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Notes for a speech by the
Right Honourable Joe Clark,
Secretary of State for
External Affairs, to the
Third International
Conference on Constitutional
Law on "The Rights of
Minorities"

Quebec

8 March 1985

It is a great pleasure for me to be with you, and to join in your consideration of the rights of minorities. I come to Laval in two capacities. As Secretary of State for External Affairs, I want to welcome a truly distinguished group of authorities, who have come from many countries, to help explore this absorbing and sensitive issue.

And as a citizen of Canada, who has acquired an affection for this Province, I am honoured to find myself again in the company of Le Devoir, Laval University, and, of course, Senator Arthur Tremblay.

I am a Western Canadian who has become involved in Québec - a product of one Canadian minority working to establish the rights of another, and much of what I know of Québec was shaped by this small newspaper, this great university, and my extraordinary friend, the Senator.

Laval University, of course, has other distinctions. It can boast of almost as many distinguished graduates as the University of St. Francis Xavier.

At other times in our recent past, I have spoken of minority rights in Canada. I remember vividly one particular occasion at this University, with the support of Le Devoir, when I proposed some changes that could have allowed Québec to join with honour in the constitutional accord. That experience serves to emphasize that for Canadians, questions of minority rights are not academic matters. They are issues as old as our country, and as fresh as last week. Just eight days ago, the Minister of Indian and Northern Affairs introduced a Bill to end finally discrimination against certain women under our Indian Act. That very Bill is being criticized by some spokesmen of the Indian community, who claim the action by Parliament infringes their collective rights as aboriginal people. Such are the complexities of questions of rights, and for Canadians they are domestic complexities as well as international.

Indeed in Canada, we have considerable experience with the rights of minorities. By the standards of the day, a rather inflammatory situation was created when Protestant England took possession of a colony that was not only Catholic in religion, but French in language. That was also a time when the British colonies to the South were already restless, and any attempt to enforce radical change in Québec would not have been wise. Accommodation in matters of language and religion was essential.

I have made the point before that we Canadians, having started with such clear differences, had no alternative to tolerance. Of course, our history is full of evidence of goodwill and generosity of spirit, and those are genuine and valuable characteristics. But there was more than goodwill. The diverse nature of Canada forces us to respect and accommodate genuine differences.

Canada was founded as a confederation of strong provinces, giving full recognition to our right to be different from one another. As immigrants from many lands spread over our country, there was no real attempt to enforce assimilation. Indeed the Canadian Charter of Rights and Freedoms has now given specific constitutional support to the preservation and enhancement of this multicultural heritage. That Charter also confirms and expands the language rights of Canadians in both official languages, and includes provisions for educational facilities for the language minority in affected provinces. In the Charter and elsewhere in the Constitution, recognition has also been given to the rights of Canada's aboriginal population.

Internationally, Canada has nothing to hide with respect to minority rights. We are one of only 34 states that have agreed to submit their record of performance under the U.N. Covenant on Civil and Political Rights to the test of petitions by individual citizens under the Optional Protocol to that Covenant. Acting on such a petition, the Human Rights Committee found that Canada was not living up to Article 27 of the Covenant, the single article in which minorities are explicitly mentioned. The issue concerned the discrimination in the Indian Act to which I have referred. We had already recognized this as a problem

within Canada, and it is nothing to be ashamed of that we have had a little prodding from an impartial international committee to put our house in better order.

This issue concerned the loss of a special group right, something not available to all Canadians. The recognized rights of any group within a state must in their nature be exclusive, apart from, and in some respects in contradiction to, the general human rights available to all on a basis of equality and non-discrimination. If a language right is to have full meaning, it must be supported by measures to make possible its full expression. It will never be easy to establish such a right, and to give it substance, because there will always be many who honestly fear that to institutionalize differences of this kind may serve to sharpen these differences, and even put at risk the integrity of the state. To produce true equality for a particular group, governments may have to discriminate actively in their favour as, for example, when "affirmative action" programs are undertaken to improve the status of women. With these aspects in mind, it is to be expected that governments will approach the matter of group rights with considerable caution.

