

CANADA IN A WORLD OF HUMAN RIGHTS: ETHICS, COMMITMENT AND CONSTRAINTS

By
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Abstract

This paper highlights and analyzes both official and individual Canadian contributions to the spread of human rights ideas and practices around the world as well as investigates what possible goals could have motivated those contributions. It examines if there are unique achievements that could be ascribed to Canada in developing human rights norms and mechanisms at the domestic and international levels. This includes its contributions to multilateral international organizations as well as the migration of distinctly Canadian human rights ideas or processes abroad. It will also identify some of the major individual Canadian contributors to the development of international human rights praxis and how they contributed in this regard. Besides, the paper investigates on what basis Canada pursues international human rights causes. It looks at whether the country's human rights commitment is based on objective ethical convictions or if it is substantially ideologically driven.

The paper canvasses the position that while in the past the Canadian government and non-governmental human rights organizations pulled in the same direction in promoting human rights values abroad, this does not seem to be the case anymore, especially from the perspective of the government. It concludes that though Canada's prior contributions in promoting human rights across the world is generally acknowledged, recent domestic ideological and political differences have shifted the direction, methodology and reach of her intervention such that it may be affecting the country's ability to influence outcomes in other countries like Nigeria.

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1. Introduction

While the overall project of which this paper forms only a part examines Canada-Nigeria cooperation in the field of human rights, this contribution is intended to analyze this relationship within the larger context of Canada's role and peculiar contributions in promoting human rights praxis around the world. Over the years, Canada has built a reputation as one of the foremost global entrepreneurs in extending humanitarian aid, expanding universal protection of human rights and building the institutions of democracy abroad. Apart from these roles which the Canadian government pursued at times with compelling distinction,¹ individual Canadians as well as Canadian non-governmental organizations have also played their parts in popularizing certain general and specific human rights concerns around the world.

Canada is recognized by Canadians and non-Canadians alike as a major global player in the propagation and advancement of human rights causes, and more so in the context of its relations with Africa.² Whether this is mere perception or is rooted in reality matters little to those who hold this opinion.³ Nor are they deterred by recent concerns that the country might be jeopardizing this reputation due to its handling of domestic human rights policies with collateral impact on her ability to effectively and authoritatively advance the causes that it had previously pursued at the international arena.⁴ Bilaterally and multilaterally, the country has played significant roles in the development of international human rights norms as well as in promoting global affirmation of the values they enshrine.

¹ See for example, Dominique Clement, "Human Rights in Canadian Domestic and Foreign Politics: From 'Niggardly Acceptance' to Enthusiastic Embrace" (2012) 34 *Human Rights Quarterly* 751.

² David Hornsby, "Changing Perception into Reality: Canada in Africa" (2014) 69 *International Journal* 334.

³ *Ibid.*

⁴ See Faisal Bhabha, "International Human Rights Law in Canada: At the Juncture of Law and Politics" (2014) 10 Osgoode Hall Law School Legal Studies Research Paper Series No. 5 online: <<file:///C:/Users/bugochukwu/Downloads/SSRN-id2414236.pdf>>; see also Amnesty International, "Getting Back on the 'Rights' Track: A Human Rights Agenda for Canada" March 2011 online: <<http://caid.ca/AmnIntHRACan2011.pdf>>; Pearl Eliadis, *Speaking Out on Human Rights: Debating Canada's Human Rights System* (McGill-Queens University Press, 2014); Matthew Behrens ed., *Unions Matter: Advancing Democracy, Economic Equality, and Social Justice* (Toronto: BTL Books, 2014).

In 2005, Thakur & Weiss described Canada as “a country strongly committed to UN-centred multilateralism, with a history of close engagement with the world organization, political credibility in both North and South, and proud tradition of successful global initiatives.”⁵ Duhaime saw Canada as “a worldwide champion of human rights.”⁶ Pal also once described the country as a “world leader in international human rights.”⁷

Canadian non-governmental human rights organizations are known to have collaborated with partners abroad to further the country’s official human rights and democracy development agenda. More significantly, individual Canadians have been recognized and lauded for their contributions towards the development of human rights values within international organizations and for the benefit of regions and countries that have requested those contributions. The country at least until very recently, used to be known to support more humane treatment of human rights and democracy defenders around the world. In fact, there is a very small category of individuals that over the years have been adopted as Honorary Canadian Citizens. These persons were all set apart by a peculiar characteristic: their commitment to the values of human rights, democracy, humanitarianism, and development.⁸

One was Raoul Wallenberg, a Swedish businessman and diplomat who at very grave risk to himself protected Hungarian Jews from Nazi persecution during the holocaust.⁹ Nelson Mandela was distinguished by his anti-Apartheid struggles in South Africa so that Canada honored him for his “great moral leadership to South Africa and all humanity.”¹⁰ Tenzin Gyatso, the 14th Dalai Lama

⁵ Ramesh Thakur & Thomas G Weiss, “R2P: From Idea to Norm – and Action?” (2009) 1 *Global Responsibility to Protect* 22 at 34. For more elaborate analysis of this doctrine see Alex Bellamy, “Realizing the Responsibility to Protect” (2009) 10 *International Studies Perspectives* 111; Gareth Evans, “From Humanitarian Intervention to Responsibility to Protect” (2007) 24 *Wisconsin International Law Journal* 703;

⁶ Bernard Duhaime, “Canada and the Inter-American Human Rights System: Time to become a full Player” (2012) 67 *International Journal* 639 at 654.

⁷ Leslie A Pal, “Competing Paradigms in Policy Discourse: The Case of International Human Rights” (1995) 28 *Policy Sciences* 185 at 186.

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has spent the better part of his life fighting to liberate his native Tibet from Chinese domination.¹¹ Aung San Suu Kyi languished in house arrest for 15 years at the hands of the Burmese military dictatorship and was honored by Canada as “a symbol of the desire of the Burmese people for political freedom.”¹² Finally, the Aga Khan, leader of 15 million Ismail Muslims became an Honorary Canadian in 2009 for his humanitarian and development work in Asia and Africa.¹³

Why did Canada demonstrate such great drive and desire for the propagation of human rights around the world sometimes to the extent of offering protection and support at great expense to those who defend that cause? Why has that desire thawed of late? Can we point to specific human rights ideas which have been developed into national or international norms that could be ascribed to Canada's efforts? Are there any significant political, ethical or ideological determinants of the nature and reach of Canadian commitments in this regard? For example, did the country observe uniform considerations in terms of relationship to the various regions of the world or did particular contextual sensitivities constrain its choices? What organizations and individuals played significant roles in carrying this Canadian human rights message abroad?

This paper by no means contains an exhaustive treatment of all the contributions that Canada has made to the development of human rights around the world. Nor does it have a complete list of all the individuals and institutions that may have played a part in this respect. Most of the examples of contributions and those who made them are only representative. The paper is organized into five sections including this introduction. In section 2, I try to identify the theoretical platforms prevalent in international law and foreign relations and while in section 3 I analyze what theoretical orientation is holding together Canada's international human rights foreign policy agenda. Section highlights specific contributions attributable to the Canadian government and individuals in spreading human rights ideas and praxis globally. I make some concluding reflections in section 5.

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2. A Theoretical Understanding of Canadian Human Rights Commitments

Almost all the contributions to this project utilize Finnemore and Sikkink's theories of the norm life cycle and strategic social constructivism which are applied to highlight the relationship between the emergence of international norms and the behaviour of states.¹⁴ Without repeating the perspective that the other contributors adopted, I take note of at least one idea espoused by Finnemore and Sikkink in relation to the development of norms such as international human rights norms and how these are dispersed globally through the process of internalization.¹⁵

A significant point that earned their focus relates to how international norms develop from domestic practices and how they only become "international" through the activities of norm entrepreneurs.¹⁶ Their analyses therefore place Canada squarely at the juncture of human rights norm entrepreneurship because of the country's longstanding commitment to spreading human rights values to other countries. By extension, I have included Canadian civil society organizations and some of its individual citizens in what could be described as a human rights norm entrepreneurship coalition committed to global expansion human rights ideas and praxis.

But as one of the major goals of this paper is to understand the principal factors driving Canada's international human rights commitments and given that Finnemore and Sikkink's theories have been already dissected by other contributors, I will take a somewhat different theoretical path. While human rights are an undoubted public good and worthy of gracing the agenda of any ethically

¹⁴ Martha Finnemore and Kathryn Sikkink, "International Norm Dynamics and Political Change" (1998) 52 *International Organization* 887; Martha Finnemore and Kathryn Sikkink, "Taking Stock: The Constructivist Research Program in International Relations and Comparative Politics" (2001) 4 *Annual Review of Political Science* 391; Kathryn Sikkink, "Transnational Politics, International Relations Theory, and Human Rights" (1998) 31 *PS: Political Science & Politics* 517;

¹⁵ See Harold Hongju Koh, "Internalization through Socialization" (2005) 54 *Duke Law Journal* 975; Ryan Goodman & Derek Jinks, "Toward an Institutional Theory of Sovereignty" (2003) 55 *Stanford Law Review* 1749; Ryan Goodman & Derek Jinks, "How to Influence States: Socialization and International Human Rights Law" (2004) 54 *Duke Law Journal* 621; Ryder McKeown, "Norm Regress: US Revisionism and the Slow Death of the Torture Norm" (2009) 23 *International Relations* 5; Antje Weiner & Uwe Puetter, "The Quality of Norms is what Actors make of it: Critical Constructivist Research on Norms" (2009) 5 *Journal of International Law and International Relations* 1; Thomas Risse, Stephen Ropp & Kathryn Sikkink, eds., *The Power of Human Rights: International Norms and Domestic Change* (Cambridge: Cambridge University Press, 1999).

¹⁶ *Ibid* at 893; see also Christine Ingerbritsen, "Norm Entrepreneurs: Scandinavia's Role in World Politics" (2002) 37 *Cooperation and Conflict* 11

minded state, they are not without challenges. And because they often demand duties that transcend national boundaries sometimes makes them susceptible to be in conflict with other national interests.¹⁷ This creates a situation where states have to strike various balancing arrangements to accommodate the diversity of interests that they may be confronted with.

