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NOTES FOR A SPEECH BY
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HUMAN RIGHTS IN CANADIAN FOREIGN POLICY

Last December, the World celebrated the 35th anniversary of the Universal Declaration of Human Rights, which proclaimed those human rights and fundamental freedoms which governments had already undertaken to respect and to promote in their signature of the U.N. Charter in 1945.

As many of you know, Dr. John Humphrey spoke for Canada at the General Assembly's commemoration of this anniversary, with a statement which pulled no punches, and was so well received that he was given the honour of presiding over part of the day's session.

As we all know Prof. Humphrey was in at the beginning of the process by which human rights have been established as a subject for continuing international concern. As President of the Foundation, he is still pursuing the "cause" with all his youthful vigour. His name is almost synonymous in Canada with international human rights, another demonstration of the theory that, to progress, great "causes" must be incarnated in dynamic and generous individuals.

A Revolution

Let me make first a few general remarks on the place of human rights in international law and practices.

What has happened in these past forty years has been truly revolutionary. Before the Second World War there was little if any challenge to the established doctrine that the individual and his rights were a matter of purely national, domestic, intra-state responsibility. The League of Nations, you will recall, had no mandate to consider human rights except in the case of those minorities for which some special treaty arrangements had been made at Versailles, an exception which only confirmed the general rule that governments enjoyed a sovereign freedom to deal with their citizens as they wished. In legal terms, as I used to say in my professorial days, individuals were sometimes the "object", but never the "subject" of international law.

Out of the terrible events of World War II have come, in relatively rapid succession, the UN Charter (1945), the Universal Declaration of Human Rights, the Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights (which entered into force in 1976), and those other multilateral declarations and conventions which have established the rights of the individual in the framework of international law.

In Europe and in Latin America, this international activity has been paralleled by the development of regional pacts, even more demanding in some respects, in which the states concerned have sought to develop legal systems having particular relevance to their cultures.

In this framework of multilateral treaties, states have defined more and more precisely international standards of human rights which they have agreed to observe within their frontiers, and which they have undertaken to promote widely. States are now answerable to one another, and to the international and regional communities at large, for their conduct in this field. This is "truly revolutionary", indeed.

Obviously the "revolution" is not yet complete. While we can rejoice at the establishment of this international network of state obligations in human rights, we cannot take as much satisfaction from the means available to ensure that these obligations are met. To create more effective structures and procedures for implementation will be a long and difficult task in a world of states, each of which must be persuaded to yield still greater amounts of "sovereignty".

There are a number of ways in which protagonists of human rights can seek to achieve more effective and universal implementation of the agreed international standards. The first of these is by ensuring that new international conventions contain within themselves some adequate means for their enforcement. I think this will be done in the case of the Draft Convention on Torture, which has gone forward from this session of the Human Rights Commission for consideration at this fall's General Assembly. While final agreement is still to be obtained, Canada is giving its strongest support to the creation of an active committee under this Convention, a committee which will not only consider national reports on the matter, but will also have a mandate to investigate complaints received from various sources.

Secondly, more coverage can be obtained by improving the processes, particularly those of the Human Rights Commission, under which any member state of the United Nations, and not just those who have ratified the covenants and conventions, can be called to account on allegations of gross and persistent violations of international standards.

Thirdly, more states must be persuaded to join the international network of treaties and conventions, and

thus expose themselves to the implementation procedures which exist. For example, at present, only 77 states, not quite half of the UN member states have ratified the Covenant on Civil and Political Rights. Of these, only Canada and 30 others have ratified the Optional Protocol to that Covenant, giving individuals a right of appeal to an international panel, the Human Rights Committee. Since human rights problems, in their nature, involve disputes between the individual and his government, that individual's right of petition is crucial to the real defense of human rights. It is heartening that more states are joining in. Some have learned the hard way; Bolivia recently signed the Optional Protocol on its return to civilian government, and the new government of Argentina has legislation before its congress to permit ratification of both basic Covenants and the Optional Protocol. As usual the revolution is evolutionary!

At the United Nations and in its bilateral relations with other states Canada will have to continue to push the slow, incremental process of bringing more states into the network of treaty law, and in improving the means of bringing states to implement such laws.

