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Comm. on External Affairs,
1951, 2d Sess.

EXTERNAL AFFAIRS

CHAIRMAN: MR. J. BRADLEY

MEMBERS OF PARLIAMENT AND BARRISTERS

HOUSE OF COMMONS

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HOUSE OF COMMONS

Fifth Session—Twenty-first Parliament, 1951
(Second Session)

STANDING COMMITTEE

ON

EXTERNAL AFFAIRS

CHAIRMAN—MR. J. A. BRADETTE

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 1

THURSDAY, NOVEMBER 29, 1951

BILL 15.

An Act to provide for Privileges and Immunities in respect of
the North Atlantic Treaty Organization.

WITNESS:

Mr. J. P. Erichsen-Brown, Legal Division, Department of External Affairs.

Chairman: Mr. J. A. Bradette.

Vice-Chairman: Mr. Gordon Graydon.

and

Messrs.

Balcer,
Bater,
Benidickson,
Breithaupt,
Coldwell,
Côté (*Matapedia-
Matane*),
Croll,
Decore,
Dickey,
Diefenbaker,
Fleming,

Fournier (*Maisonneuve-
Rosemont*),
Fraser,
Gauthier (*Luc St. Jean*),
Gauthier (*Portneuf*),
Goode,
Green,
Higgins,
Jutras,
Léger,
Lesage,
Low,

MacInnis,
MacKenzie,
Macnaughton,
McCusker,
Murray (*Cariboo*),
Picard,
Pinard,
Quelch,
Richard (*Ottawa East*),
Robinson,
Stick—35.

Quorum 10

R. J. GRATRIX,
Clerk.

ORDERS OF REFERENCE

FRIDAY, October 19, 1951.

Resolved,—That the following Members do compose the Standing Committee on External Affairs:—

Messrs.

Balcer,	Fleming,	Low,
Bater,	Fournier (<i>Maisonneuve-</i>	MacInnes,
Benidickson,	<i>Rosemont</i>),	MacKenzie,
Bradette,	Fraser,	Macnaughton,
Breithaupt,	Gauthier (<i>Lac St. Jean</i>),	McCusker,
Coldwell,	Gauthier (<i>Portneuf</i>),	Murray (<i>Cariboo</i>),
Côté (<i>Matapedia-</i>	Goode,	Picard,
<i>Matane</i>),	Graydon,	Pinard,
Croll,	Green,	Quelch,
Decore,	Higgins,	Richard (<i>Ottawa East</i>),
Dickey,	Jutras,	Robinson,
Diefenbaker,	Léger,	Stick—35.
	Lesage,	

(Quorum 10)

Ordered,—That the Standing Committee on External Affairs be empowered to examine and inquire into all such matters and things as may be referred to them by the House; and to report from time to time their observations and opinions thereon, with power to send for persons, papers and records.

FRIDAY, November 23, 1951.

Ordered,—That the following Bill be referred to the said Committee:—

Bill No. 15. An Act to provide for Privileges and Immunities in respect of the North Atlantic Treaty Organization.

THURSDAY, November 29, 1951.

Ordered,—That the said Committee be empowered to print, from day to day, 500 copies in English and 200 copies in French of its Minutes of Proceedings and Evidence, and that Standing Order 64 be suspended in relation thereto.

Ordered,—That the said Committee be authorized to sit while the House is sitting.

Attest.

LÉON J. RAYMOND,
Clerk of the House.

REPORT TO THE HOUSE

THURSDAY, November 29, 1951.

The Standing Committee on External Affairs begs leave to present the following as a

FIRST REPORT

Your Committee recommends:

1. That it be empowered to print, from day to day, 500 copies in English and 200 copies in French of its Minutes of Proceedings and Evidence, and that Standing Order 64 be suspended in relation thereto.
2. That it be authorized to sit while the House is sitting.

All of which is respectfully submitted.

J. A. BRADETTE,
Chairman.

MINUTES OF PROCEEDINGS

THURSDAY, November 29, 1951.

The Standing Committee on External Affairs met at 11:00 o'clock a.m. this day. Mr. Bradette, Chairman, presided.

Members present: Messrs. Balcer, Bater, Breithaupt, Coldwell, Gauthier (*Lac St. Jean*), Gauthier (*Portneuf*), Goode, Graydon, Léger, Lesage, Low, McCusker, Murray (*Cariboo*), Quelch, Robinson, Stick.

In attendance: Mr. J. P. Erichsen-Brown and Mr. E. R. Rettie, of the Legal Division, Department of External Affairs, and Mr. M. H. Wershof, of the Defence Liaison Division, Department of External Affairs.

On motion of Mr. Coldwell:

Resolved,—That Mr. Graydon be Vice-Chairman of the Committee.

On motion of Mr. Stick:

Resolved,—That the Committee recommend to the House that it be empowered to print, from day to day, 500 copies in English and 200 copies in French of its Minutes of Proceedings and Evidence.

On motion of Mr. Low:

Resolved,—That the Committee recommend to the House that it be authorized to sit while the House is sitting.

The question of reducing the quorum was discussed and it was agreed that there should be no reduction for the time being.

The Committee then commenced consideration of Bill No. 15, An Act to provide for Privileges and Immunities in respect of the North Atlantic Treaty Organization.

The Chairman called Clause 1 of the Bill.

Mr. Lesage, Parliamentary Assistant to the Secretary of State for External Affairs, made a statement in explanation of the principle of the Bill.

Mr. Erichsen-Brown was called, made a statement in explanation of the different types of privileges and immunities specified in the Bill; outlined the background leading up to the legislation to grant such privileges and immunities in respect of the North Atlantic Treaty Organization; explained in detail Articles 1, 2 and 3 of the Agreement on the status of the North Atlantic Treaty Organization, National Representatives and International Staff, and was questioned thereon.

During the course of the presentation by Mr. Erichsen-Brown, Mr. Wershof answered questions specifically referred to him.

At 12.30 p.m. the examination of the Witness was adjourned to the next meeting of the Committee.

Thereupon the Committee adjourned to meet again at the call of the Chair.

R. J. GRATRIX,
Clerk of the Committee.

MINUTES OF EVIDENCE

November 29, 1951.

11:00 a.m.

The CHAIRMAN: Gentlemen, we have a quorum. I appreciate very much your early attendance in such good numbers and I understand what a problem it is to get here so promptly when so many other committees are sitting.

Our first order of business will be the election of a Vice-Chairman.

Mr. BATER: I would move that Mr. Graydon be appointed Vice-Chairman.
Carried.

The CHAIRMAN: The next order of business is a motion for authority to print.

Mr. LOW: How many copies did we have last year?

The CHAIRMAN: We had 500 in English and 200 copies in French.

Mr. LOW: That was the number last year?

The CHAIRMAN: Yes.

Mr. McCUSKER: Were they all used?

The CHAIRMAN: Yes.

Mr. GAUTHIER (*Portneuf*): I can tell you one thing, the French copies will not be used because they come out too late.

Mr. LESAGE: May I draw the attention of the committee to the fact that we will be dealing only with a specific bill and our proceedings will be essentially technical. I wonder if we need all those copies?

The CHAIRMAN: Would it be better to print, say, 300 copies in English and 150 copies in French?

Mr. GAUTHIER (*Portneuf*): That would be all right, if they will print them sooner.

The CHAIRMAN: We will look into that for you. Well then, shall we say 500 copies in English and 200 copies in French; will that be satisfactory?

Carried.

The next motion is for authority to sit while the House is sitting. The wording of the motion would be: that the committee recommend to the House that it be authorized to sit while the House is sitting.

Mr. COLDWELL: I hope this committee will not sit while the House is sitting because there are so many committees which are doing that.

Motion agreed to.

The CHAIRMAN: The next motion is to reduce the quorum. That the committee recommend to the House that its quorum be reduced from 10 to 8 members and that in relation thereto standing order 63 (1) (L) be suspended.

Mr. STICK: What was the quorum last year?

The CHAIRMAN: I believe it was reduced to 8.

Mr. STICK: Well, that may be necessary in view of the fact that we have so many committees meeting.

Mr. LOW: How many members have we on this committee, Mr. Chairman?

The CHAIRMAN: Thirty-five.

Mr. Low: Eight seems to be a very small quorum.

Mr. STICK: But it is sometimes difficult to get a quorum.

The CHAIRMAN: Then perhaps we had better leave it at 10.

Mr. BREITHAAPT: It would be much better to leave it at 10, I think.

The CHAIRMAN: Now, the order of reference, as you know, is Bill number 15, an Act to provide for privileges and immunities in respect of the North Atlantic Treaty Organization. I believe that you have the bill before you now and I would like your opinion as to what way we should start our consideration of this bill. Do you want to take it up item by item?

Mr. GOODE: I would suggest, Mr. Chairman, that we get an explanation from some of the experts here. We have the parliamentary assistant with us; possibly he could give us a short statement. I suggest we go ahead with it that way.

The CHAIRMAN: Then I will call the short title: shall the short title carry?

Mr. Low: Could we have a statement from the parliamentary assistant (Mr. Lesage) on that, Mr. Chairman?

The CHAIRMAN: Mr. Lesage.

Mr. LESAGE: On November 8th, at the resolution stage I gave a general outline of the background of the bill and also of the bill itself. That was very, very general in nature and I have asked Mr. Erichsen-Brown, of the Legal Division of our department, to expand the explanation I gave at that time.

Now, Mr. Chairman, the gentlemen on my right are Mr. J. P. Erichsen-Brown, and Mr. E. R. Rettie of the Legal Division, and Mr. M. H. Wershof of the Defence Liaison Division of the Department. They will be able to answer any questions which may be put in the general discussion before we begin a study of the bill clause by clause. Would that be agreeable to the members—that we have a general statement and then consider the bill section by section?

Mr. GRAYDON: Did he have charge of the security arrangement at the conference here while NATO was sitting?

Mr. COLDWELL: I hope not.

Mr. GOODE: I did not see the statement. I must confess that I have not read it, and I am sorry that I have not. I refer to the statement made by the parliamentary assistant in the House. I don't expect you to read it again but could you just give us the main items?

The CHAIRMAN: Will you allow me to interrupt before we proceed to say that I must leave at half past twelve and I will ask Mr. Graydon to take the chair at that time. Also, I would like to have a date set for our next sitting, shall we say next Tuesday morning at 11.00 a.m.; would that be satisfactory?

Mr. Low: I am just wondering, Mr. Chairman, if it would not be advisable for us to get the preliminaries sort of cleared away so that that will give us a chance to look over all this material, and if we do that perhaps we can adjourn before you have to leave.

The CHAIRMAN: Well, I am sorry, but I have to leave at half past twelve.

Mr. LESAGE: That is all right, I think we can do it by half past twelve.

Mr. COLDWELL: Could we have a short explanation then?

Mr. LESAGE: Yes, I will say a few words. The agreement, which is the schedule to the bill, was signed in Ottawa by all the NATO members on September 20, 1951, during the NATO meeting in Ottawa, and the signatories were all the members of the North Atlantic Treaty Organization; that is Belgium, Canada, Denmark, France, Iceland, Italy, Luxembourg, the Netherlands, Norway, Portugal, the United Kingdom and the United States.

Mr. GOODE: That does not include Greece and Turkey?

Mr. LESAGE: No, they are not yet members of NATO. In order that Greece and Turkey become members of NATO, the protocol of accession has to be ratified by all the present members. Up to now only two members have ratified and they are Norway and Denmark.

Mr. STICK: And they were the ones who at first were against the admission of those two countries?

Mr. LESAGE: They may at first have been hesitant, but they were the first to ratify.

The agreement which you have before you follows generally the form of agreement which, beginning with the general convention on privileges and immunities of the United Nations in 1946, has been adopted with more or less minor variations, to define the privileges and immunities of practically all the important international organizations. Certain departures have, however, been made from the precedents in order to meet the particular requirements of NATO. NATO differs from other international organizations in that it has subsidiary bodies in permanent session in several countries. Other organizations generally only have a permanent seat in the country where they have their headquarters and it has been usual, in addition to the general agreement defining the privileges and immunities which all member states are expected to accord, to have a special headquarters agreement between the organization and the member state in whose territory the headquarters are located. For instance, apart from the general agreement on privileges and immunities of the United Nations and its specialized agencies there is a headquarters agreement dealing with privileges and immunities of national representatives accredited to ICAO—that is the International Civil Aviation Organization—which has its permanent seat in Montreal. This agreement was made between the Canadian government and ICAO. A headquarters agreement, such as we have with ICAO, covers the special requirements of the organization in this country where it has its headquarters. Since NATO has permanent bodies in several countries it has been found convenient to include in the agreement now before the committee provisions, mainly concerning national representatives, which are generally found in a headquarters agreement.

As you know, the principal activities of NATO are in Washington, London and Paris. That is where you will find most of the international staff, and the national representatives. As a matter of fact, as far as Canada is concerned this agreement is more for the protection and convenience of the international staff and our own representatives in other countries than it is for national representatives in Canada. It would of course also afford protection for the staff of NATO, or national representatives who might come to Canada.

Now, at the present time, as I said in the House, there are about 170 people only who may be described as staff affected by this agreement. In so far as representatives are concerned a large number—I cannot give the exact figure at the moment—already enjoy privileges and immunities because of their rank as ambassador or counsellor of embassy or things like that. For instance, our high commissioner in London, Mr. Wilgress, has all the usual diplomatic privileges and immunities, and this bill will not change his status because even when he sits on the council of deputies he continues to enjoy his privileges and immunities. It does not give him anything more than he already has, and the same thing applies to practically all the personnel of our embassies and legations at points at which NATO sits from time to time.

Now, as to the nature of the immunities and privileges, Mr. Erichsen-Brown will give you an explanation in his remarks.

Mr. GRAYDON: Mr. Chairman, may I ask a question? In the paper yesterday there was some reference to a measure which was passed in the United

Kingdom house which would extend privileges and immunities to and confer the status of ambassador on whomever happens to be appointed a high commissioner for any commonwealth country. Is there any difference between a high commissioner and an ambassador in so far as this bill is concerned? Now, is there any difference between the privileges and immunities granted to ambassadors from foreign countries and those granted to high commissioners appointed within the commonwealth itself?

Mr. LESAGE: There is none, Mr. Graydon, but this question of the high commissioners' status is a special one and I have something here which I could read to you:

High commissioners are accorded privileges and immunities in Canada which are within the administrative competence of the federal government on the basis of international courtesy. The legal status of high commissioners is in a state of flux. There is no reason in principle why representatives of other commonwealth countries should receive different treatment from that received by representatives of foreign governments, in so far as exemption from taxation and legal proceedings are concerned.

As a matter of fact, high commissioners have always been considered as enjoying the same privileges and immunities as the other representatives to our country.

Mr. COLDWELL: I take it this legislation in Britain just makes it statutory . . .

Mr. LESAGE: . . . of what has been the practice or usage.

Mr. STICK: Is not the idea to give the high commissioners the same status as ambassadors?

Mr. LESAGE: I did not see that item of news.

Mr. STICK: I think that is the idea behind it. It has been going on for some time. They want to give high commissioners within the commonwealth the same status as ambassadors.

Mr. LESAGE: There has never been any difficulty about this in Canada because usage has granted them the same privileges and immunities. There is no difference, as a matter of fact.

The Supreme Court of Canada has already rendered a judgment on a reference on this point, *re* power of municipalities to levy rates on foreign legations and high commissioners' residences. The judgment is reported in 2 D.L.R., 1943, at page 481. It does not make any difference between foreign diplomats and high commissioners.

Mr. GRAYDON: On what statute would that judgment rely?

Mr. LESAGE: May I read the "jugé"?

Although the Assessment Act, R.S.O. 1937, c. 272, provides in general terms for assessing property for taxes, which are declared to be recoverable as a debt from the owner and to constitute a lien upon the property enforceable by distress, a municipal corporation is not empowered thereunder to impose taxes upon property owned by a foreign state and occupied as a legation by its diplomatic agent since implicit in the principle of international law, recognized by the law of Ontario, that the diplomatic agent and the legation enjoy, in general, an immunity from local jurisdiction, is the rule that legislation imposing land taxes does not embrace such property of a foreign state.

It applies by courtesy ipso facto, to high commissioners because of usage.

Mr. LOW: That is reciprocal is it in other countries?

Mr. LESAGE: Oh, yes; of course it is reciprocal.

Mr. GRAYDON: I asked the Minister of External Affairs last session whether this matter had been discussed at the commonwealth conference. I think if I recollect correctly he said there had been some discussion of it. Perhaps it is not proper for me to ask the parliamentary assistant whether this type of legislation which has been introduced into the United Kingdom parliament, by general agreement, is to be introduced in the various commonwealth countries? If he feels free to answer, all right; but, if not, I will withdraw the question.

Mr. LESAGE: I am very sorry, but I do not know, and if I knew I would not be in a position to announce government legislation.

Mr. GRAYDON: You are catching on pretty fast.

Mr. GOODE: Has any thought been given to changing the status of the men we call high commissioners to the full status of ambassadors? This may be an old story but I have not been here too long.

Mr. LESAGE: Well, I would like to see the piece of legislation that has been passed in the United Kingdom parliament before I answer the question.

Mr. GOODE: May I ask the question again?

Mr. LESAGE: Yes, I will take note of it and look into it.

Mr. GRAYDON: Our commonwealth representatives should not be in any inferior position to those who come from foreign lands.

Mr. LESAGE: Mr. Graydon, there are things I cannot say at this time but I may be in a position to do so next week.

Mr. COLDWELL: Is there not a difference in status of high commissioners and ambassadors? Ambassadors represent a foreign power whereas high commissioners represent someone within the commonwealth—within the family as it were. I think there is a distinction. I think all immunities and so on should be granted to the high commissioners, but I would not like to see them placed on the same basis as an ambassador to a foreign country. The high commissioner is not representing a foreign country; he is a representative of a person within our family of nations.

Mr. LESAGE: That is the great difficulty, of course. A high commissioner does not represent the King—who is also the King of Canada—he represents the government. A foreign diplomat, if from a kingdom, represents the King of his country.

Mr. STICK: Or the president.

Mr. GOODE: In protocol, does our high commissioner have to take a junior position as far as foreign ambassadors are concerned?

Mr. LESAGE: That is the question again that I would like to answer next week.

Mr. QUELCH: I wonder if the parliamentary assistant could define the line of demarcation that exists between the types of information that a foreign office representative can give to his country and not violate his privileges, and without allowing himself to be open to the charge that he is indulging in a form of espionage?

Mr. LESAGE: That is the kind of question on which the experts will answer in their general statement. They are prepared to answer such questions.

As far as the status of the high commissioners is concerned I will make a more complete statement next week. I will be in a position to say whether the information that is sought may be divulged. The question is being studied and discussed at the present time.

Mr. COLDWELL: There is this difficulty. High commissioners today, under protocol, are way down the list, are they not? They follow all ambassadors?

Mr. LESAGE: That is a point I shall discuss with you gentlemen next week.

Mr. COLDWELL: I do not think it is quite proper, but on the other hand I would not like to see a change indicating that the association from now on is within the commonwealth.

The CHAIRMAN: Let us proceed. You are finished with your statement, are you not, Mr. Lesage?

Mr. LESAGE: Yes, Mr. Chairman.

Mr. J. P. Erichsen-Brown, Legal Division, Department of External Affairs, called:

The WITNESS: Mr. Chairman, I was going to suggest to the committee that I might be permitted to make a brief outline of what I thought were some of the fundamental factors of the background of this treaty. I had thought to do that at first but after listening to this discussion, I would like to alter that procedure slightly by going into the question of the different types of immunity.

Briefly, there are six bases in our law for immunity; one, the sovereign immunity of the state; two, diplomatic immunity of representatives of the state, which of course depends on the sovereign immunity; three, there is a very limited immunity accorded to consuls based upon international law, and fourth, there is the immunity which is enjoyed by a commonwealth country as such. That immunity is not dependent upon international law but rather upon the special position of the Crown. And the way it works out is that while a right has been given to the Crown in various commonwealth jurisdictions, that legislation is not extended to Acts in other commonwealth countries, and the old rule still applies, according to which a fiat is required of the Crown whose exchequer would be called upon to pay. That means there is a practical sort of immunity, if the question ever should arise, of a commonwealth government being sued.

By Mr. Graydon:

Q: I take it that would not apply to Pakistan and to India, would it?—A. I would rather not get into the question of India, Mr. Graydon, but I think it would apply to Pakistan.

And in so far as high commissioners are concerned, as Mr. Lesage indicated, they are generally treated in the same way, as far as we can, on a basis of courtesy, which is the reasonable thing to do, I think.

They are, of course, some of our best friends, and they are well behaved, accustomed to our laws and the operation of our laws, and they are most anxious to co-operate.

We practically never have any occasion where the question of immunity arises in so far as high commissioners are concerned.

And lastly, there are the international organizations. There is a fundamental point which I might make in order to assist in the understanding of this problem, and that is that a representative of an international organization is not accredited to the state from the operation of whose laws the exemption arises. He is simply accredited to the international organization as such, and similarly with respect to the senior staff of the international organization, and I would like to stress the word "senior". They are accorded certain privileges.

