

*Criminal Code*

national and international human rights groups are taking an active interest in the campaign against torture. Concerted action is necessary if we do not want torture to be tolerated or covered up.

The United Nations is taking an active part in this campaign, and Canada is giving it energetic support. In 1975, Mr. Speaker, the U.N. National Assembly adopted the Declaration on the Protection of All Persons against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Subsequently, the General Assembly asked all member States to reinforce their support by proceeding unilaterally with declarations against torture. Canada did so in 1982.

However, feeling that the Declaration was not enough, in 1977 the U.N. Assembly asked the Commission on Human Rights to prepare a draft convention against torture, based on the 1975 Declaration. Canada was active on the Human Rights Commission's task force and supported this initiative which was a concrete manifestation of international action against torture.

Canada has always been of the opinion that the Convention should not simply repeat the 1975 Declaration but also contain provisions for actual enforcement. In fact, the provisions give a broad definition of torture and provide for universal extra-territorial jurisdiction to prevent safe haven being offered to torturers, and also include a mechanism for compulsory enforcement consisting of an international committee authorized to proceed with investigations and submit comments.

In 1983, Canada jointly supported a procedural resolution, enjoining the Commission on Human Rights to give top priority to the preparation of a draft convention. The text of the draft convention was brought before the General Assembly and adopted by the Assembly in December 1984. The U.N. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was ready for signing on February 4, 1985 and was signed by Canada on August 23 of that year.

*[English]*

Under the convention, an obligation is put on parties to the convention to criminalize acts of torture as well as acts constituting complicity or participation in torture. A definition of torture is provided. The convention also provides that neither exceptional circumstances nor orders by a superior officer may be raised as a defence to torture. Any statement made as a result of torture may not be admitted as evidence in legal proceedings.

In order to enforce the convention, a system of extra-territorial jurisdiction is created to prevent safe havens for torturers or for their accomplices. States are obligated to investigate allegations of torture and to prosecute alleged torturers. With respect to a foreign torturer found on its territory, each state is obligated to either extradite or prosecute the alleged torturer. A state may refuse extradition if it fears that the person will be tortured if returned to another country.

In addition to these criminal enforcement provisions, the convention also obligates states to take other legislative, administrative, judicial or other measures to prevent both torture and other acts of cruel, inhuman or degrading treatment or punishment that does not amount to torture. These include regulatory directives, education and systematic reviews concerning arrest, detention and imprisonment. Victims of torture shall have an enforceable right to fair and adequate compensation and rehabilitation.

The convention also provides for the establishment of an international supervisory committee to monitor the implementation and operation of the convention and to receive reports. The implementation provisions further contain two optional procedures enabling the committee to consider complaints against state parties. I will not go into the details of the committee or its powers since this involves matters of international relations. They are not directly relevant to the implementation of the convention within Canada. The convention will come into force once 20 states have ratified or acceded to it. To date, over 50 countries have signed the convention and 16 have ratified it.

*[Translation]*

Mr. Speaker, Canada supports that Convention which enables us to better develop the legal obligations undertaken under the International Civic and Political Rights Pact. Let me indicate for instance that Section 7 of that Pact forbids torture or any cruel, inhuman or degrading penalties or treatments. Further, those obligations are also constitutionally recognized under Section 12 of the Canadian Charter of Rights and Freedoms, under which everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

By implementing the Convention, Canada would be more committed to promoting human rights internationally, and more specifically to eliminate torture. The Convention's provisions, which for the most part are compatible with Canadian criminal standards and practices, could easily be adapted to it. However, the Criminal Code would have to be amended to make torture a new offence and to establish extraterritorial jurisdiction in this area.

The Bill would enable us more specifically to attain the following goals: it would create a new offence, torture, committed by officials such as police officers, public servants, members of the Canadian Forces and foreign officials performing similar functions under foreign laws.

The new offence would also apply in the case of anyone acting with the express or tacit consent of those officials. Torture would be defined as any act or omission by which severe pain or suffering, physical or mental, is intentionally inflicted on a person for various purposes or for any reason based on discrimination of any kind.

Although it is possible to punish torture under existing provisions concerning assault and battery, what is required is the establishment of a new offence. In the first place, torture is