

CANADIAN DELEGATION TO THE UNITED NATIONS GENERAL ASSEMBLY
(SEVENTEENTH SESSION)

RELEASE ON DELIVERY



PRESS RELEASE NO.9
November 5, 1962.
Press Office
750 Third Avenue
YUkon 6-5740

CAVANAUGH DELEGATION TO THE UNITED NATIONS GENERAL ASSEMBLY
(GENERAL SESSION)

FROM: [illegible]
NUMBER: [illegible]
FROM OFFICE: [illegible]
DATE: [illegible]

RELEASE ON DELIVERY



STATEMENT BY MR. N. N. GENSER, Q. C.
CANADIAN DELEGATION TO THE SIXTH COMMITTEE

"CONSIDERATION OF PRINCIPLES OF INTERNATIONAL
LAW CONCERNING FRIENDLY RELATIONS AND
CO-OPERATION AMONG STATES IN ACCORDANCE WITH
THE CHARTER OF THE UNITED NATIONS

Mr. Chairman,

On the opening day of our debate in this committee I made clear the importance which my Government attaches to this item, entitled "Consideration of Principles of International Law concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations." It is not for this reason only however, that I have asked to be inscribed as first speaker on this question, since I am well aware that many other delegations share my views as to its importance, as is witnessed for instance by the fact that two resolutions have been filed prior even to the opening of the debate - surely an almost unique experience in the history of this committee. My purpose in speaking early in the debate is rather to make clear at the outset the views of my delegation and of the co-sponsors of Resolution L-507 of October 31, 1962 that quite apart from the intrinsic importance of this topic, in that it presents the Sixth Committee with an opportunity to make a real contribution to legal thought and to the progressive development of International Law, it also presents us with the clear choice of attempting to discuss the question as lawyers seeking workable solutions to problems, or of following a less constructive approach. I would not, of course, suggest that this committee is precluded from discussing political issues, but rather that we see little merit in a highly political discussion for its own sake in this committee, which is after all the legal committee of the United Nations. With this in mind the co-sponsors of Draft Resolution No. L-507 have taken

considerable pains to try to place the resolution on a basis that might find broad acceptance in this committee. In so doing we have not, however, considered that our approach is the only one which can be followed on this topic. Our hope is indeed that the co-sponsors of resolutions embodying other approaches will be able to agree with us that ours is not antagonistic to theirs, nor theirs incompatible with ours. I can best explain how this can be so by outlining the basis of draft resolution L-507.

Purposes of Resolution

In developing this resolution the major consideration which the co-sponsors have had in mind is to provide a firm basis upon which the Sixth Committee could, in the course of its discussions on this item, achieve concrete and positive results. It will be recalled that there has for some time been a feeling amongst many delegations that the Sixth Committee has not been living up to its potential. It has been our view that what is required in order to cure this malaise is an initiative which would provide the Committee with a constructive role in the progressive development and codification of international law, while not over-lapping or interfering with the activities of the International Law Commission. (As we all know, that body has enough work on its agenda to keep itself busy for several years.)

We have given considerable thought and study to this question and have concluded that these purposes could best be fulfilled through a proposal based on essentially legal considerations and avoiding contentious political issues as much as possible, while not ignoring political realities.

... ..
... ..
... ..
... ..
... ..

... ..
... ..
... ..

... ..
... ..
... ..

... ..
... ..
... ..

... ..
... ..
... ..

... ..
... ..
... ..

... ..

... ..
... ..
... ..

... ..
... ..
... ..

... ..
... ..
... ..

We are aware that there may be a desire on the part of some delegations that an attempt be made to enumerate general principles under the rubric of friendly relations. I do not propose to comment in detail on other resolutions embodying such an approach before their sponsors have had an opportunity to present them. I should say frankly, however, that it is our view that the more fruitful approach, in the light of the history of past attempts to produce general statements of principle governing relations between countries, would be for the Sixth Committee to commence upon an empirically-based study of specific areas of the law in need of development and codification. It is, of course, for this reason that we have embodied the latter approach in Draft Resolution No. L-507.

