Canadian Statement to the Third Committee
on Monday, November 29, 1965.
Professor R. St. John Macdonald

Mr. Chairman,

The Canadian delegation had an opportunity to outline a few of its views on implementation during the general debate last week. At that time we expressed the opinion that reporting, and conciliation on a state-to-state basis, desirable and helpful as they are, did not (in our opinion) go far enough, and that a petitions procedure was a necessary complement to these older and more traditional methods of implementation. We took the view that for a variety of reasons it was in the long range interest of all who would promote human rights and, in the case before us, reduce racial discrimination, to accept the idea that eventually the individual right to have access to competent international authorities who can pass on the adequacy of national standards in the human rights area. We pointed out that this concept of freeing the individual from the strait-jacket of the national state was part and parcel of the great ideas which were popularized by the English, French and Russian revolutions, and which have become an accepted part of the thinking of twentieth century man. We urged our colleagues to be experimental, Mr. Chairman, and we pointed out that in related matters, such as the Declaration Against Colonialism, 1960, radical implementation moves, once agreed upon, not only dissipated the skepticism and suspicion which surrounded them but confounded the pessimists by proving to be

... 2

remarkably successful.

Our long range objective, Mr. Chairman, remains some form of compulsory petition procedure. That is what we believe in, and that is what we will strive to secure, if only, as a start, on a regional basis. That is our long range goal.

We realize of course that this will not be achieved over night. Indeed, many of our good friends from Africa and from Latin America have told us that we had better not count on living long enough to see it achieved, at least on anything like a universal basis, and that we had better settle for something less ambitious if we would retain contact with reality. The point has been made that at a time when the Ombudsman is barely ~~giving~~ gaining recognition on the national level it may not be realistic to expect him to be extrapolated to the international level. We appreciate this, of course, and so, sir, in formulating our position on the implementation measures in the draft convention before us, we have tried to steer a middle course--a course that avoids on the one hand, the proven conservatism and stand-patism of mere reporting and conciliation, and, on the other hand, the (perhaps) optimistic fantasy of compulsory reporting. This middle course, in our opinion, leads to the system of optional petitions, a variety of which is represented by Article 13 of the draft put forward by Ghana, Mauritania and the Philippines. This article is not by a long shot everything that we would want, but it represents the results of patient and difficult negotiations, for which we are all grateful, and it is a compromise which we are prepared

to live with in principle.

Our delegation, Mr. Chairman, is impressed by the optional character of article 13. Indeed it is hard to see how the article could be any more optional than it already is. Paragraph 1 provides that a party to the convention may recognize the competence of the international committee to receive petitions from nationals. But this is entirely permissive in that the committee can have no competence for the state concerned unless that state agrees thereto In the absence of consent, that is, of a declaration, a state party will have no significant connection with the committee. These states therefore which regard the right of petition as inappropriate in the present stage of the development of international relations will in no way be bound against their wishes. Their interests are fully protected by the draft as it now stands.

Paragraphs 2 and 4 provide that a state which recognizes the capacity of the international committee may indicate or appoint a national body, which ~~should~~ shall do three things: first, receive petitions from individuals who have already exhausted other local remedies; secondly, seek redress from the state itself, where appropriate; and, thirdly, where redress has not been obtained within a time limit, communicate the matter to the international committee. But all this, like paragraph 1, is entirely optional. A party to the convention is not obliged to appoint or elect a national committee. And of course it will not do so if it has not made a declaration under paragraph

... 4

1. In this case, all of article 13 will be totally inapplicable to the party concerned. Which is simply another way of saying that the interests of those who dislike even optional petitions are fully protected.

In these circumstances, Mr Chairman, the Canadian delegation finds it difficult to appreciate why article 13 should not in principle remain as an integral part of the convention. In our view it would be unnecessary and unwise to banish this relatively harmless concept to a separate protocol. Unnecessary because article 13 does not bind anyone who does not want to be bound. Unwise because it would be a slap in the face to the idea of a petitions system. By keeping article 13 prominently in the text before us we not only orient ourselves in the right direction but we remind ourselves that the petitioning technique, in one form or another, is the third essential implementing measure, complementary to conciliation and reporting. And our delegation, as I have said, would hope that a number of signatories would find it possible to file declarations under article 13, so that, slowly but surely, the committee will be able to build up a back-log of experience and generate an atmosphere of confidence. By keeping the idea before us we induce its acceptance in fact. Cases will tend to take on a life of its own.

Finally, Mr. Chairman, we have two specific points to raise The first is of a substantive nature; the second is of a formal nature The first point concerns the concept of the national committee and it really asks why we need a

... 5

national committee ataall. Would it not be sufficient to allow petitions to go forward from the highest domestic agencies that already exist to cope with problems of racial discrimination? This would avoid the difficulty that a number of states will inevitably face in having to create a national committee. The language of paragraph 2 indicates that the national committee may either be a group that is newly appointed or elected specifically for the task at hand or that it may be an existing group that is indicated or nominated to discharge new as well as old tasks. The matter is to be left to the discretion of each particular state, as of course it should be. But it is one thing to appoint, elect or create a new group, which can be tailored to the task at hand, and quite another thing to nominate an existing group, which already has traditional functions to discharge. Problems may arise insofar as existing agencies are concerned. Suppose, for example, that a state thought of designating its Supreme Court for this purpose. / That would not be possible because a court itself cannot ordinarily seek redress from the state in whose jurisdict it sits.

reasonable supposition.

- court - no capacity to launch suit against its own government.