They are officials of some state or other, but they are strictly international civil servants and are not accredited to the Crown or the state, so the exemption from the laws of that state are not in question. The result is that there is no precise basis at the present time under international law on the subject of privileges and immunities of an international staff and organization. It has developed with the growth of legal principles. It is a gradual process and the result is that we have considered that privileges and immunities of international

organizations have to be brought about by statute. We cannot rely on the principles of international law which have been declared by a judgment of the supreme court of Canada to be part of the general statutory law.

Mr. STICK: This is a new thing as far as international law is concerned, is it not?

The WITNESS: The practice is very widespread of according certain privileges and immunities to the representatives of international organizations.

By Mr. Coldwell:

Q. You were speaking of senior representatives of an international organization. How wide a group would that embrace?—A. In the case of the United Nations the privileges which might be described as being full diplomatic privileges are limited to the secretary-general and assistant-secretaries-general.

In so far as the general background of this agreement is concerned, I would like to sketch briefly a few facts and principles of law which are relevant. First of all, let me say there are 12 NATO countries, and the number may soon become 14; and most of their work is performed in other countries. There is no office in Canada, consequently there is no international staff resident in Canada; and representatives from the other countries only come occasionally to Canada, that is at the present time, so accordingly all the provisions in the agreement could not, under existing conditions, be operative in fact. It might rather be said to be enabling.

The practical application of this agreement is very much less than its potential application. It is in fact applicable to a comparatively small number of individuals.

I have a list of the permanent representatives, including advisers, which was recently issued by the organization. It is an unclassified document. The total number of persons on this list is 59. This list comprises those who are referred to, I think, in section 12 of the agreement as being permanent representatives.

Mr. COLDWELL: And that list can be filed as an appendix to today's proceedings?

Mr. STICK: I think we should have it.

The WITNESS: There would be no objection, but I am going to refer to it in detail later in my statement. The total staff which might be affected is, of course, larger, but I have not got the exact information in that regard.

Mr. LESAGE: We will give only the list.

Mr. COLDWELL: Can we have them according to the countries from which they come?

Mr. LESAGE: We have them by countries.

The WITNESS: The question might be asked why an agreement of this sort is made. I think that the most appropriate answer is that it helps the efficient operation of the organization because it eliminates doubts on the part of representatives in foreign countries concerning their position, and it helps in the obtaining of minor courtesies for officials. And in the case of any person who resides for a long time in a country, it saves the country from having to pay taxes as part of the expenses of the representation.

At the present time, on balance, Canada actually would receive more in the way of privileges and immunities from other countries than she would be called upon to extend to the representatives of other countries in Canada.

The countries on which the greatest burden of extending immunities and privileges would rest would be obviously those where the offices of the organization are located, and at the present time that means France, the United Kingdom and the United States.

As to the legal factors, there are a number of references in the bill to the privileges enjoyed by a diplomatic envoy. Members of the public will read occasionally concerning the automobile of a diplomatic envoy which was involved in an accident. But very few have any idea of what is involved therein in the way of diplomatic immunity.

There are two sets of questions, one is the international side, pure and simple, and concerns the obligation of a state, which receives a diplomatic representative of a foreign state to see that he is protected as to the safety of his person. That rule is, and has been, very well established for many centuries. It is a rule of international law.

The other side is the domestic law. Under domestic law a diplomatic envoy of a country is protected against a violation of his immunity. The domestic law in Canada depends upon the international law. I think I have already mentioned that fact.

Mr. STICK: How can we do that? Suppose there has been a violation of immunity. If the man is immune himself, he cannot violate it, can he?

Mr. COLDWELL: Yes, I think he can violate the law, but he gets immunity.

The WITNESS: It is a question of his right to exemption.

Mr. STICK: If he is above the law, then how can he break it?

The WITNESS: A diplomat is obliged to obey the law. I mean, he is not immune from the law, but he is immune from the jurisdiction; and in any case, where the conduct of a diplomat is involved, it is a question of the remedy which is available. It is not a question of that diplomat having any special immunity from the law as such. In other words, if a question arises, the remedy is achieved through diplomatic channels.

If there is a case of an offender, one with repeated offences, such as traffic violations, and it becomes embarrassing to us, the case can always be directly brought to the attention of the head of the mission, and in extreme cases, we have the remedy of demanding recall.

Mr. STICK: That means that action is taken through diplomatic channels.

The WITNESS: That is the answer in a nutshell.

Mr. STICK: Thank you.

Mr. QUELCH: That would not apply, however, to a breach of municipal law, would it? What would happen in the case of a diplomatic representative who exceeded the speed limit on several occasions? He would be subject to the law, would he not? He would have to adhere to the traffic laws, would he not?

The WITNESS: There again it is a question of the remedy, and the local authorities would proceed to warn him.

Mr. COLDWELL: I think we have had occasions of traffic violation of that nature here in Ottawa.

The WITNESS: Yes, but they are of relatively infrequent occurrence. The diplomatic corps as a whole is very well behaved and responsible.

Mr. GOODE: Suppose in Ottawa one of the high officials from some other country is driving down the street, with his chauffeur at the wheel, and their car knocks down someone and kills him. Suppose the victim was the head of a family. How would we proceed to collect damages on behalf of that family?

The WITNESS: In actual practice, practically all foreign missions carry insurance on their cars and follow the general practice of waiving their immunity, and allowing the case to be prosecuted in court.

Mr. GOODE: That is the point.

The WITNESS: As I say, they would allow the case to be defended by the insurance company in the usual way. But they are not obligated to do so.

Mr. GOODE: But they do waive their immunity in those cases?

The WITNESS: Yes. Immunity can always be waived, and that practice has become very general.

Mr. GOODE: Yes.

Mr. GRAYDON: But suppose there is no insurance. What would happen then?

Mr. STICK: In that case, Canada would pay it.

Mr. LESAGE: It has happened, and via diplomatic channels the family was compensated by the government whose representative caused the accident. There has never been any trouble. The government of the country pays.

Mr. GOODE: Mr. Graydon asked: suppose there was no insurance. Let us suppose that this family is entitled to receive \$10,000 under the law. Do we have to depend on the foreign country to pay that money through diplomatic channels? It might take 5 years. Or, does the government of Canada accept a responsibility for it?

Mr. LESAGE: The Canadian government does not have any responsibility. I do not think a settlement would take 5 years. I might say that any claims of that kind have been promptly settled by other countries here; and whenever we have had claims against us because of the fault or negligence of our representatives in other countries, the people entitled to be paid, have been paid and paid very promptly.

Mr. GOODE: I do not think that Russia comes under this heading.

The WITNESS: It is always a matter of deep concern to the foreign government.

Mr. GOODE: This may not come under the Act, but let us suppose we had a damage claim against Russia. The parliamentary assistant has said that it would not take as long as 5 years to get it paid. But I disagree with him. I think it would take even longer than that. I believe we have had certain damage claims against them, and I believe those claims have been outstanding for 20 years and are not settled yet.

Mr. LESAGE: There has never been any trouble with anyone.

Mr. GOODE: Might I suggest that this might happen at some time. As to the particular position we are in, and the position that the family is in, while it is purely hypothetical at the moment, it might happen.

The WITNESS: The best answer to your question, I think, Mr. Goode, is that we are concerned with our own people in foreign countries, because they also drive cars and may become involved in the unfortunate experience of an accident. So we regard this question of immunity as a rather delicate one. Of course, there are all sorts of factors involved. Our relationship to the foreign country in question is involved, and our representation in that country is involved, and there is naturally sympathy with anybody who has a family in those circumstances. I do not think that too much point should be made of this problem, but that is not for me to say, of course.

Mr. GOODE: You are saying that you are not going to answer me?

The WITNESS: No. But I do know that these occurrences are so rare that they are really most exceptional.

Mr. QUELCH: I remember that recently there was a good deal of trouble about a foreign representative here whose dog bit somebody, and the victim was unable to get compensation.

Mr. BREITHAUP: That happened right here in Ottawa, I think, about a year ago.

Mr. LESAGE: Was not the person bitten a diplomatic representative of another country?

The CHAIRMAN: Suppose there is a case of manslaughter or murder; what would be the attitude according to this on the application of our Canadian laws? It might happen in the case of someone in charge of an automobile and involved in an accident.

The WITNESS: All I can say is that there is a well established understanding among states that in case of a serious offence—where the offence was essentially committed by an individual in a personal capacity rather than in a representative capacity—and that would include such things as manslaughter, murder, and that sort of thing—immunity is waived. That is the point.

The CHAIRMAN: We have never had any real criticism over an accident of that kind.

Mr. GOODE: You mean to say there is a difference between a diplomatic accident and the accident of ordinary people?

The CHAIRMAN: Surely there are safeguards to preserve the reputation of representatives of a country.

The WITNESS: The basic principle is that the diplomatic representative of a foreign state cannot become subject to the jurisdiction of another state. A diplomat is essentially a person who acts in a representative character. Consequently, any action against a diplomat is an action against the foreign state which he represents as such, and there is accordingly a very reasonable basis which is, essentially, that the diplomat be adequately a representative of the country. And, of course, his life may depend on his having immunity under certain circumstances.

For example, in a time of great stress, when people are moved out of a country, the last people to be removed are the senior diplomatic personnel. The consuls go out first, and the people who have immunity last; and generally the last person of all to leave is the head of the mission, whose person is particularly sacrosanct. He is really like the captain of a sinking ship. I do not think you should lose sight of the general importance of diplomatic immunity in the conduct of international affairs.

Mr. BALZER: Suppose there is certain tension between two countries such as that which exists between Great Britain and Iran, and suppose a representative of Great Britain has had an accident involving the head of a family, and is being sued in an effort to recover an amount of money from Great Britain. Bear in mind that there is tension between the two governments, and that for one reason or another payment is not made or payment is delayed and so on. If there were such a case, would the family have any action against the property of the government whose representative was located in the country where the accident occurred?

The WITNESS: No. The answer is no. The property of a foreign government is immune from the jurisdiction.

Mr. STICK: It is considered to be foreign soil.

The WITNESS: That is right.

Mr. LESAGE: It is part of the soil of the foreign country.

The CHAIRMAN: Suppose the party involved had some property in England which could be seized. I suppose that is not covered by the statute?

The WITNESS: You can always seek your remedy in the country concerned. You can always go to the other country and sue.

Mr. GRAYDON: You can sue in the other country under its domestic laws.

Mr. LESAGE: There is one thing which we should not lose sight of, and that is the fact that immunities and privileges are granted on a reciprocal basis; we need them on behalf of our representatives, and we have to give the same consideration to the representatives of other countries here.

The WITNESS: I would like to go on now and deal with international organizations. There is a well established practice that representatives in international organizations and their top executives are accorded privileges and immunities. This is generally done on a selective basis. In other words, there is a certain reluctance to accord full immunities and the attitude of most states may be described as cautious. That certainly is our attitude.

On the other hand there is a practice which has become established in the drafting of legislation of this sort. I would like to refer briefly to the recent Act in the United Kingdom known as the Diplomatic Privileges (extension) Act of 1944 which provides for privileges and immunities for persons connected with international organizations. The scheme of the Act is to give a broad power to the government to confer privileges and immunities up to a set maximum. The maximum is set forth in three schedules to the Act.

One schedule relates to international organizations themselves, a second schedule refers to high officials of the organization, and the third confers very limited privileges on what might be termed minor officials. This Act is an example of enabling legislation enacted with the knowledge that its practical application in given cases would almost invariably be considerably less than its possible application.

I need not point out that the United Kingdom, because of its central position, is much more likely to be a host country to meetings of international bodies than is Canada.

Section 2 of the bill now before the committee is based on a similar principle.

At this point I would like to refer briefly to the concluding words of Article 2 of the bill, and I read:

. . . . and the Governor in Council may make such orders as appear to him to be necessary for the purpose of carrying out the obligations, duties and rights of Canada thereunder.

The purpose of that section is not to facilitate the extension of privileges and immunities, but to restrict them. I would like to make that point clear. In other words, it affords a latitude to accord only such privileges and immunities as are regarded under the circumstances as being absolutely necessary.

The special peculiarity of privileges and immunities is that they are negative in character. In other words, there is always a question of exemption involved, the right not to be sued, not to be taxed, not to have baggage inspected by customs officials, and so on.

In the case of an agreement such as the one before the committee, it is essential that it be phrased so as to cover the application of a wide variety of different laws—in the present case of 12 member countries, soon to become 14—under many different contingencies. It is physically impossible to define precisely the laws from the operation of which there is to be exemption. That is obvious in the case of any one country; and when you take into consideration the text of agreements under which we have to operate, under the laws of 12 or more countries, it becomes apparent that the language which you employ has to be of a general character. You have of course to keep within the ambit of the privileges and immunities authorized by the Act.

Privileges and immunities are given strictly on the basis of reciprocity. They are accorded for the benefit of the state, and not for the benefit of the individual. That point is covered by two specific provisions of the agreement—and it applies to both general categories of persons affected, be they representatives or officials.

In the first case, the privilege is for the benefit of the state. It is not for the individual who represents the state. But in the second place, it is for the benefit of the organization, and it is not for the benefit of the people who are employed by the organization.

Mr. COLDWELL: What two provisions are you speaking of?

The WITNESS: Articles 15 and 22.

The CHAIRMAN: In giving a benefit to the state, it also gives a benefit to the individual, does it not? That is the thing. I think that is why people generally regard the conferring of these immunities with something like asstance.

The WITNESS: This agreement was prepared by a drafting committee of the NATO organization which met in London, and on which Canada was represented by a member of the staff of Canada House. We received reports of its proceedings from time to time and the agreement was considered in detail, article by article. Needless to say, we had to consult with the departments concerned here, and in the end result, this agreement is in almost every section a matter of rather precise definition, so as to satisfy the requirements of the laws of all the 12 countries.

The basis of liaison in the preparation of the agreement was the convention on privileges and immunities of the United Nations. This convention, which has also been before parliament, was appended to the Privileges and Immunities (United Nations) Act of 1947. That Act has become a model for all agreements of this sort. You may recall that that Act give a power to extend limited privileges to specialized agencies of the United Nations. But the only one of them with which we have been concerned is ICAO in Montreal. The NATO organization is not a specialized organization of the United Nations and consequently this existing legislation is not relevant.

Mr. GRAYDON: Of course, NATO itself comes under the provisions of the United Nations charter?

The WITNESS: That is true. That is why I mentioned it, its functions are consistent with those of the United Nations although it is not officially connected with the United Nations. The special powers under the existing legislation cannot be invoked as section 3 of the Privileges and Immunities (United Nations) Act only extends to specialized agencies of the United Nations.

Now, at this point, I would like to go on and discuss the bill. Perhaps, I should have gone into it much earlier. Are there any questions which any member would like to ask on this general introduction?

Mr. GOODE: Mr. Chairman, these gentlemen will be available again, will they?

Mr. LESAGE: Oh, yes.

The WITNESS: Now, in so far as this Act is concerned, what I was proposing to do was to go through it section by section dealing with what I consider to be the essential points, what you might call hitting the high spots; and, if there are any questions arise on which I may not be able to give the answer Mr. Rettie, who is more familiar with some of the details, will look the information up. If, on the other hand, a question arises which concerns staff or organization of the general set-up, I would like to refer that to Mr. Wershof.

The CHAIRMAN: It might be more convenient if Mr. Ericksen-Brown were permitted to go ahead and make his statement without interruption, and then when we go through the bill again questions may be asked on the various sections. Is that agreeable to members of the committee?

Hon. MEMBERS: Agreed.

The WITNESS: Article 1 contains definitions of four items. I am not sure that I need to go into that. I would like to comment on paragraph (b), which

defines the meaning of the word "council". That is the critical body in the organization, and you will notice that there is a reference to article 9 of the treaty. I should like to refer at this point to article 9 of the treaty which reads as follows:

The parties hereby establish a council, on which each of them shall be represented, to consider matters concerning the implementation of this treaty. The council shall be so organized as to be able to meet promptly at any time. The council shall set up such subsidiary bodies as may be necessary; in particular it shall establish immediately a defence committee which shall recommend measures for the implementation of articles 3 and 5.

You will notice by the treaty itself that NATO is not in reality an organization in the sense that it has status directly equivalent to a corporate capacity.

The council is defined here; and there is a definition of the word "organisation" which includes any subsidiary bodies; and these definitions are relevant in considering the part of the agreement which follows, which is part II of the agreement, and which you will notice deals with the Organization; and Article 4 of that section gives a sort of quasi-corporate capacity to the organization which is necessary to supplement the treaty itself which provides a rather loose organization.

Are there any questions on article 1? I could give some further details, but I am just wondering if you would prefer to question me about that part of it now.

Mr. STICK: Perhaps we had better go on with the Bill and deal with it.

The WITNESS: So far as article 2 is concerned, that is a very short section which I might read:

The present agreement shall not apply to any military headquarters established in pursuance of the North Atlantic Treaty nor, unless the council decides otherwise, to any other military bodies.

By Mr. Stick:

Q. Might I ask a question there. Does that apply to military camps such as we have in Newfoundland?—A. You mean, to the armed forces?

Q. Yes.

Mr. LESAGE: With respect to that, Mr. Stick, a bill was recently passed in the House to deal with it.

Mr. STICK: I know it was.

Mr. LESAGE: A bill was passed in the House some time ago which dealt with the status of NATO forces.

Mr. STICK: And does that include naval forces as well?

Mr. LESAGE: Yes, it dealt with the status of all branches of the armed forces and included the naval forces.

Mr. STICK: It did include the naval forces?

Mr. LESAGE: Yes.

Mr. STICK: For instance, in Newfoundland they have a naval force.

The WITNESS: Yes.

Mr. WERSHOF: Might I say in that connection, Mr. Chairman, that this agreement does not deal with armed forces of NATO or any other body, any armed forces. There was another agreement, the NATO agreement which was before parliament recently and a bill was passed by the House of Commons which deals with certain privileges and legal status to be given to armed forces of one NATO country in the territory of another NATO country, and

that agreement when it came into force applied to the forces of the United States the same as to the forces of any other country. This agreement, presently before us, has nothing to do with the armed forces in any way whatever.

Mr. STICK: That is what I wanted to get clear on, and that is why I asked the questions I did about its relationship to armed forces in Newfoundland, or any member country.

Mr. WERSHOF: May I put it this way: There are certain military bodies, military committees of NATO which have been drawn into this sometimes by resolutions passed by other bodies; for example, there was one brought down in Washington just recently relating to a committee of military representatives which will be covered by this. Now this, for example, is the sort of thing that our military attaché at the embassy in Washington, who, is also our military representative on NATO, would serve on. It relates more particularly to military officers who are attached at embassies such as those we have at Washington, and other points.

The WITNESS: Mr. Wershof has pretty well covered the observations I was going to make, and he has done it rather better than I would have done myself. You will notice in this article it says, "unless the council decides otherwise, to any other military bodies." The essential purpose of this agreement is to cover what might be called the civil staff organization, the persons who are concerned with planning, rather with strategic questions. Obviously, it is rather difficult to draw a line between officers and other persons performing such functions—their functions might be described as military, but at the same time there must be a certain amount of flexibility to the agreement.

By Mr. Stick:

Q. And that would apply to all the armed forces? I think the words "armed forces" are essential, but perhaps they do not convey the full meaning intended. They use the word "military". When you use the word "military" you use it in the sense of representing all branches of the armed service rather than any specific branch? I believe we have a definition of "military" which covers all branches of the service; is that the sense in which it is applied here?—A. Yes.

Mr. STICK: That is what I would think. Perhaps we had better wait until we get down to that part of the schedule.

Mr. WERSHOF: The application of this section of the agreement is to the military committees, the military branch of the organization's activities, the standing groups who are charged with the working out of strategy and dealing with the military aspects of NATO. These military committees are not military organizations in the ordinary sense, but rather military representatives of the several countries acting on committees appointed by NATO to deal with military matters. They have a standing organization within NATO for that purpose, and these are the only military bodies that are covered by this agreement, and none of these bodies, or committees, are armed forces; they are committees concerned more with the enforcement of peace and not generally concerned with the fighting organization. They are the military committee of NATO and it has been drawn into this agreement merely for the purpose of extending to such personnel the privileges and immunities concerned.

Mr. COLDWELL: And I understand, Mr. Wershof, that the term "military" means naval, army and air force personnel?

Mr. WERSHOF: Oh yes; on the other hand, they expressly excluded from these committees the other organization which relates to SHAPE, the Paris head-

quarters of General Eisenhower, the personnel of which are not in any way affected by this.

Mr. COLDWELL: They come under a separate agreement?

Mr. LESAGE: Yes.

The CHAIRMAN: These explanations are very interesting but I believe it will be the consensus of opinion of the members that we should go on to the next article in the schedule and then when we come back to go over the Schedule article by article, we can deal with each section in more detail.

The WITNESS: Then, Mr. Chairman, if the committee are agreeable we will pass on to article 3. This article is somewhat longer and its purpose is essentially to restrict the operation or the extension of immunities and privileges and provide a means of preventing abuse in connection with them. It provides that each of the member states are to co-operate at all times in the administration of justice and in the prevention of abuses. It provides for consultations in cases where there is any suggestion that there has been abuse of a privilege; and it finally provides that in extreme cases an individual can be required to leave the country which is analagous to the right of recall, demanding the recall of a diplomat.

