INTERNATIONAL HUMAN RIGHTS AND CANADIAN FOREIGN POLICY: PRINCIPLES, PRIORITIES AND PRACTICES IN THE TRUDEAU ERA AND BEYOND

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ABSTRACT

This expository appraisal of human rights orientation in Canadian foreign policy is predicated upon the converging dictates of contemporary international law and enlightened national self-interest. That convergence - addressed in the Introduction below - has found sustained declaratory affirmation in Canadian policy through the 1970s and 80s. Drawing upon the normative regime of international human rights and the general empirical expression thereof in national foreign policies, a paradigm for the appraisal of operative rights-orientation is proposed in Part 1.

The preceding analytical framework is applied to 'case-studies' of Canadian relations with South Africa and Central America, respectively in Part 2 and 3. Both studies engage comprehensively the corpus of international human rights law, with diverse implications for Canadian policies.

Conclusions from those studies as to the actual role of human rights criteria in Canadian policy-making - and the efficacy of the adopted paradigm in reflecting that role - are pursued in the context of a more general assessment in Part 4. There obtains a concluding 'overview' of rights-orientation through the Trudeau era and beyond.

RÉSUMÉ

Cet expose, etudiant l'orientation des droits de l'homme dans la politique etrangere canadienne, s'appuie sur les precepts convergents du droits international contemporain et l'interet national eclaire. Ces principes concourants - decrits dans l'Introduction de cet ouvrage - ont trouve leur affirmation dans les principes de la politique canadienne des annees 70 et 80. S'appuyant sur le statut legislatif international des droits de l'homme et son interpretation generale dans la politique etrangere du Canada, un modele d'appreciation de la dynamique des droits appliques est soumis dans la premiere partie.

La structure analytique precedente s'applique a l'etude casuistique des relations canadienne avec l'Afrique du Sud et l'Amerique Centrale, dans les deuxieme et troisieme parties respectivement. Les deux sont des etudes detaillees sur l'aspect international des droits de l'homme, avec des implications multiples dans la politique canadienne.

Les conclusions de ces etudes sur le veritable role des principes de droits de l'homme dans l'elaboration de la politique canadienne - et l'efficacite de le modele a refleter ce role - sont developpees dans la cadre d'une appreciation generale dans la quatrieme partie. On y donne une vue d'ensemble sur l'orientation des droits de l'homme sous le regime de P.E. Trudeau et les annees suivantes.

PREFATORY NOTE

Included in the Introduction below is a methodological statement which, coupled with Section C of Part 1, provides a detailed indication of the theoretical innovations proposed in this dissertation. Suffice it to state that the interdisciplinary appraisal of human rights orientation undertaken here - beyond the parameters of traditional legal analysis - is thought to allow more appropriate normative conclusions.

In substantive terms, the few existing studies of Canadian human rights foreign policy have not addressed the question of systemic orientation towards applicable international norms, beyond the exigencies of particular issue-areas in external relations. Parts 2 and 3 of this dissertation draw upon the available literature with a view to exposing relevant patterns in Canadian policy-making, vis-a-vis the critique offered in Part 1. The emergent 'overview' in Part 4 provides a further indication of such systemic patterns, and thence of rhetoric and reality through the 1970s and 80s.

While juridical precepts do not circumscribe the scope of the analysis below, they do constitute its central themes, as well as permeating the adopted critique of rights-orientation. Accordingly, this study seeks to provide a dynamic exposition of some critical relationships between international human rights law and foreign policy - surely a matter of profound significance in the context of the human condition in the late twentieth century.

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ACKNOWLEDGEMENTS

If the co-operation, sustained support and inspiration that I have benefited from through my endeavours were typical of the field of international human rights in practice, the world would surely be a happier place to live in. (I might then have had to find a different subject to write on - thereby probably losing the aforementioned benefit). Such an extensive personal debt cannot be fully acknowledged here, but I shall place on record the more onerous creditors.

Professor Irwin Cotler has been at least as much 'friend and mentor' as 'thesis advisor' over the past four years. Inevitably, some of the passionate advocacy which he brings to the teaching of human rights law resonates through the dissertation - though not, one hopes, without his sense of balance.

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INTRODUCTION

The matter of human rights has constituted perhaps the most radical subject of change in postive international law since World War II, amidst the transnational challenges of decolonisation, socio-economic inequality among and within states, increasing encroachment over individual freedom, and the threat posed by highly technologised warfare. A substantial corpus of treaty, customary and 'declaratory' law now establishes minimum standards of acceptable conduct by governments vis-a-vis those under their jurisdictions, groups and individuals alike. The Charter of the United Nations expressly commits state-parties to the promotion of "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction" as a condition sine qua non for "stability and well-being ... among nations."(Article 55)

A primary consequence of the development of transnational standards for the implementation of civil-political and socio-economic rights has been the supervening of traditional barriers of national sovereignty in respect of concern for those rights: what is 'internationalised' cannot remain exclusively within the domestic jurisdiction of a state.(1) Furthermore, as will be argued hereunder, the obligation to protect and promote fundamental human rights must, in a world characterised by inter-dependence and supra-national forces, encompass the

formulation of a state's foreign policy. The complex of linkages between, for instance, extending foreign economic and military assistance, and the behaviour of a recepient government in gross violation of elementary human rights, is today ineluctable.

The role of international human rights in Canada's external relations through the Trudeau-era (and beyond) is addressed in this dissertation on the basis of a general analysis of correlations between norms of human rights and their prospective application in foreign policy. The principal burden of the Introduction will be to consider some of the cardinal rationales - ethical, juridical and political - for a human rights foreign policy (Section A below), albeit in synopsis rather than exhaustively.(2)

Furthermore, if states ought to pursue a rights-oriented foreign policy, how does one measure that orientation ? What, in other words, is a 'human rights foreign policy'? Notwithstanding the abundant literature on multiple facets of the human rights policy issue, a systematic critique capable of empirical application does not appear to have been offered. Certainly, as indicated below, existing approximations to such a critique would prove inadequate in the present, juridically-inclined consideration of Canadian policy.

Part 1 of this dissertation proposes a 'simple matrix' for the appraisal of rights-orientation in foreign policy in general, and Canadian external relations in particular. The components

of the matrix are derived from the nature of the human rights-foreign policy relationship, as explained in the methodological comments below (Section B of the Introduction); the latter segment also descibes the mode of application of the matrix to Canadian policy-issues.

Canada's relations with South Africa and post-1979 Central America provide the empirical context - respectively in Parts 2 and 3 - for a focussed appraisal of the commitment to civil-political as well as socio-economic rights, in situations that engage 'competing' considerations of commercial and strategic significance. In both case-studies, the degree of consistency (and discrepancy) between rhetorical commitment to human rights principles and operative policy conduct is of particular analytical concern, not least owing to the absence in Canada of legislation affecting human rights policy. Unlike the instance of United States foreign policy, which has been subject to appropriate legislation since 1973, the present study entails evaluating an ad hoc approach to human rights issues, influenced relatively less by the legislature and non-governmental actors.

The conclusions drawn from the preceding analysis are finally considered in overview in Part 4, where Canadian policies vis-a-vis issues such as the Helsinki-process of the Conference on Security and Co-operation in Europe (CSCE), and the export of weapons to repressive clients (within the context of the arms race and its human rights implications) are surveyed.

A. WHY A HUMAN RIGHTS FOREIGN POLICY?

1. Normative Obligations in International Law

The contemporary regime of international human rights law rests primarily upon affirmations and undertakings relative to the International Bill of Rights - collectively the I948 Universal Declaration and the I976 International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights.(3) Cognate agreements address more specifically issues such as the practice of genocide, torture and apartheid, and the rights of refugees, racial minorities, women and the child.(4) At the regional level, the International Bill of Rights finds expression through, inter alia, the European, Inter-American, and the African systems for the protection of human rights.(5)

An essential component of the foregoing international regime is the corpus of customary norms of human rights, anchored in large part in pre-World War II law and practice. For instance, proscriptions affecting slavery and the slave trade, piracy, state conduct in the course of war, and genocide, have long constituted peremptory norms (jus cogens), binding upon all members of the community of nations.(6) In addition, the protection of particular national minorities in Europe was undertaken in elaborate terms by the League of Nations following World War I, predicated on principles of religious and cultural freedom.(7)

Significantly, the Universal Declaration, not per se binding as a treaty, derives its overarching international

authority principally through the reiteration of recognised norms of customary law. Provisions of the Declaration pertaining to equality and nondiscrimination, the right to life and liberty, freedom from slavery and servitude, freedom from torture, freedom of thought and religion, and of opinion and association, are cases in point. Insofar as the Declaration has received virtually universal affirmation by member-states of the United Nations, many of whom have expressly incorporated its provisions in national constitutions, and giventhe repeated references to the Declaration in international agreements since I948, the majority of its provisions may be considered part of customary international law.(8) Residual provisions - such as those concerning the right to "rest and leisure ... and periodic holidays with pay"(Article 24), and to "just and favourable remuneration ... ensuring an existence worthy of human dignity"(Article 23) - may eventually crystallize into universally binding norms of law.(9)

In the context of contemporary human rights norm-formation, the processes of treaty and custom converge "as intertwined threads in the fabric of international law", each process reinforcing the other.(10) Indeed, almost every basic principle enunciated in treaty law has a counterpart today in the corpus of customary law. This reflects, as D'Amato has observed, the dynamic nature of the norm-formation processes generated by modern transnational relations, to the benefit of human rights law-making.(11)

With regard to the implementation of the foregoing norms of customary and treaty law, Article 56 of the Charter of the United Nations requires member-states "to take joint and separate action in co-operation with the Organisation for the achivement of the purposes set forth in Article 55" (including "universal respect for, and observance of human rights and fundamental freedoms"). Inter-state co-operation for this purpose is also stated as a "duty" under the 1970 Declaration on Principles of International Law Concerning Friendly Relations, and constitutes thereunder among the "basic principles of international law."(12) This is further proclaimed as an individual right in Article 28 of the Universal Declaration: "Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized."

Hence, specific legal undertakings in respect of the implementation of relevant human rights agreements require or authorize appropriate legislative measures, the promotion of public awareness of those rights, international reporting requirements, and special complaint procedures. Contrary to traditional international law and practice, for example, the individual is granted locus standi with reference to the violation of his rights under the Optional Protocol to the Covenant on Civil and Political Rights.(13) Under the Covenant on Racial Discrimination, state-parties enjoy locus standi before the Committee on the Elimination of Racial Discrimination in respect of non-compliance with the Convention

by other parties.(14) These procedures manifest a vital trend in the effort to ensure implementation of fundamental rights and freedoms: the direct and legal accountability of governments to the international community over the treatment of those under their jurisdiction, notwithstanding the doctrine of national sovereignty.

The preceding trend is reinforced by the increasingly common practice of considering national human rights violations in multiple socio-political as well as legal contexts at the United Nations and in regional fora. Issues of apparently internal or domestic concern - the issuance of travel documents to particular citizens, the cultural freedom of minority indigenous populations, the religious rights of specific sects, denial of voting rights to a racial group, the resettlement of a refugee population - may become 'international business', the subject of the foreign policy of 'disinterested' governments. Indeed, non-governmental organisations (NGOs) such as Amnesty International, the International Commission of Jurists, and the Lawyers' Committee for International Human Rights, amongst others, have repeatedly invoked the International Bill of Rights within the foreing 'domestic' issue-areas, often effectively rendering target-governments accountable to world public opinion.

The Question of Domestic Jurisdiction in International Law

While Article 2(7) of the United Nations' Charter upholds the principle of non-intervention in respect of "matters which are essentially within the domestic jurisdiction of any state", substantial juridical as well as empirical evidence supports the view that fundamental human rights no longer constitute a matter of "essentially" national concern.(15) An authoritative pronouncement in this regard was made by the International Law Institute (ILI), holding that:

> "The reserved domain is the domain of State activities where the State is not bound by international law. The extent of this domain depends on international law and varies according to its development."(16)

This echoes the Advisory Opinion of the Permanent Court of International Justice (PCIJ) on Nationality Decrees Issued in Tunis and Morocco (1923), a case involving the interpretation of the phrase "solely within the domestic jursidiction", contained in the League of Nations Covenant; "the development of international relations" determined the issue, the the Court ruled, and "jurisdiction which, in principle, belongs solely to the State, is limited by rules of international law."(17)

In view of the extensive development of international law governing matters of human rights over the past four decades, accompanied by the aforementioned trend of deliberating on national behaviour affecting those rights in transnational fora, the principle of domestic jurisdiction cannot shelter serious governmental violations from outside

concern or scrutiny. Moreover, external 'intervention' in this context would connote what Lauterpacht has described as "dictatorial interference ... amounting to a denial of the independence of the State."(18) It is scarcely tenable that external action over and above mere discussion, directed strictly at inducing governmental compliance with fundamental international obligations, amounts to such intervention; a fortiori when the action is peaceful and the violations gross and persistent.(19)

A 1953 United Nations Commission report summed up the issue at hand thus:

> "The United Nations would be failing to perform their duties under the Charter in a responsible and cautious manner were they to interfere in a domestic situation which, though incompatible with the principles of the Charter, is due to certain well-defined historical conditions and circumstances which cannot be changed overnight but which the State concerned is endeavouring gradually to eliminate. On the other hand... the United Nations is unquestionably justified in deciding that a matter is essentially outside the domestic jurisdiction ... when it involves systematic violation of the Charter's principles concerning human rights ... and when the State concerned clearly displays an intention to aggravate the position."(20)

In a recent academic debate over the utility of the prevailing normative regime of international human rights, Professors J.S. Watson and Eric Lane contended that the doctrine of national sovereignty, as embodied in Article 2(7) of the Charter and practiced in the current 'Westphalian order', effectively undermines that regime.(21)

The "discrepancy" between persistent state "killing, torturing and imprisoning (of) their citizens", and the

existing corpus of international human rights law, led Watson to question "the validity and the efficacy of the alleged rules ... as something more than disembodied ethical statements or wishful thinking."(22) According to Lane, "state tremors over sovereign atrocities have stabilized, and sovereign self-concern has reasserted itself as the domi nant focus of the world legal order"; thus "the legal protection of human rights continues to remain solely a state matter."(23)

In response, Professors Sohn, Schechter and Higgins, amongst others, have maintained that national sovereignty remains compatible with a fragile but increasingly effective international rights regime.(24) "Some minor violations of human rights", Sohn observed, "remain matters of domestic jurisdiction, unless states have accepted supplementary agreements creating international obligations even with respect to these matters (as has been done in the Covenants, the regional conventions, and various special instruments). But gross violations of human rights have become matters of international concern and no state can hide behind the domestic-jurisdiction shield."(25)

The persistence of "appalling violations of human rights", Higgins writes, "does not require us to assert that there is no international law of human rights."(26) Or as Sohn points out, international violations of human rights are no more evidence of the questionable validity of international rules than domestic crimes are of municipal laws.(27)

Schecter focuses upon the regime of economic and social

rights and needs, where the challenges confronting states - especially in with respect to the problems of underdevelopment, overpopulation and institutionlised poverty - can scarcely be approached on a national basis alone. In Schechter's view, "the reduction of sovereign power" is a pre-requisite not only for "significant progress in human rights protection" (as Watson and Lane aver), but also because such progress "is inextricably intertwined with and dependent upon improved responses to the basic social, economic, and ecological problems that confront us", qua a community of nations.(28)

From a juridical standpoint, it might be added that the explicit incorporation in the United Nations Charter of a universal concept of human rights (concurrently with the principle of sovereignty in Article 2(7)), and the subsequent development of a normative framework in furtherance of that concept, belies an all-encompassing, traditionalist interpretation of sovereignty. It is surely against the preceding animus maifested by the international community in concrete terms that the failure to uphold applicable human rights norms must be measured.

International Human Rights Norms and National Foreign Policy

Does the existence of an extensive international rights regime (including an increasingly sophisticated machinery for implementation), coupled with the progressive attenuation of national sovereignty as a barrier to transnational action in this regard, obligate states to pursue a rights-oriented

foreign policy? Is it not sufficient that domestic policy evince due respect for international norms, subject to appropriate scrutiny by United Nations and other regional organs (but not individual states)? What legitimate, juridically-meaningful, 'entitlement' does one state have - unilaterally - in the treatment by another state of its own nationals? (29)

The legal case for a human rights foreign policy reposes upon two related, but analytically distinguishable, lines of argument. Addressing first the question of legitimate entitlement posed above, the emergence of widely-recognised principles of human rights - customary as well as conventional - renders serious violations thereof acts hostis humani generis (universal offenses). This reasoning derives from the landmark decision of the United States Court of Appeals in Filartiga v. Pena-Irala (1980), where torture committed in Paraguay was considered actionable in New York, because "the torturer has become - like the pirate and slave trader before him - hostis humani generis, an enemy of all mankind."(30) The Court in Filartiga found the prohibition against torture to be "part of customary inter national law, as evidenced and defined by the Universal Declaration of Human Rights", with "no distinction between treatment of aliens and citizens."(31)

As cogently argued by D'Amato, recognised norms of international human rights law create "universal entitlements" (benefitting individuals and states alike) in respect of the observance of those rights, "without necessarily guaranteeing

that any one nation or group of nations will feel motivated, or have the interest, to do something about it."(32) Acts of torture, piracy, slavery, genocide, racial discrimination, and other gross violations of human rights - irrespective of the locus standi or the nationality of the victims - detract from the entitlement to be free of the violation, permitting appropriate corrective action. While from the legal standpoint the entitlements in question subsist even if not exercised, their actual enforcement by states would clearly reinforce the regime of human rights law, in turn facilitating the future exercise of entitlements.

A second juridical argument takes the norms-policy nexus still further. It is submitted that the regime of international rights not only entitles states to pursue a rights-oriented foreign policy, but obliges them to do so, subject to national interpretation and judgement as to appropriate measures (though even the latter may be affected by transnational decisions such as United Nations resolutions). The scope of the Charter obligations to undertake joint and separate action to promote universal respect for human rights(Articles 55 and 56), in conjunction with the individual entitlement to an international order congenial to the rights and freedoms proclaimed in the Universal Declaration (Article 28), must meaningfully extend beyond national boundaries to the domain of transnational relations.

The basis of the above relates to traditional principles

of municipal law, civil and common alike. At minimum, a state cannot legitimately abet the violation of human rights by another government, without thereby contravening its own obligations under international law. A national foreign policy that involves military, economic or other relations which demonstrably compound the violation of fundamental rights by a 'partner' government thus constitutes illegal complicity in those violations. Positively construed, the undertaking to promote universal respect for human rights (including a transnational order congenial thereto) further entails an obligation to deter the violation of fundamental rights by another government, within the constraints of international law and comity. Thus, a state capable through its foreign policy of applying economic, political or other peaceful measures to deter rights violations by another state, taking into account the 'cost' entailed to itself, is obligated to act appropriately. Failure to deter violations when such action is readily feasible may be tantamount to tacit approval, certainly in an ethical context.(33)

In pragmatic terms, it is clear that the preceding obligation to undertake appropriate policy-action (whether to avoid complicity in or to deter violations) cannot reasonably be insisted upon vis-a-vis the entire international regime of rights. Neither the United Nations nor individual states possess the resources or the inclination to 'police' compliance with such a broad array of rights-related norms, some of which are programmatic in nature. Furthermore, in juridical terms,

human rights norms of a jus cogens nature create correspondingly more definite and tangible 'universal entitlements' for the international community. As expressed in the Barcelona Traction case (1970), "basic rights of the human person" generate obligations "erga omnes". (34)

The International Law Commission (ILC) has interpreted the erga omnes concept in Barcelona Traction as supporting the view that "a serious breach on a widespread scale of an international obligation of essential importance for safeguarding the human being, such as those prohibiting slavery, genocide and apartheid", constitutes an international crime.(35) A common feature of this amidst other enumerations of rights of "essential importance" (suggesting their jus cogens nature) is non-derogability therefrom under any circumstances.(36) Accordingly, as the ILC observes, "the international community has a greater interest in ensuring that its members act in accordance with the specific requirements of the obligations in question."(37)

Without dwelling here on the complex issue of a normative hierarchy of international rights,(38) suffice it to state that the right to life and security, as well as its attendant elements (including freedom from torture, starvation, and racial discrimination, the right to due process of law, to self-determination, and to freedom of thought and conscience), must fall within the parameters of the erga omnes conception. Through the course of this dissertation, the aforementioned

rights constitute the principal effective focus of the policy-orientation under appraisal.

The specific implications of the foregoing in terms of bilateral and multilateral economic, political and socio-culturalpolicies, are explored further in developing the rights-orientation critique in Part 1 of the dissertation. More immediately, in addresssing the overall question 'Why a Human Rights Foreign Policy?', underlying issues relating to the 'national interest' calculus, in which foreign policy is rooted, require due consideration. In assessing the locus of rights-related factors in that calculus, traditionally competing considerations of national security and economic gain serve as the organising idioms below.

2. Human Rights and 'National Interest'

The classical conception of foreign policy as the furtherance of the national interest (as construed by those exercising sovereign power), remains a vital precept of transnational relations today. 'National interest' eludes, however, a clear definition, embracing as it does multiple strands of perceived national aspirations, material interests, and fundamental values. While acknowledging this intrinsic complexity, and the necessary fluidity of its content amidst changing conditions, 'political realism' postulates interest as the yardstick of national behaviour. Hans Morgenthau, the pre-eminent proponent of this doctrine, writes:

> "The idea of interest is indeed of the essence of politics and is unaffected by the circumstances of time and place. Thucydides' statement, born of the experiences of ancient Greece, that "identity of interest is the surest of bonds between states or individuals" was taken up in the nineteenth century by Lord Salisbury's remark that "the only bond of union that endures" among nations is "the absence of all clashing interests." It was echoed and enlarged upon in our century by Max Weber ... Yet the kind of interest determining political action in a particular period of history depends upon the political and cultural context within which foreign policy is formulated. The goals that might be pursued by nations in their foreign policy can run the whole gamut of objectives any nation has ever pursued or might be possibly pursued."(39)

Morgenthau's analysis resonates in the Trudeau Government's 1970 review Foreign Policy for Canadians, which articulated policy concerns and priorities for the coming decade according to their "relevance ... to national interests and basic aims."(40) Hence, the review asserts:

> "Canada, like other states, must act according to how it perceives its aims and interest. External activities should be directly related to national policies pursued

within Canada, and serve the same objectives.(41)

Whatever the orientation of national objectives (within the relevant domestic political and cultural context), interest prevails as the criterion of policy, to be interpreted and projected by the government in power. The decision-making process is commonly portrayed as a rational one, with national interest objectives (whether general or specific) correlating with actual policies in pursuit thereof. Thus the pivotal interplay in this 'rational process model' occurs "between the environment in which the policymakers operate and actual external behaviour."(42)

Numerous difficulties have been shown to exist in applying the rational process model either to actual policy-making or national interest-formulation. Lyon and Tomlin observe, for instance, that "the objectives (of foreign policy) are either inferred from the behaviour itself or conceived of in such general terms that virtually any form of behaviour may be identified as a consequence of rational decision-making."(43) Frankel has questioned whether any "rational yardsticks" exist "for the selection of priorities among values which are the main area of decisions about national interest."(44) Rather, a degree of <u>supposed</u> or <u>perceived</u> rationality on the part of decision-makers is posited: the latter "follow policies they believe will enhance the well-being of their societies, whatever the constitutional system."(45)

Furthermore, since foreign policy is axiomatically

directed in particular at the external community of states (whatever the domestic determinants involved), the interpretation of national interest must obviously relate to an appropriate conception of transnational relations, including the probable impact of national decisions upon other state actors.(46) Ideological considerations inevitably colour the world-view of decision-makers no less than they do in the domestic sphere. Far from being objective and rational, the interest-calculus would seem to involve the subjective interpretation of national priorities and concerns, projected into an external arena fraught with complexities generally perceived through the distortive prisms of national identity and experience.

The preceding interaction between a state and the external community generates the ultimate criterion within the interest-calculus: the question of national survival and security. Indeed, Morgenthau held that "(t)he national interest of a peace-loving nation can only be defined in terms of national security, and national security must be defined as integrity of the national territory and of its institutions."(47) National interests pertaining to what are considered fundamental security matters are generally referred to as 'vital interests', connoting an overriding concern with survival issues.

Foreign Policy for Canadians, it is noteworthy, describes the country's security as an independent political

entity as the first of the Government's three 'basic national aims'.(48) This is followed by the desire to "enjoy enlarging prosperity",(49) an objective subsequently linked to a dominant "theme of national policy" - the fostering of economic growth.(50) Finally, the Government would aim at enhancing the quality of life for Canadians, including the readiness to contribute usefully to humanity, an objective related to the policy-theme of promoting social justice.(51)

The relevance of the foregoing to Canadian human rights foreign policy will be considered empirically in the case-studies to follow. For present purposes, the articulation of national priorities in Foreign Policy for Canadians illustrates broadly the traditional conception of the national interest as entailing paramount governmental concern with inter-related matters of national security and economic prosperity. The question of rights-orientation in foreign policy must, therefore, be addressed vis-a-vis those critical elements in the interest-calculus.

National Security, Economic Prosperity and Human Rights: Interests and Values in Foreign Policy

The reductive equation of national interest with national security, and of the latter with military considerations, has particularly negative implications for the role of human rights in foreign policy. A conceptual dichotomy between national security and the pursuit of international human rights is allowed to permeate decision-making on policy

issues en bloc, with "a tendency to push the subjective boundaries of security outward to more and more areas, to encompass more and more geography, and more and more problems."(52)

Illustrative is Jeanne Kirkpatrick's advocacy of the "restoration ... of American power" as a central tenet of that country's foreign policy, leading to an avowedly ideological perception of the role of human rights factors therein:

> "Human rights policies should be, and, one trusts, will be, scrutinised not only for their effect on other societies but also for their effect on the total strategic position of the United States and its domestic allies ..."(53)

On the basis of this criterion of strategic interest, Kirkpatrick enunciated the well-known doctrine of human rights activism toward totalitarian regimes and accomodation with authoritarian governments, which became the hallmark of the Reagan Administration's 'human rights policy' during the 1979-81 period. Tonelson comments that nothwithstanding the dropping of the doctrine from "American rhetoric" after 1981, "it still tyrannizes American policy",(54) as evinced particularly by the Administration's approach to Central America (see Part 3 of dissertation).(55)

Overlooked in this preoccupation with security interest as an overriding objective is the question as to what purposes are intended to be served by national foreign policy beyond national survival and material well-being, and the extent to which generally short-term perceptions of 'strategic advantage'

obscure more profound public interests. "In the ultimate analysis", as John F. Kennedy asked, "is not peace a question of human rights?"(56) Likewise, as already noted, the Charter of the United Nations recognises respect for fundamental rights and freedoms as a sine qua non for peaceful international relations, premised upon the experience of two world wars.

Yet rights-related criteria must compete in the policy making process not only with a narrow security perspective, but also with the inclination toward tangible, and equally often short-term, economic considerations. The instance of United Nations' action against South African apartheid is vividly instructive: even where palpable strategic interests are not implicated, states cannot readily be pursuaded to sacrifise significant (and, on occasion, insignificant) economic interests by adopting trade and other commercial sanctions against an egregious and systematic violator of human rights.

Foreign Policy for Canadians is certainly not unique in regarding the fostering of economic growth as a primary national objective: states generally perceive transnational commercial relations as intimately connected with national survival and progress - a matter of 'vital interests', as in the question of security. Once again, however, the failure to consider economic gain as serving human interests and needs rather than as an objective per se is pervasive. Notwithstanding the demonstrable contribution of indiscriminate commercial and other economic ties to continuing violations of human rights, a persistent tendency persists to safeguard the

primacy of immediate material gain over 'moralistic' and intangible rights-related concerns.

The implication that particular policy decisions are 'dictated' by the national interest, or what Kattenberg characterises as the "reification" of abstractions such as vital interests into "concrete material existence",(57) disguises ad hoc and subjective decision-making as 'realistic'. Stated as a principle of realpolitik, this leads to Morgenthau's "iron law of international politics, that legal obligations must yield to the national interest."(58)

That national interest and law observance merely converge coincidently while diverging commonly is a presumption well refuted in Henkin's How Nations Behave:

> "It does not seem to consider that the law of nations may be in the interest of all nations, as the law of an enlightened society is in the interest of all its citizens. It does not see national interest in law observance - in order and stability ... in the support of other nations and peoples, in friendly relations, in living up to a nation's aspirations and self image, in satisfying the "morality" of its own officials and of its own citizens ... (A) nation that observes law, even when it "hurts," is not sacrificing national interest to law; it is choosing between competing national interests ..."(59)

A critical aspect of the "reification" of national interest abstractions noted above is that foreign policy discourse may straddle the distinction between "(1) matters that are in the national interest because they pertain to the satisfactions of citizens but do not involve the protection or

promotion of their rights; and (2) matters that are in the national interest because they affect in significant ways the rights of ... citizens."(60) On the premise (after Dworkin) that a right may serve as a veto over an interest, Professor Brown has argued that the mere satisfaction of national preferences and the guaranteeing of citizens' rights "do not stand on the same moral foundations."(61) Applied to the foreign policy-making process, the rights over interests principle requires that when a state's national interest does not involve, in a given policy question, the promotion of citizens' rights, then mere domestic interests cannot justifiably override citizens' rights elsewhere.

To take an hypothetical case, policymakers in country X are confronted with the prospective sale of a nuclear-powered 'civilian' reactor to country Y, known to be a gross and systematic violator of human rights, and likely to convert the reactor to military use. It is assumed that nuclear energy safeguards relevant to the transaction (providing for inspection and monitoring of the facility) would curtail, but not eliminate, the risk of military conversion. It is further assumed that the government of country Y, in consequence of converting the reactor, is likely to engage in transnational (and possibly domestic) conduct detrimental to human rights, though not necessarily directly those of X's citizens. May the policymakers in country X proceed with the transaction on the basis of clear advantage to the national economy (including increased employment)?

Under the rights over interests principle, the prospective threat posed by the sale to citizens abroad (in country Y as well as other states affected by the latter's conduct), must outweigh mere economic advantage to country X. It may be contended, of course, that the economic advantages to citizens of X accrue toward the satisfaction of socio-economic rights, and not merely interests; further, that country Y may succeed in acquiring a reactor elsewhere, thus frustrating the purpose of the rights veto.

However, country X's socio-economic rights to material gain from the transaction cannot stand on par with the corresponding threat to life and security posed by Y's purchase.(62) Policy-makers in X would also be obliged to dissuade other reactor-exporting states to refrain from supplying Y, to obviate the frustration of the rights veto. This is cons sistent with the legal obligation, discussed above, to avoid complicity in and to seek to deter serious violations abroad. In any case, as Brown observes in this connexion, the burden of proof reposes upon those asserting the inefficacy of a rights veto.(63)

Admittedly, the foregoing presumes that the moral primacy of rights over interests ought to translate into a corresponding prevalence in policy-making. The presumption may be justified in the following terms. Foreign policy, it is commonly acknowledged, involves the 'externalisation' of values central to a nation.(64) From the standpoint of national public opinion, appropriate moral conduct lies at the core of these

values. The assumption that personal morality is irrelevant to transnational behaviour, it might be observed, ignores the fact that governmental conduct in Nazi Germany, in Hiroshima and Nagasaki, in Vietnam, has been judged by personal moral standards. "Officials of governments cannot shed their own moral codes. Representative governments, at least, cannot be indifferent to the morality of their own people, and some violations of law clearly offend that morality."(65)

This is not to assert, of course, the identity of inter-personal and international morality, but rather to recognise their overlap. In the sphere of human rights, characterised par excellence by the 'legalisation' of basic moral principles, foreign policy behavior can scarcely escape an ethical judgement - internally, according to national standards, and externally, according to international perceptions. Responsible governments can seldom, in the long-run, be anymore indifferent to international moral judgements than representative governments can be to domestic opinion.

Empirical evidence with regard to the relationship between domestic and external conduct in respect of human rights issues reinforces the case for a morally-conscious policy, prepared to assert the primacy of rights over interests. Whether in the events leading upto World War II (violations in the Third Reich),the situation in southern Africa (apartheid as institutionlised policy in South Africa), attrition in the Middle East (cardinally apropos the question

of Palestinian self-determination) or East-West confrontation in Europe (insofar as stemming from Soviet ideology), the correlation between respect for fundamental rights at home and transnational security and well-being cannot be denied.

The propensity of domestic violations to be projected into a state's external relations was remarked upon as early as 1948 by then American Secretary of State, George Marshall:

> "Systematic and deliberate denials of human rights lie at the root of most of our troubles and threaten the work of the United Nations. Governments which systematically disregard the rights of their own people are not likely to respect the rights of other nations and other people and are likely to seek their objectives by coercion and force in the international field."(66)

The argument is not that repressive governments are invariably aggressive, but rather that their perceptions of transnational relations are considerably less likely to be informed by ethical constraints, and may actually be fuelled by ongoing domestic crises. Even in the traditional interest-calculus predicated upon military and economic 'security', therefore, the potential threat to the national interest posed by unchecked gross and systematic violations elsewhere is evident. To the extent that international law entitles and obliges states to act upon those violations through the instruments of foreign policy - as maintained in the preceding section - the non-exercise and non-observance thereof, in the present context, may undermine national interest, however narrowly construed. At the very least, it is untenable that national interest requires states to disregard

the obligation to act upon the violations. A fortiori when the national interest is perceived in the larger, enlightened sense suggested here.

In conclusion, it is submitted that norms of international law, morality and political wisdom converge in requiring that, in the conduct of external relations, states neither can nor should circumvent values relating to fundamental rights and freedoms. The discussion that follows in this dissertation is premised upon that submission.

B. RESEARCH DESIGN: OBJECTIVES AND METHODOLOGY

The cardinal substantive rationale of this study is an appraisal of the degree to which Canada, through the Trudeau-era and its immediate aftermath, has undertaken a foreign policy consistent with the Government's human rights commitments and obligations, national as well as international. As already indicated, the relevant corpus of human rights law in respect of which Canada's policy implementation is at issue consists primarily of the International Bill of Rights, cognate transnational instruments, and 'declaratory' pronouncements reflecting global and regional consensus on rights-questions. In the Canadian context, numerous official statements over the period under study have reiterated the centrality of a rights-oriented policy as an expression of Canadian socio-political values, as well as a matter of compliance with international obligations.

Juxtaposed with traditional concerns over national security, economic prosperity and transnational stability, where do human rights rank in specific calculations respecting Canadian external relations? How far does the record confirm official rhetorical claims as to the primacy of rights-factors in those calculations, and does it reflect a *bona fide* commitment to applicable international norms? What influence, if any, do non-governmental, indeed non-executive, actors exercise in the policy-making process, in inducing compliance with the preceding commitments?

Rather than adopt an *ad hoc*, case-by-case approach in

addressing these and related questions, this study proposes a general 'objective' critique, applicable mutatis mutandis to virtually any national foreign policy. Organised in the form of a simple matrix, the critique is intended to facilitate not only the systematic appraisal of recent Canadian policy, but also the prospective analysis of rights-orientation in disparate contexts, historical or ongoing, attending a state's external relations.

The conclusions resulting from the application of the simple matrix to specific aspects of Canadian policy will be considered in the final segment of the dissertation from the overall perspective of the Trudeau-era and beyond. The validity and appropriateness of the particular methodological approach adopted here will also be re-considered in that connnexion.

Theoretical Paradigm

In designing a framework for the proposed critique in Part 1 below, the foreign policy instrumentalities available to a state - including public pronouncements on relevant issues, treaty undertakings, bilateral diplomatic representations, multilateral trade and military activity - receive primary consideration qua the tangible modes of expression of rights-orientation. Since they make unequal demands upon a state's commitment to international human rights - ratifying a treaty being prima facie less demanding than undertaking multilateral trade sanctions, for instance - suitable 'weighting' thereof within the framework is necessary.

Empirical factors play a critical determinative role in the weighting process, rendering the matrix per se pragmatic rather than purely abstract.

The instrumentalities selected in assessing rights-orientation (hence the 'indices' within the critique) need to be anchored not only in pertinent transnational realities, but also in the national policy-making environment. Thus the respective roles of the executive, the legislature, non-governmental organisations and other actors in the decision-making process will interface with the operation of the policy-indices above, as crucial variables in the matrix.

It is intended to apply the framework narratively, not mechanically, to empirical data concerning Canadian external relations and policy. Two specific sets of Canadian relations - with South Africa since I970, and Central America after I979 - serve as case-studies thus appraised. Details as to the rationales for these selections, and the mode of application of the matrix, are offered hereunder.

Some of the principal policy conclusions derived from the case-studies will be recalled in the concluding segment (Part 4 below) in conjunction with further, more synoptic assessments of Canada's role in other human rights issue-areas in Canadian foreign policy, including the 'Helsinki-process' of the Conference on Security and Co-operation in Europe(CSCE), and the implications of military exports to repressive client-governments, particularly in the Third World. As previously indicated, the methodological framework itself will

be re-visited in Part 4, in light of its extended application through Parts 2 and 3.

Empirical Appraisal

Canadian policy towards apartheid in South Africa (Part 2 below) constitutes an 'ideal' study in international human rights policy-making for a number of reasons. Firstly, from a methodological standpoint, the material time-frame for the study spans the entire duration of the Trudeau-era (and its aftermath), providing an empirical continuum within which to analyse the development of Canadian policy. Commencing with Foreign Policy for Canadians (the 1970 White Paper expressing the Government's priorities and concerns for the decade), through the 1977 package of measures on South Africa (in the wake of Soweto) and the policy revisions since 1984 (in response to escalating public unrest in that country), relations with South Africa evince vital currents of constancy and change in Canadian rights-orientation.

Secondly, and more substantively, apartheid implicates the entire spectrum of international human rights, civil-political as well as socio-economic, in a clearly identifiable institutional context. Having engaged the attention of the international community over some four decades, moreover, the consequences of apartheid's violations of those rights for the policies of individual states have gained definite form and recognition, albeit less unequivocally in some instances than others. Accordingly, Canada's approach to the multiplicity of

policy issues entailed - from diplomatic ties and sporting relations to economic sanctions - can be examined in comparative perspective to the fullest degree.

Relatedly, the case-study appertains to tracing the development of international human rights law itself, in response to the sui generis nature of apartheid. Thus, the latter has been declared a 'crime against humanity' by the United Nations, and is the subject of specific transnational agreements, declarations, and resolutions denouncing the practice and collaboration therein. It has been deemed to be a violation of peremptory norms of international law (jus cogens), (67) binding upon the community of states en bloc. The translation of this legal norm into national policy represents a vital aspect of the progressive implementation of human rights, establishing a potentially critical precedent for national and international approaches to other salient issues affecting the implementation of basic humanitarian norms.

In common with that study, analysis of Canadian policy towards post-1979 Central America (Part 3 below) - specifically El Salvador, Guatemala and Nicaragua - engages the panoply of contemporary international human rights law. Egregious violations of every category of elementary rights and freedoms have persisted in the region, notwithstanding official undertakings by new governments to reverse historic patterns of poverty and authoritarianism. One result has been the displacement of millions of individuals into the hemisphere, as

far north as Canada.

A 1981-82 public review of Canadian policy towards Latin America and the Caribbean by Parliament recommended in the strongest terms a greater concentration of policy-resources on Central America;(68) both the Trudeau and Mulroney Governments have joined in the international denunciation of the human rights records of regional governments, but the issue has only gradually gained saliency in Canadian external affairs.

The hemispheric proximity of Central America to this country accentuates the role of traditional security and economic factors within the 'interest-calculus' affecting rights policy-making. United States influence in this regard - on regional developments and Canadian policy alike - has been conspicuous, extending as far as the sphere of multilateral financial assistance to the nations under study, where Canada exercises minimal institutional leverage. This case-study seeks to expose important facets of the interaction between human rights and regional-ideological factors in the foreign policy process, from the perspective of Canada as, increasingly, a 'principal power'.(69)

Both empirical case-studies will be structured to correspond with the simple matrix, thus facilitating comparison. Coupled with the less structured and more ad hoc survey of other issue-areas in the Conclusion, a reasonably detailed overview of operative Canadian policy obtains.

Finally, a note on the essentially interdisciplinary

nature of the methodology and objectives alike through this dissertation. An assessment of a state's foreign policy commitment to international human rights law necessarily transcends the confines of traditional legal analysis, at any rate if the operative critique is to address 'law in context'. Certainly, the overall perspective will retain a dominant juridical concern, inasmuch as the fundamental concepts informing the entire study relate one way or another to the normative regime of international rights. Adherence to specific commitments and obligations thereunder remains the essential underlying theme, indeed the raison d'etre for the study.

However, the process of rights policy-making and implementation, intertwined as it is with vital forces relating to economic, cultural and security perceptions of states (the metier of historical and international relations studies) would fit rather poorly within a juridical framework stricto sensu. (70) In this connexion, the remarks of Ivo Duchacek on the political character of law-making are apropos:

> "The dynamic force behind all constitution making (with their bill of rights or human rights provisions) is primarily political : however legalistic a national constitution as a supreme law of the land (or a global or regional constitution - e.g. the UN Charter) may sound, it basically deals with the hard core of all politics, namely who leads whom, with what intent, for what purpose, by what means, and with what restraints." (71).

Like the subject it explores, this dissertation cannot but seek to ensure its contemporary relevance to the actual experience of individuals as well as states, as the beneficiaries of international human rights law.

NOTES

1. See Henkin,"Human Rights and 'Domestic Jurisdiction'", in Buergenthal (ed.), Human Rights, International Law and the Helsinki Accord (1977), 21, at 22. The matter is addressed distinctly in the text below.

2. See, inter alia, D'Amato,"The Concept of Human Rights in International Law", Columbia Law Review, Vol.82 (1982), 110; Bay,"A Human Rights Approach to Transnational Politics", Universal Human Rights, Vol.1:1 (January-March 1979), 19; Beitz,"Justice and International Relations", Philosophy and Public Affairs Vol.4 (1975), 360; Forsythe, Human Rights and World Politics (1983), Chapters 1 and 3; Henkin, The Rights of Man Today (1978), Chapter 3. Insofar as the case for a human rights foreign policy is seldom argued in an interdisciplinary fashion that incorporates relevant legal norms, the present discussion constitutes a modest contribution to prevailing discourse.

3. Comprehensive texts in United Nations, The International Bill of Rights (1978). For analysis of the normative content of the contemporary international rights regime, including the specific and regional instruments mentioned in the text below, see generally Bilder,"The Status of International Human Rights Law: An Overview", in Tuttle (ed.), International Human Rights Law and Practice (1978), 1; Buergenthal (ed.), supra note 1; Henkin (ed.), The International Bill of Rights - The Covenant on Civil and Political Rights (1981); Humphrey,"The International Bill of Human Rights: Scope and Implementation", William and Mary Law Review Vol.17:3 (Spring 1976), 527; Joyce (ed.), Human Rights: International Documents, Vol.2 (Economic and Social Questions)(1978); Meron(ed.), Human Rights in International Law: Legal and Policy Issues (1984), Vol.1, Part II; Vol.2, Part III; Sohn and Buergenthal, International Protection of Human Rights (1973), Chapters VI-VIII; United Nations, The United Nations and Human Rights (1978). With particular reference the African system of human rights protection, see Gittleman,"The African Charter on Human and People's Rights: A Legal Analysis", Virginia Journal of International Law Vol.22 (1982), 667; Umozurike,"The African Charter on Human and Peoples' Rights", American Journal of International Law Vol.77 (1983), 902. For observations on the Soviet-Socialist perspective on the rights- regime, see especially Tunkin, Theory of International Law (1974), at 79-83. On the traditional and contemporary jurisprudential underpinnings of human rights principles, see especially the tour d'horizon appraisal in Shestack,"The Jurisprudence of Human Rights", in Meron, supra, Vol.1, Chapter 3 (pp.69-113); see also Higgins,"Conceptual Thinking About the Individual in International Law", New York Law School Law Review, Vol.24 (1978), 13.

4. See The United Nations and Human Rights, supra note 3; and United Nations, Yearbook on Human Rights, (New York).

5. See Henkin, Pugh, Schachter and Smit, International Law - Cases and Materials, section on regional human rights law, 817-28; Sohn and Buergenthal, supra note 3, Chapters VII (European Convention on Human Rights) and VIII (Inter-American System for the Protection of Human Rights). See also Meron, supra note 3, Vol.2, Part III.

6. See Brownlie, Principles of Public International Law (1966), at 417.

7. Ibid, at 457-59; Sohn and Buergenthal, supra note 3, Chapter IV.

8. The clearest juridical statement to that effect was rendered by Judge Ammoun in the Advisory Opinion of the International Court of Justice in the South-West Africa case, I.C.J. Reports (1971), 16, at 76: "Although the affirmations of the Declaration are not binding qua international convention within the meaning of Article 38, paragraph 1(a), of the Statute of the Court, they can bind states on the basis of custom within the meaning of paragraph 1(b) of the same Article ..." At the national level, Judge Kaufman of the United States Court of Appeals averred in Filartiga v. Pena-Irala, 630 F.2d 876 (1980), that "customary international law (is) ... evinced and defined by the Universal Declaration of Human Rights ..." (882). See further authoritative pronouncements on the binding force of the Declaration cited in Henkin, et al, supra note 5, at 808-09. See also Forsythe, supra note 2, at 9; Humphrey, supra note 3, at 159; Saario and Cass,"The United Nations and the International Protection of Human Rights", California West International Law Journal, Vol.7 (1977), 591, especially at 596,607. The Declaration is also recognised as bearing substantial binding force, whether or not as customary international law, in Brownlie, supra note 6, at 463; Henkin, supra note 2, at 96-98; Sohn and Buergenthal, supra note 3, at 514-22.

9. If, however, the Declaration is considered binding qua customary law en bloc, the present distinction is unnecesary. The authorities are split on the issue - see references in note 8, supra - and therefore a 'lowest common denominator' approach is adopted here. See also on the question of 'aspirational' rights in the Declaration Nickel,"Are Human Rights Utopian?", Philosophy and Public Affairs Vol.11:3 (1982), 246.

10. Gamble,"The Treaty/Custom Dichotomy: An Overview", Texas International Law Journal Vol.16 (1981), 305, at 312. See also D'Amato, supra note 2, at 1131-47.

11. Supra note 2, at 1131-47.

12. General Assembly Resolution 2625 (XXV)(10 October 1970),

General Assembly Official Records, 25th Session, Suppl. No.18 (A/8018).

13. Article 1 of the Optional Protocol provides: "A State Party to the Covenant that becomes a party to the present Protocol recognises the competence of the Committee (established under Article 28 of the Covenant) to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant ..." As of 1983, 30 states were parties to the Protocol (76 to the Covenant): United Nations, Human Rights International Instruments (1 September 1983)(ST/HR/4/Rev.5). See especially Robertson,"The Implementation System: International Measures", in Henkin (ed.), supra note 3, Chapter 14, at 357-69; and Schwelb,"The International Measures of Implementation of the International Covenant on Civil and Political Rights and of the Optional Protocol", Texas International Law Journal, Vol.7 (1977), 141. See more generally Nanda,"Implementation of Human Rights by the United Nations and Regional Organisations", DePaul Law Review, Vol.XXI:2 (Winter 1971), 307. Also relevant here is the U.N. Economic and Social Council's resolution 1503 (XLVIII)(May 27, 1970), establishing a system of petitions for groups and individuals in respect of "consistent patterns of gross violations of human rights and fundamental freedoms", to be submitted to the Commission on Human Rights. Pursuant to an affirmative finding by the Commission - in confidential proceedings - a public recommendation may be rendered to the violating government by the ECOSOC. See Zuijdwijk, Petitioning the United Nations (1982), at 25-54, for a detailed exposition of the procedure and its actual operation hitherto; see also Cassesse,"Two United Nations Procedures for the Implementation of Human Rights - The Role that Lawyers Can Play Therein", in Tuttle (ed.), supra note 3, 39, especially at 43-46. See further remarks infra, Part 1, at 16, note 23.

14. Articles 8-15. The Racial Convention provides perhaps the most detailed system of implementation of any international human rights instrument. See especially the analysis in Humphrey,"The World Revolution and Human Rights", in Gotlieb (ed.), Human Rights, Federalism and Minorities (1970), 147, at 168-75. The Convention had received 121 ratifications in 1983 (129 signatures), the highest for a human rights instrument: Human Rights International Instruments, supra note 13.

15. For an outline of the historical development of the domestic jurisdiction question, see Sohn and Buergenthal, supra note 3, at 587-93.

16. Annuire de l'Institute de Droit International Vol.11, at 150. See also Henkin, supra note 1, at 22.

17. PCIJ, Series B, No.4 (1923), at 24.

18. International Law and Human Rights (1973), 166-73, at 167.

19. The matter is stated succinctly in Henkin, supra note 1, at 22:

> "If a matter is not within the domestic jurisdiction of another state, external or international concern with it cannot be intervention. Beyond any dispute or doubt, it is not intervention or other improper interference for the state to respond to violations by another of her obligations under international law or agreement (though some forms of external or international reaction may be barred by other legal doctrine, e.g. the unilateral use of force under Article 2(4) of the U.N. Charter)."(Emphasis in original)

See also Buergenthal,"Domestic Jurisdiction and Intervention", in Brown and Maclean (eds.), Human Rights and U.S. Foreign Policy (1979), 111. Note that the related question of 'humanitarian intervention' (generally involving unilateral or collective military action against a state purportedly in serious violation of its rights- related obligations), which is considerably more controversial than the domestic jurisdiction issue, is strictly beyond the scope of the present study. Detailed and opposing views on that subject are offered by Brownlie,"Humanitarian Intervention", 217, and Lillich,"Humanitarian Intervention: A Reply to Dr.Brownlie and a Plea for Constructive Alternatives", 229 in Moore (ed.), Law and Civil War in the Modern World (1974). See also Falk's comments on the Brownlie-Lillich debate in the same volume at 544-45. See further Sohn and Buergenthal, supra note 3, at 137-211.

20. "Report of the United Nations Commission on the Racial Situation in the Union of South Africa, 3 October 1953", General Assembly Official Records Vol.8, Suppl. No.16 (A/2505), at 16-22, 114-19 (1953); cited in Sohn and Buergenthal, supra note 3, 641-42, at 649.

21. See Lane,"Demanding Human Rights: A Change in the World Legal Order?", Hofstra Law Review Vol.6 (1978), 269, and "Mass Killings by Governments: Lawful in the World Legal Order?", New York University Journal of International Law Vol.12 (1979), 238; Watson,"Autointerpretation, Competence and the Continuing Validity of Article 2(7) of the U.N. Charter", American Journal of International Law Vol.71 (1977), 60; and "Legal Theory, Efficacy and Validity in the Development of Human Rights Norms in International Law", University of Illinois Law Forum (1979), 609.

22. "Legal Theory", supra note 19, at 610 (footnote omitted).

23. "Mass Killings", supra note 19, at 279-80 (footnotes omitted). Lane considers the atrocities in Uganda and Cambodia in the 1970s as evidence of this contention. Prof. Schecter counters that "in weighing the efficacy of current human rights protection, it is relatively easy to find violations that have occured and to place them on one side of the scale. It is much more difficult, however, to produce the evidence for the other

side ... How, for example does one balance the return of free elections to 600 million people in India with the slaughter of 1 million in Cambodia?": infra note 22, at 363.

24. The writings of Watson and Lane provided part of the impetus for a "Symposium on the Future of Human Rights in the World Legal Order" in the Hofstra Law Review Vol.9:2 (1981), 337, including contributions by Sohn,"The International Law of Human Rights: A Reply to Recent Criticisms", 347; Schechter,"The Views of 'Charterists' and 'Skeptics' in the World Legal Order: Two Wrongs Don't Make a Right", 357; and Higgins,"Reality and Hope in International Human Rights", 1485. See also the comments on this debate in D'Amato, supra note 2.

25. Supra note 22, at 349-50.

26. Supra note 22, at 1498.

27. Supra note 22, at 350.

28. Supra note 22, 397-8.

29. The term 'entitlement' in this context, connoting a state's legal right to be concerned - as opposed to a mere interest - is suggested in D'Amato, supra note 2, at 1113-14.

30. Supra note 8, at 890. See also the decision of the International Court of Justice in Barcelona Traction, Light & Power Co. Ltd. (Second Phase)(Belgium v. Spain), 1970 ICJ Reports 4, especially at 32 (remarked upon further in text below).

31. Supra note 8, at 882, 884.

32. Supra note 2, at 1112-27, at 1126.

33. See, inter alia, Beitz, supra note 2, at 386-87; Scanlon,"Human Rights as a Neutral Concern", 68, in Brown and Maclean, supra note 19.

34. Supra note 28, at 32.

35. 2 Yearbook of the International Law Commission (1976) Part 2, at 73 (U.N. doc.A/CN.4/SER.A/Add.1 (pt.2).

36. According to Article 53 of the Vienna Convention on the Law of Treaties, a peremptory norm of international law (jus cogens) is "accepted and recognised by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character." Of central importance in the present context is the non-derogability provision in the International Covenant on Civil and Political Rights (Article 4(2)), reflected in the proposed focus of rights in this dissertation (see next paragraph of text). An elaborate

list of non-derogable human rights in the context of national emergency situations is provided for in the ILC's 1984 'Paris Minimum Standards of Human Rights Norms in a State of Emergency', based chiefly upon Article 4 of the Civil and Political Rights Covenant, Article 15 of the European Convention on Human Rights, and Article 27 of the American Convention on Human Rights. See American Journal of International Law Vol.79 (1985), 'Current Developments', 1072-81 (Richard B. Lillich). See further citations in note 38, infra.

37. Supra note 35, at 85-86. The ILC cautions, however, on treating some rights as more "fundamental" than others on the basis of their origin, as in domestic law, rather than by the "undeniable fact" of greater interest in their enforcement by the international community (at 73, 85-86).

38. See especially Weil,"Towards Relative Normativity in International Law?", American Journal of International Law Vol.77 (1983), 413, at 431-33; Meron,"On a Hierarchy of International Human Rights", American Journal of International Law Vol.80 (1986), 1.

39. Politics Among Nations (5th ed)(1978), 8-9.

40. Foreign Policy for Canadians (1970), General Paper, at 11.

41. Ibid at 9.

42. Lyon and Tomlin (eds.), Canada As An International Actor (1974), Chapter 3, at 36.

43. Ibid at 36.

44. Frankel, The Making of Foreign Policy (1967), Chapter IV.

45. Neuchterlein, National Interests and Presidential Leadership (1978), at 3. See also Pratt,"Dominant class theory and Canadian foreign policy: the case of the counter-consensus", International Journal, Vol.XXXIX:1 (1983-4), 99, critiquing traditional, more 'statist' models of decision-making affecting foreign policy.

46. See especially Frankel, supra note 44; Kratochwil,"Alternative Criteria for Evaluating Foreign Policy", International Interactions Vol.8:1-2 (1981), 105, at 115-17.

47. Supra note 39, at 528.

48. Supra note 40, at 10-11.

49. Ibid.

50. Ibid, at 15./ 51. Ibid, pp.14-15.

52. Yergin, Shattered Peace: The Origins of the Cold War and the

National Security State (1977), at 196. Yergin adds that the traditional security conception "postulates the interrelatedness of so many different political, economic and military factors that developments halfway around the globe are seen to have automatic and direct impact on America's core interests ..."(at 196).

53. Comments in "Symposium on Human Rights and American Foreign Policy", Commentary Vol.5 (November 1981), 42-45, at 44. See especially Kirkpatrick's full statement of her thesis in "Dictatorships and Double Standards", Commentary, Vol.68:5 (1979), 34.

54. "Human Rights: The Bias We Need", Foreign Policy No.49 (Winter 1982-83), 52, at 58.

55. See case-study on Central America (Part 3), infra. The Kirkpatrick thesis and the corresponding 'Reagan Doctrine' were recently restated in an extended essay by Michael Novak, Human Rights and the New Realism - Strategic Thinking in a New Age (New York: Freedom House, 1986).

56. Address at American University, June 10, 1963. Reprinted in U.S. Senate, Committee on Foreign Relations, Hearings on Exec. M, 88th Congress, 1st Session (12-27 August 1963), 1001, 1005. See further on the relationship between human rights and peace Part IV, infra.

57. "Moral Dilemmas in the Development of United States Human Rights Policies", in Henever (ed.), The Dynamics of Human Rights in U.S. Foreign Policy (1981), at 12-13.

58. Morgenthau, In Defense of the National Interest (1951), 144; cited in Henkin, How Nations Behave (2ed.)(1979), at 331.

59. Supra note 58, 331-39, at 331.

53. Brown,"... in the National Interest", in Brown and Maclean (eds.), supra note 17, 161, at 167-68.

54. Ibid at 163. The discussion in the text that follows draws upon Brown's proposed application of the 'rights over interests' principle, at 167-68.

62. See note 38 and accompanying text, supra.

63. Supra note 60, at 168.

64. See, for instance, Neuchterlein, supra note 39, at 4-8; Foreign Policy for Canadians, supra note 34, especially at 42.

65. See Henkin, supra note 51, at 334-36.

66. Quoted in Laquer,"The Issue of Human Rights", Commentary Vol.63 (May 1977), 29, at 33. See also Cranston What are Human

Rights? (1973), at 85. A particularly forceful plea for a "value-centered" approach to the conception of the national interest is made in Johansen, The National Interst and the Human Interest (1980), Chapter 1, especially at 17-28 (remarked on in Part 4, infra.

67. See note 35, supra; Delbruck,"Apartheid",in Bernhardt (ed.), Encyclopaedia of Public International Law, Instalment 8 (1985), 37, at 38-39.

68. Canada, House of Commons, Minutes of Proceedings and Evidence of the Standing Committee on External Affairs and National Defence, Issue No.78 (October-November 1982), 14th Report ('Final Report' - Latin America and the Caribbean), including - as 'Attachment A' - the 'Interim Report' of December 15, 1981.

69. See DeWitt and Kirton, Canada As A Principal Power, A Study in Foreign Policy and International Relations (1983), especially at 36-46.

70. See further methodological comments in this regard in Part 4 of the dissertation, infra. 71. Rights and Liberties in the World Today (1973), 9; cited in Forsythe, supra note 2, at 20.

PART 1

TOWARDS A SYSTEMATIC APPRAISAL OF INTERNATIONAL HUMAN RIGHTS ORIENTATION IN FOREIGN POLICY

"If the members of the world community had not repeatedly taken the trouble to elaborate often complicated conventions on human rights, it would be easier - not easy but easier - to argue that human rights should not be part of foreign policy. But the treaties are there, the obligations are undeniable, and in so committing themselves governments have raised expectations that they will have to live up to."

Secretary of State for External Affairs, Mark MacGuigan, Federal-Provincial Ministerial Conference on Human Rights, Ottawa, February 2, 1983.

A. CONDUCTING A HUMAN RIGHTS FOREIGN POLICY: ENDS AND MEANS

This Section examines the instrumentalities relevant to human rights orientation in foreign policy, in the context of unilateral, bilateral and multilateral state conduct. Section B will address considerations relating to the national policy-making environment affecting rights-orientation. The ensuing critique - in the form of a simple matrix - is intended to reflect the conceptual and empirical elements alike that inform the analysis below, mindful of the legal-political background presented in the Introduction.

Reference should be made in particular to the paradigmatic comments in the Introduction (Section B), with regard to the derivation here of the instrumentalities qua policy-indices. Far from being abstract or hypothetical, the derivation consistently draws upon relevant empirical experience - not least from United States foreign policy.

A central theme in any appraisal of the formulation and conduct of foreign policy must be the degree of correspondance between professed values and undertakings on the one hand, and actual behaviour patterns on the other - what is commonly referred to as the 'rhetoric-action gap'. Perhaps nowhere is this correspondance more significant than in the sphere of human rights, where exhortation and rhetoric constantly intertwine with normative obligations and their implementation.(1) This is true not only of governmental policy-behaviour, but (as evident from the normative survey above), also of elements of the international rights-regime

itself.

In respect of the policy-making process, the analytical approach to the rhetoric-action problem will consist of grouping relevant instrumentalities under a 'declaratory' or 'operative' rubric, according to the implications for rights-orientation. For instance, governmental policy statements or undertakings apropos international rights instruments constitute 'declaratory' conduct, whereas bilateral military relations or multilateral economic assistance are classified as 'operative' policy. The order of consideration of declaratory as well as operative elements will correspond to a judgement as to their demands upon national commitment to human rights policy, in ascending hierarchy: declaratory policy indicators, therefore, precede operative elements.

In applying the preceding policy instrumentalities as indicators of rights-orientation in the proposed critique, it is recognised that each of these elements may actually operate in relative (sometimes ambivalent), rather than absolute terms. Thus, the failure of a government to publicly denounce an egregious violation of basic rights in a certain state may owe to a well-founded concern that such action would provoke an aggravation of the violation; the failure may even disguise 'quiet diplomacy', intended to more effectively pressure the violating government to desist. Similarly, bilateral economic assistance to a state engaged in gross and systematic violations of human rights may successfully be directed (often through non-governmental organisations) exclusively at those in

genuine need. In these examples, rigid adherence to the suggested indices of rights-orientation (public stands on human rights issues; severing economic assistance to egregious violators) would serve poorly the intended policy objectives.

It appears reasonable, nevertheless, that a presumptive priority be accorded to the indices proposed, subject to evidence of supervening considerations being adduced. The tendency of governments to readily assert 'realistic' constraints of national interest or security, or of comity or propriety (including claims that private diplomacy is being pursued), justifies placing the 'burden of proof' as to the constraints upon those invoking them. In light of the de facto condition of human rights prevailing throughout most of the world today, and the moral, legal and political values at stake in their pursuit, the 'standard of proof' as to supervening considerations cannot but be set high.

I. Elements of Declaratory Foreign Policy

1. Public Statements on Human Rights Issues

The logical starting point in the examination of a state's human rights commitments in foreign policy lies in articulated positions on relevant issues which the state has, or ought to have confronted. Public statements serve as a mode of expressing, inter alia, commitments to particular unilateral or multilateral policy approaches, criticism of rights abuses abroad, and explanations or clarifications as to the absence of such commitments or criticisms. While bearing an obvious self-serving rhetorical potential for governments, they also offer indications of policy concerns and orientations according to the context in which they are rendered.

National human rights foreign policies commonly start - and sometimes terminate - at the level of unilateral statements. The Carter Administration in the United States, for instance, signalled a renewed national policy commitment (such as it was) to human rights principles through numerous early addresses on the subject in major symbolic settings, including the United Nations General Assembly and the presidential Inauguration Speech.(2) Subsequently, attention would inevitably focus upon the Administration's operative performance on human rights, maintaining the subject on the national as well as international agenda.(3)

Declaratory policy in the form of public statements on rights issues contributes, most significantly, to the process

of standard-setting vis-a-vis specific questions of policy, both nationally and globally. Governmental policy-positions may generate 'declaratory norms' on particular matters, which may then be juxtaposed against operative national conduct, as well as existing international rules affecting human rights. Furthermore, the public nature of the policy-statements facilitates - at least in democratic states - the mobilisation of opinion in relation to official undertakings on relevant issues.

To illustrate, transnational denunciation of the system of apartheid in South Africa, or of genocidal practices against indigenous Indians in Guatemala, has created a minimum collective expectation - or 'normative threshold' - for policies towards those violations. Governments are, in a significant sense, constrained from condoning policies that contribute in any tangible manner to either of the preceding situations, and may justifiably be censured for deviating from the threshold; such censure cannot constitute 'domestic intervention' (or 'interference'), the matter having been internationalised by multila teral deliberations thereon.(4)

Where indeed unilateral policy declarations by governments bear the character of solemn public undertakings (implying an intention to be bound thereby), definite legal consequences may ensue. According to the International Court of Justice (ICJ) in the Nuclear Test cases (1974), the principle of good faith in transnational relations renders such declarations binding, parallel to the pacta sunt servanda rule in general

international law(5):

> "It is well recognised that declarations made by way of unilateral acts, concerning legal or factual situations, may have the effect of creating legal obligations ... When it is the intention of the State making the declaration that it should become bound according to its terms, that intention confers on the declaration the character of a legal undertaking, the State being thenceforth legally required to follow a course of conduct consistent with the declaration ... (N)othing in the nature of a quid pro quo nor any subsequent acceptance of the declaration, nor even any reply or reaction from other States, is required for the declaration to take effect, since such a requirement would be inconsistent with the strictly unilateral nature of the juridical act by which the pronouncement by the State was made." (6)

The difficulty of demonstrating the intention to be bound is likely to reduce the frequency of declarations falling within the ambit of the ICJ's judgement. However, the principle of good faith, coupled with the 'collective expectation' attending multilateral positions on specific issues, clearly imparts substantial weight to unilateral statements in this context.

The normative threshold may be invoked not only in transnational forums (regional as well as universal), but also at the national level. It will be recalled, for instance, that Canada's 1977 declared policy-measures applicable to its companies dealing with or in South Africa received considerable domestic criticism, partly because of the more stringent policies then prevailing among other Western nations (particularly the Scandinavian countries and the United States).(7)

A government's commitment to thresholds on external policy questions also contributes towards national standard-setting on

related matters. Having publicly condemned violations such as racial discrimination and minority-persecution abroad, a state can expect to encounter somewhat greater political difficulty in engaging in similar practices domestically.

Admittedly, a healthy cynicism is not inappropriate with regard to the sensitivity and responsiveness of gross and systematic violators of human rights to national or international censure. The historical insularity of some regimes in this connexion is duly recognised - Idi Amin's in Uganda and, for many years, that of Jean-Claude Duvalier in Haiti are obvious cases. Yet the experiences in Iran under the Shah, Nicaragua under Somoza, and the Phillipines under Marcos, appear to reflect the strength of 'cumulative' public rejection of governments that systematically violate their fundamental obligations.(8) Somewhat less dramatically, national and transnational pressures have combined to elicit constructive and remedial change in nations as diverse as Argentina, Pakistan, Peru and Poland.

Certainly the general sensitivity of governments to moral censure, particularly in the transnational arena, explains in part the reluctance of states to engage in 'open' rather than 'quiet' diplomacy on many occasions. The United States Assistant Secretary of State for Human Rights and Humanitarian Affairs in the Carter Administration, Patricia Derian, maintained that discrete action - contrasted with "silent diplomacy" - constituted "the first tool of implementation" of

a rights-oriented foreign policy.(9) Arguing that "another government may then find it easier to make changes in its practices without seeming to be knuckling under to outside pressures", Derian considered public statements as being a second step where quiet diplomacy was inadequate."(10) It might be added that the latter recourse is less susceptible to remonstrances, however unjustified, of 'unlawful intervention' in the domestic affairs of the target-state.

Private diplomacy must indeed feature in a rights-oriented foreign policy - generally as a first step. But its very nature renders it difficult, if not impossible, to determine its existence or effect. The record in this regard suggests that government officials tend to be averse to injecting human rights questions and conditions in the context of diplomatic exchanges over other policy-issues, and are less able to exercise significant leverage on behalf of human rights outside that context.(11) In the ultimate analysis, foregoing the policy-leverage of public attention toward serious violations may be a costly compromise for the sake of diplomatic propriety.

Another concern relating to public human rights diplomacy stems from the ideologisation of relevant issues, whether in connexion with East-West, North-South, or other socio-political conflicts and tensions.(12) Where the motivation of the 'declaratory' state is perceived as predominantly ideological, the tool of public diplomacy may itself be blunted.(13) The

forum and context of public statements on human rights become material considerations in the effectiveness of open diplomacy in this regard.

Perhaps for this reason, more than any other, non-governmental human rights organisations, whose only significant policy instrument is declaratory, have emerged as major actors in the transnational arena. Less encumbered by the diplomatic and ideological moorings of state-actors, their public expositions of governmental violations increasingly command widespread respect, even among some target-states.(14)

In applying the criterion of public diplomacy to the appraisal of rights-orientation in national foreign policy, the limitations noted above will merit appropriate attention. Effective governmental action in this regard often depends upon the willingness to seek multilateral and politically diverse support for national policy pronouncements, including initiatives in conjunction with non-governmental organisations (NGOs). Public statements will also carry greater weight when anchored in the exisiting normative regime of rights, a circumstance to which another aspect of declaratory policy - the affirmation of rights-agreements - makes a decisive contribution.

2. Affirming International Human Rights Instruments

The normative process in the definition, protection and promotion of human rights has been advanced foremost through the corpus of conventonal provisions enunciated since World War II, and the widening consent of states thereto. Acts of political killing and imprisonment, torture, mistreatment of minorities, and other violations of fundamental individu al and collective rights are increasingly perceived and addressed in the context of the existing normative regime. The International Bill of Rights, as noted earlier, finds further expression not only in specific, derivative instruments pertaining to the rights of refugees, women, the child, and so on, but also through regional agreements of a comprehensive nature.(15) If state practice and customary law confirm the entrenchment of human rights norms in international law, transnational agreements variously initiate, contribute to and reflect that process of entrenchment (as in the codification of customary law in the Universal Declaration, accompanied by the enunciation of agreed aspirational norms therein).(16)

Sovereign support for the preceding normative regime, through signature, acclamation, accession, ratification, and other means of affirming relevant agreements, helps legitimate transnational concern for national human rights conditions. This formal readiness of states to submit internal conditions to external standards and judgement, and the reciprocal capacity to invoke the latter in bilateral and multilateral relations affecting human rights abroad, thus forms a vital

indicator of declaratory rights-orientation.

