"WAR, PEACE AND LAW IN TODAY'S DIVIDED WORLD"

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Introduction:

I must begin in typical lawyer-like fashion with a disclaimer - not with respect to what I propose to say but with respect to the status of what I shall say. I should like to make clear that while the point of view which I shall put forth is necessarily influenced, shaped and coloured by my own experience as a Canadian lawyer and diplomat, particularly my experience as Legal Adviser to the Department of External Affairs, I am speaking in a purely personal capacity and the views I express are my own and not those of the Department of External Affairs nor the Canadian Government.

The topic of my address is so broad and raises such basic issues that my problem has been as much one of selection of material as of analysis and presentation. I shall not, therefore, attempt to discuss certain questions such as the possible structure of a legal order in a disarmed world, nor the nature and structure of an international community based on world federalism, nor the elements essential to a constitution for a world government. I do not suggest that such subjects are frivolous: they warrant continued serious study and open discussion. I shall, however, attempt to direct my comments to the world in which we now live, and the problems with which we shall have to live for some time to come.

I propose to begin by considering in rather summary fashion the kinds of conflicts which have occurred during the twentieth century, particularly

those since the Second World War, and then discuss briefly their apparent causes. I shall then touch on the structure of international society as we find it today, including in particular the real or apparent changes brought about in that structure by the Covenant of the League and by the Charter of the U.N. I shall conclude with some comments on the nature of international law and the extent to which it does or does not provide constraints on the use of force.

The Leonard Beaton Approach:

At the time of his death, Leonard Beaton was working on a paper on "The Strategic and Political Issues facing America, Britain and Canada". In the preface by the Co-Chairmen of the British-North American Committee to the publication of that thesis, Mr. Beaton was quoted as having said, when forwarding his draft to the Co-Chairmen, that, "it could perhaps do with a final 1,000 words on the development of world institutions." We are the poorer for not having received those 1,000 words. What I have to say can in no respect be taken as an adequate substitute for the kind of contribution only he could have made. I hope, however, that in one respect at least I shall do my best to measure up to his high standards, namely, in my attempt at realism and honesty, the characteristics which marked all of his work.

Terminology "War" and "Peace":

At the risk of again sounding legalistic, I shall commence by making clear my understanding of the terms "war" and "peace" Presumably no one here present interprets the term "war" as it is defined by traditional international law, pursuant to which an actual declaration of war between independent states is a pre-condition to a state of war. Of the over 200 conflicts which have broken out since the end of the Second World War, there

has been no declaration of war, and thus not one has been a "war" in the strict sense of the term. I shall, therefore, be speaking of breaches of the peace and outbreaks of violence, including certain types of internal insurgencies, and not confine myself to "wars" in the classic sense of the term.

The term "peace" also means different things to different people. Canada, for example, has lived in a state of peace since the Second World War, apart from the "police action" involving Canadian forces in Korea. Other countries such as Switzerland have lived in an even more undisturbed state of peace during that same period of time, without even the kind of indirect involvement which Canada has undertaken in response to each of the U.N.'s requests for participation in its many peacekeeping and peace-making missions. However, if we all agree that peace is indivisible, then we must accept that we are not today living in a peaceful world, even in the light of the developing prospects for settlement of the Vietnam conflicts.

I propose, therefore, to interpret the terms "war" and "peace" very broadly, as they are utilized in common usage rather than as terms of art.

Outbreaks of Violence:

It is necessary to be aware of the nature of the conflicts which have broken out in recent years if we are to give serious consideration to ways and means of containing or preventing such conflicts. A number of useful studies have been made of the outbreaks of violence which have occurred during the twentieth century, and particularly since the Second World War. One such study was Lewis Richardson's "Statistics of Deadly Quarrels" published in 1960. One of the most important was "A Study of War" by the great international lawyer Quincy Wright, published in 1964. Also in that year an emminent American sociologist, Harry Eckstein, published his treatise "Toward the

Theoretical Study of Internal War", in which he examined over 1,200 examples of "internal war" in the period between 1946 and 1959. His definition of "internal war" was admittedly a broad one, embracing "civil wars, including guerrilla wars, localized rioting, widely dispersed turmoil, organized and apparently unorganized terrorism, mutinies and coups d'etats". Nevertheless, his conclusions concerning the nature of the conflicts examined are extremely significant. Two years later, in a much quoted speech to the American Society of Newspaper Editors in Montreal, the then American Defense Secretary, Mr. Robert McNamara, stated that over the previous eight years there had been no less than 164 internationally significant outbreaks of violence, involving 82 governments, of which only 15 resorts to violence had been military conflicts between two states.

Two years later, however, in Adelphi Paper No.48, issued by the Institute for Strategic Studies and written by David Wood, entitled "Conflict in the Twentieth Century", rather stricter criteria were applied and, as a consequence, the number of such conflicts was substantially reduced. The term "conflict" was defined as "a situation where the regular armed forces of a country or community are involved (either on both sides, or on one side only) and where weapons of war are used by them with intent to kill or wound over a period of at least one hour." This much narrower classification excludes civil riots where only police or para-military security forces are used, mutinies, coups d'etats where force is threatened but not used, many types of frontier incidents, unapposed movement of military forces into the territory of a foreign community, and maritime blockades or "quarantines". Even applying this much narrower definition, however, this study found that in the 70 odd years of the twentieth century preceding the publication of the paper approximately 128 "conflicts" had occurred. The number of "conflicts" occurring during the years 1958-1966 (referred to by Mr. McNamara) were

reduced to 45. Nevertheless, of the 128 "conflict situations" which were analyzed, some 84 occurred after 1939. Of these only 28 took the form of fighting between states, while 56 "conflicts" fell into the categories of "armed insurgency against the central government" or "civil war between factions" or "military coups d'etats". By contrast, of the 44 conflicts recorded as occurring during the twentieth century before 1939 only 20 come into these last mentioned "internal conflict" classifications, with the remaining 24 all involving some form of warfare between states, usually motivated by territorial expansionism. The results of the study suggest that while the classical type of war between states involves forcible invasion across frontiers is decreasing, other types of outbreaks of violence are on the increase.

So much for the statistics. What do they suggest concerning the nature of the conflicts of today's world? Firstly, only rarely are we faced, as we were eventually in the recent case of Bangla Desh, with armed conflicts between two states involving incursion of armed forces across frontiers. More commonly, outbreaks of violence occur which are of the sort which are difficult if not impossible to classify under traditional international law since they are often mixed internal-international conflicts. As Ambassador Max Jakobson, former Permanent Representative of Finland to the U.N. and one of the most distinguished nominees for the position of Secretary-General, points out recently in a remarkable speech, "The conflicts of the past 25 years have failed to conform to the models designed in San Francisco. They have not been European wars; with very few exceptions they have not been classical wars between states."