By Mr. Quelch:

Q. What that means in application is, I take it, that each nation shall be responsible for policing its own personnel and that a measure of discipline will be exercised which will ensure the proper observance of diplomatic practice in respect of the immunities and privileges extended. Is that, generally, the purport of this section?—A. That is essentially correct. The section relates to the application of the agreement in a general way. This article of the agreement emphasises the practical application of immunities and privileges in respect of personal behaviour as distinct from behaviour in a representative capacity; and, generally speaking, no exception would be taken to what might be regarded as usual and proper conduct in the diplomatic service.

Mr. GRAYDON: Some question has been raised about espionage. I should think the question of espionage would not be an important one in view of the fact that this is not the United Nations or a group of unfriendly countries. This is a group of people allied together in a common cause.

Mr. QUELCH: No one knows how long these nations are going to be allied together. And in the meantime we might be providing information which might be of great value to a country in the event of a break. I noticed in connection with the espionage trials here that some of the information brought out had already been printed in the newspapers. Is it a clearly indicated line of demarcation, or is it somewhat clouded? I noticed in the papers some years ago that one of our military attaches in another country was charged with having provided information which he should not have given. What information is he to be allowed to give? Is it just information that he can observe casually, or not?

Mr. STICK: That is his job. He takes his own risk if he does it.

Mr. QUELCH: No. I think he has immunity.

Mr. COLDWELL: I would think so.

The CHAIRMAN: Order, order. It is impossible to keep a record unless only one member speaks at a time.

Mr. COLDWELL: Would not espionage be information improperly obtained and forwarded to some other third party? I think that would be espionage. But anything which is legitimately obtained and forwarded would not be espionage.

Mr. LESAGE: May I respectfully submit that that has nothing to do with this bill.

Mr. COLDWELL: I know.

Mr. LESAGE: It is a completely different thing.

Mr. MURRAY: Mr. Chairman, we have heard a lot of comments today which I think serve to stir people up. We are not here to do that. We are here for the purpose of drawing up the terms of a conciliatory act. Therefore I think that to go into the question of espionage and the question of what is going to happen here and there, and all that sort of thing is wrong. I think the Canadian people should be showing an attitude of friendship instead of stirring up all these difficulties. I think we are getting far afield from the purpose of the treaty.

Mr. GOODE: In regard to the wording of the article, suppose a case of abuse did come up. I have two questions: one, if the man has been requested to leave the country by the state, how long would he have in which to leave? And two, would his immunity still prevail while he stayed in that country?

The WITNESS: That is a very hypothetical question, Mr. Goode.

Mr. GOODE: No, I do not think it is hypothetical. I do not mean it to be that way. You mentioned abuse. Suppose an abuse has taken place. We hope that it never will, but it might, therefore you have put that article in. Suppose a man has committed an abuse and has been requested by some state to leave their country. How long does he have in which to leave that country, and does his immunity continue until he leaves that country?

The WITNESS: I cannot give you an answer in very few words, but I think the answer is: if such a person is asked to leave, he has to leave within a reasonable time. And what is a reasonable time is a question of fact. If you look at the general over-all position, it is difficult for an individual in a foreign country, because apart from his immunity, he is absolutely under the control of the country in which he is stationed. It is only his immunity which protects him. Consequently he dare not abuse that immunity; and consequently, if he is asked to leave, he dare not stay.

Mr. STICK: And you see to it that he does go?

The WITNESS: That is right.

Mr. COLDWELL: Is it not a fact that where countries have asked for the withdrawal of diplomatic immunity, the person or persons involved will leave that country immediately, even within a few hours?

The CHAIRMAN: I feel that the members of this committee as well as all Canadian people want to be fair to everybody. I have permitted discussion to take place very near the borderline today because I thought it would reveal things which the people of Canada would like to know.

Mr. Low: I am certain, Mr. Chairman, that no question asked here this morning was calculated in any way to cause distress.

Mr. COLDWELL: The clearer our view is on what this actually means, the more particularly will we realize what we are liable to have happen with the persons involved.

Mr. GOODE: When a man is asked to leave the country, does he carry his immunity from the time of the request until the time he actually leaves?

The WITNESS: He would carry his immunity until he actually recrossed the border. He obviously would have protection until he recrossed the border. There are practical considerations involved. He may have to acquire passage on a trans-atlantic plane, for example. He might have to pack his bags, or his

belongings, and it might take him two or three days to get to the border. You cannot lay down any fixed rule. The general principle is that he has to leave within a reasonable time.

Mr. GOODE: And that is given as a matter of courtesy?

The WITNESS: And should he fail to leave within a reasonable time, he does so at his peril.

Mr. MCCUSKER: As we have finished with part 1, Mr. Chairman, I move that we adjourn.

Mr. BATER: I would like to ask one question, Mr. Chairman, in connection with article 3. Suppose the representative of a country is asked to leave. I would take it that before that action is taken one country would discuss the matter with the other country. Might I ask if the individual would be asked to leave the country before one government had consulted with the other?

The WITNESS: There are two channels of communication, Mr. Bater. Diplomatic representatives are exchanged on a mutual basis. Consequently one country always has the alternative of going to its representatives in the other country; and on the other hand, there is the alternative of dealing with the representative of the foreign country. I do not think that I should set any general rule in that case. I think it would probably occur simultaneously through both channels. Certainly, practically every nation which has representatives in a foreign country would keep them informed on such matters as affect that country, because there are generally over-all considerations of policy affecting the relationship between the two countries that are involved. I do not know if that is a very satisfactory answer, but I do not think I should make any more of a definite statement than that.

Mr. Low: When shall we meet again, Mr. Chairman?

The CHAIRMAN: We shall try to meet on Tuesday at 11:00 o'clock in the morning, if possible.

Mr. LESAGE: If we could not hold the meeting in the morning, because too many committees would already be sitting on that morning, we could meet in the afternoon.

The committee adjourned.

HOUSE OF COMMONS

Fifth Session—Twenty-first Parliament
1951
(Second Session)

STANDING COMMITTEE

ON

EXTERNAL AFFAIRS

CHAIRMAN—MR. J. A. BRADETTE

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 2

TUESDAY, DECEMBER 4, 1951

BILL 15

An Act to provide for Privileges and Immunities in respect of
the North Atlantic Treaty Organisation.

WITNESS:

Mr. J. P. Erichsen-Brown, Legal Division, Department of External Affairs.

OTTAWA
EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1951

CORRIGENDA

Evidence No. 1, November 29, 1951

(By Mr. J. P. Erichsen-Brown)

Page 12, in line 13 of the Witness' evidence the word *sue* to be inserted between the words "to" and "the". That part of the sentence to read now:

"while a right has been given to *sue* the Crown in various Commonwealth jurisdiction,"

Page 13, line 3 thereof, the word *non* to be inserted between the words "general" and "statutory". That part of the sentence to read now:

"general *non*-statutory law"

Page 18, line 19 thereof, the word "liaison" to be deleted and the word *discussion* inserted therefor. That part of the sentence to read now:

"The basis of *discussion* in the preparation of the agreement"

MINUTES OF PROCEEDINGS

TUESDAY, December 4, 1951.

The Standing Committee on External Affairs met at 11.00 o'clock a.m. this day. Mr. Bradette, Chairman, presided.

Members present: Messrs. Bater, Benidickson, Côté (*Matapedia-Matane*), Dickey, Fraser, Gauthier (*Lac-St. Jean*), Goode, Graydon, Lesage, MacKenzie, Macnaughton, Murray (*Cariboo*), Richard (*Ottawa East*).

In attendance: Mr. J. P. Erichsen-Brown and Mr. E. R. Rettie, of the Legal Division, Department of External Affairs, and Mr. M. H. Wershof, of the Defence Liaison Division, Department of External Affairs.

The Committee resumed consideration of Bill No. 15, An Act to provide for Privileges and Immunities in respect of the North Atlantic Treaty Organisation.

Mr. Erichsen-Brown continued his detailed statement in explanation of the Articles contained in Part II and Part III of the Schedule to the Bill, and was questioned thereon.

During the discussion on Article 8 of Part II of the Schedule to the Bill the witness tabled the following documents:

A publication of the Department of External Affairs entitled, "Revenue Exemptions and Miscellaneous Privileges granted in Canada to Representatives of Foreign and Commonwealth Governments," and A notice of the Foreign Exchange Control Board for Diplomatic Officials.

Ordered,—That the said documents be printed as appendices "A" and "B" respectively to this day's Minutes of Proceedings and Evidence.

At 12.50 o'clock p.m. the examination of the witness was adjourned to the next meeting of the Committee.

Thereupon the Committee adjourned to meet again at the call of the Chair.

R. J. GRATRIX,
Clerk of the Committee.

EVIDENCE

December 4, 1951

11.00 a.m.

The CHAIRMAN: Gentlemen, we have a quorum and it is in order for us to proceed. I understand that Mr. Lasage is not yet ready to make his statement on the status of high commissioners and ambassadors. Therefore, we shall call upon Mr. Erichsen-Brown.

Mr. J. P. Erichsen-Brown, Legal Division, Department of External Affairs called:

The WITNESS: Mr. Chairman and gentlemen: I think we will be concerned this morning chiefly with the details of the sections of the bill which we have not yet covered. But there is one point I would like to clear up in connection with the record of the last meeting.

I have Mr. Lesage's permission to amplify a statement which he made in regard to the judgment of the Supreme Court of Canada in 1943. The members of the committee recall that the status of high commissioners was under discussion and it was explained that in so far as it was within the administrative competence of the government courtesies were extended on the same basis to high commissioners as to diplomatic representatives of foreign governments.

The point which I would like to clarify is that it was not strictly the status of high commissioners as such which was before the court in 1943. Rather it was a question of the right to exemption from taxation of the residences occupied by the high commissioners of the United Kingdom and Australia, but which were in fact owned by the Crown in right of the United Kingdom and the Crown in right of Australia respectively. The Court considered the provisions of the Ontario Assessment Act which exempted the Crown in general terms and held that these premises were exempt from taxation.

Mr. Lesage read the first paragraph of the headnote of the report of the judgment of the Supreme Court and I would suggest that the rest of the headnote might also be placed on the record.

(Per Kerwin and Hudson JJ., dissenting: Such property may be assessed and made liable for taxes although (per Hudson J.) the liability may not be enforceable so long as the diplomatic immunity continues.)

In view of the express terms of s.4 (1) of the Assessment Act, R.S.O. 1937, c.272, and of s.32 (j) of the Interpretation Act, R.S.O. 1937, c.1, a municipal corporation has no power to impose taxes upon property therein owned by the Crown in right of the United Kingdom and in right of Australia and occupied by their respective High Commissioners.

I think that putting in the balance of the headnote helps to clarify the effect of the judgment in so far as the right of exemption of the Crown, and the right in respect to other commonwealth countries is concerned.

Gentlemen, we completed consideration of part 1 of the bill which is entitled "General"; and we now come to part 2 which bears the title "The Organisation".

Article 4 is a short and simple section which confers juridical personality upon the organisation and it is tied in with the definition in article 1, as I pointed out the last day. The only observation I might make on this section is that the organisation would not in practice acquire property unless it was strictly necessary for its operations, and that it would in any event have to acquire such property in accordance with national laws.

The CHAIRMAN: Are there any questions?

By Mr. Goode:

Q. I am not sure whether or not my question is on this article, but I want to go back and develop something that I tried to find out last week. You remember that I asked some questions regarding the ordering of foreign personnel from a country. It seemed to me at that time that the answer was not forthcoming and if I can put it in my own words, perhaps you can answer it today with a yes or no. Is the important thing in ordering foreign diplomatic personnel from our country to be considered from the angle that we also have representatives in their country overseas, and would the well being of our own people be connected with the same order that this government may have to give to foreign personnel in this country? I hope I make myself clear. If, for instance, we ordered someone for cause from an embassy in this country, would we then have to consider the effect it might have on our Canadian personnel in the country concerned?—A. Am I right in that supposition?—A. Yes.

Q. Is it a supposition, or is it true?—A. That is entirely correct, Mr. Goode.

Q. Thank you very much. That is what I wanted.

By Mr. Graydon:

Q. I was going to ask a question about the spelling of the word "organisation"; but I have since consulted the dictionary and I find there is an alternative spelling for it. It looked like a strange way to spell it, but I have looked the word up and I see there is an authority for it.—A. Article 5 begins:

"The organisation, its property and assets, wheresoever located and by whomsoever held, shall enjoy immunity from every form of legal process except in so far as in any particular case the chairman of the council deputies, acting on behalf of the organisation, may expressly authorise the waiver of this immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution or detention of property."

Again, there is the same general principle that the immunity of the organisation may be waived in the same way that the sovereign immunity of a state may be waived, and in the same way that the immunity of a diplomat may be waived.

Q. Would it be necessary? Is there a likelihood that the chairman would not be sustained in a ruling he might make under this article? And what would be the procedure if it happened that he was not sustained?—A. I think that would be most unlikely.

By Mr. Graydon:

Q. I think that is covered by the terms of the article, in any event, because they say: "acting on behalf of the organisation". But I was going to ask Mr. Erichsen-Brown why the exception in the last sentence of article 5, which reads:

"It is however, understood that no waiver of immunity shall extend to any measure of execution or detention of property."

Just what does that involve?—A. That is an interesting sentence and it is a provision which is generally inserted in an agreement of this sort. I think I could answer your question more definitely by reference to a specific example. Suppose a question arose under the terms of a lease. Let us say the lease is for rented property for the organisation and let us suppose that some question arose as to the construction of that lease. Now, the members of the committee who are lawyers will appreciate that the law of landlord and tenant is a rather technical thing. It may involve reference to our statutory law and to the Short Forms of Lease Act and that sort of thing. It is not the sort of dispute which could readily be determined in a foreign country. Consequently that is why in practice when any problem arises between a foreign state or a diplomat or otherwise in connection with a lease, there is generally a waiver of immunity and a willingness to have the matter resolved here. But the question of taking action to enforce a judgment which might be given in our courts involves rather different considerations.

If the foreign government has agreed to submit the question for judicial determination of the issues, then it might not be willing to agree, once they have been determined, that the private litigant (who might have a rather prejudiced attitude towards the foreign government), would immediately put in a bailiff, or do something of that sort.

Obviously there has to be an opportunity for the foreign government to consider the decision and to submit the issues to the court for determination without having to bind itself at the same time to submit to the seizure of its property, if the judgment happens to be adverse to it.

Q. As far as our federal jurisdiction here is concerned it does not, and it cannot invade the field of property and civil rights. Now, how far can the federal government, in planning an agreement, settle this point with respect to provincial administrations in Canada, and with respect to carrying out the terms of the last sentence, for instance, in article 5?—A. That is an interesting question. May I divide your question into two parts? First of all, I would like to refer to the general position and to the question of sovereign immunity of states and the diplomatic immunity of the diplomatic envoys. In so far as they are concerned, immunity is accorded under principles of international law, which are deemed to be incorporated into our domestic law. That means the common law of the provinces in which the common law operates, and it also means the law of the province of Quebec.

I am not an expert in that regard, but the Supreme Court of Canada in the case to which reference has been made went into this question of sovereign diplomatic immunity at considerable length and indicated that it went back for a great many centuries, and the judges quoted quite freely from authorities in the French jurisprudence. The consequence is that these principles are deemed to be included in our domestic law, and the court held that all legislation, dominion or provincial, must be construed as saving to the rights of foreign states and their diplomatic envoys. In other words, there is a rule of construction which prevents provincial legislation extending so as to infringe upon the sovereign immunity of a foreign state or of a diplomatic envoy. That is the first part of the question.

Now, the second part concerns organisations such as NATO and I mentioned on the last day that the international law was in process of development and has not yet reached a stage where it could be said that immunity for international organisations as such is established. But the tendency is in that direction and the practice of according a limited immunity to the extent necessary to these organisations has become quite widespread. Accordingly, it depends essentially on the constitutional powers of the federal government,

and the best answer I can make is that our opinion, and the best advice we have had, is that the granting of this sort of thing is essential to the carrying out of our external obligations, and that the federal government has the power.

By Mr. Goode:

Q. Let me develop that point for a moment. You will remember that I am not a lawyer. What would be the status of the international court of justice, for example?—A. The international court of justice is the modern name. Before the United Nations was established there was an international court which was called the Permanent Court of International Justice.

Q. Well, what is their status in connection with this? For instance, is there any status regarding the seniority of that court over our courts in Canada? I am asking perhaps a question which you, as a lawyer, might be able to answer.—A. Yes, I think I understand the idea you have in mind. The best answer is I think that an international court is concerned essentially with questions as they arise between states rather than as between individuals.

Q. Yes.—A. And our domestic courts are concerned primarily with individuals.

By Mr. Graydon:

Q. Coming back to the question of dominion and provincial jurisdiction, the parliamentary assistant, Mr. Lesage is here and he will recall that at the last United Nations general assembly meeting in New York the question came up on one issue at least with respect to a federal clause which would protect provincial jurisdictions from certain decisions which might be made by the federal government acting as an international body. I would think that perhaps this might stand on a somewhat similar ground because it seems to me, just taking a hypothetical example, that in the years to come perhaps this organization might be replaced by another organisation, or perhaps this organisation might not proceed, or might wind up its affairs; and it might be that a long-term lease was involved on a building, let us say, here in Ottawa; and it might be that some person in the province of Ontario desired to take some legal action with respect to the terms of that lease. Now then, what action could he take, and against whom could he take it? He would be on the outside, according to this, and he would not be able to take his action because the federal government had said: "no"; whereas the provincial law was the one which applied and it would say "yes".

Now, how far can we go with respect to binding a lease? How far can we go in impeding the rights of a person who depends on the provincial law for those rights and who in a bona fide way enters into that contract under the full belief that the provincial laws prevail?—A. Let me point out, Mr. Graydon, as I did at the last meeting, that this question of immunity is one of immunity from the jurisdiction rather than a relief from all obligation to obey the laws as such. Foreign diplomatic representatives are expected to carry out their contractual obligations voluntarily undertaken, and the practice is very widespread among governments to honour those obligations.

It is, of course, conceivable that a question might arise on the technical construction of a contract. That is a situation I envisaged a few moments ago. Therefore if this person to whom you refer thought he had a claim and if there was any doubt as to his rights to sue, the first thing he would normally do would be to get in touch with us. We constantly receive letters from lawyers in circumstances of this sort inquiring as to a person's status and we at once ask questions and if it appears to us that something should be done, we endeavour to have it done. We endeavour to clear the thing up through diplomatic channels rather than allowing it to go to the courts at all. Consequently, the problem which you envisage tends not to arise in practice.

Q. It could arise but it does not tend to arise?—A. That is right.

Q. May I say this: actually we will have to understand that so far as this is concerned it does not tie up all the ends, but you have to rely rather on the diplomatic situation than on the legal aspects of it in some cases?—A. That is right. It comes back essentially to the remedy, to the way, to the recourse you have, through diplomatic channels rather than through the courts.

By Mr. Macnaughton:

Q. Is it fair to say that this particular sentence would be in effect a statement of general principles rather than one of sound international laws?—A. I would say, Mr. Macnaughton, that in cases where foreign government or envoy is involved in order to have a judicial determination on some question which might arise, let us say, on a contract, he would normally include a proviso in his waiver that the waiver would not extend to any measure of execution upon a judgment which might be realized following a judicial determination of the question.

Q. And following Mr. Graydon a little further, I take it that peace, order and good government would provide the right in practice to cover any situation fundamentally; the legal situation would have to be determined in favour of the local parties?—A. If the question of immunity depended upon customary international law, then under the judgment of the Supreme Court, any provincial legislation would have to be construed as saving to the rights of the foreign sovereign or diplomatic envoy.

By Mr. Richard (Ottawa East):

Q. Would it not sometimes happen that the federal government on account of granting this immunity would have to be responsible for some of the obligations incurred by these people, if they did not follow them through?—A. Well, in practice it is rather difficult to make a general statement. But my impression is that in practice these people are seldom out of pocket.

Q. But are we not depriving citizens of their recourse when we grant this immunity? And what happens in the case of taxes levied against a legation here? Is that a special case? Does the city recover from the government?—A. Yes. There is some indemnification given in the Ottawa area and it is similar to the indemnification given by the federal government in connection with the taxing of crown lands.

By Mr. Goode:

Q. Are taxes on a foreign embassy paid by the country whose embassy it is, or are they paid by the Canadian government?

Mr. RICHARD (*Ottawa East*): They are paid by the Canadian Government.

The WITNESS: There is partial indemnity given by the federal government to the municipalities in the Ottawa area only.

Mr. GOODE: Just in this Ottawa area only?

The WITNESS: Yes.

Mr. GRAYDON: It is news to me to hear that the federal government pays the taxes for foreign diplomats residences in Ottawa. I suppose it is a reciprocal arrangement which we have in other countries? I take it that is the case, otherwise we would be open to question as to whether or not that is a proper thing to do.

Mr. DICKEY: No. That would be a question surely between the municipality involved in the other country and their own government. I do not think there would be any principle of reciprocity between Canada and any other country involved.