Slightly over two-thirds of the community of states has affirmed the principal international agreements on human rights (Table 1:1 below). In light of the rather permissive scope of the provisions contained in the two International Covenants - particularly the Covenant on Economic, Social and Cultural Rights - the failure of no less than one-third of states to ratify the documents poses a significant challenge to the consolidation of the rights-regime.(17) Furthermore, the Optional Protocol to the Civil and Political Rights Covenant, providing for individual locus standi over the violation of rights enunciated in the Covenant, has elicited thirty-six signatures only (with thirty ratifications).(18)

It is a trite observation that a normative rights-regime without effective implementation cannot significantly ameliorate the actual international condition of human rights. Procedures for monitoring and reporting on norm-compliance, as well as for inter-state and individual complaints, are duly provided for in the various rights-agreements.(19) Yet the implementation process remains, self-evidently, at an embryonic stage; as with international law in general, human rights rules depend for their enforcement ultimately upon the voluntary consent of states (barring the use of force), in a community lacking a paramount central authority.(20) In seeking the state consensus necessary for enhanced means of implementation - including superior monitoring, reporting and complaint

procedures, along with sanctions mechanisms, administered perhaps by a High Commissionner for Human Rights - prior universal affirmation of the normative regime represents an important condition.(21)

Pending the greater effectiveness of multilateral institutional measures for rights-implementation, national policy instrumentalities (such as diplomacy and trade) remain critical in inducing state-compliance. Accordingly, while the latter clearly constitute aspects of 'operative' foreign policy in respect of human rights principles, the affirmation of pertinent agreements is indicative more of declaratory intent apropos national compliance with and promotion of norms. However, insofar as affirmation exposes states ipso facto to the foregoing potential pressures respecting compliance and promotion, an 'operative' element indubitably features within this indicator of rights-orientation. As explained in the Introduction above, the proposed indices forming the policy critique here are not conceptually absolute or discrete, but rather relative and practically complex categories.

Table 1:1: Affirmation of Selected International Instruments

INSTRUMENT	SIGNATURES	RATIFICATIONS(a)
Convention on Prevention and Punishment of the Crime of Genocide (1948)	96	92
Convention Relating to the Status of Refugees (1951)	92	92
Protocol Relating to the Status of Refugees (1967)	91	91
Convention on the Elimination of All Forms of Racial Discrimination (1964)	129	121
Convention on the Elimination of All Forms of Discrimination Against Women (1967)	93	51
International Covenant on Civil and Political Rights (1966)	85	76
International Covenant on Economic, Social and Cultural Rights (1966)	87	79
Optional Protocol to Covenant on Civil and Political Rights (1966)	36	30
International Convention on the Suppression and Punishment of the Crime of Apartheid (1973)	79	73
Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)	47(b)	--

(a) Including other definitive adherence such as accession or acclamation.

(b) As of March 1986: United Nations Department of Public Information, New York.

Source: United Nations, Human Rights International Instruments (1983) (doc.ST/HR/4/Rev.5).

II. Elements of Operative Multilateral Policy

1. Initiatives on Human Rights at Global and Regional Fora

Insofar as international human rights law reflects the voluntary consensus of the community of states, the latter bears fundamental responsibility for implementation and enforcement thereof. Under Article 56 of the United Nations Charter, it will be recalled, members pledge themselves to take joint and separate action in co-operation with the Organisation for the promotion of, inter alia, universal human rights and fundamental freedoms. Encompassed here are multilateral oversight mechanisms, prospective sanctions against egregious violators, resolutions pertaining to human rights abuses, emergency assistance to victims of violations and of national disasters, and the 'good offices' function of multilateral institutions (particularly the Secretary-General of the United Nations) - all envisaged under the corpus of transnational and regional agreements on human rights.

Reference was made above to the importance of active declaratory support in the first instance for the standard-setting processes entailed in seeking the realisation of the international rights regime. Pursuant thereto, the capacity of relevant institutions (including the United Nations General Assembly, the Commission on Human Rights, the Human Rights Committee under the Civil and Political Rights Covenant, various regional bodies) to exercise their mandates effectively toward the improvement of actual rights-conditions is commensurate with the degree of co-operation and activism

demonstrated by national governments. Importantly, multilateralism in national policy-making attenuates many of the potential difficulties associated with unilateral or bilateral action, including those related to ideological perceptions and to possible retaliation by target-states.

Within the United Nations system, existing review procedures for human rights-compliance remain weak (as under the Covenant on Economic, Social and Cultural Rights)(22), or somewhat tortuous and difficult to operate efficiently (as with the procedure under Resolution 1503(XLVII) of the Economic and Social Council)(23), or insufficiently universal for effective implementation (as with the Optional Protocol to the Covenant on Civil and Political Rights)(24). In effect, the ability of these institutions to induce state-compliance with relevant norms and principles is constrained to making recommendations and generating publicity over violations. Consequently, the extent to which reporting requirements, deliberations and recommendations, and attendant international public opinion receive appropriate governmental attention becomes all the more critical.

In contrast, relatively more incisive institutional procedures exist under regional agreements for the protection of human rights. Exemplary is the operation of the European Commission on Human Rights - pursuant to complaint-mechanisms under the regional human rights Convention - catering to state-parties as well as individuals and groups under their

jurisdiction.(25) The Commission draws upon a commonality of traditions and interests, and, ultimately, acknowledged binding authority, among member-states; an impressive jurisprudence has ensued over the enforcement of conventional norms by the regional Court of Human Rights since 1961.(26) A similar effort by the Organisation of American States (OAS), particularly since the adoption of the American Convention on Human Rights (1969) and the consolidation of the Inter-American Commission on Human Rights (IACHR) in 1979, offers encouragement for the regional approach to implemementation even amongst more heterogenous and diverse polities.(27)

Relatedly, the East-West Conference on Security and Co-operation in Europe (CSCE) has undertaken to promote respect for the international rights regime in general, as well as for specific fundamental norms, in accordance with the 1975 Helsinki Final Act.(28) Although no institutional machinery for the implementation of the Final Act was envisaged - beyond periodic reviews of progress in realising its objectives - a host of non- and inter-governmental organisations, parliamentary commissions, quasi-official groups and religious organisations have sought to monitor state-compliance with the Act's provisions on human rights.(29) The non-binding character of the Final Act stricto sensu constitutes no barrier to the normative force of those provisions, which embody established principles of the international law of human rights; the expectation of national conformity thereto (as with other

provisions of the agreement) serves to accentuate the binding force of the principles in question in specific political contexts.(30) Further consideration of the CSCE process as a forum for the protection of fundamental rights and freedoms will be undertaken within the general survey of Canadian foreign policy in Part 4 of the dissertation.

It should be noted at this juncture that, in regard to regional and global agreements alike affecting international human rights obligations, the modes of enforcement thereof include all remedies normally available to states upon violations of their rights under internationa law. The principle pacta sunt servanda, which underlies general international law, is no less relevant to the regime of human rights law:

> "International human rights agreements are like other international agreements, creating legal obligations between the parties and internati onal responsibility for their violation ... No human rights agreements, even those that establish elaborate enforcement machinery, expressly or by clear implication exclude the ordinary interstate remedies. In fact, the principle human rights agreements clearly imply the contrary : that every party to the agreement has a legal interest in having it observed by other parties and can invoke ordinary legal remedies to enforce it."(31)

In view of the weakness of existing implementation and enforcement procedures in international agreements relating to human rights (except for the regional arrangements mentioned above), the availability of standard recourses under general international law becomes all the more significant. These would include diplomatic protection, action before national courts,

settlement under international arbitration, complaints before the Security Council of the United Nations, and advisory opinions of the International Court of Justice (ICJ).(32) Where, of course, human rights norms of a jus cogens nature are violated, the erga omnes principle invoked by the ICJ in the Barcelona Traction case may be activated (see discussion in Introduction above), over and above inter-party obligations under particular agreements. In such cases, the international community is entitled to enforce the obligations involved vis-a-vis the violating state, whether collectively or individually.

A conspicuous lacuna in the array of multilateral measures attendant to the implementation of human rights obligations is an effective machinery for enforcement. Chapter VII of the United Nations Charter contemplates the application of appropriate collective measures - military or otherwise "to maintain or restore international peace and security", but for no other purpose. The only actual exercise of this authority has occured in relation to the "policies and acts" of the South African government in 1977 (deemed by the Council as threatening international peace and security), resulting in a mandatory arms embargo by members of the United Nations.(33) Regional systems for the protection of human rights, while generally exercising considerable institutional authority in enforcing memebers' obligations, are also conditioned upon prior submission thereto by the states concerned; major

violators of human rights thus tend to elude the reach of enforcement action in that context.(34)

The principles of nonintervention and nonuse of force in transnational relations - proclaimed, inter alia, in Article 2 of the Charter - would not impede coercive action by the United Nations against governments in gross and systematic violations of international human rights, where a threat to transnational peace and security is also entailed.(35) But no evidence is forthcoming of the readiness of states to adopt a purely rights-related mechanism for enforcement sanctions, military or otherwise.

Notwithstanding the preceding limitations in procedures for human rights implementation, the scope for affirmative multilateral action in deterring serious violations, and for assisting victims thereof, remains considerable. Institutional demands (regional or global) for government accountability over the fate of political prisoners and 'disappeared' persons; asylum and resettlement of refugees from situations of civil-political or socio-economic deprivation; and treatment and rehabilitation of victims of torture, are cases in point.

Multilateral efforts in establishing a United Nations' Voluntary Fund for Victims of Torture(36); in assisting non-governmental organisations to document and publicise individual cases of political imprisonment, torture and other violations;(37) and in providing for emergency humanitarian assistance directly as well as through United Nations and

private agencies,(38) represent important demonstrations of effective rights-related co-operation. A 1982 report concerning the relationship between human rights and mass exoduses, prepared for the United Nations Commission on Human Rights, emphasized the urgent need for monitoring-mechanisms to avert refugee flows,in addition to closer inter-governmental consultation in dealing with ongoing large-scale exoduses.(39) The ramifications of failure to co-operate in that and other fields are all too evident in regular news-reports from Indochina, Central America, East Africa, and elsewhere.

The implementation of the long-standing proposal for a United Nations High Commissioner for Human Rights would surely assist in the co-ordination and administration of the foregoing and related initiatives and activities at the global level.(40) Exercised by an individual of stature, the good offices of the High Commissioner could also facilitate intercession on behalf of the community of states in situations of serious violations, often in conjunction with national efforts.

Parallel considerations apply at the regional level to multilateral deterrence of violations and assistance to victims, frequently under the auspices of the United Nations and its specialized agencies.(41)

2. Rights-Criteria in International Financial Institutions

The potential impact of transnational economic policies upon nation al conditions of socio-economic and civil-political rights has been recognised at various United Nations conferences at least since 1968.(42) Yet the role of multilateral institutional lending and assistance in the context of human rights policy-making has only gradually come into appropriate focus. At issue are the activities of six principal multilateral develo pment banks - the World Bank Group (including the International Bank for Reconstruction and Development(IBRD), the International Development Development Agency (IDA), and the International Finance Corporation (IFC)) and the regional African, Asian, Caribbean, European and Inter-American Banks - which provide project assistance to developing countries through resource transfers and technical assistance.(43) In addition, the International Monetary Fund (IMF) extends loans addressed to serious national balance-of-payments problems worldwide.(44)

None of these institutions includes among its criteria for lending or assistance the human rights record of recipient governments, no matter how egregious. Voting decisions of member-states are to be based solely upon 'relevant' economic criteria, without the intrusion of 'political' considerations. Typically, the 'Articles of Agreement' of the International Bank for Reconstruction and Development provide:

> "The Bank and its officers shall not interfere in the political affairs of any member; nor shall they be

> influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions, and these considerations shall be weighed impartially in order to achieve the purposes states in Article 1".(45)

The IMF's charter simply obviates any reference to non-economic criteria in transactions with the Fund:

> "A member's use of the resources of the Fund shall be in accordance with the purposes of the Fund. The Fund shall adopt policies on the use of its resources that will assist members to solve their balance of payment s problems in a manner consistent with the purposes of the Fund and that will establish adequate safeguards for the temporary use of its resources."(46)

As specialized agencies of the United Nations (albeit enjoying significant institutional autonomy therefrom), the World Bank and the IMF would be expected not to operate in a manner inconsistent with the fundamental principles and purposes expressed in the Charter, including the promotion of universal human rights. A similar expectation obtains in respect of the regional development banks, which are patterned on the World Bank model, and whose members are also parties to the United Nations Charter. If the relationship between multilateral lending and development assistance, on the one hand, and the rights-related conduct of recepient governments on the other, is recognised as an empirical reality, then a human rights criterion ought to affect the decisions of the institutions concerned.

Evidence in support of the preceding relationship is not lacking. A classic instance is provided by the IMF's 1976-77 credits to South Africa (amidst the unrest in Soweto and other

black townships), which virtually equalled the U.S.$ 450 million increase in national defence expenditure (47); the ensuing effects upon black socio-economic welfare as well as civil-political freedoms was alluded to even in a subsequent IMF study on South Africa.(48) Further examples relating to multilateral lending in Central America are considered in the regional case-study below (Part 3).

Indeed, proponents of a rights-conscious voting-policy by national representatives at these institutions have contended that prevailing institutional regulations do not exclude human rights considerations, since the latter may be inextricably linked with relevant technical (or economic) criteria.(49) Thus it may be questioned whether governments in gross and systematic violation of human rights can be trusted to expend the funding extended to them appropriately; whether sufficient socio-economic stability would prevail in such states for the proposed projects to be completed; whether the terms of repayment of loans are likely to be honoured. These and cognate issues of convergence of economic and technical criteria with human rights factors in international financial decisions require empirical appraisal - rather than the normative approach suggested, for instance, in the World Bank's Articles of Agreement cited above - and demand appropriate recofnition by governments.

Adopting a rights-conscious financial policy would certainly entail a number of difficulties for the international

institutions and member-states alike. As a lender of last resort, the IMF, for example, contributes significantly to transnational financial stability; the ongoing debt-crisis might worsen without the Fund's intervention in support of states whose human rights records are far from irreproachable, resulting arguably in a decline in the environment affecting socio-economic and even civil-political rights. Similarly, the vital financial role of the multilateral banks in Third World development cannot be denied, once again impacting significantly upon national conditions for the respect of human rights. The severance of multilateral financing to states in serious violation of fundamental rights may exacerbate the material deprivation of the very people whose welfare is at stake here. Nor can assurances be tendered over the objectivity and ideological neutrality of the application of rights-criteria in funding decisions; charges of political partiality and meddling in sovereign affairs may be levelled against institutions and governments in that context.

With reference to the stabilisation and development functions of the Fund and the banks, however, the argument here is that assistance to egregious violators may generate consequences that outweigh the functional considerations; further, that governments in gross and systematic violation of human rights tend also to undermine financial confidence in their own economies. Exemplifying the latter contention are the expe riences of Argentina in the late 1970s and early 1980s (when thousands 'disappeared' under martial law, while the

national debt soared amidst widespread international concern over the politico-economic situation), and of Guatemala under the Garcia regime in the 1978-81 period (when the extreme violence and repression by the army discouraged foreign investment, creating a severe economic crisis).(50)It has also been observed that the IMF's substantial assistance to South Africa between 1976 and 1982 contributed to the 'stabilisation' of the apartheid system, while the post-1983 level of national unrest has severly damaged external confidence in the economy, rendering the Botha government more receptive to proposals for systemic change.(51)

United States Congressman Tom Harkin observed in 1977 with respect to the implications of conservative economic policies by multlateral institutions on client-governments:

> "How does a regime enforce such conservative fiscal policies ? It enforces them by repression - by union busting, mass arrests, murder, torture, detention without charge. The way in which foreign policy has been molded by the international public and private banking community, in our name, with our money, and largely without accountability is not divorced from the question of human rights. We must begin to understand and acknowledge precisely, what role these lending institutions have played in bolstering regimes who have the 'honorable intention' of repaying international debts by any means necessary - including the destruction of legal and political institutions and all the violations of human rights I have just mentioned." (52)

Since the multilateral banks (unlike the Fund) generally address medium- and long-term national economic needs, their operations would appear to be more conducive to the application of rights-criteria. Clearly, the project-related assistance extended by these institutions would be more susceptible to a human rights-impact evaluation in each case. However, the total

absence of rights-criteria in IMF policies -whether express or de facto - is no more compatible with the Fund's vital international role and status as a specialized agency of the United Nations, than are the present operations of the World Bank and its regional counterparts.

In view of the existence of an established legal regime of international human rights whose implementation other multilateral bodies have undertaken - despite accusations of ideological bias and intervention in sovereign affairs - the financial institutions in question scarcely merit exceptional treatment in this regard. A focus on instances of gross and systematic violations by potential client-governments - as attested to by independent reports from non-governmental organisations as well as the United Nations Commission on Human Rights - would curtail prospective problems relating to impartiality, while advancing the transnational promotion of human rights.

Significantly, the United States Congress enacted legislation in the mid-1970s (supplemented by further regulations in the 1980s) requiring that country's representatives at the multilateral development banks to oppose funding to countries engaging in a consistent pattern of gross violations of human rights (thus concentrating on the worst cases).(53) The legislation considers, however, "the extent to which the economic assistance ... directly benefits the needy people in the recepient country." A preference is also

expressed for "assistance to projects which address basic human needs for the people of the recepient country."

Regrettably, though the enactment invokes internationally recognised standards and the familiar United Nations' concept of a "consistent pattern of gross violations" thereof,(54) the record of implementation under the Carter and Reagan Administrations has been highly inconsistent in both respects.(55) Specific instances of uneven application of the legislation will be considered in relation to the question of multilateral assistance to Central America and South Africa below. Nevertheless, Congressional recognition of the nexus between international lending and human rights conduct amongst recepient governments through the legislation is salutary, and remains the law of the land, capable of improved future enforcement.

United States bilateral assistance policies (economic as well as military) are likewise subject to rights-criteria, as will be seen below, evincing an important consistency between multilateral and bilateral approaches to foreign assistance. It is no less contradictory for states to indiscriminately support multilateral aid to violating governments while denouncing their conduct and denying them bilateral assistance, than it is for multilateral financial institutions to assist governments whose human rights behaviour is condemned by the United Nations.

Until the incorporation of appropriate rights-criteria in

their charters by the IMF, the World Bank and regional development institutions, it remains for national governments to adopt suitable standards in their voting-policies there, pursuant to the American example. The absence of institutional objections to United States legislation in this respect - notwithstanding the provisions of their 'Articles of Agreement' - would appear to refute interpretations of the latter that suggest the inadmissibility of the national initiatives recommended here.

III. Operative Bilateral Relations With Severe Violators

1. 'Friendly International Relations'

While multilateral approaches to human rights policy-making afford somewhat more 'detached' and 'objective' means of exerting national effort (at least in the collective institutional context), prevailing mechanisms for channelling that effort, as indicated above, remain largely inchoate. The instrumentalities of bilateral relations - from diplomacy and commerce to military assistance - lend themselves better to prompt and incisive action in implementing rights-concerns (albeit not without attendant risks). In any case, much of the prospect of successful multilateralism is patently conditional upon sustained co-ordination at the bilateral level: states can scarcely, for example, collectively denounce officially sanctioned mass killings in State A, yet extend bilateral military assistance to its government without being being accountable under the international rights-regime.

The readiness of a state to alter 'normal' relations with another in the cause of human rights will undoubtedly depend on perceptions of national interest.(56) One is entitled to question whether the perceived interests and realities affecting inter-state relations correspond to a humane appreciation of prevailing conditions, in accordance with relevant legal-political and moral norms.(57) Under the 1970 Declaration on Principles of International Law Concerning Friendly Relations, the "duty of States to co-operate with one another" (according to the United Nations' Charter) encompasses

not only the "economic, social, cultural, technical and trade fields", but also "promotion of universal respect for, and observance of, human rights and fundamental freedoms".(58) Implicitly, "the various spheres of international relations" (as per the Declaration) must interface in keeping with germane principles of international law, including those of sovereign equality, nonintervention, nonuse of force, and fundamental human rights and freedoms.

Two areas of bilateral policy, concerning respectively economic (including commercial) and military relations, raise a number of substantive questions here that merit distinct consideration (see sub-sections 2 and 3 below). This segment addresses aspects of 'friendly relations' concerning diplomatic and socio-cultural matters as they affect rights policymaking and implementation, including applicable principles of international law referred to above.

Inter-state co-operation, qua normative obligation, is predicated under the 1970 Declaration on Friendly Relations upon the need "to maintain international peace and security, and to promote international economic stability and progress,the general welfare of nations and international co-operation free from discrimination based on (political, economic and social) differences."(59) Yet the functional value attached to such components of co-operation as diplomatic relations, inter-governmental visits, and socio-cultural and technological exchanges, is accompanied by their symbolic

significance in various contexts. These and other forms of association with governments that are serious human rights violators may be widely perceived as condoning the violations (incurring 'guilt by association').

Thus sporting links maintained by Australia, Britain and New Zealand with with South Africa in the 1960s and 70s (especially in cricket and rugby) gave considerable offence to African, Caribbean and South Asian nations, which saw in the relations an insensitivity to the plight of non-whites under apartheid.(60) The Commonwealth was acutely divided and threatened with disintegration as a consequence; the 1978 Edmonton Games were threatened with a protest boycott, a situation that repeated itself in 1986, with most Afro-Asian-Caribbean states declining to participate in the Edinburgh Games.(61) It will be recalled as well that the apartheid question prompted a boycott of the 1976 Olympic Games in Montreal, while the Soviet invasion of Afghanistan provoked the absence of the United States' team at the 1980 Moscow Olympics.(62) International sport today has indisputably acquired an enhanced political symbolism to which human rights policy must remain sensitive.

In a different context, the intimacy of governmental relations between successive American administrations and the Somoza government in Nicaragua, or that of Ferdinand Marcos in the Phillipines, was interpreted by many within and outside the United States as callous indifference to the longstanding human rights violations for which those leaders were responsible.(63)

This perception related not only to actual American economic and military support for the regimes in question, but more importantly here, to the visibly friendly treatment accorded by senior administration officials to both leaders.(64)

Where national geopolitical and economic interests constrain the capacity of governments to dissociate themselves from serious violators, then such relations as do subsist might serve as conduits for pressure on behalf of constructive change. An obvious example is the linkage between detente and human rights issues, which has featured in Soviet-American or East-West relations on occasion. While the realities of the nuclear age render imperative the need for active dialogue between the superpowers, serious repression in and by the latter cannot justifiably be disregarded in the process. The Helsinki Final Act of the Conference on Security and Co-operation in Europe (CSCE) attests to the currency of the preceding linkage, albeit reflecting a mixed record of 'reciprocity' between human rights and other political questions.(65)

A case may be argued for utilising the range of bilateral instrumentalities to consistently preserve contact with human rights violators in all situations - short of 'friendly' relations in any affirmative sense - on the rationale that isolation endangers the victims more than the perpetrators concerned. Illustrative is the effective international 'quarantine' of Kampuchea (Cambodia) under the Pol Pot

government between 1975 and 1978, when large-scale genocide was subsequently found to have occured.(66) The subsistence of selective external contacts (such as diplomatic relations and occasional governmen tal visits) with a larger group of states might have influenced the outcome of events in Kampuchea, at least through wider publicity of the acts of mass killing.(67)

The primary difficulty with the 'consistent contact' argument lies in the narrow margin between 'neutral' and 'friendly' relations. No objective means avails of determining whether the subsistence of such contacts actually serves humanitarian purposes (other than perhaps publicising the violations where 'news blackouts' operate). Rather, such contacts (not least diplomatic relations) may be construed as legitimating acts on behalf of the violating regime, under cover of 'functional' ties.(68) Without, therefore, denying the validity of this line of reasoning in specific instances, its general application must be regarded with skepticism.

Finally, with respect to the principles of international law concerning nonintervention in sovereign affairs and inter-state co- operation in transnational matters (as per the 1970 Declaration adverted to above), their application to the diplomatic and socio-cultural policy indices suggested above would not appear to entail legal conflict. As indicated earlier, the internationalisation of concern over the implementation of recognised norms of human rights supervenes the 'domestic jurisdiction' principle; the peaceful bilateral

measures under consideration here constitute legitimate instruments of promotion of those norms in bilateral relations.(69) Equally, the fundamental character of human rights rules within the corpus of international law - especially in connexion with jus cogens principles affecting the right to life and security - demands proper recognition in inter-state matters, as recognised in the articulation of the principle of co-operation in the 1970 Declaration (consistent also with the demands of the regime of international human rights law, in conjunction with norms of morality and political interest alike).

2. Economic and Commercial Relations

The instrumentality of bilateral trade and commercial relations constitutes, in most situations, the ultimate criterion of national commitment to rights-orientation in foreign policy. At stake are issues concerning the perceived 'vital interests' of the nation, including its economic independence.(70) Relatedly, foreign economic assistance may serve an important function in fostering trade and commerce, as well as advancing larger national interests in transnational stability and material well-being. The spectrum of bilateral and multilateral ties in the present context also encompasses tourism, private bank loans and trade promotion activities.

The foregoing may concurrently entail support - whether direct or oblique - for 'partner' governments in gross and systematic violation of human rights. Further, the 'guilt by association' question raised earlier is frequently seen as especially relevant in respect of bilateral trade and corporate investment, as well as of economic assistance, relationships considered as fostering 'unjust enrichment' vis-a-vis situations of serious human rights abuse.

It may be recalled that in considering the juridical rationales for an international human rights foreign policy, reference was made to the implications of state-complicity in violations by partner states, as well as to norms requiring deterrent action through peaceful policy measures.(71) This section examines, firstly, pertinent aspects of the relationship between respect for human rights and the conduct

of economic and trade relations, then considers various strategies for rights-orientation in such relations; finally, the legal implications of the latter, in the context of prevailing norms affecting inter-state relations, will be addressed.

From the perspective of a government that systematically violates human rights, the bilateral relations under consideration can serve several expedient purposes. Where the violations are institutionalised and characterise the mode of governance - as with apartheid in South Africa - trade and foreign investment may sustain the fundamental viability of the system. Elemental forces that perpetuate the state economy - not only domestic demand and supply but also, in a highly inter-dependent world, imports, exports, credit and investment - help preserve the status quo (or variations thereof controlled by the ruling elites). The presence of foreign corporations and the availability of multilateral and private consortium financing lend a degree of credibility and legitimacy to that status quo, in addition to their functional role in the economy.

More specifically, industries and projects of strategic importance within the violating system - from the manufacture of military hardware to the construction of bridges - may be directly facilitated by foreign investment and assistance (or even by forms of trade). Differently, 'dual purpose' items - ostensibly civilian-use commodities susceptible to military

conversion - might feature in bilateral trade, manifestly contributing to repressive practices in the violating state; this and cognate issues of military commerce are considered in sub-section 3 below.

Recognition of the foregoing linkages, as well as the desire to express strong disapproval of rights-violations by another government, has induced states to undertake commercial sanctions (partial or total, unilateral or multilateral) in particular historical situations.(72) Recent examples include United States' sanctions against Poland (over the imposition of martial law in 1981) and the Soviet Union (over the invasion of Afghanistan in 1979)(73), and United Nations measures agaianst Rhodesia (Zimbabwe) in 1965 (over the persistence of the colonial regime under Ian Smith).(74) The record of effectiveness of these and other international sanctions is generally considered to be mixed at best; target-states have often been successful in circumventing the blockades and boycotts imposed through the co-operation of other states, though the symbolic impact of such measures cannot be denied.(75)

However, from the standpoint of international human rights norms, the primary issue in the present context is avoidance of external complicity in violations through bilateral economic channels, and secondly, the utilisation of the latter to deter the violations.(76) Insofar as the bilateral relations in question implicate external parties, the efficacy of sanctions

is a subsidiary matter, and cannot be raised to justify inaction. The symbolic value of sanctions also represents a potential deterrent measure, supplemented by the actual degree of 'penalisation' (economic and political) of the target-state.

Without underestimating the practical difficulties entailed in successfully applying rights-related economic sanctions, including the question of dependence upon the target-state for items of vital importance to the sanctioning states, it is noteworthy that the issue of international sanctions arises only in connexion with situations of serious violations of fundamental rights and freedoms, where 'lesser' measures have failed. Confronted with the prospect of transnational instability stemming from the violations, and of national complicity therein, and given the absence of suitable mechanisms for collective rights-related sanctions (other than on an ad hoc basis), states must place the practical problems in appropriate perspective.

A somewhat less 'demanding' recourse for states in the economic sphere relates to the instrumentality of foreign assistance. Much less susceptible to protestations over inter-dependence and effectiveness in furthering human rights policy objectives, bilateral assistance potentially bears heavy responsibility in compounding or deterring violations by recepient governments. The earlier analysis in respect of causal relationships between multilateral assistance and rights-conduct applies equally to bilateral aid, with the

additional consideration of greater national discretion being available in the present context.

It is instructive to consider two distinct national approaches to rights-orientation in foreign economic assistance, those of the Netherlands and the United States respectively, nations ranking among the ten major donors of development aid.(77) Dutch legislation provides that foreign assistance must be guided by "the degree of poverty" and "the extent to which a social and political structure is present which will make possible a policy truly designed to improve the situation within the country and will benefit the whole community"; "particular attention will also be paid to the policy pursued with regard to human rights."(78)

In an elaboration of the legislative principles above, then Netherlands Minister for Development Co-operation, J.P. Plonk, affirmed that "fairer social structures" were a fundamental concern, and that aid could not be "neutral in character":

> "Development aid must set in motion processes through which the poor and the oppressed can achieve freedom and the right to a say in their own affairs. This means in turn that development aid must benefit people, and not be geared to powerful interests ... Working for human rights involves people within societies, and may affect the foundations of those societies ..."(79)

Accordingly, the Minister added,

> "We must try to use channels which reach people directly, and for this reason we attach great importance in our policies on human rights and development aid to national and international non-governmental organisations active in the promotion of justice and freedom. The view is gaining ground, and it is supported by practical experience, that in situations of oppression,

> exploitation and persecution, the dominant political, economic and military powers are not suitable instruments for bringing about reform ..."(80)

The policy emphasis upon progressive social structures and a balanced consideration of civil-political and socio-economic rights sets a high standard of qualification for Dutch assistance, tempered by the search for less formal and more direct means of assistance to the victims of social and political injustice. A similar balance is apparent ly sought in relevant United States legislation, as evinced in the 1961 Foreign Assistance Act, section 116(a)(the 'Harkin Amendment' of 1975):

> "No assistance may be provided under this part to the government of any country which engages in a consistent pattern of gross violations of internationally recognised human rights, including torture or cruel, inhuman, or degrading treatment or punishment, prolonged detention without charges or other flagrant denial to life, liberty, and the security of person, unless such assistance will directly benifit the needy people in such country."(81)

Although the important exception in favour of "needy people" in recipient states, and the reference to "violations of internationally recognised human rights" suggest equal concern for civil-political and socio-economic rights and freedoms, the list of specific violations cited belongs entirely to the former category. The absence of criteria apropos social structures in recipient states accentuates the stress on individual civil rights, reflecting traditional national perceptions and inclinations in this regard.(82)

Whatever the relative political merits of the respective

Dutch and American approaches, their anchoring in national legislation is especially salutory. Amidst variations in executive enthusiasm over the implementation of human rights priorities in foreign policy, parliament is enabled by relevant legislation to exercise appropriate influence (in accordance with the prevailing political system).(83)

Germane to the foregoing as well as other strategies for rights- orien tation in bilateral policy is their compatability with norms of international law prohibiting intervention in sovereign affairs. In reiterating the nonintervention principle, the 1970 Declaration on Friendly Relations (embodying "basic principles of international law") provides:

> "No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind ... Every State has an inalienable right to choose its political, economic, social and cultural systems, without interference in any form by another State."(84)

It might be contended, therefore, that commercial, foreign aid, and related economic measures designed "to coerce another State" into changing its policies (affecting national human rights conditions), indeed seeking structural reform, according to the Netherlands' policy objectives discussed above, constitutes a violation of the principle of nonintervention. (85) However, economic sanctions in furtherance of universal respect for fundamental rights and freedoms (a norm proclaimed in the 1970 Declaration itself) cannot amount to the

"subordination" of another state's sovereignty, nor to an attempt at securing "advantages" from that state. Recalling the "obligatory character" of international human rights norms, Prof. Oscar Schachter observes in this connexion:

> "Insofar as states are under that international obligation, observance of human rights cannot be regarded as exclusively a domestic matter and lawful measures to induce compliance would not entail a subordination of sovereign rights in regard to internal affairs ... (D)enial of aid and public expressions of disapproval are not, in and of themselves, unlawful measures, and they surely do not become unlawful when they are used to induce compliance with an international obligation."(86)

Nor can the right of states to choose their "political, economic, social and cultural systems" (and to determine national policy in those fields) supervene the obligation to respect basic principles of the Charter of the United Nations, upon which the provisions of the Declaration are predicated. On the contrary, as submitted earlier, the <u>failure</u> of states to undertake meaningful action - including bilateral economic measures - to dissociate themselves from human rights violations, and to deter the commital of such acts (within applicable constraints), constitutes a dereliction of normative obligations under international law.(87)

3. Military Relations

Bilateral military ties encompass an array of prospective dealings ranging from formal alliances and the maintenance of strategic bases to the supply of combat and police equipment. More than any other element of bilateral relations, military-related commerce and assistance may be construed as directly implicating states in external violations of human rights, notwithstanding considerations of 'national security' or other strategic factors. While the precise impact of military ties upon human rights conditions will differ from situation to situation, potential inter-relationships fall within three general caregorisations (normative as well as empirical).

Firstly, equipment and training extended as part of military assistance may directly facilitate repressive practices by the recepient government; included here is the supply of dual purpose items such as aircraft and nuclear reactors, capable of conversion from civilian to military application. United States' supplies of weapons and training to the Nicaraguan National Guard under President Somoza, to be foreseeably directed against all opponents of a repressive regime, was a case in point;(88) Canada's export of 'civilian-use' nuclear reactors to Argentina(1977) and South Korea(1982) also attracted serious apprehension over regional nuclear weapons-proliferation, both regimes being severe human rights violators.(89)

A second category of causal relationships concerns the

structuring of authoritarian institutions and military-industrial complexes among client-states, through extensive and sustained military ties with major powers. Developments in this connexion would include a growing demand for equipment not assuaged by imports and assistance, personnel training at foreign military academies, and the availability of sophisticated technology from abroad.(90) The result is often a profound disregard for socio-economic and civil-political rights (or the reinforcementof existing authoritarian tendencies), particularly in Third World client- nations. The pervasive development of such authoritarian structures in North Korea, a major beneficiary of military assistance from the Soviet Union,(91) and in Iran under Shah Reza Pahlavi, where repressive institutions received support from successive United States administrations,(92) is illustrative.

Finally, intimate military relations with an influential member of the international community may impart (as with bilateral economic connexions) domestic as well as international legitimacy, or at least a degree of respectability, to a regime in gross violation of human rights, prospectively contributing to the preservation of the status quo. States offering military assistance to such violators can be perceived as condoning their behaviour, and as supportive of them against internal and external opponents alike (with armed force if necessary). A classic instance is provided by the situation prevailing in Poland since the 1979 civil unrest (involving, amongst various forces for change, the 'Solidarity'

trade union), when the Soviet Union indicated its support for the martial law regime,(93) hence reinforcing the status quo.

Whether induced by the search for profits, geopolitical advantage or national security, the conduct of military relations with severe violators is fraught with possibilities of guilt by association; perceived gains from such relations are frequently offset by the collapse of 'partner' governments whose legitimacy cannot ultimately be assured without constructive change. Conflicts between 'security' and human rights priorities in foreign policymaking stem often from an expansive and militaristic interpretation of 'vital interests',(94) resulting effectively in a 'veto' over rights-related concerns.

Legislation in the United States - the largest transnational supplier of military equipment equipment and training (95)- has addressed the human rights implications of national security policy since 1976. Following longstanding Congressional pressure for rights- criteria in various spheres of foreign policy, the Foreign Assistance Act of 1961, as amended, conditioned bilateral military relations accordingly. Section 502B (a) of the Act provides:

> "(2)Except under circumstances specified in this section, no security assistance may be provided to any country the government of which engages in a consistent pattern of gross violations of internationally recognised human rights. Security assistance may not be provided to the police, domestic intelligence, or similar law enforcement forces ... unless the President certifies in writing ... that extraordinary circumstances exist warranting the provision of such assistance ..."(96)

The provision further directs the President "to formulate and conduct international security assistance programs of the United States in a manner which will promote and advance human rights and avoid identification of the United States ... with governments which deny to their people internationally recognised human rights ..."(97) "Security assistance" under the legislation includes "military assistance", "military education and training", "sales of defense articles or services", and licensing of exports of such articles or services.(98)

In more general terms, the International Security and Development Co-operation Act of 1981 "finds that the security of the United States and other countries is increasingly affected by a broad range of global problems including ... desperate poverty; sickness; population pressures ... "(99) The Act therefore provides "that the Nation's understanding of global and national security must be broad enough to include the problems cited ... and that adequate protection of the security of the United States requires effective action on these global problems."(100)

In view of the subsequent military association of the United States with rights-violations in inter alia, El Salvador, the Phillipines and South Korea, the effectiveness of the preceding legislation may well be questioned.(101) The enactments have provided, nonetheless, important leverage for rights-related pressures in Congress and amidst general public opinion.(102) National foreign policy-orientation can thus be

subjected to specific international human rights criteria embedded in national law, not invoked as political obstacles *simpliciter* to security and strategic priorities.

It is acknowledged here that as an indicator of rights-orientation in policy-making, bilateral military relations raise *bona fide* issues of complexity involving national defence and security, as well as transnational stability, matters not irrelevant to the environment for the enjoyment of human rights. Nonetheless, given the potential damage to international rights conditions that may stem directly from military assistance and commerce, policies in this regard demand an appraisal by the highest pertinent standards of international law and morality. In considering empirically these standards, the aforementioned experience of the United States (however flawed) furnishes an important yardstick.

B. THE HUMAN RIGHTS POLICY-MAKING ENVIRONMENT - PRINCIPAL ACTORS AND PROCESSES

Applying the foregoing rights-orientation criteria to a state's external relations requires an examination not only of the pertinent normative and national interest contexts, but also of the socio-political environment in which policy issues are addressed. Envisaged here is the modus operandi of the decision-making process, involving various governmental elements (chiefly the executive and legislature), the judicial process, and attentive publics (non-governmental organisations, the media, special interest groups). In the roles and inputs of these actors, the constant interplay of real (or operative) and and perceived (or psychological) factors can influence decisively the outcome of policy questions.

The scope and orientation of this dissertation do not permit exhaustive content analysis in respect of the potentially extensive and complex contributions of each actor in human rights policy-making. Nor can the modal intricacies of the policy process be addressed in the detail appropriate to political science studies. Rather, the most salient aspects of the respective roles and processes will be focussed upon, mindful of prospective variations among political systems in that regard. This facilitates,in any case, the flexible application of the ensuing critique to multifarious situations of national human rights foreign policy (in keeping with the proposed objective and 'universal' character of the simple matrix), while preserving the essentially normative concerns of the present study.

1. Governmental Actors

While the actual distribution of functions and powers in foreign policy-making among institutions of government depends on national constitutional arrangements, the executive and legislature, however constituted, traditionally exercise the dominant roles. In federal political systems (such as Canada, India, Switzerland or the United States),'provincial' or 'state' counterparts of those two institutional actors may influence, though seldom determine, national foreign policy decisions.(103) Neither actor should, of course, be considered monolithic in its functions: each is contoured by national rules and conventions that variously emphasize the roles of the Prime Minister or President, the 'inner cabinet', the speaker in parliament,the leader of the opposition, parliamentary commitees, and so on.

With particular reference to human rights foreign policy-making, the executive generally enjoys a vital role in at least three respects: i> formally, in affirming the state's support for relevant international instruments (albeit possibly requiring additional legislative confirmation or ratification); ii> as the ultimate decision-maker on policy-issues, in the implementation of human rights obligations through specific aspects of external relations; iii> in the capacity to launch initiatives at the national and transnational levels, focussing attention on rights-issues as part of the political agenda.

The activist role of the Carter Administration in United States human rights foreign relations during 1977-78 provides

evidence of the scope for executive action, subject to systemic constraints.(104) Admittedly, the Administration could draw upon national tradition, legal and political, in support of the assertion of civil rights and democratic freedoms vis-a-vis governmental authority,(105) as well as upon the nation's status as a dominant power in transnational relations. Yet the Administration also faced the challenge of integrating a rights- oriented foreign policy with the perceived, widespread strategic and other national interests of a superpower, an undertaking which (by most accounts) proved ultimately frustrating.(106) Arguably, executive actors among lesser powers are comparatively better placed to effect the 'integrated' pursuit of a human rights foreign policy, depending upon national sensitivity and commitment to the principles in question.(107)

Legislative support and co-ordination within prevailing constitutional arrangements may form a critical element in the development of rights-orientation in foreign policy, as evinced once again by the American experience in the 1970s. Congressional hearings in the post-Vietnam era on human rights, headed by Representative Donald M. Fraser, set in motion national concern for the implications of American foreign policy decisions, resulting in extensive legislation affecting economic and military assistance to human rights violators.(108) As Salzburg and Young conclude in their study of the parliamentary contribution to American human rights

foreign policy-making:

> "It is clear that the Congress is capable of taking an active role in the implementation and protection of human rights ... The parliamentary body has the opportunity to legislate the general guidelines for foreign policy. Looking back to 1973, it appears that Congress was at first looking for just that - the establishment of guidelines. However, the reluctance of the executive branch to accomodate congressional pressure led to firmer and more specific legislative mandates ... This serves as an example of the role a legislative body may play. Such a body, through controls over the purse and through legislative mandate can modify the behaviour of the government in its representations to the international community."(109)

Hence the groundwork for the Carter Administration's activism was in place by 1976, in terms not only of appropriate facilitatory mechanisms, but also of conducive public opinion.

Indeed, the degree of institutionalisation of foreign policy concern over international human rights issues - as expressed in the creation of formal governmental portfolios and offices facilitating rights-related input within the decisionmaking process - serves as an index of national commitment to policy implementation. In conjunction with legislation linking human rights criteria and facets of a state's external relations, such institutionalisation might well be considered imperative for the entrenchment of rights-orientation in national foreign policy.

It will be recalled that parliamentary initiatives apropos human rights criteria in Canada's relations with Latin America and the Caribbean in 1981-82 likewise sought to influence the Trudeau government's economic and political conduct,

particularly in Central America.(110) However, in the absence of legislative mechanisms and a sufficient mobilisation of public opinion, and given Parliament's relatively minor decision-making status in the foreign policy process in this country, the initiatives had a moderate impact in comparison with Congressional influence on rights-orientation in American policy.(111)

Finally it should be observed that, whether or not accorded a formal decision-making role in the present context, bureaucratic actors bear upon policy outcomes in several ways. Various government departments, representing competing constituencies for policy priorities, will impact differently upon human rights concerns. Whether through information and analysis on issues supplied to decision-makers; the process of competing for budgetary allocations among departments; or the actual mode of executing specific policies, bureacuratic input in foreign policy is not to be underestimated. Certainly where that input is institutionalised, the bureaucratic role may be critical in the development and implementation of a human rights policy.(112)

The question of the analytical organisation of relevant data concerning governmental (and non-governmental) roles in human rights policy remains to be addressed in Section C below.

2. Note on the Role of the Judicial System

The principle of judicial independence from governmental and other public actors requires national courts (and even judges in their private capacity) to preserve impartiality towards the political process, precluding their active or voluntary participation therein. However, depending upon the precise functional scope of judicial powers, as determined by the national constitution, the courts demonstrably exert a vital influence upon policymaking, domestic as well as foreign. Some observations on the nature of that influence in the international human rights sphere would seem apposite, and will inform the application of the proposed policy critique through this dissertation.

Axiomatically, the courts' interpretation of their own jurisdiction and role in questions engaging the respective policymaking functions of other other actors, particularly the executive and legislature, may impact upon the policy process. A wide interpretation of the constitutional principle that questions of conflict between executive and legislative powers generally fall dehors the judicial purview (as part of the separation of powers doctrine), for example, can have far-reaching implications for prospective challenges against governmental policy action on human rights.(113) More specifically, empirical and normative considerations alike suggest three distinct avenues through which the judiciary can affect rights-policymaking, contingent upon the prevailing political system:

i> by ruling on challenges to governmental policy-decisions that allegedly contravene existing law (usually national constitutional provisions);

ii> by ruling on cases implicating international human rights principals (whether or not embodied in municipal law), thus supporting specific strategies of action by other policy-actors;

iii> by the review (where mandated by the constitution) of prevailing legislation concerning human rights foreign policy.

The well-established phenomenon of judicial activism in domestic public policy in the United States has, on occasion, extended to questions of international human rights observance within and outside the country. Of seminal interest here is the 1980 decision of the Court of Appeals in Filartiga v. Pena-Irala (adverted to earlier in the study), where a violation of customary international human rights law abroad - torture in Paraguay - was held justiciable under United States law.(114) In addition to contributing to the process of internationalisation of principles of human rights, Filartiga indicated to American policy-actors (governmental and public alike) the scope for national enforcement thereof, in furtherance of what the Court characterised as "the ageless dream to free all people from brutal violence."(115)

While Canadian courts have historically demonstrated limited willingness to apply rules of international law (whether conventional or customary) not clearly incorporated in

national legislation, (116) the adoption of the Charter of Rights and Freedoms (which implements in part Canada's international human rights obligations)(117) has stimulated much debate as to potential changes in jurisprudential orientation. Insofar as the latter reflects the influence of United Kingdom legal practice, it is noteworthy that the European Convention on Human Rights has been held directly applicable in British courts in several recent instances, notwithstanding the absence of legislative incorporation.(118) The operative norm there - in common with Canadian law - is the "presumption albeit rebuttable, that ... municipal law will be consistent with ... international obligations."(119) Coupled with the impact of American judicial tendencies noted above in respect of the 'creative' interpretation of constitutional provisions, a trend might yet emerge of increased Charter -based activism by the Canadian judiciary.(120)

3. Attentive Publics

This rubric connotes the segment of mass citizenry that remains responsive to public affairs in the period between elections (or otherwise on a more or less consistent basis); surveys indicate that only a fraction of the adult population actually falls within even a loose interpretation of the phrase.(121) 'Attentiveness' can be differentiated in accordance with the nature and intensity of interests at stake, the degree of organisation achieved by various publics, the amount of mobilisable political strength, and other criteria.

For present purposes, however, consideration will be limited to actors or publics visibly distinguished by their articulated interest in international human rights policy issues, viz. non-governmental human rights organisations (national and international alike), groups that respond in their own perceived interest to relevant foreign policy issues (business, chuch and ethnic groups, in the main), and the media (inasmuch as it reflects and influences the opinions of other actors).

Attentive publics interact with governmental policymakers in several vital respects. As a basic proposition, the latter seek public support in multiple forms in seeking to justify and advance their policy-positions as well as to remain in power. "Without support officials cannot be elected, dictators cannot dictate, opponents cannot oppose, policies cannot be implemented, goals cannot be achieved."(122) Thus in the domain of foreign policy, governmental actors will generally respond to attentive public pressures in proportion to the perceived degree of support required therefrom, given such factors as the strength of particular publics and the likelihood of its exertion in specific situations, and the significance attached by policymakers to the substantive issues at hand.(123)

Although human rights issues ipso facto concern the 'fundamental interests' of all citizens, the formulation and conduct of rights-related foreign policy is subject to all the standard dynamics of the policy process, including contestation among questions of, inter alia, national economic and security interests, ideology, and special group concerns (especially

business and ethnic). "Within the constraints of that process, decision-makers apply human rights pragmatically (as trade-offs), inconsistently (in response to the pressure of demands) and rhetorically (by choice of definition and emphasis)."(124)

For many reasons, it is obvious that foreign policymaking cannot be a wholly public exercise on the part of governmental actors. Cardinally, the need for confidentiality and dispatch curtails the extent to which participation by the general public is practicable. Without vital undisclosed information, the public is often unable to exercise proper judgement. Further, in view of the consistency and continuity required through much of the policy process, the desirability of such participation by an inherently 'capricious' public may be questioned.(125)

A number of essential realities, however, militate against the tendency toward a pervasively closed approach to foreign policy in general, and human rights decision-making in particular. The distinction between 'foreign' and 'domestic' policy has become increasingly difficult to sustain in numerous issue-areas, not least in human rights.(126) If the legitimacy of public participation in issues of domestic policy is beyond dispute generally, then the onus of qualitatively distinguishing questions of foreign policy must repose with governmental actors. While general national publics might justifiably be considered insufficiently qualified to

meaningfully participate in the policy process, this is rather less so with regard to such attentive publics as non-governmental human rights organisations and church and ethnic groups. In addition, the merits of consistency and continuity in policymaking should be weighed against the prospect that it is being conducted contrary to essential public values and interests, without the knowledge and mandate of the citizenry that it may implicate in, for example, rights-violations abroad.

Palpably, the operative roles of public actors in policy-making differ significantly among political systems. Indeed, empirical evidence suggests that in the United States, where their influence is the most conspicuous and substantial, the actual policy-impact of even the more prominent attentive publics in the human rights field eludes reliable measurement.(127) Importantly, Congressional legislation on rights- criteria affecting foreign economic and security assistnce expressly requires the executive to consider pertinent investigations by (or access allowed in so doing to) such international organisations as Amnesty International, the International Commission of Jurists and the International Committee of the Red Cross.(128)

Notwithstanding the dominant influence of national political cultures upon the relative impact of public actors in human rights policymaking, the countervailing effect of increasing cross-national forces and public awareness vis-a-vis

spheres of rights-related activity demands recognition. Multinational corporations, religious establish ments and international NGOs (such as those cited in the aforementioned United States legislation), for instance, frequently conduct their 'lobbying' in roles that straddle national boundaries. A fortiori the global trend in the impact of broadcast and print media upon public opinion and foreign policymaking on transnational issues. News coverage of, inter alia, the American military role in Indochina, the Soviet invasion of Afghanistan, and events in South Africa (particularly since the 1976 Soweto uprising), galvanised mass perceptions of the issues at stake across the world, eliciting particular responses from national governmental actors.(129) Attentive publics with specific interests in those developments - including anti-interventionist groups in Europe and North America, Afghan refugee organisations in exile, and anti-apartheid activists advocating economic sanctions against South Africa - interacted vigourously with other actors in the foreign policy process, amidst enhanced media exposure and editorial support.(130)

It would seem quite appropriate that in the particular context of international human rights, a matter which intrinsically as well as normatively transcends sovereign boundaries, publics seeking to induce greater policy-compliance with fundamental obligations and aspirations should find their interests converging beyond national and regional confines.

Perhaps nowhere is this more crucial than in relation to societies that structurally circumscribe the freedom of non-governmental actors to participate meaningfully in the policy process, domestic or foreign.(131) The burden of facilitating the penetration of international human right law through traditional barriers of national culture, ideology and sovereignty requires, self-evidently, the combined efforts of concerned transnational actors, governmental and non-governmental alike, in the fostering of rights-orientation in foreign policy.

C. A PROPOSED FRAMEWORK FOR THE APPRAISAL OF INTERNATIONAL HUMAN RIGHTS-ORIENTATION IN FOREIGN POLICY

The foregoing components of a human rights policy critique - in terms of the declaratory and operative instrumentalities addressed in Part A, and the attendant national policymaking environment surveyed in Part B - are assembled below in a framework (or schema) that facilitates a comprehensive analytical perspective. As indicated in the methodological statement above, the ensuing simple matrix should be considered not as a set of 'compartments' for mechanical application, but rather as a systematic guide for a narrative appraisal of foreign policy-orientation.

In designing the simple matrix, a number of alternative analytical models proposed in relevant studies were considered, two of which merit specific, if brief mention.(132) Professor Richard Falk's assessment of "The Evolution of American Foreign Policy on Human Rights: 1945-1978" concludes with a "checklist" combining potential policy and implementation measures on the one hand, with policy-making fora or "settings" (diplomatic, governmental) on the other.(133) While recognising the "need to be sensitive to the secondary and tertiary, possibly unintended, effects of a human rights policy",(134) the checklist, though extensive, is not designed to reflect those effects. Indeed, the model is essentially static, inasmuch as interactions among the various components therein are not provided for in any systematic way.

Moreover, existing models relating specifically to human rights policy-making (including Falk's) focus exclusively upon

governmental roles in the process.(135) Given the tangible and increasing importance of NGOs, the newsmedia and other less 'traditional' actors - what Pratt characterises in the Canadian context as the "counter-consensus"(136) - in fostering 'official' rights-orientation, the framework proposed here will seek to incorporate that reality along the lines indicated in Part B above.

The emphasis in Brecher, Steinberg and Stein's "framework for research on foreign policy behavior", in contrast, is upon the "notion of flow and dynamic movement in a system which is constantly absorbing demands and channelling them into a policy machine which transforms these inputs into decisions or outputs."(137) In the present context, this notion serves to indicate not only pertinent feedback among policy actors (as intended by Brecher, et al),(138) but also some of the policy ramifications cited by Professor Falk. However, the emphasis throughout the framework is clearly behavioural, with a focus upon processes in foreign policy-making; the present critique adopts (as noted earlier) a normative approach, centered upon the realisation of particular (rights-related) values.(139)

In the matrix below, unilateral, bilateral and multilateral policy instrumentalities are arranged in an ascending hierarchy along the vertical axis, in accordance with the expected level of demands entailed upon their respective application. Thus, as explained earlier (see methodological statement), economic and military indices of rights-

orientation , for example are scaled or 'weighted' higher than unilateral or multilateral statements of policy simpliciter. However, consistent with the intention of presenting a fluid and adaptive critique of actual rights-policy situations, the 'weighting order' is to be considered variable as empirically appropriate.

With reference to the conduct of actors in the policy-making environment - arranged along the horizontal axis of the framework - several expository questions may be addressed in eliciting an overall understanding of the contributions of each actor, including the following:

i> What was/is the actual policy position, official and otherwise, adopted by the actor on particular issues, both substantively and in respect of suitable policy strategies attendant thereto ? (e.g. does the executive construe the poor condition of a minority in a foreign state as resulting from human rights violations by the presiding government, and if so, what policy action, if any, is deemed to be warranted by the executive in response ?)

ii> What justifications or rationalisations were suggested in support of the adopted positions, mindful of the actor's capacity to influence the external situation and other policy considerations ?

iii> In light of i> and ii> above, what inferences may be drawn as to the operative value attached to the human rights issues at hand by the actor ?

iv> What effective inputs from other actors and processes

can be regarded as having influenced i>, ii> and iii> above, and how does this reflect upon the overall system of decisionmaking ?

Within the broad framework of the proposed simple matrix, these questions will essentially inform the structuring of the empirical studies in Parts 2 and 3 below. It should be observed that while those studies address specific areas of Canadian external relations (from which patters of rights-orientation are to be inferred), the matrix may be applied comprehensively to a state's foreign policy as a whole. Equally, issue-areas in human rights foreign policy such as the transnational protection of refugees, the campaign against the practice of torture, and the implications of the arms race can be appraised within the proposed framework mutatis mutandis. (The critique would then be applied in terms of advancing objectives stemming from the issue-area in question, vis-a-vis the international community at large.)

Finally, the matrix imposes no constraints apropos the relevant time-frame for evaluating specific or comprehensive orientation toward human rights. It remains as susceptible to application over extended periods (14-16 years of Canadian external relations in the present context) as to more immediate situations in the foreign policy domain.

Table 1:2 Simple Matrix for Appraising Rights-Orientation in Foreign Policy(a)

INSTRUMENTALITIES (Ascending order of significance)	PRINCIPAL ACTORS & INTERACTIONS(b)				
	Executive Legislature	(Judiciary)	NGOs	Media	Other
Public Statements on Rights-Policy Issues					
Affirmation of International Rights-Instruments					
Initiatives at the UN & Regional Rights-Fora					
Action at International Financial Institutions					
Friendly Relations With Severe Rights-Violators					
Economic and Commercial Relations With Severe Rights-Violators					
Military Relations With Severe Rights-Violators					

(a) For interpretation see Sections B and C above.

(b) Left-hand distribution below reflects 'governmental' actors, right-hand distribution non-governmental actors.

D. NOTES

1. See particularly Johansen, The National Interest and the Human Interest (1980), where several empirical studies of United States foreign policy contrast "professed" and "implicit" values, within a perspective of "humane governance" (methodological remarks at 20-23). See also Carleton and Stohl,"The Foreign Policy of Human Rights: Rhetoric and Reality from Jimmy Carter to Ronald Reagan", Human Rights Quarterly, Vol.7 (1985), 205; Forsythe, Human Rights and World Politics (1983), Chapter 3, likewise contrasting rhetoric and reality in human rights policy-making.

2. See address by President Carter, United Nations, reprinted in New York Times, March 18,1977, A10; Bernard Gwertzman,"Carter Urges U.N. To Step Up Efforts for Human Rights", New York Times, March 18, 1977, A1; Inaugural Address by President Carter , January 20, 1977, reprinted in 123 Congressional Record, S1131 (daily edition, January 20, 1977). Then Secretary of State Cyrus Vance's address on "Human Rights Policy" in April 1977 offered the most detailed description of the Administration's proposed program of action; seminally, basic socio-economic rights would be recognised among American foreign policy priorities together with tradional civil-political rights and liberties: Law Day Address at the University of Georgia, April 30, 1977; reprinted in Georgia Journal of International and Comparative Law, Vol.7 (1977), 223-29.

3. An achievement for which the Carter Administration has received credit despite the inconsistencies and limitations of its human rights policy. See American Association for the International Commission of Jurists (AAICJ), Human Rights and U.S. Foreign Policy - The First Decade 1973-1983 (1984), at 15-29, 31-34; Carleton and Stohl, supra note 1; Cohen,"The Carter Administration and the Southern Cone", Human Rights Quarterly, Vol.4 (1982), 212; Maechling,"Human Rights Dehumanised", Foreign Policy, No.52 (Fall 1983), 118; Forsythe, supra note 1.

4. This does not, of course, guarantee ultimate conformity with the threshold in all instances; it does make it probable that deviations therefrom will entail a definite cost to the government in question. See discussion in Introduction, supra, at Section 2, especially text to note 52.

5. Nuclear Tests (Australia v. France) and Nuclear Tests (New Zealand v. France), 1974 ICJ Rep. 253 and 457 respectively; at pp. 267-68, 472-73.

6. Ibid at 267, 472-73. Cf. Rubin, "The International Legal Effects of Unilateral Declarations", American Journal of International Law, Vol.71 (1977), 1 (questioning the juridical basis for the Court's finding).

7. See empirical study in Part 2, infra, at Section B:I:1.

8. A prime historical phenomenon in this regard has been the decolonisation movement, specifically qua a vindication of the collective right to self-determination.

9. Derian, "Human Rights in American Foreign Policy", Notre Dame Lawyer, Vol.55 (1979-80), 264, at 271. Derian's comments, however, were in the context of human rights being "a consistent part of (the Carter Administration's) official contacts with other governments", a circumstance she acknowledges to be uncharacteristic of previous administrations (at 271). See also remarks in the same vein by Canadian Secretary of State for External Affairs, Mark MacGuigan, in 1982: Department of External Affairs, Statements and Speeches (No.82/23), reproduced in the 'Appendices', infra.

10. Ibid. See also Vogelgesang, "Diplomacy of Human Rights", International Studies Quarterly, Vol.23:2 (June 1979), 216, at 219-220; Tonelson, "Human Rights: The Bias We Need", Foreign Policy, No.49 (Winter 1982-83), 52, at 69; Cohen, supra note 3, at 217-220.

11. One well-known instance of such 'compartmentalisation' of policy occured in respect of United States relations with Chile, when the American ambassador there broached human rights questions with officials of the Pinochet government in 1974. Then Secretary of State, Henry Kissinger, publicly instructed the envoy to "cut out the political science lectures", preferring that those questions not 'intrude' into 'normal' bilateral relations: New York Times, 27 September 1974; cited in Cohen, supra note 3, at 217.

12. See remarks in Introduction, supra, notes 53-55 and text thereto.

13. See citation at note 127, infra.

14. United States legislation conditioning economic and security assistance upon the human rights records of recepient states requires due account to be taken of relevant investigations by, or access permitted for that purpose to, international organisations such as Amnesty International, the International Commission of Jurists and the International Committee of the Red Cross: see infra note 128. The U.S. Department of State's annual Country Reports on Human Rights Practices specifically refer to such investigations and access among states with questionable human rights records. In addition, the leading international human rights organisations enjoy observer status with United Nations organs. It is not unexpected, therefore, that target- governments would attend to the findings of these organisations, even if only to contradict them. See, for example, the Guatemalan response to Amnesty International's campaign against atrocities in that country

under the Garcia and Rios Montt regimes, in Part 3 of dissertation, supra, at notes 142, 145 and accompanying text.

15. See Introduction, supra, at Section A:1.

16. Ibid, op. cit.

17. The majority of non-parties to the Covenants belong to the 'authoritarian Third World' category: see the discussion in Forsythe, supra note 1, at 70-87. On the failure of the United States to ratify, see especially Henkin, "Rights: American and Human", Columbia Law Review, Vol.79:3 (April 1979), 405, at 420-425; and United Nations Association (USA), United States Foreign Policy and Human Rights - Principles, Priorities and Practice (1979), at 39-42. On the general importance of strengthening the international legal regime through treaty-ratification, see Schachter, Nawaz and Fried, Toward Wider Acceptance of UN Treaties (1971).

18. Note that East bloc states have declined the concept of individual access to international rights adjudication embodied in the Optional Protocol. See generally Forsythe, supra note 1, at 70, 76.

19. See Introduction, supra, at Section A:1.

20. See generally Weston, Falk and D'Amato, International Law and World Order (1983), readings at 117-31; and Henkin, How Nations Behave (1979), Part 1("Law and International Behavior").

21. See generally citations at note 17, supra.

22. Part IV (Articles 16-25) of the Covenant essentially confines the review process to periodic progress reports by state-parties, and recommendations thereon by appropriate United Nations organs. This is perhaps inevitable in view of the programmatic character of the norms proclaimed, and the generality of some of the provisions; however, the operation of procedures under Part IV (and of rules adopted thereunder) offers limited encouragement over the scope for effective and expedient monitoring of national implementation. See especially Jonathan, "Human Rights Covenants", in Bernhardt (ed.), Encyclopaedia of Public International Law, Instalment 8 (1985), 297, at 298, 300-03.

23. The '1503 procedure' (see Introduction, supra at note 13) is of potentially far-reaching significance in allowing for individual petitions against "consistent patterns of gross violations of human rights and fundamental freedoms". But disagreement over its largely in camera operation (such as whether pending communications under the procedure precluded open debate on the same matters at the United Nations), along with the tendency of many governments to decry its application

as 'domestic intervention' has attenuated its effectiveness. See Zuijdwijk Petitioning the United Nations (1982), at 39-54; Cassesse,"Two United Nations Procedures for the Implementation of Human Rights - The Role that Lawyers Can Play Therein", in Tuttle (ed.), International Human Rights Law and Practice (1978), 39, at 43-45.

24. See Section A:I:2, supra. Among state-parties to the Protocol, however, its implementation must be taken seriously. See, for example, with specific reference to Canadian domestic policies on equality the complaint before the Human Rights Committee, Lovelace v. Canada, Communication No.24/1977 (previously R.6/24); and the Government's affirmative response thereto in 38 United Nations General Assembly, Official Records, Supplement No.40, 249 (UN doc.A/38/40(1983).

25. The European Convention for the Protection of human Rights and Fundamental Freedoms entered into force in September 1953, and has been ratified by 19 members of the Council of Europe, which sponsored the Convention. Article 25 confers locus standi before the Commission (established under Article 19) to "any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in this Convention, provided that the High Contracting Party against which the complaint has been lodged has declared that it recognises the competence of the Commission to receive such petitions." (14 states have accepted the Commission's competence thereunder). Upon accepting a petition, the Commission attempts a "friendly settlement" between the parties (Article 28(b)), failing which the matter is referred to the Committee of Ministers of the Council of Europe (Article 31), whose decisions are binding (Article 32). State- parties and the Commission may also refer the matter to the European Court of Human Rights (Article 48). The Commission's competence under Article 25 has been accepted by 14 states, all of which, along with France, have recognised the Court's jurisdiction under Article 48. On the scope of the Convention, its implementation record to-date, and the the operation of the Commission, see Henkin, Pugh, Schachter and Smit, International Law (1980), 817-822; Higgins,"The European Convention on Human Rights", in Meron (ed.), Human Rights in International Law: Legal and Policy Issues (1984), Vol.2, Chapter 13, at 495-549; Robertson, Human Rights in Europe (1977); Sohn and Buergenthal, International Protection of Human Rights (1973), Chapter VII; and Yearbook of the European Convention on Human Rights.

26. See Henkin, et al, supra note 25, at 820-21; Sohn and Buergenthal, supra note 25, at 1104-1137; Robertson, supra note 25, at 193-233; and Usher, European Court Practice (1983)(detailing the Court's working procedures).

27. The American Convention on Human Rights entered into force in 1979, upon receiving 11 ratifications (6 additional states

have since ratified). The operations of the Inter-American Commission (Articles 44- 51) and the Court of Human Rights (Articles 52-69) are identical in all essential respects to those of their European counterparts (supra note 26). See generally Henkin, et al, supra note 25, at 823-26; Sohn and Buergenthal, supra note 25, Chapter VIII; Buergenthal,"The Inter-American System for the Protection of Human Rights", in Meron, supra note 3, Vol.2, Chapter 12 (439-93); and the Annual Report of the Inter-American Commission on Human Rights (Washington, D.C.). On the steadily increasing jurisprudential authority of the Court of Human Rights, see especially See also on the prospective importance of regional arrangements Lillich and Newman, International Human Rights: Problems of Law and Policy (1979), 547-663; Nanda,"Implementation of Human Rights" Denver Journal of International Law and Policy, Vol. XXI:2 (1971), 307, especially observations at 335-36. Some of the implications for Canadian human rights policy from acquiring full membership in the OAS - where this country currently has observer status only - with particular reference to the activities of the IACHR, are addressed in Part 3, infra, at Sections B:2 and B:3.

28. Convenient text in International Legal Materials, Vol.14 (1975), 1292. The Final Act was signed in August 1975 by 33 European nations, Canada and the United States, following almost three years of deliberations. 'Basket 1' addresses matters of European security, and incorporates a "Declaration on Principles Guiding Relations between Participating States", including the principle of "Respect for human rights and fundamental freedoms". 'Basket II' provides for co-operation in the economic, environmental, scientific and technological fields, and refers also to "Questions Relating to Security and Co-operation in the Mediterranean". Finally, matters concerning human contacts, information, and cultural and educational co-operation and exchanges constitute 'Basket III', which in conjunction with relevant clauses of the "Declaration on Principles" represents the human rights dimension of the Act. See generally Buergenthal (ed.), Human Rights, International Law and the Helsinki Accord (1977)(contains text of the Act's human rights provisions); Crean, "European Security - The CSCE Final Act: Text and Commentary", in Behind the Headlines (Canadian Institute of International Affairs, Toronto), Vol.XXXV:2&3 (1976); Robertson,"The Helsinki Agreement and Human Rights", in Kommers and Loescher (eds.), Human Rights and American Foreign Policy (1979), 130; and the symposium on human rights aspects of the Helsinki Final Act in the Vanderbilt Journal of Transnational Law, Vol.13:2-3 (Spring-Summer 1980), 249. See further discussion of the CSCE process, with particular reference to the Canadian role therein, in Part 4 of dissertation, infra.

29. Follow-up meetings of the CSCE to review general progress on compliance occured in Belgrade (1977) and Madrid (1980-83), with a third scheduled for Vienna this year; specific human

rights reveiws were conducted in Ottawa (1985) and Berne (1986): see Appendix . The meetings have been highly politicised (perhaps inevitably) and often acrimonious, with limited success in actually undertaking inter-governmental assessments of mutual progress on implementation. However,the platform provided by the CSCE for focussed East-West dialogue on human rights and other issues remains a valuable asset not only to governments (particularly in connexion with the process of detente), but also to non-governmental organisations and interest groups. See especially Dimitrivic,"The Place of Helsinki on the Long Road to Human Rights", Vanderbilt Journal of Transnational Law, supra note 28, 253; Forsythe, supra note 1, at 18-20; Leary,"The Implementation of the Human Rights Provisions of the Helsinki Final Act - A Preliminary Assessment: 1975-1977", in Buergenthal (ed.), supra note 28, 111; Leary,"The Right of the Individual to Know and Act Upon His Rights and Duties: Monitoring Groups and the Helsinki Final Act", Vanderbilt Journal of Transnational Law, supra note 28, 375; Jeff Sallot,"West wants press at human rights talks", Globe and Mail, May 7, 1985, p.4.

30. On its own terms, the Final Act was ineligible "in whole or in part" for registration as a treaty under Article 102 of the Charter of the United Nations. It has been pursuasively argued, nonetheless, that the Act "as a whole falls within a special category of international legal instruments not anticipated by traditional definitions of the sources of international law - that is, non-binding, but directive texts which produce limited legal effects": Kiss and Dominick, "The International Legal Significance of the Human Rights Provisions of the Helsinki Final Act", Vanderbilt Journal of Transnational Law, supra note 28, 293, at 314-15; Schachter,"The Twilight Existence of Nonbinding International Agreements", American Journal of International Law, Vol.71 (1977), 296. See also Jonathan and Jacque,"Obligations Assumed by the Helsinki Signatories", in Buergenthal (ed.), note 28, supra 43, at 51-54.

31. Henkin,"Human Rights and 'Domestic Jurisdiction'", in Buergenthal (ed.), supra note 28, 21, at 30-31. Cf. Frowein,"The Interrelationship between the Helsinki Final Act, the International Covenants on Human Rights, and the European Convention on Human Rights", in Buergenthal (ed.), supra note 28, 71, at 77-80.

32. On the range of conventional remedies available under international law, see Brownlie, Principles of Public International Law (1966), Chpaters XXV and XXVI; on the role of national courts, see Section B:2, infra.

