
Canada and the Adoption of the Universal Declaration of Human Rights

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Canada's abstention from the vote on the adoption of the *Universal Declaration of Human Rights* in the Third Committee of the United Nations' General Assembly has blemished an honourable record in international human rights. In a speech to the General Assembly, External Affairs Minister Lester B. Pearson explained the decision as a federal concern about infringing provincial jurisdiction. Even at the time, many, including John Humphrey, found the story hard to accept.

The author's research of archival documents now available shows that Canadian hesitation was principally due to discomfort in the Federal Cabinet with substantive norms enshrined in the *Declaration*, including freedom of religion and of association. The evidence suggests that provincial jurisdiction was little more than a pretext for federal politicians who wanted to avoid international human rights commitments.

The Canadian Government misled both domestic and international public opinion by concealing its substantive opposition to the *Declaration* behind procedural arguments.

The author believes this prelude to the *Declaration* compels an appreciation of the obstacles faced by those within Canada who urged the recognition of human rights norms.

L'abstention canadienne lors du vote de la Troisième commission de l'Assemblée générale des Nations Unies sur la *Déclaration universelle des droits de l'homme* a terni la réputation, dans l'ensemble honorable, du Canada en ce qui a trait aux droits de la personne. Pour expliquer la situation, le Ministre des Affaires extérieures Lester B. Pearson avait alors invoqué la préoccupation du gouvernement fédéral face à l'empiètement sur des compétences provinciales. Même à l'époque, plusieurs, y compris John Humphrey, avaient de la difficulté à accepter cette explication.

La recherche faite par l'auteur, éclairé par des documents d'archives désormais disponibles, démontre que l'hésitation canadienne était principalement due à un malaise au sein du cabinet fédéral face au contenu de la *Déclaration*, notamment la liberté de religion et d'association. Les preuves suggèrent que l'empiètement sur les compétences provinciales n'était qu'un prétexte utilisé par les politiciens fédéraux afin d'éviter de s'engager internationalement dans le domaine des droits de la personne.

Le gouvernement canadien a induit en erreur l'opinion publique nationale et internationale en camouflant avec des arguments procéduraux son opposition substantielle à la *Déclaration*.

L'auteur croit que ce prélude à la *Déclaration* aide à comprendre les obstacles auxquels les défenseurs des droits de la personne font face au Canada.

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Introduction

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Introduction

The *Universal Declaration of Human Rights*¹ was adopted by the United Nations General Assembly on 10 December 1948. According to its preamble, it was to constitute a "common standard of achievement for all peoples and all nations." As the touchstone for international human rights law, its universal significance has been reaffirmed on countless occasions, and most notably in the *Final Act*² of the Conference on Security and Co-operation in Europe of 1975 and the *United Nations World Conference on Human Rights: Vienna Declaration and Programme of Action*³ of 1993. The *Declaration* was the framework upon which the two international human rights covenants were constructed,⁴ and it is cited specifically in the preambles to the three major regional human rights instruments.⁵ Canada has reaffirmed its commitment to the *Declaration* with its ratification of the *International Covenant on Economic, Social and Cultural Rights* and the *International Covenant on Civil and Political Rights*, its commitment to the *Helsinki Final Act*, and in numerous interventions during sessions of the Commission on Human Rights, the Third Committee of the General Assembly and other international fora. The role of John P. Humphrey, who headed the human rights secretariat of the United Nations at the time the *Declaration* was drafted, and who is credited with responsibility for the first draft of the *Declaration*, is recalled with great pride by Canadian diplomats, politicians and human rights activists.

Within Canada, the *Declaration* has played a seminal role in the development of human rights law. Its drafting and subsequent adoption compelled Parliament to examine the issue of domestic implementation which eventually led to the enactment of the *Canadian Bill of Rights*⁶ in 1960. The inadequacies of that legislation propelled legislators to prepare the *Canadian Charter of Rights and Freedoms*,⁷ which was proclaimed in 1982. The drafting history of the *Canadian Charter* reveals frequent refer-

¹ GA Res. 217(III), UN GAOR, 3d Sess., Supp. No. 13, UN Doc. A/810 (1948) 71 [hereinafter *Declaration*].

² *Conference on Security and Co-operation in Europe: Final Act*, 1 August 1975, art. 1(a)(vii), reprinted in 14 I.L.M. 1292 [hereinafter *Helsinki Final Act*].

³ UN Doc. A/CONF.157/24 (1993), Preamble, reprinted in 32 I.L.M. 1661.

⁴ See the *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, Can. T.S. 1976 No. 46, 993 U.N.T.S. 3 (entered into force 3 January 1976); *International Covenant on Civil and Political Rights*, 19 December 1966, Can. T.S. 1976 No. 47, 999 U.N.T.S. 171 (entered into force 23 March 1976).

⁵ See the *Convention for the Protection of Human Rights and Fundamental Freedoms*, 4 November 1950, 213 U.N.T.S. 221, Eur. T.S. 5 (entered into force 3 September 1953) [hereinafter *European Convention on Human Rights*]; *American Convention on Human Rights: Pact of San José, Costa Rica*, 22 November 1969, 1144 U.N.T.S. 123, O.A.S.T.S. 36, 9 I.L.M. 673 (entered into force 18 July 1978); *African Charter on Human and Peoples' Rights*, O.A.U. Doc. CAB/LEG/67/3 Rev. 5, 21 I.L.M. 58 (1982).

⁶ S.C. 1960, c. 44, reprinted in R.S.C. 1985, App. III. See M. Cohen, "Bill C-60 and International Law — The United Nations Charter — Declaration of Human Rights" (1959) 37 Can. Bar Rev. 228.

⁷ Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 [hereinafter *Canadian Charter*].

ence to the provisions of the *Declaration* as efforts were made to ensure compatibility and complementarity between the two instruments.⁸ On a provincial level, the *Declaration* was a model for the Quebec *Charter of Human Rights and Freedoms*.⁹ Direct reference to the *Declaration* is made in the Ontario *Human Rights Code*¹⁰ and the Yukon *Human Rights Act*.¹¹ Canadian courts have cited the *Declaration* as an aid to interpretation of the *Canadian Charter*, and human rights legislation in general, in no fewer than 135 reported judicial decisions.¹² The Supreme Court of Canada referred to the *Declaration* for the first time in 1976,¹³ in a case which dealt with an attempt to challenge the now repealed death penalty provisions of the *Criminal Code*.¹⁴ Since then it has cited the *Declaration* in no fewer than sixteen judgments.¹⁵

Yet for Canada, the drafting of the *Declaration* had a bizarre prologue. Despite the enthusiastic involvement of Humphrey, the Canadian government's attitude toward the *Declaration* was skeptical; at its extreme, Canada's attitude bordered on hostility. During the vote on the draft *Declaration* in the Third Committee of the General Assembly, the Canadian delegation, under the personal direction and instruction of Secretary of State for External Affairs Lester B. Pearson, broke rank with the vast majority of United Nations' members and declined to support the *Declaration*. The only other states to abstain at the time were those of the so-called Soviet bloc. The international community was astonished by Canada's puzzling and isolated position, so clearly out of step with that of its traditional allies, notably the United Kingdom and the United States. Pearson quickly readjusted Canadian policy, and when the *Declaration* came before the plenary Assembly three days later, Canada had joined the near consensus and voted in favour.

⁸ See W.A. Schabas, *International Human Rights Law and the Canadian Charter*, 2d ed. (Scarborough: Carswell, 1996); M. Cohen & A.F. Bayefsky, "The Canadian Charter of Rights and Freedoms and Public International Law" (1983) 61 Can. Bar Rev. 265; J.E. Claydon, "International Human Rights Law and the Interpretation of the Canadian Charter of Rights and Freedoms" (1982) 4 Supreme Court L. Rev. 287.

⁹ R.S.Q. c. C-12 [hereinafter *Quebec Charter*]. See A. Morel, "La Charte québécoise: un document unique dans l'histoire législative canadienne" (1987) 21 R.J.T. 1 at 17. See also the comments of Justice Marcel Nichols of the Quebec Court of Appeal in *Québec (City of) v. Commission des droits de la personne*, [1989] R.J.Q. 831 at 841, 11 C.H.R.R. D/500 (C.A.).

¹⁰ R.S.O. 1990, c. H.19. The importance of the *Declaration* in the construction of the Ontario code was stressed by P.A. Cumming in *Cameron v. Nel-Gor Castle Nursing Home* (1984), 84 C.L.L.C. at para. 17,008, 5 C.H.R.R. D/2170 (Ont. Comm. Inquiry).

¹¹ S.Y. 1987, c. 3, s. 1.

¹² See Schabas, *supra* note 8 at 228-29. The first reference dates from 1970. See *R. v. Buckler* (1970), 2 O.R. 614, 2 C.C.C. 4 (Prov. Ct.). A year later, the prohibition on retroactive criminal offences, set out in article 10 of the *Declaration*, *supra* note 1, was invoked unsuccessfully to challenge measures adopted during the October crisis. See *Gagnon v. R.*, [1971] C.A. 454, 14 C.R.N.S. 321.

¹³ *Miller v. R.*, [1977] 2 S.C.R. 680, 70 D.L.R. (3d) 324.

¹⁴ R.S.C. 1970 c. C-34.

¹⁵ See Schabas, *supra* note 8 at 228-29.

I. International Human Rights, Canadian Foreign Policy and the Origins of the *Declaration*

The *Constitution Act, 1867*¹⁶ is silent about foreign or external relations, and only in 1909 was a Department of External Affairs created. Canada attended the Paris Peace Conference in 1919, signing the *Treaty of Versailles*¹⁷ and joining the League of Nations, undertakings that comprised some limited human rights obligations, specifically in the areas of labour standards and minority rights. In 1935, Canada ratified three International Labour Organization (“ILO”) conventions,¹⁸ and shortly thereafter invoked these new international obligations to justify labour and social legislation that intruded on what had previously been within provincial jurisdiction.¹⁹ When the provinces challenged this in court, the Judicial Committee of the Privy Council ruled that the federal government could not alter the division of powers in the name of respect for international human rights obligations.²⁰

Early in the Second World War, it became clear that human rights principles would form part of the New World Order which was to emerge following the defeat of the Axis powers. Even before the American entry into the war, President Franklin D. Roosevelt proclaimed the “four freedoms” in a celebrated address to Congress.²¹ The “four freedoms” — freedom of speech and belief and freedom from fear and want — would eventually reappear in the preamble to the *Declaration*. The *Atlantic Charter*,²² which resulted from a shipboard meeting between President Roosevelt and Prime Minister Winston Churchill off the coast of Newfoundland, clarified the role of human rights objectives as part of the allied war aims.²³ Well before the war was over, foreign ministries, academics and non-governmental organizations were at work pre-

¹⁶ (U.K.), 30 & 31 Vict., c. 3, reprinted in R.S.C. 1985, App. II, No. 5 [hereinafter *B.N.A. Act*].

¹⁷ *Treaty of Peace Between the Allied and Associated Powers and Germany*, 28 June 1919, 2 Bevans 43, 225 Cons. T.S. 188 (entered into force 28 June 1919) [hereinafter *Treaty of Versailles*]. Canada subsequently adopted implementing legislation: *Treaties of Peace Act, 1919*, S.C. 1919 (2d Sess.), c. 30.

¹⁸ See *ILO Convention Limiting the Hours of Work in Industrial Undertakings to Eight in the Day and Forty-Eight in the Week*, 3 November 1919, 38 U.N.T.S. 17; *ILO Convention Concerning the Application of the Weekly Rest in Industrial Undertakings*, 17 November 1921, 38 U.N.T.S. 187; *ILO Convention Concerning the Creation of Minimum Wage-Fixing Machinery*, 16 June 1928, 39 U.N.T.S. 3.

¹⁹ See *Limitation of Hours of Work Act*, S.C. 1935, c. 63; *Weekly Rest in Industrial Undertakings Act*, S.C. 1935, c. 14; *Minimum Wages Act*, S.C. 1935, c. 44.

²⁰ See *Canada (A.G.) v. Ontario (A.G.)*, [1937] A.C. 326, [1937] 1 D.L.R. 673 (P.C.) [also called *Labour Conventions Case*].

²¹ See Annual Message to Congress, State of the Union Address (6 January 1941).

²² 14 August 1941, United States and United Kingdom, 55 Stat. 1603, 204 L.N.T.S. 381.

²³ That the *Atlantic Charter* served to propel post-war human rights norms is perhaps no better illustrated than by the reference to it in a landmark Canadian case dealing with anti-Semitic restrictive covenants in land titles. See *Re Drummond Wren*, [1945] O.R. 778, [1945] 4 D.L.R. 674 (H.C.).

paring draft declarations of human rights designed to form part of the post-war legal regime.²⁴

The *Charter of the United Nations*²⁵ was adopted at the San Francisco Conference in June 1945, and was ratified by Canada on 9 November 1945. One of the four purposes of the organization, as article 1 makes clear, is the promotion and encouragement of respect for human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion. There are several references to human rights in the *UN Charter*, and a role in their protection is specifically attributed to the General Assembly, the Economic and Social Council, the Commission on Human Rights and the Trusteeship Council.²⁶ However, there is an inescapable tension in the *UN Charter* between the enhancement of human rights, which necessarily involves interference in matters which had previously been regarded as being purely internal and of no concern to the international community, and the admonition, stated in article 2(7) of the *UN Charter*, that the Security Council shall not "intervene in matters which are essentially within the domestic jurisdiction of any state."

Reflecting the great unease that many states felt with this new venture into international human rights, proposals that the *UN Charter* actually include a declaration of human rights norms were rejected by the San Francisco Conference.²⁷ One such initiative had been prepared by Canadian diplomat Escott Reid, who was part of the country's delegation to the Conference. The first chapter of his "draft charter" was entitled "The rights of every man." Reid had prepared the draft following the 1944 Dumbarton Oaks Conference in the hope that the Department of External Affairs might circulate it in preparation for the San Francisco Conference. However, the proposal was not taken up, and senior bureaucrat Hume Wrong apparently considered it a "wasted effort," although the Department did allow Reid to publish his proposal anonymously.²⁸ The proposal was in fact circulated to the delegates at San Francisco in a pamphlet issued by the Free World Research Bureau entitled "The Constitution of

²⁴ See L.B. Sohn, "How American International Lawyers Prepared for the San Francisco Bill of Rights" (1995) 89 A.J.I.L. 540; J. Morsink, "World War Two and the Universal Declaration" (1993) 15 Hum. Rts. Q. 357; H. Lauterpacht, *An International Bill of the Rights of Man* (New York: Columbia University Press, 1945).

