



STATEMENTS AND SPEECHES

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THE RULE OF LAW IN INTERNATIONAL AFFAIRS

Notes for an address by the Prime Minister of Canada, Mr. John G. Diefenbaker, to the annual meeting of the Canadian Bar Association, Vancouver, B.C., on September 4, 1959.

Politics and law have been closely associated in the history of Canada, and I am one of those whose life has been divided between law and public life. That many lawyers take part in public affairs in all spheres -- national, provincial and municipal -- and have done so, needs no proof. However, it is of interest that of Canada's thirteen Prime Ministers since Confederation, nine have been lawyers. By way of comparison, in the United Kingdom during the same period of time only two of its Prime Ministers have been members of the legal profession.

"Politics and law" are in natural association, as are the words "law and order". If the sequence is reversed in "law and order" to "order and law", the true relationship that exists between politics and law is revealed. Politics is the science of organizing social energies for effective group life, and law represents the institutions and rules by which that organization is made formal and given permanence and regularity.

An important subject of discussion at this Convention has been the Rule of Law. While some of the issues were considered by a distinguished panel this morning, I intend to discuss some international problems connected with the Rule of Law which have challenging implications, and for which lawyers have a responsibility to provide the answers which are juridical as well as political.

International Problems

There are at least five main categories of international problems to which law and lawyers can address the best of their experience and resources, and for which sound legal and political answers are needed.

First, there is the fundamental clash of ideologies between the Sino-Soviet peoples and the non-communist world, and the effect on foreign policy and on the behaviour of all states within the framework of a stable international system, as the world alternates between periods when the communist world is engaged in violent verbal and aggressive offensive and the often simulated posture of peaceful negotiation.

Secondly, there is the emergence of many colonial peoples to statehood, those "new sovereignties", sensitive and urgent in a search for a place in the stream of history.

Thirdly, there is the "population explosion", with its incalculable effects in this and the next generation on international society everywhere in the world.

Fourthly, there are the scientific break-throughs that, by the manufacture of thermo-nuclear weapons and the increasingly successful explorations in space, have altered forever the shape of warfare and the very perspective of this planet.

Finally, there is a search for international institutions that will help to resolve old and new conflicts between states and peoples, and provide a new framework within which international co-operation may be encouraged and directed for common security, welfare, and international peace.

Canada's Contribution

Canadians have made important contributions to international law and international legal developments, including the Canadian proposals on the Law of the Sea at the Geneva Conference last year which would limit sovereignty to 6 miles and add a zone of 6 miles for fisheries' control; and the measurement of down-stream and up-stream rights and benefits as between states sharing a common boundary river, as for instance in the case of the Columbia River. These have had a marked influence on international thinking. Furthermore, there has been advanced research into the legal problems of outer space, in particular at the McGill University Institute of International Air and Space Law.

Time for a Choice

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.

Law or Disaster

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 behavior 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 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 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.

International Court of Justice

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.

Conditions Made by States

The major reservations of Canada have to do with those disputes arising between members of the Commonwealth of Nations and those arising out of the Second World War. The United Kingdom, Australis, New Zealand, and South Africa have generally the same restrictive conditions; Canada applies several other reservations which are of no particular importance.

Forty-seven states, including all the communist states, have not accepted the compulsory jurisdiction of the Court, and few of the newer member-states of the United Nations, particularly in Asia and Africa, have taken action under Article 36, the section dealing with jurisdiction of the Statute of the International Court of Justice. While positive progress has been made to bring about the application of Rule of Law internationally, it is clear from the stage of development existing in the domestic systems of states that it will not be attained until all states accept compulsory jurisdiction of the Court over all legal disputes between state and state.

Recently there have been several signposts which offer evidence of a resurgence of interest in the Court, and there is reason to feel hopeful that the international community of nations will tend to move gradually towards the universality of the Rule of Law.

