of State
for External Affairs

Mr. Cadieux

(through Mr. Wershof)

Consular Division

CONFIDENTIAL

April 11, 1963

5475-AX-25-40
44-1-AD-40

s.19(1)

Possible Entry to Canada of

[redacted]

At Mr. Wershof's request, we are reviewing below the problem we might be faced with should [redacted] gain entry or seek entry to Canada. This memorandum has been seen in draft by European and Legal Divisions and their amendments have been incorporated in it.

2. We understand that [redacted] is now in Portugal but has obtained a visa to enter Brazil. [redacted] is President of the CNR (Conseil National de la Resistance), an organization which advocates the overthrow of the present French Government. The CNR is generally believed to be directly linked with the OAS (Organisation de l'Armée Secréte), a terrorist group whose main objective is the assassination of the President of the French Republic, General de Gaulle. It can be said that the OAS-CNR (as our Embassy, in Paris describes the two groups) constitutes a subversive organization believed to be dedicated to the overthrow of democracy in France.

3. It could therefore be maintained that [redacted] is prohibited from entering Canada under Section 5 (1) of the Immigration Act which reads as follows:

> "5. No person ... shall be admitted to Canada if he is a member of any of the following classes of persons:
>
> (1) persons who are or have been, at any time before or after the commencement of this Act, members of or associated with any organization, group or body of any kind concerning which there are reasonable grounds for believing that it promotes or advocates or at the time of such membership or association promoted or advocated subversion by force or other means of democratic government, institutions or processes, as they are understood in Canada, except persons who satisfy the Minister that they have ceased to be members of or associated with such organizations, groups or bodies and whose admission would not be detrimental to the security of Canada."

Legal Div.
European Div.
D.L. (2)

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4. We believe that section 5 (1) of the Immigration Act is more relevant than any other section. Section 5 (d) ("persons who have been convicted of committing any crime involving moral turpitude") would not be applicable since, to our knowledge, [redacted] has not been indicted in absentia for any crime. Section 5 (p) ("persons who are not ... bona fide immigrants or non-immigrants") is the most all-embracing clause but we doubt that it could be successfully maintained that [redacted] was not a bona fide non-immigrant if he proclaimed it was his intention to remain in Canada for a purely temporary period. It would appear, therefore, that reliance must be placed on 5 (1) of the Immigration Act.

s.19(1)

5. By directive of the Minister of Citizenship and Immigration, French citizens are among those who do not require visas for non-immigrant entry to Canada. There would thus be no way to prevent [redacted] landing on Canadian territory, unless of course a transportation company decided not to accept him as a passenger. In view of [redacted] record, transportation companies might take the precaution of inquiring of the Canadian Government whether [redacted] would be admitted, before selling him a ticket; on the other hand they might not. If the Government wished to ensure insofar as possible that [redacted] would not land on Canadian territory, all transportation companies would have to be warned, possibly by a public announcement.

6. If [redacted] should land on Canadian territory (either contrary to, or in the absence of, a government directive), he would be subject to deportation as a member of the prohibited classes under the Immigration Act. He would however have the right of appeal and, unless he entered direct from the United States, he would be kept in Canada pending a decision on the appeal. The efficacy of the deportation order issued would depend on the evidence that could be produced to substantiate the claim made in paragraphs 2 and 3 above.

7. In these circumstances, [redacted], in order to remain in Canada, might conceivably appeal for political asylum. This would introduce a new element into the situation and Section 5 (1) of the Immigration Act would have to be balanced against [redacted] possible claim of political persecution, and domestic political considerations might enter the picture.

8. If, on the other hand, the Government wished to admit [redacted] this would have to be done under Ministerial permit issued by the Minister of Citizenship and Immigration, if it were established that he came within the prohibited classes (Section 5 (1) of the Immigration Act).

9. If [redacted] were granted permission to enter Canada or sought entry on a claim to "political asylum", the question arises whether his activities while in Canada could be circumscribed in any way.

..3

Legal Division's memorandum of July 7, 1953 states that under international law Canada has a responsibility to prevent and punish two types of acts only, (a) the setting on foot of hostile expeditions or (b) attempts on the lives of political opponents. The first type of act may be prevented under the authority of the Foreign Enlistment Act and the Export and Import Permits Act. There would not appear to be any provision in the Canadian Criminal Code for enforcing the second of these international obligations. There is a provision in the Criminal Code prohibiting acts which disturb the peace in Canada, but it might be difficult to claim that by plotting to overthrow the French Government [redacted] would be causing a disturbance in Canada. Moreover, Legal Division has ascertained that the provision of the Criminal Code which prohibited publication of any libel on a sovereign authority of a foreign state is no longer in effect (paragraph 10 of Legal Division's memorandum). Perhaps the only control that could be exercised would be the threat of deportation under the Immigration Act as a member of the prohibited classes, should Mr. Bidault engage in undesirable activities.

10. Clearly, if the Government decides that [redacted] should not stay in Canada, it would be easier to effect this by trying to prevent his admission in the first place, since once on Canadian territory he could appeal a deportation order and involve the Government in extensive court action. Your instructions would be appreciated, if you think this matter should be pursued.

ROGER CHAPUIS

Consular Division.

s.19(1)

Legal/J.O.Parry/DS

CONFIDENTIAL

placed in Source Book. PMB

July 7, 1953.

11981-40
16

MEMORANDUM FOR AMERICAN DIVISION

Meeting of Cuban Opposition Leaders in Montreal.

In your memorandum of June 24, 1953, in order to assist in determining what should be the Canadian policy concerning this and other similar cases which may arise, you have requested the views of this Division on the following questions:

1. Assuming that evidence were forthcoming to establish that a revolutionary group wanted to:

(a) obtain arms from Canada;
(b) overthrow a friendly government by force;
(c) plot on Canadian soil to assassinate a friendly Head of State,

what in these circumstances,

(i) should be the attitude of the Canadian Government under international law or the comity of nations; and

(ii) what steps should Canada take under domestic law to prohibit the entry of such persons, deport them or prosecute them under the Criminal Code of Canada.

2. Responsibility under International Law:

The duty of a state to prevent the commission within its territory of acts injurious to foreign states does not imply an obligation to suppress all such conduct on the part of private persons as is inimical to or critical

... 2

of the régime of a foreign state. In brief there appear to be only two instances where state responsibility is clearly engaged under customary international law:

(1) A state has the duty of restraining persons resident within its territory from engaging in such revolutionary activities against friendly foreign states as amount to organized acts of force in the form of hostile expeditions against the territory of those states.

(2) A state is also obliged to repress and to discourage activities in which attempts against the life of political opponents are regarded as a proper means of revolutionary action.

Oppenheim (International Law Vol.I (1947) at p.260) suggests that states may also be under a duty to prevent and suppress any subversive activity which involves wilful destruction or damage to public property of a foreign government, although he cites no authority for this contention.

3. At the present time the duty placed upon a state to prevent subversive activity against a foreign government in the form of armed hostile expeditions or attempts on the lives of political leaders is derived from customary international law. From time to time attempts have been made at convential agreement:

(1) Following the assassination of King Alexander I of Yugoslavia in 1934 the League of Nations undertook the preparation of a Convention for the Prevention and Punishment of Terrorism which was opened for signature in 1937. Article I affirmed "the principle of international law in virtue of which it is the duty of every State to refrain from any act designed to encourage terrorist activities directed against another State and to prevent the

... 3

acts in which such activities take shape", while in succeeding articles the contracting parties undertook to prevent and punish various acts including:

(i) Acts causing death or injury to heads of states or to persons holding public positions when the act is directed against them in their public capacity;

(ii) Wilful destruction of or damage to public property of another state;

(iii) The manufacture, obtaining, possession or supplying of arms, ammunition or explosives with a view to the commission of an act of terrorism in any country.

Although signed by 20 states (not including Canada) this Convention has never come into force.

(2) Article X of the Pan-American Convention on Duties and Rights of States in the Event of Civil Strife of 1928 obliges the contracting parties to use all means at their disposal to prevent the inhabitants of their territory, nationals or aliens, from participating in, crossing the boundary or sailing from their territory for the purpose of starting or promoting civil strife. The parties also undertake to forbid, so long as the belligerency of the rebels has not been recognised, traffic in arms and war material except when intended for the government. This Convention is in force for the United States and certain of the Latin American states.

... 4

(3) The Draft Declaration on Rights and Duties of States prepared by the International Law Commission in 1949 provides that every state has the duty to prevent the organization within its territory of activities calculated to foment civil strife in the territory of another State.

what happened.

4. Professor Lauterpacht (Revolutionary Activities by Private Persons Against Foreign States, Vol.22 A.J.I.L. 1928 pp. 105-130), after examining the internal and international practice of states, concludes that apart from the duty of preventing hostile expeditions and attempts on the lives of political opponents, states are not bound to prohibit on their territory, the commission of acts injurious to other states. In particular, revolutionary propaganda does not fall within the scope of revolutionary acts which a state is bound to prevent.

5. The duty of states with regard to hostile expeditions in time of peace is not a consequence of the other state's right of independence which cannot, logically, in any way be interfered with or impaired by acts of individuals but is rather the result of the well-established customary rule that the territory of a state must not be allowed to serve as a base for military or naval operations against another state. The law of hostile expeditions is nothing else than the law of neutrality in relation to an actual or impending civil war.

6. With regard to preparations and conspiracies to murder, a state is fully entitled to claim from other states a reasonable measure of protection from this particular kind of revolutionary activity. No unreasonable burden of specially protecting the life of foreigners abroad is thereby imposed upon a state. Its sole duty is to give foreigners abroad the same protection from assassination, not a greater or a special one, which it affords to those resident within its territory.

7. Apart from the two kinds of revolutionary activity referred to above, international law imposes no further obligations. All other forms of revolutionary action, cannot, if coming solely from private individuals, furnish a legitimate

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cause of complaint because the duty of respect which a state owes, in international law, to the constitution and government of another country is a negative one; it is not a duty of active protection of a regime which may be either distasteful to the overwhelming majority of its own citizens, or a matter of complete indifference to them. The foreign government itself must secure this end, either by adequately enforcing its own laws or else by creating reasonable conditions for the firm establishment of its constitution and government.

Conclusions:

8. Assuming that evidence were forthcoming to establish that a group of private persons within Canada were planning an organized act of force against a friendly foreign state in the form of a hostile expedition, or were plotting the assassination of a friendly Head of State or some other political opponent, the Canadian Government would be responsible in international law for preventing these acts and for punishing them if they occur. There is no rule of international law which obliges the Canadian Government to prevent the export of arms to a revolutionary group abroad. Canada could not be held internationally responsible in this regard although the Export and Import Permits Act of 1947 enables us to prevent and punish any such attempt.

9. Under customary international law therefore Canadian responsibility is limited to preventing and punishing the setting on foot of hostile expeditions or attempts on the lives of political opponents. Failure to exercise such responsibility would give grounds for a claim on the part of the injured state. A state is responsible if it culpably omits to prevent these acts on the part of private persons. It is equally responsible when, notwithstanding due diligence having been exercised, injurious acts have been perpetrated and the duty of the state is limited to apprehending and punishing the individuals responsible. Especially, the state will not escape liability if its government has failed to enact such laws as would enable the administrative or judicial authorities effectively to prevent or repress such acts.

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10. International law is not concerned with the manner in which states elect to meet this duty so long as the laws are adequate to prevent hostile acts or to punish them after they have occurred. The Canadian laws appear to be adequate for this purpose. The Foreign Enlistment Act of 1937 makes it an offence for any person, within Canada, to prepare or fit out any military, naval or air expedition to proceed against the dominions of any friendly state. The export, or attempted export of arms, munitions or war material is controlled under the provisions of the Export and Import Permits Act of 1947. The possession of firearms and other offensive weapons without a permit or registration certificate is prohibited under Section 115-129 of the Criminal Code. Finally, although Canada has no duty in international law to prevent revolutionary propaganda, the publication of any libel on a person exercising sovereign authority over a foreign state is an offence under Section 135 of the Criminal Code.

Legal Div believes this provision has been removed tnl.

Action under Domestic Law:

11. The second question concerns action which might be taken under Canadian domestic law when there are reasonable grounds for belief that a group of persons in Canada are raising a hostile expedition or plotting the assassination of a foreign political opponent. Any export or attempted export of arms from Canada for these purposes or with the aim of supplying arms to a revolutionary group abroad can be prevented under the Export and Import Permits Act, and the raising of a hostile expedition against a foreign state would be an offence under the Foreign Enlistment Act of 1937. In both cases the persons responsible would be subject to criminal proceedings under the Criminal Code.

12. As regards preventing the entry into Canada of such persons, Consular Division has pointed out in their Memorandum of June 23 to your Division, that under the Immigration Act 1952 it is mandatory for residents of all Latin American countries to obtain non-immigrant visas before entering Canada and therefore it would be possible to restrict the entry of undesirable visitors from these countries by refusing or deferring visas.

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13. Apart from visa control entry into Canada can only be prevented if the persons come within one of the prohibited classes listed in Section 5 of the new Immigration Act. The procedure is as follows:

If there are reasonable grounds for believing that a person seeking entry into Canada comes within one of the prohibited classes in Section 5 of the Act, either as the result of information given to the Immigration Branch or revealed in the examination by the Immigration Officer,

(1) the person may be refused entry and returned to the country from which he entered Canada as a reject. In such a case there is a right of appeal but if the person entered from the United States it is customary to send him back to the United States pending consideration of his appeal.

(2) the person may be detained by the Immigration Officer and reported to a Special Enquiry Officer. The Special Enquiry Officer has power to order the deportation of such a person if he decides after enquiry that the person comes within a prohibited class. An appeal may be taken against a Deportation Order to the Minister, whose decision is final.

It should be noted that there is one exception as regards the classes of prohibited persons listed in Section 5 of the Act. Section 5 provides that no person, other than a person referred to in Sub-section 8 of Section 7, shall be admitted to Canada if he is a member of any of the classes of persons referred to in that section. Sub-section 8 of Section 7 provides that the following persons may be allowed to enter and remain in Canada as non-immigrants:

(a) persons authorized by the Minister to enter Canada for treatment and care at any health resort, hospital, sanitarium, asylum or other place or institution for their cure and care and, after entering Canada, while they are actually under such treatment and care;

(b) persons passing in transit through Canada under escort or guard; and

(c) holders of a permit.

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As regards entry under permit, Section 8 of the Act provides that the Minister may issue a written permit authorizing any person to enter Canada or, being in Canada, to remain therein. The permit shall be expressed to be in force for a specified period not exceeding twelve months, and during the time that it is in force a permit stays the execution of any Deportation Order that may have been made against the person concerned. The Minister may at any time, in writing, extend or cancel a permit. Upon the cancellation or expiration of a permit, the Minister may make a Deportation Order respecting the person concerned and such person has no right of appeal from the Deportation Order and shall be deported as soon as practicable.

If, after a person has been permitted to enter Canada, a report or complaint is made to the Director of the Immigration Branch that such person was a member of a prohibited class at the time of his admission he may be deported under either of the following procedures:

(1) The Director of Immigration, after receiving a report, will direct an enquiry to be held if he considers such action to be warranted. If the enquiry results in a decision by the Special Enquiry Officer that the person was a member of a prohibited class at the time of his admission into Canada an order for his deportation will be made. An appeal may be taken from the Deportation Order.

(2) If the person is a non-immigrant the Minister of Citizenship and Immigration is empowered at any time to declare that he has lost his non-immigrant status and to make a Deportation Order against him. In this case there is no right of appeal. The Minister has full discretion, in such a case, to act at any time on whatever information he considers sufficient.

Deportation is normally carried out by Deportation Officers of the Immigration Branch of the Department of Citizenship and Immigration who have authority to call upon any constable or Peace Officer (federal, provincial, or municipal) to execute a warrant or order made under the Immigration Act for the arrest, detention or deportation of any person.

Conclusions:

14. As indicated above the simplest method of excluding persons from Latin American countries from entry into Canada when there are reasonable grounds for believing that they plan to obtain arms here, raise a hostile expedition or plot assassination, would seem to be by refusing to issue them non-immigrant visas for entry into this country.

15. Apart from visa control, entry can be refused if they can be brought within one of the prohibited classes, especially paragraph (m) of Section 5 - "persons who have engaged in or advocated or concerning whom there are reasonable grounds for believing they are likely to engage in or advocate subversion by force or other means of democratic government, institutions or processes, as they are understood in Canada". There are obvious difficulties in applying this test to the governments of some states.

16. Deportation after entry into Canada can be carried out if the persons were members of a prohibited class at the time of their entry into this country (or if they have, since their admission to Canada, become persons who, if they were applying for entry, would be refused admission by reason of their being members of a prohibited class other than those in paragraphs (a), (b), (c) and (s) of Section 5).

17. It should be noted that the ultimate decision as to whether a person comes within one of the prohibited classes rests with the Minister of Citizenship and Immigration since he has the final decision on any appeal against a deportation order. The Minister's discretion is particularly wide in the case of persons who have entered Canada as non-immigrants. He has, for example, the power to make a deportation order at any time, from which there is no appeal, against any

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non-immigrant who, in his opinion, engages in, advocates or is a member of or associated with any organization, group or body of any kind that engages in or advocates subversion by force or other means of democratic government, institutions or processes, as they are understood in Canada.

J. P. ERICHSEN-BROWN

Legal Division.

Legal/C. V. Cole/mr

AMERICAN DIVISION

CONFIDENTIAL

May 24, 1957

1607-C-40	
59	—

Legal Division

Letter No. 92 of April 5, 1957

from the Canadian Ambassador, Caracas, Venezuela.

Ex-President of Argentina, Juan Peron.

Original in 4704-40

With reference to your routing slip of May 7, 1957 in which you ask if we might offer any comments on Mr. Bowers' question in paragraph 3 of letter No. 92, I am attaching a copy of a memorandum dated January 18, 1957, on the International Law and Conventions applicable to the problem of the interference in the domestic affairs of a foreign country by a Canadian radio station which has allegedly broadcast attacks on President Eisenhower and the Republican Party to Detroit audiences, which was prepared in this Division and which I believe contains material relevant to Mr. Bowers' question.

2. I should also like to add the following extract from Oppenheim - International Law, Vol. I, Seventh Edition, 1948, p.618:

" . . . The so-called right of asylum* is nothing but the competence of every State mentioned above, inferred from its territorial supremacy, to allow a prosecuted alien to enter, and to remain on, its territory under its protection, and thereby to grant an asylum to him. Such fugitive alien enjoys the hospitality of the State which grants him asylum; but it might be necessary to place him under surveillance, or even to intern him at some place, in the interest of the State which is seeking to prosecute him. For it is the duty of every State to prevent individuals living on its territory from endangering the safety of another State by

* I have no information as to whether Peron has sought asylum in Venezuela but the observations contained in the extract have relevance irrespective of this.

.... 2

organising hostile expeditions or by preparing commons crimesmagainst its Head, members of its government or its property. And if a State grants asylum to a prosecuted alien, this duty becomes of special importance."

3. It seems clear from the above that the activities of Peron described in letter No. 92 would not be improper from the standpoint of international law.

GILLES SICOTTE

Legal Division

C O P Y Legal/E.G.Lee/SB /mr

Memorandum on the International Law and Conventions applicable to the problem of the interference in the domestic affairs of a foreign country by a Canadian radio station which has allegedly broadcast attacks on President Eisenhower and the Republican Party to Detroit audiences.

According to Lauterpacht's Oppenheim, 8th edition, Volume 1 (1955), page 292, "the duty of a State to prevent the commission within its territory of acts injurious to foreign States does not imply an obligation to suppress all such attack on the part of private persons as is inimicable to or critical of the regime or policy of a foreign State". Thus, for example, "there is no duty to suppress revolutionary propaganda on the part of private persons directed against a foreign Government". Lauterpacht goes on to point out that "so long as International Law provides no remedy against abuses of governmental power, international society cannot be regarded as an institution for the mutual insurance of established governments".

2. On the other hand, Lauterpacht does say at page 282 of his same edition that traditional International Law has ascribed certain consequences to the dignity of States as inherent in their international personality, such as the right to demand that their Heads shall not be libeled and slandered. But while a government of a State, its organs and its servants, are bound in this matter by rigid duties of respect and restraint, Lauterpacht expresses doubt as to whether a State is bound to prevent its subjects from committing acts which violate the dignity of foreign States, and to punish them for acts of that kind which it was unable to prevent.[1] Judge Lauterpacht goes on to caution that "A State

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1. It is interesting to note that Lauterpacht states in a footnote on page 283 that "many States have enacted legislation penalizing defamation and libels of foreign governments. See, e.g. the Revised Statutes of Canada of 1927, Chapter 36, Section 135". This section of the Criminal Code of Canada which he had quoted stated that "everyone is guilty of an indictable offense and liable to one year's imprisonment who, without lawful justification, publishes

must prevent and punish such acts only as really violate the dignity of a foreign State. Mere criticism of policy, judgement concerning the past attitude of States and their rulers, utterances of moral indignation condemning immoral acts of foreign governments and their monarchs, need neither be suppressed nor punished". The position is different, of course, when the persons in question are in governmental service or otherwise associated with the government of the country.

3. From the above, it would appear that International Law implies no obligation on a State to prevent absolutely everything which might be considered to constitute a danger for foreign States. The reason behind this is that a State should not be forced into the impossible position, dangerously approaching intervention in itself, of a guardian of other States' constitutions and tranquillity. If there were such a duty, many States might become exposed to international complications in consequence of the importance of securing a conviction by their juries and other judicial organs. In other words, the theory seems to be that the scope of this kind of law should be a limited one, rather than that its comprehensiveness should eventually give rise to complaints and remonstrances.

4. Conventions: Although neither Canada nor the United States has become a party to them, there are several conventions relative to the particular problem at hand. In 1949, the General Assembly of the United Nations approved a Convention on the International Transmission of News and Right of Correction[2]. The Convention provides for some remedies with

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any libel tending to degrade, revile or expose to hatred and contempt in the estimation of the people of any foreign State, any prince or person exercising sovereign authority over such State". It might perhaps be indicative of international morality that this section was deleted from our present Criminal Code, and no comparable provisions were incorporated into it. Now that international propaganda appears to play such a large part in present-day power politics, presumably it would have been embarassing for the government to have such a provision as quoted above in the Criminal Code.

2. See General Assembly, Third Session, Part 2, Official Records, 1949, pages 21 et seq.

regard to publication abroad of news despatches which, in the view of the complaining State, are either false and distorted or are "capable of injuring its relations with other States or its national prestige and dignity". In such cases the complaining State may submit to the State where the despatch is published its own version of the facts. The obligation of the latter is limited to the transmission of the corrected version to the news agency responsible for the original publication. If the correction is not published, the Secretary-General of the United Nations is under an obligation to give publicity, through the information channels at his disposal, both to the corrected version and to the original despatch and any comment of the Government where the despatch was published.

5. In 1936, under the auspices of the League of Nations, an International Convention was signed concerning the use of broadcasting in the Cause of Peace[3]. In that Convention the Parties undertook to prohibit the broadcasting within their territories of any transmission calculated by reason of its inaccuracy or otherwise to disturb international understanding or to incite the population of any territory to acts incompatible with the internal order or the security of a territory of a Contracting Party.

6. The International Law Commission has also prepared a draft declaration on the rights and duties of States which has not, however, been adopted by the General Assembly. Article 4 of this draft declaration provides that "Every State has a duty to refrain from fomenting civil strife in the territory of another State, and to prevent the organization within its territory of activities calculated to foment such civil strife". This article could have been broadly interpreted to have included radio interference in the domestic affairs of a foreign State.

Legal Division

January 18, 1957

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3. See League of Nations Official Journal, 1936, page 1437 or Hudson, Legislation, Volume 7, page 409.

DEPARTMENT OF EXTERNAL AFFAIRS

CROSS REFERENCE SHEET

Security Confidential

5475-AX-25-40L"		
96	—	—

Type of Document Ltr. No. 249 Date 10 Apr. 63

From Rio de Janeiro Brazil

To External Affairs L.A. Div.

Subject: [redacted]

s.19(1)

Original on File No. 4719-40

Copies on File No. 44-1-AD-40"C"

Other Cross Reference Sheets on ✓

Prepared by Donald Henson "XY/5/Ry"

Ext. 308

DAILY
DIARY
FILE

European/A.Couvrette/lc

5475-AX-25-40
22

Consular Division

s.19(1)

CONFIDENTIAL

April 8, 1963.

European Division

5475-AX-25-40

Your memo of April 4 to Mr. Cadieux

Possible entry to Canada of [redacted]

We would suggest that para. 2 of your memo be replaced by the following:

" 2. [redacted] is President of the CNR (Conseil National de la Résistance), an organisation which advocates the overthrow of the present French Government. The CNR is generally believed to be directly linked with the OAS (Organisation de l'Armée Secrète), a terrorist group whose main objective is the assassination of the President of the French Republic, General de Gaulle. It can be said that the OAS-CNR (as our Embassy, in Paris describes the two groups) constitutes a subversive organisation believed to be dedicated to the overthrow of democracy in France."

2. In para. 3 we would add, after the words "...associated with any groups", the expression of Section 5(1) of the Immigration Act: "about which they are reasonable grounds for believing that it promotes or advocates...", as this addition would extend the grounds for exclusion. Similarly, after the words "democratic government", we would suggest the addition of the expression "...and processes":terrorism is surely not a democratic process.

3. We have no comments on the other paragraphs.

(original signed by)
JEAN FOURNIER

European Division.

5475-AX-25-40
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original on
5475-W-19-40

FM CANDELNY DEC21/62 UNCLAS

TO EXTERNAL 2744 PRIORITY

REF OURTEL2536 DEC6

17TH UNGA:3RD CTTEE:ITEM46:ASYLUM DECLARATION

ON DEC19 UNGA ADOPTED UNANIMOUSLY RESLN RECOMMENDED BY 3RD CTTEE

IN DOCU A/5359.

FM PERMISNY DEC05/62 RESTD

TO EXTERNAL 2536

INFO UNESCODEL PARIS

REF YOURTEL V560 NOV29

UNGA: 3 RD CTTEE- ITEM 46- ASYLUM DECLARATION

ON DEC4 CTTEE ADOPTED ARTICLE 1 OF ABOVE DECLARATION BY 85(CDA)-0-4(UK FRANCE LEBANON SAUDI ARABIA)

2. ARTICLE COMPRISES FOLLOWING THREE PARAS: (A) PARA1: QUOTE TERRITORIAL ASYLUM GRANTED BY A STATE IN EXERCISE OF ITS SOVEREIGNTY TO PERSONS ENTITLED TO INVOKE ARTICLE 14 OF UNIVERSAL DECLARATION OF HUMAN RIGHTS INCLUDING PERSONS STRUGGLING AGAINST COLONIALISM SHALL BE RESPECTED BY ALL OTHER STATES. UNQUOTE. THIS PARA WAS ADOPTED BY 85(CDA)-0-1(FRANCE). IT EMBODIES POLISH AMENDMENT L1038 WHICH CARRIED BY 33-11-32(CDA) AND AMENDMENT L1044/REV1 (REF TO COLONIALISM) ADOPTED BY 70-0-14(INCLUDING CDA SCANDINAVIANS AUSTRALIA AND UK)

(B) PARA2: QUOTE THE RIGHT TO SEEK AND TO ENJOY ASYLUM MAY NOT RPT NOT BE INVOKED BY ANY PERSON WITH RESPECT TO WHOM THERE ARE SERIOUS REASONS FOR CONSIDERING THAT HE HAS COMMITTED A CRIME AGAINST PEACE A WAR CRIME OR A CRIME AGAINST HUMANITY AS DEFINED IN THE INTERNATIONAL INSTRUMENTS DRAWN UP TO MAKE PROVISION IN RESPECT OF SUCH ITEMS?). UNQUOTE. THIS BELGIAM AMENDMENT (L1039 REV3) QUOTING TEXT INCORPORATED IN PREVIOUS CONVENTIONS WAS ADOPTED BY 38(: CDA)-7-40 AFTER POLISH SUB-AMENDMENT (L1050) HAD BEEN DEFEATED BY 28(CDA)-15-44. IN A SEPARATE VOTE OF 20(CDA)-20(INC SOVIET BLOC)-45 WORDS QUOTE WITH RESPECT TO WHOM THERE ARE SERIOUS REASONS FOR CONSIDERING UNQUOTE WERE RETAINED ON BASIS OF CONTROVERSIAL RULING OF CHAIRMAN INTERPRETING RULE OF PROCEDURE 134. IT IS LIKELY THAT A SEPARATE VOTE WILL AGAIN BE REQUESTED WHEN ITEM COMES BEFORE PLENARY.

(C) PARA3: QUOTE IT SHALL REST WITH THE STATE GRANTING ASYLUM TO EVALUATE THE GROUNDS FOR THE GRANT OF ASYLULM UNQUOTE. THIS TEXT

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GAVE RISE TO TWO DIFFERENT INTERPRETATIONS AS TO WHETHER OR NOT RPT NOT A STATE WOULD HAVE TO DIVULGE REASONS FOR GRANT OR REFUSAL OF ASYLUM. THIS PARA WAS ADOPTWKD BY 59-4-24(CDA).

3. ON DEC5 CTTEE DECIDED UNANIMOUSLY TO TAKE UP DRAFT DECLARATION AS SOON AS POSSIBLE AT 18 TH UNGA AND THUS CONCLUDED CONSIDERATION OF ITEM AT THIS SESSION.

AKU

PRESS RELEASE GA/SHC/1037
SEVENTEENTH GENERAL ASSEMBLY - THIRD COMMITTEE, 65TH MEETING (AM)
UNITED NATIONS, N.Y.

THIRD COMMITTEE DECIDES TO CONTINUE DISCUSSION OF
ARTICLE 1 OF DRAFT DECLARATION ON THE RIGHT OF ASYLUM

THE THIRD (SOCIAL, HUMANITARIAN AND CULTURAL) COMMITTEE THIS MORNING DECIDED TO CONTINUE ITS DISCUSSION ON ARTICLE 1 OF THE DRAFT DECLARATION ON THE RIGHT OF ASYLUM (DOC.A/4792).

THE COMMITTEE REJECTED BY 29 VOTES IN FAVOR, 36 AGAINST WITH 16 ABSTENTIONS A FORMAL PROPOSAL BY SIR DOUGLAS GLOVER (UNITED KINGDOM) TO COMPLETE THE CONSIDERATION OF THE ARTICLE IN THE TWO MEETINGS TOMORROW, FAILING WHICH, TO TAKE UP THE ITEM AT THE EIGHTEENTH SESSION.

THE VOTE ON THE UNITED KINGDOM PROPOSAL WAS TAKEN AFTER A LENGTHY PROCEDURAL DEBATE ON WHETHER OR NOT THE COMMITTEE SHOULD CONTINUE DISCUSSION ON ARTICLE 1.

THE DISCUSSION ON THE DRAFT DECLARATION AND ARTICLE 1 WAS SCHEDULED TO CONCLUDE ON FRIDAY LAST.

THE COMMITTEE HAD ADOPTED THE PREAMBLE OF THE DRAFT DECLARATION ON FRIDAY"" AND HAD ADJOURNED, AFTER A LONG PROCEDURAL DEBATE, WITHOUT TAKING ANY DECISION ON THE ARTICLE.

ARTICLE 1 OF THE DRAFT DECLARATION SAYS THAT "ASYLUM GRANTED BY A STATE, IN THE EXERCISE OF ITS SOVEREIGNTY, TO PERSONS ENTITLED TO INVOKE ARTICLE 14 OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS, SHALL BE RESPECTED BY ALL OTHER STATES."

FOUR AMENDMENTS HAVE BEEN TABLED TO ARTICLE 1:

(1) AN EIGHT-POWER AMENDMENT -- CAMEROON AND TUNISIA HAVE JOINED ALGERIA, GUINEA, IRAQ, MALI, MOROCCO AND THE UNITED ARAB REPUBLIC IN CO-SPONSORING THE AMENDMENT (DOC.A/C.3/L.1044) -- WOULD SPECIFICALLY MENTION "PERSONS STRUGGLING AGAINST COLONIALISM" FOR GRANT OF ASYLUM BY A STATE.

(2) AN AMENDMENT (DOC.A/C.3/L.1039) PROPOSED BY BELGIUM WOULD ADD A PARAGRAPH TO THE ARTICLE SAYING:

"THIS PROVISION SHALL NOT APPLY TO ANY PERSON WITH RESPECT TO WHOM THERE ARE SERIOUS REASONS FOR CONSIDERING THAT HE HAS COMMITTED A CRIME AGAINST PEACE, A WAR CRIME, OR A CRIME AGAINST HUMANITY, AS DEFINED IN THE INTERNATIONAL INSTRUMENTS DRAWN UP TO MAKE PROVISION IN RESPECT OF SUCH CRIMES."

MORE

""PRESS RELEASE GA/SHC/1036.

ARW 2-- PRESS RELEASE GA/SHC/1037

A BULGARIAN AMENDMENT (DOC.A/C.3/L.1041) WOULD REPLACE THE WORDS "ENTITLED TO INVOKE ARTICLE 14 OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS," BY THE FOLLOWING:

"PERSECUTED FOR STRIVING FOR NATIONAL INDEPENDENCE, FOR STRIVING TO MAINTAIN PEACE AND TO DEVELOP PEACEFUL AND FRIENDLY RELATIONS BETWEEN PEOPLES AND STATES, FOR FOSTERING AND DEVELOPING RESPECT FOR HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, OR FOR ANY OTHER ACTIVITY, EXCEPT IN THE CASE OF PROSECUTIONS GENUINELY ARISING FROM NON-POLITICAL CRIMES OR FROM ACTS CONTRARY TO THE PURPOSES AND PRINCIPLES OF THE UNITED NATIONS,"

(4) AN AMENDMENT TABLED BY POLAND (DOC.A/C.3/L.1040) WOULD ADD THE FOLLOWING PARAGRAPHS TO ARTICLE 1:

"IT SHALL REST WITH THE STATE GRANTING TERRITORIAL ASYLUM TO DEFINE ITS REASONS FOR DOING SO.

"IT SHALL NOT BE PERMISSIBLE TO GRANT TERRITORIAL ASYLUM TO ORDINARY-LAW CRIMINALS, WAR CRIMINALS OR PERSONS GUILTY T OF CRIMES AGAINST PEACE AND AGAINST HUMANITY."

THE COMMITTEE HAS ALREADY DECIDED TO CONSIDER THE REMAINING FOUR ARTICLES OF THE DRAFT DECLARATION AT THE EIGHTEENTH SESSION.

THE COMMITTEE WILL CONTINUE DISCUSSION ON ARTICLE 1 AND THE FOUR AMENDMENTS TO ARTICLE 1 WHEN IT MEETS AT 10:30 AM AND 3 PM TOMORROW.