²⁵ 26 June 1945, Can. T.S. 1945 No. 7, 59 Stat. 1031, 145 U.K.F.S. 805 [hereinafter *UN Charter*].

²⁶ See *ibid.*, preamble, arts. 1(3), 13(1)(b), 55(c), 56, 68, 76(c). See also A. Petrenko, "The Human Rights Provisions of the United Nations Charter" (1978) 9 Man. L.J. 53; E. Schwelb, "The International Court of Justice and the Human Rights Clauses of the Charter" (1972) 66 A.J.I.L. 337.

²⁷ Panama, *Additional Amendments Proposed by the Delegation of the Republic of Panama Concerning the Proposals for the Maintenance of Peace and Security Agreed Upon at the Conference of Dumbarton Oaks*, UN Conference on International Organization, Doc. 2 G/7(g)(2) (1945) at 265; Cuba, *Seven Proposals on the Dumbarton Oaks Proposals Submitted by the Delegation of Cuba*, UN Conference on International Organization, Doc. 2 G/14(g) (1945) at 493. Panama and Cuba had proposed declarations of human rights for incorporation within the *UN Charter*. At the San Francisco Conference, the First Committee adopted a resolution calling on the General Assembly to examine the Panamanian text and give it an effective form (see *Report of Rapporteur of Committee 1 to Commission I*, Doc. 944 I/1/34(1) (1945) at 446).

²⁸ See E. Reid, *Radical Mandarin: The Memoirs of Escott Reid* (Toronto: University of Toronto Press, 1989) at 192.

the United Nations.”²⁹ In February 1947, Reid also managed to slip references to his human rights proposals into a speech he drafted for Louis St. Laurent, Secretary of State for External Affairs at the time. St. Laurent’s address was delivered to the Montreal branch of the United Nations’ Association at a meeting attended by Eleanor Roosevelt, who had just been designated chair of the “nuclear” Commission on Human Rights of the United Nations.³⁰

Eleanor Roosevelt and the Commission over which she presided had been assigned principal responsibility for the preparation of two human rights documents: a declaration and a covenant or treaty.³¹ Early in 1947, Humphrey submitted a forty-eight-article draft to the “nuclear” Commission, composed of members sitting in their individual capacity rather than as representatives of member states — a temporary situation that existed for several months prior to formal establishment of the Commission of Human Rights in accordance with article 68 of the *UN Charter*.³² The preparation of the text of the *Declaration* was subsequently assigned to a small drafting committee, in which the French jurist René Cassin played a pivotal role.³³ By June 1948, after three intense sessions, the Commission adopted its final text, which was then passed to the Economic and Social Council (“ECOSOC”) for what would be only perfunctory consideration. ECOSOC sent the draft to the General Assembly, where the *Declaration* underwent comprehensive scrutiny and debate. In meetings held throughout October and November 1948, the Third Committee voted no fewer than 1,400 times on various proposals and amendments before finalizing the text on 7 December 1948. Three days later, the General Assembly adopted the text of the *Declaration* with forty-eight member states, including Canada, voting in favour. There were no opposing votes, although the delegations from the Soviet Union, Bielorussia, Ukraine, Bulgaria, Romania, Albania, South Africa and Saudi Arabia abstained.³⁴

From the post-war human rights situation in Canada contradictory signals emerge. On the one hand, from a legal standpoint there had been some significant developments towards human rights protection in Canadian law. In 1938, the Supreme Court of Canada recognized an implicit protection of freedom of expression within

²⁹ National Archives of Canada [hereinafter NAC] MG 31, E 46, Vol. 3.

³⁰ See E. Reid, *On Duty, A Canadian at the Making of the United Nations, 1945-1946* (Toronto: McClelland & Stewart, 1983) at 18-23.

³¹ See Economic and Social Council, Human Rights Commission, *Summary Record of the First Meeting*, UN ESCOR, 1945, UN Doc. E/CN.4/SR.1. For a history of the work of the Commission on Human Rights in the drafting of the *Declaration*, see J.-B. Marie, *La Commission des droits de l’homme de l’O.N.U.* (Paris: Pedone, 1975). Other works dealing with the history of the *Declaration* include: A. Verdoodt, *Naissance et signification de la Déclaration universelle des droits de l’homme* (Louvain: Nauwelaerts, 1963); G. Johnson, “La rédaction de la Déclaration universelle (1946-1948)” in G. Johnson, ed., *La Déclaration universelle des droits de l’homme* (Paris: UNESCO/L’Harmattan, 1991) 21; R. Cassin, “La Déclaration universelle et la mise en œuvre des droits de l’homme” (1951) 79 R.C.A.D.I. 237.

³² See Marie, *ibid.* Canada was not an initial member of the Commission. In fact, Canada was not elected to the Commission until 1963.

³³ See Cassin, *supra* note 31.

³⁴ Two Member States, Honduras and Yemen, were not present at the time of the vote.

the preamble to the *B.N.A. Act*.³⁵ There were also some halting moves at anti-discrimination legislation in Ontario during the early 1940s,³⁶ although it was Saskatchewan which took the pioneering step of enactment of a human rights code in 1947.³⁷

Yet Canada was in many ways a repressive society, and its human rights record compared unfavourably in several respects with that of the United States and the United Kingdom. For example, legislation enacted pursuant to the *War Measures Act*³⁸ went well beyond that of Canada's closest allies in prohibiting political activity and in ordering the internment of "enemy aliens".³⁹ Within Quebec, the "padlock law"⁴⁰ operated to prohibit the activities of communists and Jehovah's Witnesses.⁴¹ In February 1942, the Cabinet had ordered the removal of all Japanese Canadians from an area within 100 miles of the Pacific coast, despite that senior military and Royal Canadian Mounted Police officials opposed such a measure on the grounds that the Japanese minority was no threat to security. More than 20,000 persons, many of them born in Canada, were persecuted during the war on this basis and were forced to leave their homes and live in internment camps.⁴² In late 1945, following the revelations of Soviet embassy employee Igor Gouzenko, several individuals were arrested secretly and held incommunicado, without access to counsel or to family and friends. Under the *Continuation of Transitional Powers Act of 1945*,⁴³ which replaced the *War Measures Act* at the close of the war, *habeas corpus* was suspended. Those detained were subsequently questioned, without the assistance of legal counsel, before a secret royal commission composed of two sitting Supreme Court judges.⁴⁴ Meanwhile, the racist

³⁵ See *Reference Re Alberta Statutes*, [1938] S.C.R. 100, [1938] 2 D.L.R. 81.

³⁶ See *Racial Discrimination Act, 1944*, S.O. 1944, c. 51.

³⁷ See *Saskatchewan Bill of Rights Act, 1947*, S.S. 1947, c. 35.

³⁸ S.C. 1927, c. 206.

³⁹ See H. Laski, "Civil Liberties in Great Britain and Canada during War" (1942) 55 Harv. L. Rev. 1006.

⁴⁰ See *Act Respecting Communist Propaganda*, S.Q. 1937, c. 11. See also *Switzman v. Elbing*, [1957] S.C.R. 285, 7 D.L.R. (2d) 337.

⁴¹ See W. Kaplan, *State and Salvation: The Jehovah's Witnesses and Their Fight for Civil Rights* (Toronto: University of Toronto Press, 1989); M.J. Penton, *Jehovah's Witnesses in Canada, Champions of Freedom of Speech and Worship* (Toronto: Macmillan, 1976). See also *Saumur v. Quebec (City of)*, [1953] 2 S.C.R. 299, 4 D.L.R. (2d) 641; *Roncarelli v. Duplessis*, [1959] S.C.R. 121, 16 D.L.R. (2d) 689.

⁴² See K. Adachi, *The Enemy That Never Was: A History of Japanese Canadians* (Toronto: McClelland & Stewart, 1991); B. Broadfoot, *Years of Sorrow Years of Shame: The Story of the Japanese Canadians in World War II* (Toronto: Doubleday, 1977); A.G. Sunahara, *The Politics of Racism: The Uprooting of Japanese Canadians During the Second World War* (Toronto: Lorimer, 1981). See also *Co-operative Committee on Japanese Canadians v. Canada (A.G.)*, [1947] A.C. 87, [1947] 1 D.L.R. 577 (P.C.).

⁴³ S.C. 1945 (2d Sess.), c. 25, as rep. by *Continuation of Transitional Measures Act, 1947*, S.C. 1947, c. 16.

⁴⁴ See M.H. Fyfe, "Some Legal Aspects of the Report of the Royal Commission on Espionage" (1946) 24 Can. Bar Rev. 777. On the anti-Communist climate in general, see R. Whitaker & G. Marcuse, *Cold War Canada: The Making of a National Insecurity State, 1945-1957* (Toronto: University of Toronto Press, 1994).

treatment of Canadians of Japanese origin did not end with the surrender in the Pacific theatre. Rather it was only in 1949 that discriminatory measures were finally repealed, those interned allowed to return without restriction to British Columbia and their right to vote restored.⁴⁵

II. The Special Joint Committee of the Senate and the House of Commons, 1947-1948

On 26 May 1947, a resolution of the House of Commons proposed the creation of a Special Joint Committee of the Senate and the House of Commons on Human Rights and Fundamental Freedoms with a mandate "to consider the question of human rights and fundamental freedoms, and the manner in which those obligations accepted by all members of the United Nations may best be implemented."⁴⁶ The resolution added:

And, in particular, in the light of the provisions contained in the charter of the United Nations, and the establishment by the economic and social council thereof of a commission on human rights, what is the legal and constitutional situation in Canada with respect to such rights, and what steps, if any, it would be advisable to take or to recommend for the purpose of preserving in Canada respect for and observance of human rights and fundamental freedoms.⁴⁷

The Committee held seven sessions during June and July 1947, under the chair of J.L. Ilsley, hearing as witnesses R.G. Riddell and E.R. Hopkins, of External Affairs, F.P. Varcoe and D.H.W. Henry, of the Department of Justice, and John P. Humphrey, of the United Nations' Secretariat. Riddell, who was chief of the first political division at External Affairs, filed various preparatory materials for the *Declaration* with the Committee, including the forty-eight-article initial draft whose authorship is attributed to Humphrey.⁴⁸ In Humphrey's testimony before the Committee, he modestly described the document as being produced by the "secretariat".⁴⁹

The Legal Adviser to the Department of External Affairs, Hopkins, explained that the *Declaration*:

⁴⁵ See *Continuation of Transitional Measures Act — Revoking Certain Portions of Orders in Council with Respect to the Japanese*, SOR/48-92, s. 3.

⁴⁶ *House of Commons Debates* (26 May 1947) at 3422.

⁴⁷ *Ibid.*

⁴⁸ See Commission on Human Rights Drafting Committee, *Draft Outline of the International Bill of Rights*, UN ESCOR, UN Doc. E/CN.4/AC.1/3, Appendix D at 57-62. See also "Memorandum from Lester B. Pearson to Louis St. Laurent" (18 June 1947) NACRG 25, Vol. 3700, File 5475-W-40.

⁴⁹ See Special Joint Committee of the Senate and the House of Commons on Human Rights and Fundamental Freedoms, *Minutes of Proceedings and Evidence* (Ottawa: King's Printer, 1947) at 90 [hereinafter *Joint Committee on Human Rights 1947*]. He also conceded that "the final project [was] elaborated by Professor Cassin for the drafting committee" (*ibid.* at 96), adding that "Professor Cassin used the secretariat documents as the basis of this draft, in that some of the sections are textually the same" (*ibid.* at 97). Humphrey told the Commission: "Professor Cassin, who is president of the Commission, and who was familiar with the French position and the French member of the Commission on Human Rights was asked to take the secretariat draft and rewrite it with the idea of presenting something that could be put forward in the form of a declaration" (*ibid.* at 105).

would eventually be submitted to the General Assembly of the United Nations and approved by a Resolution of that body, in which case it would have only a quasi-judicial force, a moral force having the character of a strong recommendation. It would however be of a highly persuasive nature.⁵⁰

He clearly distinguished the *Declaration* from a human rights treaty, which was also being considered and which would, in contrast with the *Declaration*, bind states that ratified or acceded to it. Humphrey also sought to appease Parliamentarians by insisting upon the non-binding nature of the *Declaration*, stating: "a resolution of the General Assembly has no binding effect on international law," although he added prudently: "I think it would be an element in the building up of international jurisprudence. You cannot take it for granted that it would have no legal significance at all."⁵¹ The Committee requested that provincial attorneys general and heads of Canadian law schools be solicited for their views on the power of the Federal Parliament to enact a comprehensive bill of rights applicable to all of Canada, and recommended that a joint committee be appointed to resume its work at the next session.⁵²

The Committee reconvened in April 1948,⁵³ with Riddell and Hopkins again the featured witnesses. Riddell reviewed human rights developments in the United Nations, noting that the Canadian Government had received a report from the Commission on Human Rights on its December 1947 session,⁵⁴ with a request for comments.⁵⁵ Secretary of State for External Affairs St. Laurent replied to the Secretary-General of the United Nations on 1 April 1948, explaining that Canada must seek the advice of Parliament before expressing its views. St. Laurent provided the first public hint of reticence within the Government by launching the suggestion that the United Nations might consider postponing the adoption of the *Declaration* for at least another year:

I have the honour to refer to your letter of January 9, 1948, in which was enclosed a report on the Second Session of the Commission on Human Rights, and to inform you that the proposals contained in the draft International Bill of Human Rights have been closely considered by officials of the government, and it is expected that they will be considered by a Joint Parliamentary Committee on Human Rights. A discussion of this subject by parliament has not yet been possible, however, and the Canadian Government would not wish to ex-

⁵⁰ *Ibid.* at 13.

⁵¹ *Ibid.* at 93. Many years later, Humphrey would be one of the more outspoken advocates of the view that the *Declaration* constitutes a codification of customary norms and is thus binding on all States. See J.P. Humphrey, "La nature juridique de la Déclaration universelle des droits de l'Homme" (1981) 12 R.G.D. 397; J.P. Humphrey, "The Universal Declaration of Human Rights: Its History, Impact and Judicial Character" in B.G. Ramcharan, ed., *Human Rights: Thirty Years After the Universal Declaration* (The Hague: Martinus Nijhoff, 1984) 21; J. Humphrey, "The International Bill of Rights: Scope and Implementation" (1976) 17 Wm & Mary L. Rev. 527.

⁵² See Joint Committee on Human Rights 1947, *supra* note 49 at iv.

⁵³ Special Joint Committee of the Senate and the House of Commons on Human Rights and Fundamental Freedoms, *Minutes of Proceedings and Evidence* (Ottawa: King's Printer, 1948) at 22 [hereinafter Joint Committee on Human Rights 1948].

