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# STATEMENTS AND SPEECHES

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## FOREIGN POLICY AND THE PROVINCES

A Statement in the House of Commons by Mr. Jean-Pierre Goyer,  
Parliamentary Secretary to the Secretary of State for External  
Affairs, October 30, 1969.

Questions have been raised in recent years concerning the best way to conduct Canada's external relations, in a country where these relations frequently involve areas which are of interest to the provinces or relate to their fields of internal competence. This situation is not unique. With the evolution of international relations since the end of the war, it is a problem which all federal countries have had to face. In the light of our practical day-to-day experience with external relations, I should like to contribute to the study which must be done in Canada and elsewhere.

There has been a lot of talk about the idea of "external sovereignty" for provinces, corresponding to an extension of their fields of exclusive or shared internal competence. At first blush, this theory can seem attractive. However, it raises important questions: Has this theory a solid legal foundation? Is it based on a sound interpretation of our constitution? Is it acceptable to the international community? Can anyone who looks seriously at the international scene or has any knowledge of the daily conduct of external affairs think that the application of this theory can lead to an effective and coherent policy?

(I) In constitutional and international law, only the Federal Government has competence in the field of foreign affairs.

(a) Exclusive competence of the Federal Government:

I do not want to bore you with a long description of the constitutional evolution of Canada in the field of foreign affairs. Everyone knows the way Canada obtained independence. Everyone knows that, over 50 years of evolution, the responsibility for Canadian external affairs passed from the British Crown to the Canadian Government. This evolution was confirmed by the Letters Patent of 1947, Letters Patent which form an integral part of our Constitution. I should, however, like to take this occasion to focus on certain pseudo-legal arguments that are repeated over and over again but appear to us to be completely unfounded.

(b) The 1937 Labour Conventions:

It is often claimed that the argument concerning the Letters Patent is nullified by the judgment of the Privy Council in 1937. According to some, the judgment handed down in the 1937 Labour Conventions case has the effect of permitting the provinces to establish direct, separate relations with foreign countries and even to sign international agreements in the fields of their jurisdiction. I seriously question the level of legal knowledge of people who can come to such conclusions. Thirty-two years after the judgment was handed down, people should really know what it is about. In fact, all the Judicial Committee of the Privy Council said in 1937 is that, in matters which, under the BNA Act, are within the exclusive jurisdiction of the provinces, the Federal Parliament cannot take over the right to legislate by claiming that such legislation is necessary to carry out a treaty signed by Canada; on the other hand, the Privy Council did not cast doubt in any way on the exclusive right of the Federal Government to conclude treaties and, as a consequence, to conduct Canada's international relations. I agree that there can be no interference in the internal legislative competence of the provinces in Canada, but there can also be no provincial interference in the ultimate competence of the Federal Government abroad.

(c) The diversity of federal constitutions:

Sometimes it is pointed out that different federal constitutions exist throughout the world, that no two are the same, and that, as a result, Canada can do what it likes with its own. It is conveniently overlooked that, although different on other points, all are virtually alike concerning foreign affairs -- the external power always remains, in one way or another, in the hands of the central authority. It is quite true that there are some federal states, such as Switzerland, the United States, the Federal German Republic and the Soviet Union, where constitutional practice apparently permits member states to conclude certain kinds of agreement with foreign states. Once again, it is ignored that even a superficial examination of these constitutions shows that in each case this power of the member states must be exercised under the federal authority or by means of the federal government. Moreover, any specialist in comparative constitutional law can point out that even the powers of this kind which members of federal states can exercise have been used less and less often over the years.

(d) Post-war evolution in the field of foreign affairs:

Some claim that international life has changed, and that we must change with it. We are told: "The nature of foreign relations has greatly developed since the war and, as it no longer involves just questions of war and peace or trade but also bears increasingly on questions of culture, technology or education, a new international law has been developing which permits members of federal states to have access to the field of international relations". A splendid theory, which has only one weakness -- it has no basis in reality. International exchanges have been increasing, and not just recently; they have been doing so for half a century. But they remain in the hands of

sovereign states. And they have been doing so more clearly. You just have to have a grasp of reality and of international law. In treaties, there are progressively fewer "federal" clauses, which allow for the transfer of sharing of sovereignty.

