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SECRÉTAIRE
D'ÉTAT AUX
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NOTES FOR A
LUNCHEON ADDRESS BY
THE SECRETARY OF STATE FOR EXTERNAL AFFAIRS
THE HONOURABLE MITCHELL SHARP

TO THE FACULTY OF LAW,
UNIVERSITY OF OTTAWA,
OTTAWA
FRIDAY, MARCH 22, 1974

(TEXT)

I am honoured and very happy at this opportunity to speak to the Common Law Section of the Law Faculty of the University of Ottawa. Since the Common Law Section was set up some 17 years ago, my Department has had close and mutually useful relations with you. These include lectures and even courses given by members of the External Affairs Legal Bureau, the loan of books, provision of texts, and seminars by faculty members for the officials of my Department. We have had a similar close working relationship for many years with your colleagues on the Civil Law side.

The cross-fertilization between Government and the academic community is an essential process. The dialogue which has been established helps, I think, your academic community to focus on current problems of law as seen by government. At the same time, the ideas and analyses coming from the academic side, are an important part of the process of evolving the underlying philosophies, which must be clearly and fully developed before practical policies can be formulated.

In looking over the alma maters of the officers of my Department, I am rather surprised to find that there are only two graduates on the common law side who have entered External Affairs. I would hope that more of you might consider a career in the Foreign Service, where your legal training will be of great value at this stimulating time of new and evolving concepts of international law. I hope you will give this possibility some thought.

(TRANSLATION)

The University of Ottawa is unique in Canada and even has a rather special place in the world as a whole, because of its bilingual and bicultural character. This particular element is underlined in a striking way in the Faculty of Law where, at the same time, lawyers are trained in civil law as well as common law.

In the Department of External Affairs, we do not regard bilingualism solely as being a fundamental requirement in the framework of the Canadian Confederation. We also see it as an essential tool of our trade. A Canadian diplomat who has a knowledge of our two languages is able to communicate with the great majority of his foreign colleagues and of officials of other governments. French and English, when one or the other is not the first language of a country, is certainly the second. In this way, our double heritage is a valuable asset in our foreign relations.

(TEXT)

I would like to discuss with you a question which lies broadly in the legal domaine and which has assumed great importance for Canadians, especially since the 2nd World War. Since the late 1940's, many millions of Canadians have taken the habit of travelling throughout the world. The statistics show that we are a highly peripatetic people. There are over 2 million valid Canadian passports in circulation and we expect to issue another 500,000 this year. Traditionally, of course, the great majority of the millions of Canadians who travel annually to the United States do so without a passport.

Many of these travellers have come to know their way about the world, and especially their way about the many administrative and legal requirements of foreign travel. At the same time, there are a great many young people and others who, every year, set out to discover for themselves the world they live in. This is a very important phenomenon. I have often spoken about Canadian dependence on world trade and on our knowledge of events and changing circumstances in other countries. These very often have direct consequences for our own well-being and security. I think it natural, therefore, for Canadians to want to see something of this world, every corner of which becomes ever more accessible through the development of newer and more rapid forms of transportation.

Canada's businessmen also travel abroad in ever greater numbers, to seek and develop new markets and to strengthen and diversify traditional ones. It is one of the most fundamental jobs of Canada's representatives abroad to protect the interests of Canadian citizens in foreign countries and to assist them in their dealings with the commercial, the sporting, the academic, the cultural communities and other interests, of other countries.

The need to protect foreign travellers and foreign communities established in other countries has been recognized since earliest times. The Greeks and other Eastern Mediterranean peoples developed in the centuries before Christ a system which is not unlike modern consular representation. These early consuls were to a greater or a lesser degree the focal point of the foreign communities in other countries. They settled disputes, they witnessed contracts, they performed a wide range of activities which we would today consider as consular legal assistance. In view of the nature of the foreign communities which they served, their orientation was largely commercial, with the law of contracts playing an important part.

This consular function was quite apart from the diplomatic role of Ambassadors, who represented the Head of one state directly in the capital of another. In recent times the diplomatic and consular functions have come together somewhat, although differences remain. But their origins are essentially the same. Their functions sprang from the basic need of different communities and cultures to enter into a dialogue with one another. Early writers on diplomatic and consular practice maintained that the foreign envoy was the direct descendant of the angels, the original messengers between heaven and earth. I am sure my officials console themselves with that thought in the more difficult and discouraging moments of their careers.

My purpose is not to give you a history lesson, but, rather, to describe conditions today. The many Canadians who travel abroad have every reason to expect good service from Canadian representatives abroad. At the same time it is important that there is an understanding of the limits of what our representatives can do.

In an earlier era of strong-willed imperial powers, these would frequently back up their consular and other demands by a show of force -- by gunboat diplomacy. But in the world of today, these tactics are really no longer acceptable.

In their place, there exists a generally accepted body of the rights and duties of foreign consuls. The assistance which foreign consular or diplomatic representatives in another country can give to their nationals, in general, is still based on longstanding international custom. 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 which 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 is largely in conformity.

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 which 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 such 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.

Unfortunately, many countries have laws, regulations and legal procedures which might 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, particularly for trafficking in, or use of narcotics; conditions of detention, while perhaps considered adequate by local standards, are sometimes far below what we would consider to be even minimum standards in Canada.