HS305P 3 DEC 62

5475-AX-25-40
101

original on
5475-W-19-40
cc 5475-W-21-40

FM CANDELNY DEC3/62 RESTD

TO EXTERNAL 2490 OPIMMED

INFO UNESCODEL PARIS

REF YOURTEL V560 NOP29

17TH UNGA:3RD CTTEE:ITEM 46 ASYLUM DECLARATION

FRI NOV30 CTTEE ADOPTED AS A WHOLE PREAMBLE OF DRAFT DECLARATION ON RIGHT OF ASYLUM BY 82 (CDA)-0-2.TEXT ADOPTED INCLUDES (A)REVISED TEXT OF PREAMBULAR PARA1 CONTAINNIG ORALLY AMENDED VERSION OF SOVIET AMENDMENT L1043 REV1 (45-21(CDA)-0-2) AND (C) PREAMBULAR PARA5 66(CDA)-0-18 CONTAINING PART (A) OF BELGIAN AMENDMENT L1039 REV2 AS ORALLY REVISED BEFORE VOTE (40(CDA)-16-27).PART (B) OF ABOVE AMENDMENT WAS WITHDRAWN.

2.UKRAINIAN USSR REQUESTED SEPARATE VOTE ON WORDS QUOTE MEMBERS OF THE UN AND MEMBERS OF THE SPECIALIZED AGENCIES UNQUOTE IN (C) ABOVE THESE WORDS WERE MAINTAINED BY 59(CDA INDIA PAKISTAN) 8 (SOVIET BLOC COUNTRIES CUBA UAR) AND JQTM

3.AFTER PROCEDURAL DEBATE AS TO WHETHER CTTEE SHOULD ALSO VOTE ON ART1 UKRANIAN MOTION TO ADJOURN WAS CARRIED BY 34-20(CDA)-14.

4.MON DEC3 CTTEE CONTINUED SAME PROCEDURAL DEBATE THROUGHOUT MORNING SESSION.UK PROPOSAL THAT CONSIDERATION OF ARTICLE 1 BE COMPLETEE IN TWO MTGS DEC4 FAILING WHICH ITEM SHOULD BE RECONSIDERED AT 18TH UNGA WAS DEFEATED BY 36-29(CDA-16.DISCUSSIONS ON ARTICLE 1 WILL THEREFORE CONTINUE IN MIDST OF STRONG PRESSURE FROM SOVIET BLOC AFRO-ASIANS AND LATINS THAT CTTEE COME TO VOTE ON DRAFT ARTICLE AND RELEVANT AMENDMENTS AS SOON AS POSSIBLE.

DEPARTMENT OF EXTERNAL AFFAIRS

CROSS REFERENCE SHEET

Security Confidential

5475-AX-25-40		
101	←	

Type of Document Telegram No. V-561 Date Nov. 29/62

From U.N. Division

To Cadell, R.J.

Subject: 17th UNGA - 3rd Committee - Civil and Political Rights Covenant - USSR Draft Declaration on Asylum

Original on File No. 5475-W-15-40 "V"

Copies on File No.

Other Cross Reference Sheets on 5475-W-19-40 "V"

Prepared by P. Waters UNSR

Ext. 308

DEPARTMENT OF EXTERNAL AFFAIRS

CROSS REFERENCE SHEET

Security Confidential

5475-AX-25-40		

Type of Document Telegram No. V-560 Date November 29, 1962

From U.N. Division

To Cordel N.Y.

Subject: 17th UNGA - Asylum Declaration

Original on File No. 5475-W-19-40

Copies on File No.

Other Cross Reference Sheets on

Prepared by P. Waters U.N. 5/K

Ext. 308

5475-AX-25 | 9

Legal

UN47

PRESS RELEASE GA/SHC/1035
SEVENTEENTH GENERAL ASSEMBLY - THIRD COMMITTEE, 63RD MEETING (PM)
UNITED NATIONS, N.Y.

COMMITTEE CONTINUED DISCUSSION OF AMENDMENTS
TO DRAFT DECLARATION ON THE RIGHT OF ASYLUM

THE THIRD (SOCIAL, HUMANITARIAN AND CULTURAL) COMMITTEE THIS AFTERNOON CONTINUED DISCUSSION ON THE PREAMBULAR PART AND ARTICLE 1 OF THE DRAFT DECLARATION ON THE RIGHT OF ASYLUM

SEVEN AMENDMENTS"" HAVE BEEN TABLED TO THE PREAMBULAR PART AND ARTICLE 1 OF THE DRAFT DECLARATION. THE MEETING OF THE COMMITTEE WAS ADJOURNED EARLY AND WAS FOLLOWED BY THE MEETING OF A SUB-COMMITTEE, IN AN ATTEMPT TO DRAFT A JOINT TEXT FROM THE SEVEN AMENDMENTS.

DIFFERENT MODALITIES OF ASYLUM SHOULD BE TAKEN INTO ACCOUNT

CESAR A. PANTOJA (COLOMBIA), OPENING THE DISCUSSION, SAID HIS DELEGATION DID NOT DIFFERENTIATE BETWEEN "DIFFERENT KINDS OF ASYLUM."

HE CONSIDERED IT DESIRABLE THAT THE DECLARATION SHOULD TAKE INTO ACCOUNT THE EXISTING PRACTICES OF ASYLUM.

MRS. MARIEETA P. TREE (UNITED STATES) AGREED WITH THE REPRESENTATIVE OF SAUDI ARABIA THAT THE DRAFT DECLARATION SHOULD BE "SIMPLE AND INTELLIGIBLE."

HER DELEGATION WANTED THE DECLARATION TO DEAL ONLY WITH TERRITORIAL, AND NOT DIPLOMATIC, ASYLUM.

THE REFERENCE TO ARTICLE 14 OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS MADE IT "SELF-EVIDENT" THAT THE DECLARATION REFERRED ONLY TO TERRITORIAL ASYLUM.

SHE COULD NOT, THEREFORE, SUPPORT THE POLISH AMENDMENT (DOC. A/C.3/L.1039).

MRS. TREE SUPPORTED THE BELGIAN AMENDMENT (DOC. A/C.3/L.1039/REV.2). HER DELEGATION WOULD ACCEPT THE PERUVIAN AMENDMENT PROVIDED IT WAS MODIFIED TO STATE THAT THE GRANT OF ASYLUM WAS A "HUMANITARIAN ACT."

Y. A. OSTROVSKI (USSR) REITERATED HIS DELEGATIONS DESIRE TO INCORPORATE IN THE DRAFT DECLARATION THE "PURPOSES PROCLAIMES" IN THE CHARTER.

THE SOVIET DELEGATION WOULD, HOWEVER, AGREE TO SLIGHTLY MODIFY ITS AMENDMENT (DOC. A/C.3/L.1043) IN RESPONSE TO THE COMMENTS MADE BY THE FRENCH REPRESENTATIVE.

THE SECOND PART OF HIS AMENDMENT, MR. OSTROVSKI SAID, WAS COMPLEMENTARY TO THE PERUVIAN AMENDMENT (DOC. A/C.3/L.1042). HIS DELEGATION FAVORED A "FULL EXPRESSION" OF THE AIMS AND PURPOSES OF THE CHARTER IN THE PREAMBLE OF THE DRAFT DECLARATION.

MORE

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HORTENCIO J. BRILLANTES (PHILIPPINES) SAID THE RIGHT OF ASYLUM WAS AN INDIVIDUAL HJMAN RIGHT WHICH COULD BE INVOKED BY AN INDIVIDUAL BUT WAS "GRANTED" BY A STATE.

WITHIN THE CONTEXT OF ARTICLE 14 OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS, IT WAS CLEAR THAT THE DECLARATION REFERRED ONLY TO TERRITORIAL ASYLUM.

HIS DELEGATION WOULD LIKE THE TEXT OF THE DRAFT TO REMAIN AS IT WAS, BUT IT WOULD GO LAONG WITH ANY AMENDMENT WHICH DID NOT "RADICALLY" DEPART FROM ARTICLE 14 OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS.

THE BELGIAN AMENDMENT TENDED TO REDUCE THE RIGHT OF ASYLUM TO A SECONDARY PLACE.

HE SUGGESTED THAT THE PERUVIAN AMENDMENT, INSTEAD OF STATING THAT THE ASYLUM WAS IN KEEPING WITH THE "INTERESTS OF PEACE AND OF MANKIND," SHOULD SAY THAT WAS IN KEEPING WITH "FAITH IN FUNDAMENTAL HUMAN RIGHTS AND DIGNITY OF HUMAN PERSON."

DR. ANTONIO BELUANDE MOREYRA (PERU) STATED THAT IN VIEW OF THE REMARKS OF SEVERAL MEMBERS, HE WAS PREPARED TO REVISE HIS AMENDMENT SO AS TO SUBSTITUTE THE REFERENCE TO "INTERESTS OF PEACE AND MANKIND" BY SAYING THAT GRANT OF ASYLUM ... "IS A PEACEFUL AND HUMANITARIAN ACT."

FRANCISZEK PRZETACZNIK (POLAND) REITERATED HIS DELEGATIONS VIEW THAT THE DRAFT DECLARATION SHOULD MAKE IT CLEAR THAT IT REFERRED ONLY TO TERRITORIAL OR POLITICAL ASYLUM. DIPLOMATIC ASYLUM SHOULD BE COMPLETELY EXCLUDED FROM THE PURVIEW OF THE DRAFT DECLARATION, HE ASSERTED.

THE TITLE COULD PERHAPS BE CHANGED TO "POLITICAL ASYLUM," BUT HIS DELEGATION WOULD NOT ACCEPT THE PRESENT TITLE.

IT WAS ALSO NECESSARY TO DEFINE WHO CAN BE GRANTED ASYLUM UNDER THE DRAFT DECLARATION, HE SAID.

THE COMMITTEE WILL CONTINUE DISCUSSION ON THE PREAMBULAR PART AND ARTICLE 1 OF THE DRAFT DECLARATION ON THE RIGHT OF ASYLUM TOMORROW, FRIDAY, 30 NOVEMBER, AT 3 P.M.

JA 740P 29 NOV 62

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original on 5475-W-19-40

FM CANDELNY NOV28/62 CONFD

TO EXTERNAL 2436 OPIMMED

INFO UNESCODELPARIS

REF YOURTEL V550 NOV23

UNGA:3RD CTTEE-ITEM46--ASYLUM DECLARATION

FROM CTTEE DEBATE AND EXTENSIVE CORRIDOR DISCUSSIONS WE HAVE COME TO CONCLUSION THAT OUR DEL IS SOMEWHAT ISOLATED IN ITS STRONG OPPOSITION TO ARTICLE3.PRESENT INDICATIONS ARE THAT ONLY OTHER DELS TO HAVE OBJECTIONS AS STRONG AS OURS WOULD BE SOVIETBLOC.

2.WE BELIEVE THAT OUR DIFFICULTIES SEEM TO STEM FROM OUR INTERPRETATION OF ARTICLE33 OF CONVENTION ON STATUS OF REFUGEES AND LINK WHICH WE ESTABLISH BETWEEN THIS ARTICLE AND ARTICLE3 OF DECLARATION. IT SHOULD BE NOTED THAT ALTHOUGH CONVENTION HAS NOT RPT NOT BEEN RATIFIED BY CDA IT HAS BEEN RATIFIED BY SOME 32 COUNTRIES INCLUDING MOST EUROPEANS AUSTRALIA UK AND NZ.THESE DELS THEREFORE DO NOT RPT NOT SEEM TO HAVE ANY GREAT DIFFICULTIES IN ACCEPTING ARTICLE3.IN FACT NZ IS NOW IN POSITION TO SUPPORT SUBSTANCE OF ARTICLE3 WHILE AUSTRALIAN FO IS SUBMITTING RECOMMENDATION TO ITS ACTING MINISTER TO SUPPORT ARTICLE3 AS MODIFIED BY AMENDMENT L/1035.UK IS ALSO WILLING TO SUPPORT ARTICLE3 ON BASIS OF FOLLOWING INTERPRETATION.THEY BELIEVE THAT ARTICLE3 MAINTAINS RIGHT OF INDIVIDUAL TO SEEK ASYLUM AND,IF GRANTED,TO ENJOY IT BUT ALSO MAINTAINS EXCLUSIVE RIGHT OF A SOVEREIGN STATE TO GRANT ASYLUM TO ANY INDIVIDUAL.UK DEL BELIEVES THAT ARTICLE3 WOULD NOT RPT NOT SHIFT BURDEN OF PROOF FROM INDIVIDUAL TO STATE AND THAT IF DECLARATION IS ADOPTED ITS GOVT WILL PURSUE ITS PRESENT PRACTICE OF NOT RPT NOT DIVULGING REASONS FOR REFUSAL OF ASYLUM.

3.WE HEARTILY AGREE WITH THIS INTERPRETATION ESPECIALLY IN VIEW OF DIFFERENCES WHICH EXIST BETWEEN A CONVENTION AND A DECLARATION WHICH EXIST BETWEEN A CONVENTION AND A DECLARATION WHICH AFTER ALL DOES NOT RPT NOT BIND A STATE TO SPECIFIC COMMITMENTS.

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4. IT NOW SEEMS UNLIKELY THAT CTTEE WILL REACH VOTE ON ARTICLE3 AT THIS SESSION AND THEREFORE WE ARE NOT RPT NOT COMMENTING ON AMENDMENTS CONCERNING THIS ARTICLE AND SUBSEQUENT ARTICLES. HOWEVER PROBLEM WILL BE RAISED AGAIN NEXT WEEK WHEN CTTEE CONSIDERS USSR DRAFT ARTICLE ON ASYLUM FOR INCLUSION IN CIVIL AND POLITICAL RIGHTS COVENANT (SEE OURTEL2190 NOV13). IT ALSO HAS SOME INFLUENCE ON OUR ASSESSMENT OF VARIOUS AMENDMENTS CONCERNING PREAMBLE AND ARTICLES1AND2, SOME OF WHICH HAVE ALREADY BEEN TABLED AND FORWARDED TO YOU IN OURTELS2413-4-5-6-7 OF NOV27 AND 2422 NOV28.

5. OUR COMMENTS ON PRESENT AMENDMENTS TO PREAMBLE AND ARTICLES1AND2 ARE AS FOLLOWS: (A) WE INTEND TO SUPPORT AMENDMENT L/1037 AS PER YOUR REFTEL AND BELGIAN AMENDMENT L/1039 (WHICH WILL BE REVISED TOMORROW TO ADD WORDS QUOTE OF ARTICLE1 UNQUOTE AFTER WORD QUOTE PARA UNQUOTE IN 1(B), (B) AS REGARDS POLISH AMENDMENT L/1038 IT DOES NOT RPT NOT SEEM TO PRESENT ANY DIFFICULTIES TO US AND WE PROPOSE TO VOTE IN COMPANY OF LIKE-MINDED DELS. (C) GREEK AMENDMENT L/1037 MERELY CORRECTS OVERSIGHT IN FIRST VERSION OF AMENDMENT L/1035 AND WILL PROBABLY BE WITHDRAWN. (D) WE PROPOSE TO VOTE AGAINST POLISH AMENDMENT L/1040.

6. WE EXPECT VOTE ON FRI MORNING (NOV30) AND SHOULD BE GRATEFUL FOR YOUR EARLY REACTION.

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original on 5475-W-19-Yo

FM CANDELNY NOV28/62 UNCLAS

TO EXTERNAL 2422 OPIMMED

INFO UNESCODELPARIS FM OTT

17TH UNGA:3RD CTTEE:ITEM 46:ASYLUM DECLARATION

FOLLOWING IS TEXT OF AMENDMENT(L1040)TO DRAFT ASYLUM DECLARATION TABLED NOV28 BY POLAND.BEGINS.

1.IN ARTICLE 1 ADD WORDS QUOTE PARA 1 UNQUOTE AFTER WORDS QUOTE ARTICLE 14 UNQUOTE.

2.ADD FOLLOWING PARAS TO ARTICLE 1:QUOTE

IT SHALL BE INCUMBENT ON STATE GRANTING TERRITORIAL ASYLUM TO INDICATE ITS REASONS FOR DOING SO.

QUOTE IT SHALL NOT RPT NOT BE PERMISSIBLE TO GRANT TERRITORIAL ASYLUM TO COMMON-LAW CRIMINALS WAR CRIMINALS OR PERSONS QUILTY OF CRIMES AGAINST PEACE AND AGAINST HUMANITY UNQUOTE.

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Nov 28/62
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PRESS RELEASE GA/SHC/1033
SEVENTEENTH GENERAL ASSEMBLY - THIRD COMMITTEE, 61ST MEETING (AM)
UNITED NATIONS, N.Y.

PREAMBLE AND FIRST ARTICLE OF DRAFT DECLARATION ON RIGHT OF ASYLUM EXAMINED BY THIRD COMMITTEE

THE THIRD (SOCIAL, HUMANITARIAN AND CULTURAL) COMMITTEE THIS MORNING CONSIDERED THE PREAMBLE AND ARTICLE 1 OF THE DRAFT DECLARATION ON THE RIGHT OF ASYLUM.

THE DRAFT DECLARATION"" PREPARED BY THE COMMISSION ON HUMAN RIGHTS, WAS SUBMITTED TO THE THIRD COMMITTEE ON 26 NOVEMBER 1962. THE DRAFT DECLARATION HAS BEEN ON THE AGENDA OF THE GENERAL ASSEMBLY SINCE ITS FIFTEENTH SESSION.

THE TEXT OF THE PREAMBLE AND ARTICLE 1 OF THE DRAFT DECLARATION AS DRAWN UP BY THE COMMISSION ON HUMAN RIGHTS READS:

THE GENERAL ASSEMBLY

RECALLING THAT AMONG THE PURPOSES OF THE UNITED NATIONS IS THE ACHIEVEMENT OF INTERNATIONAL CO-OPERATION IN SOLVING INTERNATIONAL PROBLEMS OF AN ECONOMIC, SOCIAL, CULTURAL OR HUMANITARIAN CHARACTER AND IN PROMOTING AND ENCOURAGING RESPECT FOR HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS FOR ALL WITHOUT DISTINCTION AS TO RACE, SEX, LANGUAGE OR RELIGION,

MINDFUL OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS WHICH DECLARES IN ARTICLE 14 THAT "(1) EVERYONE HAS THE RIGHT TO SEEK AND TO ENJOY IN OTHER COUNTRIES ASYLUM FROM PERSECUTION; (2) THIS RIGHT MAY NOT BE INVOKED IN THE CASE OF PROSECUTIONS GENUINELY ARISING FROM NON-POLITICAL CRIMES OR FROM ACTS CONTRARY TO THE PURPOSES AND PRINCIPLES OF THE UNITED NATIONS",

RECALLING ALSO PARAGRAPH 2 OF ARTICLE 13 OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS WHICH STATES THAT "EVERYONE HAS THE RIGHT TO LEAVE ANY COUNTRY, INCLUDING HIS OWN, AND TO RETURN TO HIS COUNTRY",

RECOMMENDS THAT, WITHOUT PREJUDICE TO EXISTING INSTRUMENTS DEALING WITH ASYLUM, STATES MEMBERS OF THE UNITED NATIONS AND MEMBERS OF THE SPECIALIZED AGENCIES SHOULD BASE THEMSELVES IN THEIR PRACTICES ON THE FOLLOWING PRINCIPLES:

ARTICLE 1

ASYLUM GRANTED BY A STATE, IN THE EXERCISE OF ITS SOVEREIGNTY, TO PERSONS ENTITLED TO INVOKE ARTICLE 14 OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS, SHALL BE RESPECTED BY ALL OTHER STATES.

MORE

TWO AMENDMENTS TO DRAFT PROPOSED

TWO NEW AMENDMENTS WERE PROPOSED TODAY. BULGARIA MOVED A VERBAL AMENDMENT WHICH WOULD MAKE ARTICLE 1 APPLICABLE TO PERSONS SUBJECT TO PERSECUTION FOR THEIR PARTICIPATION IN STRUGGLES FOR NATIONAL INDEPENDENCE, FOR THE MAINTENANCE OF PEACE AND FRIENDLY RELATIONS BETWEEN STATES, AND FOR BASIC HUMAN FREEDOMS AND RIGHTS.

THE BULGARIAN AMENDMENT WOULD EXCLUDE CASES OF NONPOLITICAL CRIMES, OR ACTIVITIES CONTRARY TO THE PRINCIPLES OF THE UNITED NATIONS, FROM THE SCOPE OF THE DRAFT DECLARATION.

POLAND, WHICH HAD MOVED AN AMENDMENT YESTERDAY TO THE TITLE OF THE DRAFT AND ITS PREAMBLE (DOC. A/C.3/L.1038), TODAY MOVED ANOTHER AMENDMENT (DOC. A/C.3/L.1040) WHICH WOULD ADD THE FOLLOWING PARAGRAPH TO ARTICLE 1:

"IT SHALL BE INCUMBENT ON THE STATE GRANTING TERRITORIAL ASYLUM TO INDICATE ITS REASONS FOR DOING SO.

"IT SHALL NOT BE PERMISSIBLE TO GRANT TERRITORIAL ASYLUM TO COMMON-LAW CRIMINALS, WAR CRIMINALS OR PERSONS GUILTY OF CRIMES AGAINST PEACE AND AGAINST HUMANITY."

AN AMENDMENT (DOC. A/C.3/1039) RELATING TO THE PREAMBLE AND ARTICLE -- MOVED BY BELGIUM YESTERDAY -- WOULD INSERT A NEW PARAGRAPH STATING THAT THE DECLARATION SHALL BE WITHOUT PREJUDICE TO EXISTING INSTRUMENTS DEALING WITH ASYLUM, SUCH AS THE CONVENTION OF 1951, RELATING TO REFUGEES AND THE CONVENTION OF 1954 RELATING TO STATELESS PERSONS.

OTHER AMENDMENTS"" TO THE DRAFT DECLARATION RELATE TO ARTICLES 2, 3 AND 4.

MISS LEONARA KRACHT (CHILE), REFERRING TO THE PREAMBLE AND ARTICLE 1 OF THE DRAFT DECLARATION, SAID IT WAS NECESSARY TO CONSIDER NOT ONLY THE RIGHT OF AN INDIVIDUAL TO SEEK ASYLUM, BUT ALSO THE "RIGHT" OF A STATE TO GRANT ASYLUM.

OTHER STATES SHOULD RECOGNIZE THE RIGHT OF A STATE TO GRANT ASYLUM, SHE ADDED.

SHE DECLARED THAT ONLY A STATE COULD DEFINE THE "CAUSES BEHIND ASYLUM" IN GRANTING ASYLUM.

SHE WELCOMED THE POLISH AMENDMENT THAT WOULD HAVE THE TITLE OF THE DRAFT DECLARATION REFER TO "TERRITORIAL ASYLUM" TO DISTINGUISH IT FROM OTHER KINDS OF ASYLUMS.

SHE ALSO WANTED REWORDING OF PARAGRAPH 3 OF THE POLISH AMENDMENT ON THE FOLLOWING LINES:

MORE

"" PRESS RELEASES GA/SHC/1031 AND 1032.

"THIS DECLARATION WOULD NOT AFFECT THE PROVISIONS OF INTERNATIONAL CONVENTIONS ON ASYLUM WHICH MEMBER STATES ARE PARTY TO."

ABDUL SAMAD GHAUS (AFGHANISTAN) SAID A SPECIAL DECLARATION ON THE RIGHT OF ASYLUM WAS CLEARLY NEEDED.

A BALANCE SHOULD BE FOUND BETWEEN HUMANITARIAN CONSIDERATIONS AND THE SOVEREIGNTY OF STATES, AND HIS DELEGATION BELIEVED THE DRAFT TEXT DID THIS.

PRINCIPLES ON THE RIGHT OF ASYLUM MIGHT ALSO, HE SUGGESTED, BE INCORPORATED INTO AN ARTICLE OF THE CONVENTION ON CIVIL AND POLITICAL RIGHTS.

THE PREAMBLE, AS IT STOOD, WAS ACCEPTABLE TO AFGHANISTAN, BUT HIS DELEGATION WOULD OPPOSE NEITHER THE BELGIAN OR POLISH PREAMBULAR AMENDMENTS IF A MAJORITY OF THE COMMITTEE APPROVED THEM. ARTICLE 1, HOWEVER, SHOULD BE RETAINED IN ITS ORIGINAL FORM.

NO LEGAL OBLIGATIONS TO GRANT ASYLUM

YOULI BAKHNEV (BULGARIA) STATED THAT A STATE WAS NOT LEGALLY OBLIGED TO GRANT ASYLUM UNDER INTERNATIONAL LAW.

PROVISIONS IN THE LAWS OF THE VARIOUS COUNTRIES REFERRED TO THE RIGHT OF ASYLUM IN A "DECLARATIVE WAY" ONLY, HE SAID. HE COULD NOT ACCEPT THE CONCEPT THAT THE DECLARATION HAD ANY "BINDING FORCE." IT WAS ONLY A RECOMMENDATION, HE ADDED.

IN DEFERRING CONSIDERATION OF THIS ITEM FOR TWO YEARS, THE COMMITTEE SEEMED NOT ONLY NOT PREPARED FOR THE DRAFTING OF A DECLARATION, BUT ALSO SEEMED TO BE INCLINED AGAINST THE INCLUSION OF AN ARTICLE ON THE RIGHT OF ASYLUM IN THE DRAFT COVENANT ON CIVIL AND POLITICAL RIGHTS, HE OBSERVED.

THE DECLARATION, AS PRESENTED TO THE COMMITTEE, NEEDED TO BE "UPDATED," HE ADDED.

HIS AMENDMENT, HE SAID, WOULD INTRODUCE A "CERTAIN" MORAL OBLIGATION ON A STATE BY DEFINING WHAT TYPE OF PERSON SHOULD BE GRANTED ASYLUM.

HE ALSO URGED THE EXTENSION OF THE DISCUSSION ON THE ITEM.

DECLARATION COULD BE MORE THAN A RECOMMENDATION

DR. ANTONIO BELAUNDE MOREYRA (PERU) SAID SOME DELEGATIONS HAD QUESTIONED THE FORCE OR EFFECTIVENESS THAT A DECLARATION OF THE UNITED NATIONS MIGHT HAVE.

SUCH A DECLARATION WOULD GO FURTHER THAN A "RECOMMENDATION" -- IT COULD MAKE EXPLICIT A GENERAL PRINCIPLE OF LAW. ARTICLE 1 WAS SUCH AN "EXPLICIT STATEMENT," HE SAID.

THE PROPOSED DECLARATION WOULD HAVE SOME SORT OF LEGAL STATUS, HE CONTENDED, AND IT COULD EVEN PERHAPS BE REGARDED AS A "RULE OF LAW," UNDER THE STATUTE OF THE INTERNATIONAL COURT OF JUSTICE.

MORE

WYE 4- PRESS RELEASE GA/SHC/1033

FRANCISZEK PRZETACZNIK (POLAND) SAID, TO BE FULLY EFFECTIVE, THE DECLARATION SHOULD INCLUDE AN ARTICLE WHICH WOULD LEGALLY BIND PARTIES. NEVERTHELESS, HIS DELEGATION DID NOT CONTEST THE WORTH OF A DECLARATION AS A "MORAL CODE."

THE DRAFT WAS NOT ACCEPTABLE IN ITS PRESENT FORM SINCE IT DID NOT CONTAIN A DEFINITION OF THE RIGHT OF ASYLUM -- A PHRASE WHICH COULD MEAN MANY DIFFERENT THINGS. TERRITORIAL ASYLUM WAS AN EXTENSION OF A STATES TERRITORIAL SOVEREIGNTY, BUT DIPLOMATIC ASYLUM COULD GIVE RISE TO DISPUTES, UNLESS STATES WERE BOUND TO RECOGNIZE ITS EXERCISE BY OTHER STATES.

COUNTRIES LOOKED AT DIPLOMATIC ASYLUM FROM MANY POINTS OF VIEW, HE WENT ON. IT WAS A "CHARACTERISTIC INSTITUTION OF LATIN AMERICA," BUT THIS WAS NOT ENOUGH FOR A DECLARATION THAT WOULD HAVE WORLD-WIDE APPLICATION.

IN OTHER PARTS OF THE WORLD IN FACT, THIS LATIN AMERICAN CONCEPT OF DIPLOMATIC ASYLUM HAD BECOME OBSOLETE.

POLAND BELIEVED THE DECLARATION SHOULD CLEARLY STATE THAT IT WAS EXCLUSIVELY CONCERNED WITH TERRITORIAL ASYLUM, AND THIS WAS THE BASIS OF THE AMENDMENTS CONTAINED IN DOC. A/C.3/L.1038, HE SAID.

THE PROPOSALS OF CHILE IN THIS REGARD, HE ADDED, WOULD BE ACCEPTABLE TO HIS DELEGATION.

ANOTHER PROBLEM WAS TO DETERMINE CLEARLY WHICH AUTHORITY WAS COMPETENT TO JUDGE THE RIGHT OF A PERSON TO SEEK ASYLUM.

ON THE BASIS OF MANY INTERNATIONAL CONVENTIONS AND AGREEMENTS, EVALUATING THE RIGHT OF A PERSON TO ASYLUM WAS NORMALLY WITHIN THE COMPETENCE OF THE STATE RECEIVING THE PERSON. BUT IT WAS THE DUTY OF THE STATE GRANTING ASYLUM TO DEFINE THE CAUSES MOTIVATING ITS ACTION, AND THIS WAS EXPRESSED IN THE NEWEST POLISH AMENDMENT DOC. A/C.3/L.1040).

DUTY OF STATES TO SURRENDER GUILTY PERSONS

THERE REMAINED ANOTHER "VERY IMPORTANT" PROBLEM, SAID MR. PRZETACZNIK. INTERNATIONAL LAW IMPOSED A DUTY ON STATES TO DELIVER TO EACH OTHER PERSONS GUILTY OF COMMON-LAW CRIMES, WAR CRIMES, CRIMES OF GENOCIDE AND OTHER OFFENSES AGAINST HUMANITY. INTERNATIONAL AGREEMENTS CONCERNING ASYLUM AND EXTRADITION MADE THIS CLEAR, AND UNDER AMENDMENT DOC. A/C.3/L.1040, HIS DELEGATION NOW FORMALLY PROPOSED INCLUSION OF SUCH A PROVISION IN ARTICLE 1 OF THE DECLARATION. THE "WORST SORT OF CRIMINALS" SHOULD NOT BE "PROTECTED" BY THE PROPOSED DECLARATION, HE DECLARED.

MR. PRZETACZNIK SAID HIS DELEGATION WAS ALSO INCLINED TO ACCEPT AND SUPPORT THE PROPOSAL MADE THIS MORNING BY BULGARIA DEFINING PERSONS ENTITLED TO ENJOY THE RIGHT OF ASYLUM.

THE COMMITTEE WILL CONTINUE DISCUSSION ON THE PREAMBLE AND ARTICLE 1 OF THE DRAFT DECLARATION AT ITS MEETING TOMORROW, 29 NOVEMBER, AT 10:30 A.M.

JA 224P 28 NOV 62

FM CANDELNY NOV27/62 RESTD

TO EXTERNAL 2415 OPIMMED

INFO UNESCODELPARIS

17TH UNGA:THIRD CTTEE-ITEM 45-ASYLUM DECLARATION

FOLLOWING IS TEXT OF AMENDMENT(L1039)TO DRAFT DECLARATION ON RIGHT OF ASYLUM TABLED NOV27 BY BELGIUM.BEGINS:

1.PREAMBLE

(A)IN THE FOURTH PARA DELETE WORDS QUOTE WITHOUT PREJUDICE TO EXISTING INSTRUMENTS DEALING WITH ASYLUM UNQUOTE.

(B)AFTER THE FIRST PARA INSERT A NEW PARA READING AS FOLLOWS:

QUOTE THIS DECLARATION SHALL BE WITHOUT PREJUDICE TO EXISTING INSTRUMENTS DEALING WITH ASYLUM,PARTICULARLY THE CONVENTIONS OF 1951 CONCERNING REFUGEES AND OF 1954 CONCERNING STATELESS PERSONS UNQUOTE.

II.ART 3

IN SECOND PARA SUBSTITUTE WORD QUOTE GRANT UNQUOTE FOR WORDS QUOTE CONSIDER POSSIBILITY OF GRANT OF UNQUOTE.

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original on SY75-W-19-Y-0

FM CANDELNY NOV27/62 RESTD

TO EXTERNAL 2413 OPIMMED

INFO UNESCODELPARIS

REF OURTEL 2140 NOV9

17TH UNGA:THIRD CTTEE--ITEM45--ASYLUM DCL

FOLLOWING IS TEXT OF AMENDMENTS(L1035)TO DRAFT ASYLUM DECLARATION TABLED NOV26 BY NORWAY AND TOGO.THESE AMENDMENTS EMPHASIZE SUGGESTIONS VOLUNTEERED TO OUR DEL BY UNHCR OFFICE AND FORWARDED IN OUR ABOVE TEL QUOTE:

1.ART2

(A)PARA 1:REPLACE QUOTE THE SITUATION OF PERSONS WHO ARE FORCED TO LEAVE THEIR OWN OR ANOTHER COUNTRY BECAUSE OF PERSECUTION OR WELL-FOUNDED FEAR OF PERSECUTION UNQUOTE BY QUOTE THE SITUATION OF PERSONS ENTITLED TO INVOKE ART14 OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS UNQUOTE.

(B)PARA 2:

(I)INSERT THE WORDS QUOTE GRANTING OR UNQUOTE BETWEEN THE WORDS QUOTE IN UNQUOTE AND QUOTE CONTINUING UNQUOTE SO THAT PHRASE READS: QUOTE WHERE A COUNTRY FINDS DIFFICULTY IN GRANTING OR CONTINUING TO GRANT ASYLUM UNQUOTE.

(II)CHANGE QUOTE SHOULD CONSIDER IN A SPIRIT OF INTERNATIONAL SOLIDARITY UNQUOTE TO READ QUOTE SHALL CONSIDER IN A SPIRIT OF INTERNATIONAL SOLIDARITY UNQUOTE.

2.ART3

(A)PARA 1:

(I)REPLACE QUOTE NO ONE SEEKING OR ENJOYING ASYLUM IN ACCORDANCE WITH QUOTE BY QUOTE NO ONE ENTITLED TO INVOKE ART 14 OF ...UNQUOTE.

(II)IN ENGLISH TEXT REPLACE WORD QUOTE SHOULD UNQUOTE BY QUOTE SHALL UNQUOTE.

(III)DELETE WORDS QUOTE EXCEPT FOR OVERRIDING REASONS OF NATIONAL SECURITY OR SAFEGUARDING OF POPULATIONS UNQUOTE.(B)INSERT A NEW PARA 2 TO READ AS FOLLOWS:QUOTE THIS PROVISION MAY NOT RPT NOT BE IN-

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VOKED IN CASE OF ANY INDIVIDUAL WHO CONSTITUTES A DANGER TO NATIONAL SECURITY NOR IN CASE OF A MASS INFLUX WHICH ENDANGERS SAFETY OF NATION UNQUOTE.(C)PARA 2 TO BECOME PARA 3 READING AS FOLLOWS: QUOTE IN CASES WHERE A STATE DECIDES TO BASE ITS ACTION ON PRECEDING PARA OF THIS ARTICLE IT SHALL CONSIDER UNDER SUCH CONDITIONS AS IT MAY DEEM APPROPRIATE ALLOWING PERSONS CONFERNED A REASONABLE PERIOD AND ALL NECESSARY FACILITIES TO ENABLE THEM TO SEEK ASYLUM IN ANOTHER COUNTRY UNQUOTE.

