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NOTES FOR A SPEECH BY THE SECRETARY OF STATE FOR EXTERNAL AFFAIRS, THE HONOURABLE MITCHELL SHARP, TO THE INTERNATIONAL LAW ASSOCIATION AND C.I.I.A., MONTREAL, MARCH 29, 1971

CURRENT DEVELOPMENTS IN INTERNATIONAL LAW AND CANADIAN FOREIGN POLICY

Mr. Chairman,

I am pleased indeed to be here this evening and to have the privilege of addressing members of the International Law Association, the Canadian Institute of International Affairs, and their guests. This kind of contact between the Government and professional and academic institutions and associations is of immense benefit to both sides and I welcome this opportunity to speak to you on "Current Developments in International Law and Canadian Foreign Policy".

I always embark upon speeches about international law with some trepidation, since I am neither a lawyer nor a professor. On the other hand, some eminent international jurists tell me that this might be a distinct advantage for a foreign minister. In any case, I can assure you that I have the highest regard for international lawyers, whether practising or preaching, and over the years I have benefitted a great deal from their advice and assistance.

Perhaps I might begin this brief survey of current international legal developments by looking at the work of the United Nations where so many of them have taken place. Since 1945 -- admittedly with ups and downs, but with a definite ascending curve -- the United Nations has been actively pursuing the goal of an international order based on the rule of law. In particular, the world Organization has lead the way in enshrining basic principles of human rights and human dignity in international documents and legal instruments. The Universal Declaration of Human Rights of 1948, the International Covenants on Economic, Social and Cultural Rights, and of Civil and Political Rights of 1966 and the International Convention on the Elimination of Racial Discrimination, also of 1966, are accomplishments of great significance. The Racial Discrimination Convention was ratified by Canada while the 25th United Nations General Assembly was meeting last fall and we are now pursuing with the provinces the question of becoming a party to the International Convenants. These instruments, taken together with others dealing with refugees, relief and rehabilitation and the status of women, constitute, in a very real sense, an International Human Rights Bill. Canada will continue to play a prominent role in all such international efforts to uphold and protect the fundamental rights of all peoples everywhere.

Another area of great importance is the development of international law relating to the environment. When we speak of the environment today, our minds automatically turn to pollution. However, the United Nations law-making activities in this field began with relatively unpolluted environmental regions such as outer space and the seabed. Only recently has the Organization taken up the immense problems of the growing pollution of our soil, waters, and the air we breathe. The 28-nation United Nations Committee on the Peaceful Uses of Outer Space, of which Canada is a member, was responsible for the drafting of what may be called the outer space "charter", the 1967 Treaty on Principles

...2

Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies. In addition to postulating the peaceful character of space exploration and the rule that celestial bodies are not subject to national appropriation, the treaty obliges states to avoid harmful contamination and damage to the earth's environment resulting from space activities.

In 1967, the General Assembly established a Special Committee to examine "the reservation exclusively for peaceful purposes of the seabed and ocean floor and the subsoil thereof, underlying the high seas beyond the limits of present national jurisdiction and the use of their resources in the interest of mankind". This subject, with its far-reaching legal, political, economic and military implications, will be a matter of intense study and debate for some time to come. Canada was one of the 35 countries on the original Committee and we are currently an active member of the new enlarged Preparatory Committee for the 1973 Law of the Sea Conference, about which I shall have more to say shortly.

A subject directly aligned to peaceful uses of space and the seabed is nuclear arms control. Both the 1963 Partial Nuclear Test Ban Treaty and the 1968 Treaty on the Non-Proliferation of Nuclear Weapons as well as the Seabed Arms Control Treaty of 1971 are significant landmarks. Endeavours to proscribe all chemical and bacteriological weapons of war and all underground nuclear tests are currently underway and Canada is playing a major role in these discussions at the Geneva meetings of the United Nations Conference of the Committee on Disarmament.

The United Nations has also been organizing efforts on a number of fronts in preparation for the Conference on Human Environment, which will be held in Stockholm in 1972, with Maurice Strong as Secretary-General. There have already been two Preparatory Committee Meetings, in September of last year and this February. Canadian Delegations participated actively at both sessions in keeping with the vigorous role Canada has played nationally and internationally in the adoption of anti-pollution measures. In particular we are attempting to gain general agreement that the proposed Declaration on the Human Environment include substantive principles of international environmental law and not mere expressions of desirable objectives.

One of the difficulties faced in the development of effective international law in this field is the attitude of the developing nations. The developing nations are very aware that environmental pollution is a by-product of industrialization, itself an essential pre-condition of economic growth. These nations see in the thrust toward international pollution control an attempt to preserve their countries as "game preserves", to use a colourful expression. Developments in international law

must be in step with developments in technology that will enable the less affluent nations to enjoy the benefits of industrialization without incurring the dangers of unacceptable levels of pollution.