Today's Divided World:

Having discussed, however broadly and briefly, the nature of recent

conflicts, it is necessary to give some consideration to their underlying causes, if we are to draw any lessons from them. Obviously a case-by-case analysis would be a task well beyond the scope of this paper, but certain general conclusions can be drawn. Firstly, as pointed out by David Wood, most of the conflicts in question have taken place in Africa, the Middle East and Asia, that is to say "the third world". Secondly, a large number of these conflicts followed on or were associated with the break-up of colonial empires whether Ottoman,British, French or Japanese, and the subsequent emergence of new "developing" states. Thirdly, as a consequential conclusion, the majority of such conflicts occurred in or between the really poor countries of the world.

Mr. McNamara found no difficulty in concluding that, "There is a direct and constant relationship between the incidence of violence and the economic status of the countries concerned." He pointed out that of the 27 rich nations with a per capita income of $750 per year or more, only one had suffered a major internal upheaval on its own territory during the decade to which he was referring, whereas of the 38 poorest nations with a per capita income of less than $100 a year, no less than 32 suffered significant conflicts. He concluded that, "There is an irrefutable relationship between violence and economic backwardness. And the trend of such violence is up, not down." He reminded his audience that of the 149 serious internal insurgencies in question, communists had been involved in only 58 of them, comprising 38% of the total. His conclusion was that "security is development". My own way of expressing this point, which Ishould like to return to later, is that security may lie ultimately in development.

Secondary causes, according to David Wood's Adelphi paper, may have been the large quantities of conventional armaments left in private hands after World War II, augmented as great powers developed newer types of weaponry;

the spread of insurgency conflicts with the re-emergence of guerrilla warfare, pioneered by the Boers and later by the Bolsheviks; and the artificial and arbitrary frontiers set up on the break-up of colonial empires, which often ignore ethnic and tribal consciousness. Nothing he says, however, contradicts the conclusions of McNamara.

In the words of Ambassador Jakobson, the conflicts of the past 25 years have arisen "from the withdrawal of imperial powers, the division of nations along ideological lines, disputes over legitimacy, violent social upheaval spilling over national borders - or a combination of such factors - conflicts like Korea, Vietnam, Palestine, Cyprus or Kashmir; and they have eluded the peace-making and peacekeeping mechanisms of the Charter." I shall return to this point about the Charter later. At this stage, I should like merely to register my own view that while the causes of these conflicts are diverse, poverty is a continuing and almost constant factor. Conversely, I should like to note that nuclear weapons, while the greatest single cause of fear of a major conflagration, have neither been utilized in a conflict since the Second World War nor figured as a cause of armed conflict, although the Cuban missile crisis came close. Indeed, as I shall discuss later, nuclear weapons may well have proven to be the greatest safeguard against a third major world war.

The very title of my address appears to suggest the foregoing conclusion that much of the problem of war, peace and law stems from the divisions which exist in today's world, particularly in the poorer areas of the world. This can hardly be denied. In my own view, however, another continuous causitive factor is the present structure of international society. I should like therefore to consider, at this point, the extent to which such conflicts may stem as much from the basic structure of international society as from the ideological, economic, racial, ethnic, territorial or other differences amongst its members.

The Structure of International Society:

Whatever one's views may be concerning the future structure of the international community, it is essential to any realistic appraisal of the problems giving rise to armed conflicts and any attempt to contain or prevent such conflicts in the future that we recognize the facts of life concerning the present structure of international society. (For the purposes of this paper I have adopted the fundamental sociological distinction between "international society" and "international community" utilized by Schwartzenberger.)

In recent decades there has been a development of the concept of the international organization as a subject of international law, although this concept has not been accepted by the Eastern Europeans and some other states. Similarly, at the other end of the scale, there is increasing acceptance of individuals as proper objects of international law, although little progress has been made as yet in advancing from the legislative phase, which is almost completed, at least in the field of human rights, into the implementation phase. There are even the beginnings (at Canada's instigation) of acceptance of the need to subject multinational enterprises to rules of public international law. Thus, one could argue that at one and the same time the international society is expanding at both ends of the scale, not only numerically but substantively by embracing both larger and smaller units than that of the nation-state. A basic fact of life, however, is that the nation-state remains the fundamental unit of international society. The classic principles of sovereignty and non-intervention remain the foundation-stone of the Charter, in spite of the inequality of states built into the Charter system through the device of the great power veto. Thus, while some states may be more equal than others, sovereign independent states constitute, for the foreseeable future, the members of international society. I propose neither to justify nor to lament this fact of life but merely to note it, for it is extremely important to be aware

of the relatively primitive state of organization of international society if we are to look realistically at the difficulties of establishing effective constraints on the use of force. There is no reason why an effective world order could not be founded upon the nation-state as the basic unit, assuming that every state were willing to delegate certain legislative and enforcement powers to some supra-national organ. I suggest, however, and shall attempt to illustrate that we have hardly begun this process of moving from an international society comprising a loosely-knit group of interdependent but autonomous states towards a more well-integrated and closely regulated international community of states.

Even in Western Europe where one may detect signs of a gradual move towards political as well as economic integration, there remain very strong nationalistic pressures as evidenced, for example, by the emotions aroused by the recent referenda by states considering accession to the European Community. Yet Europe has had a learning period of centuries of "progress" from barbarism to the "civilization" of the Greek and Roman empire system back to barbarism, through the anarchy of the feudal period to the present model of the typical nation-state, since adopted by other parts of the world. I do not propose to comment on the characterization by the late President De Gaulle of North American society as the only one in the history of man which managed to progress from barbarism to decadence without an intervening period of civilization. Nothing in the Judao-Christian philosophy suggests the inevitability of the nation-state as the ultimate form of society, but it has come about and it appears to be here to stay. The same may be said with respect to the other great civilizations of Asia Minor, China, India, Egypt and of Central and South America. While theocracies have existed and still do in some parts of the world, none of the great religions are predicated upon or are causally linked with

the concept of the nation-state as the ultimate form of human association, but none has prevented its development. None of the ideologies except fascism and communism give preeminent importance to the state, and even communism, at least in theory, pays lip service to international solidarity, and the eventual "withering away" of the state, while capitalism may be showing the way with its development of trans-boundary multinational enterprises. Yet statesmen and politicians the world over find themselves locked, willingly or otherwise, into a structure whose foundation rests ultimately upon nationalism, with all its evils and all of its benefits. I propose therefore to examine the extent to which the attributes of the nation-state and thus the characteristics of international society founded upon the nation-state have or have not been altered by the two great experiments in international constraints upon the use of force, namely the League of Nations and the United Nations.

