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APPROACHES TO FOREIGN POLICY – DIFFERENCES AND SIMILARITIES

An Address by the Honourable Mark MacGuigan, Secretary of State for External Affairs, to the Eleventh Leadership Conference of the Centre for the Study of the Presidency, Ottawa, October 18, 1980

Not long ago France opposed Canada's participation in the annual economic summit meetings on the grounds that we would only echo U.S. views and proposals. Today, of course, French leaders know us better – and will have the opportunity of getting to know us even better still when we welcome them to the first Ottawa summit next year.

I am disappointed but not entirely surprised when some people even now assume that Canada's foreign policy is made in the U.S.A. What does surprise me, however, and fills me with dismay, is when some people assert that Canada's foreign policy should come out of the same mould as the U.S.A.'s. I am surprised that anyone could fail to recognize just what profound differences there are between the U.S. and Canadian moulds.

It is true, of course, that the people of Canada and the people of the U.S.A. are North Americans all, formed by the continent they share, holding in common the values of Western civilization, enriched by the contributions of yet other cultures, and united in a mutual devotion to freedom and the democratic tradition within the framework of a federal system. It is also true, however, that differences of size may involve differences of perspective, and that long ago our two countries chose to seek the same goals by different roads, at a different pace, and chose as well to adopt different institutions for the conduct of their political affairs.

What I propose to do here is to examine how some of these similarities and differences have influenced and are reflected in the Canadian and U.S. approaches to foreign policy. In doing so, I will focus especially on the differences – not in a negative spirit, I assure you, but in a spirit of enquiry. Difference, after all, need not mean conflict. And differences must be identified and understood if we are to build on the similarities.

Human rights

Let me begin with an example that in my view typifies both the similarities and differences. I think it is fair to say that human rights occupy a more prominent place in the foreign policy of Canada and the U.S.A. than in that of any other country. Other countries, of course, are also concerned and active, but there is something peculiarly North American – peculiarly naive, critics would charge – in the attitude of our two nations towards human rights. That something special is a direct result of our being the heirs and custodians of both the reality and the dream of the New World. "O my America! my new-found-land!" exclaimed John Donne to his mistress going to bed, and I hope that we in North America will never lose that same sense of wonder and joy in our contemplation of this continent, nor ever lose our eagerness to have others

know the freedom that we have found here. Canadians and Americans thus respond with a great outpouring of indignation and compassion to the tragedy of the Vietnamese boat-people. Tens of thousands of Vietnamese refugees have been welcomed into both our countries, where private citizens have opened their hearts and homes and pocket-books to help them find the security we take for granted.

Different size, different perspective

So goes the similarity. A few years ago, however, the U.S.A. was engaged in a terrible war in Vietnam. By January 5, 1973, that war and Canada's view of it had developed to the point where the Canadian Parliament adopted a resolution condemning U.S. bombing operations in North Vietnam. In these facts there lies a world of difference. In saying this, however, I do not wish to imply any sort of moral comparison between Canada and the U.S.A. or between the Canadian and U.S. governments. I simply wish to illustrate what I said earlier about differences of size involving differences of perspective. I also want to make the point that the scars of the Vietnam and Watergate years have affected U.S. institutions in a way that is affecting relations between the U.S.A. and Canada.

Those British gentlemen who decided to break away from the British Crown a little more than 200 years ago gave the U.S.A. a form of government which in a way retained more of kingship than was preserved in that part of the continent which remained "British North America". The U.S. Constitution, after all, institutionalized through separation of powers, the old conflict between executive and legislature which in Britain and Canada was resolved by having the legislature absorb the executive, leaving the sovereign to reign but not to rule.

In Britain and Canada, the executive, having thus been made part of and accountable to the legislature, was freed from the struggle for supremacy – but not, let me hasten to add, from the struggle for survival – and was able to get down to the job of governing. In the U.S.A., on the other hand, the struggle for supremacy was incorporated within the system, in the very checks and balances which were devised to ensure that no part of the government could grow too powerful and that sovereignty would forever abide with the people. The President, so it seemed for a long time had been guaranteed political survival for at least four years, but – as it now seems – had not been guaranteed the ability to govern. Nevertheless, the most powerful institution in the U.S. government for most of this century has been the Presidency. With the resignation of President Nixon, however, the apparent guarantee of survival for a full term in office was shattered; presidential accountability was dramatically reaffirmed; and Congress in effect finally achieved what the legislature had long since enjoyed *vis-à-vis* the executive under the parliamentary system.