The WITNESS: I think that is purely a matter of domestic arrangement. There is some concentration of property in Ottawa and it tends to create a burden on the local municipality.

Mr. GRAYDON: What about the Russian embassy in Ottawa? Who pays the taxes on that big building?

Mr. BENIDICKSON: We do.

Mr. GRAYDON: We do?

Mr. GOODE: I think we should get the answer from Mr. Erichsen-Brown. Is Mr. Erichsen-Brown willing to answer that question?

The WITNESS: We do not discriminate between foreign individuals. We could not.

Mr. RICHARD (*Ottawa East*): The answer is "yes", is it not?

Mr. GRAYDON: Do they pay the taxes on our embassy in Moscow?

Mr. DICKEY: That would be a question between the city council in Moscow and our government representative there.

Mr. GRAYDON: We would not have to pay the taxes in both place, surely?

Mr. DICKEY: We do not. We are exempt as I understand it from taxes on our embassy in Russia. But the government here considers it would be unfair to impose on the City of Ottawa the burden of these embassies. The Russian government might take that view so far as the city of Moscow is concerned, or the French government might take that view as far as the city of Paris is concerned.

Mr. LESAGE: It is a domestic decision.

Mr. DICKEY: Or they might think there are benefits to the municipality which flow from having these tax-free properties on their roll. But the general principle is that the property of a foreign embassy is tax-free. That is the way I understand it.

Mr. BATER: Is there a reciprocal arrangement between the United States and Canada in this connection?

Mr. LESAGE: It is clear that it is not taxable by the municipality. That is what the judgment of the Supreme Court says.

Mr. RICHARD (*Ottawa East*): This is one case where the government indemnities; one small case on account of the fact that they have their own immunity from those provincial or civic rates.

By Mr. Fraser:

Q. Does the federal government pay out anything or is it generally granted by the city of Ottawa?—A. I think the answer is that we cannot distinguish between foreign governments whether it is a question of exemption of immunity on the one hand, or a matter of domestic arrangement on the other hand. The federal government has for a great many years indemnified municipalities for crown property. I think that is a well known fact. And in this particular case a number of foreign governments have come into the Ottawa area and the municipalities are given some small compensation or partial compensation for the taxes which they have lost. It is given on a basis rather similar, it seems to me, to the motives which underly it, that is, that they have nothing whatever to do with the fact that the property happens to be that of a foreign government.

By Mr. Goode:

Q. Actually, it is a service rendered by the municipality.—A. It is purely a domestic arrangement within Canada stemming out of the desire that

a municipality should not be overburdened by reason of a great number of crown-owned properties, or foreign government owned properties in a given area, as contrasted with Canada at large.

Mr. BENEDICKSON: Under what department in the estimates are these taxes covered?

Mr. LESAGE: I think it is the Department of Finance. You will remember that there was a bill concerning it last year, or two years ago.

Mr. BENEDICKSON: Prior to that time, did we have this practice in vogue, or was this only brought about as a result of the bill?

Mr. LESAGE: I have been wondering about it.

Mr. DICKEY: Perhaps we might resume this discussion after we know what the facts are.

The CHAIRMAN: Yes. I do not believe we can go into all the financial details of that question.

The WITNESS: This is all under the Department of Public Works.

Mr. WERSHOF: Mr. Chairman, I think the vote was transferred some years ago. There is, of course, a sum which is voted by parliament to provide for this partial reimbursement of the municipalities. But whether or not it is Public Works this year, I do not know. I have not looked at the estimates.

Mr. MACNAUGHTON: When you come to the next meeting of the committee we can clear it up.

Mr. WERSHOF: But there is a vote.

Mr. GOODE: Could you not tell us about it at the next meeting?

Mr. LESAGE: Oh yes.

Mr. GRAYDON: It may not apply to this bill which is before us, but on the other hand, I think it is very closely allied to it. So I think that a full explanation would be very helpful in connection with the bill.

Mr. RICHARD (*Ottawa, East*): I take it that they cannot force a member of a foreign embassy to submit to our courts, but if he cares to do so, he may?

The WITNESS: Yes.

Mr. RICHARD: Suppose there is an unsatisfied judgment, would the government consider that they should indemnify the Canadian citizen who has not been satisfied?

The WITNESS: I am not aware of that situation ever having arisen but certainly we would put on pressure to see that it was paid. I think the answer is that it would be paid.

Mr. RICHARD: You never heard of such a case?

The WITNESS: No.

Mr. FRASER: Is there not a radius outside of Ottawa which would include, let us say, a 60-mile limit, or something like that?

The WITNESS: Immunities are part of the general law of Canada.

Mr. FRASER: It would include the whole of Canada, no matter where they are?

The WITNESS: Yes.

Mr. FRASER: But are not some of our ambassadors limited to a certain area in the countries into which they go?

The CHAIRMAN: No.

Mr. FRASER: I think so.

Mr. DICKEY: That is not a question of immunity. That is a question of impeding movement within the country.

The CHAIRMAN: I have allowed quite a wide latitude in the questions asked and answered.

The WITNESS: Mr. Chairman, I prefer not to go into that, if the committee will excuse me, because I think it involves a question of policy beyond the sphere of a member of the legal division.

Mr. FRASER: Very well.

The CHAIRMAN: Article 6.

Mr. GRAYDON: It is understood, Mr. Chairman, that article 5 will stand?

The CHAIRMAN: Of course. I believe we settled that at our first meeting with Mr. Erichsen-Brown. We decided that he would make a general statement and also deal with any questions which might arise. And I hope that such questions will not be repeated when we come to the articles again. I believe we have so far done excellent work in putting these questions.

Mr. FRASER: We are now on article 6, are we not?

The CHAIRMAN: This is not the time for a long discussion, Mr. Fraser. We have Mr. Erichsen-Brown before us today to make a general statement.

Mr. FRASER: Very well.

The CHAIRMAN: I would like to have it done in this way at the present time.

The WITNESS: Article 6 provides for inviolability for any premises which might be acquired by the organisation. This article 6 differs from article 3 and the sections on privileges and immunities of the United Nations, in a minor respect.

Following the words "form of interference in the convention" in regard to the privileges and immunities United Nations Act, 1947, there was included the words:

Whether by executive, administrative, judicial or legislative action.

The opinion was held that these words were really unnecessary and that they simply tended to complicate the section. So they were accordingly omitted. The concluding part of this short section includes the word "expropriation", and I might direct the members of the committee to the fact that on the last page of the bill, page 11, there is a reference to the signature of Portugal and of the Portugese delegate who added, after his signature, these words:

Reserving the non application of article 6 in case of expropriation.

No other state considered it necessary to make a reservation from that article. The possibility of the organisation acquiring property and wanting to expropriate was so hypothetical and so remote that it could not possibly be regarded as a matter of practical importance. We also considered that we had a practical remedy under article 3 which is the section we discussed the last day, intended to avoid abuse of the privileges given under the agreement. That is a comparatively minor matter; but since it does appear following the signature of the Portugese representative, I thought I should call attention to the reservation.

Mr. GRAYDON: May I ask a question now, Mr. Chairman?

The CHAIRMAN: I believe so. And when we come to the articles again and the bill, while of course there is not set rule about it, I hope that the questions will not be repeated. I believe the work we have done so far has been excellent.

By Mr. Graydon:

Q. In this case, suppose that NATO had purchased premises here in Ottawa, and suppose that the capital plan was extended to the point where it took in

that particular building. Then, when we find disagreement we would in fact be saying to the capital planning board: "Well, you may complain, but you cannot complain so far as the NATO building is concerned."

Now, just how far are we going, in taking that step?—A. Mr. Graydon, that is technically correct, perhaps; but on the other hand NATO has no property in Canada and there is very little prospect of its acquiring property in Canada. And might I say that countries such as the United Kingdom, France and the United States which are much more concerned with the application of this paragraph have not seen fit to make any reservation to the article.

Mr. MACNAUGHTON: Article 3 would surely cover it too.

The WITNESS: Yes, there is a remedy by discussion.

Mr. GRAYDON: Discussion and consultation hardly take the place of legal rights. I am not pressing it at the moment, but I think it could conceivably amount to something that was an interference with the rights of a municipality, such as the rights of a planning board which we have discussed here.

The CHAIRMAN: Do you have in mind NATO putting up a new building?

Mr. GRAYDON: They might buy a place here for some purpose in order to carry on certain operations of the organisation's activities. If that should come about, then of course expropriation would be ruled out completely, and I think it would be ruled out so far as long-term leases are concerned as well.

Mr. LESAGE: I am sure that no one has to be afraid of such an occurrence because here in Canada, as the witness has said, there is very little prospect of NATO acquiring any building. Moreover, under article 3 of the agreement it is always possible to seek a remedy. And there has been no trouble. That is our experience.

Mr. GOODE: And if there was a possibility of NATO acquiring a building in Canada, this would be considered as a part of the general over-all plan, and the government would take it into consideration.

The WITNESS: Mr. Rettie has drawn my attention to article 27, which provides for denunciation within a period of one year.

Mr. GRAYDON: I do not think that article 27 is applicable to this at all.

The WITNESS: It is an example of ultimate recourse. I quite agree with you, that it is not a practical question. This question would not arise and the chances of our acting under article 27 are very remote. But a technical view was taken of article 6 and I thought that I might take a technical view with regard to article 27. But the answer probably is that the situation that you envisage under article 6 won't arise, and consequently the necessity for taking any action under article 27 similarly would not arise.

Mr. GRAYDON: But if we took action under section 27, there would be serious international opposition to it, and would it not perhaps be justified even if we said to the capital planning board "that is the arrangement." But I think that hardly is the remedy that is really open to us.

Mr. RICHARD: I think that some of us are interested in this point and I think it might be discussed at the next session. The discussion of immunity generally of foreign embassies is applicable to NATO particularly and what we are discussing today. So I think that perhaps some of the examples we have given today would not apply to this particular bill but rather that the general law would apply to embassies and to foreigners in this country.

The WITNESS: I would recommend to you, sir, that you consider the judgment of the Supreme Court of Canada in 1943, I mean the one which was put on the record at the last session. The court examined the whole question of immunity and I think it would clarify the whole problem for you.

Mr. RICHARD: That does not mean that our position is satisfactory, even though they said it was the law.

Mr. LESAGE: We need these privileges of immunities on behalf of our own envoys.

Mr. RICHARD: I know they are very well treated in Canada.

The WITNESS: I would like so far as possible to stick reasonably close to this agreement in so far as this agreement is concerned with the existing position. We actually receive far more than we have to give. That arises from the fact, as Mr. Wershof pointed out on the last day, that the offices of the organisation are in the United Kingdom, France, and the United States as well as in Canada. And incidentally, that is of some indirect benefit to the Canadian taxpayer because there are certain expenses of representatives which are avoided in other countries, and on balance it is to our advantage.

Mr. GOODE: I may be wrong, but I think this question of immunity is tied up with the question I asked and to which I have not had an answer. Mr. Lesage did not answer my question in regard to the high commissioners' establishments in Canada and for a reason which I quite understand. But I do not think we are going to get very far on this immunity question until we get an explanation of the status of our Canadian representatives. It may be that the question I asked on page 21 means more to me, but until I get an answer to that question a discussion of immunity between this country and other countries is not going to help me. I quite understand why the parliamentary assistant did not answer my question. I understand it is a matter of policy and that it would be improper for him to answer it at this time. But I would be anxious to hear an answer.

Mr. MACNAUGHTON: Let me say that I am going to study the question of immunity by reading the Supreme Court Judgment.

The CHAIRMAN: Let us come back to the question asked by Mr. Graydon.

Mr. BENEDICKSON: I do not see Mr. Goode's question on page 21.

Mr. GOODE: I am sorry. It is on page 11. My glasses are not effective. It is the fourth question on the page. It might be that that question means more to me than it does to the rest of the committee.

Mr. LESAGE: I cannot tell you anymore at this time than I have told you: namely, that I wished to delay my answer to that question for very good reasons.

Mr. GOODE: I understand and I think you are quite right if you do not want to answer.

The CHAIRMAN: With respect to the question Mr. Graydon asked about the inviolability of the premises of the organisation, it is true that at the present time they have no property here, and it is true that it is not the intention of NATO to have any. But in time they may decide to acquire some; and even at the present time there are some embassies which own their own property. So I think there should be a safeguard provided in the Act for the federal improvement plan. After all, the country and the city of Ottawa are making a big monetary sacrifice in order to have a plan accepted by all, and these plans should not be interfered with by any organization. So I think there should be a safeguard provided. It certainly should apply to Ottawa. I leave that question with the committee at the present time. Surely no one will allow a country or anyone within NATO to interfere with the improvements we have here in Ottawa. They have been accepted by the whole country.

Mr. CÔTÉ: Would NATO at any time supersede the jurisdiction of the federal government?

The CHAIRMAN: It has, under article 7, inviolability of its premises.

Mr. CÔTÉ: Consider an agreement made between a foreign state and Canada, or between an international organization and the city of Ottawa, or whatever it may be called at a later time such as the Ottawa District. That is not going to come into the picture at least for the time being.

The CHAIRMAN: No, it is not but it is in the picture.

Mr. LESAGE: NATO would surely never buy any property in Ottawa before approaching at least the External Affairs Department to know what is going on. There is no danger of these things happening.

The CHAIRMAN: No. We are trying to prevent any complications.

Mr. LESAGE: The fact is that we are dealing with 11 friends; we are 12 friends together in NATO as an organization, and we have our say in it. They would never buy anything in Ottawa without approaching us beforehand.

Mr. RICHARD: I cannot see why that provision was put in there, I mean the reservation that it should not apply to expropriations. We are putting in words that would never apply.

Mr. LESAGE: Here in Ottawa, no; but there might be some expropriation elsewhere.

Mr. RICHARD: Why should we put these words in if there is not going to be any expropriation?

Mr. LESAGE: This is an international agreement and in order for it to be put into force it has to be ratified by the 12 countries. Some portions of it will never apply to Canada; some others will apply regularly in Paris or in London.

Mr. RICHARD: To me it is just being technical.

Mr. BATER: Are we not just dragging a red herring across it? It seems to me that what we are discussing is very close to that, because it is so hypothetical.

The CHAIRMAN: I suppose we have been working in the abstract. But after all, the discussion has been quite useful. I think we might now proceed with the bill.

The WITNESS: If there are no further questions on article 6, I pass on to article 7 which deals with "Archives" of the organization. The article reads as follows:

The archives of the Organisation and all documents belonging to it or held by it shall be inviolable, wherever located.

The CHAIRMAN: Do you not wish to agree with that? That is why I said that the discussion we have had before was good.

The WITNESS: That is substantially the same as an article in the convention on privileges and immunities of the United Nations which was approved by parliament in 1947.

Mr. MACNAUGHTON: Why is special exception made for the archives? It is just because archives are so important?

The WITNESS: I do not know if the practical application of this article is very great. I have not very many notes on this section, Mr. Macnaughton.

Mr. MACNAUGHTON: It is just a broad statement of the old principle of immunity. That is all.

The WITNESS: That is right. I think the answer probably is that all the text books you look at on immunity invariably list the archives as one of the things which are immune. So it has been put into this agreement dealing with the international organization. It appears in all agreements of this sort, and it is a provision which is readily accepted.

The CHAIRMAN: Since there has been a brief statement made on this subject, might we now pass to article 7. I think it would simplify our work.

Mr. CÔTÉ: They could all pass except article 6.

The CHAIRMAN: None has been passed so far because we are supposed to receive a general statement from Mr. Erichsen-Brown. But we have now had a general discussion on these different articles, so I believe the time has come, if the committee is unanimous about it, to pass article 7.

Mr. DICKEY: We seem to be dealing in quite some detail with all of these articles. It may be that we could proceed to the final determination of this one.

The CHAIRMAN: Yes.

Mr. DICKEY: Otherwise we are going to have to go over all this again.

The CHAIRMAN: The clerk tells me that some of the members who were at our last meeting are not here today, and that they might like to ask some questions. But they always have the prerogative to do so. I think it would be unfair to those present if we held back. Does article 7 pass?

Carried.

The WITNESS: Article 8 is a little longer. It is a comparatively simple section. It is simply intended to enable the organisation to transfer its funds from one member country to another. I do not think I need to read it. It is similar to sections 5 and 6 of the Privileges and Immunities of the United Nations. As to funds which might actually be transferred, I do not think it is possible to make a very definite statement, but I believe that in the course of the discussion it was considered that the funds which might be transferred might be contributions made to the organisation which formed a part of its funds and which came originally from a member state; or it might involve transfers of salaries from the organization to countries of origin.

In certain cases special arrangements may be made under article 19—let me mention that in passing I am going to deal at some length with article 19 which involves the question of taxation of nationals. As to conversion I have a note that the only form of exchange which a country would be called upon to make under this article was between its own country and any other NATO country. I think that with that short explanation there is probably little more I could add.

Mr. FRASER: These funds would not have to come through the international bank, would they?

The WITNESS: No.

Mr. MURRAY: Would the organisation have the right to operate a bank under that article?

The WITNESS: I brought with me today two documents. One is a printed document published by our department. It sets forth the revenue exemptions which are granted by the Government of Canada to representatives of the commonwealth and of foreign governments. And there is in it a reference to a memorandum of the Foreign Exchange Control Board which is also a printed document, and which is furnished to representatives of foreign countries on request.

This whole question of private funds is really a technical problem which is beyond me.

Mr. FRASER: I wondered if they had to go through the international bank.

The WITNESS: No. The answer to your question is "no".

The CHAIRMAN: Do you agree to having these documents placed in our record as appendices?

Mr. GRAYDON: What are those documents, Mr. Chairman?

Mr. LESAGE: The first one is a document of the Department of External Affairs entitled

“Revenue Exemptions and Miscellaneous Privileges Granted in Canada to Representatives of Foreign and Commonwealth Governments.”

The second one is a notice of the Foreign Exchange Control Board for diplomatic officials.

By Mr. Graydon:

Q. With respect to the point you have just explained, Mr. Erichsen-Brown, does our own Foreign Exchange Control Board approve of article 8 before our government signs it?—A. Yes.

Q. It is thoroughly considered by the Foreign Exchange Control Board?—A. Yes.

Q. And they have no objection to article 8?—A. They have no objection to article 8.

Mr. MACNAUGHTON: Surely the important words are in paragraph 1 subsection (b) “Operate a foreign currency account with a bank in Canada and make deposits to and withdrawals therefrom without permit.”

Q. Yes.

The CHAIRMAN: Shall article 8 carry?

Carried.

Shall article 9 carry?

ARTICLE 9

The Organisation, its assets, income and other property shall be exempt:

- (a) from all direct taxes; the Organisation will not, however, claim exemption from rates, taxes or dues which are no more than charges for public utility services;
- (b) from all customs duties and quantitative restrictions on imports and exports in respect of articles imported or exported by the Organisation for its official use; articles imported under such exemption shall not be disposed of, by way either of sale or gift, in the country into which they are imported except under conditions approved by the Government of that country;
- (c) from all customs duties and quantitative restrictions on imports and exports in respect of its publications.

The WITNESS: Article 9 provides that the organisation is to be exempt from taxes. Essentially that is in line with the general principle that no state seeks to force another sovereign state to contribute to its exchequer. Obviously you cannot tax a foreign state, and an international organisation which includes members of other foreign states in a similar position.

Mr. FRASER: In this article 9 the organisation is exempt from all taxes except public utility charges. Do the foreign embassies here in Ottawa, while they are tax exempt, have to pay public utility charges?

The WITNESS: Yes, they do, they have to pay the Hydro rates and the water rates even though they are issued in connection with the tax bill. We insist that the water rates be regarded as a matter of services rendered rather than a matter of tax raised for the purposes of government in Canada.

Mr. FRASER: And they would have garbage collections too, would they not? Would that go into it?

The WITNESS: Garbage collection is something which I think is generally regarded as making up a part of the general rates.

Mr. FRASER: I see.

The CHAIRMAN: And that applies with respect to representatives abroad. We had the same thing before.

The WITNESS: Mr. Bradette, the precise basis of taxation in different countries varies between one country and another; there may not be such a thing as garbage collection in a given country.

The CHAIRMAN: You mean they would pay for such services as water, light, and so on.

The WITNESS: That is correct. The general principle is that they pay for services but not for taxes. That principle is widely accepted.

The CHAIRMAN: Shall section 9 carry?

Mr. GRAYDON: I am not quite sure about that term "taxes". Now, you mentioned a moment ago that the principle is that there is no international agreement which would compel one nation to contribute to the exchequer of another nation?

Mr. GRAYDON: But in this case, in our particular set-up in Canada, it is not a question of contributing to the exchequer of another nation. It is a question of contributing to the exchequer of another province. And I am wondering whether or not we are in a different position in Canada than any other of the signatories of NATO.

The WITNESS: I might make an observation arising out of your question: this is something which is not often appreciated but as a matter of fact under international law the constituent units of a federal state do not exist. What I mean is that it is the government of Canada which is held responsible internationally—speaking for the obligation of Canada as a whole, and the federal government cannot excuse non-performance of its international obligations because of its constitutional provisions.

