

Policy Copy - General Policy File

File No *5475-AX-15-48* *T-10*

FILE COVER NO. 5-1-2845

NO. 5475-AX-15-48

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53

Department of External Affairs

Subject

File No. 5475-AX-25-40

Volume TWO

From January 1st, 1955

To Aug. 31, 1963

POLITICAL ASYLUM - GENERAL POLICY FILE

File No.	Subject	Date	Referred To	Returned
1607-0-40 "A"	GRANTING OF ASYLUM TO EX-PRESIDENT PERON OF ARGENTINE			
5475-W-19-40 "V"	HUMAN RIGHTS - DRAFT DECLARATION ON RIGHT OF ASYLUM			
290-10 "A"	DIPLOMATIC RELATIONS BETWEEN CANADA and CUBA (including Cuban Ambassador's Resignation - June, 1960)			

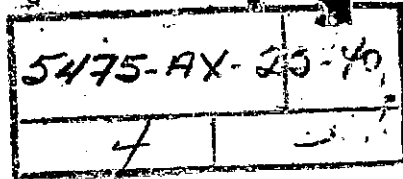
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OTTAWA

20-15-1

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DEPARTMENT OF
EXTERNAL AFFAIRS
CANADA

CONFIDENTIAL

Box 245637

Original damaged

CIRCULAR DOCUMENT

Ottawa, April 29, 1950

No. B. 45

Sir,

The Department recently received from the Argentinian Embassy at Ottawa a request for information on the position of the Government of Canada on the right of asylum. A reply to this inquiry was prepared by our Legal Division and, since it represents the first effort since 1945 to determine our position on this matter, I think it is desirable to bring it to your attention.

2. From time to time in the past, instructions have been sent to some of our Missions concerning the granting of asylum to political offenders who may seek refuge in Canadian Missions; these instructions should now be considered as superseded by the communication attached as Annex "A" to this Circular Document, which is being sent to you for your guidance.

3. With reference to paragraph 8 of Annex "A", I should like to emphasize the following:

- (a) Every step should be taken to discourage resort to your Mission by political refugees.
- (b) When time permits, you should consult the Department before granting asylum to political refugees.
- (c) When time does not permit consultation with the Department, you should use your discretion whether or not asylum should be granted to a political refugee. Generally speaking, asylum should only be granted at the request of a person in imminent danger of losing his life, and the grounds for such intervention on your part should be purely humanitarian. In countries where no local usage exists, you should take local susceptibilities into account, and in all cases you should do your utmost to ensure that your intervention, if decided upon, will not be misinterpreted.

. . . 2

To the Heads of
Canadian Posts Abroad.

- 2 -

- (d) Once you have granted asylum to a political refugee you should oppose, as far as may be possible, any attempt to remove him by force, and you should seek assurance immediately as to the refugee's future safety. Your general conduct should be in accordance with that which is locally expected of missions granting asylum.

4. I may add that paragraph 9 of Annex "A" accords with present instructions of the Royal Canadian Navy. Extracts of the relevant provisions of the King's Regulations for the Canadian Naval Service are attached as Annex "B".

I have the honour to be,
Sir,
Your obedient servant,

D. P. King

Secretary of State
for External Affairs.

Annex "A"

DEPARTMENT OF EXTERNAL AFFAIRS

Ottawa, April 13, 1950

Excellency,

I have the honour to refer to my Note No. 3 dated January 19, 1950, and to previous correspondence in which you requested the views of the Government of Canada with respect to the right of asylum.

2. It would appear desirable to distinguish between the rights of:

- (a) sovereign states to grant asylum on their own territory;
- (b) diplomatic envoys to grant asylum on diplomatic premises;
- (c) ships to grant asylum when in foreign ports.

3. The right of sovereign states to grant asylum on their own territory is based on the principle of non-intervention and the absolute control of states within their own frontiers. Any state, according to international law, may admit into its territory fugitives from justice who are nationals of another state. In the absence of an extradition treaty providing for the apprehension and mutual surrender of such fugitives, there is no legal obligation on the receiving state to deport or deliver up such fugitives to a requesting state.

4. Very recently, the Ad Hoc Committee of the United Nations on Statelessness prepared a draft Convention Relating to the Status of Refugees. This draft Convention contains certain articles dealing with the expulsion and non-admittance of refugees, which would seem to forecast another step in the evolution of international law on this point. The relevant articles read as follows:

"Article 26"

Refugees not lawfully admitted

- 1. The Contracting States shall not impose penalties, on account of his illegal entry or presence, on a refugee who enters or who is present in their territory

His Excellency Dr. Agustin Nores Martinez,
Ambassador of Argentina,
193 Sparks Street,
Ottawa, Ontario.

- 2 -

without authorization, and who presents himself without delay to the authorities and shows good cause for his illegal entry or presence.

2. The Contracting States shall not apply to such refugee restrictions of movement other than those which are necessary and such restrictions shall only be applied until his status in the country is regularized or he obtains admission into another country. The Contracting States shall allow such refugee a reasonable period and all the necessary facilities to obtain admission into another country.

"Article 27

Expulsion of refugees lawfully admitted

1. The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order and in pursuance of a decision reached in accordance with due process of law.

2. Such refugee shall be entitled, in accordance with the established law and procedure of the country, to submit evidence to clear himself and to be represented before the competent authority.

3. The Contracting States shall allow such refugee a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary.

"Article 28

Prohibition of expulsion to territories where the life or freedom of a refugee is threatened

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

5. The so-called right to grant asylum on diplomatic premises is a consequence of the doctrine of extraterritoriality. No such right to grant asylum is afforded in general international law. The immunity of the official residences of envoys is to be recognized only in so far as it is necessary for the independence and inviolability of persons of diplomatic status and their retinue so that such persons can perform their functions and keep inviolable their official documents and archives.

6. There has been no instance of Canadian citizens seeking refuge in a foreign mission in Canada for any purpose. In time of peace the most likely persons to seek such refuge would be fugitives from justice. Fugitives from justice and deserters from the armed forces should under no circumstances be granted asylum, regardless of their nationality. Similarly, Canadian missions in foreign countries would not ordinarily afford asylum to fugitives from justice who are Canadian citizens, regardless of whether they should have a second nationality in their countries of residence.

- 3 -

7. It is conceivable that under exceptional circumstances a Canadian mission abroad might offer asylum temporarily to a Canadian citizen if the circumstances were such that the Canadian citizen had been subjected to discriminatory action by local authorities or that such action appeared probable by reason of action of the local authorities in similar cases. The purpose of such temporary asylum would be to bring about negotiations with a view to securing independent legal advice and assistance and a fair trial, and not for the purpose of avoiding prosecution or the jurisdiction of competent courts.

8. Canadian representatives abroad may also be faced with the particular problem of whether or not asylum on their premises should be granted to what are usually referred to as "political offenders" or "political refugees". These terms apply to persons whose lives are threatened on account of their religion, nationality, race or political opinion. Since no such right to grant asylum is, at least at present, afforded in international law, Canadian diplomatic envoys do not grant asylum to "political refugees" or "political offenders". This should not be construed as excluding the possibility of a Canadian diplomatic representative abroad granting asylum to a "political offender" in very exceptional circumstances.

9. As to the right of ships to grant asylum when in foreign ports, it is necessary to distinguish between warships or other public vessels not engaged in trade and merchant ships or other vessels engaged in trade. The former are sometimes regarded in international law as being "extraterritorial" and a right of asylum in vessels of this class is considered to exist in certain cases. The Government of Canada has enacted regulations for commanders of ships of the Royal Canadian Navy prohibiting them from receiving on board persons, including Canadian citizens, who seek refuge for the purpose of evading the criminal laws of a foreign nation to which they have become amenable. The same regulations permit the affording of refuge:

- (a) to Canadian citizens and other British subjects who, during political disturbances or popular tumults, are fleeing from imminent personal danger; and
- (b) temporarily to citizens or subjects of foreign states who, during political disturbances or popular tumults, are fleeing from imminent personal danger.

The right of asylum is considered to exist in such cases, and also in circumstances such as those described in paragraph 7. On the other hand, merchant ships and public vessels engaged in trade are not regarded in international law as being "extraterritorial" and no right of asylum exists simply by virtue of the fact that a person has been accepted on board vessels of that class.

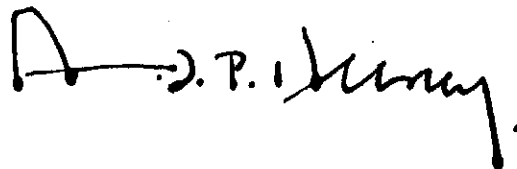
10. As the right of asylum on diplomatic premises does not exist in general international law, there would seem to be no obligation to give safe-conduct to persons other than diplomats.

11. I know of no cases where Canadian citizens or aliens have sought refuge in foreign diplomatic missions in Canada or of any court decision regarding the right of asylum in any of the meanings listed in your Note.

- 4 -

12. The Government of Canada has not signed or ratified any international convention establishing a right of asylum. Any such rights would be dependent upon principles of international law incorporated in the domestic law of Canada or recognized by Canadian courts.

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

A handwritten signature in dark ink, appearing to read "A. P. Murray". The signature is fluid and cursive, with a large initial "A" and a long, sweeping underline.

Secretary of State
for External Affairs.

Annex "B"

Extracts from King's Regulations for the
Government of His Majesty's Canadian Naval Service

KRCN 48.05 - Protection of Canadian Nationals

(1) As a general rule, the Senior Officer present shall limit protection of Canadian nationals in foreign territory to:

- (a) granting them an asylum on board ship; and
- (b) Securing them an escape from shore by boats, when their departure is a measure of necessary precaution.

(2) He shall not interfere by landing an armed force unless the lives or property of Canadian nationals are actually in danger from violence which cannot otherwise be controlled.

(3) The protection afforded to Canadian nationals under this article may be made available to other British subjects.

KRCN 48.08 - Refugees

(1) The Commanding Officer of one of His Majesty's Canadian Ships, while in a foreign port shall not receive on board persons, even though they are Canadian nationals, who are seeking refuge for the purpose of evading the criminal laws of a foreign nation to which they have become amenable.

(2) Subject to (1) of this article, during political disturbances or popular tumults, refuge may be afforded to Canadian nationals and other British subjects.

- (3)
 - (a) During political disturbances or popular tumults, refuge may be afforded to citizens or subjects of foreign nations who are flying from imminent personal danger.
 - (b) In such cases care shall be taken that the refugees do not carry on correspondence from His Majesty's Canadian Ships with their partisans.
 - (c) The earliest opportunity shall be taken to transfer the refugees to some place of safety.
 - (d) Except in extreme cases, passage shall not be given to the foreign refugees.

(4) When circumstances permit, the Senior Officer shall communicate with the nearest available diplomatic or consular officer representing Canada or the United Kingdom, or a Canadian Trade Commissioner, or if none of them is available, the diplomatic or consular representative of one of the other nations of the British Commonwealth, before taking steps for the reception of refugees on board his ships.

D R A F T

Ottawa, July 6, 1961

s.19(1)

Dear [REDACTED]

5475-AX-25-40

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File
as a sample
in future cases
where this
department
would give
the information
file
me

I have your letter of June 23, 1961 in which you request political asylum in Canada.

There is no provision in Canadian law for the entry or landing in Canada of persons ~~who are, or~~ *consider themselves to be*, in the status of "political refugees" seeking "political asylum". A person who wished to enter ^{Canada} for the purpose of seeking asylum would have to satisfy the requirements of either immigrant or non-immigrant entry, which are the only categories in which entry to Canada is permitted, and consideration might be given to ^{your} ~~his~~ application depending upon the particular circumstances involved. No advance assurance of a favourable decision could be given as each case must be considered on its individual merits.

I regret that, in the circumstances in which you now find yourself, it is extremely unlikely that a favourable decision could be reached.

Yours sincerely,

U.S.S.E.A.

Mr. Helmut Felsch, #36600
P.O. Box B,
Clinton Prison,
Dannemora, N.Y.
U.S.A.

Document disclosed under the Access to Information Act -
Document divulgué en vertu de la Loi sur l'accès à l'information
DEPARTMENT OF EXTERNAL AFFAIRS
CROSS REFERENCE SHEET

Security *Unclassified*.....

5475-AX-25-40 "L"		
96	-	-

Type of Document..... *Letter* No. *311* Date *24 May 61*
From..... *Mexico*
To..... *External Affairs, Latin American Div.*
Subject: *Defection of Cuban Embassy official in Mexico*

Original on File No..... *10/62-40*

Copies on File No..... *50066-40*

Other Cross Reference Sheets on..... ☒

Prepared by..... *Don Hendricks (XLR)*

DEPARTMENT OF EXTERNAL AFFAIRS
CROSS REFERENCE SHEET

Security ~~5-475~~ *Thompson*

5-475-AX-25-4.5.2		
96	-	-

Type of Document..... *Letter* No. *284* Date *12 May 61*

From..... *Mexico*

To..... *External Affairs Latin American Div*

Subject: *Reported defection of Cuban Embassy officials in Mexico*

Original on File No..... *10/62-40*

Copies on File No..... *50061-40*

Other Cross Reference Sheets on..... *✓*

Prepared by..... *R. Or. H. H. H.*

LATIN AMERICAN DIVISION.

SECRET.

May 8, 1961.

LEGAL DIVISION.

Telegram No. 167 of May 4, 1961 from
Havana.

5475-AX-25-40	
42	—

Asylum granted to Canadian Priests in Havana.

The telegram under reference dealing with the plight of the Canadian religious community in Cuba, contains the information that five Canadian priests who believed they were about to be arrested requested and have been granted refuge in the official Embassy residence. Our comments have been requested on the legal aspects of this occurrence.

2. First with respect to our own Consular Instructions dealing with asylum, it appears clear that the action on the part of the Embassy in Cuba falls within paragraphs (c) and (d) of Section 5.44 of the Consular Instructions, which read as follows:

"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."

The priests were, according to the available information, in imminent danger of loss of liberty and were the object of discriminatory action by the local authorities or were likely to become so. Under paragraph (d), the Embassy is entitled to extend such asylum until an opportunity has been afforded for representations designed to ensure independent legal advice and a fair trial and under section 5.45(b), it is entitled to seek assurances of the safety of the priests. This paragraph reads:

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

Mr. Cadieux,
O/U.S.S.E.A.

Mr. Ritchie,
O/Assistant
U.S.S.E.A.

Mr. Gilmour,
Consular Div.

.... /2

3. Dealing with the question from the point of view of applicable rules of international law, there is no obligation, in the absence of a treaty, on the part of the receiving State to grant an envoy the right of affording asylum to individuals not belonging to his suite, with the proviso that the grant of temporary asylum against the violent and disorderly action of irresponsible sections of the population is a legal right which, on grounds of humanity, may be exercised irrespective of treaty. This right of intervention on the ground of compelling considerations of humanity has been described in Oppenheim as one "which defies legal definition in advance" and it is not possible to state categorically whether or not intervention was required in this instance on the ground of humanitarian considerations without knowing whether these priests are being sought by the authorities for purposes of persecution or simply for deportation. No doubt the Embassy will be seeking to make arrangements with the Cuban authorities for the safe removal from Cuba of these priests. If it is refused, it will then be necessary to consider what further action may be taken in accordance with the applicable principles of international law outlined above.

4. This general statement of the relevant law and regulations is being provided for your information and guidance in dealing with the present situation, however, we will be pleased to consider any further questions which may arise from this situation and which you may wish to refer to us.

H. COURTNEY KINGSTONE

Legal Division.

DEPARTMENT OF EXTERNAL AFFAIRS, CANADA

OUTGOING MESSAGE

	DATE	FILE	SECURITY
	APR 24/61	5475-AX-25-40	UNCLAS
FM: INT OTT		27	
	NUMBER	PRECEDENCE	COMCENTRE USE ONLY
TO: WASHINGTON	C-459	PRIORITY	
INFO:			

Ref.: YOUR TEL 288 OF APR 21

Subject:

YOU MAY REPLY ON THE FOLLOWING LINES: 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 IN THE STATUS OF IMMIGRANTS OR NON-IMMIGRANTS IF THEY MEET THE RELEVANT REQUIREMENTS. PERSONS SEEKING "ASYLUM" IN CANADA MIGHT BE ALLOWED TO ENTER AND STAY IN CANADA AS NON-IMMIGRANTS OR IMMIGRANTS DEPENDENT UPON THE PARTICULAR CIRCUMSTANCES INVOLVED. EACH CASE WOULD BE CONSIDERED ON ITS INDIVIDUAL MERITS AND NO ADVANCE ASSURANCE OF ENTRY COULD BE GIVEN.

LOCAL NO STANDARD
DISTRIBUTION

see. Immigration

Done apr. 24/61
JEB

ORIGINATOR	DIVISION	PHONE	APPROVED BY
SIG..... NAME... B.A. Wallis-JOB.....	CONJULAR	6-7154	E. H. GILMOUR SIG..... NAME.....

ACTION COPY

5475-AX-25-40
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F.D.
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*ee minor
+ file
Done april 24/61
JEB.*

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s.19(1)

BW049

PP OTT

DE WDC

P 212138Z

FM WASHDC APR21/61 UNCLAS

TO EXTERNAL 1288 PRIORITY

THE FOLLOWING IS TEXT OF

TEL RECEIVED TODAY FROM

1080 BUSH STREET, APT 507 SANFRANCUSCO

2.QUOTE ADP HEENEY EMB OF CDASHDC WILLYOU PLEASE ADVISE UNDER
WHATCONDITIONS YOUR GOVT WILL GRANT POLITICAL ASYLUM TO AMERICAN
CITIZENS OR STATELESS PERSONS ENROUTE TO ANOTHER COUNTRY UNQUOTE.

3.SINCE THE QUESTION RAISED BY WILLIAMS IS INITIALLY AN IMMIGRATION
MATTER,WE WOULD APPRECIATE IT IF YOU WOULD LET US KNOW WHAT
REPLY WE MIGHT MAKE TO THE ABOVE TEL.

212215Z

GR100

C	To: <i>Miss Howard</i>
	APR 24 1961
	To:

OUTGOING MESSAGE

73

FM: EXT OTT	DATE	FILE		SECURITY	
	APR24/61	5475-AX-25-40 "L"		UNCLAS	
		27	145		
TO: WASHINGTON	NUMBER	PRECEDENCE		COMCENTRE USE ONLY	
	C-459	PRIORITY			
INFO:					

Ref.: YOUR TEL1268 OF APR21

Subject:

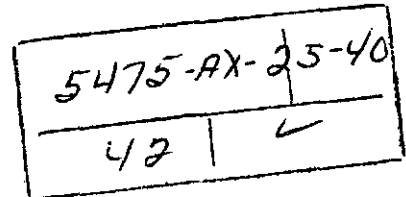
YOU MAY REPLY ON THE FOLLOWING LINES: THERE IS NO PROVISION IN CANADIAN LEGISLATION FOR THE ENTRY OR LANDING IN CANADA OF PERSONS IN THE STATUS OF "POLITICAL REFUGEES" SEEKING "POLITICAL ASYLUM". PERSONS MAY BE ADMITTED TO CANADA ~~ONLY~~ IN THE STATUS OF IMMIGRANTS OR NON-IMMIGRANTS IF THEY MEET THE RELEVANT REQUIREMENTS. PERSONS SEEKING "ASYLUM" IN CANADA MIGHT BE ALLOWED TO ENTER AND STAY IN CANADA AS NON-IMMIGRANTS OR IMMIGRANTS DEPENDING UPON THE PARTICULAR CIRCUMSTANCES INVOLVED. EACH CASE WOULD BE CONSIDERED ON ITS INDIVIDUAL MERITS AND NO ADVANCE ASSURANCE OF ENTRY COULD BE GIVEN.

LOCAL NO STANDARD DISTRIBUTION		ccc. Immigration	
		Done apr. 24/61 JEB	
ORIGINATOR	DIVISION	PHONE	APPROVED BY
SIG..... NAME. B.A. Wallis-JEB.....	CONSULAR	6-7154	E. H. GILMOUR

c.c. Mr. H.B. Robinson,
Prime Minister's Office

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

J.S.E.A.
U.S.S.E.A.



s.19(1)

Ottawa, April 12, 1961.

Dear [REDACTED]

I received your letter of March 7 and I regret that, because of recent absences from Ottawa, I have not been able to answer it sooner. I was interested to learn that you are writing a paper on the international law regarding asylum and I hope that my few words will be of some assistance to you.

As you know, asylum may be granted by a sovereign state on its own territory or by a diplomatic envoy on diplomatic premises. Any state, provided it has no treaty or other obligations to the contrary may admit into its territory any person it wishes. While the basis upon which asylum is granted on diplomatic premises is not so clear cut, the practice of granting such asylum is quite common in some parts of the world and is generally recognized when done under special circumstances. By and large such circumstances would be confined to those of a humanitarian character. International law has not recognized that any person has the right to receive asylum.

Canada has not had much experience in matters of asylum, but there is no reason to think that our policy would not be governed by the rules of international law on the matter, subject to the provisions of any relevant Canadian law. I am sure I need not refer

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Ralph J. Sternberg, Esq.,
Osgoode Hall Law School,
Toronto, Ontario

000307

- 2 -

you to the general texts on international law, most of which treat this subject at some length.

The Government of Canada is not a party to any international convention establishing a right of asylum. I expect you are aware, however, of the Convention on the Status of Refugees which was drawn up by a Committee of the United Nations and by which some 25 states are now bound. Articles 32 and 33 of the Convention are particularly relevant to this subject. The text may be found in volume 189, United Nations Treaty Series, p.150. You are also no doubt interested in following the progress of the Draft Declaration on the Right of Asylum which was an item on the agenda of the Third Committee at the present session of the U.N. General Assembly. This Declaration, however, cannot at present be considered as anything more than an indication of the direction of the development of the international law regarding the right of asylum.

In conclusion I should like to wish you success in the writing of your paper.

Yours sincerely,

Original Signed by
HOWARD C. GREEN

3475-8828	
42	✓

CONFIDENTIAL

April 12, 1961.

MEMORANDUM FOR THE MINISTER

Re: Letter on the International Law
regarding Asylum.

Attached for your signature, if you agree,
is a letter to Mr. Ralph J. Sternberg, a student
at Osgoode Hall Law School in Toronto, who has written
to ask you for information concerning the international
law regarding asylum.

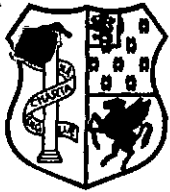


N. A. R.

*2 Sent to SSEH
for signature
14/4
JMB*

*2 Sent and signed by
SSEH
13.4.26(us) 14/4 JMB*

000309



Legal Hall
to reply
Osgoode Hall Legal and Literary Society

OSGOODE HALL
Toronto

8/3

N. P. PAVLAKIS
PRESIDENT
J. A. SAWERS
VICE-PRESIDENT
B. A. SPIEGEL
TREASURER
B. A. PERCIVAL
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M. H. HARRIS
4TH YEAR REPRESENTATIVE
H. E. FLEMING
3RD YEAR REPRESENTATIVE
J. W. VOJTECH
2ND YEAR REPRESENTATIVE
R. N. GRANGER
1ST YEAR REPRESENTATIVE

March 7th, 1961.

5475-AX-25-40	
42	✓

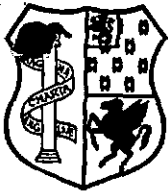
The Hon. Mr. Howard Green,
Minister of External Affairs,
Ottawa.

Dear Mr. Green;

I am a law student at Osgoode Hall Law School, currently writing a paper on International Law in relation to the Law of Asylum. I am writing various consulates, embassies and the Department in the belief that direct, current sources are best for my purposes.

The article will be an attempt to compare the views held in various nations in relation to asylum granted to criminal and political offenders and refugees, from these points of view: -
a foreign nation granting asylum to a citizen of another nation
- in what circumstances might that other nation approve or disapprove, recognize the asylum or demand extradition? What forms or restrictions of asylum might a nation recognize or grant and when might a country allow safe-conduct to exile an offender who has obtained asylum in a foreign embassy in his own country?

I am particularly interested in Canadian policy in regard to this aspect of law, both from a domestic and international viewpoint. How does Canadian policy differ from the European and South American policies now in practice?



Osgoode Hall Legal and Literary Society

OSGOODE HALL

Toronto

- 2 -

N. P. PAVLAKIS
PRESIDENT
J. A. SAVERS
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SECRETARY
MRS. C. A. FORGIE
WOMEN'S REPRESENTATIVE
M. H. HARRIS
4TH YEAR REPRESENTATIVE
H. E. FLEMING
3RD YEAR REPRESENTATIVE
J. W. VOJTECH
2ND YEAR REPRESENTATIVE
R. N. GRANGER
1ST YEAR REPRESENTATIVE

As specific examples, I wish to deal with [REDACTED]

The above will perhaps give you a rough idea of the scope and nature of this article. I realize, of course, that political circumstances and pressures alter cases, but I am interested in getting the different general policies and comparing them on an objective basis.

I understand that affairs of State must keep you and the Department very busy and I do not wish to impose on your valuable time. However, I would appreciate any assistance, information or references you might care to direct my way.

Begging your indulgence, I remain

Respectfully yours,

A handwritten signature in cursive script that reads "Ralph J. Sternberg".

Ralph J. Sternberg,
Osgoode Hall Law School,
Toronto.

5475-AX-25-40
42 | 42

Ottawa, March 6, 1961.

Dear Mr. Gadsby,

We are sorry for the delay in replying to your letter of January 22, 1961.

Our files have no record of a Canadian national having sought asylum in a foreign embassy in Canada. However, as you are no doubt aware, on February 15, 1961, following the death of Patrice Lumumba, the Belgian Embassy in Cairo was set on fire and one or more staff members sought and was granted refuge for a number of hours in the neighbouring Canadian Embassy.

The position that Canada takes is that our consulates and diplomatic missions abroad may not grant asylum on the premises of a post except in extraordinary circumstances. The sort of circumstances that we have in mind is where temporary asylum would be granted on humanitarian grounds to a person, whether a Canadian citizen or not, if he is in imminent personal danger to his life during political disturbances or riots, with care being taken to ensure that the humanitarian character of the mission's intervention should not be misinterpreted. The Cairo incident referred to above is, of course, a good case in point.

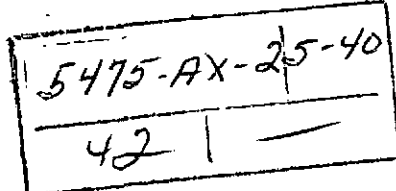
The Government of Canada has not signed or ratified any international convention establishing a right of asylum, Canada's position concerning asylum being based upon general principles of international law which recognize that the right of asylum may be exercised under very exceptional circumstances.

It is hoped that this information answers satisfactorily the questions raised in your letter.

Yours very truly,

fn
H. COURTNEY KINGSTONE
Under-Secretary of State
for External Affairs

Lloyd Gadsby, Esq., School,
Osgoode Hall Law School,
227 Coldstream Ave.,
Toronto, Ontario.



✓ Mr. Peel

No. Parl. question

CONFIDENTIAL

asked

February 15, 1961.

to 16/2

file back C.

MEMORANDUM FOR THE MINISTER

POSSIBLE QUESTION IN THE HOUSE OF COMMONS
THIS AFTERNOON CONCERNING ATTACK ON BELGIAN
EMBASSY IN CAIRO

A report was received at approximately 10:30 this morning from the AFP at Cairo that the Belgian Embassy had been set on fire and burned to the ground and that the Belgian Embassy staff had sought refuge in the Canadian Embassy. //

2. A question may be raised in the House of Commons this afternoon as to what is the position of the Government of Canada concerning the granting of asylum, having particular regard to the Cairo incident.

3. The position of the Government of Canada on this matter is set out in the Instructions for the Guidance of Officers performing Consular Duties (Chapter 5, Part II, Asylum, Sections 544-547 inclusive). These instructions are unclassified and therefore may be drawn from freely in connection with the making of public statements.

4. The sense of the above-referred to sections of the Consular Instructions is that Consulates and Diplomatic Missions may not grant asylum on the premises of a post except in extraordinary circumstances.

5. The 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, with care being taken to ensure that the humanitarian character of the mission's intervention should not be misinterpreted.

6. Once asylum has been granted, any efforts of local or national authorities to enter the premises of the post by force should be opposed. Before any person who has been granted asylum is released by the post, assurances should be sought for the safety of that person.

...2

If a question regarding the attitude of the Canadian Government following the events in Cairo should be asked in the House this afternoon, you might wish to reply along the following lines:

Although only a very brief report of the events in Cairo is at present available, the information that we have indicates that the staff of the Belgian Embassy there, following the burning of their building, has sought shelter in the Canadian Embassy *which is immediately adjacent*

In general, the immunity of diplomatic premises is recognized only insofar as it is necessary for the independence and inviolability of persons of diplomatic status and their retinue so that such persons can perform their functions and keep inviolable their official documents and archives. Under exceptional circumstances, however, a mission abroad may offer shelter or asylum on humanitarian grounds to persons who are in imminent personal danger to their lives during political disturbances. At such a time it is the humanitarian character of the act that is of greatest importance.

From what we know of what has occurred in Cairo, it would appear that the granting of asylum to the staff of the Belgian Embassy following such extraordinary events was a humanitarian act to which no one could take exception.

Should a supplementary question be asked regarding the legal basis for granting asylum, your reply could take the following form:

The Government of Canada has not signed or ratified any international convention establishing a right of asylum. Any such right would be dependent upon the general principles of international law, which recognize that such right may be exercised under very exceptional circumstances, such as the circumstances relating to the Cairo incident.

GN. A. R.

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

TRANSMITTAL SLIP

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

FROM: The Canadian Embassy, Buenos Aires

Security...Unclassified

Date...January 25, 1961

Air or Surface...Air

No. of enclosures...1

5475-AX-21240 'L'	
96	23

The documents described below are for your information.

Despatching Authority...RPB/nw

Copies	Description	Also referred to:
1	Office translation of article in <u>La Nacion</u> of January 18, 1961	<div data-bbox="1040 609 1421 770"> <p>To: Mr Beaulne</p> <p>XL FEB 3 1961</p> </div> <p>cc 10224-40</p> <p>mil</p> <p>B.</p>

INSTRUCTIONS

1. This form may be used in sending material for informational purposes from the Department to posts abroad and vice versa.
2. This form should *NOT* be used to cover documents requiring action.
3. The name of the person responsible for authorizing the despatch of the material should be shown opposite the words "Despatching Authority". This may be done by signature, name stamp or by any other suitable means.
4. The form should bear the security classification of the material it covers.
5. The column for "Copies" should indicate the number of copies of each document transmitted. The space for "No. of Enclosures" should show the total number of copies of all documents covered by the transmittal slip. This will facilitate checking on despatch and receipt of mail.

1961 FEB 3 PM 9:05 AM

TRANSLATION

ORIGINAL SPANISH

EXTRACT FROM LA NACION
January 18 , 1961

ARRIVAL OF EXILED JUDGES FROM CUBA

"There are two hundred thousand Cubans in exile scattered throughout the Americas. Attending to their immediate needs is our first preoccupation." This statement was made by Dr. Francisco Alabau Trelles, member of the Supreme Court of Cuba and President of the Association of Members of the Cuban Judiciary in Exile. Dr. Alabau Trelles is the leader of a delegation of seven Cuban magistrates who arrived yesterday in our country from Uruguay where they had been giving talks in Universities, Colleges, to groups of lawyers and in party gatherings explaining the purposes and projects of their organizations.

The delegation, which also includes Dr. José Portuondo de Castro, Dr. José Morell Romero (both members of the Supreme Court of Cuba) Dr. Cayetano Socarrás San Martín and Dr. Manuel Hernández Hernández (members of the Havana Law Courts) talked with newspapermen in their lodgings at the Alvear Palace Hotel, a short while after their arrival.

After noting that Dr. Antonio Silo Gutiérrez and Dr. Luis Espindola Palacios, also members of the Association, would arrive today or tomorrow in the city (they will remain seven days) the travellers explained that their stay in Buenos Aires would form part of the tour arranged during the last congress of the organization and that their purpose was to warn the peoples of America of the danger of the Bolshevik infiltration into the continent being introduced by the totalitarian regime of Fidel Castro.

The magistrates mentioned above also took part in the deliberations of the Cuban Judiciary Conference which took place last week in Montevideo and during which was ratified the "Declaration of the Cuban Judiciary", a document in which exiled men of law censured strongly the activities of the Fidelist regime which had done away with "all legal processes and constitutional guarantees". During the Congress in the Uruguayan capital, when proceeding to the ratification of the document in question, a second statement was published called the "Declaration of the Cuban Judiciary in Montevideo." This latter document was aimed at coordinating the activities of the 108 Cuban magistrates who had fled their country.

During the interview, Dr. Alabau Trelles explained that these documents signed by the magistrates in exile had been repudiated by the Fidelist government which had demanded a declaration to this effect from those judges who had remained on the Island. But this declaration had not received more than 16 signatures from the total of 528 judges who remained in their positions.

Questioned about the concrete ends of their organization, Dr. Trelles said that they consisted in "the liberation of our land from the Castro dictatorship, the reestablishment of the effective independence of the judicial power, and the establishment of a fully representative democracy."

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s.19(1)

On being asked - perhaps ingenuously - what were the reasons that sent them into exile, the magistrates pointed out "we have seen pass with great concern the 18 months set out in the Declaration of Caracas for the realization of free elections in all the country. But this term passed by without Castro - who had signed the Declaration - giving any sign of carrying out his promise. We understood then that we must act". "What are the limits of your action" was the immediately following question.

"We feel united with all those movements which are fighting against Castro". This categorical reply was limited immediately by the following explanation, "we are united to all except those criminals of [redacted] who wish to reinstate themselves in power". On being asked how far this "solidarity" went with rebel groups, the magistrates limited themselves to saying, "we maintain permanent communications with the rebels who are fighting in the sierras: within a few hours we can know in Miami - the seat of our organization - what is happening in the sierras or in any other part of the island".

Finally, the exiles were asked about their source of revenue. Immediately, Dr. Morell Romero explained that "in the United States, Mexico, and Venezuela, public collections were taken up. These were intended, firstly, to provide for the needs of the thousands of Cuban exiles and their families and, secondly, to equip the army of liberation." As far as the Judiciary Organization was concerned, "we possess our own funds obtained by means of popular subscriptions in the countries already mentioned" (here Dr. Alabau Tréllés interrupted his colleague to exhibit an example of the subscriptions saying, "You can see; this will give the lie to those who say we are in the pay of Yankee imperialism".) After this brief illustration, Dr. Morell Romero continued speaking, pointing out that fifty percent of the sums collected by the Association were intended for the refugee fund and the other fifty percent for publicity and organizational expenses.

cc: Dr. H.D. Robinson, Prime Minister's Office

OSCA
US33A

Ph. return

5475-AX-25-40
42 | -

H. R. P.

CONFIDENTIAL

February 15, 1961.

MEMORANDUM FOR THE MINISTER

SEEN BY THE MINISTER

*no Parl. Question
asked to 16/2*

**POSSIBLE QUESTION IN THE HOUSE OF COMMONS
THIS AFTERNOON CONCERNING ATTACK ON BELGIAN
EMBASSY IN CAIRO**

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2. A question may be raised in the House of Commons this afternoon as to what is the position of the Government of Canada concerning the granting of asylum, having particular regard to the Cairo incident.

3. The position of the Government of Canada on this matter is set out in the Instructions for the Guidance of Officers performing Consular Duties (Chapter 5, Part II, Asylum, Sections 344-347 inclusive). These instructions are unclassified and therefore may be drawn from freely in connection with the making of public statements.

4. The scope of the above-referred to sections of the Consular Instructions is that Consulates and Diplomatic Missions may not grant asylum on the premises of a post except in extraordinary circumstances.

5. The 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, with care being taken to ensure that the humanitarian character of the mission's intervention should not be misinterpreted.

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...3

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From what we know of what has occurred in Cairo, it would appear that the granting of asylum to the staff of the Belgian Embassy following such extraordinary events was a humanitarian act to which no one could take exception.

Should a supplementary question be asked regarding the legal basis for granting asylum, your reply could take the following form:

The Government of Canada has not signed or ratified any international convention establishing a right of asylum. Any such right would be dependent upon the general principles of international law, which recognises that such right may be exercised under very exceptional circumstances, such as the circumstances relating to the Cairo incident.

H. A. H.

FM CAIRO FEB15/61 CONFD

TO EXTERNAL 92 EMERGENCY

INFO LDN TT NATOPARIS BRU WASHDC PERMISNY TAVIV FM LDN

BAG BGRAD BEIRUT FM LDN

PROTECTION FOR BELGIAN AMBASSADOR AND STAFF

WE GAVE PROTECTION OF THE CHANCERY TO THE BELGIAN AMBASSADOR AND THE MEMBERS OF HIS STAFF FOR SEVERAL HOURS TODAY. WHEN HIS EMB SUFFERED A SERIES OF VIOLENT ATTACKS BY A MOB.

2. THE BELGIAN EMB IS IN CLOSE PROXIMITY TO OUR CHANCERY. THE FIRST ATTACK TOOK PLACE ABOUT 1030 THIS MORNING AND THE BELGIAN EMB WAS ENTERED. THE AMBASSADOR HAD BY THAT TIME SENT MOST OF HIS STAFF HOME. HE AND THE REMAINING MEMBERS WERE FORCED TO FLEE ACROSS A BACK GARDEN AND CAME IMMEDIATELY TO OUR CHANCERY WHICH IS ABOUT A HUNDRED YARDS AWAY.