The sensitivity of the subject, and the wide variety of what may be desirable or possible in each particular state, has delayed the development in the United Nations of any universal guidelines on group rights. The last forty years have seen the successful elaboration of standards of human rights, and the development of international processes which encourage their implementation. But the concern has been primarily with the rights of individuals. Whenever it has been suggested that similar consideration should be given to the rights of minorities, this has been resisted by some states with the argument that since they themselves contain no minorities, there could be no universal consideration of the matter. This, more often than not, is a statement of policy rather than of fact, because all states contain minority groups of some sort.

Others have argued that the increasing development of the rights of individuals would eliminate the need for any special treatment for groups of persons. This may be true to the extent that prohibiting discrimination may protect individuals in a particular community from abuse.

But human rights standards for individuals cannot provide the positive elements, involving some special privileges, required to establish the rights of a minority.

These considerations may have been responsible for the very limited treatment the rights of minorities have received in the United Nations. Article 27 of the Covenant on Civil and Political Rights speaks only of the rights of persons belonging to minorities, rather than of any rights of the groups themselves. Minority rights being such a combustible subject in the European context, identical language had to be used in the Helsinki Final Act. It will no doubt come into play at the Meeting of Human Rights Experts which Canada will host in Ottawa from late April to early June as part of the process of the Conference on Security and Co-operation in Europe (CSCE). I might add that there was considerable difficulty in getting even this reference to minorities into the Helsinki Act, and the opposition did not come only from the Eastern states.

Within the U.N. Commission on Human Rights, a Working Group has been established and requested "to consider the drafting of a declaration on the rights of persons belonging to national, ethnic, religious or linguistic minorities". This work has been delayed because there has been no agreed definition of what constitutes a minority. I admit this is a difficult matter and I shall not try my hand at it now. Two distinguished participants in this Conference, Professor Capotorti and Judge Deschênes, have made important contributions to framing such a definition, and I understand that the U.N. Sub-Commission will be discussing the conclusions of this work at its meeting in August.

I wonder if in this process we might not get rid of the word "minority" itself, which seems to me to denote something second-class, and is not generally acceptable to those groups who wish to retain their special identity. Perhaps the first right of a minority should be not to be called a minority. I have always preferred the term "community", which stresses the bond within the group, rather than the arithmetic of their situation.

One challenge is to define minority rights, and identify cases where they are not respected. The other challenge is to find practical ways to secure those rights, or stop their abuse. All of us must respond to both challenges, but the special responsibility of government is

to find practical ways to solve particular problems. Those problems are themselves diverse. By way of example, let me report on some of the minority rights questions before our particular Government now.

Our government has introduced historic legislation to amend the Indian Act that will end discrimination based on sex and will give Indian bands control of their membership. As I said in the House of Commons on March 1 - it marks a large step away from a colonial mentality that has scarred the relations between Indian and other Canadians and marks a step - just a step, but an important one - toward greater autonomy for Indian bands. It proceeds in a way that is simultaneously reasonable, tolerant and principled to resolve dilemmas that have been divisive at home and embarrassing abroad.

The Constitution Act, 1982, recognized for the first time rights unique to the aboriginal peoples. It not only affirmed existing aboriginal and treaty rights, but also provided for an unprecedented constitutional process in which First Ministers and aboriginal leaders would participate in discussions to identify and define further the rights of our aboriginal peoples to be entrenched in our Constitution. The third conference in this series will be held next month.

This Government is also committed to new efforts to assist women to a level of true equality in Canada life. This will require, as I have said, some positive measures which will favour women as a community, in order that they may make their full contribution to the society at large. Our constitution now contains a provision guaranteeing fundamental rights and freedoms equally to men and women. A report commissioned by the Government has just been published on equality in employment, and a parliamentary committee will soon examine the question of child care. Here again we find ourselves working in parallel with international efforts. Only a few weeks ago Canada presented in Vienna its first report on how we were implementing the convention on discrimination against women. We also cooperate closely with other states on particular aspects such as the vital role of women in development.

