



Statements and Speeches

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HUMAN RIGHTS AND INTERNATIONAL LEGAL OBLIGATIONS

A Statement by the Honourable Mark MacGuigan, Secretary of State for External Affairs, to the Federal-Provincial Ministerial Conference on Human Rights, Ottawa, February 2, 1981

The proper study of mankind is man, said Alexander Pope. The proper study of international law is anything but man, said the international lawyers over the centuries. Fortunately for mankind, man himself disagreed with the lawyers — not for the first or last time. And that, in a nutshell, is the story of how human rights have come to occupy their present place in international law and international affairs.

There can be no doubt, today, that man has become a subject as well as an object of international law. The atrocities of the Second World War compelled governments to enshrine human rights in the United Nations Charter. In addition, more than 20 international agreements on human rights have now been elaborated in very considerable detail — indeed, more than twice that number if we include all the conventions developed under the auspices of the International Labour Organization.

We should not be too quick to congratulate ourselves, however. The concern for human rights in foreign affairs is by no means a phenomenon exclusive to our own time. Think, for instance, of the nineteenth century drive for the abolition of slavery and the slave trade, which surely represents the supreme effort and the supreme triumph for human rights in all history.

Not slavery but another denial of humanity unhappily continues to be practised even now in South Africa, in the form of *apartheid*. This rather suggests that even now we could learn much from the nineteenth century — about the force of organized public opinion, for instance, and about harnessing national power to serve a great cause. For the first 30 years of Victoria's reign, the Royal Navy's chief task was the interception of slaving ships, sometimes on the basis of international agreements, sometimes without the benefit of such agreements. Every interception was a diplomatic gamble which could provoke charges of interference in the affairs of other states, or even be considered as an act of war or piracy. But the British public forced the British government to act despite the cost and the risks involved, and so the traffic in human beings was ended.

The twentieth century has widened the scope of international concern for human rights. We have our accomplishments too. And yet even today — even in some democratic countries — some people are surprised to learn that governments are bound by international law to observe certain standards in their treatment of their own citizens. There remains a tendency to regard human rights as a peripheral or "trendy" issue, which can be turned on or off depending on the mood or master of the moment. Human rights are still seen by some as a "moralistic" preoccupation, and concern for human rights in foreign affairs is still often derided as well-intentioned but naive, an

Force of
public opinion

irritant in international relations, and a detriment to national interests.

Solemn commitments

This attitude is misguided for at least two important reasons. First, as in nineteenth-century Britain, a government such as ours cannot ignore human rights in foreign policy because of the pressure of public opinion — and I thank God for that. Secondly, the human rights element in foreign policy is firmly based on solemn commitments undertaken by states in many international agreements. If the members of the world community had not repeatedly taken the trouble to elaborate often complicated conventions on human rights, it would be easier — not easy but easier — to argue that human rights should not be part of foreign policy. But the treaties are there, the obligations are undeniable, and in so committing themselves governments have raised expectations that they will have to live up to.

A treaty, after all, is a treaty, whether about human rights, trade or defence. By becoming a party to a treaty, a state takes on certain obligations for which it is accountable to the international community. The law of human rights is not different from any other branch of international law in this respect. Human rights treaties, of course, are applied internally, for the benefit of individual citizens. But still the commitments are *vis-à-vis* other states. This alone would make human rights a proper subject for discussion in interstate relations. This alone would justify raising issues of human rights violations in other countries. For every party to a treaty on human rights actually invites other parties to examine its conduct in this way, while assuming the right to examine their conduct too.

The covenants

The most important and comprehensive human rights agreements are the two covenants: one on civil and political rights, the other on economic, social and cultural rights. They entered into force for Canada in 1976, as did the optional protocol to the first covenant. The covenants represent a further elaboration of the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations in 1948. The Declaration, which sets out the basic rights recognized by all states, is not itself a treaty but a resolution of the UN, yet many authorities now consider it a binding part of customary international law.

The Covenant on Economic, Social and Cultural Rights specifically recognizes that full implementation of such rights can only be achieved progressively. Both this covenant and the Covenant on Civil and Political Rights oblige Canada to report to international agencies, in the first case to the Economic and Social Council of the United Nations and in the second case to the Human Rights Committee. The first Canadian report to the Human Rights Committee was considered in 1980. It was the longest and, in my opinion, the best so far submitted by any country. Each province, as you know, contributed a section to the report. This made the report longer but at the same time more interesting than those from unitary states. You will recall, of course, that Article 50 of the Covenant on Civil and Political Rights requires that "the provisions of the present Covenant shall extend to all parts of federal states without any limitations or exceptions".