3. I INFORMED THE MINISTRY OF FOREIGN AFFAIRS BY TELEPHONE AT ONCE, REQUESTED ALL NECESSARY PROTECTION AND ALSO, AT THE AMBASSADOR'S SUGGESTION, A POLICE ESCORT TO CONVEY THE SEVEN TO SOME OTHER PLACE OF SAFETY. I WAS GIVEN ASSURANCES NOT RPT NOT ONLY THAT THE MFA WOULD ASSUME FULL RESPONSIBILITY FOR THE PROTECTION OF OUR GUESTS BUT ALSO THAT THE MINISTRY OF INTERIOR WOULD PROVIDE AN ESCORT FOR THEM WHEN THIS BECAME FEASIBLE.

4. THE MOBS SURGED ABOUT OUR AREA FOR SOME THREE HOURS. ON ONE OCCASION OUR MAIN GATE WAS ENTERED AND AN ATTEMPT MADE TO BREAK THROUGH OUR FRONT DOOR WHICH WAS BARRED. THE DEMONSTRATORS WERE PERSUADED TO LEAVE WITHOUT DOING DAMAGE. I INFORMED THE MFA IMMEDIATELY AND WAS PROMISED MORE PROTECTION. HOWEVER WE DID NOT RPT NOT HAVE MORE THAN TWO POLICEMEN AT OUR GATE AT ANY TIME DURING THE DAY. I LEARNED LATER THAT THE FOREIGN MINISTRY HAD WRONGLY ASSUMED THAT THE BELGIAN AMBASSADOR AND HIS STAFF WERE AT

...2

PAGE TWO 92

OUR RESIDENCE IN ANOTHER PART OF THE CITY.

5. DURING A LULL IN THE DAYS PROCEEDINGS WE SENT ALL OF OUR STAFF EXCEPT GUARDS, COMMUNICATORS AND DRIVERS TO THEIR HOMES OR TO AREAS OUT OF THE WAY OF TROUBLE. NONE WERE MOLESTED OR DISTURBED.

6. DURING THE AFTERNOON THINGS BECAME QUIET AND THE BELGIAN AMBASSADOR DECIDED THAT HE WISHED TO LEAVE. ANOTHER MASS RALLY WAS SCHEDULED FOR FIVE PM AND IT HAD BECOME PUBLIC KNOWLEDGE THAT HE AND HIS STAFF WERE IN OUR CHANCERY. HE FEARED THAT THE RALLY MIGHT BE FOLLOWED BY AN ASSAULT ON OUR PREMISES.

7. I ALSO THOUGHT THIS WAS A POSSIBILITY, BUT BEFORE AGREEING TO THEIR DEPARTURE I WENT TO THE FOREIGN MINISTRY WHERE I OBTAINED THE AGREEMENT OF THE UNDER SECRETARY TO THE MOVE AND HIS ASSURANCES THAT THE UAR AUTHORITIES WOULD MAINTAIN RESPONSIBILITY FOR THE AMBASSADORS PROTECTION ELSEWHERE. THE AMBASSADORS STAFF THEN LEFT BY THEMSELVES WHILE I TOOK THE AMBASSADOR BY CAR TO THE HOUSE OF THE SPANISH AMBASSADOR IN ANOTHER PART OF THE CITY.

8. THIS EVENINGS RALLY HAS SO FAR NOT RPT NOT PRODUCED ANY FURTHER DEMONSTRATION IN OUR PART OF THE CITY AND THE UNDER SECRETARY OF FOREIGN AFFAIRS ASSURED ME THIS AFTERNOON THAT THERE WOULD IN ANY EVENT BE NO RPT NO TROUBLE FOR US. A SIZEABLE GROUP OF POLICE WAS STATIONED THIS EVENING IN THE VICINITY OF OUR CHANCERY.

9. WE ARE TELEGRAPHING SEPARATELY A FULLER ACCOUNT OF THE DAYS EVENTS

IRWIN

Jan 22, 1961
2276 Goldstream Ave
Tacoma, Ore.

Department of External Affairs,
Information Bureau.

5-475-AX-25-40
88 | 88

Dear Sir:

I am presently preparing a paper which will be presented to my class in Public International Law, at Osgoode Hall Law School. The subject of this thesis is "The International Law of Rayburn".

I would greatly appreciate your assistance in telling me if your files have any record of a Canadian national seeking asylum in a foreign embassy in Canada, or a foreign

9

NOV 24 1961

national seeking asylum in a
Canadian embassy abroad.

Further, could you outline any
policy that Canada follows in
situations of this nature.

Thanking you for your
aid, I am

Yours truly,

Lloyd Lashby,

Osgoode Hall Law School

5475 AX-25-40
57

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in

LEGAL DIVISION (ATTN: MR. LAMVILLE)

CONFIDENTIAL

January 4, 1980.

CONSULAR DIVISION.

Memorandum of December 29 from Latin

American Division.

Eleventh Inter-American Conference of the O.A.S.

--- Attached is a memorandum of December 29 from Latin American Division requesting us to send to United Nations Division our comments on the following two items of the Agenda of the forthcoming O.A.S. Conference:

Chapter I:

8. Conventions on diplomatic asylum and territorial asylum;

10. Inviolability of the domestic jurisdiction of states.

2. With reference to the item on diplomatic asylum, I have flagged at X on your file 5475-AX-25-40, Political Asylum - General Policy File, (attached), a memorandum of June 12, 1956 from Mr. Wershof designating your Division as the repository of all the information available to the Department on political asylum, while assigning to other Divisions responsibility for handling individual requests for asylum. In view of Mr. Wershof's ruling, I assume you will agree that your Division should prepare the commentary on asylum. In this connection you may wish to refer to Part II of Chapter 5 of the Consular Instructions Latin American Div. (Flag Y) which provides guidance to our posts abroad on this matter.

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- 3 -

3. With reference to the item dealing with the domestic jurisdiction of states, I think this again is fundamentally a Legal and not a Consular problem and that your file 10380-A-40, attached, deals with the subject.

E. H. GILMOUR

CONSULAR DIVISION.

DEPARTMENT OF EXTERNAL AFFAIRS

CROSS REFERENCE SHEET

Security UNCLASSIFIED

~~5475-AX-13-40~~

~~5475-AX-35-40~~
5475-AX-25-40

88

Type of Document.....T.S. No. Unn. Date..... November 3, 1960

From..... NEW YORK (CANDEL)

To..... E.A.

Subject: Statement by the Honourable Charles Rosenbaum,
United States Representative, in Committee VI, Nov. 2,
1960, on the Report of the International Law Commission

Original on File No..... 5475-AX-40 "L"

Copies on File No..... ..

Other Cross Reference Sheets on..... 5475-AX-35-40; ~~5475-AX-25-40~~; 5475-AX-13-40

Prepared by..... A. Drew-Brook, Legal S/R...

DEPARTMENT OF EXTERNAL AFFAIRS

CROSS REFERENCE SHEET

Security **CONFIDENTIAL**

5475-AX-25-40 "L"		
88		

Type of Document.....Memorandum..... No.....Unn.....Date.....Oct. 24. 1960

From.....Legal Division.....

To.....U.N. Division.....

Subject: Commentary for Canadian U.N. Delegation - Draft Declaration
on the Right of Asylum

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

Copies on File No.....-5475-DW-73-40 "v".....

Other Cross Reference Sheets on.....-

Prepared by.....A. Drew-Brook, Legal S/R.....

DEPARTMENT OF EXTERNAL AFFAIRS, CANADA

NUMBERED LETTER

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

FROM: OFFICE OF THE HIGH COMMISSIONER FOR
CANADA, WELLINGTON, NEW ZEALAND

Reference:

Subject: Draft Declaration on Right of

Asylum: New Zealand Delegation

Brief for UNGA

Security: CONFIDENTIAL

No: 583

Date: October 14, 1960

Enclosures: one

Air or Surface Mail: Air

Post File No: (21-1)-8-1

Ottawa File No.

5475-AX-25-YO

88

88

cc: 5475-20-15-YO

References

Attached is a copy of the brief prepared for the New Zealand Delegation to the fifteenth session of the General Assembly on Supplementary Agenda Item No. 10 (Draft Declaration on the Right of Asylum). In the brief, the history of the Draft Declaration since it was transmitted to Governments by the Commission of Human Rights was reviewed. Because of the multiplicity of opinions which had been expressed on the Declaration in comments to the Secretary-General, the New Zealanders concluded that international agreement on a whole code of practice on asylum was no more than a distant possibility. Nevertheless, certain principles existed in the Convention relating to Status of Refugees (to which New Zealand acceded during the World Refugee Year) and the Convention on the Status of Stateless Persons 1954, which would, if given wider application, do much to secure the aim of generous treatment of persons seeking asylum from persecution.

2. As for the Draft Declaration itself, the New Zealand Delegation was advised to take into account three general points, namely:

- (a) the Draft Declaration did not indicate specifically whether it was concerned with "diplomatic" or "territorial" asylum or both;
- (b) it was difficult to evaluate how well the "right" of (or to seek and enjoy) asylum was established;
- (c) while the Declaration might appear to be of only academic interest to New Zealand, the number of foreign ships which visited New Zealand ports, including Russian whaling and scientific vessels, indicated its direct practical relevance.

It was recommended that the New Zealand Delegation, provided the final text was not in conflict with the situation applying in New Zealand and was acceptable to countries such as the United Kingdom and other Commonwealth members, should support the adoption of the Declaration on the Right of Asylum.

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to Posts

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Without Enclosure
Canberra

F.B. EDMONDS

Office of the High Commissioner

000331

DEPARTMENT OF EXTERNAL AFFAIRS

MEMORANDUM

M. Stille

TO: Mr. Kingstone

..... Legal Division

FROM: Ann Drew-Brook, Legal Registry

REFERENCE:

SUBJECT: Filing of correspondence re "Cuban Ambassador's Resignation"

Security .. UNCLASSIFIED

Date June 21, 1960

File No.

5475-AX-25-40

88

As mentioned to you on the telephone this afternoon, the correspondence dealing with this subject is being placed on the American Division file "Diplomatic Relations between Canada and Cuba -- 289-40 "X". A cross-reference will be made on the Legal file 5475-AX-25-40 "Political Asylum - General Policy File", as requested.

Ann Drew-Brook

Ann Drew-Brook,
Legal Registry.

*Do you agree with
this approach.
HCB*

Yes/31

000332

DEPARTMENT OF EXTERNAL AFFAIRS, CANADA

OUTGOING MESSAGE

Consular
Legal

Mr. Campbell
(O/SSEA)

5475-AX-25-40

88

Mr. Seabrook

FM: EXTERNAL - OTTAWA

TO: HAVANA

INFO: WASH / N GTON

DATE	FILE	SECURITY
JUNE 16, 1960.	289-40X- 88	SECRET
NUMBER	PRECEDENCE	COMCENTRE USE ONLY
X-179	EMERGENCY	

Ref.: OUR X-178 JUNE 16

Subject: CUBAN AMBASSADOR'S RESIGNATION.

BARALT DISCREETLY BROACHED THE MATTER OF HIS POSSIBLE RESIGNATION ABOUT A MONTH AGO BUT DID NOT FOLLOW THIS UP UNTIL YESTERDAY WHEN HE ASKED TO SEE THE MINISTER PERSONALLY. HE TOLD THE MINISTER THAT HE HAD SENT HIS RESIGNATION TO CUBAN FOREIGN OFFICE AND A LENGTHY LETTER TO PRESIDENT DORTICOS EXPLAINING WHY HE COULD NOT REPEAT NOT IN CONSCIENCE CONTINUE TO DEFEND POLICIES WITH WHICH HE DID NOT REPEAT NOT AGREE.

2. BARALT SUBSEQUENTLY ISSUED A VERY RESTRAINED PRESS RELEASE, THE TEXT OF WHICH WE SHALL SEND YOU SEPARATELY, ANNOUNCING HIS RESIGNATION AND EXPRESSING WISH TO STAY IN CANADA.

3. FOR YOUR INFORMATION ONLY, IMMIGRATION DEPUTY MINISTER HAS INFORMALLY INDICATED THAT BARALT'S REQUEST TO STAY IN CANADA WOULD PROBABLY BE CONSIDERED WITH SYMPATHY.

LOCAL
DISTRIBUTION

STANDARD DISTRIBUTION

ORIGINATOR	DIVISION	PHONE	APPROVED BY
SIG..... C. HARDY/TF NAME.....	AMERICAN	6-7175	SIG..... N.A. ROBERTSON NAME..... 000333

- 2 -

IF YOU ARE CALLED TO FOREIGN OFFICE, YOU SHOULD SAY
THAT YOU WERE NOT REPEAT NOT AWARE OF BARALT'S PLANS WHICH
HE MADE OF HIS OWN FREE WILL AND WITHOUT THE KNOWLEDGE OF
THE MINISTER UNTIL YESTERDAY. YOU SHOULD BEHOLD USING THE WORD
"ASYLUM" IN ANY CONVERSATION BUT YOU MAY INDICATE, IN ANSWER
TO QUESTIONS, THAT YOU UNDERSTAND THAT BARALT HAS EXPRESSED
THE WISH TO STAY IN CANADA AND THAT HIS REQUEST WILL NO DOUBT
BE CONSIDERED IN THE LIGHT OF CANADIAN IMMIGRATION REGULATIONS.

Robertson

top of file

atg.

*File
JOP*

P
Y

CONFIDENTIAL

5475-AX-25-40	
16	16

CIRCULAR DOCUMENT

Ottawa, April 29, 1950

No. B. 45

Sir,

The Department recently received from the Argentinian Embassy at Ottawa a request for information on the position of the Government of Canada on the right of asylum. A reply to this inquiry was prepared by our Legal Division and, since it represents the first effort since 1945 to determine our position on this matter, I think it is desirable to bring it to your attention.

2. From time to time in the past, instructions have been sent to some of our Missions concerning the granting of asylum to political offenders who may seek refuge in Canadian Missions; these instructions should now be considered as superseded by the communication attached as Annex "A" to this Circular Document, which is being sent to you for your guidance.

3. With reference to paragraph 8 of Annex "A", I should like to emphasize the following:

- (a) Every step should be taken to discourage resort to your Mission by political refugees.
- (b) When time permits, you should consult the Department before granting asylum to political refugees.
- (c) When time does not permit consultation with the Department, you should use your discretion whether or not asylum should be granted to a political refugee. Generally speaking, asylum should only be granted at the request of a person in imminent danger of losing his life, and the grounds for such intervention on your part should be purely humanitarian. In countries where no local usage exists, you should take local susceptibilities into account, and in all cases you should do your utmost to ensure that your intervention, if decided upon, will not be misinterpreted.

To the Heads of
Canadian Posts Abroad.

. . . 2

- 2 -

(d) Once you have granted asylum to a political refugee you should oppose, as far as may be possible, any attempt to remove him by force, and you should seek assurance immediately as to the refugee's future safety. Your general conduct should be in accordance with that which is locally expected of missions granting asylum.

4. I may add that paragraph 9 of Annex "A" accords with present instructions of the Royal Canadian Navy. Extracts of the relevant provisions of the King's Regulations for the Canadian Naval Service are attached as Annex "B".

I have the honour to be,
Sir,
Your obedient Servant,

Secretary of State
for External Affairs.

Annex "A"

DEPARTMENT OF EXTERNAL AFFAIRS

Ottawa, April 13, 1950

Excellency,

I have the honour to refer to my Note No. 3 dated January 19, 1950, and to previous correspondence in which you requested the views of the Government of Canada with respect to the right of asylum.

2. It would appear desirable to distinguish between the rights of:

- (a) sovereign states to grant asylum on their own territory;
- (b) diplomatic envoys to grant asylum on diplomatic premises;
- (c) ships to grant asylum when in foreign ports.

3. The right of sovereign states to grant asylum on their own territory is based on the principle of non-intervention and the absolute control of states within their own frontiers. Any state, according to international law, may admit into its territory fugitives from justice who are nationals of another state. In the absence of an extradition treaty providing for the apprehension and mutual surrender of such fugitives, there is no legal obligation on the receiving state to deport or deliver up such fugitives to a requesting state.

4. Very recently, the Ad Hoc Committee of the United Nations on Statelessness prepared a draft Convention Relating to the Status of Refugees. This draft Convention contains certain articles dealing with the expulsion and non-admittance of refugees, which would seem to forecast another step in the evolution of international law on this point. The relevant articles read as follows:

"Article 26

Refugees not lawfully admitted

1. The Contracting States shall not impose penalties, on account of his illegal entry or presence, on a refugee who enters or who is present in their territory

His Excellency Dr. Agustin Nores Martinez,
Ambassador of Argentina,
193 Sparks Street,
Ottawa, Ontario.

without authorization, and who presents himself without delay to the authorities and shows good cause for his illegal entry or presence.

2. The Contracting States shall not apply to such refugee restrictions of movement other than those which are necessary and such restrictions shall only be applied until his status in the country is regularized or he obtains admission into another country. The Contracting States shall allow such refugee a reasonable period and all the necessary facilities to obtain admission into another country.

"Article 27

Expulsion of refugees lawfully admitted

1. The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order and in pursuance of a decision reached in accordance with due process of law.

2. Such refugee shall be entitled, in accordance with the established law and procedure of the country, to submit evidence to clear himself and to be represented before the competent authority.

3. The Contracting States shall allow such refugee a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary.

"Article 28

Prohibition of expulsion to territories where the life or freedom of a refugee is threatened

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

5. The so-called right to grant asylum on diplomatic premises is a consequence of the doctrine of extraterritoriality. No such right to grant asylum is afforded in general international law. The immunity of the official residences of envoys is to be recognized only in so far as it is necessary for the independence and inviolability of persons of diplomatic status and their retinue so that such persons can perform their functions and keep inviolable their official documents and archives.

6. There has been no instance of Canadian citizens seeking refuge in a foreign mission in Canada for any purpose. In time of peace the most likely persons to seek such refuge would be fugitives from justice. Fugitives from justice and deserters from the armed forces should under no circumstances be granted asylum, regardless of their nationality. Similarly, Canadian missions in foreign countries would not ordinarily afford asylum to fugitives from justice who are Canadian citizens, regardless of whether they should have a second nationality in their countries of residence.

7. It is conceivable that under exceptional circumstances a Canadian mission abroad might offer asylum temporarily to a Canadian citizen if the circumstances were such that the Canadian citizen had been subjected to discriminatory action by local authorities or that such action appeared probable by reason of action of the local authorities in similar cases. The purpose of such temporary asylum would be to bring about negotiations with a view to securing independent legal advice and assistance and a fair trial, and not for the purpose of avoiding prosecution or the jurisdiction of competent courts.

8. Canadian representatives abroad may also be faced with the particular problem of whether or not asylum on their premises should be granted to what are usually referred to as "Political offenders" or "political refugees". These terms apply to persons whose lives are threatened on account of their religion, nationality, race or political opinion. Since no such right to grant asylum, is, at least at present, afforded in international law, Canadian diplomatic envoys do not grant asylum to "political refugees" or "political offenders". This should not be construed as excluding the possibility of a Canadian diplomatic representative abroad granting asylum to a "political offender" in very exceptional circumstances.

9. As to the right of ships to grant asylum when in foreign ports, it is necessary to distinguish between warships or other public vessels not engaged in trade and merchant ships or other vessels engaged in trade. The former are sometimes regarded in international law as being "extraterritorial" and a right of asylum in vessels of this class is considered to exist in certain cases. The Government of Canada has engaged regulations for commanders of ships of the Royal Canadian Navy prohibiting them from receiving on board persons, including Canadian citizens, who seek refuge for the purpose of evading the criminal laws of a foreign nation to which they have become amenable. The same regulations permit the affording of refuge:

- (a) to Canadian citizens and other British subjects who, during political disturbances or popular tumults, are fleeing from imminent personal danger; and
- (b) temporarily to citizens or subjects of foreign states who, during political disturbance or popular tumults, are fleeing from imminent personal danger.

The right of asylum is considered to exist in such cases, and also in circumstances such as those described in paragraph 7. On the other hand, merchant ships and public vessels engaged in trade are not regarded in international law as being "extraterritorial" and no right of asylum exists simply by virtue of the fact that a person has been accepted on board vessels of that class.

10. As the right of asylum on diplomatic premises does not exist in general international law, there would seem to be no obligation to give safe-conduct to persons other than diplomats.

11. I know of no cases where Canadian citizens or aliens have sought refuge in foreign diplomatic missions in Canada or of any court decision regarding the right of asylum in any of the meanings listed in your Note.

12. The Government of Canada has not signed or ratified any international convention establishing a right of asylum. Any such rights would be dependent upon principles of international law incorporated in the domestic law of Canada or recognized by Canadian courts.

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

Secretary of State
for External Affairs.

Annex "B"

Extracts from King's Regulations for the
Government of His Majesty's Canadian Naval Service

KRCN 48.05 - Protection of Canadian Nationals

(1) As a general rule, the Senior Officer present shall limit protection of Canadian nationals in foreign territory to:

- (a) granting them an asylum on board ship; and
- (b) securing them an escape from shore by boats, when their departure is a measure of necessary precaution.

(2) He shall not interfere by landing an armed force unless the lives or property of Canadian nationals are actually in danger from violence which cannot otherwise be controlled.

(3) The protection afforded to Canadian nationals under this article may be made available to other British subjects.

KRCN 48.08 - Refugees

(1) The Commanding Officer of one of His Majesty's Canadian Ships, while in a foreign port shall not receive on board persons, even though they are Canadian nationals, who are seeking refuge for the purpose of evading the criminal laws of a foreign nation to which they have become amenable.

(2) Subject to (1) of this article, during political disturbances or popular tumults, refuge may be afforded to Canadian nationals and other British subjects.

- (3)
 - (a) During political disturbances or popular tumults, refuge may be afforded to citizens or subjects of foreign nations who are flying from imminent personal danger.
 - (b) In such cases care shall be taken that the refugees do not carry on correspondence from His Majesty's Canadian Ships with their partisans.
 - (c) The earliest opportunity shall be taken to transfer the refugees to some place of safety.
 - (d) Except in extreme cases, passage shall not be given to the foreign refugees.

(4) When circumstances permit, the Senior Officer shall communicate with the nearest available diplomatic or consular officer representing Canada or the United Kingdom, or a Canadian Trade Commissioner, or if none of them is available, the diplomatic or consular representative of one of the other nations of the British Commonwealth, before taking steps for the reception of refugees on board his ships.

Note for Top of File 5475-AX-25-40

Asylum is dealt with in Consular Instructions, Chapter V, 5.44 to 5.47. In connection with an enquiry from our Embassy in Cuba (Emergency Telegram 70 of April 21, 1959) concerning the former Cuban Ambassador to Canada, Carlos Carrillo, Mr. Cadieux agreed with the action taken by American Division in sending the telegram directly to Consular Division for reply.



G.C. Langille

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File
G.C. LANGILLE

DEPARTMENT OF EXTERNAL AFFAIRS
CROSS REFERENCE SHEET

Security

5475-AX-25-45		
76	—	

Type of Document..... Press Release..... No. 6/111/60..... Date..... March 1/60.....
From..... Colombo.....
To..... Ex.Aff.....

Subject: Asian-African Legal Consultative Committee - 3rd session.

Original on File No..... 12173-40 "Y".....

Copies on File No..... 2478-40 "B".....

Other Cross Reference Sheets on..... 5475-AX-11-45.....

Prepared by..... *[Signature]*.....

NUMBERED LETTER

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

FROM: The Canadian Embassy,
Havana, Cuba.

Reference: Nil.

Subject: Ministry of External Affairs
Publication.

Security: RESTRICTED

No: L-102

Date: February 15, 1960.

Enclosures: 1

Air or Surface Mail: Courier

Post File No: 4.10.3

Ottawa File No.

5475-AX-25-40

88

5

To: Mr. C. [Signature]

FEB 17 1960

References

We recently received from the Cuban Ministry of External Affairs two copies of a publication prepared by that Ministry outlining the various Inter-American Conventions in force on diplomatic asylum. We are attaching one copy of this publication for your information.

2. In light of the difficulties Cuba raised regarding the granting of diplomatic asylum following the fall of the Batista Government, the publication of these Conventions at this time may be a precursor to future Cuban action designed to alter or to denounce one or other of the Conventions. It is also possible of course that the Conventions were published by the Cuban Ministry of External Affairs merely in an attempt to justify their stand on the question of diplomatic asylum.

[Signature]

The Embassy.

Internal
Circulation

* published by the Ministry of Foreign Affairs
of Cuba, Havana 1960. "Convenciones Interamericanas
sobre Asilo Diplomático y Territorial."

Distribution
to Posts

United Nations Division

RESTRICTED

January 7, 1960.

Legal Division

Your Memorandum of December 2, 1959
and Chistoff/Graham telephone conversation
of December 21st.

5475-AX-25-40	
(11)	V

original 5475-AX-25-40

Draft Declaration on the Right of Asylum.

You advised us by telephone on December 21st that the Department of Citizenship and Immigration had indicated that, in view of the difficulty of reconciling the Declaration (particularly Article 3) with Canadian immigration regulations and the sensitive nature of this problem, they would prefer that the Canadian Government should not submit any comments on the Revised Draft Declaration on the Right of Asylum.

2. We fully appreciate the point of view of the Department of Citizenship and Immigration. Nevertheless, some consideration should be given to the possibility of submitting a useful Canadian reply, particularly in view of the fact that there was no Canadian response to a previous request of the Secretary General on this subject. Such a reply might suggest that no action should be taken on the Declaration until states have had the benefit of a study which the International Law Commission will be undertaking on this subject in conformity with a resolution passed at the fourteenth session of the General Assembly.

3. However, there may be a number of factors which should be considered before a Canadian reply can be submitted. Particularly, as the Resolution to have the International Law Commission undertake a study of the Right of Asylum (October 1959) was a development subsequent to the Secretary General's request for comments on the

Consular
Division

- 2 -

Draft Declaration on the Right of Asylum (April 1959) it may be desirable to determine the reaction of the Human Rights Commission to this new proposal. Depending on the extent of the research undertaken by the Human Rights Commission itself on the subject, there may be little advantage in waiting for the results of the International Law Commission's study on the Right of Asylum. In addition, as the Resolution inviting the International Law Commission to study the Right of Asylum was drafted to permit the Commission to look into the subject "as soon as it considers advisable", it may be several years before the International Law Commission will take up the Right of Asylum. In this event the Human Rights Commission may feel that there are compelling reasons for submitting the Declaration on the Right of Asylum to the General Assembly at the next session.

4. Accordingly, you may wish to have the Permanent Mission in New York make enquiries about the Declaration and about the responses of other nations, particularly the United States and the United Kingdom, to the Secretary General's request. You might also ask them to enquire whether the Secretariat would be willing to accept replies received after the December 31st deadline.

5. If, as a result of these enquiries, it appears that there would be advantage in deferring consideration of the Draft Declaration until such time as the International Law Commission study has been completed, a reply to the Secretary General might be drafted along the following lines:

"It is the view of the Canadian Government that consideration by States of the Draft Declaration on the Right of Asylum should be deferred until such time as the International Law Commission has examined this subject in conformity with Resolution A/C.6/L.443 adopted by the Fourteenth Session of the General Assembly. The Canadian Government submits that it would be preferable if the General Assembly had the benefit of the International Law Commission's study before voting on such a declaration."

... 3

- 3 -

6. Following such a study by the International Law Commission it may be desirable for Citizenship and Immigration and ourselves to give careful consideration to this question of Asylum and its relation to Canadian regulations and practice.

GILLES SICOTTE

Legal Division.

DEPARTMENT OF EXTERNAL AFFAIRS

CROSS REFERENCE SHEET

Security UNCLASSIFIED

5475-AX-25-40 "L"		
88		

Type of Document..... Letter..... No..... Unn..... Date..... Dec. 18, 1959...
From..... CITIZENSHIP & IMMIGRATION.....
To..... E.A.....

Subject: Draft Declaration on the Right of Asylum

(reply to E.A. letter of Dec. 2, 1959 - seeking
their comments on the French revised draft of the
above mentioned declaration).

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

Copies on File No..... -.....

Other Cross Reference Sheets on..... -.....

A. Drew-Brook, Legal S/R.

Prepared by.....

5475-AK-25-40
88-1-

Ottawa, December 2, 1959

The Deputy Minister,
Department of Citizenship
and Immigration,
O t t a w a.

Re: Draft Declaration on the Right of Asylum

On August 27, 1957 we brought to your attention a request by the Secretary-General of the United Nations for the Canadian Government's comments on a proposed draft Declaration on the Right of Asylum. In a letter dated September 12, 1957 the present Director of Citizenship forwarded to us some preliminary comments on the proposed draft.

No comments were transmitted to the Secretary-General at the time, but it would appear that other countries on the Human Rights Commission such as the United Kingdom supported the view, expressed in Mr. Boucher's letter, that the right of asylum is traditionally the right of a state to grant asylum, rather than of an individual to receive it. The preliminary draft Declaration studied by the Human Rights Commission has, accordingly, been modified in this and other respects and the revised draft Declaration has been submitted to governments for their comments by December 31, 1959.

We attach a copy of Notes SO 225/1(3) of April 22, 1959 and November 18, 1959 from the Secretary-General drawing attention to the latest resolution adopted by the

... 2.

- 2 -

Commission on this subject together with the revised French draft Declaration, the amendment submitted thereto by Iraq and a résumé in the French language of the debate on this subject which took place in the Commission. A copy of the résumé in English will be sent as soon as it is available.

In view of the fact that Canadian government thinking on the principle of a Declaration on the Right of Asylum has never been formulated, it might be useful if officers of our two Departments could meet to discuss the question after you have had an opportunity to study the attached documents. We should be grateful if you would let Mr. O.A. Chistoff of this Department (telephone extension 2-5643) have your views on this suggestion.

J. A. McCORDICK
FOR THE

Under-Secretary of State
for External Affairs.

The ~~Legal Adviser~~ Under-Secretary

RESTRICTED

(through United Nations and American Divisions)

October 7, 1959

Legal Division

5475-AX-25- 22 ✓	
88	✓

Right of Asylum

Orig on: 5475-W-19-YO

Attached for your signature, if you approve, is a telegram to the Delegation in New York in response to their request (telegrams 1277 and 1278 of October 1 attached) for instructions with regard to a resolution proposed by El Salvador on the right of asylum. The resolution (attached) proposes in effect that the International Law Commission undertake the codification of the rules and principles of international law relating to the right of asylum.

Our instructions and the reasoning behind them are set out in our telegram. In view of the urgency to send these instructions to New York before the end of this week, we have cleared the telegram by telephone with Protocol and Consular Divisions and the Department of Citizenship and Immigration (C.E.S. Smith, Assistant to the Deputy Minister). We also had the opportunity of raising this question with Mr. Parry of the Delegation in New York in the course of a telephone conversation. He indicated that in view of the fairly cautious statements made by many delegations about El Salvador's resolution, the line proposed in our instructions might be very useful. He also emphasized the importance of leaving the Delegation a certain amount of discretion on this matter.

GILLES SICOTTE

Legal Division

refer to 6.0. Di
Pastor
Consular
D/M Justice
Cit & Imm.
File
JWS.

5475-AX-25-40	
88	✓

re: 5475-W-19-40

Done
6/10/59
pc.

FM CANDELNY OCT1/59 UNCLAS

TO EXTERNAL 1278 PRIORITY

REF OURTEL 1277 OCT1

SIXTH COMMITTEE; QUESTION OF A STUDY OF THE RIGHT OF ASYLUM

FOLLOWING IS THE TEXT OF THE DRAFT RESOLUTION ON THIS

SUBJECT SUBMITTED BY EL SALVADOR WHICH WAS CIRCULATED SEP29:

QUOTE THE GENERAL ASSEMBLY,

CONSIDERING THAT IT IS DESIRABLE TO STANDARDIZE THE APPLICATION
OF THE PRINCIPLES AND RULES RELATING TO THE RIGHT OF ASYLUM,

RECALLING THAT THE INTERNATIONAL LAW COMMISSION AT ITS FIRST
SESSION INCLUDED QUOTE RIGHT OF ASYLUM UNQUOTE IN THE PROVISIONAL
LIST OF TOPICS OF INTERNATIONAL LAW SELECTED FOR CODIFICATION,

REQUESTS THE INTERNATIONAL LAW COMMISSION, AS SOON AS IT CONSIDERS
ADVISABLE, TO UNDERTAKE THE CODIFICATION OF THE PRINCIPLES AND RULES
OF INTERNATIONAL LAW RELATING TO THE RIGHT OF ASYLUM. UNQUOTE

DEPARTMENT OF EXTERNAL AFFAIRS

MEMORANDUM

TO: UNITED NATIONS DIVISION
LEGAL DIVISION ✓
FROM: CONSULAR DIVISION
REFERENCE: U.N. Division Memorandum of June 11 to
Legal Division..
SUBJECT: Draft Declaration of the Right of Asylum.

UNCLASSIFIED

Security

June 16, 1959

Date

File No.	5475-AX-25-40
SS	-

If it is intended that the Government should comment on the draft Declaration of the Right of Asylum, I suggest that you might bear in mind that the Under-Secretary has already approved a section of the Consular Instructions dealing with the granting of asylum at Canadian posts abroad. This section is attached.

E. H. GILMOUR

Consular Division.

CIRCULATION

PART II

ASYLUM

When Asylum
may be
Granted

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

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.

Action when
Asylum Granted

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.

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

Reference to
the Department

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.

Requests to
National
Authorities
for Protection

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.

NUMBERED LETTER

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

FROM: The Canadian Embassy
Havana, Cuba

Reference: Our letter No. L.236 of May 13, 1959

Subject: Carlos Carrillo

Security: Unclassified

No: L290

Date: June 11, 1959

Enclosures: 2

Air or Surface Mail: Air

Post File No:

Ottawa File No.

5475-AX-25-40^W

11

✓

References

orig on: 6-AME-1-40

Attached are copies of two letters which I recently received from Carlos Carrillo, the former Cuban Ambassador to Canada who is now in Mexico City. Both letters have been acknowledged.

The one letter expresses condolences on the recent death of Dr. Sidney E. Smith. The other conveys Sr. Carrillo's appreciation to me and the Canadian government for our interest and assistance during his recent difficulties.

HECTOR ALLARD

Ambassador

Internal
Circulation

Distribution
to Posts

DEPARTMENT OF EXTERNAL AFFAIRS, CANADA

NUMBERED LETTER

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

FROM: THE CANADIAN AMBASSADOR, HAVANA, CUBA.

Reference: Our letter No. L-236 of May 13, 1959.

Subject: Carlos Carrillo.

Security: RESTRICTED

No: L257

Date: May 28, 1959

Enclosures: None

Air or Surface Mail: Courier

Post File No: 11.1.2

510

X	TO: <i>M.C.</i>
Y	MAY 5 1959
REGISTRY	

Ottawa File No.	
<i>L 5475-AX-25-40</i>	
<i>54</i>	<i>51</i>

ce. m 10224-40

This is merely to inform you that Carlos Carrillo left Havana on or about May 15 for Mexico City by air. His wife has received letters from him saying that everything is going well in Mexico and that as soon as he has settled down, she and the children will join him in Mexico.

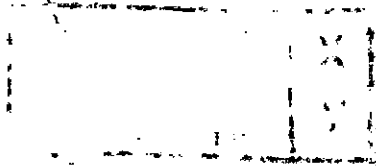
Austin Allen
Ambassador.

References

*The Canadian
Protector
Comm. Dir
T.C.
File
D.M.
TH*

Internal
Circulation

Distribution
to Posts



NO ENCLOSURES

1959 JUN 4 PM 2:37

NUMBERED LETTER

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

FROM: THE CANADIAN AMBASSADOR, HAVANA, CUBA.

Reference: Our telegram No. 78 of May 4 and previous
telegrams No. 74 of April 23 and No. 70 of
April 21.

Subject: [REDACTED]
s.19(1)

Security: CONFIDENTIAL

No: 236

Date: May 13, 1959.

Enclosures: None

Air or Surface Mail: Courier

Post File No:

Ottawa File No.

5475-AX-25-40

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References

As mentioned in my telegram of May 4, [REDACTED] sought and was granted refuge at the Mexican Embassy on May 4. His entry to the Embassy went without a hitch and, as far as we know, [REDACTED] is still awaiting certain documents before he can proceed to Mexico. His wife and children have decided to join him once he has arrived in Mexico. There are already two sisters of [REDACTED] who have married Mexican citizens who are in business in Mexico, and this is the reason why the ex-Cuban Ambassador to Canada finally decided to go to that country.

2. Since [REDACTED] had been released from prison, he had refrained from returning to his office for fear of being arrested. When the complaint by a former servant was filed against him in a local police station (see our telegram No. 74 of April 23) and when about a week later a policeman came to the house where [REDACTED] was living and casually told the maid who opened the door that [REDACTED] had better report to the local police station to answer some questions, he decided to leave Cuba.

3. It must be remembered that it is estimated that there are at present some 30,000 persons in jail in Cuba, most of them without having been charged with any crime and awaiting either to be charged with some offence or released without explanation. Furthermore, the way in which a revolutionary tribunal tried to have the former General Manager of the Banco Nacional, [REDACTED] condemned to death on purely imaginary criminal charges for something he was accused of, having done in Havana while he was away from his country on official business (see para. 3 of my despatch No. D-214 of April 30, 1959) is all too clear an indication that justice does not exist in Cuba at the present time and that it is not safe for anyone to stay on here if he is accused of anything, even by a servant. The day after he sought refuge, the revolutionary government decided to postpone the reestablishment of habeas corpus for another three months, which means that revolutionary courts can continue to function [REDACTED]

4. Concerning the prison in which [REDACTED] was kept, I would like to correct the impression given that he was at the Cabafia Fortress when he was in fact held in the Principe Prison. He said that there were around 900 persons in that building built in 1779, which can accommodate normally at the most 400. The remaining 500 had to sleep (if their families could not provide a sleeping bag or a mattress) on the floor, and of this group about 150 had to sleep on an open verandah without a roof. At Principe Prison, [REDACTED] saw a number of people he knew who, like him, wondered why they were there.