Much has been written and said about the attempts made after the First World War to restructure society through instruments for the containment and prevention of the use of force by the establishment of the League of Nations. Almost as much has been said and written concerning the reasons for the failure of the League to keep the peace. It suffices for my purposes to point out that the Covenant of the League did not set up a supra-national institutional system of security and that the individual members of the League of Nations remained free to accept or reject the decisions of the Council. The framers of the Charter attempted to go further. While they too carefully refrained from setting up any institution having pretensions of a world government, they did establish the means whereby decisions could be made by the Security Council which would bind member states and constrain them from the use of force.

As pointed out by Stanley Hoffmann in his extremely provocative article "International Law and the Control of Force",

> "The legal system of the Charter had three main elements: the individual ban of article 2, paragraph 4, which limits the ends for which force can be used or threatened and for practical purposes rules out the use or threat of force as an instrument of national policy; the collective monopoly of force in the hands of the world organization, in the case of threats to peace, breaches of peace and acts of aggression; and the exception of article 51 - individual or collective self-defense against an armed attack until the Security Council has had the time to act."

The Charter appeared to have made a considerable breakthrough in societal terms in setting up a security system, elaborated in a series of graduated steps in Articles 39 to 49, predicated on the assumption that members, particularly the great powers, would supply the Organization with sufficient military resources for its enforcement needs. As everyone knows, however, this proposed military security force has not come to pass, and U.N. peace-keeping and peace-making exercises have had to be organized on an ad hoc basis, relying upon forces offered by small and middle powers such as Canada, rather than through a permanent peace force set up by the great powers, as originally intended. Even with respect to the Security Council's broad powers, events developed along different lines than those foreseen. As for the Assembly, while it was intended that the Assembly would have wide powers of discussion and recommendation, it was never foreseen that the Assembly would authorize a "peace-making" force through the device of the "Uniting for Peace Resolution". Thus, while the Charter laid the basis for the gradual evolution of a collective security system under the UN Security Council and Assembly, which together possessed some elements of a nascent "supra-national" authority, the Charter created in essence an institution broadly comparable in structure to the League and rooted in similar ideas of national sovereignty and domestic jurisdiction. It is easy to lose sight of this rather disturbing fact.

As pointed out by Ambassador Jakobson, "The illusion of the UN as an autonomous actor on the world scene seems to have become deeply imbedded in our habits of thought and speech. Even governments, while judiciously guarding their own sovereignty, often speak as if they expected the UN to have the power to make other governments behave." The reality falls far short of the illusion.

In an article by Leo Gross entitled "The Peace of Westphalia, 1648-1948", he compares the first great European or world charter, the Peace of Westphalia, with the Vienna settlement of 1815, the Congress of Aix-la-Chapelle of 1818, and the Paris settlement of 1919. He points out that the Paris settlement, "without essentially departing from the Peace of Westphalia, attempted a novel solution, drawing for its inspiration on the Concert, the Hague Peace Conferences, the experience of the nineteenth and twentieth centuries in non-political international collaboration, and the wartime collaboration between the Allied and Associated Powers. It produced the League of Nations, in which the member states assumed certain commitments to co-operate in various fields and, above all, without abolishing the right of war, jus ad bellum, to establish 'the undertakings of international law as the actual rule of conduct among governments'". He observes that the UN Charter includes some of the elements of the League organization and relies even more heavily than did the League on the notion of consultation on limited obligations in the political, and the method of voluntary co-operation in the non-political, field. He then makes the telling point that, "The Charter proclaims that the organization is based on the sovereign equality of all the members only in order the firmer to establish the hegemony of a group of Great Powers. In Articles 24 and 25, the principal framers of the Charter almost obtained what the Concert never succeeded in obtaining, namely the recognition by the lesser nations of the

pre-eminent position of the Great Powers as the guardians of international peace and security. In spite of this and other important indications of a new approach to the problem of international security and relations, the Charter at first glance would seem to have left essentially unchanged the framework of the state system and of international law resulting from the Peace of Westphalia."

My own view is that the Charter laid the groundwork for a partial restructuring of international society, but the restructuring has not occurred. The major change contemplated was the delegation by the international community to the great powers, under the aegis of the Security Council, of the function of keeping the peace. This step fell well short of anything approaching world government, even when coupled with the legislative function of the General Assembly, the specialized agencies and the International Law Commission, and the judicial function (based wholly on jurisdiction by consent) assigned to the International Court of Justice. Nevertheless the Security Council was given at least some of the essential powers for the enforcement of constraints against the use of force. If the Charter system has not worked, the causes, I suggest, lie outside the provisions of the Charter.

As Ambassador Jakobson points out: "The 'five policemen', in Franklin D. Roosevelt's phrase, comprising the five permanent members of the Security Council who were to keep the peace of the world, were unable to do so and it did not take long before the five policemen began to accuse each other of the kind of crimes against the international order they jointly were supposed to prevent." It would be wrong, however, to place the failure of the UN to keep the peace only on the shoulders of the great powers. Jakobson himself reminds us that, while in a technical or sociological sense we have become increasingly aware of living within a unitary framework - a global village - politically, culturally and ideologically, the world is as divided as ever politically

and the fragmentation of political authority is likely to continue. In his words, "There are today more political frontiers on the face of the world than ever before, and their number is growing not diminishing.... We expect the UN to express the essential unity of mankind, but more often it reflects the diversity of its 130 odd separate sovereignties."

It would seem appropriate, at this stage, to consider what has happened under the Charter system as distinct from what may have been intended.

The Charter System in Action:

It will be recalled that it did not prove possible at the Dumbarton Oaks Conference to reach agreement on the voting procedure of the Security Council, one of the few questions not settled at the Conference. As pointed out by Goodrich, Hambro and Simons in their book on "The Security Council",

> "There was no sentiment in favour of requiring unanimity of all members for decisions on substantive questions as the League Covenant had done. Nor was there any willingness to accept the principle of majority or special majority vote for substantive decisions, without some qualification protecting the interests of the states that were to be permanent members of the Council. There was agreement in principle on the requirement of concurrence of the permanent members for all decisions on questions of substance, but there was lack of agreement on whether an exception should be made in the case of a permanent member party to a dispute when the Council was performing its function of pacific settlement, on the ground that no party should be a judge in its own case. At the Crimea Conference in February 1945, President Roosevelt proposed a formula to govern Security Council voting which was accepted by Marshal Stalin and Prime Minister Churchill. This came to be known as the Yalta Formula and was incorporated into the Dumbarton Oaks Proposals submitted by the Sponsoring Governments to the other participants in the San Francisco Conference."