This must come about in a way that will enable these countries to compete in international markets. There is no fair or acceptable way to require developing nations to build higher costs into their economies than are faced by the technologically advanced nations. At the same time, any attempt to make an exception for the developing nations by providing lower standards of pollution control for them would be self-defeating. It would set up sanctuaries which would attract those industries responsible for the worst type of pollution, causing eccentric and unhealthy capital flows and laying up trouble for the future.

Problems of this kind remind us that advances in international law do not take place in a vacuum. The underlying political problems must first be solved, and political agreement reached. Generally speaking, this is the stage of greatest difficulty, where movement is slowest. Once political agreement is achieved the writing of the law becomes a highly technical matter for experts.

Still within the United Nations framework, the specialized agencies have also been very active in the creation of new international law. The work of one such agency, the Intergovernmental Maritime Consultative Organization (IMCO) is closely related to protection of the environment. Canada has been participating in preparing for the IMCO-sponsored Marine Pollution Conference to be held in 1973. The elaboration of a draft Convention on the Establishment of an International Fund for the Compensation of Victims of Oil Pollution is of particular concern to us. We are also involved in the Maritime Safety Committee of IMCO which examines navigation and safety requirements for vessels and makes recommendations on those aspects of shipping.

Canada has a particular interest in shifting the emphasis of the Law of the Sea toward the protection of the interests of coastal states. The Law of the Sea has historically been written to protect the interest of the so-called flag states that have very great shipping industries, and has been designed to provide for the greatest possible freedom of movement and action for merchant fleets. Recent maritime disasters, such as the sinking of the "Arrow", have brought home to us the need to combine maximum freedom of movement for shipping with essential controls to protect the coastal environment.

Canada's position in this general field of international law is well known. We strongly favour international co-operation to preserve the oceans of the world and the ecological balance of especially fragile areas. With the urgency of the problems in mind, the Government passed two important Acts last year directed towards protecting the Canadian Arctic and the marine environment

and Canadian off-shore fisheries resources. Recent amendments to the Canada Shipping Act will impose stringent anti-pollution measures within Canada's territorial sea and newly-created fishing zones. It is our hope that these moves on Canada's part will lead to international agreement, developing the new Law of the Sea so as to be acceptable to coastal and flag states alike.

The Preparatory Committee of the 1973 Law of the Sea Conference has just concluded a four-week meeting in Geneva. This has been primarily concerned with organizational preparations for the forthcoming Conference which we hope will further develop this important and dynamic field of law in all its facets. A major objective is to resolve, through multilateral agreement, the outstanding issues relating to the sea and the seabed which have been a source of differences among states and could lead to further differences in the future.

The Canadian Delegation in Geneva last week outlined a process which could be implemented without awaiting the results of the 1973 Conference. This would involve the immediate determination, as of a stated date, of the minimum non-contentious area of the seabed beyond the limits of national jurisdiction; the simultaneous establishment of an interim international machinery for that area; and the simultaneous creation of an "international development fund" to be derived from voluntary contributions made by the coastal states, on the basis of a fixed percentage of revenues accruing from off-shore exploitation beyond the outer limits of their internal waters. We are looking forward with interest to the reaction to the Canadian suggestion. It will be discussed at the next Preparatory Committee Meeting this summer.

Canada has been actively involved in all these efforts to lay down agreed norms in international legal instruments directed towards preserving and promoting the peaceful uses of our environmental heritage, under the rule of law. We shall continue our support for the development and expansion of the areas subject to such rule. For example, we have been pressing for several years for the conclusion of an effective liability convention in respect of objects launched into outer space. The Canadian position on this question has consistently favoured a victim-oriented treaty which will ensure that just and equitable compensation will be paid to states suffering loss due to injurious space activities.

When examining the creation of new international law, we must certainly take note of the recent efforts of the International Civil Aviation Organization. ICAO, with its headquarters here in Montreal, has recently made important strides in its fight to prevent and deter aircraft hijackings and other forms of unlawful interference with air transport. The kind of international legal framework being developed, including the 1963 Tokyo Convention on crimes on board aircraft; the 1970 Hague

Convention on hijacking; and the draft Unlawful Interference Convention (to be subject of a diplomatic conference this September) will contribute substantially to maintaining and promoting safety in the air. As a major aviation country and as a member of the ICAO Council, Canada has been especially active in the field of international air law, one in which we did a lot of the pioneering work in the forties and fifties and to which we continue to attach a very high degree of importance.