A. J. [Signature]
Ambassador.

000358

DESPATCH

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

FROM: THE CANADIAN AMBASSADOR,
...BELGRADE, YUGOSLAVIA

Reference: Your Letter No. S-146 of April 9, 1959

Subject: Right of Asylum in Yugoslavia.

Security: CONFIDENTIAL

No: 346

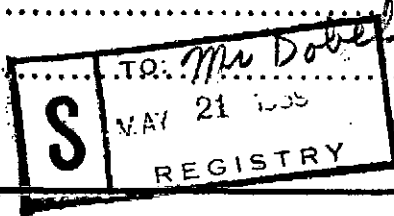
Date: May 12, 1959

Enclosures:

Air or Surface Mail: Courier

Post File No:

Ottawa File No.	
5475-AX-25-40	
65	65



References

Copies:
Lundgren
DL (P)
Conrad
Remp (S. 17)
C. & T. Irving
Prague
Warsaw
Moscow
Dobell (2)
J. L. P.
done
Lundgren
J. L. P.

We sent you under cover of our letter No. 258⁷⁴⁵²⁻⁴⁶ of April 8 the text of a new series of regulations governing the residence and moves of foreigners in Yugoslavia which were promulgated by the Secretary of State for Internal Affairs on January 15 of this year. Articles 9 and 10 of these regulations spell out the ground on which

- (a) the right of asylum may be granted; and
- (b) admission to Yugoslavia refused.

As you will note, the grant of asylum is to be made the subject of a special order to that effect by the Federal Secretariat of State for the Interior. So far we or our colleagues in friendly missions have no indication that any "foreigner persecuted because of his championing of democratic principles, national liberation, rights of people or freedom of scientific or cultural work" has invoked article 9 of the ordinance. The interpretation to be placed on this provision could obviously be far reaching. The most that we can say at this stage is that the qualifications for asylum fit in very well with all the policies associated with the Yugoslav road to socialism.

2. It is a known fact, of course, that Yugoslavia has, especially since the break with the Cominform in 1948, given asylum to political refugees from Iron Curtain countries. The outstanding example of this is afforded by the fact that Yugoslavia accepted over 20,000 Hungarian refugees of which about 600 were integrated into the economy of this country. At the present time, as we have reported previously, there are approximately 50 refugee Czechs, Hungarians, Bulgars and other Eastern European nationals in Camp Gerovo awaiting visas from western countries. Almost without exception these people were granted asylum in Yugoslavia while on tourist or business trips in 1958. On at least one occasion in the past, the Yugoslav authorities granted asylum to a family with most embarrassing results. I refer to the case of [redacted] the subject of departmental file K-54 (DL2) who sought and was granted political asylum in Yugoslavia only to become dissatisfied with living conditions here and return to Canada shortly after.

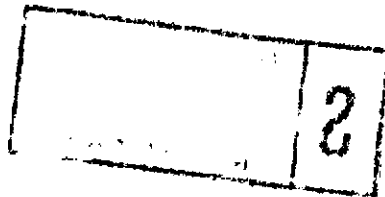
R.A.D. Ford,
Ambassador.

Internal Circulation

s.19(1)

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Distribution to Posts



NO ENCLOSURES

1959 MAY 20 PM 4:11

DEPARTMENT OF EXTERNAL AFFAIRS

MEMORANDUM

John Armstrong

TO: The Under-Secretary of State for External
Affairs

FROM: Defence Liaison (2) Division

REFERENCE:

SUBJECT: Czech Travel Official Seeks Political Asylum

SECRET

Security
May 6, 1959

Date

File No.

5475-AK-25-40

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Attached for your signature if you agree is a telegram to Prague informing our Legation there in response to their telegrams 116 of May 4 and 119 of May 5, copies attached, of the application of [REDACTED]

s.19(1)

2. There is, I am afraid, very little information available at the moment about this case. On receipt of Prague's telegrams we called the RCMP who confirmed that [REDACTED] had applied at the Immigration Office in Montreal for political asylum. The RCMP at the same time told us that they would be investigating the case and would keep us informed.

3. In a letter of May 4 from Citizenship and Immigration which has just been passed to us by Consular Division it appears that [REDACTED] entered Canada on April 14 at Montreal for the purpose of advertising Cedok Travel Office which is a Czechoslovak concern. He was in possession of a Canadian non-immigrant visa issued at Prague on April 10 last, which, as it was for a period of two weeks, has now expired. [REDACTED] according to Citizenship and Immigration, is married and his wife is presently residing with her parents in Prague.

4. In their letter the Department of Citizenship and Immigration have expressed the view that it might be advantageous to allow [REDACTED] to remain in Canada and to exploit his defection for propaganda purposes. They have asked for our views on the matter.

CIRCULATION

European
Legal
Consular

-2-

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5. Until we have the RCMP's report it will be difficult to say whether the case has any intelligence or security implications. The political and legal considerations which may well be complicated by any criminal aspects of the case, will of course be studied by European Division and Legal Division who have been informed about the case. As you know, Canada and Czechoslovakia are bound by an extradition treaty of 1926; and our Extradition Act explicitly states that we will not extradite a political refugee.

6. You will be interested to know that, according to the few details supplied to us by the RCMP, [redacted] is apparently staying in Montreal with [redacted] is president of the Quebec Seed Company and is not thought by the RCMP to be the same person as the former Czech diplomat, Frantisch Nemec, who is now employed by the CBC-IS. In asking for political asylum [redacted] stated, according to the RCMP, that he had no money for the return ticket to Czechoslovakia.

7. As far as we know, no publicity has so far been given to this case and, as recommended in the attached telegram, it seems very desirable that nothing be said for the time being. Immigration Branch will in any case probably wish to treat the matter this way but if you agree it might be wise to let them know informally the importance we attach to this aspect of the matter, and to the desirability of avoiding a question in the House. I assume that a reply to any question in the House would be the responsibility of the Minister of Citizenship and Immigration.

John Starnes

J. K. Starnes,
Defence Liaison (2) Division

s.19(1)

000362

OUTGOING MESSAGE

FM: EXTERNAL OTTAWA	DATE	FILE		SECURITY			
	7/5/59	5475-AX-25-30		SECRET			
		NUMBER	PRECEDENCE				
TO: PRAGUE	DS-56			COMCENTRE USE ONLY			
INFO:							

Ref.: URTEL116 MAY4 AND 119 MAY5

Subject: CEDOK OFFICIAL

AN OFFICIAL OF CEDOK, WHO ARRIVED IN MONTREAL APRIL4 IN POSSESSION OF A CANADIAN NON-IMMIGRANT VISA ISSUED IN PRAGUE ON APR10 FOR A SHORT BUSINESS VISIT ASKED THE MONTREAL IMMIGRATION OFFICE FOR POLITICAL ASYLUM IN CANADA. THE CIRCUMSTANCES OF THE CASE ARE NOW BEING INVESTIGATED AND WE SHALL LET YOU HAVE ADDITIONAL INFORMATION WHEN IT BECOMES AVAILABLE. IN THE MEANTIME WE HOPE TO AVOID PUBLICITY ON THE CASE AND IT SHOULD NOT THEREFORE BE DISCUSSED OUTSIDE YOUR LEGATION. IF YOU RECEIVE ANY ENQUIRIES FROM THE CZECH FOREIGN OFFICE YOU SHOULD SUGGEST THAT THEY BE DIRECTED TO US THROUGH THE CZECH LEGATION IN OTTAWA.

s.19(1)

LOCAL DISTRIBUTION

European Div., Legal Div., Consular Div.

ORIGINATOR	DIVISION	PHONE	APPROVED BY
SIG..... NAME A. F. Hart/rjt	D.L.(2)	6-6391	SIG..... NAME M. A. ROBERTSON

DEPARTMENT OF EXTERNAL AFFAIRS

MEMORANDUM

TO: THE UNDER-SECRETARY OF STATE FOR EXTERNAL
AFFAIRS

FROM: American/C. Hardy/XP

REFERENCE:

SUBJECT:

CONFIDENTIAL

Security

May 5, 1959.

Date

File No.

5475-AX-25-40

57

In telegram No. 78 of 1/12/4, a copy of which is attached, [redacted] tells how, last Sunday, he helped [redacted] take asylum at the Mexican Embassy.

2. In our telegram C-184 of April 23, [redacted] was told that Canada did not recognise the practice of diplomatic asylum and that [redacted] should be discouraged from seeking asylum at the Canadian Embassy. [redacted] was also told that we had doubts about the practice now current in Havana whereby Latin American Ambassadors use their official cars to fetch refugees at their homes and take them safely to the various embassies, on the grounds that Cubans are now prevented by the local police from entering foreign embassies.

3. We can only assume that, in the light of the interest shown by the Canadian Government in the former Cuban Ambassador here (as demonstrated by our instructions to enquire of the Foreign Ministry about [redacted]) [redacted] did not see in our recent instructions anything preventing him from helping [redacted] take refuge in any embassy but his own.

CIRCULATION
Consular Div.
Legal Div.
Protocol Div.

C. HARDY
AMERICAN DIVISION.

s.19(1)

FM HAVANA MAY4/59 CONF

TTT EXTERNAL 78 OPIMMEDIATE FM WASHDC

REF YOURTEL C184 APR23

[REDACTED]

THE ABOVE NAMED CAME TO THE CDN EMBASSY ACCOMPANIED BY HIS WIFE
AS OUR GUESTS SAT NIGHT MAY2 AND BY PREARRANGEMENT WITH MY MEXICAN
COLLEAGUE THE FOUR OF US WENT TO TEA AT FIVE THIRTY SUN MAY3.
2.WHEN WE LEFT AT SIX THIRTY WE WERE SHORT ONE PERSON NAMELY
[REDACTED] WHO STAYED IN MEXICAN EMBASSY AS A REFUGEE.
DETAILS WILL FOLLOW BY NEXT BAG

ALLARD

s.19(1)

DEPARTMENT OF EXTERNAL AFFAIRS
MEMORANDUM

s.19(1)

TO: THE UNDER-SECRETARY OF STATE FOR EXTERNAL

AFFAIRS (through Mr. Cadieux)

FROM: American/C. Hardy/TP

REFERENCE:

SUBJECT:

Security CONFIDENTIAL

Date May 5, 1959

File No.

5475-AX-25-402

54

cc. n 289-40

In telegram No. 78 of May 4, a copy of which is attached, [redacted] tells how, last Sunday, he helped [redacted] take asylum at the Mexican Embassy.

2. In our telegram C-184 of April 23, [redacted] was told that Canada did not recognize the practice of diplomatic asylum and that [redacted] should be discouraged from seeking asylum at the Canadian Embassy. [redacted] was also told that we had doubts about the practice now current in Havana whereby Latin American Ambassadors use their official cars to fetch refugees at their homes and take them safely to the various embassies, on the grounds that Cubans are now prevented by the local police from entering foreign embassies.

3. We can only assume that, in the light of the interest shown by the Canadian Government in the former Cuban Ambassador here (as demonstrated by our instructions to enquire of the Foreign Ministry about [redacted], [redacted] did not see in our recent instructions anything preventing him from helping Carrillo take refuge in any embassy but his own.

CIRCULATION

Consular Div.
Legal Div.
Protocol Div.

AMERICAN DIVISION.

The Cuban Govt may protest. For the time being, I suggest that we take no further action until we have Mallard's detailed report.

s.19(1)

FM HAVANA MAY4/59 CONFD
TO TT EXTERNAL 78 OPIMMEDIATE FM WASHDC
REF YOURTEL C184 APR23

THE ABOVE NAMED CAME TO THE CDN EMBASSY ACCOMPANIED BY HIS WIFE
AS OUR GUESTS SAT NIGHT MAY2 AND BY PREARRANGEMENT WITH MY MEXICAN
COLLEAGUE THE FOUR OF US WENT TO TEA AT FIVE THIRTY SUN MAY3.

2. WHEN WE LEFT AT SIX THIRTY WE WERE SHORT ONE PERSON NAMELY

WHO STAYED IN MEXICAN EMBASSY AS A REFUGEE.

DETAILS WILL FOLLOW BY NEXT BAG

ALLARD

Ma Coeur

"L"
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289-12

*2-Dep Reels between
Cuba and Canada*

FM HAVANA MAY4/59 CONF
TO TT EXTERNAL 78 OPIIMMEDIATE FM WASHDC
REF YOURTEL C184 APR23

THE ABOVE NAMED CAME TO THE CDN EMBASSY ACCOMPANIED BY HIS WIFE
AS OUR GUESTS SAT NIGHT MAY2 AND BY PREARRANGEMENT WITH MY MEXICAN
COLLEAGUE THE FOUR OF US WENT TO TEA AT FIVE THIRTY SUN MAY3.
2. WHEN WE LEFT AT SIX THIRTY WE WERE SHORT ONE PERSON NAMELY
WHO STAYED IN MEXICAN EMBASSY AS A REFUGEE.
DETAILS WILL FOLLOW BY NEXT BAG

ALLARD

s.19(1)

s.19(1)

ACTUAL COPY

C	To: <i>Mr. Day</i>
	MAY 5 1959
	To:

FM HAVANA MAY4/59 CONFID
TO TT EXTERNAL 78 OPIMMEDIATE FM WASHDC
REF YOURTEL C184 APR23

" L " 5475-AX-25-
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F.D. 7

THE ABOVE NAMED CAME TO THE CDN EMBASSY ACCOMPANIED BY HIS WIFE
AS OUR GUESTS SAT NIGHT MAY2 AND BY PREARRANGEMENT WITH MY MEXICAN
COLLEAGUE THE FOUR OF US WENT TO TEA AT FIVE THIRTY SUN MAY3.

2. WHEN WE LEFT AT SIX THIRTY WE WERE SHORT ONE PERSON NAMELY
[REDACTED] WHO STAYED IN MEXICAN EMBASSY AS A REFUGEE.

DETAILS WILL FOLLOW BY NEXT BAG

ALLARD

*copies referred
by Commissioner
Mr. Coadwell
Mr. Handy
American Dept*

NUMBERED LETTER

CONFIDENTIAL

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

FROM: THE PERMANENT MISSION OF CANADA TO THE
UNITED NATIONS NEW YORK

Reference: Our letter No. 320 of April 20, 1959.

Subject: RIGHT OF ASYLUM

Security:.....

No:..... 334

Date: April 23, 1959.

Enclosures: 3

Air or Surface Mail: Air

Post File No:.....

Ottawa File No.	
5475-AX-25-40	
99	✓

References

Original on 5475-w-19-40

We have now received a note
(attached) from the Secretary-General which re-
quests the Canadian government to send its
comments by December 31, 1959 on a draft
declaration on the right of asylum and an Iraqi
amendment thereto.

N. E. CURRIE

Permanent Mission

Internal
Circulation

Distribution
to Posts

UNITED NATIONS



NATIONS UNIES

RIGHT OF ASYLUM

France: revised draft declaration

The General Assembly

Noting that article 14 of the Universal Declaration of Human Rights provides 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";

Considering it highly desirable that, where appropriate, this humanitarian provision should be applied in the spirit in which it was adopted;

Recommends that in their practices the United Nations and States should base themselves on the following principles:

Article 1. Every State has the right, in the exercise of its sovereignty, to grant asylum to persons entitled to invoke article 14 of the Universal Declaration of Human Rights. No international responsibility shall be incurred thereby. Asylum thus granted shall be respected by all other States.

Article 2. The international community, as represented by the United Nations, has the responsibility to concern itself with the safety and well-being of those who have left their own or another country because of persecution or well-founded fear of persecution.

Article 3. No one entitled under article 14 of the Universal Declaration of Human Rights to seek and to enjoy asylum shall be subject to measures, such as expulsion, return or rejection at the frontier, which would result in compelling him to return to or remain in a territory where his life, physical integrity or liberty would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion. This principle shall not apply in the

UNITED NATIONS



NATIONS UNIES

2.

case of persons whom there are reasonable grounds for regarding as a danger to the security of the receiving country or who, having been convicted by a final judgement of a particularly serious crime or offence, constitute a danger to the community of that country.

Article 4. Where a country finds difficulty in continuing to grant asylum, whether because the number of persons involved exceeds its capacity to absorb them or for some other reason, it is the duty of other countries to take all appropriate steps, either in the form of aid and assistance or admission to their territory, to the maximum extent that they find possible.

The international community, as represented by the United Nations, has in such circumstances a special responsibility for securing international co-operation and for preventing a situation in which a country may find observance of article 3 beyond its powers.

UNITED NATIONS



NATIONS UNIES

RIGHT OF ASYLUM

Iraq: Amendment to revised draft declaration

After Article 4, add the following as Article 5:

"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 (2) of the Universal Declaration of Human Rights."

OUTGOING MESSAGE

65-5475-AX-25-101 "12"

2
FM: EXTERNAL OTTAWA

TO: HAVANA

INFO:

DATE	FILE	SECURITY
APRIL 23/59	9323-P-40	CONFIDEN.
	NUMBER 27	PRECEDENCE 17
	C-184	OPIMMEDIATE
		COMCENTRE USE ONLY

Ref.: YURTEL NO. 70 OF APRIL 21

Subject: [REDACTED]

WE APPRECIATE YOUR DIFFICULTIES BUT SUGGEST THAT YOU SHOULD BE GUIDED BY CONSULAR INSTRUCTIONS CHAPTER FIVE PART TWO. WE WOULD NOT FAVOUR RECOURSE TO THE DIPLOMATIC TRANSPORT PROCEDURE ENVISAGED IN PARA TWO OF YOUR TELEGRAM. ROBERTSON

s.19(1)

LOCAL DISTRIBUTION

NO STANDARD

American Division
Attention: Mr. Hardy

USSEA

ORIGINATOR	DIVISION	PHONE	APPROVED BY
SIG. A.A. DAY/M. Cadieux/PS	CONSULAR	66470	N. A. ROBERTSON
NAME.			NAME.

ACTION COPY

5475-AX-25-40-2-
1022-40
54 54
(27) (17)
95

X TO: Mr. C. (H. J. 12)
Y APR 24 1959
REGISTRY

FM HAVANA APR23/59 CONFID

TO TT EXTERNAL 74 OPIMMEDIATE FM WASHDC

REF MY TEL 70 APR21

→ To Director
Carrillo
Macton
CH

[REDACTED] FORMER SERVANT [REDACTED] HAS FILED
COMPLAINT AGAINST [REDACTED] IN LOCAL POLICE STATION CHARGING
HE DID NOT RPT NOT PAY HER RETURN TO CUBA AND HELD HER
PASSPORT AND PERSONAL BELONGINGS WORTH DOLLARS 600 WHEN SHE
LEFT OTT. THIS CHARGE MAY BE FORERUNNER FOR FURTHER TROUBLE

[REDACTED] AND WE WOULD THEREFORE APPRECIATE AN EARLY REPLY
TO MY REFTL

ALLARD

s.19(1)

s.19(1)

DEPARTMENT OF EXTERNAL AFFAIRS

MEMORANDUM

file

TO: THE UNDER-SECRETARY

Security CONFIDENTIAL

Date April 22, 1959

FROM: CONSULAR DIVISION

File No.

5475-AK-25-40

REFERENCE:

SUBJECT: [REDACTED] Former Cuban Ambassador to Canada--
Political Asylum

I attach for your consideration a brief
note to the Prime Minister concerning the possibility
that [REDACTED] may request asylum. I am attaching also
the telegram which we are proposing to send if the,
Prime Minister agrees.

Archibald Day
Archibald Day
Consular Division

Consular, Archibald Baym

file

Ottawa, April 22, 1959

s.19(1)

5475-AX-25-40	
55	

MEMORANDUM FOR THE PRIME MINISTER

 Former Cuban
Ambassador to Canada--Political
Asylum.

_____ You will note in paragraph 3 of the attached
telegram No.70 from Havana dated April 21 that
_____ may approach Canadian Embassy for political
asylum.

_____ We are proposing, subject to your instruction,
to send the attached telegram No. C-184 dated
April 22.

_____ The relevant Consular Instructions referred
to in this telegram are also attached.

N. A. ROBERTSON

N.A.R.

14. Prime Minister would like to follow exactly as possible wording of Consular Instructions. I do not believe he would want the Ambassador to take active steps to urge [redacted] to seek

Ottawa, April 22, 1959

asylum elsewhere. At the same time he would not favour the diplomatic transport procedure envisaged in the Miami telegram

MEMORANDUM FOR THE PRIME MINISTER

H.B.R.

April 23

5475-AX-25	
54	

[redacted], Former Cuban Ambassador to Canada--Political Asylum.

You will note in paragraph 3 of the attached telegram No.70 from Havana dated April 21 that [redacted] may approach Canadian Embassy for political asylum.

We are proposing, subject to your instruction, to send the attached telegram No. C-184 dated April 22.

The relevant Consular Instructions referred to in this telegram are also attached.

File

har

N.A.R.

s.19(1)

000378

COPY

FM HAVANA APR21/59 CONF

TO EXTERNAL 70 EMERGENCY

REF MY DESP D177 APT15 AND PREVIOUS CORRESPONDENCE

[REDACTED]

THERE HAS BEEN A RECENT OUTBURST OF MASS ARRESTS ON GENERAL SUSPICION OF CONSPIRACY: 150 IN PROVINCE OF MATANZAS OVER WEEKEND AND WHILE NO FIGURES ARE GIVEN FOR HAVANA PROVINCE THIS DOES NOT RPT NOT MEAN THAT THERE WERE NO RPT NO ARRESTS MADE.

2. PROSPECTIVE POLITICAL REFUGEES HAVE NOW DEVELOPED A PROCEDURE TO REACH SANCTUARY OF LATIN AMERICAN MISSIONS (GRP CORRUPT) AND THE NUMBER OF REFUGEES IS INCREASING FAST. THEY CAN BE CALLED FOR BY DIPLOMATIC CAR OF EMBASSY IN WHICH THEY SEEK ASYLUM.

3. THROUGH GRAPEVINE I LEARNED THAT [REDACTED] AND HIS FAMILY ARE TOYING WITH IDEA OF SEEKING ASYLUM. SHOULD HE APPROACH CDN EMBASSY FOR ASYLUM WHAT SHOULD WE DO. PLEASE INSTRUCT.

ALLARD

s.19(1)

Consular/Archibald Day/mf

THE UNDER-SECRETARY

CONFIDENTIAL

April 22, 195

CONSULAR DIVISION

5475-HX-28-40
9322-P-40
85-1-

██████████ Former Cuban Ambassador to Canada--
Political Asylum

I attach for your consideration a brief
note to the Prime Minister concerning the possibility
that ██████████ may request asylum. I am attaching also
the telegram which we are proposing to send if the
Prime Minister agrees.

ORIGINAL SIGNED BY
ARCHIBALD DAY

Archibald Day
Consular Division

s.19(1)

*Consular Dis.
file*

s.19(1)

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FM COMCENTRE WASHDC APR22/59 UNCLAS

TO COMCENTRE OTT SVC84

REF YOUR NOTE APR22 AND C184 TO HAVANA

THIS IS TO CONFIRM THAT C184 HAS BEEN CANCELLED.

221745Z

GR25

ACTION COPY

X	Mr Har 21
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REGISTRY	

5475-AX-25-40

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*Consular Division
→ for action*

FM HAVANA APR21/59 CONFID

TO EXTERNAL 70 EMERGENCY

REF MY DESP D177 APR15 AND PREVIOUS CORRESPONDENCE

THERE HAS BEEN A RECENT OUTBURST OF MASS ARRESTS ON GENERAL SUSPICION OF CONSPIRACY:150 IN PROVINCE OF MATANZAS OVER WEEKEND AND WHILE NO FIGURES ARE GIVEN FOR HAVANA PROVINCE THIS DOES NOT RPT NOT MEAN THAT THERE WERE NO RPT NO ARRESTS MADE.

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3.THROUGH GRAPEVINE I LEARNED THAT [REDACTED] AND HIS FAMILY ARE TOYING WITH IDEA OF SEEKING ASYLUM. SHOULD HE APPROACH CDN EMBASSY FOR ASYLUM WHAT SHOULD WE DO. PLEASE INSTRUCT.

ALLARD

Refer to:
CCOS (6)
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Handwritten: This Day (American) (copy sent to Legat) file
Handwritten: We spoke Thanks Com CH
FM HAVANA APR21/59 CONF

TO EXTERNAL 70 EMERGENCY

REF MY DESP D177 APR15 AND PREVIOUS CORRESPONDENCE

Handwritten: 5475-EX-25-40
Handwritten: 9328-P-40
Handwritten: 85(27)
Handwritten: 17

THERE HAS BEEN A RECENT OUTBURST OF MASS ARRESTS ON GENERAL
SUSPICION OF CONSPIRACY: 150 IN PROVINCE OF MATANZAS OVER WEEKEND
AND WHILE NO FIGURES ARE GIVEN FOR HAVANA PROVINCE THIS DOES NOT
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DIPLOMATIC CAR OF EMBASSY IN WHICH THEY SEEK ASYLUM.

3. THROUGH GRAPEVINE I LEARNED THAT [REDACTED] AND HIS FAMILY ARE
TOYING WITH IDEA OF SEEKING ASYLUM. SHOULD HE APPROACH CDN EMBASSY
FOR ASYLUM WHAT SHOULD WE DO. PLEASE INSTRUCT.

ALLARD

s.19(1)

NUMBERED LETTER

TO: The Canadian Embassy,
Belgrade.

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

Reference:.....
Subject: Right of Asylum in Yugoslavia.

Security: **DECLASSIFIED**
No: B-146
Date: April 9, 1959.
Enclosures: Nil.
Air or Surface Mail:.....
Post File No:.....

Ottawa File No.	
<u>5475-AX-25-40</u>	
<u>65</u>	<u>65</u>

References

A recent AFP news release dated March 4 reports that a regulation governing the right of asylum in Yugoslavia has recently been made public. The report reads as follows:

"Le Secrétariat d'Etat a l'Interieur vient de rendre publique une réglementation, aux termes de laquelle le droit d'asile en Yougoslavie pourra être accordé aux étrangers s'ils sont persécutés pour avoir lutté pour les principes démocratiques pour la libération nationale, les droits du peuple ou pour la liberté du travail scientifique et culturel.

L'Agence Tanjug qui diffuse cette information ajoute que la même décision prévoit que les étrangers, une fois admis régulièrement avec passeports et visas, pourront circuler librement sur le territoire Yougoslave.

Certaines catégories d'étrangers ne seront pas admis à bénéficier du séjour temporaire ou permanent en Yougoslavie comme par exemple ceux qui ont été condamnés comme criminels de guerre par les tribunaux Yougoslaves, ou ceux qui travaillent contre les intérêts et la sécurité du pays."

If you have not already done so, we should be interested to have a report on this new Regulation.

HENRY F. DAVIS

Under-Secretary of State
for External Affairs

Internal
Circulation

DL(2)
Consular
Mr. Keith
File
Daily
Working

Distribution
to Posts

Prague
Warsaw
Geneva
Moscow

MEMORANDUM

TO: European Division.....

Security **CONFIDENTIAL**

..... Attention: Miss L. Côté

Date March 26, 1959

FROM: Consular Division.....

File No. 5475-AX-P25-10

REFERENCE: Your Memorandum of March 23, 1959..

9323-P-10

85	—	—
----	---	---

SUBJECT: Political Asylum

I am sending to you Copy No.193 of "Instructions for the Guidance of Officers Performing Consular Duties" and this copy has now been charged to you and is for your retention and edification.

2. The point raised in your memorandum of March 23, which I am returning together with the copy of Lisbon's letter No.82 of March 6, is covered by Sections 5.44 to 5.47, and you might find it useful also to consult the entire Section beginning at 5.01.

3. Indeed, this entire volume is a mine of fascinating information gracefully and wittily presented.

4. Our Embassy in Portugal has a Copy (No.57) of this treasured document and I am assured that the various amendments, including this Section on political asylum (Amendment No.36 of August 11/58), was sent to Lisbon and, in fact, to all our Missions abroad with the care for which Consular Division is justly renowned.

*file
K 6/4/59*

M. L. L.
CONSULAR DIVISION

DEPARTMENT OF EXTERNAL AFFAIRS

MEMORANDUM

*Received in Consular
Registry - 26-3-59*

TO: CONSULAR DIVISION

Security ..CONFIDENTIAL.....

Date March 23, 1959...

FROM: EUROPEAN DIVISION

File No. 5475 BX-25-10

9323 P-40

REFERENCE:

85 - -

SUBJECT: Nationals asking for Refuge at a Canadian Embassy

Attached is a copy of letter No. 82 dated March 6, 1959 from the Canadian Embassy, Lisbon, concerning two Portuguese, in difficulties with the regime, who took refuge at the Embassy of Brazil and the Embassy of Argentina in Lisbon. You will note in Paragraph 4 that our Ambassador wonders what should be his line of action should a Portuguese ask for shelter at the Embassy. We understand that such a case is covered by the Consular Instructions and would be grateful for your comments for inclusion in a general letter to the Mission to be prepared in this Division.

Henry Davis
European Division.

CIRCULATION

NUMBERED LETTER

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

The Embassy

FROM:
Lisbon, Portugal.

Reference:
Notre lettre N°58 du 23 février

Subject:
Les Aventures de l'Ingénieur Général
.....
.....

Security:..... CONFIDENTIAL

No:..... 82

Date:..... March 6, 1959

Enclosures:.....

Air or Surface Mail:..... Courier

Post File No:..... J-1-4

Ottawa File No.

References

s.19(1)

Rien de bien neuf dans cette double affaire qui occupe le Gouvernement mais fait pour l'instant peu de bruit dans le public. On nous dit que la presse brésilienne continue de s'y intéresser mais nous n'en voyons rien ici; ou si peu. Ainsi on a saisi depuis quelques temps presque tous les journaux et périodiques qui arrivaient du Brésil. Le Ministère maintient toujours sa position; à savoir qu'il n'y a pas lieu pour [redacted] de chercher asile puisque rien ne le menace. Il est certain, je crois, que le Gouvernement accorderait sans délai congé et passeport, s'il le demandait. On serait ainsi débarrassé de son encombrante personne toujours réfugiée à l'Ambassade du Brésil. On peut croire justifiable l'attitude du Gouvernement qui refuse le sauf-conduit mais offre le passeport. Et l'attitude du Brésil qui apparemment refuse de prendre la parole formelle et écrite (j'ai eu le lettre sous les yeux) du Portugal peut paraître offensante. Quoiqu'il en soit, l'affaire pourrait se régler rapidement à la suite du passage à Lisbonne de l'Ambassadeur brésilien à Londres, Sr. Assis Chateaubriand.

Internal
Circulation

2. Qu'arriverait-il si le Général décidait de quitter son asile qu'une demi-douzaine d'Agents surveillent jour et nuit? J'ai posé la question au [redacted] qui était Ministre des Affaires Etrangères jusqu'à il y a quelques mois. Il est actuellement professeur de Droit et toujours fidèle partisan de [redacted]. "Si [redacted] quitte son refuge, m'a-t-il répondu, il s'en ira où il voudra; mais encadré d'agents de police. Cela afin d'empêcher que ses propres amis ne le blessent eux-mêmes (sic) et n'accusent ensuite le Gouvernement d'avoir menti en le prétendant non menacé." Evidemment la liberté dans ces conditions serait un peu gênée! Entouré d'agents de la police d'Etat, la P.I.D.E., on ne doit pas se sentir bien à l'aise.

Distribution
to Posts

3. Quant au [redacted] il est maintenant réfugié à la Résidence de l'Ambassadeur d'Argentine, de la Chancellerie où il était. Le Ministère a finalement autorisé son transport sur les instances de l'Ambassadeur. Si on refuse un sauf-conduit à [redacted] parce qu'il n'est pas menacé, pas même dans sa liberté, on le refuse à [redacted] parce que "il est un condamné de droit commun

Madrid
Rio
B.Aires

- 2 -

et non un condamné politique". Il fut accusé, jugé et convaincu de libelle diffamatoire et cela sous l'empire d'une loi générale promulguée en 1886 par Pedro V et qui vise la diffamation des administrateurs de la chose publique. Evidemment, tout comme on peut jouer sur les mots, on peut jouer sur les lois. La position du Gouvernement dans le cas () paraît assurément moins solide que dans le cas ()

4. C'est ici l'occasion peut-être de placer la question: Au cas, bien improbable, où un homme se réfugierait à notre Résidence ou à la Chancellerie (en dehors évidemment d'une émeute et d'une menace de mort aux mains de la foule) que devrions-nous faire immédiatement, quitte plus tard à avertir notre Ministère à Ottawa et le Ministère des Affaires Etrangères ici? Mais en attendant réponse? Question académique pour le moment. Mais sait-on jamais?

SIGNED DR. P. PANNETON

Ambassadeur

s.19(1)

DEPARTMENT OF EXTERNAL AFFAIRS, CANADA

NUMBERED LETTER

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

FROM: The Canadian Embassy
Rio de Janeiro, Brazil

Reference:

Subject: Brazil and Cuba: Right of Asylum

Security: CONFIDENTIAL

No: 97

Date: February 19, 1959

Enclosures:

Air or Surface Mail: Air

Post File No: 3253

X	TO: Mr. C. [Signature]
Y	FEB 25 1959
REGISTRY	

Ottawa File No.	
5475-AX-25-40	
54	30

References

CCOS(6)

T+C

NDC (Mud)

Regel

Historical

Q & A

Pol Co-Ord

U.S. Section

Book

+ file

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Don't

mtl 5/59

In a conversation with the Head of the Political Department of Itamaraty, we inquired if the Brazilian Government was considering taking any action in connection with the decision of the new Cuban Government not to grant safe-conducts to refugees in foreign diplomatic missions in Havana.

2. We were told privately that while no official action was contemplated, the Brazilian Government had asked its Ambassador in Havana to use his special personal connection with Fidel Castro to urge him gently to alter this decision. Apparently the Brazilian Ambassador has known Castro very well and at one time even granted asylum to his sister in the days of Batista. Our informant appeared confident that Castro could be persuaded to reconsider.

[Signature]
The Embassy

Internal
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to Posts

SECRET

... ..

Journal of Management Studies, 19(1), 67-80.

...and the

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...and the fact that the *Journal* is a journal of the American Psychological Association, the largest and most influential organization in the field of psychology, adds to the journal's prestige and makes it a must-read for all psychologists.

1. The first of these is the fact that the United States has a large and growing population of people who are not citizens of the United States. This is a result of the large number of immigrants who have come to the United States in recent years, and the fact that many of these immigrants are not naturalized citizens.

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NO ENCLOSURES

559 FEB 24 11 3:15

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J. M. Côté

The Embassy

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to Posts

5475-AX-25-40"Z	
54	✓

FM TRUJILLO JAN27/59 RESTD

TO TT EXTERNAL 10 OPIMMEDIATE FM WASHDC

INFO HAVANA WASHDC

YESTERDAY EDITORIAL IN CARIBE SIGNED [REDACTED] CLOSEST
FRIEND OF [REDACTED] ATTACKED [REDACTED]. IT IS ENTITLED [REDACTED]
SHOULD GO.

2. IT IS REMOURED [REDACTED] MIGHT SEEK ASYLUM IN FRANCE, HOWEVER
FRENCH DID NOT RPT NOT GRANT VISA. UK USA SPAIN HAVE ALREADY
REFUSED VISAS TO HIM AND MEMBERS OF HIS PARTY. ° °

s.19(1)

5475-AX-25-40 LF. de	
54	54

File
25-40-25-40 LF. de
368
, December 29, 1958.

Dear Mr. Ambassador,

In the Minister's absence, I wish to thank you for sending him under cover of your letter No. A5-878 of December 15, the text of a recent statement made by Dr. Rene de Sola on the question of political asylum.

Yours faithfully,

Original Signed by
DOUGLAS LEPAN

for Under-Secretary of State
for External Affairs.

His Excellency
Dr. Carlos L. Bebres Cordero C.,
Ambassador of Venezuela,
The Roxborough, Apt. 21,
O t t a w a .

30.12.14(us)

g.67
5475-AX-25-40-2
24 40
m. C. [Signature]

EMBAJADA DE VENEZUELA
CANADA

OTTAWA, 15 de diciembre de 1958.

No. A5-878

Señor Secretario,

Siguiendo instrucciones de mi Gobierno

tengo el honor de dirigirme a Vuestra Excelencia a
fin de remitirle, anexo a la presente, un ejemplar
contentivo de las declaraciones formuladas por el
Doctor René De Sola, Ministro de Relaciones Exterio-
res de mi país, relativas al caso de los asilados
en la Embajada de México, complicados en la rebelión
del 7 de septiembre de 1958.

Soy de usted atento servidor,

C. Febres Cordero

Doctor Carlos L. Febres Cordero C.
Embajador



LJG:as

Al Excelentísimo Señor
Secretario de Estado para Relaciones Exteriores,
O T T A W A.-

Rec'd in
Int. Aff. Section
Dec 19 1958
CH

EL CASO DE LOS ASILADOS EN LA EMBAJADA DE MEXICO.-

Declaraciones dadas por el doctor
René De Sola, Ministro de Relaciones
Exteriores, a la prensa mexicana en
rueda celebrada el día 3 de diciembre
de 1958.-

No existe ni nunca podrá existir conflicto alguno entre México y Venezuela. Las relaciones de nuestros pueblos y Gobiernos son absolutamente amistosas y cordiales, y la mayor aspiración de los venezolanos es estrechar cada vez más sus vínculos con la Nación mexicana, a la que considera una de las más esforzadas, fervientes y consecuentes defensoras de la democracia en nuestro Hemisferio. Cuando Venezuela ha fijado su posición respecto al caso de los asilados en la Embajada de México antes que querer establecer una polémica, ha estado guiada por el sano propósito de invitar a México y a otras Naciones amigas a reflexionar sobre el peligro que significaría seguir aplicando automáticamente una institución desviándola de su razón de ser y de su verdadera finalidad democrática y humanitaria. De modo que en esta invitación a la reflexión, en las discusiones cordiales y de altura que puedan entablarse, no va envuelta ninguna cuestión de prestigio para dos países amigos e igualmente empeñados en la defensa de las instituciones democráticas. El justo título que se ha ganado México de "campeón del derecho de asilo"; su voluntad inquebrantable de hacerlo respetar, no experimentaría mengua alguna. Al contrario, con México a la cabeza, la Venezuela democrática adhiere fervorosamente a la institución y ratifica su voluntad de acatarla y defenderla, pero para ello es necesario evitar las desviaciones que atentan contra el prestigio de esa hermosa conquista del derecho internacional americano.