33. Security Council Res.418 (1977)(4 November 1977), adopted unanimously. Various forms of institutional sanctions are provided for by international organisations for enforcement of members' contractual obligations, including financial penalties and suspension or expulsion from the organisation. In addition,

de facto sanctioning may occur against recalcitrant states through ostracism or severe and widespread public denunciation, with ensuing negative ramifications such as diplomatic dissociation and loss of financial credit-standing. Clearly, de facto sanctions are particularly important in the sphere of human rights observance, given the absence of specific formal mechanisms for enforcement. See generally Brown-John, Multilateral Sanctions in International Law (1975), Chapter 2 and pp.357-60; Doxey,"Sanctions Revisited", International Journal, Vol. XXXI (1975-76), 53; Henkin, How Nations Behave (1979), at 24-26, 58-60 and 330-31; Henkin, The Rights of Man Today (1978), at 107-08.

34. See especially European Convention on Human Rights, Article 32, authorizing appropriate action in pursuance of binding decisions on complaints of rights violations, and Article 25, conditioning the competence to receive complaints upon state-consent. Likewise see American Convention on Human Rights, Articles 51 and 45; 'conditioning' is somewhat less stringent here (under Article 44), but the scope for enforcement is more limited (under Article 51), in comparison with the European Convention.

35. Such action falls within the purview of the Security Council, under Chpater VII of the UN Charter.

36. The Fund has been instrumental in the establishment of international centres for the treatment of torture victims in Canada, Denmark, France, the Netherlands and Sweden. See "Treatment of Torture Victims", Refugees (UNHCR), No.18 (June 1985), 33; Lelyveld,"In Denmark, Relief for the Tortured", New York Times, March 23,1986, A3.

37. The Economic and Social Council (ECOSOC) is authorised under Article 71 of the UN Charter to make appropriate arrangements for consultations with NGOs in areas within its mandate, including human rights. See United Nations, The United Nations and Human Rights (1978).

38. On the role of various UN organs and specialized agencies in the promotion and protection of human rights, see United Nations, Yearbook on Human Rights, and The United Nations and Human Rights, supra note 37.

39. Study of the Special Rapporteur of the Commission on Human Rights (Prince Sadruddin Aga Khan), Human Rights and Massive Exoduses (1982)(UN doc. E/CN.4/1503).

40. The notion of a High Commissioner's office to facilitate the implementation of international human rights originated in the early 1950s, though it was formally proposed a decade later by Costa Rica, following President John F. Kennedy's 1963 address to the UN General Assembly on the need for "new efforts ... if this Assembly's Declaration of Human Rights, now fifteen

years old, is to have full meaning." No effective action ensued, however, from the Costa Rican and other subsequent proposals. In 1977, the matter was revived by a diverse group of states, envisaging a somewhat bureaucratic and not particularly activist office (no individual petitions would be receivable; the Commissioner's mandate would be circumscribed by existing organic powers exercised by other UN bodies). With the Afro-Asian group generally opposed, however, the proposal failed by a small majority of votes in the Third Committee. Nonetheless, Canada and a number of other states have sought to maintain the question on the UN agenda. See Zuijdwijk, supra note 23, Chapter 11, detailing the history and substance of the various proposals; and Joyce, The New Politics of Human Rights (1978), 215-19.

41. See citations on multifarious UN activities in the promotion and protection of human rights at notes 37-38, supra.

42. The 1968 International Conference on Human Rights (held in Teheran) adopted a resolution on economic development and human rights which recognised, inter alia, "the close relationship between ... economic, fiscal and monetary measures, national or international", and "the universal enjoyment of human rights and fundamental freedoms": res. XVII (12 May 1968), Final Act of the International Conference on Human Rights (UN doc.A/CONF.32/41, at 14). That linkage was reiterated more recently in the context of the 'New International Economic Order' - proclaimed as "an essential element of the effective promotion of human rights and fundamental freedoms" - in UN General Assembly resolution 32/130 (16 December 1977).

43. Detailed descriptions of the scope of the activities of each institution appear in their respective annual reports. For a convenient summary, see Henkin, Pugh, Schachter and Smit, supra note 25, 1009-28.

44. Ibid.

45. IBRD, Articles of Agreement (as amended effective December 17,1965), Article 5, Sec.10. See also the identical provisions in the charters of the IDA (Article 5, Sec.6); and the Caribbean Development Bank (Article 35(2)).

46. IMF, Articles of Agreement (as amended effective July 28, 1969), Article V, Sec.3(c). Similarly, the Agreement Establishing the Inter-American Development Bank provides that "resources and facilities of the Bank shall be used exclusively to implement the purpose and functions enumerated in Article 1 of this Agreement ..." (Article 3, Section 1).

47. See Gisselquist (for the United Nations), International Monetary Fund Relations With South Africa (1981), at 13; discussed infra, Part 2, at 37-39.

48. Cited ibid, at 13-14; see also comments by Gisselquist at 14-15.

49. See, for example, Renate Pratt (for the Canadian Taskforce on the Churches and Corporate Responsibility), Human Rights and International Lending (1984), cautioning against the "temptation ... to make this equation, then deny the admissibility of political considerations in the IMF and dismiss human rights criteria on these grounds."(at 14). Others have argued that the international financial institutions are de facto politicised, rendering the technical objection to human rights criteria hypocritical. See further case-study on Central America (Part III), at Section C:4, infra. Cf. Schachter, "International Law Implications of U.S. Human Rights Policies", New York Law School Law Review, Vol.24 (1978), 63, at 83-84.

50. See Part 3 of dissertation, infra, at Sections A:I and A:II:2.

51. See Part 2 of dissertation, infra, at Section B:I:1.

52. United States, Congress, House, Subcommitee on International Development Institutions and Finance, of the Banking, Finance and Urban Affairs Committee, International Development Institutions Authorization: Hearings on Human Rights 5262, 95th Congress, 1st Sess., March 23, 1977, p.88.

53. International Financial Institutions Act of 1977, in particular Section 701 (the Harkin Amendment). For the background to the legislation, and its impact through the Ford, Carter and Reagan Administrations, see Curry and Royce (for Center for International Policy, Washington, DC), "Enforcing Human Rights: Congress and the Multilateral Banks", International Policy Report, February 1985; Morrell (for Center for International Policy), "Achievement of the 1970s: U.S. Human Rights Law and Policy", International Policy Report, November 1981; and Center for International Policy, "Victory Over Apartheid", International Policy Report, April 1984.

54. As conceived, for instance, in the ECOSOC's '1503 procedure' (see Introduction, supra, note 13).

55. See citations at note 53, supra.

56. See Introduction, supra, at Section A:1.

57. Ibid; see especially Johansen, supra note 1, setting forth a critique for 'humane governance' in foreign policy (at Chapter 1).

58. See Introduction, supra, at note 12 and accompanying text.

59. Ibid.

60. See, inter alia, South African Institute of Race Relations (Johannesburg), A Survey of Race Relations in South Africa, 1969 (1970), pp.251-55; Shepherd, Anti-Apartheid - Transnational Conflict and Western Policy in the Liberation of South Africa (1977), at 23.

61. "Mass boycott of Games threatened", The Times (London), July 10, 1986, 1; Christie,"Drizzle and protesters greet opening of 'Friendly Games'", The Globe and Mail, July 25, 1986, 1; Don Braid,"Games boycott recalls 1976 in Montreal", Gazette (Montreal), July 23, 1986, B3 (for a concise review of Olympic and Commonwealth Games boycotts over the past decade).

62. See Don Braid, supra note 61.

63. See, inter alia, Chomsky, 'Human Rights' and American Foreign Policy (1978), at 68-89; Forsythe, note 1, supra, at 118; Maechling, note 3, supra; Robert L. Bernstein,'10 Ways Reagan Can Oppose Tyranny', New York Times, April 4, 1986, A31. See also Orville H. Schell,'Carter on Rights - A Re-evaluation', New York Times, October 25, 1984, A27 ("It now seems evident that, although the Carter Administration may have alienated repressive military regimes by criticizing their human rights abuses, it produced long lasting friendships in countries where succesor governments are restoring democracy and respect for human rights.")

64. On the Somoza family's relations with United States officials, see Part 3 of dissertation, infra, at Section A:1. With reference to Ferdinand Marcos, Vice-President George Bush's toast in Manila to the former President's "adherence to democratic principles", and the Reagan Administration's willingness to extend refuge to him upon his deposition in 1986, speak for themselves. See generally Tonelson, "Human Rights: The Bias We Need", Foreign Policy, Vol.49 (Winter 1982-83), 52, at 57; Robert L. Bernstein,'10 Ways Reagan Can Oppose Tyranny', New York Times, April 4, 1986, A31. Cf. Jacoby,"The Reagan Turnaround on Human Rights", Foreign Affairs, Vol.64:5 (Summer 1986), 1066.

65. See note 28, supra. The combination of security and human rights issues within the Helsinki Accords is generally perceived as anchored in the process of detente. See, for example, Henkin, note 20, supra, at 116-17; Kiss and Dominick, note 30, supra, especially at 310, 315.

66. Estimates of the number of political killings over that period range from two to three million. See Shawcross The Quality of Mercy (-) Cambodia, Holocaust and Modern Conscience (1984); Lane, "Mass Killings By Governments", New York University Journal of International Law, Vol.12 (1979), 239, especially citations at footnotes 2 and 3. Luard, "Human Rights and Foreign Policy", International Affairs, Vol.56:4 (Autumn 1981), 579, cites "the most bestial violations of human rights

of any in recent in years" in Cambodia as an argument against isolating violators (at 599-600). He adds that "(t)he case for maintaining contacts, however oppressive the government, and however alienated its population, has always been accepted in relation to such countries as South Africa and the Soviet Union, both serious human rights offenders." (at 600) Luard does not indicate who has 'always accepted' this argument vis-a-vis South Africa; as for the Soviet Union, its superpower status surely renders the situation sui generis, no matter how regrettably so.

67. Ibid. It has been observed, however, that the Western community, including the Carter Administration, was generally aware of the Cambodian atrocities as early as the end of 1975, but failed to speak out for political reasons until 1978. See Shawcross, supra note 66; Buckley, "Human Rights and Foreign Policy: A Proposal", Foreign Affairs, Vol. 58:4 (Sprng 1980), 775, at 792.

68. This has certainly been a widespread perception in the international community generally of states maintaining significant relations with South Africa, particularly with reference to the policy of 'constructive engagement' undertaken by the United States and Britain. See, inter alia, 'America and South Africa' (cover story), The Economist, March 30, 1985, 17; Ungar and Vale,"Why Constructive Engagement Failed", Foreign Affairs, Vol.64:2 (Winter 1985/86), 234; 'Falling Short - Speaking all too softly, Reagan raises a South African ruckus' ('Special Report'), TIME, August 4, 1986, 10.

69. See notes 86-87 and accompanying text, infra.

70. See discussion in Introduction, supra, at Section A:2.

71. Ibid, at Section A:1.

72. See, inter alia, citations at note 33, supra.

73. 'When snctions make sense', The Economist, August 3, 1985, 59.

74. Security Council Resolution 217(1965)(November 20, 1965), urging states "to do their utmost" to sever economic relations with Rhodesia. For a detailed account of the international response to Smith's 'unilateral declaration of independence' (UDI) on November 11, 1965, see especially Brown-John, supra note 33, at Chapter 5 ("The Rhodesian Case"). See also note 33, supra.

75. See Doxey,"Do Sanctions Work?", International Perspectives, July/August 1982, 13; and Barber and Spicer,"Sanctions Against South Africa - Options for the West", International Affairs, Vol.55:3 (July 1979), 385; and citations at note 33, supra. Drawing on recent extensive studies on the efficacy of

sanctions, William Minter observes: "In general ... analysts tend to underestimate the effects of sanctions by concentrating on symbolic short-term rather than substantive long-term consequences and by stressing the isolated effects of single measures rather than cumulative impact, and the interaction of sanctions with other factors influencing economic and political confidence ... Rhodesian Prime Minister Ian Smith's white minority regime went beyond promises and began negotiating only in 1979, as the toll taken by sanctions and guerilla warfare mounted." "South Africa: Straight Talk on Sanctions", Foreign Policy, No.65 (Winter 1986/87), 43.

76. As argued in Introduction, supra, at Section 1.

77. This comparative assessment draws substantially upon Cassesse,"Foreign Economic Assistance and Human Rights - Two Different Approaches", The Human Rights Review, Vol.IV:1 (Spring 1979),41. See also Harkin,"Human Rights and Foreign Aid: Forging an Unbreakable Link",15; Sirkin,"Can a Human Policy Be Consistent ?",199, in Brown and MacLean (eds.), Human Rights and U.S. Foreign Policy (1979).

78. Cited in Cassesse, supra note 77, at 44.

79. Plonk,"Human rights and development aid", Review of the International Commission of Jurists, 1977; cited in Cassesse, supra note 77, at 44.

80. Ibid.

81. Section 116(b) of the Act authorizes the U.S. House and Senate to demand written evidence from the Administration in support of alleged exceptions or justifications under the enactment, failing which a concurrent resolution of Congress may be initiated "to terminate assistance to any country".

82. See Cassesse, note 77, supra, at 43-44; also AAICJ, Human Rights and U.S. Foreign Policy, note 3, supra, at 49-50; Forsythe, note 1, supra, at 94-95, 101-02. As indicated earlier (note 2, supra), it was not until then Secretary of State Vance articulated the Carter Administration's human rights policy priorities in 1977 that socio-economic rights received official recognition by the U.S. as an integral part of the international agenda for the promotion of human rights. It will be recalled that the U.S. is not a party to the International Human Rights Covenants, which establish a 'dual' regime of civil-political and socio-economic rights.

83. See generally Morrell,note 53, supra; AAICJ, note 3, supra, especially at 13-14, 47-48.

84. Pursuant to "The principle concerning the duty not to intervene in matters within the domestic jurisdiction of any state, in accordance with the Charter: UN Gneneral Assembly

Resolution 2625(XXV)(1970).

85. It is interesting that the South African government continues to maintain that international concern over apartheid, and particularly the campaign for economic sanctions against that country, amounts to unlawful interference in its domestic affairs. See inter alia, that country's response to recent Security Council deliberations on apartheid: New York Times, July 27, 1985, 4. Similiar objections continue to be raised by governments at the United Nations Commission on Human Rights and the Helsinki follow-up meetings, notwithstanding the explicit internationalisation of questions involving fundamental rights and freedoms under applicable agreements. See remarks in Part 4 of dissertation, infra, at Section B:2; and Forsythe, supra note 1, at Chapter 2.

86. Supra, note 49, at 84.

87. See Introduction, supra, at Section A:1. See also more generally Irving Brecher,'Tie our foreign aid to human rights'('Dialogue' column), Gazette (Montreal), August 5, 1985, B3: "(S)ome argue that aid donors have no business infringing on recipients' sovereignty by making aid conditional on social, economic or political performance. This is patent nonsense. The likelihood of socio-economic gains in the receiving country is widely accepted as a major determinant of aid-giving. There is no a priori reason why donors should not also seek enhancement of liberty."

88. See Part 3 of dissertation, infra.

89. See ibid, at

90. This is in addition to the distortive structural effects within the major arms exporting nations themselves, as a result of entrenched and expanding military-industrial complexes. See generally Benoit, Milliken and Hagen, Effect of Defense on Developing Economies (1971), Vols.1 and 2; G. Kennedy, The Military in the Third World (1974); Green, "Economics of the Arms Race", McGill Law Journal, Vol.28:3 (1983), 651; United Nations, Economic and Social Consequences of the Arms Race (1978)(doc. A/32/88/Rev.1), and The Relationship between Disarmament and Development (Report of the Secretary General),(1982)(Doc. A/36/356). Further remarks on the subject in Part 4 of dissertation, infra.

91. See, for example, Amnesty International Report 1980, Section on Korea (the Democratic People's Republic of), 206; U.S. Department of State, Country Reports on Human Rights Practices for 1984 (February 1985), Section on Democratic People's Republic of Korea, 789. Freedom House (New York)'s periodic international survey of the status of civil and political rights and freedoms gives North Korea the lowest possible rating : see Freedom at issue, No.88 (January-February

1986).

92. See, inter alia, Bill,"Iran and the Crisis of '78", Foreign Affairs Vol.57:2 (Winter 1978/79), 323; Schulz,"Arms, Aid and the U.S. Presence in the Middle East", Current History, July/August 1979, 14.

93. See especially Staar,"Soviet Policies in East Europe", Current History, October 1981, 317; Rashwald,"Poland: Quo Vadis?", Current History, November 1982, 371. The Soviet intervention in Afghanistan since 1979 provides another example, though the legitimation of the status quo in that context appears to have been considerably less successful. See, inter alia, Smolansky,"Soviet Policy in Iran and Afghanistan", Current History, October 1981, 321, at 323-24, 339; Karp,"The War in Afghanistan", Foreign Affairs Vol.64:2 (Summer 1986), 1026. See also Rubinstein,"The Soviet Union and Afghanistan", Current History, October 1981, 318.

94. See discussion in Introduction, supra, at Section A:2.

95. The United States had a 36% share of the total export-market in weapons over the 1978-82 period, followed by the Soviet Union with 34%; 56% of U.S. and 67% of Soviet exports were directed at the Third World. See Stockholm International Peace Research Institute (SIPRI), Yearbook 1983, 268-72. See further discussion in Part 4, infra.

96. The enactment only expressed "the sense of Congress" when passed in 1974, becoming binding legislation in 1978. Paragraph (1) of Section 502B(a) affirms that "a principal goal of the foreign policy of the United States shall be to promote the increased observance of internationally recognised human rights by all countries", consistent with the nation's "international obligations and constitutional heritage and traditions". On the precepts underlying the legislation, and its application in U.S. policy, see especially Cohen, "Conditioning U.S. Security Assistance on Human Rights Practices", American Journal of International Law, Vol.76 (1982), 246; and Hazelton,"Morality and National Security: A No-Win Situation for the Carter Administration", International Relations, Vol.VII:3 (May 1982), 2099. See also Morrell, note 53, supra; Brown,"... in the National Interest", in Brown and MacLean (eds.), Human Rights and U.S. Foreign Policy (1979), 161.

97. Paragraph (a)(3).

98. Paragraph (d)(2).

99. Section 710(a).

100. Section 710(c).

101. See references in note 96, supra.

102. Ibid. See also AAICJ, note 3, supra.

103. In Canada, admittedly, tensions over the boundaries of federal and provincial jurisdiction (pursuant to the British North America Act of 1867) have intruded into the domain of human rights policy-making, especially in respect of treaty-making and implementation issues. One example was the delayed Canadian affirmation in 1948 of the Universal Declaration of Human Rights. See Humphrey,"The Role of Canada in the United Nations Program for the Promotion of Human Rights", in MacDonald, Morris and Johnston (eds.), Canadian Perspectives on International Law and Organisation (1974), 612, at 613-14. On the 'evolving' juridical climate in this regard, including the prospective influence of the 1982 Charter of Rights and Freedoms, see especially Cohen and Bayefsky,"The Canadian Charter of Rights and Freedoms and Public International Law", The Canadian Bar Review, Vol.61 (1983), 265. In the context of the present study, the provincial role is essentially of peripheral significance, relating as it does primarily to matters of domestic implementation rather than external action in human rights affairs. See generally the detailed analytical framework apropos Canadian foreign policy-making in DeWitt and Kirton, infra note 107. For a concise outline thereof see Kirton and Dimock, "Domestic access to government in the Canadian foreign policy process", International Journal, Vol.XXXIX:1 (1983-84), 68, offering a valuable outline of the interplay of actors in that process. Cf. Pratt, infra note 107, offering a less orthodox view of the decision-making framework.

104. See especially Derian,"Human Rights in United States Foreign Policy - The Executive Perspective", in Tuttle (ed.), note 23, supra, 183; AAICJ, note 3, supra, at 15-29; and Carleton and Stohl, note 1, supra.

105.See, inter alia, Schlesinger,"Human Rights and the American Tradition", Foreign Affairs - America and the World 1978, 502; Henkin,"Rights: American and Human", note 17, supra; Kissinger, "Continuity and Change in American Foreign Policy", Society, Vol.15 (1977), 97, at 99-102. Cf. Buckley, note 67, supra; Hoffman,"The Hell of Good Intentions", Foreign Policy, No.29 (1977), 3.

106. Hence in the cases of Iran and Nicaragua, for instance, the U.S. only reluctantly and belatedly dissociated itself from strategic allies; in the cases of South Korea, Pakistan and the Phillipines, among others, 'security' concerns prevailed throughout the Carter-period. The Reagan Administration, however, has had considerably less difficulty in 'reconciling' human rights and national security considerations. See generally Carleton and Stohl, supra note 1; Forsythe, supra note 1, at 93-110; Greenberg,"In Order To Save It, We Had To Destroy It: Reflections on the United States and International Human Rights", in F.E. Baumann (ed.), Human

Rights and American Foreign Policy (1982), 39; Hoffman, note 106, supra; Tonelson, note 12, supra, especially at 214-17. For a more radical critique of U.S. human rights foreign policy in toto, see Chomsky, supra note 63 (challenging the integrity and substance of perceived U.S. orientation towards international human rights in foreign policy behaviour).

107.See Dewitt and Kirton, Canada As A Principal Power (1983), where a "complex neo-realist perspective" on the foreign policy of what has traditionally been characterised as a 'middle power' is argued (especially at 36-46), suggesting enhanced Canadian influence in the transnational arena. Cf. Pratt,"Dominant class theory and Canadian foreign policy: the case of the counter-consensus", International Journal, Vol.XXXIX:1 (1983-4), 99, questioning the actual application of that enhanced influence beyond the more traditional national interest considerations shared with the 'greater' powers.

108.See citation in note 104, supra.

109."The Parliamentary Role in Implementing International Human Rights", Texas International Law Journal, Vol.12 (1977), 251, at 278.

110.See Part 3 of dissertation, infra, at Section B:I:1.

111. Ibid. See especially Nolan,"The Influence of Parliament on Human Rights in Canadian Foreign Policy", Human Rights Quarterly, Vol.7 (1985), 373. On governmental actors in the Canadian foreign policy process generally, see DeWitt and Kirton, note 107, supra, at 167-77; Tucker, Canadian Foreign Policy: Contemporary Issues and Themes (1980), Chapter 1.

112.See, for example, Cohen, supra note 96, detailing the "resistance of the career bureaucracy under Carter" to human rights foreign policymaking (at 256-63); Forsythe, supra note 1, addressing the interaction between human rights lobby-groups and the U.S. Departmenmt of State (at 147-57); and Tucker, supra note 111, on "'bureaucratic politics' and Canadian Foreign Policy"(at 60-72).

113. See, for instance, the decision of Judge Bork of the U.S. Court of Appeals in Tel-Oren v. Libyan Arab Republic, 726 F.2d 774 (D.C. Circuit 1984), seeking to narrow the application of the Alien Tort Statute in cases of foreign torts based on "considerations of separation of powers",(at 811) contrary to the permissive judgement in Filartiga v. Pena-Irala, 630 F.2d 876 (2d Circuit 1980). See the spirited debate thereon in the American Journal of International Law Vol.79 (1985): D'Amato,"What Does Tel-Oren Tell Lawyers? Judge Bork's Concept of the Law of Nations Is Seriously Mistaken", 105; Rubin, "Professor D'Amato's Concept of American Jurisprudence Is Seriously Mistaken", 92; D'Amato,"Professor Rubin's Title Does Not Live Up To Its Title", 112. See genrally Lillich,"The Role

of Domestic Courts in Promoting International Human Rights Norms", in Tuttle (ed.), supra note 23, at 105.

114. Supra note 113; also Filartiga v. Pena-Irala, 573 F.Supp. 860 (1984). See Introduction, supra, at 11.

115. Supra note 113, at 890. See Blum and Steinhardt,"Federal Jurisdiction over International Human Rights Claims: The Alien Tort Claims Act after Filartiga v. Pena-Irala", Harvard International Law Journal Vol.22 (1981), 53; Hoffman and Brackins,"The Elimination of Torture: International and Domestic Developments", The International Lawyer Vol.19:4(Fall 1985), 1351, at 1360-64. See also Lillich, supra note 113, on the somewhat more circumspect role of the American judiciary prior to Filartiga.

116. See Macdonald,"The Relationship between International Law and Domestic Law in Canada", in Macdonald, Morris and Johnston (eds.), supra note 103. See also Cohen and Bayefsky, supra note 103.

117. Canadian Charter of Rights and Freedoms, Part 1 of Constitution Act, 1982, enacted by the Parliament of the United Kingdom as Schedule B, Canada Act of 1982, c.11 (U.K.), in force April 17, 1982.

118. In particular since the House of Lords decision in Waddington v. Miah (1974) 2 All E.R. 377. See Duffy,"English Law and the European Convention on Human Rights", International and Comparative Law Quarterly, Vol.29 (1980), 585; Watson,"The European Convention on Human Rights and the British Courts"(Comment), Texas International Law Journal, Vol.12 (1977), 61.

119.House of Lords in A.G. v. B.B.C. (1980) 3 W.L.R. 130. The rule was reaffirmed in Canada in Ernewin v. M.E.I. (1980) 103 D.L.R.(3d) 1, at 17. See Cohen and Bayefsky, note 116, supra, at 289-90, 295-96.

120. A significant attempt to invoke the Charter in the context of human rights policy-making occured in respect of a 1984 challenge to the Government's decision to allow the testing of U.S. cruise-missiles in Alberta; the Supreme Court of Canada declined to interprete the guarantee to life, liberty and security of the person (Article 7) as impeding the weapons-test, chiefly on the basis of inadequate evidence of 'causation' between the testing and the violation complained of: Operation Dismantle Inc. et. al. v. The Queen et. al. (Supreme Court of Canada), 18 D.L.R.(4th), 481. Nonetheless, the prospective scope of the judicial role in this regard is evident. See, inter alia, Bender,"The Canadian Charter of Rights and Freedoms and the United States Bill of Rights: A Comparison", McGill Law Journal, Vol. 28:4 (1983), 811; Cohen and Bayefsky, note 103, supra. Cf. Hovius,"The Legacy of the

Supreme Court of Canada's Approach to the Canadian Bill of Rights: Prospects for the Charter", McGill Law Journal, Vol.28 (1983), 1, where judicial restraint is considered to be the predominant impulse in light of past decisions. However, the potential significance of the Charter in this context remains beyond dispute.

121.See Rosenau, Citizenship Between Elections (1974), Chapters 1 and 2. One commentator estimated the size of the 'attentive public' in the U.S. "at no more than 10 to 15 percent of the adult population": V.O. Key, Jr., Public Opinion and American Democracy (1961), at 546. See also remarks in Snyder,"The Role of the Private Bar and Public Interest Lawyers in Human Rights Matters Before Congress - A Lobbyist's View", in Tuttle (ed.), note 104, supra, 195, at 195-96. It is revealing that according to a Gallup Poll in Canada, 52% of the public was unaware of South Africa's policy of racial separation in July 1985; the figure dropped to 34% in September 1985, following intense media coverage of the issue: "Awareness of apartheid rises to 66 per cent", Gazette (Montreal), November 4, 1985, A10. Clearly the index of 'responsiveness' to public affairs (connoting a minimal degree of activism over and above 'awareness' simpliciter) would reduce the size of the 'attentive public' in Canada vis-a-vis the apartheid question to a fraction of the 66% cited in the poll. Cf. Chapin,"The Canadian public and foreign policy", International Perspectives, January/February 1986, 14, asserting that "the Canadian public is an informed public ... on the most important issues confronting Canada."(at 16) Apparently, South Africa and other human rights issues would not rank among "the most important issues" envisaged by Chapin, whose focus is primarily upon questions affecting Canadian-American relations. See further and more generally Munton,"Public opinion and the media in Canada from Cold War to detente to new Cold War", International Journal, Vol.XXXIX:1 Winter 1983/84), 171.

122.Rosenau, supra note 121, at 1.

123. Ibid, Chapter 1.

124.Marenin,"Influencing U.S. Foreign Policy on Human Rights", Denver Journal of International Law and Policy, Vol.13:2 (Fall 1984), 237, at 239.

125. See Tucker, supra note 111, at 39-40; Frank and Weisband, Secrecy and Foreign Policy (1974), including the contributions by George Ignatieff and Maxwell Cohen on the Canadian policy context (respectively at 53-68 and 353-76), and by Richard A. Frank on enforcing the public's right to openness (at 272-99); Tucker, note 111, supra, at 39-40.

126. Ibid. See also the remarks in this connexion by Dr.Sakharov cited at note 133, infra.

127.See Forsythe, note 1, supra, Chapter Four, especially at 152-57. See generally Weissbrodt,"The Role of International Nongovernmental Organisations in the Implementation of Human Rights", Texas International Law Journal, Vol.12 (1977), 293; Ray and Taylor,"The Role of Nongovernmental Organisations in Implementing Human Rights in Latin America", Georgia Journal of International and Compartive Law, Vol.7 (1977), 477.

128.As under Section 116(c)(1) of the Foreign Assistance Act of 1961 (as amended), inrespect of bilateral economic assistance; and Section 701(e) of the International Finanacial Institutions Act of 1977, concerning multilateral credits and assistance.

129.See especially the analysis with particular reference to Canadian public opinion in Munton, infra note 121; and Pratt, supra note 103, at 117-35. See also more generally Welch and Forsythe,"Foreign Policy Attitudes of American Human Rights Supporters", Human Rights Quarterly, Vol.5:4 (1983), 491.

130. Ibid.

131.Apropos in this regard are the comments of Soviet dissident Andrei Sakharov in 1980: "The most serious defect of a "closed" society is the total lack of democratic control over the upper echelons of the party and government in their conduct of domestic affairs and foreign policy. The latter is especially dangerous, for here we are talking about the finger poised on the nuclear button. The "closed" nature of our society is intrinsically related to the question of civil and political rights. The human rights issue, therefore, is not simply a moral one, but also a paramount, practical ingredient of international trust and security. This thesis has been the leitmotiv of my public statements over the last several years": "A Sick Society", New York Times, January 23, 1980, at A23.

132. Also relevant to the present conceptual framework are Johansen, supra note 1, Chapter 1, proposing criteria for a 'global humanist' approach to foreign policy-making; Kratochwil,"Alternative Criteria for Evaluating Foreign Policy", International Interactions, Vol.8:1-2 (1981), 105, emphasizing a larger understanding of 'national interest' in decisionmaking; and Ramcharan,"Evaluating Human Rights Performance: Some Relevant Criteria", Human Rights Reporter, Vol.7:1 (September-October 1981), 12, offering an overview of national and international approaches to the implementation of human rights.

133. In Dominguez, Rodley, Wood and Falk, Assessing Human Rights Conditions, (1979), at 27-29.

134. Ibid, at 28. See further the elaboration on various frameworks for such appraisal in Falk, Human Rights and State Sovereignty (1981), Chapter V, at 138-52.

135. Johansen, supra note 1, implicitly recognises the conceptual significance of public actors in foreign policy-making qua a "value-realising process"; but his analytical model focusses on the content of operative policy-values, rather than their mode of realisation.

136. Supra note 107, depicting the struggle of that consensus against traditional 'statism'. See also Kirton and Dimock, supra note 103.

137."A framework for research on foreign policy behavior", Journal of Conflict Resolution, Vol.XIII:1 (197), 75, at 80.

138. Ibid, at 77. 80.

139. See further methodological comments in Part 4, Conclusion, infra.

PART II

CANADA AND SOUTH AFRICAN APARTHEID

The official policy of 'separate development of the races' in the South African context has generated among the most clear-cut instances of the egregious and systematic violation of fundamental human rights in the second half of the 20th century. Commencing with a brief historical and normative review of the apartheid regime over two decades of entrenchment, this study undertakes a detailed assessment of the Canadian response to the situation in South Africa through the Trudeau-era, within the framework of the critique proposed above. Thereafter, the rapid and far-reaching developments in that country during the 1985-86 period - eliciting heightened opposition from the international community at large - are traced in outline; the case-study concludes with an appraisal of continuity and change in Canadian-South African relations under the Mulroney Government.

"The Nationalist government has rejected every peaceable demand by the people for rights and freedom, and answered every such demand with force and yet more force. The time comes in the life of every nation when there remains only two choices: submit or fight."
Nelson Mandela, at his trial in Pretoria in 1963.

"I have no doubt that justice will come for the victims of racism in South Africa ... whose human dignity is abused in an affront to us all. I sympathise with the impatience of those who shudder at abiding any longer - for another generation, another decade or two - the oppression of apartheid. But I counsel wisdom in choosing methods of promoting the freedom of these people for we must not let differences over tactics serve to weaken our unity in that purpose."
Canadian Minister for External Affairs, Mark MacGuigan,
United Nations General Assembly, September 21, 1981.

NOTE

Descriptive anomalies pertaining to the classification of race and colour abound in the South African milieu, defying the sensibility as well as the imagination of all but the most jaded. For the uninitiated, a selective guide to prevailing usage is offered below, albeit with frequently overlapping categorizations. Although the political (and ideological) perceptions and attitudes of South Africans do not necessarily divide along these categories, the differentiation is essential to the corpus of national law, and largely undergirds governmental policy towards the groups and individuals concerned.(1)

Afrikaners - predominantly of Dutch origin, they constitute the ruling elite in South Africa. The term is ocassionally extended to other Europeans whose allegiance to the Nationalist Government is considered irreproachable. Afrikaans is their native language, and the source of the term 'apartheid', or 'separateness'.

Asiatics - refers to Asians as a whole, descendants generally of Chinese and Indo-Pakistani immigrants. The latter, commonly referred to as Indians, form a significant minority of 0.8 million (2.8% of the population).

Bantu - the official term for Blacks (replacing 'Natives') for many years, based upon anthropological classification. 'Africans' or 'Blacks' are now the preferred usages, even by the government. The Black majority numbers 21 million, or 72.7% of the total population.

Coloureds - are those of mixed (Black and White) origin; but the precise legal status of such persons varies with skin pigmentation, social acceptance and other discertionary factors. Official classification of the Coloured population also includes three distinct communities in the south of the country, the 'Cape Coloured', 'Cape Malay' and 'Griqua', as well as 'Other Coloured'. The aggregate Coloured population is estimated at 2.6 million (9% of the country's total).

Non-Whites - expedient as encompassing Blacks, Coloureds and Indians (as well as Chinese). The government regards these communities as disparate, however, consistent with the theory and practice of 'separate development'.

Whites - those of European origin, principally Afrikaans- and English-speaking. The White minority numbers 4.5 million, or 15.5% of the overall population.

A. OVERVIEW

1. Historical Perspectives

Racial segregation has been a feature of South African history since the beginnings of European settlement in the 17th century, practiced in diverse forms by the new immigrants, British colonial administrations, and successive 'Union' governments into the post- World War II period.(2) Its purpose consistently remained the enlargement and entrenchment of White supremacy, in the face of perceived socio-economic and political encroachment and challenge by the Non-White majority. Legislation enacted by the Union government (loyal to the United Kingdom) in the early part of this century already indicated the impending direction of national life: the Natives Land Act of 1913, for instance, reserved 86% of national territory to the White population, while the 1927 Immorality Act prohibited extra- marital relations between Blacks and Whites.(3)

Segregation as an all-embracing ideology of State - or 'apartheid' - emerged in the 1940s, an integral part of Afrikaner nationalism vis-a-vis the British colonial authorities. Apartheid not only furnished the framework to perpetuate traditional White minority dominance, but also, in the hands of Daniel Malan's Nationalist (mainly Afrikaner) Party, expressed the identity and culture of the new elite.(4) Electoral triumph for the Party in 1948 signalled concurrently the institutionlisation of apartheid as the governing policy of national existence and development, and of the Afrikaner as its

effective proponent and apologist.(5) Writing in 1952 of the singular condition of his people, Dr. N. Diedrichs, a prominent Afrikaner and a future Minister of Economic Development, explained:

> "The Trekker (pioneer Afrikaner) observed and maintained differences and lines of division. The division of day and night, summer and winter, rain and drought, black and white. But the world today is the world of masses and from this arises liberalism and internationalism ... It is a wonder that we have managed to exist as we have so far, as the smallest people in the world, the only real people in South Africa, and the only white people in the whole of Africa."(6)

The interpretation of Protestant Calvinism offered by the Dutch Reformed Church (DRC) of South Africa - the leading religious institution for the majority of Whites - addressed the needs of the volk in the spiritual and secular spheres alike, providing the philosophical underpinnings of apartheid.(7) On the question of church-state relations, the DRC declared in 1951 that the state was to be perceived as God's creation, while the government was a servant of the people, drawing its authority from the masses. The franchise was to be a previlege of the Christian, and not available to 'underdeveloped groups', atheists, communists, and the like; liberal democracy and totalitarianism were both rejected. Calvinism in the service of nationalism thus engendered the rationalisation that the Afrikaner's distinctive mission - the fostering of his cultural identity in a Christian state - required a distinctive socio-political exstence, unadulterated by genetic, cultural or ideological diffusion.(8)

Reinforcing the above were the prevailing economic and

sociological realities of South Africa, characterised by a materially previleged European minority seeking to preserve its ascendancy over a generally impoverished and poorly educated Black majority in a resource-rich and fertile region of Africa. Significantly, the actual mechanics of apartheid continually remained subservient to essential considerations of Afrikaner/White economic elitism. The government's role in this regard was to manipulate instruments of state (the legislature, the the police, the armed forces) as well as socio-cultural and economic institutions (the churches, the media, the business community) in order to preserve the fundamental status quo, an interest shared by those elements in any case. Equally, 'negative' forces such as Black nationalism, expanding industrial manpower needs, and external pressures for systemic reform were to be accomodated within that 'elastic' status quo, insofar as perceived 'vital interests' were not endangered.

Under the stewardship of Hendrick Verwoerd, the Nationalist government evolved in 1959 what became a central tenet of apartheid ideology: the gradual devolution of Black and White South Africa into respective ethnic 'homelands', where separate development could flourish.(9) Premised upon the intrinsic 'diversity' of Non-Whites (and the homogenity of Whites) in the social milieu, the policy envisaged a loose association of homelands (including White South Africa) constituting a 'commonwealth' of sorts (rather than a federation). In view of the highly circumscribed economic viability of the territories prospectively forming Black

homelands (or 'Bantustans') which were sited in generally poor and undeveloped areas of the country, their degree of dependence upon the well-endowed and highly developed White homeland would remain substantial, irrespective of their sovereign status. Citizens of the homelands would therefore be permitted to earn their livelihood in White South Africa, ensuring an unlimited pool of cheap labour for its industries. As 'visiting workers' there, Blacks were to enjoy no political rights, though they could exercise all normal rights within their homelands.(10)

With respect to Coloureds and those Asiatics choosing not to 'return' to their country of origin, arrangements were envisaged to accomodate them within White South Africa, effectively qua second-class citizens.(11)

This 'final solution' potentially resolved a number of critical issues facing the Nationlists. Primarily, Whites would automatically cease to be a minority in what would be their own homeland; hence no question of extending the franchise to Blacks could arise. Furthermore, the strict control of Non-White movement and temporary settlement in White urban and rural areas, which had necessitated complex and unwieldy legislation such as the Group Areas Act, the 'Pass Laws', and the Native (Urban Areas) Acts for the citing of Black urban townships, (12) would be expediently phased-out. As a crowning triumph, the homelands policy was presented by the Minister of Bantu Affairs in the Verwoerd government in terms of Black nationalism:

> "Every people in the world finds its highest expression and fulfillment in managing its own affairs and in the creation of a material and spiritual heritage for its prosperity. We want to give the Bantu that right also. The demand for self-determination on the part of the non- white nations is one of the outstanding features of the past decade ... If the white man is entitled to separate national existence, what right have we to deny that these people have a right to it also?"(13)

No consultations whatsoever were conducted by the government with the supposed Black beneficiaries of this paternalism, though certain prominent figures such as Chief Kaiser Matanzima were co-opted into the scheme.(14) The hitherto peaceful Black resistance to apartheid (in its 'grand' and 'petty' manifestations alike), channelled in the main through the long-established, multi- racial African National Congress (ANC), appeared unable to influence governmental legislation or policy in this respect, or indeed over other aspects of apartheid.(15) In response to widespread objections to the continuing growth of the corpus of segregationist laws and measures, the government maintained that the condition of Blacks in South Africa, despite the existence of stringent 'influx control' in White areas, the wholly discriminatory allocation of social services, and severely repressive legislation against political dissent or protest, was nonetheless superior to that of other Africans throughout the continent, which served as the appropriate yardstick for Black welfare in South Africa.(16) As for political rights and freedoms, these were to come in the fullness of time upon the attainment of self-government by the various homelands.

Faced with the apparent futility of opposition to the

apartheid regime within existing structures, Blacks adopted more militant forms of protest in the 1960s, including street riots and acts of sabotage directed at governmental installations. Nelson Mandela's Youth Wing of the ANC, Robert Sobukwe's more radical Pan-African Congress (PAC), and various underground organisations began to emerge as the new voices and modes of resistance, attracting substantial domestic as well as international attention and support.(17) The government also encountered vigorous censure abroad at a United Nations dominated by newly independent Afro-Asian states, though surviving expulsion from the General Assembly for another decade.(18) On a visit to Cape Town in 1960, Prime Minister Harold MacMillan delivered what was widely considered a landmark address to Parliament, cautioning that if Britain were compelled to choose between Black and White South Africa, the "wind of change" dictated a policy favouring the former.(19) The following year, South Africa was to be denied membership as a republic in the British Commonwealth, following prolonged and much-publicised deliberations over its racial policies.

The government's response to these trends was swift and decisive. Verwoerd assured Parliament that the threatened abandonment of his country by White nations would not persuade the White South African to "allow his rights to be swallowed up", and to be "satisfied as a minority in a multiracial country to compete with the Black masses on an equal basis, which in the long run (could) only mean a Black government."(20) As if to underline the regime's determination

to preserve itself at all costs, South African police fired upon unarmed Black demonstrators at Sharpville near Cape Town in March, killing 67 and wounding 187, including 40 women and children.(21) All Black political organisations and groupings were subsequently banned, and Mandela, Walter Sisulu, and several other Black leaders arrested and imprisoned for treason between 1961 and 1963.(22)

The Transkei Constitution Act was passed in 1963 to initiate preparations for the territory's autonomy as a homeland, while Botswana, Lesotho and Swaziland were to be granted independence by the end of the decade. Emergency economic measures at home in the wake of the financial repercussions of Sharpville (an abrupt decline in foreign investment, government reserves and employment) demonstrated the country's resilience, though external pressures were palpably half-hearted and short-lived.(23) At the end of the Verwoerd era in 1966, the Nationalists appeared to have little cause for concern over the outlook for South Africa into the foreseeable future.

John Vorster commenced his Premiership with a reassurance to Parliament that only Whites would ever sit in it, "not because the Nationalist Party is hostile to any group, but because it is its God- given right to control what belongs to it ... because it believes that this nation must maintain its identity."(24) The late 60s and early 70s were a period of retrenchment for apartheid, with legislation enacted to, inter alia, transfer Black labour from the entire Western Cape,

prohibit interracial political activity, and most painfully, tighten legal loopholes in the racial classification of individuals, rendering descent the critical determinant.(25) 'Grand apartheid' - as expressed in the regime's policy of partitioning South Africa by race - proceeded apace, notwithstanding economic and political obstacles to the viability of the 'independent' homelands, including the unanimous refusal of the international community to recognise the latter.(26) If successive South African governments have reconciled themselves to the existence of a permanent Black population within the White homeland, the strategy of partition remains operational nevertheless, as evidenced by the autonomy granted in 1981 to Ciskei (joining the self-governing territories of Transkei, Bophuthatswana and Venda).(27)

A critical socio-political development of the 1970s within White South African territory was the emergence of the 'Black Consciousness' movement, reflecting as well as stimulating the new radicalisation of a generation influenced by the civil rights and post-colonial movements abroad.(28) Espoused by the South African Students Organisation (SASO) and the 1972 Black People's Convention (BPC), the movement attracted adherents across traditional tribal and class lines, with Steve Biko as its leading spokesman.(29) As an ideology of the oppressed, Black Consciousness imparted a strident racial assertiveness to all forms of resistance against the state, countering the doctrines of supremacy peculiar to Afrikaner South Africa. The impact of Biko's trial and death in detention

was profound, both inside and outside the country. The subsequent cycle of riots by youths at Soweto in 1976 was fuelled by the movement and Biko's demise.(30)

Soweto was a stark reminder to Black South Africans as well as the international community that 17 years after Sharpville, the apartheid regime was no less dedicated to the systematic use of brute force in meeting mass opposition. Equally, the intensity of Black rejection of the government and the system in the face of overwhelming odds - graphically conveyed in the world's press and television - exposed the Nationalists to a heightened round of pressures.(31) In its aftermath, with spiralling Black militancy and changing economic realities affecting the country, the government of Prime Minister P.W. Botha sought a further systemic accomodation with Non-Whites.

Within South Africa, the new adaptation (or 'dispensation', as referred to by Pretoria) has involved attenuating 'petty apartheid' and reforming such aspects of 'basic' policy as influx control and the denial of trade union rights to Black workers.(32) Expenditure on social services for Non-Whites, especially in the sphere of education, has been raised.(33) Most significantly, from the perspective of White South Africa, the constitution was amended to establish a tri-cameral Parliament with direct Coloured and Indian representation.(34) Each of the communities thus represented is empowered to administer its 'internal affairs' (such as education), while ultimately remaining subordinate to the

'general affairs' cabinet comprised almost exclusively of memebers of the ruling Nationalist Party.(35)

Even this limited franchise did not extend to Blacks, however, who remain excluded from the new Parliament. Indeed, the vast majority of Coloureds and Indians demonstrated no interest in the latter, inducing the government to abandon plans for a referendum on the issue amongst those groups.(36) Critically, the Government evinced little interest in a political dialogue with bona fide Black leaders, most of whom remain imprisoned. As for the enhancement of social expenditure on Non-Whites, per capita spending on Whites remained substantially higher in comparison.(37)

Outside its borders, the government has applied its considerable military and financial weight to eliciting the co-operation of neighbouring states in such matters as undermining the guerilla insurgency against South Africa, and advancing commercial and trade relations in the sub-continent. Through the 1984 accords with Angola and Mozambique, in particular, the Botha government sought to project a 'progressive' image abroad, while highlighting the economic inter-dependence among the states in the region notwithstanding their political differences.(38) The Prime Minister also travelled extensively in 1984 to improve the country's contacts with the West, amidst the continued Anglo-American espousal of 'constructive engagement' as the framework of their relations with South Africa.(39)

Regional economic dependency on South Africa has not,

however, neutralised the strong anti-apartheid stance of the 'front-line' states, nor has South Africa honoured its part of the non-agression pacts with Angola and Mozambique.(40) Public pressures in support of economic divestment and trade boycotts have persisted in Britain, Canada, the United States and other Western nations with traditionally close ties to South Africa. The award of the Nobel Peace Prize to Bishop Desmond Tutu of Johannesburg in late 1984, with the publicity attending an advocate of non-violent change, provided an additional voice to the growing protest against apartheid, within and outside the country.(41)

Against Black demands of 'one man, one vote' in a unitary South Africa, the government has appeared wedded in effect to the concept of 'separate development' through partition, albeit in a form reflective of new social, political and economic considerations.(42) A watershed has surely been reached in the level of rejection of apartheid at home and ostracism abroad. "All of our efforts", Bishop Tutu recently commented, "are turned to the removal of apartheid, so the only questions that are still at issue are how this is going to effected: by violence or by dialogue."(43)

Normative human rights issues stemming from the foregoing historical developments prior to and during the Trudeau era in Canada's external relations are next appraised below. This provides an indication of the ethical, political and legal exigencies confronting Canadian foreign policy (as perceived through the paradigm proposed in Part 1).

2. International Human Rights Perspectives (44)

Axiomatically, both the theory and practice of apartheid contradict intrinsically the raison d'etre of international human rights law, viz. the safeguarding of what the Universal Declaration terms "the inherent dignity and ... the equal and inalienable rights of all members of the human family."(45) South Africa is not a party to the Declaration, nor to the ensuing corpus of human rights agreements; principles of customary international human rights law, however, remain applicable, including the jus cogens prohibition against racial discrimination.(46) Furthermore, South Africa was an original signatory to the United Nations Charter, proclaiming "respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion."(Article 55(c)).

When the General Assembly of the United Nations first turned its attention to apartheid in 1952, South Africa maintained - with the support of several Western members, including Canada - that the character of her system of law and political governance was a domestic matter, ultra vires the purview of that body.(47) The Assembly rejected the contention on the general premise that race conflict in South Africa was contributing to international as well as domestic tensions, and that the fundamental breach of human rights involved violated the Charter, thus legitimating the concern of United Nations' member-states. Resolutions were adopted calling upon South Africa to modify its racial policies in accordance with the

principles and objectives of the Organisation.(48)

By 1965, in the wake of apartheid's steady entrenchment in all spheres of South African life, and following the Security Council's determination that the policy violated the Universal Declaration as well as the Charter,(49) the General Assembly had resolved that apartheid constituted "a crime against humanity".(50) Numerous normative determinations at the transnational level have since been dircted at specific facets of apartheid, as well as at the practice in toto.

On the juridical plane, the International Court of Justice (ICJ), in the course of its 1971 Advisory Opinion on South West Africa (Namibia), considered the question of South Africa's application of apartheid to that territory.(51) Observing that, as a matter of record, South Africa had "established limitations, exclusions or restrictions" on the indigenous population of South West Africa concerning their education, training, labour, residence, movement and other activities, the ICJ held:

> "Under the Charter of the United Nations, the former Mandatory (South Africa) had pledged itself to observe and respect, in a territory having an international status, human rights and fundamental freedoms for all without distinction as to race. To establish instead, and to enforce, distinctions, exclusions, restrictions and limitations exclusively based on grounds of race, colour, descent or national or ethnic origin which constitutes a denial of fundamental human rights is a flagrant violation of the purposes and principles of the Charter."(52)

Clearly, the judgement may be extrapolated to the situation of apartheid within South Africa itself, inasmuch as the latter remains a party to the Charter.

Racial segregation in general and apartheid in particular are also the subject of two international agreements, viz. the 1966 Convention on the Elimination of All Forms of Racial Discrimination,(53) and the 1973 Convention on the Suppression and Punishment of the Crime of Apartheid.(54) Article 3 of the 1966 Convention specifically condemns apartheid, while Article 5 guarantees equality before the law "without distinction as to race, colour, or national or ethnic origin" in respect of a list of civil-political and socio-economic-cultural rights and freedoms. As already indicated, 120 states are parties to the Racial Convention, the highest for a human rights instrument.(55) Indeed, the principle of nondiscrimination on racial grounds is widely recognised as a peremptory norm of international law (i.e. an integral part of the jus cogens). (56)

The 1973 Convention defines "the crime of apartheid" as involving certain acts committed for the purpose of racial domination by one group over another, and resulting in systematic oppression (Article 2). These acts are described as entailing the denial of the right to life and liberty of person (through, inter alia, murder, bodily or mental harm, and arbitrary arrest and illegal imprisonment); the deliberate imposition of living conditions calculated to cause physical destruction; legislative and other measures calculated to prevent participation in the political, social, economic and cultural life of the country,and the deliberate creation of conditions preventing the full development of a particular

group or groups (in particular through the denial of various civil-political and socio- economic rights); measures designed to divide the population along racial lines by the creation of reserves and ghettos, the prohibition of mixed racial marriages and the expropriation of landede property; the exploitation of labour, in particular forced labour; and finally, the persecution of organisations and persons for their opposition to apartheid, through the deprivation of their fundamental rights and freedoms.

This catalogue of what Article 2 of the 1973 Convention describes as "inhuman acts" serves as a succinct guide to the multiplicity of human rights violations stemming from the South African system.(57) A comprehensive survey of that country's apartheid enactments would fall well beyond the scope of this study, and has, in any case, been adequately conducted elsewhere.(58) The nature and implications of the South African socio-political system have also received extensive and detailed exposure in the news-media and periodical literature over a number of years.(59) Nevertheless, it would seem appropriate to present here critical points of intersection between the major legislative and other measures effecting the practice of apartheid in South Africa, and relevant norms of international human rights law (conventional and customary alike).

The classification of individuals according to race or ethnicity, and the differentiated treatment of each racial or ethnic group according to a presumed hierarchy of bio-social

development, serves as a cardinal predicate of the South African system.(60) The 1950 Population Registration Act provides in Section 5(1) for a register of the entire population, wherein each person is to be designated "as a white person, a coloured person or a Bantu ... and every coloured person and every Bantu whose name is so included shall be classified ... according to the ethnic or other group to which he belongs."(61) The coloured group has been further sub-divided into seven categories, including 'Asiatics' (Section 5(2)). The criteria for racial definition under the legislation (with amendments in 1962 and 1967) include appearance, social accpetance and descent, of which the last is most important (Sections 1,5(5)).

Pursuant to the individual's classfication under the 1950 Act, his political and socio-economic condition in the system - encompassing voting rights, employment expectations, permissible degrees of socializing and marriage, and the like - is determined. This was confirmed by a South African court in Mohamood v. Secretary of State for the Interior (1974), Justice Van Winson observing that

> "(T)he decision as to a person's classification is, under the laws of this country, of cardinal importance to him since it affects his status in practically all fields of life, social, economic and political. An incorrect classification can affect all those fields of life and have devastating effects upon the life of the person concerned."(62)

Hence a mass of interlocking rules and measures methodically undermine the principle of racial equality before and under the law, of central importance in the corpus of

international human rights law.

Separate development has entailed the creation of racial enclaves in various forms throughout the country. Within White South itself, the Group Areas Act of 1950 provides for the exclusive allocation of specified areas on a strictly racial basis (facilitated by the population registration system above), for commercial as well as residential purposes.(63) To prevent Blacks from outnumbering Whites in cities, the Bantu (Urban Areas) Consolidation Act (1945), in conjunction with other legislation, imposed 'influx control'.(64) Section 10 of the Act prohibits a Black person from remaining in an urban area in excess of 72 hours, unless he can demonstrate certain prescribed connexions with the area, or holds the appropriate permit from a labour bureau. Section 29 authorizes a police officer, without a warrant, to remove a Black person who is otherwise lawfully in the area if the officer "has reason to believe" that the individual is "idle or undesirable".

Freedom of movement and residence, rights proclaimed in the Universal Declaration and the Covenant on Civil and Political Rights, (65) thus have little meaning for Non-Whites in South Africa (and are also vitiated with regard to Whites, who cannot inhabit or remain unrestricted in Non-White areas).

Racial enclaves extend to virtually every sphere of South African life, from educational and health services to transportation and public conveniences.(66) Cultural and sporting activites also remain largely segregated.(67) Employment expectations are determined not only by direct

differentiation in pay-scales and the kind and level of work permitted to various groups, but also circumstantially through restricted access to education and training.(68)

Evidently, provisions of the International Covenant on Economic, Social and Cultural Rights pertaining to the right of all individuals to work under "just and favourable conditions" (Articles 6 and 7), to the "enjoyment of the highest attainable standard of physical and mental health" (Article 12), to education "directed to the full development of the human personality and the sense of its dignity" (Article 13), are subverted systematically under apartheid.

The official enforcement of separate development, particularly in respect of influx control, inferior economic conditions for Non- Whites, and the sustained opposition to apartheid by groups and individuals of every race, has necessitated a series of draconian measures for the maintenance of 'public security' and 'public order'. Traditionally, among the most notorious of these has been the Terrorism Act (no.83) of 1967, section 6 of which authorised indefinite detention without trial, and interrogation in solitary confinement. According to one South African legal commentator, "the wide definition of "terrorism" under the Act ... brings virtually every criminal act within the statutory scope of terrorism."(69) In addition, the 1950 Internal Security Act (No.44) empowered the the Minister of Justice to order preventive detention, subject only to his being "satisfied" that the individual concerned has engaged in "activities which

endanger or are calculated to endanger the security of the State or the maintenance of public order."(70) The Minister's discretion in this regard was fettered only by the requirement of a non-binding, non-judicial review two months after the order, and at six-month intervals thereafter.(71)

Both legislative measures above (as periodically amended) are permanent features of the country's legal-political landscape; coupled with the historical record of their modus operandi, and the array of other measures available to the government and police for detentions, bans and long-term imprisonment on political grounds, little freedom remains from arbitrary arrest, detention or imprisonment, fundamental elements of civil and political human rights.(72) (Relevant effects of the 'State of Emergency' decrees imposed by the Botha Government in 1985-86 are addressed below in Part C:1 of this study). Moreover, the infliction of torture and "cruel, inhuman or degrading treatment", prohibited under conventional as well as customary international law, has developed into a commonplace tool of the police. (73)

Other basic civil-political rights and liberties such as the freedoms of expression, association and peaceful assembly, the freedom to leave and to return to one's country, and the right to a nationality, are circumscribed in accordance with their compatability with 'public order' and related criteria, broadly construed, in respect of all South Africans.(74)

A professed justification for continuing segregation in present-day South Africa, as suggested earlier, stems from the

homelands policy of granting 'self-determination' to the Black populations involved ('grand apartheid'), with the latter prospectively enjoying full civil-political and socio-economic-cultural rights and freedoms (in their respective territories). Pending its culmination in a fully-partitioned state, therefore, White South Africa asserts the right to pursue an 'anticipatory' policy of separate development.(75)

The realities attending the homelands policy offer some interesting insights into the government's conception of self-determination in this context. Primarily, the quality, expanse and siting of the lands in question guarantees their continued dependence upon White South Africa, in terms of their physical as well as economic survival.(76) Statements by various South African officials, notably the founder of the policy, Prime Minister Hendrick Verwoerd, reflect unequivocally the intention of the government to preserve its 'tutelage' over the homelands, in the long-term political and economic interests of White South Africa.(77) The rationale of the policy is clearly the more efficient entrenchment of the racial status quo, - as the majority of the Black 'beneficiaries' thereof have long recognised.(78) The international community has unanimously rejected the homelands concept in its entirety, recognising none of the four exisiting self-governing territories.(79)

Thus South Africa remains in violation of the principle of self-determination vis-a-vis the majority of its population,

as enshrined in the International Bill of Rights as well as customary international law.(80)

It might be observed in concluding this segment that, from the perspective of engaging the application of fundamental norms of human rights through transnational foreign policy processes, the situation of apartheid evidently transcends prevailing ideologisations or normative differentiation sometimes invoked apropos the rights- regime. Neither the East-West-Third World schisms in approaching human rights, entailing varying emphases on civil-political and socio-economic-cultural rights, nor Vasak's cognate scheme of "three generations of human rights", involving an historical interpretation of the emergence of human rights on the transnational plane,(81) need colour policy formulations relating to apartheid. The extreme prejudice to international human rights law in toto under apartheid, as a matter of institutionalised state practice, surely affords sufficient common ground for policy responses by the international community, in meeting responsibilities through relevant undertakings for the universal implementation of human rights and freedoms.

B. CANADIAN RELATIONS WITH SOUTH AFRICA: A HUMAN RIGHTS POLICY?

Background Summary, 1948-1968 (82)

Official Canadian attitudes toward South Africa in the post- war period were conditioned by two principal forces: an historic affinity with a White Commonwealth nation which had fought on the same side in two World Wars, and an awareness of the emergence and implications of Third World nationalism, symbolised by India's independence in 1947.

At the Commonwealth Prime Ministers' Conference of 1949, Canada's Lester Pearson strongly welcomed Indian membership in the Commonwealth, initiating the 'Indo-Canadian entente' that was to come to fruition in the 1950s.(83) Yet South Africa's General Smuts, who was opposed to India's admission into an hitherto White Commonwealth, enjoyed the friendship and respect of leading Canadians.(84) Following Smuts' electoral defeat by the Nationalists in 1948, anti-communism emerged as a common, binding interest among Western nations in the Cold War-era, including Canada and South Africa.(85) Thus when the question of apartheid was first broached in the Canadian Parliament, Alistair Stewart (Canadian Commonwealth Federation), then the most articulate critic of the policy, was concerned mainly that it provided "aid and comfort to communist movements all through Asia".(86) While condemning the policy as being "every bit as bad as that which existed in Hitler's reich", Stewart's apprehension was principally "that the attitude of Asia as a whole may be conditioned by what happens in the Union."(87)

In response to Indian complaints at the United Nations

in 1946 and 1952 over South Africa's racial policies towards its Non-White population, Canada's position was one of support for a discussion of the problem (which was recognised as serious), but opposition to any action thereon, which was considered tantamount to 'intervention' in that country internal affairs.(88) Canada abstained on General Assembly resolutions critical of apartheid policies throughout the 1950s, even seeking to persuade South Africa (unsuccesfully) not to withdraw from the Assembly following the highly censorious report of a special investigatory Commission on apartheid in 1955.(89)

When continuing South African membership in the Commonwealth became an issue in Parliament in 1960, then Secretary of State for External Affairs, Howard Green, held forth on that country's "record of worthwhile accomplishments", Smuts' "outstanding" statesmanship, and the imprudence of condemning "a fellow member of the Commonwealth."(90) In the aftermath of the Sharpville massacre, Canada's official reaction, unlike the general Western one of outrage, was to withold comment, and subsequently to inform the South African representative in Ottawa of the criticism voiced by some Canadians Members of Parliament over his government's conduct.(91)

Prime Minister Diefenbaker's well-known stand against South Africa at the 1960-61 Commonwealth Conferences undoubtedly contributed significantly to the withdrawal of its application for membership as a republic in the

organisation.(92) The historical record indicates, nonetheless, that Diefenbaker was only responding belatedly to mounting Afro-Asian and domestic Canadian pressures in arriving at his position in 1961;(93) the Prime Minister remained personally circumspect apropos the ramifications of an end to White minority rule in South Africa, to the extent of sympathising with Verwoerd's perspective on the situation.(94) Late in 1961, Canada voted in favour of a United Nations resolution deploring apartheid, but against the commencement of multilateral sanctions against South Africa.(95) This initiated a pattern of 'split-voting' on Canada's part - supporting verbal denunciation without corresponding action - which generally endured through the Trudeau-era, as shown below.

In 1963, the Security Council was finally prompted to take action against South African intransigence over its racial policies, calling on states "to cease forthwith the sale and shipment of arms, ammunition of all types and military vehichles" to that country, a voluntary embargo for which Canada expressed support.(96) South Africa's ostracism from the world community proceeded further in 1966, when the General Assembly declared by an overwhelming majority, Canada included, that her mandate over South West Africa (Namibia) had ceased to be legally and morally tenable.(97) By the end of the decade, Canada had extended the arms embargo to include spare parts, and in 1971, formally withdrew recognition of South African jurisdiction over Namibia, pursuant to the judgement of the International Court of Justice (ICJ).(98)

Concurrently with the foregoing - predominantly diplomatic - multilateral activity vis-a-vis apartheid, Canada and other Western nations consolidated overall trade and investment relations with South Africa, becoming in the process vital components in the latter's economy. Between 1960 and 1970, Canadian exports to South Africa doubled, while imports quadrupled.(99) Although Canada's commercial profile remained comparatively low in this respect, its qualitative significance was (and has since remained) not inconsiderable.(100)

Finally, it should be pointed out that many segments of Canadian public opinion on the question of apartheid were frequently in adavnce of the government's over the period under review. The passing of the Group Areas Act (1950), events at Sharpville, and the matter of South Africa's membership in the Commonwealth, among other developments, attracted vocal media and mass public condemnation not only of the occurences themselves, but also of the circumspection in official Canadian responses.(101) However,the effective coalescence of general public opinion over apartheid, consistent with trends in many other issue-areas in human rights affairs, was largely a phenomenon of the Trudeau era, to which this study now turns.

I. The Trudeau Era, 1968-1984

1. Public Statements on Rights Issues

The Trudeau Government's 1968-1970 White Paper on Canadian foreign policy, predicated upon a systematic projection abroad of national aims, interests and policies, concluded that 'economic growth', 'social justice' and 'quality of life' would rank as priority themes in the formulation and conduct of policy for the ensuing decade.(102) With respect to the promotion of social justice, the review stated that attention would focus on "two major internatioal issues - race conflict and development assistance."(103) Canadian policies toward South African apartheid, the review declared, must consider national perceptions in terms of "a broad revulsion against ... racial discrimination practices in southern Africa", articulated by the churches and other organisations and individuals, as well as "better-than-normal opportunities for trade and investment in the growing economy of the Republic", as perceived mainly by businessmen.(104)

Asserting that this dual response was characteristic of other Western peoples and hence of their governments, and noting the "practical limitations" of influencing developments in South Africa, the review invoked the "two policy themes which are divergent in this context: (1) Social Justice and (2) Economic Growth ."(105) Various Canadian policy statements, actions against the regime in Rhodesia, and the embargo on the shipment of "significant" military equipment to Portugal and South Africa, were cited as reflecting the first theme;

Canada's trade in peaceful goods with all countries "regardless of political considerations" was stated as illustrating the second.(106)

Rejecting the exclusive pursuit of either theme as being contrary to Canadian interests, the Government determined that the latter "would be best served by maintaining its current policy framework ... which balances two policy themes." To facilitate a "more positive expression of the Social Justice policy theme", however, economic assistance to black African states in the region would be increased, contributions to the United Nations Educational and Training Programme for Southern Africa would be raised, and a new diplomatic mission opened for the area.(107)

In September 1970, Secretary of State for External Affairs, Mitchell Sharp, elaborated on some of the issues addressed in the policy review, including Canada's position on apartheid.(108) Sharp maintained that Canada gave "greater support to the views of black African states when this matter comes before the United Nations than any other Western country - and this is recognised by them"; the Government's initiative in dissuading Britain from resuming arms sales to South Africa, and the divestiture of South African interests by Polymer, a Canadian Crown Corporation, were recalled by the Minister in this regard.(109)

On the question of trade sanctions, Sharp reiterated the argument presented in the foreign policy review that Canada had not ceased trading with Cuba, China and the Soviet Union,

notwithstanding the character of their regimes. Questioning the rationale for cutting off trade, he contended that:

1) If the purpose was to change South African policies, an extensive embargo would be necessary, which the principal trading nations showed no signs of supporting;

2) If it was intended to punish the South Africa Government,"the worst sufferers would be the black majority, who do most of the work in South Africa in producing goods for export";

3) If it was to "satisfy our own emotional needs to express our repugnance for apartheid", this had to be weighed against the preceding considerations. Denying "callousness" or "money-making ahead of principle" on Canada's part, the Minister asserted that the implementation of the arms embargo was "evidence that Canada does not give priority to money-making".(110)

In a detailed response to the Government's policy review, and anticipating much of the above reasoning in defence of Canadian policies subsequently advanced by Mitchell Sharp (who was interviewed for the purpose), an ad hoc private citizens group prepared the highly critical "Black Paper" on Canadian policy towards southern Africa in general, and South Africa in particular.(111) Challenging the "rationale of sorts for that combination of forthright rhetoric and negligible implementation which continues to be a feature of Canadian policy",the Paper urged instead an activist role by the

Government towards "a lessening of the polarisation of international policies along racial lines."(112) Considering the apartheid situation to be sui generis in its moral unambiguity - already singled out for special treatment by Canada at the United Nations and the Commonwealth - the Black Paper found the Government's distinction between moral-political judgements and economic policy to be untenable. Canadian policy towards oppressive regimes, it was argued, could not be expected to be uniform, but rather to vary with each situation: waging war in 1939 did not imply readiness to fight every tyrant, and promoting trade with China "is not to recommend that Canada promote increased trade with every authoritarian regime."(113)

Conceding that Canada was of "marginal economic importance to southern Africa", the Paper nonetheless urged trade and investment sanctions, on the grounds that Canada should not be involved at all in supporting the South Africa economy, and that "some at least of the Western nations (should) demonstrate publicly that they are more concerned with the denial of basic human rights in southern Africa and the implications this has for basic human dignity everywhere than they are with short-run financial benefit."(114) While recognising that "every foreign policy must have built into it a cut-off point at which principles must be sacrificed to preserve economic well-being", Canada was thought to be making the sacrifice only for "negligible and minor gains".(115)

The Paper recommended a series of partial disengagement

measures by the Government, believing it "unreasonable" to expect at that stage that the country would be prepared to go further in confronting the apartheid regime. These measures included a) a termination of Commonwealth preferences in trade with South Africa, b) ceasing the expenditure of public funds in promoting trade and investment there, and c) limiting the future growth of economic relations with that country.(116) It was suggested that Canadian industries significantly affected by these measures - including possible retaliatory action by South Africa - should receive appropriate assistance from the Government.(117)

In addition, in light of the Government's acceptance of the improbability of any change in the White community in southern Africa, and the likelihood of a struggle "to the bitter end", the Paper recommended a public recognition of the legitimacy of the armed struggle and the liberation movements, including the provision of financial, technical and medical assistance to the latter by the United Nations or the Organisation of African Unity.(118)

Viewed with the benefit of historical hindsight, the foregoing analysis of the situation in South Africa and the implications thereof for Canadian policy can only be regarded as prophetic, and at least a decade in advance of official Canadian readiness to undertake incisive policy action in the matter.(119) The Government's position on the issues above remained essentially fixed through the mid-1070s, despite considerable pressures in international forums and, to a lesser

degree, within Canada.

On the question of supporting liberation movements in southern Africa, Prime Minister Trudeau remarked after the 1971 Commonwealth Conference that it was "unlikely that Canada would ever want to arm freedom fighters, though we might respect the justice of their cause."(120) Although the commuique of the next Commonwealth Conference, held in Ottawa in 1973, contained a commitment by member nations to seek social justice and self-determination for southern Africans, Canada's interpretation of this pledge was strictly in line with earlier policy.(121) Mitchell Sharp assured Parliament in March 1974 that "no arms or cash" from Canada would reach liberation movements in that part of the world.(122)

In an elaborate expose of Canadian policies at the United Nations' Special Political Committee in 1975, Louis Duclos, M.P., found it "reprehensible" that the South African Government was using the Terrorism Act and cognate legislation "to punish and indefinitely imprison persons whose only offence is their opposition to apartheid."(123) He also denounced the Bantustan (homelands) policy of that Government as "a blatant denial of the right of the majority to an equitable distribution of the resources of South Africa." But Canada, Duclos maintained, "cannot condone the encouragement of the use of violent means to achieve the required changes." Moreover, Canada regretted the continuing suspension of South Africa from the General Assembly, believing dialogue with its Government at that level to be essential.