3. ARTICLE 4:

REPLACE WORD QUOTE SHOULD UNQUOTE BY QUOTE SHALL UNQUOTE.TEXT ENDS.

Original on 5475-W-19-40

FM CANDELNY NOV27/62 RESTD

TO EXTERNAL 2416 OPIMMED

INFO UNESCODELPARIS

17TH UNGA:THIRD CTTEE-ITEM45-ASYLUM DECLARATION

FOLLOWING IS TEXT OF AMENDMENT(L1036)TO DRAFT DECLARATION ON RIGHT OF ASYLUM TABLED NOV26 BY BRAZIL.BEGINS:

REPLACE THE PRESENT TEXT OF ART 4 BY FOLLOWING:

QUOTE ON REQUEEST OF INTERESTED STATE THE STATE GRANTING ASYLUM SHOULD BY MEANS ESTABLISHED IN ITS LEGISLATION AND IN ACCORD WITH AGREEMENTS IN FORCE PREVENT THE PERSON ENJOYING ASYLUM FROM ENGAGING IN ACTIVITIES INVOLVING THE USE OF FMRE MR VIOLZNCE AGAINST THE STATE OF ORIGIN WS WELL AS FROM ENGAGING IN ACTIVITIES IN VIOLATION OF THE PURPOSES AND PRINCIPLES OF THE UN UNQUOTE.

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original on 5475-W-19-Y5

FM CANDELNY NOV27/62 RESTD

TO EXTERNAL 2417 OPIMMED

INFO UNESCODELPARIS

17TH UNGA/THIRD CTTEE-ITEM45-ASYLUM DECLARATION

FOLLOWING IS TEXT OF AMENDMENT(L1037)TO DRAFT ASYLUM DECLARATION TABLED NOV26 BY GREECE.BEGINS:

1.ART2PARA1:AFTER WORDS QUOTE FEAR OF PERSECUTION UNQUOTE ADD QUOTE AS PROVIDED FOR BY ART 14 OF UNIVERSAL DECLARATION OF HUMAN RIGHTS UNQUOTE.

2.ART 4:AFTER THE WORDS QUOTE ACTIVITIES CONTRARY TO QUOTE ADD THE FOLLOWING PHRASE:QUOTE NATIONAL SECURITY OR PUBLIC ORDER(ORDRE PUBLIC) OF THE STATE GRANTING ASYLUM AND.....UNQUOTE.

5475-AX-25-40
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original on
5475-W-19-40

FM CANDELNY NOV27/62 RESTD

TO EXTERNAL 2414 OPIMMED

INFO UNESCODELPARIS

17TH UNGA:THIRD CTTEE-ITEM 45-ASYLUM DECLARATION

FOLLOWING IS TEXT OF AMENDMENT(L1038)TO DRAFT DECLARATION ON RIGHT OF ASYLUM TABLED NOV27 BY POLAND.BEGINS:

1.IN THE TITLE OF DRAFT DECLARATION SUBSTITUTE THE WORDS QUOTE TERRITORIAL ASYLUM UNQUOTE FOR WORDS QUOTE RIGHT OF ASYLUM UNQUOTE.

2.IN ARTS 1 2 3 AND 4 INSERT WORD QUOTE TERITORIAL UNQUOTE BEFORE WORD QUOTE ASYLUM UNQUOTE.

3.ADD FOLLOWING AS ART 6:

QUOTE NOTHING IN THIS DECLARATION SHALL AFFECT THE PROVISIONS OF INTERNATIONAL CONVENTIONS RELATING TO ASYLUM UNQUOTE.°

File Legal

UN43

PRESS RELEASE GA/SHC/1032
SEVENTEENTH GENERAL ASSEMBLY - THIRD COMMITTEE, 60TH MEETING (PM)
UNITED NATIONS, N.Y.

THIRD COMMITTEE COMPLETES DISCUSSION
ON DRAFT DECLARATION ON RIGHT OF ASYLUM

THE THIRD (SOCIAL, HUMANITARIAN AND CULTURAL) COMMITTEE THIS AFTERNOON COMPLETED GENERAL DISCUSSION ON THE DRAFT DECLARATION ON THE RIGHT OF ASYLUM.

AT ITS NEXT THREE MEETINGS, THE COMMITTEE WILL LIMIT ITS DISCUSSION TO THE PREAMBULAR PART AND ARTICLE ONE OF THE DRAFT DECLARATION.

THE DRAFT DECLARATION"" REFERS TO ASSYLUM GRANTED BY A STATE IN THE EXERCISE OF ITS SOVEREIGNTY; THE SITUATION OF PERSONS WHO ARE FORCED TO LEAVE THEIR OWN COUNTRY BECAUSE OF PERSECUTION; THE GRANTING OF PROVISIONAL ASYLUM IN ANOTHER COUNTRY; AND A STIPULATION THAT PERSONS ENJOYING ASYLUM SHOULD NOT ENGAGE IN ACTIVITIES CONTRARY TO THE PURPOSE AND PRINCIPLES OF THE UNITED NATIONS; AND THE RIGHT OF EVERYONE TO RETURN TO HIS COUNTRY.

THREE SEPARATE AMENDMENTS""" WERE MOVED YESTERDAY BY NORWAY AND TOGO (DOC. A/C.3/L.1035), BY BRAZIL (DOC. A/C.3/L.1036), AND BY GREECE (DOC. A/C.3/L.1037).

TWO MORE AMENDMENTS WERE TABLED TODAY BY POLAND AND BELGIUM RESPECTIVELY.

THE POLISH AMENDMENT (DOC. A/C.3/L.1038) WOULD CHANGE THE TITLE OF THE DRAFT FROM "THE RIGHT OF ASYLUM" TO "TERRITORIAL ASYLUM."

IT ALSO PROPOSES TO ADD ANOTHER ARTICLE (NO. 6) SAYING: "NOTHING IN THIS DECLARATION SHALL AFFECT THE PROVISIONS OF INTERNATIONAL CONVENTIONS RELATING TO ASYLUM."

THE OTHER AMENDMENT (DOC. A/C.3/L.1039), SUBMITTED BY BELGIJM, IN ADDITION TO DRAFTING CHANGES, WOULD INSERT THE FOLLOWING NEW PARAGRAPH IN THE DECLARATION:

"THIS DECLARATION SHALL BE WITHOUT PREJUDICE TO EXISTING INSTRUMENTS DEALING WITH ASYLUM, PARTICULARLY THE CONVENTIONS OF 1951 CONCERNING REFUGEES AND OF 1954 CONCERNING STATELESS PERSONS."

INDIVIDUAL HAS NO RIGHT TO ASYLUM

REPRESENTATIVES OF INDIA, UNITED KINGDOM, COSTA RICA, CZECHOSLOVAKIA, UKRAINE, BELGIUM, VENEZUELA AND FRANCE INTERVENED IN THE GENERAL DISCUSSION TODAY.

MORE

""DOC. A/5145, 4792, 4793, 4452 AND ADD.1 AND ADD.1/CORR.1; E/3403 AND ADD.1-5, AND PRESS RELEASE GA/SHC/1030.
"""PRESS RELEASE GA/SHC/1031.

B.C. MISHRA (INDIA), INITIATING THE DISCUSSION, REFERRED TO THE ACCEPTED PRINCIPLE OF INTERNATIONAL LAW ON THE RIGHT OF ASYLUM AND DECLARED AN INDIVIDUAL HAD NO RIGHT OF ASYLUM, AND ALSO THAT THE STATE HAD NO DUTY TO GRANT ASYLUM.

WHERE THE MOST COULD BE SAID, HE DECLARED, WAS THAT, UNDE PRACTICE AND LAW, A STATE WAS "COMPETENT" TO GRANT ASYLUM. THUS, THERE WAS A CLEAR DISTINCTION BETWEEN THE COMPETENCE OF A STATE AND ITS DUTY, HE ADDED.

HE STRESSED THE FACT THAT THE DECLARATION, AS DRAFTED BY THE COMMISSION, DEALS WITH THE HUMANITARIAN AND GENERAL ASPECTS OF THE QUESTION RATHER THAN THE LEGAL. IT ALSO ATTEMPTED TO CREATE A BALANCE BETWEEN THE TWO DIVERGENT CONCEPTS OF THAT OF STATE SOVEREIGNTY AND THAT OF THE HUMANITARIAN CONSIDERATION INVOLVED IN THE RIGHT OF ASYLUM.

HIS DELEGATION WOULD SUPPORT THE TEXT, IN SUBSTANCE, SO LONG AS THE BALANCE BETWEEN THESE TWO CONCEPTS CONTINUED TO BE MAINTAINED, HE ADDED.

HE ALSO MADE TWO ORAL PROPOSALS RELATING TO ARTICLES 3 AND 4. ARTICLE 3, HE SAID, SHOULD READ AS FOLLOWS:

"A STATE MAY, IF IT DEEMS NECESSARY IN THE INTEREST OF ITS NATIONAL SECURITY OR PUBLIC ORDER, SUBJECT PERSONS SEEKING OR ENJOYING ASYLUM IN ACCORDANCE WITH THE UNIVERSAL DECLARATION OF HUMAN RIGHTS, TO THE MEASURE REFERRED TO IN CLAUSE 1."

IN VIEW OF A DIVERGENCE OF VIEWS ON WHETHER THE RIGHTS AND OBLIGATIONS CREATED BY THE UN CHARTER APPLIED TO INDIVIDUALS, MR. MISHRA STATED THAT ARTICLE 4 SHOULD BE MODIFIED TO BAR A PERSON SEEKING OR ENJOYING ASYLUM FROM "ENGAGING IN ACTIVITIES CONTRARY TO INTERNAL LAW AND TO THE INTERNATIONAL OBLIGATIONS OF THE STATE WHICH HAS GRANTED ASYLUM."

INDIVIDUAL HAS RIGHT TO ASK ASYLUM

SIR DOUGLAS GLOVER (UNITED KINGDOM) SAID HIS DELEGATIONS POSITION WAS ONE, AS EXPRESSED IN ARTICLE 14 OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS, THAT THE INDIVIDUAL HAS THE RIGHT TO ASK FOR AND, IF IT IS GRANTED, TO ENJOY ASYLUM.

HIS GOVERNMENT AGREED THAT A DECLARATION ON THIS SUBJECT WAS DESIRABLE. SUCH A DECLARATION, HE EXPLAINED, WOULD BE QUITE DISTINCT FROM THE WORK BEING DONE BY THE INTERNATIONAL LAW COMMISSION. HE ADDED THAT THE COMMISSIONS WORK SHOULD NOT BE ALLOWED TO DELAY THE PREPARATION OF THE DRAFT DECLARATION.

ONLY THE RECEIVING STATE SHOULD DECIDE WHO IT WAS TO ADMIT, HE DECLARED.

HIS DELEGATION SUPPORTED MOST OF THE DRAFT AND ALSO AGREED TO THE AMENDMENT CLARIFYING THAT THE SUBJECT OF THE DECLARATION WAS TERRITORIAL ASYLUM.

HE ALSO SUPPORTED, WITH MINOR RESERVATIONS, THE AMENDMENT PROPOSED BY NORWAY AND TOGO. IN THIS CONNECTION, SIR DOUGLAS MENTIONED THE "LARGE STREAM OF IMMIGRANTS" INTO HONG KONG AND SAID: "...A STATE AND ITS PEOPLE MUST HAVE SOME DEFENSE AGAINST A MASS INFLUX WHICH MAY HAVE A VERY SERIOUS EFFECT UPON THE ECONOMIC AND SOCIAL WELL-BEING OF ITS POPULATION."

MORE

IF RTICLE 4 COULD NOT BE "SUPPRESSED," HIS DELEGATION WOULD SUPPORT THE AMENDMENTS PROPOSED BY GREECE, HE ANNOUNCED.

HE ADDED THAT HE WAS OPPOSED TO THE BRAZILIAN AMENDMENT. REFERRING TO THE INTERVENTION OF THE SOVIET REPRESENTATIVE, HE SAID THAT SHE HAD PROPOSED THE SINGLING OUT OF CERTAIN SPECIFIC CATEGORIES FOR MENTION, AND THEREBY WEAKENING THE UNIVERSAL NATURE OF THE DECLARATION.

CONSIDERS ASYLUM AS OBLIGATORY

DR. JOSE LUIS REDONDO GOMEZ (COSTA RICA) SAID HIS DELEGATION WOULD OPPOSE ANY "FORMAL RECOGNITION" IN A DECLARATION OF THE RIGHT OF A STATE TO RETURN A "VICTIM OF PERSECUTI," TO THE COUNTRY OF HIS ORIGIN.

HIS DELEGATION, UNDER THE CONSTITUTION OF HIS COUNTRY, CONSIDERED ASYLUM AS OBLIGATORY, AND DID NOT DIFFERENTIATE BETWEEN TERRITORIAL AND DIPLOMATIC ASYLUM HE STATED.

CALLING FOR OBLIGATORY PROTECTION TO ANY PERSON FLEEING FROM POLITICAL PERSECUTION, DR. REDONDO URGED THE SUSPENSION OF THE DEBATE TO ENABLE MEMBERS OF DRAFT A "NEW DOCUMENT."

MRS. HELENA LEFLEROVA (CZECHOSLOVAKIA) SAID THE DRAFT DECLARATION HAD A NUMBER OF SERIOUS SHORTCOMINGS WHICH NEEDED ELUCIDATION. IT WAS ESSENTIAL TO BASE THE DECLARATION UPON THE PRINCIPLES OF THE UNITED NATIONS, SHE ADDED.

SUPPORTING THE SOVIET PROPOSALS MADE YESTERDAY, SHE SAID THE DECLARATION SHOULD SPECIFICALLY MENTION THE "PERSECUTION" OF PEOPLE ENGAGED IN PEACE ACTIVITIES AND IN THE STRUGGLE AGAINST COLONIALISM. THE DECLARATION SHOULD ALSO EXCLUDE ANY POSSIBILITY OF THE ABUSE OF THE RIGHT OF ASYLUM BY "WAR CRIMINALS," HE DECLARED.

DECLARATION SHOULD DEFINE CRITERIA

P.E. NEDBAILO (UKRAINE) ALSO SUPPORTED THE SOVIET PROPOSALS FOR CHANGES IN THE DRFAT DECLARATION AND URGED THAT THE DECLARATION SHOULD CLEARLY DEFINE THE CRITERIA ON WHICH ASYLUM WAS TO BE GRANTED.

HIS COUNTRY, HE ADDED, COULD NOT FORGET THE BITTER EXPERIENCE OF FACIST BRUTALITIES AND WOULD NOT AGREE THAT A FASCIST WAS ENTITLED TO THE SAME PRIVILEGE OF ASYLUM AS ONE FIGHTING FOR PEACE.

SIR DOUGLAS, REPLYING TO THE REPRESENTATIVE OF THE UKRAINE, STATED THAT A "FAR TOO NARROW VIEW" OF THE DECLARATION HAD NOW BEEN EXPRESSED.

IN EVERY COUNTRY, HE SAID, THERE EXISTED A MINORITY HOLDING VIEWS CONTRARY TO THE MAJORITY. SIMILARLY, IDEOLOGIES CLASHED IN THE INTERNATIONAL SPHERE, AND ONLY HISTORY COULD PROVE WHICH ONE OF THEM WAS CORRECT. AT ONE TIME OR THE OTHER, EVERY COUNTRY HAD COMMITTED ATROCITIES. HE RECALLED THAT THE SOVIET UNION HAD ENTERED INTO A PACT WITH HITLERS GERMANY, EVEN THOUGH NOW IT CONDEMNED FASCISM.

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DECLARATION SHOULD NOT PROTECT WAR CRIMINALS

HE REMARKED THAT IE LENIN AND MARX HAD NOT BEEN GRANTED ASYLU BY HIS COUNTRY THE RUSSIAN REVOLUTION MAY NOT HAVE TAKEN PLACE AT ALL.

L. TROCLET (BELGIUM) EXPRESSED THANKS TO FRANCE FOR THE INITIATIVE IT HAD TAKEN IN THE DRAFTING OF THE DECLARATION. HE REGRETTED THAT THE TEXT OF THE DECLARATION, AS SUBMITTED BY THE COMMISSION ON HUMAN RIGHTS, WAS A "RETREAT" FROM THE ORIGINAL FRENCH DRAFT.

SUPPORTING THE NORWAY-TOGO AND GREEK AMENDMENTS, HE THEN REFERRED TO THE SOVIET PROPOSALS. THE SOVIET REPRESENTATIVE WAS RIGHT IN MAINTAINING THAT THE RIGHT OF ASYLUM SHOULD NOT BE PERMITTED TO BE USED FOR HOSTILE PURPOSES, HE STATED. HIS DELEGATION, LIKE THE SOVIET UNIONS, HELD THE OPINION THAT THE DECLARATION SHOULD NOT COME TO THE PROTECTION OF "WAR CRIMINALS," HE DECLARED.

DR. PEDRO ZULOAGA (VENEZUELA) REITERATED HIS EARLIER ASSERTION THAT THE DRAFT DECLARATION HAD "A BINDING FORCE," ALTHOUGH IT WAS NOT AS IMPORTANT AS A "MULTILATERAL PACT."

MR. NEDBAILO, REPLYING TO THE UNITED KINGDOM REPRESENTATIVE, STATED THAT HIS DELEGATION WAS ADOPTING A "BROAD APPROACH" IN DEFENDING HUMAN RIGHTS, INCLUDING THE RIGHT OF ASYLUM.

HE ASKED IF IT WAS RIGHT TO GIVE THE RIGHT OF ASYLUM TO WAR CRIMINALS AND FASCISTS. ANY ACTIVITIES THAT WERE OPPOSED TO THE PRINCIPLES OF THE UN CHARTER SHOULD NOT BE PERMITTED TO BECOME A PRETEXT FOR SEEKING ASYLUM, HE DECLARED.

LIMIST DISCUSSION TO FIRST ARTICLE SUGGESTED

MARCEL BOUQUIN (FRANCE) SUGGESTED THAT, SINCE THE COMMITTEE HAD DISCUSSED THE DECLARATION IN DETAIL, DISCUSSION SHOULD BE LIMITED TO ARTICLE 1.

Y.A. OSTROVSKI (USSR) DISAGREED WITH THE FRENCH SUGGESTION, AND SAID THERE WAS NO REASON FOR CONCENTRATING ONLY ON ARTICLE 1.

MR. BOUQUIN, EXERCISING HIS RIGHT OF REPLY, SAID IF IT WAS A MANEUVER BY THE SOVIET REPRESENTATIVE "NOT TO CONSIDER" THE DRAFT, HE COULD NOT ACCEPT IT.

HE RECALLED EARLIER DISCUSSIONS IN THE COMMITTEE ON THE DRAFT, AND SAID THERE WAS ALWAYS AN ATTEMPT BY THE SOVIET REPRESENTATIVE TO BLOCK CONSIDERATION OF THE DECLARATION.

HE STATED THAT HE WANTED A YES OR NO ANSWER TO THE QUESTION: "DO YOU WANT TO STUDY THE TEXT?"

HE ADDED THAT HE WAS VERY MUCH CONCERNED AT THE PROSPECT OF THE DRAFT BEING SENT BACK FOR DISCUSSION NEXT YEAR. "STUDY IT, EXAMINE IT, LET US NOT LOSE TIME," HE ADDED.

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MR. OSTROVSKI (USSR), REPLYING, EXPRESSED SURPRISE THAT THE FRENCH REPRESENTATIVE HAD MADE AN "EXPRESSIVELY ELOQUENT STATEMENT" SHOWING THAT HE WAS NOT ONLY "DISSATISFIED," BUT THAT HE WAS ALSO "SOMEWHAT ANGERED."

HE REPREATED THAT HIS DELEGATION WOULD LIKE TO HEAR THE VIEWS OF OTHER DELEGATIONS AND WOULD NOT ACCEPT ANY LIMITATION ON THE DISCUSSION.

THE CHAIRMAN, N.C. KASLIWAL (INDIA), EFERRED TO THE SHORT TIME AT THE DISPOSAL OF THE COMMITTEE FOR COMPLETION OF DISCUSSION ON THE DRAFT DECLARATION. AFTER A PROCEDURAL DEBATE, HE ANNOUNCED THAT THE COMMITTEE WILL DDVOTE ITS NEXT THREE MEETINGS ON THIS ITEM TO CONSIDERATION OF THE PREAMBLE AND ARTICLE 1 OF THE DRAFT DECLARATION. THE COMMITTEE WOULD TAKE UP OTHER ARTICLES IF IT STILL HAD ANY TIME LEFT, HE ADDED.

THE COMMITTEE WILL MEET TOMORROW, 28 NOVEMBER, AT 10:30 A.M.

JA 945P 27 NOV 62

DEPARTMENT OF EXTERNAL AFFAIRS, CANADA

OUTGOING MESSAGE

File Ale

DATE	FILE	SECURITY
NOV23/62	5475-AX-25-40-101	CONFD

FM: EXTERNAL OTT

NUMBER	PRECEDENCE
V-550	CRITICIED

TO: CANDELNY

~~5475-AX-25-40~~

original on 5475-W-19-40

INFO:

Ref.: YOUR TEL 2140 NOV9

Subject: 17TH UNGA: THIRD CTTEE - ITEM 45 - ASYLUM DECLARATION

AS HIGH COMMISSIONERS SUGGESTIONS IN PARTS A, B AND C IN YOUR TEL UNDER REFERENCE DO NOT CHANGE ARTICLES TWO AND FOUR YOU MAY STILL VOTE FOR ARTICLES ONE, TWO, FOUR AND FIVE OF DECLARATION AS STATED IN COMMENTARY PART TWO.

2. HIGH COMMISSIONERS SUGGESTIONS FOR ARTICLE THREE WOULD MAKE ARTICLE EVEN MORE FAR REACHING IN ITS IMPLICATIONS AND YOU SHOULD ABSTAIN AS INSTRUCTED IN PART TWO COMMENTARY.

3. YOU SHOULD RESTRICT COMMENTS TO EXPLANATION OF VOTE AND ONLY THEN IF A NUMBER OF COUNTRIES ARE ALSO MAKING AN EXPLANATION. IF YOU DO MAKE AN EXPLANATION OF VOTE YOU MIGHT SIMPLY SAY THAT CDA RESERVES THE RIGHT OF A SOVEREIGN STATE TO DETERMINE WHETHER OR NOT AN INDIVIDUAL SHOULD BE GRANTED ASYLUM.

4. YOU SHOULD OF COURSE ABSTAIN ON DECLARATION AS A WHOLE.

LOCAL DISTRIBUTION: NO STANDARD (DONE IN DIVISION)
LEGAL DIVISION
DEPT. OF CITIZENSHIP AND IMMIGRATION (D.M. SLOAN)

ORIGINATOR	DIVISION	PHONE	APPROVED BY
SIG ..... NAME E.T. MONICHOL/SD	UNITED NATIONS	2-5643	SIG C.S. MURRAY NAME

EXT. 18 (REV. 12/61)

5475-AX-25-40
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Legal File

UN 19

PRESS RELEASE GA/SHC/1023
SEVENTEENTH GENERAL ASSEMBLY - THIRD COMMITTEE, 51ST MEETING (AM)
UNITED NATIONS, N.Y.

SOCIAL COMMITTEE DECIDES TO INTERRUPT FOR TWO WEEKS FURTHER DISCUSSION ON ARTICLES OF DRAFT COVENANT; TO HEAR HIGH COMMISSIONER FOR REFUGEES NEXT, THEN TAKE UP DECLARATION ON RIGHT OF ASYLUM

THE THIRD (SOCIAL, HUMANITARIAN AND CULTURAL) COMMITTEE TODAY DECIDED TO INTERRUPT ITS DISCUSSION ON THE GENERAL PROVISIONS (ARTICLES 2 TO 5) OF THE DRAFT COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, TO HEAR THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES ON MONDAY, 19 NOVEMBER.

THE CHAIRMAN, N. C. KASLIWAL (INDIA), NOTED THAT A VOTE WAS NOT POSSIBLE ON THE FOUR ARTICLES THIS MORNING. TWO NEW AMENDMENTS AND A REVISION OF AN EARLIER UNITED KINGDOM AMENDMENT WERE TABLED TODAY.

MR. KASLIWAL STATED THAT THE DISCUSSION ON THIS ITEM WOULD, REMAIN "INTERRUPTED" FOR THE NEXT TWO WEEKS WHEN THE COMMITTEE, AFTER HEARING THE HIGH COMMISSIONER FOR REFUGEES, WILL CONSIDER A DRAFT DECLARATION ON THE RIGHT OF ASYLUM.

MOTION FOR CLOSURE OF DEBATE ON ARTICLES REJECTED --

EARLIER IN THE MEETING, THE COMMITTEE REJECTED BY 13 VOTES IN FAVOR, 24 AGAINST, WITH 43 ABSTENTIONS, A MOTION BY MOHAMED N. KOCHMAN (MAURITANIA) FOR THE CLOSURE OF DEBATE ON THE FOUR ARTICLES OF THE COVENANT.

MISS WIJDAN NASSER (JORDAN) AND U KHIN MAUNG PYU (BURMA) SPOKE IN OPPOSITION TO THE MOTION FOR CLOSURE.

ALL REPRESENTATIVES SPEAKING TODAY SUPPORTED THE RETENTION OF ARTICLE 3 DEALING WITH THE EQUAL RIGHT OF MEN AND WOMEN TO THE ENJOYMENT OF ALL ECONOMIC, SOCIAL AND CULTURAL RIGHTS.

SIR DOUGLAS GLOVER (UNITED KINGDOM) SAID HIS DELEGATION WOULD NOT OBJECT TO RETENTION OF THE ARTICLE. HIS DELEGATION AT EARLIER MEETINGS HAD REQUESTED DELETION OF THE ARTICLE ON THE GROUND THAT IT WAS A REPETITION OF PARAGRAPH TWO OF ARTICLE 2 AND WAS, THEREFORE, REDUNDANT.

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THE TWO AMENDMENTS FORMALLY TABLED TODAY RELATED TO PARAGRAPH 2 OF ARTICLE 2 WHICH DEALS WITH THE IMPLEMENTATION OF THE PROVISIONS OF THE COVENANT.

NEW AMENDMENTS SUBMITTED --

ONE OF THESE AMENDMENTS, SPONSORED JOINTLY BY ARGENTINA, MEXICO AND ITALY (DOC.A/C.3/L.1028), LAID EMPHASIS ON THE RECOGNITION AND EFFECTIVE ENJOYMENT OF THE RIGHTS AND ALSO SOUGHT TO REPLACE THE WORD "DISTINCTION" IN THE PARAGRAPH BY THE WORD "DISCRIMINATION," WITH REGARD TO THE EXERCISE OF RIGHTS ENUNCIATED IN THE COVENANT.

AN INDONESIA AMENDMENT (DOC.A/C.3/L.1027) SEEKS TO SPECIFY IN THE ARTICLE THAT THE "STATE PARTY" WOULD "UNDERTAKE TO GUARANTEE" THESE RIGHTS TO "ALL ITS NATIONALS," THEREBY BARRING ALIENS FROM CLAIMING BENEFITS UNDER THE COVENANT.

BOTH THESE AMENDMENTS RECEIVED A MIXED RECEPTION IN THE COMMITTEE.

THE UNITED KINGDOM PRESENTED A REVISED AMENDMENT (DOC.A/C.3/L.1026/REV.1) WHICH WOULD REPLACE THE WORDS "LEGISLATIVE AS WELL AS OTHER MEANS" IN PARAGRAPH 2 OF ARTICLE 2 BY "ALL APPRIPRIATE MEANS INCLUDING LEGISLATIVE MEASURES." THE ORIGINAL UNITED KINGDOM AMENDMENT REFERRED ONLY TO "LEGISLATIVE OR OTHER MEANS."

BEGUM ANWARA KHATOON (PAKISTAN) AND SHU-KAI CHOW (CHINA) SUPPORTED THE UNITED KINGDOM AMENDMENT WHILE REPRESENTATIVES OF URUGUAY, CUBA, CZECHOSLOVAKIA AND CHILE SAID THAT EVEN THE REVISED AMENDMENT WOULD WEAKEN THE ARTICLE.

A COSTA RICAN AMENDMENT (DOC.A/C.3/L.1025), WHICH WAS TABLED YESTERDAY, WAS SUPPORTED IN PRINCIPLE BY SOME SPEAKERS TODAY BUT THE REPRESENTATIVES OF CANADA, UNITED KINGDOM AND PAKISTAN HAD RESERVATIONS AS TO ITS ADVISABILITY.

COMMENTS MADE BY ILO AND UNESCO --

JOSE LUIS BUSTAMANTE, REPRESENTING THE INTERNATIONAL LABOR ORGANIZATION, EMPHASIZED THAT THE PROBLEMS FACED BY A WOMAN WORKER AND A MAN WORKER WERE NOT "GENERALLY DISTINGUISHABLE." THERE WAS AN "IDENTITY OF PURPOSE" BETWEEN ARTICLE 3 AND CERTAIN PROVISIONS IN INTERNATIONAL LABOR ORGANIZATION CONVENTIONS ON THE STATUS OF WOMEN WORKERS, HE SAID.

QUOTING STATISTICS ON WOMEN WORKERS IN THE FIELD OF MANUFACTURED GOODS, IN SWITZERLAND, CHILE AND ARGENTINA, MR. BUSTAMANTE NOTED THAT THERE WAS AN INCREASING PARTICIPATION OF WOMEN IN THE ECONOMIC LIFE OF VARIOUS COUNTRIES. THIS WOULD INCREASE FURTHER AS THE DEVELOPING COUNTRIES CONTINUED TO STRIVE FOR AN ACCELERATED GROWTH OF THEIR ECONOMIES, HE ADDED.

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ASDRUBAL SALSAMENDI REPRESENTING THE UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION, SAID HIS ORGANIZATION HAD INCREASED OVER THE YEARS ITS CONTRIBUTION TO THE IMPROVEMENT OF THE STATUS OF WOMEN.

GIVING DETAILS ON A NUMBER OF UNESCO PUBLICATION AND PROJECTS, HE SAID UNESCO POLICIES WERE AIMED AT ASSISTING IN THE STRUGGLE AGAINST DISCRIMINATION BASED ON SEX, AND AT REDUCING ANY IMBALANCE IN WOMENS ACCESS TO EDUCATION.

HE WENT ON THE SAY THAT UNESCO HAD ALSO CARRIED OUT A NUMBER OF SURVEYS AND WAS COLLABORATING WITH UNITED NATIONS AGENCIES AND GOVERNMENTAL AND NON-GOVERNMENTAL ORGANIZATIONS IN THIS RESPECT.

IN CONNECTION WITH THE THREE-POWER AMENDMENT, PROF. FRANCESCO CAPOTORTI (ITALY) SAID HIS DELEGATION AND THE OTHER TWO CO-SONSORS HAD BASED THE AMENDMENT ON THE GENERAL VIEWS EXPRESSED IN THE DISCUSSION.

MISS HELEN MARSH (CANADA), WHILE GENERALLY AGREEING WITH THE FOUR ARTICLES IN THE PRESENT DRAFT, MADE A NUMBER OF "SUGGESTIONS" IN ORDER TO ACHIEVE "A COMMON DRAFT."

SHE DOUBTED THE ADVISABILITY OF THE COSTA RICAN AMENDMENT AND SUPPORTED THE SUGGESTION THAT ARTICLE 2 SHOULD "ENSURE," RATHER THAN "GUARANTEE," THE REALIZATIO OF THE RIGHTS.

MRS. GRACIELA PONCE DE LEON DE CATTAROSSI (URUGUAY) SAID HER DELEGATION WOULD ACCEPT THE ARTICLES AS DRAFTED. SHE EXPRESSED SURPRISE AT THE "EXTREME SENSITIVITY" SHOWN IN REGARD TO ARTICLE 3.

MISS ALBA GRINAN NUNEZ (CUBA) OPPOSED ALL AMENDMENTS TO THE FOUR ARTICLES, WITH THE EXCEPTION OF THE COSTA RICAN PROPOSAL.

MR. CHOW (CHINA) SAID HIS DELEGATION WOULD VOTE FOR THE COSTA RICAN AND UNITED KINGDOM AMENDMENTS AND WOULD SUPPORT THE RETENTION OF ARTICLE 3.

MRS. HELENA LEFLEROVA (CZECHOSLOVAKIA) STRESSED THE NEED FOR REFRAINING FROM MAKING ANY UNNECESSARY CHANGES IN ARTICLE 2, WHICH WAS THE MOST IMPORTANT ARTICLE IN THE COVENANT.

AS TO THE THREE-POWER AMENDMENT, HER DELEGATION WOULD LIKE PARAGRAPH 2 TO PROVIDE FOR THE EXERCISE OF THE RIGHTS WITHOUT "DISTINCTION OR DISCRIMINATION." SHE HAD RESERVATIONS REGARDING THE INDONESIAN AMENDMENT. THE UNITED KINGDOM AMENDMENT, SHE HELD, WOULD WEAKEN THE ARTICLE.

MOERSID IDRIS (INDONESIA) REITERATED HIS DELEGATIONS POSITION THAT, UNDER THE PRESENT DRAFT, A PRIVILEGED ALIEN GROUP -- A HERITAGE OF THE COLONIAL PAST OF MOST OF THE NEWLY FREED NATIONS -- WOULD CONTINUE TO RETAIN THEIR PRIVILEGES, THUS

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PERPETUATING THEIR ECONOMIC DOMINANCE. HE WOULD SUPPORT THE THREE-POWER AMENDMENT ONLY IF HIS OWN AMENDMENT WAS ADOPTED.

SIR DOUGLAS GLOVER (UNITED KINGDOM) REPEATED HIS DELEGATIONS OBJECTION TO THE EMPHASIS ON LEGISLATION IN THE PRESENT DRAFT. HE WAS PRESENTING A REVISED AMENDMENT AFTER NOTING THE OPINION OF MEMBERS ON HIS ORIGINAL AMENDMENT.

THE COVENANT INVOLVED A NUMBER OF HUMAN RIGHTS, AND A GREAT DEAL OF EDUCATION WAS REQUIRED FOR THEIR REALIZATION. HE STRESSED THAT THE REVISED AMENDMENT WOULD NOT WEAKEN THE ARTICLE IN ANY WAY.

HE OPPOSED THE INDONESIAN AMENDMENT, AS IT WOULD DISCRIMINATE AGAINST ALIENS.