Venezuela ha sometido a la consideración de México el criterio de que el caso de los refugiados en su Embajada en Caracas está fuera del campo de aplicación de la Convención sobre Asilo Diplomático suscrita el 28 de marzo de 1954, y para ello se basa en razones de principios y de las normas fundamentales que rigen el sistema jurídico interamericano. En efecto, la Carta de la Organización de los Estados Americanos, suscrita con anterioridad a la mencionada Convención, establece

-2-

que "la solidaridad de los Estados Americanos y los altos fines que con ella se persiguen, requiere la organización política de los mismos sobre la base del ejercicio efectivo de la democracia representativa". Nos encontramos, pues, en presencia de un conflicto entre dos normas del sistema jurídico interamericano: una, fundamental, la de la Carta, que proclama el postulado del ejercicio efectivo de la democracia representativa; y otra, la de la Convención sobre Asilo Diplomático. Venezuela se pregunta si es jurídicamente posible la aplicación de esta última cuando podría servir de amparo a delitos perpetrados contra el orden democrático e institucional de cualquiera de las Repúblicas de este Continente. Ante un conflicto de normas es necesario establecer cuál debe aplicarse preferentemente, y en este sentido no sólo la categoría de las mismas, sino la investigación de su verdadera finalidad y razón de ser, es la mejor orientación para llegar a la solución correcta.

A mi modo de ver, la Carta de la Organización de los Estados Americanos es como la Constitución política de nuestro Hemisferio, y por tanto, es norma de aplicación preferente. Si a esto agregamos que la verdadera finalidad de la institución del asilo fue amparar a quienes en nuestra América han luchado por un ideal democrático, con riesgo de su vida, libertad e integridad personal, tenemos que ver con preocupación que la feliz circunstancia de que nuestro Continente haya ido evolucionando hacia la consolidación de regímenes representativos e institucionistas, pueda dar lugar a que el asilo sirva de amparo a quienes atentan contra la felicidad y progreso de nuestros pueblos, y sobre todo, cuando el sistema de gobierno imperante les garantiza absolutamente su sometimiento a tribunales ordinarios, el ser juzgados por leyes preexistentes y el respeto a la vida y a la integridad personal.

Venezuela puede exhibir los antecedentes de arreglos celebrados con otras Naciones amigas y el haber dado cumplimiento estricto a su compromiso de no aplicar procedimientos extraordinarios, ni tribunales especiales ni leyes de excepción a los individuos a quienes se suspendió el asilo provisional otorgado por Embajadas de países amigos, y de garantizarles la vida y el absoluto respeto de sus personas.

-3-

La realidad continental está demostrando que se impone la aplicación armónica de todas las normas jurídicas que rigen el sistema interamericano, y que es necesaria e inobjetable una interpretación evolutiva de la institución del asilo, conforme a su verdadera razón de ser y su finalidad humanitaria. Casos como el de Venezuela y el planteado recientemente por otras Naciones hermanas que han dado pruebas indiscutibles de su apego al derecho y de su defensa del asilo, están evidenciando que una nueva realidad se está planteando en el Continente, y que debemos atender a los requerimientos de los nuevos tiempos.

Venezuela tiene la absoluta seguridad de que una Nación como México, que ha dado en las Asambleas mundiales pruebas de su espíritu de entendimiento, de comprensión y de conciliación para el arreglo de todos los problemas internacionales, estudiará con interés y simpatía la tesis venezolana, que es, como repito, una invitación a reflexionar a todos los Gobiernos democráticos del Continente.

Tengo esperanza de que, no obstante los múltiples compromisos que crea una transmisión de mando y el recibo de una Secretaría de Estado, tendré la oportunidad de conversar con el nuevo e ilustre Canciller Manuel Tello sobre estas cuestiones. Tengo razones para creer en la eficacia de las conversaciones informales y francas para el estudio de los problemas internacionales. La reciente reunión informal de Cancilleres celebrada en Washington, donde tuve el altísimo honor de conocer personalmente al eminente internacionalista Licenciado Luis Padilla Nervo, es un ejemplo elocuente de lo que puede lograrse por esta vía. Allí los Cancilleres del Continente conversamos en forma franca, directa y amistosa, acerca de todos los problemas que afectan política y económicamente el desarrollo de nuestros pueblos y el fortalecimiento de sus instituciones.-

RENE DE SOLA.

/gf.

DESPATCH

CONFIDENTIAL

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

FROM: The Canadian Ambassador,
BOGOTA, Colombia.

Reference: My Despatch No. 105 of
March 11, 1958

Subject: THE RIGHT OF DIPLOMATIC
ASYLUM IN LATIN AMERICA

Security: 216
No: MAY 27, 1958
Date: nil
Enclosures: Courier
Air or Surface Mail:
Post File No:

Ottawa File No.	
L 5475-AX-25-40	
90	✓

References

s.19(1)

In my Despatch under reference I discussed the implications of asylum granted to the former Finance Minister of Colombia, [redacted] who took refuge in the Embassy of Boliva after having been accused of criminal acts in connection with the administration of the Banco Popular of which he had also been president. The Colombian authorities had expressed the view that asylum should not be granted to those accused of criminal activities. Notwithstanding the point of view expressed by the Colombian Government, a week or so later, safe conducts were granted to [redacted] and also to a former police officer who had taken refuge in the Nicaraguan Embassy.

2. In my Despatch No. 192 of May 13, 1958, I mentioned that the leader of the abortive revolt of May 2, [redacted] had taken refuge in the Embassy of El Salvador and that several junior officers and one or two civilians had been granted asylum in the Embassies of Peru, Paraguay and Ecuador. The presence of these men in the above Embassies has been the cause of considerable discussion as to whether or not members of the armed forces on active duty can claim the same right of asylum, when involved in a revolutionary action, as that normally granted civilians. In each of these cases the person involved was granted provisional asylum by the Embassies, which later was confirmed by their respective governments. The Colombian authorities now have forwarded a Note to the Embassy of El Salvador where [redacted] took asylum, advancing the point of view that he is not entitled to asylum. Similar Notes are being sent out to the other Embassies concerned.

.....2

Internal Circulation

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to Posts Latin
American
Missions
and
Washington

- 2 -

3. The Note to the Embassy of El Salvador refers back to 1940, when the then Minister of External Relations, [REDACTED] held that military officers could only be granted asylum in cases where their lives were in immediate danger. The Note goes on to state that, in the view of the Colombian Government, in no case should diplomatic asylum be granted to service personnel who have failed to keep their oath to defend the Constitution and preserve public order, particularly if the person in question had engaged in partisan activities which as a member of the Services on active duty, he is not permitted to do. They also point out that, if normal asylum were granted to such persons, it would encourage attempts against legitimate governments by members of the armed forces in other countries as well as in Colombia. The Note added that members of the armed forces should not be granted the opportunity of avoiding the penalties provided against armed insurrection. In conclusion the Note pointed out that Colombia had no desire to damage the friendly relations that existed with El Salvador nor their normal development, but that the points of view put forward were not of exclusive interest to Colombia but related to the whole question of diplomatic asylum and the handling of that question by other Latin American countries.

4. On the face of it, therefore, it would look as though there were possibilities of these cases developing along the lines of the Haya de la Torre case. The four Embassies in question have confirmed to the Colombian government their governments' willingness to grant asylum and the Colombian government has stated its contrary views. However this impasse is perhaps not as insoluble as would appear on the surface. In the first place it seemed apparent even on May 2, that [REDACTED] and the subordinate officers immediately involved escaped much too easily. In fact one of the junior officers is reported as having stated he was asked which Embassy he would prefer to go to. At the time this probably was a reasonable manoeuvre as the lives of the four members of the Military Junta were saved in exchange for the safety of the officers involved in the revolt. It would appear, however, once the safety of the Military Junta had been ensured, the government decided not to honour the promise made under the pressure of the events of May 2 and to demand the return of these officers to stand court martial.

....3

- 3 -

5. However, I do not think this is the case. I am inclined to think that in the course of the next two or three weeks, when the subject has lost its news value, these officers will be allowed to leave the country. As I have mentioned in other Despatches, it appears that the May 2 attempt was much more widespread than originally thought. The trial of the officers most directly involved could result in revelations which would not only hurt the good name which the Armed Forces now enjoy but the prestige of the Junta. It has gone to great pains to build up public confidence in itself and the Armed Forces during its year in power and any serious reflection on them would also reflect on it. It seems much more likely that these officers after a reasonable time will be allowed quietly to leave and this will be followed by a discreet purge of the Armed Forces. There already have been a number of significant changes in various commands. When the members of the Junta return to their old posts, undoubtedly further changes will be made. It is in the interest of everybody concerned including Dr. Lleras that the new government take over from the Junta without any further trouble. The Colombian Note to the Ambassador of El Salvador supports this point of view. At no place does it state categorically that safe conduct will not be granted to the persons in question. It simply states a point of view which is open to rebuttal and which one suspects the Colombian government does not expect to be accepted by the governments which have granted asylum.

R.A.D. Ford

DEPARTMENT OF EXTERNAL AFFAIRS, CANADA
OTTAWA - 2

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5475-AX-25-40

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46

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- 2 -

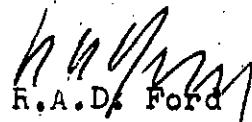
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R.A.D. Ford

s.19(1)

AMENDED COPY

DS53/612
FM PORTAU PRINCE MAY8/58 CONFD
TO EXTERNAL 15 OPIMMEDIATE

REF MY TEL 14 MAY5

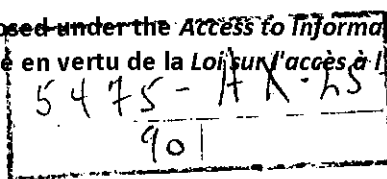
1. PRESIDENT DUVALIER HAS REQUESTED MAXICAN EMBASSY TO HAND OVER
[REDACTED] TO HAITIAN GOVT AS A COMMON LAW CRIMINAL. THIS THE AMBASSADOR
REFUSED TO DO PENDING CONSULTATION WITH HIS GOVT.
2. USA [REDACTED] WAS SHOT AT TWICE AT SEVEN THIRTY
WED NIGHT. AMBASSADOR HAS REGISTERED PROTEST WITH DEPT OF FOREIGN
AFFAIRS, THE NUNCIO, HEAD OF DIPLOMATIC CORPS AND HAS ADVISED HIS GOVT.
3. [REDACTED] MAYOR OF PORT AU PRINCE WAS DISMISSED
AFTER HAVING DELIVERED A RADIO ADDRESS INCITING POPULATION TO MURDER
MEMBERS OF OPPOSITION.
4. IN A PUBLIC STATEMENT GOVT HAS DECLINED ALL RESPONSIBILITY FOR
ANY CRIME OR VIOLENCE COMMITTED.
5. IN ANTICIPATION OF FURTHER TROUBLE USA EMBASSY AGAIN ASKED FOR OUR
COMMENTS ON EVACUATION PLANS FOR THEIR NATIONALS AND OURS IF NECESSARY.
SHALL ADVISE.

"L" 5475-AX-25-40
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Original - 6407-40

Copy - 2274-40

s.19(1)



Original - 6407-40

Copy - 2274-40

DS53/612
FM PORTAU PRINCE MAY8/58 CONFD
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SHALL ADVISE.

TO: The Library, Legal Division,
Department of External Affairs
FROM: The Canadian Embassy
Bogotá

Security.. UNCLASSIFIED

Date..... March 11, 1958

Air or Surface... Surface

No. of enclosures.. *one*

The documents described below are for your information.

Despatching Authority..... RADFord, Ambassador

5475-AV-25		11
15		40

Copies	Description	Also referred to:
1	<p>El Asilo en el Derecho Internacional Americano</p> <p>See our Despatch 105 of March 11/58</p> <p><i>(subject, on Asylum)</i></p> <p><i>Emigration held by Mr. Parry, legal pass to legal library</i></p> <p>1628 70.1 18 64 3:23</p>	<p>L</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p> <p>29</p> <p>30</p> <p>31</p> <p>32</p> <p>33</p> <p>34</p> <p>35</p> <p>36</p> <p>37</p> <p>38</p> <p>39</p> <p>40</p> <p>41</p> <p>42</p> <p>43</p> <p>44</p> <p>45</p> <p>46</p> <p>47</p> <p>48</p> <p>49</p> <p>50</p> <p>51</p> <p>52</p> <p>53</p> <p>54</p> <p>55</p> <p>56</p> <p>57</p> <p>58</p> <p>59</p> <p>60</p> <p>61</p> <p>62</p> <p>63</p> <p>64</p> <p>65</p> <p>66</p> <p>67</p> <p>68</p> <p>69</p> <p>70</p> <p>71</p> <p>72</p> <p>73</p> <p>74</p> <p>75</p> <p>76</p> 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INSTRUCTIONS

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2. This form should *NOT* be used to cover documents requiring action.
3. The name of the person responsible for authorizing the despatch of the material should be shown opposite the words "Despatching Authority". This may be done by signature, name stamp or by any other suitable means.
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1958 JUN 21 PM 3:53

DEPARTMENT OF EXTERNAL AFFAIRS, CANADA
DESPATCH

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

FROM: The Canadian Ambassador, Bogotá.....

Reference:.....

Subject: The Right of Diplomatic Asylum.....
..... in Latin America.....

Security:....CONFIDENTIAL.....

No:.....105.....

Date:.....March 11, 1958.....

Enclosures:.....

Air or Surface Mail:...Courier.....

Post File No:.....

Ottawa File No.

5475-AX-25-40

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References

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This much discussed subject has been in the limelight in Bogotá in the last few weeks and the experience can hardly do much to raise the prestige of the principle. The former head of the Banco Popular of Colombia, [redacted], took refuge in the Embassy of Bolivia, and a former member of the secret police of [redacted] was granted asylum by the Chargé d'Affaires of Nicaragua.

2. In the first case the Government had announced that it was intending to investigate a number of the financial transactions of [redacted] during the period that he was Minister of Finance in the government of [redacted] and Director of the Banco Popular. The latter was undoubtedly used to enrich the pockets of [redacted] and a number of supporters of [redacted]

In addition, [redacted] had been prominent in a number of other transactions, particularly of the Lloyd Aerea Colombiana, the unsavory details of which have been exposed during the last eight or nine months. [redacted]

got wind of the Government's intentions and took refuge in the Embassy of Bolivia. The Bolivian Embassy accorded him asylum and asked for a safe conduct out of the country for him. The Colombian Foreign Ministry answered by informing the Bolivians of the antecedents of [redacted] assured them that his life was in no danger, and pointed out that a trial had not even been called, let alone a judgement brought down in his case.

3. Nevertheless the Bolivian government upheld the decision of its Ambassador and stated furthermore that permanent asylum would be granted to [redacted] in Bolivia if the safe conduct requested by them was granted by the Colombians. I understand that one of the reasons for the attitude of the Bolivian government is that the President of Bolivia attended the same school as [redacted] and that [redacted] had helped to establish a popular bank in Bolivia. At the present time the Colombian government has not yet granted a safe conduct and Morales Gomez is a guest of the Bolivian Ambassador.

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Washington

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4. Even more far fetched is the case of [REDACTED]. The latter presented himself at the Embassy of Nicaragua as a victim of political persecution, claimed that his life was in immediate danger, and asked for asylum. The Chargé d'Affaires accorded this and with the agreement of his Government asked for recognition of the asylum and the grant of a safe conduct for [REDACTED] to go to Nicaragua.

s.19(1)

5. The Colombian Foreign Ministry again replied by a detailed account of the criminal antecedents of [REDACTED] who is known as ' [REDACTED] (The Wild Pig), was a member of the secret police of Rojas Pinilla during which time he had a highly unsavory record for political persecution and sadistic behaviour. He is also wanted for homicide committed in 1954. The accusation had been dropped when he became a member of the secret police of Rojas Pinilla but the present Government has revived the charge. Nevertheless the Nicaraguan government has supported the Chargé d'Affaires and requested a safe conduct for [REDACTED]. As in the case of [REDACTED] the Colombian Foreign Ministry has not given a final reply.

6. Both these cases seem to me an obvious distortion of the right of asylum, even as it is interpreted in Latin America. The two cases have aroused a good deal of unfavourable comment in the local press and they may conceivably have the result of leading to a re-examination of the principles involved.

7. Colombia is not in a particularly good position to dispute the theory behind the right of asylum in view of the quarrel with Peru over Haya de la Torre who, you will recall, took refuge in the Colombian Embassy in Lima where he stayed for almost five years. The case nearly led to a diplomatic break between the two countries and had eventually to be arbitrated in the International Court. Recently, however, Colombia has been attempting to improve its record by handing over to the Venezuelan authorities, [REDACTED] former head of the political department of the Venezuelan National Security, after the latter had taken refuge in the Colombian Embassy in Caracas. There is a strong suspicion however that this decision was taken, in part because of political sympathy with the new Venezuelan government, and in part in order to create a more favourable atmosphere for insisting with Bolivia that the latter turn over [REDACTED] to the Colombian authorities.

8. I am sending by sea bag a book just published in Bogotá on the question of asylum in American International Law, by [REDACTED]. This might be a useful addition to the library of the Legal Division of the Department.


R.A.D. Ford

NUMBERED LETTER

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

FROM: THE CANADIAN EMBASSY
CARACAS, VENEZUELA

Reference: Our letter No. 339, October 11, 1957

Subject: Mexican Ambassador - Caracas

Security: CONFIDENTIAL

No: 383

Date: November 12, 1957

Enclosures:

Air or Surface Mail: Air

Post File No: 12-13-2

Ottawa File No.

"L" 5475-AX-25-40

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*W. L. ...
J 3*

References

*Super
Assess
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File
done
Nov. 29/57
gc.*

Our above numbered letter mentioned that the Mexican Ambassador in Caracas, Licenciado Salvador Martínez de Alva, was likely to be withdrawn in the near future. This forecast was correct. The Ambassador has now received notice of transfer to Lima, Peru and he will leave in six or eight weeks time. Venezuelan-Mexican relations are generally good, the difficulty in this case arose because of the Ambassador's personality. I will be sorry to see him go as I was very fond of him and found him a co-operative and intelligent colleague.

R. L. ...

EMBASSY.

Internal Circulation	
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NOV 21 1957

Distribution to Posts

Mexico

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* *Departure is now set for Dec 5.*

B.

The following information was obtained from the files of the
 Civil Service Commission, Department of the Interior, Bureau of
 Indian Affairs, Division of Indian Affairs, Office of the
 Commissioner of Indian Affairs, Washington, D. C., and is
 being furnished to you for your information.

NO ENCLOSURES

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:
Subject: Mexican Ambassador - Caracas

CONFIDENTIAL
Security:.....

No: 339

Date: October 11, 1957

Enclosures:
Air or Surface Mail: Courier

Post File No: 12-3-2

Ottawa File No.

5475-AX-25-40

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References

In a number of despatches from this office in the past six months we have referred to political refugees seeking asylum in certain embassies here. A number of embassies have been favoured, including the Peruvian, Ecuadorian and Mexican. With the exception of the Mexican Embassy, little trouble has been experienced in getting permission for the refugees to leave the country.

2. The Mexican Ambassador, Licenciado Salvador Martínez de Alva, however, failed to make any progress with one of his guests, despite six months of continuous representations. When a second refugee arrived and could not be cleared after some months of negotiations, relations between the Ambassador and the Venezuelan Government became rather strained. In the end, settlement was reached through the help of the Venezuelan Ambassador in Washington whose wife is Mexican, and who dealt directly with the Mexican authorities in Mexico City. I have now been told in the strictest confidence that the refugees have been allowed to leave the country but that their departure was conditional on the Mexican Ambassador in Caracas being withdrawn. No announcement has been made about the departure of the Ambassador but I am assured by the United States Ambassador that it is just a matter of time before he will be transferred.

Internal
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Distribution
to Posts

Mexico

5475-AX-25-40

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SANTIAGOCH 28 540P

EXTERNAL

OTTAWA

44 ON IMPEACHMENT OF THE HOUSE OF COMMONS AND WITH SUPPORT OF
ALL PARTIES THE SENATE DECLARED SATURDAY THAT MINISTER OF JUSTICE
ZUNIGA AND FOREIGN MINISTER SAINTE MARIE HAD NOT APPLIED THE LAWS
OF THE REPUBLIC IN THE CASE OF FUGITIVE [REDACTED] WHO FLED
FROM PRISON AFTER

SUPREME COURT ORDERED HIS EXTRADITION TO ARGENTINA STOP AS A
CONSEQUENCE UNDER THE CONSTITUTION THE TWO MINISTERS ARE
AUTOMATICALLY DESTITUTED FROM THEIR CHARGES AND THE SUPREME
COURT WILL BE ASKED TO APPLY AGAINST THEM ALL APPROPRIATE
SANCTIONS.

DOMCAN

s.19(1)

Legal/A. E. Gotlieb/mr
File No. 5475-AX-25-40

CONFIDENTIAL

October 10, 1957

NOTE FOR FILE

Asylum: Circular Document B-45
of April 29, 1950

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Circular Document B-45 of April 29, 1950 contains the general views of the Department on the right of asylum. This document would, in general, appear still to reflect accurately the Department's position on the general subject of granting asylum.

2. It should be noted, however, that Annex "B" contains a regulation (now 64.09) for the Canadian Naval Service which will shortly be superseded by a new regulation. The drafting of the new regulation has been the subject of a considerable amount of correspondence between various Divisions of the Department and the Department of National Defence which can be found on file K-1-5.

3. If the Division will continue to make use of this Circular Document, when the new regulation comes into force, it will be necessary to bring up to date Annex "B", as well as to revise paragraph 9 of Annex "A" in the light of the new regulation.

A. E. Gotlieb

Legal Division

NUMBERED LETTER

TO: **CANADIAN EMBASSY,**
Port-au-Prince, Haiti.

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

Reference: **Your Letter No. 221 of Sept. 30, 1957**

Subject: **Political Asylum.**

Security:	CONFIDENTIAL
No:	1-128
Date:	October 9, 1957
Enclosures:	1
Air or Surface Mail:	Air
Post File No:	
<div>Ottawa File No. 5475-AX-25-40</div>	
85	✓

References

You have asked for comments regarding the decision you took in informing [redacted] that "Canada has not given recognition to the right of political asylum, and that, although my residence was extra-territorial as far as my family, my domestics, or myself were concerned, this reservation could not apply to him".

2. It might, first of all, be pointed out that the "right of political asylum" may have reference to two related but somewhat different spheres of application: (a) it may relate to the so-called right of asylum on diplomatic premises, or (b) it may relate to the granting of refuge or asylum to foreigners in Canada.

3. The questions you raise relate chiefly to the former sphere of application and, consequently, this subject shall be dealt with first and in greater detail.

4. The Canadian position with regard to the granting of asylum in Canadian missions abroad was set out in Circular Document No. D-45 of April 29, 1950. In case you do not have this document on your files, a copy is attached to this letter. This Circular Document still reflects accurately the Department's position on the general subject of the granting of asylum. However, it should be noted that Annex "B" contains a regulation for the Canadian Naval Service which is about to be superseded (Regulation QRON 64.06). Some revision of paragraph 9 of Annex "A" of the Circular Document may also become necessary in the light of the new regulation, when it is adopted.

5. You will note that the Circular Document leaves no doubt about the correctness of your decision to refuse asylum to [redacted]. The granting of asylum to political refugees on diplomatic premises is not an institution which is generally recognized in international law. The attached document makes it clear that, accordingly, Canada does not recognize any right of asylum on diplomatic premises for political refugees. The immunity of official residences of diplomatic envoys is recognized only in so far as necessary for the independence and inviolability of persons with diplomatic status and their retinues so that such persons can perform their functions and keep inviolable their official documents and archives.

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Protocol
D. L. (2)

Distribution
to Posts

6. This is not, however, an absolute rule automatically applicable in all circumstances. The following exceptions to this general rule may be noted:

(a) A Canadian mission might grant temporary asylum to a "political refugee" or "political offender", who is not a Canadian citizen, under very exceptional circumstances. This possibility is envisaged in paragraph 8 of Annex "A" of the Circular Document. It is observed in paragraph 3 of this document that asylum might only be granted at the request of a person who is in imminent danger of losing his life and the grounds for such intervention should be purely humanitarian. Every step should be taken, however, to discourage resort to Canadian missions by political refugees and, when time permits, the Department should be consulted before granting asylum to political refugees;

(b) Under exceptional circumstances a Canadian mission abroad might offer asylum temporarily to a Canadian citizen if he has been subjected to discriminatory action by local authorities or such action appears likely to occur by reason of action taken by local authorities in similar cases. Asylum would be granted only with a view to securing independent legal advice and assistance and a fair trial; not for the purpose of avoiding prosecution or the jurisdiction of competent courts (see paragraph 7 of Annex "A");

(c) Asylum might also be granted to Canadian citizens or other British subjects who are in imminent personal danger during "political disturbances" or "popular tumults". Regulations have been enacted for the Royal Canadian Navy permitting the affording of refuge to Canadian citizens or other British subjects and temporarily to citizens or subjects of foreign states who, during "political disturbances" or "popular tumults", are fleeing from imminent personal danger. (See paragraph 9 of Annex "A").

7. It has also been pointed out (see Borchard - The Diplomatic Protection of Citizens Abroad) that before a denial of justice has actually been perpetrated foreign governments may use their good offices to see that their citizens abroad receive the benefits of due process of law, in order that a denial of justice may be avoided. Since states must afford protection for the persons and property of aliens on their territories it would be open to a Canadian Mission abroad, in extraordinary circumstances, to seek assurances of protection for Canadian citizens residing in the country from the local authorities. This action would only be justified in quite unusual circumstances. The situation would have to be such that the danger of violent disorders was imminent and normal police protection was feared to be inadequate.

8. It was pointed out in paragraph 2 of this letter that it would appear necessary to distinguish between the granting of asylum by sovereign states on their own territory and the granting of asylum on diplomatic premises by diplomatic envoys. While we have said that the latter practice is not generally recognized in Canada, the question of the right of sovereign states to grant asylum on their own territory cannot be dealt with in equally general terms. The attached Circular Document points out that the right of sovereign states to grant asylum

* or perhaps, more properly, "protection"

on their own territory is based on the principle of non-intervention and the absolute control of states within their own frontiers. 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 - International Law, 8th Edition, Vol. 1, p. 678). As any state may, according to international law, admit into its territory fugitives from justice who are nationals of another state, the practice of various countries with regard to the granting of asylum will, therefore, differ considerably. It may, however, be generally said that, in the absence of an extradition treaty providing for a surrender of such fugitives, a receiving state has no obligation to deport or deliver up such fugitives to a requesting state.

9. Every application by a foreigner for asylum on Canadian territory presents a case which under current practice is regarded as sui generis and calling for an ad hoc political decision to be taken on the basis of the individual circumstances of the case itself. In this context (i.e., admission of a refugee to Canadian territory) it may not be entirely true to say that Canada has not given recognition to the right of political asylum. It does not, in fact, appear possible to formulate in a succinct general rule the Canadian position with regard to the admission of political refugees on Canadian territory.

"M. Ladioux"

for

Under-Secretary of State
for External Affairs

TO: THE CANADIAN EMBASSY,
Port-au-Prince, Haiti.

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

Reference: Your letter No. 221 of Sept. 30, 1957
Subject: Political Asylum.

BEST COPY AVAILABLE

Security: **CONFIDENTIAL**
No: 1-128
Date: October 9, 1957
Enclosures: 1
Air or Surface Mail: Air
Post File No:

Ottawa File No. 5475-AZ-25-40	
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References

You have asked for comments regarding the decision you took in informing [redacted] that "Canada has not given recognition to the right of political asylum, and that, although my residence was extra-territorial as far as my family, my domestic, or myself were concerned, this recognition could not apply to him".

s.19(1)

2. It might, first of all, be pointed out that the "right of political asylum" may have reference to two related but somewhat different spheres of application: (a) it may relate to the so-called right of asylum on diplomatic premises, or (b) it may relate to the granting of refuge or asylum to foreigners in Canada.

3. The questions you raise relate/ to the former sphere of application and, consequently, this subject shall be dealt with first and in greater detail.

4. The Canadian position with regard to the granting of asylum in Canadian missions abroad was set out in Circular Document No. D-45 of April 29, 1950. In case you do not have this document on your files, a copy is attached to this letter. This Circular Document still reflects accurately the Department's position on the general subject of the granting of asylum. However, it should be noted that Annex "A" contains a regulation for the Canadian Naval Service which is about to be superseded (Regulation 657 (S.O.)). Some revision of paragraph 9 of Annex "A" of the Circular Document may also become necessary in the light of the new regulation, when it is adopted.

Internal
Circulation

American
Consular
Protocol
D. L. (2)

*Done
Oct. 18
m.H.*

Distribution
to Posts

5. You will note that the Circular Document leaves no doubt about the correctness of your decision to refuse asylum to [redacted]. The granting of asylum to political refugees on diplomatic premises is not an institution which is generally recognized in international law. The attached document makes it clear that, accordingly, Canada does not recognize any right of asylum on diplomatic premises for political refugees. The immunity of official residences of diplomatic envoys is recognized only in so far as necessary for the independence and inviolability of persons with diplomatic status and their residences so that such persons can perform their functions and keep inviolable their official documents and archives.

6. This is not, however, an absolute rule automatically applicable in all circumstances. The following exceptions to this general rule may be noted:

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(a) A Canadian mission might grant temporary asylum to a "political refugee" or "political offender" who is not a Canadian citizen, under very exceptional circumstances. This possibility is envisaged in paragraph 6 of Annex "A" of the Circular Document. It is observed in paragraph 3 of this document that asylum might only be granted at the request of a person who is in imminent danger of losing his life and the grounds for such intervention should be purely humanitarian. Every case should be taken, however, to discourage recourse to Canadian missions by political refugees and, when time permits, the Department should be consulted before granting asylum to political refugees;

(b) Under exceptional circumstances a Canadian mission abroad might offer asylum temporarily to a Canadian citizen if he has been subjected to discriminatory action by local authorities or such action appears likely to occur by reason of action taken by local authorities in similar cases. Asylum would be granted only with a view to securing independent legal advice and assistance and a fair trial; not for the purpose of avoiding prosecution or the jurisdiction of competent courts (see paragraph 7 of Annex "A");

(c) Asylum might also be granted to Canadian citizens or other British subjects who are in imminent personal danger during "political disturbances" or "popular tumults". Regulations have been enacted for the Royal Canadian Navy permitting the affording of refuge to Canadian citizens or other British subjects and temporarily to citizens or subjects of foreign states who, during "political disturbances" or "popular tumults", are fleeing from imminent personal danger. (See paragraph 9 of Annex "A").


7. It has also been pointed out (see paragraph - The Diplomatic Protection of Citizens Abroad) that before a denial of justice has actually been perpetrated foreign governments may use their good offices to see that their citizens abroad receive the benefits of due process of law, in order that a denial of justice may be avoided. Since states must afford protection for the persons and property of aliens on their territories it would be open to a Canadian Mission abroad, in extraordinary circumstances, to seek assurances of protection for Canadian citizens residing in the country from the local authorities. This action would only be justified in quite unusual circumstances. The situation would have to be such that the danger of violent disorders was imminent and normal police protection was feared to be inadequate.

8. It was pointed out in paragraph 2 of this letter that it would appear necessary to distinguish between the granting of asylum by sovereign states on their own territory and the granting of asylum on diplomatic premises by diplomatic envoys. While to have said that the latter practice is not generally recognized in Canada, the question of the right of sovereign states to grant asylum on their own territory cannot be dealt with in equally general terms. The attached Circular Document points out that the right of sovereign states to grant asylum

on their own territory is based on the principle of non-intervention and the absolute control of states within their own frontiers. The right of asylum, it has been said, is, strictly speaking, "nothing but the competence of every State to allow a persecuted alien to enter, and to remain on its territory under its protection, and thereby to grant asylum to him". (Oppenheim - International Law, 6th Edition, Vol. 1, p. 670). As any state may, according to international law, admit into its territory fugitives from justice who are nationals of another state, the practice of various countries with regard to the granting of asylum will, therefore, differ considerably. It may, however, be generally said that, in the absence of an extradition treaty providing for a surrender of such fugitives, a receiving state has no obligation to deport or deliver up such fugitives to a requesting state.

9. Every application by a foreigner for asylum on Canadian territory presents a case which under current practice is regarded as qui parit and calling for an ad hoc political decision to be taken on the basis of the individual circumstances of the case itself. In this context (i.e., admission of a refugee to Canadian territory) it may not be entirely true to say that Canada has not given recognition to the right of political asylum. It does not, in fact, appear possible to formulate in a succinct general rule the Canadian position with regard to the admission of political refugees on Canadian territory.

M. CADIEUX


Under-Secretary of State
for External Affairs

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THE LEGAL ADVISER

CONFIDENTIAL

Through: Consular Division, and
Protocol Division.

October 9, 1957

Legal Division

5475-AX-25-40	
85	✓

Political Asylum.

I attach for your signature if you approve, a
Numbered Letter to the Canadian Embassy in Port-au-Prince
in reply to their letter No. 221 of September 30, 1957, a
copy of which is attached.

2. You will note that the Embassy has requested our
comments on a decision not to give asylum to a Haitian
citizen who had requested political asylum in the Canadian
Embassy in Port-au-Prince.

3. The attached letter points out that there would
appear to be no doubt about the correctness of the decision
to refuse asylum in this case.

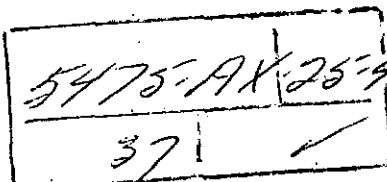
4. Attached to our letter is a copy of Circular Document
No. B-45 of April 29, 1950, which contains a general statement
on the Canadian position regarding the so-called right of
asylum. Our letter also contains some observations on the
general subject of asylum, particularly on the circumstances
under which asylum or refuge may be granted to citizens of
foreign countries, or to Canadian citizens, on diplomatic
premises abroad.

GILLES SICOTTE

Legal Division

C O P Y

Document disclosed under the Access to Information Act -
Document divulgué en vertu de la Loi sur l'accès à l'information
CANADA
DEPUTY MINISTER
OF
CITIZENSHIP AND IMMIGRATION



Ottawa, September 12, 1957.

The Under-Secretary of State for External Affairs

O t t a w a

Attention: Mr. W. McKenzie Wood

I have your letter of August 27, asking for our comments on a French draft declaration on the right of asylum submitted at the April session of the United Nations Commission on Human Rights with proposed amendments by the Israeli Delegation.

There will be need for interdepartmental discussions on this subject and the following comments simply reflect our initial reaction to the draft declaration.

The right of asylum, which has been more often linked with the question of extra-territoriality of diplomatic premises than with that of admission into foreign countries, is by no means one that has received unanimous support over recent centuries. In any instance, it never so much consisted in the right of an individual from State B to claim asylum into State A, as in the right of State A to graciously grant and maintain asylum, even against the protests of State B. In other words, it was a State's right-to-grant rather than an individual's right-to-claim. In an attempt to turn it into an individual's right to fit into the Declaration of Human Rights, it has recently been presented as the right of an individual to seek asylum. (Article 14 of the Declaration on Human Rights and Article 2 of the present draft declaration).

The first effect of this shift is to provide the individual with an implied right to flee from the country where he is threatened. That does not present any real innovation or any serious difficulty. However, the right to seek asylum remains a rather futile one. Obviously, the community of nations is not prepared to acknowledge a right of individuals to claim asylum. Nor is it prepared to acknowledge a right to seek asylum in cases of criminal prosecution and in this respect, the Israeli amendment

- 2 -

to Article 2 of the draft declaration would bring the draft more in line with the Declaration on Human Rights and with the long established standards of international law.

The Commission on Human Rights seems to be motivated by the "pressing necessity for the practical implementation of the right of asylum". It is most doubtful that Articles 1 and 3 of the draft declaration would achieve anything along these lines. Article 1 places the responsibility for granting asylum upon the community of nations. If the declaration does not turn the right to seek asylum into a right to claim asylum, it is most doubtful that the article could be interpreted to mean that the U.N. would decide that State A must grant asylum to an individual entitled to seek it. The only meaning that could then be placed on Article 1 is that a gracious grant of asylum by State A will be in the name of the community of nations and would be supported by the United Nations against protests by State B. Inasmuch as there is a right of asylum under traditional international law, Article 1 does very little but reflect the present state of the law.