I might just mention the most recent example. Just six months ago, in April, the United Nations Conference on the Law of Treaties at Vienna rejected by an overwhelming majority a proposal which would have appeared to recognize, without being explicit about the conditions, a right on the part of members of a federal state to conclude treaties. This draft text was an argument used by the government of Quebec in its white paper as a supposedly irrefutable proof of the tendency towards an international capacity for members of a federation. This draft was clearly rejected simply because it ignored the factors which I have mentioned and did not reaffirm the exclusive right of the federal state to interpret its own constitution to other states. The Conference came to the conclusion that to adopt such an article would be to invite foreign states openly to interpret the constitution of federal states, which would constitute an intolerable intervention in their internal affairs. The Conference vigorously reaffirmed the principle that in a federal country only the government of that country can interpret its constitution to foreign countries. Whatever anyone may claim, therefore, international law has evolved and continues to evolve in a way which is clearly incompatible with the theory of the external sovereignty of provinces. This is a legal fact which simply reflects the fundamental requirements of any coherent international life. I shall come back to this.

(II) The international community would not accept the theory of a so-called external sovereignty for the provinces.

All these legal points have to be made. They provide a foundation for any discussion. However, I am primarily a practical politician. I should like to examine the theory of the external sovereignty of the provinces in the light of practical, daily experience with external affairs.

Like any other abstract conception, this theory can seem plausible. It has a defect, and a major one -- it is completely incompatible with the facts of international life. The international community simply cannot accept this theory from a practical point of view. For those who have an intimate knowledge of international relations, this formula appears dangerous, ineffective, incoherent, chaotic. I shall explain.

The concept of sovereignty has been greatly clarified over the last few years. It is high time for people to realize that, even if certain protectorates and trusteeship territories continue to exist, the notion of bodies with different degrees of international personality has almost disappeared, both in theory and practice. At present there is very little reason to expect that the international community will agree to go back to old conceptions of bodies which are half or partially sovereign, especially if such bodies seek to obtain separate membership in the United Nations or its agencies.

The United Nations is based on the principle of "one state, one vote", with no distinction between unitary and federal states. Federal states as such have neither more nor less power than unitary states. Can we imagine that Canada could have ten or 11 seats in the Specialized Agencies of the UN while France and Britain would have only one each? Why could India not change its internal constitution in order to have 20, 50 or 100 votes? This would be splendid for federal countries. But do you think the international community would put up with it?

Let us take a specific case, that of UNESCO. If international law or the international community accepted the theory of the extension of internal competence into the international field, UNESCO would be composed of several hundred members overnight. Can anyone seriously claim that it would be able to function that way?

In fact, the international community is simply not ready, for practical reasons, to agree to let itself be fragmented by admitting Canadian provinces to its organizations as sovereign or partially sovereign bodies.

In more general terms, since people are talking about the evolution of international behavior, is there anything more important in our world than dialogue, co-operation and cohesion? We live in a world of minorities. On a global scale, there are no majorities, religious, political or linguistic. Christians, Moslems, Buddhists are all minorities. White, black, yellow -- minorities. No ideology dominates any other -- no language, no culture. In this fragmented world, we do not need separatists' bombs; we need formulas for understanding, such as federalism, which bring unity out of diversity without crushing it. Federalism represents an agreement between different communities to act together. It is the hope of Europe, which is being constructed; the hope of Africa, which can overcome tribalism; the hope of Asia, where 50 cultures sometimes exist side by side in a single country; the hope of the world. Sometimes we are too modest. Our federal experience and our daring experiment in bilingualism are admired by many and have inspired them. President Senghor recently reminded us of this very eloquently, when he said: "More basically, French and English bring us additional resources. This is not to say that we reject Francophonia today. On the contrary, we cling to it and welcome our English-speaking brothers. This is why Canada can, in this area of culture, which is man's own, serve as an example." Bilingualism and federalism are formulas for the future which have been given greater life and depth in Canada than anywhere else, and which we can continue to develop. This is what the reality of our world requires from us: the improvement of our federalism and not its fracturing into ten different foreign policies.