Duclos sided with majority opinion on the issue of sporting boycotts of South Africa, reaffirming that the Canadian Government did not extend funding to individuals or groups participating in athletic events in that country. However, the Government would not "limit the freedom of Canadians to travel abroad where they wish."(124)

With Black unrest in Soweto and other South African townships escalating in 1976, Canada's statement during the apartheid debate at the 31st session of the General Assembly was not entirely optimistic over future trends:

> "We recognise that our hope for peaceful solutions is a tenuous one. It is quite simply founded upon the belief that the present government of South Africa and its supporters cannot, in their own long-term interests, continue to be blind to the need to face reality. Nevertheless, we are not encouraged by statements such as that delivered by Prime Minister Vorster ... rejecting calls for changes. We must intensify our pressures on the South African government to heed the cries for justice within and without its borders."(125)

When the Security Council convened in March 1977 to debate the worsening situation in South Africa - resolving in the process to impose a mandatory arms embargo under Chapter VII of the Charter - Canada's William Barton expressed somewhat reduced expectations regarding the impact of an assertive international response, in contrast to the call for intensified international action in the statement above.(126) Emphasizing internal inter-racial dialogue as being "the key element in the evolution of South African policies", Barton urged the Council to support American and other diplomatic efforts to influence the Government of South Africa, and to adopt in the interim a

"declaration of principles on southern Africa."

By late 1977, however, with civil unrest spiralling in South African cities, and its severe repercussions for the socio-political welfare of the Black population self-evident, public pressure on the West to undertake effective economic action was mounting; Canada joined several other countries in re-examining its attitude and policies towards the Vorster Government.(127) Secretary of State for External Affairs, Don Jamieson, told the House of Commons in December that Canada would be "phasing out all its Government-sponsored, commercial-support activities in South Africa", with the institution of a five-point program as hereunder:

1. Canadian commercial counsellors in Johannesburg and Cape Town would be withdrawn, and the Consulate General in the former closed-down;

2. Government-account support by the Export Development Corporation in respect of any transactions relating to South Africa would be terminated;

3. A code of conduct and ethics for Canadian companies operating in South Africa would be published, following consultations with the parties concerned;

4. The Commonwealth preferential tariff for South Africa would be renounced, since that country had ceased to be a Commonwealth member (though the Minister was not entirely certain of the legality of this measure); non-immigrant visas would be required of South African visitors to Canada;

5. Tax-concessions for Canadian companies in Namibia

were to be reappraised, given the illegal nature of the South Africa regime in that territory; possible codes of conduct for investors in Namibia were to be considered.(128) The Minister emphasized that the Government would "keep the whole South African situation under review."(129)

It will be recalled that the "Black Paper" on Canadian policy towards South Africa had specifically recommended all the preceding economic measures - with the exception of a code of conduct - seven years earlier. The Liberal Government announced no further policy changes by the end of its term in office; the situation concerning Canadian companies and investors in Namibia was to remain unchanged. In April 1978, a "Code of Conduct on the Employment Practices of Canadian Companies Operating in South Africa" was promulgated, affecting general working conditions, collective barganing, wages, fringe benefits, training and promotion, and race relations, principally with respect to their Black employees.(130) Under the Code, companies are to submit - on a purely voluntary basis - annual reports to the Government indicating their practices and progress in the designated areas of activity.

Subsequently, in a March 1979 statement to the Commons Standing Committee on External Affairs and National Defence, Secretary of State Jamieson reiterated the centrality of the Code of Conduct to the "practical" expresion of "Canada' opposition to apartheid and it support for racial equality".(131) But there was no suggestion that additional economic or political measures were being contemplated.

A thoroughgoing survey of Canadian policy towards southern Africa was published in 1981 by the Taskforce on Churches and Corporate Responsibility (TCCR), a citizen's group which the Department of External Affairs had consulted with in some of its policy-making. The Taskforce assessed the impact of the 1977 economic measures upon actual Canadian corporate relations with South Africa, including the 1978 Code of Conduct; Canada's implementation of the United Nations arms emargoes; and this country's voting record at the United Nations, finding the record far short of the Government's promise. The survey concluded that

> "the 1977 policy pronouncements have not been followed through by subsequent measures that had been intimated in 1977. Even the first set of measures has been insufficiently implemented or neglected ... We are left with the disturbing inconsistencies, long identified in Canada's relations to South Africa, between strong rhetoric on the part of the Canadian Government and rather weak and half-hearted policies and actions. It is hypocritical to proclaim that one is against violence and prefers peaceful change while neglecting to act in a manner most likely to result in peaceful change ..."(132)

In apparent confirmation of the preceding critique, Canadian delegations at the United Nations during 1983-84 decried as "unacceptable ... (t)he continuation of apartheid for another decade ... a tragedy which we must remain firm in our resolve to avoid"(133) - while no fresh substantive measures or policy initiatives whatsoever were adopted by the Government. By the Spring of 1984, this country's South African policy manifested yet another quiescence, apparently corresponding to the lull in overt anti-apartheid protest in South Africa. An otherwise wide-ranging public survey of

Canadian human rights foreign policy by the Miniter of External Affairs, Jean Luc Pepin, failed to include a single reference to apartheid.(133a) Indeed, the Canadian Government declined an invitation to officially participate in the June 1984 Regional Conference of Non-Governmental Organiations on South Africa at the United Nations (as did the Reagan Administration), preferring to send only an 'observer' delegation which restated the Government's longstanding policy-positions on apartheid.(133b) The TCCR's 1981 criticisms thereof (adverted to above) were echoed in statements by various Canadian NGOs at the Conference.(133c)

The reponsibility for the preceding period of quiecence must be shared by the Canadian Parliament, albeit in the context of a traditionally attenuated role in foreign policy-making as a whole.(134) No parliamentary review of this country's relations with South Africa ensued, despite the intense policy activity on the issue during 1976-77. Anti-apartheid activism by Canadian NGOs likewise failed to stimulate a meaningful response by Parliament, even short of considering a formal legislative initiative.

Prior to a detailed consideration of the record of implementation and merits of Canadian policy measures apropos the apartheid regime, an examination of relevant legal undertakings by this country at the international level is offered below, to complete this exposition of the declaratory facets thereof.

2. Affirmation of Relevant International Rights Instruments

A host of conventional and other formal legal commitments on the international plane bear upon Canadian responsibility in opposing the policy of apartheid in South Africa. In general terms, as already indicated, parties to the International Bill of Rights undertake "to promote universal respect for, and observance of, human rights and freedoms", as detailed therein. As an original signatory to the United Nations Charter, and having affirmed the Universal Declaration and ratified the two International Covenants, Canada is bound by the undertakings thereunder.(135)

Two categories of more specific obligations require consideration here, in conjunction with the foreign policy implications of the aforementioned general undertakings (to be further commented upon below). Firstly, treaty-obligations relating to the principle of racial equality and to the practice of apartheid (adverted to in the 'Overview' above), including transnational policy approaches thereto; secondly, multilateral agreements and deliberations concerning appropriate strategies for combatting South Africa's continued adherence to apartheid policies.

The treaty-obligations comprise the 1966 International Convention on the Elimination of All Forms of Racial Discrimination,(136) and the 1973 International Convention on the Suppression and Punishment of the Crime of Apartheid.(137) Canada has ratified the Racial Convention, but has yet to sign the Convention on Apartheid.(138) Nevertheless, as noted

earlier, the Racial Convention incorporates a denunciation of the practice of apartheid under Article 3:

> "States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction."

In specific terms, Article 2 thereof obliges parties

> "to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end: ... (C) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists."

Arguably, the preceding requires governmental or national policies to abstain from conduct which has "the effect of creating or perpetuating racial discrimination" abroad as well as domestically, given the explicit condemnation of apartheid in this and other authoritative international pronouncements. Certainly, the solemn pledge by member-states under Article 56 of the Charter "to take joint and separate action" for the achivement of the Organisation's purposes, including "respect for the principle of equal rights and self-determination of peoples", reinforces the interpretation suggested here. A fortiori when the violation of the latter principle constitutes a "crime against humanity", as determined by the United Nations apropos South African apartheid,(139) as well as a violation of customary international law. (140)

Consequently, any apects of Canada's relations with South Africa that contribute to the maintenance of the system

of apartheid would place this country in breach of its obligations under the Racial Convention. Canada's non-adherence to the Convention on Apartheid - which is more forthright in requiring that parties "co-operate in the implementation of decisions adopted by ... competent organs of the United Nations with a view to achieving the purposes of the Convention" (i.e. the suppression and punishment of the crime of apartheid)(141) - does not relieve the Government from the essential obligation to refrain from aiding or abetting in the South African system. It is noteworthy that the 4 states opposing the adoption of the Apartheid Convention in 1973 (with 91 in favour and 26 abstaining, including Canada) were Britain, Portugal, South Africa and the United States,(142) all enjoying a vested interest in the status quo in that country.(143)

A second category of international obligations stems from anti- apartheid commitments pertaining to such policy-strategies as sanctions (economic and military), sports boycotts, diplomatic relations and support for Black liberation movements,(144) within the broad framework of principles contained in the foregoing international instruments.

The Lagos Declaration of 1977, to which Canada is a party, was adopted unanimously by the United Nations General Assembly,(145) and sets forth what Canada described as "the key elements of the problem of apartheid."(146) The Declaration proclaims a global undertaking as to the latter, including "assistance to the victims of oppression" (para. 21), "appropriate" support or assistance "to the oppressed people of

South Africa and their national liberation movement"(paras. 12, 21), and a recognition of the "urgent need" for economic measures against the South Africa (para. 27). Considerable latitude was envisaged, however, over the precise measures to be adopted by national governments thereunder.

With particular reference to sporting relations with South Africa, a Draft Convention against Apartheid in Sports awaits the final approval of the General Assembly.(147) Canada is a member of the Ad Hoc Committee on the drafting of the Convention.(148) Article 3 thereof would mandate that parties prohibit "sports contact with a country practicing apartheid", taking "appropriate action to ensure that their sports teams, sports bodies and individual sportsmen do not have such contact." Article 6 provides for each state to appropriately restrain such contact by its nationals and to penalise those in breach.

It will be recalled that current Canadian policy is to withold Government support for sports contacts with South Africa, without prohibiting the same.(149)

Finally, the 1976 Programme of Action Against Apartheid, adopted by the General Assembly by a majority of 105 votes to 8, with 26 abstentions including Canada's, commits states to an omnibus series of far-reaching measures against South Africa.(150) These include the termination of "diplomatic, consular and other official relations" (para. 21(A)), of "military and nuclear collaboration" (para. 21(B)) and of "economic collaboration" (including petroleum supplies, bank

loans, trade preferences and multilateral financial assistance) (para. 21(C)), the refusal of landing, passage and docking facilities to South African aircraft and vessels (para. 21(D)), the prohibition or discouragement of skilled emigration to that country (para. 21(E)), the suspension of "cultural, educational, sporting or other collaboration" (para. 21(F)), and the provision of "financial and material assistance" to recognised Black liberation movcements (para. 21(G)).

Canada expressed in its 'Explanation of Vote' on the Programme its agreement with such aspects thereof as measures against military and nuclear collaboration, sporting contacts and assistance to the opppressed.(151) But it was in "fundamental disagreement with those sections relating to normal State-to-State contacts noted in paragraph 21(A),(C),(D) and (E)", and also had "difficulty with other provisions".

While lacking the strong consensus accorded by the international community to the Lagos Declaration, the Programme of Action nevertheless reflects the general opinion of the United Nations as to governmental responsibilities in opposing apartheid; the instruments should, indeed be read as elaborations of the treaty-obligations assumed by parties to the 1966 and 1973 Conventions. The expectation of compliance (or 'normative threshold') stemming from the Declaration and the Programme is likely to progressively grow amidst South Africa's intransigence in meeting the most elementary human rights obligations towards its Black citizens.(152)

3. Initiatives at Transnational Rights Fora

In exploring the extent to which Canadian declaratory positions on apartheid have found expression through operative multilateral channels, this section will focus primarily upon a) Canada's voting pattern on pertinent issues at the United Nations General Assembly and Security Council; and b) significant demarches undertaken by the Trudeau Governments in furtherance of declared policies at the international level. Initiatives and positions in the particular context of international financial institutions will be considered distinctly in the segment that follows.

On the basis of their recurrence and saliency in debates on apartheid at the United Nations, nine issues affecting national foreign policy approaches to the South African situation are distinguished below, with Canada's voting-position thereon tabulated for the 1968-84 period. The professed rationale for each position - drawn from the formal 'explanation of vote', other statements during the attendant debate, or the general policy-orientation of the Government - is also indicated. In order to facilitate a broad perspective of Canadian positions, overall Western standpoints thereon are provided. It should be observed that the descriptions in the 'Issues' column represent majority positions at the United Nations (though not necessarily in the Security Council, where the five-power veto, in any case, vitiates the majority notion altogether).

Table 2:1 Canada's Voting Pattern at the United Nations on Apartheid-Related Issues, 1968-84

ISSUE(a)	VOTE	RATIONALE(b)	WESTERN VOTE(c)
Condemnation of race policies	In Favour	Apartheid violates UN Charter, human rights principles	In Favour, same rationale
Suspension of South Africa's UN status	Against	Universality principle	Against, same rationale
Rejection of the homelands policy	In favour	Violates Black self-determination	In favour, same rationale
Comprehensive economic sanctions	Against	Peaceful trade legitimate; Blacks would be hurt most	Against, same rationale
Military sanctions	In favour	Arms sales abet repression; UN embargo mandatory	In favour, same rationale; U.S. wavers for strategic reasons
Humanitarian aid to Black victims	In favour	Contributes to peaceful change	In favour, same rationale
Support for Black liberation groups	Against	Opposition to violent change	Against (except Scandinavians), same rationale
Sports boycotts	In favour	Usefully isolates White South Africa	Against (with exceptions); isolation bad
Rejection of 1984 official constitutional reforms	In favour	Blacks still disenfranchised; Asian Coloured citizens offered token power	In favour, same rationale; U.S. & U.K. favour 'constructive engagement'

(a) See preceding discussion in Section A.
(b) As proferred in 'Explanation of Vote' and other official statements;
(c) Overall West European, United States and Scandinavian stance.

Source: United Nations, General Assembly, Official Records, 1968-1984.

While the Scandinavian countries have generally displayed a more liberal attitude towards the range of anti-apartheid measures proposed in the Assembly than has Canada, it is evident that External Affairs Minister Mitchell Sharp's contention in 1970 that Canada was more supportive of "the views of black African states" on apartheid "than any other Western country" remained substantially accurate through the Trudeau-era.(153) Indeed, the oft-stated criticism of the Government's inclination to voting with the United Kingdom or the United States (or both) on apartheid resolutions has increasingly become less valid. The latter frequently find themselves isolated in opposing or abstaining on major recent resolutions, with Canada's position closer to that of other West European states or the Scandinavians.(154)

Nonetheless, majority perceptions at the United Nations apropos the international vigour necessary to effectuate fundamental change in South Africa have generally been at considerable distance from Canada's. On the single most recurrent theme in apartheid debates and resolutions in the General Assembly over the past decade - the question of 'comprehensive' economic sanctions against South Africa - Canada differed profoundly with the majority throughout the Trudeau-era,(155) a divergence not fully overcome even under the new 'progressive' policy phase in 1985-86. (See Section II:2 below). Nor is the Canadian opposition to direct assistance to recognised South Africa liberation movements acceptable to the vast majority of member-states, whatever the

precise rationalisations offered by this and other Western countries.(156)

Actual Canadian policy behaviour in respect of the preceding issue-areas will be explored subsequently under the appropriate rubrics. While this country's voting pattern at the United Nations on apartheid (Table 1) is generally reflective of relevant operative policies towards South Africa, it corresponds less consistently with Canadian declaratory policies on those issues, as even a cursory perusal of the preceding segments of this study reveals. A 1984 NGO study on Canada-South Africa relations, after reviewing Canadian voting behaviour at the United Nations since 1948, noted that this country's position has "essentially remained consistent since 1960":

> "It has maintained its two track policy of verbal condemnation of apartheid while at the same time refusing to lend support to resolutions, the implementation of which would have a direct impact on the apartheid regime in South Africa."(157)

Canada succeeded, however, in playing a significant mediatory role between competing approaches to the South African situation in various international forums through the 1970s, often achieving a broad consensus amidst divergent concerns over the pace of change in the system of apartheid. Prime Minister Trudeau's conciliatory diplomacy at the 1971 Commonwealth Conference in Singapore probably forestalled an impending rift along racial lines over the question of British arms sales to that country.(158) Six years later, the Gleneagles Agreement, which put on record the Commonwealth's

opposition to sporting contacts with South Africa, was in significant measure the product of a Canadian initiative (induced by Canada's apprehension over participation at the 1978 Commonwealth Games in Edmonton).(159)

Two Canadian engagements at the United Nations in 1977 also stand out: membership in the Western 'Contact' group, seeking an orderly resolution of the problem of South Africa's continued occupation of Namibia,(160) and membership in the Security Council during the imposition of the arms embargo under Chapter VII of the Charter.(161) Both engagements demonstrated the Government's preference for diplomatic pressure on South Africa as the instrument for change par excellence, as well as the desire for an active role in concert with other Western states on a major international issue.(162)

Juxtaposing Canada's voting pattern and the Government's demarches on apartheid over the same period, the inference that the latter generally reinforced the former appears ineluctable: Canadian mediatory diplomacy was directed in the main at restraining the adoption of what the more conservative states (often including Canada) would consider radical Third World stances, rather than at pursuading the former to shift their firm opposition to vigorous measures against South Africa.(163) Hence if the Government's declaratory policy on apartheid - in particular the official international rhetoric on the subject - has led to somewhat higher expectations of operative Canadian multilateral policy than has actually been the case, the same cannot be said of the elements within the sphere of

multilateral behaviour considered above. Neither the country's voting record at the United Nations - distinguished only by its circumspection amidst potential polarisations in transnational approaches to apartheid - nor its initiatives in the Commonwealth and Security Council, indicate a saliency of human rights concerns amongst the elements of multilateral policymaking on South Africa by the Canadian Government.

4. Action at International Financial Institutions

The sole multilateral institutional lender to South Africa through the Trudeau era was the International Monetary Fund (IMF), extending credits worth $1.5 billion (US) between 1976 and 1982.(164) In addition, the Fund's Special Drawing Rights (SDR) Department facilitated withdrawals in excess of $100 million (US) by that country during 1979-80, as part of an established co-operative arrangement between the parties outside the 'loan' classification.(165) South Africa has not qualified for World Bank (IBRD) assistance subsequent to a 1966 loan of $20 million (US) therefrom (166), nor been a member of the African Development Bank (ADB).

Canada voted affirmatively on all the preceding credits - among the most controversial in the history of both financial institutions - on the grounds that technical criteria (as per the relevant 'Articles of Agreement') stricto sensu governed the decisions.(167) The position of the Trudeau Government at the Fund is examined below in the context of pertinent circumstances attending the South African credits, including the views of the IMF staff and various member governments. Reference is made also to United States legislation adopted in 1983 that specifically restricts future support by that country for IMF assistance to countries practicing apartheid. This stands in diametric contrast to Canada's insistence that rights-related voting would 'politicise' multilateral institutional lending, in violation of members express contractual obligations.

The discussion hereunder is premised upon the conceptual analysis presented in Part 1 of this study, where aspects of the relationship between international lending and respect for norms of human rights were assessed.(168)

a. The 1976 IMF Credits to South Africa

Several loans totalling $464 million (US) were advanced by the Fund to South Africa during 1976, addressed pro forma to that country's balance of payments deficit. The credits were approved in most part after the June upheavals in Soweto and other South African townships, stemming self-evidently from the policy of apartheid.(169) Concurrently, South Africa's defence expenditure, which had increased over the 1972-75 period by 97% in real terms, further escalated by $450 million (US), virtually matching the value of the IMF credits.(170)

Although technical reservations to the loans (largely in connexion with South Africa's actual financial requirements) were expressed by a number of West European representatives on the Executive Board, it was left to the African directors to broach the the question of apartheid's economic consequences vis-a-vis the balance of payments situation.(171) Antoine Yameogo, on behalf of Upper Volta (now Bourkina Fasso) and seventeen other African states, argued that irrespective of the technical merits of the loans (strictly construed), "the basic problems in South Africa are structural", involving the distortion of market forces through discriminatory educational and labour laws and policies.(172)

In casting the human rights criterion to IMF lending in economic terms, Yameogo implicitly questioned the favourable treatment of South Africa in comparison with the standard far-reaching conditionality of IMF assistance in relation to the socio-economic policies of recepient governments. The Fund's conventional lending practices would surely require the present credits to be conditioned upon less restrictive econonmic and attendant social policies by South Africa, to which apartheid constituted a critical impediment.(173)

The affirmative votes of Canada, the United States and even the West European members, however, assured the passage of the credits without undue 'political' linkage thereof to the apartheid issue.(174) Indeed, the United Kingdom representative reportedly averred that the assistance would afford the South African Government "some additional room for maneuver, and some feeling of international support, which they deserved."(175)

The matter of convergence of economic and human rights considerations in lending to South Africa was to be revived during 1982-83, with the concurrence of the IMF's own staff. Commenting on the wider financial implications of the 1976 credits, a 1981 study commissioned by the United Nations observed:

> "Bloody riots in Soweto in June 1976 had temporarily shaken international confidence in the stability of the white South African Governmnt. South Africa's ability to borrow on good terms in private international financial markets was in jeopardy. IMF loans helped to restore investor confidence and thereby helped maintain a flow of private credits to South Africa."(176)

b. The Fund's 1982 Loan

Following sustained speculation and concern in the matter among anti-apartheid groups in Washington, South Africa formally announced its application to borrow $1.1 billion (US) from the Fund in October 1982.(177) The application was reported to have been favourably received by the IMF, prompting resolutions by the United Nations General Assembly censuring such institutional "collaboration" with the apartheid regime.(178) In addition to objections to the credits on human rights grounds, it was widely believed that South Africa required the funds not for balance of payments purposes, as it claimed, but rather in order to reaffirm its international creditworthiness.(179)

In Canada, the Taskforce on the Churches and Corporate Responsibility (TCCR) urged the Trudeau Government "that the inhumane system of apartheid be considered a major impediment to unconditional approval of the country's credit application."(180) The Secretary of State for External Affairs responded that "so long as South Africa adheres to the articles of agreement of the IMF and the loan meets normally applied criteria, Canada would not oppose the loan requested." (181)

At the Fund's Executive Board deliberations over the application in November, a record 68 member countries were opposed to the credits on a number of grounds, including the technical question as to South Africa's bona fide financial needs.(182) It was further contended by the Afro-Asian members that the economic distortions of apartheid constituted a legitimate basis for denying the loan, within the terms of the

Articles of Agreement.

However, by a narrow majority of 52 to 48%, the application was approved by the Board.(183) Canada's affirmative vote - despite the dissent of Ireland and Jamaica, whom the Canadian delegate also represented - was decisive in providing the required majority. The conditionality attached to the credits was such that 80% of the $1.1 billion could be drawn prior to the fulfillment of any of the terms by the South African Government.(184)

In May 1983, an IMF Staff Report on South Africa expressly referred to the impact of apartheid legislation concerning labour and education upon the country's market system, describing the ensuing economic deficiencies as "based on non-economic considerations."(185) It will be recalled that this linkage was first raised on the Executive Board in 1976, and strenuosly pressed again in 1982. The Staff Report concluded that "shortages of skilled labour constitute a medium-term constraint on potential growth that is likely to be eased without substantial changes in policy."(186)

It is noteworthy that South Africa eventually cancelled the 1982 line of credit well before its exhaustion,(187) ostensibly owing to an improvement in the national balance of payments situation - thus lending support to the original skepticism over the country's real need for the funds.

c. Ramifications of the IMF Credits

At the United Nations, immediately following the

Executive Board's November 1982 decision, the Council for Namibia embarked upon an international campaign to forestall future Fund credits to South Africa, rather than depend upon ad hoc resolutions by the General Assembly that the IMF could readily disregard.(188) Concurrently, several Washington-based anti-apartheid organisations joined with members of the United States Congress to effect legislative constraints on American approval of loans to South Africa.

Congressional hearings were informed in expert testimony that "apartheid spreads its economic influence over the entirety of South Africa", and that the IMF, "an institution which is rightly preoccupied with the achivement of economic efficiency", could not ignore "such an overwhleming distortion of the economy."(189) With the release of the IMF Staff Report on the impact of apartheid legislation on South Africa's economy in May 1983, the contention of the Reagan Administration that the former constituted a socio-political issue alone was severly undermined. NGOs such as the Center for International Policy, the Coalition for a New Foreign and Military Policy, Transafrica, and numerous church groups, mobilised widespread pressure on the Administration to facilitate the passage of appropriate legislation concerning United States approval of multilateral credits to South Africa, successfully generating media publicity on the issue. (190)

In November 1983, President Reagan approved a bill incorporating an anti-apartheid amendment, which instructed the United States Executive Director at the IMF:

> "to actively oppose any facility involving use of the Fund credit by any country which practices apartheid unless the Secretary of the Treasury certifies and documents in writing ... that such drawing:(1) would reduce the severe constraints on labor and capital mobility through such means as increasing access to education by workers ... and substantial reduction of racially-biased restrictions on the geographical mobility of labor; (2) would reduce other highly inefficient labor and capital supply rigidities; (3) would benefit economically the majority of the people of any country which practices apartheid; (4) (the latter) is suffering from a genuine balance of payments imbalance that cannot be met by recourse to private capital markets."(191)

Failure by the Secretary of the Treasury to certify and document "that these four conditions have been met" would require the United States representative at the Fund to "vote against such program" (not merely to abstain).

The Canadian Government, however, declined to alter its position over South Africa's compliance with the technical criteria applicable to such credits, notwithstanding findings to the contrary contained in the IMF Staff Report and in expert testimony before the United States Congress, and the implications of South Africa's curtailment of the 1982 credits. While according to the TCCR the debate within Canada "had shifted notably from our request that the loan should not be made because of human rights violations, to the perhaps more comfortable ground that present IMF rules had been disregarded",(192) the Trudeau Government remained more concerned over the potential politicisation of the Fund through the apartheid issue. As in the instances of El Salvador and Guatemala (to be addressed below), Canada's forthright condemnation of egregious governmental human rights violations

did not imply meaningful multilateral policy action to avoid financing the violating government. Certainly, evidence of prospective Canadian legislation parallel to the American anti-apartheid amedment of 1983 is not forthcoming.(193)

Testifying before a United States House of Representatives Committee on apartheid in 1983, Dr. Colin Bradford of Yale cautioned that not only donor nations but also borrowers could "politicise" the IMF, an effect that credits to South Africa appeared to have produced through their use "as a form for achieving international legitimacy."(194) In light of the Fund's failure to recognise apartheid as an impediment to South Africa's eligibility for credits - despite arguments to that effect before the Fund since 1976 - it is not unreasonable to conclude that extra-technical factors influenced the approval of the loans by the IMF's leading members. Contrary to the official Canadian position in the matter, the use of the Fund for political-ideological purposes has been implicit in South Africa's loan applications per se, as suggested by Dr. Bradford, purposes that the Canadian Government (with other members) effectively colluded in through its affirmative voting decisions on the applications.

5. Friendly Relations With Severe Violators

Canada has long advocated conventional diplomatic and economic relations with South Africa as an effective international conduit for peaceful change in the apartheid situation. At the multilateral level, as aleady seen, Canada's perception of what is desirable and necessary to effectuate that change diverged significantly from that of the international community at large: the Government was unable to support global anti-apartheid measures such as economic sanctions, severance of transportation links and material assistance to liberation movements, nor would it concur in the ostracism of South Africa at the United Nations. In the sphere of bilateral relations, Canada has had the opportunity to implement the professed commitment to systemic change in South Africa, employing the instrumentalities of its choice.

The category of bilateral ties to be examined here encompasses diplomatic and socio-cultural relations, as well as humanitarian assistance to apartheid victims (as reflective specifically of 'friendly relations' with the majority of that country's population). In large measure - and in contrast to other elements of bilateral relations such as trade, commerce and military ties - the present category is susceptible to few, if any, 'overriding' considerations of national interest and security, thus constituting an especially 'unequivocal' criterion of rights-orientation in Canadian policy towards South Africa.

On the question of diplomatic relations and the

perceived need for an international dialogue with South Africa, the Trudeau Government offered the following synopsis of this country's well-established perspective in 1984:

> "Canada maintains diplomatic relations with South Africa. It believes that this provides a continuing means of communicating to the South African Government, to the white minority there and to the population as a whole, Canadian opinion about the unacceptability of apartheid and the need for change. Through our official contacts and through our direct and indirect assistance to the non-white population of South Africa, Canada uses its influence to encourage social and political change. In the context of its general approach, Canada supports the right of South Africa to participate in the activities of the United Nations and other international organisations of which it is a member. We attach great importance to the principle of universality of membership within the UN system ... (E)xposing South Africa to the pressures of world opinion and maintaining a frank dialogue - at the UN and bilaterally - is a more effective way of promoting change than isolating it totally from the world community."(195)

Two questions remain unanswered in the many governmental statements onthis issue: firstly, whether the maintenance of diplomatic relations since 1948 can be said to have genuinely fostered or contributed tangibly to change in South Africa; and secondly, whether dialogue remains the "more effective way of promoting peaceful change" within the terms of Black expectations prevailing at this juncture in that country's history, particularly in the context of rather limited support from other, more incisive, pressures upon that Government. Evidence in support of the effectiveness of diplomatic pressures against South Africa is not readily adduced. Given that much depends on the leverage available to a country of Canada's transnational standing, and on the willingness of the Government to inject considerations of human rights into the

conduct of diplomacy, it may be asked whether such pressures by Canada - and indeed the West in general - compare at all with the effects of internal Black pressures upon the Nationalist Government, and whether external diplomatic pressures alone have even assisted internal Black protest measurably.

It may be argued that, at a minimum, diplomatic relations per se in no way constitute approval of the policies of another government, despite the connotation of political legitimacy entailed in the process. Membership in global organisations is more problematic, however, particularly when it concerns a government that flouts every fundamental precept of human rights, numerous other principles and purposes of the the organisations themselves, as well as the latter's resolutions and decisions. Canada's reference to South Africa's "right to participate" at the United Nations is surely untenable: that country has broken too many elementary rules of international law and comity to be able to claim their protection in this regard. As for exposing South Africa to concerted censure in global forums, it appears to have remained so exposed notwithstanding suspension therefrom, arguably showing no more or less sensitivity to such censure on the outside than it would on the inside.(196)

It is interesting that Canada's support for an international sports boycott of South Africa is based upon the presumption that isolation would provoke reforms in that country's sporting policies.(197) Thus since 1972, Canada has tightened progressively its regulations in this area, short of

banning private sporting contacts. In 1978, the issuance of visas to South Africans intending to visit Canada on a nationally representative basis for sports competetion was halted.(198) Canada has also been active in drafting an international convention against apartheid in sports, calling for far-reaching action by individual states to enforce a boycott of South African events and representatives. (199)

Exclusion from the Olympic and Commonwealth Games, as well as other major competitions, has elicited from South Africa numerous changes in the administration of national sporting activities, albeit insufficiently penetrating in the context of persistent socio-economic discrimination generally.(200) In any case, the Canadian boycott in and of itself has not involved foregoing significant sporting exchanges between the two countries. South Africa's national sports (in common with those of Australia, Britain and New Zealand) are cricket, rugby and soccer; track and field, tennis and field hockey are also highly popular.(201) The Canadian interest in baseball, ice hockey, football and skiing is not shared by most South Africans; swimming and tennis are minor exceptions in this regard. This might explain, at least in part, Canada's willingness to join a concerted sports boycott in contrast to the reluctance of other Western nations to do so (especially the three Commonwealth nations mentioned above, and the United States, which shares a substantial interest in track and field and tennis).

Since the mid-1970s, the centre-piece of Canadian operative multilateral policy on apartheid has been its programme of humanitarian assistance, extended to Black South Africans. References have consistently been made in official public statements to the increasing scale of such assistance, asserted as demonstrating Canada's commitment to peaceful change and social justice.(202) Equally, the assistance has been carefully tailored to minimise (if not eliminate) support, whether humanitarian or otherwise, for Black liberation movements.(203)

Overall, Canadian governmental assistance to apartheid victims - in the form of educatonal and other social welfare grants (204) - now compares quite favourably with that from most Western countries, excepting the Scandinavian nations.(205) Canada's new Conservative Government pledged early in its term to increase project-related, NGO contributions to Black South Africans to C$300,000, and to allocate C$1.5 million for educational training and scholarships within South Africa.(206)

In terms of ameliorating the existing plight of apartheid's Black victims, Canadian aid indubitably contributes generously and positively - without the disapproval of the South African Government. What this country's aid does not contribute to is the strategy for accelerated change embraced by Black liberation movements in various forms (not always violent), with the support of most 'front-line' African states and the majority of United Nations members. Public criticism of

the Canadian Government's assistance programme has centered upon its refusal to recognise the legitimacy of the liberation struggle, and the insistence that its aid be channelled solely into alternative, pre-determined areas.(207) Canada has previously supported some of the major liberation movements in what were then Portuguese Angola and Mozambique, and Southern Rhodesia, in the final pre-independence phase of their struggles;(208) though non-military and insubstantial, that support provoked much public controversy within Canada, with many regarding the Government's actions as tantamount to condoning violence. (209) At the time, several private citizens groups engaged in an effort to assist directly various liberation movements in southern Africa, despite the reservations by some over any tacit approval of violent change in the region.(210) By 1981, more than 60 Canadian NGOs were able to convene in Ottawa in preparation for the Conference on Solidarity with the Liberation Struggles of the Peoples of Southern Africa, held in May 1982.(211) In September 1982, the Canadian South African Coalition (CANSAC) was formed as a consequence, co-ordinating solidarity work amongst NGOs.(212)

It is thus left largely to non-governmental Canadian publics, with their modest resources, to conduct a vigourous campaign in support of, inter alia, divestment from South Africa-related corporate activity, restrictions on trade with that country, and material assistance to the Black liberation struggle against apartheid.(213) In 1960, Canada's External Affairs Minister, Howard Green, told Parliament that Canadian

policy towards South Africa was a question of bringing about the desired results, "by condemning them or by not condemning them and trying to work with them in a friendly fashion."(214) In large measure, Canadian policy through the Trudeau era successfully straddled Howard Green's policy options: South Africa was both condemned and worked with in somewhat "friendly fashion". One awaits the desired results.

6. Economic Relations With Severe Violators

Canada's economic ties with South Africa during the 1970s and early 80s have been extensive, encompassing trade, direct investment (through corporate presence there), indirect investment (through bank credits to South African parties), and lesser transactions. It will be further recalled that Canada endorsed multilateral institutional credits to South Africa in the amount of over $1.5 billion (US) through 1984.(215) The general ramifications of economic ties in the context of human rights law and policy were explored in Part 1 above;(216) some of the more specific implications thereof vis-a-vis the South African situation are appraised here.

No other facet of Canadian-South African relations has received the attention of academics, NGOs, the media, and governmental policy pronouncements accorded to the question of trade and investment ties; the same might be said of transnational deliberations over appropriate economic approaches towards South Africa. Hence most of the principal arguments appertaining to the continuance or otherwise of prevailing international (and Canadian) economic relations with that country have acquired considerable familiarity over the years, and will only be presented in condensed form below.

Much of this segment focuses upon the nature and substance of de facto economic links between Canada and South Africa in the course of the Trudeau era; an update for the 1984-86 period, including the stance on economic sanctions adopted by the Mulroney Government, precedes the concluding

part of this case-study, where additional remarks will be addressed to the overall foreign policy implications of Canadian economic linkages with South Africa.

The Government's policy statements on South Africa frequently observed that the conduct of trade in 'peaceful goods' with all nations, irrespective of their political orientation, is a cornerstone of Canadian external relations.(217) South African trade, however, has never featured prominently in the aggregate value of Canada's exports or imports: at no point during the Trudeau era did it exceed 1% of all Canadian trade (Table 2:2 below). From that country's standpoint over the same period, Canada accounted for approximately 3% of total exports, and supplied slightly over 2.5% of all imports.(218)

Thus the 1970 Canadian "Black Paper" was critical of this country's commercial relations with South Africa as subordinating for negligible gain in the objective of 'economic growth' the Government's commitment to furthering 'social justice', professed in its 'White Paper' on foreign policy.(219) Indeed, Prime Minister Trudeau had acknowledged the same year that in the interests of consistency in its policy towards apartheid, Canada should "either stop trading or stop condemning".(220) Yet the Government continued actively to promote trade and investment with South Africa over the ensuing decade.

Ostensibly, Don Jamieson's package of anti-apartheid economic measures in December 1977 signalled the end of

"Government-sponsored, commercial-support activities in South Africa".(221) Trade-related policy changes (adverted to earlier) included the curtailment of promotional counselling in Cape Town and Johannesburg, the termination of the Commonwealth preferential tariff extended to South Africa since 1933, and the closure of the 'government account' section of the Export Development Corporation (EDC) for transactions concerning South Africa (entailing the cessation of credit to South African importers, insurance to Canadian exporters against non-payment of contracts, and insurance to investors against non-commercial risks). (222)

In fact, the proportion of Canadian trade with South Africa increased marginally following the 1977 measures, whereas its value grew substantially, allowing for standard economy-related annual fluctuations; the balance remained in South Africa's favour (as per the situation since 1972).(Table 2:2) The highly circumscribed and largely symbolic significance of Jamieson's measures had been remarked upon by various Canadian commentators, whose criticisms of the measures appear to have been borne out by the record.(223)

The closure of Canadian trade offices in Cape Town and Johannesburg, for instance, did not prevent the continued availability of commercial counselling at the Pretoria embassy, nor is it evident that such counselling is essential for ongoing trade between the two countries.(224) As for the termination of the Commonwealth preference which South Africa had continued enjoying despite its non-Commonwealth status

after 1961, this was executed in 1979 for avowedly economic reasons from Canada's perspective: nearly 66% of South African exports entered this country at the preferred rate, whereas only 2% of Canadian exports benefitted thereunder. The impact on Canadian imports has been negligible.(225)

Cessation of the EDC's government account services (constituting 10% of all the Corporation's activity) should be understood in light of actual EDC undertakings previously: not only was the government account dormant since 1967, but the 'corporate account', which provided the overwhleming majority of EDC services to South Africa in respect of South Africa, was left untouched.(226) In 1981, the stricture was extended to corporate account concesional financing of Canadian exports (involving assistance to South African importers), but the most active sector of EDC services - corporate account guarantees and insurance to Canadian exporters - continued to flourish, more than doubling its 1977 value.(227)

Furthermore, it was observed, the official Programme for Export Marketing Development (PEMD), offering assistance to Canadian firms in their overseas marketing activities, was excluded altogether from the phasing-out of "all Government-sponsored, commercial -support activities for South Africa."(228) PEMD support to Canadian exporters reached its highest-ever level for the South African market in 1982 ($88 million).(229) While it may be contended that the assistance is not extended for activities <u>within</u> South Africa, as per a literal reading of the policy measure, the substantive impact

thereof patently transgresses the professed purpose of the change in policy.

Given the quantitative marginality of Canada-South Africa trade, it may be asked why the Government has been unyielding in curtailing it - and hesitant even in implementing symbolic measures effectively in this regard - despite widespread international as well as domestic pressures to the contrary. An examination of the composition of that trade reveals two characteristics with clear policy implications for Canada. Firstly, this country has enjoyed considerable success in exporting manufactured goods to South Africa, amidst a failure to do so in its overall international trade. Finished products, in recent years, have accounted for over 40% of Canadian exports to South Africa, amounting to over 30% of this country's total manufactured exports. (Table 2:3 below) Bearing in mind the relative paucity of Canadian imports of finished products from that country, the emerging trade profile compares favourably with Canada's general international performance. The Trudeau Government perceived this as a vital economic policy consideration "in a country such as ours, with a serious unemployment problem."(230) It is indeed the export of finished goods that generates comparatively the highest degree of domestic employment - sustained in this instance by the purchasing power of White South Africans benefitting from the system of apartheid.

A second notable characteristic of the composition of Canada- South Africa trade is the moderate Canadian dependence

on 'strategic imports', notwithstanding general concerns in that respect often stated in the debate over trade sanctions against South Africa.(231) Of the 'non-edible' imports from that country, "metal ores, concentrates and scrap" (comprising chrome, ferrochrome, managanese, ferromanganese and tungsten) constitute the most important category,(Table 2:4 below) with particular respect to managanese, essential in the steel-making process and imported almost exclusively from South Africa.(232)

The edible items purchased from South Africa would readily be available elsewhere, without a major price deferential.(233) Import-alternatives for virtually all the non-edibles, including essential metals and minerals, can also be secured, whether in terms of sources or substitute-uses, albeit with greater difficulty and possibly at higher cost.(234) A recent Canadian NGO study observes that multinational corporations mining in South Africa respond to the lack of extraction constraints there, creating an artificial dependency through control of "both the extraction in South Africa and the marketing ... The dependence is "excessive" because it is profitable to have it that way."(235) Indeed, the reluctance of Canada and the West to foster any such dependence upon the major alternative source of strategic imports - the Soviet Union and other East bloc nations - surely contributes to prevailing policy orientations in the former.(236) Moreover, South Africa's dependence upon the Western market for such exports is itself highly substantial.(237) As a 1985 corporate-media report on American

strategic imports from South Africa points out,

> "If the U.S. imposed tough economic sanctions, the South African government could of course embargo mineral shipments to the U.S. - but at a forbidding cost to its own country's economy. Mining accounts for about 26% of South Africa's gross domestic product and 75% of its foreign exchange earnings, and the economy has been in a deep recession for three years."(238)

The foregoing leads to the conclusion that, on the one hand, Canada's trade relations with South Africa involve definitive qualitative advantages to the former in the sphere of manufactured exports, though in the context of a small proportion overall of international trade values. On the other hand, a Canadian decision to sever trade with South Africa need not be deterred by considerations relating to dependency on metal and mineral ('strategic') imports, which would likely enjoy exemption from a general embargo in any event, to the advantage of both countries.

From the human rights policy perspective, does Canadian trade with South Africa, limited as it is, contribute identifiably to the maintenance of the system of apartheid? Would a Canadian trade boycott, whether unilateral or in concert with other states, constitute an appropriate measure to induce prompt and meaningful change in that country? Or would the negative economic effects of sanctions on Black South Africans and neighbouring countries in the region outweigh the impact on White South Africa? Conclusive responses to each of these questions can only be tendered at the risk of oversimplifying the facts and issues; rather, a judgement on the 'balance of probabilities' appears to be called for,

mindful of the normative human rights obligations owed by the community of states to the victims of the South African system.

South Africa's robust economic performance through most of the post-War period has made it a leading industrial and trading nation, though critically dependent on the availability of unlimited supplies of cheap Black labour from within and outside its borders. Importations from that country, whether agricultural, industrial or mineral, inevitably entail activating the discriminatory treatment of Non-White labour within the system.(239) Successful international trade is not only a vital component of South Africa's economic well-being - worth 30% of gross domestic product - but also a crucial bridge to the external (notably Western) world.(240)

Arguably, the critical mass of White domestic support for the Nationalist Government would be difficult to sustain without the assurance of a threshold level of material prosperity for that group, including the availability of Western industrial consumer products.(241) Furthermore, as with the issue of multilateral credits to South Africa, the question arises of financial confidence in the country's economy: the continuance of near-normal trading relations by Western states appears to confirm professed mutual economic inter-dependence, suggesting shared 'vital interests' in the stability of South Africa's economy. Inasmuch as Canada maintains what is deemed an important trading relationship with that country, it partakes in the preceding Western assertion of economic faith in the South African status quo.

One rationale of the Canadian (and general Western) opposition to economic disengagement from South Africa is that international trade - as well as investment, to be examined below - enhances Black participation in an expanding economy, rendering apartheid progressively less profitable and viable for the White establishment. Conversely, it is held, the principal adverse effects of trade sanctions would be borne by Black South Africans and the 'front-line' African states, rather than the White population.(242) Canada has also often expressed doubts as to whether "totally isolating" South Africa through a trade boycott would promote, rather than retard, positive change in the system.(243)

Proponents of a multilateral trade embargo question whether the existing plight of the majority of Blacks under economic apartheid is susceptible of significant deterioration through sanctions. The argument that increased trade will result in constructive - if long-term - change through a trickle-down process for Blacks postulates the failure of the White establishment to control the pace and direction of political and economic developments in its own interests. Yet South African history since 1948 does not support this hypothesis: periods of economic boom have, on the contrary, been accompanied by measures further entrenching apartheid.(244) Given the failure of international pressures short of trade sanctions to reverse that process in South Africa, what non-violent alternatives remain for the external community?

The majority of Black leaders in that country (excluding governmental appointees) have articulated their support for the African National Congress (ANC)'s call for an international trade embargo, in the face of potential prosecution by the Government for doing so; most of the 'frontline' states have endorsed that call, notwithstanding the acknowledged hardship which would ensue for their economies.(245) Through the 1980s (and especially in the post-1984 period), overall Black support within and outside South Africa for more incisive economic measures against the regime has demonstrably hardened.(246) Invoking concern for the welfare of the preceding groups as a deterrent factor against multilateral sanctions hence appears rather disingenuous.

Indubitably, strong commercial sanctions cannot be guaranteed to produce peaceful change in South Africa in the short or even the medium term at this stage in history, and certainly not without substantial attendent developments vis-a-vis the regime (continued vigorous Black protest, pressures from the White business community, persistent guerilla warfare against official targets, strong diplomatic action by major Western nations). A determined Nationalist Government can be expected to resort to assorted strategies for circumventing sanctions, and South African Blacks would indeed have to endure added hardship (though in the context of a more 'flexible' threshold of tolerance than the Whites, it would seem).

The matter is frequently perceived as a dichotomy

between an optimistic expectation that economic pressure can induce an obdurate, affluent and entrenched elite in South Africa to undertake meaningful change, and the radical thesis that sanctions would severely destabilise the status quo in that country to the point of allowing majority rule through force; the latter is then advanced as the more persuasive hypoyhesis by Western policy-makers opposed to a trade embargo.(247) Canadian action in this regard, unilateral or in concert with other states, could in itself have little direct impact on the situation in South Africa. However, at relatively negligible material cost, Canada could dissociate itself from the apartheid regime in what is clearly a vital sphere of activity, actual and symbolic; it would also provide this country with the groundwork for leadership in a more authentic Western human rights policy towards the international community at large.(248)

When confronted with the preceding arguments in support of trade sanctions during the past decade, the Canadian Government expressed skepticism over the capacity of unilateral action to effect any change in South Africa, and over the prospect of pursuading Britain and the United States to join in effective multilateral action against a valued trading partner. In the 1980s, the question of a trade boycott (unilateral or concerted) is widely perceived in the context of comprehensive economic disengagement from South Africa, including corporate investment links with that country. The Canadian position in this larger economic framework will now be addressed.

Canadian direct investment in South Africa - in the form of private corporate participation in that country's economy - expanded steadily in recent years, from $73 million in 1970 to $153 million in 1980.(Table 2:5 below) The proportion of Canada's African investment concentrated in South Africa over that period also grew conspicuously, from 35% to 53%; as a proportion of aggregate Canadian investment, however, the South African share has consistently remained well below one-fifth of 1%.(249) A dominant segment of 'Canadian' corporate investment in that country, as Table 5 indicates, has been foreign controlled (68% in 1980), reflecting the general pattern of overseas ownership and dependence in the Canadian economy.

The list of corporations with direct investment in South Africa - until the spate of withdrawals initiated by major United States companies in 1986(249a) - has included many of Canada's largest multinationals, engaged in an array of activities central to the functioning of a highly industrialised, resource-based economy. Massey Ferguson, the largest supplier of farm implements in South Africa, headed the Canadian list, also producing through a South African subsidiary diesel engines for the national defence forces.(250) Also prominent has been Ford Motors of Canada (a subsidiary of Ford (USA), designated under South African law as a 'Key Point Industry', requiring the company to supply vehichles in emergency circumstances to the military and the police (both of which Ford was under contract to supply in any event).(251) (251)

Another major investor, Alcan Alumninium, has contributed significantly through the 1970s to South Africa's virtual self-sufficiency in aluminium. Alcan has held a 24% interest in Huletts Aluminium, a South African enterprise under contract with the military (which equips and trains an 'industrial security force' for Huletts).(252)

Canadian companies such as Cominco, Laurasia Resources, Noranda Mines, Rio Algom and Tinto Holdings, have engaged in multiple mining-related activities in Namibia and South Africa, including the extraction/production of diamonds, gold, fluorspar, lead, potash, silver, uranium and zinc.(253) In another strategic sector of the economy, that of computers, the Canadian connexion is more oblique, operating through IBM Canada's American parent company, IBM World Trade.(254)

Nor has the flow of direct investment capital been in one direction only: South Africa's corporate presence in Canada amounted to approximately $153 million in 1980,(255) and essentially continues unabated. More important, South African-controlled investments in this country are substantially larger than is commonly appreciated. As of 1978, the value of Canadian assets under such control - dominated overwhelmingly by the Anglo- American Corporation (engaged in mining, oil and natural gas) and the Rothman's group (with tobacco, brewery, andwinery intersts) - totalled $600 million.(256) Following a brief decline in the mid-1970s, the trend in South African investments in Canada has been firmly upward.(257)

A sector of the South African economy with chronically high dependence on the West is banking and finance. Canadian bank loans to parastatal companies in that country amount to a heavy quantum of indirect investment, complementing the well-documented role of American financial institutions in that respect. Between 1972 and 1978, Canada is reported to have ranked tenth on the list of countries providing finance capital to South Africa,(258) over and above the Government's support for IMF credits to that country.

While 'client-confidentiality' forestalls a full disclosure, information garnered by the United Nations Center Against Apartheid and Canadian NGOs indicates that all major Canadian chartered banks extended funding to the South African Government and/or its agencies during the 1970s and early 80s.(259) Recent financing includes a 1980 loan of $60 million (US) by the Royal Bank of Canada to the Standard Bank Import and Export Finance Co. of South Africa, and a 1982 loan of $60 million (US) by the Candian Imperial Bank of Commerce to the South African Mineral and Resources Corporation (MINORCO).(260) The Bank of Montreal engaged in providing credits to the South African Government through the 1970s, with bond purchases and loans totalling $450 million over the decade.(261)

An important source of foreign exchange for South Africa traditionallly stems from the sale of Krugerrand gold coins, distributed officially in Canada by the Bank of Nova Scotia.(262) Marketing of the Krugerrand in this country has involved advertisements on the television channels of the

Canadian Broadcasting Corporation (CBC), a practice which the Corporation's Commercial Acceptance Department avers as being within the terms of its regulations.(263) According to official Canadian policy, however, the sale of the coin constitutes "trade in peaceful goods ... which is neither encouraged nor promoted by the Government",(264) a position plainly at odds with the CBC's practices qua a Crown corporation.

Lesser economic interactions between the two countries have included the presence of a Canadian trade delegation at the commissioning of a major oil-from-coal enterprise (Sasol II) in South Africa in early 1980, and the participation of Canadian representatives at the International Coal Conversion Conference in Pretoria in August 1982.(265)

The role of international investment relations with South Africa has generated still greater controversy than the issue of trade; the former suggests, not inaccurately, active and integral participation in the operation of the apartheid economy, whether enlightened or not. Foreign banks, companies and governments are critical to the viability of virtually every sector of that economy, and hence to the political status quo. (266) As the precise nature of external investment linkages with South Africa have gained enhanced exposure - in the context of escalating civil unrest through the 1980s - campaigns for the divestment of various South Africa-related funds held by Western corporations has gathered momentum, becoming a particular rallying point for North American publics protesting apartheid.

Those favouring continued Western investment in South Africa assert that the presence of foreign (particularly United States') multinationals there constitutes a 'progressive force' in the socio- economic sphere, a source of practical leadership to South African corporations in the gradual liberalisation of apartheid constraints.(267) Indeed, the progressive record of multinationalss such as Caltex, Ford, General Motors and IBM - in terms of the equitable treatment of all employees in most work-related areas - cannot be gainsaid, at least over the past decade.(268) The majority of Western corporations fall under the purview of 'codes of conduct' promulgated by the governments of their home countries, viz. the Sullivan Principles in the United States, the European Economic Community (EEC)'s Code of Conduct, and the Canadian Code of Conduct (referred to earlier) - all of which seek to promote minimum, nondiscriminatory standards of employment in South Africa.(269)

It is further asserted that, as with enhanced international trade, continued investment in South Africa stimulates the expansion of the economy to the benefit of the Black population, increasing the likelihood of eventual equality de facto and de jure in the not-too-distant future. Equally, divestment would entail large- scale unemployment amongst Blacks, a decline in work-standards for those Blacks still employed, and a drop in the material standard of living for the entire country, not least the Non-White population.(270)

Both sets of arguments have been advanced by Canadian banks and corporations engaged with South Africa, the former asserting that their bond purchases and loans in no way reflect approval of apartheid.(271)

The Canadian Government maintains a position of 'neutrality' with regard to private investment, while believing that isolation resulting from economic disengagement would insulate South Africa from external reformist pressures.(272) In upholding respect for the ground-rules concerning private business, and in opposing what it considers would otherwise be extra-territorial application of Canadian regulations to companies operating in South Africa,(273) the Government thus avoids intervening in ongoing Canadian private investment, direct and indirect, in South Africa.

In response to United Nations resolutions in recent years calling for wide-ranging economic sanctions against the apartheid regime (including trade and investment boycotts), the Canadian Government asserted in 1982:

> "We do not believe that global economic sanctions against South Africa are appropriate, we do not believe they can be effective, and we do not believe that they would promote the changes we desire in South Africa. We are also concerned about the damage they would do to neighbouring countries."(274)

This position was reiterated in a policy synopsis presented by the Government at the 1984 North American NGO Conference on apartheid at the United Nations.(275)

Proponents of divestment perceive the foregoing as camouflaging the co-optation of Western banks, companies and

governments into the maintenance of the South African system, in the name of laissez-faire economics and short-term advantage to nationaal interests. Prevailing standards of work for Blacks in foreign-owned companies, it is argued, are only marginally superior to those among their locally-owned counterparts.(276) Moreover, fewer than 100,000 Blacks (slightly over 1% of the workforce) were employed by foreign multinationals even prior to the 1986 corporate eodus;(277) the reformist impact of foreign indirect investment, therefore, is intrinsically cirumscribed. Clearly, segregation outside the workplace remains the norm for Black employees irrespective of conditions at work, rendering the focus on the 'employment-reform' somewhat misleading.

With specific reference to Canadian companies in South Africa, Renate Pratt's conclusion that the Government's 1977 Code of Conduct "is the most feeble of all the codes",(278) has since been echoed in this country.(279) Pratt notes that in 1981 and 1982, only one Canadian company - Alcan Aluminium - submitted a report under the Code.(280) In early 1985, the Globe and Mail (Toronto) revealed that Bata Limited, a major Canadian multinational in the Zulu 'homeland' (until its withdrawal from South Africa in late-1986), was in gross violation of the provisions of the Code; in particular, the company's wage levels failed to meet the minimum standard set with reference to the local 'poverty line'.(281) Bata's previous record of compliance with the Code - especially on the treatment of trade unions - had also came under heavy criticism

in 1983.(282) No penalties attend the breach of the Code, however, and no public censure was forthcoming from the Canadian Government.

The anti-apartheid movement in the United States has sought in recent months to consolidate the Sullivan Principles, which comprise the only tightly written, widely observed set of corporate guidelines promulgated in respect of foreign corporations in South Africa; many in the United States nevertheless regard the code as an expedient that seeks to justify a continued American corporate presence in South Africa, in the context of the limitations outlined above apropos the scope of the 'progressive' influence of foreign companies within the system of apartheid.(283) In contrast, the Swedish Government refrained from formulating a code of conduct at all, decreeing instead in 1977 that no further investment in Namibia or South Africa was permissible for Swedish nationals.(284) Yet the 1977 Canadian Code, its acute shortcomings acknowledged by the Government in 1981, has continued to operate unchanged.(285)

The crux of the advocacy of economic disengagement from South Africa - that the undoubted beneficial effects of trade and investment, such as they may be, are outweighed by the palpable support thereby accorded to tthe South African Government and the system it represents, as well as the potential antagonism thus engendered vis-a-vis a future Black government in that country - appears to withstand arguments to the contrary. If divestment and a trade embargo will produce

unemployment and material hardship for many Black South Africans, then continued foreign investment and trade provide capital and technological inflows, external demand and a level of self-sufficiency in vital sectors, and skilled employment to the White labour force, all essential components of the apartheid system. On balance, therefore, economic disengagement from South Africa arguably constitutes an ethical as well as a political imperative.

Once again, nevetheless, a number of imponderables demand recognition in this context. Sanctions might generate a hardening of White establishment attitudes towards peaceful change, a withdrawal into what is commonly characterised as a 'laager mentality'.(286) Nor can a limited degree of prevailing Western economic dependence upon South Africa be denied altogether, notably in the sphere of strategic metal and mineral imports.

From a specifically Canadian perspective, the prospect of disengagement in concert with a number of Commonwealth or other states would appear considerably greater than a universal boycott; in light of this country's limited economic profile in relation to South Africa, the potential for leadership at various multilateral levels remains highly significant, thus imparting substance to Canada's professed human rights orientation in foreign policy.

It might be observed in concluding this discussion that while even serious economic sanctions cannot guatantee constructive change in South Africa (however defined), no such

assurances were available at the end of the colonial era in Africa and Asia either; many of the arguments against disengagement from that country could have been (and indeed were) advanced against British and French colonial 'disengagement'.(287) If Canada and the West cannot be certain of a peaceful transition to social justice through economic measures against South Africa, a sufficient degree of certainty surely attends the social, economic and political repercussions of continued engagement in the economy of apartheid.

Table 2:2 Canadian Trade With South Africa, 1970-84

Year	Exports to S.A. ($ millions)	% Total Exp.	Imports from S.A. ($ millions)	% Total Imp.
1970	105.49	0.6	45.70	0.3
1971	63.68	0.4	54.59	0.4
1972	43.88	0.2	58.94	0.3
1973	66.20	0.3	81.07	0.3
1974	91.30	0.3	117.16	0.4
1975	133.10	0.4	193.82	0.6
1976	96.61	0.3	155.22	0.4
1977	83.01	0.1	150.00	0.4
1978	112.01	0.2	149.32	0.3
1979	107.70	0.2	240.48	0.4
1980	201.98	0.3	355.53	0.5
1981	239.30	0.3	402.72	0.5
1982	215.10	0.3	218.72	0.3
1983	165.77	0.3	194.14	0.3
1984	201.83	0.3	222.16	0.3

Table 2:3 Canadian Exports of End-Products to South Africa, 1975-84

Year	Value ($ millions)	% Total Exports to S.A.	% Global Exports
1975	84.7	64.1	32.0
1976	51.4	53.4	33.5
1977	31.2	52.2	34.0
1978	50.8	45.4	36.0
1979	45.9	42.6	32.5
1980	72.2	35.7	29.4
1981	96.5	40.3	31.2
1982	91.6	42.6	34.9
1983	51.5	31.0	16.5
1984	59.7	30.0	14.0

Source: Statistics Canada, Exports by Country; Imports by Country, various years.

Table 2:4 Principal Canadian Imports from South Africa, 1978-84
($ millions)

Commodity	1978	1979	1980	1981	1982	1983	1984
Raw Sugar	54.7	55.3	116.1	112.0	46.9	19.1	26.8
Metal Ores, Concentrate & Scrap	6.9	19.5	76.9	116.0	61.2	63.0	49.3
Iron, Steel & Alloys	18.8	47.9	42.3	51.5	24.0	15.0	22.8
Fresh Fruit & Berries	6.1	8.8	12.4	10.4	11.7	11.0	14.9
Inorganic Chemicals	3.7	9.2	10.9	10.6	5.7	3.9	8.9
Fruit & Canned Prod.	3.4	6.9	7.4	9.9	8.7	8.6	12.2
Non-Ferrous Metals, Alloys	8.0	14.4	8.1	13.4	1.2	4.4	14.7

Source: Statistics Canada, Imports by Country, various years.

Table 2:5 Canadian Direct Investment in South Africa, 1970-80
($ million)

Year	South Africa			Other Africa
	Canadian Controlled	Foreign Controlled	Total	
1970	12	61	73	134
1971	27	84	111	187
1972	30	76	106	112
1973	26	79	105	135
1974	34	75	109	143
1975	36	90	126	41
1976	34	92	126	52
1977	42	81	123	74
1978	44	109	153	108
1979	61	87	148	112
1980	49	104	153	136

Source: Statistics Canada, Canada's International Investment Position, various years.

7. Military Relations With Severe Violators

Canada does not maintain official military relations with South Africa. The United Nations Security Council's 1963 embargo on arms-sales to that country (and extended to military spare-parts in 1970), was affirmed by the Canadian Government.(288) The Council's 1977 mandatory arms embargo against South Africa, a stricture that encompassed nuclear collaboration, was also concurred in by Canada.(289)

The Trudeau Government's adherence to the 1970 Council resolution on military spare-parts was of particular significance, since Canada had exempted from its 1963 embargo "maintenance spares for equipment supplied before August 7, 1963 ... certain aircraft piston engines and maintenance spares for such engines."(290) Thus until the 1970 restriction, Canadian military exports to South Africa were largely unaffected by the measures adopted by the United Nations.(291)

Following the Security Council's mandatory embargo in 1977, Canada informed the General Assembly that it had "fully and effectively implemented" the voluntary embargo of 1963, and had "not engaged in nuclear co-operation with South Africa."(292) In November 1984, Canada's Stephen Lewis reiterated before the Assembly that "we have enforced, and we continue to enforce, the embargo rigorously."(293) In several respects, however, the de facto record of Canadian military exports to South Africa, falling within the mandate of the Department of Industry, Trade and Commerce, has been

highly questionable. The Government has not only permitted the export of 'dual purpose' items readily adaptable from civilian to military use in enforcing apartheid policies in South Africa, but has also failed to prevent certain forms of nuclear energy-related co-operation with, and direct military sales by Canadian companies to that country.

While dual purpose items on the Government's Export Control List require individual export permits, the official guidelines governing such exports are classified, precluding public assessment thereof. When South Africa had sought in 1964 to purchase 10,000 four-wheel drive trucks from Ford Motors of Canada, the Canadian Government vetoed the sale on account of the 1963 embargo. Then Minister of External Affairs Paul Martin asserted that "all trucks capable of being used for military purposes come within the meaning of the resolution ... I am sure the interpretation placed on the Security Council resolution by Canada was the only one we could take, in the light of the clear implication of that resolution." (294) Subsequently, however, the Government authorised the sale of jet engines to that country, for use in F-86 aircraft; the transaction was reportedly of minor financial value to the seller, Orenda Aircraft Corporation of Canada.(295) Again in 1979, Canadair obtained a permit for the sale of three CL-215 amphibious aircraft to South Africa, which the company lists as being usable for, inter alia, "utility emergency transport ... particularly in internal troop-lift operations."(296)

According to the Taskforce on the Churches and Corporate Responsibility (TCCR), such items as engines, jeeps, navigation and signal equipment, radar and communications equipment, fuel tanks, wing tips, crash indicators, and precision instruments, apparently receive an export permit from the Government "as long as the actual purchaser is not a South African military or paramilitary organisation, even though there is no guarantee that the ultimate user of the equipment will not be the South African military."(297) The report adds that Canadian military and related industries specialise in the manufacture of these auxiliary parts, "necessary for the effective functioning of a technologically sophisticated military and police apparatus."(298)

Indeed, as recently as June 1984, the Government cleared a permit for Control Data of Canada to sell eleven large-scale computer systems to the South African Iron and Steel Corporation (ISCOR), a major supplier to the state-owned Armaments Corporation of South Africa (ARMSCOR), subject to an end-user certificate pledging non-military application of the item; yet computer systems fall within the Canadian prohibition on strategic-item sales, and ISCOR's production activities are military-oriented.(299)

The Government's record on dual-purpose exports may also be questioned in light of a Security Council Committee's recommendation concerning the implementation of the mandatory arms embargo of 1977:

> "States should prohibit the export to South Africa of ... items provided for civilian use but with the potential for diversion or conversion to military use. In particular, they should cease the supply of aircraft engines, aircraft parts, electronic and telecommunications equipment, and computers to South Africa."(300)

In a still less ambiguous sphere of commerce with military implications, Canada has maintained several forms of co-operative linkages relating to the use of nuclear energy with South Africa, in contravention of this country's international undertakings apropos nuclear fuel safeguards in general, and nuclear relations with South Africa in particular. A Canadian Crown corporation remains under contract to refine Namibian uranium for South Africa, notwithstanding, inter alia, the latter's illegal occupation of that territory.(301) Furthermore, South African representatives have been invited to a number of international conferences on nuclear energy held in this country, where officials of the Canadian Government were active participants.(302)

Quite apart from the 'commerce over conscience' connotations of the foregoing, the implications of such co-operation in light of South Africa's well-known pursuit of nuclear weapons capability can only be characterised as ominous.(303)

A third area of 'unofficial' circumvention of the United Nations' arms embargo by Canada has occurred through military sales by Canadian- based companies to South Africa, in one instance probably involving direct nuclear

collaboration. Specifically, the activities of two such companies, Levy Autoparts and the Space Research Corporation of Canada, both enjoying close relations with the United States military establishment, have been documented.

Levy Auto Parts, a defence contractor for the United States and other NATO member states, was engaged in the shipment of engines and transmission equipment for Centurion tanks in South Africa in 1980, ostensibly for 'civilian' purposes.(304) It appears the tank-parts were purchased from India - subject to official Canadian assurances to that country regarding non-resale to South Africa - then shipped to the United States, pending their dispatch to South Africa. Similar illegal shipments are thought to have been conducted by Levy prior to 1980, in conjunction with Teledyne Continental Motors of Michigan (USA); the latter was refused further export permits by the United States Government in 1974, owing to the nature and destination of the items in question. Canadian law required Levy to indicate whether its export- sales were en route to a third country, and if so to disclose the latter; but the Government does not monitor such shipments despite their patently sensitive nature.(305)

The case of the Space Research Corporation (SRC) has long been the subject of an official Canadian investigation, including a report by the RCMP in April 1979 recommending public prosecution of the Corporation for its security-related activities.(306) SRC established operations

in the late-1960s across the Quebec-Vermont border, procuring substantial defence contracts with the United States Pentagon and the Central Intelligence Agency (CIA). Between March 1977 and November 1978, SRC succeeded in shipping no less than $50 million worth of 155 mm. howitzer shells and artillery to South Africa, a system purchased in part from the United States Army Department without an end-user certificate. The consignment was dispatched via Antigua to Durban, (South Africa), and formally designated as bound for Canada.(307) In July 1977, the South African Armaments Corporation (ARMSCOR) acquired a 20% interest in SRC, notwithstanding the implications for Canada-United States security, and the subsistence of an arms embargo against South Africa.(308)

Canadian and United States NGO reports suggest that the howitzer artillery system sold by SRC to South Africa was used in a nuclear test explosion by that country in the South Atlantic in 1979.(309) The use of howitzers by the South African army in Angola was also reported in 1979 by independent observers.(310)

The advanced military-industrial complex developed by South Africa through the 1960s and 1970s - in response to the international embargo on arms sales to that country - has necessitated substantial amounts of financial as well as technological co-operation by the West, including multinational corporations located within the country.(311) South Africa has also benefitted from large-scale funding by

the IMF which, as indicated earlier, facilitated the growth of the national defence budget. Canadian banks and companies, as well as the Government itself, have clearly played an integral role in this regard.

It is somewhat ironic, in light of the foregoing linkages between Canada and South Africa, that the former predicates its refusal to recognise the legitimacy of the Black liberation movement against the South African regime upon the desire for a 'peaceful' resolution to the problem of apartheid.

II. Beyond The Trudeau Era, 1984-1986

This update on the continuing situation of apartheid in South Africa is presented in two sections: firstly, a survey of major developments within that country, focussing upon the socio-political structures affecting the policy of apartheid; and secondly, Canada's response thereto under a new Government, particularly in the context of an escalated transnational readiness to undertake meaningful action on behalf of basic rights and freedoms in South Africa.

1. Reform and Retrenchment in the Apartheid System

In a parliamentary address in January 1986, South African President P.W. Botha asserted that the nation had "outgrown the outdated concept of paternalism as well as the outdated concept of apartheid", and that "a democratic system of government, which must accomodate all legitimate political aspirations of all the South African communities, must be negotiated."(312) The President outlined a number of recent structural reforms affecting the rights and welfare of Black South Africans, as demonstrative of his Government's willingness to undertake far-reaching political change.

