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RIGHTS & DEMOCRACY'S NEWSLETTER

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CANADA

IN THE AMERICAS:

IT'S TIME TO DO THE RIGHT THING

BY ALEX NEVE, AMNESTY INTERNATIONAL CANADA, AND JEAN-LOUIS ROY, RIGHTS & DEMOCRACY

UNDENIABLY, the past decade has brought with it a new democratic reality in the Americas, as harsh military rulers have given way to elected civilian governments in country after country. But despite profound political change throughout the Americas, grave and systematic human rights abuses continue to be the daily reality for the overwhelming majority of this hemisphere's people. Women, indigenous peoples, human rights defenders, refugees, migrant workers, and trade unionists are among the vulnerable people whose basic rights are cavalierly disregarded and abused. Be it the right to life, to be free from torture, to have access to basic health care, or to an education, fundamental human rights are sadly still more illusory than real for far too many people, from Canada's north to the southern tip of Chile.

Upholding human rights must become a preoccupying concern for governments in the Americas. One critical pillar in that quest has to be bolstering the treaties and institutions that have been put in place to provide real human rights protection for the women, men and youth of the Americas. This hemisphere has two important human rights bodies with regional scope: the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. Both have made crucial contributions to improving human rights. However, both have faced ongoing challenges to their authority and continue to be woefully

CANADA, DESPITE JOINING THE ORGANIZATION OF AMERICAN STATES (OAS) OVER A DECADE AGO, CONTINUES TO STAND ALONG THE HUMAN RIGHTS SIDELINES IN THE AMERICAS.

under-resourced. They must be strengthened and given the political backing and financial resources needed to become bulwarks in the struggle for human rights in the Americas.

Canada, despite joining the Organization of American States (OAS) over a decade ago, continues to stand along the human rights sidelines in the Americas. The failure of Canada to ratify the *American Convention on Human Rights*—its two protocols, and the three OAS treaties dealing with torture, "disappearances" and violence against women—means that Canada has yet to make a full commitment to crafting strong and effective mechanisms for human rights protection in this hemisphere.

Canadian ratification of the treaties has never been more important. As the prospect of closer inter-American economic integration draws closer—be it through the possible Free Trade Area of the Americas or regionally-based developments such as Plan Puebla Panama—the need for vibrant and powerful inter-American human rights integration has never been clearer. Anything else risks fostering greater inequality, marginalization and human rights abuses.

This issue of *Libertas* examines the importance of Canadian ratification of the ACHR within Canada's foreign policy, some of the controversial issues surrounding ratification and the challenges related to the Additional Protocol on economic, social and cultural rights (San Salvador Protocol). It also addresses one of the most serious obstacles to Canadian ratification of the ACHR: the wording of Article 4.1 on the right to life. Finally, *Libertas* presents the conclusions of recent studies on the issue by Quebec Native Women and the Standing Senate Committee on Human Rights. *ℓ*



Rights & Democracy
International Centre for Human Rights
and Democratic Development

RIGHTS & DEMOCRACY (International Centre for Human Rights and Democratic Development) is a Canadian institution with an international mandate. It is an independent organization, which promotes, advocates and defends the democratic and human rights set out in the International Bill of Human Rights. In cooperation with civil society and governments in Canada and abroad, Rights & Democracy initiates and supports programmes to strengthen laws and democratic institutions, principally in developing countries.

CANADIAN RATIFICATION OF THE AMERICAN CONVENTION ON HUMAN RIGHTS



Canadian Foreign Affairs Minister Bill Graham with OAS Secretary General César Gaviria.

BY LLOYD AXWORTHY, DIRECTOR/CEO, LIU INSTITUTE, UNIVERSITY OF BRITISH COLUMBIA AND FORMER CANADIAN FOREIGN AFFAIRS MINISTER

to information, bringing fresh opportunities to build a universal culture of human rights. Democracy has taken root in the majority of the world's states.

At the same time, human rights violations are still being committed in many areas of the globe. Political dissidents are being jailed, people are being tortured, children are working in exploitative conditions, and internal conflicts are claiming innumerable civilian lives. Globalization arrived with a dark side: transnational organized crime, terrorism, the drug trade, environmental pollutants and growing economic inequities.

Canada has long worked to create an international human rights policy that responds to these changes in the global environment. The country's ultimate aim is to prevent abuses by addressing root causes, understanding that international respect for human rights is not a luxury, but an imperative of living in a global society.