⁵⁴ UN Doc. E/600.

⁵⁵ *House of Commons Debates* (13 February 1948) at 1181.

press views on a matter of such importance without having had the benefit of learning the opinion of Parliament...

The Canadian Government is anxious that ample opportunity be afforded to comment on the International Bill of Rights both at the meeting of the Economic and Social Council in July and at the meeting of the General Assembly in September.

It is the opinion of the Canadian Government that the final drafting of an International Bill of Rights is a serious task involving the reconciliation of differing philosophies and judicial principles. It is therefore respectfully suggested that the final expression by the United Nations of human rights and fundamental freedoms may well require much more time than is at present contemplated, and that postponement of approval of the Draft Bill from the 1948 to the 1949 Session of the General Assembly might be with advantage taken into consideration.⁵⁶

Riddell told the Committee that some hoped the *Declaration* would be in final form by the autumn of 1948, but said that "my own personal view is that the process of revision will be a rather longer one."⁵⁷ Hopkins added that a common approach to human rights might be difficult because of ideological differences between the east and west. Hopkins returned to the distinction between the draft *Declaration* and the proposed treaty, still in embryonic form, noting that the *Declaration* would "have the character of a recommendation and what lawyers call a persuasive value. It would not create binding and positive legal obligations."⁵⁸ When asked bluntly by one Parliamentarian whether a General Assembly declaration would bind Canada, Riddell answered: "No, sir. The actions of the General Assembly of the United Nations constitute simply recommendations to the member states."⁵⁹ In its final report to Parliament, the Committee concluded:

Although not legally binding upon States, such a document, being a statement of principles, will tend to influence the course of legislation in States which consider themselves morally bound by its provisions, and will, therefore, promote human rights and fundamental freedoms.⁶⁰

The parliamentarians spent several sessions examining the draft *Declaration* article by article. The text that they worked from had been adopted by the Commission on Human Rights at its December session, although the Committee was aware that the Commission was to meet again in June 1948, and that additional changes to the draft were to be expected.⁶¹ The proceedings are a revealing guide to prevailing attitudes on human rights matters and to the nervousness with which much of Canada's political

⁵⁶ *Supra* note 53 at 51.

⁵⁷ *Ibid.* at 22.

⁵⁸ *Ibid.* at 33.

⁵⁹ *Ibid.* at 35.

⁶⁰ *Ibid.* at 207.

⁶¹ A copy of the draft had been brought to the attention of the Canadian legal community by John Humphrey. See J.P. Humphrey, "The Draft International Declaration and Covenant on Human Rights" (1948) 26 Can. Bar Rev. 548; also J.P. Humphrey, "The Draft International Declaration of Human Rights" (1948) 26 Can. Bar Rev. 1106.

elite approached the question. Although on a few occasions there was a suggestion that the Committee might formally vote upon proposed amendments, in the end it simply discussed the proposed provisions and left it for others to interpret the tenor of its comments. Among the few real proposals to emerge was the suggestion that "the name of God should be embodied" in the *Declaration*. One honourable member urged that where draft article 1 referred to "dignity and rights", the words "and rights" should be replaced with "being vested by their Creator with unalienable rights."⁶² An apparent consensus emerged recommending that Cassin's text of article 1 be replaced with the following: "All men are born free and equal in dignity being vested by the Creator with unalienable rights. They are endowed by Him with reason and conscience, and should act towards one another like brothers."⁶³

When attention turned to the non-discrimination provision of the draft *Declaration*, which would eventually become article 2, some parliamentarians expressed concern about how this might apply to Canadians of Japanese descent and to Amerindians.⁶⁴ At one point, the Chair noted:

Somewhere in these articles there is the right of movement of citizens within their own country, and if you wish to have a law preventing a movement of the Japanese from one part of the country to the other which we have at the present time it could well be argued it is contrary to this declaration.⁶⁵

But a Member of Parliament from British Columbia quickly interjected that there was no human rights violation in the treatment of the Japanese, who had been interned not because of "race" but because of "loyalty or subversive attitudes."⁶⁶ As for Aboriginal peoples, it was questioned whether the *Declaration's* democratic rights provision (eventually article 21) might entitle them to vote (status Indians were not allowed to vote in Canada until 1960).⁶⁷ However, Senator Gouin explained that "they have the right to choose to be wards of the state and not vote, or to vote and have freedom."⁶⁸

Concern was expressed about the right to life provision (article 3 in the final draft). Cassin had intentionally omitted reference to the death penalty, with the view that the *Declaration* would evolve into an abolitionist instrument.⁶⁹ Unaware of Cassin's intentions, the Committee Chair noted:

Certainly there is an exception in countries which have capital punishment. I suppose that is covered by a subsequent section and so therefore all the declaration amounts to is that everyone has the right to life, except those whose lives are taken away by process of law.⁷⁰

⁶² Joint Committee on Human Rights 1948, *supra* note 53 at 52.

⁶³ *Ibid.* at 59.

⁶⁴ See *ibid.* at 72.

⁶⁵ *Ibid.* at 74-75.

⁶⁶ *Ibid.* at 75. In fact, no Japanese-Canadian was ever charged with subversive activities.

⁶⁷ See *Canada Elections Act*, S.C. 1960, c. 39, s. 14.

⁶⁸ Joint Committee on Human Rights 1948, *supra* note 53 at 72.

⁶⁹ See Commission on Human Rights Drafting Committee, *Summary Record of the Second Meeting*, UN ESCOR, 2d Sess. UN Doc. E/CN.4/AC.1/SR.2 at 10.

⁷⁰ Joint Committee on Human Rights 1948, *supra* note 53 at 76.

A member of the Committee, Marquis, was skeptical: "It seems to me that we are going as far as advocating the removal of capital punishment."⁷¹ Marquis was also intrigued by the possibility that the prohibition of torture or other cruel, inhuman and degrading treatment or punishment (article 5 of the final draft) might outlaw hanging but the Chair reassured him otherwise.⁷² Members of the Committee also concluded that whipping would not be prohibited by the provision.⁷³

The economic and social clauses of the *Declaration*, which are found in articles 22-26 of the final version, were treated with considerable levity by the Committee. Member of Parliament John Hackett described the right to an adequate standard of living as being "a statement of political economy, not human rights."⁷⁴ When it came to the right to rest and leisure (article 24 in the final version) Senators and Members of Parliament joked about whether vacations should be compulsory, and the Chairman said "[t]hey should be frequent and they should be long."⁷⁵

In its conclusions, the Committee noted that it had not attempted to redraft the *Declaration*, but simply to examine critically the principles set out in the working draft generated by the Commission at its December 1947 session. Nothing, however, suggests that the parliamentarians supported the Government's suggestion that adoption of the *Declaration* be delayed. Nor, in general, was the negativity which would characterize so much of the Department of External Affairs' behaviour in the coming months in any way endorsed. The report states:

Your Committee considers that the Declaration would be more effective if stated in a shorter, more concise form. As there is no assurance that any specific draft prepared by your Committee would be accepted by the United Nations, your Committee does not suggest any particular revision of the draft submitted but recommends that the Government, in presenting its views to the United Nations, have in mind the views of members of your Committee as reported in the record of proceedings and evidence.⁷⁶

To an extent, this is what took place. The proceedings of the Committee were analysed by bureaucrats and digested in a briefing book which was prepared to guide the Canadian delegation at the 1948 session of the General Assembly. The briefing book stated:

The Committee considered that the *Declaration* would be more effective if stated in a shorter, more concise form. While not suggesting any particular revision of the draft submitted, the Committee recommended that the Government, in presenting its views to the United Nations, have in mind the views of the Committee as reported in the record of proceedings and evidence. At its meeting members of the Parliamentary Committee declared they were much impressed with the Draft Declaration of Human Rights submitted by the delegation of China (UN Doc. E/CN.4/AC.1/18) to the drafting committee of Hu-

⁷¹ *Ibid.* at 77.

⁷² See *ibid.*

⁷³ See *ibid.* at 96.

⁷⁴ *Ibid.* at 155.

⁷⁵ *Ibid.* at 157.

⁷⁶ *Ibid.* at 207.

man Rights Commission. The Committee felt that this draft was an appropriate length and yet embodied all the essential principles. If a similar Declaration were submitted again to the Economic and Social Council, the Canadian delegation should support it. The United States delegation has also consistently favoured a shorter Declaration, and stated that it was "impressed and encouraged" by the draft Declaration submitted by China. In considering the Declaration submitted by the Human Rights Commission, the Canadian delegation should take into account the views of the Parliamentary Committee which generally was opposed to unnecessary articles, e.g. Article 5 [the right to recognition everywhere as a person before the law, article 6 in the final version], and to articles which appeared to define the duties of the state, e.g. Articles 21-22 [dealing with economic and social rights, articles 22 to 26 in the final version]. In accordance with the views of members of the Committee, the delegation should at least place on the record the view that the name of God should be embodied in the first article of the *Declaration*.⁷⁷

The text of the briefing book follows with a catalogue of comments "based on the views of members of the Committee and of the Department of External Affairs." It states that the preamble should be written "simply and directly," urging a reference to "human beings" and "the spirit of brotherhood" with which the official who drafted the memorandum felt the Parliamentary Committee would "probably agree." It noted the concern of the Committee with emergency powers, and the fact that the possibility of derogation in such circumstances would at the very least be implicit. The comments were quite detailed on many provisions, including those respecting marriage, incitement of discrimination, elections and economic and social rights.

Canada seemed proud of the fact that its elected officials had reviewed the draft *Declaration*, something that few, if any, of the other members of the United Nations had apparently taken the trouble to do. At the summer 1948 meeting of the ECOSOC, a Canadian delegate, L.A.D. Stephens, referred to the work of the Joint Parliamentary Committee and told members of the Council that the Committee "had been able to report on [the draft *Declaration*] in highly favourable terms." Conveying one of the suggestions to emerge from the Committee's deliberations, he said that Canada "fully agreed" with an amendment to article 1 that would indicate the "Creator" as the source of rights, and pledged that "the Canadian delegation to the General Assembly would be anxious to support such an amendment."⁷⁸

Stephens also singled out article 23 (article 26 in the final version) dealing with the right to education. He said that the provision might have been more appropriate in a UNESCO resolution. A reference to the incitement of discrimination (article 7 in the final version) was described as being vague, and Stephens said it should either be clarified or deleted.⁷⁹ As for the economic and social rights clauses (articles 22-26 in the final version), the Canadian representative said that they went beyond the purpose

⁷⁷ "Commentary for the Use of the Canadian Delegation" NAC RG 25, Vol. 3699, File 5475-DG-3-40"2".

⁷⁸ UN Doc. E/SR.216 at 655.

⁷⁹ In its final version, art. 7 of the *Declaration*, *supra* note 1, states: "[A]ll are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination."

of the *Declaration*, and became, in effect, a proclamation of governmental responsibilities. "A simple general statement of the right to social security would have been preferable."⁸⁰ But Stephens cautioned that these were only minor criticisms, "and did not detract from the admiration which the Canadian delegation felt for the *Declaration* in general."⁸¹ According to Stephens, Canada "would support the *Declaration*, with the necessary modifications, in the conviction that its adoption would add to the sum total of human dignity, happiness and decency."⁸² In the months to follow, this relatively unequivocal public Canadian support was to become, at the best of times, half-hearted.

Canada's principal allies, the United Kingdom and the United States, had left no doubt as to their enthusiasm for the *Declaration* and their determination that it should be adopted at the autumn session of the General Assembly. A meeting in London of Commonwealth representatives with British diplomats made clear the United Kingdom's support of the *Declaration*. Acting High Commissioner R.A.D. Ford reported to Ottawa:

The United Kingdom feel on the whole that there is an advantage in presenting it to the Assembly at the present time. They propose to make minor changes in the articles concerning the right to asylum, the right of equal pay, and the right to work. Article 21 concerning the right to work they now feel may be interpreted to mean that Governments are required to find work for everyone. In the United Kingdom's opinion, it is simply a matter of finding the correct nomenclature. In general, they would prefer to see textual changes kept to a minimum. They are anxious to have further consultations between various Commonwealth delegations in Paris on the draft before it goes before this Assembly.⁸³

Canada was also well aware of the level of support in the United States for the *Declaration*, just as the Americans were aware of the emerging Canadian reticence. At a meeting of the United States Delegation on 25 September 1948, Dean Rusk referred to the meetings of the Parliamentary Committee earlier in the year stating, incorrectly, that Canada intended to apply the *Declaration* in domestic law when it was eventually adopted. But when he suggested a meeting with the Canadians to address their "legitimate serious concern," Eleanor Roosevelt warned that while "there was no way to prevent discussion," if "detailed discussion was begun, there was serious question as to whether the Declaration would be gotten through at all."⁸⁴ On 28 September 1948, the members of the Canadian delegation who were assigned to the Third Committee had lunch with Eleanor Roosevelt at the Hotel Raphael, the headquarters of the Canadian delegation. According to the report the Canadian delegates filed with Ottawa the next day:

⁸⁰ *Supra* note 78.

⁸¹ *Ibid.*

⁸² *Ibid.* at 655.

⁸³ "Letter from R.A.D. Ford to Escott Reid" (13 September 1948) NAC RG 25, Vol. 3699, File 5475-DG-2-40.

⁸⁴ "Minutes of the Fifth Meeting of the United States Delegation, Paris, Hotel d'Iéna, 25 September 1948, 9:15 am" in *Foreign Relations of the United States, 1948, General: The United Nations, Part I* (Washington: United States Government Printing Office, 1975) at 292-93.