Mr. LESAGE: I think I know what Mr. Graydon has in mind. He is thinking perhaps of the draft covenant on human rights which was discussed at the last meeting of the General Assembly in New York and also this summer in Geneva at ECOSOC. But this is a different problem from the covenant on human rights. The covenant would apply new rules of law in every signatory country, dealing with matters which in certain countries such as Canada pertain to provincial jurisdictions, while this is different because the principles regarding immunities and privileges have been considered as being part of the law of Canada since a very long time. That is what the judgment of the Supreme Court of Canada said. Is that not right?

The WITNESS: You are quite right, Mr. Lesage. I would put it this way: that there has recently been an increase in subjects which have come into discussion in international forums where the basic objective of the discussion was to bring national law up to international standards. When you are dealing with a question of that sort, it is perfectly obvious that the provinces have to enact their legislation, and everything that is done as a matter of implementing that international obligation must be done directly in accordance with constitutional divisions of power.

Mr. GRAYDON: I think that constitutes an invasion of provincial rights, even though the Supreme Courts' judgment so held that it is possible. I think that whether it is done by judicial or legislative means it certainly would be an invasion and we cannot get away from that principle. I think that where you legislate nationally on subjects that affect the jurisdiction of a provincial legislature, you certainly are invading the rights of that legislature. I would

have thought that perhaps the legislature of a province where these properties might be situated—because they might not be in Ottawa—or the province in question ought at least to have been consulted so that they themselves could have made some provision with respect to their tax structure. I know that you point to the Supreme Court, but the Supreme Court does not answer my question because the Supreme Court is invading, in my opinion, the position as between the dominion and the provinces. I think these trends are extended, and I think the principle now seems to have been established, but I am not sure where we go from here. I am concerned about it and I think the question ought to be raised. However, I am not going to press it at the moment.

Mr. LESAGE: You will remember that I expressed my view to you last summer on the difficulties which the federal parliament faced because of its international obligations and at the same time the difficulty of respecting the autonomy of the provinces. As you know, I have been very concerned about it and my minister has always been very concerned.

You know how strongly I defended the principle with respect to the government including a federal clause in the proposed covenant on human relations.

Mr. GRAYDON: Yes, and I was quite in agreement with it.

Mr. LESAGE: I strongly urged that we should have a federal clause because we feel we should have one to respect the autonomy of the provinces. But this is quite a different position. We are not dealing with an international board or a covenant of law which would affect the jurisdiction of the provinces. Not here. We are dealing with immunities and privileges that have been recognized by our own law and which form a part of the law not only of Canada but of the provinces. That is what the Supreme Court of Canada says. So we are not touching the autonomy of the provinces. We are respecting the law.

Mr. GRAYDON: Whether it be done by this agreement or by a judgment of the Supreme Court, I think we are taking away certain provincial rights which were given to the provinces under the British North America Act, namely, to apply certain taxes from real estate within their domain.

Mr. LESAGE: The privileges and immunities in the international field existed long before the Confederation of 1867 and that is what the Supreme Court says. It has been part of the law of the land even under the French regime.

The CHAIRMAN: Shall article 9 carry?

Carried.

Shall article 10 carry?

ARTICLE 10

While the Organisation will not as a general rule claim exemption from excise duties and from taxes on the sale of movable and immovable property which form part of the price to be paid, nevertheless, when the Organisation is making important purchases for official use of property on which such duties and taxes have been charged or are chargeable, Member States will whenever possible make the appropriate administrative arrangements for the remission or return of the amount of duty or tax.

The WITNESS: Gentlemen, article 10 is to a certain extent included for the purpose of clarifying article 9. But there is one point in connection with article 9 which I intended to mention before coming to article 10, and I realize it was an oversight. Might I go back temporarily to article 9, paragraph (b), the reference to customs duties and quantitative restrictions and

so forth. This refers to articles imported under such exemption. They are not to be disposed of either by way of sale or by gift.

The point I want to make is this: article 10 deals more specifically with the question of sale and it contains a provision by which important purchases are distinguished from trivial purchases. That is putting it in very brief language. You will notice that article 10 says that when the organisation is making an important purchase for official use of property on which such duties and taxes have been charged, or are chargeable, the member state will whenever possible make the appropriate administrative arrangements for the remission or return of the amount of duty or tax.

Mr. FRASER: Why did they put in there "make an important purchase"? Where is the distinction on that?

The WITNESS: For example, if there was a sales tax on a package of cigarettes, I do not think any organisation or foreign representative is going to ask for the remission of that sales tax, levied on the purchase of a package of cigarettes. But on the other hand, if he is making an important purchase, let us say, of an automobile, that might well be a case which would come under this section and they might well say: "we would like to have the tax remitted".

Mr. FRASER: But those cigarettes or that automobile would not be for the benefit of the organisation, would they? They would be for the benefit of the representative himself, the individual representative of NATO?

The WITNESS: Well, evidently the example I just gave was unfortunate.

Mr. LESAGE: The automobile would be all right. The NATO organisation may own automobiles for official use.

Mr. FRASER: Yes.

Mr. LESAGE: And they may even buy cigarettes for an official reception.

Mr. DICKEY: Perhaps a better example would be that of a small amount of stationery for the use of the organisation.

Mr. LESAGE: Yes.

Mr. FRASER: Would they be buying a small amount for an individual's use?

Mr. DICKEY: No.

Mr. FRASER: They would be, in the case of the cigarettes.

Mr. LESAGE: Take the case of the small amount of stationery, as Mr. Dickey suggests, or the case of an automobile.

Mr. CÔTÉ: Or a case of liquor!

Mr. FRASER: What about a resale? How would they get over that? An organisation like that is exempt from taxes. But suppose they sell that automobile again? They could go into business on a thing of that kind?

The WITNESS: There is a standing restriction which makes it illegal to resell such an automobile within a period of two years, otherwise they would have to pay the tax.

Mr. FRASER: And would that restriction cover NATO?

Mr. LESAGE: Article 10 says that appropriate administrative arrangements are to be made. That requirement about the automobile not being resold within two years is a part of appropriate administrative arrangements that we have here in Canada.

The CHAIRMAN: Shall article 10 carry?

Mr. LESAGE: It is a regulation of the Department of National Revenue.

Mr. FRASER: And you say that it would apply to NATO also?

The CHAIRMAN: Carried.

Shall article 11 carry?

Article 11

1. No censorship shall be applied to the official correspondence and other official communications of the Organisation.

2. The Organisation shall have the right to use codes and to despatch and receive correspondence by courier or in sealed bags, which shall have the same immunities and privileges as diplomatic couriers and bags.

3. Nothing in this Article shall be construed to preclude the adoption of appropriate security precautions to be determined by agreement between a Member State and the Council acting on behalf of the Organisation.

The WITNESS: Article 11, subsection 1 deals with censorship; subsection 2 deals with the use of codes and the right to have a courier. Subsection 3 is another limitation and it enables the enforcement of appropriate security precautions with any member under the general scheme of this article.

The CHAIRMAN: Shall article 11 carry?

Carried.

Mr. GRAYDON: Before we pass article 11, I wonder if Mr. Wershof, who is representing the Department of National Defence—

Mr. WERSHOF: Not the Department of National Defence. I am from the Defence Liaison Division of the Department of External Affairs. Whereas the legal division was dealing with the negotiations of the NATO agreement, our division deals with the activities of NATO. I am here just in case there is any question as to what the different branches of NATO actually do—whether they are in a ten story building or a one story cottage. I will do my best to answer, though.

Mr. GRAYDON: I take it you are not the person to address a question on the recent security precautions taken by NATO while here in Ottawa?

Mr. WERSHOF: No, sir. That was a decision apparently made by the government. I do not know that any of us here dealt with it.

Mr. LESAGE: No, I do not think that any of the officials here would be in a position to answer your question. The Speaker of the House could answer it.

The CHAIRMAN: Article 12.

Every person designated by a Member State as its principal permanent representative to the Organisation in the territory of another Member State, and such members of his official staff resident in that territory as may be agreed between the State which has designated them and the Organisation and between the Organisation and the State in which they will be resident, shall enjoy the immunities and privileges accorded to diplomatic representatives and their official staff of comparable rank.

The WITNESS: Article 12 begins a new part of this bill and you will notice it is headed "representatives of member states".

This part deals generally with the privileges of those persons who go to represent governments at NATO meetings. The next following part deals with the staff who are employed by the organisation as such. I might point out, before we get into a discussion of this part, that Article 16 exempts the position of nationals and that there is a cross reference in Article 16 to Articles 12 to 14 inclusive. Consequently, you have to appreciate in reading

12, 13, and 14, that Canadian nationals would not be involved in any exemptions given under these sections in so far as Canadian laws are concerned.

The next general observation I would like to make concerns the general theme of these articles 12, 13 and 14. Article 12 is concerned essentially with permanent representatives. Article 13 is concerned essentially with what might be called temporary representatives, and Article 14 is concerned with what might be described as subordinate staff.

I think it would be useful if I were to indicate in a general way the nature of the problems which arose when these articles were drafted.

It was considered there were three categories of persons who would make up the normal delegations to meetings of the NATO body: permanent members, who are covered by Article 12 as I have mentioned, and the other two classifications. In so far as permanent members were concerned it was generally agreed that they should have full diplomatic privileges down to a category approximately equivalent to a third secretary. I mentioned on the last day that the personnel chosen by members countries to represent them were, for the most part, drawn from the diplomatic missions and I referred to a list of permanent officials as they exist at the present time in a document which I undertook to put on the record. Actually, it has not been deposited yet but I explained at that time I was going to refer to it in greater detail. This is the occasion on which I wish to refer to it.

It is an unclassified list of the persons who have been listed as coming within Article 12. It does not specifically say that, but that is what it amounts to. It lists on an average. I would say, five or six representatives from each country. In each case there is a senior member and then there is, generally, a deputy head of the delegation—and there are some advisers. Some of those advisers are drawn from the diplomatic staff, and there are military advisers who, because of their close work in conjunction with questions of policy, are included in this agreement. Just glancing through it—first of all I might refer to the Canadian representatives on this list. Perhaps I might read them.

The CHAIRMAN: Is it a long list?

Mr. LESAGE: No, four names.

The WITNESS: Our deputy is Mr. Wilgress, the Canadian High Commissioner in London. Our advisers are Mr. Rae, first secretary at Canada House; Mr. Ritchie, first secretary at Canada House; and Mr. Cote, first secretary at Canada House. The service advisers are Major General J. D. B. Smith, chairman of the Canadian Joint Staff in London, and Air Commodore Costello, the air member to the Canadian Joint Staff in London. There is also one adviser who is listed as an adviser on defence production and he holds the rank of commercial secretary at Canada House.

Mr. MACNAUGHTON: What is his name, please?

The WITNESS: I am sorry, his name is R. G. C. Smith.

By Mr. Côté:

Q. I must have misunderstood you, but did you not say that, according to Article 12, representatives of a mission to another country would rate at about third secretary?—A. Yes, sir, but in so far as Canada is concerned—

Q. Do you mean to say that Mr. Wilgress, from High Commissioner to Great Britain, comes down to a third rate secretary in the North Atlantic Treaty Organisation?—A. I was speaking of what I might call a general policy when this article was under discussion. It was agreed that if any member country chose to employ its diplomatic staff it could, if it chose to, go down to a level as low as third secretary and that person would be covered. We did not choose to go down to such a low level and our people do not go below the rank of first

secretary or commercial secretary—I am not quite clear where a commercial secretary appears on the list.

As I mentioned at the last session a large number of persons covered by Article 12 would otherwise enjoy privileges and immunities. The question arises as to why this article needs to be included and I think I can explain that briefly by pointing out that the North Atlantic Treaty Organisation may meet in different countries. In other words, members of our staff at Canada House are accredited to the Crown in the right of the United Kingdom, but they are not accredited to the President of France. Consequently, if they were to attend a meeting in France—

Mr. LESAGE: And there was one in Rome?

The WITNESS: Or in Rome, they would not have status in those other countries even though they might enjoy it in the United Kingdom. The reason these people were chosen was that it was contemplated that the meetings they would have to attend would be, for the most part, in London. It was a matter of saving travel.

Mr. LESAGE: The council deputies sit in London.

The CHAIRMAN: Shall Article 12 carry?

Carried.

Article 13?

1. Any representative of a Member State to the Council or any of its subsidiary bodies who is not covered by Article 12 shall, while present in the territory of another Member State for the discharge of his duties, enjoy the following privileges and immunities:

- (a) the same immunity from personal arrest or detention as that accorded to diplomatic personnel of comparable rank;
- (b) in respect of words spoken or written and of acts done by him in his official capacity, immunity from legal process;
- (c) inviolability for all papers and documents;
- (d) the right to use codes and to receive and send papers or correspondence by courier or in sealed bags;
- (e) the same exemption in respect of himself and his spouse from immigration restrictions, aliens registration and national service obligations as that accorded to diplomatic personnel of comparable rank;
- (f) the same facilities in respect of currency or exchange restrictions as are accorded to diplomatic personnel of comparable rank;
- (g) the same immunities and facilities in respect of his personal baggage as are accorded to diplomatic personnel of comparable rank;
- (h) the right to import free of duty his furniture and effects at the time of first arrival to take up his post in the country in question, and, on the termination of his functions in that country to re-export such furniture and effects free of duty, subject in either case to such conditions as the Government of the country in which the right is being exercised may deem necessary;
- (i) the right to import temporarily free of duty his private motor vehicle for his own personal use and subsequently to re-export such vehicle free of duty, subject in either case to such conditions as the Government of the country concerned may deem necessary.

2. Where the legal incidence of any form of taxation depends upon residence, a period during which a representative to whom this Article applies is present in the territory of another Member State for the discharge of his duties shall not be considered as a period of residence. In particular, he shall be exempt from taxation on his official salary and emoluments during such periods of duty.

3. In this Article "representative" shall be deemed to include all representatives, advisers and technical experts of delegations. Each Member State shall communicate to the other Member States concerned, if they so request, the names of its representatives to whom this Article applies and the probable duration of their stay in the territories of such other Member States.

The WITNESS: Article 13 applies to representatives of member states who are not covered by Article 12. I mentioned a few minutes ago that they may be described as temporary representatives. There is a list of privileges set forth and, at first glance, it looks like a rather formidable list. Actually, the particular subsections are of relatively slight application. The peculiarity of a temporary representative, as distinct from a permanent representative, is that he does not acquire permanent residence. He comes in generally for a brief period which may be a matter of a week or ten days and the practical applications of these sections is likely to be restricted to the work of immigration and customs officials. I do not want to have the statement misinterpreted, I just want to give what I think is the proper emphasis to be put on this section.

Now, I am prepared to deal in detail with these provisions if there are any questions which arise. I may say that they are very similar to the provisions included in the three sections of the Convention on Privileges and Immunities of the United Nations—sections 11, 13, and 16 of that convention.

Mr. GRAYDON: Would you mind pointing out the distinction between the privileges and immunities under Article 13 and the privileges and immunities which were granted under the United Nations Organisation?

The WITNESS: Yes, Mr. Graydon. The differences are in subparagraphs (h) and (i). Perhaps I might read a short statement that I have here:

The differences between the corresponding paragraphs and sections are principally in matters of detail except that paragraph 1 (h) and 1 (i) make provision for duty free entry on first arrival of furniture, effects, and private motor vehicles, subject to the conditions stated.

Those conditions in effect mean that the government will be in a position to prevent abuses, in particular by stipulating that there shall be no sale of articles mentioned without payment of the appropriate taxes, and that the articles brought into the country are not in excess of what can reasonably be considered necessary.

In other words, the difference in this subsection (h) and subsection (i) is that the North Atlantic Treaty Agreement does not go as far. There are conditions added in there which do not appear in the other convention.

The CHAIRMAN: Shall Article 13 carry?

Mr. GRAYDON: Just before we go on to Article 14 we have not dealt with subsection 2 of Article 13, the question of legal incidence of any form of taxation depending upon residence, and so on.

The WITNESS: Yes. I think the purpose of that section is reasonably clear. I might recall that it is the basis of our own Income Tax Act—that there will be taxation on the basis of residence. I might also recall that diplomats are deemed to be non-residents for the purposes of taxation.

I refer you, Mr. Graydon, to Section 57, subsection 1, subparagraph (b) of the Income Tax Act. Perhaps I could read the entire operative words so that you can get the meaning:

No tax is payable under this part on the taxable income of a person when that person was . . .

(b) an officer or servant of a government of a country other than Canada whose duties require him to be resident in Canada.

And then, there are three subparagraphs which annex conditions of reciprocity. Do you want the details?

Mr. GRAYDON: No, I think that is sufficient.

The WITNESS: The point is that it is established practice to regard a diplomat as a non-resident and this section makes a similar provision. It would enable the Income Tax Department to deal on the same administrative basis NATO representatives as it does with diplomats—and consequently it would facilitate administration.

The CHAIRMAN: Shall the article carry?

By Mr. Graydon:

Q. Income tax applies only to nationals. Supposing an individual is here in a capacity, not as representing a state, but representing the North Atlantic Treaty Organisation as it stands. Is there any need for distinction for such individuals in so far as income tax is concerned?—A. I suppose that would depend upon whether he did or did not acquire residence. Actually, Article 13 applies to these temporary representatives essentially. It does not say so, but that is what it amounts to. Consequently, any persons coming within the purview of Article 13 are not likely to acquire residence.

Q. But they could?—A. I am using residence in the sense of our domestic laws.

Q. They could?—A. Yes, I agree, but they are not likely to.

The CHAIRMAN: Shall Article 13 carry?

Carried.

Article 14?

Official clerical staff accompanying a representative of a Member State who are not covered by Articles 12 or 13* shall, while present in the territory of another Member State for the discharge of their duties, be accorded the privileges and immunities set out in paragraph 1 (b), (c), (e), (f), (h) and (i) and paragraph 2 of Article 13.

The WITNESS: Article 14 deals with the subordinate staff and you will observe that there is a cross reference to Article 13. Some, only, of the privileges listed in Article 13 are extended to the subordinate staff. The privileges which are not extended are in sub-paragraphs (a), (d) and (g), as they appear in Article 13.

Mr. GRAYDON: Mr. Erichsen Brown, you are going to place on the record a list of those who are going to be covered by these three different sections?

The CHAIRMAN: Their work, not their names but the work they do?

The WITNESS: I was not intending to do that, Mr. Graydon, and actually I have not got the precise knowledge as to who would be covered. The only thing I can say is that I do not think there are any persons within Article 14 now in Canada. I make that statement in part having regard to the fact that Canadian nationals are excepted by reason of the operation of Article 16, and therefore, Article 14 only applies, in so far as exemption from Canadian law is concerned, to the subordinate staff of foreign countries. There is no subordinate staff of foreign countries in Canada. The agreement is enabling in a sense, and as I pointed out, its potential application is rather greater than its practical application.

Mr. GRAYDON: What I am concerned about is this. We have three different classifications coming under three different provisions in this agreement, and I think we ought to be clear, as a committee, as to whether there is a line of demarcation between each one of those different classes.

*In the French text, "12 or 13" reads "12 et 13". The English and the French texts are equally authoritative.

“Official clerical staff”, for instance—it would seem to me that might spill over into the provisions of number 1 under Article 13 by some devious means that might readily be employed. I think we ought to have a fairly careful record of just what these three classes actually consist and, perhaps at a future meeting you could indicate to us in some way just what these classes actually mean. I am afraid, that as it stands now, it might easily be that some question might arise in connection with immunities and privileges for someone who is here in Canada who would claim they are under section number 1 of Article 13 rather than under Article 14. I think we ought to know the exact situation in case that arises?

The CHAIRMAN: Do you feel that some people will try to qualify from one group to another?

Mr. GRAYDON: That is it.

Mr. LESAGE: We cannot find an example, Mr. Graydon, because there is nobody in Canada who enjoys any of these privileges—because there is not any part of NATO here.

Mr. GRAYDON: Not yet.

Mr. LESAGE: No representatives, no staff, and we do not expect any.

Mr. GRAYDON: We are not legislating for what is happening at the moment, we are legislating for what will happen in the future. We have the right to plug any holes there are.

Mr. LESAGE: It is most unlikely.

Mr. GRAYDON: I do not think we should pass legislation on the basis of something not being likely. I think we should take it that it is likely and legislate for the eventuality.

Mr. LESAGE: As Mr. Erichsen Brown has said, this is enabling legislation and this agreement, before coming into force, has to be ratified by all twelve members.

Mr. MACNAUGHTON: I think, if I understand Mr. Graydon, he would like an explanation of “official clerical staff” and if we were told what constitutes “official clerical staff” that would be the answer?

Mr. LESAGE: Well, I might answer. When we went to New York last year the official clerical staff consisted of girls who were typing and taking dictation. We had eight or ten. That was our clerical staff.

The CHAIRMAN: And filing clerks?

Mr. LESAGE: Yes.

Mr. MACNAUGHTON: And messengers.

Mr. DICKEY: It seems to me that this wording is fairly clear. I do not think I can quite agree with Mr. Graydon. Article 14, paragraph 1 starts:—

Any representatives of a member state to the council . . .