It is not at all in question that Canada has been active in propagating the message of human rights both at home and abroad. What are contested are the reasons why the country pursues that agenda. In international relations theory, the literature identifies various schools of thought aggregating certain factors that states take into account in conceptualizing their foreign policy commitments. Given that a country's interests comprise a variety of issues – they could be military, economic, expansionist or human rights informed – there obviously would be distinct calculations for each area of concern. When these calculations are examined separately, they provide the backdrop to various theoretical suppositions regarding why states act the way they do in relating to/with others.

Realists for example build their analysis of world politics and the interaction among states on three different assumptions.¹⁸ The first is that there is something inherently conflictual about world politics and international relations to a degree that Gillies says “approaches the Hobbesian world.”¹⁹ There is no single power to keep states within the boundaries of rules or norms and so states have to “be self-reliant in generating and maintaining conditions that ensure their survival and well-being.”²⁰ Second, realists also believe that it is groups mainly that give social reality its essence. These groups

¹⁷ David Gillies, *Between Principle and Practice: Human Rights in North-South Relations* (Montreal: McGill-Queens University Press, 1996) at 4.

¹⁸ *Ibid.* at 5; see also David Forsythe, *Human Rights in International Relations* (Cambridge: Cambridge University Press, 2006) at 152-162; Jack Donnelly, *Universal Human Rights in Theory and Practice*, (Ithaca: Cornell University Press, 2003) at 163; Stephen Brown, “CIDA under the Gun” in Jean Daudelin & Daniel Schwanen, eds., *Canada among Nations 2007: What Room for Manoeuvre?* (Montreal: McGill-Queens University Press, 2008) at 172-2007.

¹⁹ Gillies, *supra* note...; see also Eric Cox, “State Interests and the Creation and Functioning of the United Nations Human Rights Council (2010) 6 *Journal of International Law and International Relations* 87;

²⁰ *Ibid.*

being essentially almost always in conflict are shaped by a high level of competition which becomes the “characteristic mode of interaction.”²¹

Finally, realists are of the opinion that on most political questions, power is often the final arbiter.²² For all its appeal, therefore, diplomacy alone cannot be the ultimate solution to all questions involving the relationship among states. Sometimes, crude power could be mobilized and allowed to lurk in the shadows or to actually overwhelm diplomatic discussions.²³ In the words of George Shultz, former United States Secretary of State under Ronald Reagan, diplomatic efforts when they are not backed by credible threats of force and, when necessary, with use of limited force will prove ineffectual.²⁴

Realists are often opposed by idealist principles that are purveyed by those often accused of worshipping at the shrine of utopia.²⁵ There are many strands of the idealist argument all of them extending from the claim that there has always existed a “natural harmony of interests” among all peoples.²⁶ Idealists in the fields of international law and international relations share similarities with believers in natural law principles at the domestic level in their insistence that moral laws can be established by the right reason and that following this, “the individual serves the rest of the community, and the community serves the interests of the individual.”²⁷ Therefore when clashes of

²¹ *Ibid.*

²² *Ibid.*

²³ On scholar at least does not see just “realists” but “brutal realists” whom he says are “realpolitikers of an extreme kind. Ethics, they insist, have no place in politics. Might makes right. What is good for the state is good. Characteristically, brutal realists take pleasure in their brutal realism. They pride themselves on their tough-mindedness. Their noses are hard. They enjoy the company of hawks.” See James Eayrs, “Right and Wrong in Foreign Policy” in Janice Yalden & Bernard Ostry, eds., *Visions of Canada: The Alan B Plaunt Memorial Lectures, 1958-1992* (Montreal, Quebec: McGill-Queen’s University Press, 2004) at 167.

²⁴ Alexander L George, “The Role of Force in Diplomacy: Continuing Dilemma for U.S. Foreign Policy” online: <<http://www.pbs.org/wgbh/pages/frontline/shows/military/force/article.html#1>>.

²⁵ Lucian Ashworth, “Did the Realist-Idealist Great Debate really happen? A Revisionist History of International Relations” (2002) 16 Int’l Relations 33.

²⁶ *Ibid* at 36.

²⁷ *Ibid.*

interests happen, idealists see them only as “the result of the incorrect calculation of interests by one or more of the conflicting parties”²⁸ and not just the result of pure selfish inclinations.

3. Canada: Realism, Idealism or Liberal Internationalism?

It is important at this point to evaluate Canada’s international human rights praxis overtime in the context of this contribution to situate it in either of the realist or idealist paradigm. To do this effectively, I will divide the analyses into three different periods: the period from 1945 to 1970, the period 1970 to 2006 when Stephen Harper became Prime Minister and the period since 2006. Most authors agree that until the 1970s Canada did not consider human rights important in national and international politics.²⁹

What the literature seems to show is that Canada did not practice a strictly realist or idealist foreign relations regime with regard to human rights. Apparently in recognition that neither realist nor idealist ideas were without self-evident flaws, various interveners called for a hybrid formula that accommodated both ethical and self-interest ingredients. In a 1965 lecture, a respected Canadian foreign relations expert described this middle ground as grounded in “practical realism”,³⁰ a framework that tended to balance “the harshness of realism” against “the folly of idealism” or utopia.³¹

²⁸ *Ibid.*

²⁹ Dominique Clement, Will Silver & Daniel Trottier, *The Evolution of Human Rights in Canada* (Ottawa: Canadian Human Rights Commission, 2012) online: <http://www.chrc-ccdp.ca/sites/default/files/ehrc_edpc-eng.pdf>; Michael Behiels, "Canada and the Implementation of International Instruments of Human Rights: A Federalist Conundrum, 1919-1982." in D Anastakis and PE Bryden, eds., *Framing Canadian Federalism: Historical Essays in Honour of John T Saywell* (Toronto: University of Toronto Press, 2009); Dominique Clement, *Canada's Rights Revolution: Social Movements and Social Change, 1937- 1982* (Vancouver: University of British Columbia Press, 2008); Victoria Berry & Allan McChesney, “Human Rights and Foreign Policy-Making” in Robert O Matthews & Cranford Pratt eds., *Human Rights in Canadian Foreign Policy* (Kingston, Ont.: McGill-Queen’s University Press, 1988) 59 at 60; see also Clement, *supra*... at 761; Cathal Nolan, “The Influence of Parliament on Human Rights in Canadian Foreign Policy” (1985) 7 Hum Rts Q 373 at 379.

³⁰ See Eayrs, *supra* note ... at 171.

³¹ Leah Sarson, National Interests and International Consensus: The Case for a Human Rights Approach to Canadian Foreign Policy (unpublished thesis submitted to the University of Waterloo for a Master of Arts in Political Science, 2009) at 1.

On his part, Nossal modified this idea of “practical realism” in the Canadian foreign relations context by suggesting a slightly different iteration which he calls “liberal realism.”³² According to him, liberal realism understands and accepts the importance of power in international politics. It also acknowledge and accepts that it is inevitable that politics at the global level is brutal, resulting from the anarchical nature of the global system. Besides, it understands and accepts that governments and peoples have competing conceptions of justice that come from the absence of a global superordinate authority to moderate right and wrong.³³

Others contend that Canada practiced none of the above. Instead, it is claimed, a consensus was built around liberal internationalism as the fulcrum of Canada’s foreign policy “in the decades after the Second World War” and until this was ruptured by Harper’s conservative government starting in 2006.³⁴ This consensus was summarized as including:

[T]he conviction that working through international institutions generally served Canadian interests and values, that energetic multilateral diplomacy provided Canada with opportunities for international influence which it would have otherwise lacked, that strengthening rules and norms in all areas of international affairs was critical for a country in Canada’s position of openness and vulnerability to global forces, and that promoting reconciliation and the peaceful settlement of disputes abroad was both a reflection of Canada’s success as a multicultural society and a means of contributing to international security.³⁵

Not everyone is impressed by these opinions. There are some, for example, who demur at the description of Canada as a “middle” or “secondary” world power whose foreign policy is not driven by capital or other hegemonic interests.³⁶ To Gordon, “Canada is an imperialist country – not a superpower, but a power that nevertheless benefits and actively participates in the global system of domination in which the wealth and resources of the Third World are systematically plundered by

³² Kim Richard Nossal, “Right and Wrong in Foreign Policy 40 Years On: Realism and Idealism in Canadian Foreign Policy” (2007) 62 *Int’l J* 263 at 269.

³³ Sarson, *supra* note...

³⁴ See Roland Paris, “Are Canadians still Liberal Internationalists? Foreign Policy and Public Opinion in the Harper Era” (2014) 69 *Int’l J* 274; see also Kim Richard Nossal, “The Liberal Past in the Conservative Present: Internationalism in the Harper Era” in HA Smith & CT Sjolander eds., *Canada in the World: Internationalism in Canadian Foreign Policy* (Don Mills, ON: Oxford University Press, 2013) at 21.

³⁵ Paris, *Ibid* at 275.

³⁶ Nathan Andrews, “Imperialist Canada” (2012) 33 *Canadian Journal of Development Studies* 391.

capital of the Global North.”³⁷ It is therefore, in the context of these divergent viewpoints that one must view Canada’s human rights undertakings in a foreign policy sense. Given, as Paris suggests, the fragments of liberal internationalism still noticeable in Harper’s foreign policy,³⁸ it could be argued that Canada’s foreign policy including on the subject of human rights has never been permanently cast on concrete realist or idealist, internationalist or otherwise.