The authors go on to point out that,

> "The delegates of the Sponsoring Governments and France stressed the need of great-power unity if the Security Council was to discharge its duties....That any decision relating to enforcement action should require the concurring votes of the permanent members was generally accepted at San Francisco as justifiable or at least realistic. The issue chiefly pressed in committee discussion concerned the appropriate procedure when the Council was performing its peaceful settlement function. The position of the Sponsoring Governments was that unanimity of the permanent members was necessary, except on the admittedly procedural questions of putting matters on the Council's agenda and giving states the opportunity to be heard, since a decision to carry out an investigation

> or make a recommendation of procedures or terms of peaceful settlement might have major political consequences and might even initiate a chain of events which would lead to enforcement action by the Council."

The rule of unanimity which prevailed under the Covenant was discarded but concurrence of the five permanent members was required for any decision by the Council under Chapter VII of the Charter. Thus the Council could not take action against any of the major powers. The provision for great power unanimity or rather the provision for a great power veto was considered to be a realistic device to avoid conflicts between great powers. Whatever the failures of the Charter, that purpose has at least been achieved, whether as a consequence of the Charter system or the nuclear stalemate or a combination of both. As Ambassador Jakobson points out, "The UN was never equipped to deal with disputes between the big powers" and "as a result the enforcement powers granted to the five policemen for the removal of a threat to peace or the suppression of aggression have remained almost entirely unused." Stanley Hoffmann states flatly that, "The military enforcement-minded system of Chapter VII has been for all practical purposes abandoned." J.S. Conway in his illuminating article on the Politics of Peace-keeping points out:

> "We have therefore over the past 20 years completely reversed the political assumptions about peace-keeping. In the first place, we do not have a fire-brigade nor do we have any device for really defeating aggressors. Secondly we have no designs for a great-power organization seeking to coerce small powers. What we assume we ought to have is an agency for separating the major powers or for assisting them in areas in which they are not vitally interested by avoiding the expansion of conflicts. Thirdly, we have no moral hue and cry against an aggressor, but rather we have seen the willing acceptance of peace-keeping elements by both sides in a dispute. And fourthly, we have the recognition that military solutions do not solve political problems which must be resolved first."

I am not so sure that we need resign ourselves to the present great-power stalemate in the Security Council as a continuing fact of life, a point to which I shall return. It must be accepted, however, that the present

international political climate could lead to an indefinite delay in the implementation of the collective security arrangements provided for in Articles 43 to 47 of Chapter VII of the Charter, which could, if invoked, have enabled the Security Council, had it so decided, to take collective action to deal with any threat to the peace, breach of the peace or act of aggression. Thus, the security system envisaged in the Charter, which had been regarded as the major advance over the League of Nations, has not in practice been implemented. International society has remained in the essentially primitive stage in which it emerged from the turmoil of the 19th century. It is for these reasons that the concept of ad hoc peacekeeping, in which Canada has played such a large role, was developed.

Peacekeeping:

As a consequence of the breakdown in the system of collective security through enforcement action, as prescribed in Chapter VII of the Charter, there was at first a political vacuum and then an attempt to develop new approaches. The concept of peacekeeping through the use of military observers, truce supervisory missions or major military forces for non-forcible purposes was the result. All such peacekeeping exercises were mounted on an ad hoc basis and, more important, were carried out only with the consent of the parties directly concerned. Recently attention has shifted from the "uniting for peace" procedures of the General Assembly back to the Security Council, as it has become generally recognized that only the Security Council can perform the function of keeping the peace. However, one has only to look at the handling of the Bangla Desh conflict to see how ineffective the Security Council is in a crisis situation involving "client-states" of the great powers. It was the representative of Saudi Arabia who described the performance of the Security Council throughout that crisis most aptly when he spoke of the great powers

playing out their game of chess upon the chess-board of the Indian Sub-Continent. The conflict between India and Pakistan was admittedly a mixed internal-international conflict but ultimately it involved virtually all the attributes of classical war, including even the crossing of frontiers by organized armies. Yet neither the Assembly nor the Security Council was able - or willing - to stop the conflict, as each of the interested great powers involved prevented any action directed against its respective client-states.

The late Lester B. Pearson expressed the situation some time ago in the following words:

> "What we will soon have to decide is whether the UN is to become merely a social, humanitarian and assistance organization, with political and security problems only for debate, not resolution. Or whether, by revising the Charter or by agreement between the more important members, the peace-keeping functions of the UN can be made reasonably effective."

It would seem that, in spite of the present signs of settlement of the Vietnam conflict reached, of course, wholly outside the UN, the prognosis concerning the Charter system of collective security ~~would seem to be~~ is a gloomy one. My personal view, however, is that over the long term, prospects are not so dim as they would appear. My reasons for believing this are directly related to the subject of my address. I have talked about war, peace and the divisions of the world in which we live, but I have not talked about international law, a subject I should now like to examine.

International Law and the Use of Force:

In the light of my preceding comments concerning international law, one may be tempted to recall the response by the Prince of Wales to the question concerning his views on modern civilization, when he is said to have replied: "It is a grand idea - when is it going to begin?" Usually, however, when people criticize international law for its weakness, they are complaining

in reality either about the ineffectiveness of the UN or about the primitive stage of development of international society. Admittedly, international law can only govern through the consent of those it purports to regulate. This is equally true, however, in the final analysis, of any system of law. When law does not reflect the will of the community it seeks to regulate, the law becomes unenforcible. Thus, ultimately, the enforcibility of any system of law depends upon the consent of the community to be regulated by law. On the domestic plane we have by mutual consent erected a highly sophisticated superstructure for the enactment and enforcement of law. On the international plane we have only begun the process and have not yet wholly abandoned the right to self-help - the right to use violence. Yet much of the conduct between states is clearly regulated by legal principles treated as binding. Why is this not so with respect to the use of force?

I should like to make two basic points at this stage: Firstly, no system of national law of which I am aware has been able to prevent outbreaks of violence such as murder, rape, armed robbery and kidnapping, in spite of the existence of highly developed legal constraints involving courts, law-making legislatures, police, prisons and effective means of punishment, including even the death penalty in some jurisdictions. Secondly, it is as difficult for the UN and for international law, including UN Charter-law, to prevent a state from dismembering itself as it is for domestic law to prevent an individual from committing suicide, whether by dangerous driving or other seemingly accidental methods or by a deliberate act.

We have seen that the vast majority of the outbreaks of violence since the establishment of the Charter "collective security system" have involved internal or mixed internal-international conflicts. As pointed out by Linda B. Miller, "Indirect aggression rather than external attack has become

the familiar mode for states wishing to penetrate the physical boundaries of other states." We have seen also that, in Linda Miller's words, "The framers of the UN Charter, like the authors of the Covenant of the League of Nations, were principally concerned with the problem of international war rather than intrastate violence." Leaving aside for the moment the effectiveness of international law as a constraint of itself upon the use of force, the problem is complicated by the lack of clear legal rules concerning the use of force in internal or mixed internal-international conflicts. Numerous writers have pointed to the continuing hiatus in international law concerning the control of force in civil conflicts or mixed internal-international conflicts. Percy Corbett comments in "Current Challenges to International Law" as follows:

> "In traditional international law, civil strife fell into three rough divisions - local insurrection or rebellion, insurgency and belligerency. I say 'rough' because the dividing lines were blurred and each foreign State decided for itself the category in which the conflict should be placed, subject only to a charge of illegal intervention if it prematurely recognized graduation to one of the two higher categories."

