

Bulletin

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THE RULE OF LAW IN INTERNATIONAL AFFAIRS

The following passages are from an address by Mr. Mitchell Sharp, Secretary of State for External Affairs, to law students at Osgoode Hall, Toronto on March 4:

...You will not be surprised to learn that a high proportion of the Canadian delegates and advisers to each session of the United Nations General Assembly are lawyers, and I believe the same is true of all other delegations. The significance of law and legal skill in the work of the United Nations is particularly impressive. It is only a slight exaggeration to say that the development and application of the Rule of Law, in its widest sense, is what the United Nations is all about.

Over the years, substantial progress has been achieved through the United Nations in setting international objectives and standards, particularly with regard to the intrinsic worth and treatment of the human being. We are continually being distressed and disheartened at the vast suffering and loss of life caused by the armed conflicts that plague the international community. But we can take some encouragement from the successful efforts of the United Nations to place the dignity of every man in an incontestable legal context. The Universal Declaration of Human Rights, the 1966 International Covenants and many other similar declarations and agreements on human rights together constitute what amounts to an International Bill of Rights.

Where the United Nations or, more correctly, the international community at large, moves far too slowly is in the development of machinery for enforcement of these rights. Contemporary international law is still bound up with outdated conceptions of national interest, which hinder the effective settle-

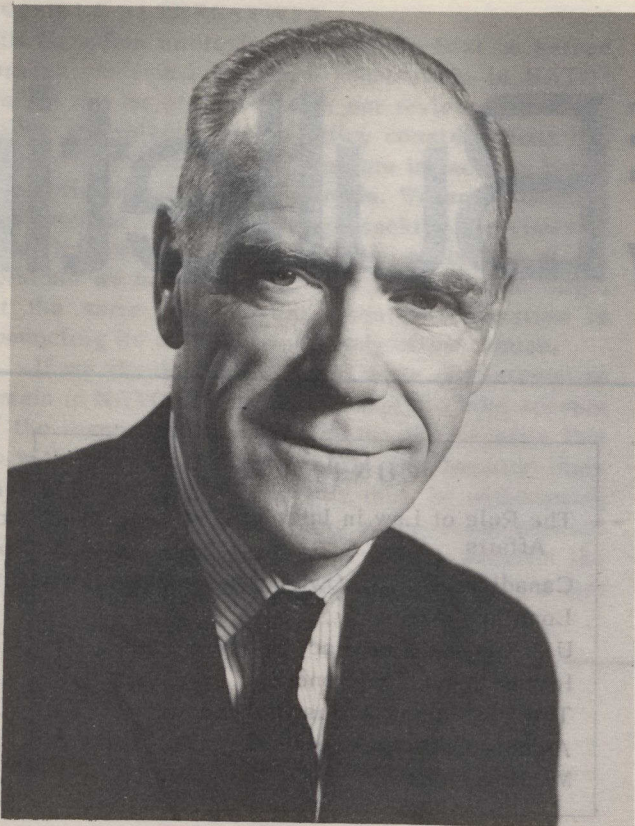
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ment of disputes by peaceful means. In spite of the lack of international enforcement machinery, however, states do increasingly adhere to the generally recognized principles of international law, particularly those constituting treaty obligations. The vast interlocking network of bilateral and multilateral treaties now in effect represents the progress that has been made toward placing contemporary international relations within a legal framework. A similar advance in compulsory third party settlement of disputes is, however, still to come.

UN LAW-MAKING

The vigour and range of United Nations law-making activities are not always fully appreciated. At the present moment, various UN bodies are studying and elaborating legal principles in the following fields: human rights, which I have already referred to; the law of treaties; the definition of aggression; the seven basic principles of international law in the United Nations Charter, which are euphemistically called "friendly relations"; private international law relating to trade; the sending and receiving of *ad hoc* special diplomatic missions; and the relations between states and international organizations. As you can see, despite gloomy pronouncements that international law is dead, it is alive and kicking at the United Nations.