Though Canada would ultimately become a strong international advocate for human rights,³⁹ the country’s relationship to that cause in historical terms is more complicated than the positive reputation it later acquired in this regard. And while John Humphrey, a Canadian actually produced the first draft of the Universal Declaration of Human Rights,⁴⁰ it is no secret that the country initially resented that document and wanted nothing to do with it.⁴¹ As such, notwithstanding Humphrey’s involvement in crafting the UDHR, Canada’s attitude to it was described as skeptical and bordering on hostility.⁴² According to the records, on a vote to pass the draft declaration in the Third Committee of the UN General Assembly, “the Canadian delegation...broke rank with the vast majority of the United Nations’ members and declined to support the Declaration.”⁴³

Canada’s prior hostility to the UDHR would come to define its attitude to the idea of human rights for much of this period. The country’s justification for its stance sounded all too familiar. The Canadian government viewed the promotion of human rights at this time “as unwarranted

³⁷ See Todd Gordon, *Imperialist Canada* (Manitoba: Arbeiter Ring Publishing, 2010) at 9.

³⁸ Paris, *supra* note...at 275; see also Jean-Francois Rioux & Robin Hay, “Canadian Foreign Policy: From Internationalism to Isolationism” (1998-1999) 54 *Int’l J* 57.

³⁹ Clement, *supra* note... at 755.

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⁴¹ Clement

⁴² William A Schabas, “Canada and the Adoption of the Universal Declaration of Human Rights” (1998) 43 *McGill L J* 403 at 406; see also AJ Hobbins, “Eleanor Roosevelt, John Humphrey and Canadian Opposition to the Universal Declaration of Human Rights: Looking Back on the 50th Anniversary of the UNDHR” (1998) 53 *Int’l J* 325 stating: “During its early years, however, the declaration was greeted with considerable hostility by the majority of mainstream forces in Canada.”

⁴³ *Ibid.*

interference in the internal affairs of sovereign states...⁴⁴ Considering that when the Declaration was adopted in 1948 all but an insignificant number of African countries languished under colonialism and that South Africa⁴⁵ (which abstained from the vote on the Declaration) practiced apartheid white minority rule, Canada's position could not be defended on any idealistic grounds. Instead, the country would appear to have pursued an agenda based on basic realist principles.

As Nolan notes, the country was only interested in the practical problems of achieving general security through international organization and in developing the mechanisms that facilitated pacific settlement of disputes between states.⁴⁶ This meant that Canada's external affairs depended more on other factors than simply the promotion of human rights. Up to and even including the 1970s, the country's foreign relations rested on three different "unchallenged presuppositions."⁴⁷ These were Canada's growth as a trade-dependent capitalist country, the membership of various Western military, political and economic alliances and the successful management of its relationship with the United States.⁴⁸

These assumptions remain relevant even today in the Canadian foreign policy context. But they are sometimes tempered by ethical considerations that impact the extent to which they could be pursued in undiluted realist terms. The period of the 1970s as is shown particularly in the next session therefore came to be known as the time when certain idealist influences crept into Canada's foreign policy calculations, particularly on the subject of international human rights.

⁴⁴ Cathal J Nolan, "Reluctant Liberal: Canada, Human Rights and the United Nations, 1944-65" (1991) 2 *Diplomacy & Statecraft* 281 at 284.

⁴⁵ See Ashild Samnøy, *Human Rights as International Consensus: The Making of the Universal Declaration of Human Rights 1945-1948* (Bergen, Norway: Chr Michelsen Institute, 1993) online: <http://bora.cmi.no/dspace/bitstream/10202/369/1/R1993.4%20%C3%85shild-07182007_5.pdf>.

⁴⁶ *Ibid.*

⁴⁷ Berry & McChesney, *supra* note... at 59.

⁴⁸ *Ibid.*

The character of Canada's foreign policy during this period is often described as humane internationalism.⁴⁹ Defining the central theme of this foreign policy orientation in 1976, Paul Gerin-Lajoie who was then President of the Canadian International Development Agency (CIDA) said aid is or should be about human rights.⁵⁰ According to him, the major objective of aid was the total liberation of man, including liberation from hunger, disease, illiteracy, unemployment, and chronic underemployment. It also included liberation from the use of force to silence dissenters, systematic recourse to political imprisonment, and torture of prisoners.⁵¹

Throughout this period (and including the 1980s and 1990s) there was a sense that Canada's approach to managing its human rights agenda as part of an overall foreign policy objective remained consistent notwithstanding that the government was controlled at different times by the Liberals and Progressive Conservatives. While its actions remained sensitive to Canadian interests as well as its relationship with the United States, these regimes sustained a pattern that seemed focused on maintaining markets to sustain the country's economic growth while also encouraging good governance abroad.⁵² As noted earlier, this followed more a case-by-case analysis of situations to see what specific Canadian actions were warranted. Often, those actions were informed by how strategic the government viewed a country and the regime it was dealing with.

I will illustrate this with the spat Canada had with Nigeria following the hanging in November 1995 of the famous environmentalist Ken Saro Wiwa, along with eight other Ogoni indigenes. The Nigerian regime at the time was a military one and had charged Wiwa of the minority Ogoni ethnic group of authorizing the murder of some prominent leaders of that ethnic group. But rather than the regular courts, Wiwa was tried before a military tribunal that broke

⁴⁹ TA Keenleyside, "Aiding Rights: Canada and the Advancement of Human Dignity" in Cranford Pratt ed., *Canadian International Development Assistance Policies: An Appraisal* (Montreal: McGill-Queens University Press, 1994) 240 at 253.

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

⁵² Evan H Potter, "Nigeria and the Commonwealth: Explaining Canada's Hard-Line Approach to Sanctions, 1995-1996" (1997) 86 *The Round Table: Commw J Int'l Aff* 205.

almost every rule of fair trial. Beholden obsequiously to the military authorities, the tribunal pronounced Wiwa and eight other Ogonis guilty and sentenced them to death.

Their deaths by hanging strained Canadian/Nigerian relations in a significant way. The Canadian government ostensibly abandoned an essentially reactive policy on Nigeria for a more “hard-line, confrontational approach.”⁵³ The country also was among more than 25 other countries to recall their top diplomats from Nigeria. Canada’s officials also pulled out of a Commonwealth mission to Nigeria when the Nigerian dictatorship would not guarantee access to political prisoners during their visit. The Canadian government then closed down its High Commission in Lagos and transferred its prior responsibilities to the country’s Accra mission. Workers at the Canadian NGO, CUSO were asked to leave Nigeria.⁵⁴

The military regime in Nigeria retaliated. It accused the Canadian government of “encouraging the overthrow of the Nigerian government by funding dissidents...”⁵⁵ The junta also closed down the country’s Ottawa mission and recalled all the officials.⁵⁶ As the disagreement smouldered, questions emerged as to why Canada had singled Nigeria out for such coercive diplomacy. Didn’t this amount to double standard in the application of Canadian foreign policy?⁵⁷ The allegation of double standard could imply that Canada was more self-interested or realist in this particular episode. The question then could be, how so? There did not seem to be much at stake for Canada in terms of tangible economic or other material benefits from its relationship with Nigeria. Or so the literature suggests.

The trade relationship between the two countries rested almost exclusively on crude oil. Yet Canadian businesses, even those in the oil and gas sector, cooperated with the government in its

⁵³ *Ibid.*

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

⁵⁶ Angela Ajodo-Adebanjoko & Ojua Takim Asu, “An Assessment of the Niger-Delta Crisis and Nigeria’s External Relations - From 1992-2008” (2013) 3 *Int’l J Humanities & Soc Sci* 179 at 186.

⁵⁷ Potter, *supra* note...

tough stance against Nigeria.⁵⁸ It was therefore quite emblematic of this relationship that the only other Canadian interest that figured in this disagreement was Bata, a struggling footwear company based in Lagos but whose parent company had its offices in Toronto. In the course of this furore, the Toronto head office terminated its existing technical agreement with Lagos which included research and development of new technology.⁵⁹

Still skeptics remained who refused to buy what the Canadian government sold regarding its treatment of the Nigerian military regime. They said the Canadian government mustered as much coercion because there was not much at stake in terms of trade or other interest that could be harmed. They also accused the government of hypocrisy for its targeting of such countries as Nigeria, Haiti and Burma where it stood to lose nothing while ignoring serious human rights violations in such large market countries as China and Indonesia.⁶⁰ However this concern is examined, one thing is certain. Canada's foreign policy objectives could be well served if it sustained deeper engagement with countries from which it stood to gain little. Whether in Africa or elsewhere, such a posture if aimed at resolving challenges like inequality, injustice, and indignity could portray the country as less self-interested and more idealist in its dealings.⁶¹

This is, however, where Canada's foreign policy and human rights actions since its current federal administration came to power in 2006 have earned only a negative assessment. As Paris notes, the current government has clearly distanced itself from the principles of liberal internationalism⁶² which Canada had pursued in a largely "non-partisan basis" for over 60 years as the platform for its foreign policy.⁶³ He asserts that:

⁵⁸ *Ibid.*

⁵⁹ Adebajoko & Asu, *supra* note...

⁶⁰ Potter, *supra* note ... at 216.

⁶¹ David J Hornsby, "Changing Perception into Reality: Canada in Africa" (2014) 69 Int'l J 334 at 336.

⁶² This paradigm is built upon five pillars: (1) a premium on the idea of "taking responsibility for playing a constructive role in the management of conflicts"; (2) an emphasis on multilateral approaches to cooperation; (3) support for, and involvement with, international institutions; (4) a willingness "to use national resources for the system as a whole"; and (5) an emphasis on international law. See Nossal, *The Liberal Past in the Conservative Present*, *supra* note...

⁶³ Paris, *supra* note... at 275.

Indeed, the most enthusiastic and effective practitioner since [Lester] Pearson was arguably a (Progressive) Conservative prime minister, Brian Mulroney, who reinvested in multilateral diplomacy at the United Nations (UN) and elsewhere, championed Canada's role in international peacekeeping, negotiated new global environmental accords and trade agreements, and cultivated close relationships with a broad array of foreign leaders.⁶⁴

Paris says the current government has rewritten the script since winning power in 2006. They have portrayed liberal internationalism as “a failure and morally flawed”⁶⁵, and established a different narrative of Canada's history and role in the world. This new narrative, Paris claims, diminishes Canada's accomplishments “as a multilateral entrepreneur and peacemaker, and instead highlights [its] participation in wars and great moral struggles...”⁶⁶

I will briefly exemplify this changed dynamic of Canadian foreign policy since 2006 in three ways. First I will look at the country's relationship with the United Nations human rights system. Second I will look at Canada's attitude towards Africa in terms of its human rights expansion and development aid activities. Finally, I will explain briefly how Canada's current human rights foreign policy reality informs and is informed by domestic conditions, events and attitudes.