I might explain that in attempting to select areas of the law for study we have had in mind two main considerations: firstly, the fact that, over the last twelve years -- since the time, in other words, of the 1949 International Law Commission Draft Declaration on the Rights and Duties of States -- some fifty nations have attained membership in the United Nations, and that these nations are entitled to be heard on these questions. We have therefore attempted to select areas of particular interest to the newer nations.

Our second major consideration has, of course, been to select areas of the law which directly relate to the topic on the agenda.

With these considerations in mind we have concluded that the two fundamental principles underlying friendly relations and co-operation among states, - and the ones from which, in our view, all others flow - are the respect for the territorial integrity and political independence of states and the obligation to settle disputes by peaceful means. It is the view of the co-sponsors that while other

principles are of great importance in regulating relations between states in an orderly fashion, it is these two which comprise the essence of friendly relations.

It is our further view that the underlying purpose of the United Nations -- not merely in the Sixth Committee, but especially in the Sixth Committee -- is to work toward the development of the rule of law amongst nations. We have therefore founded our resolution upon that concept, and I should like to offer some observations on that aspect of the resolution.

Rule of Law

The importance which my Government attaches to this concept of the rule of law in international affairs can be clearly seen from the following excerpts from an address given by the Rt. Hon., the Prime Minister of Canada, Mr. John G. Diefenbaker, to a recent annual meeting of the Canadian Bar Association in Vancouver, B.C.

"This moment of history presents a point of departure to a new epoch, and possibly a point of no return. As new forces are unleashed which mean either world destruction or the realization of man's ideals and longings, the international community of nations is presented with a choice, direct and simple, which can no longer be postponed. It is a choice fundamental to society itself, and even to the survival of mankind. It is the choice between the highway of the Rule of Law and that uncertain path which has no laws to guide or control the selfish and arbitrary wills of men or to resolve the conflicts which beset them. The future for which mankind strives can be attained only in peace through law, each being the function and product of the other.

"In the domestic legal system of states it is the function of the Rule of Law, and the courts which apply it, to regulate the conduct between man and man -- by proclaiming what is permissible and what is not, by prescribing

principles or norms of human behaviour and thus preventing disputes from arising, and by adjudicating on and settling conflicts when they arise.

"In the larger sphere of the conduct and relations between state and state, the creation and interpretation of law must regulate relations between states, not by any one or several states, but by all states in common consensus and will.

"The application of the Rule of Law internationally is the fundamental basis and assurance of peace, and one of the most cardinal messages which lawyers throughout the world must carry to mankind is that the Rule of Law is synonymous with peace.

"Forward steps have been taken towards this objective for many generations, and in this century one of the significant yet undramatic developments in the relations of state and state has been the evolution of the Rule of Law in the international sphere, as formulated and laid down by the International Court of Justice and its predecessor, the Permanent Court of Justice.

The foregoing quotation conveys something, I believe, of the concept of the **R u l e** of Law upon which this Resolution is based and concerning which our co-sponsors will have more to say.

Text of Resolution

Turning now to the text of the Resolution, I should like to offer a few brief explanatory comments. It will be noted that the Resolution begins by drawing attention to the paramount importance of the Charter of the United Nations in the continuing development of the rule of law amongst nations: While the Charter is not the only law-making treaty in existence in the field of contemporary international law, it is surely the most far-reaching the most broadly based, the most fundamentally significant

...the ... of ...
...the ... of ...
...the ... of ...

"It is the ... of the ..."

...the ... of ...
...the ... of ...
...the ... of ...

...the ... of the ...

...the ... of ...
...the ... of ...
...the ... of ...

...the ... of ...

...the ... of ...
...the ... of ...
...the ... of ...
...the ... of ...
...the ... of ...

...the ... of ...
...the ... of ...
...the ... of ...

... ..

...the ... of ...
...the ... of ...
...the ... of ...