For the future, some of the most exciting prospects lie in the application of legal principles to the new frontiers of man's endeavours. It was not so many years ago that the discovery and study of



*The Honourable Mitchell Sharp,
Secretary of State for External Affairs*

Antarctica had turned the world's southernmost continent into a source of international friction and controversy, brought on by competing territorial claims. The Antarctica Treaty of 1959 converted this area into one of peaceful co-operation. Now we are concerned with the exploration and use of outer space; and tomorrow it will likely be the sea-bed and ocean-floor.

The orbiting of the first Soviet *Sputnik* in 1957 heralded the arrival of our space age. Drawing on the Antarctic experience, the General Assembly established a Committee on the Peaceful Uses of Outer Space, which created a Legal Sub-Committee, including Canada, to study "the nature of legal problems which may arise in the carrying out of programmes to explore outer space". Eventually, in 1962, sufficient agreement was achieved to make possible the unanimous adoption by the General Assembly of the "Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space". The General Assembly agreed also that the substance of the Declaration should form the basis of a treaty on outer space. Some states voluntarily declared that they would abide by the legal principles contained in the Declaration. As the United States Ambassador, Adlai Stevenson, said: "We believe these legal principles reflect international law as it is accepted by the members of the United Nations. The United States, for its part, intends to respect these principles."

The Soviet representative, Mr. Fedorenko, replied that: "The Soviet Union, for its part, will also respect the principles." Thus, by unanimous declaration, the United Nations succeeded in making new international law. Canada played an active role in the embodiment of these declared principles into the Outer Space Treaty of 1967.

LAWS FOR OUTER SPACE

The Treaty confirms that the exploration and use of outer space shall be for the benefit of all countries, irrespective of the degree of their economic or scientific development. It proclaims the complete freedom of outer space and its use without discrimination of any kind. It affirms that outer space and celestial bodies, including the moon, are not subject to national appropriation and that they shall be used exclusively for peaceful purposes. It prohibits the stationing in space or on celestial bodies of nuclear weapons and other kinds of weapons of mass destruction. It also extends the provisions of international law to activities conducted in outer space and on celestial bodies. It is immensely encouraging that our fractious world community has found the wisdom to establish an orderly regime for an area which would well have become a major source of discord.

The United Nations and its Outer Space Committee are continuing to elaborate the law of outer space. An agreement on the rescue of astronauts, the return of astronauts, and the return of objects launched into outer space came into force in December last year. It balances the interests of those states launching and recovering astronauts and space objects with the sovereign rights of states on whose territory search and rescue operations may be conducted. But its overriding concern is for the safety and prompt return of the "envoy of mankind" — the astronaut.

The next task for the Outer Space Legal Sub-Committee is to draft an agreement on liability for damage caused by objects launched into outer space. Given the dramatic increase in the number and size of space objects launched each year, it is inevitable that accidents will one day occur in which damage will be caused on earth. International lawyers are seeking to prepare for this much in the same manner as they did when aeroplanes were first introduced.

CONTROL OF SATELLITES

Canada is now taking a leading part in the United Nations study of the technical feasibility and related implications of one of the newest developments in space technology — direct broadcasting from satellites, beaming television programmes from one country straight into the homes of another. Satellites are of great interest to Canada as it is our intention to establish our own domestic satellite communications system. So we collaborated with Sweden in encouraging the establishment of a special United Nations working group to study the subject and in presenting

CANADIANS ONLY TO OWN CANADIAN SHIPS

A recommendation that the right to own and register ships in Canada be restricted to Canadian citizens and companies incorporated in Canada is contained in the report of a special inquiry by the Canadian Transport Commission, made public recently by Transport Minister Paul Hellyer. Under the present terms of the Canada Shipping Act, a vessel may be registered under the Canadian flag by citizens or corporations or Commonwealth countries or the Republic of Ireland.

The report, by the CTC's water-transport committee, also proposes a federal guide-line to limit the expansion of Great Lakes fleets owned or controlled by iron-ore companies. It sees a danger that unchecked growth by these "captive fleets" could destroy effective competition in the lakes bulk shipping industry.

The inquiry into ship ownership and registration law was initiated at Mr. Hellyer's request late in 1967 and included public hearings last April in Ottawa and Vancouver. Briefs were submitted by 25 companies and organizations.