It is too soon to tell what will be the long-term effects of these historic developments on the U.S. system of government. That system, however, is complex and delicate and every piece must interact with the others to make it work. Seen from Canada, in the foreign policy context, it has not fully recovered from recent shocks and is not working well at present. As a representative of the parliamentary system I can hardly challenge the concept of presidential accountability; I can, however, mourn the fact that it does not seem to have left the President the effective power to carry out his constitutional responsibility to shape and conduct the foreign policy of the U.S.A.

Congress has grown increasingly assertive, and the Senate in particular is exercising its constitutional power in respect of treaty ratification in a way that is frustrating the President's foreign policy responsibilities, at least so far as Canada is concerned. Relations between the two countries are suffering as a result, even if only one of them seems to be aware of this to date.

Fishing problems

Fish are not usually associated with the layman's idea of diplomacy, except perhaps in the form of caviar. Fish, however, have occupied a very important part in the relations – and confrontations – of Canada and the U.S.A. from colonial times to the present. Again today they are at the centre of what is for Canada our most serious bilateral issue with any country, but for the U.S.A. is simply a "regional problem" left for determination by two or three senators in accordance with their local concerns. Once more, note the difference of perspective.

I am referring of course to two inter-related treaties dealing respectively with international adjudication of the Gulf of Maine maritime boundary dispute and with co-operative fisheries management and reciprocal fishing rights off the east coast of Canada and the U.S.A. These treaties were referred to the Senate by President Carter in April 1979, with the message that they were "in the best interests of the United States". They remain unratified to this day. Meanwhile stocks are being overfished; fishermen are growing increasingly frustrated; the boundary issue festers; prospects of escalation of the dispute begin to arise; and the Canadian side must patiently await the U.S. Senate's "take-it-or-leave-it" proposals for amendments to a treaty which was concluded only after long and difficult negotiations. Clearly, this is not acceptable. Clearly, differences in approaches to foreign policy here reach a point where rational management of a crucial bilateral relationship may no longer be possible.

I do not wish to call into question U.S. constitutional requirements and realities, or the motives of the senators who are blocking these treaties, or the democratic right of their fishermen-constituents to press for such action. Canada too is a democratic, federal state, and the conclusion of the two east coast agreements required long, delicate and even painful consultations with our fishermen and provincial governments before conflicting interests could be reconciled and an internal consensus achieved which enabled us to say to the U.S. negotiators – naively perhaps – "it's a deal". We understand the internal difficulties arising in the U.S.A., but we must ask why these cannot be resolved before a treaty is solemnly concluded. We must wonder too about the wisdom of Congress in institutionalizing these difficulties and weakening the executive in the field of international fisheries relations through legislation giving substantial powers over foreign interests to regional fisheries management councils. To see the matter in the round, one has only to imagine what the U.S. reaction would be if it were Canada which could not deliver in respect of the east coast agreements.

Treaty-making procedures

I recognize, of course, that the U.S. constitutional procedures for treaty ratification are indeed more complex and unwieldy than Canada's. In Canada, parliamentary approval is sought only for some of the very most important treaties, and treaty negotiation and ratification is a matter of executive authority as an element of the Royal Prerogative. It is important to remember, however, that in Canada, unlike the

United States, treaties do not, in themselves, become part of the "law of the land" Parliament or, if appropriate, provincial legislatures, must enact any legislation that may be necessary for the performance of treaty obligations. Because of this requirement to pass subsequent provincial legislation in cases where the subject matter falls under provincial responsibility, it is the practice in Canada to consult the relevant provinces prior to ratification or signature. This procedure is about as close as we come in Canada to the U.S. system.