This brings me to a second set of considerations, on the role of Canada in this area of human rights.

Canada and the Battle for Human Rights at the International Level

This year Canada shall be completing a series of three successive terms - a total of nine years - of membership on the United Nations Commission for Human Rights. It is mainly in this Commission that agreement must be reached on the definition of international standards in human rights, and where new ways of encouraging the practical attainment of these standards must be developed.

During these nine years Canada has been among the most active members of the Commission, with a strong delegation which has been led throughout this period by Ambassador Yvon Beaulne. Ambassador Beaulne is now retiring, but he has left his stamp on the work of the Commission, and on the Department which he has served so well. His strong personal conviction, and his great negotiating skill, have produced solutions to many issues in which the lines of battle were firmly drawn, and passions high. He has also served as an inspiration to all who have worked with him in this field, and he leaves behind a considerable number of officers - a human rights "Ginger Group" - who are personally committed to seeing the good work go forward.

What has Canada been able to achieve in the Commission over our years of membership?

First I would like to give you a brief report on the current session, running from February 6 to March 16, on which we are still consolidating our final reports. It was not marked by any spectacular breakthrough, but there was good progress on a number of issues.

As I have already indicated, the Commission produced a draft Convention on Torture, which has been high among Canada's objectives, and to which our delegations have devoted a great deal of effort. If adopted by the General Assembly, this convention will give a clear definition of the crime of torture, and establish definite obligations on states parties to prevent such abuses, to punish those who may commit them, and to compensate the victims.

As a result of a Canadian initiative, the Commission will annually receive and consider a report on possible human rights implications of states of seige or emergency which may exist in various countries, a situation which more often than not results in the severe limitation or violation of the rights of the individual.

Canada supported proposals which have strengthened the continuing operations of the Working Group on "Disappearances" and the Special Rapporteur on "Summary Executions".

Canada successfully launched initiatives on Prisoners of Conscience and on the Rights of the Disabled and obtained consensus support for continuing efforts to improve ways to deal with, and if possible prevent, mass exoduses of persons from any state as a result of violations of human rights.

After obtaining some improvements in drafts, our delegation was able to join in the Commission's approval of resolutions on Guatemala, El Salvador and Chile.

The Commission approved the appointment of Special Rapporteurs for Iran and Afghanistan, which should improve its ability to consider the unsatisfactory state of human rights in those two countries.

Consideration on Poland was deferred until the next session, but this at least will ensure that the situation there may be debated at that time.

In all, it was a very busy session, and one in which Canada was able to accomplish a considerable amount.

Looking back now over the past nine years, I think that Canada can be proud of what it has been able to contribute to advancing human rights through the work of the Commission. Much of our contribution has been in a multitude of small efforts to improve the operation of some procedure or to make some resolution a little less political and more constructive in keeping with our general belief that these matters are best pursued in a moderate, balanced and constructive fashion, with a force that draws its strength from basic humanitarian conviction rather than from political ideology. It is this fundamental concentration on human rights, by and for themselves, which has marked our contribution to the Commission, and which has made Canada a credible and productive member of the Commission.

One of the main ideas Canada has promoted in these 9 years is the thematic approach to human rights violations, an approach which deals with particular types of violation on a global basis, examining the general circumstances under which violations occur, as well as the particular ways they have developed in the various countries concerned. This approach, with its initial focus on the sin rather than the sinner, has undoubtedly led to a more reasonable and comprehensive examination of such difficult matters as "summary executions" and "disappearances" than would have been possible if cases had to be raised separately with regard to particular states.

Examination of "Summary Executions" and "Disappearances" on a global basis now continues from year to year, and the processes developed for their examination are gaining increased protective effect from their ability to react to new cases with greater speed. Thus two of the great crimes against the inviolability of the person are being more effectively addressed by the use of this thematic approach. Canada, as the initiator of the Working Group on "Disappearances" can take much of the credit for this progress. There are many areas to which the approach can be extended; we have adapted it to some already, and no doubt will wish to propose it for others.