Unfortunately, the Charter does little to add to or clarify this rather blurry law.

Linda Miller makes the point as follows:

> "The incidence of internal disorders prior to World War II had resulted in the development of principles of neutrality, belligerency and insurgency expressed in legal doctrines purporting to regulate state behaviour in internal conflicts. But the choices for third parties desiring to influence the outcome of civil strife were essentially political, in the absence of well-defined legal criteria. State practice before 1945 attests to the frequent deviations from the presumed norms of prewar legal doctrines. The limits placed on permissible state action in internal conflicts were unclear....The framers of the Charter made no attempt to formulate rules for the legal relations of states in situations of subversion, revolution or civil war....In sum, 'the charter concentrates on the problem of international war, ignoring the issues of civil war except in cases where domestic strife appears likely to develop significant international ramifications. The Charter's concern with international war is absolute, its concern with war within states is conditional'".

Stanley Hoffmann, in discussing the Charter Collective security system puts it as follows:

> "The basis of this system was a certain conception of international relations, a certain model of crises - the 'sin' to be abolished, the evil to be prevented was the crossing of a border by the armed forces of a state, the model was that of 1914 and 1939, the daemon to be exorcised was the annexionist or expansionist state....The notion of a resort to force 'against the political independence or territorial integrity' of a state presupposes the existence of a well-defined state, with clear-cut boundaries. What has happened again and again is that the boundary itself has been the question mark - not because (as in the model) one side coveted a territory that clearly belonged to another party, but either because the limits of the contending states had not been clearly drawn and were at stake (Kashmir, Arab-Israeli dispute, African border claims), or because violence broke out between two halves of a partitioned country (Vietnam today)."

I might mention that in addition to Canada's involvement in every peacekeeping mission of the UN to date plus some important non-UN peacekeeping missions such as the one now being attempted in Vietnam, Canada has taken and is taking action in the Aggression Committee of the UN and in a conference of government experts in the International Committee of the Red Cross, to develop international law relating to such conflicts. It is no secret, however, that the development of this branch of international law - if it can be deemed properly to fall within the ambit of international law - raises some of the most intractable problems of human relations of a legal, political, military and even technical nature.

Moreover, even apart from the gaps in the law concerning the control of internal conflicts, we are all aware of serious breaches of the peace involving crossing of frontiers and conflicts between states which are wars according to all the basic criteria of the classical concepts whether or not they are accompanied by a formal declaration of war. It is appropriate, therefore, to examine what, if anything, international law has to say about the use of force and, more important, what, if anything, international law can do to constrain it. Any attempt to answer this question must begin with an examination of the nature of international law as it exists today.

The Nature of International Law:

There would seem to be as many views of the nature and purpose of international law as there are learned authors writing on the subject. If we look to the origins of international law, then it is quite clear that Hugo Grotius perceived international law as a means of establishing order among nations and restricting war as far as possible. As Bart Landheer remarks in his thoughtful study, "On the Sociology of International Law and International Society", "to Grotius law was to be a motive rather than a technique in international action...the efficacy of international law depends upon the feeling of responsibility for world order of the major states....In this way, law is first and foremost a moral responsibility as it has been seen by great jurists like Suarez, Vitoria, Hugo Grotius and others". He goes on to suggest that, "The positivist school of international law has attempted to separate law completely from morality, but this trend is again losing ground in a period in which new states are striving to orient themselves in international society." I would like to agree with this last statement by Landheer but I'm not sure that it is borne out by the facts.

Quincy Wright wrote in 1955, "The discipline of international law is in a state of crisis. As understood by traditionalists it appears to be obsolete, and as understood by modernists it appears to be premature." There is still all too much truth in this statement.

Richard Falk states bluntly that after several centuries of thought we remain without an established science of international law, and goes on to say, "There remains considerable doubt as to the character of international law and great controversy as to its achievements and shortcomings."

Kelsen, the great publicist in the Grotian tradition, views international law as a complex of norms regulating the mutual behaviour of states who are the specific subjects of international law. He considers that

international law is "law" if it is a coercive order, that is to say, a set of norms regulating the behaviour of states by attaching certain coercive acts or sanctions as consequences to breaches of the "rule of law". He admits that international law, while partaking of the same character of national law, differs from it in lacking specific organs for the creation and application of its norms. He likens international law, therefore, to the law of primitive stateless societies and emphasizes its far-reaching decentralization, and looks to legitimate self-help for the coercive element. Thus Kelsen accepts the Austinian concept of law as requiring coercive processes in order to constitute true law, and postulates self-help as the coercive process. In so doing he tends to demonstrate the primitive nature of international society as much as the existence of positive international law. He concludes that the path which international law must follow in order to transform itself from its present state of decentralization to one analagous to that of domestic legal systems is through the establishment and utilization of international tribunals. I question this last conclusion, as I consider the International Court almost irrelevant at this stage of development of international society to the problem of control of the use of force, and I suggest that its habitual use will come about as a consequence of rather than as a cause of changes in national attitudes.

Myres McDougal is probably the leading scholar identified with the modernist approach to international law, combining legal realism with the systematic policy science pioneered by Harold Lasswell. McDougal focusses upon the processes of authoritative decision-making transcending the boundaries of particular territorial communities. McDougal, like Kelsen, accepts the decentralized character of international society but comes to different conclusions. He stresses the decision-maker located in the national system as the prime actor in international law and calls upon these decision-makers

to balance national interests against world community interests to the extent that the two perspectives collide. Thus McDougal is at the other end of the spectrum from Kelsen with his stress on law as binding norms.

Stanley Hoffmann is critical of those who, like Kelsen, conclude that international law qualifies as law in that it reflects relationships similar to the customs of primitive societies. He concedes that self-help is also the mark of primitive legal systems but suggests that the lack of institutionalization in the case of a primitive society may represent a high degree of integration, whereas in the case of international society self-help merely confirms its non-integration and promotes further disintegration. He is critical also of the view of McDougal and other modernists of the function of international law as a "medium for precise communication between international actors". There is no doubt that international law performs such a function, and that this is an important role. Indeed, in a recent publication "World Politics: Verbal Strategy among the Super Powers" by Franck and Weisband, the co-authors advance a persuasive argument to the effect that acts of states may be influenced by the legal rationale developed by other states in defence of their acts. In Hoffman's view, however, "Our proper and fashionable concern for communication systems should not make one forget who the communicators are, or what is being communicated: In the international milieu, some communicators have the might to force others to accept messages on which there is no consensus or the might to reject messages they don't like, and the communicators tend to agree on exchanging only such messages as enshrine their actual habits or serve their convenience." He goes on to say, "International law is the law of a group whose component units have highly institutionalized legal systems and differentiated political institutions; primitive law is the law of a group whose components have neither; in other words, the meaning of the low degree of institutionalization of international law is not at all the same as that

of the low degree of institutionalization of primitive law. Self help is indeed the mark of primitive legal systems - primitive from the viewpoint of institutionalization, but the lack of institutionalization can be found, so to speak, at the two extremes on the scale of group integration; at one extreme, it confirms integration, at the other, it confirms non-integration and may promote further disintegration."