While in the past Canada's foreign policy involved working with international institutions like the UN and its organs that has hardly been the case since the current government took power. There has been a “lack of affection for the institution, especially since [Canada] failed to win a non-permanent seat on the Security Council in 2010.”⁶⁷ Paris in fact presents a catalogue of instances clearly depicting Canada's frosty attitude towards the UN during the Harper years.⁶⁸ It is an attitude that has spilled into the country's participation in the activities of the UN Human Rights Council which replaced the much maligned Commission on Human Rights⁶⁹ the same year Harper became Prime Minister.

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Ibid.

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From its establishment in 2006 to 2009, Canada was a member of its 47 member-states but as one scholar observes this quickly gave way to antagonism as Canada

[S]oon became known as the voice of opposition..., registering a recorded 'no' vote on contentious matters with a degree of frequency unequalled by any other Council member-state within the institution's first three years, and establishing a hitherto unexpected reputation within international circles as a voice of dissent.⁷⁰

The country voted "no" to Council decision 1/106 on the "Human Rights situation in Palestine and other Occupied Arab Territories" as well as decision 1/107 on "Incitement to Racial and Religious Hatred and the Promotion of Intolerance." Both texts had been sponsored by Pakistan on behalf of the Organization of Islamic Conference (OIC).⁷¹ It also tagged along with Eastern and Western European states and Japan to vote against the adoption of resolutions on the "Human Rights Situation in the Occupied Palestinian Territory." By December 2006, Canada started voting "no" in isolation and as "sole opposition voice" to various resolutions on Occupied Palestine and East Jerusalem, and Occupied Syrian Golan. It then voted "in good company" against resolutions on the future activities of the Human Rights Council itself and a separate decision aimed to encourage implementation of the Declaration of the 2001 Durban conference on Racism, Racial Discrimination, Xenophobia and Related Intolerance."⁷²

Canada's commitment to human rights growth and development assistance to Africa have been negatively impacted by the actions of the current government. Prior to 2006, Canada's support for human rights activities in Africa was in the form of development assistance offered through the Canadian International Development Agency (CIDA). In addition to what have been noted earlier regarding the overall justification for its foreign policy, Canadian aid in particular was dispersed around the world on two main motivations: international realism and humane internationalism.⁷³ As much as there was emphasis on Western security, foreign aid was also intended to help the poor

⁷⁰ Joanna Harrington, "Canada and the United Nations Human Rights Council: Dissent and Division" (2010) 60 UNBLJ 78 at 79.

⁷¹ *Ibid.*

⁷² *Ibid* at 95.

⁷³ See Brown, "CIDA under the Gun" *supra* note...

and promote social justice. The latter was always much more of a concern in Africa where governments often behaved irresponsibly and suppressed human rights.

Still the structure of Canadian aid has changed in more fundamental ways and in a fashion that places less emphasis on issues that had hitherto been its core objectives. In 2013, CIDA was merged into a new Department of Foreign Affairs, Trade and Development (DFAIT), a development some commentators warned signalled an end to Canada's foreign-aid era.⁷⁴ Prior to its disbandment, a Canadian Senate report had recommended just that and pointed to CIDA's failure in Africa as reason that it had to go. According to the report:

Given the failure of the Canadian International Development Agency (CIDA) in Africa over the past 38 years to make an effective foreign-aid difference, the government of Canada should conduct an immediate review of whether or not this organization should continue to exist in its present non-statutory form.⁷⁵

There is therefore a noticeable shift from the foreign-aid and policy approach which portrays Canada as a "non-belligerent, committed, reliable and friendly partner to Africa"⁷⁶ (and implicitly to other developing regions of the world)⁷⁷ to one that uses aid to leverage trade as well as military objectives as in Afghanistan.⁷⁸ The fallout, for example, is the regrettable closure of the International Centre for

⁷⁴ See Kim Mackrael, "Ottawa's Elimination of CIDA Brand Signals end of Foreign-Aid Era" *The Globe and Mail* 27 June 2013 online <<http://www.theglobeandmail.com/news/politics/ottawas-elimination-of-cida-brand-signals-end-of-a-foreign-aid-era/article12878309/>>.

⁷⁵ "Senators call for CIDA to be disbanded" *National Post* online <<http://www.nationalpost.com/story.html?id=c63974a5-00f3-43b5-b5ed-6f2ed1df4125>>; see also Stephen Brown, "Creating the World's Best Development Agency? Confusion and Contradictions in CIDA's New Policy Blueprint" (2007) 28 *Can J Dev Stud* 213; Jamey Essex, "The Politics of Effectiveness in Canada's International Development Assistance" (2012) 33 *Can J Dev Stud* 338; David Black & Rebecca Tiessen, "The Canadian International Development Agency: New Policies, Old Problems" (2007) 28 *Can J Dev Stud* 191.

⁷⁶ Edward Ansah Akuffo, *Canadian Foreign Policy in Africa: Regional Approaches to Peace, Security and Development* (Burlington, VT: Ashgate Publishing Company, 2012).

⁷⁷ Hornsby, *supra* note...at 335.

⁷⁸ See Brown, "CIDA under the Gun", *supra* note...; see also Alexander Moens, "Afghanistan and the Revolution in Canadian Foreign Policy" (2008) 63 *Int'l J* 569; Brent Patterson, "For Stephen Harper, Trade Trumps Human Rights" *The Council of Canadians*, 27 November 2013 online <<http://canadians.org/blog/stephen-harper-trade-trumps-human-rights>>; Dan Riendeau, "For Harper Profit always comes before Human Rights" *Newstalk770*, 9 February 2015 online <<http://www.newstalk770.com/2015/02/09/54244/>>.

Human Rights and Democratic Development (Rights and Democracy) in 2012⁷⁹ even before CIDA was also shuttered.

A member of its Board at the time of its closure, David Matas in supporting the government action said the Centre had become “organizationally dysfunctional.” He added that its staff promoted their own human rights agenda without recourse to the Board while repressive regimes had grown more hostile to Western countries funding human rights workers in their countries.⁸⁰ But to Ed Broadbent who built the Centre to a global human rights brand as its first President, this amounted to giving a dog a bad name so to hang it. He accused the Harper government of undermining the Centre’s independence and international credibility by appointing partisan individuals to its Board.⁸¹ Incidentally, it was an ideological disagreement that allowed latent crisis at the Centre to bubble to the surface with members of the Board falling out with then President Remy Beaugard for awarding a grant of \$10,000 to three organizations investigating Israel over alleged human rights abuses. After a particularly heated meeting of the Board, Mr. Beaugard died of heart attack.⁸²

This leads me to a look at how the Harper government’s apparent ideological reconfiguration of longstanding, bipartisan Canadian foreign policy traditions impacted domestic human rights practices.⁸³ If we accept the saying that charity must begin at home, that will be recognition that for Canada’s international human rights efforts to be meaningful, they must proceed hand in hand with excellent conditions at home. There is, however, growing feeling among Canadians and international human rights bodies that the government is not living up to its domestic human rights duties.

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⁸⁰ Graeme Hamilton, “Tories Shutter troubled Rights and Democracy Agency” *National Post*, 3 April 2012 online <<http://news.nationalpost.com/news/canada/tories-shutter-troubled-rights-and-democracy-agency>>.

⁸¹ *Ibid.*

⁸² *Ibid.*

⁸³ Brian Bow & David Black, “Does Politics stop at the Water’s Edge in Canada? Party and Partisanship in Canadian Foreign Policy” (2008-2009) 64 *Int’l J* 7.

For example, in March 2015 the UN Committee on the Elimination of Discrimination against Women issued an unprecedented report finding Canada liable for violations of various articles of the International Convention on the Elimination of All Forms of Discrimination against Women.⁸⁴ By some accounts, “this is the first time an international human rights expert body has found Canada to be in contravention of international human rights norms.”⁸⁵ In his 2014 report on the state of the human rights to assembly and association, the UN Special Rapporteur Mr. Maina Kiai referenced a June 5 media report that the Canadian Government Operations Centre had contacted all federal agencies, requesting assistance in “compiling a comprehensive listing of all known demonstrations which will occur either in your geographical area or that may touch on your mandate.”⁸⁶ While in the past the GOC’s surveillance had target aboriginal protesters under the *Idle No More* movement, this particular program seemed to expand beyond this to include “all demonstrations by any person or group.”⁸⁷

As well during an academic visit to Canada in 2013, Mr. Kiai spoke out about “the trend toward narrowing space for dissent in Canada and the need for an honest assessment of where fundamental democratic rights stand in the country.”⁸⁸ He urged Canadians to exercise their rights to assemble, protest and organize, noting that these rights – and indeed democracy itself – should not be taken for granted. Besides, during the G20 Summit which Toronto hosted in 2010, more than 1,000 peaceful protesters were arrested and detained without charge in a development that both

⁸⁴ CEDAW/C/OP.8/CAN/1 “Report of the inquiry concerning Canada of the Committee of the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women” online <http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/CAN/CEDAW_C_OP-8_CAN_1_7643_E.pdf>

⁸⁵ See Lara Koerner Yeo, “Canada in Violation of International Human Rights Law – Pressure Mounts to hold National Inquiry” Canadian Lawyers for International Human Rights, 31 March 2015 online <<http://claihr.ca/2015/03/31/canada-in-violation-of-international-human-rights-law-pressure-mounts-to-hold-national-inquiry/>>.

