



# Statements and Speeches

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(Corrected version)\*

## DIPLOMACY TODAY -- RECOGNITION, ASYLUM AND CONSULAR PROTECTION

A Lecture by the Secretary of State for External Affairs, the Honourable Mitchell Sharp, Osgoode Hall, Toronto, April 3, 1974.

In the last few years, as Canada's foreign relations have expanded and grown in complexity, there has been an increasing awareness among Canadians of these relations. As more Canadians every year travel abroad, there is a greater appreciation of our overseas activities and a greater interest in them. With this has come -- quite understandably -- a questioning of some of our ways of going about our international business.

It might be useful, therefore, if I describe how the Government sees the purpose of our missions abroad. I want particularly to touch on three related areas, about which there has been a certain amount of discussion in the press and in correspondence to me or to my colleagues in the Government. These are:

- 1) Recognition of regimes;
- 2) consular protection of Canadians; and
- 3) asylum.

Since earliest times, the problem of the protection and advancement of national interests in other countries has been considered an essential national requirement.

From the early Greek writers, especially Thucydides, we have descriptions of the situation which existed in the centuries before Christ in the Eastern Mediterranean, and the methods devised for establishing relations between different communities. The various Greek city states existed in their separate valleys, and in earliest times regarded strangers as being by definition hostile. It was into this unpromising international -- or intercommunal -- atmosphere that the idea was born of sending emissaries or envoys to discuss mutual problems and to resolve disputes.

These early envoys were, at first, often seized and, we are told, cast down wells, before discussions could begin, simply because they were strangers. But the idea that one state might wish to speak with another state by means of an envoy was a very strong one.

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To overcome the difficulties of establishing this dialogue, a convention became accepted that the persons of these envoys, or heralds as they were called, were sacred. This was the beginning of the idea of diplomatic privileges and immunities.

The diplomat was born of a need of essentially hostile states to find some method of communication. There was an early understanding that national interests transcended borders. It is this same conception -- the need for dialogue -- which prompts the Canadian decision to make arrangements to send representatives to another country. The basic reason for this gesture is a national one -- the advancement of the national interest. The most obvious external interest, which is still perhaps the strongest single force in international affairs, is the exchange of goods: in a word, trade.

In its paper *Foreign Policy for Canadians* issued in 1970, the Canadian Government summed up what it meant by foreign policy in these words: "In essence, foreign policy is the product of the Government's progressive definition and pursuit of national aims and interests in the international environment. It is the extension abroad of national policies."

Canada's external interests have grown with our evolving status from colony, to an autonomous part of an empire, through to full independence.

Our posts abroad grew from an initial two, in London and Paris, whose status was something less than that of a full diplomatic mission. Our first true foreign mission was the Legation in Washington, established in 1927. From that time on until 1939, a few other legations and embassies were established. But it was not until the Second World War that, through our alliances, we saw a great expansion of our diplomatic missions abroad.

Canada emerged from the Second World War with considerable economic strength and a new sense of independence. The war had taken many Canadians abroad and had kindled throughout the country a tremendous interest in the world outside Canada's borders.

Canadians became one of the world's most travelled people. Today, there are two million valid Canadian passports in circulation, and my Department expects to issue another 500,000 this year. This great interest in the world outside our borders stems, I think, from the recognition that Canada depends, perhaps more than most other industrialized states, for its well-being and security on trade and co-operation with others. We also look abroad for the expressi

of an important element of our national character -- a belief in a certain human duty toward others.

All these activities have drawn Canadians to journey abroad. This has required the establishment of a wide and still-expanding network of diplomatic and consular missions throughout the world. One of their major purposes is to protect Canadian interests and to assist in the development of the external links in the wide range of fields of contact and co-operation which Canadians seek to develop.

Recognition Canada, along with other states with a Western legal heritage, subscribes to the principle that the recognition of a government involves a decision as to whether an authority claiming to be the government of a state is entitled to be regarded as representing that state on the international plane. Recognition of a government should be distinguished from recognition of a state since recognition of a government, or of a new form of government of a state previously recognized as such, does not affect recognition of the state itself.

On the question, in a situation of violent change, of what government to have relations with, Canada, again along with most Western states, applies a simple test:

- Is the government in question able to exercise control, with a reasonable expectation that it can deal effectively with foreign governments for at least some period of time?