Landheer points out that to Max Huber the existence of a certain equilibrium was a pre-requisite for the functioning of international law. According to this view, international law expresses an equilibrium rather than creates one. A slightly different approach is taken by Schwarzenberger who holds that international law does not condition but is conditioned by the rule of force. According to this view, international law expresses power relationships instead of regulating them. There is, unfortunately, considerable validity in both the Huber and Schwarzenberger views of international law which are not, in my view, mutually exclusive. Examples of legal doctrines illustrating power relationships are title by conquest for the acquisition of territory or the exclusion of duress as a ground for invalidating a peace treaty. It is important, however, to note the existence of other rules which are quite different in their origin, such as, for example, diplomatic immunity, which is based upon reciprocity, or air navigation rules which reflect common interests. The distinction between actual contemporary state practice concerning the rules of law on the use of force and contemporary state practice on other rules of international law is central, in my view - a point to which I shall return.

My personal perspective is very close to that of Falk, who draws attention to the double nature of international law as an intellectual discipline devoted to the study of order in world affairs and an operative code of conduct capable of exerting varying degrees of beneficial and detrimental influence on the quality of international life. He tends to stress the functions of

international law in the light of the characteristic patterns of interaction in the present international system. He suggests that in order to avoid either cynicism or utopianism it is necessary "to emphasize the limits of legal ordering as an independent variable in the existence of a social system". In other words, he regards law as one of the central elements in the development of world order, but cautions against expecting too much of it too soon.

Conclusions:

At this stage, I feel an obligation to give my own wholly personal views. Firstly, there is no doubt in my mind that with respect to the use of force - but not other issues - international law reflects more what "ought to be" rather than what "is". Even in the light of the absence of clear principles of international law concerning constraints on non-international conflicts there is no lack of norms concerning the legality of the use of force. The problem is, as pointed out by Stanley Hoffmann that, "legal norms never constrain all by themselves. Behaviour is restrained (1) either by self-restraint arising out of a sense of duty pure and simple...or (2) by self-restraint due to the calculation of interest...or (3) by the actual use of force on behalf of the norm." I concur with him in his view that international law if viewed as a system of coercion is weak law, particularly with respect to the use of force, the one issue on which restraints on behaviour happen to be the crucial issue. I agree with him also in the view that "the failure of the constraining function has always been at the heart of the weakness of international law. But this failure takes on a new dimension, and constraint a new urgency, at a time when the free resort to violence means the possibility of total war." I suggest, however, that international society is gradually moving towards the application of Hoffmann's second behavioural norm - self-restraint, due to a calculation of interest, a point to which I shall return.

My reason for stressing the nature of international society as it is rather than as it might be is that here too I agree with Hoffmann that "those who advocate, for the promotion of international law, the 'emergence of effective supra-national management on a regional and universal basis' of the use or threat of force, i.e. a more centralized world society, are right in pointing out what would ideally be needed. But they skip much too fast over two sets of problems: (1) What kind of 'supra-national management?...(2)...how will one get the states to move in this direction?"

I do not disagree with the Kelsen theory of international law as analagous to that of any primitive society not yet having approximated the state of a true community, but I cannot accept self-help as an effective substitute for an enforcement system which would place law above states. Self-help places states above the law. Like McDougal, I consider the actual processes of decision-making an essential factor in the determination of the ultimate effect of law upon the use of force, particularly in seeking accommodations between the national interest and the interests of the international community, but I am unable to avoid the conclusion of Hoffmann that "in a clash between inadequate law and supreme political interests, law bows". Ultimately, as Hoffmann points out, "if 'the survival of states is not a matter of law'...the states are still above the law...by definition...a legal system is a normative one, i.e. it is - just like an ethical code - a set of rules <u>for</u> human behaviour, and not merely the transcription of empirical rules <u>of</u> human behaviour."

Ivan Head describes the function of international law very aptly in his article "The Limits of Adjudication" appearing in "This Fire-Proof House":

> "Law suits and wars both stem from one party's desire to alter the status quo: to change territorial boundaries, to refuse to remain a colony, to divorce a spouse, to refuse to perform a contractual obligation, to steal. Changes don't always spawn disputes; the law performs an immensely successful role in facilitating changes in accordance with acceptable legal principles, and the number of changes arranged amicably exceeds by far the number of incidents which evolve into disputes. The success of legal institutions and legal processes in these areas is encouraging, but the role of settlor of disputes must still be played. And it must be played well if the law is to remain as an alternative to violence."

With respect to the use of force, one is obliged to admit that international law as such is, at this stage of the development of international society, almost peripheral as a motivating factor, and legal principles tend to be utilized more often to justify uses of force - a means of communication, as some authors point out - than as a reason for refraining from the use of force.

At this point in my address I have said rather little from which anyone might derive any encouragement. I happen to believe, however, that international law is already having an effect, albeit indirect, on the use of force and that this effect will be cumulative in its gradual development of a system of constraints. I concur completely, as I suggested a little earlier, with the following summation by Falk:

> "No form of law, however much it is supported by the social environment, has been able to eliminate altogether violations of its most fundamental rules of restraint. If one examines the domestic incidence of murder or rebellion in the best-ordered society, the record discloses a frequency of violation that would disappoint any legal perfectionist ....Thus it is not realistic to anticipate the perfection of international order through the perfectionof the legal system, nor through the successful emulation in international society of the kind of legal system that has emerged in the most successful domestic states."

He goes on to suggest that,

> "A failure to heed such realism is partly why movements dedicated to 'world peace through world law' seem so characteristically naive. And it is through an over-awareness of this naiveté that critical observers are invited to denigrate the role of law altogether in world affairs."

Falk concludes that,

> "The inability of international law to guarantee an altogether peaceful world does not imply its inability to promote a more peaceful world, or to deal adequately with the many aspects of international life having nothing directly to do with war and peace."