There has recently been significant activity in the development of International Humanitarian Law which is generally based on the four Geneva Red Cross Conventions of 1949. Since that immediate post-war era, events have shown that the Conventions should be strengthened and extended, to make them more effective in the kinds of conflict that are all too prevalent today. In particular, Canada and a number of other countries would like to see the adoption of more comprehensive, internationally agreed standards of conduct with respect to civilian populations in non-international conflict situations, such as the recent war in Nigeria. At the 1969 International Red Cross Conference in Istanbul, the Canadian Delegation presented a number of proposals on the subject which received widespread support. The International Committee of the Red Cross has now convened a meeting of governmental experts on humanitarian law to take place in Geneva at the end of May. Canada will be taking an active part with a view to securing agreement on provisions which could be incorporated in one or more international accords, supplementing and augmenting the 1949 Conventions. The United Nations has also given this matter serious attention and its Secretariat has been working in close collaboration with the Red Cross and interested governments.

One other field of international endeavour which has become of special interest to Canada concerns international action to prevent and deter the kidnapping of diplomats and other related acts of terrorism. These types of unlawful acts place responsible governments in extremely difficult situations. In order to develop an international legal framework to deal with this threat to normal diplomatic activity, the Organization of American States and the Council of Europe have, independently, been examining the possibility of drafting international conventions. We are, of course, following these developments very closely and we have been in contact with the OAS and other governments so that Canadian views and interests will be taken into account.

All these activities I have been reviewing are directed towards fostering international co-operation and better regulating man's peaceful use of the substance and attributes of the world and universe in which we live. However, dissension, disagreement, and disputes are an inevitable part of international affairs as conducted by sovereign states. The years since the last world conflict have indeed witnessed some progress in providing for their pacific resolution. Nevertheless, it is a fact -- and current crises in several regions of the globe bear this illuminating testimony -- that we have not yet created nor established effective

machinery for enforcing international law such as already exists. It seems to me that the international community is still bound up with outdated concepts which impede the settlement of differences by peaceful means. The 1969 Law of Treaties Convention, to which Canada became a party last December, makes a substantial contribution to the uniformity and applicability of international rules relating to treaties. But we have not yet succeeded in developing a similar codification of a compulsory third party settlement of disputes procedure. While I honestly wish I could say to you that this objective will be realized soon, I am afraid that contemporary international relations do not bode particularly well with respect to banishing strife and conflict in favour of law and diplomacy. Yet, responsible persons in government, in international organizations, and in private professional and academic institutions and associations, must continue to press for an end to the use of force as a means of settling disputes. While the millennium is certainly not at hand, it can perhaps be brought a little less distant.

If progress is to be made, nations must give up narrow and anachronistic ideas of sovereignty. This raises a complex and emotionally-charged subject. I for one do not regard acceptance of limitations on sovereignty unthinkable. We have already accepted such limitations in the economic and communications fields, these should point the way to acceptance of limitations of sovereignty in the interests of peace and security. I hope that Canada will find a way to provide leadership toward such a worthwhile goal.

Mr. Chairman, in my view it would not be proper to discuss international law without mentioning the International Court of Justice. Canadian views on increasing the effectiveness of the World Court are well known. The Canadian Delegation at last year's United Nations General Assembly supported a resolution adopted on "Review of the role of the ICJ". By means of this resolution member states of the United Nations, and states parties to the Statute of the Court were invited to submit to the Secretary-General suggestions concerning the role of the Court, on the basis of a questionnaire to be prepared by the Secretariat. In light of these comments, and those which the ICJ itself may wish to put forward, the Secretary-General is to prepare a comprehensive report to be available for the 26th Session of the Assembly. The questionnaire has recently been received in Ottawa and we are at present engaged in formulating the Canadian views to be transmitted to United Nations Headquarters. This initiative, which, as the resolution states, "should seek to facilitate the greatest possible contribution by the Court to the advancement of the rule of law and the promotion of justice among nations" is most welcome. Canada has always supported and will continue to support all such efforts to assist the ICJ to continue to serve, with renewed effectiveness, as the principal judicial organ of the United Nations.

...7

Before concluding, I would like to say a very few words to this distinguished audience about the skilled practitioners of the art of legal diplomacy. Many nations, including Canada, rely to a great extent on these experts to develop, promote and create a body of generally acceptable international law which is materially relevant to the modern age in which we live. This speaks much more eloquently than any individual foreign minister can, of the reliance and trust which is placed in them. I also believe that their continuing contact with important professional and academic institutions and associations, such as the ILA and CIIA, can help these legal experts to keep fully aware and take into account informed opinion on these detailed and complex subjects. This is another reason I am pleased to have had the opportunity of addressing you this evening -- to maintain and enhance this relationship between the foreign policy making branch of the government, which is directly concerned with international law, and the Canadian professional and academic community of which your Associations are a significant and influential part.

- 30 -