While this act of recognition is essentially legal in nature, the relevance of certain political considerations is recognized in modern international practice. There is, therefore, scope for the exercise of some discretion.

Further questions we ask ourselves are:

- Has the government in question expressed its willingness to fulfil its international obligations?

-- Is it achieving acceptance by a significant number of states, especially those which view recognition broadly as we do?

In case of doubt in the matter of recognition, one must go back to the basic principle -- that entering into relations with a government is a question of national interest and not an act of approbation or a sign of particular friendship.

To illustrate in modern terms the disadvantages of breaking relations in order to show disapproval of policies or actions, we have the various situations that have occurred since the six-day war of 1967 in the Middle East. A number of the Middle Eastern states broke relations with Britain, France and the United States. Nonetheless, these states recognized the need for some form of continuing direct contact. The old practice of another state being designated to look after the interests of those with which relations had been broken was adapted to fill the need for essentially uninterrupted relations on a broad range of subjects. The original practice involved the mission taking over the interests of a state whose mission had departed, in an occasional presentation of a note or other communication. Very often, no officials of the departed state remained. This situation was found to be inadequate and a so-called "interests section" was established, under the flag of the protecting state.

It was often housed in the former premises of the departed state, but with a new flag and new plaque on the door. These interests sections were, in several cases, very large, and headed by a senior official, even of ambassadorial rank. In fact, one had a full-blown diplomatic mission under another name. There were, however, numerous disadvantages. The head of the so-called interests section had no normal right of access to officials and was hampered in a number of ways in the performance of his job.

Short of breaking relations, in a situation where there is no particularly warm regard between states, there are a number of other actions that can be taken to indicate this. Ambassadors may be withdrawn and a less senior official appointed chargé d'affaires. The mission can lie low in its social contacts with the regime; it can be represented at official ceremonies and events by a very junior officer. Many signs and symbols can be

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used. But it is important to use them sparingly, since excessive use can give an impression of pettiness and prevent the kind of dealings which should go on between governments in their own interests.

The act of entering into relations with a new regime is also an indication of what exactly is meant by continuing relations. When the decision is taken by the Canadian Government to continue relations with a new government of a state where there has been a violent change of regime, this is sometimes done by finding some very routine matter and writing a note to the new incumbents. It may be no more than a simple acknowledgement of a circular note from the foreign ministry informing, for instance, that the foreign ministry would be closed on such a date for some local holiday. No fulsome expression about continuing relations is involved -- only an indication that "we wish to continue to conduct official business with your country".

It is sometimes not appreciated that the alternative to not recognizing a regime is to pack up and leave. The interests-section approach may not always be accepted and, as I have said, it has many disadvantages.

It is my belief also that, through contact and dialogue, one is first of all in a better position to know what is really going on in a country and, secondly, one can sometimes have an influence on events. Sharp reactions often provoke obduracy rather than a desired result. Dialogue, although often a long, painful process, is, in my view, a more effective method of persuasion.

There is also the rather special case of a newly-emerged state. When a former colony achieves independence through negotiation with its former masters, there is no particular problem. It is when there is violence in the relationship and no clear-cut break that factors must be weighed. In such situations, Canada applies the basic legal test of control over territory: has, in fact, a new state emerged, with reasonable assurance of permanence? Is it in a position to assume international obligations? In a civil war or colonial war situation, the answers to these questions must be clear or one may find oneself having recognized a state which subsequently disappears.

There are currently three situations where there are rival claims of jurisdiction. In South Viet-Nam, in Cambodia and in Guinea Bissau or Portuguese Guinea. The latter case is perhaps the one over which there is most controversy, since it is a colonial situation. Canada's views on Portugal's African territories are

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clear. We have said on many occasions that the continuation of colonial rule in Africa is not compatible with the evolution of events in recent years, or with the philosophy of human dignity to which the great majority of countries subscribe.

Nonetheless the PAIGC forces in Guinea Bissau are not at the present time able to meet the standard criteria under international law that we accept as the yardstick for the existence of a new state.

Consular protection  
of Canadian interests

Now that I have described our philosophy of relations between states, I should like to say something about the jobs which our missions abroad can and do perform, and also something about the limitations on their actions.