⁸⁶ Maina Kiai, “2014: The Year in Assembly & Association Rights” (A Report issued in January 2015) at 8 online <http://freeassembly.net/wp-content/uploads/2015/01/UNSR-FOAA-2014-annual-report_r.pdf>.

⁸⁷ See David Pugliese, “Federal Agency seeks to widen Surveillance beyond Idle No More to any Demonstrators in Canada” *National Post*, 5 June 2014 online <<http://news.nationalpost.com/news/canada/canadian-politics/federal-agency-seeks-to-widen-surveillance-beyond-idle-no-more-to-any-demonstrators-in-canada>>.

⁸⁸ See Kiai, *supra* note... at 24.

shocked and outraged Canadians who have always believed in liberal democracy and the values of constitutional rights.⁸⁹

4. Canadian Contributions to Global Human Rights Promotion

At official and unofficial levels, Canada has made significant contributions in the development and promotion of human rights ideas around the world. On one level, the Canadian government has utilized international processes availed by institutions like the United Nations and its agencies to drive home specific human rights agendas. On a different level, human rights norms and practices applicable in the Canadian domestic context have been successfully borrowed or transplanted to other jurisdictions. At times this transplantation had happened by dint of intuition from the borrowing jurisdictions. In other situations, transplantation had occurred with the active involvement of Canadian citizens or organizations. In both situations, Canada's international reputation as a global human rights entrepreneur is apparently enhanced even when it is not clear whether the objectives are realist or informed by moral choice.

I. The Government of Canada

In multilateral terms and with regard to the activities of international organizations, Canada has at times been a leader in developing and promoting new areas of human rights focus. This is mainly as regards the development of new international norms, promoting existing ones and actively participating in the activities of international institutions. Though as earlier stated it took the country a while after the adoption of the UDHR to show its human rights hand, once Canada got a hang of it, the country became almost ubiquitous in the field for many ground-breaking initiatives. This is notwithstanding that some of its international bureaucrats felt Canada did not commit sufficient

⁸⁹ Margaret Beare, Nathalie Des Rosiers & Abigail Dushman eds., *Putting the State on Trial: The Policing of Protest during the G20 Summit* (Vancouver: UBC Press, 2015); David Walsh, 'Violence and Police Repression at the G20 Summit in Toronto' *Global Research*, 3 July 2010 online <<http://www.globalresearch.ca/violence-and-police-repression-at-the-g20-summit-in-toronto/19982>>; Jeffrey Monaghan & Kevin Walby, "'They attacked the City': Security Intelligence, the Sociology of Protest Policing and the Anarchist Threat at the 2010 Toronto G20 Summit" (2012) 60 *Current Sociology* 653.

resources and personnel to the human rights cause.⁹⁰ Some of those initiatives are the focus of this section.

In 1981 during the 37th Session of the UN Human Rights Commission, Canada played a prominent role in drafting a Declaration on the Elimination of All Forms of Discrimination based on Religious Belief.⁹¹ At the same session, Canada proposed a resolution requesting the sub-Commission to carry out a study on the plight of human rights defenders while also co-sponsoring a resolution mandating another study on the right to conscientious objection. The Canadian delegation further ensured the passage of a consensus resolution calling for a rapporteur to study the mass movements of people given the relationship of this phenomenon to human rights.⁹²

When the United Nations held a meeting of experts on the issue of violence against women, it was Canada that initiated the resolution to that effect.⁹³ The country also sponsored the meeting of this expert group which produced a recommendation from the UN Committee on the Elimination of All Forms of Discrimination against Women. This recommendation soon led to another Canadian inspired resolution by which the United Nations accepted to develop a Declaration on this specific subject.⁹⁴

These actions of the Canadian officials were inspired in part by the country's less antagonistic stance towards the international human rights system and departure from the immediate post-UDHR years. Over time, pressure from parliament and the civil society for Canada to live up to her international duty and ratify the international human rights instruments was rewarded when the Pierre Trudeau regime in 1976 ratified the ICCPR and ICESCR.⁹⁵ This also coincided with the period when the government of Jimmy Carter in the United States started leveraging that country's foreign development aids portfolio to advance the country's human rights

⁹⁰ John W Foster, "The UN Commission on Human Rights" in Robert O Matthews & Cranford Pratt, *Human Rights in Canadian Foreign Policy* (Kingston, Ontario: McGill-Queen's University Press, 1988) at 91.

⁹¹ A/Res/36/55 of 25 November 1981. See also Foster, *ibid* at 91; Clement, *supra* note 1 at 770.

⁹² Foster, *supra* note 32 at 91.

⁹³ See Kathleen E Mahoney, "Human Rights in Canada's Foreign Policy" (1992) 47 Int'l J 555 at 575.

⁹⁴ *Ibid.*

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message. In effect, the US government tied the delivery of foreign aid to the human rights record of the receiving government.⁹⁶ Considering Canada's often clearly stated goal of managing its foreign policy with US position in mind, this was anticipated to have collateral effect on its (Canada's) own policies.

It is also worth highlighting that once the American government took the position of linking development aid to the human rights records of the recipient states, an open discussion on whether Canada should follow that example kicked off in earnest. Again, the Canadian parliament orchestrated and led the debate.⁹⁷ The then Prime Minister, Pierre Trudeau was immediately questioned in parliament whether he ever thought of denying Canadian development aid to countries ruled by severe human rights violators. He answered that "Until now we have not made it a condition of our assistance to starving people in the Third World that their government be above reproach. That is our general approach."⁹⁸ The day after this response, a private member's bill was introduced in parliament aimed at denying Canadian aid to regimes that grossly and consistently violated human rights.⁹⁹

Though this bill could not be passed into law, the debates on it, however, proved fruitful in pressuring the government to articulate a human rights and foreign aid policy that took into account the behaviour of the aid-receiving government. And while the government rejected the bill, it still

⁹⁶ David Richards & Ronald Gelleny, "Money with a Mean Streak? Foreign Economic Penetration and Government Respect for Human Rights in Developing Countries" (2001) 45 *International Studies Quarterly* 219; Clair Apodaca & Michael Stohl, "United States Human Rights Policy and Foreign Assistance" (1999) 43 *International Studies Quarterly* 185; James Lebovic & Erik Voeten, "The Cost of Shame: International Organizations and Foreign Aid in the Punishing of Human Rights Violators" (2009) 46 *Journal of Peace Research* 79; Eric Neumayer, "Do Human Rights Matter in Bilateral Aid Allocation? A Quantitative Analysis of 21 Donor Countries" (2003) 84 *Social Science Quarterly* 650; Steven Finkel, Anibal Perez-Linan & Mitchell Seligson, "The Effects of U.S. Foreign Assistance on Democracy Building, 1990-2003" (2007) 59 *World Politics* 404. This policy has been maintained by subsequent U.S. administrations in the same or modified format as shown by HR 2003 or otherwise the Ethiopia Democracy and Accountability Act passed by the U.S. Congress in 2007 which aimed to withdraw non-essential development aid to Ethiopia unless the country's government fulfilled various human rights obligations; see Abigail Salisbury, "Linking Rights and Foreign Aid for Ethiopia: The Case of HR 2003" (2008) *Jurist: Academic Commentary Online*: <<http://jurist.org/forum/2008/01/linking-rights-and-foreign-aid-for.php>>.

⁹⁷ Nolan, *The Influence of Parliament* supra note...

⁹⁸ *Ibid* at 381.

⁹⁹ *Ibid*.

recognized that human rights restrictions could affect its involvement with severe rights violators. However, the government identified as qualifying conditions “the gross and continuing character of the [human rights] violations, the existence of a global consensus in favor of condemnation, and in the case of aid *per se*, the inability to effectively administer the program in the face of extensive abuses.”¹⁰⁰

This attitude apparently informed a case-by-case examination of the human rights conduct of receiving countries and culminated in Canada’s unilateral action against South Africa because of that country’s gross abuses of human rights under an apartheid context. Canada also froze aid to Uganda during the regime of the late dictator, Idi Amin.¹⁰¹ Besides, this orientation led to the denial of Canadian aid to the government of Vietnam in 1979 because of what was seen as that government’s gross human rights abuses in the expulsion of the “boat people.”¹⁰² Owing in part to actions like these, it could be contended that Canada’s human rights commitments had far more idealist character than being motivated by only selfish realist considerations. It showed the country as being very sensitive to suffering which without argument provides the single most potent ethical platform to support any human rights crusade.

In a 1987 strategy paper, the government promised to make “assessments of human rights policies and practices concrete factors in decision-making on aid determination.”¹⁰³ The paper also stated that in making decisions about the levels and types of aid to be provided, the cabinet is to give annual consideration to information on the human rights situation in potential recipient countries. Further, the policy espoused that “in countries where violations of human rights are systematic, gross and continuous, and where it cannot be ensured that Canadian assistance reaches the people for whom it is intended, government-to-government (bilateral) aid will be reduced or denied,

¹⁰⁰ Clement, Human Rights in Canadian Domestic and Foreign Politics, *supra* note...

¹⁰¹ Nolan, *supra* note... at 382.

¹⁰² *Ibid* at 383.

¹⁰³ TA Keenleyside & Nola Serkasevich, “Canada’s Aid and Human Rights Observance: Measuring the Relationship” (1989-1990) 45 *International Journal* 138 at 139.

whereas countries that make advances towards improved respect for human rights will see that progress reflected in Canadian decisions on future funding.¹⁰⁴

In 1988 Canada ramped up its international human rights commitment when the Act establishing the *International Centre for Human Rights and Democratic Development* (ICHRDD, later to be renamed *Rights & Democracy*) was passed.¹⁰⁵ In section 4(1) of the Act, the Centre's objectives were "to initiate, encourage and support cooperation between Canada and other countries in the promotion, development and strengthening of democratic and human rights institutions and programs that give effect to the rights and freedoms enshrined in the *International Bill of Human Rights*." Specifically, the Centre's activities were to be organized around a range of human rights including the right to an adequate standard of living, the freedom from torture, cruel, inhuman or degrading treatment or punishment, the right of freedom of opinion and expression, and the right to vote and be elected at periodic, genuine elections in pluralistic political systems.¹⁰⁶

It will take another two years before the Centre commenced operations.¹⁰⁷ But once it did, it became in some sense the face of Canada's determination to nurture democracy and open governments abroad. Funded almost exclusively by the Canadian government (about five million Canadian dollars in 1999 and twelve million dollars as of 2010¹⁰⁸), the ICHRDD in turn dispersed this fund to frontline organizations (either directly or through intermediaries) working to strengthen democratic institutions in other countries.¹⁰⁹ In 2010-2011 the Centre had projects in such countries as Haiti, Afghanistan, Colombia, China, Burma, Zimbabwe and Egypt.¹¹⁰

The Canadian Human Rights Foundation (now Equitas – International Centre for Human Rights Education) has also been a leader in spreading human rights knowledge to other parts of the

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¹⁰⁵ International Centre for Human Rights and Democratic Development Act, RSC ...