### (III) Sharing of external policy: the results.

Let us see where the logic of those who wish to share external sovereignty between the Federal Government and the ten provincial governments actually leads us. Let us take this working theory to its logical conclusions. It is not enough to draw up constitutional theories in the abstract. We have to see where they lead us.

(a) Need for a coherent policy:

In practice, different aspects of international life cannot be separated into watertight compartments. They are completely interrelated. As soon as countries deal with one another at the governmental level, it becomes impossible to separate just one aspect, such as education, culture or technical assistance, from all the other aspects of the relations between them. Intellectually, you might draw a distinction between "traditional foreign policy" and more recent aspects of international relations, technical, cultural or social. In fact, these are all aspects of a single whole. The business of an inter-governmental conference on education may be joined in a hundred ways to other fields, such as co-operation in la Francophonie or some other group, international aid policy, bilateral relations with the other countries, economic and commercial problems, international cultural or social co-operation. Political problems are constantly coming up at so-called "technical" conferences. We should not be naive. We just have to look at the policies of the great powers to see the many links between their policies concerning culture, technical exchanges, aid and social questions and the many other political and economic aspects of international life.

Any foreign policy has to be brought together into a compatible, coherent whole. Foreign policy in a particular field has to take account of a series of Canadian interests and a variety of Canadian internal or external policies which may be affected. We must have a central body which co-ordinates and defines policies before presenting them to the outside world. We cannot have 11.

Someone may say we only need to have two centers -- Ottawa and Quebec. Do you think that if the country let one province get away with this all the others would not ask for the same? We have recently seen that even two is impossible. But we would have ten or 11, not just two.

(b) Need for efficiency and strength:

Foreign policy must be clear and effective. It cannot be full of contradictions. If there are ten or 11 Canadian voices abroad, there will be a variety of Canadian viewpoints and activities which will largely cancel one another out. Our influence in international affairs would be reduced. It would be almost impossible to count on us.

In today's world, it is difficult to carry any weight. Europe is very aware of this problem in its relations with the super-powers, without so far having solved it. For a middle power, it would almost be political suicide to waste its energy in a variety of activities and initiatives in many fields. Ten provinces working abroad separately, even if their activities did not cancel one another out, would not have the same power or influence as a Canada which gathered all of its energy behind a single policy.

(c) A balkanized policy is a vulnerable policy:

A balkanized policy would be highly vulnerable. Foreign countries would have to show superhuman virtue not to take advantage of the opportunities offered to them in many fields if Canada's presence abroad were fragmented.

It would be possible for them to play off provincial interests against one another, to adopt client states, to make use of Canada freely, with a good conscience and with our permission. You just have to remember the recent events which took place in our country to prove this assertion.

(d) Effects in Canada; Canada's internal life would be threatened:

The most serious aspect of this affair is that the theory of the external sovereignty of the provinces, if it were adopted, would threaten the internal life of Canada. The sharing of external sovereignty would permit perpetual intervention in the constitutional and internal affairs of Canada. Canada's future would be decided not through rational constitutional debate, shaped by Canadian public opinion in the light of all the problems, but through the changing and divergent interests of the international community. As a result, we should have a constitution which was made abroad. Could Canada survive? It would have an excellent chance of disintegrating, without its voters being consulted.

It is high time for the population of Quebec to realize that, even if it does not want to be separatist, those who hold this theory are pursuing a policy which can be fatal for Canada. Those who aim at this result should admit it; those who are opposed should stand up.

(IV) Formula according to which the provinces can take part in the foreign policy of Canada.

I think it is clear that the Canadian provinces will have enough commonsense to work within the Canadian framework and to avoid policies that threaten to break up Canadian foreign policy and the country itself. Should they, therefore, be resigned to taking no part in our foreign relations and to playing no role on the world scene? Is it Ottawa's policy to keep them out of our foreign relations? It is necessary to sacrifice the provinces and their interests on the altar of national unity? Not at all.

It seems to me that the provinces want their aspirations and interests to be reflected in the formulation of Canadian foreign policy, to participate when appropriate in presenting and carrying out these policies abroad, to be present at conferences and in international organizations and to have their role and contribution -- whether in education, culture or technical and social co-operation -- receive adequate recognition as part of a common Canadian effort. To achieve this they do not need to claim a disastrous sharing of external sovereignty.