...the ... of ...
...the ... of ...
...the ... of ...
...the ... of ...
...the ... of ...

law-making instrument devised in the history of man. With all its imperfections, of which we as lawyers are aware, the Charter of the United Nations has achieved more in regulating the affairs of nations than any other treaty, or perhaps even than the totality of all other treaties. Amongst the reasons why this is so are that, as pointed out in the draft resolution, the Charter records the determination of the peoples of the United Nations to practice tolerance and live together in peace with one another as good neighbours. There can hardly be a more forward looking declaration even though conceived nearly two decades ago.

Obviously, however, the mere existence of the United Nations Charter is, of itself, not sufficient to bring about the development of the rule of law amongst nations. If I may refer again to the language of the Resolution, the fulfillment by member states of their duty to cooperate actively with one another through the United Nations, and to respect international rights and perform in good faith, treaty and other international obligations, is essential for the creation of conditions of stability and well-being necessary for the achievement of peaceful and friendly relations among states.

Even strict adherence to treaty rights and the rules of customary international law is, however, no longer sufficient in the world in which we live. It is becoming increasingly evident that there is a close relationship between the progressive development of international law and the ultimate establishment (through the promotion of international cooperation in the economic, social, cultural, education and health fields, and through the realization of human rights and fundamental freedom for all, without distinction as to race, sex, language or religion), of conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained. It is clear, of course, that many of these activities, highly desirable as they are, do not fall within

the domain of the Sixth Committee.

It is equally clear, however, that certain areas of international law are, as stated in this Resolution, in need of clarification and progressive development if law is to make a fuller contribution to social progress, better standards of life and friendly relations and cooperation among states. This increasingly compelling need is closely related to the emergence of many new states who are in a position, as stated in the Resolution, to make substantial contributions to the progressive development and codification of international law. New nations emerge into an already existing social, political and economic order based on many well-settled rules and principles of conduct between nations in these several spheres. It is not enough however, to say to such nations that these rules and principles which, until now, you have had little opportunity to help formulate, are, because they are well-founded, nevertheless settled for all time. To repudiate all the past, however, would be to bring about utter chaos.

If then, the rule of law is based upon, and productive of, stability, it is not and cannot ever be merely an affirmation of the status quo. Those nations familiar with the common law process need not be reminded that its best characteristic is its flexibility and its adaptability to changing conditions. If international law is also seen in this light, it is readily apparent that the rule of law cannot be an affirmation of the status quo but is rather the antithesis of it. The rule of law represents, therefore, at once a dilemma and a paradox since, while it must be flexible, it can only be effective if it is productive of an orderly regulation of conduct amongst nations; hence the intimate relationship between the rule of law amongst nations and the progressive development of international law.

With these general considerations in mind, the draft resolution begins, in its first operative paragraph, by making a clear affirmation that the rule of law is essential for the

The first part of the report deals with the general situation of the country.

The second part of the report deals with the economic situation of the country.

The third part of the report deals with the social situation of the country.

The fourth part of the report deals with the political situation of the country.

The fifth part of the report deals with the cultural situation of the country.

The sixth part of the report deals with the international situation of the country.

The seventh part of the report deals with the future of the country.

The eighth part of the report deals with the conclusion of the report.

The ninth part of the report deals with the appendix of the report.

The tenth part of the report deals with the bibliography of the report.

The eleventh part of the report deals with the index of the report.

The twelfth part of the report deals with the list of figures of the report.

The thirteenth part of the report deals with the list of tables of the report.

The fourteenth part of the report deals with the list of maps of the report.

The fifteenth part of the report deals with the list of abbreviations of the report.

The sixteenth part of the report deals with the list of acronyms of the report.

The seventeenth part of the report deals with the list of symbols of the report.

The eighteenth part of the report deals with the list of footnotes of the report.

achievement of the purposes of the United Nations, particularly the development of friendly relations and cooperation among states, based on respect for the principles set forth in the Charter of equal rights and self-determination of peoples and of the sovereign equality of all Member States.

The second operative paragraph makes a clear-cut affirmation of the Charter as the fundamental statement of principles of international law governing friendly relations and cooperation among States, notably, the obligation to respect the territorial integrity and political independence of States and the obligation to settle disputes by peaceful means. I will leave it to my co-sponsors to develop this theme more fully, but I should like, if I may, to indicate the importance which my Government attaches to peaceful settlement of disputes by the following excerpts from the previously-mentioned address by the Prime Minister of Canada.