¹⁰⁶ *Ibid.*

¹⁰⁷ See James M Scott, *Transnationalizing Democracy Promotion: The Role of Western Political Foundations and Think-Tanks* (1999) 6 *Democratization* 146 at 150.

¹⁰⁸ See *Engaging a Changing World: Annual Report 2010-2011* (Montreal: Rights & Democracy, 2012) at 69 Online: <http://publications.gc.ca/collections/collection_2011/dd-rd/E81-1-2011.pdf>.

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid.*

world. It does this through its flagship International Cooperative Human Rights Training Program of which this author has been a beneficiary.¹¹¹ This training was initiated in 1980 and brings together up to 90 participants from well over 50 different countries. Since inception, the program has attracted about 3, 500 participants from over 100 countries.¹¹² In the bulletin announcing the course for June 2015, the Centre described it as “an intermediate-level program focusing on international human rights standards, current human rights issues and human rights education strategies.”¹¹³ The course also focuses on the exploration of human rights principles and instruments and critical reflection and inquiry, as well as extensive sharing of experiences which allows participants to strengthen their capacity to engage in effective human rights education, and advance equality and human dignity that leads to social change.¹¹⁴

The case of Bariya Magazu, a 17-year old Nigerian Muslim girl sentenced to a public lashing for engaging in pre-marital sex illustrates a situation where the Canadian government, non-governmental organizations and other branches of the country's civil society worked collaboratively to protect the human rights of an individual abroad. In September 2000, Magazu was spotted pregnant outside marriage in the Northern Nigerian state of Zamfara. The state had been the first to institute Islamic sharia law in 2000 following Nigeria's successful transition from military to civil rule in 1999. She was sentenced to 100 lashes for engaging in pre-marital sex and another 80 lashes for making unsubstantiated allegations against three men.¹¹⁵

¹¹¹ Vincenza Nazzari, Paul McAdams & Daniel Roy, “Using transformative learning as a model for human rights education: a case study of the Canadian Human Rights Foundation's International Human Rights Training Program” (2005) 16 *Intercultural Education* 171.

¹¹² See Equitas: International Centre for Human Rights Education 2015 International Human Rights Training Program Information Online <<https://equitas.org/wp-content/uploads/2014/09/2015-IH RTP-Information-Package.pdf>>.

¹¹³ *Ibid* at 2.

¹¹⁴ *Ibid*.

¹¹⁵ See “Nigerian Girl Appeals against Lashing” BBC News, 8 January 2001 online: <<http://news.bbc.co.uk/2/hi/africa/1106888.stm>>.

The first Canadian organization to get involved in her case once the sentence was confirmed was *The Globe and Mail* which featured the story for several weeks.¹¹⁶ The newspaper group also sent a reporter to Nigeria to cover the story first hand and in greater detail. The Canadian Section of the global human rights organization Amnesty International also got involved. They received letters from ordinary Canadians and sent them to authorities in Nigeria, pleading for reprieve for Bariya. So did other sectors of Canadian civil society. For example, not only did the congregation of the First United Church of Ladysmith, British Columbia write to protest Bariya's treatment, they also offered to sponsor her immigration to Canada.¹¹⁷ These interventions, however, only paved the way for the Canadian government to take Bariya's case up through the Department of Foreign Affairs and International Trade (DFAIT). Canada said it was disturbed by what it called "an appalling case" and called on Nigeria to respect its commitments to the Universal Declaration of Human Rights.¹¹⁸

But by far Canada's most significant contribution to the development of international human rights norms could very well be the "Responsibility to Protect" doctrine that seeks to protect people all over the world from genocide and ethnic cleansing at the hands of their own governments.¹¹⁹ It was described initially as "Canada's doctrine" apparently due to the leading role that Lloyd Axworthy, the country's former Foreign Minister played in generating the plan that ultimately resulted in the promulgation of the doctrine. It has been noted that Canada was "state champion from start to finish" in birthing the doctrine.¹²⁰

II. Spreading Canada's Constitutional Human Rights Praxis

¹¹⁶ See Rhoda Howard-Hassmann, "The Flogging of Bariya Magazu: Nigerian Politics, Canadian Pressures, and Women's and Children's Rights" (2004) 3 *Journal of Human Rights* 3 at 5.

¹¹⁷ *Ibid.*

¹¹⁸ *Ibid* at 16.

¹¹⁹ See "Canada's 'Responsibility to Protect' Doctrine Gaining Ground at the UN" online: <<http://www.thecanadianencyclopedia.ca/en/article/canadas-responsibility-to-protect-doctrine-gaining-ground-at-the-un/>>; Alex J Bellamy, "Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention after Iraq" (2005) 19 *Ethics in International Affairs* 31;

¹²⁰ Ramesh Thakur & Thomas G Weiss, "R2P: From Idea to Norm – and Action?" (2009) 1 *Global Responsibility to Protect* 22 at 34.

Another way that Canada has positively influenced the development of human rights practices abroad is through the spread of its distinct form of domestic protection of human rights by constitutional means. There is obviously a significant correlation between a strong constitutional human rights culture at the domestic level and a country's ability to propagate those values abroad. And while Canada's system for the constitutional protection of rights may not have been designed with the objective of exporting it to other countries, yet it has produced this outcome in a variety of contexts.¹²¹ As one scholar put it, while the influence of the United States Constitution and Supreme Court in the interpretation of human rights has waned around the world that of the Canadian Charter and Supreme Court has only increased.¹²² Two other scholars suggested that Canada is in fact becoming a "constitutional superpower."¹²³

Several examples have been provided regarding the migration of Canada's culture of human rights protection through the process of constitutional borrowing. One that instantly stands out is the influence of the Canadian Charter of Rights and Freedoms on the design of South Africa's first post-Apartheid constitution.¹²⁴ Prior to the adoption of South Africa's interim Constitution Act of 1993, eight lawyers based in Cape Town had authored a document called "A Charter of Social Justice" which in terms of its structure had been based substantially on the Canadian Charter of Rights. South Africa's National Party had also drafted a similar document called "Charter of Fundamental Rights" which again relied heavily on comparative constitutional law principles, including those from Canada.¹²⁵

¹²¹ See Adam Dodek, "Canada as Constitutional Exporter: The Rise of the 'Canadian Model' of Constitutionalism" (2007) 36 *Supreme Court Law Review* 309.

¹²² Mark Tushnet, "The Charter's Influence around the World" (2013) 50 *Osgoode Hall Law Journal* 527; David S Law & Mila Versteeg, "The Declining Influence of the United States Constitution" (2012) 87 *New York University Law Review* 762;

¹²³ Law & Versteeg, *ibid* at 809.

¹²⁴ DM Davis, "Constitutional Borrowing: The Influence of Legal Culture and Local History in the Reconstitution of Comparative Influence: The South African Experience" (2003) 1 *International Journal of Constitutional Law* 181 at 186.

¹²⁵ *Ibid.*

Expectedly, what became chapter 3 of the South African interim Constitution on “fundamental rights” was a mesh of both the National Party’s document and the “Charter of Justice” signed by the eight Cape Town lawyers. As Davis notes:

In its essential structure, chapter 3 followed the Canadian Charter of Rights and Freedoms. The limitation clause contained in chapter 3 was a variation of section 1 of the Canadian Charter. Similarly, the manner in which this section had been interpreted by the Canadian Supreme Court in *R. v. Oakes*¹²⁶ also helped shape the final product.¹²⁷

This influence has spread as well to other parts of the world. A recent study found that Israeli judges accorded “important status” to human rights precedents set forth by the Canadian Supreme Court.¹²⁸ In point of fact, Canada ranked only second to the United States in terms of the frequency with which Israeli courts referenced foreign precedents.¹²⁹ The justification offered for this is that the Israeli Basic Laws on human rights include a limitation clause that is similar to the one in the Canadian Charter. The ISC, however, did not turn to Canada only on that clause, and its constitutional adjudication includes references to Canadian precedents when they are relevant and even uniquely address constitutional issues that emerge in Israel.¹³⁰

As much as the Canadian domestic constitutional framework for human rights protection is copied and referenced in other jurisdictions, the country has also shown a willingness to allow its own practices at home to be influenced both by international law and the practices of other jurisdictions, especially those sharing the common law legal tradition.¹³¹ As such, Canada is a very

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¹²⁷ *Ibid* at 187. For specific application of Canadian caselaw in South African constitutional cases see Hoyt Webb, “The Constitutional Court of South Africa: Rights Interpretation and Comparative Constitutional Law” (1999) 1 *University of Pennsylvania Journal of Constitutional Law* 205 at 281 & 223; Christa Rautenbach, “South Africa: Teaching and ‘Old Dog’ New Tricks? An Empirical Study of the Use of Foreign Precedents by the South African Constitutional Court (1995-2010)” in Tania Groppi & Marie-Calire Ponthoreau, eds., *The Use of Foreign Precedents by Constitutional Judges* (Oxford: Hart Publishing, 2013) 185.