Cardinal among the Government's reforms were the subsequent repeal of the notorious 'pass laws',(313) and the restoration of South African citizenship to those living in the 'independent' Black homelands in September 1985.(314) Identity documents common to all races would replace the

notorious passes hitherto carried only by Blacks, while 5 million 'citizens' of the homelands could enjoy dual citizenship as South Africans. Also repealed in 1985 were the Immorality Act (1949) and the the Prohibition of Mixed Marriages Act (1950), which had banned sexual and marital relations across racial barriers in South Africa.(315)

The Government further committed itself to increases in spending for Non-Whites in education - within a segregated system - as well as to major development projects for the benefit of Blacks in impoverished areas.(316) Other reform commitments included prospective Black ownership of homes, farms, shops and small businesses, and Black participation in South African political institutions at various levels of Government.(317)

When juxtaposed with prevailing apartheid laws and practices, however, the foregoing appears to constitute less the dismantling than the adaptation of the South African system by the Nationalists. The existence of the Group Areas Act, for instance, continues to guarantee segregation with respect to where members of each racial group 'belong'; the Population Registration Act preserves the ethnic- racial basis of socio-political rights and freedoms in South Africa. Black urban migration remains subject to regulation through 'common identity documents' rather than 'passes', while the 5 million 'new' Black citizens of South Africa remain, as per the status quo ante, disenfranchised and 'second-class' under national law.(318) Equally, the

legalisation of inter-racial marriage is subject to the constraints of segregation in housing, education and other amenities for spouses and their offspring.(319)

Quota systems continue to govern the admission of Non-Whites to predominantly White universities, and the disparity in educational spending for Black and White students stood at 700% during the 1983-84 fiscal year, rendering somewhat remote the Government's objective of 'equality' in that sphere.(320)

Nor has the Government relented in pursuing its strategy of 'grand apartheid' amidst the professed commitment to democratic structures and to the rejection of colonial paternalism. Preparations continue for KwaNdebele to join the four existing 'independent homelands', consistent with the Government's ideological premise that 'community rights' take precedence over individual rights, with Blacks (but not Whites) subject to innumerable ethnic sub-divisions.(321) Socio-economic conditions in the generally resource-poor homelands do not bear comparison even with those prevailing in Black townships within White South Africa,(322) but the leaders of such homelands (many of whom have yet to gain 'autonomy' from Pretoria) are co-opted through diverse forms of patronage in to the Government's strategy of <u>de facto</u>, if not <u>de jure</u>, partition.(323)

The June 1986 Report of the Eminent Persons Group on South Africa, stemming from the Nassau Accords of the

Commonwealth nations in October 1985, surveyed extensively the current situation of apartheid in light of the much-publicised governmental reforms in recent months. (324) Observing that the programme of desegregation in selected areas (mixed marriages, certain forms of public transportation, attendance at cinemas, use of public beaches, dining at major hotels) occured in the context of severe contrasts in the basic material condition of Blacks and Whites under the system, the Report stated:

> "And so the question remains: does all this make any real difference to the impact of apartheid on the lives of blacks? In a country where the blacks are so poor, where white incomes per capita are ten times those of black and where the responsibilities of the extended family system place a heavy burden on ny black in work, those blacks rich enough to dine at Johannesburg's Carlton Hotel or Durban's Maharani are very few in number. And even they, when the meal is over, must return to their designated township. To the casual visitor, apartheid may appear to be on the way out. In its essential elements, it remains very much intact." (Emphasis added) (325)

President Botha's contention that South Africa had outgrown apartheid is further undermined by the outstanding feature of recent developments in that country: the imposition of a state of emergency in July 1985,(326) reimposed in June 1986 following a three-month 'interregnum'.(327) The already extensive security legislation was considered inadequate in dealing with a Black upsurge against various apartheid- related practices since late 1984, escalating through 1985 when an average of 1.6 deaths per day occurred between January and July.(328) Under the emergency decrees, the army and police could,

inter alia, apply curfews, detain individuals without charges for two weeks, and conduct searches without warrants; a clause under the June 1986 decree authorised "the application of such force as ... necesary in order to ward off or prevent ... suspected danger", effectively permitting the security forces to shoot on sight.(329)

Far from stemming the tide of Black unrest, the state of emergency raised the daily death-toll to an average of 3.2, becoming 3.6 by the following year.(330) Of the estimated 1,150 people killed in political violence between late 1984 and early 1986, virtually all have been Black; two-thirds, according to Government sources, were shot by official forces.(331) Intra-Black attrition and violence, an ominous and growing phenomenon that has claimed its share of lives in South African townships, stands as yet another by-product of the system of apartheid.(332)

Although the state of emergency imposed in July 1985 nominally ended the following March, "no noticeable effect" ensued, with 150 political killings of Blacks each month, chiefly by official forces. (333) A report by the Lawyers Committee for Human Rights in New York cited seven documented cases of death in detention between April 2 and May 20, five of the victims being "subjected to brutal assaults by police before their deaths."(334)

On June 12, 1986, the state of emergency was reimposed, generating a new spate of political arrests and detentions. Estimates of the number of detainees under the

emergency laws ranged from 8,000 to 13,000 at the end of July;(335) the Government acknowledged holding 8,501 individuals, without disclosing reasons for their detention.(336) Notwithstanding successful challenges in South African courts against the legality of several measures under the emergency decrees, notably in respect of detentions without trial and curbs on media coverage of security-related developments, the rigour of official repression of anti-apartheid activities (real and perceived) has proceeded unabated.(337)

South Africa's use of force in preserving 'security' has extended beyond its own borders historically, a situation persisted through the 1984-86 period. Most recently, Botswana, Zambia and Zimbabwe were targets of co-ordinated raids by the South African air force and army, apparently directed at African National Congress (ANC) operations based in those states.(338) Described as "the most extensive military action by Pretoria in its 25-year-old war against the Congress",(339) the attacks coincided with the return to South Africa of the 'Eminent Persons Group', following talks with the ANC in Lusaka (Zambia), part of the Commonwealth's diplomatic efforts at influencing change in South Africa.(340) Quite apart from the question as to whether that country actually expected to undermine the ANC's guerilla campaign through the raids (in which it appears to have failed),(341) their timing assured the demise of the Commonwealth initiative vis-a-vis the

Nationalist Government.(341)

At the forefront of such diplomatic initiatives directed at effecting 'power-sharing' negotiations between Black leaders and the Government of South Africa, has been the demand for the unconditional release of Nelson Mandela (who headed the ANC upon his imprisonment in 1964), and the initiation of a dialogue with the Congress.(342) In early 1985, the Government offered to release Mandela, on condition that he not "make himself guilty of planning, instigating, or committing acts of violence for the furtherance of political objectives."(343) The ANC, however, would remain outlawed; indeed, the Government preferred to arrange the release outside White South Africa, seeking to exile Mandela in the 'independent' Black homeland of Transkei.(344) Mandela's rejection of the offer (announced by his daughter in Soweto) was scarcely unexpected:

> "It was only when all other forms of resistance were no longer open to us that we turned to armed struggle. Let Botha show that he is different to Malan, Strijdom and Verwoerd. Let him renounce violence ... Let him free all who have been imprisoned, banished or exiled for their opposition to apartheid. Let him guarantee free political activity so that the people may decide who will govern them ...
> I cannot sell my birthright, nor am I prepared to sell the birthright of the people to be free ... What freedom am I being offered while the organisation of the people (the ANC) remains banned? ... What freedom am I being offered when I must ask permission to live in an urban area?... Only free men can negotiate. Prisoners cannot enter into contracts ..."(345)

Likewise, the most significant multiracial political organisation to emerge in South Africa in the 1980s - the

United Democratic Front (UDF) - has found its peaceful opposition to apartheid thwarted by the mass incarceration of its leadership under the emergency decrees.(346) Rather, the increasingly strong trade union movement has come to offer alternative leadership in Black politico-economic protest, wielding the strike-weapon with growing potency against the system.(347)

Urban Black support for international disinvestment sanctions against South Africa - conditional as well as absolute - experienced a significant increase over the 1984-85 period (Table 2:6 below)(348). This found expression also in the distribution of support for the principal political actors and strategies in the anti-apartheid struggle: collectively, 61% of metropolitan Blacks endorsed 'tendencies' that advocated economic sanctions, as against 16% preferring continued or enhanced investment.(Table 2:7)(349)

The nature of the Government's response to the continuing spiral of Black opposition, and the apparent failure of Commonwealth and other diplomatic demarches to constrain that response, have provided strong impetus to the widening calls for international economic sanctions against South Africa. An assortment of unilateral as well as concerted measures have begun to be implemented, unprecedented in their general degree of significance for the international community and South Africa alike.(350)

Table 2:6 Attitudes to Disinvestment Sanctions, Urban Black South Africans, 1984-85

Option	Dec. 1984 (%)	Sept. 1985 (%)
Free investment	47	26
Conditional disinvestment	44	49
Total disinvestment	9	24

Table 2:7 Support for Major Political Tendencies, Urban Black South Africans, September 1985

Tendency	Support (%)
Nelson Mandela & ANC	31
UDF & radical groups	14
Bishop Desmond Tutu	16
Chief Buthelezi & Inkatha	8
Government & pro-investment groupings	8
Sundry ('Don't know', 'None', Other)	24

Source: Orkin, Disinvestment, the Struggle and the Future: What Black South Africans Really Think (1986).

With the Nationalist Government as skeptical and defiant at this stage over the probable scope of such external anti-apartheid action as it has traditionally been over domestic Black demands for equality,(351) the outlook for fundamental human rights remains in profound jeopardy.

2. Canada-South Africa Relations: Continuity and Change

(1) Declaratory Policy Orientation

The Fall 1984 commencement of the Mulroney period in Canadian foreign policy was not accompanied by a departure from the Trudeau Government's perspectives on Canada-South Africa relations. In a major address at the General Assembly in New York, Canada's new Ambassador to the United Nations, Stephen Lewis, was outspoken in condemning the *sui generis* character of the "unconscionable violation of fundamental human rights" under South Africa's "abhorrent system".(352) Nevertheless, Lewis reiterated Canada's support for "the right of South Africa to participate in the activities of the United Nations", as well as for bilateral diplomatic relations with that country. Neither would Canada consider applying 'comprehensive economic sanctions' against South Africa.

While dismissing the Botha Government's 1984 constitutional reforms as "a sorry exercise in tokenism", the Ambassador remained optimistic over the prospects of future constitutional change by the Nationalists, maintaining Canada's non-recognition of the Black liberation movement there.

As the wave of civil unrest mounted through 1985 in South Africa, Canada's official response in July 1985 was to institute a package of predominantly economic policy measures against that country(353) - not unlike the 1977

response by the Trudeau Government to developments in Soweto and other Black townships. Pending "a broader review of Canada's relations with South Africa through the hearings of the Special Joint Committee on Canada's International Relations", the Government would, in effect, consolidate in various respects the application of the measures adopted in 1977.

Thus, compliance with the voluntary 'Code of Conduct' concerning Canadian companies in South Africa would be more closely monitored; the Export Development Corporation's issuance of global insurance policies would be terminated apropos South Africa; and the Government's Programme for Export Market Development would not support Canadian exports to that country. Canada also affirmed its concurrence with such multilateral measures against apartheid as the sports boycott, the embargo on arms and sensitive equipment trade, the non-importation of Kruggerand gold coins, and the cessation of commercial activities relating to Namibia, while emphasizing the essentially voluntary nature of such measures.(354)

With respect to the traditionally important area of Canadian humanitarian assistance to victims of apartheid, the Government had allocated $5 million for an expanded educational and training programme for Blacks in South Africa and Canada.

Amidst South Africa's imposition of a state of emergency in July that year, Canadian External Affairs

Minister Joe Clark nonetheless praised that country's social reforms affecting the condition of Blacks in a speech to the Royal Commonwealth Society in London, asserting that the Commonwealth's "special duty" was "to point the way to reforms that will both end apartheid, and rebuild relations with South Africa."(355)

By September 1985, however, with the Commonwealth heads of state scheduled to confer on concerted action against the regime in Pretoria the following month, Clark acknowledged in the Canadian House of Commons that "(w)hat we have in South Africa, rather than change, is a deepening crisis", obliging him "to make clear to South Africa that Canada is prepared to invoke total sanctions if there is no change."(356) Moreover, while believing that "diplomatic and economic relations should continue to exist even though governments might disagree", Canada would "be left with no resort but to end our relations absolutely" should South Africa continue on its present course. Calling for the release of political prisoners - in particular ANC and UDF leaders - and the initiation of a process of dialogue with the Black leadership in South Africa, the Minister also stipulated that apartheid legislation preventing common South African citizenship with equal rights, including the franchise, be eliminated, that no classification exist on the basis of race or colour, and that Namibia be granted its independence, as "key steps" in the process of change.

Observing that "business and investors within and

outside South Africa have fostered a wave of disinvestment - without the prompting of governments, but surely reflecting both the events on the ground in South Africa and the signals many governments have sent", Clark introduced a voluntary ban on Canadian bank loans to the South African Government and all its agencies, as well as on the sale of crude oil and refined products to South Africa.(357) Neither ban, as the Minister conceded, was of significant financial value to this country. A further embargo on air transport between Canada and South Africa was imposed, though no bilateral air agreements existed between the countries. Clark also announced the appointment of Albert Hart, a former Canadian High Commissioner to Ghana, as administrator of the 'Code of Conduct' concerning Canadian companies in South Africa, and undertook to consult with business and finance representatives "to examine areas of cooperative action against apartheid."

Aspects of the actual implementation of these and further policy measures by Canada will be appraised under the appropriate rubrics below. Self-evidently, in any case, the Government's rhetoric on South African apartheid (including statements as to normative expectations of reform) well exceeded the scope of the measures announced by the Minister of External Affairs in June and September 1985.

At the Commonwealth summit in Nassau that October, however, Prime Minister Mulroney was to side with the rest of the membership - except for the United Kingdom - in

seeking to impress "on the authorities in Pretoria the compelling urgency of dismantling apartheid and erecting the structures of democracy".(358) In addition to adopting a package of measures which, in effect, consolidated existing United Nations restrictions on economic relations with South Africa, the Commonwealth pledged itself ready to impose further punitive bans on aspects of such relations in the absence of "adequate progress" within a six month period.(359) In the interim, an 'Eminent Persons Group', appointed by Australia, the Bahamas, Canada, India, the United Kingdom and Zimbabawe, would seek to facilitate in South Africa "a process of dialogue across lines of colour, politics and religion, with a view to establishing a non-racial and representative government". (360)

Many in Canada considered the Prime Minister to have developed a strong personal stand against South Africa's apartheid policies, as evidenced in part by his post-Nassau confirmation at the United Nations General Assembly that "Canada is ready, if there are no fundamental changes in South Africa, to invoke total sanctions against that country and its repressive regime", and that "relations with South Africa may have to be severed absolutely."(361)

Canada's Ambassador to the United Nations, Stephen Lewis, was equally assertive at the Security Council on the question of Namibia's independence from South Africa, recalling that Canada had recently terminated all toll-processing of Namibian uranuim imported from South

Africa, and that the latter's continuing intransigence on the issue "will contribute to the widening gap in our bilateral relationship".(362)

The ill-fated search for a diplomatic rapprochement by the Eminent Persons Group (at which Canada was represented by Archbishop Edward Scott of the Anglican Church), attended as it had been by widespread skepticism from its inception, only added to widening international demands for concerted and far-reaching economic sanctions against the apartheid regime. In the wake of South Africa's attacks on neighbouring Botswana, Zambia and Zimbabwe in May 1986,(363) the Group's Report concluded that "against a background in which ever-increasing violence will be a certainty, the question of further measures immediately springs to mind."(364) Without expressly recommending sanctions, the Report observed that "the Government of South Africa has itself used economic measures against its neighbours and that such measures are patently an instrument of its national policy."(365)

The re-imposition of South Africa's 'state of emergency' in June, and the Botha Government's formal announcement that plans for Namibia's independence would not be implemented as scheduled by August 1986,(366) scarcely allowed scope for disagreement over the 'adequacy' of progress by that country in changing the direction of its policies.

The extensive review of 'Canada's International

Relations' by the Special Joint Committee (referred to in External Affairs Minister Clark's June 1985 address on South Africa) resulted in a forthright recommendation that the Government "should move immediately to impose full economic sanctions, seek their adoption by the greatest possible number of Commonwealth members, and promote similar action by non- Commonwealth countries."(367) The Committee's Report also urged that Canada "expand direct contacts at the highest levels with black political organisations in South Africa", including the ANC, and that 'front-line' African nations suffering the impact of South African as well as international sanctions be granted financial support.(368)

Likewise, the newly-established Commons Standing Committee on Human Rights, which commenced its deliberations in March with the subject of Canada's relations with South Africa, concluded in July that Canada should sever all ties with that country, barring meaningful action to dismantle apartheid and to withdraw from Namibia by September 30 this year.(369) Significantly, a nationwide Canadian poll in July revealed that a strengthening of this country's stand against South Africa was supported by 44% of the general public; 37% were satisfied with current policy.(370) Most sections of the Canadian press also expressed favour for strong economic measures by the Mulroney Government, on the eve of the Commonwealth 'mini-summit' in London to review common action against South Africa.(371)

Hence, the Prime Minister was well-positioned to join

with the leaders of Australia, the Bahamas, India, Zimbabwe and Zambia in seeking further economic sanctions by the Commonwealth at the August summit in London. Britain's Margaret Thatcher remained as adamant in her opposition to such action as she had been at Nassau, no doubt strengthened in her dissent by President Ronald Reagan's parallel refusal to countenance meaningful sanctions by the United States against the Botha regime.(372)

Canada committed itself with the Commonwealth - yet again without Britain's concurrence - to the "urgent adoption and implementation" of a series of bans on economic dealings with South Africa (to be detailed below), though falling short of the 'comprehensive sanctions' advocated by the United Nations and various Canadian political groups.(373) The Prime Minister stated upon his return from London that Canada would implement the Commonwealth measures by October.(374)

As a final indication of the Mulroney Government's declaratory policy, it is noteworthy that in consultations between Canadian NGOs and the Department of External Affairs in preparation for the 1986 session of the United Nations Commission on Human Rights, the official perception of prospective change in the apartheid situation was expressed thus:

> "There is every reason to believe that South Africa - wealthy and advanced as it is, with its strong economy - would do well under a government representing all its citizens rather than a white oligarchy. The present unrest and repression in South Africa compares unfavourably with the political

rights and freedoms enjoyed by many Africans elsewhere on the continent ... In the longer perspective, the choice is between reform, repression or revolution. Canada favours timely reform, because the other two will only lead to extremism and chaos."(375)

(2) Operative Policy Orientation

Clearly, the principal thrust of change in Canada's relations with South Africa beyond the Trudeau era occured in the context of multilateral action by the Commonwealth at the summits in Nassau and London. As indicated earlier, the Government's unilateral economic measures of June and September 1985 concerning investment and trade relations with South Africa represented no significant advance on prevailing Canadian policy on apartheid, in terms of proceeding substantively from the package of largely symbolic measures announced by Don Jamieson in 1977. Notwithstanding Joe Clark's September 1985 statement to Parliament apropos Canada's readiness to consider "total sanctions" (including a complete severance of diplomatic relations) failing meaningful change in South Africa,(376) the scope of operative Canadian policy action remained mild, particularly in light of this country's clear recognition of normative international responsibility to oppose the unique violation of human rights under apartheid.(377)

While pronouncing itself prepared to impose them if necessary, the Government continued to decry the potential efficacy of comprehensiv e economic sanctions prior to the Commonwealth conference at Nassau, in terms of both, rendering them universal and influencing Pretoria's behaviour.(378) Arguments over the dependency of Canada and the West upon commercial relations with South Africa continued to be invoked in particular public sectors, as

well as by the Botha Government.(379) Nor did South Africa's largest trading partner, the United States, demostrate a willingness to add the former to its list of embargoed countries, despite pressures from Congress, numerous public interest groups, and the Security Council of the United Nations.(380)

Nevertheless, opinion among Commonwealth leaders was virtually unanimous as to the "compelling urgency" of the situation affecting Blacks in South Africa, demanding an appropriate multilateral response "if a greater tragedy is to be averted."(382) Acordingly, the Nassau summit adopted a programme of common action not only reaffirming support for the existing United Nations embargo on military and sensitive-item sales to South Africa, as well as for the Commonwealth's own 1977 Declaration against sporting contacts with South Africa, but also placing constraints on other economic dealings with that country, viz:

(a) a ban on all new government loans to the Government of South Africa and its agencies;
(b) a readiness to take unilaterally what action may be possible to preclude the import of Krugerrands;
(c) no Government funding for trade missions to South Africa or for participation in exhibitions and trade fairs in South Africa;
(d) a ban on new contracts for the sale and export of nuclear goods, materials and technology to South Africa; and
(e) a ban on the sale and export of oil to South Africa.(382)

The preceding constituted a compromise package in the face of Britain's refusal to concur in stronger measures by the Commonwealth, a refusal which Prime Minister Mulroney had reportedly vested considerable effort in seeking to

reverse.(383) A further list of prohibitions on economic relations with South Africa was to be adopted failing "adequate progress" over a six-month period in dismantling apartheid, consisting of:

(a) a ban on air links with South Africa;
(b) a ban on new investment or reinvestment of profits earned in South Africa;
(c) a ban on the import of agricultural products from South Africa;
(d) the termination of double taxation agreements with South Africa;
(e) the termination of all government assistance to investment in, and trade with, South Africa;
(f) a ban on all government procurement in South Africa;
(g) a ban on government contracts with majority owned South African companies;
(h) a ban on the promotion of ourism to South Africa.(384)

In the interval between Nassau and the follow-up 'mini-summit' in August 1986, the trend in Canadian public opinion in support of severing all economic relations with South Africa developed a steady momentum. The NGO report Trafficking In Apartheid - The Case for Canadian Sanctions Against South Africa (described by United Nations Ambassador Stephen Lewis as "the most complete compendium of Canada's economic relations with South Africa"), (385) offered a particularly detailed refutation of Canada's supposed dependency upon 'strategic imports' from South Africa. Consistent with the findings of the 1980 United States Congressional Research Service on Imports of Minerals from South Africa by the USA and Other OECD Countries, and other private studies on the question, the Canadian survey concluded that constraints affecting strategic imports by

this country and the West would disrupt the private corporations involved in their importation more significantly than the respective national economies, while being "disastrous to South Africa's mining and finance houses."(386)

Indeed, the Eminent Persons Group reported to the Commonwealth in June that "(t)he question in front of the Heads of Government ... is not whether such measures will compel change; it is already the case that their absence and Pretoria's belief that they need not be feared, defers change ... Such action may offer the last opportunity to avert what could be the worst bloodbath since the Second World War."(387)

Neither the Group's Report nor the renewed efforts of Canada and other states, however, could pursuade Britain (South Africa's third largest trading partner) to participate in concerted anti-apartheid sanctions at the London 'mini-summit' in August,(388) where it was accepted that South Africa had fallen far short of the level of progress required to avert further Commonwealth action.(389) The package of eight measures outlined at Nassau was duly adopted by all but Britain's Thatcher. In addition, bans were to be applied to new bank loans to South Africa, and to the importation of uranium, coal, iron and steel from that country; consular facilities were also to be withdrawn, except those serving nationals of the Commonwealth countries concerned and third countries to whom such services were

being rendered.(390)

Observers in Canada generally agreed that the sanctions undertaken at Nassau and London would entail minimal financial cost for this country's economy.(391) The major agricultural imports affected were Granny Smith apples (worth $18 million), readily available elsewhere, and raw cane sugar ($27 million), already being imported from several alternative sources. With respect to the ban on coal, iron, steel and uranium, Canada imported no coal from South Africa, and $26 million worth of iron and steel products, substitutable by purchases from the EEC and other exporters; Canadian processing of South African uranium would continue until the expiry of existing contracts in 1988. The ban on air links, as External Affairs Minister Clark acknowledged in his Commons address in September 1985, was symbolic, there being no bilateral air carriage agreements with South Africa.(392) Nor would the rescinding of double taxation agreements between the two countries affect more than a very small number of Canadians.

New bank loans from this country to South Africa have already declined in response to financial market conditions relating to South Africa in recent years, rendering the Commonwealth ban virtually superfluous. Seven Canadian companies have majority holdings in their South African subsidiaries, thus falling within the terms of the ban on new investment there;(393) their response to the latter might well consist of a reduction in holdings to below 50%,

thus circumventing the effect of the ban, or of raising the requisite funding from sources within South Africa.

The first Annual Report on the administration and observance of the official Code of Conduct affecting Canadian companies in South Africa, tabled by the Government in the House of Commons in June 1986, revealed that five of the twenty-two Canadian companies in South Africa - Bata Ltd., Dominion Textiles Inc., Falconbridge Ltd., Massey-Ferguson Ltd., and Moore Corporation Ltd. - underpaid their Black employees in South Africa, in relation to minimum standards of 'decent' living for that country.(394) Three other companies - Bayer Foreign Investments Ltd., Cobra Emerald Mines and Stern Ltd. - failed to submit reports on their compliance with the Canadian 'Code of Conduct'. The Government asserted, nevertheless, that it would be upto Canadian public opinion to improve the record of treatment of Black workers by the corporations concerned.(395)

By the Fall of 1986, two of the aforementioned companies - Dominion Textiles and Bata, as well as Alcan Aluminium,(396) had joined the corporate exodus from South Africa by some of the principal United States investors (including Coca-Cola, General Motors, IBM, Honeywell and Warner Communications).(397) Quite clearly, the withdrawals were prompted less by a new-found antipathy toward the apartheid regime than by prevailing market considerations and a crisis of confidence over that country's economic

performance.(398) Concurrently, a major Canadian investor in South Africa over several decades, Falconbridge Ltd. of Toronto, increased its portfolio in a local affiliate, Western Platinum, by $31.6 million, consonant with positive expectations apropos the South African mineral and ore sectors.(399)

In general, the Canadian record of compliance with the 1985-86 official sanctions on bilateral economic relations with South Africa has been conspicuously mixed. NGO testimony before the Commons Standing Committee on Human Rights in June, for instance, observed that Canada imported A300 Airbus planes from South Africa shortly after the 1985 voluntary ban on air transportation links between the two countries, violating the spirit if not the letter of the Government's own policy.(400) Nor would Eldorado Nuclear (a Crown corporation) subordinate its contracts for the processing of South African uranium from Namibia to the new policy against uranium imports from that country; yet Canada has ceased to recognise South African sovereignty over Namibia for more than a decade. The Human Rights Committee was told that pending the adoption of effective enforcement machinery by the Government apropos the new economic sanctions, the "political will" to implement the latter remained questionable.(401)

Trade data released by Statistics Canada in late-1986 indicated that over the 13-month period following the announcement of new economic sanctions in September 1985,

Canadian imports from South Africa actually rose by 49% (to $358 million); exports declined only by 1.2% over the same period.(402) Transactions relating to South African sugar and liquor, coupled with the preceding Airbus purchases, accounted in the main for this situation.(403)

It might be added that Canada did not feel obliged to extend its commitment to a sports boycott of South Africa to the anti-apartheid protest boycott of the Commonwealth Games at Edinburgh in July, notwithstanding the Government's public stand against Britain's dissent from concerted Commonwealth action against South Africa.(404)

More recently, Air Canada facilitated arrangements by South African Airways for a 'fact-finding' tour of that country by 64 Canadians, in accordance with an officially planned itinerary.(405) External Affairs Minister Joe Clark declined to constrain what was considered private commercial activity by the Crown corporation, despite strong public criticism thereof.(406) However, following the South African Tourist Board's open defiance of Canada's new policy discouraging the promotion of tourism to that country, the Board's Canadian offices were ordered closed by Ottawa, as were those of South African Airways.(407)

Accordingly, the question remains not only as to whether Canada's professed willingness to apply 'comprehensive' economic sanctions (consistent with longstanding United Nations resolutions thereon) will find

expression in operative bilateral action, but also whether such measures will enjoy de facto implementation and enforcement. In cautioning against the self-defeating impact of partial and piecemeal sanctions by South Africa's Western trading partners, which allows "leeway for evasion and compensatory action", William Minter, a leading scholar on the subject, observes:

> "the 30-year record ... shows that for the near future there is no alternative way, short of Western military action, to induce the apartheid regime to negotiate its surrender ... In South Africa today the basic will to reach a solution is missing, and talk about negotiations has become in effect a ploy to fend off the escalation of pressure while the conflict continues to fester or escalate."(408)

That analysis is surely borne-out as well by the record of Canada's relations with South Africa through the Trudeau era.

III. Conclusions

The fundamental normative issues of law and policy stemming from South Africa's ideology and practice of apartheid have engaged Canadian attention over a period of four decades. Certainly, by the time Foreign Policy for Canadians sought to articulate the Trudeau Government's perspectives and projections for the 1970s, this country's posture had developed from "one of relative detachment" to becoming "increasingly sympathetic" towards the victims of apartheid, as the White Paper itself observed.(409) While asserting "Canada's support for human rights and its abhorrence of apartheid in South Africa", however, the White Paper had concluded that 'social justice' criteria in Canadian policy were to be balanced by those concerning 'economic growth', requiring the continuation of prevailing investment, trade and related dealings with South Africa.(410)

Persistent and egregious violations of civil-political and socio-economic human rights under the apartheid regime, the illegal occupation by South Africa of Namibia (to which apartheid also applied), and demands for a meaningful international response thereto by steadily widening majorities at the United Nations, failed to induce substantive change in operative Canadian policy toward South Africa through the mid-1970s. Even as the Government's rhetorical condemnation of various aspects of apartheid grew in stridency, traditional policy-positions with regard to,

inter alia, South Africa's 'right to participate' at the United Nations, the imposition of far-reaching economic sanctions against that country, and the legitimacy of the ANC's anti-apartheid struggle, were reaffirmed.

Developments in Soweto and other Black townships during 1976-77, the scale of which provoked unprecedented international recognition of the inherent violence of the system of apartheid, elicited a reappraisal of Canada's relations with South Africa. As the Security Council of the United Nations adopted a mandatory embargo on arms sales to South Africa - with Canada's concurring vote - expectations mounted over the Government's impending package of anti-apartheid measures. External Affairs Minister Don Jamieson, however, announced a largely symbolic change in Canada-South Africa relations, involving no meaningful economic sanctions at all. On the contrary, trade and investment ties were effectively enhanced, notwithstanding the partial withdrawal of governmental sponsorship of commercial transactions, and the adoption of a 'Code of Conduct' for Canadian companies operating in South Africa.

Moreover, that country's 'Key Points' legislation mandated the co-operation of foreign companies in South Africa in providing strategic items to the Government and its agencies for the enforcement of apartheid laws and regulations, a measure implicating several Canadian corporations. On the other hand, denouncing violence as a means of constructive change South Africa, Canada maintained

its non-recognition of the ANC's opposition to the apartheid regime - in a situation where violence preserved the status quo.

Similarly unrecognised by the Canadian Government was the demonstrable nexus between the provision of multilateral credits to South Africa, notably through the IMF, and the economic and even military condition of the apartheid system. In 1976 and again in 1982, amidst an especially severe cycle of civil unrest and official repression in Black South Africa, Canada cast a critical vote in favour of substantial loans by the IMF to Pretoria, ostensibly on the basis that only 'economic' factors could guide such loan-decisions. Ironically the Fund's own Staff Report of May 1983 on South Africa acknowledged the distortive economic implications of apartheid policies; that country 's bona fide need for such funding also remained questionable, thus undercutting its loan applications even on strictly technical criteria. The major proponent of IMF assistance to South Africa - the United States - finally recognised the human rights implications thereof in 1984, legislating against future American approval of Fund credits to the apartheid regime. Canada, however, has yet to alter its stance on the issue.

In terms of this country's palpable, even if incidental, contribution to the viability of the South African system, the increase in corporate investment (direct as well as indirect) and trade levels between the two

countries into the early 1980s seriously undercut the integrity of the Trudeau Government's professed human rights orientation in foreign policy. Furthermore, Canada's adherence to the 1963 (voluntary) and 1977 (mandatory) embargo on arms sales to failed to prevent transactions of considerable military significance between Canadian companies and the South African Government. The monitoring and enforcement of Canadian export controls affecting 'dual purpose' items (aircraft, computers, road vehichles) and outright military sales (including components for a howitzer system probably instrumental in the testing of South Africa's first nuclear weapon in 1979) proved ineffectual in ensuring Canadian compliance with relevant international commitments apropos South Africa.

Normative obligations pursuant to the various international conventional provisions pertaining to racial discrimination and apartheid, as well as those stemming from customary international law, have required in essence that states avoid aiding or abetting South Africa's apartheid policies and practices, whether by design or otherwise. The international community is also committed under the 1976 Programme of Action Against Apartheid and the Lagos Declaration of 1977 to undertaking meaningful economic and political sanctions against South Africa, and to appropriate support for the victims of apartheid and their national liberation movement. The aspects of Canada's economic relations with Pretoria outlined above patently entail a

substantial default in fulfilling this country's international policy obligations, a situation which, in significant measure, remains unrectified notwithstanding the Mulroney Government's adoption of the Commonwealth package of anti-apartheid sanctions during 1985-86, as is indicated below.

More positively, the Trudeau and Mulroney Governments alike funded a sizeable programme of humanitarian assistance to Black victims of apartheid, particularly in the educational field, while precluding such assistance to the social programmes of the ANC and other liberation organisations. Canada also applied widening restrictions to sporting contacts with South Africa after 1974, in contrast to overall Western inclinations in that regard, while actually sacrificing little in the way of prospective socio-cultural benefits in an area of divergent interests vis-a-vis South Africa.

The aftermath of the Trudeau era in Canadian external relations has coincided with the most tumultuous spiral of anti-apartheid unrest and governmental contraints on individual rights and liberties in South African history. With the adoption by Canada and the Commonwealth of several potentially far-reaching economic sanctions, a meaningful departure has been signalled from what constituted a policy of modified 'constructive engagement' towards South Africa. If Canada's declaratory stance on apartheid through the Trudeau era was in advance of American and British policy,

this country's resolute opposition to international isolation of South Africa during that period ran parallel to Anglo-American policy-perceptions favouring 'friendly pursuasion' over 'hostile pressure' on the need for fundamental change.

Under the new package of policy measures, the status quo ante of virtually normal trade and investment relations between Canada and South Africa has been seriouly put into question for the first time, though some important aspects of such commerce remain largely unaffected, as was indicated above. A readiness is professed to impose 'comprehensive economic sanctions' and even to sever diplomatic relations with South Africa - in diametric opposition to this country's historical posture on isolating the apartheid regime - albeit qua declaratory policy at this stage.

Importantly, the Mulroney Government's increasingly forthright stand on far-reaching economic measures against South Africa has been attended by conspicuous support from the Canadian Parliament. The mid-1986 Report of the Special Joint Committee (Senate and Commons) on Canada's International Relations, followed by the findings of the Commons Standing Committee on Human Rights with specific reference to South Africa, both advocated comprehensive sanctions by Canada well in advance of the Government's commitments at Nassau and London. As a corollary to Canada's call for the release of ANC leader Nelson Mandela, and the unbanning of the Congress within South Africa, the Special

Joint Committee further recommended contacts "at the highest level" with Black political organisations such as the ANC - contrary to this country's traditional position. As a counterweight to what was hitherto a Canadian variant of the United States' policy of 'constructive engagement' with White South Africa, a dialogue with apartheid's direct victims cannot come too soon.

Canadian NGOs have also long urged the Government to extend such recognition to the anti-apartheid struggle, particularly by the ANC, as well as to adopt total sanctions on economic relations with South Africa, positions that were reiterated before the Commons Standing Committee in early 1986, where the Mulroney Government's support for the Commonwealths package of measures was lauded.

Neither the NGOs nor Parliament succeeded, however, in playing an 'activist' role in the formulation and conduct of Canadian human rights foreign policy towards South Africa, over the period under study. The Trudeau Government's principal initiatives and demarches essentially constituted responses to crisis-situations within South Africa itself, as well as to difficulties in the evolution of suitable international strategies against the apartheid regime, with accomodation as the overriding objective. Parliament conducted no substantial evaluation of Canadian-South African relations (as occured, for instance, with the Caribbean and Latin America during 1981-82), nor appears to have influenced tangibly the content even of

Canada's 'reactive' policies. The recent more 'progressive' stance on apartheid by Canada manifestly owes in large part to heightened Commonwealth pressure (in turn responding to the current cycle of unrest in South Africa), reminiscent of the post-Sharpeville position of the Diefenbaker Government. Equally, executive consultations with the NGOs on apartheid issues, whether by the Trudeau or Mulroney Government, have consistently comprised ad hoc exchanges with minimal substantive impact, a situation arguably accentuated by Parliament's abridged role.

The strength of the Government's prevailing commitments undertaken at London, however, is by no means assured, pending the establishment of appropriate implementation mechanisms. Indeed, a primary criticism of Canadian policy towards South Africa through the Trudeau era and beyond centers upon the quality of enforcement of various policies promulgated in respect of economic, military and socio-cultural relations with that country. No legislation implements those policies, while existing bureaucratic devices (e.g. export control lists, voluntary trade constraints, the 1977 'Code of Conduct' for Canadian companies) have patently proven inadequate in forestalling their circumvention by private corporations and individuals. Moreover, the depth of Canada's policy commitments apropos South Africa (as well as other human rights issue-areas) is less obvious when unsupported by corresponding legislation. Nor has the judicial process proved relevant in advancing

rights-objectives in this regard without a concrete statutory framework.

A major ramification of the foregoing lacuna in Canadian policy is the circumscribed scope of Parliament's role in the development and implementation thereof, particularly in a system intrinsically favouring overwhelming executive dominance in foreign policy-making. Whereas in the United States, for instance, Congress (and especially the House of Representatives) has consistently played a dynamic role in influencing executive decision-making on relations with South Africa, essentially through legislative means,(411) the corresponding impact of Parliament's occasional pronouncements on the subjects has been negligible. The recent establishment of the Commmons Standing Committee on Human Rights is surely as overdue as it is welcome in this regard, not least given its consideration of Canada's policy on South African apartheid as its first substantive agenda-item.

Relatedly, a thematic extrapolation of the anti-apartheid policies of the Trudeau and Mulroney Governments into the general sphere of Canadian human rights foreign policy does not appear to have occured in significant measure. Legislative pronouncements attended by extensive parliamentary debate on matters concerning relations with South Africa might have generated a clearer anchoring of the problem of apartheid in the context of international human rights law and policy issues as a whole.

Instead, Canada's more ad hoc approach to the apartheid question suggests a somewhat particularised - and relatively more politicised - acceptance of normative responsibility, not readily susceptible to application dehors that fact-situation. It is noteworthy that such a contextualised appraisal of Canada-South Africa relations did occur within the framework of the Commons Standing Committee on Human Rights, a development that might well extend to other issue-areas on the Committee's agenda.(412)

In the final analysis, official compliance with this country's international normative obligations affecting human rights policy issues in general, and South African apartheid in particular, remains in need of enhanced structures for meaningful public monitoring and influence, primarily through the vehichle of binding action by Parliament. Without such structures, the gap between rhetoric and implementation of Canada's solemn obligations will likely subsist at an unaceptable level. The price for such a discrepancy vis-a-vis the situation of apartheid in South Africa can scarcely be overstated.

C. NOTES

1. For a wide-ranging statistical profile that exposes the major features of apartheid's socio-political landscape in South Africa, see especially International Defense and Aid Fund for South Africa (IDAF) Apartheid - the Facts (1983). See also Omond, The Apartheid Handbook - A Guide to South Africa's Everyday Racial Policies (1985), an 'A-Z' of the system. The population statistics in the present 'Note' are based upon the Official Census of 1980 (cited in the IDAF publication above), which estimated the overall national population at approximately 29 million.

2. See Troup, South Africa - An Historical Introduction (1972); Wilson and Thompson,(eds.) The Oxford History of South Africa (1969,1971), Vols. I (to 1870) and II (1870-1966); Hoagland, South Africa - Civilizations in Conflict (1972). See further Cornevin, Apartheid: power and historical falsification (1980); Fredrickson, White Supremacy - A Comparative Study in American and South African History (1981).

3. See Horrell, Laws Affecting Race Relations in South Africa (1978), Chapter 1, for a comprehensive survey of legislation between 1909 and 1948. See also Hoagland, supra note 2, at 146-66; Fredrickson, supra note 2, 239-82; Troup, supra note 2, 212-85.

4. De Villiers, "Afrikaner Nationalism", in Wilson and Thompson,(eds.) supra note 2, 365; Giliomee,"The National Party and the Afrikaner Broederbond", 14; and Price,"Apartheid and White Supremacy: The Meaning of Government- Led Reform in the South African Context",297, in Price and Rosberg,(eds) The Apartheid Regime - Political Power and Racial Domination (1980).

5. De Villiers, supra note 4, at 390-416; Giliomee, supra note 4, 18-19.

6. The Weltangschaung of the Afrikaner (1952); cited in Troup, supra note 2, at 294-95. Diedrichs was a senior member of the Afrikaner Broederbond, an influential, cohesive and clandestine society that sought to advance Afrikaner political and socio-economic interests, using all available means. He travelled to Germany in the 1930s to study the methods of the nascent Nazi Party. The Broederbond manifested numerous Nazi-tendencies in its early period; it has persisted to this day as an elitist organisation, still professing Afrikaner supremacy. See Giliomee, supra note 4, at 37-42; Troup, supra note 2, 270. See further Dunbar Moodie's authoritative The Rise of Afrikanerdom: Power, Apartheid, and the Afrikaner Civil Religion (1975), quoting Die Berger (a relatively liberal Afrikaner newspaper), October 11, 1944, as stating that "God created the Afrikaner People with a unique language, a unique philosophy of life, and their own history and tradition in order that they might fulfill a particular calling and destiny here in the southern corner of Africa".(at 110)

7. De Villiers, supra note 4, at 370-73; Troup, supra note 2, 287-89; Carstens,"The Churches in South Africa", in Robertson and Whitten ,(eds.) Race and Politics in South Africa (1978), 89.

8. See Carstens, supra note 7, at 92-95.

9. Adam,"The Political Sociology of South Africa: A Pragmatic Race Oligarchy", in Robertson and Whitten,(eds) supra note 8, 13, at 22-26.

10. Ibid. See also Price, supra note 4, at 298-309; Troup, supra note 2, 34 -57.

11. The 1960 Immigration Amendment Act stipulated that an Asian who obtained a permit to change his residence from one province to another (pursuant to the Immigrants Regulation Act, 1913) would henceforth automatically lose th right of domicile in the original province of residence. Numerous other policy changes curtailing the alread limited rights and liberties enjoyed by the Asian and Coloured population were made during this period. See the South African Institute of Race Relations' (Johannesburg) annual compilation, A Survey of Race Relations in South Africa, 1959-60, especially at 131-38.

12. Discussed infra, Section A:2.

13. (M.N. de Wet Nel). Quoted in Price, supra note 4, at 308.

14. For multiple and diverse South African perspectives on the homelands policy, see especially Rhoodie,(ed.) South African Dialogue (1972), 113-207. Gatsha Buthelezi, chief of the Zulu homeland, writes that notwithstanding "reservations" over aspects of the policy, "we are co-operating in the hope that the development we are promised may an improvement in our plight."(at 205) Buthelezi has not since accepted 'self-government' for the Zulu homeland, but remains an advocate of the 'federal' approach to political organisation in South Africa, entailing the devolution of power largely to ethnic-tribal entities. Attitudes among most popular Black leaders in this regard are radically less accomodating to the Government's perspectives. See, inter alia, Yengwa,"The Bantustans - South Africa's 'Bantu Homelands' Policy", in LaGuma,(ed.) Apartheid - A Collection of Writings on South African Rascism by South Africans (1979), 83; No Sizwe, One Azania, One Nation - The National Question in South Africa (1979). The June 1983 'National Forum' of approximately 100 Black organisations, meeting near Pretoria, also called for a "unitary Azania" with re-integrated homelands. See Survey of Race Relations in South Africa, 1983, at 54-55. See also note 349, infra.

15. The rather restrained and collaborative attitude of the ANC (under Nobel Peace Prize Winner Albert Luthuli) vis-a-vis non-Black groupings of Indians, Coloureds and 'progressive

Whites' led to heightened dissension within the Congress during 1957-58. The mainstream ANC, however, retained its multiracial outlook under the newly adopted 'Freedom Charter', though its commitment to peaceful opposition to apartheid was seen by many as becoming increasingly untenable. In any case, the Government issued Proclamation 67 in March 1958, empowering it to ban the Congress in certain rural areas, on the grounds that it was "detrimental to the peace, order and good government" of Africans. A total ban on the Congress' activities was soon to follow. See Survey of Race Relations, 1957-58, at 12-15.

16. Troup, supra note 2, at 349. 'Freedom' for Black South Africans is also compared favourably by the Reagan Administration in the United States with the situation prevailing within East Bloc countries; thus Assistant Secretary of State for Human Rights, Elliott Abrams, recently remarked that "(a) Soviet Bishop Tutu would be dead by now": "Dealing With Apartheid", Newsweek, March 11, 1985, at 40.

17. See the 1969 'Political Report' of the African National Congress, "Strategy and Tactics of the South African Revolution", in LaGuma,(ed.) supra note 14, 179-204. Valuable analytical overviews are provided in Karis, "Revolution in the Making: Black Politics in South Africa", Foreign Affairs Vol.62:2 (Winter 1983/84), 378; Stanbridge,"Contemporary African Political Organisations and Movements", in Price and Rosberg,(eds.) supra note 4, 66.

18. Survey of Race Relations, 1961, 4-7.

19. See Survey of Race Relations, 1959-1960, pp.278-280.

20. Quoted in Troup, supra note 2, at 346.

21. Survey of Race Relations, supra note 19, at 57-58. The Survey states: "It would appear that firing (by the police) was continued after the people began to flee: according to evidence given by medical practioners at the enquiry (held by the Government after the shooting), of the bullet wounds that could be classified, 30 shots had entered the wounded or killed persons from the front and 155 from the back".(at 58)

22. Ibid, 68-69. Survey of Race Relations, 1962, at 46-53. Following the culmination of the 'Rivonia Trials' in 1964, Mandela, Sisulu, Govan Mbeki, Raymond Mhlaba, Elias Matsoaledi, Andrew Mlangeni and Dennis Goldberg were sentenced to life imprisonment, to be served on Robben Island. See Survey of Race Relations, 1964, at 87-89.

23. See Troup, supra note 2, 369-71; Survey of Race Relations, 1961, 1984-86.

24. Quoted in Troup, supra note 2, at 380.

25. The Coloured Cadet Training Bill was introduced soon after

Vorster's accession, with the intention of transferring Black labour from the Western Cape in order to vacate the area for White and Coloured workers, who were deemed to belong there. Under the 1968 Prohibition of Political Interference Act, belonging to a racially-mixed political party was unlawful. The Population Registration Amendment Act of 1967 detailed a number of tests relating to descent, the determining criterion for racial classification. The tests included such factors as 'appearance', 'speech', 'deportment', and 'demeanour in general'. For useful summaries of the foregoing legislation, see Horrell, supra note 3.

26. See note 79, infra.

27. Dugard,"South Africa's 'Independent' Homelands: An Exercise in Denationalisation", Denver Journal of International Law and Policy Vol.10 (1981), 11; Stultz,"Some Implications of African 'Homelands' in South Africa", in Price and Rosberg,(eds.) supra note 4, 194.

28. Stemming from an existential rejection of the apartheid regime in all its authoritarian forms, 'Black Consciousness' should be seen less as corresponding to 'Black Power' tendencies in the U.S. than as a struggle for cultural and political identity in a colonial-type situation. For a succinct treatment see Lodge, Black Politics in South Africa since 1945 (1983), Chapter 13 (including bibliographical citations).

29. See Stubbs,(ed.) Steve Biko - I Write What I Like (A Selection of his writings)(1978); Schlemmer,"The Stirring Giant: Observations on the Inkatha and Other Black Political Movements in South Africa", in Price and Rosberg,(eds) supra note 4, 99, especially at 101-03.

30. The events of 1976 are well-documented in Survey of Race Relations - 1976, 24-26, 51-87. See also Callinicos and Rogers, Southern Africa after Soweto (1977), at 157-73; and West,"The Apex of Subordination: The Urban African Population of South Africa", in Price and Rosberg,(eds.) supra note 4, 127, at 143-47.

31. External pressures in the wake of Soweto (to be addressed below) included partial economic sanctions and a UN military embargo, as well as well as a reconsideration of bilateral relations with South Africa by its Western allies. Domestically, the economic growth rate slumped to slightly over 1%, one of the lowest since 1945. In response to the perceived threat to various aspects of national security posed by extensive media coverage of Black civil unrest, the controls of the 1974 Publications Act and its administration were tightened in 1977. Survey of Race Relations, 1977, 183-86, 173-82.

32. See Survey of Race Relations - 1982, 275-76, 297-301 (Black urban rights); Survey of Race Relations - 1978, 246-51 (trade union rights).

33. Notwithstanding the post-Soweto increases in educational spending for Non-Whites, per capita expenditure on White students during 1980/81 was Rand 1,021, as compared with Rand 176.20 for Black students: Survey of Race Relations - 1982, 465. In November 1983, the Government published the White Paper on the Provision of Eduction in the Republic of South Africa , pursuant to an investigation into the subject by the national Human Sciences Research Council, in the aftermath of Soweto. While supporting many of the reforms advocated by the Council, the Government insisted on 'separate development' as an underlying premise in educational services and objectives: Survey of Race Relations - 1983, 71-98. See Cowell,"Education Troubles Haunt South Arica", New York Times, October 21, 1984, E5; Cowell,"Pretoria Plans to Cut Arms Spending and Raise Education Budget", New York Times, March 19, 1985, A6.

34. Survey of Race Relations - 1983, 71-98. See "South African Rite: Old Leader, New Powers", New York Times, September 15, 1984, 1; "2 Nonwhites in South African Cabinet ", New York Times, September 18, 1984, 3.

35. Ibid.

36. Valpy,"South Africa reform entrench whites' power", The Globe and Mail, (Toronto), August 28, 1984, 10; "Turnout Low As Mixed-Race South Africans Vote", New York Times, August 23, 1984, A4; Schlemmer,"South Africa: Time of Violence", The Washington Post, September 18, 1984, A19.

37. Supra note 33.

38. See for a succinct review 'Angola: engaging the clutch' and 'Meanwhile ... in Mozambique', The Economist, March 30, 1985. See also Howard Wolpe, 'Don't Praise Pretoria', New York Times, April 4, 1984, A27.

39. See Valpy,"Botha's plans rate inspection", Globe and Mail, May 30, 1984, 8; "Europeans Give Botha A Frosty Reception", New York Times, June 10, 1984, E5; "South African Comes Home From Europe Tour", New York Times, June 15, 1984, A3. For an interesting exposition of South Afroca's "international propaganda machine", see the report by the The Africa Bureau (London), The Great White Hoax (1979).

40. See Section B:II:1, infra.

41. See "America and South Africa", The Economist, March 30, 1985, 17-34, especially at 28; "Tutu Installed As Bishop; Defends Political Role", New York Times, February 4, 1985, A3.

42. See, for instance, Prime Minister Botha's remarks to his ruling National Party as recently as August 1985, outlining what he described as a "manifesto for a new South Africa": New York Times, August 16, 1985, A1. See also Alan Cowell,'South Africa: A New Path?', New York Times, February 15, 1985, A9.

43. Interview with Newsweek, March 11, 1985, 32.

44. For an update of the overall legal-political framework of apartheid following the legislative changes during 1985-86, see Section B:II:1, infra pp.239-47.

45. Article 55(c).

46. See inter alia, Brownlie, Principles of Public International Law (1966), at 417; Butcher,"Legal Consequences for States of the Illegality of Apartheid", Human Rights Quarterly, Vol.8 (1986), 404, 407-13, at 410. The only human rights treaties ratified by South Africa are the 1926 Slavery Convention (and amendments thereto) and the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others: United Nations, Human Rights International Instruments (Signatures, Ratifications, Accessions, etc., as of I September 1983) (1983).

47. United Nations General Assembly, Official Records, 7th Session, 381st Plenary Meeting, 17 October 1952. See Sohn and Buergenthal, International Protection of Human Rights (1973), 556-887, for a detailed account of early developments at the United Nations on South Africa, including the Indian question.

48. Resolution 615(VII) concerning 'Treatment of people of Indian origin in the Union of South Africa' (5 December 1952); resolution 616(VII) on 'The question of race conflict in South Africa resulting from the policies of apartheid of the Government of South Africa'(5 December 1952).

49. Security Council resolution 182 (4 December 1963).

50. General Assembly resolution 2074(XX) (17 December 1965), passed in the context of South Africa's apartheid policies in Namibia; Assembly resolution 2202(XXI) (16 December 1966), reiterated the condemnation, in the context of apartheid within South Africa.

51. Legal Consequences for States of the Continued Presence of South Africa in Namibia (Advisory Opinion)(1971), ICJ Reports, 16; International Legal Materials, Vol. 10 (1971), 677.

52. Ibid at para. 131 (ICJ Rep.); 715 (ILM).

53. General Assembly resolution 2106(XX)(19 January 1966).

54. General Assembly resolution 3068(XXVIII)(6 December 1973).

55. International Human Rights Instruments, supra note 46.

56. See Brownlie, supra note 46, at 417; Weis, Nationality and Statelessness in International Law (2 ed.;1979), at 125. See also Sohn and Buergenthal, supra note 47, 856-911.

57. The Apartheid Convention has over 70 ratifications; Canada and most other Western countries have failed to ratify, apparently on the grounds that the Convention does not add usefully to the provisions of the Racial Convention, to which they are parties. See, for example, Digest of United States Practice in International Law, 1973 (1974), 130-32.

58. See particularly Dugard, Human Rights and the South African Legal Order (1978); Horrell, supra note 3 (offering an exhaustive guide to the various substantive areas of apartheid legislation to 1976; and the annual Survey of Race Relations, supra note 14 (for detailed updates of prevailing legislation as well as many of the effects thereof). See further Kentridge,"The Theories and Realities of the Protection of Human Rights Under South African Law", Tulane Law Review Vol. 56:1 and 2 (1981-82), 227.

59. A recent television documentary by the American Public Broadcasting Service (PBS) on "The Media and Human Rights", for instance, examined the impact of news reports on the situation in South Africa upon American public opinion, with the panelists concurring on the considerable significance of such impact, including its effects on foreign policy: PBS Video (broadcast September 23, 1986).

60. See Cell, The Highest State of White Supremacy - The Origins of Segregation in South Africa and the American South (1982), particularly at 219-29; Fredrickson, supra note 2, 239-82.

61. See Horell, supra note 3, pp.16-19; Dugard, supra note 58, pp.59-63.

62. Cited in Dugard, supra note 58, at 62.

63. See Dugard, supra note 58, at 79-83; Horrell, supra note 3, 71-76 (including statistics on ramifications of the Act).

64. Ibid, respectively at 70-78; and Chapter XVIII.

65. Article 13, Universal Declaration; Article 12, Civil and Political Rights Covenant (which also restricts derogability therefrom).

66. Evident from, inter alia, the annual Survey of Race Relations, in terms of 'petty' as well as 'grand' apartheid. For a random sampling of the individual cost of institutionalised discrimination in South Africa, see Joseph Lelyveld,'South African Tragedy: Jail Suicide Parts Lovers Lovers', New York Times, December 5, 1982, A2; Peter Younghusband,'South African rightists threaten to 'remove' coloured pool lifeguard', Globe and Mail (Toronto), July 2, 1984, 11; Anthony Lewis,'Postscripts to Kafka', New York Times, March 3, 1985, E21; Cowell,'Blacks Slain By Police Fire', New York Times, March 22, 1985, 1. See also Lelyveld's depictions

in his excellent Move Your Shadow - Black and White in South Africa (1985), especially at Chapter 10 ("Pilgrims"); and the account of an articulate and peaceful Black 'dissident' under apartheid, Winnie Mandela, Part of My Soul (1985).

67. See Survey of Race Relations, various years.

68. See the data presented in Apartheid, The Facts, supra note 1, at 27-49.

69. The legislation extended to South West Africa (Namibia), and was of retroactive effect from June 1962. See Horell, supra note 3, 473-74, 445-46; Dugard, supra note 58, at 119.

70. A 1976 amendment of the Act embodies provisions of the lonngstanding 'Supression of Communism' legislation, followed by a consolidation of cognate statutes under the 1982 Internal Security Act (No.74). The latter includes provisions on 'terrorism' and 'riotous assemblies', and authorises the banning of organisations deemed to endanger "security" or "the maintenance of law and order" or to be "propagating the principles of communism". See Horell, supra note 3, Chapter XXXV; Dugard, supra note 58, pp.110-23; and Survey of Race Relations, 1982, pp.222-26.

71. Ibid.

72. The General Law Amendment Acts of 1962 and 1963, for instance, conferred on the Government almost unlimited powers of detention on political grounds. See Horrell, supra note 3, at 415, 424-27.

73. See Amnesty International, Report on Torture (1973), 123-28; and Detention Without Trial and Torture in South Africa (1982); International Commission of Jurists, The Review No.33 (December 1984), 25-27; United States Departmnt of State, Country Reports on Human Rights Practices for 1984 (1985), 296-97. On the scope of the death penalty, whipping and interrogation undr the security laws in South Africa, see Dugard, supra note 58, at 123-36.

74. See Kentridge, supra note 58, at 231-47; Dugard, supra note 58, 107-202.

75. Some insights into the Afrikaner establishment's perception of the homelands policy are provided by a former South African Minister of Information, Social Welfare and Pensions, Connie Mulder, in "The Rationale of Separate Development", in Rhoodie,(ed.) supra note 14, 50.

76. See the concise expositions in Apartheid, The Facts, supra note 1, at 16-19, 40-41; Madava,"Government Policy and Economic Dualism in South Africa", Canadian Journal of African Studies Vol.5:1 (1971), 19. For detailed annual updates see the Survey of Race Relations, which runs a distinct section on the

homelands.

77. Verwoerd told Parliament in 1951:

> "Now a Senator wants to know whether the series of self-governing areas would be sovereign. The answer is obvious. It stands to reason that White South Africa must remain their guardian. We are spending all the money on these developments. How could small scattered states arise? The areas will be economically dependent on the Union. It stands to reason that when we talk about the Natives right of self-government in those areas, we cannot mean that we intend by that to cut out large slices out of South Africa and turn them into independent States."

Ten years later, in an address to the South Africa Club in London, Verwoerd's essential theme was unchanged, though the tenor of his articulation differed:

> "We prefer each of our population groups to be controlled and governed by themselves, as nations are. Then they can co-operate as in a Commonwealth or an economic association of nations where necessary ... South Africa will proceed in all honesty and fairness to seek - albeit by necessity through a process of gradualness - peace, prosperity and justice for all by following the model of nations which in this modern world means political independence coupled with economic interdependence."(Emphasis in original)

Quoted in ICJ Pleadings, South West Africa Vol.IV (1966), 265.

Prime Minister P.W. Botha's 'Twelve-Point plan' for the homelands, announced in 1979, implied greater interaction among the components of the 'commonwealth', while reflecting the essential precepts of Verwoerd's conception of partition: South Africa, House of Assembly Debates, March 21, 1980, cols. 3278-9. For a rigourous critique of the Botha plan, see Dugard,"The Denationalisation of Black South Africans in Pursuance of Apartheid", ICJ Review, No.33 (December 1984), 49; and Dugard, supra note 27. For the limited implications in this connexion of Pretoria's recent changes in the nationality laws applicable to citizens of the homelands, see infra Section B:II:1.

78. Supra note 14.

79. General Assembly resolution 2923(XXVII),E (15 November 1972), condemns the 'bantustan' policy of the South African Governmment; resolution 3411(XXX),D (28 November 1975), took note of the proposed policy with regard to the Transkei and other homelands, which it denounced. No country recognises the 'independence' of any of the homelands.

80. See Sohn and Buergenthal, supra International Protection of Human Rights (1973), at 535-36; Butcher,"Legal Consequences for

States of the Illegality of Apartheid",, supra note 46, at 424-25. See also Brownlie, supra note 46.

81. Vasak, The International Dimension of Human Rights (revised and edited for the English version by Phillip Alston)(1982). These 'generations' of rights relate to the French Revolution, and are respectively detailed in terms of civil and political rights (first generation), economic, social and cultural rights (second generation) and solidarity rights (third generation). See further Weston,"Human Rights", Human Rights Quarterly Vol.6 (1984), 257, particularly at 264-67.

82. See generally Tennyson, Canadian Relations With South Africa - A Diplomatic History (1982), which covers the period 1899-1961; Naiman, Bhabha and Wright, Relations Between Canada and South Africa, 1948-1983 (1984), a paper presented to the North American Regional Conference For Action Against Apartheid at the United Nations in June 1984, by 'Canadians Concerned About South Africa'; and

83. Prime Minister MacKenzie King was equally enthusiastic over Indian membership, in the prelude to the 1949 Conference. See Spencer, Canada in World Affairs (1959), Chapter VIII, at 394-402.

84. See Tennyson, supra note 82,at 100, 145.

85. Ibid, at 136.

86. Canada, House of Commons Debates, 17 November 1949, col.1871.

87. Ibid.

88. Canada voted against resolution 44(I) (8 December 1946), pronouncing upon the treatment of Indians in South Africa as contravening that country's international obligations, and abstained on resolution 615(VII) (5 December 1952), seeking a negotiated settlement on the Indian question, and calling upon South Africa "to suspend the implementation or enforcement of the Group Areas Act, pending the conclusion of the negotiations". Both resolutions were adopted by substantial majorities.

89. See Tennyson, supra note 82, 137-38. The tone of the Assembly's resolutions, however, remained mild and circumspect despite South Africa's failure to comply with the Organisation's various recommendations against apartheid. See, for example, resolutions 917(X) (6 December 1955) and 1016(XI) (30 January 1957) (expressing 'regret' and 'concern' over that country's intransigence, and 'inviting' future co-operation).

90. Canada, House of Commons Debates, 10 February 1960, cols.939-40.

91. Prime Minister Diefenbaker told Parliament that "the important consideration is not whether any action or statement by Canada would relieve Canadian feelings, but what practical effect such action or such a statement might have in South Africa itself ..." Canada, House of Commons Debates, 25 March 1960, col.2448-49. Only the growing public and parliamentary outrage in Canada over Sharpville prompted Diefenbaker to formally approach the South African ambassador. See Canada, House of Commons Debates, 30 March 1960, col. 2611; and Canada, House of Commons Debates, 31 March 1960, col. 2641.

92. Following South Africa's withdrawal of its membership application at the March 1961 meeting in London, Prime Minister Verwoerd reported to his Deputy in Pretoria that the "attack" against his country by Ghana, India and Nigeria "was supported by Diefenbaker in strong and hostile terms", an outcome that Britain's Prime Minister MacMillan had apparently anticipated. See Tennyson, supra note 82, at 155-73.

93. Ibid. Considerations such as the adoption of the 1960 Bill of Rights by the Canadian Parliament, and the newly-acquired significance of the Afro-Asian bloc at the UN during 1960-61, weighed strongly upon Diefenbaker. Yet the Prime Minister wavered on the issue all through, finding it "impossible ... conscientiously to assume the responsibility for ... expulsion without a further opportunity being given (South Africa's) government to change its racial policies."

94. According to recently released minutes of Diefenbaker's cabinet meetings during 1957-61, the Prime Minister accepted the South African Government's rationalisations for influx control (securing White interests in the face of overwhelming odds) and denying majority rule (lack of Black maturity to govern); Diefenbaker was also apprehensive over possible Non-White immigration to Canada from the new Commonwealth whose emergence this country had so stoutly supported: Gazette (Montreal), July 31, 1986, B1.

95. Draft resolution II of the Special Political Committee (A/4988, para. 13), which Canada opposed, called for sanctions against military relations with South Africa. It was amended to urge states "to take such separate and collective action as is open to them in coformity with the Charter", and passed as resolution 1663(XVI) of 1961, which Canada supported. The rationale offered by the Canadian delegate, and some of its ramifications, are addressed below in the context of Canadian voting behaviour at the United Nations over the 1970-84 period.

96. Resolution 181 (7 August 1963), adopted by 9 votes to none, with France and the United Kingdom abstaining, called upon "all States to cease forthwith the sale of and shipment of arms, ammunition of all types and military vehichles to South Africa". Resolution 182 (4 December 1963) reiterated the preceding call, with the concurrence of all members of the Security Council.

97. Resolution 2145(XXI) (27 October 1966). Subsequently, resolution 276 (30 January 1970) of the Security Council decalred that "the continued presence of the South African authorities in Namibia is illegal", and called upon "all States, particularly those which have economic and other interests in Namibia, to refrain from any dealings with the Government of South Africa", consistent with the preceding declaration.

98. Supra note 51.

99. Statistics Canada, Canada Yearbook 1970 (1971), 289.

100. See infra pp. 213-14.

101. See Tennyson, supra note 82, at 136, 143, 148-49.

102. Foreign Policy for Canadians (1970). The review comprised five 'issue-area' booklets (for Europe, Latin America, the Pacific, International Development and the United Natios), and an 'overview' ('Foreign Policy for Canadians'). The discussion of policy themes and their ranking is contained in the overview. For valuable analyses of the White Paper in toto, see especially Lyon and Tomlin,(eds.) Canada As An International Actor (1974), 35-55; and Thordarson, Trudeau and Foreign Policy - a study in decision-making (1972).

103. 'Foreign Policy for Canadians', supra note 102, at 15.

104. 'United Nations' booklet, supra note 102, 17-20, at 19.

105. Ibid, 19-20.

106. Ibid.

107. Ibid, 20.

108. Department of External Affairs,"Canadian Foreign Policy and the Third World", Speech at the University of Toronto, September 18, 1970, Statements and Speeches (70/12).

109. Ibid, at 6-7.

110. Ibid, at 7.

111. Legge, Pratt, Williams and Winsor (for the Committee for a Just Foreign Policy),"The Black Paper: An Alternative Policy for Canada Towards Southern Africa", Behind the Headlines (a Canadian Institute of International Affairs Publication), Vol.XXX: 1 & 2 (September 1970), 1.

112. Ibid, at 10.

113. Ibid, 10-11.

114. Ibid, 11.

115. Ibid.

116. Ibid, 13-14.

117. Ibid, 4.

118. Ibid, 15.

119. See also Anglin,"Canada and Southern Africa in the Seventies", Canadian Journal of African Studies, Vol.4:2 (1970), 261, which was somewhat more radical in its critique and recommendations apropos the "unambiguous moral challenge" of rascism not only to Canadian policy, but also to the Commonwealth and NATO.

120. Department of External Affairs,"Excerpts from a Press Conference ... at the Commonwealth Heads of Government Conference", Singapore, January 20, 1971, Statements and Speeches (71/3).

121. Department of External Affairs,"The Major Aims of Canadian External Policy", Statement by the Minister of External Affairs to the House of Commons Standing Committee on External Affairs and National Defence, Ottawa, March 19, 1974, Statements and Speeches (74/3).

122. Ibid.

123. Canadian Delegation to the United Nations,"Policies of apartheid of the Government of South Africa", Statement in the Special Political Committee of the 30th Session of the General Assembly, 23 October 1975, Communique (No. 14).

124. Ibid.

125. Canadian Delegation to the United Nations,"Policies of apartheid of the Government of South Africa", Statement at the 31st Session of the General Assembly by the Hon. Robert Stanbury, Representative of Canada, November 1, 1976, Commmunique (No.28).

126. Department of External Affairs,"Canada Reaffirms Its Abhorrence of Apartheid", March 30, 1977, Statements and Speeches (77/3).

127. Department of External Affairs,"Canadian Policy Towards South Africa", Statement by the Hon. Donald Jamieson, Secretary of State for External Affairs, House of Commons, December 19, 1977, Statements and Speeches (77/3).

128. Ibid.

129. Ibid.

130. Department of External Affairs, "Code of Conduct Concerning the Employment Practices of Canadian Companies Operating in South Africa", 28 April 1978, Communique (No.44).

131. Department of External Affairs,'Current Issues in Canadian Policy', Statement to the Commons Standing Committee on External Affairs and National Defence, Ottawa, March 8, 1979, Statements and Speeches (No.79/5). It should be noted that the Conservative interlude in office under Prime Minister Joe Clark was to witness no further developments in connexion with the Code - nor other aspects of Canada's policy on apartheid.

132. Canadian Policy Towards Southern Africa (1981)(Brief to the Government); also published in abbreviated form in the Canadian Journal of African Studies, Vol.16:1 (1982), 113. The Department of External Affairs responded to the Brief a year later, upon which the Taskforce has in turn commented in detail: also published in the Canadian Journal of African Studies, Vol.17:3 (1983), 497. The Brief held that "the 1977 measures which have been implemented were those that related mainly to the activities of the Department of External Affairs and were largely of symbolic rather than practical value."(at 3)

133. Department of External Affairs, Statement by the Canadian Delegation, ECOSOC (Spring Session), U.N. Decade to Combat Racism and Racial Discrimination, May 20, 1983; Canadian Delegation, ECOSOC (Spring Session), Second Decade to Combat Racism and Racial Discrimination, May 8, 1984 (statement of Barbara Martin).

133a. Department of External Affairs,'Human Rights in Canadian Foreign Policy', Ottawa, March 26, 1984, Statements and Speeches (No.84/4).

133b. See Department of External Affairs,'Canadian Policy on Human Rights in South Africa' (June 1984) (summary restatement of policy). For proceedings of the Conference see UN doc. A/AC.115/L.614; the concluding Declaration appears in doc. A/39/370-S/16686. See the NGO reports to the Conference by Naiman, Bhabha and Wright, supra note 82; Kappler (for the TCCR), Canadian Governmental Policy, Banks and Corporate Relations with South Africa; Klein, United States and Canadian Involvement in Loans to South Africa from 1979 to May 1984.

133c. See especially Naiman, Bhabha and Wright, note 82, supra.

134. See Tucker, Canadian Foreign Policy - Contemporary Issues and Themes (1980), at 40-52; DeWitt and Kirton, Canada As A Principal Power (1983), at 171-77. See, further, the remarks made in Part

3 at note 624, infra.

135. See Humphrey,"The Role of Canada in the United Nations Program for the Promotion of Human Rights", in Macdonald, Morris and Johnston, Canadian Perspectives on International Law and Organisation (1974), 612; Department of External Affairs,"Human Rights and International Legal Obligations", Statement by the Secretary of State for External Affairs, Mark MacGuigan, to the Federal-Provincial Ministerial Conference on Human Rights, February 2, 1981, Statements and Speeches (81/3). See generally on the scope of relevant normative international obligations Part 1 of this dissertation, supra.

136. General Assembly resolution 2106(XX) (21 December 1965); opened for signature March 7, 1966. Text in International Legal Materials, Vol.5 (1966), 352.

137. General Assembly resolution 3068(XXVIII) (30 November 1973). Text in International Legal Materials, Vol.13 (1974), 51.

