



CANADA

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## INTERNATIONAL LAW AND POLITICS

*Prime Minister L.B. Pearson recently addressed the American Bar Association in Montreal. The following is a partial text of his remarks:*

...Over the week-end I was glancing at the reports of your 1913 convention. In many ways it seemed like the record of a far distant age....

In those earlier proceedings, there was much talk of the bonds of friendship between the English-speaking nations; of the undefended border between our own two countries and our 100 years of peace....

There was also much optimism expressed at your 1913 meeting about the prospects for peace in the world. Mr. Kellogg, in his Presidential address, spoke hopefully of the "principles of international law which, in the science of modern governments, are taking the place of war in the settlement of disputes".

Your guest of honour from England that year was Lord Haldane, the Lord Chancellor. He took as his subject, "The Higher Nationality", which was to embrace all humanity.

"There is apparent", he said, "a tendency to seek for a higher standard of ideals in international relations. The barbarism which once looked to conquest and the waging of successful war as the main object of statesmanship seems as though it were passing away. There have been established rules of international law which already govern the conduct of war itself...with the result that the cruelties of war have been lessened."

...The dreary and tragic years of failure and futility followed. We lapsed back into international anarchy and frustration. There was no law between nations that could save us from the consequences of our political failures as men. Never, indeed, has the interaction between law and politics been more

tragically demonstrated than in those years between the wars - unless it was in the period after the Second War.

### SOUTH WEST AFRICA

I should like to mention one recent and significant illustration of this interaction. It is found in the judgment - unexpected at least to a layman - on South West Africa by the International Court of Justice. After nearly six years of the most complicated legal arguments, the Court had to decide the case - though not the substance of it - by resorting to the extra tie-breaking vote given by its President, Sir Percy Spender of Australia. As you know, the World Court, without giving judgment on the substantive points at issue, ruled that Ethiopia and Liberia, acting as members of the former League of Nations, had not established any legal right or interest in their complaints against South Africa's administration of South West Africa. Yet the Court had already declared in 1962, again by a narrow majority, that it *had* the necessary jurisdiction to hear the case. This adds to the difficulty of appreciating the narrow procedural point on which the decision was based. Indeed, one distinguished Canadian professor of law has said that the decision "would baffle the intellectual ingenuity of a medieval scholar".

The judges who voted not to take cognizance of the merits of the case did so for what seemed to them to have been sound technical reasons without regard to any other considerations. The judges who dissented were concerned by the political consequences of failure to deal with the case itself on technical grounds which seemed to them to be insubstantial.