HUMBERTO DIAZ-CASANUEVA (CHILD) CONCLUDED THAT THE THREE-POWER AMENDMENT WOULD LEAVE ROOM FOR A STATE TO RECOGNIZE THE RIGHTS WITHOUT LETTING ITS NATIONALS EXERCISE THEM. THE CONCEPT OF RECOGNITION OF THESE RIGHTS WAS SUPERFLUOUS, AS THEIR EXERCISE WOULD MEAN THEIR IMPLICIT RECOGNITION.

HE OPPOSED BOTH THE UNITED KINGDOM AND THE INDONESIAN AMENDMENTS.

BEGUM ANWARA KHATOON (PAKISTAN) SUPPORTED THE UNITED KINGDOM AMENDMENT AND URGED THE RETENTION OF ARTICLE 3. SHE OPPOSED THE COSTA RICAN AMENDMENT.

THE COMMITTEE WILL MEET AGAIN ON MONDAY AT 10:30 A.M.

HS&JA 502P 16 NOV 62

5475-AX-25-40
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original on 5475-W-19-40
5475-W-21-40

FM CANDELNY NOV9/62 CONFD

TO EXTERNAL (2140)

UNGA:THIRD CTTEE-ITEM 45:ASYLUM DECLARATION

1.UNHCR OFFICE IN NY HAS VOLUNTEERED TO MANY DELS FOLLOWING SUGGESTIONS CONCERNING THE DRAFT DECLARATION ON RIGHT OF ASYLUM:(A)IN ARTS TWO AND THREE,TO USE LANGUAGE OF ART. ONE IE QUOTE PERSONS ENTITLED TO INVOKE ART 14 OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS UNQUOTE(B)IN ART TWO IN ORDER TO TAKE INTO ACCOUNT THE POSSIBLE DIFFICULTIES WHICH MAY ARISE IN THE INITIAL GRANT OF ASYLUM TO INSERT WORDS QUOTE GRANTING OR UNQUOTE BEFORE THE WORD QUOTE CONTINUING UNQUOTE(C)IN ARTS TWO THREE AND FOUR TO REPLACE QUOTE SHOULD UNQUOTE BY QUOTE SHALL UNQUOTE AS WAS DONE IN ARTS ONE AND FIVE AND IN HUMAN RIGHTS DECLARATION(D)THE FOLLOWING CHANGE IN ART THREE IS THE ONE ON WHICH HCR LAYS GREATEST WEIGHT AND CONCERNS THE SENTENCE QUOTE EXCEPT FOR OVERRIDING REASONS OF NATIONAL SECURITY OR SAFEGUARDING OF THE POPULATION UNQUOTE.THIS MIGHT ALLOW STATES TO REFUSE TO GRANT ASYLUM TO ANY PARTICULAR INDIVIDUAL IN ORDER TO QUOTE SAFEGUARD ITS POPULATION UNQUOTE.THIS CRITERION HAS NO RPT NO RECOGNIZED DEFINITION AND COULD BE USED BY STATES AS A JUSTIFICATION FOR RESTRICTIVE PRACTICES.HCR RECOMMENDS THAT THE PRINCIPLE BE STATED WITHOUT QUALIFICATIONS IN THE FIRST PARA AND THAT A NEW PARA TO BE INSTERED AFTER PARA ONE SHOULD CLEARLY SET OUT THE CIRCUMSTANCES UNDER WHICH EXCEPTION TO THE GENERAL PRINCIPLE MAY BE MADE.SECURITY OF A STATE IS OF PRIME CONSIDERATION FOR THAT STATE AND MAY IN EXTREME CIRCUMSTANCES OUTWEIGHT THE CLAIMS OF A PARTICULAR INDIVIDUAL TO ASYLUM.THE PHRASE QUOTE SAFEGUARDING OF THE POPULATION UNQUOTE WAS INTENDED BY THE DEL TO THE COMMISSION WHO INTRODUCED IT TO REFER TO INSTANCES OF MASS INFLUX ALONE.THE PHRASE SHOULD BE EXPLICITLY RESTRICTED TO THESE OCCASIONS IF IT CANNOT RPT NOT BE OMITTED ALTOGETHER.IT SHOULD NOT RPT NOT BE POSSIBLE FOR A STATE TO EXCLUDE INDIVIDUALS

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ON THE BASIS OF QUOTE SAFEGUARDING ITS POPULATION UNQUOTE.HCR RECOMMENDS FOLLOWING NEW PARA QUOTE THIS PROVISION MAY NOT RPT NOT BE INVOKED IN THE CASE OF ANY INDIVIDUAL WHO CONSTITUTES A DANGER TO NATIONAL SECURITY NOR IN THE CASE OF A MASS INFLUX WHICH ENDANGERS THE SAFETY OF THE NATION UNQUOTE(E)SECOND PARA OF ART THREE OF THE COMMISSIONS DRAFT IS ADDRESSED TO STATES WHICH INTEND TO APPLY A MEASURE THE APPLICATION OF WHICH FIRST PARA OF ART 3 SEEKS TO RESTRICT.IT RECOMMENDS THAT ALTERNATIVE ARRANGEMENTS BE MADE IF POSSIBLE TO ENABLE THE PERSONS THREATENED WITH RETURN TO A TERRITORY WHERE THEY MAY BE PERSECUTED,TO LEAVE FOR ANOTHER COUNTRY IN WHICH THEY DO NOT RPT NOT FEAR PERSECUTION AND WHERE THEY WOULD NOT RPT NOT BE LIABLE TO BE RETURNED TO A COUNTRY WHERE THEY FEAR PERSECUTION.AT PRESENT THE ART ONLY RECOMMENDS STATES TO CONSIDER THE POSSIBILITY OF GIVING THESE PERSONS SUCH AN ALTERNATIVE OPPORTUNITY.REF IS ALSO MADE IN THIS PARA TO QUOTE PROVISIONAL ASYLUM UNQUOTE,A TERM WHICH HAS NO RPT NO RECOGNIZED MEANING IN INTL PRACTICE AND MIGHT BE AVOIDED.HCR SUGGESTS THAT SUCH PERSONS SHOULD ALWAYS BE GIVEN THE OPPORTUNITY OF SEEKING AN ALTERNATIVE COUNTRY OF ASYLUM IF POSSIBLE AND THAT THE ART BE AMENDED THUS QUOTE TO ALLOW THE PERSONS THUS ENDANGERED A REASONABLE PERIOD AND SUCH FACILITIES AS ARE NECESSARY TO ENABLE THEM TO SEEK ASYLUM IN ANOTHER COUNTRY UNQUOTE.

2.THE FIRST THREE SUGGESTIONS WOULD APPEAR TO BE REASONABLE ONES AND WE WOULD PROPOSE TO SUPPORT THEM.AS REGARDS SUGGESTIONS(D)AND(E) CONCERNING ART 3 WE BELIEVE THAT IN LIGHT OF OUR PRESENT INSTRUCTIONS IT WOULD BE PREFERABLE NOT RPT NOT TO EXPRESS OUR VIEWS OF THEM. SINCE IT IS POSSIBLE AS STATED IN OUR PRESENT INSTRUCTIONS THAT THERE MIGHT BE OBJECTIONS ON CDAS PART TO ANY NEW TEXT PRESENTED TO THE CTTEE OUR DEL MIGHT THEN APPEAR AS RESISTING THE INCLUSION

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OF A SUBSTANTIVE ART SUCH AS PRESENT ART3.WE BELIEVE THEREFORE THAT WE SHOULD NOT RPT NOT SOLICIT SUPPORT FROM OTHER DELS FOR THE POINTS RAISED IN PART 1! COMMENTARY ART AND THAT IT WOULD SEEM SUFFICIENT FOR OUR PURPOSE TO STATE SOME OF THEM DURING DEBATE.IF YOU AGREE WITH ABOVE WE SHOULD BE GRATEFUL TO RECEIVE TEXT OF STATEMENT TO BE DELIVERED IN CTTEE.DEBATE ON THIS ITEM IS SCHEDULED FOR LAST WEEK IN NOV.

Legal/M.Fraser/fl

CONFIDENTIAL

United Nations Division

August 17, 1962

Legal Division

5475-AX-40
5475-AX-25-40

Your memorandum of June 12, 1962.

Part II - Commentary

Attached please find draft commentaries on provisionsl agenda items 72 and 45, the question of the publication of a United Nations Juridical Yearbook and the Draft Declaration on the Right of Asylum.

GILLES SICOTTE
Legal Division

P.S. As our position has remained unchanged in relation to the Draft Declaration on the Right of Asylum, the Part II Commentary for the Sixteenth Session of the United Nations General Assembly on this item has been reproduced.

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PART II

CHAPTER III
RESTRICTED
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DRAFT DECLARATION ON THE RIGHT OF ASYLUM

a) Background References

Commission on Human Rights, Report of the Sixteenth Session (28 Feb. - 18 March 1960) E/3335, E/N. 4/804

Memorandum by the Secretary-General, dated August 23, 1960. A/4452

The Canadian Bill of Rights, Statutes of Canada 1960, Chapter 44

Final Report on Item 82 Fifteenth Session of the General Assembly. Sept. 20 to Dec. 20, 1960.

Draft Declaration on the Right of Asylum, Report of the Third Committee. A/4667 dated 17th Dec. 1960.

General Assembly Resolution. 1571 (XV) dated 18 Dec. 1960.

Part II of the Commentary for the Sixteenth Session on Item 38.

b) Issues Facing the Seventeenth Session

The text of a draft Declaration on the Right of Asylum, adopted by the Human Rights Commission, was referred to the General Assembly fifteenth session by the Economic and Social Council. The General Assembly referred this matter to the Third Committee, where it was relegated to the end of this committee's agenda.

At the fifteenth and sixteenth sessions, of the United Nations General Assembly, the Declaration was not discussed but deferred for the consideration of the Committee at its next session. At the fifteenth session there was some question whether the item should be assigned to the Third or Sixth Committee. The Canadian Delegation took no part in the brief debate on the question.

c) Policy Considerations for Canada

Canadian officials of the Department of Citizenship and Immigration have considered the Draft Declaration on the Right of Asylum; they have linked it closely to the Convention on the Status of Refugees, for Article 3 of the Draft Declaration and Article 33 of the Convention raise

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problems of a similar nature. (The text of Article 33 is attached as Annex II. The Convention today binds some 25 states; most of those in western Europe, including the United Kingdom, Australia, New Zealand, Yugoslavia, Israel, Tunisia, Morocco and Ecuador.) They have no objections to, and no substantive comments upon the preambular and operative paragraphs and Articles 1, 2, 4 and 5 of the Draft Declaration, although they note that paragraph 5 seems unnecessary as it repeats the third paragraph of the preamble. A few drafting changes might be desirable in these parts of the text, but Canada would not dissent from them in their present form.

Article 3, however, is the heart of the declaration and caused the Human Rights Commission the greatest difficulty. Department of Citizenship and Immigration officials have studied the implications of the draft text and have come to the conclusion that the delegation should not support Article 3 as it now stands and should abstain in the vote on the complete text unless Article 3 is amended in a way that makes it more acceptable. The Department of External Affairs is in accord with this conclusion.

A summary of the comments of the Department of Citizenship and Immigration follows as part (i), with the comments of the Department of External Affairs as part (ii).

(i) Comments of Department of Citizenship and Immigration

Article 3 is much more sweeping and far-reaching in its effect than anything contained in the Convention on the Status of Refugees. The Convention is applicable only to a relatively limited number of persons who fall within the Convention's definition of refugee. In contrast Article 3 of the Draft Declaration on the Right of Asylum is applicable to everyone. No one seeking asylum, says the Declaration, "should, except for over-riding reasons of national security or safeguarding of the population, be subjected to measures such as rejection at the frontier, return or expulsion which would result in compelling him to return to or remain in a territory if there is well-founded fear of persecution damaging his life, physical integrity or liberty in that territory."

It is true that the Article speaks of a "well-founded" fear of persecution, but it seems likely that in most cases in which the question might arise, arguments would be advanced which would be difficult to refute in factual terms; the effect would be that the Canadian Government would have the burden of proving that the fear of persecution was not well-founded. Even if this were not so, the Government, if it supported this Article, would at least be under a moral obligation to grant asylum in Canada to anyone who alleged that he had a well-founded fear of persecution, whether in reality that fear was well-founded or not.

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Article 3 of the Draft Declaration is also broader than the corresponding provisions of the Convention on the Status of Refugees in that governments are expected to refrain from three types of action in relation to persons seeking asylum: "rejection at the frontier, return or expulsion". Article 33 of the Convention refers only to return or expulsion. It is one thing to undertake not to expel from the country a person who has found his way here and has gained entry either as a landed immigrant, a temporary visitor or on some other basis. It is quite another thing to undertake not to reject at the frontier a person who may never have been in the country and who may apply at a border point or who may be a passenger, stowaway or a crew member on a ship calling at a Canadian harbour.

By Article 33 of the Convention, a state undertakes that it will not expel or return a refugee "to the frontiers of territories where his life or freedom would be threatened". Article 3 of the Draft Declaration refers to "rejection at the frontier, return or expulsion which would result in compelling him to return to or remain in a territory etc.". There is a considerable difference between an undertaking not to expel or return a person to the frontiers of another country and an undertaking not to reject a person at the frontier if the result of such rejection is that he will eventually be compelled to return to that country. A person rejected at the Canadian frontier might also be rejected at the frontiers of the other countries where he seeks asylum; each rejection would in effect have the result of compelling him to return to the country where he fears persecution. The result would be that Canada could be faced with the argument that its action in rejecting a person at the Canadian frontier was in violation of the undertaking to which Canada has subscribed in voting for Article 3 of the Declaration and the burden of proof would, in most cases, be likely to fall upon the Canadian authorities to establish that they were not acting in violation of Article 3.

Canada might be justified in undertaking that it would not return or expel anyone who has actually managed to land in Canada, whether temporarily or permanently and whether legally or illegally, but it is difficult to consider accepting, even in principle, the proposition that Canada does not have the right to decide entirely in its own interests who shall be allowed to enter the country for the first time. A promise to safeguard the position of persons who are actually within Canadian jurisdiction follows from an undertaking not to return or expel. An undertaking not to reject at the frontier, however, leads to the assumption from

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some other jurisdiction of a responsibility which belongs to it rather than to Canada, and Canadian officials see little or no justification for accepting this additional obligation.

The text of Article 3 leads to a final general comment which does not perhaps apply to any particular part of the Article. The text seems to endeavour to shift the concept of the right of asylum from the state to the individual. Asylum has always been considered as the right of a state; it may be granted to an individual notwithstanding any protest that may be made by the state from which he comes. Article 3, however, proclaims the right of an individual to demand and secure asylum from the government of a country. If this change is to be considered at all, the state which may be under an obligation to grant asylum should at least have the right to insist that the burden of proof, in case of doubt, rests clearly with the individual seeking asylum rather than with the state from which asylum is sought.

(ii) Comments of the Department of External Affairs

The question of asylum falls mainly within the responsibilities of the Department of Citizenship and Immigration. That Department's comments have been given above to explain the position adopted on the Draft Declaration and for the information of the Canadian Delegation to the General Assembly. This part (c) (ii) of the commentary is intended primarily to provide suggestions for the use of the material in the preceding part.

Perhaps the most serious objection to Article 3 and indeed to the Draft Declaration as a whole is its implied derogation from national sovereignty. While it does not deny the right of a state to refuse to grant asylum to a person, it greatly strengthens the position of the person seeking asylum. This is, of course, the purpose of the Draft Declaration, but the right of asylum in international law is not the right of a person to secure asylum but the right of a state, in the exercise of its sovereignty, to grant asylum. Lauterpacht, in Oppenheim's International Law (8th ed., vol. 1, p. 677) writes,

> "The so-called right of asylum is certainly not a right possessed by the alien to demand that the State into whose territory he has entered with the intention of escaping prosecution in some other State should grant protection and asylum. For such State need not grant such demands. ...At present it is probable that the so-called right of asylum is nothing but the competence of every State to allow a prosecuted alien to enter, and to remain on, its territory under its protection, and thereby to grant asylum to him."

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It is recognized that international law may be moving towards a position where the right of asylum is the right of an individual to secure asylum; however, this is not yet the position, and the delegation should make clear, if it becomes necessary to do so, that the Canadian Government does not recognize any right of an individual to demand and receive asylum from a state.

This Draft Declaration differs from most other similar Declarations and Conventions that have been formulated under the United Nations in that it refers and applies to everyone, not just to special groups such as refugees, women and children. For this reason caution in adopting it is necessary and its terms have been examined carefully. References made above to Article 33 of the Convention on the Status of Refugees are useful for comparison, but the Delegation should not link Article 3 of the Draft Declaration with it unless the particular nature of a discussion makes doing so appropriate. Canada is not a party to the Refugee Convention; it is, in fact, objections made to the implications of Article 33 that have prevented us from acceding to it. While the Canadian position on Article 33 may be undergoing some change, comparisons between the terms of these two articles are to be avoided in public debate. The suggestion made by the Department of Citizenship and Immigration that the phrases "rejection at the frontier... which would result in compelling him to return to or remain in a territory" etc., go considerably further than the wording used in the Refugee Convention is certainly true, but to say so would be to raise a controversy over whether, in fact, there would be much difference in their application. It is very possible that, in practice, the effect of Article 33 would be as broad as that of Article 3; very few refusals to admit a person that would contravene Article 3 could be justified by citing Article 33. Indeed, to say that Canada would not expel a person already in the country, even if here illegally, but might reject at the Canadian frontier a person seeking asylum, would seem likely to encourage attempts at illegal entry. To adopt such a position in public debate might well prove embarrassing.

(d) Instructions

In making known the Canadian objections to the text of Article 3 of the Draft Declaration the delegation will, it is realized, be handicapped by not being able to make some of its points in public. Neither can it suggest an alternative text. Even if the objections raised above are satisfied it is possible that there will be other objections to any new text. The delegation should therefore

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at once refer any proposed amendments to Ottawa for comment and instruction. The delegation should also seek support for the points that have been raised.

If Article 3 remains unchanged the delegation should abstain in the vote on it and in the vote on the Declaration as a whole but may support the other parts of the Declaration if a vote is taken separately on them.

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ANNEX I

TEXT OF THE DRAFT DECLARATION ON THE RIGHT OF ASYLUM

The General Assembly,

Recalling that among the purposes of the United Nations is the achievement of international co-operation in solving international problems of an economic, social, cultural or humanitarian character and in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion,

Mindful of the Universal Declaration of Human Rights which declares in Article 14 that "(1) Everyone has the right to seek and to enjoy in other countries asylum from persecution; (2) this right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations",

Recalling also paragraph 2 of Article 13 of the Universal Declaration of Human Rights which states that "everyone has the right to leave any country, including his own, and to return to his country",

Recommends that, without prejudice to existing instruments dealing with asylum, States Members of the United Nations and members of the specialized agencies should base themselves in their practices on the following principles:

Article 1

Asylum granted by a state, in the exercise of its sovereignty, to persons entitled to invoke Article 14 of the Universal Declaration of Human Rights shall be respected by all other States.

Article 2

The situation of persons who are forced to leave their own or another country because of persecution or well-founded fear of persecution is, without prejudice to the sovereignty of States and the purposes and principles of the United Nations, of concern to the international community.

to grant asylum, 1
the United Nations should consider, in a spirit of [illegible] national solidarity, appropriate measures to lighten the burden on the country granting asylum.

Article 3

No one seeking or enjoying asylum in accordance with the Universal Declaration of Human Rights should, except for overriding reasons of national security or safeguarding of the population, be subjected to measures such as rejection at the frontier, return or expulsion which would result in compelling him to return to or remain in a territory if there is well-founded fear of persecution endangering his life, physical integrity or liberty in that territory.

In cases where a State decides to apply any of the above-mentioned measures, it should consider the possibility of the grant of provisional asylum under such conditions as it may deem appropriate, to enable the person thus endangered to seek asylum in another country.

Article 4

Persons enjoying asylum should not engage in activities contrary to the purposes and principles of the United Nations.

Article 5

Nothing in this Declaration shall be interpreted to prejudice the right of everyone to return to his country as stated in Article 13, paragraph 2, of the Universal Declaration of Human Rights.

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ANNEX II

CONVENTION ON THE STATUS OF REFUGEES

ARTICLE 33

Prohibition of Expulsion or Return

("Refoulement")

No Contracting State shall expel or return ("Refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

2. The benefit of the present provision may not, however be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particular serious crime, constitutes a danger to the community of that country.

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INTERNATIONAL LAW COMMISSION-14TH SESSION GENEVA-FUTURE WORK

ILC DEVOTED ITS FIRST TWO WEEKS TO A CONSIDERATION OF ITS FUTURE WORK PURSUANT TO REQUEST MADE BY UNGA IN RES 1686(XVI)OF DEC18/61.PAL (INDIA)WAS ELECTED CHAIRMAN,WITH GROS(FRANCE)AND AMADO(BRAZIL)AS VICE-CHAIRMEN AND LACHS(POLAND)AS RAPPORTEUR.THE COMMISSION HAD BEFORE IT DOCU A/CN/4/145 PREPARED BY SECRETARIAT SURVEYING THE PAST AND EXISTING WORK OF THE COMMISSION AND PROPOSALS MADE IN UNGA FOR FUTURE WORK.COPY OF THIS DOCU AND OF PROVISIONAL SUMMARY RECORDS OF MTGS TO DATE(A/CN.4/SR/628-636)WERE AIRMAILED TO YOU MAY8.COMMISSION HAS NOW CONSLUDED PRESENT STAGE OF DISCUSSIONS ON ITS WORK AND HAS BEGUN CONSIDERATION OF LAW OF TREATIES.WALDOCKS REPORT ON TREATIES WAS DISTRIBUTED TO MEMBERS END OF LAST WEEK(DOCU A/CN/4/144 CONTAINING REPORT WAS AIRMAILED TO YOU ON MAY4 AND ADDENDUM TO REPORT (A/CN/4/144/ADD.1)WAS AIRMAILED MAY8).IT IS EXPECTED THAT REMAINDER OF WORK OF PRESENT SESSION WILL LARGELY BE DEVOTED TO LAW OF TREATIES.

2.THE DEBATE ON WORK OF COMMISSION WAS A BROAD ONE WITH A WIDE VARIETY OF VIEWS BEING EXPRESSED ON THE THREE MAIN QUESTIONS CONCERNING FUTURE WORK OF COMMISSION-STATE RESPONSIBILITY(ILC WAS ASKED TO CONTINUE ITS WORK ON THIS BY UNGA RES 1686(XVI)PARA3(A));SUCCESSION OF STATES AND GOVTS(SAME RES ASKED ILC TO INCLUDE THIS SUBJECT ON ITS PRIORITY LIST);AND ITS FUTURE PROGRAMME OF WORK(CONCERNING WHICH ILC WAS ASKED TO REPORT TO UNGA AT ITS NEXT SESSION). IT WAS CLEARLY THE GENERAL VIEW OF COMMISSION THAT ITS MAIN WORK OVER THE NEXT FIVE YEARS WOULD BE ON SUBJECT OF LAW OF TREATIES AND THAT A VERY LARGE PART OF COMMISSIONS TIME WOULD HAVE TO BE GIVEN TO THIS SUBJECT.

3.IN VIEW OF FACT THAT IT WOULD HAVE BEEN DIFFICULT TO REACH A [illegible] STATE

SUCCESSION WITHOUT A PROLONGED DEBATE IN COMMISSION,CHAIRMAN PRESSED FOR ACCEPTANCE OF A PROPOSAL OF TUNKIN FOR CREATION OF CTTEES TO STUDY SCOPE OF STATE RESPONSIBILITY AND OF SUCCESSION OF STATES AND GOVTS.AFTER A LENGTHY PROCEDURAL DEBATE COMMISSION AGREED TO ESTABLISH FOLLOWING FOUR CTTEES(1)A SEVEN-MEMBER DRAFTING CTTEE UNDER CHAIRMANESHIP OF GROS(FRANCE)WITH FOLLOWING ADDITIONAL MEMBERS:WALDOCK(UK),AGO(ITALY),ARECHAGA(URUGUAY),TUNKIN(USSR), LACHS(POLAND),YASSEEN(IRAQ);(2)AN EIGHT-MEMBER CTTEE UNDER CHAIRMANSHIP OF AMADO(BRAZIL)WHOSE FUNCTION IS TO DRAW UP A LIST OF TOPICS FOR WORK OF COMMISSION AND REPORT TO ILC AT ITS PRESENT SESSION WITH A VIEW TO COMMISSION DECIDING ON CERTAIN SPECIFIC TOPICS FOR FUTURE CODIFICATION.(ADDITIONAL MEMBERS ARE AGO,BARTOS (YUGOSLAVIA),MYSELF,CASTREN(FINLAND),ARECHAGA,PESSOU(DAHOMEY)AND TUNKIN;(3)A CTTEE OF TEN ON STATE RESPONSIBILITY UNDER CHAIRMANSHIP OF AGO WITH FOLLOWING ADDITIONAL MEMBERS:TUNKIN,LACHS,GROS, BRIGGS(USA),ARECHAGA,DE LUNA(SPAIN,TSURUOKA(JAPAN),PAREDES(ARGENTINA)AND YASSEEN.FUNCTION OF THIS CTTEE IS TO STUDY AND LAY DOWN GENERAL INSTRUCTIONS ON SCOPE OF SUBJECT OF STATE RESPONSIBILITY FOR GUIDANCE OF SPECIAL RAPPORTEUR OR RAPPORTEURS(TO BE APPOINTED AT NEXT SESSION IN 1963).CTTEE WOULD BEGIN WORK AT PRESENT SESSION, CONSULT BY CORRESPONDENCE BEFORE NEXT SESSION AND DRAW UP REPORT AT BEGINNING OF NEXT SESSION FOR CONSIDERATION BY ILC NOT RPT NOT LATER THAN BYSEND OF ITS NEXT SESSION;(4)A CTTEE OF TEN ON SUCCESSION OF STATES AND GOVTS UNDER CHAIRMANSHIP OF LACHS WITH FOLLOWING ADDITIONAL MEMBERS:BARTOS,BRIGGS,CASTREN(FINLAND),LIU(CHINA) ELIAS(NIGERIA),TABIBI(AFGHANISTAN),TUNKIN,ROSENNE(ISRAEL),EL-ERIAN (UAR).TERMS OF REF AND TIME OF REPORTING OF WORK OF CTTEE IS SAME AS THAT OF CTTEE ON STATE RESPONSIBILITY.SPECIAL RAPPORTEUR OR RAPPORTEURS WILL,AS IN CASE OF STATE RESPONSIBILITY,BE CHOSEN AT NEXT SESSION AFTER CTTEE PRESENTS ITS REPORT.

4.WHILE THERE WAS UNANIMITY ON ESTABLISHMENT OF A DRAFTING CTTEE AND OF CTTEE ON FUTURE WORK OF COMMISSION,THERE WAS A SHARP

DIVERGENCE OF VIEWS ON DESIRABILITY OF ESTABLISHING CTTEES OF THE TYPE FINALLY AGREED UPON ON STATE RESPONSIBILITY AND SUCCESSION. THE PREFERENCE OF A LARGE NUMBER OF MEMBERS(INCLUDING GROS,WALDOCK, MYSELF,VERDROSS,AGO,ELIAS,ARECHAGA AND OTHERS)WAS FOR APPOINTING SPECIAL RAPPORTEURS AT PRESENT SESSION WITH EITHER NO RPT NO SPECIAL CTTEES BEING ESTABLISHED OR THEIR CREATION AS CONSULTATIVE GROUPS IN ORDER TO ADVISE THE SPECIAL RAPPORTEUR ON GENERAL GUIDELINES OF HIS WORK.DECISION TO DEFER APPOINTMENT OF SPECIAL RAPPORTEURS AND TO ESTABLISH CTTEES WITH RESPONSIBILITY FOR INVESTIGATING GENERAL SCOPE OF STATE RESPONSIBILITY AND SUCCESSION WAS DUE IN LARGE MEASURE TO PERSISTENCE OF CHAIRMAN WHO CONTINUALLY PRESSED FOR ADOPTION OF SUGGESTION OF TUNKIN FOR ESTABLISHMENT OF THESE CTTEES. WHILE NO RPT NO VOTE WAS TAKEN,IT WAS CLEAR THAT DECISION TO CREATE (FOR THE FIRST TIME SINCE THE INCEPTION OF COMMISSION)CTTEES WITH GENERAL EXPLORATORY FUNCTIONS WAS DUE LESS TO GENERAL WISHES OF MAJORITY OF MEMBERS THAN TO DETERMINATION OF CHAIRMAN AND SOVIET BLOC REPS.

5.WHILE NO RPT NO DECISION WAS TAKEN WITH REGARD TO APPOINTMENT OF SPECIAL RAPPORTEURS FOR THESE TWO SUBJECTS IT WAS GENERALLY UNDERSTOOD THAT THEY WOULD BE DESIGNATED FROM AMONG MEMBERS OF EACH CTTEE AND IT SEEMS LIKELY THAT AGO WILL BE ELECTED AT 1963 SESSION AS SPECIAL RAPPORTEUR FOR STATE RESPONSIBILITY,AND LACHS WILL BE ELECTED SPECIAL RAPPORTEUR FOR SUCCESSION OF STATES AND GOVTS.

6.THERE WAS CONSIDERABLE DISCUSSION OF SCOPE OF THESE TWO SUBJECTS AS WELL AS OF OTHER FUTURE WORK OF COMMISSION.ON SUBJECT OF STATE RESPONSIBILITY,MANY MEMBERS(INCLUDING VERDROSS,AGO,TUNKIN,LACHS, YASSEEN,BARTOS AND OTHERS)SUPPORTED VIEW THAT SUBJECT SHOULD BE SPLIT INTO TWO OR MORE PARTS-CORRESPONDING IN GENERAL TO BROAD QUESTION OF GENERAL SCOPE AND NATURE OF STATE RESPONSIBILITY AND THE MORE LIMITED QUESTION OF RESPONSIBLITIY FOR DAMAGE TO ALIENS ON TERRITORY OF A FOREIGN STATE.ON THE OTHER HAND,SEVERAL OTHER MEMBERS(INCLUDING GROS,ARECHAGA,BRIGGS,WALDOCK

AND MYSELF)EMPHASIZED THE CLOSE INTERRELATIONSHIP BETWEEN THE TWO TOPICS AND DESIRABILITY OF DESIGNATING A SPECIAL RAPPORTEUR TO STUDY QUESTION IN ITS ENTIRETY WITH A VIEW TO MAKING RECOMMENDATIONS ON HOW AND WHETHER THE SUBJECT SHOULD BE DIVIDED.IN ADDITION TO THESE TWO GENERAL LINES OF APPROACH,THE COMMUNIST REPS ARGUED THAT THE CONCEPT OF STATE RESPONSIBILITY HAD BECOME MODIFIED BY THE QUOTE NEW INTERNATIONAL LAW UNQUOTE AND NOW CONCERNED MAINLY RESPONSIBILITY IN RELATION TO MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY ARISING IN PARTICULAR FROM AGGRESSION AND VIOLATIONS OF UN CHARTER AND OF THE OBLIGATION TO GRANT INDEPENDENCE TO COLONIAL PEOPLES ETC.

7.ON SUBJECT OF STATE AND GOVT SUCCESSION,THERE WAS GENERAL AGREEMENT THAT PRIORITY SHOULD BE GIVEN TO IT,AS REQUESTED BY UNGA,BUT MANY VIEWS WERE EXPRESSED ON:QUESTION WHETHER OR NOT RPT NOT THERE WERE GENERAL RULES GOVERNING SUBJECT WHICH COULD BE DEDUCED FROM STATE PRACTICE;WHAT ITS RELATIONSHIP WAS TO LAW OF TREATIES AND STATE RESPONSIBILITY;WHETHER TOPIC SHOULD BE SPLIT OR WHETHER SUCCESSION OF GOVTS WAS A PROPER SUBJECT FOR CODIFICATION,ETC.THE VIEW WAS WIDELY EXPRESSED THAT IN VIEW OF PAUCITY OF EXISTING MATERIAL ON SUBJECT THE SECRETARIAT SHOULD SOLICIT REPORTS FROM GOVTS(POSSIBLY BY CIRCULATING A QUESTIONNAIRE)ON STATE PRACTICES AND SHOULD PREPARE A BACKGROUND STUDY.

8.ON QUESTION OF FUTURE WORK OF COMMISSION,GENERAL VIEW SEEMED TO BE THAT SUBJECTS OF TREATIES,STATE RESPONSIBILITY AND STATE AND GOVT SUCCESSION WOULD MORE THAN FILL UP THE TIME OF THE COMMISSION OVER THE NEXT FIVE YEARS.AS ADDITIONAL PRIORITY TOPICS,SEVERAL MEMBERS EXPRESSED A PREFERENCE FOR AD HOC DIPLOMACY(WHICH SEEMS LIKELY TO BE TAKEN UP AT NEXT YEARS SESSION IN ADDITION TO LAW OF TREATIES) AND FOR OTHER TOPICS REQUESTED IN EARLIER UNGA RESOLUTIONS IE HISTORIC BAYS(CONCERNING WHICH SECRETARIAT WILL DISTRIBUTE A STUDY IN JUN),ASYLUM AND RELATIONS BETWEEN STATES AND INTERNATIONAL ORGANIZATIONS.HOWEVER,GENERAL VIEW WAS ALSO EXPRESSED THAT IT

WOULD BE DESIRABLE(AND NECESSARY UNDER UNGA 1536(XVI))TO DRAW UP A STAND-BY LIST(A CTTEE BEING ESTABLISHED FOR THIS PURPOSE)AND TO SUBMIT THIS TO NEXT UNGA SESSION,EVEN THOUGH ITS PRACTICAL VALUE SEEMED RATHER LIMITED IN VIEW OF HEAVY WORKLOAD OF COMMISSION OVER NEXT FIVE YEARS.

9.THERE WAS ALSO A CONSIDERABLE AMOUNT OF DISCUSSION ABOUT FUTURE METHOD OF WORK OF ILC.A VARIETY OF VIEWS WERE AGAIN EXPRESSED SIMILAR TO THOSE ADVANCED IN EARLIER SESSIONS(EG REGARDING POSSIBILITY OF MTG MORE OFTEN DURING SESSION(TABIBI),OBTAINING OUTSIDE ASSISTANCE(CASTREN),ELECTING MEMBERS FOR A LONGER PERIOD THAN FIVE YEARS(TABIBI),STAGGERING EXPIRATION OF TERMS OF OFFICE ALONG LINES FOLLOWED BY ICJ(PAL),HAVING A FIRST READING OF REPORTS IN A CTTEE (DE LUNA)VERDROSS),MAKING ILC A PERMANENT BODY(PAL),DIVIDING ILC INTO TWO SUB-COMMISSIONS(CASTREN),APPOINTING MORE THAN ONE RAPPORTEUR PER SUBJECT(TABIBI,CASTREN),ETC.HOWEVER AS IN PAST SESSIONS THE DISCUSSION ON THIS LATTER TOPIC WAS GENERAL AND DIFFUSE AND NO RPT NO DECISIONS WERE TAKEN.