Peaceful Settlement of Disputes

"The history of international arbitration and of the pacific settlement of disputes in this century has shown that, if a world order with the Rule of Law as its base is to be brought into being, there must be something more in existence than the machinery for settling international disputes.

"The fifteen judges of the International Court have been men of capacity and ability, but only thirty contentious cases have been submitted to the Court, several of which were stricken from its list for lack of jurisdiction, and in addition ten advisory opinions have been given.

"Eighty-five states are parties to the Statute of the International Court, of which thirty-eight states have accepted the compulsory jurisdiction of the Court. Of these, thirteen have accepted unconditionally, or subject

only to the condition of reciprocity; nine have accepted subject only to reciprocity, and with respect to those disputes which arose after the declaration came into being; sixteen states have more restrictive conditions.

"Jurisdiction is the key, the sine qua non, for the existence of the universal Rule of Law -- and by that I mean compulsory jurisdiction. For this reason, the goal of all peace-loving states should be directed to bring about the acceptance of the compulsory jurisdiction of the International Court of Justice by members of the international community of nations as a whole.

The Court, as the judicial arm of the United Nations, needs to have the opportunity to play a larger and more dynamic role. What I wish to emphasize is that anything which the international community of nations does to strengthen the International Court of Justice will strengthen the Rule of Law itself, and as a preliminary step, the General Assembly of the United Nations might well give consideration to a comprehensive study of the wider use of the Court by all member states."

The foregoing quotation gives an indication of the nature and extent of the interest of my Delegation in this aspect of the Resolution, which our co-sponsors will develop in greater detail in their statements.

Implementing Provisions

Returning again to the Resolution, paragraphs three, four and five go on to spell out the means whereby the Sixth Committee might attempt to develop and codify these two cardinal principles through inscribing them as separate topics on the Agenda of the Eighteenth Session, and requesting the Secretary-General to invite member states to submit comments concerning these topics and to communicate them to member states prior to the Eighteenth Session.

The first part of the report deals with the general situation in the country. It is noted that the economy is in a state of depression, and that the government is unable to meet its obligations. The report also mentions the fact that the population is suffering from a lack of food and clothing, and that the government is unable to provide for their needs.

The second part of the report deals with the financial situation. It is noted that the government is unable to raise enough money to meet its obligations, and that the country is in a state of financial crisis. The report also mentions the fact that the government is unable to pay its debts, and that the country is in a state of bankruptcy.

The third part of the report deals with the political situation. It is noted that the government is unable to govern the country, and that the country is in a state of political chaos. The report also mentions the fact that the government is unable to maintain law and order, and that the country is in a state of anarchy.

The fourth part of the report deals with the social situation. It is noted that the population is suffering from a lack of education and health care, and that the government is unable to provide for their needs. The report also mentions the fact that the government is unable to provide for the needs of the poor, and that the country is in a state of social crisis.

The fifth part of the report deals with the military situation. It is noted that the government is unable to maintain a strong military, and that the country is in a state of military weakness. The report also mentions the fact that the government is unable to defend the country, and that the country is in a state of military crisis.

The sixth part of the report deals with the international situation. It is noted that the country is in a state of international isolation, and that the government is unable to maintain good relations with other countries. The report also mentions the fact that the country is unable to participate in international affairs, and that the country is in a state of international crisis.

The seventh part of the report deals with the future of the country. It is noted that the country is in a state of hopelessness, and that the government is unable to provide for the future of the country. The report also mentions the fact that the country is unable to develop, and that the country is in a state of stagnation.

Summary

In summary, it can be seen that draft resolution number L-507 attempts to confine the terms of reference of this Committee to workable dimensions and to postulate a clear-cut course of action susceptible of concrete and positive results, namely, the study of the principles of the obligation to respect the territorial integrity and political independence of states and of the obligation to settle disputes by peaceful means.