Mrs Roosevelt emphasized United States desire for the *Declaration* to pass at this Assembly, saying moral force of a declaration would be great. No United States legislation would be needed for a declaration. United States dislikes certain aspects, but is willing to have the *Declaration* in its present form pass without major change so as to avoid endless discussion, especially by USSR. United States particularly dislikes clause on freedom to work. We mentioned our dislike of clauses on duties of Governments. We also showed our dislike for *Declaration's* parts of which we did not believe in. Mrs Roosevelt thinks only one clause biased to USSR way of thinking and suggests we all do as USA has done, viz. to declare what we understand by each clause. She abhors possibility of detailed debate when it took two years for eighteen to agree and thinks general acceptance of *Declaration* can be used as means of education of peoples and Governments (and, I suspect, of anti-Communist propaganda).⁸⁵

There were public signs of opposition within Canada, notably in a resolution of the influential Canadian Bar Association ("C.B.A."), adopted on 3 September 1948, stating that "the said draft declaration ought to be examined with the utmost care in all its juridical aspects before further action is taken, so that there may be no misunderstanding as to the meaning and effect thereof."⁸⁶ The 1948 Convention of the Association, held at Montreal's Windsor Hotel from 31 August to 3 September, exuded an obsessive antagonism to the question of judicial protection of human rights.⁸⁷ It opened with a disgraceful defence of Quebec's "padlock law" by keynote speaker Premier Maurice Duplessis:

In the province of Quebec you will find law-abiding citizens. We may have some legislation which you do not like. We respect your opinion, but we like the legislation we have. On more than one occasion this so-called extraordinary law called the padlock law has proved to have served the interests of the province and of Canada at large.⁸⁸

This was followed by the presidential address of John T. Hackett, a Montreal lawyer and Member of Parliament for the Conservative Party, consisting principally of a diatribe on the draft *Declaration*. Earlier in the year, Hackett had played a particularly cynical role in the debates of the Special Joint Committee on the *Declaration*. For Hackett,

⁸⁵ (September 1948) NAC RG 25, Vol. 3699, File 5475-DG-2-40, No. 74. 29. Prime Minister MacKenzie King also had Mrs Roosevelt for dinner on 29 September, although there is nothing to suggest that they discussed the *Declaration*. King noted in his diary that his rooms were almost immediately adjacent those of Eleanor Roosevelt at the Raphael Hotel. See W.L.M. King, *Mackenzie King Diaries: 1893-1949* (Toronto: University of Toronto Press, 1980) at no. 259-60.

⁸⁶ *The 1948 Yearbook of the Canadian Bar Association and the Minutes of Proceedings of the Thirtieth Annual Meeting* (Ottawa: National Printers, 1949) at 142 [hereinafter *1948 Yearbook of the Canadian Bar*].

⁸⁷ In his study, Walter S. Tarnopolsky interpreted the proceedings in the Canadian Bar Association somewhat more charitably, downplaying the organization's hostility to human rights: see W.S. Tarnopolsky, *The Canadian Bill of Rights*, 2d ed. (Toronto: McClelland & Stewart, 1975) at 6-7.

⁸⁸ *1948 Yearbook of the Canadian Bar*, *supra* note 86 at 19.

These human rights and fundamental freedoms exist in Christian civilization. They do not exist elsewhere. They have never existed elsewhere.⁸⁹

His message was that the protection of human rights would be achieved not by declarations under the aegis of the United Nations but by the promotion of Christianity.

III. Debates in the Third Committee of the General Assembly

The Canadian delegation to the 1948 Paris session of the General Assembly was initially headed by Minister of Transport Lionel Chevrier, although Prime Minister Mackenzie King himself, in one of his last official gestures before retiring, attended briefly at the beginning of the session.⁹⁰ There were efforts from the United States Government, during the summer of 1948, to urge Secretary of State for External Affairs St. Laurent to stand as president of the General Assembly.⁹¹ However political changes were afoot in Ottawa and St. Laurent preferred to stay at home. King left for Europe on 13 September, and from then St. Laurent was Acting Prime Minister. He returned in early November only to formalise his resignation and officially transfer authority to St. Laurent. Lester B. Pearson joined the Cabinet in the foreign affairs portfolio on 10 September despite the fact that he was yet to hold a seat in the House of Commons. Pearson spent part of October campaigning in a safe constituency in Northern Ontario.⁹² After winning the by-election on 25 October he left the same night on the train for Ottawa and then flew to Europe to take charge of the General Assembly delegation.⁹³

The work of the General Assembly is carried out principally by its six committees. Human rights questions, as a general rule, fall to the Third Committee. The report of ECOSOC, containing the draft *Declaration*, was accordingly examined by the Third Committee prior to being submitted for final approval by the plenary General Assembly. In the Third Committee, Canada's delegation was headed by Ralph Maybank, a Member of Parliament, assisted by R.M. MacDonnell, H.H. Carter and K.C. Brown. In his opening statement on 1 October, Maybank referred to the work of the Parliamentary Committee, which he said had "reported favourably on the general objectives of the draft declaration and had suggested a number of amendments, to which he would refer at a later stage."⁹⁴ Maybank noted that Canada "deplored" the fact that

⁸⁹ *Ibid.* at 100, 142.

⁹⁰ King arrived in Paris on 20 September and left for London on 5 October, where he spent the rest of the month before returning to Canada. While in London he met briefly with Lester Pearson, who was on his way to Paris to lead the delegation at the General Assembly. See W.L.M. King, *supra* note 85 at nos. 259-60.

⁹¹ Dean Rusk broached the idea with the Canadian chargé d'affaires in Washington early in August 1948: see NAC RG 25, Vol. 3699, File 5475-DG-2-40.

⁹² See J. English, *Shadow of Heaven: The Life of Lester Pearson*, vol. 1 (1897-1948) (Toronto: Lester and Orpen Dennys, 1989); J.A. Munro & A.I. Inglis, eds., *Mike, The Memoirs of the Right Honourable Lester B. Pearson*, vol. 2 (1948-1957) (Toronto: University of Toronto Press, 1973).

⁹³ See English, *ibid.* at 331-32; Munro & Inglis, *ibid.* at 9.

⁹⁴ UN GAOR, C3, Social, Humanitarian and Cultural Questions, 3d Sess., 90th Mtg., Pt.1. at 40-41 (1948) [hereinafter Official Records of the Third Committee].

the draft *Declaration* had not been discussed in any detail during the ECOSOC session that summer. He added, "as I am sure all delegations here recognize, that the Commission on Human Rights had not accomplished the miracle of producing a perfect text."

At the appropriate time the Canadian Delegation will make a number of suggestions designed to clarify the wording of individual articles in the present text.

... [W]hile my Government endorses the general objectives of this draft Declaration of Human Rights, the extent to which it can act in the field of human rights is circumscribed and is a subject which would have to be carefully studied by competent legal authorities at the proper time. This, however, is a matter which can be left in abeyance, as the present document before us is a simple declaration whose endorsement does not require legislative action by member states.

In conclusion I would like to state again my conviction that, with good-will and a common belief in the importance of defining human rights in simple and unmistakable terms, we can in this Committee approve a declaration which will be of real significance in the history of man's striving to achieve a greater measure of dignity and freedom.⁹⁵

This statement was not entirely accurate. The Parliamentary Committee had not in fact proposed a number of amendments. Probably the most certain of its conclusions was the idea that the Creator be mentioned somewhere in the *Declaration*. Raising the spectre of provincial jurisdiction was plainly insincere, and Maybank virtually admitted as much in his speech when he said the matter could be "left in abeyance" because the *Declaration* was no more than "a simple declaration whose endorsement does not require legislative action by member states." In any event, this matter had been adequately explained to the Parliamentary Committee by the Legal Advisor to External Affairs and by Humphrey, and appeared to pose no difficulties. But the argument was a convenient one, implying to uninformed delegations from other states that the intricacies of Canada's inscrutable constitution might explain and even justify a less enthusiastic approach to the *Declaration*.

As the debates unfolded, Maybank's promise to present the amendments that the Parliamentary Committee had allegedly proposed evaporated. In fact, Canada never did move any amendments.⁹⁶ To be fair to Maybank, his instructions from Ottawa over the next few days hardly encouraged him to participate. On 7 October the delegation received a discouraging telegram, and a day later a personal message arrived from St. Laurent to Lionel Chevrier indicating the Acting Prime Minister's serious misgivings

⁹⁵ NAC RG 25, Vol. 3700, File 5475-DM-1-40. See also: (1 October 1948) NAC RG 25, Vol. 3700, File 5475-DN-40, No. 91; (1 October 1948) NAC RG 25, Vol. 3700, File 5475-DP-40, No. 92; "Progress Report on Committee III, November 1, 1948, despatch by R.G. Riddell to Escott Reid" NAC RG 25, Vol. 3699, File 5475-DG-2-40. For the exact wording of Maybank's speech in the summary records of the Committee, see Official Records of the Third Committee, *supra* note 94.

⁹⁶ See "Report on Draft Declaration of Human Rights up to the 23 November — (Articles 1 to 22, inclusive), November 25, 1948" NAC RG 25, Vol. 3700, File 5475-DM-1-40 No. 31 at 5, §8 [hereinafter "Report on Draft Declaration of Human Rights"].

about the *Declaration*. The statement that, "We were advised not to take a prominent part in the discussion on individual articles, until our position on the *Declaration* as a whole had been further clarified,"⁹⁷ summarised a subsequent report from Paris. The Canadian delegation read the signals from Ottawa without difficulty and on 11 October 1948, wrote back: "In accordance with your instructions the Canadian delegation will not sponsor nor support the early passage of the *Declaration* on Human Rights in its present form."⁹⁸ When article 1 was being debated, Brazil sought to insert a reference to God, something vigorously opposed by both the United States and the Soviet Union, who argued that the issue had been exhaustively canvassed in the Commission on Human Rights. Maybank and his associates quietly forgot the work of the Parliamentary Committee and said nothing, although according to the delegation's report to Ottawa on the proceedings, they were prepared to support the Brazilian amendment.⁹⁹ In fact, Canada abstained on the amendment, which was defeated, and voted in favour of the article as a whole at the end of the debate.¹⁰⁰

At times, the Canadian delegation seemed to find the whole matter of a declaration of rights rather tiresome. The dispatch to Ottawa described the debate on article 4 (slavery and servitude) as "anaesthetic".¹⁰¹ The Third Committee discussion on article 6 (recognition as a person before the law) provided the occasion for Canada's first substantive contribution. The provision had disturbed the Parliamentary Committee, which believed it to be superfluous.¹⁰² Delegation member Carter told the Third Committee that Canada supported the provision, adding that "Canadian national law had for a long time admitted the right of every individual to recognition of his juridical personality."¹⁰³ Carter gave as an example of its importance the fact that the right to legal personality had been denied in Nazi Germany.¹⁰⁴ Mysteriously, the delegation's report to Ottawa claimed that the essence of Carter's intervention concerning draft article 6 was to tell the Committee that "we were not entirely convinced of its necessity."¹⁰⁵

When the Committee came to the provisions dealing with economic and social rights (articles 22-26 in the final version) Canada made an important statement indicating its discontent with the provisions, and invoking the now familiar spectre of provincial jurisdiction. In several telegrammes to Ottawa the Canadian delegation built-up to the event, which had become the highlight of its participation in the Third

⁹⁷ *Ibid.*

⁹⁸ (11 October 1948) NAC RG 25, Vol. 3701, File 5475-DR-40, No. 165.

⁹⁹ "Report on Draft Declaration of Human Rights", *supra* note 96 at 7.

¹⁰⁰ (13 October 1948) NAC RG 25, Vol. 3700, File 5475-DN-40, No. 186.

¹⁰¹ (22 October 1948) NAC RG 25, Vol. 3700, File 5475-DN-40, No. 252.

¹⁰² See "Commentary for the Use of the Canadian Delegation", *supra* note 77 at 2, §9.

¹⁰³ Sec UN GAOR, C3, Humanitarian and Cultural Questions, 3d Sess., 111th Mtg., UN Doc. A/C.3/SR.111 (1948) at 225.

¹⁰⁴ *Ibid.*

¹⁰⁵ "Report on Draft Declaration of Human Rights", *supra* note 96 at 9. See also: (25 October 1948) NAC RG 25, Vol. 3700, File 5475-DN-40, No. 268.

Committee.¹⁰⁶ Canada's statement is reported as follows in the summary records of the debates:

After careful consideration, the Canadian delegation has come to the opinion that it should abstain from voting on these four articles, but we wish immediately to stress the fact that no one should interpret our abstention as an opposition to the principles set forth in article 20 [article 22 in the final version] and in those three immediately succeeding articles. We wish to make it clear, however, that, in regard to any obligations that may arise under the Declaration of Human Rights, the Federal Government in Canada will not invade the field of provincial jurisdiction, particularly in regard to education. It is for this reason that I shall abstain on these articles.¹⁰⁷

As pledged, Canada subsequently abstained in the vote on all of the economic and social rights.¹⁰⁸ The Canadian delegation report described article 23, which recognizes the right to work, as the "most contentious single article of the *Declaration*."¹⁰⁹ This was an exaggeration, because the provision was carried handsomely by thirty-nine votes, with only Canada and China abstaining, and the United States opposing.¹¹⁰

The *Declaration* contains no provision dealing with the rights of ethnic minorities, although one had been drafted by the Sub-Commission on the Prevention of Discrimination and Protection of Minorities¹¹¹ and had been defended by Yugoslavia, the Soviet Union and Denmark in the Third Committee.¹¹² Many states were uneasy with the issue because of the failure of the League of Nations' minorities protection system and the suspicion that it had been exploited by Nazi warmongers.¹¹³ Maybank made an important statement in opposition to the inclusion of a minority-rights clause in the *Declaration*, based on the questionable premise that Canada had no problems in this area:

¹⁰⁶ See (15 November 1948) NAC RG 25, Vol. 3700, File 5475-DN-40, No. 393; (13 November 1948) NAC RG 25, Vol. 3700, File 5475-DN-40, No. 386; (12 November 1948) NAC RG 25, Vol. 3700, File 5475-DN-40, No. 379; (10 November 1948) NAC RG 25, Vol. 3700, File 5475-DN-40, No. 367.

¹⁰⁷ For the original text, see: "Report on Draft Declaration of Human Rights", *supra* note 96. For the exact wording in the summary records, see the Official Records of the Third Committee, *supra* note 94 at 500-01. See also: (16 November 1948) NAC RG 25, Vol. 3700, File 5475-DN-40, No. 402; (22 November 1948) NAC RG 25, Vol. 3699, File 5475-DG-2-40, No. 458.

¹⁰⁸ See "Report on Draft Declaration of Human Rights", *supra* note 96 at 15; "Final Report, Item 58, Universal Declaration of Human Rights, Supplementary to and continuing Interim Report submitted under cover of despatch No. 31 of 25 November from Chairman of the Canadian Delegation, by J.H. Thurrott, Second Secretary at the Canadian Embassy in Brussels, sent to George Ignatieff, December 21, 1948" NAC RG 25, Vol. 3700, File 5475-DM-1-40 at 2, 7 [hereinafter "Final Report, Item 58"].

¹⁰⁹ "Final Report, Item 58", *ibid.* at 5.

¹¹⁰ See *ibid.* at 689.

¹¹¹ See UN Doc. E/CN.4/52 at 9-10.

¹¹² See A. Verdoodt, "Influence des structures ethniques et linguistiques des pays membres des Nations Unites sur la rédaction de la Déclaration universelle des droits de l'homme" in *Liber Amicorum Discipulorumque René Cassin* (Paris: Pedone, 1969) at 403-16.