138. United Nations, Human Rights International Instruments, supra note 46.

139. Supra note 50.

140. See note 46 and text thereto, supra. Nothing in the Article, or the Convention in toto, requires a restrictive reading of the scope of the obligations under consideration as being confined to the municipal domain, at least in terms of the spirit thereof.

141. Article VI.

142. United Nations General Assembly, Official Records, 28th Session, 2185th Plenary Meeting, 30 November 1973.

143. It is interesting that the Canadian Government justifies its refusal to regulate the activities of Canadian corporations in South Africa on a mandatory basis because, inter alia, this would entail the extra-territorial application of Canadian law (see infra p.211). Would this consideration override a Canadian obligation under Art.2(1)(d) of the Apartheid Convention, "to prohibit and bring to an end, by all appropriate means ... racial discrimination by any persons, group or organisation"? It is submitted that the Article encapsulates, at least in spirit, actions not only constituting direct discrimination, but also those supportive of racial discrimination (particularly the supply of equipment to the South African Government susceptible to use against its civilian population).

144. See the segment that follows with respect to the array of measures advocated at the United Nations.

145. United Nations General Assembly, Official Records, 32nd

Session, 102nd Plenary Meeting, 14 December 1977. The Declaration is contained in United Nations doc. A/CONF.91/9, Vol.1, Section X.

146. Canadian Delegation to the United Nations, 'Explanation of Vote' on draft resolutions on 'Policies of Apartheid of the Government of South Africa', General Assembly, December 14, 1977, Communique (No.61).

147. "Report of the Ad Hoc Committee on the Drafting of an International Convention Against Apartheid in Sports", United Nations General Assembly, Official Records, 39th Session, Supplement No.36 (A/39/36)(1984).

148. Ibid.

149. Note 124 and text thereto, supra.

150. Resolution 31/6 J (9 November 1976);

151. United Nations, General Assembly, Official Records, 31st Session, 58th Plenary Meeting, 9 November 1976 (statement by M.Gignac).

152. Part 1, supra at section A:1.

153. Supra note 108.

154. At the 38th session of the General Assembly (1983-1984), Canada opposed three resolutions on South Africa with the United Kingdom and the United States, and one with the West en bloc, also abstaining on one with France, Italy, West Germany and the United Kingdom. On six other South African resolutions, Canada voted in favour or abstained with the Scandinavians as well as other West Europeans. The United States opposed all eleven resolutions on South Africa, seven with the United Kingdom. General Assembly, Official Records, 38th Session, 83rd Plenary Meeting, 5 December 1983. At the 39th session of the Assembly, Canada opposed one resolution with the United States and the United Kingdom, one with the West en bloc, and supported the remaining four with the Scandinavians and other West Europeans. The United States opposed all but two of the resolutions, all with the United Kingdom, supporting none. General Assembly, Official Records, 39th Session, 99th Plenary Meeting, 13 December 1984.

155. The vote on sanctions in 1983 (resolution 38/39 D) was 122 in favour, with Canada and nine others opposed, and eighteen abstentions. In 1984 (resolution 39/72 A), 123 voted in favour, Canada and fourteen others were opposed, and fifteen abstained.

156. See, for instance, remarks on the issue at the 39th session of the General Assembly by the Chairman of the African Group (Ambassador Engo, Cameroon) and by the Chairman of the

Special Committee Against Apartheid (Joseph Garba, Nigeria): General Asembly, Official Records, 39th Session, 66th Plenary Meeting, 20 November 1984.

157. Naiman, Bhabha and Wright, supra note 82, at 13.

158. See, inter alia, Leach,"Canada and the Commonwealth - assuming a leadership role", International Perspectives, May/June 1973, 24. For a pre-Conference analysis of the issues at hand, see Freeman, Helleiner and Matthews (for the Committee for a Just Canadian Policy Towards Africa),"The Commonwealth at Stake", Canadian Journal of African Studies, Vol.5:1 (1971), 93.

159. See, inter alia, Canada, Department of External Affairs, Annual Review, 1977, at 68. Text of Declaration appears in 'Appendices' below.

160. Pursuant to Security Council resolution 385 in 1977, calling for the withdrawal of South Africa from Namibia. See Tennyson, supra note 82, 183-85; Department of External Affairs, address by Secretary of State for External Affairs, Don Jamieson, at the 23rd Session of the United Nations General Assembly, September 26, 1978, Statements and Speeches (78/5).

161. It is noteworthy that in May 1977, Canada's Ambassdor to the United Nations, William Barton, stated in a public address: "Now the Africans are demanding that the Security Council should invoke Chapter VII of the Charter to impose an arms embargo against South Africa. Thus far, Canada and most Western nations have not been prepared to contemplate such action." Department of External Affairs, "Canada at the United Nations", Winnipeg, May 13, 1977, Statements and Speeches (77/8). The change in Canada's position at the Council that October would appear to have been inspired less by new-found conviction than by expediency.

162. See Matthews and Pratt,"Canadian Policy Towards Southern Africa", 164, at 171, 174; and Freeman,"Canada and the Frontline States", 69, especially at 84, in Anglin, Shaw and Widstrand, (eds.) Canada, Scandinavia and Southern Africa (1978). See more generally DeWitt and Kirton, supra note 134, arguing a 'complex neo-realist' perspective on contemporary Canadian policy (especially at 34-36, 44-45).

163. Ibid.

164. The principal loan-approvals were in the amounts of $464 million in 1976, and $1.1 billion in 1982. IMF, Annual Report, relevant years.

165. See Gisselquist (for the United Nations), International Monetary Fund Relations With South Africa (1981), describing the multiplicity of accomodations relating to gold reserves and SDRs extended by the Fund to South Africa since 1969 (at

17-26).

166. See Center for International Policy (Washington,D.C.),"A Victory Over Apartheid", International Policy Report, April 1984, at 2. The World Bank loan was opposed at the United Nations by the General Assembly as well as by then Secretary-General U Thant.

167. The Government's official policy position on this issue was discussed in Part 1 of the dissertation, at Section A:II.

168. Part 1, Section A:II, supra.

169. See Morrell and Gisselquist (for the Center for International Policy),"How the IMF Gave $464 Million to South Africa", Special Report, January 1978 (incorporating transcript-excerpts from the Board meeting); Gisselquist, supra note 165, at 2, 5-7.

171. Ibid.

172. Ibid.

173. See "Victory Over Apartheid", supra note 166, at 2.

174. Director Yameogo exercised only 2% of the vote - against 4% by Canada, and over 19% by the United States.

175. Morrell and Gisselquist, supra note 169, at 5 (based on transcript-excerpts).

176. International Monetary Fund Relations With South Africa, supra note 165, at 14-15.

177. Confidential communications between South Africa and the United States relating to the intended application were 'leaked' in July 1982, revealing a series of surreptitious acts on the part of both Governments with regard to the timing and disclosure of the application. The United States reportedly advised South Africa to formally lodge the application after the Fund's annual convention that summer in Toronto, in order to circumvent public discussion thereof at the forum. South Africa also requested the IMF Managing Director not to disclose the intended application and details of the formal negotiations thereon to the Executive Board pending the formal announcement of the application, an unprecedented request which the Director in fact complied with. "Victory Over Apartheid", supra note 166, at 3-4.

178. Resolution 36/172 D (paras.8-10)(17 December 1981), adopted by 109 votes to 13, with 18 abstentions; and resolution 37/69 A (para.12)(9 December 1982), adopted by 118 votes to 11, with 14 abstentions.

179. The Afrikaans press in South Africa was unrestrained in

asserting this, with Beeld (a pro-Government daily) stating that IMF approval was "a feather in our cap since granting of such a loan means our house is in order." Cited in "Victory Over Apartheid", supra note 166, at 4.

180. TCCR, Human Rights and International Lending (1984), at 6-7.

181. Ibid. The Minister of Finance wrote the TCCR that "the IMF must be careful not ... to be accused of meddling in the internal affairs of sovereign states", an ironic reply in view of the original objection that the loan was tantamount to harmful intervention in the apartheid system.

182. "The IMF's ordeal over apartheid", Maclean's, August 8, 1983, 33; "Victory Over Apartheid", supra note 166, at 7-8; Center for International Policy,"South Africa Loan Was Improper, IMF Officials Argue", Aid Memo, January 6, 1983.

183. Ibid.

184. "South Africa Loan Was Improper", supra note 182.

185. International Monetary Fund, South Africa, Staff Report for the 1983 Article IV Consultation and Review under Stand-By Agreement (1983); cited in Bonner,"Economic Problems Tied to Apartheid", New York Times, November 17, 1983, D6; Human Rights and International Lending, supra note 180, at 7-8.

186. Ibid.

187. IMF, Annual Report, 1984, at Appendix I (Table 1.3).

188. "Victory Over Apartheid", supra note 166, at 4.

189. Ibid, at 5.

190. Ibid, at 4-5.

191. Cited ibid, at 9.

192. Human Rights and International Lending, supra note 180, at 8.

193. See Part 3 of the dissertation, at Section C:II, supra.

194. "Victory Over Apartheid", supra note 166, at 5.

195. Government of Canada, Canadian Policy on Human Rights in South Africa, supra note 134.

196. In any case, within the context of Canadian diplomacy through the Western 'Contact' group, seeking a negotiated South African withdrawal from Namibia, the effort has been rather fruitless. See TCCR, Canadian Policy Towards Southern Africa,

supra note 132 (section on Namibia); and remarks by Canada's Amabasdor to the United Nations, Stephen Lewis, on the failure of the Botha Government to respond to international diplomacy in this regard, infra Section B:II:2. With regard to Canadian effrots in support of the Reagan Administration's policy of 'constructive engagement' towards South Africa, the impact thereof on the latter's apartheid policies is likewise widely considered to be negligible. See, for instance, "America and South Africa", The Economist, March 30, 1985, 17, at 18-27; "Dealing With Apartheid", Newsweek, March 11, 1985, 28; Unger and Vale,"Why Constructive Engagment Failed", Foreign Affairs, Vol.64:2 (Winter 1985/86), 234.

197. Statement by Canada's Louis Duclos, United Nations General Assembly, supra note 123.

198. Pursiant to the Gleneagles Declaration of Commonwealth leaders, 1977:

199. Supra note 147.

200. An inquiry into "Sport in the Republic of South Africa" by the Human Sciences Research Council of South Africa, submitted to the Botha Government in September 1972, was sevely critical of the administration of facilities in the country, with paticular reference to the paucity of services for Non-Whites. The Report was not regarded by the South Council on Sport, a major Non-White organisation, as sufficiently far- reaching: Survey of Race Relations - 1982, 586-88. See also the statement to the United Nations General Assembly by Canada's Robert Stanbury (November 1976), supra note 125; and Valpy,"Sports boycotts work on apartheid", Globe and Mail (Toronto), July 30, 1986, A8.

201. See South African Department of Foreign Affairs and Information, South Africa 1983 (an official yearbook), 823-56, for the Government's account of sport in that country.

202. See, for example, Department of External Affairs,"Canada and Africa", Speech by Secretary of State for External Affairs, Allan MacEachen, Fifth Annual Conference of the Canadian Association of African Studies, Toronto, February 19, 1975, Statements and Speeches (75/2); Statement by Robert Stanbury to the United Nations General Assembly, supra note 125; Government of Canada, Canadian Policy on Human Rights in South Africa, supra note 195.

203. Supra p.123.

204. The principal institutional channels for which are the UN Trust Fund for South Africa and UN Education and Training Programme for Southern Africa. See further citations in note 205, infra.

205. Canadian contributions commenced in the mid-1970s, not

without much debate as to the precise beneficiary programmes under the Trust Fund and other institutionalised arrangements. See especially Shepherd, infra note 287, Chapter 6, especially at 128-34. By 1983, the Trudeau Government's annual contributions in this regard included $25,000 to the Trust Fund and $350,000 to the Education and Training Programme for Southern Africa. See statement by Ambassador Stephen Lewis, infra note 206.

206. Department of External Affairs,"Apartheid - A Violation of Fundamental Human Rights", Statement by Ambassador Stephen Lewis, United Nations General Assembly, November 20, 1984, Statements and Speeches (84/14).

207. See the comments in the 1970 "Black Paper", supra note 111, at 174-75; Pratt,"Canadian attitudes towards southern Africa: a commentary", International Perspectives, November/December 1974, 38; Naiman, Bhabha and Wright, supra note 82, at 6-6, 39-40.

208. Ladouceur,"Canadian Humanitarian Aid for Southern Africa", in Anglin, Shaw and Widstrand,(eds.) supra note 162, 85, at 96-97. Ladouceur observes, however, that Governmental assistance to the movements in question was a humantarian gesture simpliciter, not an 'act of solidarity' as it was (and remains) for the NGOs concerned.

209. Ibid.

210. Ibid, at 95-96.

211. Naiman, Bhabha and Wright, supra note 82, at 40.

212. Ibid.

213. Ibid, at 40-43.

214. Quoted in Anglin,"Canada and Apartheid", International Journal, Vol.XV (Spring 1960), 122, at 128.

215. Supra pp. 192-99.

216. At Section A:III:2, supra.

217. See Section B:I:1, supra; Canadian statement at the United Nations Security Council (March 1977), supra at note 126).

218. Data cited in Tennyson, supra note 82, at 208-09.

219. Supra note 115.

220. Henault,"Canada May Cut Trade Links with South Africa", Toronto Telegram, February 25, 1970, 70.

221. Text to note 129, supra.

222. Ibid.

223. See especially TCCR, Canadian Policy Towards South Africa, and the subsequent "analysis of the Canadian Government's response" (hereafter cited as "Analysis"), supra note 132; Keenleyside,"Canada-South Africa Commercial Relations, 1977-82: Business As Usual?" Canadian Journal of African Studies, Vol.17:3 (1983), 149.

224. See Keenleyside, supra note 223, at 451.

225. Ibid, at 455. See also Tennyson, supra note 82, at 198.

226. TCCR,"Analysis", supra note 132, at 4-6; Keenleyside, supra note 223, at 454-55; Keenleyside and Taylor,"The Impact of Human Rights Violations on the Conduct of Canadian Bilateral Relations: A Contemporary Dilemma", Behind the Headlines, Vol.XLII:2 (1984), 9-11.

227. Keenleyside, supra note 223, at 453; "Impact of Human Rights Violations", supra note 226, at 10-11.

228. Ibid.

229. Ibid.

230. Cited in Blouin,"Canadian Policy Towards Southern Africa", in Anglin, Shaw and Widstrand,(eds.) supra note 162, 159, at 161.

231. See, inter alia, Langdon,"The Canadian Economy and Southern Africa", in Anglin, Shaw and Widstrand,(eds.) supra note 162, 15, at 18-19; South African Congress of Trade Unions (SACTU) Solidarity Committee (Canada), Guide to Canadian Collaboration With Apartheid, (1983), 2-3; "America and South Africa", The Economist, supra note 196, at 32. See further citations at note 234, infra.

232. While the South African Manganese Corporation (SAMANCOR) is reportedly the world's largest, alternative sources in Canada and parts of the Third World can be drawn upon to fulfil this country's demands. For a detailed discussion see SACTU, Trafficking in Apartheid (January 1985), 39-47.

233. Wines, fruits and sugar remain the principal items (as indicated in Table 2:4), the last being by far the most important item. See SACTU, note 233, supra.

234. See Rotberg, Towards a Certain Future - The Politics and Economics of Southern Africa (1981), 100-22, for an analysis of the probable degree of Western dependence on South Africa's 'strategic minerals'; uranium supplies are discussed at 141-42. Although Rotberg concludes that "(c)hrome, along with platinum, manganese, vanadium, and, possibly uranium, provides South Africa with a unique source of economic leverage",(at 107) his

survey of potential alternative sources for each of these suggests that the 'leverage' relates more to prospective price-hikes among alternative suppliers than to the availability of the items on the world market. Thus Foltz,"US Policy Towards Southern Africa: Economic and Strategic Constraints", in American Policy in Southern Africa: The Stakes and the Stance (1978), 247, perceives "few serious constraints" on a more progressive American policy towards South Africa, in the context of the supposed dependence on particular minerals and metals.(at 268) See also Schrire, "South Africa, the International Community, and the United States", in Clifford-Vaughn,(ed.) International Pressures and Political Change in South Africa (1978), 60, especially remarks at 69.

235. Guide to Canadian Collaboration, supra note 231, at 3.

236. See SACTU, not 232, supra.

237. A sharp decline in gold prices during 1981-82, for example, coupled with a fall in global demand for platinum, copper and diamonds, produced acute balance-of-payment problems and a recession in the South African economy. See Keenleyside, supra note 223, at 458.

238. "Don't Lose Sleep Over Strategic Metals", Fortune, September 30, 1985, 23.

239. See Survey of Race Relations - 1983, including comparative wage/salary statistics for the various racial groups in the major economic sectors, at 122-75.

240. According to the South African Financial Gazette, "(t)hrough trade, South Africa can offer formidable resistance to any efforts to isolate her from the rest of the world. Foreign trade is in fact the means of ensuring a continued role for South Africa in world politics. Its political importance should, therefore, never be underestimated." Quoted in Litvak, DeGrasse and McTigue, South Africa: Foreign Investment and Apartheid (1978), at 63.

241. See Davis, Cason and Hovey,"Economic Disengagement and South Africa: The Effectiveness and Feasibility of Implementing Sanctions and Divestment", Law and Policy in International Business, Vol.15:2 (1983), 529, especially at 555-58. It is an offense under the Terrorism Act to advocate sanctions against South Africa, punishable by a minimum of five years imprisonment: see Horrell, supra note 3, at 445-46.

242. This argument is strongly promoted by the Government of South Africa. See, for instance, the remarks in London by that country's Foreign Minister, Pik Botha, during his visit in 1983: Survey of Race Relations - 1983, at 117-18; On the propaganda efforts by South Africa to counter potential Western economic sanctions, in particular corporate divestment from that country , see inter alia, see Davis, Cason and Hovey,

supra note 241, at 558; Litavk, DeGrasse and McTigue, supra note 240, at 78.

243. See Canadian statement at the United Nations General Assembly by Louis Duclos (23 October 1975), supra note 123; TCCR,"Analysis", supra note 223, at 26. Canadian Ambassador to the United Nations, Stephen Lewis, told the General Assembly in 1984 that "Canadian reservations about comprehensive economic sanctions against South Africa stem from our belief in the leverage of dialogue and contact, and also from our doubts whether such sanctions could be effective": Canadian Delegation to the United Nations, 38th Session of the General Assembly, 20 November 1984, Communique (No.28).

244. See, inter alia, Litvak, DeGrasse and McTigue, supra note 240, 11-37, especially at 34-36.

245. See Africa Fund, U.S. Business in South Africa:"Voices for Withdrawal" (1980), and note 246, infra.

246. According to a much-publicised survey of Black South African opinion on disinvestment sanctions, conducted by Lawrence Schlemmer of the South African Institute of Race Relations in 1984, 75% of those polled opposed such measures. New York Times, November 24, 1984, 7. The authenticity and value of the poll, funded in part by the U.S. Reagan Adminstration, was challenged on various grounds, including the nature of the questionnaire itself (seen as unnuanced). See, for example, the 'letter to the editor' by Penelope Andrews, New York Times, November 24, 1984, 22. Indeed, a subsequent survey by the London Sunday Times yielded virtually the reverse result as to Black opinion. Peter Goodwin and David Lipsey,'Sanctions: black support grows', Sunday Times (London), 25 August 1985. It was a third study by Mark Orkin, an independent sociologist in Johannesburg, that proved the most valuable. Orkin demonstrated the failure of both the preceding polls to explore the middle ground of Black opinion, viz. support for 'conditional disinvestment', finding in his survey a 49% majority for that position, with roughly equal proportions (25%) favouring either free investment or total disinvestment. The study also tracked the radical movement of Black opinion towards more incisive action against the system. New York Times, September 10, 1985; Orkin, Disinvestment, the Struggle and the Future - What Black South Africans Really Think (1986). The results of the survey are further detailed in Section B:II:1 of the study (including Tables 2:6 and 2:7), supra./247. See, for example, Shingler, Canadian Universities and South Africa (based on an address to Queen's University, Kingston, November 3, 1983), which considers the disengagement-for-reform argument (as oppposed to disengagement-for-revolution) as "a policy whose time has passed". Am bassador Stephen Lewis also maintained in his United Nations address in 1984, supra note 243, that "comprehensive sanctions may hasten rather than avert

conflict." The Netherlands representative at the Assembly adopted an almost identical stance, arguing that "comprehensive sanctions against (South Africa) will gravely exacerbate existing tensions and will inflict intolerable suffering on the people of South Africa and neighbouring states". See also the concluding comments in Barber and Spicer, "Sanctions against South Africa - Options for the West", International Affairs (London), Vol.55:3 (July 1979). 385, at 400.

248. On a visit to Canada in 1969, then President of Tanzania, Julius Nyerere, told an audience in Toronto, "We believe this country has both the opportunity and the willingness to try to build bridges in the world and, in particular, to build a bridge across the chasm of colour ... Will Canada at least understand that freedom means as much to us in Africa as it does to any other people? And, if Canada cannot support our struggle, will it at least be able to refrain from giving comfort and help to those would deny freedom and dignity to us?" Quoted in the "Black Paper", supra note 111, at 12.

249. See generally SACTU, note 232, supra, at 93-94. A valuable profile of foreign investment in South Africa, including relevant policy developments domestically and internationally, appears in Survey of Race Relations, 1983, 108-15 (see also annual updates thereof).

250. Guide to Canadian Collaboration, supra note 231, at 45-46; as of May 1983, 28 Canadian companies were listed as operating in that country. See also Naiman, Bhabha and Wright, supra note 82, 24-25; Tennyson, supra note 82, at 196. The Canadian Government did not regard the supply of diesel engine technology by a British subsidiary of Masssey-Ferguson (a recepient of substantial financial assistance by the Canadian Government) as falling clearly within the ambit of the United Nations arms embargo of 1977, notwithstanding the prospective use of the engines in military trucks by the South African armed forces: TCCR, "Analysis", supra note 223, 11-14.

251. Guide to Canadian Collaboration, supra note 231, at 31-32; Naiman, Bhabha and Wright, supra note 82, 24. In communications with the TCCR, the Government stated that it was not prepared to constrain Ford Motors from dealing with Pretoria, in respect of the company's obligations under national legislation: "Analysis", supra note 231, 8-11, at 9.

252. Naiman, Bhabha and Wright, supra note 82, at 21; Guide to Canadian Collaboration, supra note 231, 11-12.

253. See the extensive survey in Guide to Canadian Collaboration, supra note 231, at 8-65.

254. Ibid, at 74. On the role of foreign-owned computer firms in South Africa (which lacks any major national manufacturers), see Litvak, DeGrasse and McTigue, supra note 240, at 50-52.

255. Naiman, Bhabha and Wright, supra note 82, at 25; Guide to Canadian Collaboration, supra note 231, 77-80.

256. Ibid.

257. See Statistics Canada, Canada's International Investment Position, December 1982 (1984).

258. Guide to Canadian Collaboration, supra note 231, 83-85, at 83. See further Kappler, supra note 134, at 3-7; Naiman, Bhabha and Wright, supra note 82, 29-30. For a summary of the debate on the loans issue in the United States, see Hauck, Voorhes and Goldberg (for the Investor Responsibility Research Center, Washington, D.C.), Two Decades of Debate: The Controversy Over U.S. Companies in South Africa (1983), at 127-43. United States as well as Canadian loans to South Africa between 1979 and 1984 are documented in Klein, supra note 134.

259. Ibid. The Toronto Dominion Bank announced in March 1980 that no further loans would be advanced to the South African Government or its agencies "under present conditions"; in view of ongoing market trends internationally, the undertaking cannot have proven difficult to honour. See discussion infra, at pp. 261-62.

260. Klein, supra note 134, at 23-24.

261. Naiman. Bhabha and Wright, supra note 82, at 29; Guide to Canadian Collaboration, supra note 231, 84.

262. As of November 1984, the Bank of Nova Scotia has discontinued the purchase of Krugerrands fom the South African Chamber of Mines, and will not list or advertise the availability of the gold coins. The Bank will, nevertheless, continue to deal in Krugerrands."International Canada" October & November 1984), Supplement, International Perspectives, January/February 1985, 15-16.

263. Naiman, Bhabha and Wright, supra note 82, 30.

264. Ibid.

265. Ibid, at 32.

266. See especially the expose in Litvak, DeGrasse and McTigue, supra note 240, at 38-70.

267. Ibid, at 11-37, for a synopsis of 'progressive force' arguments. See also Choyke,"American Business in South Africa Can Be a Force for Change", New York Times, July 13, 1984, A25; Cowell,"Does Withdrawing Investment Hurt Apartheid?" New York Times, October 28, 1984, 18; Williams,"Beware the Well-Intentioned", New York Times, May 15, 1983.

268. "Dealing With Apartheid", Newsweek, supra note 196, 35-36

(on Caltex); Akers,"IBM, On South Africa", New York Times, March 27, 1985, A27; Myers and Liff,"The Press of Business", Foreign Policy, No.38 (Spring 1980), 143, at 150-54 (general changes on the factory floor). The standards maintained by these companies are not necessarily reflective, however, of those prevailing overall amongst foreign companies in South Africa: see infra p.225 (note 276).

269. See Pratt,"Codes of Conduct - South Africa and the Corporate World", Canadian Forum, August/September 1983, 33-36; Hauck, Voorhes and Goldberg, supra note 258, 97-126 (on the Sulivan Principles); Adelbert,"The EEC Code of Conduct", South Africa International, Vol. VIII:4, 224.

270. See citations at note 267, supra.

271. Kappler, supra note 258, at 2.

272. Canadian Policy on Human Rights in South Africa, supra note 134. At the 31st session of the General Assembly, the Canadian representative offered the more traditional argument, in an 'Explanation of Vote', that "the maintenance of normal trade and commercial relations with other states does not in any way imply support for their political policies. Accordingly, we cannot accept that the existence of economic relations constitutes collaboratio with or encouragement for the policies of apartheid." General Assembly, Official Records, 58th Plenary Meeting, 9 November 1976. The argument is clearly oblivious to the objective need for "normal trade and commercial relations with other states" by the apartheid regime, for its own sustenance. More recent policy statements address themselves rather more narrowly to the practicality of the sanctions strategy in influencing the South African Government, including the constraints of 'economic interdependence' in this regard. See infra pp.

273. Matthews and Pratt, supra note 162, at 175; Tennyson, supra note 82, 197-99.

274. Quoted in TCCR,"Analysis", supra note 233, at 26.

275. Canadian Policy on Human Rights in South Africa, supra note 134, at 4.

276. Litvak, DeGrasse and McTigue, supra note 240, at 37 (on the basis of a study by the Investment Responsibility Research Center); Pratt, supra note 269, at 36 (based on a 1981 United Nations study on transnational corporations).

277. See Litvak, DeGrasse and McTigue, supra note 240, at 36.

278. Supra note 269, at 35.

279. See Valpy,"Canada's code on South Africa could take cue from U.S. model", Globe and Mail (Toronto), March 22, 1985, 7;

TCCR,"Analysis", supra note 223, 15-17.

280. Supra note 269, at 35.

281. "Bata contravenes Ottawa code on South Africa", Globe and Mail (Toronto), February 15, 1985, 1. The company was cited for underpaying its Black employees once again in 1986, in a report to Parliament by the Canadian Government: see infra p.262 (note 393). 282. See Guide to Canadian Collaboration, supra note 231, at 14-15; Pratt, supra note 269, at 35.

283. See Davis, Cason and Hovey, supra note 258, at 21-22. Many United States corporations in South Africa have agreed to consolidate the terms and application of the Sullivan Principles, particularly in respect of pressuring the South African Government to dismantle apartheid regulations concerning Black urban- residence rights and 'influx-control' in general. See "U.S. Companies Bolster Anti-Apartheid Code", New York Times, December 3, 1984, D1.

284. Sweden, Ministry of Commerce, Prohibition of Investments in South Adrica and Namibia (1979).

285. TCCR,"Analysis", supra note 223, at 16-17. A revision of the Canadian code finally commenced in mid-1985: "External Affairs reviews conduct code", Globe and Mail (Toronto), February 15, 1985, 10. See further infra p.249 (note 354).

286. See Barber and Spicer,"Sanctions Against South Africa", supra note 246, at 391-93. The 'laager' concept in policy analysis on potential South African responses to sanctions is strongly attacked in "America and South Africa", The Economist, supra note 196, at 27-28.

287. Significantly, UN anti-apartheid resolutions have generally been perceived by Third World member-states as embedded in the decolonisation question as a whole. See the discussion on some of the concepts attending international approaches to the question of apartheid in Shepherd, Anti-Apartheid: Transnational Conflict and Western Policy in the Liberation of South Africa (1977), Chapter 1, especially at 6-10, 16-21.

288. Supra pp. 167-68 (note 96).

289. Resolution 418(1977), adopted unanimously on 4 November 1977: United Nations, Security Council, Official Records, 32nd Year (1977), 2046th Meeting.

290. Statement by then Secretary of State for External Affairs, Paul Martin, cited in Naiman, Bhabha and Wright, supra note 82, at 15.

291. Ibid. 292. Canadian Delegation to the United Nations, November 21, 1977, Communique (No.48).

293. Canadian Delegation to the United Nations, Communique (No.28), New York, November 20, 1984, at 3. Supra note .

294. TCCR, Canadian Policy Towards South Africa, supra note 223, at 12-13.

295. "The Black Paper: An Alternative Policy for Canada Towards Southern Africa", supra note 111, at 15.

296. TCCR, Canadian Policy, supra note 223, at 12.

297. Ibid, at 12.

298. Ibid.

299. See TCCR, Annual Report 1983-1984, at 53-54; see also text to note 308, infra.

300. Cited in TCCR, Canadian Policy, supra note 223, at 13.

301. TCCR,"Analysis", supra note 223, 30-32, at 31.

302. TCCR, Annual Report, supra note 299, at 51-53.

303. See, inter alia, Stockholm International Peace Research Institute (SIPRI), World Armaments and Disarmament Yearbook, 1985, pp.316-20, at 319.

304. Naiman, Bhabha and Wright, supra note 82, at 17.

305. Ibid.

306. Ibid, at 18-20; TCCR, Canadian Policy, supra note 223, 10-11.

307. Ibid. See also Stockholm International Peace Research Institute (SIPRI), World Armaments and Disarmament Yearbook, 1982, 122-23.

308. Naiman, Bhabha and Wright, supra note 82, at 19; TCCR, Canadian Policy, supra note 223, 10-11.

309. Naiman, Bhabha and Wright, supra note 82, at 20.

310. Ibid, at 19.

311. South Africa was ranked among the six leading Third World exporters of 'major weapons' for the 1970-79 period, accounting for 9% of total Third World exports: SIPRI, World Armaments and Disarmament Yearbook, 1981, 116. Useful surveys of that country's military sector are offered in SIPRI, Southern Africa - The Escalation of a Conflict (1976), Chapter 6 (especially at 137-50); and SIPRI, Yearbook, 1982, supra note 307, at 122-23.

312. New York Times, February 1, 1986, A4; Gazette (Montreal),

February 1, 1986, 1. See also earlier comments by the South African Amabassador to the United States,"Botha government plans to dismantle apartheid: envoy", Gazette (Montreal), September 16, 1985, A1. It is noteworthy that in the wake of President Botha's parliamentary address, Foreign Minister 'Pik' Botha's comment that he could contemplate serving under a future Black South African leader provoked a public rebuke from the President, in response to which Opposition Leader Slabbert tendered his resignation from Parliament, in protest against the Government's attitude: Gazette (Montreal), February 8, 1986, B12.

313. "Pretoria Rescinds Pass-Law Control on Blacks Moves", New York Times, April 19, 1986, A1; "South Africa to drop pass laws", Gazette (Montreal), April 19, 1986, A1. An estimated 2.5 million Blacks have arrested over the past decade for pass law offenses in White areas - covering 87% of South Africa. See also "South Africa's Pass Law Embodies Dream for Whites, Burden for Blacks", New York Times, April 16, 1985, A6.

314. "Pretoria's Latest Hints", New York Times, September 16, 1985, A6; "Citizenship Plan Offered by Botha", New York Times, September 12, 1985, A1.

315. "South African law banning mixed sex is to be repealed", Globe and Mail (Toronto), April 17, 1985, 1; "South Africa Drops a Barrier to Relations Between Races", New York Times, April 21, 1986, 2E; "Goodbye to a bad law" (editorial), Gazette (Montreal), April 17, 1985, B2.

316. Gazette (Montreal), February 1, 1986, supra note 312; "Pretoria Plans to Cut Arms Spending and Raise Education Budget", New York Times, March 19, 1985, A6.

317. Ibid. See also Cowell,"South Africa: A New Push?" New York Times, February 15, 1985, A9; "Pretoria Relaxes Forced Uprooting", New York Times, February 22, 1985, A5.

318. See Mazwai,"Changed pass-book rules were a hollow gesture", Gazette (Montreal), 30 September 1985, B3; Slabbert,"Pass laws' removal doesn't mean end of apartheid", Gazette (Montreal), May 13, 1986, B3; Lewis,"Hope Against Hope", New York Times, April 24, 1986, A23.

319. "Sex law change: Freedom is the thing we want. Not to marry whites", Gazette (Montreal), April 20, 1985, B5; "South African Segregation: Changes Have Been Few", New York Times, August 22, 1985, A10.

320. See Liddar,"Visit to South Africa", International Perspectives, March/April 1986, 17;

321. Valpy,"South African purists seek true separation", Globe and Mail (Toronto), April 8, 1986, A1; Cowell,"Despite Turmoil, Pretoria Moves Ahead With Black Homeland Policy", New York

Times, August 10, 1985, 4. The KwaNdebele legislative assembly rejected the Government's independence plan in August 1986, rendering unclear the immediate course of action by Pretoria: Gazette (Montreal), August 13, 1986, A11.

322. According to a 1982 report by the South African Bureau for Economic Research (BENSO), real growth in GDP for the homelands between 1975 and 1980 was virtually nil; over 83% of their population was found to have no measurable income as of 1980. Survey of Race Relations, 1982, at 409; also details economic and political conditions in the homeland territories (pp.366-48). See also Press,"Black homelands' medical care pitiful", Globe and Mail (Toronto), May 31, 1985, 7; Cowell,"Poverty Said to Grow for South Africa's Blacks", New York Times, April 22, 1984, 9.

323. A withering exposition of the extent of such co-optation is presented in Lelyveld, Move Your Shadow, supra note 66, Chapter 6 ("Generalissimo").

324. The Commonwealth Group of Eminent Persons, Mission to South Africa (1986), Chapters 1 and 2. The Group's mandate and terms of reference are stated in the Report.

325. Ibid, at 33.

326. "Emergency Power Granted to Police By South Africa", New York Times, July 21, 1985, A1. The emergency decree was promulgated pursuant to the 1953 Public Security Act, which limited its duration to one year; the Government did not, however, specify such a limitation to the emergency. See also "South Africa in Emergency" (editorial), New York Times, July 23, 1985, A26.

327. "State of Emergency Imposed Throughout South Africa; More Than 1,000 Rounded Up", New York Times, June 13, 1986, A1.

328. Based on data compiled by the South African Institute of Race Relations: Cowell,"A Tightrope for Pretoria", New York Times, March 9, 1986, 1.

329. "Emergency Power Granted to Police By South Africa", supra note 326; "The Emergency Decree and What It Will Do", New York Times, June 13, 1986, A12.

330. Supra note 328.

331. Ibid.

332. See, inter alia, "At least 5 blacks die in clashes between rival groups near Durban", Gazette (Montreal), September 30, 1985; Cowell,"South Africa's Caldron of Resistance Boils Again", New York Times, April 7, 1986, 2E; Mission to South Africa, supra note 324, 62-63.

333. Mision to South Africa, supra note 324, 62-63.

334. New York Times, July 27, 1986, 12.

335. Ibid; Cowell,"Rights Leaders in South Africa Estimate Detainees at Over 8000", New York Times, July 25, 1986, A4. An estimated 11,000 individuals were jailed in 1985 for anti-apartheid activites: Gazette (Montreal), February 6, 1986, A15.

336. "South Africa Isues List of Detainees", New York Times, August 19, 1986, A6.

337. "South African Court Bars Banning of Activist", New York Times, March 23, 1986, 6; "Court Voids Detention Laws", New York Times, August 12, 1986, A3; "S. African bishops try to save cleric from torture", Gazette (Montreal), August 23, 1986, B9; "South Africa gags press as Soweto gears to defy ban on mass funerals", Gazette (Montreal), September 4, 1986, A11; "South Africans Say They Were Abused in Prisons", New York Times, September 28, 1986, 1.

338. "Pretoria Forces Raid 3 Neighbours In Move On Rebels", New York Times, May 20, 1986, A1; Mission to South Africa, supra note 324, at 126-29.

339. New York Times, May 20, 1986, supra note 338.

340. Ibid; Valpy,"Commonwealth Damaged by Air Raids", Globe and Mail (Toronto), May 21, 1986, A1.

341. Ibid; Mission to South Africa, supra note 324, at 120.

342. See, inter alia, Statement by Secretary of State for External Affairs, Joe Clark, to the Royal Commonwealth Society, London, July 29, 1985(85/44); Department of External Affairs, Statement by Prime Minister Brian Mulrooney, United Nations General Assembly, October 23, 1985, Statements and Speeches (85/14); Mission to South Africa, supra note 324, especially at 101-04.

343. "South Africa Hints At Conditional Release for Jailed Black Leader" , New York Times, February 1, 1985, A7.

344. Ibid.

345. Quoted in full in Winnie Mandela, Part of My Soul, supra note 66, at 146-48. See also Mission to South Africa, supra note 324, Chapter 3 ("The Release of Nelson Mandela and Others"); and the interview with Mandela by Lord Nicholas Bethel for (London Mail on Sunday), Gazette (Montreal), February 2, 1985, B8. Somewhat remarkably, the Botha Government offered in February 1986 to release Mandela in exchange for the Soviet Union's release of dissidents Andrei Sakharov and Anatoly Scharansky, as well as the captured South African

officer, Capt. Wyand du Toit: New York Times, February 1, 1986, A4.

346. Serving as an umbrella organisation for approximately 700 anti- apartheid groups, and commanding an estimated multi-racial membership of two million South Africans, the UDF's strategy of non-violence has not prevented it from facing several 'treason' trials, all of which have resulted in acquittals for accused members. See International Commission of Jurists, The Review, No.35 (December 1985), 9-11; Mission to South Africa, supra note 324, at 90-92.

347. See Kristof,"South Africa's Economy: New Pressure", New York Times, September 1, 1985, 16; "Black Labor Federation Challenges Pretoria", New York Times, December 2, 1985, A1.

348. Orkin, supra note 246. The hardening of Black opinion in support of increasingly radical anti-apartheid strategies is attributed principally to the 'State of Emergency' legislation and the ensuing calls for sanctions by Black trade unions and leaders such as Bishop Tutu.

349. Mass Black support for the 'moderate' positions adopted by Chief Buthelezi, including the retention of homeland-based authority in a future South Africa, with a free enterprise economic framework, was found to be marginal at best: Orkin, supra note 246.

350. In addition to the measures adopted by the Commonwealth (including Canada) against South Africa during 1985-86, discussed infra, Section 2, see "132 states seek economic sanctions on South Africa", Gazette (Montreal), June 21, 1986, B27; Dyer,"Sanctions snowball has begun to roll", Gazette (Montreal), August 11, 1986, B3; "Japan Warns South Africa It May Adopt New Sanctions", New York Times, September 5, 1986, A4; "Sign the Sanctions" (editorial), New York Times, September 17, 1986, A26.

351. "Botha vows sanctions will only toughen South Africa", Gazette (Montreal), August 13, 1986, A11; "Botha attacks West on 'childish' sanctions: Japan joins 'snowball'", Gazette (Montreal), September 20, 1986, A9. Concurrently, however, South Africa has adopted numerous retaliatory economic measures against neighbouring African states, suggesting that the gathering momentum of multilateral sanctions is causing considerable apprehension in Pretoria. See "The Debate Over Sanctions", Time, July 7, 1986, 30; "South Africa hits trade with Zambia and Zimbabwe", Gazette (Montreal), August 6, 1986, A1; Mission to South Africa, supra note 324, at 128-29.

352. Department of External Affairs,'Apartheid - A Violation of Fundamental Human Rights', November 20, 1984, Statements and Speeches (84/14).

353. Secretary of State for External Affairs, Statement on

South Africa by Joe Clark, Baie Comeau, July 6, 1985 (85/37).

354. Supra note 353.

355. Supra note 342, at 4.

356. Secretary of State for External Affairs, Statement by Joe Clark, House of Commons, September 13, 1985 (85/50).

357. Ibid.

358. The Commonwealth Accord on Southern Africa, Nassau, 20 October 1985 (communique circulated by Department of External Affairs); Globe and Mail (Toronto), October 21, 1985, 1.

359. Ibid. The measures adopted are detailed in the text below.

360. Ibid.

361. Statements and Speeches, supra note 342; "A Turning Point in Ottawa", Maclean's, August 18, 1986, 22.

362. Department of External Affairs,'The Future of Namibia', November 15, 1985, Statements and Speeches (82/25).

363. Notes 338-40 and accompanying text, supra.

364. Mission to South Africa, supra note 324, at 140.

365. Ibid. The Report added that "the South African Government is concerned about the adoption of effective economic measures against it. If it comes to the conclusion that it would always remain protected from such measures, the process of change in South Africa is unlikely to increase in momentum and the descent into violence would be accelerated."

366. "Pretoria delays independence for Namibia", Gazette (Montreal), June 21, 1986, B27.

367. Report of the Special Joint Committee of the Senate and of the House of Commons on Canada's International Relations, Independence and Internationalism, June 1986, 108-11, at 110 (Report formally contained in the Minutes of Proceedings and Evidence of the Committee, Issues Nos.19-63, where the Committee's work in this connexion is also documented).

368. Ibid.

369. "Impose sanctions on South Africa by September 30: Commons committee", Gazette (Montreal), July 18, 1986, A6.

370. "Most Canadians worried by South Africa", Gazette (Montreal), July 12, 1986, A7.

371. See, for instance, Shere,"Sanctions needed to pressure South Africa's white rulers", Winnipeg Free Press, July 31, 1986, 7; Young,"Apartheid: words are note enough", Gazette (Montreal), August 2, 1986, B3; "Mulroney's chance to influence events", Toronto Star, Augut 2, 1986, B2; "Maggie bucks up", Calgary Herald, August 2, 1986, A4. Cf. "Looking for Sanctions", Globe and Mail (Toronto), July 31, 1986, A6; Nagle,"'Economic warfare' will multiply innocent victims", Calgary Herald, July 31, 1986, A5. See also the post-summit comments by, inter alia, Fotheringham,"PM's call for sanctions isn't enough", Gazette (Montreal), August 5, 1986, B1; Braid,"Don't weep for white South Africa ", Gazette (Montreal), August 6, 1986, B3. Cf. Amiel,"A discordant song of sanctions", Maclean's, August 18, 1986, 7.

372. Gazette (Montreal), August 5, 1986, A1. The Department of External Affairs announced subsequently that commencing October 1, 1986, imports of South African agricultural products, uranium, coal, iron and steel will require import permits, which "will not normally be granted": Gazette (Montreal), September 17, 1986, A15.

373. Commonwealth Heads of Government Review Meeting (Communique), London, 3-5 August, 1986 (communique distributed by Department of External Affairs).

374. Gazette (Montreal), August 6, 1986, B1.

375. Department of External Affairs, Consultations Between the Department of External Affairs and Canadian NGOs In Preparation for the 42nd Session of the UN Commission on Human Rights, January 23-24, 1986, 76-80, at 79.

376. Supra note 356.

377. See, inter alia, Department of External Affairs, Address by Secretary of State for External Affairs, Mark MacGuigan, 'Canada's Human Rights Obligations', Canadian Human Rights Foundation, Ottawa, March 27, 1981, Statements and Speeches (81/7); Statement by Canadian Ambassador to the United Nations, Stephen Lewis,'Apartheid - A Violation of Fundamental Human Rights' (November 20 , 1984), supra note 350. Indeed, External Affairs Minister Clark stated in his September 1985 address to Parliament on South Africa, supra note 356, "(w)e fully recognise ... that Canada has a responsibility to provide both moral and practical leadership. The Government of South Africa should have no doubt that we will invoke full sanctions unless there is tangible movement away from apartheid."

378. Statement by Stephen Lewis, United Nations General Assembly (November 20, 1984), supra note 350; "No plans for South Africa sanctions now: Clark", Gazette (Montreal), August 24, 1985, A16; Statement by Joe Clark to the House of Commons (September 13, 1985), supra note 356.

379. See Plommer,"Is West at mercy of South Africa for vital metals?" Globe and Mail (Toronto), October 1, 1985, A7; Weiner,"Economic Warfare Would Backfire", New York Times, August 11, 1985, F2 (maintaining that Western sanctions would boost Japanese economic gains from trade with South Africa); Sallot,"Tough apartheid talk belies weak options", Globe and Mail (Toronto), August 29, 1985, 5.

380. Ottaway,"Hill Bucks Diplomacy", Washington Post, June 10, 1985, 1; 380. Valpy,"History lesson doesn't sink in", Globe and Mail (Toronto), June 26, 1985; "Security Council Votes Anti-Apartheid Measure", New York Times, July 27, 1985, 4; Solarz,"American Sanctions: Only a First Step", New York Times, August 28, 1985, F2; "Winking at Apartheid" (editorial), New York Times, August 28, 1985, A22; "Reagan's Sanctions Criticised By Both Sides in the Dispute", New York Times, September 10, 1985, A13; "Two Sets of Sanctions: A Comparison", New York Times, September 12, 1985, A8 (juxtaposing proposed Congresional and White House measures).; Baldwin,"Economic Sanctions Work", New York Times, September 20, 1985, A22. See generally Unger and Vale,"Why Constructive Engagement Failed", supra note 196, especially at 251-58.

381. Commonwealth Accord, supra note 358; "Thatcher told Britain threatens Commonwealth", Globe and Mail (Toronto), October 17, 1985, A9.

382. Commonwealth Accord, supra note 358.

383. "Thatcher told Britain threatens Commonwealth", supra note 381; "Sanctions set against South Africa", Globe and Mail (Toronto), October 21, 1985, 1; "Sanctions deal not watered down: leaders", Gazette (Montreal), October 22, 1985, A7 (quoting Prime Minister Mulrooney as stating,"Where we are today is infinitely further along the road than we were ... This is something that has escaped the Commonwealth for 20 years".)

384. Commonwealth Accord, supra note 358.

385. South African Congress of Trade Unions (SACTU) Solidarity Committee (Canada), Trafficking in Apartheid, supra note 232. The report was used extensively at the hearings on South Africa by the Commons Standing Committee on Human Rights, where Amabassador Lewis' remarks were quoted: House of Commons, Minutes of Proceedings and Evidence of the Standing Committee on Human Rights, Issue No.8 (July 15, 1986), at 6.

386. Trafficking in Apartheid, supra note 385, 39-47, at 46-47.

387. Mission to South Africa, supra note 324, at 140-41.

388. Prime Minister Thatcher reportedly found South Africa's "raft of measures" after the Nassau Summit, including the

'abolition' of the Pass Laws, to be substantial. Gazette (Montreal), August 4, 1986, A-1; 'Isolated U.K. is called ally of apartheid', Gazette (Montreal), August 6, 1986, A-1.

389. Commonwealth Heads of Government Review (Communique), supra note 373; "Pretoria hasn't done enough, leaders agree", Gazette (Montreal), August 4, 1986, A1.

390. Ibid. The British Government consented to placing voluntary bans on new investment, and the promotion of tourism to South Africa, while pledging to "implement any E.E.C. decision to ban the import of coal, iron and steel and of gold coins from South Africa." In the event, the European Community concurred only in mild anti-apartheid measures in September, excluding therefrom a ban on coal imports, potentially the most meaningful action against South Africa. "Western European Nations Impose Weakened Sanctions on Pretoria", New York Times, September 17, 1986, A1.

392. Statement in the House of Commons on South Africa (September 13, 1985), supra note 356.

393. According to the May 1986 Annual Report on the Canadian Code of Conduct, infra note 394. A full list of Canadian companies in South Africa, as of March 1, 1986, appears in 'Appendices' below.

394. Code of Conduct Concerning the Employment Practices of Canadian Companies Operating in South Africa, report by Administrator Albert Hart, May 29, 1986; Gazette (Montreal), June 19, 1986, A2.

395. Ibid.

396. Gazette (Montreal), November 21, 1986 (Bata); Gazette (Montreal), October 23, 1986 (Dominion Textiles).

397. 'G.M. Plans to Sell South African Unit To a Local Group', New York Times, October 21, 1986, A1; 'More firms getting out of South Africa', Gazette (Montreal), October 23, 1986, A-1; 'Company exodus highlights Pretoria's growing isolation', Globe and Mail (Toronto), October 25, 1986, A10.

398. Indeed, many of the principal 'withdrawals' envisaged contractual arrangements for continuing 'arms length' relationships between the U.S.-based parent companies and their former South African branches, facilitating enhanced marketing flexibility for such multinationals. See, inter alia, 'Pullouts by U.S. firms may profit Pretoria', Gazette (Montreal), October 23, 1986, A11.

399. Gazette (Montreal), November 21, 1986, A-1.

400. Minutes of Proceedings and Evidence of the Standing Committee on Human Rights, supra note 385, 5-24, at 11

(submission by Ken Traynor, South African Congress of Trade Unions Solidarity Committee (Canada)).

401. Ibid.

402. Globe and Mail (Toronto), November 11, 1986; SACTU, Press Release (November 11, 1986).

403. Ibid.

404. See, inter alia, Michael Valpy,'Sports boycotts work on apartheid', supra note 200; Alan Fotheringham,'PM's call for sanctions isn't enough', supra note 371.

405. The arrangement ensued with the cancellation of landing rights by the United States for South African Airways in October. Air Canada contracted to fly the passengers over the transatlantic leg of the tour (to London), with South African Airways flying the other leg. The trip was arranged in most part by the South African Information Bureau. Gazette (Montreal), October 22, 1986; Anne Mitchell,'An alternative tour: the real South Africa', Globe and Mail (Toronto), September 16, 1986, A7.

406. 'Sanctions not defied by airline, Clark says', Globe and Mail (Toronto), October 25, 1986, A5.

407. Globe and Mail (Toronto), September 6, 1986.

408. "South Africa: Straight Talk on Sanctions", Foreign Policy, No.65 (Winter 1986/87), 43, at 49-50.

409. 'United Nations' segment, supra note 102, 17-20, at 18.

410. Ibid, at 20.

411. Particularly in response to growing American public concern since late 1984 over Black unrest in South Africa. See Gwertzman,"Congress Turns Its Eye on Race in South Africa", New York Times, April 10, 1985, A20; "House Panels Act on South Africa", New York Times, May 1, 1985, A12; "U.S. Senate panel backs Pretoria sanctions", Gazette (Montreal), August 2, 1986, A1; 'Whose Foreign Policy?' (editorial), New York Times, September 30, 1986, A34 (characterising Congress' challenge to the White House on, inter alia, the question of anti-apartheid sanctions, as "a healthy maturation of the legislature's ability to do its duties."); 'Senate, 78 to 21, Overrides Reagan's Veto and Imposes Sanctions on South Africa', New York Times, October 3, 1986, A1. Congress has continued to press - and the Administration to resist - further measures that would effect a greater convergence with the comprehensive economic sanctions advocated by the United Nations. See 'U.S., Britain veto UN move against South Africa', Gazette (Montreal), February 21, 1987, D-10.

412. The Standing Committee's agenda includes reviews of Canadian policy apropos the human rights provisions of the 1975 Helsinki Final Act; the condition of human rights in Central and South America; and the implications of impending budgetary cuts at the United Nations upon the Organisation's human rights programme: House of Commons, Minutes of Proceedings and Evidence of the Standing Committee on Human Rights, Issue No.2 (May 6, 1986)('Future Business of the Committee'). See generally Dobell,"Foreign Policy in Parliament", International Perspectives, January/February 1985, 9.

PART III

THE CRISIS IN CENTRAL AMERICA: CANADIAN HUMAN RIGHTS POLICIES SINCE 1979

For the nations of El Salvador, Guatemala and Nicaragua, political violence reached epic proportions during the 1970s, in a region characterised by longstanding patterns of authoritarianism and socio-economic deprivation. By the end of the decade, however, an historic watershed appeared to be emergent in Central America. New revolutionary governments in Managua and San Salvador undertook to establish progressive legal-political structres to replace traditional oligarchies and safeguard individual security and well-being; General Garcia's military regime in Guatemala faced resounding rejection from within and outside the country amidst reports of egregious repression against the indigenous population. The evolution of the situation of human rights in those states through the present decade - when severe violations have continued in varying forms and phases - has presented a significant challenge to the international promotion of norms of basic human rights and freedoms, not least for Canada and its hemispheric neghbours. The rights-orientation matrix developed in Part 1 of this dissertation is applied below to the policies of the Trudeau and Mulroney Governments towards post-1979 Central America, pursuant to an appraisal of the contemporary historical context and the normative issues attending the situation in that region.

"Within our own borders, we have long realised that there can be no freedom for some without freedom for all. An assault against the basic rights of my neighbour inevitably places in jeopardy my own rights, my own security and freedom. We have little trouble accepting the truth and the implications of that statement within our borders.
We have more trouble in giving a modern answer to the very old question: Who is my neighbour? Is she the woman rummaging for food in the back streets of an Asian shanty town? Is he the man in South America in prison for leading a trade union? The people dying in Africa for lack of medical care, or clean water, are they my neighbours?"

Prime Minister Pierre Trudeau, Address to the House of Commons, Ottawa, June 15, 1981.

"Central America and the Caribbean have been the troubled regions closest to home. It is generally agreed that the sources of unrest there are socio-economic. Are Canadian political and security interests sufficient to involve ourselves more?"

Secretary of State for External Affairs, Joe Clark, Competitiveness and Security: Directions for Canada's International Relations (Green Paper, May 1985), at 42 (emphasis added).

A. OVERVIEW

I. Contemporary Historical Perspectives(1)

While the scale of human rights violations in Central America has provoked intense international attention and concern over the past decade, particularly in the cases of El Salvador, Guatemala and Nicaragua, these developments are no aberration in the modern history of that region. Endemic to the political culture of those nations has been the institutionalisation of a military-oligarchic alliance, exercising a virtual monopoly of wealth and power, and determined to sustain the status quo in the face of all opposition. It is not surprising that, having regard to the conditions of acute deprivation on the part of the general population - in terms of fundamental health, housing, education and employment needs - combined with external political and economic manipulation by various parties, a predictable pattern of the severe undermining of human rights emerges.

Table 3:1 below offers a comparative indication of the socio-economic conditions underlying the fragile respect for the rule of law in most of Central America; corresponding indicators for Canada suggest the larger, North-South framework within which the situation may also be perceived. The trend in economic growth and development in all three countries under study was one either of stagnation or recession over the post-1979 period, notwithstanding substantial infusions of foreign aid.

Table 3:1 Central America and Canada, Basic Socio-Economic Indicators(a)

Country	Area (1000 sq. km.)	Population (millions)	Income per capita ($ US)	Literacy (%)	Life Expectancy (per 1000 live births)
El Salvador	21	4.4	670	62	63
Guatemala	109	6.8	1,020	57(b)	59
Nicaragua	130	2.6	660	55	56
Honduras	112	3.6	530	63	50
Costa Rica	51	2.2	1,820	90	70
Canada	9,976	23.7	9,640	99	74

(a) Data as of 1979.

(b) 1977 figures.

Source: The World Bank, World Development Report, 1981 (Washington, D.C., 1981).

A smooth transition from the centuries-old system of poor land distribution, single- or two-crop economies (especially in El Salvador and Guatemala), gross neglect of rural development, and heavily oligarchic economic activity, has proven impossible. Much of the ongoing civil strife can be understood directly in terms of the historic clashes among traditional competitors in the politico-economic context: the military, the land-owning class, and the small urbanised middle class and the peasantry.

When in 1931 the Salvadoran Government of Arturo Araujo, a liberal "friend of the working class and peasantry", initiated mild economic reforms in the wake of the 1929 Depression, the ultimate outcome was coup d'etat and a massacre of 30,000 people, mostly peasants.(2) 'La Matanza', as the even is referred to, claimed the life of Augustin Farabundo Marti, a socialist revolutionary, whose memory and that of the massacre continue to inspire the guerilla movement in El Salvador.

In the same decade,the United States marines terminated their twenty year occupation of Nicaragua, leaving in command a well-trained National Guard under Anastasio Somoza Garcia.(3) The inception of the Somoza dynasty was marked by the carefully arranged assasination of a general in the Liberal Party who had resisted the new conservative Government, Augusto Cesar Sandino, in whose naame the Sandanista revolution was eventually launched.

Not significantly different from the Martinez dictatorship in El Salavador or that of Somoza in Nicaragua in

the 1930s and 40s, was the reign of Gen. Jorge Ubico in Guatemala (1931-44). Political repression and coffee-based oligarchism were the salient features, with the vital support of private American corporate interests. However, while the authoritarian systems constructed in El Salvador and Nicaragua were to endure consistently until the upheavals of 1979, Guatemala experienced a democratic interregnum between 1944 and 1954, when the Arevalo and Arbenz administrations secured the co-operation of the military in their radical programmes of social reform.(4) The experiment in social democracy ended when an insurgency by Col. Castllo Armas, backed by the United States Central Intelligence Agency (CIA), restored the status quo ante. (5) Guatemala has since been effectively dominated by the armed forces, with limited support from a small, non-Indian economic elite whose interests are thus preserved.

Apart from occasional phases of mild economic reform, characterised mainly by limited land-redistribution schemes, qualified recognition of trade union rights and a measure of tolerance of the Catholic church, military rule in Central America has served to accentuate existing poverty, class division and economic elitism. It has also failed to preserve social order. Political opposition, even by the print-media, has been violently suppressed.

Traditionally, the indigenous population have been a particular casualty of authoritarian excesses. Almost uniformly impoverished, alienated, disenfranchised and repressed, they constitute a large proportion of the refugee population of over

300,000, fleeing the seemingly interminable cycle of violence; many more suffer internal displacement and a precarious existence in zones of conflict between the army and guerilla forces.(6)

The foregoing provides the general themes in the common recent experiences of Central America (Costa Rica being a notable exception) to be pursued in the synopsis of major historical developments in El Salvador, Guatemala and Nicaragua this century. As already indicated, the normative rights issues generated thereby will be addressed subsequently (Section A:2). An update in this connexion for the most recent period (1985-86) follows the examination of Canadian policies in the region through the Trudeau era (Section B:1).(7)

El Salvador

The ascendancy of Gen. Hernanadez Martinez to the Salvadoran presidency in 1931 signalled the political triumph of the military over the oligarchy - and hence over civilian rule - until the coup of October 1979. As evinced dramatically in La Matanza in 1932, the peasantry, Indians and the urban working class constituted 'the enemy', vis-a-vis the army and the oligarchy alike.(8) Whereas the political structure of the nation was firmly authoritarian and intolerant of dissent, economic policy was geared to the interests of the coffee oligarchy. The creation of a Central Reserve Bank in 1934 ensured the capitalisation of coffee land-holdings and production, even as industrialisation was curtailed through

legislation in order to discourage a peasant-worker alliance against the regime.(9)

Alternating phases of relative liberalisation followed by heightened repression accompanied a succession of coups d'etat from 1931. Gen. Martinez was compelled to resign under nationwide (including military) pressure in 1944, and, after a six month respite, was suceeded by the somewhat less repressive Gen. Castaneda.(10) A new constitution was proclaimed in November 1945, reinforcing the secular, liberal principles upon which the socio-political system was ostensibly based.(11) Public works and social programmes were launched, largely to appease a segment of Castaneda's civilian supporters, while the freedom of political organisations in the country was restricted. (12) In December 1948, during a National Assembly meeting that would grant the General a second presidential term, the army launched another coup, with Maj. Oscar Osorio emerging as the head of a Revolutionary Council.(13)

Maj. Osorio soon resigned fom the Council, however, to initiate the Revolutionary Party of Democratic Unification (PRUD), which easily won a national election in 1950.(14) The Government promptly embarked upon a program of vigorous social and economic development, and even legalised collective bargaining by the trade unions.(15) In keeping with the Revolutionary Council's original undertaking, a new constitution was proclaimed.(16) The rationale for this particular liberalisation phase was the situation in neighbouring Guatemala, where social democracy of a radical

brand was being inaugurated. Maj. Osorio's hand-picked successor, Lt. Col. Lemus, continued what was described as a "revolutionary" policy for the remainder of the decade, while stifling potentially 'communist' opposition.(17)

T.S. Montgomery, in her history of El Salvador, observes that the much-touted "1948 revolution" essentially catered to the interests of a narrow urban class: "nothing was done to upset the fundamental control by the oligarchy over the economy ... Thus the traditional alliance between military and oligarchy acquired a new dimension, and others, including the existing (if minuscule) industrial sector and technocrats, were brought into the process."(18) Critically, no significant agrarian reform was undertaken; groups that advocated it were designated as communist and repressed.

In the shadow of the revolution in Cuba, two military coups, in October 1960 and January 1961, ushered in the regime of Col. Julio Rivera, with the support of the Kennedy Administration in the United States.(19) El Salvador was to thrive in the 1960s as a consequence of Kennedy's 'Alliance for Progress' undertaking in the hemisphere, and of the creation of the Central American Common Market, both aimed in large part at countering the perceived communist threat in the region. The emergence of the Christian Democratic Party in El Salavador was seen by the United States as a progressive alternative to both, prevailing authoritarianism and Cuban-style communism, but the new Party quickly divided into very different factions. Col. Rivera came to head a conservative dissident faction - the

National Conciliation Party (PCN) - which was to dominate Salvadoran politics through the decade.(20)

A new constitution was promulgated in 1962, based in the main on its 1950 predecessor, and remains in force today;(21) minimum wage laws sought to elevate material standards among the peasantry, amidst the general economic buoyancy; but no agrarian reform was instituted.(22) The PCN not only perpetuated the military-oligarchic partnership (hence preserving the established foundations of economic power), but also engaged the active support of the Catholic church, an important legitimating force in Central American society.

The status quo was disrupted in 1969 by the four-day 'soccer war' between El Salvador and Honduras, precipitated chiefly by disputes over the common border and the presence of over 300,000 Salvadoran settlers in Honduras.(23) In its aftermath, El Salvador was $20 million poorer, lost the Honduran consumer market worth $23 million, and most seriously, was burdened with thousands of its returning nationals, dislocated and unemployed. The accompanying decline in world coffee prices as well as in private private investment in the national economy compounded the prevailing crisis.(24)

By 1972, when presidential and national assembly elections were held, the mainstream Christian Democratic Party (PDC) was ascendant, and the fortunes of the PCN were on the wane. Three opposition groups, the PDC, Manuel Ungo's Revolutionary National Movement (MNR), and the Nationalist Democratic Union (UDN) (a legal front for the Communist Party),

formed a coalition, the National Opposition Union (UNO), to contest the elections.(25) Jose Napoleon Duarte, the mayor of San Salvador, headed the UNO ticket, with Ungo as his vice-presidential running-mate. Col. Arturo Molina ran for the PCN. Once again, the elections turned fraudulent, with the army entirely unwilling to countenance a clear-cut UNO victory in both sets of balloting.(26) Molina was proclaimed the winner, and the civilian opposition forced into exile. An era of escalating political violence was initiated, as mass popular organisations and guerilla groups replaced the traditional opposition.(27) Security forces and 'death squads' generated a wave of official repression, punctuated by peasant massacres. The oligarchy tendered generous funding for a multiplicity of paramilitary and security force operations, reinforcing the traditional alliance.(28)

As periodic elections for the assembly and the mayorship continued to be manipulated by the army and the oligarchy, President Molina selected as his successor the Minister of Defence, Carlos Romero. One of Romero's first actions as heir-apparent was to reverse the modest "agrarian transformations" decreed by Molina - which the oligarchy had firmly opposed. The 1977 elections, conteste d by the UNO, resulted in a resounding victory for Romero.(29)

The heavy repression practiced by the Romero Government attracted global denunciation, including that of the United States, where the Carter Administration had proclaimed a new commitment to a human rights foreign policy.(30) El Salvador

rejected further American military assistance in response, and when Washington eased its pressure for reform, Public Order legislation was enacted to stifle press criticism, public gatherings, industrial action (strikes), and other forms of opposition to the Government; standard judicial processes were also suspended.(31) The radical left reacted to the Government's repression by unleashing a counter-wave of violence, reducing the country to a state of virtual anarchy. Romero lifted the Public Order law, sought to curb official 'security' activity, and offered internationally- supervised elections in 1980, but to no avail. The military and its extreme-right allies appeared beyond restraint; the oligarchy, on the other hand, was alienated by the Government's failure to preserve order. Events in neighbouring Nicaragua, where the Sandanista insurgency had culminated in the collapse of the National Guaard and Somoza's regime, added to the travails of the ancien regime in El Salvador.(32)

On October 15, 1979, a relatively progressive wing of the armed forces, led by Cols. Majano and Gutierrez, ousted the Romero Government, committing El Salvador to fundamental reform and intiating the current phase in the nation's political history. The ruling junta promptly elicited centrist civilian support, while inviting the more radical parties to the left and the right to co-operate in its declared programme of widespread economic and political change, including agrarian reform and respect for human rights.(33)

In the ensuing months, however, the junta failed to

embark upon that programme in any significant measure. As LeoGrande and Robbins observe, "(t)he pledge to investigate human rights abuses led to no arrests; the pledge to reorganise the government's security apparatus led only to a cosmetic shuffling of personnel; and the pledge to conduct an agrarian reform led nowhere."(34)

Faced with the continuing persecution of political activists by the National Guard, and the internal paralysis of the 'centrist' junta itself, various political organisations on the left resumed the offensive, political and military alike. In early Janary 1980, the civilian-military Government finally resigned en bloc; seizing the initiative, the Christian Democrats offered to form a partnership with the military in a new junta.(35) Although neither partner in the contrived alliance demonstratively exercised widespread political appeal,(36) the Christian Democrats attracted the invaluable financial and diplomatic endorsement of the United States. In the aftermath of the Sandanista revolution in Nicaragua, the Carter Administration's predominant regional concern was less with the prospects for human rights than with the strategic implications of 'losing' El Salavdor.(37)

Elections in 1982 and 1984, while confirming the Christian Democratic leadership of Duarte, only tentatively preserved the uneasy alliance between the military and the Party.(38) Between 1979 and 1984, some progress was undoubtedly achieved in implementing agrarian reform, dismantling the notorious state 'security' apparatus, and reconstructing the

ravaged economy - owing substantially to assistance and pressure from Washington.(39)

However, the failure of political dialogue between the Government and the left assured the intensification of militant opposition by elements of the latter; the willingness of senior members of the Government to join forces with the opposition reflected the level of malaise attending the nation's political direction (or lack thereof).(40) Severe political violence against civilian non-combatants continued after 1979, as did the persecution of opponents of the Government despite claims of a new liberalisation (to be discussed in Section B, below). The overwhelming burden of responsibility was attributed to official forces, leaving unresolved the question of the Government's credibility and integrity, within as well as outside El Salvador.(41)

Guatemala

October 1944 witnessed the advent of a ten year experiment in controlled social revolution in Guatemala, where an able civilian- military triumvirate replaced Jorge Ubico's long dictatorship.(42) In March 1945, after what has been characterised as the freest election in the nation's history, Juan Jose Arevalo, the senior member of the triumvirate and a prominent figure in Guatemalan cultural and social circles, assumed the presidency.(43) Empowered by the new constitution to legislate a program of democratic socialism, Arevalo set-out to reform the state of agriculture and popular education, which

he regarded as cardinal causes of the economic and social backwardness of the nation.(44)

Changing the feudalistic system of land distribution and cultivation in a country with a largely landless,poor and illiterate population proved to be more difficult than anticipated by Arevalo. By the end of his term in office in 1951, only minor reforms had been efected in the terms of agricultural employment and production, and practically none in the pattern of ownership.(45) The Government had succeeded, however, in passing legislation capable of radically altering the nation's socio-economic structures if fully implemented.(46) Further, the traditional repression of the peasantry by the armed forces was brought to an end, with a fresh climate of expectations over respect for individual security and freedoms emerging.

The 1951 elections produced a landslide victory for one of Arevalo's prime supporters, the Defence Minister Jacobo Arbenz. A pragmatist who shared his predecessor's 'socialist' vision, Arbenz immediately initiated a new agrarian reform plan, involving extensive expropriation of private holdings and the abolition of all forms of servitude.(47) Since the largest land-holder in the country was the American United Fruit Company (controlling more than was owned by half the national population), a confrontation between the Government and the United States, which had already censured the 'communist' poicies of Arevalo and Arbenz, became inevitable.(48)

Notwithstanding the absence of distinctive policies for

their benefit, the Indians in the Guatemalan countryside derived major benefits from the land reform program, gaining some autonomy over the land and its yield. The steady integration of the Indian population into the national economy that Arevalo commenced was continued under Arbenz; indigenous languages and culture underwent a formal revival as the new educational programmes promoted their study and practice.(49)

Arbenz' considerable administrative skills and political astuteness failed, nevertheless, to expose to the President the extent of the hostility between landowners (including small-scale farmers) and the peasantry engendered by his reform legislation and its mode of implementation. Procedures effecting expropriation were summary in nature, and appeals lay directly to the office of the President, rather than to the judicial system. Compensation offered by the Government was uniformly considered inadequate. Fundamentally, in any case, landowners were implacably opposed to losing their holdings.(50) In accusing the Government of communism, the fact that the national Congress of 56 members had only 4 communists was overlooked, as was Artbenz' ultimate objective of fostering successful capitalism in a more egalitarian system.(51)

Most significantly, the United States Government had determined in 1953 that the expropriation of the Fruit Company's lands, and the general tenor of Guatemalan policies (which was attracting favourable comment amongst the Latin American intelligentsia), was no longer compatible with the need to actively pursue anti-communism in the hemisphere.(52)

Guatemalan exiles in neighbouring countries were armed by the American Government, with a concentration upon the forces under Castillo Armas in Honduras (who also received military training). In June 1954, an invasion by Armas toppled the Arbenz Government, apparently on the premise of direct intervention by the United States as an alternative; no military confrontation occured, with Arbenz voluntarily resigning the presidency.(53)

Until his assasination in 1957, Armas oversaw the return of Guatemala to the socio-political fold of Central America , with the reversal of most of the agrarian reforms of 1944-54.(54) The United Fruit Company's lands were returned. Participants in Arbenz' programmes and in the rural unions encouraged thereunder were persecuted in an anti-communist purge; the death penalty was instituted for 'crimes' broadly construed as tantamount to 'sabotage'.(55) Armas initiated his own programme of land distribution under a new constitution,(56) the major beneficiaries of which were members of the landed oligarchy. The most enduring legacy of the period was the National Liberation Party, a bastion of military conservatism and an expedient front for military candidates in several national elections.