These are domestic concerns, having their reflection in the international field, but the promotion of respect for human rights in other states must also concern

us. Many Canadians have family ties in Eastern Europe. They expect that their relatives will be able to visit them, and that their ancestral countries will adhere to standards of human rights set out in international agreements such as the Helsinki Final Act. The government must continually consider how best to support their human rights. It is important to remember that what may be satisfying to say in public is not always effective in reducing the suffering or in relaxing officially-sanctioned repression. Canada has always used bilateral and multilateral meetings to advance human rights, including minority rights, and this will continue to be the case. I would like to note our pride that the first Human Rights Experts Meeting of the Conference on Security and Cooperation in Europe will be held in Ottawa this May. It is the only CSCE conference to take place in North America, and is being held at Canadian initiative. I hope it will provide an opportunity for an orderly and productive discussion of these problems.

Minority rights concerns are not of course limited to developed countries. Emerging from the crucible of colonialism, many developing countries have had to confront the challenge of reconciling the coexistence of minority groups during the early stages of nation-building. Most of these experiments in nation-building have proceeded as smoothly, if not more so, than in older, developed countries. Political harmony and respect for human rights, and the rights of communities, are at once prerequisites and components of the developing process.

As a partner in development, Canada has formed close relationships with many developing countries, and we must be dismayed when they experience difficulties which threaten their domestic peace and progress. Sri Lanka comes to mind as a classical current example of a country with minority problems, but there are others that one could mention. We have often expressed to other governments our concern about the trend of events in their countries, and now our government intends to address the more difficult question of whether our bilateral aid resources should be more related to the performance of recipient governments in such areas as human rights.

In South Africa we have a country where those in control are in fact a numerical minority and those suffering abuse an overwhelming majority. Canada over the years has been in the vanguard of initiatives which have sought to bring pressure on the South African government to treat all its

inhabitants with justice and equality. Canada has for years prevented the sale of Canadian military equipment to South Africa. We played a pivotal role under the Right Honourable John Diefenbaker in expelling South Africa from the Commonwealth, and have supported programmes designed to help the victims of apartheid. We severely curtailed the use of public funds for the promotion of trade with South Africa and very recently welcomed to our capital the heroic figure of Bishop Tutu. The government will shortly be looking at other means of expressing the deep opposition of most Canadians to the apartheid policies of the South African government.

While the scope for national action may be limited, the international situation is not hopeless or even unique. It is exactly that situation which has been faced in other areas of human rights, in which it has been possible to develop internationally-agreed standards, and to provide some international mechanisms to encourage the implementation of these standards. And, as I have indicated, the Commission on Human Rights is now engaged in drafting a declaration on the rights of minorities. Canada will work to advance this process as rapidly as possible, in the hope that we may have a declaration, as a focus for political action, within the next few years.

It is a political reality that these processes take time. So I hope that the international community will also explore some more immediate methods by which states might benefit from the experiences of others in developing the rights of minority groups. Professor Capotorti's study of 1979 is an excellent compendium of such experience, and I think we should look for some mechanism by which such information may continue to be collected and for means by which it may be made freely available to states. The appropriate agency for such work is the United Nations Centre for Human Rights in Geneva which, through its Advisory Services Program, has expanded its capacity to assist member states.

In some of these situations, and currently in the case of Cyprus, the U.N. Secretary-General has used his good offices to help the parties achieve some accommodation or reconciliation. Canada fully supports such efforts, but member states themselves, acting together, must do more to seeking realistic solutions to problems involving the rights of minorities, and to encourage and assist nations to adopt these solutions.

Our clear objective must be to assist nations with their problems, rather than to meddle in their internal affairs. Lasting improvements must come from internal processes of accommodation in individual states, as a result of domestic decisions.

In seeking to promote such accommodation within individual states, the international community must rely on persuasion, through concerted political pressure mobilized in the United Nations and elsewhere.

You have assembled here experts and practitioners in the rights of minorities, a subject which has been suffering from neglect internationally. I am certain that the records and conclusions of this Conference will themselves be a significant contribution to the development of international standards and action. It will certainly give new, and timely, impetus to the consideration of this matter among nations. It is my intention that Canada contribute actively and compassionately to this work, from which we too will benefit within our own country.

Sometimes, at international conferences, Canada is celebrated for what we are not. We are not a superpower, not an imperial power, not an aggressive nation. But we are a country deeply involved with the rights of minorities. That issue was present at our beginning, with our two founding peoples, and before our beginning, with our aboriginal people.

Our future success as a nation, as with our past, will be determined by our treatment of this issue.

The challenges are Canadian and international. I am honoured to have the opportunity to discuss them here with you.

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