¹¹³ See P. de Azcarate, *League of Nations and National Minorities* (Washington: Carnegie Endowment for International Peace, 1945); P. Thornberry, *International Law and the Rights of Minorities* (Oxford: Clarendon Press, 1990); T.D. Musgrave, *Self Determination and National Minorities* (Oxford: Clarendon Press, 1997).

Some attempt has been in the Committee, to define the word "minority", and thus give its proper context in these resolutions. It has been stated that the problem of minorities may arise as the result of the arrival in a country of new settlers from a foreign country, or it may arise from the unfavourable circumstances in which certain indigenous national groups may find themselves.

I can say quite confidently that for Canada the problem of minorities, regarded in either of these two ways, does not exist; that is to say it is not pre-set in the sense that there is discontent. In the first place, Canada is a country made up of English speaking and French speaking Canadians, and I trust by the very use of these words I am making clear that neither of these groups falls in the category of a "minority" referred to in these draft resolutions. These two peoples, who comprise the greatest number of Canadian citizens, carry on their lives and activities with complete amity one towards the other, and each has its own language and makes use of its own educational facilities and contributes its own cultural tradition to our country.¹¹⁴

Maybank did not return to the subject of indigenous peoples, although he did discuss the status of immigrants:

There were many European and non-European immigrants in Canada. They were free to worship as they pleased and to speak their own language. The Government's policy was one of voluntary assimilation, looking forward to the day when the immigrant would regard himself as a Canadian citizen. While Canadians were free to use whatever language they wanted, the question of education remained within the jurisdiction of each province and the Federal Government neither wished nor was able to interfere in that connection.¹¹⁵

Maybank told the Committee that he would vote against proposals, although he could support referring the matter to ECOSOC for further study.¹¹⁶ In the end, the General Assembly decided to leave the question for another day¹¹⁷ and, of course, an important minority rights provision was finally included in the *International Covenant on Civil and Political Rights*.¹¹⁸ Canada also voted against another unsuccessful Yugoslav proposal seeking to add a national rights provision to the *Declaration* on the grounds that it was superfluous.¹¹⁹

¹¹⁴ "Final Report, Item 58", *supra* note 108, App. H.

¹¹⁵ Official Records of the Third Committee, *supra* note 94 at 729.

¹¹⁶ See (29 November 1948) NAC RG 25, Vol. 3699, File 5475-DG-2-40, No. 497: "Debate completed on proposals for new articles concerning position of minorities. Maybank spoke several times supporting Haiti's proposal (Third Committee, *Draft International Declaration of Human Rights, Haiti: Draft Resolution*, UN GAOR, 3d Sess. UN Doc. A/C.3/373 (1948)) for reference of these articles to ECOSOC, recommending that they be studied by Commission on Human Rights and Sub-Commission on Prevention of Discrimination and the Protection of Minorities, which passed by roll call 24-0-16." See also: "Final Report, Item 58", *supra* note 108 at 9.

¹¹⁷ GA Res. 217C(III).

¹¹⁸ *Supra* note 4, art. 27. Indeed, in one of its first rulings, the Human Rights Committee concluded that Canada had breached article 27 of the Covenant, in a case dealing with aboriginal women. See: *Lovelace v. Canada* (Comm. No. 24/1977), Y.B.H.R. Ctee. 1981-82, Vol. 11, UN Doc. CCPR/3/Add.1 at 320, H.R. Ctee, Sel. Dec. under the Optional Protocol, UN Doc. CCPR/C/OP/1 at 83.

¹¹⁹ See "Final Report, Item 58", *supra* note 108 at 10.

IV. Role of the Department of External Affairs and the Cabinet

Many years after the Paris session of the General Assembly, Humphrey wrote: "I knew that the international promotion of human rights had no priority in Canadian foreign policy."¹²⁰ The archival documents confirm the very minor role the *Declaration* played at the Department of External Affairs in the preparation for the third General Assembly. A 112-paragraph document entitled "Views of Canada on Matters Before the United Nations" prepared by External Affairs bureaucrats for the Assembly did not even mention the *Declaration*.¹²¹ In late August, Pearson, who was then the highest-ranking civil servant in the Department, met in Washington with Dean Rusk of the State Department and Gladwyn Jebb of the Foreign Office to discuss the agenda of the Assembly, but in the extensive notes on the discussions there is no reference to human rights nor to the *Declaration*.¹²² Yet as the Third Committee debates wore on the *Declaration* became a growing preoccupation of Canadian policy makers. During the autumn of 1948 it appeared on the agenda of the Cabinet on three occasions and frequently received the personal attention of the Prime Minister.

A September memorandum to the Cabinet from the Department of External Affairs advising on the General Assembly read:

The Delegation should give general support to the draft Declaration of Human Rights ... but it should seek to avoid the adoption of proposals which have not been given adequate consideration, particularly from a legal point of view. On matters as difficult and important as these it might be wise for the Assembly to adopt the International Labour Organization technique of a first reading at this session and a second reading at the 1949 session.¹²³

These instructions, which implied a strategy of stalling the proceedings for at least one year and which were evidently out of step with the strategy of Canada's closest allies, were approved by Cabinet on 21 September 1948.¹²⁴ However, a telegram dated 28 September 1948, from E.A. Côté, a member of the Canadian delegation who had already arrived in Paris, was sent to George Ignatieff in the United Nations Division of External Affairs. It stated, "[w]e do not feel [the *Declaration*] can be supported."¹²⁵

On 4 October 1948, Chevrier and Maybank cabled Ottawa for instructions. They expressed concern, "lest defenders of provincial rights in Canada should misinterpret

¹²⁰ J.P. Humphrey, *Human Rights, A Great Adventure* (Dobbs Ferry, N.J.: Transnational Publishers, 1984) [hereinafter *Human Rights, A Great Adventure*].

¹²¹ "Views of Canada on Matters Before the United Nations" NAC RG 25, Vol. 3699, File 5475-DG-2-40.

¹²² See "Notes on Conversations with Mr Rusk and Mr Gladwyn Jebb on UN Assembly Agenda, August 27, 1948" NAC RG 25, Vol. 3699, File 5475-DG-2-40.

¹²³ "Memorandum to Cabinet, 7 September 1948" NAC RG 25, Vol. 3699, File 5475-DG-2-40. See also: "Statement for the guidance of the Canadian Delegation" NAC RG 25, Vol. 3699, File 5475-DG-1-40.

¹²⁴ See "Cabinet Conclusions, September 21, 1948" NAC RG 2, A5A, VOL. 2642.

¹²⁵ "Telegram from Côté to Ignatieff, September 28, 1948" NAC RG 25, Vol. 3699, File 5475-DG-2-40, No. 63.

the Government's position in supporting the Declaration,¹²⁶ adding that it seemed impossible to get the General Assembly to agree to a *Declaration* that did not touch on subjects within provincial jurisdiction — such as ownership of property, marriage, hours of work and education. They elaborated that other federal states, such as the United States and Australia, appeared unconcerned with the problem. “Nevertheless, we must avoid embarrassing the Government on the provincial rights issue, at the same time recognizing that any hesitation might be construed as opposition to human rights by those who are active in their support at home.”¹²⁷ This was clearly distorting the issues and the tenor of the debates to date because the Parliamentary Committee, the briefing book and the Cabinet instructions had not suggested that the delegation should endeavour to tease out the issues that might be of provincial jurisdiction. It had been clearly explained to all concerned that the *Declaration* was not a source of binding obligations. Thus, there was no question of trampling on provincial jurisdiction.

The 4 October 1948 cable considered four hypotheses. The first was to hope that enough amendments would be introduced to delay adoption. This would lead to the *Declaration* being referred back to ECOSOC for further study. “This, of course, would only postpone the question of our attitude,”¹²⁸ noted the telegramme. The second alternative was to support the *Declaration* and try to simplify it. This would once again make clear for the record that federal action in the field of human rights was circumscribed. “This is the line taken in ECOSOC and in Mr Maybank's speech”¹²⁹ it said, referring to Maybank's declaration in the Third Committee on 1 October. Another suggestion was to abstain from voting on amendments or on a completed draft because of the lack of federal authority. The cable noted that “[t]his would be a new development in Canadian policy on this subject and would require considerable explanation.”¹³⁰ In fact, this was not far from the course that Canada eventually adopted, although the cable clearly underestimated the amount of explanation that would be required for such an extreme strategy. The telegramme ruled out a final possibility, which was to vote against the *Declaration*, because such a move “would be interpreted as opposition to human rights, especially as other federal States will vote in favour.”¹³¹

In conclusion, the Canadian delegation reminded Ottawa of the position of its allies and other Member States:

The United States wants to have present draft accepted on ground that it is the best compromise likely to emerge. United Kingdom is not quite so keen but will do its best to have present draft accepted with a few amendments. Australia and New Zealand are generally in favour, while South Africa is opposed. Western Europe and Latin America are strongly in favour.¹³²

¹²⁶ (4 October 1948) NAC RG 25, Vol. 3699, File 5475-DG-2-40, No. 109.

¹²⁷ *Ibid.*

¹²⁸ *Ibid.*

¹²⁹ *Ibid.*

¹³⁰ *Ibid.*

¹³¹ *Ibid.*

¹³² *Ibid.*

Lester B. Pearson, the newly named Secretary of State for External Affairs, who was then somewhat preoccupied by the by-election in Algoma, had his Under-Secretary Escott Reid draft a memorandum to the Acting Prime Minister Louis St. Laurent¹³³. Reid noted that the Canadian delegation had been under “considerable pressure” from members of the United States delegation — particularly Eleanor Roosevelt — to support the *Declaration*.¹³⁴ But Reid then reminded St. Laurent that the Parliamentary Committee had concluded “that there were many inadequacies in the present draft” and “[t]hat the Committee expressed a preference for a simpler form of *Declaration*.”¹³⁵ He concluded by informing the Acting Prime Minister that the Canadian Bar Association had discussed this matter recently in Montreal and thought it was desirable that the draft be referred to a body of experts for study before any final decision was taken by the General Assembly.¹³⁶ This was a rather negative way to explain the issues to St. Laurent. In reality, the Parliamentary Committee had been positive about the *Declaration*. For the first time, however, reference was made in the record to the C.B.A. Perhaps Reid understood that this might strike a responsive chord in St. Laurent.

At the same time, Pearson prepared a telegram of instructions for the delegation in Paris. He said that “it would be difficult for us to oppose actively the adoption of a *Declaration* strongly supported by the United States and the United Kingdom,” but added that “we would not, repeat not, wish to be responsible in any way for its adoption in its present form at this session of the General Assembly.”¹³⁷ He evoked the possibility of supporting a simplified text — along the lines of one proposed by China.¹³⁸ He urged the delegation to secure a complete revision of the draft that would exclude Soviet amendments, adding that “[a]ll attempts by Soviet States to amend it would have to be voted down. Such a *Declaration*, [however], might be a useful weapon in the cold war.”¹³⁹ If that failed, Pearson advised the delegation to attempt to have the draft referred to a body of international jurists, preferably the International Law Commission (“I.L.C.”), which had just been established, noting that “[y]ou will no doubt be aware of the resolution passed recently by the Canadian Bar Association.” As a last resort,

it is our view that in the absence of instructions to the contrary, you should abstain from voting for the adoption of the draft in its present form, explaining that the present *Declaration* is so ambiguous in some of its articles as to raise genuine doubts regarding the meaning and effect of its provisions. You might also indicate that under the constitutional arrangements in Canada, as a federal state, the field of human rights is one in which the provinces of Canada are di-

¹³³ See “Memo from Escott Reid to the Acting Prime Minister, October 7, 1948” NAC RG 25, Vol. 3701, File 5475-DR-40.

¹³⁴ *Ibid.*

¹³⁵ *Ibid.*

¹³⁶ See *ibid.*

¹³⁷ (8 October 1948) NAC RG 25, Vol. 3701, File 5475-DR-40, No. 110 [hereinafter “Telegram from Pearson to the Delegation in Paris”].

¹³⁸ See UN Doc. E/CN.4/AC.1/18.

¹³⁹ “Telegram from Pearson to the Delegation in Paris”, *supra* note 137.

rectly concerned, and that accordingly the Canadian delegation feels particularly anxious that, even though the *Declaration* will not have an absolutely juridical force, its terms should not be such as to invite disputes in their interpretation.¹⁴⁰

Pearson had left instructions that the draft cable be discussed with Acting Prime Minister St. Laurent, and that it be sent only if the latter agreed. Pearson noted in the text of the message itself that its contents had been reviewed with St. Laurent. The National Archives indicate that St. Laurent “suggested certain minor alterations which were incorporated” although there is nothing to indicate what these were. When the powerful J.W. Pickersgill of the Privy Council Office returned St. Laurent’s comments on the telegramme to Ignatieff of External Affairs, he suggested that a supplementary telegramme be sent to the delegation setting out “Mr. St. Laurent’s misgivings regarding the *Declaration*.”¹⁴¹ This suggests that Pearson’s pronounced lack of enthusiasm for the *Declaration* was still too mild for the Acting Prime Minister. Pearson’s original cable, incorporating St. Laurent’s suggestions, went out on 8 October, but Ignatieff immediately reacted to Pickersgill by preparing a second text for St. Laurent’s consideration. This time, it was to be labelled “personal and confidential” and was intended only for Cabinet colleague Chevrier, and not for the entire delegation in Paris. Clearly, St. Laurent was highly distressed by the domestic political implications of the *Declaration*. Ignatieff’s draft cable stated:

However, I feel sure that you will agree that the adoption of the *Declaration* in its present form at this session of the Assembly might prove to be a source of embarrassment to the Government, particularly if the Canadian delegation were to take an active part in its adoption. It might, indeed, merely serve to provoke contentious even if unfair criticism of the Government. I realize that the approach indicated in our telegram under reference might place the delegation in some difficulties, especially with the United States delegation. In particular, we would not wish to be on record as opposing in principle the adoption of a declaration of human rights. We do, however, have real apprehensions concerning the adoption of a *Declaration* in terms that may be open to criticism on juridical and political grounds and which might serve to provoke contention in the domestic as well as in the international field.¹⁴²

Even these words were not enough for St. Laurent, who then included an additional sentence that goes to the heart of his worries:

I am particularly concerned about the uses which could be made of the text of articles 17, 18, 19 and 22 [freedom of speech, freedom of association, freedom of assembly, and the right to employment in the public service] as an undertaking not to discriminate against communists because of their political views

¹⁴⁰ *Ibid.*

¹⁴¹ “Memo to Secretary of State for External Affairs, October 14, 1948” NAC RG 25, Vol. 3701, File 5475-DR-40.