Surely, in the North Atlantic Treaty Organisation there would be a clear distinction of representatives of member states to the council, just as there is in the United Nations a clear distinction between delegates and alternate delegates.

Article 14 goes on in its first wording and says:—

. . . official clerical staff accompanying a representative of a member state who are covered by Articles 12 or 13 . . .

Now, the same words “representative member states” are employed and surely it will not be difficult to determine who are representatives of member states in accordance with the procedure of the organisation. And then everybody else who is accompanying them will, I presume, under this wording, be part of the official clerical staff and will come under section 14. I must say that I cannot see any possibility of real difficulty arising out of that wording.

Mr. GRAYDON: I think I can see some real difficulty and on this basis: if you have a high ranking secretary attached to a representative of a member state, and if he is involved in a very serious motor accident in the country in which he is, the question of damages might arise and it would be a very simple matter for the state involved, if they so desire, to terminate his position as secretary and designate him as a member of the council. There is no definition as to how many members there can be of member states on the council.

Mr. DICKEY: I do not see how we can legislate to improve the situation which Mr. Graydon envisages. I thought there was a distinction between people of the clerical staff and people who are members of a certain state. I do not think it would be the cause of any difficulty at all. The situation which Mr. Graydon has envisaged seems to me to be a very extraordinary one that we could not possibly hope to cover in this legislation except in a general way by limiting the rights of state to name a particular person as their representative. It is a field into which I do not think we should get.

Mr. GRAYDON: I think we could get over it by clarifying what we mean by "official clerical staff".

Mr. LESAGE: The official clerical staff would be the clerical staff accompanying the representatives. What can we add? I do not know.

Mr. CÔTÉ: And a chauffeur?

Mr. LESAGE: No, a chauffeur would not be a member of the clerical staff. I do not see any trouble or difficulty there. I do not see how we can put it any clearer than "official clerical staff".

Mr. GRAYDON: Actually we cannot change this agreement. It has been signed. All we can do is to reject it or adopt it. But I would like to have that clarification. I wonder if Mr. Erichsen-Brown could give us some idea of the personnel which would be attending the delegation?

The CHAIRMAN: I believe we have the right to make recommendations so long as this bill has been referred to this committee. I believe we have the right to recommend certain changes if we want to. After all, we have the task of scrutinizing this bill which is before us according to our order of reference and I think we also have the power to make recommendations.

Mr. LESAGE: I have something here which I might read:

In general, this article will apply to secretarial staff (typists, registry clerks, etc.) accompanying temporary representatives. It will also apply to secretarial staff of permanent representatives not covered by article 12. Domestic staff of representatives would not be entitled under this article to any privileges properly so-called, but would probably enjoy the courtesies which are accorded to the comparable members of the staff of a diplomatic representative.

Mr. GRAYDON: That seems clearer, if that goes into the record I would be satisfied.

Mr. FRASER: Would this not cover a staff which is enroute to another country, except just where the council was meeting? Would it not cover them while they were enroute?

The WITNESS: If the other country were a NATO country.

The CHAIRMAN:

Carried.

Does article 15 carry?

ARTICLE 15

Privileges and immunities are accorded to the representatives of Member States and their staffs not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connection with the North Atlantic Treaty. Consequently, a Member State not only has the right, but is under a duty to waive the immunity of its representatives and members of their staffs in any case where, in its opinion, the immunity would impede the course of justice and can be waived without prejudice to the purposes for which the immunity is accorded.

The WITNESS: This is one of the two sections to which I referred in my opening remarks. It is the section which emphasizes that privileges and immunities are not given for the personal advantage of the individual but rather for the advantage of the government that he represents. There is a corresponding section in the next part of the agreement in regard to officials.

Mr. DICKEY: It seems to me that the situation that was envisaged by Mr. Graydon relating to article 14 and to the difficulty of its interpretation would definitely come within the principle of article 15.

Mr. CÔTÉ: I think that article 15 must cover the 3 other articles, 12, 13 and 14, and that it applies generally to this.

The WITNESS: Yes, it applies generally to them.

The CHAIRMAN: Shall article 15 carry?

Carried.

The CHAIRMAN: Shall article 16 carry?

ARTICLE 16

The provisions of Articles 12 to 14* above shall not require any State to grant any of the privileges or immunities referred to therein to any person who is its national or to any person as its representative or as a member of the staff of such representative.

The WITNESS: Article 16 is a very simple section. It simply exempts nationals from the previous section which we have already considered.

Carried.

The CHAIRMAN: I think we should adjourn now because we have not got a quorum unless I close my eyes. Before we adjourn I want to tell you how much I appreciate the fact that we had a quorum today so early because there are three other committees sitting this morning. Would it be possible to hold another meeting of our committee soon? I believe we ought to get through with this bill early next week. What about tomorrow at 3.30? Because I think Thursday will be quite a problem.

Mr. DICKEY: There is to be a meeting of the Combines Legislation Committee on Wednesday afternoon at 3.30, Mr. Chairman.

Mr. CÔTÉ: What about tomorrow morning?

The CHAIRMAN: Caucus.

Mr. DICKEY: We used to hold evening meetings in past sessions.

The CHAIRMAN: Evening meetings?

Mr. DICKEY: Yes, we used to meet in the evenings and we did so with some success.

*In the French text, "12 to 14" reads "12 et 14". The English and the French texts are equally authoritative.

The CHAIRMAN: If we cannot have a meeting tomorrow, let us try to have it on Thursday either in the morning or in the evening. Would that be satisfactory to the members of the committee?

The committee adjourned.

APPENDIX "A"

REVENUE EXEMPTIONS AND MISCELLANEOUS PRIVILEGES GRANTED IN CANADA TO REPRESENTATIVES OF FOREIGN AND COMMONWEALTH GOVERNMENTS DEPARTMENT OF EXTERNAL AFFAIRS Ottawa, Canada, January 1, 1951

PART I

GOVERNMENT OF CANADA

EXEMPTIONS FROM TAXATION

(A) *Remission of Customs Duty and Taxes on Imported Articles*

(By authority of the regulations, under Item 706 of the Customs Tariff, established by Order in Council P.C. 4450 of October 17, 1950)

1. *Exemption from Examination of Baggage*

The privilege is granted of exemption from examination of baggage and other effects, and of admission thereof free of duty and taxes, to:

- (i) Heads of diplomatic missions, and their families and servants;
- (ii) High commissioners, and their families and servants;
- (iii) Officers of diplomatic missions who are eligible for inclusion in the Diplomatic List, and their families;
- (iv) Officers of high commissioners' offices who are eligible for inclusion in the Diplomatic List, and their families;
- (v) Consuls-general of career and their families.

Procedure

Baggage checked by the common carrier will be released without examination by the appropriate Canadian Customs official on establishment of ownership.

2. *Admission of Articles for Personal and Family Use Free of Duty and Taxes*

The privilege is granted at all times of entry free of customs duty and taxes of articles for the personal and family use of:

- (i) Heads of diplomatic missions;
- (ii) High commissioners;
- (iii) Officers of diplomatic missions who are eligible for inclusion in the Diplomatic List;
- (iv) Officers of high commissioners' offices who are eligible for inclusion in the Diplomatic List;
- (v) Consuls-general of career;
- (vi) Consuls of career;
- (vii) Vice-consuls of career;
- (viii) Trade commissioners of career;
- (ix) Assistant trade commissioners of career.

Procedure

Except as respects importation of motor vehicles, application for free entry under these regulations should be made in writing to the local Collector of Customs and Excise in duplicate, a separate application being made for each importation, accompanied by the common carrier's note of advice.

Application for free entry of motor vehicles desired to be imported subsequent to first arrival in Canada should be made in the form prescribed by the Customs regulations, (copies of which form are obtainable from local collectors of customs and excise); and be forwarded by the applicant direct to the Deputy Minister of National Revenue, Customs and Excise, Ottawa.

- (a) In the case of heads of diplomatic missions and high commissioners, the application in duplicate should bear the mission seal and the signature of the authorized signing officer of the mission.
- (b) In the case of consuls general of career and trade commissioners of career, the application in duplicate should be signed by the consul general or trade commissioner;
- (c) In the case of officers of diplomatic missions and officers of high commissioners' offices who are eligible for inclusion in the Diplomatic List, consuls of career and vice-consuls of career and assistant trade commissioners of career, the application for free entry should be approved in writing by, or in the name of, the head of the diplomatic mission, the high commissioner, the supervising consul general, or the trade commissioner.

3. *Free Entry Privileges (on first arrival only) for Employees of Foreign and Commonwealth governments.*

The privilege is granted, on their first arrival only, of entry free of customs duty and taxes of their personal and household effects, including motor vehicles but not including spirituous liquors, to employees of foreign and commonwealth governments and their families, who are sent by their governments to posts in Canada and who are nationals or citizens of the country employing them and are not engaged in any other business or profession.

Procedure

The imported goods will be cleared by the appropriate Collector of Customs and Excise on production of the common carrier's note of advice and upon written application to the Collector in duplicate, supported by a certificate from the head of mission high commissioner or supervising consul general as to the *bona fides* of the applicant, and stating that the goods covered by the application are being imported on first arrival in Canada.

- 4. *All the privileges mentioned above are extended on the basis of reciprocity.*
- 5. Articles other than motor vehicles which have been admitted free under these regulations and which have been in the use and possession of the importer in Canada for a period of at least one year may be sold or disposed of in Canada without payment of duty and taxes. Otherwise they shall be subject to the ordinary provisions of the Customs Tariff and the Excise Tax Act.
- 6. Motor vehicles which under these regulations are allowed admission free of duty and taxes shall be subject to the ordinary provisions of the Customs Tariff and the Excise Tax Act if sold or otherwise disposed of in Canada without having been in the use and possession of the importer in Canada for a period of at least two years.

7. The provisions set forth in paragraphs five and six also are on the basis of reciprocity.

(B) Remission of Excise Duty

(Under authority of Excise Regulations established by Orders-in-Council P.C. 4397 of August 31, 1949, and P.C. 1087 of March 25, 1947).

1. The privilege of exemption from excise duty, and excise taxes where applicable, on domestic spirits and tobacco products purchased from licensed manufacturers in Canada, is granted to heads of diplomatic missions, high commissioners and consuls general of career. This privilege is also granted, but only on the basis of reciprocity, to other officers of diplomatic missions and of high commissioners' offices who are eligible for inclusion in the Diplomatic List, and to commonwealth trade commissioners of career.

Procedure

(a) Purchase orders should be sent direct to licensed manufacturers and should be accompanied by an application in triplicate in the following form:

APPLICATION

(Name and address of supplier)

Place

Date

Dear Sirs:

I,..... having been officially
(Full name)

notified to the Department of External Affairs, Ottawa, as.....
(official designation)

hereby request shipment of the following goods free from excise duties and excise taxes where applicable:

Quantity	Description
.....

The above-described goods are for one or more of the following uses as designated by an "X" placed opposite the applicable clause:

- (i) For personal or official use by the undersigned;
- (ii) For personal use only by members of my family and servants resident with me;
- (iii) For personal use only by members of my staff locally domiciled as designated hereunder;

and not otherwise.

Names of Members of Staff	Title or Designation	Place of Residence
.....
.....

Signature

(Seal)

Official Designation

- (b) (i) Applications by heads of diplomatic missions or high commissioners must be signed personally by such heads of diplomatic missions or high commissioners.
- (ii) Applications by officers of diplomatic missions must be signed personally by the head of mission.
- (iii) Applications by officers of high commissioners' offices must be signed personally by the high commissioner.

- (iv) Applications by counsels general of career and by commonwealth trade commissioners must be signed by such consuls general and trade commissioners.
 - (c) The goods will be forwarded in bond by the manufacturer and under bill of lading consigned to the order of the appropriate Collector of Customs and Excise from whom delivery may be obtained on completion by the applicant of an Excise Entry on Form B52, obtainable from the Collector.
- (C) *Remission of Sales and or Excise Taxes on Certain Goods Purchased in Canada.*
- (Under authority of The Excise Tax Act, Chapter 179, R.S.C. 1927, with amendments, and under the provisions of P.C. 80/9555 of December 28, 1944)*

1. *Persons Exempt from these Taxes*

The representatives of other countries entitled to this privilege are the following:

- (a) Heads of mission accredited to His Majesty in respect of Canada and high commissioners representing in Canada other of His Majesty's governments; upon written application personally signed by the head of mission or the high commissioner, respectively, or in his absence by the official authorized to sign in his stead;
- (b) Counsellors, secretaries and attachés of missions and high commissioners' offices in Canada whose governments accord similar privileges to Canadian officials holding corresponding posts in the countries represented by such missions and high commissioners' offices; upon written application personally signed by the head of mission or the high commissioner, respectively, or, in his absence, by the official authorized to sign in his stead;
- (c) Trade commissioners representing in Canada other of his Majesty's governments, when the governments they represent extend similar privileges to Canadian trade commissioners, and not otherwise, and consuls general of career of foreign nations, when the governments they represent extend similar privileges to Canadian consuls general, and not otherwise, upon written application personally signed by the trade commissioner or consul general, respectively.

2. *Exemptions*

The exemptions are as follows:

Under Parts XI, XII, and XIII of the Excise Tax Act

Exemptions from the sales and excise taxes on automobiles, cigars, cigarettes, tobacco, wines, ale, beer, stout and spirits.

Procedure

In the case of domestic spirits and tobacco products the same procedure as required by (B) 1 is to be followed. On purchase of the other items mentioned the head of mission, high commissioner, trade commissioner, or consul general, as the case may be, should, when making the payment, include a statement over his signature to the effect that the goods are for the personal use of himself or of an officer entitled to receive exemption from the taxes under the provisions of Order-in-Council P.C. 80/9555 of December 28, 1944.

(D) *Remission of the Excise Tax on Official Cheques*(a) *Under Part VI of the Excise Tax Act*

Exemption from the excise tax on official cheques drawn on accounts in Canadian banks maintained with the funds of foreign or commonwealth governments.

Procedure

The exemption from the excise stamp tax on cheques is granted only for cheques drawn on official accounts. Cheques issued against personal accounts are subject to the excise stamp tax.

(E) *Exemption From Income Tax*

1. Subsection (1) (b) of section 57 of The Income Tax Act provides that no tax is payable upon the taxable income of a person for a period when that person was an officer or servant of the government of a country other than Canada whose duties required him to reside in Canada

(a) If that country grants a similar privilege to an officer or servant of Canada of the same class;

(b) If he was not, at any time in the period, engaged in a business or performing the duties of an office or employment in Canada other than his position with that Government; and

(c) If he was during that period a subject or citizen of that country.

(F) *Exemption from Radio License Fee*

1. Order in Council P.C. 5020 of June 21, 1943, provides that exemption shall be granted from the payment of the private receiving station license fee to all persons whose names appear in the Diplomatic List and to consuls general of career as listed in the Annual Report of the Department of External Affairs.

Procedure

Owners of radio receiving sets are requested to provide themselves with a radio license, which is issued gratis upon application to:

The Controller of Telecommunications, Department of Transport, Ottawa.

(G) *Diplomatic Correspondence*

Diplomatic and official correspondence may be sent through two main channels:

(I) By courier;

(II) By post.

(I) *By Courier*

1. Ministries, missions, United Nations and specialized agencies may make whatever arrangements they desire for the transmission of their official mail by courier.

2. The bags or receptacles in this case travel outside the jurisdiction of the domestic and international postal services and the complete arrangements from the time of despatch to the time of delivery are the responsibility of the despatching office.

Procedure

Application for privilege to be made in writing to the Department of External Affairs.

(II) *By Post*

1. Official correspondence, including diplomatic pouches, may be sent by post. Such items are to be prepaid at the postage rates applicable. (See exceptions below).

2. Diplomatic pouches should not exceed 20 kilograms in weight or be too large to be enclosed in a mail bag.

3. Sealed bags containing correspondence are accepted prepaid on the bulk weight of the contents.

Procedure

Application for permission to send such diplomatic bags by post should be made in writing to the Post Office Department through the Department of External Affairs. Once authority has been granted, the Post Office Department will advise the applicant as to the necessary details.

4. *Exceptions*

- (a) The following reciprocal free mailing concessions for surface mails have been granted to members of the Diplomatic Corps representing countries of the Postal Union of the Americas and Spain, as listed below, and to the consular representatives of such countries:

Argentina	Ecuador	Paraguay
Bolivia	Guatemala	Peru
Brazil	Haiti	Salvador (El)
Chile	Honduras	Spain
Colombia	Mexico	United States
Costa Rica	Nicaragua	Uruguay
Cuba	Panama	Venezuela
Dominican Republic		

- (b) Free despatch is granted (on other than air mail) to:

- (i) Correspondence of members of the Diplomatic Corps:

1. Within Canada;
2. To addresses in the countries designated above.

Diplomatic bags should not exceed 20 kilograms in weight. The combined length, width and depth are not to exceed 140 centimeters and the greatest dimension is not to exceed 60 centimeters.

Diplomatic correspondence shall bear in the upper left-hand corner of the address side of the envelope or tag, the name of the sending embassy or legation and be prominently endorsed in the upper right-hand corner "Diplomatic Correspondence" over the words "Libre de Poste" or "Free of Postage".

- (ii) Official correspondence mailed by consuls-general, consuls or vice-consuls acting as consuls of the countries designated above, addressed to:
1. Their respective countries;
 2. Respective embassies or legations in Canada;
 3. To Canadian Government authorities in Ottawa.

Consular correspondence shall bear in the upper left-hand corner of the address side of the envelope or tag the name of the sending consulate-general or consulate and be prominently endorsed in the upper right-hand corner "Consular Correspondence" over the words "Libre de Poste" or "Free of Postage".

- (c) All correspondence and diplomatic pouches intended for conveyance by air mail must be prepaid at the air mail rates applicable.
- (d) Correspondence and diplomatic pouches are entitled to free registration but without the right to indemnity.

Procedure

Application to be made in writing to the Post Office Department in order that the necessary arrangements may be concluded.

(H) *Foreign Exchange Transactions*

1. As soon as convenient after arrival, diplomatic representatives are requested to communicate in writing to the Department of External Affairs the name and address of the bank at which they intend to carry on foreign exchange transactions, in order that authorization may be sent to that bank by the Foreign Exchange Control Board for the extension of facilities.

2. Full details of Canadian foreign exchange control regulations and of the exemptions extended to diplomatic and commonwealth representatives may be obtained by application in writing to:

The Secretary, Foreign Exchange Control Board, Ottawa.

GENERAL

1. *Cards of Identity*

These cards are issued by the Department of External Affairs to all non-Canadian officials and employees of foreign and commonwealth governments stationed in Canada and must be returned to the Department when such persons relinquish their appointments.

2. *Publication of the Department of External Affairs*

The Diplomatic List is issued gratis by the Department of External Affairs to persons whose names appear therein. The Annual Report of the Department of External Affairs is issued on December 31st, and is available on application to the Department.

3. *Communications to the Secretary of State for External Affairs*

Communications to the Secretary of State for External Affairs should not be addressed to him by name but should bear the following address:

The Secretary of State for External Affairs,
East Block,
Ottawa.

4. *Curricula Vitae*

It would be appreciated if a curriculum vitae for each diplomatic or consular officer for whom a card of identity is issued might be supplied to the Department of External Affairs at the time that the issuance of these cards is requested.

PART II

PROVINCE OF ONTARIO

(A) *Motor Vehicle Permits and Driving Licences*

1. The Government of Ontario issues, without payment of the usual fee, licence plates for automobiles owned by the personnel of foreign and Commonwealth missions who are eligible for inclusion in the diplomatic list, or by consuls, vice-consuls, trade commissioners and assistant trade commissioners of career.

2. Drivers' licences are also issued to the foreign and Commonwealth representatives listed in the previous paragraph, free of charge, and without examination upon production of a driver's licence issued to the applicant in his own country.

Procedure

Application for free licence plates and drivers' licences may be made to:
The Registrar of Motor Vehicles,
Department of Highways,
Parliament Buildings,
Toronto 2, Ontario.

Licence plates (but not drivers's licences) may also be obtained from the local Motor Vehicle Licence Bureau at 287 Laurier Avenue West.

(B) *Province of Ontario Gasoline Tax*

1. The Government of Ontario grants exemption from the provincial gasoline sales tax to the foreign and Commonwealth representatives listed in paragraph (A) 1. above. This exemption applies only to purchases of gasoline which are made *within the Province of Ontario* for vehicles owned by the representative concerned and which are charged to the purchaser's credit account with the oil company.

Procedure

Arrangements for credit purchases are made by the mission concerned with the Ottawa credit manager of an oil company; the mission sends notification of these arrangements with the name of the official concerned and of the oil company to:

The Chief Inspector of Gasoline Tax,
Department of Highways,
Parliament Buildings,
Toronto 2, Ontario.

and requests the credit manager of the oil company also to notify the Chief Inspector of Gasoline Tax.

The Chief Inspector of gasoline tax then authorizes the oil company to sell gasoline tax-free to the officers of the mission.

It is necessary that the mission should send each month to the Chief Inspector of Gasoline Tax a report of its tax-free purchases of gasoline on Form G.T.8. Supplies of these forms can be obtained on application to the Chief Inspector of Gasoline Tax.

