External Affairs
Supplementary Paper

No. 54/35/UN9/12 HUMAN RIGHTS

Text of a statement on November 2, 1954, by Mrs. K. G. Montgomery, Canadian Representative in the Third Committee at the ninth session of the United Nations General Assembly, New York, on agenda item 58 - Draft International Covenants on Human Rights

Note: The text of the resolution adopted by the Committee and the results of the voting are included at the end of the statement.

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The Commission on Human Rights is to be congratulated for having presented us with final drafts which, even though they are not complete due to lack of agreement on some points, nevertheless represent an important step towards the aims of the United Nations on the subject of Human Rights. Some of the views held by the Canadian Delegation on the draft Covenants have already been expressed by previous delegations and, bearing in mind the number of speakers still on your list, I shall endeavour to limit myself to a brief explanation of the Canadian position on what we consider to be the more important aspects of the matter under discussion.

The first of the two covenants before us deals with economic, social and cultural rights. These rights appear in the Universal Declaration on Human Rights of 1948 and it is the view of the Canadian Government that in this century of ours the traditional civil liberties cannot be fully enjoyed unless they are accompanied by the exercise of economic and social rights. Generally speaking, however, these rights differ substantially from political and civil rights in that the latter impose limitations upon the State as against the individual, whereas the enjoyment of economic, social and cultural rights calls for the carrying out of positive social and economic policies involving detailed legislation and the establishment of administrative machinery. From a practical point of view therefore, if for no other reason, the Canadian Delegation considers that if there is to be a codification of economic, social and cultural rights it is appropriate that there should be two instruments or covenants dealing with each category of rights.

We have in the past pointed to the obstacles in the way of translating economic, social and cultural rights into legal terms, the implementation of which would not give rise to serious difficulties. In our view, the draft Covenant on Economic, Social and Cultural Rights contains vague generalities which will need clarification if the provisions of this covenant are to have, as they should, the same meaning for all parties. As things now stand, it is difficult for us to conceive of a clear-cut interpretation of many articles bearing in mind the different standards of measurement applying in various countries. This is particularly true of Articles 13 and 16 and also of the articles using such terms as "fair wages", "decent living", "healthy working conditions", "adequate food and housing", and "adequate standard of living".

Similar considerations apply to the Covenant on Civil and Political Rights in the case of articles which contain expressions susceptible of different meanings depending on the interpretation given to them under various legal systems or in different languages. Here again an attempt might be made to define such terms as "arbitrary" or "public order" which are consistently used, if the obligations undertaken under these articles are to have anything approaching the precise meaning the provisions of the Covenants on Civil and Political Rights should have.

The Canadian Government has at one point expressed its general support of the contents and scope of the Covenant on Civil and Political Rights. Since then a number of articles have been added and while we find ourselves in agreement with many of these additions there are certain provisions in the new drafts which we think should preferably be deleted. In the first place we do not consider that the International Court of Justice should be asked to elect members of the proposed Human Rights Committee. To our mind this is a non-judicial task which should preferably be left to political organs such as the General Assembly or to the states parties to the Covenant. In the second place we are inclined to regard Articles 24 and 26 as superfluous or inconsistent with other provisions of the Covenant. Article 24 might be invoked to prevent authorized derogations to some of the rules of the Covenant, such as that provided for in Article 12. The prevention of discrimination aimed at in Article 24 is, to our mind, adequately covered by Article 2. We think it is altogether impracticable to define the terms of Article 26 and in particular the so-called "incitement to hatred and violence". The purpose of this article may well be regarded as being achieved by Article 19.

The Canadian Government has submitted a number of observations on the draft Covenant on Civil and Political Rights in addition to those which I have already made. These observations form part of the documentation available

to the Committee and it is the intention of the Canadian Delegation to raise these points at the appropriate time during the detailed reading of the Covenants.

