

VERNMENT



# STATEMENTS AND SPEECHES

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## THE CHARTER OF THE UNITED NATIONS

Text of an address delivered by the  
Right Honourable Louis S. St. Laurent,  
Secretary of State for External Affairs,  
at a meeting of the Law Society of  
Upper Canada, Toronto, October 31, 1947.

As an adopted son of five years' standing, I am most grateful for this opportunity of joining with you in celebrating the one hundred and fiftieth anniversary of the Law Society of Upper Canada. Few Canadian institutions have flourished for a century and a half of our country's history. I am sure that all of us from yourself, Mr. Chairman, to the most recent member of the Society - the Prime Minister of Canada - are agreed with me that the record is one of which we may be justly proud, not so much because it is one of venerable age, but because of the great contribution the society has made to the steady development of our young nation over that century and a half.

No one can believe, however, that this occasion will serve merely to mark the anniversary of an Act of the Parliament of 1797.

Gatherings such as this afford us, as well as a welcome opportunity to meet many old friends, a fitting occasion to reaffirm our faith in our profession and in the rule of law to which it is devoted. We are sometimes subjected, 'tis true, to critical attacks which we are not slow to resist. Occasionally, however - though perhaps less frequently than we might wish - we receive credit beyond our just due. The following is an old story but I venture to use it as an illustration of what I mean.

A judge in one of the southern states of the Union had before him a man charged with non-support of his wife. Said the judge: "You have been neglecting your wife shamefully. I am going to let her have thirty dollars a month." "Thanks, Judge", replied the husband, "I'll give her a dollar or two, once in a while, myself!"

Mr. Chairman, the kind invitation which finds me before you today gave me latitude in the choice of a subject. There are, obviously, a great many matters which it would be profitable to discuss with such an eminent group of fellow-lawyers. However, if any sort of order is to be introduced into my brief remarks, some limitation of theme must be imposed. It has seemed to me that I might speak for a short time on the Charter of the United Nations, and in particular, on its juridical aspects.

A great deal of attention has been concentrated on the Charter in recent weeks. The subject is one in which I am sure all the members of this Society are interested, not only as representatives of the legal profession, but as Canadian citizens.

The Charter of the United Nations is, as all know, an international treaty in the nature of a constitution: a constitution conceived at Yalta, modelled at Dumbarton Oaks, and completed, amid high hopes,

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at San Francisco. Fifty-seven states have now been admitted to membership. The Charter is the basic document which underlies the events and governs the deliberations which have been taking place, and which are at this moment taking place, at Flushing Meadows and Lake Success.

The Charter is not, needless to say, a perfect document. We have only to remind ourselves of the character and tone of those deliberations to fully realize that fact. It is not possible to say of it, as Sir Edward Coke once said of the Common Law of England, that it is the "perfection of reason". Perhaps some might feel and even say, in other company, that this description may be something less than the whole truth when applied to the Common Law itself!

Since the Charter is in the nature of a constitution, it is expressed in broad and general terms. Also since it was the product of many minds and many pens, representing the measure of agreement arrived at by many nations, somewhat mistrustful of each other (perhaps it would be more accurate to say "one of whom was very mistrustful of all the others") there are, inevitably, crevices and contradictions, gaps and inconsistencies. It is, moreover, a new constitution and it is not to be expected that a new constitution can be a wholly good one. It must first acquire a leathery and weatherbeaten hue, be lashed by the storms of vigorous debates, and prove itself able to withstand the strains and stresses of conflicting views and interests.

It will therefore be necessary, in the course of time, if it is to endure as we hope it will, that greater clarity and more obvious effectiveness be given to the provisions of the Charter. Gaps must be filled and apparent conflicts resolved, in order that the bare bones of the Charter -- or, if I may borrow a phrase from the civil law, the nudum pactum, -- may eventually be fully clad. This will be a gradual, perhaps a tortuous process, and it is apt to take many forms.

It may be of interest to examine some of these forms.

- (1) Practices and procedures in the United Nations, its organs and related agencies may be expected to take form and crystallize. Lawyers need not be reminded of Sir Frederick Maitland's observation that substantive law is often "secreted in the interstices of procedure". In this connection, Canada has taken initiative in an effort to improve the Provisional Rules of Procedure of the General Assembly, and in underlining the obvious need for reform in the procedures of the Security Council.