You have noticed that I am talking of new contributions which Canada might make to the work of the Commission at the very moment when we are giving up our membership! I know that the prospect of Canada not being on the Commission is almost unthinkable to some Canadians.

Coinciding with the retirement of Ambassador Beaulne, they fear that this absence could mark the end of an era of Canadian "activism" in the promotion of human rights on the international scene.

So widespread is this concern that I think I must take this opportunity to ask you to accept that in any body of limited membership, particular states, Canada in this case, must step aside from time to time to allow other states, those of the Western group in this instance, to take a turn. I must assure you that it is the Government's intention to seek re-election at the earliest possible date.

During the coming period, while Canada lacks full membership, we shall still be represented at the Commission by a strong observer delegation led by a senior diplomatic officer. We shall not be able to introduce resolutions or participate in the voting, nor shall we be able to take part in the confidential considerations of the country situations. On the other hand, we shall be able to participate in the debate and sit on a number of the working groups, and co-sponsor resolutions. Indeed it seems to me that by working closely with delegations of friendly member states, and being able to concentrate our efforts on items of most interest to Canada, we will be able to accomplish almost as much as if we were full members. I hasten to add that even if this optimism proves well-founded, we would still seek re-election as soon as possible.

I would also like to note that there will be eminent Canadians working within the United Nations system as experts in human rights, rather than as agents of the Government. Madame Gisèle Coté-Harper has been elected to the Human Rights Committee to fill the unexpired term of Mr. Justice Tarnopolsky. Mr. Justice Jules Deschênes and Madame Rita Cadieux have been elected, as Member and Alternate respectively, to the Sub-Commission for the Prevention of Discrimination and Protection of Minorities. We also have Maureen O'Neil on the U.N. Commission on the Status of Women, and Madame Marie Caron has served on the Committee for the Elimination of Discrimination Against Women since its inception. Each has a distinguished record in human rights, and I am sure that they will contribute to the impartial and international character which we would wish to maintain in the bodies on which they serve.

In addition to the United Nations, there is another forum in which human rights are coming increasingly to attention and that is the system of meetings which is held within the process of the Conference on Security and

Co-operation in Europe, the CSCE, embodied in the Final Act of Helsinki in 1975. The CSCE is a multi-faceted process in which there are at present two main parts, the security aspect and the humanitarian dimension. The Final Act recognized the importance of human rights to the Relationship between East, West and the Neutral and Non-aligned states of Europe, plus Canada and the United States.

The negotiation of the humanitarian dimension was difficult in the first instance and, with the decline of détente, has become an ever-larger bone of contention, at the first Follow-up Meeting in Belgrade and again at the second Follow-up Meeting in Madrid from 1980 to 1983. At the Madrid Meeting the subject of implementation in the field of human rights was pursued throughout the three years with full participation by the Canadian delegation. I regret to have to say that the debate did little to reach a solution to the problem of implementation as an irritant of major proportions. In fact, it would be fair to say that during the conference, performance became worse and exculpatory justifications were made by some participating states which will only add to the problem.

In his opening speech on November 11, 1980, the then Secretary of State for External Affairs, Mr. MacGuigan, proposed that a meeting of experts be held to discuss the problem of human rights within the CSCE context. I should add a word of caution at this point. The expression "meeting of experts" is a term of art within the CSCE system which defines the nature of the meeting rather than the nature of the participants. The meeting, to be held in Ottawa in April, May and June, 1985, will be an inter-governmental meeting and more political than expert. It will undoubtedly lead to a further review of implementation under the Final Act but the Canadian government would also hope that the meeting would start a political process which could lead to more common agreement on human rights than now exists between East and West. If this process can be inaugurated, it will undoubtedly be long and slow.

Before that meeting we shall be consulting widely with Canadians, individually and with non-governmental organizations of all types who may have an interest in the issues. I would hope that you, as persons having a real concern in these matters, might now start considering the matter, and in due course give the Government your thoughts on how the widely different concepts of human rights held in the West and in the East might be steered towards some form of reconciliation. If our aim was merely to attack the East European governments on their shortcomings, as we

see them, we have already more than enough information to sustain our debate. If we were to do so, we would probably find ourselves left with a certain moral satisfaction, some hotel bills, and little else.