However, when read in conjunction with Article 3, it becomes rather obscure. First of all, it is difficult to see how State A could, as provided by Article 3, grant asylum "in accordance with Article 1" since Article 1 seems to trace the granting of asylum to the community of nations as a whole. Secondly, the word "responsibility" is used in both articles, but most probably with a different meaning. Article 1 would seem to place the responsibility for deciding on whether asylum will be granted upon the community of nations. That would be the responsibility vis-à-vis the individual seeking asylum. Article 3, on the other hand, seems to refer to the responsibility for maintaining asylum against the protests from State B. The wording is very loose and while it would be correct to say that State A would not incur any liability towards State B if asylum were granted, yet it is obvious that in the matter of maintaining asylum, some responsibility will be incurred towards the community of nations and towards the individual involved by State A, either in its own rights or in the name of the United Nations. To say that "a State shall incur no international responsibility" by granting asylum is a very obscure statement. What it could mean would be that State A would not need to answer protests by State B and that the United Nations would assume responsibility for that. In any instance, it is difficult to see what is gained by shifting the responsibility for granting (and possibly for maintaining) asylum from States to the community of nations. Certainly, the inherent futility of the mere right-to-seek is not dispelled by

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- 3 -

the shift of responsibility, and the judicial implications of this shift remain very confused.

Article 4 is much more realistic, and while it does not ensure that asylum will be granted (which cannot be done as long as there is merely a right-to-~~seek~~ asylum), yet it directs that the United Nations shall promote and liberalize the granting of asylum. Incidentally, this Department would prefer the Israeli amendment. Although the French draft is not too compromising, the Israeli amendment would be more satisfactory as it does not emphasize the provision of second asylum as a means of alleviating the burden of countries of first asylum.

Article 5 (which would be improved by the Israeli amendment) raises a real difficulty. While State A would still be free to refuse asylum, it could no longer grant it during good pleasure only, as used to be the law. Each grant would last as long as the individual would be threatened, or at least, as long as he could not move on to some other country of second asylum, except if he endangered the political or social security of State A. At the moment, the Canadian law provides that refugees may be deported even to countries of flight and for several other reasons than those envisaged in the permissive clause of the article. This Department would normally resist the suggestion that the Canadian law be changed, because Canada does not normally admit refugees as such but rather as landed immigrants or pending landing, and because the deportation practices are even more liberal than envisaged by the Article, in that the Government refrains from deporting refugees forcibly to the countries of flight, even when they have committed what under the Article would be regarded as "particularly serious crimes".

(Sgd.) Jean Boucher
Director of Technical Services

DEPARTMENT OF EXTERNAL AFFAIRS

MEMORANDUM

TO: THE LEGAL ADVISER *ve*

Security **CONFIDENTIAL**

Through: ~~Consular Division~~ *AMH*, and
~~American Embassy Division~~
FROM: Legal Division *AA*

Date **October 9, 1957**

File No.
5475-AX-25-40

REFERENCE:

85 ✓

SUBJECT: Political Asylum.

Sent 16.10.57
I attach for your signature if you approve, a Numbered Letter to the Canadian Embassy in Port-au-Prince in reply to their letter No. 221 of September 30, 1957, a copy of which is attached.

2. You will note that the Embassy has requested our comments on a decision not to give asylum to a Haitian citizen, who had requested political asylum in the Canadian Embassy in Port-au-Prince.

3. The attached letter points out that there would appear to be no doubt about the correctness of the decision to refuse asylum in this case.

*File please
AG
Legal
16.10.57*
4. Attached to our letter is a copy of Circular Document No. B-45 of April 29, 1950, which contains a general statement on the Canadian position regarding the so-called right of asylum. Our letter also contains some observations on the general subject of asylum, particularly on the circumstances under which asylum or refuge may be granted to citizens of foreign countries, or to Canadian citizens, on diplomatic premises abroad.

[Signature]

Legal Division

DEPARTMENT OF EXTERNAL AFFAIRS, CANADA

NUMBERED LETTER

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

FROM: THE CANADIAN EMBASSY,
PORT-AU-PRINCE, HAITI.

Reference:

Subject: Political asylum.
.....
.....

Security: UNCLASSIFIED.....

No: 22/.....

Date: September 30, 1957...

Enclosures: Nil.....

Air or Surface Mail: Air.....

Past File No:

Ottawa File No.

5475-AX-25-40

85

References

A few enquires have been received from Canadians established here concerning the plans already taken regarding their safety in case of further trouble. They were re-assured on that point.

2. We could not give, however, the same re-assuring answer to a Haitian, [redacted] who paid a visit to the residence on Thursday, September 26th at 9 p.m. after rather a hectic session with the police the same day. It appears that his establishment, a book-store, was seized by the military forces in compliance with the government decree against striking shopkeepers who, in protest against the deceptive election of September 22nd, had decided to remain closed. He asked for political asylum.

3. My reply was that Canada had not given recognition to the right of political asylum, and that, although my residence was extra-territorial as far as my family, my domestics, or myself were concerned, this reservation could not apply to him. I offered him my sympathy and he left to look for political asylum at one of the South American Embassies. It was the only request of this sort that we have received up to this moment.

4. It would be appreciated if you had any comments to offer regarding this decision.

Wilfrice Carpenter

The Embassy.

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OCT 4 1957

Distribution
to Posts

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1. The first step in the process of the investigation is the identification of the problem. This is done by the investigator who is responsible for the study. The investigator must first identify the problem and then determine the scope of the study. The next step is to design the study. This involves determining the methods to be used and the data to be collected. The third step is to collect the data. This is done by the investigator who is responsible for the study. The fourth step is to analyze the data. This is done by the investigator who is responsible for the study. The fifth step is to interpret the results. This is done by the investigator who is responsible for the study. The sixth step is to write the report. This is done by the investigator who is responsible for the study. The seventh step is to present the results. This is done by the investigator who is responsible for the study. The eighth step is to discuss the results. This is done by the investigator who is responsible for the study. The ninth step is to conclude the study. This is done by the investigator who is responsible for the study. The tenth step is to publish the results. This is done by the investigator who is responsible for the study.

has been

1. The first step in the process is to identify the problem or issue that needs to be addressed. This involves gathering information and understanding the context of the problem.

NO ENCLOSURES

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CANADA

DEPUTY MINISTER

OF

CITIZENSHIP AND IMMIGRATION

5475-AX-25-40	
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Ottawa, September 12, 1957.

The Under-Secretary of State for External Affairs

O t t a w aAttention: Mr. W. McKenzie Wood

I have your letter of August 27, asking for our comments on a French draft declaration on the right of asylum submitted at the April session of the United Nations Commission on Human Rights with proposed amendments by the Israeli Delegation.

There will be need for interdepartmental discussions on this subject and the following comments simply reflect our initial reaction to the draft declaration.

The right of asylum, which has been more often linked with the question of extra-territoriality of diplomatic premises than with that of admission into foreign countries, is by no means one that has received unanimous support over recent centuries. In any instance, it never so much consisted in the right of an individual from State B to claim asylum into State A, as in the right of State A to graciously grant and maintain asylum, even against the protests of State B. In other words, it was a State's right-to-grant rather than an individual's right-to-claim. In an attempt to turn it into an individual's right to fit into the Declaration of Human Rights, it has recently been presented as the right of an individual to seek asylum. (Article 14 of the Declaration on Human Rights and Article 2 of the present draft declaration).

The first effect of this shift is to provide the individual with an implied right to flee from the country where he is threatened. That does not present any real innovation or any serious difficulty. However, the right to seek asylum remains a rather futile one. Obviously, the community of nations is not prepared to acknowledge a right of individuals to claim asylum. Nor is it prepared to acknowledge a right to seek asylum in cases of criminal prosecution and in this respect, the Israeli amendment

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to Article 2 of the draft declaration would bring the draft more in line with the Declaration on Human Rights and with the long established standards of international law.

The Commission on Human Rights seems to be motivated by the "pressing necessity for the practical implementation of the right of asylum". It is most doubtful that Articles 1 and 3 of the draft declaration would achieve anything along these lines. Article 1 places the responsibility for granting asylum upon the community of nations. If the declaration does not turn the right to seek asylum into a right to claim asylum, it is most doubtful that the article could be interpreted to mean that the U.N. would decide that State A must grant asylum to an individual entitled to seek it. The only meaning that could then be placed on Article 1 is that a gracious grant of asylum by State A will be in the name of the community of nations and would be supported by the United Nations against protests by State B. Inasmuch as there is a right of asylum under traditional international law, Article 1 does very little but reflect the present state of the law.

However, when read in conjunction with Article 3, it becomes rather obscure. First of all, it is difficult to see how State A could, as provided by Article 3, grant asylum "in accordance with Article 1" since Article 1 seems to trace the granting of asylum to the community of nations as a whole. Secondly, the word "responsibility" is used in both articles, but most probably with a different meaning. Article 1 would seem to place the responsibility for deciding on whether asylum will be granted upon the community of nations. That would be the responsibility vis-à-vis the individual seeking asylum. Article 3, on the other hand, seems to refer to the responsibility for maintaining asylum against the protests from State B. The wording is very loose and while it would be correct to say that State A would not incur any liability towards State B if asylum were granted, yet it is obvious that in the matter of maintaining asylum, some responsibility will be incurred towards the community of nations and towards the individual involved by State A, either in its own rights or in the name of the United Nations. To say that "a State shall incur no international responsibility" by granting asylum is a very obscure statement. What it could mean would be that State A would not need to answer protests by State B and that the United Nations would assume responsibility for that. In any instance, it is difficult to see what is gained by shifting the responsibility for granting (and possibly for maintaining) asylum from States to the community of nations. Certainly, the inherent futility of the mere right-to-see is not dispelled by

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the shift of responsibility, and the judicial implications of this shift remain very confused.

Article 4 is much more realistic, and while it does not ensure that asylum will be granted (which cannot be done as long as there is merely a right-to-seek asylum), yet it directs that the United Nations shall promote and liberalize the granting of asylum. Incidentally, this Department would prefer the Israeli amendment. Although the French draft is not too compromising, the Israeli amendment would be more satisfactory as it does not emphasize the provision of second asylum as a means of alleviating the burden of countries of first asylum.

Article 5 (which would be improved by the Israeli amendment) raises a real difficulty. While State A would still be free to refuse asylum, it could no longer grant it during good pleasure only, as used to be the law. Each grant would last as long as the individual would be threatened, or at least, as long as he could not move on to some other country of second asylum, except if he endangered the political or social security of State A. At the moment, the Canadian law provides that refugees may be deported even to countries of flight and for several other reasons than those envisaged in the permissive clause of the article. This Department would normally resist the suggestion that the Canadian law be changed, because Canada does not normally admit refugees as such but rather as landed immigrants or pending landing, and because the deportation practices are even more liberal than envisaged by the Article, in that the Government refrains from deporting refugees forcibly to the countries of flight, even when they have committed what under the Article would be regarded as "particularly serious crimes".

(Sgd.) Jean Boucher
Director of Technical Services

DESPATCH

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

FROM: THE CANADIAN AMBASSADOR, HAVANA, CUBA.

Subject: "Asilados" - Convention on Diplomatic
Asylum

Security: CONFIDENTIAL

No.: D-321

Date: August 27, 1958.

Via: Courier

Referred to:

Washington
All Latin
American
Posts

Since I arrived at this post in January, 1957, one of the main functions of all Latin American heads of missions in Havana, Cuba, except those of Colombia and Panama, appears to have been to put into effect the provisions of the various conventions on diplomatic asylum. The two exceptions had varied reasons for not receiving "asilados" in their Embassies. While we have no documents in our library on this subject, I understand that the first convention on diplomatic asylum was signed during the Sixth Interamerican Conference held in Havana in 1928. A further convention was signed at the time of the Seventh Interamerican Conference in Montevideo in 1933, which provided for the Ambassador of any of the signatory countries, after ratification, to decide who can be received as a political "asilado". Finally, at the Tenth Interamerican Conference held in Caracas in 1954, the first two conventions were revised and clarified and combined into a new instrument. It is said that there have been only half a dozen ratifications of the Caracas convention and it is presumed that a number of Latin American countries are still applying either of the two previous conventions which they have ratified.

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2. My Colombian colleague has escaped the "asilados" because when [redacted] was deposed, it happened that the lease on the Embassy residence was lapsing and, being uncertain about his future, he did not renew the lease but went to live in an apartment hotel, the Rosita de Hornedo. He could not, in the limited space he had, receive any refugees. The other one was the Panamanian Ambassador who presented his credentials on February 5, 1958, and as Panama had no official residence, he also went to live at the Rosita de Hornedo. Recently these two Ambassadors have rented houses, in the case of the Colombian in Alturas de Miramar and the Panamanian in Biltmore. Their respective Embassies having become known as impossibilities and being somewhat out of the way, they are apparently continuing to enjoy freedom from requests for "asilados" to seek refuge in their Embassies. It may also be that their respective countries have not yet ratified the last two conventions. One interesting coincidence is the fact that the wife of the Colombian Ambassador is a Panamanian.

3. All of the other missions, however, have been partially occupied to this day by "asilados". In many cases, the Ambassadors manage to get the "asilados" out of the country, even without having to receive them in their official residences, but on the whole they still have from two to fifteen "asilados" at all times.

4. Two missions, namely, the Ecuadorian Embassy and the Paraguayan Legation, have handled the largest number of "asilados". In the case of Ecuador, the Ambassador does not wish to say how many he has received since the 1st January, 1958, but the Paraguayan Minister volunteered the information that during the first seven months of 1958, he had received and helped out of the country over 250 "asilados".

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5. According to the Ambassadors of the larger and more prosperous countries, such as Brazil and Argentina, their governments send them every quarter an additional lump sum allowance to look after refugees, who must be fed and cared for until they leave Havana, always by air, for a country of refuge.

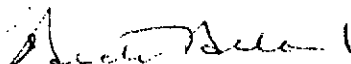
6. In the case of the Paraguayan, he recently had 27 "asilados" living in the Embassy residence at one time - 24 men and 3 women. At that particular moment, their Cuban servants decided that they would not work to keep rebels and left "en bloc", which forced the Paraguayan Minister's wife to cook for 27 persons plus her husband and herself without any help whatsoever. In his case also, I understand from other Latin American colleagues that the Paraguayan Government sometimes forgot to send their Minister money to look after "asilados". It is because of that that he recently had to take a mortgage on his car - a Mercedes-Benz sedan - in order to keep his "guests" fed. The same thing must have happened to the Ecuadorian Ambassador who had a small fishing boat of about ten tons built in Sweden when he was Minister there and which was his only form of recreation as he was very fond of deep sea fishing. Some months ago he sold his boat for cash at such a reasonable price that he was obviously hard pressed to look after the numerous refugees which were coming his way.

7. While we are not a party to any of the conventions on diplomatic asylum, there have been a few persons asking for asylum at the Embassy residence, usually over week-ends. This happened during the first half of April. The nearest Latin American Embassy being the Argentine Embassy, my Argentine colleague was always happy to receive anyone I sent him. I did, however, arrange to have persons who asked for help taken with the official car with flag flying so that they would not be stopped on their way.

8. Judging from the piecemeal information I have been able to gather over the last six months, I would say that some 2000 political refugees were handled by the Latin American missions during 1957 and approximately the same number during the first seven months of 1958. Most of these refugees, I hear, are young people and, as indicated in my report on Fidel Castro and his followers (No. D-297 of August 15, 1958 - para. 7), a number of the "asilados" proceed to a country not too far from Cuba and manage to return here to join the Castro forces. Many of the others help swell the ranks of revolutionaries who, from their country of refuge, are plotting the overthrow of the dictator.

9. It is wondered whether Castro could have continued fighting the way he has if it had not been for the number of followers he got through this group of refugees managing to return to Cuba to join the rebels. While this may be an unkind remark, it is difficult to avoid the conclusion that the Latin American missions are in fact indirectly helping the rebels against the government to which they are accredited. This might make sense to Latin American logic - who can tell when they themselves will have to request asylum - but does it not in fact promote and abet the Latin American love of revolutions.

10. At all events, as we are not a party to any of these conventions, we should count our blessings but at the same time deplore the fact that all of the charitable work being done by the Latin American Heads of Missions, because of the sanctity of agreements which their governments have signed, would seem merely to be weaving the threads of a vicious circle from which there is no foreseeable issue.


Ambassador

000432

D E S P A T C H

TO: THE SECRETARY OF STATE FOR EXTERNAL AFFAIRS, OTTAWA, CANADA. Security: CONFIDENTIAL

FROM: THE CANADIAN AMBASSADOR, HAVANA, CUBA. No.: D-321

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Via: Courier

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2. My Colombian colleague has escaped the "asilados" because when [REDACTED] was deposed, it happened that the lease on the Embassy residence was lapsing and, being uncertain about his future, he did not renew the lease but went to live in an apartment hotel, the Rosita de Hornedo. He could not, in the limited space he had, receive any refugees. The other one was the Panamanian Ambassador who presented his credentials on February 5, 1958, and as Panama had no official residence, he also went to live at the Rosita de Hornedo. Recently these two Ambassadors have rented houses, in the case of the Colombian in Alturas de Miramar and the Panamanian in Biltmore. Their respective Embassies having become known as impossibilities and being somewhat out of the way, they are apparently continuing to enjoy freedom from requests for "asilados" to seek refuge in their Embassies. It may also be that their respective countries have not yet ratified the last two conventions. One interesting coincidence is the fact that the wife of the Colombian Ambassador is a Panamanian.

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- 2 -

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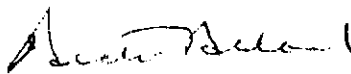
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Ambassador

000434

NUMBERED LETTER

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

FROM: THE CANADIAN EMBASSY

STOCKHOLM, SWEDEN

Reference:

Subject: DEFLECTION FROM BULGARIAN LEGATION.

Security: RESTRICTED

No: 403

Date: August 15, 1957

Enclosures:

Air or Surface Mail: Air

Post File No:

Ottawa File No.

5475-AX-25-40

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+ in phone
at 10:00
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If many Swedes and the occasional western visitor complain about this social democracy's restrictions, they are apt to forget that during and since World War II the air of freedom here has had considerable attraction for the oppressed from countries to the south and east. Peoples from the Baltic states, and in more recent times refugees from Hungary, have come here in large numbers. Defections from the many eastern European missions in Sweden have been rare however. It would almost seem as though more than the usual amount of care has been exercised by the Soviet Union and its satellites in selecting personnel for Stockholm missions. To the best of our knowledge there have been no defections here during the past three years at least.

2. In the circumstances the news last week-end that a 36-year old chauffeur at the Bulgarian Legation had left his Legation's premises with his family and had requested political asylum here received prominent attention in the Swedish press. Although consideration of his case has not yet been completed by the Foreign Office, the story as reported in the press may be of some interest.

3. Last Wednesday, August 7, [redacted] his wife and two children left the Bulgarian Legation premises with all their belongings to find other living quarters. Because his superiors at the Legation had given him permission to find other quarters his departure did not arouse any initial suspicion. It appears he drove around for some hours to shake off any would-be followers and then registered at a small hotel in the city.

4. The following day he went to the police and requested political asylum in Sweden. In support of his request he indicated that he "could not stand the police regime at the Legation any longer" but he refused to divulge details of his life at the Legation. The atmosphere was quite different when he arrived three years ago, he is reported to have said, but had deteriorated considerably recently, particularly since Minister Marko Temmalov took over a year ago. When

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he complained to his superiors they threatened to send him home to Bulgaria.

5. Two days after he had left the Legation and when he and his wife were at the police station, the Second Secretary of the Legation appeared at his hotel where the hotel personnel provided the Secretary with his room number since they did not know he was a refugee. [redacted] children wisely did not let the Secretary in, however, despite repeated threats. Finally, the hotel personnel requested him to leave. After making two other unsuccessful attempts to track down his quarry, once allegedly using the ruse that he had been sent by the Swedish police, he departed. The following day the Minister himself appeared at the hotel in the company of another employee, the Legation cashier [redacted]. They knocked on the [redacted] but it was slammed in their faces. A Russian speaking guest at the hotel informed them they were breaking Swedish law.

6. As the case stands at present the police authorities have submitted to the Aliens Commission and to the Foreign Office their report on the case after questioning the hotel employees and other Swedes involved. It seems that the Secretary may not have actually misrepresented himself as a policeman in attempting to get in to the chauffeur's hotel room. He produced his passport or diplomatic identity card on being accosted by the hotel porter who, owing to the language difficulty involved, may have thought the Secretary was posing as a policeman.

7. With some of the local papers, particularly [redacted] criticizing as "brutal" the action of the Bulgarian Minister and his Secretary, the former was summoned to appear before the Secretary General of the Foreign Office to explain the incident. The outcome of their meeting is not yet known but we expect the matter will be laid at rest. If it accomplished nothing else, the outcry in the press should serve to discourage the Minister or his officers from further clumsy attempts at recapturing this defector, if indeed they want him back for punishment. Reprisals against relatives at home may well be a more effective way of reminding any other would-be transgressors of the wrath their action may unleash on them or on their own.

s.19(1)

Jean Gaudelaine

The Embassy

NUMBERED LETTER

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EXTERNAL AFFAIRS, OTTAWA, CANADA.

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STOCKHOLM, SWEDEN

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Copenhagen

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J. A. CHAPDELAIN

s.19(1)

The Embassy

NUMBERED LETTER

TO: THE CANADIAN CONSULATE, DETROIT.

Security: UNCLASSIFIED

No. C-67

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

Date: May 27, 1957.

Enclosures:

Air or Surface Mail: Surface

Post File No.: 104-1-100

Reference: Your letter No. 82 of May 2, 1957.
Subject: Conditions under which Canadian
Government grants political and religious
asylum.

Ottawa File No.

5475-AX-25-40

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References

The following reply should be made to the letter of April 24 from Mr. Preston G. Matthews of Toledo, Ohio:

"Canada has on occasion granted asylum to nationals of foreign countries. However, the conditions under which this country might give refuge to foreign nationals are so entirely dependent upon the circumstances pertaining to each individual case that it is not possible to formulate even a general definition of the grounds on which sanctuary might be afforded. It could be said that, in general, Canadian policy in this regard would closely parallel that of the United Kingdom and the United States.

"We are unable to envisage any circumstances under which citizens of the United States would feel impelled to seek asylum in Canada. What we assume you mean is that the persons to whom you refer are dissatisfied with the conditions under which they are now living and are considering emigrating to Canada. If this is so, they would be admissible only upon compliance with the Canadian Immigration Regulations."

Internal
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Distribution
to Posts

T. P. MALONE

Under-Secretary of State
for External Affairs.

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

FROM: THE CANADIAN EMBASSY,
MONTEVIDEO, URUGUAY

Reference:

Subject:

Security: CONFIDENTIAL

No: 95

Date: May 14, 1957

Enclosures:

Air or Surface Mail: Air

Post File No: 21-1-6

Ottawa File No.

5475-AX-25-40 L

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References

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The government of Uruguay has given permission to the ex-President of Guatemala, [redacted] to reside here. On May 9 he was granted a diplomatic visa by the Uruguayan Embassy in Paris, and he arrived in Montevideo by KLM on May 13.

2. Upon his arrival he was welcomed by the ex-Chancellor of Guatemala, [redacted] who has settled in Buenos Aires, by [redacted] who lives in Montevideo, and by other exiles. In replying to reporters' questions he denied that he was a Communist or that his government had been communistic.

3. The government of Uruguay has received a note from the Interamerican Confederation for Continental Defence, with headquarters in Mexico, protesting the granting of asylum [redacted] In an editorial one Montevideo newspaper, while upholding the principles of political asylum and hospitality for which Uruguay is well known, has reserved the right to investigate the future activities of Arbenz in this country.

B.B.

Blair Birkett,
Chargé d'Affaires, a.i.

DEPARTMENT OF EXTERNAL AFFAIRS, CANADA

NUMBERED LETTER

Regal Bureau
Unclassified

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

Security:
No: 82

FROM: The Canadian Consulate
Detroit, Michigan

Date: May 2nd, 1957
Enclosures: One

Reference:
Air or Surface Mail: Surface

Subject: CONDITIONS UNDER WHICH CANADIAN
GOVERNMENT GRANTS POLITICAL AND RELIGIOUS
ASYLUM.

Post File No: 104-1-100

Ottawa File No.	
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File
F.M. Kirk

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MAY 17 1957

We attach a copy of a letter received from Mr. Preston G. Matthews of Toledo, Ohio, to ascertain the conditions under which the Canadian Government will grant political and religious asylum. We should be grateful if you would let us know the nature of the reply which should be made. Meanwhile we have acknowledged Mr. Matthews' letter.

J.F. Echols
CONSULATE.

W.A.Jenkins/bp

Internal Circulation

Please refer to
Consular Division for decision.
A Consular Division is in
charge concerning any legal
aspects of question, no doubt
it will be reaching advice from
Legal Division
Heck
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Legal Division

Distribution to Posts

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Letter to Detroit cleared by
Plouffe with Mr. Hampton
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6-7917 Kingston

DEPARTMENT OF EXTERNAL AFFAIRS, CANADA

NUMBERED LETTER

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

FROM: The Canadian Consulate
Detroit, Michigan

Reference:.....

Subject:.....
CONDITIONS UNDER WHICH CANADIAN
GOVERNMENT GRANTS POLITICAL AND RELIGIOUS
ASYLUM.

Security:.....Unclassified
82
No:.....
Date:.....May 2nd, 1957
Enclosures:.....One
Air or Surface Mail:.....Surface
Post File No:.....104-1-100

Ottawa File No.	

References

We attach a copy of a letter received from
Mr. Preston G. Matthews of Toledo, Ohio, to ascertain
the conditions under which the Canadian Government
will grant political and religious asylum. We should
be grateful if you would let us know the nature of the
reply which should be made. Meanwhile we have acknowl-
edged Mr. Matthews' letter.

CONSULATE.

W.A.Jenkins/bp

Internal
Circulation

Distribution
to Posts

C
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P
Y

April 24, 1957

Ambassador,
Canadian Embassy
Washington, D.C.

Your Excellency:

There is today in the United States a class of citizens who have no rights, privileges or immunities either under the laws or in the Courts of the states wherein they reside.

These people cannot receive a fair trial or hearing, due to prejudice and discrimination, because of political and monetary reasons, against them by public officials and the laws.

Therefore, on behalf of these people, I would like to know under what conditions your government grants Political and Religious asylum. I trust that you or your government may be of assistance in this matter.

Yours sincerely,

"Preston G. Matthews"

Preston G. Matthews
330 Broadway Apt. # 1
Toledo, Ohio.

DESPATCH

Confidential

TO: THE SECRETARY OF STATE FOR
EXTERNAL AFFAIRS, OTTAWA, CANADA.
The Canadian Embassy,

FROM: Buenos Aires, Argentina.

Reference:

Subject: Continuing Unrest.

Security: 102

No: March 22, 1957.

Date:

Enclosures: Courier.

Air or Surface Mail:

Post File No: POL-3-1

Ottawa File No.

5475-AX-25-402

References

The escape on March 18 of the [redacted]
and five top peronists ([redacted])

[redacted] from prison and their flight to Chile where they were received as political refugees deeply perturbed public opinion and caused considerable embarrassment to the Provisional Government. It would appear that the six Peron henchmen, bribed their way out of supposedly escape-proof Rio Gallegos prison, 1,200 miles south of Buenos Aires, in Patagonia. Federal authorities were thought to have been incredibly negligent in failing to ensure the custody of the prisoners, who had been transferred some months ago from inaccessible Ushuaia to Rio Gallegos, only 67 kilometres from the Chilean border.

2. Government sources, at first reticent, revealed that the escapees were helped by the Chief prison guard, who accompanied his wards but left them before reaching Punta Arenas, in Southern Chile. The six men had been held for 18 months and charged with various common crimes. Argentine officials are now preparing a request for the extradition of [redacted] and his friends as common criminals, the only basis for extradition under Latin American asylum traditions. While peronists openly derided the caretaker authorities, the fear was expressed in many quarters that this escape will reinforce the ex-dictator's commando in Chile, it evidently means a loss of prestige for the security forces and consequently for the Provisional Government. The immediate result would be further counter-revolutionary moves and another wave of sabotage in Argentina.

3. A new Peronist plot, allegedly directed from Caracas, and involving insurgent groups in Paraguay, Chile, Brazil, Bolivia and Uruguay, who were to have led uprisings in frontier provinces on February 28 was foiled two weeks ago by the Provisional Government. Under the leadership of former officers and non-commissioned officers, some of whom were to cross the border simultaneously at various points, armed bands planned to seize by surprise military establishments and strategic points along the periphery, in an attempt to set up bases in the interior. Two ex-admirals and six ex-generals are among the thirty-five persons detained on charges of subversion.

Internal
Circulation

Distribution
to Posts

- 2 -

4. The Catholic Church in Libano, Lamadrid, Province of Buenos Aires, was set on fire on March 8 by a group of youthful Peronist fanatics, who had scribbled on the walls "Peron will return". Inside the church, the walls were also defaced by slogans praising the ex-dictator.

5. A strike of Rosario workers for higher wages interrupted essential services for a week, while public transportation stopped and garbage piled up on the sidewalks. The strike accompanied by a walkout of 1,000 grade school teachers, forced the resignation of the federal interventor, [REDACTED]. Sporadic stoppages occurred in several of the SWIRT, [REDACTED] packinghouses in Buenos Aires Province and in railroad workshops and sheds. Strikes have been called by the aircraft workers of Cordoba and are spreading in the sugar plantations of Tucuman. [REDACTED] strikes in La Plata, Parana and Tucuman left those cities breadless for three days.

6. The uneasy truce among the military since the Rial incident (see despatch No. 95 of March 18) the tragic situation of Argentine economy (see despatch No. 94 of March 21) and the turbulence of political parties (see despatch No. 96 of March 20) all tend to create a climate of restlessness and suspicion which might give new impetus to the subversive activities of peronists, who do not seem to have learned their lesson despite 28 abortive attempts since the Revolution.

PHILIPPE PICARD

Philippe Picard
Ambassador

s.19(1)

5475-AX-	25-40
131	—

mc Dan Division - Latin-American Section

Consular Division

CONFIDENTIAL

November 30, 1956.

Legal Division

File on
5474-AX-25-40
~~1778-A-40~~ *[Signature]*

Your memorandum of November 27,
received on November 29, 1956.

Political Asylum in Canada - [REDACTED]

s.19(1)

You have requested our views as to whether it would be appropriate for Canada to offer temporary asylum to [REDACTED] a citizen of the Dominican Republic. On the basis of the available documentation - New York's Despatch 696 of November 16, 1956 - we understand this individual is presently in Cuba where he is waiting for a permanent visa from the United-States. Since there is some fear for his life in Cuba, he wishes to wait out his U.S. visa in Canada.

2. In international law, a State has the right either to grant or refuse political asylum; states are at liberty to do whatever they chose within their territory, without reference to the wishes of other states, as long as their acts are not directly injurious to them (1). The right of sovereign state to grant asylum on their own territory is based on the principle of non-intervention and the absolute control of state within their own frontiers. Any state may therefore admit into its territory fugitives from justice who are nationals of another state (2).

3. Political asylum being left to the discretion of the receiving state and being based on the concept of 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 to grant it. (3).
.../2

(1) See all International Law, 8th Edition, Page 264.

(2) See Departmental Circular Documents No. B-46 of April 29, '50

(3) See Sibert, Traite de Droit international public, Tome I, pages 573-574.

It does not follow from these principles, however, that the states granting asylum has no duties with regard to the state of which the political refugee is a national: "For it is the duty of every state to prevent individuals living on its territory from endangering the safety of another state by organizing hostile expeditions or by preparing common crimes against its Head, members of its Government or its property (4). On the other hand, the sovereignty of a state with regard to asylum may have been limited by the state concerned by multilateral conventions establishing a right of asylum, by extradition treaties or by renunciations, with regard to certain categories of refugees, of its sovereign rights of granting asylum by way of a special provision in a multilateral or bilateral treaty. It would appear that Canada has never entered into any such treaty relationship with the Dominican Republic.

Therefore, we come to the conclusion that from a strictly legal point of view, Canada is at liberty either to refuse or grant temporary asylum to [REDACTED]. The policy to be followed in this particular case, taking into account the attitude of the Dominican Republic and the fact that Dr. Ornes is a visa seeker is, of course, not a matter for this Division to decide.

GILLES SICOTTE

Legal Division.

(4) See Oppenheim's International Law, page 839.

DEPARTMENT OF EXTERNAL AFFAIRS

MEMORANDUM

TO: Legal Division

Security Confidential

Date November 27, 1956.

FROM: Consular Division

File No.

1778-A-40

3476-AR-2540

REFERENCE:

SUBJECT: Political Asylum in Canada - [REDACTED]

Attached is a copy of letter No. 696 of November 16
from the Canadian Consulate General in New York.

2. We should be grateful for your views on whether or not
it would be appropriate for the Canadian Government to
offer [REDACTED] temporary asylum in Canada.

3. We are also seeking the views of American Division,
and we shall consult the Under-Secretary before drawing [REDACTED]
[REDACTED] case to the attention of the Department of
Citizenship and Immigration.

Pam Malone
Consular Division.

s.19(1)

DEPARTMENT OF EXTERNAL AFFAIRS
MEMORANDUM

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TO:CONSULAR DIVISION.....
.....C.C. Legal Div.....
FROM:AMERICAN DIVISION/A:Anderson/ed.....
REFERENCE: Your Memorandum of November 27.
SUBJECT: ...Political Asylum in Canada:.....

SecurityCONFIDENTIAL.....

DateNovember 30, 1956.....

File No. 5475-A1-25-40		
131	—	11/12

NOV 30 1956

From the point of view of Canadian relations with the Dominican Republic, we think that the granting of political asylum to [REDACTED] would probably be regarded as an unfriendly action and might therefore have a damaging effect on our relations, and possibly on our trade. If the Dominican Government is making difficulties with the United States over his visa, as [REDACTED] says, they might well be expected to take a similar attitude with us.

s.19(1) 2. There can be no doubt that [REDACTED] is in bad odour with [REDACTED]. Equally, there is no doubt that the [REDACTED] regime is a complete dictatorship. It would presumably be correct to classify Ornes as a refugee from a totalitarian rule, in danger of possible death or at least imprisonment if he were to fall into the hands of Trujillo police or Trujillo agents.

3. We are unable to assess the rights and wrongs of this dispute. Attached, however, are three New York Times clippings of December 30, 1955, March 30 and April 25, 1956, which will give you some of the background. (Please make sure that these clippings are either placed on the Ornes file or returned to us.)

4. The aspect of the problem of specific concern to this division is that of our relations with the Dominican Republic. In this context we think that if admission of

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s.19(1)

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is to be considered it would be advisable to consult our Chargé d'Affaires by telegram. The case was mentioned in one of his despatches last April but was not discussed in any detail. We think he will agree with our view, as stated in paragraph one above, but it would be well to make sure.

5. On the general question of political asylum there are several memoranda of 1955 dealing with the possible request of ex-President Peron for asylum (which never materialized). No doubt copies of these were sent you at the time; if not, the file is 1607-C-40; Argentina, Ex-President Peron, Political Asylum, and probably there are copies on Legal Division's general file on political asylum. I refer especially to a memorandum of November 3, 1955 from Legal Division, in which they concluded that

(a) Canada was under no obligation in International Law either to accept or to refuse Peron as a political refugee; (b) whether it was desirable or convenient for Canada to shelter him, should he seek asylum, was mainly a question of policy that should be decided in consultation with the Department of Citizenship and Immigration and the R.C.M.P. This may be relevant.

6. A comment occurs to us. In one of the attached clippings, dated December 30, 1955, Ornes is quoted as stating that he is a native of the Dominican Republic. If so, he can enter Canada as a non-immigrant without requiring a visa. If it is desired to allow him to enter Canada and remain for some months, perhaps this possibility could be mentioned to [redacted]. The re-admissibility requirement would have to be stressed for our own protection in case we wanted to get rid of him later on. There is of course no assurance that he will succeed in obtaining a visa to the United States. Deportation to his native country would involve such serious consequences for him that we might not wish to consider it, and unless his admissibility to some other country, perhaps Cuba where he is now, had been established we might have him on our hands indefinitely.

7. We shall be interested in the development of this affair and hope that we shall be enabled to see copies of future communications.

A. ANDERSON

American Division.

000450

s.19(1)

CONSULAR DIVISION

CONFIDENTIAL

c.c. Legal Div.

November 30, 1956

AMERICAN DIVISION/A.Anderson/ed

Your Memorandum of November 27.

5475-AK-25-40

131

Political Asylum in Canada: Dr. German Ornes

From the point of view of Canadian relations with the Dominican Republic, we think that the granting of political asylum to Ornes would probably be regarded as an unfriendly action and might therefore have a damaging effect on our relations, and possibly on our trade. If the Dominican Government is making difficulties with the United States over his visa, as [redacted] says, they might well be expected to take a similar attitude with us.

2. There can be no doubt that Ornes is in bad odour with [redacted]. Equally, there is no doubt that the [redacted] regime is a complete dictatorship. It would presumably be correct to classify Ornes as a refugee from a totalitarian rule, in danger of possible death or at least imprisonment if he were to fall into the hands of Trujillo police or [redacted] agents.

3. We are unable to assess the rights and wrongs of this dispute. Attached, however, are three New York Times clippings of December 30, 1955, March 30 and April 25, 1956, which will give you some of the background. (Please make sure that these clippings are either placed on the Ornes file or returned to us.)

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7. We shall be interested in the development of this affair and hope that we shall be enabled to see copies of future communications.

A. ANDERSON

American Division.

000452

DEPARTMENT OF EXTERNAL AFFAIRS

MEMORANDUM

TO: MR. WEBERHOF

Security CONFIDENTIAL

Date July 12, 1956.

FROM: Consular Division

File No.
5475-AX-25-40

REFERENCE: Your memorandum of June 26.

131	—	—
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SUBJECT: Political Asylum.