Of this organ, I shall have something to say later. However, since the close of the last regular session of the General Assembly, at least one practice has grown up in the Security Council which, without formal amendment of the Charter, lessens the stringency of the veto power. It has been agreed that the mere abstention, as distinct from the negative vote, of a Great Power in the Security Council will not be considered as a veto. This practice has not an absolute juridical force. Indeed it is contrary to the language of article 27 of the Charter which requires for the decision of all other than procedural matters the affirmative vote of seven including the concurring votes of the permanent members. However, as lawyers, we know that once a convention of the constitution has become well established through repeated use, it is barely distinguishable from a rule of positive law. We know that much can be done, through conventional developments of this kind and without formal amendment of the Charter to strengthen the authority and prestige of the United Nations.

(2) It is to be expected that decisions will be handed down by the principal judicial organ of the United Nations - the International Court of Justice - and by other judicial or quasi-judicial bodies which may have occasion to consider the meaning of the Charter. The International Court has not yet, like our own domestic courts, been burdened by a crowded agenda. It has now, however, a case before it - the legal dispute between the United Kingdom and Albania concerning incidents in the Corfu Channel. Other cases of a litigious character are likely to come before it. Moreover, the General Assembly and the Security Council (under the Charter), the Economic and Social Council and the specialized agencies (by authorization of the General Assembly) are empowered to seek advisory legal opinions from the Court.

Advantage will no doubt be taken of these powers from time to time and helpful pronouncements can be expected.

(3) The various organs and related agencies of the United Nations will have to give practical interpretations to many of the provisions of the Charter as business proceeds. No organization, public or private, national or international, can operate without some conception of the nature of its functions and the extent of its jurisdiction. Some of the practical interpretations will be implicit assumptions upon which lines of conduct are predicated; others may be expressed in the form of interpretive resolutions. In any event a body of precedents of this character will inevitably grow up.

(4) Formal amendments to the Charter may be looked for in the course of time - there is certainly a limit to what can be accomplished by the processes to which I have already referred. This is not to suggest that formal amendments are in the realm of practical politics at the present time. They are of course subject to the so-called "Great Power Veto" of which I will speak later on.

(5) The architects of the Charter were, of course, not unaware that certain of its provisions were couched in pretty general terms. Indeed, some of the more important provisions of the Charter expressly provide the machinery necessary for their own clarification. I shall mention only two. "Human Rights and Fundamental Freedoms" is not an expression to which all would attach precisely the same meaning. Accordingly, Article 62(2) of the Charter provides that the Economic and Social Council may make recommendations for promoting respect for and observance of Human Rights and Fundamental Freedom for all, and the council has to that end established a Commission on Human Rights, the activities of which have recently been under study by a Committee of the Canadian Parliament and with respect to which the Minister of Justice has invited expressions of views from many sources.

Another example is provided by Article 102 of the Charter, which provides that the United Nations, its officials and the representatives of its Members shall enjoy the privileges and immunities necessary for the fulfilment of the purposes of the United Nations and the independent exercise of their functions in connection with the Organization. The third clause of the Article provides that the General Assembly may make recommendations with a view to determining the details of the application of the Article and that it may propose Conventions for this purpose. In the exercise of this power and in an effort to clarify the Charter, a Convention on Privileges and Immunities was duly adopted by the General Assembly in London and presented to Members for accession. Substantial approval of this Convention was obtained from the Canadian Parliament during the last session.

It is reasonable to expect that, by processes such as these, many of the difficulties of the Charter will be ironed out, and that a sort of jurisprudence, the first signs of which are even now discernible, will eventually support and complete the Charter.

I would not wish to leave the impression that the way will be clear or the going easy. You are all aware that there are special difficulties in the Charter to which I have already made a passing reference. I have no wish to minimize these difficulties. I refer particularly to those which arise out of the so-called "Great Power Veto" in the Security Council - or to what some states prefer to call "the principle of the unanimity of the Great Powers". Unanimity, when people are convinced that their interests are in conflict, is a scarce product. I stated recently, in New York, the following as our attitude in that regard:

"This veto privilege, attacked and defended with equal vigour, if it continues to be abused, may well destroy the United Nations, because it will destroy all confidence in the ability of the Security Council to act internationally, to act effectively, and to act in time. There is no point in deceiving ourselves. Our peoples cannot be expected to accept indefinitely and without alteration, voting procedures and practices which, in the name of unanimity, underline disunity; and which reduce agreement to a lowest common denominator of action that in practice often means inaction."

Of course we must not shut our eyes to the fact that seems to be just what our Russian friends want most of the time and that it is not any new or even unexpected development.

From the very outset Mr. Stalin seems to have had grave misgivings about the wisdom of allowing us smaller nations to have anything to do about the settlement of world affairs.

During the war rapid and concerted action was necessary and a pattern was set of International Conferences of Mr. Stalin, Mr. Churchill and Mr. Roosevelt. All important decisions were made by them and it must have appeared to Mr. Stalin to be the proper course to follow.