¹²⁸ Suzie Navot, “Israel: Creating a Constitution – The Use of Foreign Precedents by the Supreme Court (1994-2010)” in Tania Groppi & Marie-Calire Ponthoreau, eds., *The Use of Foreign Precedents by Constitutional Judges* (Oxford: Hart Publishing, 2013) 129 at 147.

¹²⁹ *Ibid*.

¹³⁰ *Ibid*.

¹³¹ Antje Wiener & Philip Liste, “Lost without Translation? Cross-Referencing and a New Global Community of Courts” (2014) 21 *Indiana J Global Leg Stud* 263 at 277; see also Gerard La Forest, “The Use of American

significant player in the development of what some have called a global community of courts.¹³² This is important for at least one reason. It secures the country's reputation as a soft international power that respects the international norm production system and encourages her allies to act in the same manner.

III. Canadian Non-Governmental Organizations

While it is understandable that the Canadian government takes much of the plaudits for the country's positive human rights reputation, it has to be said that the country's non-governmental institutions (NGOs) also played a distinguished role in creating and sustaining that image. Evidence abounds as well that these NGOs didn't just perfunctorily tag along; they were at times front of the line, dragging Canada's commitments along by sheer willpower and extraordinary resolve. This is especially true of the period prior to the 1970s when sufficient warmth for the human rights agenda had yet to be generated within the Canadian government and among the country's population. Though hampered in terms of their number and experience, these NGOs persisted and kept the idea burning as a moral challenge to the Canadian government.

The literature shows that only a handful of Canadian human rights NGOs were active in the country during the period of the 1950s.¹³³ Even so, they were propelled into the cold war battle that raged between the East and the West in those days. The groups "were bitterly divided between communists and social democrats (the latter allied with the liberals)."¹³⁴ This ideological gulf in turn

Precedents in Canadian Courts" (1994) 46 Me L Rev 211; Sanford Levinson, "Looking Abroad when Interpreting the US Constitution: Some Reflections" (2004) 39 Tex Int'l LJ 353 at 354.

¹³² See Anne-Marie Slaughter, "A Global Community of Courts" (2003) 44 Harv Int'l L J 191; David Law & Mila Versteeg, "The Evolution and Ideology of Global Constitutionalism" (2011) 99 Cal L Rev 1163.

¹³³ See Clement, *supra* note... at 759; see also Dominique Clement, "Spies, Lies and a Commission: A Case Study in the Mobilization of the Canadian Civil Liberties Movement" (2000) 7 Left History 53; Frank K Clarke, "Debilitating Divisions: The Civil Liberties Movement in Early Cold War Canada, 1946-48" in Gary Kinsman, Dieter Buse & Mercedes Steedman, eds., *Whose National Security? Canadian State Surveillance and the Creation of Enemies* (Toronto: Between the Lines, 2000) 171; Ross Lambertson, *Repression and Resistance: Canadian Human Rights Activists, 1930-1960* (Toronto: University of Toronto Press, 2005) at 244; Barrington Walker, "Finding Jim Crow in Canada, 1789-1967" in Janet Miron, ed., *A History of Human Rights in Canada: Essential Issues* (Toronto: Canadian Scholars Press, 2009) at 81; Dominique Clement, "The Royal Commission on Espionage and the Spy Trials of 1946-9: A Case Study in Parliamentary Supremacy" (2000) 11 *Journal of the Canadian Historical Association* 151.

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prevented them from speaking with a strong national voice on the major human rights issues of the time.

But happenings in the decades of the 1960s and 1970s were marked by incremental advancements in the Canadian human rights arena leading to a period recorded in the literature as the era of the Canadian human rights revolution.¹³⁵ But what is very interesting regarding the events of this period is the light it shines on the relationship that could exist between a country's domestic human rights activism and its commitments on the international front. As is becoming a lot clearer in recent times, often this relationship could be fraught and antagonistic. At other times, it could be a seamless, symbiotic connection in which the domestic and foreign branches of the network become so entwined that they are almost inseparable in their objectives as well as the manner they are pursued. The Canadian situation up to at least 2006 paints a relatively satisfactory picture of situation that the government and NGOs worked in harmony towards the human rights goal. It could also be stated that this alliance far from being carefully orchestrated only emerged from a fortuitous combination of forces.

As earlier stated, up to the 1960s, the Canadian government did not feel sufficiently persuaded to adopt the human rights message as it considered that an intrusion into the sovereign realm of countries. But one provincial government, that of Ontario, felt differently. Along with the emergence of a new crop of human rights activists, the passage of the Ontario Human Rights Code in 1962 is said to have "marked the beginning of Canada's rights revolution."¹³⁶ Two groups, the Jewish Labour Committee and the Association of Civil Liberties campaigned prominently for the promulgation of the Code. Over time, the activities of these groups, along with others, began to exert a shift in the Canadian federal government's thinking on the issue of human rights.

Once Canada voted in December 1966 for the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights at the United

¹³⁵ Clement, et al the evolution of Human Rights in Canada at 16

¹³⁶ *ibid.*

Nations, legitimate questions began to be asked as to whether the country intended to also go the full distance by ratifying them.¹³⁷ These questions were specifically asked in Parliament in January 1967 of the then Canadian Prime Minister Lester Pearson. He first claimed ignorance of the existence of the Covenants but then later informed of a commitment on the part of his government to pursue ratification “at the earliest possible date.”¹³⁸ For Canada’s human rights campaigners, this was a small window of opportunity which they seized immediately to demand urgent action on the process of ratifying those instruments.¹³⁹

That same year, following his return to the University of McGill, John Humphrey led a group of scholars to found the Canadian Human Rights Foundation (now *Equitas*) with mandate to advance democracy, human development, peace and social justice through education programs.¹⁴⁰ The next year as part of activities to celebrate the 20th anniversary of the Universal Declaration of Human Rights the Canadian government gave out \$1 million to local groups and communities to participate in the celebrations.¹⁴¹ This was huge coming from a country that had been hostile to the Declaration from its earliest beginnings and led to the formation of several human rights organizations in the various provinces. These groups soon enough added their voices to the groundswell of public opinion in favour of a more human rights sensitive Canadian domestic and foreign policy.

One issue remained nevertheless which could not be buried under the dust that popular enthusiasm for the human rights project had kicked up. The field was still bifurcated between activists who only considered civil liberties and fundamental freedoms and those who wanted the

¹³⁷ See Cathal Nolan, “The Influence of Parliament on Human Rights in Canadian Foreign Policy” (1985) 7 *Human Rights Quarterly* 373 at 378.

¹³⁸ *Ibid.*

¹³⁹ See for example, Michael Behiels, “Canada and the Implementation of International Instruments of Human Rights: A Federalist Conundrum, 1919-1982” in D Anastakis & PE Bryden, eds., *Framing Canadian Federalism: Historical Essays in Honour of John T Saywell* (Toronto: University of Toronto Press, 2009).

¹⁴⁰ See “Equitas: Our History” online: <<https://equitas.org/en/about-us/our-history/>>; see also Vincenza Nazzari, Paul McAdams & Daniel Roy, “Using Transformative Learning as a Model for Human Rights Education: A Case Study of the Canadian Human Rights Foundation’s International Human Rights Training Program” (2005) 16 *Intercultural Education* 171.

¹⁴¹ Clement, et al at 17

economic and social welfare dimension of human rights to be explored as well. This divergence while it lasted, affected the strength of the human rights voice within the Canadian civil society. However, the determination of one non-governmental human rights organization would come to symbolize “how human rights transformed social movements in Canada.”¹⁴² The *Montreal Ligue des Droits de L’Homme* went all out for a human rights platform rather than one that catered only to civil liberties. Accordingly –

Its new mandate was to adapt to the changes occurring within Quebec society and consider the unique problems facing the poor, women, elderly, youth and minorities. The manifesto embraced [also] notions of *positive* freedom. With this new mandate, economic, social and cultural rights were given equal (if not greater) priority to civil and political rights. Instead of concerning itself with individual rights, the Ligue believed equality would be achieved by improving the social conditions in which those rights were exercised. In this way, the Ligue reflected broader developments within Canada’s social movement landscape. Social movements led by women, gays and lesbians, Aboriginal peoples, churches and a host of others embraced human rights as a vision for social change.¹⁴³

As it turned out, in that 1970s period Canadian human rights groups were front row in the efforts to convince the country’s governments to ratify international human rights instruments and to honour the responsibilities they imposed. There also seemed to be less ideological divisions at this time. Besides, between 1987 and 1992 when the Canadian government “placed human rights issues...squarely at the centre of its foreign policy” there seemed to have been similarity in government and NGO policy in the manner this commitment was pursued.¹⁴⁴

IV. Canadian Individuals

In addition to its government and institutional civil society actors, Canada’s human rights activities domestically and abroad have been influenced by the generous contributions of several individual Canadians to the cause. It is not known the extent that these individuals knew what impact their activities were going to have before embarking on them. It is, however, to their credit that the world

¹⁴² Clement, et al at 22.

¹⁴³ *Ibid.*

¹⁴⁴ See Pal, *supra* note...

often stood up to acknowledge what they did. Some of them have not relented but continue to push the boundaries of human rights protection in various regions of the world. There are many such individuals deserving of recognition in a project such as this. But they are just too numerous to mention. This is therefore only a representative sample of such individuals and the ways in which they contributed. These individuals though chosen randomly have left their footprints on the internationalization of human rights ideas and praxis.

For good reasons, John Humphrey merits being at the top of any list of the most influential Canadians in the development of international human rights praxis. A 1988 recipient of the United Nations Prize in Human Rights, he is credited with producing the very first draft of the Universal Declaration of Human Rights. That document has been variously described as “the single most important reference point for cross-cultural discussion of human rights in the world...,”¹⁴⁵ “the international Magna Carta of all men everywhere”¹⁴⁶, and as the “legitimizing power of government.”¹⁴⁷ Humphrey himself agrees with others who view the UDHR as the greatest ever achievement of the United Nations.¹⁴⁸

Humphrey was head-hunted in 1946 to establish the United Nations Division for Human Rights where he served as its Director until 1966. In that time, he oversaw the most critical period in the development of global human rights agenda in the United Nation's, culminating in “the

¹⁴⁵ Mary Ann Glendon, “Knowing the Universal Declaration of Human Rights” (1998) 73 *Notre Dame L Rev* 1153.