¹⁴² “Draft Telegram for Chevrier from St. Laurent, October 8, 1948” NAC RG 25, Vol. 3701, File 5475-DR-40.

and of article 27 as obliging a state to provide higher education to everyone at the cost of the state if he cannot pay for it.¹⁴³

In the corner of the note, someone had initialled "OK". The cable, as drafted by Ignatieff and amended by St. Laurent, was then sent out later in the day on 8 October 1948.¹⁴⁴

Within External Affairs, the senior bureaucrats quickly realized that they were playing with a hornets' nest. A few days later, Ignatieff sent a memo to Reid stating that "[i]n the light of Mr. St. Laurent's views on the matter, I am not proposing that we send any further comments to the Canadian delegation at the present time."¹⁴⁵ The two telegrammes, one authored by Pearson and a second harsher message, signed by St. Laurent, surely left the delegation in Paris with the impression of indifference — if not outright hostility — to the *Declaration* amongst the highest levels in Ottawa. It was essentially like a wet blanket for Canadian efforts in the Third Committee. From receipt of the St. Laurent telegramme, Canadian participation was reduced to a few perfunctory comments and the occasional negative speech. The delegation cabled Ottawa on 11 October 1948, to confirm that it had understood the new tone: "In accordance with your instructions the Canadian delegation will not sponsor nor support the early passage of the Declaration on Human Rights in its present form."¹⁴⁶

At some point in October, the former president of the C.B.A., John Hackett, met personally with St. Laurent to discuss the *Declaration*.¹⁴⁷ Hackett and St. Laurent had been childhood friends, and had even attended a seminary together. At the C.B.A.'s annual meeting in September, Hackett was elected chair of its Committee on Legal Problems on International Organization for the Maintenance of Peace. He was also in close contact with the American Bar Association ("A.B.A."). The latter had taken a position opposed to the *Declaration*, and the report of its Special Committee for Peace and Law Through United Nations suggests that the American lawyers were encouraged by the position of their Canadian colleagues.¹⁴⁸ During his meeting with St. Laurent, Hackett indicated his fears that the Canadian delegation would support the draft *Declaration* in a more or less revised form. Senior officials in External Affairs, no doubt with the knowledge and encouragement of St. Laurent, prepared a letter intended to reassure Hackett.¹⁴⁹ Although the letter was formally signed by Pearson,¹⁵⁰ he

¹⁴³ "Hand-written Memo to File by Acting Prime Minister of Canada" NAC RG 25, Vol. 3701, File 5475-DR-40.

¹⁴⁴ See (8 October 1948) NAC RG 25, Vol. 3701, File 5475-DR-40, No. 118.

¹⁴⁵ "Memorandum to Acting Under-Secretary of State for External Affairs from George Ignatieff, October 14, 1948" NAC RG 25, Vol. 3701, File 5475-DR-40.

¹⁴⁶ (11 October 1948) NAC RG 25, Vol. 3701, File 5475-DR-40, No. 165.

¹⁴⁷ See "Letter from George Ignatieff to 'Gerry', October 30, 1948" NAC RG 25, Vol. 3701, File 5475-DR-40.

¹⁴⁸ See *Annual Report of the American Bar Association, Including Proceedings of the Seventy-First Annual Meeting* (Chicago: American Bar Association, 1949) at 287.

¹⁴⁹ See "Letter from George Ignatieff to 'Gerry', October 30, 1948", *supra* note 147.

¹⁵⁰ In a selection of documents published by the Department of Foreign Affairs and International Trade, Pearson is indicated as the author of the letter. See "Letter from L.B. Pearson to John T. Hackett" (28 October 1948) in H. Mackenzie, ed., *Documents on Canadian External Relations*, vol. 14

did not see the text before it was sent. A copy was subsequently cabled to the delegation in Paris with the suggestion that it be discussed with Pearson.¹⁵¹

The letter dated 28 October 1948, was described as "background information" for Hackett's "confidential use."¹⁵² Hackett requested this because he was to attend a meeting of the A.B.A.'s Special Committee on Peace and Law Through United Nations in Washington from 29-31 October 1948.¹⁵³ Indeed, it may well have been drafted for American consumption as a message to conservative circles in Washington that Canada could be counted upon to obstruct passage of the *Declaration*, even if their own delegation, under the leadership of Eleanor Roosevelt, was equally determined for it to succeed. The letter indicated that the Canadian delegation was under "special instructions to have full regard to the terms of the resolution adopted by the Canadian Bar Association at its recent meeting."¹⁵⁴ It noted that the Legal Adviser of the Department was present at the Montreal meeting of the C.B.A. In what was almost certainly an allusion to St. Laurent's telegramme of 8 October, it added that "supplementary advice, almost in the terms of the resolution in question, was subsequently sent to the Delegation."¹⁵⁵ The telegram elaborated that Canada felt the draft *Declaration* to be "unacceptable" and said that Canadian efforts in the Third Committee would focus on a reference of the problem to the I.L.C. if possible. The letter indicated that Canada was well aware of the support of the United States delegation for the *Declaration*. It concluded:

Indeed, the present intention is to abstain from voting, should the matter be pressed to this point, and to explain that the present draft is so ambiguous in some of its articles as to realize genuine doubts as to their meaning and effect.¹⁵⁶

St. Laurent had decided to bring the matter to Cabinet. On 8 November, Ottawa asked for Pearson's recommendations on the appropriate course to follow in preparation for the 17 November Cabinet meeting.¹⁵⁷ Pearson replied with a personal telegramme for St. Laurent and Brooke Claxton, who had assumed the position of Acting Secretary of State for External Affairs in Pearson's absence. Pearson explained that reference of the *Declaration* to the I.L.C., a delaying tactic that had initially appealed to Ottawa, "would be overwhelmingly defeated"¹⁵⁸ because "[n]early all the other

(1948) (Ottawa: Department of Foreign Affairs and International Trade, 1993) [hereinafter *Documents on Canadian External Relations*] at 354-55.

¹⁵¹ See "Letter from George Ignatieff to 'Gerry', October 30, 1948", *supra* note 147.

¹⁵² *Ibid.*

¹⁵³ See *The 1949 Yearbook of the Canadian Bar Association and the Minutes of Proceedings of the Thirty-First Annual Meeting* (Ottawa: National Printers, 1949) at 191.

¹⁵⁴ "Letter from George Ignatieff to 'Gerry', October 30, 1948", *supra* note 147.

¹⁵⁵ *Ibid.*

¹⁵⁶ "Letter from L.B. Pearson to John T. Hackett" (28 October 1948) in *Documents on Canadian External Relations*, *supra* note 150 at 354-55.

¹⁵⁷ See (8 November 1948) NAC RG 25, Vol. 3701, File 5475-DR-40, No. 217.

¹⁵⁸ (9 November 1948) NAC RG 25, Vol. 3701, File 5475-DR-40, No. 316 [hereinafter "Telegram from Pearson to St. Laurent and Claxton"]. Another member of the delegation, R.G. Riddell, wrote to Reid in Ottawa: "Such a proposal will be defeated. Even so, the Canadian delegation would then probably be in a better position to explain our abstention on the Declaration as finally approved by

delegations — including the United Kingdom and the United States — are anxious to get the *Declaration* approved by this Assembly.¹⁵⁹ Pearson noted that the version to be adopted would most certainly contain “features found objectionable in the original text by the Parliamentary Committee and by the Canadian Bar Association.”¹⁶⁰ He also referred to the economic and social clauses of the draft *Declaration* “which raise questions of provincial jurisdiction in Canada.”¹⁶¹ Pearson proposed that Canada make a general statement in the Third Committee on the economic and social clauses “emphasizing our constitutional position and our consequent inability to vote in favour of these articles.”¹⁶² In addition, once the entire *Declaration* was adopted by the Third Committee, Canada would make a further statement:

This would be to the effect that we originally planned to put forward a proposal that the *Declaration* be referred to the International Law Commission. We would then say that from the course of debate in the Committee, and from informal conversations, it was evident that such a proposal would not be approved. Accordingly we did not wish to take up the time of the Committee by advancing a proposal certain to be defeated. We were, however, still of the opinion that the *Declaration* in its present form contained clauses which needed further detailed examination and, accordingly, we would abstain from voting on the *Declaration* as it now stood. We might also refer back to Maybank’s statement of 1st October deploring the Economic and Social Council’s failure to examine the *Declaration* at its 7th Session. Finally we might again refer to our jurisdiction problem with specific reference to Articles 20 to 23. When the *Declaration* came before the plenary session we could again explain our abstention, in similar terms, if this appeared necessary. In this way we would have made our case clear, at each stage of discussion, and our position on the *Declaration* as a whole would be fully on record.¹⁶³

Escott Reid transmitted the Pearson telegramme to Acting Minister Claxton with his own comments. Reid referred to what External Affairs was now characterizing as the “serious misgivings” of the Parliamentary Committee about the *Declaration*.¹⁶⁴ In fact, the Parliamentary Committee had been generally favourable, as anyone at the time could have quickly ascertained by rereading its proceedings — or for that matter the briefing book prepared by External Affairs for the guidance of the delegation. In his telegramme, Pearson had asked that the proposed modification in Canadian strat-

Committee III” (“Progress Report on Committee III, November 1, 1948” NAC RG 25, Vol. 3699, File 5475-DG-2-40).

¹⁵⁹ “Telegram from Pearson to St. Laurent and Claxton”, *ibid.* See also Official Records of the Third Committee, *supra* note 94 at 201, where a member of the Canadian delegation, Macdonnell, said: “In view of the limited time at the Committee’s disposal, he thought the Committee might consider the possibility of postponing the discussion on the declaration of human rights to another session of the Assembly, or of referring it for study to another organ of the United Nations.”

¹⁶⁰ “Telegram from Pearson to St. Laurent and Claxton”, *ibid.*

¹⁶¹ *Ibid.*

¹⁶² *Ibid.*

¹⁶³ *Ibid.*

¹⁶⁴ See “Proposed Action by Canadian Delegation, Memo for Acting Secretary of State for External Affairs, November 10, 1948, from Reid” NAC RG 25, Vol. 3701, File 5475-DR-40. See also: “Memorandum from George Ignatieff to Acting Under-Secretary of State for External Affairs, November 13, 1948” NAC RG 25, Vol. 3701, File 5475-DR-40.

egy — that is, the decision not to seek reference to the I.L.C. — be communicated to Hackett of the C.B.A. Accordingly, on 13 November 1948, a letter was sent to Hackett explaining the changes in the Canadian position.¹⁶⁵

Claxton asked Reid to draft a telegramme for Pearson in anticipation of the result of the 17 November 1948 Cabinet meeting. Claxton was unwilling to drop the idea of a reference to the I.L.C. His view was that in the debate on the economic and social articles of the draft *Declaration*, Canada should:

plant the seed of a suggestion about the reference of the whole *Declaration* to the International Law Commission for further study and polishing after this session of the Assembly is through with it and before it is formally adopted. [Claxton] would hope, from his experience in other international conferences, that this suggestion might be picked up by other delegations, who would say that they hoped that the Canadian delegation would eventually submit a formal resolution to this effect.¹⁶⁶

He also wanted the Canadian delegation “to point out very carefully and precisely” to the Third Committee that the economic and social clauses “*and other* articles in the *Declaration* raise for Canada questions of limitations on federal jurisdiction.”¹⁶⁷ However, Claxton was also unsure about the political consequences of an abstention. Reid wrote in a memo to Ignatieff:

[Claxton] is, I think, inclined to believe that if we fail in having the *Declaration* referred to the International Law Commission it may be necessary for us, on the final vote, to vote for the *Declaration*, after having restated our caveat about provincial jurisdiction and expressed regret that the Assembly did not see fit to refer the whole *Declaration* to the International Law Commission for further study.¹⁶⁸

Ignatieff’s view was that given Canada’s statement on the economic and social clauses, which had already been made,¹⁶⁹ it was better to leave the matter to Pearson’s discretion in determining the tactics “so long as the Canadian position on the jurisdictional question is clearly put.”¹⁷⁰

Cabinet discussed Canada’s position on the *Declaration* and decided on three points. First, Canada was to abstain in the vote on the economic and social clauses on the ground that their subject matter was not within the jurisdiction of the Government of Canada. On the same ground it would also abstain from voting on the resolution for adoption of the *Declaration* as a whole at the plenary session. Finally the delegates were to clearly explain the Canadian constitutional difficulties, possibly making reference to the view that the whole *Declaration* might well be referred for further study to

¹⁶⁵ See “Letter to John Hackett, November 13, 1948” NAC RG 25, Vol. 3701, File 5475-DR-40.

¹⁶⁶ “Memorandum from Escott Reid to UN Division, November 15, 1948” NAC RG 25, Vol. 3701, File 5475-DR-40.

¹⁶⁷ *Ibid.* [Italics in the original].

¹⁶⁸ *Ibid.*

¹⁶⁹ See Official Records of the Third Committee, *supra* note 94.

¹⁷⁰ “Memorandum to Assistant Under-Secretary of State for External Affairs from George Ignatieff, November 16, 1948” NAC RG 25, Vol. 3701, File 5475-DR-40.

the I.L.C.¹⁷¹ On 18 November, Claxton cabled Pearson with the Cabinet decision and some comments on the meeting. It was noted that Canada had already predicted constitutional problems with the economic and social clauses, but referred to the prospect of other clauses causing similar difficulties — specifically those dealing with the right to property and the fundamental freedoms of religion, expression, association and peaceful assembly. Claxton asked Pearson to “plant a seed which would bear fruit”¹⁷² by hinting at the reference of the *Declaration* to the I.L.C. — an approach whose futility Pearson had previously warned against. He concluded:

As to the draft *Declaration* as a whole, it is our feeling that, having made sufficiently clear our position in respect of the federal-provincial problem in the field of human rights, and having also taken the position recommended by the Canadian Bar Association about the advisability of referring the whole *Declaration* to the International Law Commission for further study, we should, in the final vote on the draft *Declaration* in plenary meeting, abstain (repeat abstain).¹⁷³

In a final paragraph, Claxton noted that he refrained from writing to Hackett until having received Pearson’s reaction to the Cabinet decision.¹⁷⁴

Pearson was unhappy with what Cabinet had ruled on 17 November, and replied promptly in the hope that the matter could be reviewed at the next Cabinet meeting. Pearson was now attuned to the dangers of abstaining, even if this represented a change in his earlier views, and warned Ottawa accordingly:

As you point out, there are strong arguments in favour of our abstaining, but I wonder if our position would not be equally clear if we voted in favour of the *Declaration* as a whole, while making the reservations referred to.... Whether we abstained or voted for the *Declaration* our reservations would be on the record in either case. Yet by abstaining we might find ourselves in a rather undesirable minority — including principally the Soviet bloc and South Africa (for different reasons). It is clear from the discussion in Committee III up to date that the great majority of other delegations wish to see the *Declaration* approved at this session of the Assembly, and there is every indication at present that, although almost every delegation regards the Declaration as unsatisfactory in certain features, it will be approved by a large vote.