The ratification by Canada of the *American Convention on Human Rights* would allow a unique opportunity for the entire continent to benefit from the values that have guided Canadian human rights policies for decades. *ℓ*

BUILDING RESPECT for human rights has proven to be one of the most challenging missions of foreign policy in the new century. The task demands a comprehensive and flexible approach that links respect, peace, security, development and trade.

The collapse of the bipolar world has created new possibilities to promote and protect human rights. Globalization has opened up borders

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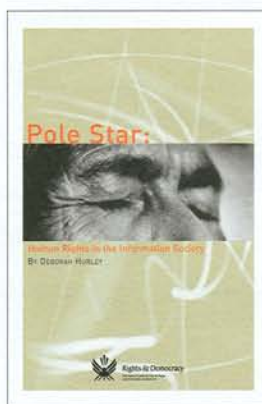
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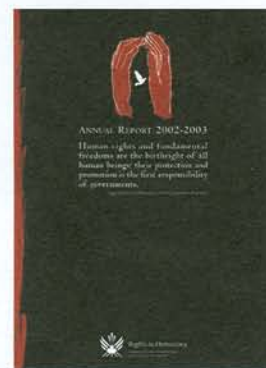
NEW PUBLICATIONS OF RIGHTS & DEMOCRACY

At the third Preparatory Committee of the *World Summit on the Information Society*, which took place in Geneva from 15-26 September, Rights & Democracy released an essay by award-winning author Deborah Hurley entitled:



POLE STAR: HUMAN RIGHTS IN THE INFORMATION SOCIETY.

The essay reviews specific challenges and opportunities for human rights posed by the information society—privacy, security, freedom of expression, freedom of movement and association, as well as access to technology and information, intellectual property rights and the right to education.



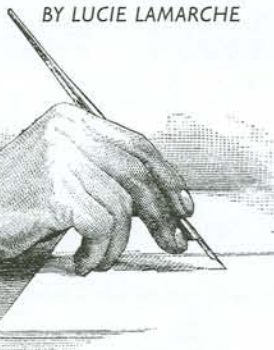
RIGHTS & DEMOCRACY'S ANNUAL REPORT of its activities and financial accounts for the fiscal year ending March 31, 2003 was tabled in Parliament at the beginning of October and is now available to the public.

For copies of these and other recent Rights & Democracy publications, visit www.ichrdd.ca or contact publications@ichrdd.ca.

THE AMERICAN CONVENTION ON HUMAN RIGHTS IS PART OF THE “REGIONAL SOLUTION,”

AND CANADA SHOULD THEREFORE RATIFY IT

BY LUCIE LAMARCHE



SINCE JOINING THE OAS, the Canadian government has not been transparent concerning the reasons it is hesitant about proposing ratification of the *American Convention on Human Rights* to Canadian civil society and the provinces. However, the Canadian government is far enough committed to the process of hemispheric integration that it should finally begin a dialogue on this issue.

Some segments of Canadian civil society do not have a clear idea of why it would be appropriate to ratify the Convention. People frequently wonder why Canada should ratify a regional human rights instrument with a scope equivalent to that of international instruments to which the country is already a party.

Canada's need to strengthen democracy and governments that respect human rights is related to the reality of a two-way playing field. Not only can Canada's participation in the inter-American human rights system contribute significantly to strengthening governments in Latin America, but it can also provide stronger guarantees for endangered rights, at a time when business and security agendas are constantly in competition with the human rights agenda.

In the debate over Canada's ratification of the Convention, it would be a mistake to isolate the Convention from the body of inter-American human rights instruments to which it belongs. Other instruments to be considered include the *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights* (Protocol of San Salvador, 1998, entered into force in 2000) and the *Protocol to the American Convention on Human Rights to Abolish the Death Penalty* (1990). The OAS has also adopted the *Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women* (known as the "Convention of Belém do Pará," 1994), the *Inter-American Convention for the Prevention and Repression of Torture*, and the *Inter-American Convention on the Forced Disappearance of Persons*.

The Protocols can only be ratified if the Convention is ratified first. This is an important issue for Canada in the case of the Protocol of San Salvador on economic, social, and cultural rights. Considering both the significant shortcomings of the Canadian *Charter of Rights and Freedoms* regarding the protection of economic and social rights and the Supreme Court's uneasiness with recognizing, even indirectly, the existence of these rights, we have to conclude that, by failing to take the necessary steps toward ratification of this protocol, Canada is inexplicably missing out on an opportunity to fall in step with Europe and, just as importantly, on a chance to stamp its involvement in the Americas with an affirmation of the interdependence and indivisibility of all human rights.