SUBSIDIARIES INCLUDED

Dealing with the question of Canadian subsidiaries of foreign corporations, the report recommends that only firms whose senior management personnel are Canadians should be allowed to own and register ships in Canada. It rejects as unworkable the idea of identifying a Canadian ship-owning corporation by the degree of share ownership involved.

This management qualification would "help to assure, in cases where there is a specifically Canadian interest involved as opposed to that of a foreign interest, that the Canadian interest is given the weight to which it is entitled," the report says.

LOAN TO BRAZIL

The Government of Canada has approved a development loan of \$9,320,000 to Brazil, which will be used to expand electric power generation, transmission and distribution facilities in ten Brazilian states. In making the announcement, the Secretary of State for External Affairs, Mr. Mitchell Sharp, stated that the loan, which will bring electricity to an additional two million Brazilians, is the largest single loan Canada has extended to a Latin American country.

THREE PROJECTS

The programme will be under the control of Centrais Electricas Brasileiras (Electrobras), which will use the money to finance three Brazilian electrical development projects. The first of these will require \$7,592,000 of the total to build a steam power-plant in the City of Belém, comprising two turbo-generating

GREAT LAKES TRAFFIC

The 30,000-word document, signed by CTC Commissioners H.J. Darling, the committee chairman, A.P. Campbell and J.E. Dumontier, takes special note of the Great Lakes bulk traffic situation.

During the inquiry, independent carriers contended that the private fleets of iron-ore and steel interests threatened to secure a monopoly over bulk commodity movements in the St. Lawrence and Great Lakes region. Ore vessels that carry ore up the Seaway system from ports on the lower St. Lawrence River usually seek return grain cargoes.

The report says the economies of this two-way movement are too important to be prohibited. But it agrees that a potential danger to competition exists and must be met.

"We therefore recommend that the Government lay down as a guide-line that the fleet of any iron-ore company or its affiliate, associate or subsidiary shipping company neither carry nor contract to carry in any one year more than 20 per cent of its own or associated company's traffic...less any amounts carried on behalf of other ore companies," the committee says.

During 1967, six bulk carriers operated under the Canadian flag by ore and steel interests handled slightly more than 10 per cent of the upbound ore traffic through the St. Lawrence Seaway. Grain was carried on about half of the return trips.

The report says the proposed 20 percent limit would allow for some expansion of captive ore fleets without threatening other shipping interests.

Another recommendation by the committee calls for broader control by the Canadian Transport Commission over acquisitions in the transportation industry.

units each with a nominal capacity of 25MW. The project will take four years to complete and will supply sufficient energy to meet estimated needs in the region until 1977.

The second portion of the loan, amounting to \$864,000, will be used by Electrobras to retain the services of a Canadian engineering consultant firm which will supervise the extension and improvement of the distribution systems of nine electric companies in northeast Brazil. The project will include the installation or reconstruction of sub-transmission lines, primary distribution feeders, sub-stations, and miscellaneous regulating and control equipment. It will take about three and a half years to complete.

The final portion of the loan, also amounting to \$864,000, will be used by Electrobras to hire a Canadian consulting firm to give technical assistance for four years on high-voltage transmission and hydroelectric plan programming.

PROGRAMME TO DATE

The Canadian development assistance programme was expanded to include Latin America in 1964, when it was decided that \$10 million would be allocated from the newly-created development loan fund and that loans approved under the programme would be administered for Canada by the Inter-American Development Bank. Since 1964, an additional \$10 million has been allocated each year, bringing the total to \$50 million.

To date, under the Canadian International Development Agency programme, development loans have been extended to ten Latin American countries as well as to the Central American Bank for Economic Integration.

U.S. - CANADA AUTO PACT BENEFITS

The Canada-United States Automotive Products Agreement of 1965 indicates "the possibilities of strengthening economies and expanding international trade without the restraints of additional tariff and non-tariff barriers," according to the Bank of Montreal's February *Business Review*. The auto pact is also, the *Review* adds, a recognition by industry and government that, under certain circumstances, industry can meet the needs of a market efficiently only through integration.