The first requirement for us to be able to do anything for Canadians abroad is to have a presence in the main areas of Canadian interest. The presence can vary from a very large embassy with a network of consulates, such as we have in the United States, to an agreement to enter into diplomatic relations. This latter state is short of presence but, through accreditation of officials at other posts, allows for the beginnings of a dialogue and, through visits and the right of calling on ministers and other officials, starts the process of advancing Canadian interests in that country. I am often asked why we don't have missions in this or that country. The reason is the classic one of priorities for limited resources, both financial and human. These priorities are constantly being reassessed and our program of increasing our missions abroad is modified as necessary by changing circumstances and requirements.

The protection and assistance our missions abroad can give is based on long-standing traditions and conventions. The problem of protection of national communities in foreign countries is not a new one.

It was the Greeks again, and other inhabitants of the Mediterranean who developed a system not unlike our modern consular offices. The system continued through Roman and Medieval times and some most interesting early documents have been found which lay down codes for the conduct of international trade and the rights of foreigners in other countries. These were elaborated in a time that historians usually refer to as the "Dark Ages".

More recently, the rights and duties of foreign representatives, and of the states receiving them, have been codified in the Vienna conventions on diplomatic and consular relations of 1961

and 1963 and, of course, in a number of bilateral agreements between nations. Because the Vienna Convention on Consular Relations contains certain provisions that involve provincial jurisdiction, the Government of Canada is not yet in a position to become a party to that agreement. However, the agreement is essentially a declaration containing general and long-standing international law concepts with which Canadian consular practice largely conforms.

Article 5 of the Vienna Convention on Consular Relations specifies the various internationally-accepted consular functions, including: "Protecting in the receiving state the interests of the sending state and of its nationals, both individuals and bodies corporate, within the limits prescribed by international law". These limits referred to have to do with the principle that states are sovereign entities and that the laws, customs and regulations of a particular country have no external status or authority, and thus do not apply inside another state.

This is a fundamental limitation that is important for Canadians travelling abroad to understand.

Canadian citizens residing or travelling in other countries are subject to the laws and regulations of those countries, just as foreign citizens residing or travelling in Canada are subject to Canadian laws and regulations. When persons run afoul of foreign laws and regulations, they must expect to be dealt with in accordance with local procedures and practices, just as foreign citizens in violation of laws in Canada will be dealt with in accordance with Canadian laws and regulations.

It is important, I think, to keep in mind this relationship with our own actions. I recognize that this is not always easy, especially when laws, regulations and procedures in many countries seem severe and even harsh by Canadian standards. Some countries, for example, permit almost unlimited detention without charges, pending an investigation of a case. Severe punishments are often imposed; conditions of detention, while perhaps considered adequate by local standards, are sometimes far below what we should consider to be even minimum standards in Canada.

Two routes are open to Canadian officials in dealing with situations involving Canadians -- the legal and official route and the unofficial one. The first route usually restricts the Canadian representative to ensuring that, when a Canadian citizen becomes involved with the law in another country, he or she is treated no

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less fairly than other foreign nationals, or than the citizen of that country. He can also ensure that the appropriate legal counsel is obtained.

Unofficially, quite often a great deal more can be done: representations to local authorities to consider possible mitigating circumstances, to speed up otherwise slow judicial processes, and appeals for leniency on appropriate humanitarian grounds, to the extent that local law and practice permit.

One other problem which our representatives face is knowing about a Canadian who is being detained by local authorities. Often, of course, Canadians so detained can inform our embassies or consulates of their arrest. However, foreign governments are under no obligation to inform our representatives when a Canadian is in custody, unless the person detained so requests. Nonetheless, most foreign governments do notify our representatives when a Canadian is in custody.

One of the most important generally-recognized rights is that of consular access. This is the right of our representatives to visit the person concerned so that they can ascertain and respond to his wishes regarding legal counsel, notification of next-of-kin, and other specific requests he may have. In rendering assistance, my officials, rather like doctors or lawyers, endeavour to respect confidences.

Of course, some individuals, for various reasons of their own, do not want Canadian representatives, or their own relatives, to be aware of their situation. In such instances, we learn about the event only later, and perhaps even by accident, or when, on reflection, the Canadian confined decides to request assistance after all.