The members of the committee, who represent almost every region of the world, subjected the Canadian report to close scrutiny. While the report was highly praised,

some members of the committee questioned whether Canada was fully implementing certain provisions of the covenant, relating for instance to the Indian Act, the prohibition of propaganda for war, the adequacy of remedies for violations of the covenant, and so on. Although we know that Canada's record is better than most, this does not mean that we should take exception to honest queries and criticisms, or that we can relax our efforts to ensure that Canadian law and practice conform to the terms of the covenant.

**Complaints to
UN Committee**

Under the optional protocol to the covenant, Canadian citizens may lodge complaints with the UN Committee regarding alleged violations of their human rights. The government is obliged to respond to these complaints and the Human Rights Committee states its views on the issue and sometimes makes recommendations. The committee's findings are not like a judgment of a court of law, and there is no mechanism to enforce them. Nevertheless, they have a great deal of persuasive value.

The covenants and the protocol provide a yardstick and a form for Canadians to judge the actions of the federal and provincial governments and take action against them, in a limited sense. Certainly Canadians do not hesitate to use this yardstick and this forum. And certainly these international agreements have contributed to the promotion of human rights in Canada, and have encouraged the establishment of statutory human rights agencies at both the federal and provincial levels.

Foreign governments, of course, can also judge Canada's conduct under the covenants. It says something about Canadians — something good, on the whole — that when we have criticized the performance of others in the field of human rights we have been taken to task more by Canadians than we have been criticized by others, whether in the UN Committee or elsewhere. Yet this reticence can be carried too far. When we ratified the UN Charter, we undertook to promote human rights abroad as well as at home. Moreover, the UN Charter as well as the covenants give us a solid legal basis for taking any country to task when it grossly infringes fundamental human rights in clear violation of international obligations it has freely assumed. Governments may repudiate their human rights obligations if they do not like being open to criticism. So far as I am aware, however, none has ever done so.

Human rights debates can be highly political, and even counter-productive, but I believe that they are going to become an increasingly significant phenomenon, and a positive one in the end. We must be careful, of course, in determining when to use quiet diplomacy and when to "go public", or when to adopt a judicious blend of these two approaches. We must also be prepared to take into account legitimate, honest differences of perception of human rights priorities as between Western democracies and some other members of the United Nations. A starving man, naturally, may be more interested in obtaining food than the right to vote. On the other hand, we all know that some countries put forward a variety of transparent pretexts to dodge the obligations they profess to honour. There are distinctions to be made here — some easy ones, and some hard ones — but we must not allow such distinctions to become further pretexts for general inaction.

Canada's actions

Before closing, let me review very briefly some of our recent multilateral activities in

the promotion of human rights:

— Last July Canada signed the Convention on the Elimination of All Forms of Discrimination Against Women, after having obtained the prompt accord of all the provinces. Prior to ratification, consultations will be necessary to ensure that both levels of government are prepared to undertake the obligations imposed by this new convention.

— In the UN Commission of Human Rights, Canada is engaged in an effort to work out agreements dealing with torture and religious intolerance.

— At the Commission's last session, we secured the establishment of a group of experts to investigate "disappearances" of persons. We also won a resolution calling for an assessment of mass exoduses of population and the denial of human rights, and yet another resolution affirming the right and responsibility of individuals to promote human rights within their own country.

— Finally, a Canadian is now chairing the group established to propose a human rights role for the Commonwealth.

So much for recent activities. What of the future? We hope to ensure that international law is put to the service of man — of men and women and children — everywhere in the world. We shall continue to insist on a place for human rights in international relations. We shall remain responsive to the concerns of the Canadian public. And we shall try for no less at home than what we seek abroad.

In 1772, an English court decided that a slave became a free man the moment he set foot on the British Isles. There was something grand about that sweeping, simplistic approach. Perhaps some day, the mere fact of setting foot anywhere on this planet, the mere fact of birth, will confer on every human being the plenitude of human rights.