APPENDIX "B"

FOREIGN EXCHANGE CONTROL BOARD

Ottawa

November 8, 1951.

DIPLOMATIC OFFICIALS

1. Section 3(e) of the Foreign Exchange Control Regulations provides that
 - (e) An officer, official or other employee of an international organisation or government of a country other than Canada whose duties require him to reside in Canada and who is accorded diplomatic privileges by the government of Canada is deemed to be a non-resident.

As a "non-resident" for the purposes of the Foreign Exchange Control Act and Regulations, such a person (referred to herein as a "diplomatic official") may

- (a) deal freely outside Canada with foreign exchange, securities or other property held outside of Canada; and
- (b) operate a foreign currency account with a bank in Canada and make deposits to and withdrawals therefrom without permit.

2. A diplomatic official should arrange with the Secretary of State for External Affairs to advise the Foreign Exchange Control Board of his status and of the name and branch of any bank in Canada with which he maintains an official Canadian dollar account or with which he or members of his family maintain personal Canadian dollar accounts in order that the Board may notify the banks concerned of their status. Such an account, whether conducted on behalf of a diplomatic official's government or as a personal account, is regarded as that of a non-resident of Canada. The account is designated as that of a resident of a United States dollar area, sterling area or special arrangement country depending on the country represented by the official.

3. The Canadian dollar bank account of a diplomatic official may, without permit, be credited with

- (a) Canadian dollars derived from the sale of foreign exchange to an authorized dealer (i.e. a branch in Canada of a chartered bank);
- (b) Canadian dollars transferred from the account of another non-resident of Canada, except that no transfers may be made from the account of a resident of a United States dollar area country to the account of a diplomatic official who is designated as a resident of a sterling area or special arrangement country or vice versa;
- (c) consular fees and other similar payments collected in Canada for account of the government represented by the diplomatic official.

Except as specified in (c) above, the account of a diplomatic official may not be credited with any payment from a resident of Canada unless the resident concerned has obtained a permit from the Board authorizing the payment.

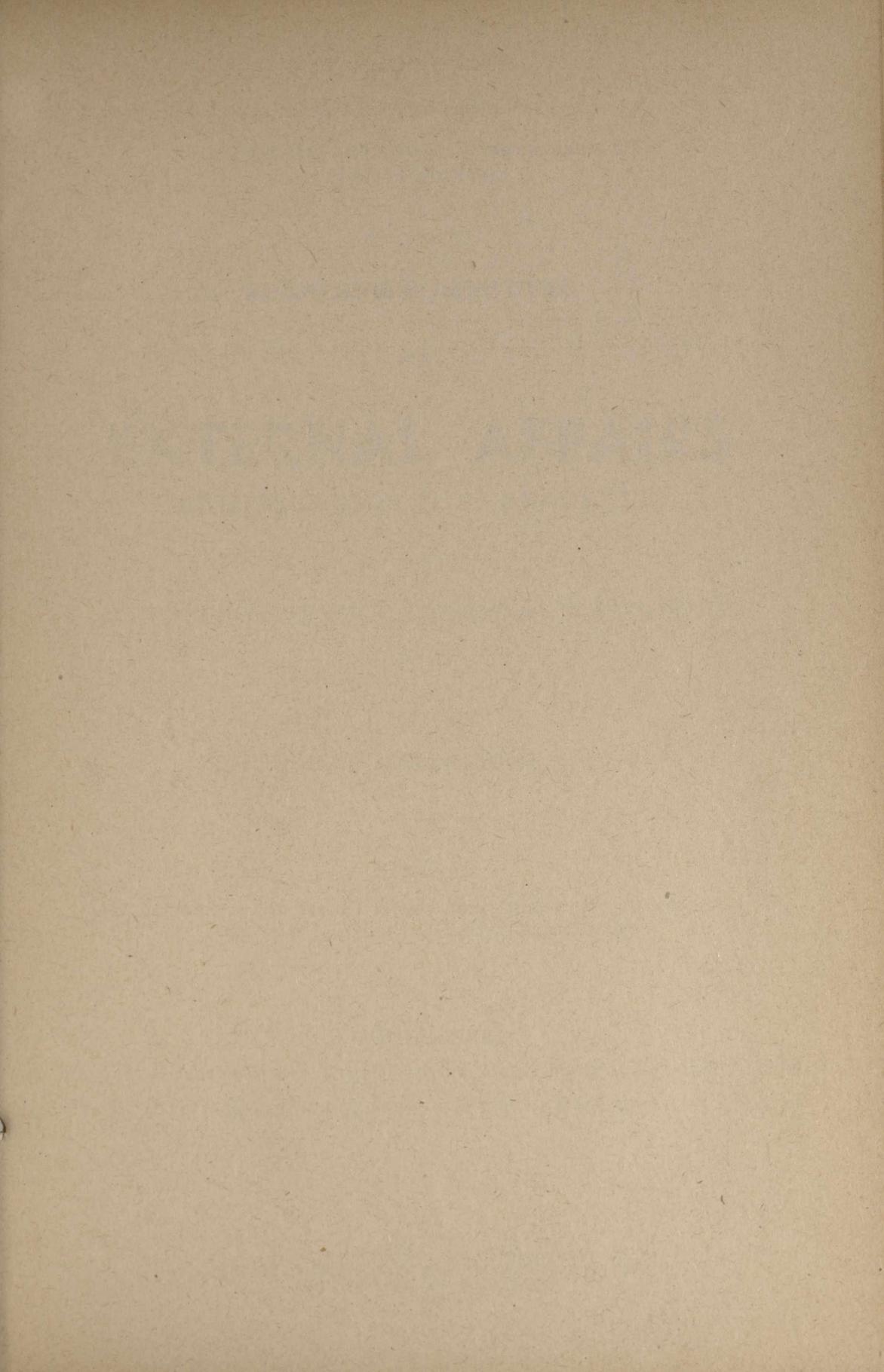
4. Payments may be made, without permit, from the Canadian dollar bank account of a diplomatic official

- (a) to residents of Canada; and
- (b) to non-residents, except that an official who is designated as a resident of a sterling area or special arrangement country may not pay Canadian dollars to a resident of a United States dollar area country or vice versa.

5. An authorized dealer with which a diplomatic official maintains a Canadian dollar account may sell foreign exchange in conversion of Canadian dollars on deposit in the account.

6. The provisions of par. 5 apply to the balance on deposit in a personal account of a diplomatic official only during the period of his residence in Canada in the course of his duties. Upon his departure any Canadian dollar balance remaining on deposit becomes ineligible for conversion into foreign exchange by an authorized dealer. The balance may, however, be transferred to other non-residents of the same currency area for conversion outside Canada.

7. No permit is required by a diplomatic official for the export of Canadian or foreign currency for the purpose of a journey from Canada.



HOUSE OF COMMONS

Fifth Session—Twenty-first Parliament, 1951
(Second Session)

STANDING COMMITTEE

ON

EXTERNAL AFFAIRS

CHAIRMAN—MR. J. A. BRADETTE

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 3

THURSDAY, DECEMBER 6, 1951

BILL 15.

An Act to provide for Privileges and Immunities in respect of
the North Atlantic Treaty Organisation.

WITNESSES:

Mr. J. P. Erichsen-Brown, Legal Division, Department of External Affairs.

Mr. M. H. Wershof, Defence Liaison Division, Department of External
Affairs.

REPORT TO THE HOUSE

TUESDAY, December 11, 1951.

The Standing Committee on External Affairs begs leave to present the following as a

SECOND REPORT

Your Committee has considered Bill No. 15, An Act to provide for Privileges and Immunities in respect of the North Atlantic Treaty Organisation, and has agreed to report the said Bill without amendment.

A copy of the Evidence adduced in respect of the said Bill is appended hereto.

All of which is respectfully submitted.

J. A. BRADETTE,
Chairman.

MINUTES OF PROCEEDINGS

TUESDAY, December 11, 1951.

The Standing Committee on External Affairs met at 8.30 o'clock p.m. this day. Mr. Bradette, Chairman, presided.

Members present: Messrs. Balcer, Bater, Breithaupt, Croll, Decore, Fraser, Gauthier (*Lac St. Jean*), Gauthier (*Portneuf*), Graydon, Leger, Lesage, MacInnis, Mackenzie, Macnaughton, Murray (*Cariboo*), Quelch, Richard (*Ottawa East*), Stick.

In attendance: Mr. J. P. Erichsen-Brown and Mr. E. R. Rettie, of the Legal Division, Department of External Affairs, and Mr. M. H. Wershof, of the Defence Liaison Division, Department of External Affairs.

The Committee resumed consideration of Bill No. 15, An Act to provide for Privileges and Immunities in respect of the North Atlantic Treaty Organisation.

Mr. Erichsen-Brown completed his detailed statement on the Schedule to the Bill and was questioned thereon.

During the examination of the witness Mr. Wershof answered questions specifically referred to him.

Clauses one and two, the Schedule and the Title were severally considered and adopted.

The Bill was adopted and the Chairman ordered to report the same to the House without amendment.

At 9.45 o'clock p.m. the Committee adjourned to the call of the chair.

R. J. GRATRIX,
Clerk of the Committee.

LISTS OF PUBLICATIONS

1. [Illegible text]

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2. [Illegible text]

EVIDENCE

December 6, 1951.

8:30 p.m.

The CHAIRMAN: Order, gentlemen, we now have a quorum.

Before we proceed may I inform the committee that Mr. Lesage invited Senator Turgeon to be present with us this evening if at all possible, assuring him that he would be welcome. I regret to inform the committee that I received a telephone call from Senator Turgeon a few moments ago saying that it would be impossible for him to be present.

Again, I would make the request that when you put your questions that you address them to the chair, not for my own sake but for the convenience of the official reporters who have to take them down.

Hon. MEMBERS: Hear, hear.

The CHAIRMAN: I would also ask the officials if they are to make any lengthy statements, that they would come up here beside Mr. Erichsen-Brown or myself, if they want to; again for the convenience of the record.

We are now at part III—representatives of member states.

Mr. LESAGE: Pardon me, Mr. Chairman, but we passed part III. We are now on part IV.

The CHAIRMAN: That is right, article 17.

I believe that we were all in agreement that we will try the best we possibly can to get through this evening because, otherwise, it will mean that we will have to hold another meeting.

We are now on part IV, page 6—international staff and experts on missions for the organization.

Mr. J. P. Erichsen-Brown, Legal Division, Department of External Affairs, called:

Shall section 17 carry?

Carried.

Article 18—officials of the organization agreed upon under article 17.

Shall the section carry?

Mr. FRASER: Just a moment, Mr. Chairman. It says, "and of acts done by them in their official capacity and within the limits of their authority;". Would that mean within the confines of the committee, of their meeting place? It would not be outside?

Mr. STICK: It says in their official capacity.

Mr. FRASER: I know. It does not have to be in the meeting place. Is that right?

Mr. GAUTHIER (*Portneuf*): Yes, not necessarily.

Mr. FRASER: That is what I am trying to find out; it is or it is not.

Mr. WERSHOF: Mr. Chairman, we would not think that it is necessarily limited to acts done or words spoken immediately in the building in which the official normally worked. It is quite conceivable that an official of the NATO organization in London might have official business to do in another place in

London, and he might have words to say in other places in London in line of duty, just as in our department we sometimes have to go to other buildings and to other cities, even, to perform official business; so I do not think the paragraph would necessarily be limited to the actual building in which the official normally worked.

Mr. DECORE: What about an official driving to a certain place, to his home, after business, after a meeting in which he has taken part and he is on his way home? If he gets into some kind of difficulty, would it apply to him then?

Mr. WERSHOF: I do not think this particular paragraph relates to that type of immunity. I think in a later section there is reference to full diplomatic immunity for the senior officials of the organization. In article 18(a) there is reference to immunity. This section of this article applies in respect of words spoken or written or actions done both in their official capacity and within the limits of their authority. I cannot think of this paragraph as being intended to relate to such things as immunity from accidents when driving.

Mr. MACNAUGHTON: If you examine the other paragraph and the proviso in article 18 you will see pretty well what the intention of the paragraph is.

The WITNESS: Actually, I think it is doubtful whether any privilege is accorded in our law by this paragraph (a). Our ordinary libel law gives a certain exemption to words spoken by individuals, even to a Canadian citizen if he is speaking in an official capacity. It would be a question of qualified privilege.

Mr. LESAGE: I want to draw the attention of the members of the committee to the fact that there are two qualifications. It is not only the official capacity, but it has to be made within the limits of the authority of the one who is speaking the words.

Mr. GRAYDON: I would like to have some clarification on what Mr. Brown has just said. Our libel and slander laws, according to him, do not cover the cases where someone speaks in an official capacity. I differ on that, because I do not think even the Prime Minister is above the libel and slander laws of this country. I do not think anyone is who is in an official position.

Mr. LESAGE: Unless he can prove it is true and in the public interest.

Mr. FRASER: Then it is not libel.

Mr. LESAGE: That is what I say, if it is true and in the public interest.

Mr. DECORE: That applies to every citizen.

Mr. LESAGE: Every citizen. That is what Mr. Brown has said.

Mr. GRAYDON: This puts somebody above the ordinary suit as far as libel and slander are concerned. What happens if we have a case of this kind and somebody comes in with some slanderous intent? Would you just let him talk on?

Mr. LESAGE: You know what is happening in the various meetings of the United Nations, there are sometimes quite vicious attacks.

Mr. DECORE: Did you say sometimes?

Mr. LESAGE: I am careful.

Mr. GRAYDON: Yes, but we do not extend that privilege to some official of the United Nations who happens to be in Canada or elsewhere.

Mr. LESAGE: No, because he would not be then within the limits of his authority and he would not be in his official capacity.

Mr. GRAYDON: He might be.

Mr. LESAGE: Then he would be exceeding the limits of his authority.

Mr. MACNAUGHTON: Mr. Chairman, if you care to look at Part III, which is entitled "Representatives of Member States", article 12 and article 13 set

out the immunities, and then Part IV is "International Staffs and Experts on Missions", starting with articles 17 and 18, sets up immunities and special privileges. It is the same form only applying to a lower rank of official.

Mr. LESAGE: I was answering Mr. Graydon in general because you find the same privileges and immunities in paragraph (a) of article 13.

Mr. GRAYDON: Two wrongs, if they happen to be wrongs, do not make a right.

The CHAIRMAN: Shall the article carry?

Carried.

Shall article 19 carry? officials of the organisation, and so on.

ARTICLE 19

Officials of the Organisation agreed under Article 17 shall be exempt from taxation on the salaries and emoluments paid to them by the Organisation in their capacity as such officials. Any Member State may, however, conclude an arrangement with the Council acting on behalf of the Organisation whereby such Member State will employ and assign to the Organisation all of its nationals (except, if such Member State so desires, and not ordinarily resident within its territory) who are to serve on the international staff of the Organisation and pay the salaries and emoluments of such persons from its own funds at a scale fixed by it. The salaries and emoluments so paid may be taxed by such Member State but shall be exempt from taxation by any other Member State. If such an arrangement is entered into by any Member State and is subsequently modified or terminated, Member States shall no longer be bound under the first sentence of this Article to exempt from taxation the salaries and emoluments paid to their nationals.

Mr. LESAGE: I believe, that on this, Mr. Brown could give a full explanation.

The WITNESS: The first sentence of Article 19 corresponds to section 18(b) of the Convention on the Privileges and Immunities of the United Nations. The remainder of the article is designed to take account of the taxing policies of some member states including Canada. It will be recalled that Canada ratified the Convention on the Privileges and Immunities of the United Nations subject to a reservation that "exemption from taxation imposed by any law in Canada on salaries and emoluments shall not extend to a Canadian citizen residing or ordinarily resident in Canada."

Since the officials of the organisation are drawn from several different countries, each with a different and frequently changing scale of taxation, it is obviously desirable in the interests of efficiency of the organisation to pay the international staff at uniform tax-free rates regardless of country of origin. On the other hand, to agree to such a scheme would in the case of some member states amount to surrendering the right to tax nationals resident or ordinarily resident in those states. At the same time the governments of certain other member states are obliged to tax their nationals in accordance with national laws except when a specific exemption is made in an international agreement; that is to say, when by international agreement, it rests within the discretion of those member states whether or not to tax, no exemptions of nationals could in fact be allowed, that it, under the laws of the state which had laws of that type. Finally, some member states might wish to assign their own employees to service as NATO officials without forcing them to accept the lower salary scales paid by that organisation.

To take account of these complex considerations, article 19 does three things:

- (a) it establishes the general principle of tax-free salaries for officials so that exemptions may be made by governments which are under an obligation to tax to the maximum extent possible under international agreements;
- (b) it allows a member state to make arrangements with the organization to assign its employees to NATO, pay them at higher salary scales and tax them on salaries so paid, so that the government of that member state may comply with national laws imposing a tax on all persons resident or ordinarily resident in that state.

I think I might stop at that point to comment on that particular point. It arises under the second sentence of the article and its practical application is this, that any state could make an arrangement with the organization to assign its own staff to the organization, to pay its own staff out of its own exchequer, so that although they would be working for the organization, they would continue to be paid by the state of which they are nationals. That would enable the state to apply its own laws, which might require that its own nationals be taxed. On the other hand there would not result this situation—that the international agreement which all states had signed, provided that certain nationals should not be exempt with the result that under the laws of other countries their laws would operate to make it impossible for them to exempt their nationals. I hope I have made it clear. It is a rather intricate problem, and the difficulty of accepting the first sentence of this article alone without some such qualifying arrangement as is set forth in the balance of the article arose essentially from the national laws of certain states, which were so phrased that the agreement tended to become unworkable. In other words, the laws could not be made to work in co-operation, and this article was worked out as a result of very lengthy discussion. It took more discussion to settle on the text of this article than any other provision of the agreement.

By Mr. Stick:

Q. It is rather complicated, that. It seems to me that the organization as such, NATO pays the officials tax free, but if Canada pays its own officials in that organization then they are taxable.—A. Yes, that's right.

Q. That is the gist of it. —A. Yes, that's right.

Q. For instance, whoever is paying the people, if Canada is paying them then they are taxable under the laws of Canada, but if they are paid under the laws of the organization they are not.—A. That is right.

By Mr. Richard:

Q. Could you tell us as a fact are Canadian paid by the government and are they taxed?—A. The answer to that is that the section is enabling and an agreement may be made pursuant to the provisions of this agreement; but this agreement, of course, is not yet in force and consequently an arrangement cannot be made. The only answer I can give you at the present time is it is under consideration and that we regarded this as a useful device for preserving the general principle which we have followed—that Canadians employed by international organizations should not be exempted from their liability to pay Canadian income tax.

Mr. RICHARD: Is that the case now as far as our employees on NATO are concerned? We have employees?

Mr. LESAGE: It cannot be, because the bill is not passed.

Mr. RICHARD: But we have employees?

Mr. LESAGE: This agreement is not in force because it has to be ratified by at least six countries before it comes into force.

Mr. RICHARD: But we have got NATO employees now?

Mr. LESAGE: We have.

Mr. WERSHOF: I think I can give you some information on that. There are not very many Canadians working for NATO at the present time. There are four working for NATO who are Canadian civil servants on loan really to NATO.

Mr. STICK: Who pays them?

Mr. WERSHOF: As far as I know the Canadian government is still paying them and it is not at the present time being reimbursed by NATO. I think in the future some arrangement may be made under this article.

Mr. GRAYDON: Will there not be a rush of Canadians to get on the NATO payroll so that they can get out of paying income tax?

Some Hon. MEMBERS: It depends on the payroll.

Mr. WERSHOF: I should not think so and if there were a rush they would not get there because NATO is not employing large numbers of people by any means. In any event, it costs people a great deal more to live in places like London or Paris when working for Nato, than it would if they worked here in Ottawa. I do not think they would really be much better off.

Mr. QUELCH: How do the salaries paid by NATO compare with those paid by Canada?

Mr. WERSHOF: I have not the salary scale available.

Mr. QUELCH: Are they generally higher or lower?

Mr. WERSHOF: As I recall them they are much the same as the Canadian scales.

Mr. LESAGE: Mr. Brown can answer your question, in a comparison with the United States?

The WITNESS: I do not think it is a direct answer to your question but it is related to it. One of the advantages of an arrangement such as that which is authorized by this article, is that it would enable a member state to pay its own nationals at a salary scale they were accustomed to. The salary scales of many NATO countries are not the same. Consequently, in the case of a country for example such as the United States which, generally speaking, pays relatively higher salaries, their nationals who might be assigned to the organization would not be prejudiced by the fact that they were obliged to accept lower salaries which might be paid by the organization

Mr. GRAYDON: Could I ask one question about the contribution by various members of NATO? Do they all contribute the same with respect to NATO civil service—if I may use that term? Or do they make contributions on a similar level to that to the United Nations?

Mr. LESAGE: That is of course outside the scope of this bill, Mr. Graydon.

Mr. GRAYDON: I do not think it is—in regard to Article 19?

Mr. LESAGE: Well, the contribution of Canada to NATO is well known—and that is the contribution.

Mr. STICK: How much is it?

Mr. LESAGE: I am not in a position to say.