I quite understand the sympathy expressed by Canadians when a fellow Canadian, or perhaps a family member, is in legal difficulties abroad. When local laws and procedures are more rigorous or harsh than those that apply in Canada, there can be even greater concern, and a feeling that an injustice is being perpetrated. This moves them to call upon the Government, and especially my Department, to "do something about it".

But, as I have suggested earlier, there are constraints on our dealings with other governments on these matters. There are also reasons why we should respect these constraints. In the first place, the guidelines of international law and accepted international practice have been carefully evolved. Sovereignty is the

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most important concept for the protection of a country from unwarranted interference by another state. But there has grown up a balance between the absolute sovereignty which states claim and the generally-recognized rights of other states to be involved in the interests of their citizens abroad.

Canada could not tolerate other governments interfering in our own judicial processes on behalf of their nationals, nor should we take kindly to outraged or intemperate criticisms of our judicial practices.

The second constraint, and one that I consider most important, is the question of effectiveness. We have found that quiet persuasion and unpublicized *démarches* are extremely effective in many cases. There are two important factors that modify the actions of states in the treatment of foreigners, within the latitude allowed by their laws; one is world opinion and the other the bilateral relationship with the countries of the foreigners concerned. It is often effective for our representatives to note that, by not showing some comprehension in a certain case, the general relationship between the country concerned and Canada is damaged.

I sometimes receive suggestions that we take drastic action toward this or that government, that we sever trade or aid relations, or that we should make our concern known through highly-publicized demands and threats. This seems to me to be a sort of verbal "gunboat diplomacy" which Canadians will surely consider obsolete.

I ask the persons involved whether the important thing is the public assertion of our position, or the relief of the immediate problem. Most Canadians would agree, on reflection, that the important thing is to resolve the question. Public declarations of righteousness are a luxury that one can dispense with.

Another factor is that any unnecessary publicity concerning a question can often cut across our diplomatic efforts to resolve the question, and can create fresh difficulties for other Canadians living or travelling in that country.

I have spoken at some length of difficulties with foreign laws, but there are also a great many other circumstances in which Canadian officials can be of help.

Deaths and illness occur while Canadians are abroad; they become injured, they lose money or passports or are victims of robberies. Because of international conflict or local tensions, they may

require urgent assistance and possibly evacuation from the area. In such cases, Canadian representatives give all possible assistance; notifying next-of-kin, arranging for medical attention, providing emergency financial assistance, emergency evacuation, and so on. The vast majority of these situations have happy endings, and I receive many letters testifying to this. During the past year, our embassies and consulates abroad provided over 200,000 consular services to Canadians in difficulties or seeking assistance for one reason or another.

Services are also rendered in happier circumstances: the registration of a birth of a Canadian abroad; helping a foreign bride of a Canadian to come to Canada; making available Canadian papers and news bulletins about events at home.

Perhaps, before concluding this part of my remarks, I might say a few words about passports. These are essentially internationally-recognized identity documents, which are accepted by foreign governments as proof that their bearers are Canadian citizens.

The passport contains the formal request to all concerned to "allow the bearer to pass freely, without let or hindrance, and to afford the bearer such assistance and protection as may be necessary".

There is sometimes some misapprehension that passports are somehow more than this. They are not, for instance, permits to enter foreign countries. They do not afford any special protection or immunity from foreign laws and regulations. Nor are they certificates of good conduct.

If a Canadian passport is usually highly regarded by foreign immigration and travel authorities, it is because Canada and Canadians, on the whole, enjoy a good reputation abroad, through the policies and attitudes we have adopted in our external dealings and through the understanding of Canadians generally of the obligations of a visitor in a foreign country. Parenthetically, I might add that the high reputation of Canadians is one reason why extraordinary efforts have sometimes been made to forge our passports. Because a Canadian passport is so keenly sought after it should be carefully protected and highly valued.

**Asylum** The complex question of asylum has come to public attention in recent months with the 55 Chileans and others who sought shelter in the Canadian Embassy in Santiago last autumn.

Canadian policy on this question is based on the definition of different kinds of asylum:

- 1) Territorial asylum;
- 2) diplomatic asylum; and
- 3) temporary safe haven.

All of these involve different legal considerations.

Territorial asylum is the term used to describe the form of asylum which a country may be obliged to provide to persons seeking either to enter it by crossing its frontiers or to remain in it, in accordance with the provisions of the 1951 Refugees Convention and 1967 Protocol, to which Canada is a party.