When Mr. Churchill and Mr. Roosevelt suggested a United Nations organization, Mr. Stalin agreed, but stipulated that the organization would have nothing to do with the peace terms to be imposed upon our former enemies and these terms would be determined by the foreign ministers of the big three, which might become the big four if France joined them. He also stipulated that the United Nations would only act through a Security Council and that no important decision in the Security Council could be made without the concurrence of his representatives i.e. that each of the big powers would have an absolute veto.

When the rest of us signed the United Nations Charter at San Francisco we had to accept these conditions and we did accept them after it had been stated by representatives of the big powers, in the presence of the Russian delegates, that the veto would be used sparingly and with a due sense of responsibility. Since then, the Russian representatives have used it over twenty times and, as a consequence, they have made the Security Council practically unworkable as the main instrument of the United Nations to secure and maintain peace. Notwithstanding this, they are now waxing very indignant over what they call the efforts of the United States, the United Kingdom and the powers friendly to them to by-pass the United Nations and get something accomplished in spite of their vetoes.

I say again that this is not surprising because we have long known that the attitude of the Russians is to insist that "no international question can be solved correctly and justly if an attempt is made to solve it without the Soviet Union, or against its interests". Now, it is perfectly clear that the Soviet Union wishes to see what it calls Capitalistic Regimes destroyed and Communistic Totalitarianism established everywhere.

It is also obvious that the physical destruction brought about by the war in Europe is apt to result in the total collapse of European economies if some further substantial assistance is not forthcoming from the new world. The Russians feel that this collapse would facilitate the extension of their communistic regimes and they appear to be doing everything in their power to prevent the new world from extending any further assistance to Europe. That is one explanation of the vitriolic demagoguery uttered by Mr. Vishinsky at Flushing Meadows a few days ago and it is one of the reasons why the Comintern (now called the "Cominform") has again raised its head on the European scene. There are communists in practically every country of continental Europe and in order to help them in their struggle for power and domination, it was no doubt felt useful to give them public encouragement. That should increase their self confidence and also their confidence in the prospects of success.

The line taken by Mr. Vishinsky at this Assembly and echoed by the satellite slavish powers is by no means new. For months past, a Government controlled Press and Radio in the Soviet Union have been hammering out the theme that the United States is preparing to attack the U.S.S.R.. This propaganda has been carried on in an area fenced by the most powerful censorship and the most rigorous control of opinion which the world has ever known. It has been designed to create the stereotype of a gigantic and powerful capitalistic country bent upon destroying governments set up by the working classes and piling up atomic bombs for eventual use against the Soviet Union at the most propitious time. The reactions aroused by Mr. Vishinsky's speech were at once relayed to Moscow and displayed in the Soviet Press. Is it not fair to assume that Mr. Vishinsky knowing that everything which can be regarded as news gets wide publicity in the papers of the North American continent, deliberately planned to thus secure some evidence for domestic consumption of the validity of the line which the Soviet Government has been pursuing for months past?

The second and perhaps even more important purpose of this campaign may very well have been to endeavour to frighten certain portions of public opinion on the North American continent about the possibility of United States intervention in Europe ultimately leading to war and thereby prevent acceptance by the public and by Congress of the Truman and Marshall plans for aid to Europe. Without such aid it is reasonable for Russians to expect that the regimes based upon private ownership and private enterprise will collapse and give way to regimentation by communistic bureaucrats and that Governments modeled on theirs will in fact be subservient to Moscow's influence and only too willing to implement that higher loyalty which Moscow seems able to inspire in those it has trained in its communistic institutions.

Now, all this is not merely a matter of ideology; it has become a very concrete problem for each one of us. We, in Canada, have an economy based upon the principle of multilateral trade and multilateral currency conversion. We buy from the United States commodities to the value of hundreds of millions of dollars more than we sell in that market and, unless we can use the surpluses from our sales to other countries to pay for our United States purchases, we will have to cease making these purchases. We are, therefore, vitally concerned in the prompt restoration of European economies and in the removal of those trouble-

some threats to peace and stability which block the path to such restoration, and it was not merely words I was speaking when I said to the General Assembly the other day on behalf of the Canadian Delegation:

"The fact remains, however, that these problems must be solved and that procedures and practices which obstruct such solutions must be changed. This can be done by the voluntary abandonment of these practices; by agreed conventions or understandings which will regulate them; or, if necessary, by amendments to the Charter. We must hope that no member of the Security Council will flout clearly expressed world opinion by obstinately preventing change and thus become responsible for prejudicing, and possibly destroying, the Organization which is now man's greatest hope for the future."