I am deeply convinced that international law can play and is playing an effective role in the regulation of the conduct of states on a wide variety of complex issues in their relations with one another. States abide by the law because it is in their national self-interest to do so. I am equally convinced that as the law-creating and law-fulfilling processes continue to develop, international law will gradually have an increasing impact in constraining the use of force. There are many reasons why I hold these convictions. Firstly, if we were to consider even matters seemingly marginal to problems concerning the use of force, such as issues relating to the environment, to the law of the sea, to air navigation, to diplomatic intercourse, to international labour standards, to international health standards and a variety of other fields, one is struck by the rapidly developing network of interlocking treaties which bind states to civilized rules of conduct founded upon their common interests. While some of these rules are based on reciprocity, others are based simply on the recognition of the common interest. It is a fact of international life that states do not take their treaty obligations lightly. It is another fact of contemporary international life that the treaty-making process has accelerated under the aegis of the UN to a fantastic degree since the Second World War, to the point that it has almost supplanted the customary law-making process as the legislative system on the international plane. Every state in the world is now bound by bilateral, limited multilateral or universal treaties on a vast range of subjects of great diversity and increasing complexity. No state is obliged to bind itself by such treaties. Increasingly, however, states are finding it in their national interests to do so. This voluntary undertaking of a treaty commitment is admittedly merely

the expression of a willingness to be bound to a rule which in most cases cannot be imposed without the consent of the state in question. Nevertheless, states do accept such obligations and in so doing are aware that the acceptance of a treaty obligation is at one and the same time an expression of sovereignty and an acceptance of a lessening of the exercise of that sovereignty. Thus, the inter-dependence of states which we all talk about finds concrete form in the interlocking network of treaties to which I have referred. Studies have been made, most notably, in the case of Canada, by Allan Gotlieb, indicating the extent to which an examination of treaty relationships reveals the actual relationships between countries. I have no doubt whatsoever that international society is gradually becoming integrated into an international community by this process of creation and adoption of legal obligations which in many cases gradually acquire the character of rules of international law.

Quite apart from the process I have just described there have been a number of specific developments in international law which, taken together, provide further grounds for encouragement concerning the future of international law and its effect upon the use of force. One such example is the non-proliferation treaty. Although some of the nuclear powers have not yet adhered to it, thus far no state other than the great powers has acquired nuclear capacity. Another example is the partial test ban treaty. While some states have not yet adhered to it, at least the process of weeding down the number and size of nuclear explosions has been begun. Another example is the seabed arms control treaty. It may be that at this point in time no state wishes to implant nuclear weapons or other weapons of mass destruction on the seabed, but the treaty guards against such action in the future. Another example is the treaty banning the stationing of weapons of mass destruction in space. Like the other treaties mentioned it does not have a direct effect upon the

use of force but it clearly has an indirect effect, particularly if one considers the possibilities and probabilities in the absence of this treaty and the others mentioned. In each case a door is closed on possible uses of force of the most catastrophic nature known to man. In each case international law is playing a role, even if only as the reflection of the wills of the most powerful states, rather than as an independent force obliging them to act in a certain way, whether or not they have consented to do so.

There are still other examples which can have beneficial effects upon law as a constraint upon the use of force, not only of themselves but through their impact on the thinking of decision-makers on other matters. One such example is the treaty banning claims to sovereignty in outer space and of celestial bodies. A similar example not yet in treaty form is the UN declaration proclaiming that the seabed beyond national jurisdiction shall not be subject to the sovereignty of any state but shall be reserved for purely peaceful purposes for the benefit of mankind. If neither of these developments appears to be world-shaking in its direct impact upon the use of force, their real significance can best be seen by a consideration of the alternatives to the approaches reflected in these instruments. Consider, for example, the implications of the landings by the USA of astronauts on the moon and the landings by the USSR of space vehicles in the absence of such prior binding agreements. The possibilities of claims and counter-claims to sovereignty and the disputes which could conceivably arise therefrom are limitless. Similarly, the Antarctic Treaty is not usually ranked as a great break-through in developing constraints on the use of force. It is not beyond the reach of one's imagination, however, to conceive of the use of force to establish competing claims to territory in the Antarctic in the absence of such a treaty.

The law-creating process I have described may appear so peripheral

and so gradualist as to be analagous to that of a drop falling into a bucket. The process might more accurately be compared, in my view, to that of a series of drops of water falling upon stone. Over the past 25 years the rough edges of the stone have been worn away. There is more and more evidence of the willingness of states to join together in regulating their conduct by rules of law applying to a wide range of human activity. Major resistance continues to be encountered as yet concerning direct constraints upon the use of force. It seems fairly clear that contrary to the expectations after both the First and Second World Wars, international society will not develop into an international community by settling first the problems of the use of force. The process, in my view, will, on the contrary, be that of regulating so many fields of conduct so effectively that there will be less and less reason to resort to force, and thus less resistance to the gradual acceptance of real constraints upon its use. We in the West have not been in the forefront in perceiving the importance of treaty-making, particularly multilateral treaty-making, as a working tool for the gradual construction of world order. We have continued to defend the customary law-making process on the international plane while not sufficiently perceiving the long-term benefits of treaty making. A kind of breakthrough occurred, however, with the agreement in the mid-sixties on the Vienna Convention on the law of treaties itself, that is to say, a treaty which approaches the status, together with the Charter of the UN, of a constitution for the developing world order, for that is what the law of treaties convention comprises, in my view. This treaty represents a virtual tour de force, combining as it does the basis for certainty and stability in the framework for relations of states with the necessary flexibility to enable these relations to adapt and adjust as changes occur. I am personally quite confident that, while we may never achieve a complete and effective cessation of the use of force internationally, nor have we on the domestic plane, we are already well into the

process of creating a system for the regulation of relations between states which will gradually make the use of force less relevant.

What I have said provides relatively little hope for the immediate future if we are to look to international law for restraints upon the use of force. I have no doubt, however, that with every year that goes by the superstructure of international law which is gradually being erected will have an increasing impact upon the use of force as much as upon particular areas of human and state activity which such treaties regulate.

The Nuclear Deterrent:

I have deliberately refrained thus far from attempting to thread a path through the theology of nuclear deterrence. Falk points out in his compelling work "Legal Order in a Violent World" that states have not felt so intimidated by the prospect of nuclear war as to re-define their interests in co-operative terms nor to change drastically the structure of international society. He is critical of the form of sophistication that tends to be reassured about the prospects for indefinitely maintaining nuclear peace on the basis of the skill the superpowers have exhibited in maintaining their joint interest in keeping the magnitude of conflict well below nuclear threshholds. The growing mastery of the great powers of the techniques of pursuing goals within apparently safe boundaries does not reassure him, probably because, as he points out, the use of a bluff or threat is relevant to the conduct of international diplomacy only if the intention to carry it out under specific conditions is maintained as credible. He expresses the fear that inevitably, however much the level of risk may alter with time, a policy of restraint will fail, simply on the basis of mathematical probabilities. He points out that the present "balance of terror" security system has developed out of the inter-action of nation-states operating as units of conflict and co-operation, and has operated as long as wars have been fought among the units. He considers that the work

of psycho-analysis is relevant to a depiction of political behaviour that involves violence. He goes on to question the viability of the nation-state as the prime organizing and value realizing unit in world politics. He concludes that the minimal ethical constituent of any new international society should be an affirmation of the solidarity of mankind.