Territorial asylum for refugees is applicable to cases in which the persons concerned have well-grounded fears of persecution in their countries of origin; a prerequisite to acquisition of that status is that the applicant must be physically present outside the alleged country of persecution. Problems relating to the provision of territorial asylum are the only ones to which the word "refugee" really applies and they should, therefore, by definition ordinarily not be of direct concern to our posts. Instead, they are matters for the immigration authorities at Canadian border entry points.

Diplomatic asylum is the term used to describe the process whereby an embassy provides shelter, which can turn out to be protracted in time, to persons seeking refuge on its premises in a foreign country in order to avoid the jurisdiction of the local authorities.

Diplomatic asylum, as distinct from territorial asylum, has been defined as involving a derogation from the sovereignty of the state in whose territory the embassy is situated. It withdraws the offender from the jurisdiction of the territorial state and constitutes an intervention in matters which are exclusively within the competence of that state. This conception is essentially a Latin American one. Canada does not recognize a general right of persons to such diplomatic asylum and does not participate in this practice, even in Latin America.

Diplomatic asylum is not a generally-recognized conception. Therefore, a state whose embassy may shelter a political refugee may simply risk the rupture of relations and the seizure of the persons seeking asylum.

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To digress a little, the "sit-in" may seem to be a recent innovation, but in fact there are records of a custom in Iran, or Persia as it was called at the time, known as bast, which existed until fairly recently. Taking bast meant taking shelter in a foreign mission as a means of asserting grievances. It was based on the principles of hospitality in that country, which precluded denial of bast, whatever inconvenience might be caused. On one occasion in 1906, no fewer than 14,000 merchants and others took bast at the British Legation in Tehran and remained there for over a week, as a way of asserting their demands for constitutional reforms. I can only conclude that the British Legation must have been considerably larger than anything the Treasury Board has approved for a Canadian mission abroad.

I come now to the third category of asylum, which is the most relevant to Canadian concerns: Temporary safe haven.

This term is used to describe a special and restricted category of diplomatic asylum. Under this highly exceptional process, an embassy provides a purely temporary refuge to persons on extreme humanitarian grounds, as in cases where they face a serious and imminent risk of violence against which the local authorities are unable to offer protection or which the authorities themselves incite or tolerate.

This is the only form of diplomatic asylum now generally recognized by international law. Even so, there is uncertainty as to the precise scope of the "extreme humanitarian grounds" which may justify the granting of this kind of asylum.

Of course, temporary safe haven should never be granted to an ordinary criminal attempting to escape from the normal processes of the law.

The head of mission is not under any duty to grant asylum or temporary refuge and all kinds of considerations may affect his decision. For example, the circumstances may seem sufficiently compelling to the head of post to receive an applicant into the diplomatic premises but not actually to grant asylum before he can report to Ottawa. In that case, if the Canadian Government declines to grant asylum the head of post may, if necessary, give permission to the local police authorities to enter the premises to remove the individual.

This so-called right of asylum or temporary refuge is, in fact, only a "right" of the representing state, through its head of

post, to make such an offer. There is no right of the individual to be granted asylum or temporary refuge. Because of the ill-defined nature of this exception to the general rule, it has in practice tended to be closely circumscribed.

In the case of the 55 persons granted temporary safe haven in the Canadian Embassy in Santiago, it was the forbearance of the Chilean authorities, for whatever reason, and the subsequent granting of safe-conducts, which brought about a successful outcome. It was because our Embassy had lines of communication with the new Chilean authorities that the necessary arrangements for the departure of these persons were possible.

I might conclude my brief survey of these complex and difficult questions with the following thoughts: The exposure to Canadian public opinion of representatives of a country practicing policies against human dignity and freedom of conscience can, over a period of time, have an important effect on those policies. If these foreign missions were closed, then this important channel of opinion would be closed. This process may be a slow one, but then much change, involving the evolution of ideas, is slow. The saying goes that Rome was not built in a day. Nor was democracy in a country ever destroyed in a day. The spark remains, perhaps not always readily visible, but it is not extinguished. I believe that exposure to ideas is the surest way to bring about a change in attitudes.

Contacts between nations serve more purposes than the rupture of these contacts. Our influence is greater on others not in a void but where a dialogue exists.

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