Of course, the Convention's text is not perfectly congruent with Canada's rule of law, but perfect congruency is rare in such cases. This is why ratification techniques have been designed to protect Canada's rule of law against interpretations that might undermine human rights safeguards guaranteed through Canadian law (reservation, interpretative clause, etc.). Moreover, like constitutions, human rights treaties are "living trees." We would be wrong to doggedly uphold the letter

of the Convention only to discredit it. Instead, Canada, with its rich jurisprudence in matters of human rights, is logically destined to contribute to the development of the *American Convention on Human Rights*.

It is tempting to suggest that Canada should ratify thematic or less fundamental instruments as a means to calm things down. One possibility would be to ratify only the inter-American conventions against torture and violence against women, but how can a tree survive with nothing more than its branches? Such an action would mean that Canada intends to definitively deny the competence of the Inter-American Court of Human Rights (the inter-American human rights system's end result—and a component that the UN system lacks), to the detriment of victims of human rights violations, and, furthermore, to promote a surgical approach to human rights protection systems. This kind of approach is contrary to the Vienna principles concerning the interdependence of all rights and, in the case of Canada, would amount to negating that the social, economic, and cultural rights guaranteed by the Protocol of San Salvador are to be defined as rights.

The issue of Canada's ratification of the Convention is currently paralyzed by a combination of misunderstanding and Canadian chauvinism. On the one hand, the Canadian government believes that it can become involved "differently" in the arena of the Americas by denying the importance of a regional court's eventual judiciary control over Canadian citizens. It thereby places itself pretentiously above the fray. On the other hand, human rights are not to be chosen: they must be respected! We must therefore interpret the 2001 Quebec City commitment made by the heads of State in its literal sense and demand that the Canadian government "impose" an effective dialogue on Canada's civil society and the provinces for the purpose of ratifying the *American Convention on Human Rights*. Nothing prevents this necessary ratification from respecting Canadian human rights legislation. *ℓ*



ECONOMIC, SOCIAL AND CULTURAL RIGHTS

OAS General Assembly
in Santiago, Chile from June 8-10, 2003

THE SAN SALVADOR PROTOCOL: A STEP IN THE RIGHT DIRECTION. TAKE IT.

BY JOHN W. FOSTER, PRINCIPAL RESEARCHER (CIVIL SOCIETY), NORTH-SOUTH INSTITUTE

IN JULY 1998, Latin American human rights organizations met in Quito, Ecuador and issued a declaration on the enforcement of economic, social and cultural rights (ESCR) in Latin America and the Caribbean. They urged the strengthening of the human rights system and its enforcement tools, including a call on governments to ratify the *Protocol of San Salvador on Economic, Social and Cultural Rights*. The appeals of that Declaration still ring true today.¹

In 1998, at the Santiago Summit of the Americas, Canadian non-governmental and social organizations asked then Foreign Affairs Minister Lloyd Axworthy to proceed with ratification of the *American Convention on Human Rights* and the San Salvador Protocol. Five years later, the Department of Foreign Affairs and International Trade published a study on Canada's obligations that declines to move forward.

The inter-American human rights system has obvious limitations and imperfections, but for Canada to move ahead with inter-American trade and investment guarantees without either ratification of the existing human rights Convention and the San Salvador Protocol would be tragic. It would also further exacerbate imbalances between our high investment in agreements that privilege investors and traders and our continued low engagement with human rights agreements and enforcement measures that protect human beings.

The rights enumerated in the Protocol might be extended and strengthened, but already cover a number of essential areas:

- guarantees regarding work and just, equitable and satisfactory conditions of work
- trade union rights
- paid maternity leave
- social security
- the right to health and adequate nutrition
- the right to a healthy environment
- the right to access to basic public services
- the right to formation and protection of families
- the rights of children

Securing regular reports from all states parties on these and related matters would be an initial advance. Such reports would provide a moment for non-governmental and social organizations to evaluate government action, and undertake advocacy to improve performance.

The Protocol, with regard to article 8 (trade union rights) and article 13 (right to education), permits individual petition through the Inter-American Commission and the Court. The right to petition is a key element in the Convention and Protocol and would be a concrete gain for Canadians suffering violations of the enumerated rights.