I should like, if I may, to conclude with one further quotation from the speech by the Right Honourable Prime Minister of Canada, John G. Diefenbaker, which summarizes the approach of the Canadian delegation to this whole question:

"In the stabilizing influence of the law, and in the maintenance of the spiritual things of freedom, peace with justice will be attained. In the strict regard by all nations to international obligations, and in a mutual desire to cooperate by all nations, mankind will be able to take the first faltering steps to disarmament and to ultimate peace.

"There will be those who will contend that blueprints for peace have been drawn in the past, and have failed. They will tell you that in 115 years there have been 73 wars; that in three centuries there has been a world war every twenty-three years. All these things are true. Pacts in themselves are not sufficient and will only succeed when justice under law and the pacts are builded together.

"By upholding the sanctity of the Rule of Law, by promoting respect for the law, by vigorously doing all we can to achieve and maintain freedom under law, lawyers will be contributing to the realization of the new order where peace and the Rule of Law are inextricably linked, where peace is secured through law, and where law will become the true and final security for all mankind."

1944

The first part of the report deals with the general situation in the country. It is noted that the economy is still in a state of depression, and that the government has taken various measures to stabilize the situation. The report also mentions the progress of the war and the impact it has had on the civilian population.

In the second part, the report discusses the financial situation of the country. It is noted that the government has incurred large losses, and that the national debt has increased significantly. The report also mentions the measures taken to reduce the deficit and to improve the balance of payments.

The third part of the report deals with the social and cultural situation in the country. It is noted that the population is suffering from poverty and unemployment, and that there is a general feeling of despair. The report also mentions the progress of the education system and the state of the arts and sciences.

In the fourth part, the report discusses the political situation in the country. It is noted that the government is still in a state of transition, and that there are various factions vying for power. The report also mentions the progress of the democratic process and the state of the constitution.

The fifth part of the report deals with the international situation in the country. It is noted that the country is still isolated, and that there are various international organizations working to help it. The report also mentions the progress of the diplomatic relations and the state of the international community.

The sixth part of the report discusses the future prospects of the country. It is noted that there are various challenges ahead, but that there is also a great deal of potential. The report also mentions the measures taken to improve the situation and to build a better future for the country.

These words express better than anything I have previously said, the underlying concepts embodied in draft Resolution L-507. It is our earnest hope that this Resolution will find wide support amongst the member states of the United Nations.

The General Assembly,

Recognizing the paramount importance of the Charter of the United Nations in the continuing development of the rule of law among nations,

Recalling that the Charter records the determination of the peoples of the United Nations to practice tolerance and live together in peace with one another as good neighbours,

Convinced that fulfillment by Member States of their duty to co-operate actively with one another through the United Nations, and to respect international rights and perform in good faith treaty and other international obligations, is essential for the creation of conditions of stability and well-being necessary for the achievement of peaceful and friendly relations among States,

Considering that certain areas of international law are in need of clarification and progressive development if law is to make a fuller contribution to social progress, better standards of life and friendly relations and co-operation among States,

Conscious of the significance of the emergence of many new States and of the contribution which they are in a position to make to the progressive development and codification of international law,

1. Affirms that the rule of law is essential for the achievement of the Purposes of the United Nations, particularly the development of friendly relations and co-operation among States based on respect for the principles set forth in the Charter of equal rights and self-determination of peoples and of the sovereign equality of all Member States;

2. Affirms also that the Charter is the fundamental statement of principles of international law governing friendly relations and co-operation among States, notably, the obligation

...the ... of ...

to respect the territorial integrity and political independence of States and the obligation to settle disputes by peaceful means;

3. Resolves to consider, in relation to specific principles of international law of immediate and universal concern such as those referred to in paragraph 2, the development of the rules of international law and international procedures with a view to the more effective application of those principles;

4. Decides accordingly to inscribe on the provisional agenda of its XVIIIth Session the topics of the obligation to respect the territorial integrity and political independence of States and of the obligation to settle disputes by peaceful means;

5. Requests the Secretary-General to invite Member States to transmit written comments concerning the topics referred to in paragraph 4, and to communicate those comments to Member States before the beginning of the XVIIIth Session.

October 15, 1962.

1914

... ..

...

... ..

...

... ..

...

... ..