From a purely personal point of view, while I cannot disagree with Falk's gloomy prognostications, I am reassured by the analysis Falk himself made of the rules of the game being pursued by the great powers, based, admittedly, on tacit assent and mutual forbearance rather than formalized law-making, which provides a rather useful summary of the present state of the nuclear stand-off. Falk lists the following essential boundary rules being followed by the great powers:

(1) No concerted use of military force across international boundaries in pursuit of unspecified objectives;

(2) No use of nuclear weapons to influence the outcome of an armed conflict internal to a single national society;

(3) No overt military intervention in ongoing warfare taking place within a state belonging to a rival superpower's bloc or sphere of influence;

(4) No extension of the scope of overt violence associated with an internal war to reach covert participation if such an extension requires overt acts of violence across an international frontier;

(5) No insistence upon victory in a violent encounter involving the substantial participation of rival blocs;

(6) No deployment of nuclear weapons in a state formerly associated with a rival's sphere of influence.

The foregoing six "rules" can hardly be characterized as a prescription for peace, but they provide rather greater cause for comfort than one might derive from the efforts being made to develop supra-national institutions through various non-governmental and occasionally governmental conferences.

In similar vein, if one is to derive what solace there is from the actual state of the world as distinct from the world we would like to have, it is worth turning again to Mr. David Wood's Adelphi Paper No. 48, which I have referred to earlier. He concludes, after an exhaustive analysis of the nature and extent of the conflicts which have occurred during the twentieth century, somewhat surprisingly perhaps in the light of the statistics previously mentioned, that "It may be true that we are living in an age of greater 'violence'...that there are a number of potential conflict situations in the world today, and that racial strife, the pressures of the 'poverty gap' and rising populations may create even more unstable conditions in the future" but that "it does not seem necessarily true that we are living now in a greater age of conflict than we were in the first half of the twentieth century."

An important point he makes is that of the four major wars fought since 1945: two (the first Indo-China war and the present Vietnam conflict) have started with nationalist insurgency with outside powers becoming involved; one (the Chinese civil war) followed a power vacuum caused by the withdrawal of an occupying imperial power; and only the fourth (the Korean War) involved a co-ordinated response of non-Asian powers to an invasion of an Asian sovereign state's territory. He reminds us that, when inter-state tensions in the Third World have led to the outbreak of hostilities with set-piece engagements of tactical forces (as with the India-Pakistan war of 1956 and the fall of 1971, and the Arab-Israeli war of June 1967), the great powers have taken care not to become involved. His paper was published before the USA became so deeply involved as an active participant in the Vietnam conflict, although the process of escalation had already begun. I suggest, however, that the USA experience and the present Paris peace talks strengthen rather than weaken his conclusion that the great powers have concluded that it is not in their interests to

become directly involved in such conflicts.

What of the immediate future? Firstly, it is worth noting that the situation today is in many respects not as bad as one might have expected it to be in the light of the lack of real and effective constraints upon the use of force. Even Hoffmann points out that, in contrast to the thirties, international politics in the nuclear age have been marked by far greater restraint based, of course, not on any evolution in human development towards a higher ethic but simply on the one discernible common need, namely survival. The reason for the comparative peace of our age is actually assumed to be the nuclear stalemate. F.H. Hinsley points out, however, in his "Power and the Pursuit of Peace", quite correctly, in my view, that, "There remains the case that deadlock between the powers existed before 1955, before nuclear parity or nuclear caution were achieved, and if it is now so complete it is for other reasons in addition to the thermo-nuclear weapons."

Deadlock is an unpleasant word but it can be interpreted as expressing the concept of a power equilibrium albeit not quite in the sense envisaged by Huber and Schwarzenberger.

The foregoing conclusions offer no comfort to the states or the peoples immediately involved in any of the conflicts in question. Death is as irrevocable for an individual, a family, a city or a people whether it comes as a consequence of a small war or a major conflagration. We would be doing no service, however, to the cause of peace or the future of international law if we were to generalize from the particular to the point of defeatism. Decision-makers and opinion-forming groups such as that assembled here tonight can best contribute to the development of a peaceful world by the kind of combination of realism and optimism personified by the late Lester B. Pearson.

In Volume I of his memoirs, Mr. Pearson gave an indication of the

depth of his personal commitment to the task of constructing a peaceful world, and his vision of Canada's role in this difficult process:

> "Everything I learned during the war confirmed and strengthened my view as a Canadian that our foreign policy must not be timid or fearful of commitments but activist in accepting international responsibilities. To me, nationalism and internationalism were two sides of the same coin. International co-operation for peace is the most important aspect of national policy. I have never wavered in this belief even though I have learned from experience how agonizingly difficult it is to convert conviction into reality."

I suggest that Canada's response to participate in the Vietnam Control Commission and Canada's stance at the Paris Conference which opened today, is wholly consistent with the Pearson approach to international affairs.

I should like to close with a comment on an issue raised in the earlier part of my address, namely the link between poverty and the willingness to resort to force borne of the desperation of those with nothing to lose. In Leonard Beaton's treatise, "The Strategic and Political Issues facing America, Britain and Canada", he concludes with the following words:

> "Up until about 1960, it was generally assumed that the world as a whole was in some way involved in serious conflict and that keeping the peace was a real if undefined general obligation. The various U.N. peacekeeping efforts are perhaps the most important monument to this conviction...for many years, the western powers as a whole, led by the USA, Britain and France, used a combination of influence, money, aid and (where necessary) force to maintain what they conceived to be a reasonable world order. More recently, there has been an evident withdrawal from these concerns. With the strong mood of retrenchment in the USA, Britain and France, with the absence of any serious commitments by other western powers, and with the decline of aid programmes, the value of western links to poor and vulnerable countries is progressively diminishing....Is there a sense in this group of countries that they understand the roots of security and prosperity and have the will to show large parts of the world the way to both? These political and moral questions are interweaved. The real problem for the West is that the institutions of co-operation established in an era of high responsibility conceal the fact that the habit of co-operation has in large measure disappeared."

It lies with you and with me, and with our country Canada, to face up to these problems with courage, determination and perseverance, and with a clear perspective of the direction in which we must move and confidence in the eventual outcome of our efforts.

February 26, 1973.

WAR, PEACE AND LAW IN TODAY'S DIVIDED WORLD

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