I realize that I suggested that we abstain on the final vote. It was not possible at that time, however, to foresee that in abstaining we would be associated only with the minority group I have mentioned above. You may, therefore, wish to consider whether or not it would be more desirable for us to vote in favour of the Declaration, at the same time explaining our reservations.¹⁷⁵

¹⁷¹ See “Cabinet Conclusions, November 17, 1948” NAC RG 2, A5A, Vol. 2642; see also: “Memorandum of Cabinet Decision, November 17, 1948” NAC RG 25, Vol. 3701, File 5475-DR-40.

¹⁷² (18 November 1948) NAC RG 25, Vol. 3701, File 5475-DR-40, No. 267.

¹⁷³ *Ibid.*

¹⁷⁴ See *ibid.*

¹⁷⁵ (23 November 1948) NAC RG 25, Vol. 3701, File 5475-DR-40, No. 461. See also: “Memorandum of Escott Reid to Assistant Under-Secretary of State for External Affairs, November 23, 1948” NAC RG 25, Vol. 3701, File 5475-DR-40.

Cabinet reviewed the matter at its 24 November meeting. Claxton explained Pearson's observations to the Cabinet, which then reversed itself and agreed that the Canadian delegation be instructed to vote in favour of the *Declaration*. According to the Cabinet minutes, Pearson was to:

stat[e] clearly in the Assembly that, while the government [was] generally favourable to the objectives set out in the *Declaration*, the subject matter thereof was largely outside the jurisdiction of the Government of Canada. Furthermore, in supporting the resolution, the Government relied upon the provisions of article 28 [the limitations clause, which became article 29§2 in the final version] as a safeguard against any unacceptable interpretation of certain other articles of the *Declaration*.¹⁷⁶

However, Claxton's subsequent telegramme to Pearson, explaining the Cabinet decision, suggests that it was not "generally favourable" to the objectives of the *Declaration*. Claxton said that Cabinet did not believe the *Declaration* "would have any great political usefulness either internationally or internally in any country."¹⁷⁷ Many Cabinet colleagues felt that "the language and scope of the *Declaration* [were] thoroughly objectionable for numerous reasons and that the adoption of the *Declaration* in anything like the present form may do more harm to the cause of the United Nations and of freedom than if no (repeat no) *Declaration* were adopted at all."¹⁷⁸ Cabinet was evidently sensitive about some of the major human rights issues of the day — namely the persecution of Communists and Jehovah's Witnesses. For example, it was said that:

[q]uite apart from the question of provincial jurisdiction, the Cabinet holds strongly to the view that the language is sometimes so lacking in precision as to make some articles incapable of application. Article No. 19 [subsequently 21], conferring the right to public employment irrespective of political creed, must be read as requiring the employment of Communists in the government service, while Article 16 [subsequently 18] would permit the unrestricted activities of sects like Jehovah's Witnesses.¹⁷⁹

Claxton also insisted on the issue of provincial jurisdiction, noting that "[a]lleged encroachments by the federal government on the jurisdiction of the provinces were matters of major issue in the provincial elections in Ontario and Quebec."¹⁸⁰ Although provincial jurisdiction was not a real issue from a legal standpoint (because the *Declaration* was not a source of binding norms), there were apparent fears that it might be misunderstood as a federal encroachment. Claxton continued: "[w]e must, therefore, make it abundantly clear in every statement that any attitude taken will not (repeat not) constitute any interference whatever with the jurisdiction of the provinces."¹⁸¹ He expressed the fears of Cabinet members that "some private member" might introduce a resolution in Parliament incorporating the text of the *Declaration*, and that this

¹⁷⁶ "Cabinet Conclusions, November 24, 1948" NAC RG 2, A5A, VOL. 2642; see also: "Memorandum of Cabinet Decision, November 24, 1948" NAC RG 25, Vol. 3701, File 5475-DR-40.

¹⁷⁷ (25 November 1948) NAC RG 25, Vol. 3701, File 5475-DR-40, No. 294.

¹⁷⁸ *Ibid.*

¹⁷⁹ *Ibid.*

¹⁸⁰ *Ibid.*

¹⁸¹ *Ibid.*

would put every member in the position of having to take a stand on individual human rights. Claxton said that many members of Cabinet still stuck to the original strategy of abstention, but that they had been swayed by Pearson's caution about the inherent danger of such an approach. He then provided Pearson with a detailed draft statement, to be delivered in the General Assembly in explanation of Canada's vote in favour of the *Declaration*. This text essentially referred to the familiar issues of provincial jurisdiction and to concern about the scope of the limitation clause with respect to the allegedly vague and very general substantive provisions of the text. Lastly, Claxton urged Pearson to make a final attempt to postpone the vote until the next year.¹⁸²

Pearson's sensible advice on the futility of an abstention in the final vote carried the day in Cabinet. Pearson, of course, was considering the problem from a diplomatic perspective and was concerned about the consequences of an abstention for Canada's image within the United Nations. Ottawa, on the other hand, seemed focussed on domestic reactions, especially attempts within Parliament to enact enabling legislation, and consequences upon the pending provincial elections. Astonishingly, after convincing the Cabinet to change its mind, Pearson reversed his position and proposed to abstain within the Third Committee while voting in favour of the *Declaration* within the General Assembly. It could be said that Pearson was trying to please the abstentionists with some theatrics in the Third Committee, while carrying through with his general strategy of a favourable vote in the General Assembly. Rather than scoring points in both constituencies, however, the strategy only embarrassed Canada internationally and left a blemish that fifty years have not erased.

On 2 December, Pearson cabled Claxton and informed him that the Canadian representative would abstain from the vote in the Third Committee, but that he would cast a positive vote in the General Assembly. Pearson said that he greatly appreciated the danger of giving the impression that Canada was infringing, or even ignoring, provincial jurisdiction in the field of human rights. But he wisely raised an argument against too strong an insistence upon the issue. Pearson said: "[a]t the same time, you will agree, I am sure, that it would be unwise to do anything to confirm the extreme view that the Federal Government can never accept any international obligation or sign any international agreement that may deal with matters which under our constitution require provincial action for implementation."¹⁸³ Pearson's approach was closely noted in Ottawa.¹⁸⁴

A subsequent telegramme from Paris indicated that the abstention in the Third Committee would be made "without comment."¹⁸⁵ St. Laurent was consulted on these developments,¹⁸⁶ and on 4 December, a new telegramme was sent to Pearson stating

¹⁸² See *ibid.*

¹⁸³ (2 December 1948) NAC RG 25, Vol. 3701, File 5475-DR-40, No. 525.

¹⁸⁴ "Memorandum, December 2, 1948" NAC RG 25, Vol. 3701, File 5475-DR-40.

¹⁸⁵ (3 December 1948) NAC RG 25, Vol. 3701, File 5475-DR-40, No. 534 [hereinafter "Telegram from Pearson about the Abstention"].

¹⁸⁶ See "Memorandum from Escott Reid to Brooke Claxton, December 3, 1948" NAC RG 25, Vol. 3701, File 5475-DR-40.

“we agree generally with the line you propose to take.”¹⁸⁷ St. Laurent had also made a few suggestions with respect to the speech that Pearson proposed to deliver, “[h]aving regard to the strongly worded resolution of the Canadian Bar Association and to the text of the letter which you sent to Mr. Hackett,”¹⁸⁸ which were later passed on to Pearson. During this time, Hackett was in personal contact with St. Laurent on the issue, and kept the Prime Minister informed of the last-ditch efforts of the A.B.A. to defer adoption of the *Declaration* to 1949.¹⁸⁹ Undoubtedly influenced by Hackett, St. Laurent still wanted Pearson to state Canada’s original hope that the matter be referred to the I.L.C. for further study.¹⁹⁰

Early in the morning on 7 December 1948, the text that had been adopted article by article over the previous two months, came to a vote in the Third Committee. Although no member states voted against the *Declaration*, there were seven abstentions — Canada and the Soviet Union and its allies.¹⁹¹ Pearson promptly cabled Ottawa:

There was considerable surprise at the association of Canada with the Slavs. It certainly is regrettable that it had to occur but in view of the messages from Ottawa, we felt that we had no alternative. I hope that no misunderstanding arises in Canada over the situation. We will, however, make an explanatory statement at the plenary session and as agreed, change our vote in favour of the resolution.¹⁹²

Later that day, Pearson sent another telegramme:

All members present voted for the *Declaration*, none against, and the seven abstentions consisted of Canada and the Soviet Six. Chang (China), Malik (Lebanon) and Humphrey of Secretariat are at a loss as to why we should have taken this stand. I shall probably make a statement in the plenary to put this matter into proper perspective, though it will probably appear that the Canadian representative on Committee III is the sacrificial goat.¹⁹³

Pearson subsequently informed Ottawa that the delegation had been urgently approached by the United Kingdom and the United States. It was stressed to the Canadian delegation that “the propaganda importance of getting on record some statement of the rights which were being denied to people daily within the Soviet bloc was so great that they were prepared to accept the *Declaration* in its present form. They regarded our abstention as a serious weakening of the propaganda position which they

¹⁸⁷ (4 December 1948) NAC RG 25, Vol. 3701, File 5475-DR-40, No. 337 [hereinafter “Telegram from St. Laurent to Pearson”]; (6 December 1948) NAC RG 25, Vol. 3700, File 5475-DN-40, No. 551: “in General Assembly, we will be guided by your telegram no. 337 of December 4th.”

¹⁸⁸ “Telegram from St. Laurent to Pearson”, *ibid.*

¹⁸⁹ “Memorandum for Prime Minister from Guy Sylvestre, Private Secretary, December 7, 1948” NAC RG 25, Vol. 3701, File 5475-DR-40.

¹⁹⁰ “Telegram from St. Laurent to Pearson”, *supra* note 187.

¹⁹¹ See Official Records of the Third Committee, *supra* note 94 at 880.

¹⁹² (7 December 1948) NAC RG 25, Vol. 3701, File 5475-DR-40, No. 560.

¹⁹³ “Daily Reports of Delegation Meetings, December 7, 1948” NAC RG 25, Vol. 3700, File 5475-DN-40, No. 562. Earlier in the day, a laconic telegramme to Ottawa from the Canadian delegation had announced: “Convention [*sic*] adopted December 6th [*sic*] with no contrary votes, 7 abstentions (including Canada)” (7 December 1948) NAC RG 25, Vol. 3699, File 5475-DG-2-40, No. 566.

were hoping to achieve.”¹⁹⁴ Pearson also informed them that Canada would change its vote in the plenary General Assembly — something which must have become an open secret in Paris.¹⁹⁵ In his memoirs, published in 1984, Humphrey wrote that the day after the vote in the Committee he met Dana Wilgress, a senior career diplomat who was on the Canadian delegation. Wilgress told Humphrey that “it had just been decided that Canada would vote for the *Declaration* in the plenary Assembly.”¹⁹⁶ This decision, however, had actually been taken weeks earlier. Humphrey wrote: “I had no doubt whatsoever that this quick change in position was dictated solely by the fact that the government did not relish the company in which it found itself.”¹⁹⁷ His diaries which were published in 1994, on the other hand, reported the matter a little differently:

The Canadian vote came as a great surprise but I learned today that it will be changed when the declaration comes before the plenary. I am afraid that I exceeded my prerogatives as an international servant when afterwards I expressed my indignation to the Canadian representative. This has apparently caused some talk, because today I had the visit of a representative of the Canadian Press, sent to me strangely enough by the Canadian Delegation, who wanted me to say for publication in Canadian newspapers that I had been shocked by the Canadian vote. I had to give him a lecture on the status of an international official!¹⁹⁸

Pearson was sufficiently embarrassed by his association with the Soviet Union that he declined to support Moscow’s resolution which was proposed in the Third Committee to postpone adoption of the *Declaration*.¹⁹⁹ Considering that the Soviet Union had also espoused the cause of the conservative A.B.A., this was yet another case of strange bedfellows.

According to Robert Spencer, Canada’s abstention was an “embarrassing association with the Soviet group” that “caused a mild sensation”.²⁰⁰ Humphrey wrote:

¹⁹⁴ (9 December 1948) NAC RG 25, Vol. 3700, File 5475-DN-40, No. 579. According to the archives, the Canadian delegation had already “told certain press representatives here privately that we will vote for the resolution in the plenary session”.

¹⁹⁵ See *ibid.*

¹⁹⁶ *Human Rights, A Great Adventure*, *supra* note 120.

¹⁹⁷ *Ibid.*

¹⁹⁸ A.J. Hobbins, ed., *On the Edge of Greatness, The Diaries of John Humphrey, First Director of the United Nations Division of Human Rights*, vol. 1 (1948-1949) (Montreal: McGill University Libraries, 1994) at 89 [hereinafter *On the Edge of Greatness*].

¹⁹⁹ See (8 December 1948) NAC RG 25, Vol. 3701, File 5475-DR-40, No. 577. After the *Declaration* was adopted, Pearson wrote to the C.B.A.’s Hackett explaining Canada’s approach (“Lester B. Pearson to John Hackett, December 18, 1948” RG 25, Vol. 3701, File 5475-DR-40). Hackett replied on January 8, 1949 indicating: “It is apparent that you did everything that could be done to obtain further delay in which to consider the *Declaration*” (“John Hackett to Lester B. Pearson, January 8, 1949” RG 25, Vol. 3701, File 5475-DR-40).

²⁰⁰ R.A. Spencer, *Canada in World Affairs, 1946-1949* (Toronto: Oxford University Press, 1959) at 162-63. The sentence: “The Dominion’s action was a surprise and no immediate explanation was forthcoming” was used in the Canadian Press wire story: “World News Summary” *The Globe and Mail* (8 December 1948) 1.

It was the Canadian abstention which shocked everyone, including me. The Canadians had given me no warning, and I was quite unprepared for what happened. Although I knew that the international promotion of human rights had no priority in Canadian foreign policy, it had never occurred to me that the government would carry its indifference to the point of abstaining in such an important vote. I could hardly have prevented the scandal even if the delegation had taken me into their confidence, but I could at least have warned them of the company in which they would probably find themselves.²⁰¹

The following day, a Canadian representative offered a brief explanation to the astounded delegates:

Mr Thurrott (Canada) stated that the abstention of the Canadian delegation did not indicate a light approach to so important a document. Canada had given and would continue to give sober consideration to the *Declaration* and its implementation.