In the last four years, Canada's exports of automobiles and parts have increased nearly sixfold.

EFFECT ON EXPORT TRADE

"Domestic exports of automotive products, totalling no less than \$2.6 billion, compared to \$177 million only four years earlier, far exceeded the combined export value of wheat and newsprint in 1968," the *Review* says. The expanding automotive trade played a major role in pushing Canadian exports to \$13.2 billion last year, which was a 19 percent increase over exports in 1967.

Before the auto pact, Canadian imports of cars and parts consistently exceeded exports. Canada bought about 7.5 percent of all North American cars but manufactured only 4 per cent.

Since the Agreement was signed, the Bank of Montreal notes, "not only has the serious imbalance in trade been improved but automobile production in Canada has increased substantially more than sales".

Between 1965 and 1967, manufacturers of cars and parts invested an average \$200 million annually in plant and equipment, compared to an annual average of \$65 million for the three previous years. The value of motor-vehicle shipments rose from \$1.7 billion in 1964 to \$2.5 billion in 1967, while parts shipments rose from \$629 million to \$899 million. At the same time, employment in the industry increased by 18.5 per cent, though the volume of Canadian sales went up by only 12.3 per cent.

The Agreement freed trade on certain automotive products to allow "greater industrial and economic integration...of auto firms with the basic objective of creating a single North American market in automotive products," the *Review* states. "There is no doubt...that benefits have accrued on both sides of the border. Views expressed by both government and automotive manufacturers appear to indicate a desire...for continuation of the arrangement."

INTERNATIONAL CONFERENCES

QUALITY OF FISH

The growing importance of quality control of the world's fisheries will be discussed at a major international conference to be held in Halifax, Nova Scotia, this summer. The meeting, which is being sponsored by the Food and Agriculture Organization of the United Nations (FAO), will be attended by more than 300 delegates from 40 countries.

Among the topics to be discussed at this gathering, which is scheduled for July 15 to 25, are the organizational aspects of fish-inspection principles of quality control and new methods of quality determination. Methods used in the fisheries in different parts of the world will also be assessed, and it is hoped that certain techniques and test methods will win general acceptance as a result of the discussions.

AGRICULTURAL AVIATION

The National Research Council has announced that two international conferences will be held this summer at Queen's University, Kingston, Ontario. The Fourth International Agricultural Aviation Congress, from August 25 to 29, is expected to hear speakers from many parts of the world and to facilitate the exchange of information on international progress in agricultural and forestry aviation, as well as co-operation in research, technology and operations.

Delegates to the Congress will see a demonstration and display of aircraft, aircraft parts, dispersal equipment, electronic gear, pesticides, chemical products, and safety devices, etc.

BIRD HAZARDS TO AIRCRAFT

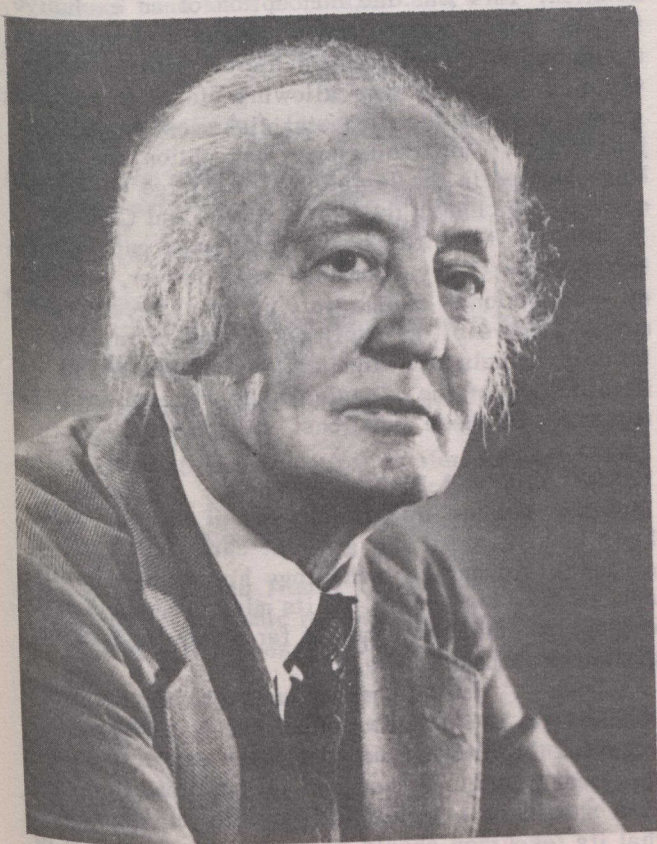
From September 2 to 5, a world conference will be held on Bird Hazards to Aircraft. The object is to determine the seriousness of the hazard to aircraft from birds and to decide how much worse it is likely to become with the increased use of jet aircraft. The conference will study the methods being used to overcome the problem in various countries.

