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Statement by Professor R. St. John Macdonald

to the Third Committee, November 17, 1965

The Canadian delegation regards the draft convention before us as a document of great importance to the world community and to the United Nations in particular. This draft is part and parcel of the tremendous collective effort which the United Nations has been making, slowly but successfully, to clarify and to formulate principles and procedures which will promote and extend basic individual liberties to more people, in more areas, and on a more comprehensive scale, than ever before. In our view, this document has the capacity to take its place as one of the significant responses by the United Nations to the demands for freedom and for equality which can be discerned with rising insistence the world over, by all who have ears to hear and eyes to see.

We are in complete agreement, therefore, with the many, many delegations which have stressed the importance of making the draft effective, and of preventing it from lapsing into a sort of dead letter for want of adequate implementation provisions. Like others, we too do not want the Cheshire cat without the Cheshire smile. We have been particularly impressed by the eloquent plea which the distinguished representative of Ghana made in this House yesterday, and in which he asked us to exploit the present opportunity to go forward in the struggle against racial discrimination.

Through you, Mr. Chairman, I would say now to our good friend from Ghana that the Canadian delegation is ready to join with him in matching deeds to words, and in going forward with

him in exploring new ways and new means of ensuring the success of the convention.

With your permission, Mr. Chairman, I would come now to the specific question of implementation; and my object at this time would be no more ambitious than to suggest the general views and orientation of the Canadian delegation, expressing our desire, and reserving our right, to participate in the details of the debate at a later stage.

I turn then to the two major proposals which are before us, namely, the Phillipine suggestion in Doc. 1221, and the Ghana amendment thereto in Doc. 1274/Rev. 1.

Our preliminary analysis of the document circulated by the Philippines is that it reaches for three major objectives. First, it provides for reports from governments in Article 1. Secondly, it provides for fact-finding, good offices and conciliation of state vs state controversies by a committee, which is to be established under articles 2 - 10, inclusive. Thirdly, it provides for petitions by individuals and groups, under controlled conditions, by virtue of article 16. There are other provisions, of course, such as the committee's obligation to report annually to the General Assembly under article 17, and the creation of a kind of compulsory jurisdiction in the International Court of Justice under Article 18. But, generally speaking, the three points I have mentioned represent the core idea of the Phillppine proposal.

(Para) The amendment submitted as a complete alternative by Ghana also contains a reporting and conciliation procedure, though it uses two bodies for these purposes, rather than the single committee preferred by the Philippines; and it calls for the creation of national committees through which the petitions of individuals

may be screened to an international committee. Reference to the International Court is provided for in article 9, and an effort is made in article 10 to cope with the problem of enforcement.

A few of the provisions in one document are not found in the other document. For example, the oath of impartiality in article 7 of the Ghana proposal, and the dispute-settlement provision in article 9 of the same document, find no precise counterpart in the Philippine draft. There are, additionally, differences in detail and in nuance, as is to be expected. The Philippines prefer one committee rather than two; and they would allow the r eports to go to non-signatories, whereas Ghana would not. And so forth.

Both documents have a good deal in common and it is obvious that both provide us with exceptionally valuable bases for discussion. Their major point of contact, of course, is the recognition of reports, conciliation, and petitions.

Nevertheless, Mr. Chairman, it is a fact, I believe, that there is nothing terribly new or revolutionary in either of the two proposals. Reports, conciliation, and petitions are familiar techniques in the experience of international organizations generally and in the human rights field particularly. They have been used by a number of organizations in a variety of ways, and they have been talked about in the Human Rights Commission for at least 15 years. What is rather new, however, is that we now have a fresh opportunity to give these old ideas practical application in the sensitive field of race relations.

Reporting and conciliation, of course, are techniques tried and true; and there can be no doubt that national experience has proved the value which the cumulative impact of a series of investigations and recommendations can have when they attract the white light of publicity. Reporting and conciliation, therefore, are all right as far as they go. The main difficulty is that they do not go far enough. This is particularly true when conciliation is on a state vs state basis, if for no other reason than that friends do not like to tangle in public, while rivals are only too tempted to do so. The history of the ILO complaints system is good evidence of what might happen were that system to be relied upon in the human rights area.

Reporting and conciliation, in our view, is not enough.

What is needed, we believe, is access for groups and individuals within the state to competent, impartial decision-makers outside the state. The idea is simply to vest competent non-national authorities with no less capacity than the power to pass on the treatment which the home state has meted out to its own national. In this way, the individual will have the opportunity to overleap his tribal organisation, and to bring a completely independent mind to bear on the standard which the national state is applying in the human rights area. The individual will no longer be cabined and confined by his local government.

Now, Mr. Chairman, article 16 of the Philippine proposal goes some distance, though certainly not all the way, towards recognising such an authorisation; and the Costa Rican

proposal for a High Commissioner for Human Rights, co-sponsored by Canada, is of similar design. Both these documents, in this regard, go beyond the suggestion for national committees in article 12 of Ghana's amendment. And because they correspond with our view of the desirability of an open society; of larger groupings in the world; of growing international, as opposed to national, loyalties and identifications; and the individual's fullest possible participation in the processes of power, we prefer the former approach to the latter.

We have no illusions of course about the easy or quick achievement of this objective. We realize that different societies are in different stages of development, and that as long as there is widespread disease, poverty, exploitation and instability in the world, there is little likelihood of any kind of universal acceptance of a really effective right of petition procedure. We are also sensitive to the fact that many, many countries are simply not ready for this kind of an experiment, and that other countries just don't share the concept of human rights that has developed in the Western world.

In the view of our delegation, however, the general views which we have outlined should continue to serve as our unifying and organising principle - as the standard which we should seek - and we think that we should tend to err, if we must err at all, on the side of the bold, the experimental, the enthusiastic, rather than on the side of the traditional and the conservative. We would do well to remember that the work of the Commission, and of our Committee, has been severely

criticized by non-governmental, academic and other expert bodies on the ground that enforcement has not gone far enough. We would do well, Mr. Chairman, to remember that we should not be mesmerized by the concept of sovereignty.

To these remarks of a general nature, Mr. Chairman, I would reserve our Delegation's right to intervene in the details of the debate at a later stage.