The Canadian delegation reserved the right to clarify its position in [the] plenary meeting of the General Assembly.²⁰²

On account that Pearson had abstained in the Third Committee without making any explanatory comment,²⁰³ there is a suggestion in the National Archives of some consternation in Ottawa. Whether this was an intelligent approach, Pearson had clearly informed Ottawa that he would follow such a course.²⁰⁴ Cabinet was immediately notified of the developments and of Pearson's intention to vote in favour of the *Declaration* in the plenary General Assembly. Cabinet again endorsed Pearson's actions.²⁰⁵ Pearson and Claxton, moreover, exchanged cables over the next few days, perfecting the speech that was to be delivered in the General Assembly.²⁰⁶

On 10 December 1948, the *Declaration* was adopted by forty-eight votes to none — with Saudi Arabia, South Africa, the Soviet Union and five of its allies abstaining. A separate vote by a show of hands was held on article 26, concerning the right to education, and on article 27, protecting the right to cultural life. Canada abstained on both provisions, as it had done in the Third Committee.²⁰⁷

Prior to the vote on the *Declaration* as a whole, Pearson addressed the Assembly and explained the Canadian concerns and reservations.²⁰⁸ He said that Canada regarded the document as one inspired by the highest ideals, and that the great goal of

²⁰¹ *Human Rights, A Great Adventure*, *supra* note 120.

²⁰² Official Records of the Third Committee, *supra* note 94 at 886.

²⁰³ See "Memo from Escott Reid to Brooke Claxton, December 8, 1948" NAC RG 25, Vol. 3701, File 5475-DR-40.

²⁰⁴ See "Telegram from Pearson about the Abstention", *supra* note 185.

²⁰⁵ See "Cabinet Conclusions, December 8, 1948" NAC RG 2, A5A, VOL. 2642.

²⁰⁶ See "Brooke Claxton to Lester B. Pearson" (9 December 1948) NAC RG 25, Vol. 3701, File 5475-DR-40, No. 366; "Lester B. Pearson to Brooke Claxton" (9 December 1948) NAC RG 25, Vol. 3701, File 5475-DR-40, No. 596.

²⁰⁷ See (13 December 1948) NAC RG 25, Vol. 3701, File 5475-DR-40, No. 611.

²⁰⁸ See *Verbatim Record of the One Hundred and Eighty Second Meeting, GA, 1948*, UN Doc. A/PV.182, 81-91. The speech can also be found in R.A. Mackay, ed., *Canadian Foreign Policy: Selected Speeches and Documents, 1945-1954* (Toronto: McClelland & Stewart, 1971) at 163-65.

the United Nations must be to move towards full and universal application of the principles set out in the *Declaration*. He continued:

The Draft Declaration, because it is a statement of general principles, is unfortunately, though no doubt unavoidably, often worded in vague and imprecise language. We do not believe in Canada that legislation should be placed on our statute books unless that legislation can indicate in precise terms the obligations which are demanded of our citizens, and unless those obligations can be interpreted clearly and definitively in the courts. Obviously many of the clauses of this Draft Declaration lack the precision required in the definition of positive obligations and the establishment of enforceable rights. For example, Article 22 [article 21 in the final version] which gives the right to public employment to people irrespective of political creed might, unless it is taken in conjunction with Article 31 [article 29 in the final version], be interpreted as implying an obligation to employ persons in public service even if it was their stated and open desire and intention to destroy all the free institutions which this Declaration of Rights is intended to preserve and extend.²⁰⁹

Pearson said that “some of the difficulties and ambiguities” in the *Declaration* might have been avoided had it been reviewed by a body of international jurists — such as the I.L.C. He added: “we regret that the general desire to expedite this important matter has made such a reference impossible.”²¹⁰ Then, no doubt because the Soviets were proposing a delay, Pearson distanced himself from them with a bit of Cold War rhetoric. He explained that human rights were protected in Canada by a combination of statute law and judicial decisions, and that “[w]hile we now subscribe to a general statement of principles, such as that contained in this *Declaration*, in doing so we should not wish to suggest that we intend to depart from the procedures by which we have built up our own code under our own federal constitution for the protection of human rights.”²¹¹ Pearson sought to clarify the issue of provincial jurisdiction, noting that Canada had abstained on certain articles adopted in the Committee because these were not within federal government powers. Ottawa was not seeking to invade areas of provincial authority. He concluded:

Because of these various reservations on details in the Draft Declaration, the Canadian Delegation abstained when the Declaration as a whole was put to the vote in committee. The Canadian Delegation, however, approves and supports the general principles contained in the Declaration and would not wish to do anything which might appear to discourage the effort, which it embodies, to define the rights of men and women. Canadians believe in these rights and practice them in their communities. In order that there may be no misinterpretation of our position on this subject therefore, the Canadian delegation, having made its position clear in the committee, will, in accordance with the understanding I have expressed, now vote in favour of the resolution, in the hope that it will mark a milestone in humanity's upward march.²¹²

²⁰⁹ *Ibid.*

²¹⁰ *Ibid.*

²¹¹ *Ibid.*

²¹² *Ibid.*

In his diaries, Humphrey described this statement as “[o]ne of the worst contributions,” and “a niggardly acceptance of the *Declaration* because it appeared from Mr. Pearson’s speech, the Canadian government did not relish the thought of remaining in the company of those who, by abstaining in the vote, rejected it.”²¹³ Pearson’s speech, however, met with approval in the Canadian press. The *Montreal Star* noted, erroneously, that “the whole issue has been examined in this country and found to lie in the provincial, rather than the federal, field.”²¹⁴ The newspaper also congratulated Pearson for the reservations he formulated in the General Assembly. Comments in *Le Devoir*, on the other hand, reflected the ambivalence of the Canadian Government’s position, and complained that the text was incomplete and provided insufficient protection for confessional schools.²¹⁵ Others were more positive. Within a few weeks of the adoption of the *Declaration*, Northrop Frye editorialized prophetically in the *Canadian Forum* that “it is a magnificent declaration of faith, which may in the long run do much to force statesmen to examine their conscience (and public opinion) before they undertake to suppress the basic freedoms and rights of their peoples.”²¹⁶

Conclusion

Pearson’s 10 December speech to the Assembly addressed a number of Canadian reservations concerning the *Declaration*, but clearly implied that there were no serious problems with the substance of the instrument. Yet the documents in the National Archives reveal a different story. Prime Minister St. Laurent himself had expressed major concerns about freedom of speech, freedom of assembly, freedom of association, and the right to employment in the public service, because of their potential invocation by Communists. Unnamed members of the Cabinet also complained about protecting freedom of religion as the provision might provide support to Jehovah’s Witnesses. Even the opposition to recognition of economic and social rights, presented as nothing more than a federal-provincial dispute, clearly cut deeper. The Parliamentary Committee had already indicated that it felt such provisions, which imposed duties on states rather than granting rights to individuals, had no place in the *Declaration*. Lurking in the background was the reactionary Hackett, an unashamed adversary of human rights, who had the attentive ear of both Pearson and St. Laurent.

In the years following adoption of the *Declaration*, Canada joined other Western powers in contesting the legitimacy of economic and social rights.²¹⁷ Eventually a compromise was reached and two international covenants — one for civil and politi-

²¹³ *On the Edge of Greatness*, *supra* note 198 at 90-91.

²¹⁴ See “Canada and Human Rights” *Montreal Star* (13 December 1948) 14.

²¹⁵ See “Bloc-notes : un droit violé” *Le Devoir* (11 December 1948) 1.

²¹⁶ (1949) 18:336 *Canadian Forum* at 219.

²¹⁷ See Commission on Human Rights, Observations of Member States on the Draft International Covenant on Human Rights and Measures of Implementation, as Drafted at the Sixth Session of the Commission on Human Rights, Received by the Secretary-General Under General Assembly Resolution 421H(V) and Economic and Social Council Resolution 303 I(XI), ESC, UN Doc. E/CN.4/515/Add.13 (1951). See also F.H. Soward & E. McInnis, *Canada and the United Nations* (Westport, Connecticut: Greenwood Press, 1956) at 201-02.

cal rights²¹⁸ and the other for economic and social rights²¹⁹ — were created. In the early 1950s, as the debate raged in the Assembly, Canada sided with the United States and United Kingdom in arguing that the *Covenant* should be restricted to civil and political rights. Such a view was endorsed in Cabinet memoranda and formed the basis of instructions to Canadian diplomats.²²⁰ Much later, Canadian policy-makers came to appreciate the significance of economic and social rights, at least on an international level, although there is continued resistance to their recognition in Canadian constitutional law. Not only is Canada a party to the *International Covenant on Economic, Social and Cultural Rights*, its diplomats have given an interpretation to the *International Covenant on Civil and Political Rights* by which certain economic and social rights are read in. For example, in its latest report to the Human Rights Committee, pursuant to article 40 of the *International Covenant on Civil and Political Rights*, Canada explains that its respect for the right to life (article 6) includes measures aimed at reducing infant mortality and at increasing life expectancy through the elimination of malnutrition and epidemics.²²¹

On the subject of federal-provincial relations, Canada has adopted a co-operative approach requiring structured and systematic consultations with provincial and territorial officials on human rights matters that trench upon their areas of jurisdiction. The *Covenants* were only ratified in 1976, after approval had been obtained by this mechanism from the provincial governments. Since then, the consultation mechanism has been used regularly prior to ratification of international treaties, as well as in the preparation of periodic reports to the treaty bodies and the filing of submissions in response to individual petitions or communications.²²² The 1948 debates suggest that provincial jurisdiction was little more than a pretext for federal politicians who wanted to avoid international human rights undertakings and commitments. Clearly

²¹⁸ See the *International Covenant on Civil and Political Rights*, *supra* note 4.

²¹⁹ See the *International Covenant on Economic, Social and Cultural Rights*, *supra* note 4.

²²⁰ See "Draft International Covenant on Human Rights, 12 October 1951" in G. Donaghy, ed., *Documents on Canadian External Relations*, vol. 17 (1951) (Ottawa: Department of Foreign Affairs and International Trade, 1996) at 305.

²²¹ See "Canada's Fourth Report on the International Covenant on Civil and Political Rights" (1 April 1997), online: Canadian Heritage <<http://www.pch.gc.ca/ddp-hrd/english/iccpr/index.htm>> at para. 45 (date accessed: 30 July 1998). See also Human Rights Committee, *Consideration of Reports Submitted by States Parties under Article 40 of the Covenant*, 1979, UN Doc. CCPR/C/1/Add.43 at 19-23; Human Rights Committee, *Consideration of Reports Submitted by States under Article 40 of the Covenant*, UN Doc. CCPR/C/1/Add.62 at 23-31; Human Rights Committee, *Consideration of Reports Submitted by States under Article 40 of the Covenant*, ESC, 1981, UN Doc. ESC, 1983, CCPR/C/51/Add.1 at 5. Such a large interpretation of the right to life is consistent with that proposed by the Human Rights Committee in its first general comment on article 6: Human Rights Committee, *General Comments Adopted by the Human Rights Committee under Article 40, paragraph 4 of the International Covenant on Civil and Political Rights (up to April 1989)*, ESC, 1981, 1989, UN Doc. CCPR/C/21/Rev.1, at General Comment 6(16) at para. 5. Also published as UN Doc. A/37/40, Annex V, UN Doc. CCPR/3/Add.1 at 382-83.

²²² See D. Turp, "Le Comité permanent fédéral-provincial territorial des fonctionnaires chargés des droits de la personne et sa participation à la mise en œuvre des traités" (1984-85) 2 A.C.D.P. 77; D. Turp, "La préparation des rapports périodiques du Canada en application des traités relatifs aux droits et libertés" (1986) 24 A.C.D.I. 161.

that has changed, although federal officials may still be tempted from time to time to invoke the provinces in this way. Despite federal pledges that this would be done in 1991, for example, Canada has yet to ratify the *American Convention on Human Rights*.²²³ The standard and somewhat unconvincing explanation for this failing is that the provinces are not yet in agreement.

The Canadian Government, and the Department of Foreign Affairs²²⁴ in particular, misled both domestic and international public opinion by concealing its substantive opposition to the *Declaration* behind procedural arguments. Aside from the outright hostility to specific provisions of the *Declaration*, there was also a strong dose of indifference — as Humphrey alluded to in his memoirs. Humphrey was an obvious friend and ally to Canada. What would have been more natural than for Canadian diplomacy to provide a helpful counterpart to his important work in the Secretariat? Humphrey's name, however, is not even mentioned in any of the telegrammes and memoranda of the Department of External Affairs during the autumn of 1948 that deal with the *Declaration*! Humphrey himself appeared to have spent more time that autumn in Paris meetings with former McGill law students — Jérôme Choquette, Ross Clarkson, D'Iberville Fortier — than he did with members of the Canadian delegation.²²⁵ The indifference to human rights clearly came from within the Department. Parliament had quite plainly sent another message, indicating by means of the Joint Committee that Members of Parliament and Senators viewed the *Declaration* as a matter of considerable importance.

There was simply no “human rights culture” within the Department of External Affairs. It is impossible to identify a single official among the many distinguished Canadian personalities who then worked for the Department — including Pearson, Reid and Ignatieff — who viewed the *Declaration* as being of real significance. None of them even mentioned the subject in their memoirs. They seem to have been preoccupied by other issues of the day, such as the Berlin airlift and the creation of NATO. To the extent that Canadian diplomats, politicians and bureaucrats viewed the *Declaration* as a troublesome impediment and a rather hollow gesture, they were grievously mistaken. Perhaps more than anything else, the story of the *Declaration* in Canadian policy-making, told fifty years after the adoption of the instrument, compels an appreciation of the obstacles faced by those within Canada who urged the recognition of human rights norms, both nationally and internationally: John Humphrey, John Diefenbaker, Frank R. Scott, Pierre E. Trudeau, Jacques-Yvan Morin, Paul-André Crépeau, Walter Tarnopolsky and others. They, of course, prevailed — which is the happy ending to this rather sombre prelude to the story of Canada and the *Universal Declaration of Human Rights*.

²²³ *Supra* note 5.

²²⁴ Prior to the Federal Liberal Party's return to power in 1993, the Department of Foreign Affairs and International Trade was called the Department of External Affairs.

²²⁵ J.P. Humphrey's diaries report a lunch with R.G. Riddell, chief of the UN Division at External Affairs, on 24 September 1948. See *On the Edge of Greatness*, *supra* note 198 at 47, 53, 63, 85.