Granted that Canada's treaty-making procedures are simpler than the U.S.A.'s, we have not yet fully explored those differences in foreign policy approaches which flow from institutional differences. Americans quite properly hold their political institutions — if not necessarily their politicians — in awe and wonder. We in Canada are respectful but more relaxed about our own institutions — as witness the fact that we are only now getting around to fetching our Constitution home. The U.S. attitude colours the U.S. foreign policy approach in subtle ways. Thus there is an instinctive view among many U.S. policy-makers and negotiators that international law should conform with U.S. law, rather than the other way about. Thus too U.S. negotiators often seem to expect the representatives of other countries to give the same automatic deference as they do to the procedural and institutional peculiarities of the U.S. system.

The extra-territorial exercise of U.S. anti-trust jurisdiction is a field rich in examples of this kind of attitude, not a few of them involving Canada. The effects on the U.S.A.'s foreign relations have been serious indeed. Australia and the U.K. have already passed laws to protect themselves from such extra-territorial interference, and Canada will be joining them soon.

The tuna issue

But let me stick to the field of fisheries. Take tuna. The consensus emerging from the Law of the Sea Conference recognizes the exclusive sovereign rights of coastal states over all living resources of the 200-mile zone. U.S. law accordingly asserts such rights over the rich coastal fisheries off the U.S.A., but does not recognize that these same rights can extend to tuna, owing to the fact that U.S. fishermen take huge quantities of tuna off the coasts of other countries. Here again Congress has usurped the executive's role in foreign affairs and has favoured local interests over international agreement. But the story does not end there. U.S. law goes further and requires an embargo on tuna imports from any country arresting a U.S. vessel for unauthorized fishing for tuna within its 200-mile zone. According to Canadian experts, at least such action is contrary to the U.S.A.'s obligations under GATT [the General Agreement on Tariffs and Trade], but again Congress has placed local interests over international agreement.

I would like to conclude my remarks with the tuna story because it has a happy ending — I really should say a happy intermission — at least so far as it affects the U.S.A. and Canada. Late last August our two countries concluded an interim agreement on reciprocal fishing of albacore tuna by Canadian and U.S. fishermen off the Pacific coast, thus averting a resumption of the 1979 conflict when Canada arrested 19 U.S. vessels in the Canadian 200-mile zone. Both countries have also agreed to use their best efforts to transform this interim arrangement into a long-term treaty by June 1981.

I would not wish to leave the impression that only Canada has experienced difficulties because of the procedural and institutional framework in which U.S. foreign policy is made – or "happens", as the process might sometimes better be described. Lloyd N. Cutler, Counsel to President Carter, analyzes this framework in an article in the most recent issue of *Foreign Affairs,* in the light of the failure of his own efforts to get the SALT II [Strategic Arms Limitation Talks] treaty through Congress. He writes as follows:

"A particular shortcoming in need of a remedy is the structural inability of our government to propose, legislate and administer a balanced program for governing.... The separation of powers between the legislative and executive branches, whatever its merits in 1793, has become a structure that almost guarantees stalemate today."

Mr. Cutler has dual qualifications to support his reaching this conclusion. In addition to his association with SALT II, he was the U.S. negotiator for the two east coast agreements with Canada, which continue to keep SALT II company in the limbo of the U.S. Senate.

Similarities outweigh differences

I already gave you my happy ending a minute ago – which is sure proof that I have gone on too long. I cannot end, however, on the note of stalemate evoked by Mr. Cutler. But since I do not have the temerity to follow his lead in proposing amendments to the U.S. Constitution, I am hard-pressed to strike a note of promise for the future. Yet that note exists, quite independently of any possible suggestions for restructuring the U.S. approach to foreign policy. I have stressed the differences between Canada and the U.S.A. in these remarks, but it is the similarities I rely upon. If this underlying optimism reflects pride in Canada, it also reflects faith in the U.S.A., confidence in our friendship, and the expectation that reason and fair play will again prevail.

Finally, given the number of academics with us today, I would not wish to conclude without saying how much we appreciate the growth of teaching and research about Canada in American universities. It is quite remarkable how much Canada has risen in academic popularity in the last decade. I would like to encourage more such studies, as I believe they lead to better understanding of Canadian interests and concerns, and therefore to a well-managed and mutually beneficial relationship.