Consular Division's responsibilities in the field of political asylum have been generally limited to liaison with Immigration Branch about the question of entry to and status in Canada of certain political refugees, and to the issuance to them of Certificates of Identity after entry. The relevant Consular files are summarized in paragraph 3 (a) (b) and (c) below.

2. Certificates of Identity are issued by Passport Office. Section 2.64(a) of the revised Consular Instructions states that Certificates of Identity are issued to "aliens, legally landed and permanently resident in Canada, who are stateless or who are unwilling, for a valid reason, to apply for passports of their countries of origin". Such Certificates are normally issued only to persons who are legally landed in Canada. Passport Office's practice has been to require, before issuing a Certificate of Identity, some evidence in writing that the diplomatic mission of the applicant's own country will not issue him with a travel document. Otherwise there would be an infringement of the right of a government to issue passports to its own nationals. Exceptions to this rule are described in paragraph 3 (d), (e), (f), (g) and (h) below.

3. (a) File 9908-AD-1-40. Visit to Canada of Otto von Hapsburg.

The ex-Empress Zita of Austria (Duchess De Bar)

cc: Passport Office
Legal Division

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and her family were admitted to Canada in 1940 "for the duration of the War". They have remained in Canada since that time. Because of their desire to retain their rights to the Hapsburg throne, they did not seek to acquire legal landing status in Canada. They are in Canada purely as refugees. Contrary to normal practice, they were issued with Certificates of Identity valid for travel to a number of countries. On March 14, 1947, Mr. St. Laurent, then Secretary of State for External Affairs decided that they should continue to get special consideration and that no effort should be made to have them legally landed. On April 9, 1951, a decision was reached in the Department to refrain from seeking any change in this ruling.

(b) File 233-A(S) - Granting of Safety Visas
to Political Leaders-Proposals.

This file contains a memorandum to the Cabinet dated May 7, 1948, recommending that an unofficial committee be set up comprising a few leading Canadians and a few selected refugees who would be concerned with finding suitable employment for, and advising officials regarding, the worthiness or otherwise of political refugees seeking admission to Canada. The memorandum recommended that Governmental responsibility would not go further than arranging for the admission to Canada of the refugees concerned.

At its meeting on May 14, 1948, Cabinet noted with approval, subject to minor amendment, this report.

This memorandum to Cabinet terminates the file.

(c) File 9408-A-40 - Immigration of Displaced
Persons and Refugees of German Origin.

This file contains Berlin despatch No. 427 of November 20, 1950, enclosing a translation of a law passed by the Magistrat of West Berlin on September 30, 1950, concerning the recognition of political refugees.

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(d) Passport Office File 7-8-1

The policy regarding issuance of Certificates of Identity to refugees, described in paragraph 2 above, admits of certain exceptions. For refugees from the U.S.S.R. and satellite countries, no suggestion is made that an applicant for a Certificate of Identity should first apply to his own national representative for a passport. From the fact that such a person requests a Canadian Certificate of Identity, it is assumed that he prefers to have no dealings with the Soviet or satellite representative.

(e) Passport Office File 7-8-1

The policy mentioned in sub-paragraph (d) above is not followed for Yugoslavia. If an applicant for a Certificate of Identity is from Yugoslavia, he is referred to the Yugoslav Embassy. If he replies that he is a refugee and that he does not wish to deal with that Mission, Passport Office is then prepared to consider issuance to him of a Canadian Certificate of Identity.

(f) Passport Office File 7-8-1

Jewish refugees of German origin who request Certificates of Identity, need not apply for passports from the German Embassy if they do not wish to do so. In a notation by Mr. Pearson on a memorandum dated May 26, 1951, he said we should merely call the attention of these people to their right to obtain a German passport but not advise them to do so. He continued: "It would be better not to take any action which could be interpreted as bringing any pressure of any kind for such people to renew their contacts with Germany".

(g) Passport Office Files 00259, 00266, 07404, 12912, 33122, 46112 and Others.

Another class of persons who are somewhat unique are the Spanish political refugees in Canada. The Spanish Embassy has informed us that their Consulate in Montreal

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- 4 -

does not deny passports to any Spanish citizens resident in Canada who apply for them. However, Spanish applicants for Certificates of Identity frequently are at pains to point out that they are Spanish political refugees and will have nothing to do with the representatives of the present Spanish regime in Canada. These cases still present a problem, and in a memorandum dated January 4, 1956, the Under-Secretary decided that during a period of six months or so all applications for Certificates of Identity from Spanish citizens should be referred either to Mr. Leger or to you for consideration. This memorandum continued: "While we should do all we can to help bona fide refugees, I don't think we should agree to a situation the result of which would be that 'refugeeism' would become an occupation in this country".

(h) Passport Office Files R.00937 and
R.01133

Nationals of Greece and Turkey, if of military age, have been refused passports by their own missions in Canada unless they agreed to return to their homelands to complete their military service. This conditional refusal of passports has not been considered as sufficient reason for this Department to regard the individuals in question as stateless nor as eligible for Canadian Certificates of Identity.

4. We shall be happy to prepare, for Legal Division's file, copies of any documents in which it expresses an interest.

B.K. Brande
Consular Division.

MR. WERSHOF

CONFIDENTIAL

July 12, 1936.

Consular Division

5475-AI-35-40

Your memorandum of June 26.

Political Asylum.

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The ex-Empress Zita of Austria (Duchess De Bar)

cc: Passport Office
Legal Division

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This file contains a memorandum to the Cabinet dated May 7, 1948, recommending that an unofficial committee be set up comprising a few leading Canadians and a few selected refugees who would be concerned with finding suitable employment for, and advising officials regarding, the worthiness or otherwise of political refugees seeking admission to Canada. The memorandum recommended that Governmental responsibility would not go further than arranging for the admission to Canada of the refugees concerned.

At its meeting on May 14, 1948, Cabinet acted with approval, subject to minor amendment, this report.

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6. We shall be happy to prepare, for Legal Division's file, copies of any documents in which it expresses an interest.

G. K. GRANDE

Consular Division.

DEPARTMENT OF EXTERNAL AFFAIRS

MEMORANDUM

TO:LEGAL DIVISION.....

SecurityCONFIDENTIAL.....

DateJuly 11, 1956.....

FROM:AMERICAN DIVISION: R.W. Nadeau: bm.....

File No.	5475-AX-25-40
	1607-9-40
	2347-40
131	—

REFERENCE:Mr. Wershof's memorandum of June 26.....

SUBJECT:GRANTING OF POLITICAL ASYLUM.....

We refer to Mr. Wershof's conclusion that it would be desirable if all the basic information on political asylum were made conveniently available on one file and that the Legal Division has agreed to make itself the repository.

2. According to our files, American Division has handled two cases concerning political asylum in recent years. These are with respect to a [REDACTED]

General Noriega

3. On August 11, 1954, the Peruvian Government announced that Brigadier General [REDACTED] had been placed aboard a naval vessel and was to be immediately deported from the country for inciting a revolt on the previous day. On August 17, 1954, through our Ambassador in Lima, [REDACTED] enquired whether the Canadian Government would be willing to accept [REDACTED] as a refugee with residential status in Canada. When the appropriate authorities had been consulted by the Department (see file 2347-40), it was decided that Noriega would be admitted as an immigrant within one of the normal categories. However, the United States had agreed in the meantime to admit the General temporarily without documentation under special provisions of the McCarran Act. This closed the Noriega case as far as Canada was concerned.

c.c. Consular Div.

s.19(1)

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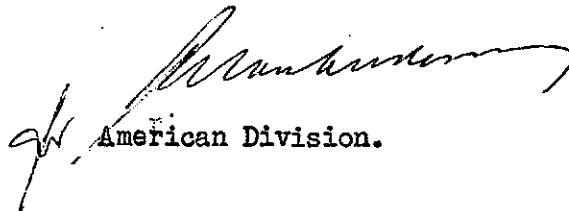
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[REDACTED]

4. On October 6, 1955, a note was received by our Chargé d'Affaires in Buenos Aires from the Foreign Minister of the Argentine provisional government, requesting that Canada refuse political asylum to [REDACTED] if the question should arise. [REDACTED] had taken refuge on a Paraguayan gunboat and it was evident that he would soon wish to move to some other country. He later went to Panama. The hypothetical question as to what Canada's reaction would be should Peron seek asylum here gave rise to several queries on the part of the American Division, both to various divisions within the Department and to other governmental departments (see file 1607-C-40). Latest reports indicate that the ex-President is still in Panama. The consensus here appears to be that, if the usual standards of qualifications for admission as an immigrant to Canada were applied to Peron, he would be found to fall short in regard to the "good character" requirement.


American Division.

s.19(1)

LEGAL DIVISION

s.19(1)

CONFIDENTIAL

July 11, 1956.

AMERICAN DIVISION: R.W. Madaeu: bm

Mr. Wershof's memorandum of June 26.

→ 5475-AX-25-40
1607-C-40
2347-40

GRANTING OF POLITICAL ASYLUM

5475-AX-25-40		
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We refer to Mr. Wershof's conclusion that it would be desirable if all the basic information on political asylum were made conveniently available on one file and that the Legal Division has agreed to make itself the repository.

2. According to our files, American Division has handled two cases concerning political asylum in recent years. These are with respect [REDACTED]

General Noriega

3. On August 11, 1954, the Peruvian Government announced that Brigadier [REDACTED] had been placed aboard a naval vessel and was to be immediately deported from the country for inciting a revolt on the previous day. On August 17, 1954, through our Ambassador in Lima, [REDACTED] enquired whether the Canadian Government would be willing to accept [REDACTED] as a refugee with residential status in Canada. When the appropriate authorities had been consulted by the Department (see file 2347-40), it was decided that Noriega would be admitted as an immigrant within one of the normal categories. However, the United States had agreed in the meantime to admit the General temporarily without documentation under special provisions of the McCarran Act. This closed the Noriega case as far as Canada was concerned.

c.c. Consular Div.

...2

- 2 -

[REDACTED]

4. On October 6, 1955, a note was received by our Chargé d'Affaires in Buenos Aires from the Foreign Minister of the Argentine provisional government, requesting that Canada refuse political asylum to [REDACTED] if the question should arise. [REDACTED] had taken refuge on a Paraguayan gun-boat and it was evident that he would soon wish to move to some other country. He later went to Panama. The hypothetical question as to what Canada's reaction would be should Peron seek asylum here gave rise to several queries on the part of the American Division, both to various divisions within the Department and to other governmental departments (see file 1607-C-40). Latest reports indicate that the ex-President is still in Panama. The consensus here appears to be that, if the usual standards of qualifications for admission as an immigrant to Canada were applied to Peron, he would be found to fall short in regard to the "good character" requirement.

R ANDERSON

American Division.

s.19(1)

000464

✓ File copy
Daily
Working

FILE COPY
DEPARTMENT OF EXTERNAL AFFAIRS
MEMORANDUM

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

TO:Legal Division.....

.....File 5475-AX-25-40.....

FROM:European/R.A.D.:Ford.....

REFERENCE: Mr. Wershof's Memorandum of June 26
.....

SUBJECT: ..Political Asylum;.....

Security **CONFIDENTIAL**.....

Date July 3, 1956:.....

File No.

5475-AX-25-40

131

European Division has no files dealing with either the general policy or particular cases of Political Asylum, but we have brought Mr. Wershof's Memorandum to the attention of the officers of this Division.

(Signed) R. A. D. FORD.

R.A.D.F.

DEPARTMENT OF EXTERNAL AFFAIRS

MEMORANDUM

TO: Legal Division

..... File 5475-AX-25-40

FROM: European/R.A.D.Ford

REFERENCE: Mr. Wershof's Memorandum of June 26

SUBJECT: Political Asylum,

Security CONFIDENTIAL

Date ... July 3, 1956

File No. 5475-AX-25-40		
131	—	—

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h n y am
R.A.D.F.

file run

J.G.Maranda/G.Sicotte/em
CONFIDENTIAL
5475-AX-25-40
June 26, 1956.

MEMORANDUM FOR AMERICAN DIVISION ←
~~EUROPEAN DIVISION~~
~~CONSULAR DIVISION~~
~~UNITED NATIONS DIVISION~~
~~DEFENCE LIAISON (2) DIVISION~~
~~PROTOCOL DIVISION~~

5475-AX-25-40	
137	—

Political Asylum

I have come to the conclusion that it would be desirable that all the basic information on Political Asylum were made conveniently available on one single file. Legal Division has agreed to make itself the repository of basic information on this subject, i.e. the legal opinions available to the Department together with data on the practice that we have followed in actual cases in the past.

In order to facilitate the task of Legal Division, it would be appreciated if Divisions which have handled Asylum cases and have individual files would prepare a brief note on their past activities and experience in this field.

Legal Division's present file, entitled "Political Asylum - General Policy File" (No.5475-AX-25-40), contains documentation merged from the former "Granting of Asylum to Political Refugees in Canadian Missions Abroad" (No.7257-40) and "Political Asylum for Latin America - General" (No.12359-40) files.

It is not intended that other files - mainly the individual case files - be merged with the General Policy file; nor that the responsibility of Legal Division will include the handling of individual cases. The political division concerned will continue to assume the primary responsibility in each case for the disposal of applications for asylum, in consultation, where necessary, with Legal Division and other interested divisions .

M.H.W.
M.H.W.

000467

3.7.6(55)

68-187-AX-35-40	
131	

J.G. Maranda/G. Sicotte/em
CONFIDENTIAL
5475-AX-25-40
June 26, 1956.

MEMORANDUM FOR AMERICAN DIVISION
EUROPEAN DIVISION
CONSULAR DIVISION
UNITED NATIONS DIVISION
DEFENCE LIAISON(2) DIVISION
PROTOCOL DIVISION

*file
down*

Political Asylum

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M.H.W.
M.H.W.

5475	Document disclosed under the Access to Information Act - Document divulgué en vertu de la Loi sur l'accès à l'information
131	JUNE 12, 1956

MEMORANDUM FOR LEGAL DIVISION (MR. SICOTTE)

Political Asylum

I have been considering the points made in your memorandum of March 20. I think that on the whole the opinions you put forward are correct. However, I also think that it would be useful to the Department if one division were designated to make itself the repository of all the information available to the department and of the practice that has been followed in actual cases in the past in Canada. So far as I can see, this information is at present scattered among many divisions and many files. I would be glad if Legal Division would agree to be responsible for gathering the information together, in order that it may be available to other divisions and the Under-Secretary when required. I would suggest that your present file entitled "Asylum in International Law" might have its title changed to become "Political Asylum - General Policy File". The next step would be to draft a note in my name to all the divisions which may have handled cases and which have individual files, asking them to provide you with a brief note on their activities and experience. These notes could then be put on the general file.

At some future time, when Legal Division can spare the time to do it, a basic source paper could be prepared for the information of the Under-Secretary. We need not decide now whether anyone would wish at that time to recommend to the Under-Secretary any change in the Canadian attitude and practice in these matters.

The responsibility I am asking Legal Division to assume does not include the handling of individual cases. I agree with you that each individual case, as it arises, should primarily be the responsibility of a geographical division, which will of course consult with Legal Division. What I am trying to bring about is a situation in which all the basic information, not only the legal opinions, is conveniently available in one place.

c.c. American Division

M.H.W.

000469

19.6.52(45)

OK/15
Legal Sec. Rights
completing
JUNE 29/66
(MM)

12/25

DEPARTMENT OF EXTERNAL AFFAIRS

MEMORANDUM

X-Registry
TO: American Division

Latin American Section

FROM: Legal Division

REFERENCE:

SUBJECT: - Merging of Files on Political Asylum -

CONFIDENTIAL
Security

Date May 9, 1956.

File No.
5475-AX-25-40

131

Mr. Wershof has suggested that your File No. 12359-40 on the "Political Asylum for Latin Americans" be merged in our File No. 5475-AX-25-40 on "Asylum in International Law".

2. It appears that file No. 12359-40 contains documents exclusively relating to general principles on the granting of political asylum, which sometimes originated in this Division and which should also be found on our file No. 5475-AX-25-40. Mr. Wershof is of the opinion that no useful purpose will be served by duplicating documents on two different files. Since our file deals more specifically with general enquiries and with the legal aspects of the granting of political asylum, it is believed that it should be retained instead of yours. We understand that, in addition, individual files have been opened for special cases, i.e., File No. 1605-C-40 on the granting of political asylum to ex-President Peron.

3. I would appreciate being informed whether this is agreeable to you. If so, will you please request your Registry to close File No. 12359-40 and to send it to the Legal Sub-Registry which will take the appropriate action for merging both files.

X-Registry

J. W. S.
Legal Division

MESSAGE FORM
OUTGOING

File No. 5475-AX-25-40 12359-40 <i>K</i>	
131	26 <i>(26)</i>

FROM: THE SECRETARY OF STATE FOR EXTERNAL AFFAIRS, CANADA

TO: THE CANADIAN EMBASSY,

LIMA, PERU.

Message To Be Sent

AIR CYPHER

EN CLAIR

CODE

CYPHER ☒

No. *1-12*

Date *MAY 2*
April 30, 1956

For Communications Section Only

REFERENCE: Your letter No. 110 of March 28, 1956.

SUBJECT: POLITICAL ASYLUM

Priority

ROUTINE

ORIGINATOR

(Signature)

J.G. Maranda/wd/bb

(Name Typed)

Div....Legal.....

Local Tel. 2-2294.....

APPROVED BY

...*M. H. Warshaw*...

(Signature)

(*200*) R. M. MacDONNELL

(Name Typed)

Internal Distribution:

S.S.E.A. - U.S.S.E.A.

American Div.

Done...*gh*.....

Date...*May 2/56*.....

Copies Referred To:

Done.....

te.....

rt. 97 (Rev. 1/52)

AS A GENERAL RULE, CANADA DOES NOT RECOGNIZE ANY RIGHT OF ASYLUM ON DIPLOMATIC PREMISES FOR POLITICAL REFUGEES. EXCEPTIONS, HOWEVER, MAY BE MADE TO THIS RULE AND THE CASE ENVISAGED IN YOUR LETTER WOULD BE ONE OF THEM; IN VERY EXCEPTIONAL CIRCUMSTANCES, A CANADIAN MISSION ABROAD MAY GRANT TEMPORARY ASYLUM TO A POLITICAL REFUGEE AT HIS REQUEST AND WHILE THIS PERSON, NOT BEING A CANADIAN CITIZEN, IS IN IMMINENT DANGER OF LOSING HIS LIFE. EVERY STEP, HOWEVER, SHOULD BE TAKEN TO DISCOURAGE REQUESTS OF THIS NATURE. WHEN TIME PERMITS THE DEPARTMENT SHOULD BE CONSULTED BEFORE ASYLUM IS GRANTED TO A POLITICAL REFUGEE.

2. THE DIRECTIVES ON THE GRANTING OF POLITICAL ASYLUM ARE CONTAINED IN CIRCULAR DOCUMENT NO. B-45 OF APRIL 29, 1950, WHICH STILL REFLECTS ACCURATELY THE DEPARTMENT'S POSITION AND A COPY OF WHICH IS BEING FORWARDED BY THURSDAY'S AIR BAG. THIS DOCUMENT ALSO PROVIDES COMPARABLE RULES ON THE GRANTING OF PROTECTION TO CANADIAN CITIZENS.

EXTERNAL

000471

SECRET

MESSAGE FORM
OUTGOING

FROM: THE SECRETARY OF STATE FOR EXTERNAL AFFAIRS, CANADA

TO:

For Completion of an Official Copy

SUBJECT:

RY
EN

NO

000472

NUMBERED LETTER

TO: The Canadian Embassy,
 Lima, Peru.....

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

Reference: Your letter No. 110 of March 28/56..
 and our telegram No. ~~112~~ ^{L-12} of ~~April 20~~ ^{May 2}, 1956
 Subject:

..... Political Asylum

Security: CONFIDENTIAL.....

No: 4-124.....

Date: May 1, 1956.....

Enclosures: 1.....

Air or Surface Mail: Air.....

Post File No: Corr.....

Ottawa File No. 6475-AX-	
123-11-40	25-40
131	26

References

I am attaching a copy of Circular Document No. B-45 of April 29, 1950 to which we referred in the last paragraph of our telegram under reference and which you do not seem to have on your files. As stated in our telegram this Circular Document still reflects accurately the Department's position in the granting of asylum in Canadian Missions abroad and it should guide you in case of need.

2. You will note therein that, since as a general rule Canada does not recognize any right of asylum on diplomatic premises for political refugees, we do not believe that there is any obligation on the part of a receiving state to grant to envoys the right of affording asylum to individuals not belonging to their suites. The immunity of official residences of diplomatic envoys must be recognized only in so far as it is necessary for the independence and inviolability of persons of diplomatic status. The following exceptions to this general principle are provided for in the Circular Document:

a) - In very exceptional circumstances a Canadian Mission abroad may grant temporary asylum to a "political refugee" who was not a Canadian citizen. Generally speaking, asylum in this case should be granted at the request of a person in imminent danger of losing his life and the grounds for such intervention should be purely humanitarian. Every step, however, should be taken to discourage requests of this nature and when time permits the Department should be consulted before asylum is granted to such "political offenders" or "political refugees". (Paragraph 8 of Annex "A" of the Document). This seems to be the case envisaged in your letter No. 110 of March 28, 1956.

b) - Under exceptional circumstances a Canadian Mission abroad may offer temporary asylum to Canadian citizens if they have been subjected or were likely to be subjected to discriminatory action by the local authorities. Asylum in this would be granted with a view to securing independent legal advice and a fair trial but not to avoiding prosecution or to denying competent jurisdiction. (Paragraph 7 of Annex "A" of the attached document)

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c) - Asylum may also be granted to Canadian citizens or other British subjects in imminent personal danger during political disturbances or popular tumults. The regulations enacted for the Royal Canadian Navy, referred to in paragraph 9 of Annex "A" of the Document, permit asylum for Canadian citizens fleeing from danger in such circumstances and in our opinion a Mission abroad would have similar discretion to afford temporary asylum to Canadian citizens and to other British subjects who during political disturbances or popular tumults are fleeing from personal danger.

3. In addition to the directives outlined in the attached Circular Document, we would like to point out that Borchard (The Diplomatic Protection of Citizens abroad) takes the view that before the denial of justice has actually been perpetrated, foreign governments may use their good offices to see that their citizens abroad receive the benefits of due process of law, in order that a denial of justice may be avoided. Since states must afford protection for the persons and property of aliens on their territories it would be open to a Canadian mission abroad, in extraordinary circumstances, to seek assurances of protection for Canadian citizens residing in the country from the local authorities. This action would only be justified in quite unusual circumstances. The situation would have to be such that the danger of violent disorder was imminent and when normal police protection was feared to be inadequate.

4. In so far as Canadian refugees are concerned it is not quite accurate to refer to the "granting of asylum". What is involved is rather the "giving of protection", since generally speaking we do not recognize any right of asylum on diplomatic premises for political refugees.

5. I trust that this information replies adequately to your request for guidance on this matter.

(S2) R. W. MACDONNELL

Acting Under-Secretary of State
for External Affairs.

NUMBERED LETTER

TO:.....THE CANADIAN EMBASSY.....
.....CIUDAD TRUJILLO.....

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

Reference: Your letter No. 14 of Jan. 13, 1956.

Subject: Political Asylum.....
.....
.....

Security: ... ~~SECRET~~

No: L-58

Date: April 18, 1956

Enclosures:

Air or Surface Mail: Air

Post File No:

Ottawa File No.

6475-AX-25-40

131

26

References

We sent you on March 29, 1956 in answer to paragraph 2 of your letter under reference a copy of the directive circulated to Canadian Missions in Latin America in April, 1950.

2. This circular still reflects accurately the Department's position in the granting of asylum in Canadian Missions abroad. In my opinion, the denunciation of the Diplomatic Convention Asylum by the Dominican Republic - reported in your letter - would not affect the principles recorded in our circular which should guide you in case of need.

G. SICOTTE

FOR THE

Under-Secretary of State
for External Affairs.

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to Posts

TOP SECRET

500-54-40
(D.L.(1) File)

Ottawa, April 4, 1956.

5475-4X-25-40
122

The Deputy Minister,
Department of National Defence.

orig on 500-54-40
"U"

You will recall that under cover of our letter dated February 24 we sent to you a copy of letter No. 263 of February 14 from Canada House concerning the R.C.N. cruise in the Baltic which was to have taken place last fall. In paragraph 3 of this letter it was reported that the Foreign Office authorities would provide us with documents dealing with the question of handling possible defectors during naval visits. This material has now been received from London under cover of letter No. 500 of March 16, a copy of which is attached along with one copy of each of the three following Foreign Office papers:

Possible Defectors during Naval Visits;

Legal Advisors' Minutes on handling potential defectors;

The Minutes of Meeting at the Foreign Office on September 2, 1955, on Procedure for handling possible defectors from visiting Polish ships in Portsmouth, September 8-11.

G. IGNATIEFF

for the

Under-Secretary of State
for External Affairs.

NUMBERED LETTER

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

FROM: THE OFFICE OF THE HIGH COMMISSIONER
FOR CANADA, LONDON.

Reference: Our letter No. 263 of Feb. 14, 1956.

Subject: Possible Canadian Naval Cruise in
the Baltic.

TOP SECRET

Security:.....

No: 500

Date: March 16, 1956.

Enclosures:.....

Air or Surface Mail:.....

Post File No:.....

Ottawa File No.

50054-40

References

In paragraph 3 of our letter No. 263, we said that Hohler, Head of the Northern Department of the Foreign Office, was to give us a Note about the arrangements made by the United Kingdom authorities to deal with possible defectors. This Note has now been made available to us and you will find enclosed herewith two copies.

2. When the above-mentioned Note was handed to us, we were shown comments prepared by the Foreign Office Legal Advisers on the implications, under international law, of the policy it was intended to follow in dealing with Soviet Bloc defectors. In view of the conclusion reached therein, we said that we thought that the legal Minutes would be useful to the Canadian authorities if we were to arrange a naval cruise to the U.S.S.R. and Poland, and enquired whether copies could not be made available to us. The Foreign Office has been good enough to meet our suggestion, and we are enclosing two copies of the Legal Advisers' Minutes concerning the grant of asylum in a warship under international law.

3. In our conversations with Foreign Office officials, we were impressed by the importance given to possible political repercussions such defections might entail and by the careful study given to the various aspects of this problem before arriving at a firm policy. Preliminary discussions with senior representatives of Admiralty, Home Office and Security Services were held for the purpose of discussing the difficulties that may arise if a Soviet citizen seeks asylum on board one of H.M. warships during a visit to the U.S.S.R. and also the related problem of what should be done if a Soviet naval officer or relative sought asylum either ashore or in one of H.M. ships, or naval shore establishments during a Soviet visit to Portsmouth. The U.K. authorities were faced with difficult political problems both on internal and international planes. Regarding the internal aspects, the long-standing tradition in this country of giving political asylum which, as you are aware, was recently the subject of statements both in Parliament and in the press as a result of certain number of Poles asking for asylum

Internal
Circulation

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to Posts

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poses a serious dilemma. What would be the public reaction if a bona fide defector were to be returned to his national authorities by United Kingdom officials? On the international plane, the United Kingdom authorities had to weigh possible reactions and difficulties on the part of the U.S.S.R. Government if the U.S.S.R. could claim that the U.K. authorities were encouraging, welcoming or even merely accepting such defections. This would tend to nullify the improvements in relations which the naval visits are primarily interested in encouraging. In addition to these two problems, consideration had also to be given to the intelligence aspect. Notwithstanding the recent relaxation of international tension, there is still a continuing need of the available intelligence which defectors, particularly defectors from the Soviet Armed Forces, can provide.

4. For all these considerations, the Foreign Office felt that the international law aspect of this matter should be studied as fully as possible. In fact, the first legal opinion was prepared by Miss Gutteridge, one of the Assistant Legal Advisers, but we understand that the conclusion reached therein, namely that there does not seem to be some generally recognized right in international law to grant, under circumstances such as those envisaged, asylum in a warship, caused serious misgivings among senior Foreign Office officials. Sir Gerald Fitzmaurice was, therefore, asked to look into the question personally. The Legal Adviser, while studying the matter from another angle (he assimilated the case of asylum in warships in a foreign port to that of the case of granting asylum in an Embassy in a foreign country) reached the same conclusion and made similar recommendations. It was only after these two opinions were obtained that a policy was agreed upon. It is worth noting that a distinction was still made between defectors seeking asylum on board warships and those applying for asylum of the Civil authorities. In the first instance, while requests for asylum should not be granted by a naval officer, the instructions made it clear that the individual concerned should not be handed over to local authorities but should be put ashore unobtrusively. In the second instance the Civil authorities were instructed to deal with the application in the ordinary way without reference to the circumstances of the arrival of the applicant.

5. You may also be interested in the attached Minutes of a meeting held at the Foreign Office on September 2, 1955 to discuss arrangements as to the way possible defectors from the Polish ships calling at Portsmouth should be handled. You will note that it was felt advisable to prevent Polish emigre organizations from any attempt to stage demonstrations or persuade the Polish sailors to default. In this connection special care was taken to prevent these organizations from arranging "receptions" for the Polish sailors at the places which they were to visit. However, the meeting agreed that it would be undesirable to make any attempt to contact the Polish emigres with a view to enlisting their support against any encouragement on their part to incite Polish sailors to default.

CANADA HOUSE

TOP SECRET

Possible Defectors during Naval Visits

The policy adopted for the handling of any Soviet or Satellite defectors that arose from an exchange of naval visits was based on the following considerations:

- (a) the primary aims of the visits, to promote good relations between the two countries, would be stultified by any defection, particularly if the Communists were given any ground whatever for alleging that the defector had received encouragement or assistance from any official source;
- (b) to provide asylum to political refugees was a British tradition;
- (c) there is no generally recognised right in international law to grant asylum in a warship (except in conditions not likely to be relevant to a naval visit).

2. Commanding officers of H.B.M. ships visiting Soviet Bloc ports were told that in no circumstances was a request for asylum on board to be accepted, and were given discretion to use whatever means were necessary to put the individual concerned ashore unobtrusively; but not to hand him over to the local authorities or allow them on board to take them.

3. If a Soviet Bloc national sought asylum of the civil authorities during a naval visit to the United Kingdom, his application would be dealt with in the ordinary way without reference to the circumstances of his arrival.

4. If a Soviet Bloc national made a request for asylum to the naval authorities, they should;

- (a) call in the civil authorities; and, if his request is granted,
- (b) inform his Commanding Officer and allow him to interview him; if he maintains his request.
- (c) hand him over to the civil authorities.

5. Any action which could be represented as assistance or encouragement to defect must be avoided; but anyone genuinely seeking asylum in the U.K. must not be prevented.

T O P S E C R E T

EXCHANGE OF NAVAL VISITS WITH SOVIET BLOC COUNTRIES

HANDLING OF POTENTIAL DEFECTORS

(Legal Advisers' Minutes)

There have been circumstances, particularly in times of political disturbances, when refugees in danger of their lives or of imminent political persecution, have sought and obtained refuge on board one of H.M. warships. Certain authorities on international law (e.g. Hall and Westlake) have considered that the reception of such political refugees is justified by custom, but it is probable that "the reception under the circumstances just mentioned is rather a concession to the claims of humanity rather than the exercise of a right of asylum. It is limited to special cases and almost invariably in countries with frequent political upheavals" (Colombos, International law of the Sea. (3rd Edition) pp. 206-207).

The view that the reception on board a warship of refugees can be justified only in certain circumstances is endorsed in the draft articles on Asylum adopted by the Institute of International Law in 1950. Article 3, which deals both with the possibility of asylum in diplomatic premises and in warships, provides that

"au cas où le fonctionnement des pouvoirs publics d'un pays se trouve manifestement disorganisé, ou maîtrisé par une faction, au point de ne plus offrir aux particuliers des garanties suffisantes pour la sécurité de leur vie, les agents diplomatiques et les commandants des bâtiments de guerre peuvent accorder ou maintenir l'asile même à l'encontre des poursuites des autorités locales."

From the above it appears that even if a right to asylum in warships can be said to exist, its exercise is confined to cases in which persons are seeking refuge in times of political disturbance from imminent danger to their lives or liberty on account of their political opinions. An American authority on international law, whilst admitting that "where frequent insurrections occur and constant instability of Government exists, usage sanctions the granting of asylum", points out that it has been the practice in the United States to instruct naval officers that "even in the waters of such countries, officers should refuse all applications for asylum, except when required by the interests of humanity in extreme or exceptional cases, such as the pursuit of a refugee by a mob" and to add that in any case "officers must not directly or indirectly invite refugees to accept asylum" (Hyde, International Law (2nd revised edition) Vol. II, pp. 828-829).

Taking into account the above considerations, there seems little justification for holding that international law would recognize any right to grant asylum on board a warship to a defector from the Communist regime who was in no imminent danger either to his life or his liberty, and who arrived on board one of our warships as a visitor along with other Soviet citizens.

If it be suggested that, as a warship is "floating territory of the flag State", there should be the same right to grant asylum on board a warship as in the territory of a State, it must be said that this conception, which is based on the notion of "extraterritoriality" has a most uncertain legal basis. There

- 2 -

is now widespread agreement with the view expressed by the Privy Council in Chang Chi Cheung v. The King (1939) A.C. 160, that "however the doctrine of extraterritoriality is expressed, it is a fiction". Immunities and privileges accorded under international law are now considered to be based, not on the fiction of extraterritoriality, but on the conception that they are necessary to enable certain functions to be carried out. Several writers on international law (notably Westlake and Fauchille) have denied the extraterritoriality of warships, and the practice of States shows no tendency to justify any grant of asylum on board a warship on the basis of the vessel's extraterritoriality. In line with the conception that the only basis for so-called extraterritoriality is the necessity for non-interference with essential functions is Baldoni's view that "L'extraterritorialité réelle d'un navire n'est pas, à elle seule, suffisante pour lui faire reconnaître le droit d'accorder l'asile". (See Morgenstern, British Year Book of International Law, p. 254).

I talked to Sir Gerald Fitzmaurice before writing this minute. He agrees with me, I believe, that if the legal position in regard to asylum in warships is somewhat uncertain, this affords all the more reason for not giving the Russians any opportunity of successfully alleging that we had granted asylum to defectors in circumstances unsanctioned by generally accepted principles of international law.

(Sgd.) Joyce A.C. Gutteridge

(October 7, 1955).

Sir Gerald Fitzmaurice

I have discussed this with Miss Gutteridge, and I have also personally looked at the authorities, and I am satisfied that the view she expresses is the correct one. Indeed, for reasons which I will give in a moment, I do not think that the case contemplated here would be one of political asylum at all.

The case of asylum in warships in a foreign port is basically the same as that of the case of granting asylum in an Embassy in a foreign country, and it has long been settled law that except in regions of the world (e.g. Latin America) where there is a recognised local usage entitling foreign Embassies to grant asylum to local political refugees, no such right strictly exists. In practice, asylum may be granted, but only on humanitarian grounds in the case of persons who are actually fleeing for their lives from the authorities, or in danger of injury at the hands of the mob, etc.

What impresses me in the present case is that the element of seeking refuge from some form of actual peril (which is really the basic element in the grant of asylum) would be wholly lacking. As I understand it, the case contemplated is not that of someone who is seeking to fly from or evade a charge, whether on ordinary criminal or political grounds, or of someone who is wanted by the authorities, or of anyone who is in danger from mob violence or potentially imperilled by the existence of local disturbances. The case is simply that of a man who presents himself and says that he wants to be kept on board the warship and taken out of the country; in short, not really a refugee at all but simply a would-be defector. This is not a case of asylum in the proper sense of the term.

In practice, it should be possible to deal with these cases during any visit of British warships to Soviet ports without raising any issue about asylum. We must assume that no one would be able to get on board the warship without the consent of its Commander, and this could simply be refused except in the case of authorised visitors. The actual possibility is that persons authorised to visit the ships (I understand that there would be visiting days) may ask to be kept on board the ship. The answer could simply be that visitors are not allowed to remain on the ship on any grounds after a certain time.

Of course, in an ordinary country, while it might be unusual, there would be no reason why a local citizen should not leave the country if he wants to, and no reason, therefore, why he should not secure a passage on a warship if he can get one, but in the case of Russia, to leave the country without a permit is an offence for a Soviet citizen, and whether one agrees with a law of that sort or not, nevertheless, to afford a Russian citizen a passage in these circumstances would be to connive at a breach of Soviet law, and I cannot see the slightest justification for this in the case of persons who merely wish to "defect" and are not in any true sense refugees wanting asylum on any immediately compelling ground. They would simply be persons who do not like life in Russia and want to get away. To my mind, it would be stretching the idea of asylum impossibly far to maintain that we have a right when in Russia to connive at breaches of Soviet law by removing a person in breach of that law.

- 2 -

It is, of course, possible that some visitor might manage to stow himself away during the course of a visit, but frankly I feel that if he is discovered, he must be told that he has committed an offence against the ship's regulations by so doing, and must be compelled to go on shore. No doubt this should be done as unobtrusively as possible, but I think it must be done, and I feel it would be very difficult to defend his retention in the circumstances.

(Sgd.) G.G. Fitzmaurice

(October 7, 1955)

SECRET

THE POSSIBILITY OF DEFECTIONS BY MEMBERS OF THE
CREWS OF THE POLISH SHIPS WHICH ARE TO VISIT
PORTSMOUTH FROM SEPTEMBER 8 - 11

MINUTES OF A MEETING HELD AT THE
FOREIGN OFFICE ON SEPTEMBER 2.

PRESENT:

Mr. R.A. Hibbert (Foreign Office, Northern Department)
Mr. J. Wilberforce (Foreign Office P.U.S.D.)
Mr. E.F.G. Maynard (Foreign Office, Security Department)
Lieutenant-Colonel F.B. Clifford, R.M. (Admiralty)
Mr. W.R. Darracott. (Military Branch, Admiralty).
Mr. H.F. Boddington (Admiralty Constabulary, C.I.D.)
Mr. C.O. Shipp. (Security Service)
Miss Coates (Home Office, Aliens Department)
Mr. S.J. Coombes (Home Office, Immigration Branch).