Legally and officially, all that Canadian representatives abroad can usually do when a Canadian citizen becomes involved with the law in a foreign country is to ensure that he or she is treated no less fairly than other foreign nationals, or than the citizens of that country would be treated in similar circumstances; and to ensure that appropriate legal counsel is obtained.

Unofficially, Canadian representatives abroad can, and do, go much further. They can often assist by making representations to local authorities to consider possible mitigating circumstances; to speed up otherwise slow

judicial processes; and to appeal for leniency on appropriate humanitarian grounds, to the extent which local law and practice permit.

Of course, relatively few Canadians encounter difficulties with the laws of other countries. This is a testimony to their understanding of what it means to be a visitor in another country. Most cases which arise, happily, are dealt with quietly and effectively by our consular officers; the few cases that prove really difficult and sometimes beyond our control are, of course, the ones that draw public attention.

Canadians, upon being detained by the local authorities abroad, can normally inform our Embassies or Consulates of their arrest. In rendering assistance, my officials, rather like doctors or lawyers, endeavour to respect their confidences. Foreign governments are under no obligation to inform our representatives when a Canadian is in custody, unless the person detained so requests, or our representative makes an inquiry. Nonetheless, most foreign governments do notify our representatives when a Canadian is in custody.

Whenever our Embassies and Consulates abroad are notified that Canadian citizens have been arrested or are otherwise in difficulty with the local laws, they immediately seek information about the person concerned, and the charges being laid, if any. One of the most important rights is that of consular access. This is so that our representatives can ascertain, and respond to, the individual's wishes regarding legal counsel, notification of next-of-kin, and other specific requests he may have.

It can sometimes happen that the individuals in question, for various reasons of their own, do not want Canadian representatives or their own relatives to be aware of their situation. They might request the local authorities not to notify our people. There are, therefore, instances where we do not know about the predicament a Canadian is in. Or we learn about it only later, and perhaps even by accident. Sometimes, the individual concerned decides, in time, to request assistance after all.

There is an understandable concern and sympathy on the part of other 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 and that the Government and my Department should "do something about it." I fully understand and sympathize with this sentiment.

But our dealings with other governments on these matters must be carried out within the guidelines of international law and accepted international practice, which I have outlined. Canada would not tolerate attempts by foreign governments to interfere in our own judicial processes on behalf of their nationals, nor would we take kindly to outraged or intemperate criticisms of our judicial practices.

I sometimes receive suggestions that we take drastic action toward this or that government. I am urged to sever trade or aid relations with a country which is not treating one of our citizens in accordance with our standards. I

am told that we should make our concern known through highly publicized demands and threats. Most Canadians would agree, on reflection, I think, that such emotional response not only would not have the desired effect of relieving the immediate problem, but even if it were possible and not contrary to our bilateral or multilateral obligations, it would only exacerbate the general relationship between the country concerned and Canada. More particularly, it would also cut across our diplomatic efforts to resolve the situation. It might even create fresh difficulties for other Canadians living or travelling in that country.

Special problems can arise in connection with naturalized Canadians or, in some cases, native-born Canadians of naturalized parents who may be regarded by the country of their birth, or their parents' birth, still to be citizens of those countries. These "dual nationals," are considered subject to the laws concerning taxation, military service, and so on, of their country of origin. Often the authorities in the countries concerned refuse to entertain any representations and insist on their laws being applied -- an attitude which may be quite consistent with international law and practice, but which we usually try to suggest, may not make for the best relations between ourselves and them. This problem exists with a wide range of countries, in Western and Eastern Europe, in South America, in Asia. Recently, there have been a number of cases involving United States citizenship. Under United States law all male persons born in that country of Canadian parents, and who are therefore dual nationals, are required to register for Universal Military Service immediately upon attaining the age of 18, whether or not they are present in that country. Where such dual United States-Canadian citizens neglect to comply with such procedure they are liable to prosecution upon re-entering the United States. The same requirements for registration at age 18 and liability to prosecution for non-compliance apply to all Canadian male children who are permanent residents of the U.S.A. In such complex cases, our representatives make contact with the Canadian involved, when they are aware of his predicament, but there is little direct help that they can give. As I have said, these problems are not confined to the United States.

I do not want to leave you with the impression that our consular officials spend their time visiting jails full of Canadians, who in their innocence have contravened some obscure foreign regulation. This is a relatively rare occurrence.

Canadian officials are there to help in many other circumstances. Deaths and illnesses 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.

These services are also given in happier circumstances: for instance, the registration of the birth of a Canadian abroad. Many of our embassies and missions have facilities for reading Canadian papers and for receiving news bulletins. In this way, Canadians can explore the Taj Mahal or the cathedrals of Europe and still be in touch with the latest struggle for the Stanley Cup, or with the bulls and bears of the Vancouver, Toronto and Montreal exchanges.

The latter activities might well have an important influence on the length of their stay abroad.

In only a very small percentage of these cases has there been any complaint on the part of the person concerned or the next-of-kin. Unfortunately, as I pointed out earlier, it is these few instances which come to public attention and criticism. I welcome such criticism if it concerns errors of omission or commission on our part.

The Government and my Department attach very great importance to the protection of Canadian interests abroad and to the quality of assistance available to Canadians travelling or residing abroad. We shall continue to exert our best efforts to maintain and improve the excellent consular service they already enjoy.