As an example, the United States' acceptance of the compulsory jurisdiction of the Court is subject to a reservation which excludes from the Court's jurisdiction matters falling within the domestic jurisdiction of the United States, as determined by the United States, and I emphasize the words.

The Charter of the United Nations specifically provides that:

"Nothing in the Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the members to submit such matters to settlement under the Charter."

Because of this provision it might be argued that such a reservation by the United States does not detract from the compulsory jurisdiction of the Court. Such is not the case, as there are two classes of domestic jurisdiction reservations -- one which leaves it to the Court, as does Canada, to decide what is a domestic matter, and the other which reserves the right to the state to decide the question.

Some consideration has been given in the United States to bring the American reservation into line with that in effect in Canada, and a resolution to this effect has been tabled in the United States Senate.

In July, France, which until then had a domestic jurisdiction clause of a like effect to that of the United States, formally renounced the power which it had reserved to itself and will hereafter leave it to the Court to determine.

It is of interest that in 1957 the United Kingdom decided to exclude from the Court's jurisdiction such disputes as, in the opinion of the United Kingdom Government, affected its national security, and in November 1958 deleted the reservation in this regard.

Western nations, indeed all peace-loving nations, by expanding the compulsory jurisdiction of the International Court will be doing their part as architects of a world legal order, with the Rule of Law as its basic pillar.

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 the members of the international community of nations as a whole. That this is still far in the future must be admitted, as the communist world systematically continues to ignore the Court.

Need for Stronger Court

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.

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 the 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.

International Police Force

The establishment of an International Police Force would be a further step in the maintenance of the Rule of Law internationally. This has been a perennial subject for discussion among international lawyers since the days of Grotius. It was advocated by Castlereagh at the Council of Vienna. It was considered at the Versailles Conference in 1919 and

during the days of the League of Nations. At San Francisco in 1945 mankind believed that it was about to be mobilized.

An International Police Force is still the hope of an assured world peace, but to become a mighty instrument in the maintenance of the Rule of Law it has yet to receive more than vocal approbation among world leaders.

Jurisdiction in Outer Space

There have been many times in history when man has stood on the threshold of a new age, but none to surpass the present, as man is poised to explore and to exploit the universe of outer space. This is the age of nucleus -- that infinitesimally minute world, held together by forces so titanic that whether released in bombs for death or reactors for life, they have changed man's thinking and his future. Considerable progress has been made in the control and peaceful use of atomic energy through the establishment of the International Atomic Energy Agency of the United Nations, through the creation of "EURATOM" for the Community of Six in Europe, and through a number of bilateral agreements as well.

To facilitate the peaceful interchange of atomic energy information and the supply of the necessary raw materials and know-how is an immediate problem, so that mankind can benefit from the almost limitless but manageable power that nature has stored in the nucleus.

The scientific break-through which, when linked with nuclear energy, spells either heroic adventure or total disaster for mankind, began with Sputnik and has developed into an international race to launch a human being into space.

The question of jurisdiction in outer space and of the control of celestial objects such as the moon, which scientists believe is but a generation away from discovery and physical exploitation by man and states, has brought problems which deserve and demand early solution.

Canada, and other nations of the Commonwealth, have been willing to enter into an agreement that would jointly control outer space missiles and satellite developments, but the U.S.S.R. is not willing to do so.

Canada has advocated that objects projected into outer space must be for peaceful or scientific purposes.

I have advocated:

- (a) the setting up of an international space agency, named by the United Nations General Assembly, with inspection and control powers to police all operations, to assure that jurisdiction of the atmosphere shall

be vested in the United Nations to the end that outer space shall be used for scientific and peaceful operations only; and,

- (b) that an international convention should be established to assure that in the launching of any satellites or rockets and projectiles, previous notifications should be given, the information and observations secured being made mandatorily available to all nations.

The Paris Convention of 1914, as confirmed in 1944, whereby every state should have complete sovereignty over the air space above it, has been outgrown by the advances of science.