A long-exiled general, Ydigoras Fuentes, succeeded Armas in March 1958, implementing the latter's anti-communist policies with greater rigour throughout his presidential term.(57) Hundreds of families inhabiting lands owned by the United Fruit Company were evicted by the Government, many

forcibly. Administrative corruption was rampant, and as in El Salvador, the Government cultivated the support of the Catholic church through assorted favours. On the positive side, Guatemalan participation in the Central American Common Market was successfully promoted, and limited land distribution in favour of the peasantry carried out.(58)

Growing administrative incompetence and graft, and the continued manipulation of elections at various levels, alienated important sectors of the population; the army was also losing faith in the presidency, to which it was inextricably linked. On the eve of elections in 1963, former President Arevalo announced from his exile in Mexico that he was prepared "to assume the leadership of all revolutionary forces in the country",(59) hence challenging the ascendancy of the army in national political life. To forestall any such development, Col. Peralta Azurdia led a coup against Fuentes, undertaking to develop conditions conducive to free elections, while suspending the 1956 constitution.(60)

In 1965, the Azurdia Government proclaimed a new 'Basic Law' - still in force in Guatemala - premised on "anti-communism' and honesty", and upon the "dangerous ambiguity" of concepts of social justice, which the 'communists' were regarded as exploiting.(61) Although expulsions of peasants from previously expropriated lands were less frequent, civil liberties were strongly curtailed. Guerilla activity was spurred in many regions, the army responding with still greater repression. Azurdia had declared

in 1963 that his government was purely transitional , and in March 1966, having nominated a colleague to head his newly created Institutional Democratic Party (PID), the President stepped down.(62)

Contrary to most predictons, the ensuing elections resulted in a victory for the candidate of the Revolutionary Party (PR), professing allegiance to the 1944 revolution. Julio Cesar Mendez Montenegro assumed the presidency in May 1966 - but only after signing an undertaking conceding critical administrative powers to the armed forces.(63) If Mendez Montenegro was earnest in his commitment to widespread land reform and rural development, the scope for independent action by the presidency was highly circumscribed. At the conclusion of his term in 1970, the civilian president had been reduced in effect to an expedient front for the army; thus the repression in the countryside continued, as did the guerilla campaign against the Government, while the record of social reform was minimal.(64)

Upon the electoral victory in 1970 by Gen. Arana Osorio, with the support of a coalition of right-wing parties (including the erstwhile National Liberation Party), direct rule by the Guatemalan army was restored.(65) The Revolutionary Party (having served as a civilian veneer for for authoritarianism through the Mendez presidency) was discredited and demoralised, to remain a passive participant within the status quo. Gen. Arana proceeded with the anti-guerilla campaign that he had personally led before his election, and

also succeeded in eliminating peaceful proponents of social reform (including thousands of individuals branded as subversives). Continuity in this regard was ensured by the President's selection of Gen. Laugeraud as his successor in the 1974 elections, which were blatantly manipulated. A civilian coalition had supported the comparatively benign Gen. Rios Montt as its candidate, seeking thereby to accomodate the interests of the military; Montt clearly won, but was forced into exile in Spain.(66)

Gen. Laugeraud commenced his term somewhat unexpectedly, easing the repression against particular segments of the population and even implementing modest social reforms (such as the provision of financial assistance for certain co-operatives, and the promotion of economic modernisation). The result was a mild resurgence in traditional opposition to the Government, including freer expression by the radicalised trade union and co-operative movements. In response, a wave of violent suppression was unleashed by the army against all opposition, including the newly emergent political center.(67)

Against the background of a growing anti-Somoza insurgency in Nicaragua, Laugeraud was succeeded in 1978 by General Lucas Garcia.(68) The Social Democratic Party (PSD), the United Revlutionary Front (FUR) and the Christian Democrats (DC) all fell victim to the regime's latest crackdown on the oposition. The turn of events in El Salvador and Nicaragua increased the army's determination to consolidate its grip over the nation, but the sharply declining economy, also suffering

the effects of an international investment and credit cut-off, aggravated the political situation.(69)

A particularly ominous trend from the perspective of the army was the new willingness of indigenous Indians, in large numbers, to join the mass popular organisations and guerilla groups. The Government sought to thwart a sustained alliance in that regard by systematically escalating the level of violence directed at the Indian population - especially in the countryside - provoking in the process an international outcry against what many perceived as a genocidal policy.(70)

In the United States, however, the Reagan Administration came to office in 1980 pledging not to betray the nation's allies in Latin America - as the Carter Administration was considered to have done through its campaign for human rights.(71) Seeking a 'centrist' solution to the crisis in Central America, in the wake of the revolution in Nicaragua and the emergence of the Christian Democrats in El Salvador, the United States undertook 'constructive engagement' with the military regime in Guatemala.(72) Notwithstanding substantial security assistance to that country from the United States, Garcia announced in August 1981 the candidacy of Defence Minister Anibal Guevara for the impending national elections. Such was Guevara's personal record of complicity in human rights violations that the implications of his victory at the polls (which could scarcely be doubted) drew protestations from official Washington - to no avail.(73)

At the March 1982 elections, Guevara's clear defeat was

unabashedly reversed in the 'formal results', which proclaimed him the President. Remarkably, the Reagan Administration dispatched a congragulatory message to Guevara, and pledged to stand by the beseiged Government of Guatemala.(74) On March 23, the hitherto exiled Gen. Rios Montt staged a successful coup d'etat, declaring himself a reborn Christian determined to combat corruption and brutality in national politics. The United States reacted with surprise, then welcomed the overthrow, hoping to find in Rios Montt the vaunted - and elusive - centrist political solution.(75)

The level of urban violence and corruption in Guatemala was curbed significantly by the new regime, and, with equal fervour, a campaign of 'counter-insurgency' launched against the guerillas (who in tradtional fashion were uniformly dismissed as communists).(76) By late 1982, reports of fresh massacres of Guatemalan Indians were rife; the persecution of perceived opponents of the Government was fully underway, facilitated by 'Courts of Special Jurisdiction' empowered to impose the death penalty for political and related common offences.(77) The chorus of international denunciation of Rios Montt's emerging record of human rights violations was even joined by the United States, which had resumed regular economic and military assistance to that country following a prolonged suspension.(78)

A combination of factors ranging from the President's capricious rhetoric and his personal evangelical fervour, to the Government's attempts at fiscal and agrarian reform, lost

the regime the key support not only of the civilian economic elite, but also that of many segments within the armed forces.(79) In August 1983, Rios Montt's short but bloody reign was ended by a coup lauched by Gen. Mejia Victores, who promised national elections in 1984.

The overall socio-economic decline in Guatemala persisted through the 1983-84 period (despite the assistance of the United States), as did the army's campaign of counter-insurgency.(80) Elections for a constituent assembly were scheduled for mid-1984, with the Government tolerating campaigns by political parties across the spectrum. In the event, a significant victory ensued for the moderate parties, though attenuated by the system of distributing seats in the 88-member Assembly.(81)

The Courts of Special Jurisdiction were abolished by Mejia Victores, and a measure of press freedom allowed, but disappearances and political killings remained endemic.(82) As Guatemala headed for presidential elections in 1985, amidst an economic crisis and growing civilian unrest,(83) the prospect of an <u>enduring</u> transition from military to civilian government could not but be assessed in light of the country's recent history, particularly the circumstances attending the terms in office of Mendez Montenegro (1966- 1970), and of the Arevalo and Arbenz administrations (1944-54).

<u>Nicaragua</u>

Amongst the nations of Central America in the mid-20th

century, Nicaragua would surely have appeared to be the least susceptible to a social and political revolution by 1979. Unlike El Salvador and Guatemala, the country experienced a prolonged period of authoritarian stability, under the dynastic rule of a single family and a well- trained National Guard. Further, the regime enjoyed unstinting support from the United States until its demise, a relationship commencing in 1934 with the dynasty itself, and continuing through economic and military co-operation within and outside Nicaragua in the ensuing decades.(84)

The country shared, however, in the material poverty and social inequality of the region, including the existence of an oligarchic order, which the Somoza clan dominated.(85) When in 1956 President Anastasio Somoza Garcia was assasinated, his eldest son, Luis, immediately succeeded him. Anastasio Somoza Debayle, a West Point graduate, remained commander of the National Guard, an organisation whose loyalty to the Government was ensured through patronage, isolation, indoctrination, and opportunities for petty tyranny and corruption.(86) Economic control by the Somozas encompassed one-third of the country's arable land and virtually every industry.(87) When in 1967 the presidency was assumed by Anastasio Somoza Debayle, he arranged for the appointment of his son as commander of the National Guard's elite training facility and assault brigade.(88)

Entry into the Central American Common Market in 1963, coupled with growing American investment in the country as part of the 'Alliance for Progress', fostered a period of rapid

industrialisation and economic progress in Nicaragua. Although the Somoza clan remained the principal beneficiary, a significant expansion of the urban middle class also occured; the latter's political and economic opportunities, nevertheless, were firmly constrained by the authoritiarian structure of the state.

The Somozas sought to portray their alliance with the United Stat es as a mark of their prestige and credibility, which correspondingly required them to tolerate a measure of political freedom to satisfy Washington as well as the elite in Managua. Historian Richard Millet observes that in dividing and conquering the traditional Nicaraguan opposition groups, the Somozas would strike bargains with different segments of the population to gain their acquiescence, presenting the clan as the only alternative to communism: the strategy became "more credible as years of co-optation, acquiescence, and humiliation undermined the prestige and credibility of the traditional opposition." (89)

The early 1960s had witnessed the convergence of the largely rural worker and student gatherings, alienated by the clan and the middle classes, into the Sandanista National Liberation Front (FSLN) and the Nicaraguan Socialist Party (PSN), as well as a number of trade union associations.(90) A major inspiration of these movements was the peasant co-operative vision of Augusto Cesar Sandino, the legendary rebel leader whose assasination had been plotted at the inception of the Somoza dynasty. In urban areas, the small

Christian Socialist Party and the Communist Party also took root in the 1960s, gradually succeeding in organising strikes and raising political awareness amongst the working classes. However, the strength of the National Guard ensured that overt opposition to the clan was suppressed. Indeed, the Somozas were able to point to these movements - as well as to the Cuban revolution of 1960 - as presenting a threat to the economic well-being of the middle class, hence perpetuating social division amidst the steadily growing opposition to the regime.(91)

Insofar as the long-term interests of the clan converged with the perceived anti-communist interests of the United States, however, the prospect of significant structural change in Nicaragua seemed quite remote.(92) What turned the tide was a massive earthquake in December 1972, destroying the capital city. As international attention and assistance focussed upon the disaster, with the President personally in charge of reconstruction, the clan visibly enriched itself at the expense of the population.(93) A network of Somoza-owned enterprises earned vast profits from the reconstruction, the family appropriating no less than 50% of funds received in international aid. The corruption that plagued administrative activity even in normal periods emerged as a blatant feature of the prevailing situation; land and commercial properties became the target of financial speculation by the ruling family.(94)

The middle and upper classes, like the remainder of the population before the earthquake, were inevitably antagonised,

many radicalised, by the Government. A number of young professionals, trained abroad and expecting to participate in a liberalised and prosperous economy, simply departed from Nicaragua. Worsening economic conditions generated a series of strikes, demonstrations and land seizures by the working class during 1972-73; by the folowing year, moderate and radical elements had coalesced separately into powerful opposition organisations, determined to effect an end to the regime.(95)

A principal emergent organisation was the Democratic Liberation Union (UDEL), formed by the charismatic editor of the opposition newspaper, La Prensa, Pedro Joaquin Chamorro. UDEL, a loose coalition which included the Communist Party, aimed at substituting a form of democratic capitalism for Somozan authoritarianism, without radical social change.(96) The attention of the public was captured, however, by the spectacular seizure of twelve prominent officials of the Government by the Sandanista Front at a Christmas party, and their exchange for fourteen political prisoners, a million dollars in ransom, and a passage to Cuba for the captors.(97) The Front also launched guerilla operations in the countryside, attracting widespread sympathy and support across class lines.

Somoza declared a state of seige, and created a counter-insurgency force within the National Guard. A campaign of terror was initiated in the northern regions, and thousands of rural residents forced into resetlement camps to undercut Sandanista support. As the United States increased its military assistance to Nicaragua by 80%, American public

opinion became increasingly aware and critical of the regime in Managua.(98) The Catholic church of Nicaragua, under the leadership of Archbishop Miguel Obando y Bravo, joined the opposition to authoritarianism, albeit tentatively at first. Finding its legitimacy as well as its existence in jeopardy, the regime merely escalated its persecution and repression of opponents across the country.(99)

The Sandanista Front, which suffered a series of personnel and military losses at the hands of the National Guard, underwent a series of critical organisational changes during 1975-76. Two streams within the Front, both strongly Marxist in orientation, advocated further political preparation through improved linkages with the countryside as well as the urban working class, with no immediate military action. A third faction, the Insurrectional Tendency (known popularly as the Terceristas), favoured mass and nationwide popular action against the Government, with the partnership of the middle class. The Insurrectionists leaned towards a social democratic rather than Marxist ideology and, in June 1977, attracted the support of a leading group of twelve public figures - Los Doce - to intercede with the urban middle class on behalf of the Sandanistas.(100)

Beginning in October 1977, the Insurrectionists distinguished themselves through a spate of damaging attacks on the National Guard, accompanied by workers' strikes and peasant gatherings. Significantly, UDEL leader Pedro Chamorro conferred with Miguel D'Escoto Brockman of Los Doce over the prospect of

a dialogue with the Front;(101) shortly thereafter, on January 10, 1978, Chamorro was assasinated in Managua, an event that convulsed the nation. Two weeks of spontaneous rioting were followed by a general strike called by UDEL, virtually paralysing the capital and other major cities in Nicaragua. The Insurrectionists attacked the Guard once again, drawing fierce official retaliation.(102)

The advent of the Carter Administration with its interest in human rights-oriented foreign policy for the United States offered the possibility of a relatively controlled transition of power to the moderate opposition in Nicaragua, especially when economic and military assistance to Somoza was reduced in April 1977. But the moderates waited in vain for more decisive action from Washington, while the Sandanistas consolidated their forces.(103) A broad centrist umbrella organisation in Nicaragua enjoying official American support allowed the initiative to dissipate by the Fall of 1978, when the Sandanistas seized the National Palace and 1500 hostages, then attacked the Guard. (104)

Somoza's rejection of a United States' sponsored proposal for a supervised plebiscite on the future of his Government in early 1979 provoked only mild and symbolic sanctions from the Carter Administration, which appeared to believe that the Guard could forestall the collapse of the regime, and that the moderates would finally rally behind the President rather than hazard an outright Sandanista victory.(105) By contrast, an international publicity campaign

by Los Doce and the various elements of the Sandanista Front had mobilised sympathy and support in Western Europe and Latin America; even conservative Costa Rica permitted the flow of arms to the Front through its territory.(106) Condemnation of the Nicaraguan Government by Amnesty International, the Inter-American Commission on Human Rights, as well as the United Nations General Assembly, failed to prevent the United States from endorsing a $16 million loan by the International Monetary Fund (IMF) to Somoza in May 1979, though the Carter Administration professed its abhorrence of the regime.(107)

In the early months of 1979, the Sandanistas succeeded in unifying the three factions within the Front under a nine-member National Directorate. Mass organisations among disparate groups that included women, students and peasants were linked in a coalition, the United People's Movement (MPU), which combined with the Social Christians and the Independent Liberal Party to form the United Patriotic Front, constituting a crucial support organisation for the Sandanista Front.(108) In June 1979, the Front called a general strike, followed by a 'final insurrection'. Much of the country, including the second city of Leon, fell under the control of the Sandanistas in weeks, though the National Guard retained control of Managua.(109)

Apprehensive at a 'communist' victory in Nicaragua, the United States told a conference of the Organisation of American States (OAS) on June 22 that it was prepared to accept Somoza's resignation, but that military intervention was required to

ensure a "broad-based representative government" - a substitute for the Sandanista forces then in command of most of Nicaragua.(110) The OAS rejected the proposal, but arms continued to flow from Washington to the Somoza's National Guard. When Somoza finally acknowledged defeat and departed from the country on July 17 (for Miami), taking with him the entire senior command of the Guard and the funds in the national treasury. the insurrection was over. On July 19, 1979, the Provisional Junta of National Reconstruction, composed of Daniel Ortega of the Sandanista Front, Violetta Chamorro, widow of the assasinated UDEL leader, Moises Hasan of the MPU, Sergio Ramirez of Los Doce, and Alfonso Robelo of the centrist umbrella organisation of 1978, assumed complete control.(111)

The Provisional Junta committed itself to respecting the basic human rights and freedoms of all Nicaraguans - within a socialist- democratic framework. An eighteen-member cabinet was promptly appointed, its composition reflecting, along with that of the bureaucracy , considerable political diversity. A legislative assembly of forty-seven members - the Council of State - was established in May 1980, though the initiation of legislation effectively remained the prerogative of the Junta.(112) The judiciary was reconstituted, and came to enjoy a reputation for independence from the Government.(113)

Ultimate political authority, in any case, was vested in the National Directorate of the Sandanista Front, which determined overall policy, communicating with the Junta through Daniel Ortega. Following a relatively auspicious

beginning on the task of national reconstruction during the 1979-81 period, the growing dominance of the Front in the operation of the Government provoked concern in vital sectors of the national politico-economic milieu.(114) The exercise of civic freedoms was circumscribed in several respects despite formal legal guarantees (discussed in Section 2, below), and the material welfare of most Nicaraguans suffered in consequence of the serious economic downturn.

Importantly, the early United States policy of accomodation and co-operation vis-a-vis the revolutionary Government became, by late 1981, a posture of open hostility, apparently on the grounds that Nicaragua was 'exporting' its ideology to neighbouring Central American states, particularly El Salvador.(115) The 1982-83 period witnessed a steady escalation of the militant opposition to the Sandanista Government, with the sponsorship of the Reagan Administration in the United States. Originally comprising pro-Somoza fighters only, the 'contra' effort was expanded into a sizeable insurgency, including some former revolutionary allies of the Sandanistas.(116)

National elections in 1984 were accompanied by a phase of political liberalisation, resulting ultimately in the consolidation of the Sandanistas political authority.(117) The ongoing 'contra' insurgency, however, constituted a particularly serious financial diversion for an impoverished and fragile economy.(118) At least partly in response to the external threat, moreover, domestic repression by the

Government was escalated, especially against the Catholic church and the independent press, which were seen as undermining the revolution. (119) For the majority of Nicaraguans, nevertheless, conditions under the Somoza regime had been considerably less tolerable than under the new revolution, and were certainly preferrable to those prevailing in neighbouring El Salvador and Guatemala.(120)

II. Human Rights Issues, 1979-1984

The undertakings by Central America's new governments to enhance respect for the fundamental human rights of their citizens - especially as contained in national constitutional provisions and in the International Bill of Rights - constitute a profound legal and political challenge for those societies, in light not only of the historical circumstances outlined above, but also of prevailing authoritarian tendencies.

El Salvador's 1962 constitution articulates an array of individual and social rights to be protected in a system based on social justice.(121) However, the Revolutionary Junta's Decree 114 of February 8, 1980, qualified the application of the constitution to the extent of its compatability "with the nature of the present regime" and "the postulates and objectives of the Proclamation of the Armed Forces of October 15, 1979 and its line of government."(122) Other military decrees have similarly impinged upon the constitutional order, though principally in the domain of economic policy (such as expropriation of property).(123)

Guatemala's constitution of 1965 recognised the essential rights inherent to mankind, with a series of legal codes, decrees and other instruments augmenting the constitutional provisions.(124) A 'Fundamental Statute of Government' (amended by Decree Law 36-82) limited the scope of the preceding rights and freedoms after the coup of March 1982.(125)

In Nicaragua, the constitution of 1974 was replaced in

July 1979 by a 'Fundamental Statute' premised on "standards that guarantee the rights of citizens" as well as "a broad-based, democratic government." The Statute on the Rights and Guarantees of Nicaraguans (Decree 52), proclaimed in September 1979, recognised the full range of international individual and collective human rights.(126) The benefit of these rights and freedoms was expressly circumscribed with reference to prosecutions and other state action relating to the Somoza family and its possessions, as well as to those closely associated with the former regime; other categories of citizens have also been subjected to various contraints (de facto and de jure) in the exercise of civil-political rights guaranteed in the 1979 Statute, chiefly in the context of perceived anti-Sandanista activities.(127)

On the international plane, all three states are signatories to the Universal Declaration of Human Rights, and have ratified the 1969 American Convention on Human Rights and the 1948 Convention on Genocide.(128) The International Covenants on Civil and Political Rights, and on Economic, Social and Cultural Rights, were ratified in 1979 by El Salvador and Nicaragua; the former has signed, and Nicaragua ratified, the Optional Protocol to the Civil and Political Rights Covenant.(129) Guatemala is not a party to either Covenant.

This segment addresses the general condition in practice of the foregoing sets of rights and freedoms in each of these states since 1979, thus providing an expose of the normative

issues confronting Canadian foreign policy towards the region. In view of the particularly severe assault on the fundamental right to life and personal security over the 1979-84 period, that normative category is treated foremost and distinctly, followed by issues of civil-political and socio-economic rights, and finally, given once again conditions in the region, the rights of refugees and indigenous Indians.

The preceding scheme of analysis is intended to facilitate a comparative (if condensed) assessment of human rights conditions among the three nations under study.

I. The Right to Life and Security of the Person

Estimates by local as well as international human rights organisations indicate that no less than 39,000 civilian non-combatants died from political violence in El Salavador between 1979 and 1984.(130) The overwhelming majority of these casualties - which excludes the large number of deaths resulting from armed conflicts between governmental and guerilla forces - occured through official 'security' activities (such as the aerial bombard ment of villages suspected of harbouring guerillas) and attacks by right-wing 'death squads'. Despite the banning in November 1979 of ORDEN , the security agency responsible for some of the most egregious rights violations during the 1970s, no specific measures to dismantle the organisation or to prosecute its members were undertaken.(131)

In excess of 2,700 Salvadorans 'disappeared' over the five-year period in question, in many instances following the hundreds of arbitrary arrests.(132) Indeed, the Revolutionary Junta's Decree 507 of December 1980 institutionalised the longstanding practice of security -related arrests without warrant, subject to the exclusive jurisdiction of military tribunals.(133) Under Article 4 of the Decree, a "military examining judge" need only be informed of the arrest "within twenty- four hours", and of the prisoner's case "within a period of fifteen days". Decree 50 of February 1984 perpetuated this authorization.(134)

Decree 507 is also considered by human rights monitoring

groups to have encouraged the extensive practice of torture under interrogation by governmental organs. Article 5 of the Decree provides for preventive detention on the basis of "any information to give one cause to believe that the suspect was a participant in the crime", including the "extrajudicial investigation conducted by the auxiliary organs" presenting the case. Furthermore, in the absence of the preceding information required to detain the accused, Article 6 envisages "corrective detention" for upto 120 days, if the military judge "by studying the case or any other means has established the need to subject him to security measures".(135) Torture is also regarded as occuring "routinely" prior to summary executions of suspected opposition sympathizers.(136)

It has been asserted in some quarters - particularly in official circles in the United States - that the election of Jose Napoleon Duarte to the Salvadoran presidency in June 1984 signalled a departure from the trends in political violence by the state, particularly in respect of the number of civilian casualties; continuing non-combatant deaths have thus been attributed primarily to guerilla attacks in the countryside (rather than to offical agents or the death-squads).(137) Independent accounts indicate, however, that the level of such violence remained extremely high through the ensuing months in 1984, for which overwhelming responsibility reposed with the traditional actors. At the first Human Rights Congress of El Salvador in November 1984, organised by non-governmental human rights agencies, delegates noted "a slight decrease in certain

kinds of repressive acts such as 'disappearances' and bodies left by the roadside", but "a substantial increase in bombing raids against civilian targets."(138) In addition, the annual survey of human rights by the office of legal aid of the Archdiocese of San Salvador, Socorro Juridico, recorded 2,506 non-combatant civilians casualties from actions by the armed forces or paramilitary groups, and 68 from guerilla activities during 1984; an estimated 116 disappearances resulted from official security-related detentions.(139)

Press reports also confirmed that the presidential policy directive against aerial bombardment of villages by the armed forces was poorly observed in late 1984, through 1985.(140) Serious human rights violations by individual official agents, according to the reports, continued to elude prosecution, and often even censure, under the Duarte presidency.(141)

In September 1979, Amnesty International commenced a campaign to focus attention on the gross and systematic violation of rights under the Garcia regime in Guatemala. (142) Subsequent reports by the Inter-American Commission on Human Rights (IACHR) documented the scale of political killings by governmental forces and extreme-right groups such as the 'Mano Blanco'; the violence was said to be directed with particular vehemence at indigenous Indians and peasants in Guatemala.(143) The Canadian Inter-Church Committee on Human Rights in Latin America (ICCHRLA) cited the death-toll amongst civilians in late-1981 as averaging 50 persons a day;

large-scale torture and disappearances were also documented, and found to be on the increase.(144)

The Guatemalan Government's response was to deny all responsibility for the deaths and violations, which it attributed to various communist groups and extreme right squads; the Government also accused Amnesty International and other rights-monitors of communist leanings.(145)

Immediately following the coup of March 1982, the hitherto frequent disappearances in Guatemala City were curtailed, and it was widely hoped that state-sponsored violence throughout the country would also decline. By the Fall of 1982, Amnesty International reported otherwise: 2,600 fresh civilian non-combatants had been killed, largely as a consequence of Rios Montt's campaign of anti-subversion.(146) In July 1982, furthermore, 'Courts of Special Jurisdiction' were instituted to try political offenses against the state, in connexion with the regime's pursuit of 'communists' and other perceived opponents of national 'stability'; those found guilty under a system of summary justice faced possible death sentences.(147) The series of extrajudicial executions stemming therefrom was halted only by the determined intervention of the IACHR in 1983, based on the conflict between the legislation in question and Guatemalan commitments under the American Convention on Human Rights.(148)

In the aftermath of the August 1983 seizure of power by Mejia Victores, the Special Courts were abolished, but hundreds of casualties resulted from the continuing anti-communist

campaign by official forces.(149) No human rights organisations were permitted to monitor the situation from within Guatemala, rendering precise estimates of civilian casualties from political violence extremely difficult.(150) The practice of torture incontrovertibly persisted on a significant scale, and Guatemalan press reports indicated that numerous disappearances continued to occur.(151) Annual resolutions of the United Nations General Assembly and the Commission on Human Rights have specifically condemned since 1982 the large-scale political killings and disappearances in Guatemala as well as in El Salvador (denunciations that Canada has affirmed).(152)

In comparison with the situation in those two nations, and with what prevailed prior to its revolution of July 1979, Nicaragua has demonstrated a serious commitment to the right to life and personal security under the Sandanista Government - with some notable exceptions. Although Article 5 of the Statute of the Rights and Guarantees of Nicaraguans (1979) abolished the death penalty, an indeterminate number of extrajudicial executions of political prisoners had already occured in the revolutionary aftermath, some by governmental and others by independent leftist forces.(153) The vast majority of the executions involved former National Guardsmen and associates of former President Somoza Debayle; the Government offered public assurances in late 1979 that the executions would cease and the perpetrators punished, an undertaking that was not closely observed.(154)

Of the estimated 7,000-9,000 detainees of the Government

in July-August 1979, slightly over 5,000 were ultimately imprisoned for offenses under the previous regime.(155) The trials were conducted by 'Special Tribunals' that denied suspected 'somocista' offenders the full protection of constitutional rights, but the death penalty was not imposed. A number of the prisoners appeared to have been subjected to forms of abuse and torture, in addition to lesser rights-violations associated with their 'rehabilitation'.(156) Reports by the American State Department and the IACHR in 1984 stated that several of the prisoners were killed by official Nicaraguan forces, apparently while seeking to escape.(157)

In connexion with the ongoing guerilla insurgency against the Sandanista Government, enforced disappearances and killings involving civilian non-combatants were reportedly conducted by the state in zones of conflict, albeit not on a large scale.(158) The suspension of habeas corpus as part of the emergency regulations in 1982, as well as of the constitutional freedom from detention without arraignment for over seven days, were partially reversed in August 1984. However, the 1983 extention of prison sentences imposed on political detainees was continued.(159)

Perhaps most seriously, the Miskito Indian population on the country's Atlantic coast was subjected to severe mistreatment, in the form of forced relocations, arbitrary arrests, and an indeterminate number of killings.(160) While the Government formally admitted in 1983 to grave 'errors' in its relations with the Indian communities, some of the abuses

nevertheless continued. The subject is considered distinctly in Section 3 below.

2. Civil-Political and Socio-Economic Human Rights

In the midst of continuing civil strife in El Salvador and Guatemala, and the 'contra' insurgency in Nicaragua, the exercise of individual rights to, inter alia, peaceful assembly and association, and to free movement and free speech, have had a tenuous practical basis. As already indicated, this occured despite the prior existence of formal legal guarantees - which were abridged under 'special' legislation. The undermining of the judicial process by the armed forces and extreme political groups, particularly in El Salavdor and Guatemala, compounded the situation.(161)

The imposition of 'state of seige' decrees in 1980 and 1981 in El Salvador virtually eliminated the rights of trade unions critical of the Government to organise and assemble, and generally subjected the right to free speech to stringent qualifications.(162) Two important opposition newspapers, El Independiente and La Cronica, were forced to cease publication following sustained violence and threats against their staff, leaving only conservative newspapers in operation since 1981, also subject to political censorship.(163)

Religious freedom in the country has progressively improved overall since 1979, but members of the clergy have been targets of killings, disappearances, threats and beatings. The assasination in 1980 of Archbishop Romero, an outspoken

critic of the Government's human rights record, was followed by a massacre at his funeral; the Catholic church nonetheless remains critical of official practices, especially on behalf of the working class and peasants in El Salvador.(164)

Multiple legal and de facto constraints surrounded the national elections of 1982 and 1984, though no reports of outright fraud emerged.(165) Since at least mid-1984, leftist political parties not associated with the anti-government guerillas or the extreme left have been officially permitted to operate, though not without considerable risk from official security forces and independent right wing groups alike.(166)

The anti-communist campaigns conducted by successive governments in Guatemala since 1954 occured with particular severity under Rios Montt in 1982-83, despite the adoption of the 1982 Basic Statute guaranteeing the free exercise of civil and political rights. Trade unions, university students and specific church groups and personnel were targets of attacks for suspected leftist sympathies.(167) Renewed official assurances as to personal religious freedom were not accompanied by security for the churches, and Rios Montt's invitation to exiled priests to return to Guatemala was accepted by few.(168)

Upon assuming power in 1983, Mejia Victores promulgated Decree 91-83, broadening the individual guarantees contained in the Fundamental Statute (1982) and restricting the scope of arbitrary arrest powers to situations in flagrante delicto, and where the suspect was fleeing the scene of his crime.(169) The

exercise of civil-political rights by ordinary Guatemalans remained a precarious matter, however, in the context of continuing large-scale violence and repression against perceived subversives. Indeed, reports in 1984 by the Guatemalan Human Rights Commission (an independent organisation based in the United States) held that the condition of political rights had deteriorated after the 1983 coup, contrary to popular opinion.(170) An important exception was freedom of the press, in respect of which previous curbs were relaxed, though self-censorship continued.(171)

In Nicaragua, the 1982 emergency decree greatly restricted the civil and political rights guaranteed in the 1979 Fundamental Statute, including the rights of assembly, press freedom and strike action.(172) The judicial system, however, succeeded in preserving a degree of independence, as evinced by the affirmation of habeas corpus rights under the emergency decree by the Supreme Court in 1983.(173) Less encouraging was the Government's establishment in May 1983 of Special Tribunals to try security-related offenses, aimed principally at 'somicista' activites; the Tribunals provided regular due process, but restrictions applied to reviews of their sentences by the Supreme Court. The IACHR strongly denounced the composition and political orientation of the Tribunals in its 1982-83 Annual Report.(174)

The most reliable source of information on human rights in the country has remained the independent Permanent Commission of Human Rights (CPDH), despite official harassment

since 1982. The leading opposition newspaper, La Prensa, has been less fortunate, with constant censorship and official attacks against its staff drastically limiting its regular operation.(175) Nor has the Catholic church been permitted to freely express criticism of Sandanista policies, though personal religious freedom, at least for the Catholic majority, is not interfered with.(176)

Ideological pluralism has remained a problem in Nicaragua under the revolutionary regime, with varying degrees of enjoyment of civil- political rights permitted in accordance with their perceived compatability with the official ideology.(177) Although account must be taken in this regard of the foreign-sponsored guerilla insurgency against the Government, this circumstance has often been used to justify sweeping authoritarianism. The elections held in 1984, for instance, were accompanied by various restrictions applied to those campaigning against the Government, notwithstanding express legislation to the contrary. Most external observers affirmed, however, the fairness of the polling process, the results of which suggested that the Sandanistas remained relatively popular amongst Nicaraguans.(178)

For most segments of the population, respect for socio-economic rights has fared somewhat better than its civil-political counterpart in post-1979 Nicaragua. The Government launched widely acclaimed programmes of literacy and public health in 1979; by 1984, diseases such as malaria and

polio had been brought under control through a vaccination campaign. Land, property and finances owned by the Somoza family and its associates were redistributed or used to support social welfare programmes, while the private sector was offered guarantees as to property rights.(179) The termination of economic assistance from the United States after 1981 was adequately compensated for by international aid from a multiplicity of sources, including Canada, France, Libya, Mexico and the Eastern bloc nations; the non- availability of credits from the IMF, the IADB and the World Bank, on the other hand, constituted a more serious deficiency.(180)

Real gross national product (GNP) increased by 10% in 1980, while inflation declined. But rampant nationalisations of private holdings, poor administration and management by the Government, and the loss of business confidence by the private sector contributed to a reversal of the favourable economic trend after 1980.(181) Further, the anti-guerilla war was reportedly consuming no less than 50% of the annual national budget by 1984,(182) a situation aggravated by American sanctions on trade with the country.(183) The Government undertook to facilitate a more open domestic economic environment in 1984, and renewed its assurances of security to the private sector, which continued to account for 60% of the gross domestic product (GDP).(184)

Viewed in the light of historical conditions under the Somozas, the price exacted by the revolutionary insurgency through the 1970s, and the demands of ongoing conflict with the

'contras', Nicaragua's accomplishments in reconstruction and affirmative social change, and hence in implementing the enjoyment of socio-economic rights for the majority of its citizens, surely merit due recognition. This perspective is only accentuated when prevailing realities in El Salvador and Guatemala over the 1979-84 period are assessed.

A 1982 economic report on Guatemala by the United States Agency for International Development (AID) observed that in 1979, the country was considered to have the least equitable distribution of wealth and resources in Central America.(185) In 1983, gross domestic product (GDP) shrank for the second succesive year - by 2.7% - partially as a consequence of global economic factors, but also because of the virtual cessation of foreign investment, aid or credit on any significant scale flowing into the country, in response to conditions of severe repression and apalling economic management by the state.(186)

Human rights monitors attributed the economic decline in large part to the militarization of the state, entailing not only the diversion of extremely scarce resources to the 'defence' and 'security' sectors, at the expense of social welfare, but also the subordination of development projects to strategic objectives relating to the anti- communist campaigns.(187) The worst victims of the crisis have been the Indian communities in the countryside, whose traditional political social and economic plight is thereby perpetuated.

Between 1979 and 1983, El Salvador experienced a 25% drop in real gross domestic product (GDP), a 33% reduction in

exports, a sharp rise in unemployment, and a 75% decline in private investment.(188) Amidst the prevalence of extreme poverty and the highest population density in the western hemisphere, combined with the effects of an intense ongoing civil war, the survival of the national economy was maintained only by the infusion of substantial assistance from the United States and the multilateral financial institutions - with strong political overtones.(189)

As already indicated, agrarian reform has been a critical challenge to Salvadoran governments seeking any meaningful change in the country's traditional socio-economic structures. On March 5, 1980, the most radical programme of land distribution to-date was initiated, with support and pressure for its effective implementation from the Government of the United States. The programme was to be conducted in three phases, with the expropriation and/or transfer of estates of varying sizes to sharecroppers, renters and peasant families, covering the entire country. Predictably, former landowners have been highly resistant to the reforms, the administration of which has been less than efficient; the exclusion of many poor peasants from relevant local agencies has aroused particular criticism.(190) By 1984, the agrarian reform had achieved partial success, transferring the ownership of about 25% of the agricultural land brought under the programme, benefitting an estimated 95,000 families.(191) With the halting of the downward economic trend in El Salvador by early 1984, the outlook for the country had improved at least

marginally, though leaving the overall fabric of socio-economic rights as fragile as the prevailing political structure.

3. The Situation of Indigenous Indians and the Displaced

A salient feature of the situation of human rights in Central America has been the official treatment accorded the large population of unassimilated Indians, particularly in Guatemala, where they constitute over 50% of the population, and in Nicaragua, where the Miskito who dominate the Atlantic coast have been seriously alienated by the Sandanista Government. Indeed, a majority of the population of displaced Central Americans (those internally uprooted as well as refugees), numbering well over a million in 1984, remains Indian.(192)

In the case of Guatemala, Indian communities are distinguishable less on a racial than on a socio- cultural basis from the more westernised and urban 'ladino' population (composed of varying degrees of inter-mixture between the indigenous and immigrant, predominantly Spanish, races). The Indian population has historically inhabited the countryside, owned virtually no land, enjoyed little access to national institutions, and endured a level of nutrition lower than prevailed under the ancient Mayan civilisation, while being subject to constant and brutal assaults by official forces. (193) Counter-insurgency campaigns by the Lucas Garcia and Rios Montt Governments produced numerous massacres, displacements and severe deprivation for those inhabiting zones of conflict.

The recent official concern over the Indians' willingness to join forces with ladino guerillas opposed to the Government provoked a systematic campaign of repression by the latter, amounting according to some international observers to a deliberate policy of genocide.(194)

Conflict in Nicaragua between the Government and the Miskito and other Indian communities commenced soon after July 1979, when the latter resisted what was seen as the imposition from Managua of a programme of modernisation, adaptation and political participation, as part of the Sandanista revolution.(195) Nicaragua's Indians were traditionally ignored and neglected by the Somozas, hence isolated from the processes of national of politico-economic development, and 'autonomous' in matters of local administration. The Sandanistas' agrarian reform programmes of 1981 and 1982 affecting historic Indian land-claims were instituted without prior consultation with the Indian leadership, causing widespread resentment among the communities in question.

Furthermore, in its war with guerilla insurgents based in Honduras, the Government increased the presence of the armed forces in Indian territories bordering that country, adding to the concerns of already disaffected communities. The counter-insurgency effort involved as well the enforced relocation of whole Miskito villages and townships from conflict zones along the Honduran border in 1982, contributing to the large-scale movement of Nicaraguan Indians into Honduras, with some participating in the 'contra' war against

the Sandanistas.(196)

In 1983, the IACHR issued a report on the treatment of Miskito Indians in Nicaragua, detailing the Government's poor record of respect for their fundamental rights, including arbitrary arrests, harassment, restricted freedom of movement and organisation and instances of brutality and killing.(197) The Nicaraguan Government admitted to serious errors in its relations with the Miskito, inviting the exiles to return from Honduras; yet charges of ongoing official abuses against the Indians were repeated by various sources in 1984.(198)

It is estimated that 14,000 non-Indians fled Nicaragua between 1982 and 1984, largely into neighbouring nations and the United States.(199) At least 10,000 Miskito are thought to have left over the same period, predominantly into Honduras and Costa Rica, where their condition is regarded as being reasonably secure, with the assistance of the UNHCR.(200) Internal displacement within Nicaragua has also occured in conflict zones, a process that can be expected to continue with the ongoing 'contra' insurgency.(201)

Indians form the majority of the internally displaced population of Guatemala, estimated at approximately a million individuals in 1984.(202) Many were believed to be seeking refuge in the mountains, the victims of malnutrition and disease. Private relief agencies were subject to official control even after the 1983 coup, and the military was alleged to have manpulated relief supplies for political purposes.(203) The Guatemalan refugee population in Mexico - also

predominantly Indian - doubled from 20,000 to 40,000 between 1982 and 1984, an additional 120,000 living in the country as illegal immigrants. UNHCR reports indicate that recent arrivals into Mexican camps were plagued by serious health problems, including mental ailments among children; the Government's offer of safe return to the refugees has had few takers.(204)

As a proportion of the national population, El Salvador has generated the largest number of internally displaced and refugee victims from post-1979 civil strife in Central America.(205) A report by the United States Committee for Refugees (an independent group) states that from a figure of a few thousand in 1980, the displaced population of El Salvador exceeded 240,000 by October 1982.(206) As of 1984, 400,000-700,000 Salvadorans were displaced within the nation, less than 25% of whom resided in camps.(207) About 60,000-80,000 were considered inaccessible for purposes of assistance, owing to their location in zones of conflict. The International Committee of the Red Cross, the only party authorised by both offical and guerilla forces in El Salvador to assist the displaced, could reach no more than 80,000 in 1984; the Government itself assisted an estimated 264,000.(208) According to a 1984 report on the situation by non-governmental human rights groups, the applicability of the 1949 Geneva Conventions - to which El Salvador is party - to the victims of the civil conflict was acknowledged by neither of the belligerents; on the contrary, the Government selectively impeded external assistance directed at civilian non-combatants

in the displaced category.(209)

Hundreds of thousands of Salvadoran refugees inhabit camps in Mexico (the largest asylum nation), Honduras, Belize and the United States, while many refugees lack any protection at all.(210) An estimated 18,000 live in Nicaragua, where the Government appears to have successfully arranged for their integration.(211) The recent drop in refugee flows from El Salvador is considered to be a consequence at least in part of the depopulation of areas of conflict that previously generated such flows to neighbouring countries.

B. HUMAN RIGHTS AND CANADIAN FOREIGN POLICY TOWARDS El SALVADOR, GUATEMALA AND NICARAGUA

I. The Trudeau Era, 1979-1984

Canada's relations with Central America through the 1970s, including the level of attentiveness to that region's socio-political travails, can reasonably be characterised as minimal. This was reflective of the extent of Canadian involvement with the affairs of the Americas south of the Rio Grande, a situation that journalist Knowlton Nash memorably compared to that of "a reluctant virgin fearful of losing her purity to the seductive Latins."(212)

In Foreign Policy for Canadians, the Trudeau Government's White Paper of 1970, a distinct section had been allocated to Latin America - emphasizing tradional concerns with commerce and investment, professing a commitment to social justice in the Third World, and referring at some length to the question of Canadian membership in the Organisation of American States (OAS).(213) The theme of social justice in Latin America was outlined mainly in terms of development aid: technical and financial assistance flowed on a modest scale to Central America, entirely through multilateral and private voluntary organisations, and would continue to do so.(214) Official Canadian awareness of the acute socio-economic disparities or the political afflictions prevailing in Central America was not reflected in the White Paper.(215)

The merits of Canadian membership in the OAS - where this country had and still enjoys permanent observer status - were to be debated through the decade, with hemispheric

security and commerce as the preponderant issues.(216) By the 1980s, the question had become virtually moribund,(217) apparently confirming the White Paper's verdict that direct Canadian interest in the political affairs of the hemisphere was "real but still somewhat limited."(218)

The decision to join the Inter-American Development Bank (IADB) was perhaps the most salient Canadian policy initiative in relation to Central and Latin America in the early 1970s, inducing Japan and Western Europe to follow suit,(219) and resulting in a doubling of Canadian assistance to the region in the first two years of membership alone (pre-membership disbursements to the IADB's development fund had averaged $10 million per annum since 1964).(220) The nexus between foreign aid and human rights did not exercise policy calculations in Ottawa until the 1980s,(221) the governing perception being that the former was inherently and necessarily congenial to the improvement of human rights conditions, as well as to a positive business climate for Canadian entrepreneurs.(222)

Central America remained through the early and mid-Trudeau era a subject of relatively minor importance to Canadian commerce and development aid, much less of any political interest. On the eve of the 1979 upheavals in El Salvador and Nicaragua, Canadian diplomatic representation in the entire region was confined to Costa Rica.(223) By 1982, however, Canada had participated in international denunciations of the human rights situations in El Salvador and Guatemala, and a major parliamentary hearing on Canadian relations with

Latin America and the Caribbean was devoting a full report to Central America, emphasizing the human rights dimension in foreign policy. Canadian-Latin American relations, the report held, could not continue to center exclusively on traditional bilateral matters vis-a-vis Argentina, Brazil, Chile, Mexico and Venezuela, but would have to extend to emergent public concerns with human rights conditions in those and other - notably the Central American - countries.(224)

The present case-study spans the post-1979 policy period not only to coincide with relevant transformations in Central America, but also because an assessment of the preceding period, as evident from the outline above, would be largely insubstantive in terms of actual Canadian relations.(225)

1. Public Statements on Rights Issues

In the 1979-80 period, when the turmoil in Central America was reaching its culmination, a policy response to the multiplicity of issues at stake in the region had yet to be articulated by Canada. Public statements on questions of foreign policy, including references to global problems in the domain of human rights, failed to extend to those arising from the prevalence of governmental change and political violence and repression in El Salvador, Guatemala and Nicaragua. This omission characterised the policies of both governments in office during 1979-80, the Liberals and the Progressive Conservatives.

Hence an address to the United Nations in September 1979 by the Minister for External Affairs in the Clark Government, Flora MacDonald, encompassed a panoply of socio-political issues, but contained no reference to the two-month old Sandanista revolution, nor to the egregious violations of human rights in El Salvador and Guatemala.(226) Similarly, a previous statement by the Minister on 'Canada's Foreign Policy and Relations' at the Canadian Club in Montreal, though adverting to Soviet infringements of human rights norms, did not address the grave situation then developing in Central America.(227)

The new Minister of External Affairs (serving Prime Minister Trudeau's re-elected Government), Mark MacGuigan, offered an extensive survey of 'Current Issues in Canadian Foreign Policy' to the parliamentary Standing Committee on External Affairs and National Defence in June 1980, following

his visit to Latin American and other foreign countries.(228) MacGuigan expressed concern over such 'human issues' as the problems of hostage-taking and of refugees in Africa and Asia, and touched upon ongoing political tensions in the Midle East, Indochina and Southern Africa, but made no reference whatsoever to Central America.

In part, the omissions may be attributed to the degree of official representation amongst the countries in question, a matter which the Department of External Affairs evaluated in 1980-81, "when it became clear that the region was quickly becoming one of major interest to Canadians."(229) The Canadian 'commercial delegation' in Guatemala was accordingly upgraded to embassy-status in 1982, and was also accredited to Honduras. Three members were added to the staff at the Canadian embassy in Costa Rica, "to handle the increased workload of new development assistance activities in Nicaragua (and Costa Rica) as well as general relations work in El Salvador, Nicaragua and Panama." (229) Proposals for an embassy in Nicaragua by, inter alia, the New Democratic Party (NDP) and Canadian church organsisations were rejected by the Government, apparently on financial grounds.(230)

The Canadian policy quiescence of 1979-80 was measurably corrected in 1981, when serious attentiveness to developments in El Salvador, and to the worsening situation of human rights in Guatemala, emerged for the first time. At the March session of the United Nations Commission on Human Rights in Geneva, Canada co-sponsored a resolution denouncing the persistent

violations in Guatemala, including the treatment of indigenous Indians by the Government of that country; the initiative was repeated the following year.(231)

Also in March 1981, the Canadian House of Commons mandated a review of "all aspects of Canada's relations with the countries of Latin America and the Caribbean"; hearings were conducted thereon by a Sub-committee of the Standing Committee on External Affairs and National Defence during 1981-82.(232) The Commons' action was induced in the main by the United States' invitation to Canada to participate (along with Mexico and Venezuela) in its Caribbean Basin Initiative, a 'mini-Marshall Plan' for selected countries in the region.(233) Consonant with the strident ideological stance adopted by the Reagan Administration in matters perceived as bearing on East-West relations, it was sought to counteract the effects of the socialist revolution in Nicaragua by consolidating the economies and the governments of friendly nations such as Costa Rica, El Salvador and Jamaica.

The Commons Sub-Committee presented its first review of Canadian policy issues in the hemisphere in December 1981, highlighting the role of international human rights principles therein. Taking note of External Affairs Minister MacGuigan's 1981 statement on 'Human Rights and International Obligations',(234) the review urged the Government to emphasise "Canada's commitment to the protection of human rights ... and to protest vigorously all instances of human rights violations."(235) As for the proposed Caribbean Basin

Initiative, the Sub-Committee questioned the motivation, planning and underlying premises thereof, commending Canada's (as well as Mexico's) "opposition to using the plan as an ideological tool directed against particular countries", and urging the Government to "strongly assert Canada's own distinct policy interests and role."(236) The Sub-Committee's two subsequent reports in 1982 (addressed below), including the July review of Canadian relations with Central America and the Caribbean, were to reiterate the importance of an independent and rights-oriented policy towards the region as a whole.

In the wake of the first review in 1981, the Canadian Government announced an expanded development assistance programme for Central America, consisting of a regional allocation of $106 million for the next five years.(237) The new programme was declared as stemming from "deep concern for the conditions of poverty and economic dislocation in Central America ... beneath the current instability and traumatic social change there". Pending an improvement in "the current level of violence", assistance to El Salvador and Guatemala would remain suspended.(238)

Canada's position on the March-April 1982 elections in El Salvador became a major subject of contention in the context of the orientation of relations with Central America, not least owing to the extent of direct American involvement in the electoral process. Four members of the Sub-Committee on Relations with Latin America and the Caribbean (representing all the federal parties) visited El Salvador and Mexico in

February, cautioning upon their return that it would be "a profound error to view this process solely through an East-West ideological prism", and expressing the "gravest doubts that present conditions ... will allow elections in the next two months to contribute positively to the making of peace."(239)

However, a resolution by the United Nations Commission on Human Rights recommending the postponement of the Salvadoran elections until, inter alia, conditions had developed for the effective exercise of civil and political rights, was abstained on by Canada.(240) Communiques by the NDP and the Canadian Rights and Liberties Foundation called for a less American-influenced policy towards Central America, and a more forthright condemnation of rights violations in El Salvador.(241) Prime Minster Trudeau asserted that Canadian policy already diverged significantly from that of the United States, in opposing arms supplies to El Salvador and in stressing considerations of social justice and peace in the region.(242)

An exposition of Canadian policy on Central America was offered by External Affairs Minister MacGuigan in March 1982 at the University of Toronto, focusing on the situation in El Salvador.(243) Observing that "violations of elementary human rights, atrocities , torture, massacres and murder on an appalling scale" were rife in Central America, the Minister attributed prevailing instability in the region to "poverty, the unfair distribution of wealth, and social injustice", from which stemmed external ideological rivalries. In El Salvador,

according to MacGuigan, the elections offered the prospect of "a balanced solution", and Canada, favouring "democratic government", therefore supported the elections. While decrying the intrusion of East-West rivalries in the region, the Minister asserted that "the U.S.A. and other countries of this hemisphere have legitimate security interests which must be protected."

MacGuigan also related the expanded regional development aid programme of February directly to the Caribbean Basin Initiative, though bilateral aid to to El Salvador would remain suspended. Assistance to Nicaragua was accompanied by Canadian apprehension at "a growing tendency" by the Sandanistas "to depart from their own stated principles of political pluralism and non-intervention in the affairs of other countries."(244) MacGuigan did not refer to the role being played by the United States in the prevailing situation in Nicaragua.

A rather different perspective on Canadian policy towards the countries of Central America (as well as Argentina, Bolivia and Chile) was contained in a brief by the Taskforce on the Churches and Corporate Responsibility (TCCR) submitted to the Commons Sub-Committee on Latin America and the Caribbean.(245) While commending the clear denunciation by Canada of the violations of human rights in Guatemala and El Salvador at the United Nations in 1981, the brief questioned the Government's subsequent support for an IADB loan of $20 million (US) to Gauetmala, on which the United States had abstained on human rights grounds.(246) Strenuous lobbying by

church and other human rights groups had, on the other hand, prompted abstentions by Canada (and a number of West European countries) on loan applications by El Salvador to the IADB in November 1981.(247)

The TCCR brief observed that the Canadian Export Development Corporation (EDC) had extended credits and insurance worth several millions to Guatemala between March and July 1981, further undercutting the credibility of Canada's public condemnation of that country's record on human rights.(248) In addition, Canadian banks had participated to the extent of $180 million in loans to Guatemala that year, to the benefit of "military and commercial interests who are pushing for control of the nation's forestry, agricultural and mineral resources, with the result of further marginalising Guatemala's peasant population."(249)

The Commons Sub-Committee's July 1982 report on Central America and the Caribbean (referred to above) was a seminal assessment of Canadian policies based upon extensive on-site visits, consultations with key Canadian and foreign policy-makers, and briefings from various experts and non-governmental interest groups.(250) Emphasising that "the walls of sovereignty behind which some states commit violations against their citizens do not make them immune to the judgement of others", the report elevated human rights considerations "to a position of priority in Canada's relations with Latin America and the Caribbean".(251)

On Nicaragua's post-revolutionary human rights

situation, the Sub-Committee was critical of press censorship, governmental abuse of police and military authority, and the treatment of the Miskito population by the Sandanistas, but commendatory of the general evolution of the climate of respect for rights and freedoms:

> "Virtually all Nicaraguans with whom we spoke stated that the human rights situation today is much better than it was under Somoza. And yet, intense controversy continues to surround these issues. It is important for Canadians to understand that some of this springs from fundamental differences over the economic and social development of Nicaragua. The Sandanistas have stated that their fundamental objective is to satisfy the basic needs of the historically deprived majority. Such an objective inevitably clashes with entrenched interests, some of whom may seek to use human rights as a rallying cry for the attainment of other objectives." (252) (Emphasis added)

Nicaragua's economic difficulties in connexion with the burden of post-Somoza reconstruction, the 1981 decline in world coffee prices, the constraints on access to financial institutions abroad for credit, were recognised in the report as straining the Government's capacity to fulfil its socio-economic human rights obligations, a situation which was compounded by the state's attitude towards the private sector within Nicaragua.(253) From the standpoint of political stability in Central America, concern was expressed that "Nicaragua is both the subject of hostility and is itself pursuing a course of increased militarization."(254)

In respect of El Salvador, the Sub-Committee noted the continuing large-scale killing of civilians after the March elections - heavy responsibility for which was attributed to the security forces - as well as the problem of casualties from

the ongoing civil war involving the guerillas. The report acknowledged "the tragic fact that the exercise of the right to vote does not by itself guarantee the basic human rights of Salvadorans";(255) with administrative difficulties plaguing the programme of land reform, and an estimated 50% of Salvadoran industrial production halted by guerilla activity, the outlook for the country remained precarious.(256)

The recent history of human rights in Guatemala was characterised by the report as "horrendous"; over the 1978-82 period in particular, a witness before the Sub-Committee considered the country to be "a land off eternal repression".(257) Despite the early optimism as to Guatemala's fate following the coup of 1982 against Lucas Garcia, the evidence indicated minimal change in the status quo. It was recommended that Canada "not resume development assistance to Guatemala, until it is satisfied that the Government of Guatemala has made serious efforts to reduce human rights violations." (258)

Conditionality with regard to development assistance was also recommended for El Salvador (subject to effective implementation of land reform and substantial progress toward reducing official violations of human rights) and Nicaragua (to which continued assistance was supported, subject to the adoption of constraints on the expansion of that country's armed forces).(259) The Sub-Committee was critical of the denial of aid and credit on ideological grounds from international financial institutions to Nicaragua, averring

that "legitimate developmental criteria" alone should determine loan-decisions by the IMF, the IADB, and the World Bank.(260)

On the question of refugees and the displaced, many of whom the Sub-Committee had visited in Central America and Mexico, generous Canadian assistance to local resettlement programmes was urged, consistent with the wishes of the majority of those concerned to remain within the region. The "massive violations of human rights of refugees" in Honduran and Salvadoran camps, especially by the security forces of those countries, was also noted.(261) In the opinion of the Sub-Committee, the plight of those displaced within their own countries merited an expanded definition of "refugee" in the context of their protection in United Nations instruments.(262)

The Canadian Government was encouraged in the report to enlarge its quota of refugees from Central America, in respect of the small percentage of the refugee population that wished to leave the region, and to adopt measures to expedite their entry into this country.(263)

A number of conceptual issues concerning human rights policy- making in general, including the utilisation of trade sanctions and developmental assistance in furtherance of rights-related objectives, were subsequently addressed by the Sub-Committee, in its Final Report of November 1982. Identifying "the promotion of stability" as the overarching objective of Canadian policy in the hemisphere, the Report advocated its pursuit through the "foreign policy purposes" of human rights, trade and investment, development assistance and

security. In recommending that the "promotion of respect for human rights" feature among "the essential purposes and guiding principles of Canadian foreign policy", the Sub-Committee called on the Government to work for the consolidation of those rights in international instruments, and to condemn violations by states irrespective of ideology.(264)

Critically, the Final Report urged "making Central America a region of concentration in Canada's foreign policy" - a region where the failure to meet fundamental economic and social needs should be rectified, hence addressing the underlying causes of instability. Where "gross and systematic violations of human rights make it impossible to promote the central objective of helping the poor", it was suggested that "Canadian development assistance be substantially reduced, terminated or not commenced."(265) In positive terms, substantial aid increases were recommended where states' human rights record showed improvement; in other cases, humanitarian assistance through international agencies, or aid via the private sector and non-governmental organisations working directly with the poor was called for, with support for "those struggling for human rights."(266)

Somewhat ambiguously, the Sub-Committee, while favouring due compliance with United Nations trade sanctions against repressive governments, rejected generally the application of such sanctions by Canada in pursuance of human rights objectives. The recommendation was premised not upon questions relating to the effectiveness of the sanctions, but simply on

Canada's need for substantial "commercial relations".(267) Furthermore, the severance of Canadian arms exports to governments engaging in serious violations was only supported where the supplies would be of "direct use to governments in enforcing repression." The Report did, nevertheless, recommend the use of trade "as leverage to provide Canadian support to organisations which are struggling to promote human rights", and the rewarding of improvements in rights-records with increased trade.(268)

In an extended analysis of the long-standing question of Canada's membership in the OAS, the Report recommended, partly on the basis of greater potential for Canadian influence on hemispheric human rights practices, that full membership be sought. While lamenting the recent tendency of OAS members to dilute and challenge the important work of the IACHR, the Sub-Committee perceived this as reflecting upon the efficacy of the Commission's investigative work and the ensuing public reports.(269)

Responding in May 1983 to the Sub-Committee's Final Report, the Taskforce on the Churches and Corporate Responsibility (TCCR) questioned the rationale underlying the recommendation against the application of trade sanctions on human rights grounds, deploring the prevalence of profit considerations over principle.(270) The TCCR further criticised the Report's recommendation on Canadian military exports to rights-violators, arguing that even the current Canadian policy

in that regard (which, in any case, had recently been breached vis-a-vis exports to the Honduras) was broader in scope than that favoured by the Sub-Committee.(271) Both the preceding sets of issues will be considered under the appropriate rubrics below.

With reference to the relationship between regional stability and the promotion of human rights in the conclusions of the Final Report, the Taskforce opposed the presumptive priority accorded the former qua the central objective in Canadian foreign policy:

> "In cases of gross and consistent violations of human rights, where all democratic means of redress have been exhausted and when faced with institutionalised violence, armed struggle for the establishment of a more just social order could well be acknowledged and understood as a legitimate last resort. Not to do so might be interpreted as an acceptance of the legitimacy of continued repression for the sake of 'stability'."(272)

As in the case of Canadian policy on South African apartheid, however, it is highly improbable that the dichotomy between governmental and non-governmental perspectives on the issue can readily be reconciled in political terms, particularly in view of the primacy in transnational relations of the principle of state sovereignty.(273)

Notwithstanding differences on specific recommendations in the reports of the Commons Sub-Committee, widespread support for their general thrust, as well as for the review-exercise per se, was expressed by various commentators and rights-activists alike. Foreign affairs analyst John R. Walker described the investigative work of the Sub-Committee as "a

unique experiment in parliamentary intervention in Canada's foreign policy", speculating that "it might eventually help modify some of the more rigid policy stances of the Trudeau government, and reflect a more distinctly Canadian policy viewpoint, especially in relation to the Reagan administration's ideological outlook on the Caribbean and Latin America."(274) The TCCR observed in responding to the Final Report that its own substantive comments were not to be construed as an overall criticism of the "thorough and careful assessments" undertaken by the Sub-Committee.(275)

Two speeches by External Affairs Minister Allan MacEachen - in April and June 1983 - addressed human rights issues in the Government's current policies towards Central America. In his remarks to the Canadian Human Rights Foundation in April, the Minister noted that Canada had not hesitated to publicly condemn the violations in El Salvador and Guatemala, and that the suspension of assistance to those nations reflected the Government's willingness to condition aid on the absence of gross abuses of human rights.(276) The complex of rights-aid linkages proposed in the Final Report of the Commons Sub-Committee was not, however, endorsed by the Government. MacEachen also asserted that while this country would refrain from arms sales to states "whose human rights practices are wholly repugnant to Canadian values", the adoption of unilateral trade sanctions on human rights grounds would be ineffective and therefore unacceptable.(277)

The Minister's address in June to a non-governmental seminar on 'Latin America and it Relationship with Canada' espoused an overtly pro-American perspective on the question of political stability in Central America, and the violation of human rights in that context.(278) Although unable to "condone the activities of left-wing guerilla groups seeking to overthrow a legitimate government" in El Salvador, MacEachen apparently had no such difficulty with the parallel situation facing the "legitimate government" in Nicaragua.(279) The Sandanistas were reproved for their "increasing tendency towards authoritarianism", as well as for their ideological "export of violence", even as 'strategic American interests' in the region were accorded full support by the Minister.(280) On the other hand, the Contadora initiative for political dialogue in Central America was lauded, as were the efforts of the IACHR.(281)

In considering the impact of the parliamentary review of Canada's hemispheric relations upon the policies of the Trudeau Government, it might be contended that the general emphasis of the latter - as reflected in MacEachen's expositions in 1983 - was not entirely inconsistent with the priority given by the Sub-Committee in its Final Report to the promotion of stability as an overriding objective. The context of analysis of the situation in Central America, however, appeared to be as ideological in its East-West idiom as it had been prior to 1982, if not more so. Canada's approval of the IACHR's work did

not induce participation therein through membership in the OAS; nor did the Government join in the Contadora initiative, despite expressing support for its efforts in Central America. Parliament remained skeptical of the Government's willingness to adopt a policy in the region independent of that of the United States, thus intrinsically limiting the scope for a human rights-oriented approach to such issues as development assistance, multilateral institutional credits, and bilateral commercial relations.(282)

The preceding questions featured in an exchange between the Department of External Affairs and the Canadian Inter-Church Committee on Human Rights in Latin America (ICCHRLA) during 1983-84, an exchange that also encompassed the problems of refugees and the displaced in Central America.(283) The Government maintained its traditional position as to the exclusion of human rights criteria from its voting decisions at the IMF, the World Bank, the IADB, and other multilateral institutions, on the basis that their charters proscribed the application of non-economic considerations by the Executive Directors.(284) It will be recalled that the Commons Sub-Committee had recommended that ideological considerations be excluded from such decision-making in respect of states such as Nicaragua, and that "legitimate developmental criteria" alone be determinative. No attempt was made either by the Government or the Sub-Committee to address the divergence in Canada' s approach to financial assistance at the bilateral level (where human rights criteria were declared to be

material) and in the multilateral context, an inconsistency accentuated by the adoption of human rights criteria at the multilateral institutional level by the United States.

Canada's oft-declared opposition to the orientation of the Reagan Administration's policies towards Nicaragua was reiterated in the Government's exchange with the ICCHRLA, particularly in the context of this countrty's support for the demilitarisation of the region through the Contadora process.(285)

The Government also pledged support for UNHCR resettlement projects for Guatemalan and Salvadoran refugees living under difficult conditions in Honduras;(286) consistent with the ICCHRLA's recommendation, emergency assistance to those internally displaced in El Salvador and Guatemala would only be disbursed through non-governmental organisations and international agencies.(287) As to the more generous admission of Salvadoran refugees into Canada where their protection was urgently necessary, the Government referred to its "regular and frequent representations" on behalf of political prisoners in that country, and the special 1983 programme for their admittance. However, Canadian policy requiring Guatemalan refugees to obtain exit visas from their Government in advance of applying to enter Canada would remain unchanged; it was maintained that those facing difficulty in obtaining such visas could resort to the alternative of "overland travel to an adjacent country" in order to apply - a less than humane posture in view of the prevailing level of violence not only in

2. Affirmation of Relevant International Rights Instruments

As evident from Section A:II above, the situation of human rights in Central America, like that of apartheid in South Africa, has implicated the full spectrum of norms contained in the International Bill of Rights. In particular, the systematic assault on the fundamental right to life and personal security in Central America during the final phase of the Trudeau era (1979-84) defied comparison in intensity and scope with any non-war situation in recent history (with the possible exception of the genocide in Kampuchea under Pol Pot).(291)

Canada's affirmation of the International Bill of Rights constituted a firm legal basis for the denunciation of violations in Central America, as did the normative effects qua customary law of provisions of the Universal Declaration of Human Rights.(292) El Salvador and Nicaragua became parties to the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, in 1979. Article 4 of the Civil and Political Rights Covenant restricts 'state of seige' declarations to public emergencies which threaten "the life of the nation." Moreover, no derogation is permissible thereunder from, inter alia, "the inherent right to life" (proclaimed in Article 6) and the right not to be subjected to "torture or to cruel, inhuman or degrading treatment or punishment."(Article 7). Since 1980, nevertheless, such declarations in those nations have circumscribed the essence of a host of civil-political rights.

Pertinent as well at the global level, in view of the record of treatment accorded the Indian population in Central America, was the Convention on the Prevention and Punishment of the Crime of Genocide, which Canada and Guatemala have both ratified. Numerous references were made by international human rights monitors in the 1979-83 period to the genocidal policies of the Guatemalan government;(293) in the Canadian Parliament, public condemnation of the "genocidal war being waged against Indian people by the guatemalan government of Rios Montt" was called for in March 1983.(294) The provisions of the Genicide Convention were not, however, invoked by state-parties in international fora.

In the hemispheric human rights context, Canada's non-membership in the OAS, and therefore in the Inter-American Commission on Human Rights (IACHR), deprived the Trudeau Government of a vital arena for effective policy implementation. The 1969 American Convention on Human Rights (Pact of San Jose), operative since July 1978, became the principal instrument for the monitoring and protection of civil-political as well as socio-economic-cultural rights in the Americas, overseen by the IACHR and the Inter-American Court of Human Rights.(295) By 1979, all the states of Central America (except Belize) were parties to the Convention, and the Commission on Human Rights had published comprehensive critiques of the prevailing situations of human rights in El Salvador and Nicaragua; Guatemala was added to the list in 1981.(296)

The American Convention is premised on "a system of personal liberty and social justice based on respect for the essential rights of man" within a democratic framework,(297) and requires states parties to effectuate through national legislation or other measures the "rights and freedoms" protected in the Convention.(298) Derogation from the obligations of the Convention is confined under Article 27 to

> "time of war, public danger, or other emergency that threatens the independence or security of a State Party ... to the extent and for the period of time strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law and do not involve discrimination on the ground of race, color, sex, language, religion or social origin."

Article 27 further prohibits the suspension under any circumstances of, inter alia, the right to life (Article 4), the right to humane treatment (Article 5), the freedom of conscience and religion (Article 12), the right to nationality (Article 20), the right to participate in government (Article 23), or "the judicial guarantees essential for the protection of such rights."(299) While modelled on Article 4 of the Civil and Political Rights Covenant referred to above, Article 27 of the Convention is more elaborate in its characterisation of circumstances allowing for dergation from human rights obligations, and in its enumeration of non-derogable rights and freedoms.