For the time being, I should like to state our position on provisions which are common to both Covenants. The Canadian Delegation considers that one of these provisions should not have been included in the Covenants. I am speaking now of Article 1 dealing with self-determination. I need not emphasize here that Canada is, to use the expression of our distinguished Vice-Chairman, "100 percent in favour" of self-determination and independence. Were it not so, Canada would be repudiating not only the United Nations Charter but also its own history of recent decades. We continue to believe in the principle of self-determination which we think deserves the fullest respect and support of all and we attach the greatest importance to its recognition. It is our view, however, that self-determination is more a collective right than an individual human right and for this reason we do not consider that it is in its proper place in the Covenants any more than it would be in the Universal Declaration on Human Rights. Nor do we think that it is proper to invest the Human Rights Committee with the responsibilities provided for in Article 48 of the Covenant on Civil and Political Rights. On the subject of the functions of the Human Rights Committee, the Canadian Delegation considers that it would be inappropriate both from a legal and practical standpoint to grant the right of petition to individuals and non-governmental organizations. The system envisaged in the Commission's draft whereby each state party to the Covenant on Civil and Political Rights would be able to appeal to the Human Rights Committee should, in our opinion, prove to be an adequate instrument for ensuring effective implementation of this Covenant.

There are two other provisions which appear in both Covenants with which the Canadian Government wishes to express its disagreement. One of these articles is the so-called territorial application clause. I do not think it is practicable nor indeed fair to expect states administering non-self-governing territories to apply, overnight so to speak, all the provisions of the Covenants to all the territories over which they have some jurisdiction "be they Non-self-governing, Trust or Colonial Territories". Many of these territories already enjoy a certain measure of autonomy of which they are understandably jealous. There is no doubt that a good number of the provisions of the Covenants which, as we all know run so deep into the life of the community, already come under the purview of colonial governments and legislatures. To insist on the inclusion of the territorial clauses (Articles 28 and 53) as they now read is to make it impossible for a number of states administering non-self-governing territories to become parties to the Covenants. To prevent these states from becoming parties would not be in the general interest.

This brings me to the second article of both covenants which the Canadian Delegation considers unsatisfactory. In fact, it is an article to which the Canadian Government takes strong exception. This provision is the so-called federal clause in Articles 27 and 52 of the Covenants. I say so-called because, if we are to be guided by the recent history of international law and indeed by the history of human rights in the United Nations, the text now before us cannot properly be described as a federal clause. As some delegates have already pointed out it should more appropriately be called an "anti-federal clause". As all members of the Committee are aware, the General Assembly decided in 1950 that there should be a federal clause, and for that purpose it directed the Economic and Social Council, in its Resolution 421 C (V) "to request the Commission on Human Rights to study a federal State Article and to prepare... recommendations which will have as their purpose the securing of the maximum extension of the Covenant to the constituent units of federal States, and the meeting of the constitutional problems of federal States."

Nor surely this decision of the Assembly did not come from mid air. There were no resolutions then, and as far as I know there are none now, giving attention to unitary states or to monarchies or to republics or to dictatorships as such, for the simple reason that these forms of government do not present any special problem with regard to the treaty power in relation to human rights. The federal states <u>are</u> confronted with special problems in this connection and it is because of this that the Assembly has taken action in the sense which I have indicated with a view admittedly to securing the maximum extension of the Covenants to units of federal states but also, and this to my mind is the most substantive part of the resolution, with a view to meeting the special problems of federal states. There was no particular need to have a resolution indicating that the Covenants would apply to their constituent units. The normal rule is that any state, whether or not it is a federal state, becoming a party to a convention which does not contain a federal clause, is automatically bound to apply the convention to all its territory.

Now let us consider, in the light of what I have just said, the text of articles 27 and 52. This text reads as follows:

> "The provisions of the Covenant shall extent to all parts of federal States without any limitations or exceptions."

I must say it was with some amazement that we learned of the decision of the Commission to adopt this text. For not only does it imply a complete lack of understanding for the special position of federal states but it is in direct contradiction with both the letter of the 1950 resolution and with the spirit underlying the

Assembly decision. The Canadian Government cannot consider becoming a party to the Covenants unless the present text of articles 27 and 52 is replaced by an article which can properly be regarded as a federal clause, i.e., a text taking into consideration the special position of federal States.

