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huH. DismontRemis le 6.10. 1977 par
M. K. Blacketter, de
l'Ambassade du Canada.

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No. 69

The Canadian Embassy presents its compliments to the Federal Department of Justice and Police and has the honour to refer to the Department's Note of July 26 setting out its views concerning the prosecution in Switzerland, pursuant to the Treaty between Great Britain and Switzerland for the mutual surrender of fugitive criminals signed at Berne on November 26, 1880 (as applicable to Canada), of Messrs Reiser, Zingre and Wuest, Swiss nationals, for alleged crimes committed in Canada.

The Embassy responds by submitting the views of the Canadian authorities. It is agreed that the Treaty is between Canada and Switzerland (and not parts thereof) and that Canada is not obliged to pay the costs of prosecution.

The provision in the second paragraph of Article I of the Treaty that the alleged offenders are to be prosecuted "according to the laws of the Canton of origin" (in this case Thurgau), in the view of the Canadian authorities, solely to the law which will govern the prosecution and not to obligations assumed by the contracting parties to the Treaty. The requirement of the law of the Canton of Thurgau that payment of advance costs in the amount of 100,000 Swiss francs, is in the view of the Canadian authorities, an internal matter to be resolved between the authorities of the Swiss State and the Canton. The interpretation of the Canton in

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this respect is not consistent with the obligations assumed by Switzerland under the Treaty.

The Canadian authorities reject the contention of the Canton of Thurgau that either the Province of Manitoba or the Manitoba Development Fund is the "plaintiff" in the prosecution proceedings in Switzerland. This concept does not appear in the Treaty. Messrs Reiser, Zingre and Wuest stand accused of acts (fraud) which are prohibited by the criminal code of Canada. The views of the Canton appear to reflect a misunderstanding of the position of the Crown which is responsible for the prosecution of alleged offenders under the criminal code. The Crown is represented in the Provinces by the Attorneys General and in this case by the Attorney General of Manitoba. The Crown alone decides on prosecutions under the criminal code and such decision is taken independently of the position of any person or legal entity (such as the Manitoba Development Fund) who may have suffered loss or injury as a result of the commission of the alleged offence. Accordingly Canada, under the terms of the Treaty, has requested Switzerland to prosecute Reiser, Zingre and Wuest on behalf of the Crown.

In view of the foregoing the Canadian authorities cannot agree to transmit the Decree dated June 3 of the Public Prosecutors Office of the Canton of Thurgau to the Manitoba authorities nor to agree that the Swiss Embassy in Canada do so.

The Canadian authorities trust that Switzerland will fulfill its obligations under the Treaty and that the prosecution of Messrs Reiser, Zingre and Wuest be commenced immediately. The Canadian authorities assure their fullest cooperation in these prosecutions in accordance with Canadian obligations under the Treaty.

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The Canadian Embassy avails itself of this opportunity to renew to the Federal Department of Justice and Police the assurances of its highest consideration.

BERNE, October 6, 1977