10.ON THE WHOLE THE COMMUNIST MEMBERS WERE RATHER SURPRISINGLY RESTRAINED IN THEIR INTERVENTIONS AND EVEN THEIR ADVOCACY OF QUOTE NEW INTERNATIONAL LAW UNQUOTE WAS IN LOW KEY.BEYOND THE OCCASIONAL REF TO PEACEFUL COEXISTENCE AND COLONIALISM THE DEBATES HAVE NOT RPT NOT HAD TO DATE ANY SIGNIFICANT DEGREE OF POLITICAL CONTENT AND THE COMMUNIST MEMBERS HAVE NOT RPT NOT SOUGHT TO INTRODUCE SUBJECT OF PEACEFUL COEXISTENCE AS A SEPARATE TOPIC ON AGENDA OF ILC ALTHOUGH THEY HAVE OF COURSE MAINTAINED THEIR GENERAL ARGUMENTS IN FAVOUR OF AN APPROACH TO STATE RESPONSIBILITY WHICH WOULD SEEM CAPABLE OF EMBRACING A RATHER SIMILAR RANGE OF TOPICS.

11.SUMMARIES OF MY THREE MAIN INTERVENTIONS ON WORK OF COMMISSION AND ON PROCEDURES FOR DEALING WITH STATE RESPONSIBILITY AND THAT AN [illegible]

12.[illegible] ESTABLISHED THAT THE THREE MAIN TOPICS OF THE ILC OVER NEXT FIVE YEARS WILL BE LAW OF TREATIES,STATE RESPONSIBILITY

...6

DEPARTMENT OF EXTERNAL AFFAIRS

MEMORANDUM

TO: MR. CADIEUX

FROM: MR. BEESLEY

REFERENCE: 5475-AX-25-40 / 371

Security: CONFIDENTIAL

Date: April 18, 1962.

File No. 5475-AX-40
C.C. 5475-AX-37-40
~~5475-AX-36-40~~
5475-AX-25-40
11647-A-40

SUBJECT: Today's Meeting of the Departmental Legal Planning Committee.

The subjects you might wish to raise at today's meeting would seem to be as follows:

State Responsibility and Permanent Sovereignty over National Resources

2. A copy of Legal Division's background paper dated April 17 discussing briefly (a) the appointment of a new Rapporteur, (b) the scope of the topic and (c) the merits of Garcia Amador's study, is attached. (A copy has been sent to Geneva for inclusion in the Commentary for your guidance.)

3. Economic Division has been meeting with representatives of other departments this week to discuss the economic aspects of State Responsibility (including the O.E.C.D. proposed Convention on the Protection of Foreign Property) and may have a paper ready for presentation today incorporating the results of these discussions.

4. We have now received replies to our telegram L-38 to Washington, London, and Oslo, suggesting the possibility of linking the topics of State Responsibility and Permanent Sovereignty over National Resources (flagged on the attached file).

5. Telegram 1073 of April 6 from Washington (flagged on the attached file) reports that the State Department would be agreeable to the topics being interrelated in the I.L.C. provided UNGA were prepared to refer the question of Sovereignty over National Resources to the I.L.C., the likelihood of which could depend on who was named as Rapporteur to replace Garcia Amador. (If a Rapporteur who might be more acceptable to the West were appointed, it was thought that UNGA might be more reluctant to pass the questions to the I.L.C.)

6. London's telegram 1412 of April 16 (flagged) says merely that Sir Humphrey Waldock is well aware of the Foreign Office position and that the Foreign Office considers that "it would be a good idea if Mr. Cadieux could work in close co-operation with him and, of course, with the other Western members of the I.L.C. The telegram also makes the point that there may be a danger of the Communists capturing the position of Rapporteur on this question.

CIRCULATION

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Ext. 326A (6/56)

7. Oslo's telegram 95 of April 12 (flagged) reports that in the view of Evenson, Director of Legal Division of the Norwegian Foreign Ministry it is possible that broadening the subject of state responsibility to include sovereignty over national resources might assist in providing a basis for general agreement, but Evenson is doubtful of any real use being made of Amador's paper which he regards as destructive of traditions of international law and "almost as dangerous as the work of the Communists".

8. Geneva's telegram 743 of April 16 (flagged) reports that according to El Erian, the U.A.R. member of the I.L.C., one of the Communist members (probably Lachs of Poland) might propose that the subject be split in two, so that one part would deal with state responsibility in the narrower sense of responsibility for damage to aliens, and the broader part would cover the general subject of responsibility for non-compliance with obligations under treaties and general international law. This telegram also passes on the views of Professor Sohn that Lachs might have some support in the I.L.C. for splitting the subject of state responsibility into two parts. Sohn thought Professor Ago of Italy was sympathetic to this line of approach, and he himself tended to the view that splitting the subject might help to consolidate and forward the work already done in the I.L.C. on the subject of state responsibility for damage to aliens; he was rather dubious, however, about the idea of undertaking the codification of state responsibility in the wider sense as used by the Communists.

Peaceful Co-existence

9. A copy of Legal Division's background paper dated April 11, (a copy of which has also been forwarded to Geneva), is attached. This paper incorporates European Division's memorandum of April 10 on Political Aspects of Co-existence.

Colonialism

10. Some background papers, including a New Zealand paper on the topic, have been forwarded to Geneva. African and Middle Eastern Division are preparing a position paper on the question, a first draft of which may be ready for today's meeting.

Asylum

11. The position paper prepared by Consular and U.N. Divisions has been forwarded to Geneva. Some revisions and additions to the paper are now being made by Latin American Division, to incorporate the Latin American political approach to the problem, and by European Division to incorporate the Soviet bloc position on the question.

International Law Association

12. As you know, a registration form has been sent to you relating to the Brussels Conference in August of the I.L.A.

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13. The question of semi-official representation by Western countries has been raised in Washington, London and Oslo. Oslo's telegram 75 of March 26 reported that the Norwegians had not been giving much thought to the problem of representation at the I.L.A. Conference but that they would be considering the question in the light of our comments. London's telegram 1412 of April 16 reports that the Foreign Office shares our concern about the attempts which the Soviet bloc have been making to capture the I.L.A. and that while so far the Foreign Office have not sent any representatives to it, they agree that this is well worth considering. They are now looking into it and shall let us know their conclusions as soon as they can. Washington's telegram 1073 of April 6 reports that the U.S.A. had not in the past appointed delegates as such, although a representative of the U.S.A. Consulate in Hamburg had attended that meeting purely for reporting purposes. The U.S.A. would want to have a representative attend the Brussels meetings, at least for reporting purposes, and they would also consider in the light of our discussions with them whether it might be desirable to have someone attend who might seek to influence the substance of discussion in any Western caucus that might be organized. They were conscious of some of the difficulties involved, but aware also that Soviet bloc representatives had taken advantage of this situation, and their Legal Department would therefore give immediate attention to possible representation at the Brussels meeting this summer.

Summer Employment of Professors

14. Since Professors Morin and MacDonald are not available background information is being obtained on Professors Castel and Pharand and this question can perhaps be discussed at the conclusion of today's meeting.

J. A. Beesley

J. A. Beesley

DEPARTMENT OF EXTERNAL AFFAIRS

MEMORANDUM

TO: Legal Division

FROM: Latin American Division

REFERENCE:

Security RESTRICTED

Date April 17, 1962.

File No. 5475-AX-25-40

4

SUBJECT: Right of Diplomatic Asylum in Latin America - Notes on Political Aspects.

You have asked whether we could comment briefly on some political aspects of the granting of diplomatic asylum in Latin America. Actually, there is very little that can be added to what you will have seen already on Legal (and Consular) files concerning this subject. The best known case, of course, is that of the Peruvian APRA leader Haya de la Torre, who spent five years in the Colombian Embassy in Lima.

2. Since Heads of Missions have a right to assess whether persons asking for asylum are bona fide political asylees or not, the granting of asylum often assumes a political character. In practice, the asylum is seldom refused to anyone requesting it on valid political grounds, whatever his political orientation may be. It is usually remembered that one has interest in treating others as one should like to be treated. Furthermore, political refugees will normally descend on those Heads of Missions who are the least likely to reject their requests for asylum. One recent instance can be cited here of a mala fide request that was rejected - but unsuccessfully: in August 1960, Generalissimo Trujillo sent to the Mexican Embassy, already overcrowded with refugees, a large number of his own men who asked for asylum; the Mexican Chargé d'Affaires rejected their request, wherupon the so-called "asylees" caused damage to his property and settled down for a few days in his Residence, where they took careful note of the bona fide refugees who had received asylum.

3. Actually, totalitarian regimes tend to violate the right of asylum as traditionnally applied in Latin America, although their leaders are the most likely to need to invoke this right some day. Their main instrument is the refusal to grant, or the delay in granting safe conducts to asylees. Since the number of people asking for asylum grows under dictatorships, Heads of Mission can thus be forced into refusing further requests for asylum. Under the revolutionary regime of Cuba, the right of asylum has been subjected to serious encroachments of this sort. In spite of periodic returns to more practice, the Cuban authorities have generally shown a lack of cooperation especially with regard to the issuance of safe-conducts. This has led to increasingly difficult situations in overcrowded Embassies - both a sign and a cause of bad relations between Cuba and the Latin American countries involved. Cuban militiamen are also reported to have fired on persons seeking refuge in foreign Embassies. The same happened in the Dominican Republic under Trujillo.

4. Often enough, the granting of political asylum may lead to tensions between otherwise friendly countries. These tensions usually arise from disagreement on whether or not the asylees are bona fide political refugees. For instance, last October, five military prisoners accused of conspiracy against the security of Venezuela shot their way out of a military hospital and gained entry to the Peruvian Embassy by forcing a door. Venezuelan prisoners violated the Embassy grounds and a soldier was killed. While the Venezuelan Foreign Minister declared that the escapees were "common criminals" who would not be granted safe-conducts under the rules of political asylum, President Betancourt apologized for the violation of the Embassy. Nevertheless, the Peruvian Ambassador decided to give the occupants temporary refuge and subsequently announced his government's decision to grant political asylum,

CIRCULATION
Mr. Cadieux

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Ext. 326A (6/56)

18.4.27(US)

as well as his decision to resign because he could not assume "responsibility for a debate on political asylum which should have been avoided".

5. Abuses result inevitably from the fact that Heads of Mission seldom feel that they can reject a request for political asylum. In 1958, the Government of Colombia strongly criticized the way the right of asylum was being applied in Latin America. They claimed that asylum should not be granted to members of the Armed Forces on active duty guilty of having turned against a legitimate democratic government, thus violating their oath to defend the constitution and preserve public order. Asylum, they said, should be granted only to those military persecuted for having fought against a dictatorial regime. The Inter-American Juridical Committee decided against this interpretation in October 1958. However, it was to be raised anew at the Inter-American Conference scheduled to be held in Quito in 1959, but postponed since. Obviously, while the Colombian thesis has much merit in theory, it could multiply and render more complex the political problems arising occasionally from the granting of asylum.

Head of Latin American Division.

P.S. Mr. Pick has approved this memo

5475-AX-25-40
96

Legal Division

CONFIDENTIAL

April 17, 1962.

Latin American Division

Right of Diplomatic Asylum in Latin America - Notes on Political Aspects.

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Mr. Dadieux

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ROGER CHAPUT

Head of Latin American Division.

Refer Mr Cadieux
Legal Div
UN Div
L-A Div
D22 Div
Apr. 17/62

TO: Mr Walton
APR 16 Rec'd
REGISTRY

CANADA
DEPUTY MINISTER
OF
CITIZENSHIP AND IMMIGRATION

5475-AX-25-40
57 | 37

OTTAWA, April 13th, 1962.

xRef 9323-P-40 "C"

M. Cadieux, Esq.,
Deputy Under-Secretary of State for External Affairs,
Department of External Affairs,
OTTAWA, ONTARIO.

Dear Mr. Cadieux:

This refers to your letter of April 4th regarding the forthcoming Session of the International Law Commission which you will be attending.

This Department certainly has no objection to the discussion by the Commission of the question of asylum. Such a discussion would be interesting and your participation would enable you to put forward the Canadian point of view with which you are very familiar.

Yours sincerely,

Guy Favreau

Deputy Minister.

CONSULAR DIV./B. A. Wallis/z
April 17, 1962

Mrs Frame
Mr Kennedy

Canada
DEPUTY MINISTER
OF
CITIZENSHIP AND IMMIGRATION

5475-AX-25-40

OTTAWA, April 13th, 1962.

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Deputy Under-Secretary of State for External Affairs,
Department of External Affairs,
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Yours sincerely,

Deputy Minister.

REFERRED TO: Mr. Cadieux
Legal Division
U.N. Division
Latin American Division
D.L. (2) Division

File
H.S.
Diary

Mr. M. Cadieux

(through Legal and United Nations Divisions

Consular Division

United Nations Division memorandum

of April 2.

Canadian position on the Law of Asylum.

CONFIDENTIAL

April 4, 1962.

9323-P-40-C
cc: 5475-AX-25-40
Legal

In the light of United Nations Division's memorandum of April 2 which states there may be some advantage to Canada in having the question of Asylum placed on the agenda of the International Law Commission, I attach a revised letter to the Deputy-Minister of Citizenship and Immigration on this subject.

D. M. CORNETT

Consular Division

Counsellor/BAA Wallisyha

cc: Geneva
European Div.
Latin American Div.

CONFIDENTIAL

File 9323-P-40-C
File 5475-AX-25-40
H.S.
Diary

April 4, 1962.

62

5475-AX-25-40
57 ✓
9323-P-40 C

Dear Dr. Davidson,

As you may know, the International Law Commission to which I was elected last fall (a United Nations organ established to promote the progressive development and codification of international law), will be meeting in Geneva on April 24. Though created by a U.N. Assembly resolution [No. 174 (ii) of November 21, 1947] the Commission is not governmental in a strict sense inasmuch as its members are elected in a personal capacity so as to represent the various legal systems in the world. I shall be, therefore, attending its meetings in a private character, rather than as a representative of the Government. Nevertheless, you will appreciate that in participating in the studies of the Commission I would wish to take into account the Canadian position on any questions which it may take up. One such topic is that of Asylum. While it is unlikely that this will be discussed in substance, the question might arise as to whether such a subject should be dealt with in the future work of the Commission.

You may feel, as I am inclined to do, that Asylum is not a subject which, by and large, it would be in Canada's interest to have codified, since the Canadian Government has always dealt with requests for asylum on the basis of practical consideration, such as the national interest in any given instance and the

Dr. George F. Davidson,
Deputy Minister of Citizenship
and Immigration,
Ottawa.

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suitability of the applicant as a permanent resident of Canada. At the scheduled meeting in April, however, the only question that may arise will be whether Asylum should be inscribed on the agenda of a subsequent session of the International Law Commission. While the Canadian Government, it seems to me, would have no great interest in seeing this question inscribed, I think we also would not have any overriding objections to such a study. Indeed, there may be an advantage to inscription, in that discussion of the subject in a body such as the International Law Commission might strengthen our position in the Third Committee of the General Assembly of the United Nations.

As you may know, an item on Asylum has been on the agenda of the Third Committee for two sessions now, but has not yet been discussed because of lack of time. It is, however, quite possible that the item may be reached during the 17th General Assembly. I do not think the Third Committee which may be inclined to deal with the question of Asylum from a humanitarian and political point of view is as well qualified to deal with this subject as the International Law Commission which might be expected to approach it on a more objective basis with greater emphasis on the practical considerations involved. It may well be that the Commission's views might prove useful in the Third Committee in buttressing the arguments of countries, such as Canada, which may be expected to take a rather negative attitude towards the Draft Declaration of Asylum.

I should be glad to have your early views on the position you think I should take on the question of possible inscription of this item on the Agenda of the International Law Commission.

Yours sincerely,

"M. Cadieux"

M. Cadieux

ANNEX TO DEPARTMENTAL WORKING PAPER ON ASYLUM

Soviet Bloc Position on Asylum (1)

U.S.S.R.

Extradition and Asylum

The attitude on Soviet law and legal writing on extradition is vague and complex. On the one hand, an asylum for political offenders was pronounced as early as 1918 and restated in the later constitutions. On the other hand, the words of these statements underwent a change, and there is still a provision on the statute books which leaves open the possibility of extradition.

The right of asylum was granted by the Decree of March 15, 1918 to those "prosecuted in their countries for crimes of a political or religious nature." A similar provision was then included in the constitutions of individual soviet republics. The R.S.F.S.R. Constitution of 1925, section 12, originally offered asylum to "aliens who are subject to prosecution for their political activities or for their religious convictions." This Section was amended in 1929 by the XIV All-Russian Congress of the Soviets by substituting for the last phrase, the phrase "for their revolutionary and liberation activities." Finally, the 1936 Constitution of the Union, which is still in force, provides as follows:

Section 129. The U.S.S.R. shall grant the right of asylum to alien citizens who are persecuted for defense of the interests of the workers or scholarly activities or struggle for national liberation.

From these provisions it follows that room is left for extradition of aliens who do not come under the definitions of those who enjoy the right of asylum. These definitions with time were made broader in some respects and narrower in others. For example, aliens persecuted for their religious beliefs are no longer granted asylum.

There is only one statutory provision in Soviet law which leaves the hands of the government untied in dealing with extradition. It is paragraph 2 of section 16, Basic Principles (Osnovy) of Criminal Procedure of the Union and the Soviet Republics. It reads:-

Section 16(para 3). The extradition of persons against whom the investigation is pending or who are committed for trial or convicted by judicial bodies and whose extradition is requested by a foreign government from the Government of the U.S.S.R., shall be permitted only in cases and in the manner established by the treaties, agreements and conventions of the U.S.S.R. with foreign governments, or by a special agreement of the Government of the U.S.S.R. with foreign governments, as well as by a special law, enacted in the form of federal legislation.

No such special law has been enacted thus far, and treaties began to be made only with the satellites in 1957. It must be stressed

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(1) Extracts from Government Law and Courts in the Soviet Union and Eastern Europe Vol.2. Gsovski and Grzybowski, edited by Atlantic Books 1959.

however,that this section provides for a special agreement in individual cases. The draft of basic principles (1958) no longer covers extradition.

Books written by those who escaped from the Soviet Union reported cases of extradition to Nazi Germany of German communists under the Ribbentrop-Molotov agreement; see for example Margarette Buber, Under Two Dictators, translated from German, London 1949, p.xii. However, no official Soviet source to this effect was disclosed.

The Soviet Union adhered to several international statements concerning the extradition of war criminals and insisted on the extradition of displaced Soviet citizens to the Soviet Union.

Czechoslovakia

3. Rights of Asylum and Extradition

Czechoslovak law is vague on both asylum and extradition. There are no statutory provisions but merely the opinions of writers with regard to the right of asylum. Czechoslovak writers draw a line between communists or "fellow travelers" who offend the laws of a bourgeois nation, and noncommunists who offend the Soviet-type regimes. These writers state:

The Soviet Union and the People's Democracies grant the right of asylum only to those who are persecuted for having defended the right of the working people and of the oppressed colonial nations against the exploiters and bloodsuckers of human society.

Our legal order does not have an express provision regarding the right of asylum. In practice there shall be no difficulty in taking a standpoint analogous to the provision of the Soviet Constitution because acts undertaken for the protection of the interests of the working people,etc., quite surely will not be dangerous for our People's Democratic society (s. 2, Criminal Code) and therefore, they cannot be prosecuted in our country (cf. the case of Gerhard Eisler). 71

Thus, they argue, the necessary condition for extradition is lacking.

The concept of political offenses was treated in a dialectical manner by the present Czechoslovak writers when it came to the application of extradition treaties. Since the end of World War II, Czechoslovakia has made several such treaties. They provide for the extradition of persons who have committed serious crimes (felons) with the exception of political crimes. The concept of political offender received a very narrow, politically tinted interpretation as follows:

In the People's Democracy we do not recognize as political offenses those acts which are directed against the People's democracy and against socialism because these acts are directed against the just (social) order and the Government of the large majority of the working people, and against the removal of exploitation and of all inequalities which follow from exploitation and the laborless accumulation of profits. Therefore we do not

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71. Filipovsky, No.611, pp.49 ff. (International law permits extradition only for offenses punishable under the law of both countries involved.)

recognize as political offenses acts committed against the People's Democratic Constitution or against the socialist development of the Republic ... Indeed, we have in the new international treaties (especially with People's Democratic Poland) the provision that we shall not extradite (the offenders) for political offenses, but this provision shall be interpreted according to the above-expounded viewpoints on political offenses. 72

Thus communist Czechoslovakia is prepared to extradite political offenders against the Soviet-type regime.

Hungary

Article 58 of the so-called bill of rights of the 1949 Constitution (which bears a striking resemblance to that of the U.S.S.R. Constitution of 1936) guarantees asylum for political refugees provided that they were "persecuted for their democratic attitude or their activities in the interest of the liberation of the peoples." It is apparent that in this context "democratic" is synonymous with "communist", and "liberation" does not include the liberation from communism or Russian rule.

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72. Filipovsky, No.611, pp.49-50.

United Nations/S.C.H. Nutting/s.

DEPARTMENT OF EXTERNAL AFFAIRS

MEMORANDUM

Consular Div. Obviously, we need a less categorical position

TO: MR. M. CADIEUX
DEPUTY UNDER-SECRETARY AND LEGAL ADVISER.

Security RESTRICTED

Date APRIL 25, 1962

FROM: UNITED NATIONS DIVISION

Could you see if a common position can be worked out

REFERENCE:

File No.		
5475-AX-25-40		
		UN Div.

SUBJECT: CANADIAN POSITION ON THE LAW OF ASYLUM

3/4/62

We have some reservations about the attached memorandum on this subject from Consular Division. The Draft Declaration of Asylum has been on the agenda of the Third Committee for the past two sessions. Because the Committee has not found time to consider all the items on its agenda, the asylum item has been postponed each year. It is, however, most probable that the Third Committee will consider the asylum item at the 17th Session.

2. We do not think the Third Committee is perhaps as well qualified to deal with this subject as the International Law Commission, which might be expected to approach it from a more objective basis. The Third Committee, on the other hand, would probably be inclined to approach the subject from a humanitarian and political point of view. It seems to us that there might be some merit in having the International Law Commission discuss the question of asylum. The Commission's views would serve as talking points in the work of the Committee and might result in a greater emphasis on the practical considerations involved. The Commission's views might also serve some purpose in buttressing the arguments of countries like our own, which can be expected to take a rather negative attitude toward the Declaration.

CIRCULATION

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Ext. 326 (6/56)

3.4.28(US)

3. In any event, we do not think that the discussion of this subject by the Commission can do any harm to our position. We see no reason why we should not support any proposal to have this subject discussed by the Commission provided most other responsible nations are in accord with this view. Our support in any such proposal need not compromise in any way our present disinclination to accept such a Declaration.

United Nations Division.

MR. M. CADIEUX
DEPUTY UNDER-SECRETARY AND LEGAL ADVISER.

RESTRICTED

APRIL 2, 1962

UNITED NATIONS DIVISION

CANADIAN POSITION ON THE LAW OF ASYLUM

We have some reservations about the attached memorandum on this subject from Consular Division. The Draft Declaration of Asylum has been on the agenda of the Third Committee for the past two sessions. Because the Committee has not found time to consider all the items on its agenda, the asylum item has been postponed each year. It is, however, most probable that the Third Committee will consider the asylum item at the 17th Session.

2. We do not think the Third Committee is perhaps as well qualified to deal with this subject as the International Law Commission, which might be expected to approach it from a more objective basis. The Third Committee, on the other hand, would probably be inclined to approach the subject from a humanitarian and political point of view. It seems to us that there might be some merit in having the International Law Commission discuss the question of asylum. The Commission's views would serve as talking points in the work of the Committee and might result in a greater emphasis on the practical considerations involved. The Commission's views might also serve some purpose in buttressing the arguments of countries like our own, which can be expected to take a rather negative attitude toward the Declaration.

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3. In any event, we do not think that the discussion of this subject by the Commission can do any harm to our position. We see no reason why we should not support any proposal to have this subject discussed by the Commission provided most other responsible nations are in accord with this view. Our support in any such proposal need not compromise in any way our present disinclination to accept such a Declaration.

G. S. MURRAY

United Nations Division.

Diary
H. S.
File.

Consular/B.A. Wallis/ch

Legal Division
U. N. Division

Consular Division

CONFIDENTIAL

March 28, 1962

9323-P-40-C
cc: 5475-AX-25-40

Minutes of Sixth Meeting of the ILC Legal Planning Committee from March 22, 1962. Canadian Position on the Law of Asylum.

In accordance with the decision reached at the March 22 meeting of the ILC Legal Planning Committee, I attach for release, if you agree, a letter to the Deputy Minister of Citizenship and Immigration, requesting his views on our suggestion that Canada should abstain on any proposal to have the question of Asylum studied by the ILC.

D. M. CORNETT

Consular Division

Consular/IA 1962/eb

Diary
H. S.
File.

Mr. M. Cadieux
(through Legal Division & U. N. Division)
Consular Division

CONFIDENTIAL
March 28, 1962

9323-P-40-C
ccr5475-AX-25-40

Minutes of Sixth Meeting of the ILC Legal Planning Committee from March 22, 1962.

Canadian Position on the Law of Asylum.

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D. M. CORNETT
Consular Division.

Legal/J.A. Beesley/bjw

Consular Division

CONFIDENTIAL

March 26, 1962

Legal Division

9323-P-40 "C"
5475-AX-25-40

Your second draft memorandum of

February 14, 1962

Canadian Position on the Law of Asylum

5475-AX	-25-40
76	—

Attached is a copy of the minutes of the March 22 meeting of the I.L.C. Legal Planning Committee. As you will note, it was agreed that the views of Citizenship and Immigration should be requested as to whether to resist, accept or abstain on any proposal to have the topic of asylum placed on the agenda of the International Law Commission and that it be suggested to the Department of Citizenship and Immigration that the preferable approach in the light of Canada's position on the Convention on Refugees would seem to be to abstain. This will confirm our understanding that you will draft such a letter and clear it through the various interested divisions before forwarding it to Citizenship and Immigration.

GILLES SICOTTE

LEGAL DIVISION

FILE ON 5475-A7-25-40

CONFIDENTIAL

February 22, 1962.

Minutes of the February 10, 1961 (Fifth) Meeting of the Intradepartmental Committee on the Future Work of the International Law Commission

Present at the meeting were Mr. Cadieux (Chairman), Mr. Sicotte, Mr. Grenon, Mr. Beesley (Legal Division), Mr. Wallis (Consular Division), Mr. Nutting (U.N. Division), Mr. Hicks (African and Middle East Division), Mr. Wilgress (Economic Division), Mr. Roberts (European Division), and Mr. Hooper (D.L.(2) Division).

2. The purposes of the meeting were explained to those members of the Committee who had not previously attended its meetings. In particular a letter dated February 12 which had been sent to our missions in London, Washington and Oslo was discussed, and the representative from U.N. Division was asked to take note that the letter proposed discussions and consultations with friendly governments on legal questions; that there had been a lack of sufficient U.N. consultation until now on legal questions; and that it was hoped that the elaborate system of consultations being carried out by U.N. Division would include the legal questions raised in the letter of February 12.

Asylum

3. The meeting noted that Consular Division's working paper had now been commented on by U.N. and Latin American Divisions and the results incorporated in a revised paper which had been distributed prior to the meeting. Mr. Cadieux stated that the paper appeared to have advanced far enough for the purposes of the I.L.C., unless the comments of some other divisions were still required. He suggested that the Declaration on asylum and the Convention on Refugees be appended to the paper, and that copies of the completed paper should go to New York and Geneva. He doubted whether there was any need to obtain the views of the Department of Citizenship and Immigration at this stage.

4. Mr. Wallis suggested that the paper be cleared with D.L.(2) Division and perhaps later with Citizenship and Immigration.

5. Mr. Sicotte expressed reservations concerning the comments in the paper on the Convention on Refugees pointing out that Citizenship and Immigration had taken a definitive decision last year to drop the idea of Canada acceding to the Refugee Convention. This decision had remained unchallenged and had been reasserted in a recent conversation with Dr. Davidson. Mr. Nutting said pressure might force us in due course to resume consideration of Canada's accession, in line possibly with the alteration in the policies of Citizenship and Immigration

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resulting from recent changes in their Act. It was agreed, however, that this eventuality was not to be taken into account in the work of the Committee, being outside its terms of reference.

6. Mr. Sicotte pointed out that there was a Latin American approach to the question of asylum which he thought - subject to research confirming this - was probably reflected in a text produced by the Havana Inter-American Conference; the text of the Pan-American Convention on asylum could be annexed to the paper.

7. It was agreed also that the working paper might be expanded to record the Soviet approach to asylum.

8. In summary, it was agreed that the paper would be submitted to D.L.(2) for comments; that two new sections would be added to it, one on the Latin American view point and one on the Soviet approach; that the above-mentioned documents be attached as appendices to the paper; and that Citizenship and Immigration would not be consulted at this stage, since the paper is for background purposes and no change on the question of Canada's accession to the Refugee Convention is now being contemplated.

Law of Treaties

9. Mr. Cadieux explained that he had seen Mr. Grenon's preliminary working paper which had not, because of its technical nature, been circulated to the members of the Committee, that the paper promised to be a useful and interesting one, and that he would look forward to receiving the next instalment in due course.

State Responsibility

10. Mr. Cadieux noted that a preliminary working paper had been submitted, which had been seen by Economic Division but not circulated to the other members of the Committee because of its specialized nature, and that in this case also a further paper would be submitted in due course.

Permanent Sovereignty

11. Economic Division's working paper on permanent sovereignty dated February 16 had been circulated to the meeting. In a brief discussion of it certain legal problems were raised and it was agreed that Legal Division and Economic Division would consult concerning them. It was agreed also that the group as a whole should be kept informed concerning this exercise since it could affect the discussions in the Second, Third and Sixth Committees of the United Nations Assembly.

Colonialism

12. There was a brief discussion on the ground which might be covered on this question in the paper to

be produced by African and Middle Eastern Division, and it was agreed that:

(a) the paper should be broad enough to take into account both the legal as well as the political aspects of questions raised by colonialism; and

(b) that colonialism should be dealt with not only as a separate subject but in the context of the agitation for self-determination by neutralist countries, its inclusion as part of the alleged juridical basis of peaceful co-existence, and also the approach to be taken on specific issues such as Angola.

13. The Chairman explained that while the members of the I.L.C. serve on it in their personal capacity, it would be inappropriate for him to follow an approach in the International Law Commission on such questions as the existence of the obligation in the Charter on the right of self-determination with that which might be taken in one or more of the U.N. Committee. Similarly the question of peaceful co-existence might be raised in the I.L.C. in connection with the topic of state responsibility, having already been placed on the Agenda of the Sixth Committee.

14. It might be possible for the U.S.A., the U.K. and Canada to develop a consolidated position on certain questions, such as the meaning of Article 10 of the Charter, but the Canadian position would have to be worked out beforehand.

15. Mr. Nutting raised the question of the inclusion of economic colonialism in the paper and it was agreed that this should be done.

16. Mr. Hicks raised the question of the theories being propounded in justification of India's Goan action, and the Chairman mentioned that these theories had been discussed from a legal point of view in Legal Division's memorandum of January 30.

Peaceful Co-existence

17. It was agreed after a brief discussion that Legal Division would produce a further paper on the juridical basis for peaceful co-existence and that the comments of European and U.N. Divisions would subsequently be obtained. The Chairman mentioned that a recent Australian paper seemed to provide a good deal of interesting material and that a copy should be sent to our mission in Geneva. The Chairman mentioned also that the International Law Association had been studying this question and that it was proposed to consult with Canadian representatives on the questions raised by Soviet bloc efforts to use the International Law Association as a stepping stone to the Sixth Committee. He suggested that an appendix to the paper should be added discussing I.L.A. aspects of the question.

Summer Employment of Professors

18. The meeting noted that the memorandum which had been forwarded to the Minister on this question was still under consideration by him.

Priorities

19. Mr. Sicotte suggested that it would be worthwhile to establish a list of priorities. It was agreed that they should be as follows:

1. Law of Treaties
2. State Responsibility
3. Ad hoc Diplomacy (Special Missions)
4. Other Questions

In the Chairman's view it was likely that the ILC meeting commencing April 26 would begin with the election of officers, go on next to a discussion of future work, and then proceed with the topics of law of treaties and state responsibility, neither of which was ready for detailed study. Ad hoc diplomacy might also be discussed. On the question of state responsibility, two of the problems would be the appointment of a Special Rapporteur and the question of the kind of approach he should take to the task.

International Law Association

20. The Chairman suggested that consideration be given to the nature and extent of departmental representation at the Brussels Conference of the International Law Association in August.

JB

Legal Division

February 21, 1962

Refugee Policies (2) Citation

5475-A X-25-40

Draft paper on Canadian Position in the Light of Asylum

Our comments are mainly on points of detail and do not affect the general lines of the paper.

Paragraph 3. Suggested revisions: References from pilot plan countries (for example, p. 1111 in Decision of Board of Review also Italians in Canada) have traditionally been permitted to remain in Canada, as it has been considered that the possible resultant detriment, if any, to our relations with the sending country occasioned by granting such asylum is not a factor of importance in the face of the stated desire of such persons to live in a free democratic society. Such cases are always dealt with in the first instance by the Interdepartmental Committee on Refugees, which can recommend exception to the regulations concerned in the individual case to be dealt with.

Paragraph 6 (b). Suggested that "Canada and asylum should be implied by receive and to grant asylum in Canada".

Paragraph 6 (). Question if this is not too broad a statement. If it is then it could be considered that a refugee (political or other) could receive a fair trial by our standard of justice, and it is not conceivable at least cooperation in extradition proceedings of asylum seekers? Perhaps a phrase such as "if they could be convicted without a fair trial" would be more in keeping with our attitude in general.

Paragraph 7 (a) Latin American Problem

BEST COPY AVAILABLE

...2

Paragraph 7. Soviet and satellite seamen are granted temporary landing if they manage to escape ashore in Canada and seek asylum. It would not be politically possible to return them to their ships. The Yugoslav sailors would have been classed as deserters rather than defectors, although the decision to return them to face severe punishment for defection, rather than desertion, may have been unwise.

Paragraph 11. Add: Requests to our missions abroad for asylum from defectors from the Soviet Union or satellite countries may, however, be given special treatment through the machinery of the Interdepartmental Committee on Defectors.