For these reasons, the Canadian Delegation at Lake Success is warmly supporting the United States proposals for reform in the voting procedures of the Security Council. Moreover, Canada is prepared to do whatever it can, as a recently elected member of the Security Council, to make it a genuinely effective body.

The General Assembly itself, to which nations will turn if the Security Council does not or cannot take effective action for the settlement of international disputes, is not a law-making body. It is a Parliament in the original sense of the term, a "parlement", a talking place.

Nevertheless the General Assembly has, even under the express terms of the Charter, important and continuing responsibilities in the field of peace and security, for the maintenance of which, admittedly, the Security Council was intended to take primary responsibility. Article 11 of the Charter, for instance, authorizes the Assembly to "consider the general principles of cooperation in the maintenance of the international peace and security". Article 15 (1) (a) requires the General Assembly to "initiate studies and make recommendations for the purpose of promoting international cooperation in the political field". Moreover, Article 14 provides that the General Assembly may recommend measures for the peaceful adjustment of any situation (not being dealt with by the Security Council), regardless of origin, which it deems likely to impair the general welfare or friendly relations between nations,

Canada has been supporting at New York proposals for the continuing use of the Assembly's authority during a trial period of one year, by the establishment of an Interim Committee of the whole to meet between sessions. Much might be accomplished in this manner without its being within the power of any one member to prevent it. Within its sphere of competence, the Interim Committee could make investigations, discuss disputes, see that grievances are fully aired, publish reports of its findings and make the necessary recommendations. It could look into the implementation of resolutions adopted by the Assembly. It could also give preliminary consideration to important items on the agenda of the General Assembly for its next session. We must, I suggest, explore every avenue open to us under the Charter which can lead to the peaceful adjustment of international situations and to the improvement of friendly relations, among all nations if possible; and, if that should become or remain impracticable, among enough nations to give each of them a sense of secure confidence in the authority and prestige of the organization which they have dedicated primarily to these ends.

Though the Charter is, as I have said, an imperfect document, it does not follow that the discords and frustrations encountered in the Security Council and in the General Assembly are attributable,

exclusively or even primarily, to the Charter. These discords are, of course, at root political, not juridical; they are symptoms, not causes. Unfortunately, they are symptomatic of the rift between the two worlds - between the two great centres of political and material power. It would not be desirable, even if it were possible, to disguise or minimize this central fact, or to deny that the authority of the United Nations as a one world organization is threatened as it has not been threatened since the Charter came into force on October 24, 1945.

On the other hand, as jurists, we know that, given the will, the Charter can be made to work. We know that law and order do not exist "in the air"; they are of the earth, earthy. They must take root in the minds of men. We know that law, national or international, depends ultimately on the spirit of law-abidingness, and that the will for order, national or international, is necessary to the establishment and maintenance of order. We know also that the high purposes of the Charter - the peace, freedom and security of all - can best be promoted by a universal demand continuously and earnestly pressed by the peoples of the world and by their leaders.

Despite gathering clouds on the horizon, despite these early and angry disagreements, despite the shortcomings of the Charter to which I have alluded, we need not, and must not, be cynical or despairing.

After all, the Organization is youthful, the times are troubled, and the traditional rivalries of the great powers have not been entirely forgotten. We cannot expect too much too soon. The millenium is not at hand, nor is world-wide brotherly love just around the corner. Nevertheless, we have in the Charter an instrument which can become the foundation of an international order based upon justice, supported by law, and dedicated to the freedoms which have been so eloquently expressed in the Atlantic Charter. We may have to build slowly. There will be setbacks, frustrations, shortages of material and consequent delays. But nevertheless we may still be able to build well and surely.

I cannot bring myself to believe that any nation is bent upon war. Surely, in 1947, no one in his right mind believes that bloodshed and violence offer any solution to the difficulties which beset the world. Nor, I venture to suggest, need we stress always the matters which divide us, upon which disunity and discord thrive. There are, of course, fundamental differences of opinion on political, economic and ideological questions which we cannot ignore and which we will not soon resolve. There are, nevertheless, fundamentals which unite us all. Common humanity, at least, is universal and at this time there must also be, if not more positive bonds of union, at worst common fear that the existing means of destruction are so terrible and probably so accessible to all possible contenders for military supremacy that all of us might perish.

I am satisfied that Canadians generally will agree that we must do everything possible to strengthen the authority and prestige of the United Nations, its organs and its related agencies. Canada has devoted, and will continue to devote her energies and talents to this end. You and I will not live to see the United Nations celebrate (like the Law Society of Upper Canada) one hundred and fifty years of uninterrupted success. We must, nevertheless, do what we can to the end that such a celebration may ultimately become possible. In so doing, we can all of us, old and young alike, feel we are dedicating ourselves to generations yet unborn.

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