This question has been considered at some length and in a forcible manner by the distinguished representative of Australia, and I would not wish to take too much of the Committee's time at this juncture. I deem it expedient, however, to repeat here what has been said in previous years that the aim of the Canadian government in insisting on the insertion of a suitable federal clause is not to escape obligations under the Covenants. Time and again we have let it be known that in our opinion such a clause would not relieve federal governments of any obligation which it might constitutionally be capable of implementing. Nor was the Canadian federal constitution adopted with a view to enabling the Canadian Government to avoid international obligations. Our constitution came into being in 1867 when those who drafted its text could hardly foresee the full implications of Canada becoming a full sovereign state. Most of all, they could by no means foresee the entry into the arena of international legislation of the subjects which they attributed exlusively to the Canadian provinces.

The present situation in Canada, unlike that which prevails in many other federal states is that international agreements dealing with matters coming exclusively within the jurisdiction of the Canadian provinces do not become the law of the land even though these agreements may be approved or ratified by the federal government.

In his lucid statement in this Committee the other day, the distinguished representative from France remarked that the Committee could proceed to draft a perfect instrument to which no state could subscribe in good faith. He also suggested that as between such an instrument and one which would be based at the lowest possible level where no progress would be achieved, there was room for a middle course. For her part, the distinguished representative of the United Kingdom suggested that in any event the covenants should not be drafted in such a way as to make it impossible for many states, even those with a high standard of observance of human rights, to accept and implement their provisions. It is our earnest hope that this Committee will agree on a course which, if it is approved by the Assembly, will ultimately prove to have been the most appropriate in the circumstances, towards achieving a wider respect for human rights both in theory and in practice.

Voting Results

Following is the text of the resolution (U.N. Doc. A/2808) adopted by the Third Committee on November 16, 1954, by a vote of 42 in favour (including Canada) to 5 against (Australia, Belgium, France, New Zealand and the United Kingdom), with 4 abstentions (Luxembourg, Netherlands, Turkey and the United States), and in plenary meeting on December 4, 1954, by a vote of 49 in favour (including Canada) to 2 against (Belgium, France), with 7 abstentions (including the United Kingdom, the United States, Australia, New Zealand and Luxembourg):

Text of Resolution

The General Assembly,

Taking note of the draft international covenants on human rights prepared by the Commission on Human Rights and transmitted by the Economic and Social Council (E/2573-E/CN.4/705, annexes I, II and III) and expressing its gratitude to that Commission for the work accomplished,

Having considered these draft international covenants on human rights at its ninth session,

Reaffirming that it is important that these draft covenants should be adopted in their final form as soon as possible,

Considering that it is desirable to give Governments of States Members and non-members of the United Nations and the specialized agencies time to make a full study of the draft covenants and to submit, if they so desire, amendments or additions thereto, or further observations thereon,

Considering that it is desirable for each Government to be informed in good time of the views of other Governments and of the specialized agencies concerning the provisions to be included in the draft international covenants on human rights so that it may take due account of these views in determining its own attitude,

Considering that it is desirable that public opinion should continue to express itself freely on the draft international covenants on human rights,

1. Invites:

(a) Governments of States Members and non-members of the United Nations to communicate to the Secretary-General, within six months after the end of the present session of the General Assembly, any amendments or additions to the draft international covenants on human rights or any observations thereon;

(b) The specialized agencies to communicate to the Secretary-General, within six months after

the end of the present session, any observations they may wish to make with regard to the draft international covenants;

(c) The non-governmental organizations concerned with the promotion of human rights, including those in the Non-Self-Governing and Trust Territories, to stimulate public interest in the draft international covenants on human rights by all possible means in their respective countries;

2. Requests the Secretary-General:

(a) To prepare and distribute to Governments, as early as possible, a concise annotation of the text of the draft international covenants, taking account of the observations made before and during the ninth session of the General Assembly, including those made in the Economic and Social Council and in the Commission on Human Rights;

(b) To distribute to Governments, as soon as they are received, the communications which may be made by Governments and by the specialized agencies during the next six months;

(c) To prepare as a working paper a compilation of all the amendments and proposed new articles which may be submitted by Governments during that period;

3. Requests the Secretary-General to give the draft international covenants on human rights the widest possible publicity through all the media of information available to him, and within the limits of his budget;

4. Recommends that, during the tenth session of the General Assembly, the Third Committee give priority and devote itself mainly to the discussion, article by article, in an agreed order, of the draft international covenants on human rights with a view to their adoption at the earliest possible date. The discussion shall also cover any new articles which may be proposed.

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