2. For the purpose of the Interdepartmental Committee on Defectors, a "defector" is defined as:

> Any citizen of the USSR, of the Chinese People's Republic, or of satellites of these countries, who, without the knowledge and approval of his Government, seeks permanent admission to Canada (a) if he is considered by any Directorate represented on the Joint Intelligence Committee (for which purpose the Joint Intelligence Bureau will consult with any interested intelligence directorate in the Department of National Defence, coordinate D.I.B. views and interests and arrange the debriefing of defectors on its behalf) to have considerable intelligence value, and his settlement in Canada is recommended by that Directorate in order that his knowledge may be properly exploited, OR (b) if a friendly intelligence service has requested that Canada cooperate by admitting the person concerned.

3. It is a responsibility of the Committee itself, however, to determine whether a Soviet or satellite citizen falls within this definition. You may wish to add this definition as a footnote to paragraph 3.

(Sgd.) G. K. GRANDY

Defence Liaison (2) Division.

D.L.(2)/C.F.W. Hooper/wp

DEPARTMENT OF EXTERNAL AFFAIRS

MEMORANDUM

TO: Legal Division

FROM: Defence Liaison (2) Division

REFERENCE:

Security: SECRET

Date: February 21, 1962

File No. 5475-AX-25-40

4

SUBJECT: Draft paper on Canadian Position on the Right of Asylum

Our comments are mainly on points of detail and do not affect the general lines of the paper.

Paragraph 3. Suggested revision: Defectors from Soviet bloc countries (for example, Dr. Mikail A. Klochko and members of Soviet bloc missions in Canada) have invariably been permitted to remain in Canada, as it has been considered that the possible resultant detriment, if any, to our relations with the Communist country concerned by granting such asylum could not be a factor of importance in the face of the stated desire of such persons to live in a free democratic society. Such cases are always dealt with in the first instance by the Interdepartmental Committee on Defectors, which makes recommendations to the Departments concerned on how the individual should be dealt with.

Paragraph 6 (b). We suggest that "demand asylum" should be replaced by "receive or be granted asylum in Canada".

Paragraph 6 (d). We wonder if this is not too broad a statement. If we were convinced that a murderer (political or other) would receive a fair trial by our standards of justice, might we not consider at least cooperation in extradition proceedings if appropriate? Perhaps a phrase such as "if they would be executed without a fair trial" might be used. There seems to be no virtue in preserving the lives of notorious political murderers, regardless of nationality (vide Nuremburg).

CIRCULATION

Consular
United Nations
Protocol
European
Latin American

...2

Ext. 326 (6/56)

Paragraph 7. Soviet and satellite seamen are granted temporary landing if they manage to escape ashore in Canada and seek asylum. It would not be politically possible to return them to their ships. The Yugoslav sailors would have been classed as deserters rather than defectors, although the decision to return them to face severe punishment for defection, rather than desertion, may have been unwise.

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3. It is a responsibility of the Committee itself, however, to determine whether a Soviet or satellite citizen falls within this definition. You may wish to add this definition as a footnote to paragraph 3.

B.C. Rande

Defence Liaison (2) Division.

Latin American/R.Rotvin/ip

DEPARTMENT OF EXTERNAL AFFAIRS

MEMORANDUM

TO: Legal Division

FROM: Latin American Division

REFERENCE: Memorandum of January 22, 1962 from Consular to Legal

SUBJECT: Papers for International Law Commission - Asylum.

Security: Confidential

Date: February 14, 1962.

File No. 5475-AX-25-40

4

I should like to recall that one of the reasons which influenced this Division into advising against [redacted] staying in Canada was that "the presence of former leading figures of the Trujillo Government or secret police in Canada may give occasion to the settlement here of personal vendettas which could only embarrass the Canadian Government" (re our memorandum of December 6, 1961 to Consular Division).

2. I should suggest therefore that in paragraph 5 and in paragraph 6 section (c) mention could be made that considerations of a purely domestic order also enter into the making of a decision as to the granting or refusal of asylum.

3. Concerning the last sentence of paragraph 10, it would appear that several of the five priests were included in the group of 65 who returned to Canada, one travelled to Canada under a different arrangement, and one possibly is still in Cuba. I suggest therefore that the wording of the last sentence of paragraph 10 might be altered to read as follows: "the situation as regards all five priests was later remedied."

CIRCULATION

Consular
D.L. (2)
Protocol

s.19(1)

J.R.B. Chaput

Ext. 326 (6/56)

SECOND DRAFT

5475-AX-25-40
4

Consular/United Nations/Divisions/Latin American
February 14, 1962
File: 9323-P-40C
c.c. 5475-AX-25-40

CONFIDENTIAL

CANADIAN POSITION ON THE RIGHT OF ASYLUM

Canada has dealt with requests for asylum on the basis of practical considerations rather than by reference to any inviolable rights to asylum by individuals requesting it. Asylum has been granted or refused depending on the particular circumstances of each case. In general, the Canadian Government has granted asylum when this would not be contrary to Canadian interests and, when it has refused asylum to those who have sought refuge in Canada, has taken care not to endanger thereby the life or liberty of the person concerned irrespective of his possible demerits. A brief account of the handling of requests for asylum and the principles that emerge therefrom are given below, together with a summary of the Canadian Government's views on the Draft Declaration on the right of asylum and the Convention Relating to the Status of Refugees.

I

s.19(1)

STATE ASYLUM AFTER ENTRY TO CANADA HAS BEEN GRANTED

2. Certain persons have succeeded in entering Canada legally on a temporary basis and have then sought "asylum" in this country.

3. Anti-Communist defectors from Soviet-bloc countries (such as [redacted] have invariably been permitted to remain in Canada. In their case it has been considered that they were persons who were suitable as permanent residents of Canada, that any aggravation in the relations between Canada and the Communist country by granting asylum to the individual would not be a factor of great importance, and that we should respect the wishes of such persons to live in a free democratic society.

4. The circumstances were different, however, in the case of certain members of former dictatorial regimes in Latin America. In 1960, [redacted] former Police Chief in the Batista regime in Cuba, entered Canada without a visa for a 30-day

visit, and subsequently refused to leave. The Departments of External Affairs and Citizenship and Immigration were in agreement that [redacted] should be required to leave, primarily on the grounds that he was a person with a notorious reputation as a political murderer and that he intended to actively work while abroad for the overthrow of the Castro regime by armed revolt which would be inimical to Canada's relations with Cuba. While Immigration never seriously considered deporting [redacted] to Cuba where presumably he would be shot, it looked into the possibility of deporting him to Trinidad or Jamaica from which countries he had entered Canada, and to Portugal to which country he had a non-immigrant visa. In the event, [redacted] left Canada of his own accord for Guatemala.

s.19(1)

5. [redacted] a former senior official with the Secret Police of the Turjillo regime in the Dominican Republic, entered Canada in 1961 on a transit visa, destined ultimately to the Dominican Embassy in Iran. After his arrival in Canada it was discovered that his diplomatic appointment had been cancelled and he informally asked whether he could stay in Canada. In view of his record and the fact that his continued stay in Canada would be inimical to Canada's relations with other Latin American countries and might give occasion for the settlement in Canada of personal vendettas which could only embarrass the Government, the Department of External Affairs and Immigration agreed that he should not be allowed to remain permanently in this country. Deportation to the Dominican Republic was never seriously considered, however, because of the danger that he might be shot there, and it was the view of this Department that he should be given time to effect departure to some third country far from the Western Hemisphere such as possibly Portugal. [redacted] has now been asked to leave Canada but it is not yet known whether he will succeed in finding another country willing to receive him. It is possible that Immigration will have to try to deport him to Jamaica, the

country from which he entered, although there would be no obligation on Jamaica to accept him.

6. The principles that emerge from these two types of request for asylum are the following:

(a) A State has the right to grant asylum notwithstanding any protest by the State from which the person has fled.

(b) A person has no right to demand asylum. It is the responsibility of the individual to convince the Government that he is a bona fide political refugee and not of the Government to prove that the individual's fear of persecution is not well-founded.

(c) The granting of asylum by Canada depends in the first instance on the past history of the person concerned, his suitability as a permanent resident of Canada, his intended activities in Canada, and the effect of the possible granting of asylum on Canada's international relations. Asylum normally would not be granted if the individual were a notorious political murderer, if he intended to actively foment revolution in his home country from Canadian territory or to engage in activities within Canada which would disrupt law and order, or if Canada's relations with friendly countries would be jeopardized by the granting of asylum. Asylum would only be granted where these factors were not present.

(d) Even in the case of notorious political murderers, the persons requesting asylum would not be deported direct to their home countries if by doing so their lives would be endangered.

(e) If asylum were not granted, the persons would normally be allowed to remain in Canada temporarily until a safe third country could be found to which they would be prepared to go voluntarily or to which they could be deported.

II

STATE ASYLUM REQUESTED AT A CANADIAN PORT-OF-ENTRY

7. Occasions have arisen where Soviet seamen have been granted asylum at ports-of-entry, although normally seamen are not granted asylum. On the other hand in 1960 certain Yugoslav seamen who deserted and claimed to be refugees were not granted asylum. In general, the five principles mentioned in paragraph 6 above apply and in addition the following:

(a) The Government has the unconditional right to decide who is to enter Canada for the first time and, in the case of a person seeking entry on the grounds that he is a refugee, responsibility for him rests not with Canada but with the transportation company or the country of transit.

(b) If the individual requesting asylum were seeking entry from a country where he could safely remain, Canada normally would not give him asylum since it would not be prepared merely to take upon its own shoulders a problem facing the other country. Thus, a person who had already successfully entered the United States after fleeing from another country, would not normally be admitted to Canada at the Canada-U.S. border. However, if the person sought entry at a port in Canada from the country from which he was fleeing, he might be allowed temporary or permanent stay. If he were refused permanent stay for one of the reasons given in paragraph 6(c), he would not be returned directly to the country from which he was fleeing, but he might still not be granted admission to Canada even if this meant that, if every other country were to act similarly, the transportation company would have no choice but to return him to the country from which he was fleeing.

8. It should be remembered that there is no provision in Canadian legislation for the entry or landing in Canada of persons in the status of "political refugees" seeking "political asylum". Persons may be admitted to Canada in the status of immigrants or non-immigrants if they meet the relevant requirements. Therefore, persons seeking "asylum" in Canada, if allowed to stay in Canada, would be granted this permission in the status of immigrants or non-immigrants and would be required (at least formally) to meet the statutory requirements.

III

DIPLOMATIC ASYLUM ON THE PREMISES OF CANADIAN MISSIONS ABROAD

9. Departmental policies on the granting of asylum on mission premises are contained in Chapter V, Part II of the Consular Instructions, a copy of which is attached. In summary, asylum may be granted on mission premises:

(a) To a person, whether a Canadian citizen or not, if he is in imminent danger to his life during political disturbances or riots.

(b) To a Canadian citizen if he is in imminent danger of loss of life or liberty where the normal civilized standards of justice and due process of law are absent.

(c) To a Canadian citizen, for a strictly temporary period, if he is the subject of discriminatory action by the local authorities; the purpose of protection would be to ensure independent legal advice and a fair trial, not to avoid prosecution or deny the jurisdiction of the competent courts.

10. Rule (b) above was the rule under which asylum has been granted on mission premises to Canadians subject to persecution in Communist countries. In 1956, [redacted] a naturalized

s.19(1)

Canadian citizen of Czechoslovak origin was forced to sign a confession of espionage in Czechoslovakia. He subsequently was granted asylum in the Canadian Legation in order to ensure his personal safety. Eventually, after difficult negotiations, the Czechoslovak authorities allowed him to leave Czechoslovakia. In 1961, five Canadian priests, who believed they were about to be arrested by the Castro Government, were granted refuge in the Canadian Embassy residence in Havana. The situation as regards all five priests was later remedied.

11. The principles in paragraph 6(a) - (c) apply to diplomatic asylum on mission premises.

IV

DRAFT DECLARATION OF RIGHT TO ASYLUM

12. The right of asylum was touched upon in one of the Articles in the Universal Declaration of Human Rights to which Canada has acceded. France, supported vigorously by the Latin American countries, considered that the right of asylum should be further protected by a Declaration, and the Commission on Human Rights was given the task of drafting such a document. In 1960 the document was presented to ECOSOC, accepted and passed along for the consideration of the Third Committee. At the fifteenth and sixteenth sessions of UNGA, the Declaration was not discussed but deferred for the consideration of the Committee at its next session. France is still acting as the chief sponsor of the Declaration and has the support of the Latin American countries. A number of countries, including Canada, the United Kingdom, New Zealand and Australia, object to Article 3 of the present text of the Convention.

13. The text of Article 3 reads as follows:

" No one seeking or enjoying asylum in accordance with the Universal Declaration of Human Rights should, except for overriding reasons of national security or safeguarding of the population, be subjected to measures

"such as rejection at the frontier, return or expulsion which would result in compelling him to return to or remain in a territory if there is well-founded fear of persecution endangering his life, physical integrity or liberty in that territory.

In cases where a state decides to apply any of the above-mentioned measures, it should consider the possibility of the grant of provisional asylum under such conditions as it may deem appropriate, to enable the person thus endangered to seek asylum in another country."

14. The principal objection to Article 3 is that it is too broad and would place signatories in a moral position to grant asylum to anyone alleging that he had a well-founded fear of persecution. A state would no longer have the power of discretion to refuse entrance to such people.

15. The Department of Citizenship and Immigration has given a detailed criticism of Article 3, and its implication for Canada, in Dr. Davidson's letter of September 26 of 1960. In essence, a state acceding to the Declaration would have the responsibility of proving that the fear of persecution of the refugee was not well founded. As currently interpreted in international law, the right of asylum is not the right of a person to secure asylum, but the right of the state to grant asylum. Citizenship and Immigration has adopted towards the Declaration substantially the same basic attitude that it has assumed toward the Convention. However, with regard to the Declaration, the basis for objection is much sounder. Furthermore, we should in the Third Committee find a good deal of support for our position.

16. In its instructions for the sixteenth session the Delegation was to abstain on Article 3, if the present text was retained, and on the Declaration as a whole. It seems reasonable to assume that the Declaration will be discussed by the Third Committee at the seventeenth session, although

because of the probable opposition to Article 3, the Declaration may not be completed at that session. The instructions on the Declaration to the Canadian Delegation will probably remain much the same.

V

CANADIAN POSITION ON THE CONVENTION RELATING TO THE STATUS OF REFUGEES

17. This Convention was drafted at a conference in Geneva in 1951 and entered into force in 1954. Since that time more than thirty countries, including the United Kingdom, New Zealand, France, The Netherlands and the Scandinavian countries, have acceded to the Convention. For several years the UNHCR has urged Canada to accede to the Convention. This Department has always taken the view that there would be advantages in Canada's accession to the Convention. This point of view has been opposed by the Department of Citizenship and Immigration, and despite persistent pressure from this Department, Citizenship and Immigration has refused to budge from its basic position.

18. Until 1960, the Department of Citizenship and Immigration based its opposition to our accession upon Article 33 of the Convention, which prohibits expulsion of a refugee where his life would be endangered on account of his race, religion or political views, except for expulsion on the grounds of security or where a competent court has ~~been~~ found the refugee guilty of a serious crime. Immigration was not prepared to accept a situation in which they could not deport a refugee to his homeland behind the Iron Curtain unless they could prove he was a criminal or security risk. They did so on the grounds that, as a matter of policy, they hesitate to reveal that a refugee has been refused permission to enter Canada because he is considered a security risk. Immigration considers that if they did so, it would endanger our sources of information on security matters.

19. The RCMP, who look after most of the security work for Citizenship and Immigration, were consulted on this matter.

The informal view of the RCMP was that arrangements could be made which would get around the difficulty posed by Immigration and permit us to accede to the Convention.

20. When the matter was next discussed in November of 1960, Immigration gave three reasons why we should not accede to the Convention. The security reason which had been advanced for so many years by Immigration was not mentioned, presumably because of the views given us by the RCMP. The first objection related to Article 2 which defines the refugees to which the Convention applies. The interpretation of the UNHCR, and of other countries signatory to the Convention, is that the refugees are not limited to those who left their homes "as a result of events occurring before January 1, 1951".

21. The second objection raised by Immigration related again to Article 33 which prohibited the expulsion or return of refugees to the frontiers of territories where their lives or freedom would be threatened. Immigration wishes to protect its right to grant or reject such applications, even though in practice it would not return such refugees to a country where their lives would be in danger.

22. The third objection of Immigration also arises from Article 33 where states would be expected to refrain from any measures which would result in compelling a refugee to return to a country where his life would be in danger. Immigration point out that this may well prohibit them placing such a refugee back aboard a ship belonging to a third country, if there were a chance that this might indirectly lead to the refugee having to return to his country of origin.

23. In the meantime a number of other countries, including New Zealand, had acceded to the Convention. Our Permanent Representative in Geneva, Mr. Wershof, and officials in the

Department, decided to make a further attempt to convince Immigration that it would be desirable for Canada to accede to the Convention. Mr. Wershof consulted with the Legal Adviser, Dr. Weis, of the UNHCR with a view toward determining whether his interpretation accorded with that of the Department of Citizenship and Immigration on the three points concerned. The Legal Adviser, Dr. Weis, agreed with the first point that refugees would not be limited to those who left their homes as a result of events occurring before 1951. On the second point, Dr. Weis did not give a clear-cut opinion. He said that while the Convention did not expressly require a government to refrain from rejecting refugees at the frontier, the implication was that it certainly ought not to do so. On the third point, Dr. Weis again agreed with the view of Citizenship and Immigration.

24. On October 6 of last year, Dr. Davidson, the Deputy Minister of Citizenship and Immigration, again wrote to the Under-Secretary to say that, after perusing Dr. Weis's opinions, his Department had regretfully reached the conclusion that Canada should not adhere to the refugee Convention. His main objection was that the definition of refugees was too broad and that he could "not recommend that Canada adhere to a convention which involves acceptance of such an ill-defined and open-ended commitment as this. I feel that about all that we can do now is let the matter drop."

25. In general, the Convention is less precise in its wording and would leave more discrimination to Immigration authorities than would the Declaration. It is still difficult for this Department to understand the strength of the objections to the Convention which have been raised by Citizenship and Immigration. In practice, we now comply generally with the terms of the Convention and would presumably have no more difficulty with it than the United Kingdom or New Zealand. There would, however, seem to be little hope that Immigration officials can be persuaded to agree to our accession in the near future.

CONSULAR INSTRUCTIONS

CHAPTER V

PART II

Asylum

5.44 a. Consulates and diplomatic missions may not grant asylum on the premises of a post except in extraordinary circumstances. *When Asylum may be Granted*

b. Granting of temporary asylum on humanitarian grounds to a person, whether a Canadian citizen or not, may be justified only if he is in imminent personal danger to his life during political disturbances or riots; care should be taken to ensure that the humanitarian character of the mission's intervention is not misinterpreted.

c. Granting of asylum to a Canadian citizen may be justified if he is in imminent personal danger of loss of life or liberty where the normal civilized standards of justice and due process of law are found to be absent.

d. Granting of temporary asylum to a Canadian citizen may be justified if he is the subject of discriminatory action by the local authorities or if such action appears probable. The purpose of such protection would be to afford an opportunity for representations designed to ensure independent legal advice and a fair trial, not to avoid prosecution or deny the jurisdiction of the competent courts or to shelter a fugitive from justice seeking to evade the criminal laws of the state.

5.45 a. Once asylum has been granted, any efforts of the local or national authorities to enter the premises of the post by force should be opposed. Any such entry should be protested and reported immediately to the Department. *Action when Asylum Granted*

b. Before any person who has been granted asylum is released by the post, assurances should be sought of the safety of that person.

5.46 When a person has been granted asylum on the premises of the post, this fact and all relevant details surrounding it, should be brought immediately to the attention of the Department. *Reference to the Department*

5.47 A head of post, after consultation with the Department if time permits, may seek from the national authorities assurances of protection of Canadian citizens where there is danger that violent disorders are imminent and that police or armed forces protection may not be adequate. He may seek similar assurances where Canadian citizens are in imminent danger of persecution on account of their religious or political beliefs, racial origin, or citizenship. *Requests to National Authorities for Protection*

United Nations/S.C.H.Nutting/s

File

LEGAL DIVISION

CONFIDENTIAL

FEBRUARY 6, 1962.

UNITED NATIONS DIVISION

5475-AX-25-40
57 ✓

CANADIAN POSITION PAPERS - INTERNATIONAL LAW COMMISSION

- We attach our comments on the paper prepared by Consular Division on Canadian practice with respect to the granting of asylum. We have also included a short paper of our own on other aspects of Canadian policy relating to the Draft Declaration on the Right of Asylum. It might be useful, we suggest, to include both papers under a single heading entitled "Canadian Position on Draft Declaration on the Right of Asylum".

G.S. [redacted]

United Nations Division.

CONFIDENTIAL

COMMENTS ON PAPER PREPARED BY CONSULAR DIVISION

(1) Second Sentence, Paragraph 1:

Perhaps this statement should be qualified. We have on occasion discouraged political refugees from applying for sanctuary or asylum, presumably the statement refers only to those political refugees who have succeeded in entering Canada and have then requested asylum. Perhaps the phrase "to those who have sought refuge in Canada" could be inserted after "when it has refused asylum".

(2) Section (d), para. 6, page 3:

The last two lines of this section might be rephrased. Perhaps it might read "the persons requesting asylum would not be deported to their home countries, if by doing so their lives would be endangered. (For example, some political refugees returning to Cuba might be in danger of summary execution.) We would, presumably, have no objection to citizens of any country "being brought to justice", in that such a phrase implies a fair trial and punishment commensurate with the crime committed.

(3) Paragraph 7, page 3:

The last sentence on this page states that it is not clear why one request was accepted and the other refused. We would gather from the file that Immigration officials were satisfied that the Yugoslav seamen would not be in danger of losing their lives should they return to Yugoslavia. It is also implied that their main reason for requesting asylum was an economic one. We assume that the judgment of the officials concerned might have been influenced by the fact that there is somewhat more scope for individual freedom in Yugoslavia than there is in Soviet Russia. Furthermore, our relations with Yugoslavia are considerably more friendly than our relations with Soviet Russia. Perhaps this sentence might be deleted.

(4) Section (b), para. 7, page 4:

The last sentence of this paragraph is not clear. It would seem to contradict Section (d) on page 3. We should think that such a person, once he had entered the country, would only be required to leave provided we were able to find a third country which would accept him. Of course, if he had not done so, he could be refused permission to disembark from the ship or aircraft he was travelling on.

(5) Paragraph 8, page 4:

The last sentence of this paragraph might require some qualification. While it is true that such persons would be granted the status of non-immigrants, the qualifications for such status might have to be interpreted very liberally to meet exceptional cases. Perhaps the word "generally" could be inserted after the word "required".

CONFIDENTIAL

DRAFT DECLARATION OF RIGHT TO ASYLUM

The right of asylum was touched upon in one of the Articles in the Universal Declaration of Human Rights to which Canada has acceded. France, supported vigorously by the Latin American countries, considered that the right of asylum should be further protected by a Declaration, and the Commission on Human Rights was given the task of drafting such a document. In 1960 the document was presented to ECOSOC, accepted and passed along for the consideration of the Third Committee. At the fifteenth and sixteenth sessions of UNGA, the Declaration was not discussed but deferred for the consideration of the Committee at its next session. France is still acting as the chief sponsor of the Declaration and has the support of the Latin American countries. A number of countries, including Canada, the United Kingdom, New Zealand and Australia, object to Article 3 of the present text of the Convention.

2. The text of Article 3 reads as follows:

" No one seeking or enjoying asylum in accordance with the Universal Declaration of Human Rights should, except for overriding reasons of national security or safeguarding of the population, be subjected to measures such as rejection at the frontier, return or expulsion which would result in compelling him to return to or remain in a territory if there is well-founded fear of persecution endangering his life, physical integrity or liberty in that territory.

In cases where a state decides to apply any of the above-mentioned measures, it should consider the possibility of the grant of provisional asylum under such conditions as it may deem appropriate, to enable the person thus endangered to seek asylum in another country."

3. The principal objection to Article 3 is that it is too broad and would place signatories in a moral position to grant asylum to anyone alleging that he had a well founded fear of persecution. A state would no longer have the power of discretion to refuse entrance to such people.

4. The Department of Citizenship & Immigration has given a detailed criticism of Article 3, and its implication for Canada, in Dr. Davidson's letter of September 26 of 1960. In essence, a state acceding to the Declaration would have the responsibility of proving that the fear of persecution of the refugee was not well founded. As currently interpreted in international law, the right of asylum is not the right of a person to secure asylum, but the right of the state to grant asylum. Citizenship & Immigration has adopted towards the Declaration substantially the same basic attitude that it has assumed toward the Convention. However, with regard to the Declaration, the basis for objection is much sounder. Furthermore, we should in the Third Committee find a good deal of support for our position.

...2

5. In its instructions for the sixteenth session the Delegation was to abstain on Article 3, if the present text was retained, and on the Declaration as a whole. It seems reasonable to assume that the Declaration will be discussed by the Third Committee at the seventeenth session, although because of the probable opposition to Article 3, the Declaration may not be completed at that session. The instructions on the Declaration to the Canadian Delegation will probably remain much the same.

CANADIAN POSITION ON CONVENTION RELATING TO THE STATUS OF REFUGEES.

This Convention was drafted at a conference in Geneva in 1951 and entered into force in 1954. Since that time more than thirty countries, including the United Kingdom, New Zealand, France, The Netherlands and the Scandinavian countries, have acceded to the Convention. For several years the UNHCR has urged Canada to accede to the Convention. This Department has always taken the view that there would be advantages in Canada's accession to the Convention. This point of view has been opposed by the Department of Citizenship & Immigration, and despite persistent pressure from this Department, Citizenship & Immigration has refused to budge from its basic position.

2. Until 1960, the Department of Citizenship & Immigration based its opposition to our accession upon Article 33 of the Convention, which prohibits expulsion of a refugee where his life would be endangered on account of his race, religion or political views, except for expulsion on the grounds of security or where a competent court has found the refugee guilty of a serious crime. Immigration was not prepared to accept a situation in which they could not deport a refugee to his homeland behind the Iron Curtain unless they could prove he was a criminal or security risk. They did so on the grounds that, as a matter of policy, they hesitate to reveal that a refugee has been refused permission to enter Canada because he is considered a security risk. Immigration considers that if they did so, it would endanger our sources of information on security matters.

3. The RCMP, who look after most of the security work for Citizenship & Immigration, were consulted on this matter. The informal view of the RCMP was that arrangements could be made which would get around the difficulty posed by Immigration and permit us to accede to the Convention.

4. When the matter was next discussed in November of 1960, Immigration gave three reasons why we should not accede to the Convention. The security reason which had been advanced for so many years by Immigration was not mentioned, presumably because of the views given us by the RCMP. The first objection related to Article 2 which defines the refugees to which the Convention applies. The interpretation of the UNHCR, and of other countries signatory to the Convention, is that the refugees are not limited to those who left their homes "as a result of events occurring before January 1, 1951".

5. The second objection raised by Immigration related again to Article 33 which prohibited the expulsion or return of refugees to the frontiers of territories where their lives or freedom would be threatened. Immigration wishes to protect its right to grant or reject such applications, even though in practice it would not return such refugees to a country where their lives would be in danger.

6. The third objection of Immigration also arises from Article 33 where states would be expected to refrain from any measures which would result in compelling a refugee to return to a country where his life would be in danger.

...2

Immigration point out that this may well prohibit them placing such a refugee back aboard a ship belonging to a third country, if there were a chance that this might indirectly lead to the refugee having to return to his country of origin.

7. In the meantime a number of other countries, including New Zealand, had acceded to the Convention. Our Permanent Representative in Geneva, Mr. Wershof, and officials in the Department, decided to make a further attempt to convince Immigration that it would be desirable for Canada to accede to the Convention. Mr. Wershof consulted with the Legal Adviser, Dr. Weis, of the UNHCR with a view toward determining whether his interpretation accorded with that of the Department of Citizenship & Immigration on the three points concerned. The Legal Adviser, Dr. Weis, agreed with the first point that refugees would not be limited to those who left their homes as a result of events occurring before 1951. On the second point, Dr. Weis did not give a clear-cut opinion. He said that while the Convention did not expressly require a government to refrain from rejecting refugees at the frontier, the implication was that it certainly ought not to do so. On the third point, Dr. Weis again agreed with the view of Citizenship & Immigration.

8. On October 6 of last year, Dr. Davidson, the Deputy Minister of Citizenship & Immigration, again wrote to the Under-Secretary to say that, after perusing Dr. Weis's opinions, his Department had regretfully reached the conclusion that Canada should not adhere to the refugee Convention. His main objection was that the definition of refugees was too broad and that he could "not recommend that Canada adhere to a convention which involves acceptance of such an ill-defined and open-ended commitment as this. I feel that about all that we can do now, is let the matter drop."

9. In general, the Convention is less precise in its wording and would leave more discrimination to Immigration authorities than would the Declaration. It is still difficult for this Department to understand the strength of the objections to the Convention which have been raised by Citizenship & Immigration. In practice, we now comply generally with the terms of the Convention and would presumably have no more difficulty with it than the United Kingdom or New Zealand. There would, however, seem to be little hope that Immigration officials can be persuaded to agree to our accession in the near future.

ADDITIONAL POINTS

Some consideration might be given to having short papers on the following subjects:

(a) Right of asylum provided by foreign and Commonwealth diplomatic Missions in Canada.

DEPARTMENT OF EXTERNAL AFFAIRS, CANADA. *(DUPLICATE)*

NUMBERED LETTER

CONFIDENTIAL

TO: THE UNDER-SECRETARY OF STATE FOR EXTERNAL AFFAIRS, OTTAWA, CANADA.

FROM: CANADIAN EMBASSY SANTO DOMINGO

Reference:

Subject: Diplomatic Asylum in Santo Domingo

Security:

No: 34

Date: January 30, 1962

Enclosures:

Air or Surface Mail:

Post File No:

Ottawa File No. 5475-AK-25-40 "L"

96 -

References

Internal Circulation

Distribution to Posts

The Brazilian Embassy had hardly been re-established in Santo Domingo when it began filling up with asylees. The first to arrive were three air force officers who had denounced the political ambitions of [redacted] Following [redacted] coup fourteen more arrived including the family and body guards of some members of the Council of State. The only other Latin American embassies, the Guatamalan and the Haitian, apparently did not receive any asylees. The Brazilian chargé d'affaires told us that the Guatamalan ambassador had directed such persons to the Brazilian embassy, giving the excuse that he could not receive asylees as he had not presented his letters of credence. In fact, no letters of credence have been presented by any of the Latin American officers and we believe that, in any event, it is the embassy and not the officer which affords asylum.

s.19(1)

2. The successive government changes of two weeks ago gave rise to two further unusual asylum situations. In our letter 32 of January 30 we mentioned that two members of the Dominican Council of State, [redacted] had been received as "guests" at the American residence by the chargé d'affaires. Although the Embassy is careful to insist that the arrival of [redacted] was by social invitation, the precedent created has given them some concern. It is not clear whether a line between guest and asylee can be drawn in the case where the guests are being sought and threatened by the authorities in power for political activities and are admitted to a residence where these authorities do not possess the right of search. If the danger to the two council members had continued we understand the U.S. embassy would have arranged to have them received by a Latin American embassy. Possibly the Cardinal [redacted] in Budapest throws some light on the legal position of the American embassy under these circumstances.

3. After the collapse of the Echevarria coup we were surprised to hear that former [redacted] had sought and received asylum in the Nunciatura. The Nunciatura is conveniently located next door to Balaguer's residence. However we had not realized that the Vatican exposed itself to the problems of diplomatic asylum. To our knowledge it is not a party to any of the Latin American conventions on diplomatic asylum. The Dominican Government has not protested to the Nunciatura and is apparently prepared to grant [redacted] a safe conduct when the public cry for

his trial dies down. It is not clear to us whether the right of diplomatic asylum is dependent strictly on the adherence of parties to a convention or, as a result of Latin American practice, it can exist independently of the convention in Latin American countries. Of course, in this case, if the receiving state does not object, the problem will not arise.

4. In connection with [redacted] it is interesting to note that less than three months ago, he secured congressional approval for the return of the Dominican Republic "to the juridical and humanitarian rules of diplomatic asylum" by adherence to the (1954) Convention of Diplomatic Asylum of Caracas (reference our letter 227 of November 8).

JOHN W. GRAHAM
The Embassy.

s.19(1)

ACTION REQUEST

TO	DATE
D.L.(2) Div. (Hooper)	Jan 26
LOCATION	

FROM	RE FILE NO.
Legal Div/J.A.Beesley/IL	

FOR:

	ACTION		NOTE & FORWARD
	APPROVAL		NOTE & RETURN
XX	COMMENTS		P.A. ON FILE
	DRAFT REPLY		REPLY DIRECTLY
	INFORMATION		REPLY, PLEASE
	INVESTIGATE AND REPORT		SEE ME, PLEASE
	INVESTIGATION		SIGNATURE
	MAKE.....COPIES		TRANSLATION
	MORE DETAILS		YOUR REQUEST
	NOTE AND FILE		.....

PREPARE MEMO TO:.....

REPLY FOR SIGNATURE OF:.....

REMARKS.....

see last sentence of Consular Div. Memo of January 22.

000698

CGSB 6-GP-12 P.P.&S. CAT. 3433

Legal Div/J A Beesley/CIL

DEPARTMENT OF EXTERNAL AFFAIRS

MEMORANDUM

TO: UNITED NATIONS DIVISION

FROM: LEGAL DIVISION

REFERENCE: Consular Division Memo of January 19, 1962

SUBJECT: Canadian position papers - International Law Commission

Security: CONFIDENTIAL

Date: January 26, 1962

File No. 5475-AX-25-40

57

The attached draft paper on Canadian practice with respect to the granting of asylum and the principles that may be inferred therefrom has been prepared by Consular Division as part of the work being done in the Department consequent upon Mr. Cadieux's election to the International Law Commission.

2. It will be recalled that it was agreed, at the meeting of the I.L.C. Committee on January 17, (which was attended by Messrs. Jay and Chistoff), that this paper would be referred initially to your Division for comment.

GILLES SICOTTE

Legal Division

CIRCULATION
Mr. Cadieux
Consular
(Mr. Wallis)
D.L.(2)
Protocol
European
(Mr. Roberts)
Economic
(Mr. Wilgress)
Latin Am.
Permis Geneva

Ext. 326 (6/56)

Consular: P.A. Wallis/JEB

DEPARTMENT OF EXTERNAL AFFAIRS

MEMORANDUM

TO: Legal Division

FROM: Consular Division

REFERENCE: Memorandum of January 5 from Mr. Cadieux

Security: CONFIDENTIAL

Date: January 22, 1962

File No. 9323-P-40C
c.c. 5475-AX-25-40

SUBJECT: Papers for International Law Commission - Asylum

Attached are two copies of a draft paper on the Canadian practice with respect to the granting of asylum and the principles that may be inferred therefrom which you may wish to submit in due course to Mr. Cadieux. You might bring to Mr. Cadieux's attention Mr. Wershof's memorandum of June 12, 1956 (File 5475-Ax-25-40), and if Mr. Cadieux agrees you might assume coordinating responsibility for this subject. It is suggested that the attached memorandum might be sent in the first instance to the United Nations Division so that they may insert, if they think it necessary, paragraphs concerning Canada's position with respect to the United Nations Convention on the Status of Refugees and the Proposed Declaration on the Right of Asylum (U.N.Division Files 5475-EA-40 and 5475-W-19-40 attached). When U.N.Division has made its contribution, the composite memorandum might be sent to Defence Liaison (2), Protocol European and Latin American Divisions for comments, after which it should be reviewed by the Department of Citizenship and Immigration.