It was explained that the Home Office would send an Immigration Officer to Portsmouth for the period of the Polish ships' visit. The Immigration Officer would be the key figure in any cases of defection by members of the Polish crews. Strays from the Polish ships would no doubt come to the attention of the Police first of all, and the police at Portsmouth had considerable experience of handling such strays in collaboration with the Naval Authorities. But if any Pole asked for asylum the Immigration Officer would be called and the handling of the case would depend entirely on him. He would consult immediately with the Home Office if he was satisfied that the request for political asylum was genuine.

2. The meeting agreed the following points:-

- (a) the best means of guarding against defections would be a full programme of activities for the crews of the Polish ships, especially a programme which kept them on the move and did not leave them to their own devices in Portsmouth. The Admiralty were already arranging suitable coach tours, etc. The Home Office and Foreign Office would be sent copies of the programme. Arrangements under the programme would be made as discreetly as possible so that it would not be easy for Polish emigré organisations to get wind of them and arrange "receptions" for the Polish sailors at the places which they were to visit.
- (b) The Commander-in-Chief, Portsmouth, the Chief Constable of Portsmouth and the Immigration Officer who was to be stationed at Portsmouth would be informed by the Admiralty and Home Office of the importance which Her Majesty's Government attached to the discreet handling of this question of would-be Polish defectors.
- (c) Briefing of subordinate officers and officials who would have dealings with the Poles should be left to the discretion of the Commander-in-Chief, Portsmouth, the Chief Constable of Portsmouth and the Immigration Officer. It would be unwise to attempt any special

- 2 -

briefing as this would be liable to attract publicity. It was impossible to devise and authorise the use of a formula of discouragement which might be used by those who would have dealings with Poles who wanted to defect. Any such formula would be bound to leak to the press and attract strong criticism. There were well-established routines for dealing with sailors who absented themselves from their ships. It was best to trust to these, to the common-sense of the British ratings and others who came into contact with the Poles, and to the discreet and rapid intervention of the higher authorities (sub-paragraph (b) above) who would be aware of the delicacy of the issues involved.

- (d) The Home Office and Security Service advised strongly against any attempt to warn the Polish emigrés (i.e., in practice the Polish ex-Servicemen's Association) that Her Majesty's Government would take a serious view of attempts on the part of emigrés to stage demonstrations or persuade the Polish sailors to default. It was pointed out that representations would have to be made to the central authorities of the emigré organisations, who in practice had no control over the local Lodges where action was likely to be initiated. The central authorities would feel bound to circularise the Lodges. This would almost certainly lead to undesirable publicity and it might have a result opposite to that which was intended. It might put ideas into the heads of the Lodge members. It might even provoke some emigrés to actions which would be deliberately intended to embarrass Her Majesty's Government. The meeting therefore agreed that it would be undesirable to make any attempt to contact the Polish emigrés in connexion with the visit by the Polish ships. All that could be done was for the police and others to watch the activities of the emigré organisations vigilantly.
- (e) The Home Office would be bound to deal with an application for asylum from a defecting Polish sailor in exactly the same way as all other applications for asylum. In practice, the crucial point would be when the Immigration Officer first interviewed a would-be defector. Immigration Officers were not easily persuaded of the merits of a defector's case, but once he was persuaded that there were merits in it, the usual machinery for dealing with such cases would have to be set in motion by the Home Office. This would be done with all possible speed.

DEPARTMENT OF EXTERNAL AFFAIRS, CANADA

NUMBERED LETTER

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

FROM: THE CANADIAN EMBASSY, LIMA, PERU.

Reference:

Subject: Political Asylum.

Security: CONFIDENTIAL

No: 110

Date: March 28, 1956

Enclosures:

Air or Surface Mail: Courier

Post File No:

Ottawa File No. 5475-AX-25

~~12359-46~~ corr

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The Ambassador
J-1

References

3-45
46424
1957

On going through our files, I have been unable to find any instructions on the attitude that I should adopt towards requests for political asylum.

2. My understanding of our policy is that I am to refuse to grant political asylum unless the person requesting it is in imminent danger of his life: if, for instance, a person is being pursued by an angry mob, I should admit him to my house and then expel him as soon as the imminent danger has passed.

3. If my understanding is not correct, I should be grateful if you would let me know by telegram, as Peru is in the throes of an election campaign in which feelings run high.

Benjamin Rog

Benjamin Rog
Embassy.

Internal
Circulation

Distribution
to Posts

X.

NO ENCLOSURES

1956 APR 18 PM 1:43

1956 APR 18 PM 4:17

TO: Canadian Embassy,
 Ciudad Trujillo, D.R.
 FROM: Under-Secretary of State for
 External Affairs, Ottawa.

SECRET

Security.....
 Date..... March 29, 1956
 Air or Surface..... Air
 No. of enclosures..... 3

The documents described below are for your information.

Despatching Authority..... Legal Division (G.Sicotte)

5475-AX-25-40	
131	26

Copies	Description	Also referred to:
1 photo- static " "	Circular Document No. B. 45 of April 29, 1950 Annex "A" A "B" Reference your Letter No. 14 of January 13/56	

INSTRUCTIONS

1. This form may be used in sending material for informational purposes from the Department to posts abroad and vice versa.
2. This form should *NOT* be used to cover documents requiring action.
3. The name of the person responsible for authorizing the despatch of the material should be shown opposite the words "Despatching Authority". This may be done by signature, name stamp or by any other suitable means.
4. The form should bear the security classification of the material it covers.
5. The column for "Copies" should indicate the number of copies of each document transmitted. The space for "No. of Enclosures" should show the total number of copies of all documents covered by the transmittal slip. This will facilitate checking on despatch and receipt of mail.

DEPARTMENT OF EXTERNAL AFFAIRS

MEMORANDUM

TO: MR. WERSHOF *See my file 12 mh*
FROM: LEGAL DIVISION
REFERENCE: Mr. Carter's memorandum of March 9, 1956 to you.
SUBJECT: Political Asylum

Security CONFIDENTIAL

Date March 20, 1956.

File No.

5475-AX-25-40

131

You have asked who runs the general file on Asylum. Legal Division has a file (5475-AX-25-40) entitled "Asylum in International Law" which is presumably the one you have in mind: it contains, essentially,

(a) Miscellaneous documentation relating to the granting of asylum to political offenders by Canadian Missions Abroad, which hinges around the basic departmental directive on the subject, - namely circular document B45 of April 29, 1950;

(b) A study made by Legal Division in connection with the case of Perón on the right of a state to receive asylees from foreign countries (memorandum to American Division dated November 3, 1955).

2. You also ask my view as to which division should take "primary responsibility" for the subject as a whole. - By a process of elimination I would answer as follows:

Legal Division supplies advice in Department on the principles of International Law applicable to the question of asylum;

United Nations Division has an interest in departmental policies on asylum in as much as these may relate to Canada's position on the Draft U. N. Convention relating to the Status of Refugees and on the Universal Declaration on Human Rights;

- 2 -

Defence Liaison (2) is concerned with the security problems which may result from Canada (or Canadian Missions Abroad) granting refuge to asylees;

Protocol Division ought to have some interest in the implications (from the point of view of relations with local authorities) of the granting of refuge to asylees by Canadian Missions abroad;

Consular Division should similarly be concerned where Canada's immigration policy, and the application of the Immigration Act, are at stake when a foreign refugee seeks asylum in our territory;

The Political (Geographical) Division dealing with the world area where the asylee resides or comes from is also largely responsible - if not primarily - for the policy decision to be taken - in the light of the relevant political circumstances - on the granting or refusal of asylum to a foreigner, whether in our Missions abroad or in Canada.


3. Bearing in mind both the above and the considerations outlined in paragraph 2 of Mr. Carter's memorandum under reference, I find it difficult to assign - on a logical basis - "primary responsibility" for the subject of asylum as a whole to one particular division. For the reasons given in paragraph's 7 and 8 (a and b) of Legal Division's memorandum of November 3, 1955, (flagged) I am of the opinion that the political (geographical) Division concerned should assume primary responsibility in each and every case for the disposal to be given to applications for asylum, - in consultation of course with the other Divisions concerned, particularly Consular, D.L. (2), and Legal.

4. Similarly because of the wide scope of the subject (after all in the words of Oppenheim (volume I seventh edition, page 618) "the so-called right of asylum is nothing but the competence of every state ... inferred from its national 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") I doubt that the "general study" advocated in paragraph 3 of Mr. Carter's memorandum of March 9th would really serve a useful purpose: in so far as the granting of asylum by our Missions Abroad is concerned, the study on the whole has been made, and incorporated in

- 3 -

the circular of April 1950; as for granting asylum to foreigners in Canada it seems to me that every application presents a case which is sui generis and calls for an ad hoc political decision to be taken on the basis of a distinctive approach in each case (e.g. refugee under the IRO scheme, admission of a communist^x,^x hospitality to a politico^x at odds with some Latin American Regime, etc.).

x As you are aware the admission of communists is the subject of a separate Departmental policy, and D. L. (2) (was it Consular Division?) have files relating to this matter of such.


Legal Division

DEPARTMENT OF EXTERNAL AFFAIRS

MEMORANDUM

TO: MR. WERSHOF

Security CONFIDENTIAL

Date March 9, 1956.

FROM: AMERICAN DIVISION: T. LeM. Carter: bm

File No.

5475-A X-25-4

REFERENCE:

SUBJECT: POLITICAL ASYLUM

108

copy 6m
1607-40

Arising out of discussions on a possible request for political asylum in Canada by ex-President Peron, it appeared that there are no very clear instructions or general principles on the question of political asylum to guide Departmental officials who may be obliged to advise on particular cases. It further appears that no Division is very clearly responsible for the general subject of political asylum. Apparently cases in the past have been handled on an ad hoc basis and by different Divisions.

2. I asked Miss Mackay to do a brief study on this question, and I attach the memorandum which she prepared. I think that her list of cases is incomplete. There are, of course, the cases of asylum given to a number of former Communist diplomats who have resigned either in Canada or abroad. Moreover, in the last twenty or thirty years, a large number of persons who came under the general category of refugees or displaced persons, have entered Canada. In dealing with these cases, humanitarian and political principles which form part of the doctrine of political asylum have been given due weight. In other words, I do not think that our record in this field in the past twenty or thirty years has been as haphazard and as lacking in general principles as Miss Mackay's memorandum suggests.

3. I would suggest that one Division should be in charge of following the question of political asylum in a general way, in consultation, of course, with the political Division concerned. Consular Division would appear to be a likely candidate. Once the Division is selected, it would seem desirable to me that some general study, along the lines of one of our source papers, should be embarked upon, on the question of political asylum, and that it should be

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considerably more comprehensive than Miss Mackay's study. The study should go back to the '30's, in a real attempt to analyse what in fact the Canadian Government has done over the last few years. From this study some principles or precedents would emerge which would be of help in dealing with any individual applications. What struck me a few months ago, when we considered the possibility of an application from former President Peron, was that there was no organized set of principles or precedents which automatically came into play, and there was no Division which was the custodian of the practice.

4. I think an argument can be made that a country with political stability and the low temperature of Canada, might well attempt to carry on the very honourable tradition in this field of countries like Switzerland, France, the United Kingdom, etc.


American Division.

DEPARTMENT OF EXTERNAL AFFAIRS

MEMORANDUM

TO: *W* MR. T. LAM, CARTER

Security *Confidential*

Date February 29, 1956

FROM: Latin American Section/L. F. Mackay/nk

File No.

5475-AX-25-4

REFERENCE:

108

SUBJECT: Political Asylum

A review of Canada's policy regarding the granting of asylum in Canada to political refugees seems indicated in the light of recent events, namely, the possibility that President Peron of Argentina seek refuge in the United States or Canada. This has given rise to the possibility of formulating an enlightened policy following in the footsteps of the more politically mature countries such as France, Switzerland and Great Britain. As the problem falls within the jurisdiction of Legal, Consular and United Nations Divisions, we would recommend that the most appropriate division be charged with the responsibility of pursuing a study of Canada's policy on this question.

The Privilege of Asylum

2. The right of asylum is placed in three categories:

- A. Sovereign states granting asylum on their own territory.
- B. Diplomatic envoys granting asylum on diplomatic premises.
- C. Ships granting asylum while in foreign ports.

3.
A. The right of asylum which was recognized many centuries ago has completely vanished as a rule in International Law. However, in the broad sense of the term a State, being at liberty to do whatever it chooses, has the right of giving asylum or hospitality

- 2 -

to immigrants or refugees "whether or not they (the refugees) have violated the laws of their country in leaving it and whether the latter are accused of political or ordinary crimes (Hall, International Law).

4. Treaties can, of course, restrict the country's right to grant asylum. Canada, however, has not signed any such treaties as far as can be ascertained. If one considers British treaties as binding on Canada, there are still no restrictions on Canada's right to grant asylum, for it can be argued that in British treaties only crimes of common law (crimes de droit commun) and not political offences are extraditable.
5. The Canadian policy with regard to political asylum can be based on principles of International Law or follow along the lines of the Draft Convention relating to the Status of Refugees, which Canada has not yet ratified. Nevertheless, it can be used as a norm of world opinion. The right of sovereign states to grant asylum on their own territory is based on the principle of absolute control within their own frontiers. Any state, according to International Law, may admit into its territory fugitives from justice or nationals of another state. According to the Draft Convention, states should not impose penalties on refugees who enter their territory illegally but who present themselves without delay to the authorities and show good cause for illegal entry or presence. States should also not expel a refugee lawfully in their territory save on the grounds of national security or public order in the pursuance of a decision reached in accordance with due process of law. A refugee should not be expelled or returned to a country where his life or freedom is threatened on account of his race, religion, nationality or political opinion.
6. Outstanding cases of asylum in Canada can be listed as follows:
 - (a) Count Jacques Duge de Bernonville

Count de Bernonville, a French national, left France in November, 1946, destined for New York intransit. He remained some time in the United States and came to Canada

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under an assumed name, seeking entry as a non-immigrant. His family joined him in Montreal a few months later. After entry into Canada de Bernonville applied for landing in this country but, being unable to comply with immigration requirements, he was rejected and ordered deported on January 30, 1948. It was discovered about this time that de Bernonville had been tried in absentia for high treason by the French court of Toulouse and condemned to death by shooting. Institution of habeas corpus proceedings and other legal entanglements caused the case to drag on for over two years. Finally, de Bernonville left of his own accord for Brazil on August 17, 1951.

- * In the case of de Bernonville the French Government never requested extradition. Proceedings against de Bernonville were instituted because he did not comply with immigration regulations and not for his political beliefs. It must in all fairness be said, however, that public opinion played an important role in this infamous case and that the Canadian Government suffered much embarrassment and was therefore anxious to see de Bernonville deported or out of the country.

(b) The Peruvian General, Xenon Noriega

? In August, 1954, General Xenon Noriega, Peruvian Minister of Defence, in President Odria's cabinet, attempted to seize power for himself. His coup d'etat was nipped in the bud and President Odria placed him aboard a northbound Peruvian destroyer. Our Ambassador in Lima was approached with a view to admitting Noriega to Canada as a permanent resident. Because Canada's relations with Peru are excellent, it was decided appropriate for Canada to grant permanent residence to General Noriega. Subsequently, he was admitted to the United States as a deportee.

(c) Ex-President Juan Peron of Argentina

Although ex-President Peron did not seek refuge in Canada, and therefore does not belong, strictly speaking, to this category, the possibility of his coming here has to be con-

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sidered. Peron, after the successful revolution in Argentina, sought refuge in Paraguay, where he remained until November 2 of last year, at which time a court edict was brought against him and several other Peronistas, accusing them of treason. Peron fled Paraguay to land in Panama after speculation had him going to Switzerland. Argentina declared that because Peron had left Paraguay he could not be considered any more as a political refugee. During Peron's stay in Paraguay there were some student demonstrations. The news of his intended stay in Nicaragua also touched off oratory and demonstrations among the students. By November 22 Peron had decided to remain temporarily in Panama. Panama, when approached by Argentina for extradition, refused to grant it on the grounds that Peron was a political refugee and not a common criminal. When in December the news leaked out that Peron had applied for entry into Mexico, a heated controversy arose in the Mexican press. Contrary to Peron's expectations, the Mexican Ministry of Foreign Relations took its time about studying his visa request and finally Peron requested to remain in Panama. It appears, however, that United States officials have made no secret of their desire to see General Peron move from Panama.

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- (d) There have been a few other cases of political refugees in Canada which all bear out the same ad hoc policy in a restrictive sense. In the case of some French nationals accused of treason, they were permitted to stay in Canada by Orders-in-Council, as was the case with Julien Labedan, Dr. Benoit Montel, Dr. A. C. Boussat and Mr. Jean-Louis Huc.
 - (e) Consideration is given to applications for admission to Canada of democratic anti-communist refugees. Examination of each case is made before entry is permitted. The same general policy applies also to requests for entry to Canada received from former Soviet or satellite officials.

7. Canada's attitude in the case of de Bernonville and other Frenchmen accused of similar crimes was outlined by the Minister of Mines and Resources, when he indicated that such persons

- 5 -

could not be treated as bona fide political refugees because they did not present themselves as such nor had they been persecuted for their political beliefs or denied their political rights in France. However, in a memorandum dated October 21, 1948, Mr. Cadieux suggested it was a mistake to establish the Canadian immigration law as the principle of selection in the case of persons seeking refuge in Canada. He further stated, "The immigration law in fact implies the negation of the refugee status of the persons concerned and, if interpreted literally, may lead to preposterous conclusions....I am therefore led to the conclusion that we are compelled to look at the political record of the persons who claim refugee status and I venture to suggest that the test whether a person should be allowed to remain or not is whether he is accused and has been condemned for criminal actions in the usual sense of the word".

8. The contrary attitude was taken in the case of General Noriega. The examination of his case was not based principally on immigration requirements, which could be waived by the Minister of Citizenship and Immigration if he so desired, but was based on the excellent relations existing between Canada and Peru.
9. In the event of Peron seeking asylum, the stand to be taken was outlined in a memorandum of November 17, 1955, which concluded that if Peron were to seek admission, he should be refused because he is a most undesirable visitor, is hated in his country and has an unsavoury reputation. There is also the fear of possible extradition requests.

United Kingdom

10. Instead of the ad hoc policy followed by Canada in judging the acceptability of asylum cases, where consideration is given more to the agreeable or unsavoury character or personality of the individual concerned, the United Kingdom adopts the following procedure:

11. The Home Secretary has almost unlimited power to admit aliens for such periods as he may decide and on such conditions as he may choose, or to refuse admission to aliens and to deport

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- 6 -

any alien if he deems it to be conducive to the public good. On the particular question of refugees, in practice the customary thing is that when a refugee is permitted to land the permission is for a specified period. After some time has been spent by the refugee in England, he would apply to the Home Office for permission to remain indefinitely. No Order-in-Council is necessary to authorize the granting of such permission and the decision is taken by an appropriate official of the Home Office. Only in very unusual cases is the matter brought before the Home Secretary, who always reserves the right to terminate or permit residence of an alien in the United Kingdom. If a refugee landed in the United Kingdom under a false identity and his true identity were later discovered, the Home Office could allow him to remain if they so desired. All that would be necessary would be for the man to present a travel document in his proper name which the Home Office would endorse with permission to remain in the United Kingdom for an indefinite period. Leniency in interpretation is the usage so that in fact asylum is granted in the majority of cases.

United States

12. In the United States the status of the refugee can only be achieved under the provisions of the Displaced Persons Act of 1948 or by a private bill introduced by a member of Congress. It is then referred to a Judiciary Committee, passed to either the House or the Senate and from there to the corresponding and remaining Judiciary Committee and finally to the President for signature.

Latin America

13. The Sixth International Conference of American States held in Havana in February, 1928, adopted a convention on asylum providing that, "Asylum granted to political offenders shall be respected to the extent in which it is allowed as a right or through humanitarian toleration by the usages, the conventions or the laws of the country in which granted".

14. Mexico heads the Latin American countries, with the exception of Peru, in broadly interpreting this policy so that,

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- 7 -

provided the political asylee engages in no political activities and makes no statements of a political nature to the press, he will be granted refuge. One famous case of asylum in Mexico was, of course, that of Leon Trotsky, who was accepted as a political refugee without regard to any possible criminal activity in which he may have engaged. More recent cases were the henchmen of ex-President Arbenz of Guatemala, who sought and were granted refuge in Mexico.

Switzerland

15. Switzerland also broadly interprets the demand of political asylum by granting refuge to whomever requests it on the one condition of no political activity. Famous political asylees who were granted refuge by Switzerland are Lenin and, for a short time, ex-President Arbenz of Guatemala.

16.

- B. In the case of diplomatic envoys granting refuge in diplomatic premises, the Canadian policy was clearly outlined in Circular Document B.45 of April 29, 1950, which established the principle that every step should be taken to discourage resort to a Canadian mission of political refugees. Generally speaking, asylum can be granted only when a person is in imminent danger of losing his life and such intervention should be purely humanitarian, taking into consideration the local usages and susceptibilities.

17.

The United Kingdom, in the case of asylum in diplomatic premises, takes the attitude that, although the right of foreign envoys to grant asylum does not exist in International Law, that right may exist in particular countries due to local use. Asylum is granted only on the request of the refugee and when he is in immediate danger of his life.

18.

The United States, though it does not recognize the right of 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 action by the duly constituted authorities".

19.

- C. The interpretation outlined in B above applies also in the case of refugees seeking asylum on warships in foreign ports. Mer-

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chant ships can afford no such asylum, of course, as they do not enjoy the privilege of extra-territoriality.

Conclusion

20. In conclusion, Canada, as a sovereign state, has the right to grant or refuse asylum, based on the principle of absolute control within her frontiers. In the past the granting of political asylum was examined in the light of the existing immigration laws. Exceptions were made in unusual cases, when after examination of individual records it was established no common crime had been committed by the asylee. An Order-in-Council superseded the Immigration Act in such cases.

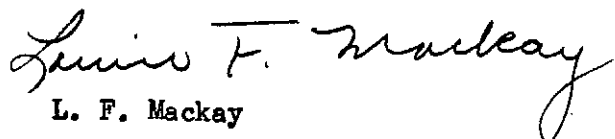
21. In other countries, however, the principle of asylum is more largely interpreted. Asylum can be granted to a political offender guilty of crimes of a political character even to the extent of murder. The case of some communist officials who have deserted to the West is an example of this broader interpretation.

22. In my opinion, Canada should adopt a similar policy on humanitarian grounds. The political climate of Canada is stable enough, being similar to that of Switzerland, to be able to keep a political offender on her soil and allow him to live in dignity. I should therefore like to make the following suggestions:

(a) That a detailed study of the history and evolution of the principle of political asylum be made in the light of rules of International Law and the tradition of various countries, examining the different interpretations given in the following periods:

- I. Up to the First World War
- II. Between the two World Wars
- III. From the Second World War until today

(b) Working on the foundation of (a) above, a more lenient Canadian policy than the one so far adopted can be formulated, so that the granting of political asylum can become a general principle in itself and not the application or exception to the Immigration Laws of Canada.


L. F. Mackay

NUMBERED LETTER

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

FROM:THE CANADIAN EMBASSY,.....
.....CIUDAD TRUJILLO, D.R.....

Reference:.....

Subject:.....Political Asylum.....

Security:.....SECRET.....

No:.....14.....

Date:.....January 13, 1956.....

Enclosures:.....three.....

Air or Surface Mail:.....Surface.....

Post File No:.....10-1-4.....

Ottawa File No.

5475-AX-25-40

131

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Referred to:
American Air
on March 29/56

References

E.g.

Forwarded herewith is a copy of the original together with translations of a note received from the Dominican Foreign Office notifying governments with representation in Ciudad Trujillo yet not members of the OAS of the denunciation by the Dominican Republic of the Havana (1928) and Montevideo (1933) Conventions on Diplomatic Asylum. We presume that you have been aware of the Dominican Republic's intention to take this step since the denunciation notice was first filed with the OAS in September, 1954. It now appears that all appropriate steps have been taken by the Dominican authorities and that the denunciation of these Conventions, although not provided for in the Conventions themselves, has taken effect from October 7, 1955.

2. It is our understanding that while Canada is not party to any convention concerning political or diplomatic asylum and has not publically taken a position on the legality of such conventions, our policy on the granting of asylum does contemplate that in most extreme and pressing circumstances in order to save the life of a clearly political offender temporary protection might be given subject to the Department's advice on the particular case. It is requested that a copy of the policy paper prepared in the Consular Division on this subject be forwarded to this Embassy. At the same time we would be grateful for your views on the effect that the Dominican denunciation of the Diplomatic Asylum Conventions, and presumably the principles therein set forth of the right of diplomatic asylum, would have on any case that might arise which would involve our own policy on asylum.

Internal Circulation

Distribution to Posts

A. R. B. /
for The Embassy.

30677

Ciudad Trujillo, R.D.,
22 de diciembre de 1955.
Año del Benefactor de la Patria.

Señor Encargado de Negocios:

Tengo a honra informar a Vuestra Señoría que las Convenciones sobre Asilo Diplomático de La Habana, de fecha 20 de febrero de 1928 y de Montevideo, de fecha 26 de diciembre de 1933, han quedado sin efecto en lo que concierne a la República Dominicana, a partir del 7 de octubre del presente año, y que con tal motivo se publicó en la prensa diaria de esta ciudad un Comunicado de la Cancillería, cuyo texto dice así:

"En cumplimiento de la Resolución del Congreso Nacional No.3943, de fecha 25 de septiembre de 1954, y del Decreto No.227 de fecha 25 de septiembre de 1954 del Poder Ejecutivo, la República Dominicana denunció las Convenciones sobre Asilo Diplomático de La Habana, de fecha 20 de febrero de 1928 y de Montevideo, de fecha 26 de diciembre de 1933, por Nota del Representante de la República Dominicana ante la Organización de Estados Americanos dirigida al Secretario General de la citada organización el 6 de octubre de 1954.

"Según constancia expedida por el Secretario General interino de la Organización de Estados Americanos en fecha 16 de diciembre de 1955, el 8 de octubre de 1954 la Unión Panamericana informó a los Estados Miembros de la Organización, la denuncia por el Gobierno de la República Dominicana de las Convenciones sobre Asilo Diplomático de la Habana y Montevideo y que al mismo tiempo la Unión Panamericana comunicó a dichos Estados que como la Convención de La Habana de 1928 no contenía disposición alguna sobre denuncia,

A Su Señoría
Morley B. Bursey,
Encargado de Negocios a.i.
del Canadá, Ciudad.-

- 2 -

el Gobierno Dominicano había manifestado que en cuanto a esta Convención la denuncia produciría sus efectos inmediatamente y en lo relativo a la Convención de Montevideo, que ésta última dejó de regir para la República Dominicana a partir del 7 de octubre del presente año.

"En consecuencia, ambas Convenciones han cesado en sus efectos, en lo que concierne a la República Dominicana, a partir del 7 de octubre del presente año.

"Ciudad Trujillo, 17 de Diciembre de 1955.
Año del Benefactor de la Patria."

Hago provecho de la oportunidad para renovar a Vuestra Señoría las seguridades de la más distinguida consideración.

República Dominicana

SECRETARIAT OF FOREIGN AFFAIRS
AND WORSHIP

Note#30677

Ciudad Trujillo, D. R.
December 22nd, 1955.
Year of the Benefactor of the
Country.

In execution of Resolution No. 3943 of the National Congress dated September 25th, 1954, and of Decree No. 227, dated September 25th, 1954, of the Executive Power, the Dominican Republic denounced the Conventions on Diplomatic Asylum of Havana, dated February 20th, 1928 and of Montevideo dated December 26th, 1933 in a Note from the Representative of the Dominican Republic to the Organization of American States addressed to the Secretary General of the aforementioned organization of American States, on October 6, 1954.

According to written evidence sent by the acting Secretary General of the Organization of American States dated December 16th, 1955, the Pan American Union informed the Member States of the Organization, of the denunciation by the Government of the Dominican Republic of the Diplomatic Asylum Conventions of Havana and of Montevideo on October 9, 1954. At the same time the Pan-american Union informed the aforementioned States that in the absence of any provision for denunciation, the Dominican Government had manifested that it wished the denunciation to take effect immediately, and that the Convention of Montevideo, being the latest one, ceased to govern in respect of the Dominican Republic beginning on October 7th of the present year.

Accordingly, both Conventions have ceased in their effect in relation to the Dominican Republic, beginning on October 7 of the present year.

DESPATCH

THIS COPY FOR LEGAL DIVISION

American Division/L. F. Mackay/nk

TO: THE CANADIAN AMBASSADOR,

Security: CONFIDENTIAL

BUENOS AIRES, ARGENTINA,

No. No. X-311

FROM: THE SECRETARY OF STATE FOR
EXTERNAL AFFAIRS, OTTAWA, CANADA.

Date: November 23, 1955

Enclosures:

Reference: Your telegram No. 62 of October 6, 1955

Air or Surface Mail:

Subject: Political Asylum; Ex-President Peron

Post File No:

Ottawa File No. 5475-AK-254	
7257-40 3607-40	
131	—

References

ORIGINAL ON 1607-40

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28 NOV 1955

We have carefully examined the question of political asylum with reference to ex-president Peron in consultation with Legal Division and the Director of Immigration and the following points were agreed to:

- (a) Legally, Canada is at liberty to admit Peron, but is under no obligation to do so.
- (b) If he should seek admission, the Department of Immigration has full power to refuse him without giving a reason.

2. A detailed study is being prepared on the whole question of political asylum and the possibility of formulating a Canadian policy in that respect. For the time being, however, we consider it unnecessary to give any answer to the note of the Argentine authorities, especially since they do not ask specifically for a statement. No further action should therefore be taken by you and the acknowledgment which you have already sent seems sufficient. If any further approach is made to you by the Argentines you may say that the Canadian Government has taken careful note of their representations. Should this happen, you will, of course, inform us immediately.

T. LeM. Carter

Secretary of State
for External Affairs

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1. member
22(17)*

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Document divulgué en vertu de la Loi sur l'accès à l'information
DEPARTMENT OF EXTERNAL AFFAIRS
MEMORANDUM

*Noted
L. H. ...*

TO: AMERICAN DIVISION *per letter*.....

Security CONFIDENTIAL.....

Date November 3, 1955.....

FROM: LEGAL DIVISION.....

File No.

5475-AX-25-40

REFERENCE: Your memorandum of October 18.....

108

✓

SUBJECT: Granting of Political Asylum.....

It is a generally agreed principle in International Law, based on the concept of territorial sovereignty, that a state has the right either to grant or refuse asylum* unless such state has limited its own liberty of so doing in either of the following ways:

- a) by signing or ratifying a Multilateral Convention establishing a right of asylum,
- b) by entering Extradition Treaties or Conventions with foreign countries.
- c) by renouncing, with regard to certain categories of refugees, its sovereign right of granting asylum by way of a special provision in a multilateral or bilateral treaty - (e.g. by incorporating in a diplomatic treaty a "clause d'attentat" which, since the Franco-Belgian Convention of March 22, 1856, has been introduced in many agreements in order to prevent murderers of heads of state to benefit of the political asylum in a foreign country).

....2

* "A state being 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 has the right of receiving and giving hospitality or asylum to immigrants or refugees, whether or not the former have violated the laws of their country in leaving it; and whether the latter are accused of political or of ordinary crimes. So soon as an individual, not being at the moment in custody, asks to be permitted to enter the territory of a state, the state alone decides whether permission shall be given." (Hall "International Law" - 8th Edition, p. 264)

SEE ALSO letter from Mr. Pearson to the Minister of Citizenship and Immigration of March 6, 1945 in the de Bernonville Extradition (file 102-CJG-40) *4.11.20(55)*

2. The Government of Canada has not signed or ratified any multilateral convention establishing a right of asylum, nor am I aware of its having inscribed in treaties passed with foreign countries, and in particular with Argentina, special clauses of the type described above. Moreover, the Mutual Extradition Treaty of Fugitive Criminals of 1894, between Great Britain and the Argentine Republic (see British Treaty Series Number 2, 1894), which may be regarded as binding on Canada, specifically excludes (as is usual in such cases) offenses of a political character from the list of extraditable offenses (see Article 6). It would therefore appear that Canada has retained its entire freedom to either grant or refuse asylum to refugees of Argentine origin, except for those having committed ordinary crimes, i.e. crimes with no political character ("crimes de droit commun").

3. It follows from the general principle expressed in paragraph 1 above that whatever may be the number and quality of those to whom asylum is applicable, asylum is never a right for them:

" L'accorde qui veut; la refuse qui veut. Moore, dans son Digest, a expliqué comment en présence des progrès réalisés à peu près partout dans l'organisation de la justice, l'idée disparut progressivement que la protection fut juridiquement due au fugitif. Cette opinion américaine est aussi celle des doctrines anglaises et françaises. A refuser asile, on ne viole pas le droit, et le seul jugement dont relève ce refus est celui de l'opinion publique". (M. Sibert "Traite de Droit International Public", Tome I, p. 573-574, Note 2).

4. To further illustrate the discretionary nature of asylum, it might perhaps be useful to mention that the Universal Declaration of Human Rights, adopted by the General Assembly of the United Nations on December 10th, 1948, specifies in Section 14(1) that individuals have a right "to seek or to enjoy in other countries asylum from persecution" but not a right to exact asylum. You will recall that, although the Canadian Delegation voted for the adoption of that Declaration, it has abstained from the final vote in the Third Committee on the Declaration as a whole.

5. As you may be aware, Canada is not a party to the Convention Relating to the Status of Refugees which has been signed

and ratified by two countries in July 1952, pursuant to a conference held in Geneva. The Canadian Government has not yet decided what action it will take with respect to that Convention. It is known that various changes in existing policy would be required if Canada were to ratify it. "At present, refugees who enter Canada as immigrants have the same privileges as other residents of Canada with respect to the rights dealt with in the Convention and a Canadian accession to the Convention would [reportedly] not improve their status in any appreciable measure. Whether it is desirable for Canada to make the necessary alterations in its own policy so that it can encourage considerate treatment of refugees elsewhere by ratifying the Convention is a question which the Government has not yet decided". (See our memorandum of June 1954, for file 5475-AX-25-40, on the question of Canadian policy concerning Refugees).

6. It is to be noted that although a country may "ad libitum", in principle, either grant or refuse asylum to political refugees, it does not follow from this that the state granting asylum has no duties with regard to the state of which the individual searching asylum is a national:

"La terre d'asile ne doit pas être un lieu d'entreprises ou de complots contre ses droits ou intérêts; dès l'instant où 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 dangers pour l'Etat contre lequel il cherche protection: un engagement formel pourra être exigé du réfugié de s'abstenir de toute action politique contraire à son Etat; mieux encore, une surveillance continue, et au besoin, une résidence fixe pourront lui être imposées." (M. Sibert - Traité de Droit International Public, Tome, p. 573-574-Note2).

"When [an individual] has been received, the state is only bound, under its general responsibility for acts done within its jurisdiction, to take such precautions as may be necessary to prevent him from doing harm, by placing him, for instance, under surveillance or by internment him at a distance from the frontier, if there is reason to believe that his presence is causing serious danger to the country from which he has fled. On the failure of measures of this kind, a right arises on the part of the threatened state to require his expulsion, so that it may be freed from danger; but in

no circumstances can it exact his surrender." (Hall "International Law" - 8th Edition, p. 265).

"For it is the duty of every State to prevent individuals living on its territory from endangering the safety of another state by organising hostile expeditions or by 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." (Oppenheim "International Law" - Vol. I, p. 539)

7. On the matter of what criterion should be adopted to select political refugees coming to Canada, I would submit that it might perhaps not be appropriate to establish the Canadian Immigration Law as the principle of selection, as was apparently done in the case of French political refugees after the war. (See file 102-CJG-40). That law seems to actually imply the negation of the refugee status of the person concerned and, if interpreted literally, may lead to somewhat preposterous conclusions. "A more adequate criterion for this selection would be provided by looking at the political record of the persons who claim refugee status and I would suggest that the test whether the person should be allowed to remain or not is whether he is accused and has been condemned for criminal actions in the usual sense of the word." (See paragraph 3 of Memo of October 21, 1948 on French political refugees, in the de Bernonville case. - File 102-CJG-40). This process might involve a search of the personal records of a refugee and even, in certain cases, a full study of his public life, in order to ascertain whether the crimes he is accused of having committed are crimes "in the ordinary sense of the word", not crimes having a political character. - In this connection, it is my belief that there might be some interest in securing, at this stage, the opinion of Consular and D.L.(2) Divisions as to what type of political refugees Canada might possibly accept within its borders.

8. Our conclusions are therefore the following:

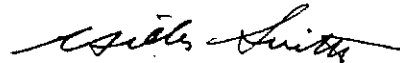
- a) Canada is under no obligation in International Law to either accept or to refuse General Peron as a political refugee.
- b) Whether it is desirable or convenient for Canada

.....5

~~CONFIDENTIAL~~

to accept or refuse to shelter General Peron, should he decide to search asylum in our country, is mainly a question of policy that should be decided in consultation with the Department of Citizenship and Immigration and the R.C.M.P. (This, I understand, could be done with the co-operation of D.L.(2) and Consular Divisions). - The arguments against continental countries granting asylum to General Peron, brought forward in the Argentine Note, do not seem, in my opinion (mainly on account of obvious geographical factors) to have much pertinence, nor to carry much weight, in the particular case of Canada. However, these arguments should be examined in the light of our paragraph 3 above.