Economic integration without a countervailing or conditioning legal human rights framework represents a distorted and imbalanced approach to development, and

offers increased potential for injury and inequity. Canadian ratification of key inter-American human rights treaties is overdue.

Ratification of both the Convention and the San Salvador Protocol are essential first steps in re-balancing Canada's treaty relations in the Americas, but they are not sufficient. As the Quito Declaration asks, governments should "guarantee that the principles of international treaties and agreements relating to ESCR be respected and complied with in relation to the Free Trade Agreement of the Americas (FTAA) and other regional and international economic integration agreements."

To this end the Declaration seeks the "adoption of a Social Charter of the Americas aimed at guaranteeing full and equitable enjoyment of ESCR by all citizens of the region." In the meantime, governments are encouraged to ratify other international instruments that promote and protect ESCR, including relevant ILO conventions, and agreements "referring to women, children, migrant workers, indigenous peoples and Afro-American communities."

Some portion of the considerable resources currently devoted to developing trade and investment accords need to be re-directed to this considerable agenda in human rights. *ℓ*

¹ *DECLARATION DE QUITO: EXIGIBILIDAD DE LOS DESC EN AMERICA LATINA Y EL CARIBE, CUADERNOS DESC NO. 1, PLATAFORMA INTERAMERICANA DE DERECHOS HUMANOS, DEMOCRACIA Y DESARROLLO, LA PAZ, 2001.*

THE AMERICAN CONVENTION ON HUMAN RIGHTS AND WOMEN'S RIGHTS IN CANADA

ARTICLE 4(i) of the American Convention on Human Rights (ACHR) stipulates as follows: "Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life."

Although the Inter-American Commission on Human Rights (IACHR) decided in 1981 in *Baby Boy* that Article 4(i) does not represent an "absolute" ban on abortion, it implied that the practice of abortion for "arbitrary" reasons would be contrary to the spirit of the ACHR. However, it must be admitted that the Inter-American Court has not yet ruled on Article 4(i) and that the Commission is not totally impermeable to political pressure that might build around a new petition arguing for a foetus's right to life from the moment of conception.

In short, Article 4(i) of the ACHR is a source of legitimate concern among feminists. How can we protect the women's movement's hard-won gains around abortion?

All evidence suggests that the "regional courts" of justice will avoid deciding the matter of whether the foetus has a right to life, not because they consider the instruments unclear on this point but out of respect for the margin of appreciation of sovereign states. Moreover, though there is no explicit reference to abortion rights in international law, it is now acknowledged that the criminalization or abusive prohibition of abortion infringes women's human rights.

PROFESSOR REBECCA COOK BELIEVES THAT THE CONVENTION SHOULD BE RATIFIED SUBJECT TO AN INTERPRETATIVE DECLARATION THAT WOULD AFFIRM CANADA'S STRONG COMMITMENT TO IMPROVING WOMEN'S STATUS AND CREATING THE CONDITIONS NECESSARY FOR THE FULL REALIZATION OF THEIR RIGHTS.

In international law, a state may make ratification of a treaty or convention subject to a reservation or an interpretative clause. A reservation is a unilateral declaration whereby a state proclaims its intent to exclude or modify the legal effect of a treaty provision as it applies to that state. In an interpretative declaration, a state unilaterally specifies or clarifies the meaning or scope of its commitment under a treaty provision.

One possibility would be for Canada to ratify the Convention subject to a reservation concerning Article 4(i). But this is obviously problematic, since it would then be refusing to recognize the right to life.

Professor Rebecca Cook (a member of Rights & Democracy's board of directors) believes that the Convention should be ratified subject to an interpretative declaration that would affirm Canada's strong commitment to improving women's status and creating the conditions necessary for the full realization of their

rights. This interpretative declaration would take into account the work done internationally to reduce pregnancy-related mortality and would seek to ensure that the interpretation of Article 4(i) guarantees women's freedom of choice with respect to maternity. Canada's commitment to the Convention must be made with a view to safeguarding and promoting the rights of Canadian women, while contributing to the protection of the rights of all women in the Americas. *ℓ*

* EXCERPT TAKEN FROM RATIFYING THE AMERICAN CONVENTION ON HUMAN RIGHTS: THE STAKES FOR CANADIAN WOMEN, BY ANDRÉE CÔTÉ AND LUCIE LAMARCHE. THE COMPLETE PAPER IS AVAILABLE ON THE NATIONAL ASSOCIATION OF WOMEN AND THE LAW WEB SITE AT WWW.NAWL.CA.