Human Rights in Bilateral Relations

In addition to its continuing activity in multilateral forums, Canada has also been expanding and consolidating its efforts to give full expression to human rights factors in its bilateral relations with other states. It has for some time been established practice for Canadian missions abroad to keep abreast of the human rights situation in the countries to which they are accredited, and to report regularly to Ottawa on any significant developments. Here in Ottawa, all those concerned are ever more aware of the importance of the human rights factor in external relations. It has been the Government's objective to integrate human rights into our whole system of relationships, to let the preoccupation permeate the entire structure rather than to highlight the subject by establishing a distinct organizational unit with specialized officers abroad to work exclusively on this subject. I think it would be a mistake to hive-off the subject in this manner, when it is such an important factor running through the political, economic and social fabric of any country.

In our bilateral relations, our main efforts continue to be the persistent expression, most often privately, of Canadian concern over particular cases in which individuals may be subjected to abuse. A typical case is one in which our embassy is asked to make enquiries of the host government about the condition of some prisoner detained for what we consider political rather than criminal reasons. Such enquiries will be made on simple humanitarian grounds, or because Canada has some more specific interest arising for example from the concern of relatives living here or from publicity generated by concerned NGO's. Whether such an approach is likely to be effective in alleviating the conditions of those concerned will be a consideration. There are cases where raising the matter might well be more prejudicial than helpful to the persons involved. Cases of particular significance may be raised in private talks between Canadian ministers and their foreign counterparts, on the occasion of visits.

It is hard to assess the precise effects of this rather "quiet diplomacy", but I know that it produces results in many cases, and that over time it serves to keep the government concerned fully aware of Canadian views. Since success depends often upon discretion, it is not an area in which the Department of External Affairs will ever be able to claim much credit for its efforts, but it is certainly a field in which departmental activities have increased greatly over the past ten years, and I think will continue to increase.

The Government of Canada is often told to limit development assistance to those developing countries in which the human rights situation gives cause for concern. We resist the invitation most of the time. By decreasing our bilateral assistance to express displeasure with the conduct of existing regimes, we might well indeed be prolonging and even adding to the hardship of the people we seek to assist, punishing them for the sins of their government. But there will be times when we will feel compelled to suspend bilateral assistance, as was done most recently in the cases of Guatemala and El Salvador. Such decisions must always be taken with considerable regret, in sorrow more than in anger, and only in extreme circumstances.

Indeed, in withdrawing assistance, we remove an important element in our influence for effecting gradual improvement in these matters.

Similar considerations must apply to Canada's voting for or against development programmes and projects of the World Bank or other international development and financial institutions, with the added consideration that these organizations are generally bound by their charters to consider only economic and technical, not political, criteria. It has been our policy to respect that rule, sometimes with a certain regret, and with the consolation that such projects take a long time to become realities, time which may allow for behavioural changes prompted by other external and internal influences. I think we must continue to follow this policy, if only to keep the international institutions from becoming battlegrounds for conflicting political pressures.

Conclusion

We have, I think, a record for the protection and promotion of human rights abroad of which we can be justly proud. Canada's able representatives in embassies and on human rights bodies abroad have credibility mainly because we are recognized as practising - generally speaking - what we preach.

It is normal that our external relations should reflect the remarkable growth in the respect for human rights which has been seen in Canada in recent years. The Charter of Rights and Freedoms which now forms part of the Canadian Constitution serves as the cap-stone of a complex and comprehensive structure of federal and provincial legislation and administrative processes, all designed to protect the individual from injustice and discrimination, and to enhance the rights of groups who may be at a disadvantage. In this last vein there have been solid efforts made on all fronts to improve the lot of our native population, the handicapped, women, children, and others whose rights may be particularly vulnerable.

It is natural that we should wish to project these efforts abroad, but we must not think that this is a one-way street. Many concepts that we considered part of our heritage have been given clearer definition and added force from being tested in the international arena, and have returned to be incorporated into new Canadian legislation, or to be used as general guidance by our courts. Consequently, in this and in many other ways, the continued efforts of Canada to protect and promote human rights everywhere will be in our own Canadian interest.