- c) My only comment on the statement you propose to use is that you should, as far as possible, try to incorporate in it the few points brought forward in the first and third paragraphs above. The information contained in paragraph 5 could also be used, although it should be indicated as Confidential.



Legal Division

DEPARTMENT OF EXTERNAL AFFAIRS

MEMORANDUM

FILE COPY

TO:LEGAL DIVISION.....

Security ..CONFIDENTIAL.....

DateOctober. 18., 1955.....

FROM:American Division/L..E..Mackay/nk.....

File No.

5475-AX-28-40

REFERENCE:

131

SUBJECT:Granting of political asylum.....

Attached please find two copies of telegram No. 62 of October 6 from our Embassy in Buenos Aires, in which the question is raised of Canada's position with respect to the granting of political asylum to ex-President Peron.

2. On looking over our files, we have come across a letter dated April 13, 1950, in which the views of the Canadian Government on this question are outlined to the Argentine Embassy, following a request we received from them, which reads in part:

"The right of sovereign states to grant asylum on their own territory is based on the principle of non-intervention and the absolute control of states within their own frontiers. Any state, according to international law, may admit into its territory fugitives from justice who are nationals of another state. In the absence of an extradition treaty providing for the apprehension and mutual surrender of such fugitives, there is no legal obligation on the receiving state to deport or deliver up such fugitives to a requesting state.

"Very recently, the Ad Hoc Committee of the United Nations on Statelessness prepared a draft Convention Relating to the Status of Refugees. This draft Convention contains certain articles dealing with the expulsion and non-admittance of refugees, which would seem to forecast another step in the evolution of international law on this point. The relevant articles read as follows:

c.c. Protocol Division
Consular Division
United Nations Division

- 2 -

Article 26

Refugees not lawfully admitted

- "1. The Contracting States shall not impose penalties, on account of his illegal entry or presence, on a refugee who enters or who is present in their territory without authorization, and who presents himself without delay to the authorities and shows good cause for his illegal entry or presence.
- "2. The Contracting States shall not apply to such refugee restrictions of movement other than those which are necessary and such restrictions shall only be applied until his status in the country is regularized or he obtains admission into another country. The Contracting States shall allow such refugee a reasonable period and all the necessary facilities to obtain admission into another country.

Article 27

Expulsion of refugees lawfully admitted

- "1. The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order and in pursuance of a decision reached in accordance with the process of law.
- "2. Such refugee shall be entitled, in accordance with the established law and procedure of the country, to submit evidence to clear himself and to be represented before the competent authority.
- "3. The Contracting States shall allow such refugee a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary.

Article 28

Prohibition of expulsion to territories where
the life or freedom of a refugee is threatened

"No Contracting State shall expel or return, in any manner whatsoever, a refugee to the frontiers of territories where his life or freedom would be threatened on account of

000514

- 3 -

his race, religion, nationality or political opinion."

The contents of this letter, which was prepared by your division, were incorporated into a Circular Document, No. B/45 of April 29, 1950, and sent to all our missions abroad.

3. I should be grateful if you could inform us what changes should be made in this statement in order to bring it up to date. As we want to use the statement for our own guidance, as well as for possible use in a communication to the Argentine Government, you might include statements of a classified character of the government's position, indicating that they are classified. Your reply should also cover the points raised in the Argentine note, and the specific case of ex-President Peron. As we would like to be prepared in case this question arises suddenly, I should be obliged for a reply by November 1. We do not at present propose to send a reasoned reply to the Argentine note but simply an acknowledgement.

4. I am sending a copy of this memorandum to the United Nations Division, whom you will doubtless want to consult about the Convention on Refugees.


AMERICAN DIVISION

COPY

FROM: EMBASSY BUENOS AIRES

TO: EXTERNAL OTTAWA

s.19(1)

CONFIDENTIAL. NO. 62. OCTOBER 6/55.

FOLLOWING IS OFFICE TRANSLATION OF TEXT OF FIRST PERSON
CONFIDENTIAL NOTE NO. 1504 RECEIVED TODAY FROM FOREIGN MINISTER:
BEGINS:

"THE ARGENTINE GOVERNMENT, RESPECTING THE JUDICIAL NORMS IN
FORCE IN AMERICA ON THE SUBJECT OF (ROYALTY) HAS AUTHORIZED THE
DEPARTURE OF [REDACTED] FROM ARGENTINE
TERRITORY. THE ARGENTINE GOVERNMENT RECOGNIZE THE RIGHT OF
TERRITORIAL ASYLUM OR SANCTUARY IN (GROUP CORRUPT) WHICH
POLITICAL EXILE OR FUGITIVE MAY CLAIM PROTECTION UNDER CERTAIN
CONDITIONS IN TERRITORY OF ANOTHER STATE.

2. BUT SINCE CONCESSION OF TERRITORIAL ASYLUM IS NOT AN
OBLIGATION BUT A RIGHT FOR STATES GIVING ASYLUM, AND MAY BE GRANTED
OR DENIED AD LIBITUM, I BEG TO REQUEST YOU TO BE GOOD ENOUGH TO
TRANSMIT TO THE GOVERNMENT WHICH YOU REPRESENT SOME REFLECTIONS
WHICH PRESENT THEMSELVES TO THE ARGENTINE GOVERNMENT ON THE
POSSIBILITY THAT DEPOSED PRESIDENT MAY WISH TO ESTABLISH HIS
RESIDENCE IN TERRITORY OF YOUR GOVERNMENT.

3. IN RESPECT TO THIS, WE BELIEVE THAT IT WOULD NOT BE AMISS
TO REMIND YOU OF THE VIOLENT PERTURBATIONS WHICH THE EX-PRESIDENT
AROUSED DURING HIS TENURE OF OFFICE AND, ABOVE ALL, OF HIS OVER-
WHELMING RESPONSIBILITY IN THE DRAMATIC EVENTS OF RECENT DAYS
DURING WHICH MANY THOUSANDS OF PERSONS LOST THEIR LIVES, AS MANY
WERE WOUNDED AND AGAIN EVEN MORE SUFFERED GRIEVOUS PROPERTY
DAMAGE.

4. NOW, WHILE AUTHORITY OF PROVISIONAL GOVERNMENT IS FULLY
CONSOLIDATED AND THERE DOES NOT EXIST ANY DANGER WHATEVER THAT
THERE WILL BE A RETURN TO PREVIOUS STATE OF AFFAIRS, THERE IS NO

COPY

- 2 -

DOUBT THAT THE PRESENCE OF EX-PRESIDENT PERON IN A COUNTRY OF THE CONTINENT MIGHT OCCASION TROUBLESOME COMPLICATIONS AND AROUSE IN HIM ASPIRATIONS OF REINSTATEMENT WHICH WOULD BE AS HARMFUL AS THEY WOULD BE ABSURD. THE GOVERNMENT OF THE ARGENTINE CONSIDERS, FOR THIS REASON, THAT WITHDRAWAL OF [REDACTED] TO AN EXTRA-CONTINENTAL COUNTRY WOULD REDOUND TO BENEFIT OF INTERNAL PEACE OF THE ARGENTINE, TO GOOD RELATIONS BETWEEN OUR COUNTRY AND, AS WELL THE TRANQUILLITY OF THE STATE WHICH EVENTUALLY GIVES HIM ASYLUM.

5. IN CONCLUDING THIS NOTE, I DO NOT CONSIDER IT REDUNDANT TO REITERATE TO YOU THAT MY GOVERNMENT IS NOT PROPOSING IN (GROUP CORRUPT) TO INTERNATIONAL INVIOABLE RIGHT OF ASYLUM, BUT TO APPEAL TO THE UNDERSTANDING AND GOODWILL OF YOUR GOVERNMENT IN THE NAME OF FRATERNAL TIES WHICH HAPPILY BIND US IN ORDER TO ARRIVE AT BEST SOLUTION OF A PROBLEM WHICH CLOSELY AFFECTS THE VITAL INTERESTS OF THE ARGENTINE REPUBLIC. I TAKE THIS OPPORTUNITY ETC. ETC. (SIGNED MARIO AMADEO)." ENDS.

2. WE HAVE IT ON GOOD AUTHORITY THAT THE ARGENTINE GOVERNMENT HAS TODAY ADDRESSED A NOTE TO THE PARAGUAYAN GOVERNMENT REQUESTING THE REMOVAL OF [REDACTED] FROM PARAGUAYAN TERRITORY.

3. THE FOREIGN MINISTER'S NOTE HAS BEEN ACKNOWLEDGED, AND WE HAVE ADVISED HIM THAT WE WOULD COMMUNICATE FURTHER WITH HIM ON THE SUBJECT. WE SHOULD BE GRATEFUL FOR YOUR EARLY ADVICE AS TO REPLY TO BE MADE.

4. WE HAVE CONFIRMED THAT BY WORD "CONTINENT" THE ARGENTINE GOVERNMENT MEANS ALL THE AMERICAS, NORTH, CENTRAL AND SOUTH. BISSETT.

DEPARTMENT OF EXTERNAL AFFAIRS

MEMORANDUM

TO: AMERICAN DIVISION

Security ... RESTRICTED

Date October 12, 1955

FROM: LEGAL DIVISION

File No. 5475-AX-254
7257-40

REFERENCE:

SUBJECT: Political Asylum in Canadian Embassy, SANTIAGO.

Attached is the text of a proposed
reply to letter No. 230 of September 21, 1955 from
the Canadian Embassy, Santiago, which you may wish
to forward to its addressee, if you deem it appropriate.

John Smith
Legal Division

Mr. Carter
I see no objection.
Will you sign, if you agree.
AA

(FILE COPY)

NUMBERED LETTER

TO:.....

Security:

No: 1099

Date: 12-11-2001

Enclosures: . . .

Air or Surface Mail:.....

Post File No:

Ottawa File No.

5475-AX-255

131

134

References

On 12/12/50, the following information was received from the Bureau of the Census, Washington, D.C., regarding the number of persons in the United States who were born in the foreign born population in 1949:

T. LOM. Carter

1. James Earl Ray
2. John Edgar Hoover

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5475-AX-25-4

OTTAWA FILE	
No. 7257-4	
131	128

SECURITY CLASSIFICATION
RESTRICTED

Despatch No. 230.....
Date..... September 21, 1955.....

FROM: THE CANADIAN AMBASSADOR, SANTIAGO, CHILE.

TO: THE SECRETARY OF STATE FOR EXTERNAL AFFAIRS, CANADA

Reference...Circular Document No. B.45 of April 29, 1950.....

Subject: ~~Political Asylum in Canadian Embassy~~.....

In view of recent events in Argentina and the disturbed conditions in this country, I should like to enquire whether the Department has formulated any further ideas concerning the granting of asylum to political refugees since your aforesaid Circular Document No. B.45 of April 29, 1950.

2. My understanding of existing instructions is that, although I should discourage persons from seeking asylum in the Embassy, in the event that a Chilean political leader should be in imminent peril of losing his life if asylum were not granted him, I may grant him asylum, and oppose, as far as possible, any attempt to remove him by force.

T. E. Brown
Ambassador.

Copies Referred
To.....
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.....
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No. of Enclosures
.....

Post File
Right of
No. Asylum.....

DEPARTMENT OF EXTERNAL AFFAIRS, CANADA.
NUMBERED LETTER

TO: THE CANADIAN EMBASSY,
..... BUENOS AIRES, Argentina.....
FROM: THE UNDER-SECRETARY OF STATE FOR
EXTERNAL AFFAIRS, OTTAWA, CANADA.
Reference: Our telegram No. 4 of January 24, 1955.
Subject: Protection in Canadian Embassy for
..... Canadian Sisters of the Franciscan Order....
.....

Security: CONFIDENTIAL.....
Date: January 24, 1955.....
Date No. 11.....
Enclosures:
Air or Surface Mail: Air.....
Post File No: 5475-AX-2576

Ottawa File No. 7-57-25740	
16	100

References

Refer a copy of this letter & Circular for their file together with a copy of our memo to right of Jan 29
0 on 25/55

As we informed you in our telegram under reference, you were quite correct in assuring the Mother Superior of the Franciscan Order that protection would be granted by the Canadian Embassy should there be a threat of physical violence to the six Canadian sisters of her order. It is important, as indicated in our telegram, that before such protection is granted, there should be a threat of physical violence during political disturbances or riots.

2. Generally speaking, Canada does not recognize any right of asylum on diplomatic premises for political refugees; in other words we do not believe that there is any obligation on the part of a receiving state to grant to envoys the right of affording asylum to individuals not belonging to their suites. However, this is not an absolute rule automatically applicable to every situation; exceptions may be made in certain circumstances:

(a) In very unusual circumstances a Canadian Mission abroad might grant temporary asylum to a "political offender" who was not a Canadian citizen. This possibility is recognized in para. 8 of Annex "A" of Circular Document B.45 of April 29, 1950.

(b) Under exceptional circumstances a Canadian Mission abroad might offer temporary asylum to a Canadian citizen if he had been subjected to discriminatory action by the local authorities or if such action appeared probable. The aim in granting asylum 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. (See para. 7 of Annex "A" of Cir. Doc. B.45.)

(c) Asylum might also be granted to a Canadian citizen who is in imminent personal danger during political disturbances or riots. Regulations enacted for the Royal Canadian Navy permit the grant of refuge on naval vessels for Canadian citizens fleeing from danger in such circumstances and we have recently advised Commonwealth Division that in our opinion a Canadian Mission abroad would have a similar discretion to afford temporary asylum to Canadian citizens.

3. It might also be noted that Borchard (The Diplomatic Protection of Citizens Abroad) takes the view that before

Internal
Circulation

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to Posts

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x a denial of justice has actually been perpetrated foreign governments may use their good offices to see that their citizens abroad receive the benefits of due process of law, in order that a denial of justice may be avoided. Since states must afford protection for the persons and property of aliens on their territories it would be open to a Canadian Mission abroad, in extraordinary circumstances, to seek assurances of protection for Canadian citizens residing in the country from the local authorities. This action would only be justified in quite unusual circumstances. The situation would have to be such that the danger of violent disorders was imminent and normal police protection was feared to be inadequate. x

4. Since Canada does not recognize any right of asylum on diplomatic premises for political refugees, it is preferable to refer to the "giving of protection" rather than the "granting of asylum". As indicated above, this letter should be read in conjunction with Circular Document No. B-45 of April 29, 1950.

C. A. LITTLE

for Under-Secretary of State
for External Affairs.

Sem/pt.
Sept.

agree WSS
Consular

Jan 24.

MESSAGE FORM
OUTGOING

File No. 5475-AX-25-46 7257-40	
16	100

FROM: THE SECRETARY OF STATE FOR EXTERNAL AFFAIRS, CANADA

TO: THE CANADIAN AMBASSADOR,

BUENOS AIRES, ARGENTINA.

Message To Be Sent	No. 4	Date 24 January 21, 1955	For Communications Section Only
AIR CYPHER			SENT - JAN 24 1955
EN CLAIR			
CODE			
CYPHER <i>OTP</i>	<input checked="" type="checkbox"/>	REFERENCE: Your telegram No. 5 of January 17, 1955	
Priority		SUBJECT: Protection in Canadian Embassy for Canadian Sisters of the Franciscan Order	
ORIGINATOR <i>[Signature]</i> G. C. Langille (Name Typed)		<p>You were correct in giving assurance that protection in the Canadian Embassy would be granted to the six Canadian repeat Canadian sisters should there be a threat to them of physical violence during political disturbances or riots. Generally, Canada does not recognize any right of asylum on diplomatic premises for political refugees. Exceptions may be made in certain circumstances to this rule. One is the one given above, where a Canadian citizen is in imminent personal danger during political disturbances or riots. Another exception is discussed in paragraph 7 of Annex to Circular Document No. B-45 of April 29, 1950. Letter follows. <i>Ends.</i></p>	
Div. American			
Local Tel. 7175			
APPROVED BY <i>[Signature]</i> M. Wershof (Name Typed)			
Internal Distribution: S.S.E.A. - U.S.S.E.A.			
Done. <i>RLH</i>			
Date. JAN 25 1955			

Copies Referred To:

(Note for file: Cleared with Consular Division -
Mr. W. G. Stark
[Signature])

Done.

Date.

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DEPARTMENT OF EXTERNAL AFFAIRS

MEMORANDUM

TO: AMERICAN DIVISION *Mr. LaFleche*

Security CONFIDENTIAL

Date January 20, 1955

FROM: LEGAL DIVISION

File No.

REFERENCE: Your memorandum of January 18, 1955.

SUBJECT: Asylum in Canadian Embassy in Buenos Aires for Canadian Sisters of the Franciscan Order.

In our opinion General LaFleche was quite correct in assuring the Mother Superior of the Franciscan Order that asylum would be granted by the Embassy should there be a threat of physical violence to the six Canadian Sisters of her Order.

2. Generally speaking, Canada does not recognize any right of asylum on diplomatic premises for political refugees; in other words we do not believe that there is any obligation on the part of a receiving state to grant to envoys the right of affording asylum to individuals not belonging to their suites. However, this is not an absolute rule automatically applicable to every situation; exceptions may be made in certain circumstances:

(a) In very unusual circumstances a Canadian Mission abroad might grant temporary asylum to a "political offender" who was not a Canadian citizen. This possibility is recognized in para 8 of Annex "A" of Circular Document B.45 of April 29, 1950, attached.

(b) Under exceptional circumstances a Canadian Mission abroad might offer temporary asylum to a Canadian citizen if he had been subjected to discriminatory action by the local authorities or if such action appeared probable. The aim in granting asylum 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

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competent courts. (see Para. 7 of *Annex A of* Cir.Doc.B-45)

(c) Asylum might also be granted to a Canadian citizen who is in imminent personal danger during political disturbances or riots. Regulations enacted for the Royal Canadian Navy permit the grant of refuge on naval vessels for Canadian citizens fleeing from danger in such circumstances and we have recently advised Commonwealth Division that in our opinion a Canadian Mission abroad would have a similar discretion to afford temporary asylum to Canadian citizens.

3. It might also be noted that Borchard (The Diplomatic Protection of Citizens Abroad) takes the view that before a denial of justice has actually been perpetrated foreign governments may use their good offices to see that their citizens abroad receive the benefits of due process of law, in order that a denial of justice may be avoided. Since states must afford protection for the persons and property of aliens on their territories it would be open to a Canadian Mission abroad, in extraordinary circumstances, to seek assurances of protection for Canadian citizens residing in the country from the local authorities. This action would only be justified in quite unusual circumstances. The situation would have to be such that the danger of violent disorders was imminent and normal police protection was feared to be inadequate.

William Smith
LEGAL DIVISION

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LEGAL DIVISION

Jan 18/55

American Division/G.C. Langille/nk

Telegram No. 5 of January 17, 1955 and

Despatch No. 11 of January 3, 1955 from Buenos
Aires

— Attached is a copy of telegram No. 5 of
— January 17, 1955 and of despatch No. 11 of January 3,
1955 from Buenos Aires.

2. Since the telegram mentions the possibility of our Embassy in Buenos Aires giving asylum to Canadian Sisters of the Franciscan Order in Argentina and paragraph 3 of the despatch also deals with the question of possible asylum, it would be appreciated if you would let us have your opinion in this regard.

— 3. For your information attached is a copy of telegram No. 55 of October 3, 1952 to Buenos Aires mentioned in paragraph 3 of despatch No. 11.

AMERICAN DIVISION

DEPARTMENT OF EXTERNAL AFFAIRS

MEMORANDUM

*file
top*

TO:LEGAL DIVISION.....

SecurityCONFIDENTIAL.....

DateJanuary. 18, 1955

FROM:American Division/G..G..Langille/nk...

File No.

5475-AX-25-40

REFERENCE:Telegram No.. 5 of January. 17, 1955 and

Despatch No.. 11 of January. 3, 1955 from Buenos Aires

SUBJECT:

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Attached is a copy of telegram No. 5 of
January 17, 1955 and of despatch No. 11 of January 3,
1955 from Buenos Aires.

2. Since the telegram mentions the possibility
of our Embassy in Buenos Aires giving asylum to Canadian
Sisters of the Franciscan Order in Argentina and para-
graph 3 of the despatch also deals with the question of
possible asylum, it would be appreciated if you would
let us have your opinion in this regard.

—
3. For your information attached is a copy of
telegram No. 55 of October 3, 1952 to Buenos Aires
mentioned in paragraph 3 of despatch No. 11.

Langille
AMERICAN DIVISION

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18 JAN 1955

COPY

FROM: THE CANADIAN EMBASSY, BUENOS AIRES

TO: THE SECRETARY OF STATE FOR EXTERNAL AFFAIRS, CANADA

Security Classification	
CONFIDENTIAL	
File No.	

Priority	System	No.	Date
	CYPHER-O.T.P.	5	January 17, 1955.

Departmental Circulation

THE MINISTER
UNDER-SEC'Y
ASSOC/U/SEC'Y
ASSIST/U/SECS
POL COOR SECT.

Done

Date

References

Done

Date

Ext. 230 (rev. 10/55)

Reference:

Subject:

Mother Superior, Franciscan Order, called on me Friday. She wished to know what steps I would take to protect six Canadian Sisters of her Order now in Argentina in the event that anti-clerical disorders break out of which she said there were strong rumours. The Mother Superior was inclined to discount their likelihood, but possibility had to be considered. I replied that Canadian Sisters could depend on protection of their Embassy and that asylum would be granted should there be a threat of physical violence to their person. Please advise if this reply is in accordance with your views.

The French and Italian Embassies have also been consulted regarding their own nationals in the same Order. I understand that replies similar to mine were given. The United States Embassy will also be approached. LaFleche.

DEPARTMENT OF EXTERNAL AFFAIRS - CANADA

DESPATCH

CONFIDENTIAL

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

The Canadian Ambassador

FROM: Buenos Aires, Argentina

Reference: My despatch No. 540 of Dec. 21/54

Subject: The Catholic Church and Current
 Political Events.

Security:.....

No: // January 3, 1955

Date:.....

Enclosures: Courier

Air or Surface MAIL

REL-2-1

Post File No:.....

Ottawa File No.

References

Informed opinion here is inclined to the view that the government will shortly step up its campaign against the Catholic Church. It is not considered improbable that such drastic measures as the expropriation of church property and the closing of schools operated by religious orders will be decreed by the regime and a rumour that Peron will take over the Jesuit El Salvador College here in Buenos Aires persists. El Salvador is an old and highly respected educational institution. Its disappearance would be a very hard blow. Although Article 2 of the 1949 Constitution stipulates that the Federal Government supports the Roman Catholic Apostolic Faith, it has never been legally settled whether this Article is to be interpreted as meaning that Roman Catholicism is the official religion of the country or whether the Article means simply that the Federal Government undertakes to aid and assist

Roman Catholicism. While no court ruling has been given, the prevailing legal view is to the effect that such an undertaking in the Constitution actually means that Roman Catholicism is the official State religion. This, however, should not embarrass President Peron in his present mood.

Internal
 Circulation

2. That he is determined to break the power and prestige of the Church in this country appears clear from the recent passage by Congress of the Divorce Law and the repeal of the law prohibiting houses of prostitution. I understand that General Peron, in order to obtain if not the support at least the toleration of the Church, when he assumed power, gave a promise not to introduce divorce legislation nor repeal the so-called "prophylactic" law. For a number of years various political parties had included in their platform proposals to legalize divorce, but always in the face of Church opposition and for lack of sufficient political strength, the proposed legislation had to be dropped. The cleaning up of vice-ridden Buenos Aires which was a centre of white slavery, required the closing of houses of prostitution. The measure was successful to the extent that such places became less numerous, but did not prevent their underground and clandestine existence. The closure also meant for the unscrupulous ward-healers and political hangers-on a decline in sources of possible revenue in "protection" money. As a further step in his campaign and to annoy the Church, some

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 to Posts

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some think it not unlikely that the authorities will favour the establishment of brothels in the near vicinity of Catholic schools and churches.

3. That the expropriation of Church property cannot be dismissed as being too drastic a measure, is indicative by the fact that one of my colleagues was approached by a representative of a religious order who enquired whether he and other Heads of Mission would consider the possibility of accepting for safekeeping articles of intrinsic and religious value such as jewelled chalices, crucifixes etc.etc. He replied that should the occasion arise he would, of course, consult his Government, but that he thought it unlikely that it would agree to any such proposal as it would mean getting involved in a local issue. I have not had a similar approach made to me, but I do not rule out the possibility of one being made. It is not crying "wolf" to request your attention to the problem that would be created for Canada should this Mission be requested to give refuge to persons or property. The situation could easily become one where persecuted persons might be in danger of losing their lives. It would be easier to decide what to do in the case of persons than with their belongings but I would be grateful for your early guidance. I have your Telegram No.55 of October 3, 1952 but its provisions might not apply in the present case which is still hypothetical.

4. Should President Peron press his campaign against the Church to the extent rumoured, it will probably mean an all out struggle between Church and State and might bring about the establishment of a Christian-Democrat party which the regime fears. Such a party could unite most of the opposition groups and appeal to a good number of the less convinced camp-following Peronistas. It is thought

that President Peron wishes to break the power and prestige of the Church now so as to weaken it as a rallying point for the Christian Democrats. However, in my time down here and considering the events that have taken place, I see no evidence of any great political courage on the part of the Argentines. For a new party to be formed in the face of known government opposition, would require bold and able political dedication. This is a police state. Every Constitutional provision relating to civil liberties has been broken by the Government at whim with only the raising of the meekest protests from the more hardy. The newspaper "El Pueblo", organ of the Catholic Church, after many harassments has suspended publication because of "technical difficulties". Its editor and director are in jail. This step was feared by the newspaper; it had, accordingly, restrained its criticisms of recent events to the mildest

of terms, but even mild criticism is not tolerated by the regime.

5. The climate of the Argentina of vitamins in the soil render the people with little inclination to be "heroes" they have their "bifé" and "vino" even little concerned with civil liberties, all that it implies. The Argentine has qualities, but these are counterbalanced by pride, apathy and laziness. For these reasons I somewhat doubt the establishment of a popular political party which could overthrow the present regime through constitutional processes. Rather, to my mind, it is only an established and organized group such as the Army which could take the matter in its own hands when and if it believes that President Peron has gone too far and that the body politic is threatened which could result in violent social upheaval. There is every reason to believe that President Peron has cached enormous sums of money in foreign banks. In that respect he is ready for a change.

6. There are indications to show that President Peron's intentions are not only directed at the Catholic Church but to others as well, although because of their relatively small numbers, the other denominations are barely heard of. Nevertheless, I know that the Salvation Army sometime ago was under fire, that clergymen of two other churches are hampered in their movements as are Catholic priests. A prominent member of the clergy of a protestant church, who knows the country well, told me that the present trend of events is patterned after the great persecutions which we witnessed during the second great war and is aimed at Christianity as a whole.

L. R. LA FLÈCHE

L.R.LaFleche
AMBASSADOR

MESSAGE FORM
OUTGOING

COPY

FROM: THE SECRETARY OF STATE FOR EXTERNAL AFFAIRS

TO:THE CANADIAN AMBASSADOR, BUENOS AIRES, ARGENTINA.....

Message To Be Sent		No.	Date	For Communications Section Only
AIR CYPHER			October 1, 1952	SENT Oct 1 1952
EN CLAIR				
CODE				
CYPHER OTP		X		
Priority "C.E."		REFERENCE: Your telegram No. 51 of September 29, 1952		
.....IMPORTANT.....		SUBJECT:		
ORIGINATOR		Please keep us informed of any developments		
.....W. G. Stark..... (Signature)		in student movement.		
.....W. G. Stark..... (Name Typed)		2. Full instructions on asylum are contained in		
Div.....American.....		our Circular Document B-45 of April 29, 1952, which		
Local Tel.....7175.....		indicates that generally speaking asylum should only		
APPROVED BY		be granted to a person in imminent danger of losing		
.....C. Eberts..... (Signature)		his life. If time permits you should seek instructions		
.....C. C. Eberts..... (Name Typed)		from us on any particular case; if not, you may use		
Internal Distribution:		your discretion.		
S.S.E.A. - U.S.S.E.A.				
Deputy Under-Secretary				
Ass't. Under-Secretary				
Legal				
D.L. (2)				
J.I.S.				
Economic Division				
Done.....2/10/52.....				
Date.....				
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Washington				
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Date.....				
Ext. 97 (Rev. 1/52)				

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EXTERNAL AFFAIRS
CANADA

CONFIDENTIAL

CIRCULAR DOCUMENT

No. B. 45

Ottawa, April 29, 1950

Sir,

The Department recently received from the Argentinian Embassy at Ottawa a request for information on the position of the Government of Canada on the right of asylum. A reply to this inquiry was prepared by our Legal Division and, since it represents the first effort since 1945 to determine our position on this matter, I think it is desirable to bring it to your attention.

2. From time to time in the past, instructions have been sent to some of our Missions concerning the granting of asylum to political offenders who may seek refuge in Canadian Missions; these instructions should now be considered as superseded by the communication attached as Annex "A" to this Circular Document, which is being sent to you for your guidance.

3. With reference to paragraph 8 of Annex "A", I should like to emphasize the following:

- (a) Every step should be taken to discourage resort to your Mission by political refugees.
- (b) When time permits, you should consult the Department before granting asylum to political refugees.
- (c) When time does not permit consultation with the Department, you should use your discretion whether or not asylum should be granted to a political refugee. Generally speaking, asylum should only be granted at the request of a person in imminent danger of losing his life, and the grounds for such intervention on your part should be purely humanitarian. In countries where no local usage exists, you should take local susceptibilities into account, and in all cases you should do your utmost to ensure that your intervention, if decided upon, will not be misinterpreted.

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To the Heads of
Canadian Posts Abroad.

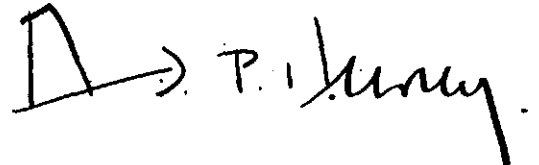
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- (d) Once you have granted asylum to a political refugee you should oppose, as far as may be possible, any attempt to remove him by force, and you should seek assurance immediately as to the refugee's future safety. Your general conduct should be in accordance with that which is locally expected of missions granting asylum.

4. I may add that paragraph 9 of Annex "A" accords with present instructions of the Royal Canadian Navy. Extracts of the relevant provisions of the King's Regulations for the Canadian Naval Service are attached as Annex "B".

I have the honour to be,
Sir,
Your obedient servant,

P. J. Murray

Secretary of State
for External Affairs.

Annex "B"

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Extracts from King's Regulations for the
Government of His Majesty's Canadian Naval Service

KRCN 48.05 - Protection of Canadian Nationals

(1) As a general rule, the Senior Officer present shall limit protection of Canadian nationals in foreign territory to:

- (a) granting them an asylum on board ship; and
- (b) Securing them an escape from shore by boats, when their departure is a measure of necessary precaution.

(2) He shall not interfere by landing an armed force unless the lives or property of Canadian nationals are actually in danger from violence which cannot otherwise be controlled.

(3) The protection afforded to Canadian nationals under this article may be made available to other British subjects.

KRCN 48.08 - Refugees

(1) The Commanding Officer of one of His Majesty's Canadian Ships, while in a foreign port shall not receive on board persons, even though they are Canadian nationals, who are seeking refuge for the purpose of evading the criminal laws of a foreign nation to which they have become amenable.

(2) Subject to (1) of this article, during political disturbances or popular tumults, refuge may be afforded to Canadian nationals and other British subjects.

- (3)
 - (a) During political disturbances or popular tumults, refuge may be afforded to citizens or subjects of foreign nations who are flying from imminent personal danger.
 - (b) In such cases care shall be taken that the refugees do not carry on correspondence from His Majesty's Canadian Ships with their partisans.
 - (c) The earliest opportunity shall be taken to transfer the refugees to some place of safety.
 - (d) Except in extreme cases, passage shall not be given to the foreign refugees.

(4) When circumstances permit, the Senior Officer shall communicate with the nearest available diplomatic or consular officer representing Canada or the United Kingdom, or a Canadian Trade Commissioner, or if none of them is available, the diplomatic or consular representative of one of the other nations of the British Commonwealth, before taking steps for the reception of refugees on board his ships.

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Annex "A"

DEPARTMENT OF EXTERNAL AFFAIRS

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Ottawa, April 13, 1950

Excellency,

I have the honour to refer to my Note No. 3 dated January 19, 1950, and to previous correspondence in which you requested the views of the Government of Canada with respect to the right of asylum.

2. It would appear desirable to distinguish between the rights of:

- (a) sovereign states to grant asylum on their own territory;
- (b) diplomatic envoys to grant asylum on diplomatic premises;
- (c) ships to grant asylum when in foreign ports.

3. The right of sovereign states to grant asylum on their own territory is based on the principle of non-intervention and the absolute control of states within their own frontiers. Any state, according to international law, may admit into its territory fugitives from justice who are nationals of another state. In the absence of an extradition treaty providing for the apprehension and mutual surrender of such fugitives, there is no legal obligation on the receiving state to deport or deliver up such fugitives to a requesting state.

4. Very recently, the Ad Hoc Committee of the United Nations on Statelessness prepared a draft Convention Relating to the Status of Refugees. This draft Convention contains certain articles dealing with the expulsion and non-admittance of refugees, which would seem to forecast another step in the evolution of international law on this point. The relevant articles read as follows:

"Article 26

Refugees not lawfully admitted

- 1. The Contracting States shall not impose penalties, on account of his illegal entry or presence, on a refugee who enters or who is present in their territory

His Excellency Dr. Agustin Nores Martinez,
Ambassador of Argentina,
193 Sparks Street,
Ottawa, Ontario.

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without authorization, and who presents himself without delay to the authorities and shows good cause for his illegal entry or presence.

2. The Contracting States shall not apply to such refugee restrictions of movement other than those which are necessary and such restrictions shall only be applied until his status in the country is regularized or he obtains admission into another country. The Contracting States shall allow such refugee a reasonable period and all the necessary facilities to obtain admission into another country.

"Article 27

Expulsion of refugees lawfully admitted

1. The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order and in pursuance of a decision reached in accordance with due process of law.

2. Such refugee shall be entitled, in accordance with the established law and procedure of the country, to submit evidence to clear himself and to be represented before the competent authority.

3. The Contracting States shall allow such refugee a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary.

"Article 28

Prohibition of expulsion to territories where the life or freedom of a refugee is threatened

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

5. The so-called right to grant asylum on diplomatic premises is a consequence of the doctrine of extraterritoriality. No such right to grant asylum is afforded in general international law. The immunity of the official residences of envoys is to be recognized only in so far as it is necessary for the independence and inviolability of persons of diplomatic status and their retinue so that such persons can perform their functions and keep inviolable their official documents and archives.

6. There has been no instance of Canadian citizens seeking refuge in a foreign mission in Canada for any purpose. In time of peace the most likely persons to seek such refuge would be fugitives from justice. Fugitives from justice and deserters from the armed forces should under no circumstances be granted asylum, regardless of their nationality. Similarly, Canadian missions in foreign countries would not ordinarily afford asylum to fugitives from justice who are Canadian citizens, regardless of whether they should have a second nationality in their countries of residence.

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7. It is conceivable that under exceptional circumstances a Canadian mission abroad might offer asylum temporarily to a Canadian citizen if the circumstances were such that the Canadian citizen had been subjected to discriminatory action by local authorities or that such action appeared probable by reason of action of the local authorities in similar cases. The purpose of such temporary asylum would be to bring about negotiations with a view to securing independent legal advice and assistance and a fair trial, and not for the purpose of avoiding prosecution or the jurisdiction of competent courts.

8. Canadian representatives abroad may also be faced with the particular problem of whether or not asylum on their premises should be granted to what are usually referred to as "political offenders" or "political refugees". These terms apply to persons whose lives are threatened on account of their religion, nationality, race or political opinion. Since no such right to grant asylum is, at least at present, afforded in international law, Canadian diplomatic envoys do not grant asylum to "political refugees" or "political offenders". This should not be construed as excluding the possibility of a Canadian diplomatic representative abroad granting asylum to a "political offender" in very exceptional circumstances.

9. As to the right of ships to grant asylum when in foreign ports, it is necessary to distinguish between warships or other public vessels not engaged in trade and merchant ships or other vessels engaged in trade. The former are sometimes regarded in international law as being "extraterritorial" and a right of asylum in vessels of this class is considered to exist in certain cases. The Government of Canada has enacted regulations for commanders of ships of the Royal Canadian Navy prohibiting them from receiving on board persons, including Canadian citizens, who seek refuge for the purpose of evading the criminal laws of a foreign nation to which they have become amenable. The same regulations permit the affording of refuge:

- (a) to Canadian citizens and other British subjects who, during political disturbances or popular tumults, are fleeing from imminent personal danger; and
- (b) temporarily to citizens or subjects of foreign states who, during political disturbances or popular tumults, are fleeing from imminent personal danger.

The right of asylum is considered to exist in such cases, and also in circumstances such as those described in paragraph 7. On the other hand, merchant ships and public vessels engaged in trade are not regarded in international law as being "extraterritorial" and no right of asylum exists simply by virtue of the fact that a person has been accepted on board vessels of that class.

10. As the right of asylum on diplomatic premises does not exist in general international law, there would seem to be no obligation to give safe-conduct to persons other than diplomats.

11. I know of no cases where Canadian citizens or aliens have sought refuge in foreign diplomatic missions in Canada or of any court decision regarding the right of asylum in any of the meanings listed in your Note.

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12. The Government of Canada has not signed or ratified any international convention establishing a right of asylum. Any such rights would be dependent upon principles of international law incorporated in the domestic law of Canada or recognized by Canadian courts.

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

A. J. P. Murray

Secretary of State
for External Affairs.