Mr. GRAYDON: If it is well-known we ought to know something about it.

Mr. LESAGE: It is well-known that we make one contribution.

Mr. GRAYDON: What I am trying to get at is do we make the same contribution to the NATO civil service as the United Kingdom or the United States, or is there a different level?

Mr. LESAGE: There is no special contribution for the civil service. There is one general contribution to NATO.

Mr. MACNAUGHTON: In other words you are still in the organizational set-up stage?

Mr. LESAGE: It is like the case of the United Nations. We do not pay a special contribution, Mr. Graydon, for the international staff of the United Nations. Our contribution is a general contribution to the United Nations.

Mr. GAUTHIER (*Portneuf*): Your quota?

Mr. LESAGE: Yes, and it is the same with NATO.

Mr. GRAYDON: What is our general contribution to NATO as compared with the United States and the United Kingdom?

Mr. LESAGE: I am not in a position to answer that question. I do not believe we can allow the officials to answer it.

Mr. RICHARD: Suppose we pay, or the United States paid all of its employees directly? Should not the contribution be less than if those employees were paid out of the general fund?

Mr. LESAGE: I understand that would be taken into account, but that it would be a very small amount compared to the total contribution. Do you not agree, Mr. Wershof?

Mr. WERSHOF: I think on the particular point, the idea of the agreement that could be made under this is that if one of the governments chooses to take advantage of this and to pay the salaries of its nationals who are working for NATO, then it will get, under the special agreement, reimbursement from NATO—not for all the money but for that part of the money which NATO would have paid anyway.

For example, if there is a job in NATO for which NATO would pay 2,000 pounds per annum—roughly \$6,000—and if one of the countries, a member of NATO, has made an agreement under Article 19 under which that country pays those of its nationals working for NATO, and if a Mr. Smith is holding down that particular job, the government of his country may choose to give him \$10,000. That is their business; and if they wish to impose income tax on that amount that is also their business—but they will get reimbursement from NATO to the extent of \$6,000 which was the amount that was agreed by the NATO deputies in London as the NATO salary for that particular job.

So, nobody loses anything. NATO pays out \$6,000 which is the proper amount; the man gets what his government chooses to give him; the government imposes its income tax if that is its policy; and everybody is happy under the scheme.

Most governments will not take advantage of this—they are prepared to accept the first sentence and have nationals completely tax free if working for NATO. There may be one or two governments which wish to take advantage of the second part of the article.

Mr. STICK: This may not be a fair question and you may not be able to answer, but has NATO advanced to such a degree that contributions to NATO of member states have been worked out?

Mr. WERSHOF: There is a NATO budget for housekeeping expenses—as distinguished from the military expenses which are the main expenses NATO has. There is a NATO budget. To the best of my knowledge it is not a public document and in any event I have not it with me tonight. I do not think we would be at liberty to spread it on the record, but a budget has been worked out to cover the housekeeping of NATO—which would include rent of buildings, stationery they use, coal for burning in fireplaces, wages of NATO employees.

A tentative agreement has been reached as to how the NATO budget should be met—as to how the different countries should contribute. There again I think, as Mr. Lesage says, the scale of contribution is not public information.

Mr. STICK: Well, as I say, if the information cannot be given it is all right. However, I take it that before we can make that contribution it would have to be passed by parliament—it would have to be ratified by parliament before it could be operative?

Mr. LESAGE: That is a question of government policy on which I am not at liberty to give an answer.

Mr. GAUTHIER: Is it not implicitly ratified when we voted for the North Atlantic Organisation?

Mr. LESAGE: I am not in a position to answer.

Mr. STICK: Well, I do not want to carry it any further.

Mr. QUELCH: If the amount of the salary we paid was equivalent to the amount which would be paid by NATO, would that amount reimbursed to us by NATO be the amount we paid less the amount of tax which we levy?

Mr. WERSHOF: Mr. Chairman, to begin with, let me repeat that no such an agreement has yet been made by Canada and I do not know whether or not it will be made. But supposing this was in force, and supposing an agreement had been made under article 19, the idea is that the government which provides the salary of its own national who is actually working for NATO would be reimbursed by NATO up to the limit of the amount which NATO would have paid to that man.

NATO has established a salary scale for each job and if the Canadian government should choose to employ, let us say, a stenographer, and pay her, and send her over to work for NATO, the Canadian government can be reimbursed up to the amount that NATO would pay the stenographer for that job. But if the Canadian government is paying exactly the same amount, and levying income tax on it, then in theory the Canadian government could make something on the deal.

Mr. QUELCH: Apparently they could be ahead on the deal.

Mr. WERSHOF: It is not possible, however, to send a stenographer over to London to work for the amount of money that we can give her here because she would not be able to live. So it is more than likely that she would be getting more money from the Canadian government. Therefore the chances of the Canadian government making any profit on the deal are not great.

Mr. GRAYDON: Wherever NATO is functioning I should think there would be bound to be a chaotic disruption among the people, for example, who would be sitting at the same desk, because the nationals of one nation would be getting a certain salary while the nationals of another nation might be getting quite a different salary, and the result would be that there would be no salary scale observed at all. What would happen if that sort of chaotic situation arose?

Mr. WERSHOF: I agree that something like that could result from this article. I do not think that anybody was terribly happy about the article. It was simply a compromise. Some governments wanted the opening sentence to be the whole article and to stop right there. There were other governments such as the Canadian government which made a reservation similar in nature to the one in the United Nations convention. The United States and the Canadian government wished to adhere to the principle, for example, that a Canadian who otherwise would be liable to pay income tax would not cease so to be liable because he was working temporarily for NATO. And this article was a compromise which was hammered out to try to please everybody a

little bit. But I do suggest that a chaotic condition is not likely to appear, because, to begin with, most of the countries belonging to NATO have no intention, to the best of our knowledge, of making an agreement under the second part of article 19. It may well be that there will be a few cases in which there will be two men sitting in the NATO office at London doing similar work, one of them getting \$5,000 a year, which is the NATO scale, while the other man will be getting more money because his government chooses to give him more. This was recognized by the governments who signed this and they were willing to accept it because there was nothing else to do. They had to agree on something.

Mr. GRAYDON: The only recourse for the man getting the low salary is to try to get his government to replace him with another.

Mr. LESAGE: Suppose a United States citizen of a certain rank is working temporarily for NATO in Washington, and suppose that next door to him there is an officer of the same rank working for about the same salary. The first-one could be tax-free, if we have only the first sentence; while the other one would have to pay his taxes. So it is to prevent such a state of affairs, especially in the case where a national of a country is working for NATO in that country, and to prevent a state of affairs like this from occurring. It is being done mostly for that reason.

Mr. WERSHOF: I think that is the case. There are people working for NATO in Washington; in the case of the United States, there are some people working for NATO in the United States and they might be United States citizens; and under the law and policy of the United States they would not be willing to accept the first sentence as the whole provision. And neither was Canada, on a matter of principle. So they thought they had to work out something by which the countries which wish to do so can impose their own tax on their own nationals who are resident in that country. It is a compromise provision and, like all compromises, it is open to criticism on purely logical grounds.

Mr. MACNAUGHTON: Carried.

The CHAIRMAN: Shall article 20 carry?

Carried.

Shall article 21 carry?

Carried.

Mr. FRASER: I think it could be explained perhaps a little better, Mr. Chairman.

ARTICLE 21

1. Experts (other than officials coming within the scope of Articles 18 and 20) employed on missions on behalf of the Organisation shall be accorded the following privileges and immunities so far as is necessary for the effective exercise of their functions while present in the territory of a Member State for the discharge of their duties;

- (a) immunity from personal arrest or detention and from seizure of their personal baggage;
- (b) in respect of words spoken or written or acts done by them in the performance of their official functions for the Organisation, immunity from legal process;
- (c) the same facilities in respect of currency or exchange restrictions and in respect of their personal baggage as are recorded to officials of foreign Governments on temporary official missions;
- (d) inviolability for all papers and documents relating to the work on which they are engaged for the Organisation.

2. The Chairman of the Council Deputies shall communicate to the Member States concerned the names of any experts to whom this Article applies.

Mr. WERSHOF: I could give some examples.

Mr. LESAGE: Yes, that would be a good way.

Mr. GRAYDON: I would like to hear of one example of an expert. I have seen a lot of them and I have never found them to do that. So I would like you to mention one or two men who are experts.

Mr. WERSHOF: I won't give any names, Mr. Chairman; but the idea of the article as I understand it is this: Article 18 deals with what you might call civil servants of the organisation in London, Washington, and Paris. There are certain full time employees of various grades running all the way from office boy up to high executives working on salary for the organisation. The most important of them are mentioned in article 20. There are only a few of them which will have full diplomatic privileges.

Consider the Defence Production Board which is one of the agencies of NATO. From time to time that board will have occasion to employ government or industrial experts in a particular field of production. For example, in the case of the army, it might be for tank production. The Board might have to recruit a team of experts for tank production. That team might have to visit certain NATO countries to look at factories to see whether something could be done to improve or to expedite the production of tanks. Those people may be working for NATO for a period of 6 months or 6 weeks; but while they are so working, their privileges would be those which are set out in article 21. They would not be ordinary civil servants of NATO, but they would be experts engaged for a special mission by NATO. Usually they would be borrowed either from a government service or from industry in a case of that kind.

Mr. BATER: They could be mechanical experts of some kind, could they not?

Mr. MACKENZIE: Who designates them as experts?

Mr. LESAGE: According to paragraph 2 the Chairman of the Council Deputies would designate them as experts.

Mr. FRASER: Does he do that after they are arrested or before?

Mr. LESAGE: If you will look at part 2 of article 21, it reads as follows:

2. The Chairman of the Council Deputies shall communicate to the member states concerned the names of any experts to whom this article applies.

Mr. STICK: I think we could say "persons with special qualifications" instead of "experts". I do not think the word should be "experts" at all.

Mr. MACNAUGHTON: We should add that they get a double fee.

Mr. STICK: I propose "persons with special qualifications."

Mr. LEGER: It is the same thing.

The CHAIRMAN: I think we had better leave it without any change.

Mr. GRAYDON: "Expert" itself is bad enough without trying to find a better word.

Mr. LESAGE: May I point out that we have to accept the agreement as a whole or not accept it at all. It was signed here in Ottawa on the 20th of September.

Mr. GAUTHIER (*Portneuf*): We cannot change it.

The CHAIRMAN: I believe it would be better to leave that.

Mr. STICK: We cannot change it.

Mr. LESAGE: We can refuse to ratify it. We can make some reservations but I do not see any point in saying we reserve our decision on the word "experts".

The CHAIRMAN: The only thing we can do is make a recommendation but we cannot make any change in the bill itself.

Mr. STICK: I do not see any point in us wading through all this business here if we cannot change it.

Mr. LESAGE: May I say this article is similar to the one approved by the convention on privileges and immunities of the United Nations, which we accepted. It has worked since without much trouble.

Mr. GRAYDON: I have seen some experts at work in the United Nations and I wouldn't call them experts.

The CHAIRMAN: Shall the article carry?
Carried.

Then article 22.

Mr. FRASER: This article is where the chairman can take the privilege of being an expert away from him; is that right?

Mr. LESAGE: The chairman has the privilege to waive the immunity of any official or expert.

Mr. GRAYDON: That would only be in criminal cases, would it not?

Mr. MACNAUGHTON: That is what it says.
Carried.

The CHAIRMAN: Then article 23.
Carried.

Mr. FRASER: Don't go to fast, we may have some other experts here.

The CHAIRMAN: I am entirely in the hands of the members of the committee.

Mr. GRAYDON: What is meant by "appropriate modes of settlement"?

Mr. FRASER: I just want the chairman to go a little slower so we will have a chance to read this again.

The CHAIRMAN: Do you want to revert back to another article?

Mr. FRASER: No, that is all right. We are on 24?

The CHAIRMAN: Yes.

The WITNESS: This is a provision under which no action has yet been taken. When this agreement was drafted the discussion did not extend to particular modes of settlement. It is a provision on which thinking has not gone very far yet.

Mr. BATER: Wouldn't council have authority to determine arbitration?

The WITNESS: Yes, it is concerned with domestic matters of conciliation.

Mr. LESAGE: The council shall make provision for appropriate modes of settlement. We are leaving to the council the way of settling any disputes.

Mr. STICK: The council makes its own rules.

Mr. LESAGE: Yes, that is right.

Mr. GRAYDON: Section (b) says: "disputes involving any official or expert of the organization to whom Part IV of this agreement applies who by reason of his official position enjoys immunity, if immunity has not been waived in accordance with the provisions of article 22." What type of dispute would that involve?

The WITNESS: I would say that it was domestic matters within the organization. It is a little hard to visualize a precise situation that could be covered by it.

Mr. LESAGE: I can in my mind envisage what it could possibly cover. It is a kind of appeal to the council in cases where under article 22 a waiver of immunity of any official would have been asked from the chairman of the council of deputies. That would set up a kind of appeal to the council itself. You know the council of NATO is formed by the ministers while the council of deputies is formed by representatives of the ministers. Our representative is the high commissioner in London while on the council itself Mr. Pearson is the chairman.

Mr. GRAYDON: It says, "disputes involving any official or expert of the organization to whom Part IV of this agreement applies who by reason of his official position enjoys immunity, if immunity has not been waived in accordance with the provisions of article 22."

Mr. LESAGE: It is a question of waiver of immunity.

Mr. GRAYDON: No.

Mr. LESAGE: It is any dispute involving any official or expert of the organisation if immunity has not been waived in accordance with article 22 by the chairman of the council of deputies whenever the dispute is going to be settled according to the rules set out by the council itself.

Mr. MACNAUGHTON: Doesn't it mean this, it previews a situation where an official or expert of the organisation had some trouble with someone outside the organisation and having immunity the person cannot touch him and therefore the council authorizes the negotiation of a settlement.

Mr. LESAGE: Yes, if the chairman of the council of deputies has not waived immunity.

Mr. BATER: It is a sort of supreme court?

Mr. LESAGE: Yes.

Carried.

The CHAIRMAN: Article 25?

Mr. FRASER: Does this mean that the council can make separate agreements with the member states, and they would have different regulations than perhaps the member states. Is that what it means?

Mr. LESAGE: This article relating to supplementary agreements was included presumably because it appeared on the convention on privileges and immunities in the United Nations. There did not appear to be any clear case where it would be likely to apply.

The CHAIRMAN: It is only a precaution.

Mr. QUELCH: It seems strange it would be in there. It would be discrimination.

Mr. LESAGE: There cannot be any discrimination because any supplementary agreement would have to be worked out in the council and in the council all members states are represented.

Mr. QUELCH: Wouldn't the majority carry?

Mr. LESAGE: No, NATO does not work under rule of majority.

The CHAIRMAN: Article 25 carried?

Carried.

Article 26, shall it carry?

1. The present Agreement shall be open for signature by Member States of the Organisation and shall be subject to ratification. Instruments of ratification shall be deposited with the Government of the United States of America which will notify all signatory States of each such deposit.

2. As soon as six signatory States have deposited their instruments of ratification, the present Agreement shall come into force in respect of those States. It shall come into force in respect of each other signatory State, on the date of the deposit of its instrument of ratification.

By Mr. Decore:

Q. What do you mean "subject to ratification"—ratification by whom?
—A. By the member states.

The CHAIRMAN: Shall the article carry?

Carried.

Article 27?

Carried.

Now, we will revert back to the second page, the one after the number of the bill—the power to make necessary orders. That is item 2.

Mr. MURRAY: Mr. Chairman, on the subject of the title—

The CHAIRMAN: We are on the clause now, agreement of power to make necessary orders. Shall it carry?

Carried.

Now, we are on the schedule of Part I, general, Article 1. Shall article 1 carry?

Carried.

Article 2?

Carried.

Article 3?

Carried.

Part II, Organization, Article 4—shall it carry?

Carried.

Article 5, shall it carry?

Carried.

I think someone wanted to put some questions on Article 6. It is the last one we have before us now, Article 6.

The premises of the Organisation shall be inviolable. Its property and assets, wheresoever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of interference.

Mr. GRAYDON: There was to be a statement made, I think, in connection with Article 6.

Mr. LESAGE: Was it on a particular point, Mr. Graydon?

The CHAIRMAN: This is Article 6 on page 3, Part II.

Mr. FRASER: Who has the statement to make, Mr. Chairman?

The CHAIRMAN: I do not know if it was a statement or a question or by one of the members.

Mr. RICHARD: Is not that where Mr. Graydon put the question of paying municipal taxes?

Mr. GRAYDON: I think I was aided and abetted by the member for Ottawa East on that subject.

Mr. LESAGE: It is about the vote, I think.

The WITNESS: I have it here if you want it.

Mr. LESAGE: If my memory is correct that was it.

Mr. FRASER: That was it, Mr. Chairman.

The WITNESS: The particulars will be found in Vote 337, page 45 in the estimates of the Department of Public Works and the details of the vote appear at 345 under the caption "primary 19".

By Mr. Fraser:

Q. What was the vote?—A. The estimate was \$70,000.

By Mr. Graydon:

Q. Was that to cover the Dominion Government's share of the compensation to the city of Ottawa with respect to foreign legations in the city?—A. Yes, Mr. Graydon.

Q. That was the full compensation the government gave on that occasion?—A. Yes, Mr. Graydon. There is a minor error that has been detected. I have a short statement which I will put in in connection with it. In case you look this particular item up, it now reads "taxes and water rates." The explanation I want to give is that that language appears to have been included for some years and I have conferred with the departmental solicitor of the Department of Public Works and we agree that no water rates have apparently been paid under this vote for six years. Prior to that time foreign missions received the benefit of the rates applicable to town property and there was an adjustment with the city made through the Department of Public Works. The practice which is now followed is that foreign missions pay water rates on the basis that they are payments for services rendered; in other words, the sum that I mentioned in response to Mr. Fraser's question is solely in respect of the partial indemnification for tax only.

Mr. RICHARD: That would be a very small tax rate from the amount of buildings we have for legations in the city?

Mr. LESAGE: Well, \$70,000 is equivalent to the taxes, not the value of the property.

Mr. RICHARD: I know that, but in any event it is \$70,000 only.

The WITNESS: Well, Mr. Richard, my understanding is the payment was made the same as the payment in respect of Crown property prior to the enactment, I think it was two years ago, of the Municipal Grants Act. I think it averaged about two-thirds.

Mr. GRAYDON: How many legations are there in Ottawa that are owned by foreign governments?

The CHAIRMAN: Of course, that will come in another department.

The WITNESS: I am not sure I can tell you definitely, Mr. Graydon, but I would say it is between ten and twenty. This exemption only applies to the embassy proper and the chancery. It does not apply to any property that is purchased by the lower diplomatic officials.

Mr. RICHARD: Just the same that would represent an assessment of about \$1½ million, which is very low—must be special bargain.

Mr. LESAGE: Mr. Richard, this is pursuant to an arrangement administered by the Department of Public Works.

Mr. RICHARD: As I was saying before, Mr. Chairman, I think all these should have been brought up before in a sitting of this committee at another session.

The CHAIRMAN: When we have the estimates of the Department of External Affairs.

Mr. LESAGE: And this does not even come under our estimates; it is the estimates of the Department of Public Works.

The CHAIRMAN: Shall the article carry?

Carried.

Shall the short title carry?

Carried.

Mr. MURRAY: Mr. Chairman, on the title, the tendency would be to call this NATO, which is obviously a mechanical contrivance, an abbreviation. It is not very dignified. I think it should be referred to always by the Canadian people as the North Atlantic Treaty Organisation. Now, it has to do with the peace of the world and with a friendly alliance between great nations and I would object to going in with the Americans on these abbreviated and meaningless alphabetical items. It is the North Atlantic Treaty Organisation and if it is so described officially then the people will understand what it is and there would be some chance of its surviving, but if it is going to be NATO along with the other abbreviations which are bandied about in the press from day to day, I think the dignity of the organization will be sadly lowered.

Mr. MACNAUGHTON: You mean it will only be understood by the Department of External Affairs.

The CHAIRMAN: As you will notice, the full title carries the words North Atlantic Treaty Organisation. So does the short title. It is not included in there. It is not called NATO there.

Mr. MURRAY: It only takes a minute longer to mention the full title.

The CHAIRMAN: The full title reads that way. There is no NATO there.

Mr. MURRAY: I mean, it brings in the common slang of the country, and I do not think it should.

Mr. GRAYDON: I have listened to the honourable member for Cariboo referring to the C.C.F., not to the Cooperative Commonwealth Federation.

Mr. FRASER: I think, no matter what we call it, it will always be referred to as NATO by people at large.

The CHAIRMAN: Yes, it is always simpler to use these letters the same as in the case of the United Nations which is referred to popularly as the U.N.

The CHAIRMAN: Shall the Title carry?

Carried.

The CHAIRMAN: Shall I report the bill?

Agreed.

The CHAIRMAN: Thank you, gentlemen; and on behalf of the members of the committee I think I should thank our clerk and the officials of the department; and also yourself, Mr. Lesage.

Mr. GRAYDON: And our congratulations also to you, Mr. Chairman.

The CHAIRMAN: Thank you.