RATIFICATION AND THE PROMOTION OF THE RIGHTS OF INDIGENOUS PEOPLES

QUEBEC NATIVE WOMEN (QNW) recommends Canadian ratification of the American Convention and the *Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women* (the Convention of Belém do Pará) to strengthen the promotion and protection of all people's human rights, including those of women and Aboriginal peoples in the Americas. These two conventions provide substantial means, which do not necessarily exist in the wider international systems of rights protection, for enforcing the human rights of Aboriginal peoples in the specific context of the Americas.

Once these two conventions are ratified, human rights activists in Canada will be encouraged to invoke the decisions of the Inter-American Commission and Court regarding the rights of Aboriginal peoples and Canadian courts will have the power to enforce these decisions. Ratification would facilitate inter-American discourse and use of the Inter-American Court to address continuing threats to property, culture and heritage posed by NAFTA and similar trade agreements.

If ratified, the Convention of Belém do Pará would be a useful addition to the existing standards that prohibit violence against women in aboriginal communities and provide additional remedies for victims of violence, especially Aboriginal women and children. *ℓ*

To obtain a copy of QNW's complete position paper concerning Canadian ratification of the ACHR, contact: **Quebec Native Women Inc., 460 Ste-Catherine West, suite 503, Montreal (Quebec) H3B 1A7, Telephone: (514) 954-9991, info@qnwafaq.com, www.qnwafaq.com**

REPORT OF THE STANDING SENATE COMMITTEE ON HUMAN RIGHTS:

ENHANCING CANADA'S ROLE IN THE OAS: CANADIAN ADHERENCE TO THE AMERICAN CONVENTION ON HUMAN RIGHTS

SUMMARY OF RECOMMENDATIONS

1. The Committee recommends that Canada take all necessary action to ratify the *American Convention on Human Rights*, with a view to achieving this goal by July 18, 2008, which is the thirtieth anniversary of the entry into force of the Convention.
2. The Committee further recommends that, upon ratification of the Convention, Canada recognize the jurisdiction of the Inter-American Court of Human Rights on all matters relating to the interpretation or application of the Convention.
3. Given the concerns expressed by government officials and representatives of various sectors of civil

society that certain provisions of the Convention may appear problematic in the light of contemporary Canadian domestic law, whether federal, provincial or territorial, the Committee recommends that the federal-provincial-territorial Continuing Committee of Officials on Human Rights identify specific provisions of the *American Convention on Human Rights* that raise concerns and inform the Canadian public about them so as to foster debate and a search for solutions.

4. The Committee recommends that the Government of Canada consider making the necessary interpretive declarations and reservations to

address any concerns raised, in particular to maintain the status quo of abortion under Canadian law.

5. The Committee recommends that as the Government of Canada takes appropriate steps towards the ratification of the Convention, it should actively engage in promoting the Convention and the whole inter-American system for the protection of human rights in Canada. *ℓ*

For a copy of the complete report, visit the Web site of the Parliament of Canada at <http://www.parl.gc.ca/37/2/parlbus/commbus/senate/com-e/huma-e/rep-e/rep04may03-e.htm>



RELATED LINKS

For a copy of the *American Convention on Human Rights*, the Salvador Protocol and other inter-American human rights instruments, visit the Inter-American Commission on Human Rights of the Organization of American States (OAS) at www.cidh.oas.org

For general information on ratification/accession of the Convention, visit www.oas.org/juridico/english/Sigs/b-32.html

Further information on Canadian ratification :

Canadian Bar Association:
www.cba.org/CBA/Sections/Abor/96_21_M.asp

Canadian Lawyers for International Human Rights, *Canada's Accession to the American Convention on Human Rights*, www.claihr.org

North-South Institute, *Canadian Ratification of the ACHR & San-Salvador Protocol in the Context of Trade Liberalization in the Americas*, by John Foster: www.nsi-ins.ca/ensi/news_views/oped43.html

Rights & Democracy's position concerning Canadian ratification of the *American Convention on Human Rights* www.ichrdd.ca (publications)

Coming soon: Action Plan to Promote Canadian Ratification of the *American Convention on Human Rights* www.ichrdd.ca www.amnesty.ca