The largest markets for Canadian lumber are the United States and Britain. Other major markets include Japan, Australia, Central America, France and the Netherlands.

THE PASSING OF MARIUS BARBEAU

Dr. Marius Barbeau, Canada's foremost ethnologist and folklorist, died on February 27 at the age of 86. Dr. Barbeau, one of the first Canadian scientists to interest himself in ethnology, carried out elaborate studies of Canadian Indians, particularly those of the Northwest coast, thoroughly documented in numerous books and articles which are among his many legacies to Canada.

His reputation as a student of folklore was firmly based on an outstanding contribution to the recorded history of Canada by tireless research on and documentation of the spirit, habits and customs of the peoples of Canada.



Dr. Marius Barbeau
1883-1969

Dr. Barbeau recorded and classified historical evidence of all sorts, tangible and intangible: costumes, customs, furniture, firearms, utensils, games, phrases, prejudices, songs, legends, tales, anecdotes, art – anything and everything that dealt with the life of the individual Indian, French-Canadian or pioneer.

Born at Ste. Marie de Beauce, Quebec, Marius Barbeau grew up in an atmosphere filled with the lore, music and art of the common people, all of which was of great importance in his later life. His insatiable curiosity led him into many fields of endeavour, in each of which he laboured with enthusiasm.

In 1910, Dr. Barbeau became an anthropologist with the National Museum of Canada (then part of the Geological Survey of Canada), and thus began an association that was to last for nearly half a century.

His erudition, coupled with untiring work habits, soon made him known to the scientific community, and, within a few years of beginning his career, he had published the first of a long list of books and articles – more than 50 books and some 700 articles – in both French and English. He left some unfinished manuscripts that will eventually be published. His final book, *Louis Jobin Statuaire*, appeared a few months before his death.

One of the most valuable collections in the folklore division of the National Museum consists of 9,000 songs and 5,000 melodies gathered by Dr. Barbeau in the Province of Quebec and the Acadian region of the Maritimes.

Although Dr. Barbeau retired from the National Museum in 1948, he continued to publish papers and books and to involve himself in a large variety of academic pursuits, including lecturing at Ottawa University, the University of Montreal and Laval University.

He won the coveted *Prix David* literary award three times for works written in both French and English – first in 1925, again in 1929 and finally in 1945.

His interests extended into the world of art, and he was a friend of several of the Group of Seven. Dr. Barbeau himself was recognized as an authority of the paintings of Cornelius Kreighoff, about whom he published a book in 1948.

ARCHAIC CULTURES UNEARTHED

Fragments of an archaic culture came to light recently on Twillingate Island, Newfoundland, when a resident, digging in his garden, unearthed the point of a slate spear. When his shovel turned up another 34 items, he notified the Director of the National Museum of Man in Ottawa.

Museum archaeologist Don MacLeod hurried to the spot, and found that the "treasure site" was the

graveyard of an ancient Indian culture which he named Maritime Archaic. Now, three years later, several more fragments of evidence have been unearthed and Mr. MacLeod has outlined a probable sequence of cultures for the area. "We know," Mr. MacLeod explained, "that this same geographic area was occupied at different periods of time by at least three different cultures: in approximate terms, from 2500-500 B.C. by the Maritime Archaic, from 0-600 A.D. by the Dorset Eskimo and from 1000 A.D.

to a little over 100 years ago by the Beothuk Indian."