Canadian federalism offers them all the scope necessary. Within the present constitution, the Federal Government has begun to work out a flexible formula for co-operation with the provinces. It is not a concession which the Federal Government has made out of pure virtue; it is a practical necessity which federalism has imposed upon us. We have already worked out areas of consultation and co-operation. The federal formula has the potential to permit increased provincial participation in the Canadian presence abroad. Rather than waste our energy in sniping at one another abroad, it would be much more profitable for the provinces to work with the Canadian Government to expand and define methods of consultation and co-operation.

Let us speak in more concrete terms. What is this formula?

(a) Drafting and application of treaties:

For some time, the Federal Government has undertaken to consult the provinces about different aspects of the drafting and application of treaties. This permits the interests of the federal and provincial governments to be reconciled, and results from the wishes expressed by the provinces concerning treaties where the subject matter relates to their internal legislative competence.

Consultation can take different forms. It implies direct discussion between federal and provincial authorities. This can start before or during the negotiation of a treaty if its execution requires federal-provincial co-operation.

A variety of measures, such as the "umbrella agreement", have been taken or considered by the Federal Government to validate agreements of interest to the provinces at the international level.

(b) Participation in international organizations and conferences:

A certain number of international organizations have been created with activities relating to questions which are partly within the internal competence of the provinces, particularly since the end of the war. All these organizations have one objective in common: drafting international conventions at general conferences. It is, therefore, important to have close consultation with the provinces to facilitate ratification and implementation of these conventions by Canada. As a result, federal authorities have frequently consulted the provincial authorities in recent years on the content of such conventions and the possibility of carrying them out.

One of the most practical ways of carrying out this policy of co-operation is to strengthen provincial participation in the delegations which Canada sends to international conferences when the activity is of particular interest to the provinces. That is what we have done, for example, in the case of UNESCO, where provincial ministers of education have been invited to participate in general conferences and senior provincial civil servants have been included in Canadian delegations. This system is perfectly adequate for promoting provincial interests, provided, of course, it is used. This presupposes that the provinces will not make a desperate effort to dissociate themselves from the Canadian presence abroad, as if it were dishonorable to be a Canadian or ineffective to put forward the interests of all of us with a single voice.

(c) Foreign aid:

Foreign aid is an integral part of Canadian foreign policy, and the Federal Government must assume responsibility for co-ordinating it. On the other hand, in view of the fields where Canadian foreign aid is concentrated, it is obvious that the effectiveness of the programs depends in part on the co-operation of the provinces, whether federal or provincial programs are involved.

Thanks to effective consultations between the federal and provincial authorities, the provinces have been able to make a generous contribution to the Canadian aid effort, by recruiting teachers and advisers for service abroad and by offering education and training in Canada.

In addition to taking part in federal programs, some provinces have established their own programs of aid to developing countries. The Federal Government is delighted at this provincial support. The Federal Government's only aim is to ensure that the whole of the Canadian program is maintained and developed in a coherent manner, without splitting Canadian sovereignty abroad. It is, therefore, necessary to work together so that Canadian assistance forms a program which is co-ordinated by the Canadian Government, in which provincial support receives the credit it deserves.

The merits of this formula and of these methods of consultation are that they are compatible with a viable federalism, ensure an appropriate dialogue in Canada with the provinces in the fields of interest to them so that a Canadian policy can be defined, and open the way to a provincial presence and action abroad within a Canadian presence. That is a positive policy which respects the reality of Canada. It is the Federal Government's policy.

#### Conclusion

The constitution, and the flexible way in which we are applying it, ensure to the provinces that they can take part in the field of foreign relations, together with the Central Government. No doubt this system needs to be improved and developed. These improvements must be defined in Canada by Canadians. These questions are too complicated and too important to us to be the subject of a fight abroad.

We are ready to talk with those who have other opinions. We do no doubt their good faith. But this dialogue must take place in Canada, in a reasonable manner, through agreements between governments and through constitutional discussions. We must arrive at solutions which take into account not only the rules of international law and the realities of the modern world but even more the principles of an effective, viable federalism. Our success -- for we shall succeed -- will serve the interests of the provinces, of the Central Government and of all Canadians. It will offer a fine example to a divided world.

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