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THE RULE OF LAW IN INTERNATIONAL AFFAIRS

Speech by the Honourable Mitchell Sharp,
Secretary of State for External Affairs,
at Osgoode Hall, Toronto, March 4, 1969.

...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 Contemporary international law is still bound up with outdated conceptions of national interest, which hinder the effective settlement of disputes by peaceful means.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.

The vigour and range of United Nations law-making activities are not always fully appreciated. At the present moment, various U N 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 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.

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 could well have become a major source of international 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.

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 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 copyrights. 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.

The law of outer space is developing very quickly, in an orderly and deliberate manner, despite deep ideological divergences. Development of this kind illustrates the way international law evolves by the gradual codification of rules which are perceived by states to be in their common interests. It also shows the value of the United Nations as a multilateral forum for the codification of international law.

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.

Man has long used the sea for transport and he has always taken from the sea an important part of his food supply. These traditional uses of the sea have inevitably given rise to conflict - and to the law of the sea. In the development of that law, two conceptions have contended: first, the conception of the closed sea under the jurisdiction and control of particular states; second, the conception of the open sea accessible to all nations on an equal basis. From the eighteenth century on, coastal states recognized they could extend their sovereignty over only a narrow belt of the waters round their shores. This "territorial sea" was widely accepted as being three miles in breadth.

Today there is lively and growing interest in the sea and its resources. New types of claim 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.

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.

The Convention on the Continental Shelf adopted in 1958 grants sovereign rights to coastal states for the exploration and exploitation of the natural resources of the continental shelf. These rights do not affect the status of the waters above the shelf, which remain high seas open to navigation and fishing by other states. But the exploitation of the continental shelf may eventually affect freedom of navigation and the present limited jurisdiction might well be slowly extended to cover the waters above the shelf.

Unfortunately, the Continental Shelf Convention has two major deficiencies. It defines the continental shelf as beginning, in the legal sense, where the territorial sea ends, and this element will remain imprecise until there is international agreement on the breadth of the territorial sea. It defines the outer limits of the continental shelf as the point where the waters reach a depth of 200 metres or, beyond that point, where the depth of water permits exploitation of the underlying resources. By this inclusion of the "exploitability test" the legal definition of the continental shelf is a highly elastic one. An extreme interpretation of the Convention could easily lead to national confrontations and perhaps to a new sort of imperialism in the oceans.

It was against this background, in 1967, that Malta introduced before the United Nations General Assembly a proposal the implications of which, in the legal, political, economic and military fields, are so far reaching that they will be the subject of intense study and debate for a long time to come.

The Maltese proposal called for the United Nations to undertake the "examination of the question of the reservation exclusively for peaceful purposes of the sea-bed and ocean-floor and the subsoil thereof, underlying the high seas beyond the limits of present national jurisdiction, and the use of their resources in the interests of mankind".

Canada was among the 35 countries on the original Committee set up by the General Assembly in 1967 to conduct this examination. We are also

represented on the new 42-member Standing Committee on the Sea-bed, formed last October to continue the work.

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.

The principle that the resources of the sea-bed beyond the limits of national jurisdiction should be used in the interests of mankind obviously bears directly on the nature of the legal rules to be elaborated for this area. The U N resolution creating the Standing Committee on the Sea-bed qualifies this principle by referring to "the benefit of mankind as a whole, taking into account the special interests and needs of the developing countries". Does this mean that some part of the revenues from exploitation of the internationalized area of the sea-bed should be turned over to the United Nations for development aid and similar purposes? What would be the consequences of giving the United Nations this sort of independent income? How would such a scheme provide for a sufficient return from the investments required for the exploitation of the sea-bed? For the time being, the questions are more numerous than the answers.

All these questions will be studied by the Standing Committee on the Sea-bed. Deliberations on the reservation of the internationalized area of the sea-bed for exclusively peaceful purposes will also have to take place in the Eighteen-Nation Disarmament Committee.

As a country with one of the world's longest coast-lines and with a continental shelf roughly equal to 40 per cent of its land area, Canada can understand and share the enthusiasm which has been generated by the Maltese item, particularly among the developing countries. Ocean space is man's last earthly frontier and we are anxious to join in the effort to isolate it from the arms race, to exploit it in an orderly and co-operative fashion, and to dedicate some part of its wealth to reducing the alarming gap between the rich and the poor nations of the world.

These examples of the progressive application of international law and legal skills to important problems confronting the world community as represented in the United Nations show that international law is far more than an instrument for the prevention of war. It is also a necessary instrument for the elimination of discrimination, for the protection of human rights, for the education of the ignorant and for relieving the oppressed. At the United

Nations it continually fosters, in a realistic manner, the creative values which nations and peoples seek to fulfil domestically.

This is a field of international activity in which Canadians can make an invaluable contribution to the future of mankind if we are imaginative and diligent. I hope some of you will apply your talents to this endeavour.

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