Altogether, 15 graves have been excavated, yielding a total of 400 artifacts. Two small dwelling sites have been found nearby which contained, among other things, stone axes, adzes and spear-points and the hammer stones and grindstones used to fashion these tools. All items were from the Maritime Archaic culture of some 3,500 years ago.

SECOND DISCOVERY

The Twillingate discovery was duplicated at another Newfoundland community, Port-aux-Choix, where excavation is now taking place under the direction of Dr. James Tuck of Memorial University, with support from the National Museum of Man. Both sites are characterized by the presence of red ochre. By careful observation of the deposits, archaeologists can reconstruct the burial customs of these people.

The general procedure was to lay the body on a bed of red ochre, in a flexed position with the knees drawn up to the chest. Implements and weapons which the deceased might have used were laid on top of and beside the body, along with birch-bark containers probably filled with food offerings.

The Port-aux-Choix site has produced the first skeletal remains of the "red paint" people, and the results have tied in quite nicely with Mr. MacLeod's findings. Among the items recovered at Port-aux-Choix, are necklaces of small sea shells, numerous bird bones, tools and weapons fashioned from bone, antler and ivory, and birch-bark boxes containing red ochre. The two sites complement each other: Twillingate yielding the first definite dates and a good sample of stone tools, and Port-aux-Choix yielding the first usable bone material.

Research activities in the area will go on for some time but these recent discoveries have contributed more to the solution of the mystery surrounding this ancient Indian culture than has the past 50 years of research.

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to this group a joint paper. The Swedish-Canadian paper discussed such legal problems as equitable access to the communications and other systems, preventing libel and slander, and protecting copyright. These are matters on which there are few, if any, existing international legal rules. There will be a great need for the protection of public and private interests and hence for more international agreements, as this field of technology opens up. These are only some of the legal consequences of this tremendous development which will have profound and far-reaching social and political effects....

LAW FOR OCEAN-FLOOR

The United Nations is now turning to the development of a new legal regime for the sea-bed and ocean-floor in areas beyond the limits of national jurisdiction....

Today there is lively and growing interest in the sea and its resources. New types of claims to national jurisdiction are evoking new responses. The law of the sea has entered a period of rapid evolution, rich in promise but also in difficulty.

The United Nations Conferences on the Law of the Sea, at Geneva in 1958 and 1960, left unsettled the breadth of the territorial sea and the limits of fisheries jurisdiction. Canada played a leading role at both conferences and introduced a formula which very nearly provided the basis for a compromise solution. This was the conception of an exclusive fishing zone, which would preserve freedom of navigation by maintaining a narrow territorial sea, while at the same time allowing states to bring a greater part of their coastal fisheries under their jurisdiction. The fishing zone conception has since been adopted in the legislation of a large number of countries, including the United States and Canada.

Failure to settle the territorial sea and fishing limits at the Geneva Conferences, however, has left us with national claims varying from three to 200 miles. Seizure of an intelligence ship or arrests of fishing vessels are dramatic - and dangerous - illustrations of the pressing need for international agreement on these questions.

MINING THE SEA-BED

But it is not the traditional uses of the sea which have brought about the greatest change in national attitudes. Advancing technology has made it profitable to mine the sea, to tap its mineral deposits and exploit its other resources at far greater depths and distances from the shore....

Only a limited consensus has so far been reached on the sea-bed question. It is generally accepted that there is an area of the sea-bed beyond the present limits of national jurisdiction; that this area should be reserved for peaceful purposes; and that its resources should be used in the interests of mankind. However, these principles only point up the difficulties involved in reaching further agreement.

On the question of the limits of national jurisdiction, the basic Canadian position has been that the continental shelf is a legal conception based on geographical and geological realities, and that these realities should be taken into account in defining the limits of national jurisdiction. On the legal rules which should govern the area of the sea-bed beyond national jurisdiction, we have argued that it is much too early to take a definitive stand. We are prepared to accept for the present, however, the widely shared view that the rules governing this area should prevent any form of national appropriation....

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