2. We shall be glad to make any further contribution you might consider desirable.

"D.M.Cornett"
Consular Division

CIRCULATION

Ext. 326 (6/56)

D R A F T

Consular: B.A.Wallis/JEB
January 18, 1962
File: 9323-P-40C
c.c. 5475-AX-25-40

CONFIDENTIAL

CANADIAN PRACTICE WITH RESPECT TO THE GRANTING OF ASYLUM

Canada has dealt with requests for asylum on the basis of practical consideration rather than by reference to any inviolable rights to asylum by individuals requesting it. Asylum has been granted or refused depending on the particular circumstances of each case. In general, the Canadian Government has granted asylum when this would not be contrary to Canadian interests and, when it has refused asylum, has taken care not to endanger thereby the life or liberty of the person concerned irrespective of his possible demerits. A brief account of the handling of requests for asylum and the principles that emerge therefrom are given below.

s.19(1)

I

STATE ASYLUM AFTER ENTRY TO CANADA HAS BEEN GRANTED

2. Certain persons have succeeded in entering Canada on a temporary basis and have then sought "asylum" in this country.

3. ~~Anti-Communist defectors~~ Such persons from Soviet-bloc countries ~~(such as Dr. Klochko and mission personnel)~~ have invariably been permitted to remain in Canada, ~~In their case~~ as it has been considered ~~that they were persons who were suitable as permanent residents of Canada~~, that any aggravation in the relations between Canada and the Communist country by granting asylum to the individual ~~would~~ could not be a factor ~~of great importance,~~ affecting our decision, in the face of ~~and that we should respect~~ the wishes of such persons to live in a free democratic society.

4. The circumstances were different, however, in the case of certain members of former dictatorial regimes in Latin America. In 1960, ~~Major-General T. Pedraza,~~ a former Police Chief in the [redacted] in Cuba, entered Canada without a visa for a 30-day visit, and subsequently refused to leave. The Departments of External Affairs and Citizenship and Immigration were in agreement that ~~General Pedraza~~ he should be required to leave, primarily on the grounds that he was a person with a notorious reputation as

a political murderer and that he intended to actively work while abroad for the overthrow of the Castro regime by armed revolt which would be inimical to Canada's relations with Cuba. While Immigration never seriously considered deporting this individual ~~Podraza~~ to Cuba (where presumably he would have been ~~be~~ shot) it looked into the possibility of deporting him to Trinidad or Jamaica from which countries he had entered Canada, and to Portugal to which country he had a non-immigrant visa. In the event, he ~~Podraza~~ left Canada of his own accord for Guatemala.

5. ~~General Arturo Espaillat,~~ A former senior official ~~with~~ of the Secret Police of the Trujillo régime in the Dominican Republic, entered Canada in 1961 on a transit visa, destined ultimately to the Dominican Embassy in Iran. After his arrival in Canada it was discovered that his diplomatic appointment had been cancelled and he informally asked whether he could stay in Canada. In view of his record and the fact that his continued stay in Canada would be inimical to Canada's relations with other Latin American countries, the Department of External Affairs and Immigration agreed that he should not be allowed to remain permanently in this country. Deportation to the Dominican Republic was never seriously considered, however, because of the danger that he might be shot there, and it was the view of this Department that he should be given time to effect departure to some third country far from the Western Hemisphere such as possibly Portugal. This person ~~He~~ has now been asked to leave Canada but it is not yet known whether he will succeed in finding another country willing to receive him. It is possible that Immigration will have to try to deport him to Jamaica, the country from which he entered, although there would be no obligation on Jamaica to accept him.

6. The principles accepted by Canada that emerge from these two types of request for asylum are the following:

(a) A State has the right to grant asylum notwithstanding any protest by the State from which the person has fled.

(b) A person has no right to ~~demand~~ be granted asylum. It is the responsibility of the individual to convince the Government that he is a bona fide political refugee and not of the Government to prove that the individual's fear of persecution is not well-founded.

(c) The granting of asylum by Canada depends in the first instance on the past history of the person concerned, his suitability as a permanent resident of Canada, his intended activities in Canada, and the effect of the possible granting of asylum on Canada's international relations. Asylum normally would not be granted if the individual were a notorious political murderer, or if he intended to ~~actively~~ foment revolution in his home country from Canadian territory, or if Canada's relations with friendly countries would be jeopardized by the granting of asylum. Asylum would ~~only~~ be granted only where these factors were not present.

This is all wrong: we might well send back one of these people if we thought he would get a fair trial.

(d) Even in the case of notorious political murderers, the persons requesting asylum would not be deported to their home countries if there was a danger that they would be executed without a fair trial ~~brought to justice there.~~

(e) When ~~If~~ asylum is refused, ~~were not granted~~, undesirable ~~the~~ persons are ~~would~~ normally be allowed to remain in Canada temporarily until a safe third country could be found to which they would be prepared to go voluntarily or to which they could be deported.

II

STATE ASYLUM REQUESTED AT A CANADIAN PORT-OF-ENTRY

7. Occasions have arisen where Soviet seamen have been granted asylum at Canadian ports-of-entry, [although normally seamen are not granted asylum]. ~~On the other hand,~~ In 1960 certain Yugoslav seamen who deserted and claimed to be refugees were not granted asylum. It is not clear why the claim of ~~the~~ Soviet seamen to refugee status was believed and the similar claim of the Yugoslav seamen was not. In general, the five principles mentioned in

Is this true? If so, should we say it?

It certainly isn't. A poor decision?

paragraph 6 above apply and in addition the following:

(a) The Government has the unconditional right to decide who is to enter Canada for the first time and, in the case of a person seeking entry on the grounds that he is a refugee, responsibility for him rests not with Canada but with the transportation company or the country of transit.

(b) If the individual requesting asylum were entering from a country where he could safely remain, Canada normally would not give him asylum. ~~Since it would not be prepared merely to take upon its own shoulders a problem facing the other country.~~ ~~This~~ For example, a person who had already successfully entered the United States after fleeing from another country, would not normally be admitted to Canada at the Canada-U.S. border. However, if ~~the~~ a person sought entry to Canada from the country from which he was fleeing, he might be allowed temporary or permanent stay. If he were refused permanent stay for ~~one of the~~ reasons such as those given in paragraph 6(c), he would not be returned ~~[illegible]~~ to the country from which he was fleeing, but he might still be required to leave even if this meant that, if every other country were to act similarly, the transportation company would have no choice but to return him to the country from which he was fleeing.

I wonder...

8. It should be remembered that there is no provision in Canadian legislation for the entry or landing in Canada of persons in the status of "political refugees" seeking "political asylum". Persons may be admitted to Canada only with ~~in~~ the status of immigrants or non-immigrants and if they meet the relevant requirements. Therefore, persons seeking "asylum" in Canada, if allowed to stay in Canada, would be granted this permission only in the status of non-immigrants or immigrants and not as "asylees" and would be required to meet the statutory requirements.

III

DIPLOMATIC ASYLUM ON THE PREMISES OF CANADIAN MISSIONS ABROAD

9. Departmental policies on the granting of asylum on mission premises are contained in Chapter V, Part II of the Consular instructions, a copy of which is attached. In summary, asylum may be granted on mission premises:

(a) To a person, whether a Canadian citizen or not, if he is in imminent danger to his life during political disturbances or riots.

(b) To a Canadian citizen if he is in imminent danger of loss of life or liberty where the normal civilized standards of justice and due process of law are absent.

s.19(1)

(c) To a Canadian citizen, for a strictly temporary period, if he is the subject of discriminatory action by the local authorities; the purpose of protection would be to ensure independent legal advice and a fair trial, not to avoid prosecution or deny the jurisdiction of the competent courts.

10. Rule (b) above was the rule under which asylum has been granted on mission premises to Canadians subject to persecution in Communist countries. [redacted] a naturalized Canadian citizen of Czechoslovak origin was forced to sign a confession of espionage in Czechoslovakia. He subsequently was granted asylum in the Canadian Legation in order to ensure his personal safety. Eventually, after difficult negotiations, the Czechoslovak authorities allowed him to leave Czechoslovakia. In 1961, five Canadian priests, who believed they were about to ba arrested by the Castro Government, were granted refuge in the Canadian Embassy residence in Havana. It is believed, since nothing further has been heard about them, that they were included in the group of 65 Canadian priests who were returned to Canada from Cuba.

Couldn't we find out? Anyhow it seems irrelevant

11. The principles in paragraph 6 apply to diplomatic asylum on mission premises.

CHAPTER V

PART II

Asylum

5.44 a. Consulates and diplomatic missions may not grant asylum on the premises of a post except in extraordinary circumstances. — When Asylum may be Granted

b. Granting of temporary asylum on humanitarian grounds to a person, whether a Canadian citizen or not, may be justified only if he is in imminent personal danger to his life during political disturbances or riots; care should be taken to ensure that the humanitarian character of the mission's intervention is not misinterpreted.

c. Granting of asylum to a Canadian citizen may be justified if he is in imminent personal danger of loss of life or liberty where the normal civilized standards of justice and due process of law are found to be absent.

d. Granting of temporary asylum to a Canadian citizen may be justified if he is the subject of discriminatory action by the local authorities or if such action appears probable. The purpose of such protection would be to afford an opportunity for representations designed to ensure independent legal advice and a fair trial, not to avoid prosecution or deny the jurisdiction of the competent courts or to shelter a fugitive from justice seeking to evade the criminal laws of a state.

5.45 a. Once asylum has been granted, any efforts of the local or national authorities to enter the premises of the post by force should be opposed. Any such entry should be protested and reported immediately to the Department. — Action when Asylum Granted

this is dangerously unclear

b. Before any person who has been granted asylum is released by the post, assurances should be sought of the safety of that person.

5.46 When a person has been granted asylum on the premises of the post, this fact and all relevant details surrounding it, should be brought immediately to the attention of the Department. — Reference to the Department

5.47 A head of post, after consultation with the Department if time permits, may seek from the national authorities assurances of protection of Canadian citizens where there is danger that violent disorders are imminent and that police or armed forces protection may not be adequate. He may seek similar assurances where Canadian citizens are in imminent danger of persecution on account of their religious or political beliefs, racial origin, or citizenship. — Requests to National Authorities for Protection

5475-AX-25-40

~~SECRET~~ Orig 5475-AX-40

January 26, 1962

Minutes of the Meeting of the Interdepartmental Committee on the Future Work of the International Labour Organization, on January 17, 1962

Present at the meeting were:

Mr. Giotto (Acting Chairman)
Messrs. Jay and Chistoff, United Nations Division
Mr. Willis, Consular Division
Mr. Wilgress, Economic Division
Mr. Beesley, Legal Division (Secretary)

The discussion was as follows:

Summer Employment of University Professors

1. Mr. Beesley reported that he had been informed by Personnel Division that it had been agreed at the Under-Secretary's meeting of January 5, that a memorandum should be submitted to the Minister outlining the proposed programme of summer employment of University Professors and obtaining his approval to it, and that Legal Division's request was one of the to which priority would be given. It was understood that Personnel Division were engaged in drafting the necessary papers.

Colonialism and Self-determination

2. Messrs. Jay and Chistoff raised the question as to whether U.N. Division should be the one primarily responsible for these questions, or whether they would fall more appropriately to one or more of the area political divisions, such as African and Middle Eastern. After some discussion, it was agreed that U.N. Division would give consideration to the feasibility of producing a first draft of a "think piece" along fairly general lines, based on Canadian policy in the U.N., in so far as it might be relevant to the future work of the I.L.O.

Permanent Sovereignty over Natural Resources

3. Mr. Wilgress submitted a discussion paper and it was agreed that it would provide a useful basis for further examination of the question of permanent sovereignty over natural resources. It was agreed also that the next step would be the preparation by Economic Division of a draft position paper on the U.N. draft resolution on permanent sovereignty and that Economic Division and Legal Division would confer to the extent necessary arising out of the inter-relation of that question with the law of state responsibility and that it would be determined subsequently whether or not it was necessary to consult also with the Departments of Finance and Trade and Commerce.

State Responsibility

4. It was agreed that Legal Division and Economic

...2

Division would confer, as and when necessary, to discuss the various aspects of state responsibility.

Right of Asylum

5. Mr. Wallis reported that a draft paper was under preparation in Consular Division outlining Canadian practice on the right of asylum. Mr. Wallis explained the extent to which the responsibility of various other divisions overlap on this question and it was agreed that the Consular Division draft paper should be circulated for comments first to U.N. Division and subsequently to other interested divisions and ultimately to the Department of Citizenship and Immigration.

Legal Div/J.A. Beesley/TL

DEPARTMENT OF EXTERNAL AFFAIRS

MEMORANDUM

TO: UNITED NATIONS DIVISION

FROM: LEGAL DIVISION

REFERENCE: Consular Division Memo. of January 19, 1962

SUBJECT: Canadian position papers - International Law Commission

Security: CONFIDENTIAL

Date: January 26, 1962

File No. 5475-AX-25-40
~~5475-FA-10~~

57	✓	

Mr Summary
Mr Dayton John Holmes
Mr Jay

I have files for Mr Putting

The attached draft paper on Canadian practice with respect to the granting of asylum and the principles that may be inferred therefrom has been prepared by Consular Division as part of the work being done in the Department consequent upon Mr. Cadieux's election to the International Law Commission.

2. It will be recalled that it was agreed, at the meeting of the I.L.C. Committee on January 17, (which was attended by Messrs. Jay and Christoff), that this paper would be referred initially to your Division for comment.

Legal Division

Jaqe

Mr Summary

I assume Mr. Putting should take this on.

1.) In addition to commenting, if necessary, on our attitude to two conventions (Refugees + Asylum) we might suggest para 6 (3) should speak of charges " of summary execution

2.) enquire who is to deal with administ. question of asylum in Quebec in Ottawa e.g. Secession (not in, say, French

3.)

CIRCULATION
Mr. Cadieux
Consular (Mr. Wallis)
D.L. (2)
Protocol
European (Mr. Roberts)
Economic (Mr. Wilgress)
Latin Am.
Permis Geneva
Ext. 326 (6/56)

000709

File

Consular: D.A.Philip/JEB

DEPARTMENT OF EXTERNAL AFFAIRS

5475-AX-25-4

MEMORANDUM

TO: Legal Division

FROM: Consular Division

REFERENCE: Memorandum of January 5 from Mr.Cadieux

Security: Confidential

Date: January 23, 1968

File No. 9325-P-400
c.c. 5475-AX-25-40

SUBJECT: Papers for International Law Commission - Asylum

Attached are two copies of a draft paper on the Canadian practice with respect to the granting of asylum and the principles that may be inferred therefrom which you may wish to submit in due course to Mr. Cadieux. You might bring to Mr. Cadieux's attention Mr. Wershof's memorandum of June 18, 1956 (File 5475-AX-25-40), and if Mr. Cadieux agrees you might assume coordinating responsibility for this subject. It is suggested that the attached memorandum might be sent in the first instance to the United Nations Division so that they may insert, if they think it necessary, paragraphs concerning Canada's position with respect to the United Nations Convention on the Status of Refugees and the Proposed Declaration on the Right of Asylum (U.N.Division Files 5475-EA-40 and 5475-U-19-40 attached). When U.N. Division has made its contribution, the composite memorandum might be sent to Defence Liaison (2), Protocol, European and Latin American Divisions for comments, after which it should be reviewed by the Department of Citizenship and Immigration.

2. We shall be glad to make any further contribution you might consider desirable.

CIRCULATION

D. M. CORNETT

Consular Division.

Ext. 326 (6/56)

Consular: B.A.Wallis/JEB

DEPARTMENT OF EXTERNAL AFFAIRS

MEMORANDUM

TO: Legal Division

FROM: Consular Division

REFERENCE: Memorandum of January 5 from Mr. Cadieux

Security: Confidential

Date: January 19, 1962

File No. 9323-P-40C
c.c. 5475-AX-25-40

57 ✓

SUBJECT: Papers for International Law Commission - Asylum

Attached are two copies of a draft paper on the Canadian practice with respect to the granting of asylum and the principles that may be inferred therefrom which you may wish to submit in due course to Mr. Cadieux. In conformity with Mr. Wershof's memorandum of June 12, 1956 (File 5475-AX-25-40), you may wish to assume coordinating responsibility for this subject. It is suggested that the attached memorandum might be sent in the first instance to the United Nations Division so that they might insert, if they think it necessary, paragraphs concerning Canada's position with respect to the United Nations Convention on the Status of Refugees and the Proposed Declaration on the Right of Asylum (U.N.Division Files 5475-EA-40 and 5475-W-19-40 attached). If U.N. Division has made its contribution, the composite memorandum might be sent to Defence Liaison (2) Division, Protocol Division and European and Latin American Divisions for comments, after which it should be reviewed by the Department of Citizenship and Immigration.

2. We should be glad to make a further contribution if you consider this desirable.

CIRCULATION

Consular Division.

Ext. 326 (6/56)

D R A F T

Consular: B.A. Wallis/JEB
January 18, 1962
File: 9525-P-40C
c.c. 5475-AX-25-40

CONFIDENTIAL

CANADIAN PRACTICE WITH RESPECT TO THE GRANTING OF ASYLUM

Canada has dealt with requests for asylum on the basis of practical consideration rather than by reference to any inviolable rights to asylum by individuals requesting it. Asylum has been granted or refused depending on the particular circumstances of each case. In general, the Canadian Government has granted asylum when this would not be contrary to Canadian interests and, when it has refused asylum, has taken care not to endanger thereby the life or liberty of the person concerned irrespective of his possible demerits. A brief account of the handling of requests for asylum and the principles that emerge therefrom are given below.

s.19(1)

I

STATE ASYLUM AFTER ENTRY TO CANADA HAS BEEN GRANTED

2. Certain persons have succeeded in entering Canada on a temporary basis and have then sought "asylum" in this country.

3. Anti-Communist defectors from Soviet-bloc countries (such as Dr. Klochko and mission personnel) have invariably been permitted to remain in Canada. In their case it has been considered that they were persons who were suitable as permanent residents of Canada, that any aggravation in the relations between Canada and the Communist country by granting asylum to the individual would not be a factor of great importance, and that we should respect the wishes of such persons to live in a free democratic society.

4. The circumstances were different, however, in the case of certain members of former dictatorial regimes in Latin America. In 1960, [redacted] entered Canada without a visa for a 30-day visit, and subsequently refused to leave. The Departments of External Affairs and Citizenship and Immigration were in agreement that [redacted] should be required to leave, primarily on the grounds that he was a person with a notorious reputation as

a political murderer and that he intended to actively work while abroad for the overthrow of the Castro regime by armed revolt which would be inimical to Canada's relations with Cuba. While Immigration never seriously considered deporting [redacted] to Cuba where presumably he would be shot, it looked into the possibility of deporting him to Trinidad or Jamaica from which countries he had entered Canada, and to Portugal to which country he had a non-immigrant visa. In the event, [redacted] left Canada of his own accord for Guatemala.

5. [redacted] a former senior official with the Secret Police of the Trujillo regime in the Dominican
s.19(1) Republic, entered Canada in 1961 on a transit visa, destined ultimately to the Dominican Embassy in Iran. After his arrival in Canada it was discovered that his diplomatic appointment had been cancelled and he informally asked whether he could stay in Canada. In view of his record and the fact that his continued stay in Canada would be inimical to Canada's relations with other Latin American countries, the Department of External Affairs and Immigration agreed that he should not be allowed to remain permanently in this country. Deportation to the Dominican Republic was never seriously considered, however, because of the danger that he might be shot there, and it was the view of this Department that he should be given time to effect departure to some third country far from the Western Hemisphere such as possibly Portugal. [redacted] has now been asked to leave Canada but it is not yet known whether he will succeed in finding another country willing to receive him. It is possible that Immigration will have to try to deport him to Jamaica, the country from which he entered, although there would be no obligation on Jamaica to accept him.

6. The principles accepted by Canada that emerge from these two types of request for asylum are the following:

(a) A State has the right to grant asylum notwithstanding any protest by the State from which the person has fled.

(b) A person has no right to demand asylum. It is the responsibility of the individual to convince the Government that he is a bona fide political refugee and not of the Government to prove that the individual's fear of persecution is not well-founded.

(c) The granting of asylum by Canada depends in the first instance on the past history of the person concerned, his suitability as a permanent resident of Canada, his intended activities in Canada, and the effect of the possible granting of asylum on Canada's international relations. Asylum normally would not be granted if the individual were a notorious political murderer, or if he intended to actively foment revolution in his home country from Canadian territory, or if Canada's relations with friendly countries would be jeopardized by the granting of asylum. Asylum would only be granted where these factors were not present.

(d) Even in the case of notorious political murderers, the persons requesting asylum would not be deported to their home countries if there was a danger that they would be brought to justice there.

(e) If asylum were not granted, the persons would normally be allowed to remain in Canada temporarily until a safe third country could be found to which they would be prepared to go voluntarily or to which they could be deported.

II

STATE ASYLUM REQUESTED AT A CANADIAN PORT-OF-ENTRY

7. Occasions have arisen where Soviet seamen have been granted asylum at ports-of-entry, although normally seamen are not granted asylum. On the other hand in 1960 certain Yugoslav seamen who deserted and claimed to be refugees were not granted asylum. It is not clear why the claim of the Soviet seamen to refugee status was believed and the similar claim of the Yugoslav seamen was not. In general, the five principles mentioned in

paragraph 6 above apply and in addition the following:

(a) The Government has the unconditional right to decide who is to enter Canada for the first time and, in the case of a person seeking entry on the grounds that he is a refugee, responsibility for him rests not with Canada but with the transportation company or the country of transit.

(b) If the individual requesting asylum were entering from a country where he could safely remain, Canada normally would not give him asylum since it would not be prepared merely to take upon its own shoulders a problem facing the other country. Thus, a person who had already successfully entered the United States after fleeing from another country, would not normally be admitted to Canada at the Canada-U.S. border. However, if the person sought entry to Canada from the country from which he was fleeing, he might be allowed temporary or permanent stay. If he were refused permanent stay for one of the reasons given in paragraph 6(c), he would not be returned directly to the country from which he was fleeing, but he might still be required to leave even if this meant that, if every other country were to act similarly, the transportation company would have no choice but to return him to the country from which he was fleeing.

8. It should be remembered that there is no provision in Canadian legislation for the entry or landing in Canada of persons in the status of "political refugees" seeking "political asylum". Persons may be admitted to Canada in the status of immigrants or non-immigrants if they meet the relevant requirements. Therefore, persons seeking "asylum" in Canada, if allowed to stay in Canada, would be granted this permission in the status of non-immigrants or immigrants and would be required to meet the statutory requirements.

III

DIPLOMATIC ASYLUM ON THE PREMISES OF CANADIAN MISSIONS ABROAD

9. Departmental policies on the granting of asylum on mission premises are contained in Chapter V, Part II of the Consular instructions, a copy of which is attached. In summary, asylum may be granted on mission premises:

(a) To a person, whether a Canadian citizen or not, if he is in imminent danger to his life during political disturbances or riots.

(b) To a Canadian citizen if he is in imminent danger of loss of life or liberty where the normal civilized standards of justice and due process of law are absent.

s.19(1)

(c) To a Canadian citizen, for a strictly temporary period, if he is the subject of discriminatory action by the local authorities; the purpose of protection would be to ensure independent legal advice and a fair trial, not to avoid prosecution or deny the jurisdiction of the competent courts.

10. Rule (b) above was the rule under which asylum has been granted on mission premises to Canadians subject to persecution in Communist countries. [redacted] a naturalized Canadian citizen of Czechoslovak origin was forced to sign a confession of espionage in Czechoslovakia. He subsequently was granted asylum in the Canadian Legation in order to ensure his personal safety. Eventually, after difficult negotiations, the Czechoslovak authorities allowed him to leave Czechoslovakia. In 1961, five Canadian priests, who believed they were about to ba arrested by the Castro Government, were granted refuge in the Canadian Embassy residence in Havana. It is believed, since nothing further has been heard about them, that they were included in the group of 65 Canadian priests who were returned to Canada from Cuba.

11. The principles in paragraph 6 apply to diplomatic asylum on mission premises.

CHAPTER V

PART II

Asylum

5.44 a. Consulates and diplomatic missions may not grant asylum on the premises of a post except in extraordinary circumstances. *When Asylum may be Granted*

b. Granting of temporary asylum on humanitarian grounds to a person, whether a Canadian citizen or not, may be justified only if he is in imminent personal danger to his life during political disturbances or riots; care should be taken to ensure that the humanitarian character of the mission's intervention is not misinterpreted.

c. Granting of asylum to a Canadian citizen may be justified if he is in imminent personal danger of loss of life or liberty where the normal civilized standards of justice and due process of law are found to be absent.

d. Granting of temporary asylum to a Canadian citizen may be justified if he is the subject of discriminatory action by the local authorities or if such action appears probable. The purpose of such protection would be to afford an opportunity for representations designed to ensure independent legal advice and a fair trial, not to avoid prosecution or deny the jurisdiction of the competent courts or to shelter a fugitive from justice seeking to evade the criminal laws of a state.

5.45 a. Once asylum has been granted, any efforts of the local or national authorities to enter the premises of the post by force should be opposed. Any such entry should be protested and reported immediately to the Department. *Action when Asylum Granted*

b. Before any person who has been granted asylum is released by the post, assurances should be sought of the safety of that person.

5.46 When a person has been granted asylum on the premises of the post, this fact and all relevant details surrounding it, should be brought immediately to the attention of the Department. *Reference to the Department*

5.47 A head of post, after consultation with the Department if time permits, may seek from the national authorities assurances of protection of Canadian citizens where there is danger that violent disorders are imminent and that police or armed forces protection may not be adequate. He may seek similar assurances where Canadian citizens are in imminent danger of persecution on account of their religious or political beliefs, racial origin, or citizenship. *Requests to National Authorities for Protection*

DRAFT

Consular: B.A.Wallis/JEB
January 18, 1962
File: 9323-P-40C
c.c. 5475-AX-25-40

CONFIDENTIAL

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5.47 A head of post, after consultation with the Department if time permits, may seek from the national authorities assurances of protection of Canadian citizens where there is danger that violent disorders are imminent and that police or armed forces protection may not be adequate. He may seek similar assurances where Canadian citizens are in imminent danger of persecution on account of their religious or political beliefs, racial origin, or citizenship. — Requests to National Authorities for Protection

Legal/J.H. Bassley/bjw

Consular Division

CONFIDENTIAL

January 5, 1962

Mr. M. Cadieux

Future Development for International Law

... I am attaching, for your information, a copy of Legal Division's working paper dated January 3 on the general question of the juridical basis for peaceful co-existence and its particular relevance to various topics under discussion in the U.N. and in the International Law Commission. Also attached is a copy of the minutes of yesterday's meeting of the Intra-departmental I.L.C. Committee. As you will note paragraphs 15 and 17 of these minutes are of particular interest to your Division.

J. Watkins
for M. Cadieux

CONFIDENTIAL

January 4, 1962.

Minutes of the Meeting of the Intradepartmental Committee on the Future Work of the International Law Commission

Present at the meeting were: Mr. Cadieux (Chairman) Mr. Sicotte, Mr. Beesley, Mr. Lee, Mr. Bild (Legal Division), Mr. Wilgress (Economic Division), Mr. Roberts (European Division), Mr. Baudouin (Personnel Division), and Mr. Brady (U.N. Division).

Summer Employment of University Professors

2. A list of professors of international law and constitutional law was submitted to Mr. Cadieux with a view to the selection of one of them for summer employment in the Department during the summer of 1962 on legal research oriented towards the work of the I.L.C. The names suggested were, in order of preference: Mr. St. John Macdonald of the University of Toronto, Mr. Bourne of the University of British Columbia, Mr. Morin of the University of Montreal, and Mr. Lawford of the University of Ottawa.

3. Mr. Baudouin of Personnel Division explained that he had been in touch with the Civil Service Commission and that they had agreed that it would be in order, in the circumstances, particularly in the light of the urgency of obtaining someone before the professors had all concluded their arrangements for the coming summer, for our Department to determine in advance the most likely prospect and approach him directly. The meeting agreed that this seemed to be by far the more preferable procedure to follow.

4. There was a brief discussion as to which of the four possible topics (Law of Treaties, Law of State Responsibility, Law of State Succession or Ad Hoc Diplomacy) should be assigned to the professor selected, and it was agreed, at this stage, that he would be told only that he would be expected to do a research project on one of the four topics in question, and that he would be notified which one had been chosen later in the Spring, when the agenda of the I.L.C. had been determined. (The I.L.C. will meet in Geneva from April 24 to June 29.) Mr. Baudouin mentioned that there was to be a meeting with the Under-Secretary on January 5 to discuss the general question of summer employment of professors on departmental research, and that at this meeting the recommendations of the I.L.C. Committee could be considered.

5. The remainder of the discussion at the meeting centered around Legal Division's working paper on the juridical basis of peaceful co-existence dated January 3, (copy attached). The decisions on the particular questions discussed were as follows:

/ ...2

Condemnation of Colonialism and Self-determination

6. Mr. Cadieux pointed out that the questions of condemnation of colonialism and self-determination appear to be closely related and could probably be conveniently handled together; he referred particularly to Mr. Glazebrook's memorandum dated January 3 on Goa and the Anti-colonial Movement which was relevant to these questions. He asked that U.N. Division prepare a paper on colonialism and self-determination (in consultation with European Division and, perhaps African and Middle East Division) and taking into account Mr. Glazebrook's paper, with a view to producing a departmental position paper, which would be useful both in connection with the proposed Canadian resolution on self-determination referred to publicly by the Prime Minister, and also in other discussions at the U.N., and in the I.L.C.

Permanent Sovereignty over Natural Resources

7. Mr. Cadieux pointed out that this question seemed to concern primarily Economic Division. He referred to the discussions in the U.N. Assembly Third Committee (and more recently the Second Committee) and to the rather lengthy and comprehensive report issued by the U.N. on this general question which he thought would provide considerable material useful, not only in the Second Committee, but also in the Sixth Committee and I.L.C. discussions on such questions as state responsibility. Mr. Wilgress confirmed, on the basis of his study of the U.N. documents on permanent sovereignty and Economic Division's files that these papers should provide a basis for further development of the Canadian position on this question, and in particular the resolution which will be brought to a vote during the next session of the U.N. He mentioned also that the Canadian position to date seemed to have been concerned primarily with the question of provincial/federal relations, although a good deal of work had been done on the general subject. Mr. Wilgress raised the question whether the proposed studies should be concerned particularly with such questions as expropriation without compensation or whether a more general approach should also be taken to the Canadian position on permanent sovereignty, and it was agreed that the more general approach should be taken, at least initially.

8. It was agreed that such questions as the requirement for Canadian participation in Northern Development projects might be relevant not only to the particular topic of permanent sovereignty but also to discussions in the Sixth Committee and the I.L.C. on state responsibility. Such questions, for instance, as loans by the Communist bloc with strings attached might be considered as providing scope for causing embarassment to the Soviets.

9. Mr. Cadieux directed that Economic Division take the initiative in bringing together Legal, U.N. and the other divisions concerned and, as suggested by Mr. Wilgress, later consulting other interested Departments, such as Finance, with a view to producing a Canadian position paper.

/ ...3

State Responsibility

10. Mr. Cadieux pointed out that the questions of permanent sovereignty over natural resources and state responsibility overlapped to some extent, and that therefore a substantial part of the preparation for the Canadian position in the Sixth Committee and the I.L.C. on state responsibility would be covered by the working paper to be done by Economic Division. He considered that there were two aspects to state responsibility, firstly, the question whether it could be treated as broadly as is demanded by the Soviet bloc, in which case the topic already assigned to Economic Division would cover part of this broader field, and secondly, the narrower question of treatment of aliens, on which it would be necessary to work out detailed positions on such questions as expropriation either without compensation based, however, to a large part on the more general Canadian position on permanent sovereignty over natural resources.

11. It was agreed that Legal Division should continue to deal with the subject of state responsibility, since it is primarily a legal matter, but in consultation perhaps with Economic Division.

Law of Treaties

12. After some discussion it was agreed that while a detailed commentary for use in the I.L.C. and the Sixth Committee could not be worked out until the report being produced by Sir Humphrey Waldock is received, in the meantime considerable useful work could be done on the general line to be taken on the basis of the draft articles and reports already produced by Sir Gerald Fitzmaurice and J.L. Brierly, This also was a subject to be handled by Legal Division, who should make enquiries of the U.N. Secretariat as to when Waldock's paper may be expected, while proceeding in the meantime on the basis of the material at hand.

Law of State Succession

13. It was agreed that this topic did not appear to be urgent at this stage, and that it could in due course be handled in the normal way by Legal Division, with a particular view to future discussions in the Sixth Committee and in the I.L.C.

Ad Hoc Diplomacy

14. There appear to be no particular difficulties connected with this topic because of its non-controversial nature, and it was agreed that it should be handled in due course in the normal way by Legal Division in consultation with Protocol Division and those other divisions and departments concerned, as is now being done with the Draft Convention on Consular Immunities.

Right of Asylum

15. Mr. Sicotte pointed out that there was a distinction between diplomatic asylum and state asylum and it was agreed that the more general question of asylum should be studied, (along the lines suggested in the working paper), by Consular Division, in consultation with U.N. and Legal Divisions, and, possibly, the Department of Citizenship and Immigration.

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Draft Convention on Arbitral Procedure, International Criminal Court and International Court of Justice

16. It was agreed that the Soviet bloc opposition to the Draft Convention on Arbitral Procedure and the International Criminal Court, (on the grounds that they infringe national sovereignty) was open to attack and that it might be possible to capitalize on their vulnerability on these questions. In so far as the International Court of Justice is concerned, however, it would be necessary to formulate and implement the Canadian position on reservations to the International Court of Justice before we would be in any position to make capital out of the Soviet bloc reluctance to make use of the Court. It was agreed that this latter question should be proceeded with on an urgent basis by Legal Division as soon as the officer having the carriage of the matter returned from leave. (Mr. Cadieux pointed out also that it would seem advisable in the meantime to withhold an answer to the Swiss on their request for Canadian participation in the setting up of a permanent Conciliation Board. In a brief discussion which ensued on the question of the Swiss sponsored Conciliation Board it was recalled that the Swiss are parties to the Statute of the International Court of Justice and have explained their approaches to Canada and other countries as part of an attempt to augment and supplement the existing procedures of the U.N. for the peaceful settlement of disputes, in fact they had indicated that they were only approaching those countries who had not thus far taken a very forthcoming attitude towards acceptance of compulsory jurisdiction of the International Court; those factors should be taken into account in framing our reply to the Swiss.)

