

bill in all particulars. I must aver that, when I say it is clear, I do recall, as one of my old professors used to say—and I do not want to offend a great multitude of people in this chamber—that the difference between good English and legal English is substantial. But I do think this is a pretty precise and clear bill.

Some of the matters are corrections in terminology. The expression “post”, in “diplomatic post,” has been replaced by “mission.” Even a consultation with Webster’s would indicate that that change is an improvement. There are some spent clauses which are properly dropped.

The main aspect of the bill is to provide for a certain contingency under which a country, or perhaps even a part of a country, would establish in Canada something purporting to be an embassy or a mission. Before the passage of this bill, and indeed at the present time, the Government of Canada would have no legal avenue or vehicle to deal with such a transgression of the Vienna conventions.

As all senators know, I am sure, the bill which we are amending today is a short bill, but its schedule is quite long and quite impressive, because the schedule is in fact a restatement of the 50 some clauses of the Vienna conventions.

This bill, honourable senators, deals with a delicate problem which may occur at any given time and create for Canada some embarrassment on the international scene. Furthermore, such a situation, should it arise, would most likely create tension in Canada’s bilateral relations with the country concerned.

The problem could be summarized as follows: At present there is no basis in Canadian law for the federal government to prevent the opening or to bring about the closure of an entity which purports to be an embassy or a consulate representing a country or a government which Canada does not recognize. In both cases, such a situation would cause a serious embarrassment to Canada. In a few minutes I will discuss a situation which embarrassed another country greatly.

I should point out that the Vienna Conventions on Diplomatic and Consular Relations annexed to the Diplomatic and Consular Privileges and Immunities Act are declaratory of customary international law and have the force of law in Canada. Article 2 of the Vienna Convention on Diplomatic Relations clearly states that “the establishment of diplomatic relations between States, and of permanent diplomatic missions, takes place by mutual consent,” while article 4(1) of the Vienna Convention on Consular Relations states that “a consular post may be established in the territory of the receiving State only with that State’s consent.”

In that respect, it would certainly be consistent with the spirit of Canada’s obligations under the Vienna conventions to take the necessary measures to prevent the opening of such so-called “embassies” or “consulates” when they are opened without Canada’s consent, and when they purport to represent a country or a government not recognized by Canada.

This bill, honourable senators, is to amend the Diplomatic and Consular Privileges and Immunities Act, and it deals with

[Senator Macquarrie.]

this particular problem that may result from the establishment or the operation of purported embassies or consulates in Canada by persons not representing a sovereign state or a government recognized by Canada. The new legislation would thus make it an offence to engage in such conduct, enabling our courts to prohibit the representation of such premises as a diplomatic mission or consular post.

The act which we are amending—and I believe it, too, originated in the Senate—was the act of 1977. It was given royal assent on June 10 of that year. It was, as I have said in my brief preamble, an incorporation into the law of our country of the provisions of the Vienna conventions.

It will be recalled that the reason for the reference in Section 2 of the act to only certain articles of the two conventions—those dealing with the privileges and immunities of diplomatic and consular missions in Canada and affecting the rights of private persons in Canada—is that these articles specifically require the force of law to be implemented in Canada. The other articles of the Vienna conventions not mentioned in Section 2 of the act deal with rights and obligations between governments and do not need to be given statutory basis to be implemented in Canada, as they reflect principles of customary international law governing diplomatic and consular relations between sovereign states and, as such, are part of the Canadian law via the common law.

The existing act, however, does not deal with all situations. In particular, the question to which the present amendment is addressing itself was not covered. At present there is no basis in Canadian law to deal adequately with an entity which purports to represent a country or a government which Canada does not recognize. This is not in line with the relevant articles of the two Vienna conventions which specifically state that the establishment of diplomatic and consular relations takes place by mutual consent.

● (1510)

The example to which I referred a few minutes ago occurred in Australia, and caused that country and its government considerable embarrassment. A so-called “Croatian embassy” was opened in Canberra in November 1977. Croatia is one of the six constituent republics of Yugoslavia which is a federal state. The Australian government had no legal means, at that time, to close the so-called embassy. Proper legislation was finally adopted in August 1978, and the Federal Court of Australia granted an injunction, requested by the Department of the Attorney General, to close the Croatian embassy in accordance with the provisions of the new legislation. The Croatian *chargé d'affaires* stated in Canberra in April 1979 that similar Croatian embassies would be established in several other countries, including Canada.

The events in Australia brought to the Canadian government’s attention that if Canada were to be faced with a similar situation now, it would not have the proper legislation to deal with it. That is precisely the purpose of this bill.

Furthermore, without addressing ourselves to a specific case or group of people, it is clearly important that the necessary