¹⁴⁶ Eleanor Roosevelt, An Address to the United Nations General Assembly on the Adoption of the Universal Declaration of Human Rights, 9 December 1948 online <<http://www.kentlaw.edu/faculty/bbrown/classes/HumanRightsSP10/CourseDocs/2EleanorRoosevelt.pdf>>. See also Thomas Risse & Kathryn Sikkink, “The Socialization of International Human Rights Norms into Domestic Practices: Introduction” in Thomas Risse, Stephen C Ropp & Kathryn Sikkink eds., *The Power of Human Rights: International Norms and Domestic Change* (Cambridge: Cambridge University Press, 1999) at 1; Henry J Steiner, Philip Alston & Ryan Goodman, *International Human Rights in Context: Law, Politics, Morals* (Oxford: Oxford University Press, 2008) at 146; Lord Irvine of Lairg, *Human Rights, Constitutional Law and the Development of the English Legal System: Selected Essays* (Oxford: Hart Publishing, 2003) at 263.

¹⁴⁷ Nsongurua Udombana, “Mission Accomplished? An Impact Assessment of the UDHR in Africa” (2008) 30 *Hamline J Pub L & Pol’y* 335 at 344.

¹⁴⁸ John Humphrey, “The Revolution in the International Law of Human Rights” (1975) 4 *Hum Rts* 205 at 206.

implementation of 67 international conventions and the constitutions of dozens of countries.”¹⁴⁹

Apart from the UDHR, this period also witnessed the adoption of the two major human rights covenants (the ICCPR and ICESCR) which, together with the UDHR, form what is known today as the International Bill of Rights.¹⁵⁰

Apart from his exertions on the international front, Humphrey was no less active within Canada in driving the human rights message forward. Prior to taking up the UN post in 1946, he was a professor of law at McGill University where he was offered the position of dean at about the same time he received the offer to join the UN. He chose the latter but returned to McGill once he left his UN position. He continued teaching international human rights as well as remaining active in the non-governmental human rights sector. He was founding President of both the International Commission of Jurists (Canada) and Canadian Human Rights Foundation (now *Equitas*). He was also instrumental in establishing the Canada Section of Amnesty International.¹⁵¹

Second on this list is Irwin Cotler, former Canadian federal Attorney General, an emeritus law professor at the University of McGill and serving member of the Canadian Parliament.¹⁵² He is also winner of the Law Society of Upper Canada's first human rights award.¹⁵³ But more than chairing the Canadian All-Party Save Darfur Parliamentary Coalition and heading Canada's delegation to the International Forum on the Prevention of Genocide held in Stockholm, Sweden,

¹⁴⁹ See Canadian Council on International Law, “John P. Humphrey (1905-1995)” online <<http://www.cciil-ccdi.ca/ccil-about-humphrey/>>

¹⁵⁰ John P. Humphrey, “The International Bill of Rights: Scope and Implementation” (1976) 17 *Wm & Mary L Rev* 527; Beth Simmons, “Civil Rights in International Law: Compliance with Aspects of the ‘International Bill of Rights’” (2009) 16 *Indiana J Global Legal Stud* 437; Thomas Buergenthal, “The Normative and Institutional Evolution of International Human Rights” (1997) 19 *Hum Rts Q* 703. Some writers might view the International Bill of Rights as comprising only the Covenants. See for example Barbara Stark, “The ‘Other’ Half of the International Bill of Rights as a Postmodern Feminist Text” (1993) 25 *Stud Transnat'l Legal Pol'y* 19.

¹⁵¹ The Hampton John Peters Humphrey Foundation, “John Peters Humphrey: Father of the Modern Human Rights System” online <<http://humphreyhampton.org/accomplishments.html>>.

¹⁵² See Arthur Grant, “Constitutional Expertise in Parliament: An Unused Resource” *Constitutionally Canadian*, 22 August 2014 online <<http://constitutionalcanadian.com/2014/08/22/constitutional-expertise-in-parliament-an-unused-resource/>>.

¹⁵³ See “Irwin Cotler receives Human Rights Award” online <<http://www.lawtimesnews.com/201502164493/videos/irwin-cotler-receives-the-lsuc-s-first-human-rights-award>>.

Professor Cotler also has an impressive resume in pursuing human rights causes outside Canada. Apart from within country, he has been invited as an expert witness on human rights before Parliamentary Committees in the United States, Russia, Sweden, Norway and Israel. As an international human rights lawyer, he served as attorney to former prisoners of conscience like Nelson Mandela in South Africa, Andrei Sakharov and Nathan Sharansky in Russia as well as Wole Soyinka, the Nigerian playwright and winner of the Nobel Prize for Literature.¹⁵⁴

Cotler has also been in the forefront of building bridges of understanding between Israel and its neighbours in the Middle East, having taught in Israeli and Arab-based universities for upwards of thirty years. In the process, he has created avenues for dialogue between the Israelis and the Palestinians in particular. Having been a staunch advocate for the establishment of the International Criminal Court, Professor Cotler was also Counsel to the Commissions of Inquiry into the Matter of bringing Nazi War Criminals to Justice and into the Fate and Whereabouts of Raoul Wallenberg. He filed amicus before the International Criminal Tribunals for the former Yugoslavia and Rwanda, and served in the Commission that inquired into the crime of apartheid.¹⁵⁵

Another prominent Canada who blazed a distinguished trail in stimulating debate on the subject of international human rights is Ronald St. John Macdonald who was Dean of Law at University of Toronto and Dalhousie University. Described as a quintessential academic cosmopolitan, Macdonald is to date the only non-European ever to sit on the European Court of Human Rights.¹⁵⁶ Nominated by Liechtenstein, he served on the court for 18 years before retiring in 1998.¹⁵⁷ As Scott noted:

Macdonald used the time on the Court mostly to build a body of writing on the doctrinal principles underlying the Court's jurisprudence, playing a collegial role on the Court itself and not tending to dissents or separate opinions. His trilogy of synthetic pieces on derogations, reservations and the margin of appreciation are amongst the leading pieces in the field: see "Derogations under Article 15 of the European

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¹⁵⁵ *Ibid.*

¹⁵⁶ Craig Scott, "Ronald St. John McDonald and International Legal Education" (2002) 4 *International Law Forum* 215.

¹⁵⁷ *Ibid.*

Convention on Human Rights” (1997) 36 *Columbia Journal of Transnational Law* 225-267, “Reservations Under the European Convention on Human Rights” (1988) 21 *Revue Belge du Droit International* 429-450, and “The Margin of Appreciation in the Jurisprudence of the European Court of Human Rights” in (1990) Vol.1, Book 2 *Collected Courses of the Academy of European Law* 95-161.¹⁵⁸

The fourth individual deserving of inclusion in this list is Lloyd Axworthy who served as Canada’s Minister for Foreign Affairs between 1996 and 2000. He is described as perhaps Canada’s “most activist, and most popular, Foreign Affairs Minister”¹⁵⁹ because of his focus on human security rather than states, a preoccupation that defined as well his human rights contributions. His idea of human security came to be known by some as the “Axworthy doctrine.”¹⁶⁰ Axworthy’s obsession with human security helped him make significant contributions in shaping international response to three critical issues of his time. These were (1) his diplomatic work to win global ban on anti-personnel landmines; (2) his leadership in ensuring the establishment of the International Criminal Court (ICC);¹⁶¹ and (3) his path-breaking role in promulgating the responsibility to protect as a norm of international law.¹⁶²

Lastly, in this short list of influential Canadians whose human rights pursuits have left a lasting impression on the world is Craig Scott currently representing the Toronto Danforth riding in the Canadian federal Parliament. I mentioned earlier that the Canadian Charter of Rights and Freedoms had a huge influence on the drafting of the South African post-Apartheid Constitution especially regarding its human rights provisions. Professor Scott is one of the reasons that turned out to be the case. In an effort that has been described as “remarkable”¹⁶³, he counseled for and supported the demands of the African National Congress for the inclusion of socio-economic rights in that constitution. This makes that constitution one of the most modern and progressive

¹⁵⁸ *Ibid* at footnote 5.

¹⁵⁹ Jennifer Ross, “Is Canada’s Human Security Policy Really the ‘Axworthy’ Doctrine?” (2001) 8 *Can Foreign Pol’y J* 75.

¹⁶⁰ *Ibid*. See also Fen Osler Hampson & Dean Oliver, “Pulpit Diplomacy: A Critical Assessment of the Axworthy Doctrine” (1998) 53 *Int’l J* 379.

¹⁶¹ See Steve Lee, “The Axworthy Years: Humanist Activism and Public Diplomacy” (2000) 8 *Can Foreign Pol’y J* 1.

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¹⁶³ See David Desbaillets, “Craig Scott: The NDP’s Brand New MP and Public Intellectual” *Forget the Box*, 3 April 2012 online <<http://www.forgetthebox.net/craig-scott-human-rights/>>

constitutions in the world.¹⁶⁴ There are only a few, if any, comparative constitutional texts published since South Africa transitioned from apartheid to multi-party constitutional democracy that does not contain an analysis of that country's constitutional praxis.¹⁶⁵ This is even more so in relation to constitutional recognition and judicial enforcement of social and economic rights.

¹⁶⁴ Fons Coomans, "Reviewing Implementation of Social and Economic Rights: An Assessment of the 'Reasonableness' Test as Developed by the South African Constitutional Court" (2005) 65 *ZaoRV* 167; A writer describes South Africa's situation in this regard as "unparalleled in international constitutional jurisprudence..., revolutionary and heroic..." see Eric C Christiansen, "Adjudicating Non-Justiciable Rights: Socio-Economic Rights and the South African Constitutional Court" (2007) 38 *Columb Hum Rts L Rev* 321 at 323.

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