The time has come when a declaration should be made that every nation, however weak, should have the same territorial rights in space as the powerful.

Last autumn in the General Assembly there was general agreement on the need for an international group to make an initial examination of the scope of the problem, and on the terms of reference appropriate for such a group.

It was agreed that such a survey should include:

- (1) The existing international activities and resources;
- (2) The areas and programmes of international co-operation which could appropriately be undertaken under United Nations auspices;
- (3) The future organizational arrangements to facilitate international co-operation;
- (4) The nature of the legal problems which might arise in connection with the exploration of outer space.

Committee on Peaceful Uses of Outer Space

However, the composition of the group proved to be a source of controversy which could not be resolved. A group of twenty nations, including Canada, proposed the creation of an ad hoc committee on the peaceful uses of outer space, with its membership based on scientific competence, with due regard to geographical distribution.

The Soviet approach has been a political one and calls for equal representation of the Soviet bloc and the Western world, with the addition of certain "neutrals". The Assembly approved the composition of the group proposed by the West, which included the Soviet Union, Poland and Czechoslovakia, but these states refused to participate.

The ad hoc Committee was convened early in May with thirteen of the eighteen members in attendance (with India and the United Arab Republic not participating because of the absence of the Soviet bloc member). In July a report was produced

covering the four aspects of the problem outlined in the terms of reference.

While it is regrettable that the communist states have not joined, it is gratifying that co-operation in specific practical projects related to space research is continuing in various countries.

Canada has shared its facilities at Churchill with the United States for part of its rocket programme during the International Geophysical Year. Canadian scientists provided the instrumentation for two high-altitude experiments carried in United States rockets during that period, and intend to instrument a satellite to be placed in orbit by a United States rocket about 1961.

However, action under United Nations auspices loses much, if not all, of its significance without the participation of the U.S.S.R.

Many questions arise, such as where does sovereignty over air space end, and where does outer space begin? How can the status of outer space be defined if it is not subject to the sovereignty of the individual state? Should not outer space, as in the case of the high seas, be regarded as res omnium communis, a thing belonging to all, and not subject to appropriation by any one?

Another problem, and here I am probing more deeply into the future, is the regulation of spacecrafts. What control should be applied to them? On what basis would liability be determined in the event of collisions and other accidents, what rules of safety should be followed?

It has been agreed that until more is known action should not be taken in attempting to discuss or to solve these problems.

From a speculative point of view, action may now be difficult, but the advance of technology is so rapid that it is now the common responsibility of all nations to concern themselves in order to ensure that the tremendous potentialities of outer space, both for good and for evil, shall be harnessed for the benefit of mankind and all nations, large or small, in the interests of peace.

Ultimate Objectives

Mankind's ultimate objective must be to bring about a regime which will ensure that outer space will be used for scientific and peaceful purposes only. This objective is closely connected with the need for general disarmament, a need which makes Soviet collaboration and co-operation indispensable.

Mr. Justice Holmes, when speaking of the law, declared that: "A man can live as greatly in the law as elsewhere". Mankind cannot survive elsewhere than in the law, and under the law.

The moral and intellectual "most" from everyone is demanded if dangerous international tensions are to be resolved. No profession has a greater part to play in finding the way to peace under law than lawyers.

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 co-operate by all nations, mankind will be able to take the first faltering steps to disarmament and to ultimate peace.

It has been said of this generation of the cold war that it moves "beyond the tower and the abyss" -- the tower being the high heights to which standards of men everywhere in the world can be raised if mankind wills to take the pathway of peace; the abyss is the bottomless depths to which mankind will fall if we fail to solve world differences by specific means and armed conflict takes place, with the arithmetic of scientific destruction being almost limitless.

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, with world-wide acceptance of the International Court.

I believe that, beginning with the world-wide acceptance of the International Court of Justice and, in the process of time, an international control over outer space, ultimately an International Police Force can be established. Then, and only then, will peace under law be attained.