17. Mr. Cadieux explained that he would be absent at the Commonwealth Education Conference in India until the end of January, and he hoped that by his return draft papers would have been prepared on most of the subjects discussed.

DEPARTMENT OF EXTERNAL AFFAIRS, CANADA

NUMBERED LETTER

TO: THE UNDER-SECRETARY OF STATE FOR EXTERNAL AFFAIRS, OTTAWA, CANADA.

FROM: THE CANADIAN EMBASSY, CARACAS, VENEZUELA.

Reference: MY DESPATCH NO. 398 OF OCT. 10, 1961.

Subject: [redacted]

Security: UNCLASSIFIED

No: 12

Date: JANUARY 5, 1962

Enclosures:

Air or Surface Mail: REG. AIR

Post File No: 10.0.26

Ottawa File No. 5475-Ax-25-40 "L"

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References

cc 3132-40 cy 8451-40

Safe conducts were granted yesterday by the Venezuelan Government for one military and two civilian members of the group of eight Venezuelans who took refuge in the Peruvian Embassy last October 1 in the circumstances reported in my despatch under reference. [redacted] A few weeks ago the Foreign Ministry had announced a decision to examine individually the cases of the eight asylees and to consider providing safe conducts for those who were not implicated in the fatal shooting of a soldier during the escape of the group.

A. D. ROSS

Embassy.

Internal Circulation

s.19(1)

Distribution to Posts

C (Rev. 2 /52)

COPY

Legal/I.L.C. Resistant

DEPARTMENT OF EXTERNAL AFFAIRS

MEMORANDUM

TO: Mr. Cadieux	Security: CONFIDENTIAL
	Date: January 3, 1962
FROM: Legal Division	File No. 5475-AX-~~28~~-40 (25)
REFERENCE: To-day's Meeting of I.L.C. Committee	57 ✓
SUBJECT: Peaceful Co-existence and State Responsibility.	

Attached is a paper on "peaceful co-existence" as it relates to the work of the I.L.C., discussing the various elements which, according to the Soviet Bloc, are embodied in the juridical basis for peaceful co-existence. As you know, much of the Soviet line on peaceful co-existence overlaps with its line on state responsibility which latter subject, according to the Soviet Bloc, virtually encompasses the whole of International Law.

2. A brief discussion of Soviet views on state responsibility has therefore been included in this paper on peaceful co-existence (although, strictly speaking, state responsibility is a separate subject), on the assumption that the USSR and its friends will probably use the discussion by the I.L.C. of state responsibility as an excuse to introduce their various views usually put forth on discussions on peaceful co-existence.

(Signed) GILLES SICOTTE

Legal Division

CIRCULATION

Mr. Roberts
(European Div.)
Mr. Wilgress
(Economic Div.)

Ext. 326 (6/56)

ILC: Peaceful Coexistence

An examination of the statements of the Soviet bloc made in the Sixth Committee, the ILC and the International Law Association suggests that the successful campaign in the Sixth Committee during its recently concluded session, for the inclusion of peaceful coexistence on its agenda, is part of an overall plan of operations, being put into effect whenever and wherever the opportunity arises, to put forth Soviet views on international legal questions and, in the process, to attempt to appropriate to the Communist system the credit for all the various progressive and dynamic developments in international law. The line adopted is relatively plausible and, while no longer original, it seems elastic enough to undergo slight variations depending upon the particular subject under discussion, while retaining certain basic and continuing elements. (For instance, much of what was said in the Sixth Committee at the sixteenth session to justify inclusion of peaceful coexistence as a topic, could have been applied (and has been) to Soviet bloc criticism of the ILC for taking a "narrow" approach to state responsibility. (Presumably the same line will be applied, when the time comes, at least in certain respects, to a discussion of state succession.) It would seem to be a mistake, however, to dismiss these Soviet legal initiatives as merely attempts to carry over into legal spheres the usual Soviet propaganda line. The juridical basis for "peaceful coexistence", (which would seem, in Soviet eyes, to encompass all International Law) appears to be a genuine reflection and extension into the international sphere of the political and economic basis of the Soviet philosophy, coupled, perhaps, with overtones of traditional Russian nationalism, (i.e. suspicion and mistrust of other nations), and couched in terms designed to appeal to the Afro-Asian and the other underdeveloped countries of the world. The result is a rather mixed bag embodying 19th Century European political concepts of sovereignty while in economic terms it is the antithesis of traditional concepts of international law.

In political terms, for example, in the words of the Ukranian SSR delegation to the Sixth Committee at the 15th session "the basis of International Law is agreement between sovereign states, and supra-nationality is a denial of sovereignty". In economic (and legal) terms, in the words of the Rumanian delegate to the same, "the right of peoples to self determination includes permanent sovereignty over their natural resources, and, consequently, the right to nationalize them". The various principles which the USSR seeks to establish as the foundation stones of contemporary International Law seem therefore to be either a reflection of the Soviet pre-occupation with protection of its sovereignty, or a translation into international spheres of Communist socio-economic theories. As a consequence, the USSR and its friends have had to pick and choose somewhat in selecting their materials for their structure of the international legal edifice.

It is not too difficult to deduce those areas of the law in which the USSR will be able to cause some difficulty for the western countries, those in which the USSR will be vulnerable, and those on which it may be possible to have some meeting of the minds. Some examples of each are as follows:

Definition of Aggression

The USSR can probably be expected to revive periodically its attempts to produce a definition of agression,,

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although it does not seem likely that there will be as much pressure on this subject as there was, for instance, at the time of the U2 incident. Perhaps, however, the Indian intervention in Goa could be used to advantage by the USSR, by means of attempts to define aggression essentially in terms of colonialism or imperialism, thereby eliminating the Indian action, by definition, as aggression. This could force Western powers into taking a line which would be unpopular with the majority of the members of the United Nations. This subject might, therefore, be a useful one on which to consult with other Western powers, (particularly the British, in the light of Lord Home's recent references to a double standard being applied in the United Nations on issues of colonialism).

Convention on Prevention and Punishment of Genocide

This is considered by the USSR to be one of the elements of the juridical basis of peaceful coexistence. Since the Convention is already in force, it doesn't seem likely that it will provide much scope for the USSR in the immediate future.

Condemnation of Colonialism

According to the USSR thesis, contemporary International Law began with the Russian revolution, and is in sharp contradistinction to traditional International Law, which preceded the development of the "socialist societies", and was based on the efforts of the colonial and imperial powers to justify their mistreatment and exploitation of the peoples of Asia and Africa. This question can and probably will be used to good effect by the Soviet bloc, and perhaps, others (including both some of the Afro-Asians and some of the Latin Americans) with particular bearing on such questions as state responsibility and, to the lesser degree, state succession.

Sovereignty over Natural Resources

The emphasis on the sovereignty of a country over its natural resources has, as its corollary, the proposition that a country has a right to expropriate without compensation to foreign nationals affected. At present, the discussion on natural resources is confined largely to the third committee, but much of what is said there will probably be repeated in the ILC in the discussions on state responsibility and state succession. Several of the Soviet bloc representatives at the 15th session of the Sixth Committee, for instance, not only called into question the international obligation to compensate foreign nationals affected by nationalization measures, but suggested that the colonial powers should begin to "restore at least in part what they have taken". As previously mentioned, according to the Soviet line the International Convention on Human Rights has already enshrined the right of peoples to permanent sovereignty over their national wealth and resources and, consequently, the right to nationalize them.

It may be that Canada could be in an equivocal position on some aspects of this question, some here between those countries interested in protecting their foreign investments, and those interested in conserving and protecting their own natural resources. Perhaps the Canadian policy in the third

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committee could be used as a basis for the formulation of not only the approach to be taken on this question, but also on various aspects of state responsibility and state succession.

Sovereignty of States

The well known Soviet views on national sovereignty while open to attack on the basis of logic, may contain more emotional appeal than those of the Western powers for the many countries which seem still to be going through the process of excessive pre-occupation with nationalism that seems to accompany recent emergence into statehood.

Perhaps European Division and some of the other political divisions, could provide assistance in working out an approach that would be consistent with Western political beliefs (varying from those of, say, Adlai Stevenson, to those of General de Gaulle) with the approach of the Afro-Asians, and differentiating between some of those questions involving sovereignty on which the Afro-Asians feel so strongly and the actual conduct of the USSR in Hungary and elsewhere, and in so doing contrast Soviet theory with Soviet practice. It would seem advisable to consult also with other Western countries on this question.

Self-Determination

This is a question on which the Soviet bloc seems to feel it is on sound ground, while in fact this may be one on which they are most vulnerable. Here again, it might be useful to consult with the British on such questions as the numbers of peoples and individuals who have been brought to nationhood in recent years by them, as compared to the numbers brought under Soviet (and/or Chinese?) domination. It may be necessary also to consider the relevance of the Congo experience with respect to the line to be taken on self-determination.

Draft Convention on Arbitral Procedure, International Criminal Court, and Permanent Court of International Justice.

It is interesting that the Soviet line on the Draft on Arbitral Procedure produced by the ILC and the proposals of the ILC on the establishment of an International Criminal Court reveal some of weaknesses of the overall Soviet position. It should not be difficult to capitalize on these weaknesses with the Afro-Asians and others who, while sharing some of the Soviet views on sovereignty and nationalism, may differ with them on their willingness to submit to compulsory settlement of international disputes of various kinds.

The Soviet attitude towards the International Court of Justice is also extremely vulnerable. Unfortunately, for the time being, so is Canada's, and the present evaluation of the future Canadian position on the acceptance of compulsory jurisdiction of the International Court is not unconnected with the line Canada should take on such questions as Compulsory Arbitral Procedure and the establishment of an International Criminal Court.

Right of Asylum

The Soviet bloc countries are presumably vulnerable on this question but in the light of Canada's rather equivocal position on this question, it might be difficult to capitalize

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on differences between, say, the Latin American and the Soviet bloc countries. However, it is not a question on which Western powers would appear to be open to attack and it would seem to provide some scope for causing embarrassment to the Soviet bloc.

Law of Treaties

This would seem to be one of those topics on which there may be a fairly wide measure of agreement between the Western Powers and the Soviet Bloc, while still some differences over such questions as reservations and the rebus sic stantibus rule. On this essentially legal topic there would seem to be little need for consultation outside Legal Division.

Consular Immunities)
)
Ad Hoc Diplomacy)

These two topics would seem to be among the relatively few on which there would seem to be little basic differences of views between the Western Powers and the Soviet Bloc, and ones giving rise to no special political or economic problems. A continuation of consultation process already underway both within and outside the Department on Consular Immunities suffice on this question.

State Responsibility

According to the Soviet Bloc line, the question of violation of rights of states is much more important than the question of violation or rights of individuals, and this theme runs through their whole approach to this topic. They go further, however, and their attack on the approach taken by the ILC to this question is two-pronged: they query the terms of reference of the Rapporteur as being too narrow, and they challenge the Rapporteur's conclusions on their merits.

As to the first question, according to the Soviet Bloc version of the Law of State Responsibility it embodies the "fundamental principles of contemporary international law" of the right to peace, to sovereignty, to exploitation of a country's own natural resources, to territorial integrity and to self determination of peoples, (many of the principles also put forth as fundamental to the notion of "peaceful coexistence"). They criticize the ILC therefore for concentrating on acts encroaching on rights of aliens while ignoring those infringing on rights of states. In developing this theme, they allege that the ILC has "assumed that state responsibility can be expressed only in the form of financial reparation" without taking into account that the "dignity of man and the essential rights of people cannot be evaluated in monetary terms".

On the merits of the Rapporteur's conclusions, the Soviet bloc would eliminate any provisions in a draft convention "giving Colonial powers the right to claim against underdeveloped countries". They argue that the British and French attempted to justify their "aggression" against Egypt, and the USA its action in Cuba, on the grounds of such concepts which are long since obsolete. In keeping with this approach, they question whether foreign nationals can have "rights" to natural resources of states, whether compensation is payable upon nationalization, whether contemporary international law sanctions espousal by states of claims of individuals and whether espousal constitutes the claim as international in character. In other words, the Soviet bloc question the whole basis of the traditional Law of State Responsibility. On particular issues, they argue that:

a) Article 19 of the ILC draft articles on state responsibility, stipulating that a claim by an alien against a particular state is international in character is invalid;

b) Article 20, providing for the bringing of an international claim by the state of the national interferred with, is a pretext for interference in internal affairs and attempts to stifle nationalist aspirations in the interests of colonial powers;

c) Instead of dwelling on the compensation payable by the nationalizing state, the ILC should have begun with the two Draft International Conventions on Human Rights, which proclaim the right of peoples to self determination, "including permanent sovereignty over their national wealth and resources and consequently the right to nationalize them";

d) International Law on state responsibility has been based almost entirely on the unequal relations between great powers and small states, and the basis of the ILC studies should be the requirement to restore in part what has been taken by the colonial powers;

e) The development of the Socialist economic system coexisting with the capitalist system, and the achievement of independence of many colonial territories, have rendered the concepts of state responsibility, in so far as they are concerned with the protection of aliens, almost entirely obsolete.

f) The essential principle of state responsibility is that aliens must be subject to the law of the country of residence and have no special privileges.

It would seem advisable initially to consult through Economic Division and U.N. Division and with the Department of Trade and Commerce to work out the approach to be taken in response to the Soviet line, in the light, inter alia, of the Canadian position in the Third Committee on Sovereignty over National Resources, and subsequently to consult both with other Western powers and certain selected Afro-Asian countries, such as perhaps Egypt and India.

State Succession

It may be assumed that the Soviet line on State Succession will be merely an extension of their line on peaceful coexistence and their version of state responsibility. Presumably it would be argued that a revolutionary government would have no "unfair" obligations arising out of the committments of a predecessor "re-actionary capitalist regime". While in theory, this approach does not seem too objectionable, in practice, the various consequences which follow from this premise would, of course, be completely contrary to the traditional law of state succession.

Summary

It may be deduced from the foregoing that the requirements would seem to be;

a) to determine by intra-departmental and interdepartmental consultations the basic Canadian position on these questions;

b) subsequently, to consult with our Western allies and, at a later stage, if time permits;

c) to consult with certain of the other countries whose nationals are represented on the ILC, such as Egypt, Mexico and

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India.

The major difficulty would seem to be initially in working out an agreed Western position on certain questions on which there are various divergencies both in doctrine and in practice, and then to attempt to reconcile this agreed position, to the extent possible, (in the light of the considerable divergency and inconsistency between traditional legal doctrine and state practice in recent years on such questions as the law of state responsibility and state succession) with those of certain of the Afro-Asians.

Ottawa, January 3, 1962

DEPARTMENT OF EXTERNAL AFFAIRS, CANADA.

NUMBERED LETTER

TO: THE UNDER-SECRETARY OF STATE FOR EXTERNAL AFFAIRS, OTTAWA, CANADA.

FROM: The Canadian Embassy, Ciudad Trujillo, Dominican Republic.

Reference:

Subject: Dominican Republic and Convention on Asylum.

Security: Unclassified

No: 227

Date: November 8, 1961

Enclosures:

Air or Surface Mail:

Post File No:

Ottawa File No. 5475-AX-25-40

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TO: Mr Bacon
NOV 27 Rec'd
REGISTRY

References

Yesterday the Dominican legislature approved Dominican adherence to the Convention on Diplomatic Asylum established at the 10th Inter-American Conference in Caracas in 1954. President Balaguer announced that "in this way the Dominican Republic was to be re-incorporated into the juridical and humanitarian rules of diplomatic asylum."

2. Under the late Generalissimo the Dominican Republic had renounced the 1928 Havana and 1933 Montevideo asylum conventions. (El Caribe, November 8, 1961.)

The Embassy.

Miss Shore
+ file
JCB

Internal Circulation

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M Shore

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DEPARTMENT OF EXTERNAL AFFAIRS, CANADA. *(DUPLICATE)*

NUMBERED LETTER

TO: THE UNDER-SECRETARY OF STATE FOR EXTERNAL AFFAIRS, OTTAWA, CANADA.

FROM The Canadian Embassy,
Ciudad Trujillo, Dominican Republic.

Reference:

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J. W. GRAHAM
The Embassy.

(Ext. 182C(Rev. 2/52)

DEPARTMENT OF EXTERNAL AFFAIRS, CANADA. (DUPLICATE)

DESPATCH

RESTRICTED

TO: THE SECRETARY OF STATE FOR EXTERNAL AFFAIRS, OTTAWA, CANADA.
CHARGE D'AFFAIRES A.I.,

FROM: CANADIAN EMBASSY, CARACAS, VENEZUELA.

Reference: VENEZUELAN - PERUVIAN DISPUTE OVER ASYLUM.

Subject:

Security:

No: 398

Date: OCTOBER 10, 1961

Enclosures:

Air or Surface Mail: COURIER

Post File No: 10.0.26

Ottawa File No. 5475-AX-25-40 "L"

96

References

s.19(1)

Internal Circulation

Distribution to Posts

In a running gun battle, in which one soldier was killed and three others were wounded, eight Venezuelans gained access to the Peruvian Embassy on October 1 and, in the ensuing dispute over the question of asylum, relations between Venezuela and Peru have become somewhat strained.

2. The following was the sequence of events:-

Five military prisoners, accused of conspiracy against the security of the State, were admitted to military hospital under guard.

[redacted] the five, armed with revolvers and assisted by three civilian collaborators, shot their way out of the hospital and gained entry to the Peruvian Embassy by forcing a door.

Venezuelan pursuers, both military and plain clothes police, violated the Embassy grounds and there was a further exchange of gunfire.

Following the death of a soldier, [redacted] Acting Venezuelan Foreign Minister, declared that the escapees were "common criminals" who would on no account be granted safe conducts under the rules of political asylum. He asked for their immediate return to Venezuelan custody.

The new Peruvian Ambassador, [redacted] who had presented his credentials only last September 13, returned from a Sunday at the beach to find his Embassy "under siege" and declared that he would give the occupants temporary refuge until he had obtained a decision from his government.

President [redacted] personally telephoned the Peruvian Ambassador to apologize for the violation of the Embassy.

The Minister of Defence announced a five-man commission to investigate the mysterious circumstances surrounding the commitment of the prisoners to hospital and their subsequent escape.

The Peruvian Ambassador announced his government's decision to grant political asylum.

[redacted] called on [redacted] on Saturday, October 7, to request safe conducts for all eight of the refugees.

Following this interview, Dr. Ugarteche announced to the press his "irrevocable decision" to resign his post as Ambassador, saying that he could not assume "responsibility for a debate on political asylum which should have been avoided".

Later he issued a statement saying that "in my opinion, after the serious attack suffered by the Embassy in my charge last Sunday, the issuance of safe conducts should have been ordered immediately as satisfaction...". He added that the lamentable death of the soldier in performance of his duty was "one consequence of the act of escape and, therefore, according to the asylum treaties, must be considered with the political crime and I am sure that it will be so recognized when serenity returns ...". He also cited the 1948 incident in Lima when, following a naval revolution in which he was involved and in which several military personnel were killed, [redacted] sought refuge in the Venezuelan Embassy. Peruvian police forcibly removed him, but later he had been returned personally by a Minister of the Peruvian government along with a safe conduct.

3. On the face of it, it would appear that [redacted] and the Venezuelan government will come to regret the hasty announcement of refusal to grant the safe conducts. In the end, they may well have to grant them. And, meanwhile, their stand will not, for instance, particularly strengthen the Venezuelan case in regard to the considerable number of Cubans to whom they have granted asylum in the Venezuelan Embassy in Havana and for whom they are still seeking safe conducts from the Castro government.

4. The press reports this morning that there was a meeting concerning this matter in New York yesterday between the Venezuelan Foreign Minister, Dr. Marcos Falcón Briceño, and the Peruvian Foreign Minister, Luis Alvarez Gárrido, who interrupted a trip to Geneva for the purpose. These reports add that the meeting may have opened the way for a solution in a week or two. However, one cannot but recall how stubborn the Latin Americans sometimes become over the application of their system of asylum, for example, the case of [redacted] who spent five years in the Colombian Embassy in Lima.

s.19(1)

A. D. ROSS

Chargé d'Affaires a.i.

DEPARTMENT OF EXTERNAL AFFAIRS

SUMMARY

OF: Despatch No.D-794 of Sept. 14 from Havana

RE: The Problem of the Political Asylees in Havana

Insert particulars of document or file being summarized.

SECURITY GRADING
CONFIDENTIAL

DATE
September 25,1961

INITIALS OF AUTHOR
AP

CIRCULATION

USSEA
Mr. Ritchie
Consular
USA
Economic
DL(2)
Commonwealth (17)
All L.A. Posts
Washington

Political asylum took on an unusual aspect in Havana because of the large number of people involved. Some 700 individuals were being maintained in asylum during this past summer in the Embassies of Venezuela (300), Brazil (125), Argentina (100), Costa Rica (90) and Mexico (13).

2. In the past, asylum was granted on a selective basis and in accordance with a set procedure. Political refugees had to ask for asylum from the head of mission. The local government would determine whether asylum was warranted in each case. The Cuban authorities normally issued the necessary safe-conduct out of the country. The system was designed for those selected political refugees of some social or political standing. As the power of the police state increased in Cuba, more people began to present themselves at local Latin American missions. With the wholesale arrests of suspected opponents which followed in the wake of the April invasion, the number of persons seeking asylum from all walks of life increased rapidly. Many gained access to diplomatic premises illegally. Once they were inside the walls, no Latin American mission was prepared to eject them by force. The Cuban authorities took exception to this unorthodox situation and stopped granting safe-conducts. The housing and feeding of the refugees thus became during the summer a heavy physical and financial burden on the missions concerned which began to press the Cuban authorities for remedial action.

3. At a meeting last August which all Latin American heads of missions had with President Dorticos and Prime Minister Castro, the Cubans agreed to release most of the asylees that the missions had formally notified to the Foreign Ministry, or some 75% of the total. In counterpart, it was understood the missions would return to more traditional practices in the administration of the asylum system.

4. In itself, the asylee problem was an irritant in Cuba's relations with other Latin American States rather than a major source of difficulties. Viewed alongside the recent decision to accept full convertibility of the old currency held by diplomatic missions, over which some Latin American representatives here had hinted vaguely at the possibility of breaking relations, the more restrained use of the firing squad as a means of disposing of counter-revolutionaries and the generally softer line which Ché Guevara adopted at the Punta del Este conference, the Cuban change of heart on this question has perhaps greater significance. The decision would seem to fit in with the recent Cuban pattern of attempting to mend hemispheric fences. Cuba has already indicated that it no longer intends, at least overtly, to export its revolution provided there is acceptance on the part of the Latin American states of the new order in this country. It may well be concerned at the possibility of finding itself in too isolated a position in the Americas.

Ext. 105
(Rev. 2/53)

WHEN THIS FORM IS USED TO SUMMARIZE A DOCUMENT IT MUST BE STAPLED TO, AND FILED BY DATE OF THAT DOCUMENT.

Legal/T.C.Bacon/fa

FILE

United Nations Division

5475-AX-25-40
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Origin 5475-W-19-40

UNCLASSIFIED

September 11,1961

Legal Division

Your Memorandum of July 19, 1961

Part II Commentary for Item 38: Draft Declaration on the Right of Asylum.

Attached are the suggested changes for the Part II Commentary for the above mentioned item. Except for sub-titles (a) and (b) last year's Commentary remains the same.

2. We have consulted with the Department of Citizenship and Immigration to determine if there has been any change in their views, as incorporated into last year's commentary, resulting from any possible effect of the Canadian Bill of Rights. We were assured that there has been no change in their position.

Legal Division

PART II

Commentary for the Sixteenth Session, UNGA

Item 38: Draft Declaration on the Right of Asylum

(a) Background References

(i) Commission on Human Rights, Report of the 16th Session (28 Feb. - 18 March 1960) E/3335, E/N.4/804.

(ii) Memorandum by the Secretary General, dated August 23, 1960. A/4452

(iii) The Canadian Bill of Rights, Statutes of Canada 1960, Chapter 44.

(iv) Final Report on Item 82 Fifteenth Session of the General Assembly. Sept. 20 to Dec. 20, 1960.

(v) Draft Declaration on the Right of Asylum, Report of the Third Committee. A/4667 dated 17th Dec. 1960.

(vi) General Assembly Resolution, 1571 (xv) dated 18 Dec. 1960.

(vii) Part II of the Commentary for the Fifteenth Session on Item 82.

(b) Issues Facing the Sixteenth Session

The text of a draft Declaration on the Right of Asylum, adopted by the Human Rights Commission, was referred to the General Assembly 15th Session by the Economic and Social Council. The General Assembly referred this matter to the third committee, where it was relegated to the end of this committee's agenda.

As it turned out, there was very little time available to deal with this item when it finally came up on the committee's agenda.

After a brief discussion as to whether the item should be dealt with at the sixteenth session by the third committee or the sixth committee, it was agreed that there should be no specific reference to this matter in the committee's resolution in order to avoid prejudicing the forthcoming Assembly's decision concerning to which committee this item should be allocated. In line with this discussion the French representative then proposed that the General Assembly take up the item as soon as possible at its Sixteenth session and devote as many meetings as possible to the Draft Declaration.

This resolution was unanimously adopted in Plenary without discussion by resolution 1571 (XV) dated 18th December 1960.

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The Canadian Delegation took no part in the brief debate on the question.

The foregoing discussion clearly indicates that there is a likelihood that the text of the Draft Declaration on the Right of Asylum will be fully discussed at the forthcoming General Assembly but it is not clear as yet whether this item will be assigned to the third or sixth committee.

The remaining parts of this Commentary are the same as those for last year, starting with subtitle (c): Policy Considerations for Canada.

DEPARTMENT OF EXTERNAL AFFAIRS, CANADA. (DUPLICATE)

DESPATCH

TO: THE SECRETARY OF STATE FOR EXTERNAL AFFAIRS, OTTAWA, CANADA.

FROM: The Canadian Chargé d'Affaires a.i., Caracas, Venezuela

Reference:

Subject: Venezuelan-Cuban Relations.

Security: UNCLASSIFIED

No: 282

Date: July 25, 1961

Enclosures: 1

Air or Surface Mail: Air

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References

OY 12797-40

s.19(1)

Venezuela has withdrawn the Chargé d'Affaires of the Venezuelan Embassy in Havana, [redacted] following a request by the Cuban government for his recall because of alleged "transgressions" in connection with the granting of asylum and following an "investigation" in Havana by [redacted] appointed a special commissioner by the Foreign Minister, Dr. Falcón Briceño. At the same time Dr. Falcón declared that as a result of this enquiry he had no doubts about either the honour or the capabilities in office of [redacted] and that the latter had not violated any of the generally accepted rules of asylum.

2. An office translation of the text of a statement issued yesterday by Dr. Falcón is attached. In this statement it was explained that [redacted] was recalled so that his further presence in Havana could not be used as a pretext for not granting safe-conducts, and it was announced that, if the problem of safe-conducts was not resolved, Venezuela would place the matter before the Human Rights Commission of the Organization of American States (of which Romulo Gallegos, former Venezuelan President, is currently the chairman).

Internal Circulation

3. The controversy arises from the situation in the Venezuelan Embassy, where, as you will no doubt have been informed from Havana, the number of Cubans who have been granted political asylum has risen steadily. The total had reached 206 as of the beginning of the week. Only a handful of safe-conducts have been granted by the Cuban government despite steadily increasing pressure from Venezuela. One can only imagine the resulting difficulties in regard to provisions, sleeping accommodation and sanitation.

4. All of the major newspapers here, with the exception of "El Nacional", completely support the Venezuelan side of the issue. The reporting in "El Nacional" tends to give at least some credence to the Cuban claim that Prof. Zurbarán employed Embassy vehicles to bring refugees to the Embassy and once allowed some of them the use of an Embassy vehicle to meet others hostile to the Castro regime and then return to the Embassy. The large-circulation independent newspaper "El Universal" describes Venezuelan-Cuban relations as being strained nearly to the breaking point.

Distribution to Posts

A. D. ROSS

Chargé d'Affaires a.i.

000745

Ext. 180C (Rev. 2/52)

OFFICE TRANSLATION

STATEMENT ISSUED BY THE VENEZUELAN FOREIGN MINISTER

DR. MARCOS FALCON BRICEÑO

ON JULY 25, 1961

On the 26th of June last, the Honourable Chargé d'Affaires of Cuba, Dr. Federico de Córdoba Castro, visited the Ministry of External Relations for the purpose of advising that he had received a message from his Government wherein he was instructed to inform the Chancellery of the desire that the Chargé d'Affaires of Venezuela in Havana, Professor Alfonso Zurbarán, be replaced, since the aforementioned Government thought that the conduct of the Venezuelan official, "far from contributing to the improvement of the friendly relations between the two countries" was creating "constant disagreements and misunderstandings".

The Chancellor did not receive this unexpected request without surprise, since the Chancellery holds the highest opinion of Professor Zurbarán, and his conduct, given the abnormal circumstance of having a large number of refugees at the Embassy residence and in the Chancery proper, has been correct and respectful of the customs regulating the subject of diplomatic asylum.

Since the difficult conditions that have lately surrounded the activities of the Embassy in Cuba are of a special and extraordinary character, the Ministry of External Relations has, from time to time, sent high officials of the foreign service to Havana so as to carry on a careful supervision there. The reports turned in by these officials agreed basically with one another which, added to the honesty of their authors, casts one more proof of the truthfulness of the conclusions reached.

In summary, these reports refer:

1) To the persistence, tact and discretion with which the Venezuelan Embassy in Cuba has been trying to obtain from the Cuban Chancellery safe-conducts for the growing number of refugees that it has had to protect.

2) To the honourable behaviour of the Chargé d'Affaires, Professor Alfonso Zurbarán, who has not taken advantage of the circumstances in order to make a profit from the refugees.

3) To the strictest possible obedience to the rules of diplomatic asylum, which include both the isolation and the proper treatment and consideration of the refugees. (The telephones at the Embassy and its dependencies have been sealed so that they can not be used, the doors to the premises are guarded by employees of the office, etc...)

4) Within the difficult circumstances that our Mission in Havana has had to act, because of the attention that had to be paid first to the problem of refugees, the Chargé d'Affaires of Venezuela has tried to maintain normal relations with the Cuban Chancellery and Government, and at the same time to carry out the other duties of his delicate mission.

For these reasons the Chancellery was surprised by the irrevocable request that Professor Zurbarán be replaced, under threat of expulsion. The Venezuelan Government does not deny the right of the Cuban Government to request this substitution, and has so made it known to the Honourable Chargé d'Affaires. Nevertheless, as the request casts doubts on the conduct of an official of whom, as has been said, there are satisfactory references, the Chancellery requested the leave of the Cuban Government to send a new investigator, and the Chancellery at Havana was warned that if Professor Zurbarán was expelled from Cuba the Venezuelan Government would adopt the same measure with respect to the Cuban Mission in this country. The Cuban Chancellery agreed that a special envoy from our Chancellery be sent to Havana. It was then that Dr. Adolfo Tayhardat left for Cuba where he had interviews with Chancellor Roa and other Cuban authorities, and also personally carried out the necessary investigations at the Embassy residence and premises. The report from Dr. Tayhardat agrees with previous ones and leaves no doubt as to the behaviour of the Chargé d'Affaires.

This incident has contributed to the worsening of relations between the two countries, which have been badly hurt by the obstinate refusal of the Cuban Government to grant safe-conducts to the more than 200 refugees, which it is bound to do by international law and by the conventions to which both Venezuela and Cuba have suscribed. Not only through the Venezuelan diplomatic mission to Havana, but through the Cuban Embassy in Venezuela as well, by means of direct messages and by taking advantage of the visits of personalities from one country to the other, the Venezuelan Government has insisted in availing itself of all diplomatic resources in order to obtain the aforementioned safe-conducts. Upon the visit to Caracas of two good-will Ambassadors of the Cuban Government who were travelling through the Latin American countries, the Chancellery renewed its efforts with a view to having the safe-conducts granted as soon as possible.

The Cuban Chancellery has been repeatedly informed that the Venezuelan Government has no interest in having the refugees come to reside here, but that, rather, it would request the necessary visas for whatever country to which these refugees want to go. The danger of an epidemic due to the crowded living conditions under which the refugees necessarily live because of the physical limitations of the Embassy has been stressed. In spite of the promises given on various occasions by the Cuban Government, particularly through the aforementioned good-will Ambassadors, no progress has been made, and only now and then has a safe-conduct been granted to any one particular person.

Due to this continual reticence by the Cuban authorities, and especially to the ever increasing restrictive conditions to which the Venezuelan Embassy has been subjected, relations have deteriorated. These restrictions have gone as far as making it difficult for employees, medicines, food and other needs of life to enter the Embassy.

The Venezuelan Chancellery, going to the limit in an effort of good will, will transfer Professor Zurbarán to another country, so that his presence in Havana will not continue to be used as a pretext for the refusal to grant the safe-conducts. In accordance with international practice Venezuela will in due time designate a new Chargé d'Affaires in Havana.

The next step that the Venezuelan Chancellery is preparing as a last resort to obtain the safe-conducts that in conformity with international conventions it has requested for the 206 refugees at present in the Venezuelan Embassy in Havana, is to present the problem to the proper branch of the Organization of American States (OAS).

In the meantime, the fundamentally humanitarian reason of doing its duty by the refugees obliges the Venezuelan Government to stretch to the ultimate point its good-will in the otherwise very precarious relations that it maintains with the Government of Cuba. In this, as in other equally important cases, Venezuela has once again reaffirmed its unwavering intention of respecting and working for the upholding of principles, of laws, and of commitments freedly assumed by the country.

Caracas, July 25, 1961

File
Diary
H.S.

Consular/WRCampbell/mj

File:
5475-AX-25-40.
27 | 45

"L"

OTTAWA, July 13, 1961.

The Director of Immigration,
Department of Citizenship & Immigration,
Ottawa.

I attach a letter received from [redacted] #36600, P.O. Box B, Clinton Prison, Dannemora, N.Y., who has requested political asylum in Canada.

In an interim reply, I informed [redacted] that you would probably write to him.

J. R. MITCHELL
Under-Secretary of State
for External Affairs.

s.19(1)

File
Diary
H.S.

Consular/RC Campbell/mf

s.19(1)

"L"

File:
5475-AX-25-40.
27

OTTAWA, July 13, 1961.

Dear [redacted]

I have your letter of June 23, 1961, in which you request political asylum in Canada.

Entry to Canada is controlled by the Department of Citizenship and Immigration and I have, therefore, forwarded your letter to that Department in order that a reply may be sent to you.

Yours sincerely,

J. R. MITCHELL

Under-Secretary of State
for External Affairs.

[redacted] #36600,
P.O. Box B,
Clinton Prison,
Dannemora, N.Y.,
U.S.A.

Letter sent to B.C. & Immig
No copy retained.