Similarly, the right to life in the American Convention is construed as proscribing the infliction of capital punishment "for political offenses or related common

crimes"(Article 4, para.4), beyond the provisions of the Civil and Political Rights Covenant. The IACHR successfully invoked the proscription (ultimately at the regional Court of Human Rights) against Guatemala's establishment of Courts of Special Jurisdiction, which were authorized to apply the death penalty in arbitrarily described situations.(300)

Reports of the IACHR since 1979 have systematically investigated the implementation in Central America of civil and political rights protected in the Convention, and, to a lesser degree, the attainment of social and economic rights.(301)

The Commission's work received considerable commendation from Canadian sources during 1982-83, including the Department of External Affairs.(302) Commenting on the human rights dimension in prospective Canadian membership in the OAS, the Final Report of the Commons Sub-Committee on Latin America and the Caribbean held that the IACHR enjoyed "an excellent reputation for objectivity and accuracy in its investigation of human rights violations", to the point that "those countries with the worst human rights records are now disputing the right of the Commission to ivestigate their "internal problems".(303) The Report also observed that the Commission's recommendation's and reports were confronted with the current tendency in the General Assembly of the OAS to "weaken" their impact.(304)

According to External Affairs Minister MacEachen, the Trudeau Government was considering in 1983 - following the Commons Sub-Committee 's Final Report - "whether Canada should go beyond its current status (at the OAS) ... but a decision to

join ... would have to be based on a firm conclusion that it would have decisive advantages for our political relations with Latin American states and for the promotion of Canadian interests in the region."(305) There was no indication that the Government considered potential Canadian influence upon the human rights activities of the Organisation as an important factor in the membership question, as had the Sub-Committee in its Report.

Finally, with respect to the issue of refugees and the displaced in Central America (addressed distinctly in Section A:II above), the application of the 1951 Convention on the Status of Refugees, and the 1967 Protocol thereto, remains to be considered.(306) Those instruments provide for the basic international definition of refugee-status,(307) prohibit the expulsion of a refugee to territories where his life or freedom would be threatened on a discriminatory basis (non-refoulement),(308) and require state-parties to co-operate with the United Nations High Commissioner for Refugees (UNHCR) in its function of protecting the beneficiaries of the Convention and the Protocol.(309) Canada acceded to both agreements in 1969,(310) incorporating the Convention-definition of a refugee into the 1976 Immigration Act.(311) As already indicated, the UNHCR has been instrumental in resettlement efforts on behalf of Guatemalan, Nicaraguan and Salvadoran refugees throughout Central America and Mexico; Canada's contributions to those efforts, official as well as non-governmental, have been significant over a number of

years.(312)

Although most countries in Central America had acceeded by 1979 to the Convention as well as the Protocol, hence facilitating full-scale UNHCR involvement in protecting the refugee population, Guatemala and Honduras remained non-parties despite hosting large numbers of refugees. (313)

The most intractable problem in this connexion, however, appertained to the condition of those internally displaced, estimated at well in excess of one million individuals by 1984.(314) The Refugee Convention and the Protocol do not extend in scope to those displaced within their own countries of origin or habitual residence, thus providing no legal basis for UNHCR intervention on their behalf.(315) Rather, the International Committee of the Red Cross has played the principal protective role in such situations, supported in many situations by the provisions of the Geneva Conventions, but subject to the vagaries of national sovereignty in all cases.(316)

The Commons Sub-Committee's report on Central America and the Caribbean (July 1982) expressed particular concern over the plight of the displaced population in the region.(317) Observing that recent events generating the widespread displacemnent of people throughout the world have effectively altered the de facto definition of a refugee, the Sub-Committee urged the Government "to raise in the General Assembly of the United Nations the question of expanding the definition of a refugee to include in it persons who have been displced but are

domiciled in their own country."(318) Equally, the Sub-Committee called for a wider definition of the term 'refugee' in Canadian legislation, consonant with changing international circumstances, and pursuant to the Government's own 1982 'Refugee Definition Guidelines'.(319)

Within the prevailing Convention definition of a refugee, moreover, the Government was called upon to expand its quota for admissions from Latin America and the Caribbean, and to improve the existing Canadian refugee status determination process.(320) It was recommended also that the Governments of Guatemala and Honduras (as well as of Mexico) be encouraged to ratify the 1951 Convention and the 1967 Protocol, thus contributing towards the amelioration of poor camp conditions within their territories.(321)

Special admissions programmes for the small numbers of Guatemalans and Salvadorans - particular political prisoners - wishing to settle in this country were indeed implemented by the Government,(322) while the processing capacity for refugee-claims from within Guatemala and Mexico was enhanced.(323) However, upon the conclusion of the Trudeau Government's term in office, most of the more far-reaching recommendations of the Commons Sub-Committee remained unadopted.

3. Initiatives at Transnational Fora

The sustained large-scale violation of individual rights to life and security of the person, as well as of elementary civil-political liberties in Central America since 1980 have featured consistently on the agenda of the United Nations Commission on Human Rights (Geneva). Canada's membership in the Commission, spanning three successive terms between 1976 and 1984, offered an opportunity not only for the articulation of evolving policy positions on relevant issues, but also for a contribution towards the strengthening of multilateral procedures for the monitoring of conditions in Central America and elsewhere. Aspects of the post-1979 situation in El Salvador, Guatemala and Nicaragua were also considered by other organs of the United Nations - notably the Security Council and the General Assembly - with varying degrees of emphasis upon questions of human rights.(324)

In the regional multilateral context, the OAS and in particular the IACHR, coupled with the more ad hoc 'Contadora Group' of South and Central American representatives,(325) constituted potentially relevant forums for the advancement of policy interests apropos Central America, including those relating to human rights. The role of the Contadora process in seeking to encourage non-military, democratically-oriented and local solutions to the conflicts in El Salvador and Nicaragua reflected the declared premises of Canadian policy in the region.

Prior to assessing the scope of the Trudeau Government's

relevant initiatives in the regional (hemispheric) sphere below, this segment will survey Canada's general voting behaviour at the United Nations Commission on Human Rights, qua a reflection of rights-policy orientation at the global level. In both cases, due consideration will be extended to the interaction between Canadian and United States policy-making towards the countries under study, as a factor influencing the Government's readiness to address issues of socio-economic and civil-political rights alike in the prevailing situation in the region.

The Commission on Human Rights first considered the condition of fundamental human rights and freedoms in Central America in 1980, adopting a resolution expressing "profound concern" at the deteriorating situation in Guatemala.(326) Canada co-sponsored all but one of the progressively stronger resolutions on Guatemala passed at the Commission through March 1984 (see Table 3:2 below); reference was made at the latter date by the Commission to "the violence against non-combatants, widespread repression, massive displacement of rural and indigenous peoples, disappearances and killings ... recently reported to have increased."(327)

Table 3:2 Canada's Voting Pattern on Resolutions Concerning the Situation of Human Rights in Central America, UN Commission on Human Rights, 1980-84

Year	Subject Country	Canadian Vote	U.S. Vote	Overall Vote(a)
1980	Guatemala	In Favour	Abstained	26-12-14
1981	El Salvador	In Favour	Abstained	29-2-14
	Guatemala	In Favour(b)	Abstained	28-2-10
1982	El Salvador	Abstained	Opposed	25-5-13
	Guatemala	In Favour	Abstained	29-2-12
1983	El Salvador	Absent	Opposed	24-5-13
	Guatemala	In Favour	Opposed	27-4-12
1984	El Salvador	In Favour	Opposed	24-5-13
	Guatemala	In Favour(b)	In Favour	36-1-05

(a) Numerical record below in order of votes in favour, opposed and abstaining.

(b) Resolution co-sponsored by Canada.

Source: UN Commission on Human Rights, Annual Report (respective years); Canada, Department of External Affairs.

Substantial voting majorities supported each of the resolutions, notwithstanding divergent ideological perceptions of the socio-political situation in Guatemala and the region as a whole.

El Salvador entered the Commission's agenda upon the request of the General Assembly in December 1980;(328) a resolution by the Commission in March 1981 deplored "the murders, abductions, disappearances, terrorist acts and all grave violations of human rights and fundamanetal freedoms" in that country.(329) Subsequent appeals were rendered for the restoration of civil-political and socio-ecomomic rights in El Salvador without external intervention, predicated upon a dialogue between official and opposition forces as "the only way" to achieve an appropriate climate guaranteeing "full enjoyment of human rights."(330) Canada cast an abstaining vote on the Commission's 1982 resolution and absented itself altogether from the 1983 vote (see below) while supporting the majority positions in 1981 and 1984.(Table 3:2)

Common to the Commission's resolutions on both El Salvador and Guatemala was the plea to all concerned parties in the ongoing civil strife to heed "relevant norms of international humanitarian law applicable in armed conflicts of a non-international character" (specifically Article 3 of the 1949 Geneva Convention, and the 1977 Additional Protocol II), requiring "a minimum standard of protection of human rights and of humane treatment" of the civilian population.(331)

Canada's Ambassador to the Commission, Yvon Beaulne, was

strongly critical of the collapse of the rule of law in those countries, observing that despite protestations of good faith in dealing with rights-violations, "l'ecart entre les bonnes intentions et les faits reste immense."(332) But the Ambassador sought to have the Commission express its resolutions on the continuing outrages in those countries in 'moderate language', apparently with a view to fostering 'conciliation' among the belligerents.(333)

The Commission's 1982 resolution on El Salvador - abstained on by Canada - referred implicitly to the impending elections that year, stating that "conditions ... for the effective exercise of civil and political rights ... do not exist at the present time", and urging the Salvadoran Government "to work together with all representative political forces" toward "appropriate conditions for the establishment of a democratically elected Government."(334) In explaining the Canadian position thereon, Ambassador Beaulne maintained that the Commission exceeded its mandate in pronouncing upon matters other than the existing condition of human rights in El Salvador.(335) It will be recalled,in any case, that this country officially endorsed the conduct of the elections (which were sponsored largely by the United States), with Canadian observers in attendance at the polls.(336)

Similarly, Canada declined to vote on the Commission's 1983 resolution on El Salvador, following the rejection of a Canadian draft resolution that sought to exclude 'political' considerations from the appraisal of human rights conditions in

that country (specifically in respect of external military intervention). Minister of State for External Affairs Charles Lapointe informed Parliament after the Canadian abstention that the Government considered "the human rights issue (in El Salvador) ... so important that the UN Human Rights Commission was not the appropriate forum for taking a position with a political impact ... (I)t was preferrable to make an appeal on humanitarian grounds to condemn the obstruction of full protection of human rights."(337)

The preceding suggests an expedient 'compartmentalisation' of questions relating to human rights in Canadian policy-making, gua a humanitarian issue distinct from other matters engendering "a political impact", a tendency adverted to in Part 1 of this dissertation. The Canadian Government appeared content with supporting rhetorical denunciations of the human rights situation in El Salvador - without more and in 'moderate language'. Notwithstanding Ambassador Beaulne's stated concern over the Commission's mandate vis-a-vis the Salvadoran elections, Canada subsequently co-sponsored a resolution referring expressly - and in favourable terms - to forthcoming elections in Guatemala in 1984.(338) Significantly, the Commission's 1982 resolution on El Salvador was endorsed by 25 member- states, including France, Italy, Mexico and the Netherlands, and opposed only by Argentina, Brazil, the Phillipines and the United States.

In light of the foregoing, it is difficult to avoid the inference that the Canadian vote was influenced in the main by

the Government's concurrence with overarching American policy objectives in post-1979 El Salvador, centering upon hemispheric ideological and strategic concerns. Nor were those concerns straddled in the context of Canadian demarches respecting international efforts at fostering a meaningful peace in Central America, not least within the Contadora process.

As already indicated, the Trudeau Government's declared support for Contadora intiatives in El Salvador and Nicaragua during the 1982-84 period was not accompanied by Canadian interest in participating therein, despite seemingly shared perceptions of the major obstacles to enduring social justice and stability in the region. Even Canada's support for the Contadora denunciation of the mining of Nicaragua's harbours by the United States in early 1984 was qualified by the insistence that the Reagan Administration's "serious violation of international law" be seen "within the overall context of events in Central America".(339) External Affairs Minister Allan MacEachen's assertion that the Contadora Group shared that perspective on the situation was undercut by statements made by member-nations amidst further developments in this regard.(340) The Canadian Government appeared insufficiently concerned over the implications of, on the one hand, favouring the Caribbean Basin Initiative and other American-sponsored regional undertakings, while professing, on the other hand, strong agreement with the Contadora stand against external intervention and ideological manipulation in the prevailing

conflict.

This country's willingness to pursue independent rights-related initiatives on Central America was somewhat more in evidence at the United Nations, where appropriate procedures for the monitoring of political disappearances and killings - particularly in El Salvador and Guatemala - were urgently sought after 1979. The establishment of a Working Group on Disappeared Persons, and the strengthening of the investigative role of the 'Special Rapporteur' with respect to various situations of severe human rights violations, were the results of longstanding efforts by Canada (in co-operation with like-minded states) at the Commission on Human Rights.(341) Yet this country's desire for improved multilateral mechanisms in support of the effective implementation of human rights must be perceived also in conjunction with the readiness to submit to overriding "political implications" thereof, as occured in connexion with El Salvador in 1982.

More seriously, non-membership in the OAS, and hence in the IACHR, has surely deprived the Canadian Government of a significant opportunity to contribute towards the consolidation of hemispheric processes for the protection of fundamental rights and freedoms, parallel to efforts at the United Nations. Further, both the OAS and the IACHR might have furnished platforms of considerable pragmatic value for Canadian demarches towards the post-1979 crises in Central America, as well as greater inducement to play an active part in the Contadora process.(342) Analogous is the role of the

Commonwealth in Canada's relations with the apartheid regime in South Africa, generating the most far-reaching action undertaken in the sphere of Canadian human rights foreign policy. Enhanced participation by this country in hemispheric institutions would require, however, a readiness to assert Canadian policy priorities - including those pertaining to the advancement of human rights - in the face of frequently divergent United States policy objectives, a matter in which the Government has been found wanting with reference to the situation in Central America.

4. Action at International Financial Institutions

The traditional Canadian policy of excluding human rights criteria from decision-making on multilateral financial credits was reaffirmed on numerious occasions vis-a-vis post-1979 Central America. By 1984, the regional Inter-American Development Bank (IADB), the International Monetary Fund (IMF) and the World Bank (IBRD) had collectively provided financing worth $525.3 million (US) to El Salvador, $676.7 million (US) to Guatemala and $248.8 million (US) to Nicaragua (see Table 3:3 below). With control over a voting-share averaging 4% at those institutions, Canada opposed none of the preceding credits, though abstaining on non-human rights grounds on a number of decisions.

The data in Table 3:3 yield a broad comparative perspective on the distribution of multilateral assistance from the three principal sources to the nations under study during 1980-83. Juxtaposed with the socio-geographical data provided earlier (Table 3:1), the inverse correlation between apparent socio-economic needs (as reflected by the 'basic indicators' in Table 3:1) and the quantum of multilateral funding available is evident.(343) A second inverse correlation obtains between the latter and prevailing levels of respect for human rights in El Salvador, Guatemala and Nicaragua - in terms particularly of the scale of civilian non-combatant deaths from political violence.(344)

Relevant provisions of the 'Articles of Agreement' governing the operations of the major international financial

institutions were discussed in Part 1 of the dissertation, as well as in the context of multilateral lending to the South African Government in Part 2. It will be recalled that in the latter instance, political-ideological factors were considered to have significantly influenced decision-making by the IMF and the World Bank, notwithstanding an ostensibly 'neutral' voting policy on the part of member-states.

North American human rights organisations have published extensive reports suggesting the systematic utilisation of its dominant vote by the United States at each of the institutions concerned in furtherance of national political objectives in Central America - to the benefit of El Salvador and Guatemala, and the detriment of Nicaragua. (345) It is further maintained that Canada, in excluding human rights (along with other 'political') criteria from its voting-decisions, has in effect conformed to the aforementioned trend in American policy. Although the confidential nature of the decision-making process at these institutions forestalls a methodical survey of all pertinent information attendant to the voting on each of the credits at issue, a considerable amount of such information is 'leaked' to public sources when controversial decisions are reached. Supplemented by official data released by the institutions (in annual reports and elsewhere) - cited in Table 3:3 below - critical analysis is facilitated of voting patterns on loan-decisions, and of their implications for human rights practices and policies.

The appraisal below details a series of generally

well-publicised and often contentious multilateral credits to Central America, including the voting tendencies thereon in the policies of Canada as well as other influential member-states; there follows a discussion of pertinent ramifications for this country foreign policy. The available evidence would seem to indicate that, despite the overtly apolitical criteria contained in the institutions's charters, and professed in official statements by Canada and other nations, multilateral loans to Central America have been subject to discernible patterns of politicisation, and failed to comport with international obligations flowing from norms of human rights.

El Salvador

The IADB was the major source of multilateral credits to El Salvador after 1979, providing $347.2 million (US) by the end of the 1984 financial year. As indicated in Table 3:3 below, the assistance was directed primarily at the agrarian reform programme (discussed in Section B above), and at the construction of rural roads, a bridge and a dam, located predominantly in 'conflict zones'.

Canada, Denmark, Mexico and West Germany declined to support a December 1981 loan of $45.4 million (US) for the agrarian programme, on the basis that its implementation under prevailing conditions of warfare could not be adequately assured as required under the Bank's charter.(346) Nevertheless, the affirmative vote of the United States - with control over 35% of aggregate voting shares, and with a direct

stake in the agrarian programme - ensured the passage of the credits. Similarly, a November 1981 loan worth $30.8 million (US) was extended by the Bank for road construction in north-western El Salvador, an area embroiled in the civil conflict, despite Canadian, Scandinavian and West German objections over the feasibility of the project.(347) The position of the United States was instrumental in the final decision, as it was in its concurrent opposition to virtually identical project-credits to Nicaragua.

Further loans in 1982-83 for the construction of the San Lorenzo hydroelectric dam and the reconstruction of the Golden Bridge (spanning the Lempa River), both being guerilla targets in the ongoing war, reinforced the 'strategic' character of IADB financing for El Salvador. The dam project was to be subject to weekly power-severance through guerilla attacks, while the Golden Bridge was destroyed in October 1981, presenting a formidable and costly challenge to reconstruction.(348) As already indicated, El Salvador's prevailing record of respect for fundamental human rights was also poor, and subject to severe public criticism by Canada. Yet this country expressed no opposition to the credits, in respect of which a contribution of $7.4 million (US) was tendered by the Trudeau Government.(349)

Substantial assistance was also advanced to El Salvador by the IMF, in the sum of $178.1 million (US), under highly questionable circumstances. A July 1981 loan of $36.4 million, for instance, was granted without the customary institutional

staff evaluation, prompting strong opposition on procedural grounds from West European members.(350) Under the Fund's normally stringent regulations, credits from the Compensatory Financing Facility are subject to a staff confirmation as to the temporary nature of export short-falls in the balance-of-payments situations of borrowing countries. Such a confirmation was denied the Salvadoran application to the Facility, owing to the uncertainties attending that country's politico-economic condition.(351)

The Netherlands' representative on the IMF Executive Board observed, in opposing the loan, that the latter traditionally "discusses requested transactions only on the basis of a staff paper that seeks to establish the validity of the request in the light of the Fund's policies. Even a single deviation from that principle would set a serious precedent."(352) The United Kingdom, West German and other European directors similarly questioned the propriety of the credits, which they declined to support. The United States, however, criticised as unduly pessimistic the position of the IMF staff in denying the Salvadoran application the conventional evaluation.(353) Canada's representative, with "some reservations", supported the American view; additional affirmative votes from Italy and a number of Third World states resulted in the approval of the loan.(354)

Far from representing a mere technicality, the West European objections to the financing were premised upon the IMF's need for for circumspection in "underwriting chronic

balance-of-payments deficits", essential in preserving the Fund's image "as an even-handed dispenser of money" to economically-troubled nations.(355) Instead, as with the 1982 loan to South Africa - for which Canada's 4% voting share was also cast with the United States' 19% - the Fund's decision-making was widely perceived as being manifestly political.(356)

In July 1982, El Salvador successfully obtained additional credits from the IMF - totalling $84.7 million (US) - over the opposition of several countries in regard to the low conditionality attached thereto.(357) A follow-up review of that country's economic performance by the Fund in May 1983 cautioned that conditions had declined further owing to the civil war, with no recovery anticipated in the short-term.(358) Indeed, the Fund had already undertaken by 1982 to increase its level of conditionality worldwide in extending loans, upon the urging of the United States Government; the policy appears not to have been applicable to El Salvador.(359) No further assistance, however, was extended to the latter by the IMF in subsequent years.

Guatemala

Despite international condemnation of the Lucas Garcia regime for its record of egregious human rights violations, Guatemala received $206 million (US) in IADB and World Bank loans during 1980-81, directed in significant proportion away from what might be construed as 'basic human needs' (see Table

3:3). It is noteworthy that in the voting for a November 1981 IADB loan for the Chixoy hydroelectric project in Guatemala, the United States abstained in accordance with national legislation affecting multilateral assistance to gross violators of international human rights (the exception in favour of assistance for basic human needs being regarded as inapplicable to the loan-request).(360) Canada, however, voted affirmatively thereon, contributing to its ultimate approval.

Following the overthrow of the Garcia regime by Rios Montt in 1982, Guatemala's application for $18 million (US) in IADB credits for a rural telephone system was reconsidered, having previously been opposed by the United States.(361) Non-governmental organisations in this country as well as the United States lobbied strenuously against the application, maintaining that widespread reports of political killing and torture by the new regime were already emerging, including the massacre of rural Indians as part of the army's 'counter-insurgency' campaign.(362) It was feared that the proposed telephone system would contribute in the main to consolidating military repression against the rural population, rather than to general civilian welfare, as claimed by the Guatemalan Government. Members of the United States Congress also expressed their concern over the loan on human rights grounds.(363)

Even as Canada co-sponsored a 1982 United Nations General Assembly resolution condemning the persistent violation of fundamental rights in Guatemala,(364) the Reagan

Administration informed Congress that it no longer considered that country to be a gross and systematic violator of human rights, and would therefore support the passage of the IADB telephone credits.(365) Somewhat remarkably, the Canadian Government voted with the United States in endorsing the Guatemalan loan in December 1982.

An additional $167.5 million (US) was advanced by the IADB to Guatemala in 1983, once agains for projects generally outside the basic needs category (see Table 3:3). Canada voted in favour of all the credits, despite the Government's continuing public denunciation of that country's human rights pratices.(366)

The following year, in the wake of yet another coup d'etat in Guatemala, the IMF had no hesitation in providing $63 million (US) to a patently unstable client-state.(367) The World Bank also financed telecommunications and industrial promotion in Guatemala in the amount of $50 million (US) during 1984 - though declining to support educational and water-supply projects in Nicaragua.(368)

Commenting editorially on the Canadian Government's inconsistency in aiding as well as denouncing Guatemala at the international level, the Globe and Mail (Toronto) saw the loan-decisions as "influenced not merely by ... economic needs, but by ... political affiliation", and called instead for a Canadian policy of "conscionable credits", at least in the context of assistance by the multilateral development banks.(369)

Nicaragua

Post-revolutionary Nicaragua had relatively little difficulty in procuring $168 million (US) in IADB and World Bank credits through 1981, when relations with the United States Government were not openly hostile. Canada also supported the loans, directed primarily at economic reconstruction in Nicaragua.(370)

During late-1981 and 1982, however, the Sandanista Government was unable to elicit IADB financing for the revitalisation of the national fisheries industry (a casualty of former President's Somoza's final appropriations of boats upon his departure in July 1979).(371) A credit request of $30 million (US) was 'vetoed' by the United States (with the concurrence of Argentina and Chile), consonant with the Reagan Administation's avowed opposition to Nicaragua's ideological orientation.(372)

Observing that economic reasons could always be cited to disguise politicised decision-making and voting at multilateral institutions, Jan Shinpoch, then staff director for the United States House of Representatives Sub-Committee on International Development Institutions, deplored the Administration's position on the fisheries loan, remarking:

> "The Nicaraguans wanted to rebuild their fishing fleet which Somoza ran off with. It was obvious the money could could not be used to build indoctrination centres for 6-year olds."(373)

By late-1982, the Nicaraguan Government had succeeded in gaining Argentinian support for its application to the IADB,

following the Sandanistas' vocal backing of that country in the Falklands war.(374) A realignment ensued in the voting at the Bank, with the Directors endorsing $34.4 million (US) in credits for the Asturias hydroelectric project in Nicaragua, as well as $30.7 million (US) for the fisheries industry.(375) Canada was alleged to have shared in the widespread resentment at the IADB over what was perceived as a systematic American campaign against multilateral assistance to Nicaragua, a situation that persisted through the 1984 financial year.(376)

According to an October 1981 study by the World Bank on the Nicaraguan economy, the national recostruction effort was proceeding satisfactorily, and long-term prospects appeared favourable if foreign assistance and sound economic managament were sustained.(377) Yet a January 1982 loan application for $16 million (US) for storm drainage and the protection of bus routes in the Managua area was opposed by the United States (on express instructions from the Reagan Adminitration to the American delegate, who favoured the loan).(378) No other member voted against the application, which the World Bank approved.

In February 1982, a World Bank management staff paper recommended - notwithstanding the favourable assessment of October 1981 - that certain sectors of the Nicaraguan economy be denied additional funding, viz. education, water supply and rural road construction.(379) The country's requirements for water and roads were considered insufficiently urgent, though elsewhere the same report recognised that the population was in dire need of both. Nicaragua's educational requirements were

regarded as well provided for through alternative sources, and a $40 million (US) request for a literacy project was rejected in the report. It will be recalled that cognate developmental undertakings in El Salvador and Guatemala were judged worthy of support by the multilateral banks,(380) arguably in circumstances less congenial to their successful implementation. Nicaragua was to receive no further assistance from the World Bank after 1983.(381)

The last credits advanced by the IMF to Nicaragua - in the amount of $66 million (US) - were procured by Anastasio Somoza on the eve of his downfall in 1979, with the concurrence of Canada as well as the Carter Administration.(382) Opposition to the credits by the insurgent Sandanistas, and by church and human rights groups, failed to prevent the Fund's approval. Somoza departed therafter with the national treasury, including the portion of the IMF credits already granted.(383) In August that year, the Fund 'cancelled' the loan, hence requiriung its immediate repayment; the new Government accepted responsibility for the debt, but declined entering into a conditional arrangement the terms of which conflicted fundamentally with the socio-economic tenets of the national revolution.(384) Relations between the Fund and the Nicaraguan Government soured, and have remained poor at a time when the country's external financing needs are acute.(385)

Table 3:3 IADB, IBRD and IMF Assistance(a) to El Salvador, Guatemala and Nicaragua, Fiscal 1980-84 (US$ millions)

Country	1980	1981	1982	1983	1984
El Salvador	63.4 (IADB:agric/ export aid)	48.4 (IADB:roads/ agric/export aid)	121.4 (IADB:agric/ indus/ export aid)	13.5 (IADB:San Marcos br/ proj eval)	100.5 (IADB: indus/ agric)
	57.0 (IMF)		84.7 (IMF)		
Guatemala	76.5 (IADB:agric/ health)	110.5 (IADB:Chixoy hydro/animal health)	46.0 (IADB:rur tel/educ)	167.5 (IADB:urban dev/water/ indus)	13.9 (IADB: agric)
	17.0 (IBRD:roads)		111.4 (IMF)	18.5 (IBRD:educ)	50.0 (IBRD: tel)
					63.0 (IMF)
Nicaragua	69.0 (IADB:agric/ export aid)	8.0 (IADB: forestry)	34.4 (IBRD: hydro)	30.7 (IADB: fisheries)	
	52.0 (IBRD:indus/ agric)	38.7 (IBRD: indus/ water/mining)	16.0 (IBRD:storm drainage)		

(a) Short-term IADB project credits and grants not included; IBRD data incorporate assistance from International Development Agency;

Sources: IADB, IBRD and IMF Annual Reports, respective years.

Implications for Canadian Human Rights Policy

The question of Canada's posture amidst the visible politicisation of IADB, IMF and World Bank lending decisions affecting Central America was addressed in the 1982 parliamentary report on this country's relations with the Caribbean and Central America (discussed earlier in this study). Citing "evidence that those institutions are being put under considerable pressure to exclude certain countries such as Grenada and Nicaragua from their lending because of ideological considerations", the report observed that "Nicaragua, unlike El Salvador and Guatemala, has been unable to obtain funding for its rural development and water supply projects"; the Canadian Government was urged to affirm the principle that "all countries and projects that meet legitimate developmental criteria" receive due endorsement.(386)

In March 1983, the issue was raised in the House of Commons, where in statements concerning Canada's financial contributions to multilateral credit institutions, Pauline Jewett (NDP) commented that:

> "political considerations are becoming even more critical in the final decision on who gets what loans from the Inter-American Development Bank. The political considerations ... seem to have nothing to do with human rights violations; they have nothing to do with whether or not the money is being spent on arms. All thet have to do with, it seems, is whether or not the recepient country is one that is favoured by the U.S. State Department in its ... policies vis-a-vis Central America."(387)

Jewett added that, with specific reference to the World Bank, the IMF and the IADB, "an evaluation of the effectiveness of

these institutions ... in terms of our own policy objectives" was necessary.(388)

Responding for the Government, External Affairs Minister MacEachen did "not think these financial institutions should be politicised", and held that Canada "would attempt to resist any effort to apply tests, other than those which are financial and commercial, in providing developmental loans or concessional financing to countries."(389) The Minister failed to address the existing politicisation of decision-making at the institutions, not did he indicate what measures Canada would adopt to "resist" that tendency.

Indeed, MacEachen appeared less concerned about general Canadian neutrality in multilateral institutional lending in a subsequent address to the Southeast Asian Nations (ASEAN) Conference, stating that:

> "Canada will not support in either bilateral programmes or through multilateral institutions the provision of economic assistance to Vietnam which would have the effect of subsidising or rewarding Hanoi's continued military occupation of Cambodia."(390)(Emphasis added)

It may be inquired whether the Government's preceding stance should not, in principle, have extended to credits to South Africa, which continues to illegally occupy Namibia, and to states such as El Salvador and Guatemala, whose armed forces have been responsible for gross and systematic violence against their own populations.

As noted in Parts 1 and 2 of this dissertation, United States legislation requires that country's representatives at the multilateral development banks to oppose credits to

governments in gross and systematic violation of human rights, and specifically to the apartheid regime in South Africa (391) - apparently without prejudice to the 'Articles of Agreement' of the institutions concerned. In light thereof, as well as Canada's international obligations in the human rights domain, the Taskforce on the Churches and Corporate Responsibility (TCCR) proposed in June 1983 that the Government incorporate as a "co-determinant" in decisions at the IMF specific criteria capable of triggering a negative vote by the Canadian Director.(392) A set of five fundamental violations, corresponding to recognised international standards, and occuring on a "systematic and consistent" basis, constituted a "minimum definition" of the proposed "co-determinant": (a) the arbitrary deprivation of life, (b) arbitrary arrest, (c) torture or cruel, inhuman or degrading treatment or punishment, (d) the denial of the right to leave any country, including one's own, and to return to one's country, and (e) the practice of apartheid. The Government would be expected, in applying the criteria to its decision-making, to consult with the findings of the United Nations Commission on Human Rights, non-governmental organisations (international and Canadian), and the Canadian Parliament.

While the proposal addressed itself to Canadian policies at the IMF, voting criteria at the multilateral developments might also have been envisaged in the same vein. In view of the fact that the latter do not generally undertake 'emergency' type financing such as the Fund commonly engages in, an a

fortiori case may be argued for the incorporation of human rights criteria in their decision-making.

The Canadian Government's reply to the TCCR proposal, however, only reiterated its traditional stance on the issue:

> "Introducing political criteria would set a precedent that could ultimately undermine the effectiveness of the Fund ... (I)t is not possible legally for the Fund to discriminate against a member for political or other reasons."(393)

Once again, the existence of legislation mandating human rights criteria in American voting-decisions at the institutions was ignored, as was the question of prevailing ideological orientation discussed above. In effect, Canadian policy would remain predicated on the non-existence of a nexus between multilateral financial assistance to governments and the latter's human rights conduct, notwithstanding substantial empirical evidence to the contrary.

5. Friendly Relations With Severe Violators

The propinquity of official Canadian relations with the nations of Central America, as indicated earlier, has never been substantial. Until the establishment of an embassy in Guatemala City in 1982, the only Canadian representation at the ambassadorial level in the entire region was in San Jose, Costa Rica. Notwithstanding the parliamentary recommendation of 1981-82 that Central America constitute an area of concentration in Canadian hemispheric relations - within the context of new rights-oriented policy priorities(394) - this country's 'diplomatic' affairs in El Salvador, Honduras and Nicaragua - continue to fall within the ambit of missions in Guatemala City and San Jose.(395)

Bilateral economic and military relations with the Governments of El Salvador, Guatemala and Nicaragua - addressed in Sections 2 and 3 below - are notable more for their qualitative rather than quantitative implications for Canada. On the other hand, official humanitarian assistance, particularly in the form of disaster-relief and aid to the region's displaced and refugee population, has been significant in both absolute as well as comparative terms.(396) Much of the assistance is channelled by this country through non-governmental organisations, international and Canadian alike.(397)

Indeed, the efforts of Canadian church groups as well as other private citizens' organisations in contributing towards refugee- resettlement, 'grass roots' development projects, and

assorted general public welfare schemes throughout Central America, frequently under precarious conditions, constitutes arguably the most affirmative dimension to 'bilateral' relations in the present context.(398) At a time when inter-governmental relations with El Salvador, Guatemala, Honduras and Nicaragua are perceived in considerable measure in East-West ideological terms (not least in the sphere of economic assistance), the preceding non-governmental efforts especially merit recognition.(399) Moreover, given the essentially humanitarian nature of the groups and organisations in question, their corresponding capacity to influence the direction of Canadian policy towards the region can only be viewed favourably. Certainly, the Canadian Government has been more forthcoming in acknowledging their impact upon its decision-making, as compared with the policy-process vis-a-vis South Africa.(400)

It should be observed, in concluding this brief segment, that with respect to such aspects of 'friendly relations' as the promotion of tourism, cultural and sporting ties, and ministerial visitations (all of which affect Canada's relations with the apartheid regime in South Africa), their prospective relevance in the Central American context is highly circumscribed. Prevailing political violence and instability, severe economic underdevelopment, and the subsistence of tenuous cultural links with this country, appear to combine as the principal causal factors in that regard.

6. Economic Relations With Severe Violators

The Latin America region en bloc constituted in 1980 the major Canadian trading partner in the Third World, with Central America (including the Antilles) accounting for over 40% of regional exports.(401) Trade with El Salvador, Guatemala and Nicaragua, however, has been of relatively minor significance.(402) Overall Canadian-Central American commercial relations - comprising direct and indirect investment, export promotion activities by the Export Development Corporation (EDC), as well as trade - remained steady, nevertheless, through the 1979-84 period,, while trade with Nicaragua followed a distinct upward trend (see Tables 3:4 and 3:5 below).

Bilateral economic assistance to Central America during that phase was directed chiefly at El Salvador and Honduras, designated by the Canadian International Development Agency (CIDA) as 'programme countries' deserving continuous aid, with Guatemala and Nicaragua receiving sporadic assistance as 'project countries'.(403) However, in response to prevailing conditions of violence in El Salvador and Guatemala, Canadian assistance after 1980 was to be conditioned upon significant improvements in the situation, though humanitarian aid remained unaffected (see Tables 3:6 and 3:7 below). In contrast, it will be recalled, the Government's policy on multilateral credits to those countries was one of general approval, rejecting any linkage with political and security factors, as well as with their human rights records.(404)

This section will appraise the nature and implications of Canada's bilateral assistance, investment and trade relations with the countries under study, in connexion with the rights-policy perspectives and criteria set forth in Part 1 of the dissertation,(405) and elaborated upon in Part 2 apropos relations with South Africa.(406)

a. Trade and Investment

In the wake of the Trudeau Government's recommendations in Foreign Policy for Canadians (1970) with respect to Latin American relations,(407) regional trade was promoted strenuously through the 1970s, outweighing Canadian investment or assistance at the end of the decade.(408) Aggregate import and export values for El Salvador, Guatemala and Nicaragua, however, represented only 2% of overall Latin American (and Caribbean) trade in 1980,(409) and slightly over 5% of all Central American commerce (see Table 3:4). The severe conditions of human rights in those countries had no impact upon Canadian policies concerning trade and commerce.

Consistent with global terms of trade patterns, Canadian imports from Central America were predominantly agricultural - coffee and bananas - and exports to the region mainly manufactured - 'newsprint paper' being the dominant item.(410)

The July 1982 parliamentary report on the Caribbean and Central America (discussed above) characterised this country's regional trade as being of "limited and declining significance", recommending accordingly a more aggressive

approach to the marketing of Canadian exports, along with a greater receptivity to imports.(411) The November 1982 'Final Report' further recommended that countries with improving human rights records be 'rewarded' through trade promotion by the EDC and other appropriate instrumentalities, and that "trade officials should pay closer attention to the human rights performance of a country in evaluating its medium and long-term prospects for stability and expanded commercial relations.(412)

In this connexion, it is noteworthy that Guatemala was the only recepient among the countries under study of EDC credits during the 1979-84 period, obtaining $8.9 million in 1981.(413) Neither El Salvador nor Nicaragua previously received EDC assistance, though Guatemala had been granted $20.8 million by 1978.(414) Yet the Trudeau Government did recognise and implement the linkage between export promotion and human rights practices in relations with South Africa after 1977.(415) Clearly, Guatemala's egregious record of large-scale political murder, torture and enforced disappearances demanded similar treatment. Subject to an exception in respect of assistance that demonstrably contributes to 'basic human needs', EDC credits ought surely to be withheld in principle from governments in gross and systematic violation of human rights, pursuant to the parliamentary recommendation of 1982.

The Final Report had advocated, it may be recalled, making human rights among "the essential purposes and guiding principles of Canadian foreign policy",(416) urging that trade "be used as leverage to provide Canadian support to

organisations which are struggling to promote human rights."(417) Nevertheless, the application of trade sanctions in furtherance of rights-related policy objectives was rejected in the Report, on the grounds that "sanctions would not be effective and would prevent Canada from having commercial relations with many Latin American countries."(418) No analysis or recommendations appertaining to the potential efficacy of such sanctions appeared in the Report, nor was it sought to justify placing possible commercial gains above human rights criteria qua among "the essential purposes and guiding principles of Canadian foreign policy".

External Affairs Minister Allan MacEachen was less dismissive of the prospective value of trade sanctions, maintaining in April 1983 that "a concerted international approach" thereto was preferrable to unilateral action by Canada.(419) However, no indication of this country's readiness to pursue concerted sanctions in any context was offered, consistent with the Government's long-standing opposition to United Nations trade embargos relating to apartheid.(420)

Hence, the Canadian Government implemented neither the linkage advocated in the parliamentary report between export promotion and human rights conduct (having in effect 'rewarded' Guatemala while 'punishing' the improving situation in Nicaragua), nor the declaratory recognition of the significance of multilateral sanctions against severe violators (thus concurring in the commercial priorities implicit in the relevant parliamentary recommendation).

Guatemala has also been the major beneficiary of direct Canadian investment in Central America (including Costa Rica and Honduras), hosting seven Canadian corporations engaged primarily in the mining and petroleum sectors.(421) In comparison, El Salvador hosted three Canadian corporations, in the chemical, mining and paper industries,(422) with none located in Nicaragua.

The EDC and CIDA have long performed major roles in promoting Canadian investment overseas, supplemented in the present instance by the private, Government-assisted 'Canadian Association - Latin America and the Caribbean' (CALA).(423) As with bilateral trading relations, the Latin and Central American region constituted en bloc the major Third World location of direct Canadian investment,(424) Central America being of comparatively minor importance (see Table 5). Prevailing socio-political conditions in that region have undoubtedly discouraged further Canadian (and other foreign) investment in El Salvador, Guatemala and Nicaragua.(425)

Greater promotion of regional investment relations by the Government was recommended in the July 1982 parliamentary report, as well as the more effective exploitation of existing investment "to promote longer-term trade relations."(426) No qualifications concerning human rights factors were appended, a circumstance entirely congruent with current CIDA and EDC practices in this regard. Indeed, the EDC expressly rejected any relationship between its operational principles and rights-criteria, with particualr reference to Latin American

transactions.(427)

In respect of indirect Canadian investment, the five major chartered banks were estimated in 1982 to have located an average of 20.6% of their total international assets in Latin America and the Caribbean, considerably in excess of any other concentration in the Third World. More specific data on Central America are not available.(428) Canadian bank loans, however, are known to have flowed in amounts exceeding $200 million to Guatemala in 1981-82 alone, notwithstanding the especially severe international condemnation of the Garcia regime, and the opposition of Canadian churches to the transactions.(429)

The problem of insufficient public disclosure of loan-related information by the private banks in the context of client governments in gross violation of human rights was addressed at hearings in 1978 on the Canadian Bank Act, conducted by the parliamentary Standing Committee on Finance, Trade and Economic Affairs.(430) In its submission to the Committee, the Churches and Corporate Responsibility (TCCR) held that Canadian foreign policy "might be influenced and at times distorted by the important activities of private banks", citing as specific instances private credits to the Governments of Chile and South Africa.(431) The TCCR proposed that bank loans exceeding $1 million to sovereign clients be subject to mandatory disclosure under Canadian law, thus facilitating an appropriate "overview" of the implementation of Canadian Government policies.

In the event, 'confidentiality' and 'non-interference' prevailed as the established norms of private lending practice, and the Taskforce proposal was not recommended for legislation by the Standing Committee. Accordingly, the dependence of human rights policy monitors upon 'unofficial' sources for critical data on private loans overseas must continue - with all its implications for consistency in Canadian foreign policy.

b. Bilateral Assistance

A programme of bilateral assistance to Central America was only commenced by the Canadian Government in 1971, following the new profile accorded to hemispheric affairs in Foreign Policy for Canadians. Concurrently, the EDC's regional lending programme was consolidated, and a 'Business and Industry Division' added to CIDA in pursuance of a policy linkage between aid and trade.(432) All Central American states were categorised as 'programme countries', judged as the neediest and best capable of utilising Canadian development assistance.(433)

By 1979, only El Salvador and Honduras were retained in the 'programme' category of bilateral assistance, with Costa Rica, Guatemala and Nicaragua classified as 'project countries' qualifying for ad hoc assistance only.(434) Humanitarian assistance and food aid would remain unaffected, to be extended purely in accordance with prevailing needs. Significantly, a number of 'special programmes' within CIDA's bilateral aid

package were created or strengthened in 1979-80: Canadian non-governmental organisations, for instance, were to receive enhanced support for co-operative development efforts in the Third World, and an 'industrial co-operation programme' provided funding for Canadian business operation in the Third World.(435) Evidently, this advanced the aid-trade linkage advocated by the Trudeau Government for the Agency's undertakings.(436)

In late-1980, the Trudeau Government announced the suspension of further official development assistance (ODA) to El Salvador, in response to the level of local strife; subsequently, assistance to Guatemala was likewise suspended.(437) Canadian human rights groups, while expressing satisfaction with the Government's decision, observed that a dramatic corresponding increase occured in the component of assistance adminstered by Canadian missions (MAF) in the region. Thus, El Salvador received $60,000 in MAF during fiscal 1980-81, as compared with $275,000 in 1982-83; the relevant figures for Guatemala being $20,000 and $350,000.(438) Moreover, aid commitments prior to the suspension dates remained unaffected (see Table 3:6).

A substantial increase in ODA to the Central American region was announced in 1982, with an allocation of $106 million for the next four years, in contrast to the disbursement of $60 million over the previous five years.(439) Honduras would be the major recepient of Canadian aid, followed by Costa Rica and Nicaragua. Assistance to El Salvador and

Guatemala remained suspended through 1984.(440)

Recommendations by Canadian church groups that post-revolutionary Nicaragua be designated a 'programme country' for bilateral assistance were rejected, on the basis that Nicaragua received susbstantial aid after 1980 in any case. In particular, emergency food aid valued at $4.5 million was granted in 1981, and $3 million in 1983, and two lines of credit worth $18 million were extended in January 1984.(441) Critics argued that the Government's declared figure of $12.5 million in assistance to Nicaragua for 1980-83 was "misleading", in light of a substantial private sector financing component, stimulated by "church and non-governmental activity with the Nicaraguan people."(442)

Canadian assistance to Nicargua, in any case, was conditioned upon the Sandanistas' adherence to "principles of political pluralism and non-intervention in the affairs of other countries."(443) It is noteworthy that no such conditions were cited in connexion with assistance to other hemispheric governments, including those of El Salvador, Guatemala, Haiti and Honduras. Rather, as indicated earlier, CIDA maintained its policy-position of severing bilateral assistance only where "it is simply adminstratively impossible to work with any degree of security any longer."(444)

While recognising that "all assistance buttress government, and if you are giving assistance to governments that are flagrant violators of human rights, you are in effect buttressing their position", CIDA declined to adopt a direct

linkage between Canadian assistance and human rights factors.(445) It was felt that the appropriate solution was to ensure in such instances "that the kind of assistance being rendered is to the maximum extent possible not that which will buttress the government but that which will render direct assistance to the people."

This consideration was not, however, entrenched in appropriate legislation or any other binding form. Its humanitarian tenor was also somewhat at odds with CIDA's linkage between aid and substantial Canadian-purchase and content requirements imposed on recepient governments ('tied aid'), a policy strenghthened by the Trudeau Government in early 1984.(446) Thus the promotion of trade and investment relations interfaced in large measure with development assistance, while the promotion of human rights, intrinsically related to the welfare of recepient populations, found no meaningful expression in Canadian policy.

The more forthright position of the parliamentary 'Final Report' in this regard was discussed above; in essence, the analysis of the aid-human rights nexus therein stemmed from the recognition that the former "has as its primary purpose the satisfaction of basic human needs, among which is respect for the value and integrity of the human person."(447) Accordingly, respect for human rights by the recepient country was considered central to Canadian bilateral aid policies; the utilisation of non-governmental channels of assistance in difficult situations was also recommended.

With specific reference to Central America, the July 1982 Report endorsed the suspension of bilateral assistance to El Salvador, subject to the effective implementation of land reform in that country, and "substantial progress toward reducing human rights violations committed by government forces."(448) It also recommended "continued assistance to Nicaragua ... both on developmental and practical grounds", subject to the Sandanista Government "maintaining its armed forces solely for self-defence purposes."(449)

The Government's response to the proposed 'active linkage' between bilateral aid and human rights practices in the Parliamentary reports was that "human rights records of development partners have been and will continue to be relevant to decisions regarding the nature and extent of our programme."(450) The preceding review of de facto Canadian aid policies towards Central America does not suggest a high degree of "relevance" of rights-criteria.

An important positive development in the Trudeau Government's formulation of development assistance policies was the increasing emphasis upon non-governmental channels of assistance, consistent with the views expressed in the parliamentary Final Report. Numerous small-scale Canadian organisations - particularly church groups - were thus able to elicit financial support from CIDA in their contribution to socio-economic and refugee-resettlement undertakings in Central America.(451)

Less encouraging was the visible politicisation of bilateral (as well as multilateral, as indicated earlier) assistance in the region in the context of evolving United States interests and objectives, especially during the post-1979 period. Canadian participation in the Caribbean Basin Initiative (CBI), though occuring on a more circumscribed basis than proposed by the Reagan Administration, influenced the orientation of bilateral development assistance (as well as investment and trade) policies of the Trudeau Government in several respects.(452) The skepticism over CBI articulated in the parliamentary reports on Latin America and the Caribbean was adverted to earlier, as was the Government's direct association of its expanded aid programme in February 1982 with the Initiative.(453)

External Affairs Minister Mark MacGuigan asserted in March 1982 that the basis for Canadian association with CBI was predicated upon the "conviction that the answer to the tension there is social and economic development rather than the force of arms", while reiterating United States' criticism of the political direction embarked on by the Nicaraguan Government.(454) As for the Initiative's declared concern with Central American "social and economic development", the parliamentary review had found "virtually no consultation with governments of the region prior to its unveiling", in what it considered "a poorly planned and questionably motivated initiative."(455)

The Government's post-1980 preference for Honduras - a

critical American strategic ally in the region - as the sole 'programme country' for enhanced Canadian economic aid might also be construed as comporting with the precepts underlying the Initiative.(456) Equally, the EDC's continuing and unconditional financial support for transactions relating to Guatemala and Honduras, with no assistance flowing to Nicaraguan clients, was clearly harmonious with the United States' regional policy objectives.

In conjunction with the evident failure of the Canadian Government to counteract the overt politicisation of multilateral assistance to Central America through the IADB, the IMF and the World Bank, the overall record of Canadian economic relations with Central America manifests a significant degree of ideologisation over the 1979-84 period. Although purportedly guided by humane concerns relating to social justice and economic development in the region, official assistance policies patently ignored vital considerations of human rights behaviour in the region (which were only asserted when expedient in the case of Nicaragua). Investment and trade promotion by CIDA and the EDC - benefitting Honduras and Guatemala most significantly - remained active concerns in Canadian development aid disbursements, conforming concurrently with the interests of the United States in the region.

At best, with the exception of Canadian humanitarian assistance and the increased funding of non-governmental groups active in Central America, economic relations between the

Trudeau Government and the countries under study may reasonably be regarded as reflecting the traditional foreign policy priority of achieving national economic growth over that of promoting social justice - reminiscent of its policies towards the apartheid regime in South Africa.

Table 3:4 Canadian Trade With El Salvador, Guatemala and Nicaragua, 1978-84, Selected Years ($ millions)

Exports to:	1979	1980	1981	1982	1983	1984
El Salvador	15.60	15.33	17.94	15.26	18.62	15.81
Guatemala	21.29	21.70	17.71	34.25	15.92	21.94
Nicaragua	2.82	14.71	15.74	15.66	16.01	22.48
Total	39.71	51.74	51.39	65.17	50.75	60.23
Total Central America(a)	1153.21	1529.69	1865.19	1515.06	1439.40	1469.58
Imports from:	**1979**	**1980**	**1981**	**1982**	**1983**	**1984**
El Salvador	27.29	26.81	25.02	20.87	35.03	24.97
Guatemala	16.62	25.06	36.00	23.09	20.82	36.31
Nicaragua	8.70	31.45	52.09	26.65	32.12	45.33
Total	52.61	83.32	113.11	70.61	87.97	106.61
Total Central America(a)	689.02	1026.46	1892.15	1626.97	1765.03	2279.94

(a) Including the Antilles.

Sources: Statistics Canada, Exports by Country; Imports by Country (respective years).

Table 3:5 Comparative Canadian Direct Investment, Central and South America and Third World, 1978-84
($ millions)

Location	1979	1980	1981	1982	1983	1984
Argentina	54	8	44	36	38	45
Brazil	554	585	619	726	769	873
Venezuela	49	59	59	67	71	75
Other South and Central America (a)	322	385	448	495	524	512
Total Developing Countries	3477	4275	4806	5240	5375	6207

(a) No specific data for Central America available.

Source: Statistics Canada, Canada's international investment position, 1978-1984.

Table 3:6: Canadian Bilateral Assistance(a) to El Salvador, Guatemala and Nicaragua, Fiscal 1978-83
($ millions)

Country	1978	1979	1980	1981	1982	1983
El Salvador	0.63	1.37	2.66	6.21	0.54	0.53
Guatemala	4.61	2.94	1.33	1.17	2.57	0.86
Nicaragua	-	0.20	0.20	4.65	0.59	7.15
Total	5.24	4.51	4.19	12.03	3.70	8.54
Total Central America & Caribbean(b)	56.07	42.16	36.08	55.51	43.91	62.88

(a) Including food but excluding 'humanitarian assistance' and 'special programmes' involving the private sector and non-governmental organisations.

(b) Encompassing the entire geographical area.

Table 3:7: Canadian Bilateral Humanitarian Assistance(a) to El Salvador, Guatemala and Nicaragua, Fiscal 1978-84
($ millions)

Country	1978	1979	1980	1981	1982	1983
El Salvador	0.20	0.06	0.25	0.65	0.08	1.32
Guatemala	-	-	-	-	0.05	-
Nicaragua	0.19	0.32	0.04	0.50	0.28	0.03
Total	0.39	0.32	0.29	1.05	0.41	1.35

(a) Includes emergency and refugee assistance.

Source: CIDA, Annual Report (respective years).

7. Military Relations With Severe Violators

An important distinguishing facet of Canadian policy toward the post-1979 upheavals in Central America related to the rejection of a military solution to regional problems, particularly with respect to El Salvador and Nicaragua. The Trudeau Government's perception of Central American instability diverged from that of the United States, in its attribution of causal factors primarily to socio-economic rather than ideological realities.(457) Canada favoured the 'Contadora' perspective on ideological pluralism in the hemisphere, maintaining in March 1982 that:

> "The internal systems adopted by countries of Latin America and the Carribean, whatever these systems may be, do not in themselves pose a security threat ... It is only when countries adopt systems which deliberately link themselves to outside forces or seek to destabilise their neighbours that a threat is posed. Canada has adopted a flexible approach in this regard."(458)

It is noteworthy that the reference above to "systems which deliberately link themselves to outside forces" would be prospectively applicable to the prevailing situations in El Salvador as well as Nicaragua, and, insofar as ongoing military relations between the Lucas Garcia regime and the United States were concerned, to Guatemala.

In response to a 1983 recommendation by the Inter-Church Committee on Human Rights in Latin America (ICCHRLA) that the Government "take energetic steps to prevent the transfer of Canadian military and dual-purpose equipment to governments engaged in systematic and gross violations of human rights and to combatant forces in Central America", the Department of

External Affairs reaffirmed official policy thus:

> "The Canadian Government does not export military products to any country of Central America nor to any groups of combatant forces in Central America. Non-military products having a possible military application are examined according to established Cabinet guidelines and regulations and must be submitted for ministerial approval before an export permit may be issued."(459)

However, well-documented evidence suggests that, notwithstanding the conceptual divergence in Canadian-United States approaches to the situation in Central America, the Trudeau Government was effectively drawn into significant areas of involvement in the militarization of the region.(460) Canada was implicated directly through the laxity of governmental controls over the issuance of export permits for military and dual-use items destined for Central America, as well as the operation in Guatemala and Honduras of a Canadian aircraft manufacturer, known over the past 30 years to have "specialised in the logistic support of a wide variety of North American designed military, transport, and fighter aircraft."(461) Equally significant, though less direct, was Canada's involvement through United States and NATO military activities in the region, pertaining to defence co-operation inter se resulting from various agreements, treaties and understandings.(462)

In examining the preceding evidence of Canadian operative policies in light of declared undertakings to the contrary, the analysis hereunder also touches upon general Canadian military sales policies concerning Latin America, and

the relevant implications of possible Canadian membership in the Organisation of American States (OAS). Finally, the contrasting legislative policy constraints (or lack thereof) attending Canadian and United States relations with Central America during the 1979-84 period will be addressed, as in Sections 1 and 2 above.

Canadian Military or Dual-Use Sales to Central America

In at least two instances, the Department of External Affairs (International Trade) approved export permits for dual-use equipment to be sold to Guatemala and Honduras, notwithstanding Canadian policy against such sales to countries involved in hostilities or to regimes considered "wholly repugnant to Canadian values".(463) The first transaction involved the export of three DHC-5D Buffalo military transport planes (worth $30 million) by De Havilland Aircraft of Canada, then a Crown corporation, to the Honduran government.(464) The Export Development Corporation (EDC) was to extend a supporting loan on 'soft' repayment terms to Honduras. Following the grant of an export permit in late 1981, Canadian human rights groups expressed their opposition to the transaction, since the Honduran armed forces were increasingly involved in the support for cross-border attacks on Nicaragua", a situation of conflict as envisaged in Canadian policy regulations.(465) The transport planes could well be utilised in the preceding military operations.

The Minister of Trade asserted that "circumstances which

led to the approval of this export are still valid", and that the Honduran government would utilise the aircraft in "important civilian tasks, including refugee relief."(466) Human rights groups denied the existence of any record of relief supplies by Honduras to Salvadoran refugees, and criticised the Canadian position as a reversal of its own previous policy on military sales. In May 1983, without referring to policy guidelines on military sales, the Government announced that De Havilland was not proceeding with the sale, and the export permit had been withdrawn.(467)

A second transaction that similarly failed to materialise entailed the sale of 4 DHC-6 "Twin Otter" aircraft by De Havilland to Aviateca, a government-owned Guatemalan commercial airline, originally operated by the national Air Force.(468) According to the Financial Post in March 1983, it was the Air Force that initially expressed interest in the aircraft.(469) With appropriate modifications, the DHC-6 could be applied to maritime reconnaisance, counter-insurgency/light strike operations, and small-scale troop-transport. Although the aircraft were to be supplied without the modifications, De Havilland customarily furnished the kits required for such purposes; the Guatemalan military moreover, was known to have adapted civilian aircraft for military applications on several occasions.(470)

Without seeking formal assurances from Guatemala as to the exclusively civilian utilisation of the DHC-6 "Twin Otter", and despite the protestations of church groups against the

sale, the Department of External Affairs approved an export permit in August 1983. In early 1984, ostensibly for business reasons, the sale was cancelled; arguably, "the government quietly stepped in to halt what was becoming an embarrasing political issue."(471)

Further evidence of the failure of existing regulations to prevent Canadian-made equipment from potentially benefitting the military forces in Central America related to the sales of counter-insurgency aircraft engines by Pratt and Whitney of Canada to Brazil and Israel, both of which re-sold the engines to El Salvador in the mid and late-1970s.(472) Pratt and Whitney reportedly used Canadian Government grants worth $80 million towards the development of the engines. It will be recalled that similar 'end-user' related loopholes in Canadian regulations benefitted the South African regime in the procuring of military supplies.(473)

Likewise, in early 1983, Canadian-made ammunition (bullets manufactured by Valcartier Industries, Inc.) was discovered in a 'contra' camp in northern Nicaragua, according to North American press reports.(474) A Canadian investigation in the matter suggested that Colombia may have been the intermediary in question,(475) while Maclean's opined that the United States might have had a role.(476) The results of the investigation were not publicised, but then Minister of State for External Affairs Charles Lapointe acknowledged that if the story were true, Canadian safeguards on military exports "are not good enough."(477) Nevertheless, visits by journalists to the same

location in Nicaragua in spring 1984 revealed that the contras were employing the same equipment - including Canadian-made ammunition.(478)

Finally, in a case that parallels the operation of South African-based Canadian corporations under military-related contracts with the apartheid regime, Patlon Aircraft and Industries of Mississauga (Ontario), which has long "specialised in the logistic support of a wide variety of North American designed military, transport, and freighter aircraft", has maintained branch offices in Guatemala and Honduras.(479) Patlon contracted to supply the Guatemalan government with "airframe and engine spares, instruments, electronic equipment, and other equipment", designated as being of civilian application. No guarantee as to the military utilisation thereof was sought or offered by the parties, and the Department of External Affairs, under the Trudeau Government, had no hesitation in approving an export permit for the transactions involved.(480)

Canadian Participation in United States and NATO Undertakings in Central America

The Canadian military establishment has long been interlinked with that of the United States, in the context not only of NATO commitments (including the Organisation's Regional Planning Group), but also of numerous bilateral accords since the Second World War.(481) Of particular relevance here is the Canada-United States Defence Production Sharing Agreement(DPSA), stemming from the 1941 Hyde Park Declaration; the Agreement enabled Canadian companies to compete for American defence contracts on an equal footing with local suppliers.(482) As noted above, this country manufactures equipment utilised in counter-insurgency operations, frequently in response to American demand under the DPSA. In view of the military relations between the United States and the countries of Central America through the 1970s and 80s, the implications of Canadian exports under the Agreement are self-evident.

A specific Canadian contribution to United States military activities in the region consisted of the supply of guidance and trigger mechanisms by Litton Systems of Rexdale (Ontario) for the Tomahawk sea-launched cruise missile, carried by the U.S. Warship Iowa, while cruising the Caribbean.(483) Another instance might be Canada's participation in the Global Positioning System (GPS), part of a larger satellite system that would permit a high degree of precision in various military undertakings. When complete, the system is considered likely to be "set into space by the Canadarm of the space

shuttle."(484) Writing on the GPS in 1983, Rasmussen and Morrigan observed:

> "The murderous implications of such a system - for U.S. advisors in El Salvador, for example - must not be underestimated. It would no longer be necessary for large forward patrols to direct artillery fire, since the U.S. Special Forces 'advisor' with a GPS receiver could do it; and an efficient night-flying helicopter capacity would allow counter-insurgency forces to operate in the dark, which hitherto was the exclusive domain of the guerilla."(485)

It should be noted that Canadian regulations governing the export of military or dual-use items have never been applicable to sales to the United States. As indicated in the case-study on South Africa, one consequence of the absence of such constraints was the successful export by the Canadian Space Research Corporation (SRC) in the mid-1970s of components of a highly sophisticated artillery system to Pretoria via the United States.(486) The artillery system was thought to have been instrumental in the launching of a nuclear test explosion by South Africa in 1979.

The intimacy of Canadian-United States military relations weighed as a factor in the recommendations of the 1982 Final Report of the Parliamentary Sub-Committee on Latin America and the Caribbean, apropos the question of Canada's membership in the Organisation of American States (OAS).(487) A standard concommitant of OAS membership would be the signing of the Inter-American Treaty of Reciprocal Assistance (the Rio Treaty),(488) according to which an external threat to any American state would be construed as a threat to all, and prompt a collective response from the signatories (Article 3).

While recommending full Canadian membership in the OAS, the Final Report opposed Canada's signing of the Rio Treaty and this country's participation in the security undertakings of the Organisation, owing at least in part to the prospect of further Canadian subordination to United States military policies in the region.(489) The Trudeau Government, as already noted, did not act upon the affirmative recommendation in the Final Report, preserving Canada's 'observer' status in the OAS.

In any case, the far-reaching military engagements in post-1979 Central America by the United States occured in the context of elaborate (if imperfect) national legilative constraints pertaining to human rights considerations in national foreign policy. In particular, as discussed in Part I of the dissertation, Section 502B of the 1961 Foreign Assistance Act, as amended, prohibits the provision of security assistance (defined as including military assistance, economic support funds, and military education and training) "to any country the government of which engages in a consistent pattern of gross violations of internationally recognised human rights ... unless the President certifies in writing ... that extraordinary circumstances exist warranting provision of such assistance ..."(490) Furthermore, "licences may not be issued under the Export Administration Act of 1979 for the export of crime control and detection instruments and equipment" to such violators, subject to the same exception. Importantly, a Congressional review of the Administration's policy-making in this regard was envisaged in Section 502B.(491)

Commentators have observed that the exception relating to the application of Section 502B served as an expedient loophole for the Carter and the Reagan Administration alike with regard to military sales to an array of egregious human rights violators, and that Congress generally concurred in these circumventions.(492) El Salvador and Guatemala were among the beneficiaries of the loophole.(493)

However, the specific human rights-related conditionality entailed in formulating United States policy provided a tangible focal point - enshrined in law - for those concerned about the direction of that policy.(494) A public dimension thereto was assured by the legislative requirement of a Congressional review. No such constraints were operative in respect of the Trudeau Government's formulation of policy. All the relevant regulations and policy principles mentioned hitherto were to be applied 'internally' by the appropriate Government departments, with no provision for parliamentary (and hence public) review.

In its 1982 'brief' to the Parliamentary Sub-Committee on Latin America and the Caribbean, the Taskforce on the Churches and Corporate Responsibility (TCCR) commended as "salutory" to Canadian legislators "the experience of their American colleagues with regard to the subject of human rights and security assistance to foreign governments."(495) The TCCR recommended annual hearings thereon by the Canadian Parliament, as well as national legislation parallel to provisions of the 1961 Foreign Assistance Act. The recommendation was echoed in

the Final Report of the Sub-Committee,(496) and will be further addressed in the concluding segment of this case-study.

Legislation in Canada parallel to Section 502B of the 1961 Act may have forestalled the substantial sales of Canadian dual-use equipment to other hemispheric human rights violators, countries whose governments were criticised by Canada in international forums. Sales to Chile and Argentina through the 1970s and 80s represent particularly questionable instances of Canadian commercial priorities in the context of a professed regard for human rights principles in foreign policy.(497) As in the case of proposed aircraft sales to Guatemala, Canadian Crown corporations - the Export Development Corporation (EDC) and De Havilland of Canada - were parties to exports to the Chilean Air Force, allegedly on the grounds that no military use thereof was provided for by Canada.(498)

With respect to the EDC's participation in the aircraft sale to Chile in 1986, the response of the Corporation's President to public protestations in the matter is instructive:

> "One can assume that the EDC was deliberately set up as a Crown Corporation of a type removed from direct government control in order that it might pursue its commercial functions most effectively in the interest of Canada's economic growth. Parliament has not changed those terms of reference although it has had the statute before it for amendment six times. From this, one may conclude that Parliament considered that the furtherance of human rights and social justice abroad should be accomplished by other means. It would be presumptuous of the Board of Directors of the Corporation with respect to transactions under the EDC corporate account to decide to cut off a country when Parliament has by the Export Development Act directed EDC to facilitate trade and has not laid down any restrictions relating to human rights and social justice."(499)

Yet the nexus between the activities of the EDC and the general orientation of Canadian foreign policy was explicitly recognised in regard to Canadian-South African relations, with restrictions applied from 1977 onwards by the Trudeau Government to the Corporation's financing of transactions relating to that country.(500) No systematic follow-up on that recognition was undertaken, despite repeated assertions by the Government of the significance of human rights in Canadian foreign policy; the 1977 EDC restrictions continue to apply to South Africa alone. In essence, therefore, the EDC President's argumentation above regarding the express purpose of the Corporation and the considered omission of human rights criteria, must be accepted as legitimate, pending contrary action by the Government.

As regards the sales policies of De Havilland in this context, the company rejected public offers to discuss the transaction at all, implicitly denying its accountability qua a Crown corporation.(501) The TCCR was thereby prompted to comment in its 1982 'brief' as to

> "an urgent need to determine more carefully the sales promotions undertaken and contracts made by these corporations and to educate their senior officers about the implications of military sales to repressive regimes ... Above all, Crown Corporations engaged in international trade are under a very specific obligation to pay attention, as a matter of policy, to the desire of the Canadian Government to make human rights observances an integral part of its foreign policy."(502)

The preceding would apply a fortiori to the role of the Atomic Energy Agency of Canada, also a Crown Corporation, in

promoting the sale of 'Candu' nuclear reactors to Argentina, at a time when a highly repressive military regime exercised power.(503) In view of Argentina's refusal to sign the nuclear Non-Proliferation Treaty (NPT), and its widely-publicised inclination toward the development of a nuclear weapon capability,(504) the Candu contracts manifested insensitivity on the part of the Canadian Government not only to the humanitarian principles professed in policy statements, but also to international concerns about nuclear proliferation.(505) In their 1984 study on Canadian relations with governments with poor human rights records, including those in Latin America, Keenleyside and Taylor conclude:

> "It is difficult to attach a great deal of credibility to the assertion of the Department of External Affairs that 'The Canadian desire for closer and more comprehensive ties with the countries of the Southern "cone" has been restrained by past political events, particularly in Chile and the Argentine' and that 'Canada's relations with the region are linked to improvement in the human rights field.'"(506)

II. Beyond The Trudeau Era

The 1984-86 phase in the recent socio-political experience of Central America witnessed the formal retrenchment of civilian rule in El Salvador and Nicaragua, as well as the election in Guatemala of the first non-military President in over a decade. These developments have been accompanied by a tangible attenuation in the level of political violence and official abuse of authority in comparison with conditions during the 1979-84 period - but not without the continuing presence of many facets of traditional authoritarian structures and tendencies, and the legacy of decades of socio-economic inequity. The consequent implications for individual and collective rights and liberties in those countries are examined in Section 1 below, followed by an appraisal of the orientation of Canadian relations therewith under the Mulroney Government.

1. Post-revolutionary Central America: Wherefore Human Rights?

El Salvador

The inauguration of Jose Napoleon Duarte as President-elect on June 1, 1984, engendered widespread optimism over the prospects for political reconciliation and stability in El Salvador, with Duarte undertaking to "fight openly and tirelessly" for "the establishment, enforcement and overall respect for human rights".(507) Although the Government was unable to forestall in the ensuing months of 1984 continuing severe violations of human rights by the armed forces and elements of the extreme-right,(508) the President appeared

genuinely committed to the institutionalised protection of individual security and political rights, as well as to meaningful economic reform.

Under Decree 15 of August 1984, a Special Commission was established to investigate political crimes of 'international relevance' committed in recent years, including the assasinations of the Archbishop of San Salvador, Monsignor Romero, and Director Viero of the Salvadoran Institute for Agrarian Reform, and of two American labour advisors.(509) The governmental Human Rights Commission, established earlier under the 'Apaneca Pact', sought to establish regional offices throughout the nation, and to launch a human rights educational campaign among various sectors of the population; the Commission's ongoing rights -investigations, though "modest" in scope, contributed to the amelioration of the more egregious official violations against ordinary civilians.(510) Further, a July 1984 agreement with the United States initiated a 'Judicial Reform Program', the objectives of which included the enhancement of investigative capacities, the protection of participants in criminal justice proceedings, and the provision of administrative support for the court system.(511)

Pursuant to his statement at the United Nations General Assembly on October 8, 1984, President Duarte conferred with representatives of the armed opposition - the Democratic Revolutionary Front (FDR) and the Farabundo Marti Liberation Front (FMLN) - on October 15, seeking a prompt resolution to the country's five-year civil conflict.(512) The political

dialogue was to be resumed following impending elections for the national Legislative Assembly in early 1985.

Hitherto, however, the term in office of the Christian Democrat Government has witnessed largely the failure to fulfil promises of reform and reconciliation in El Salvador. Severe abuses of authority by official forces (compounded by the actions of the extreme right) persists, as does the indiscriminate aerial bombardment of civilain targets by the army; a pervasive slackening has marked institutional investigations (judicial, quasi-judicial and military) of official misconduct; and many hundreds have been added to the country's displaced and refugee population.(513) The guerilla activities of the FDR-FMLN only aggravate the existing jeopardy to individual security and well-being, while inflicting enduring damage to the Salvadoran economy (particularly its infra-structures). In response, the Government has appeared readier to elicit additional external military assistance than to embark upon bona fide conciliatory dialogue.(514)

Political killings, abductions and disappearances involving civilian non-combatants, though occuring on a significantly lower scale than during earlier periods, remained tragically high through 1985(515) the number of political prisoners actually increased from 405 in 1984 to approximately 600 in 1985.(516) Estimates of civilian casualties from military attacks by the armed forces ranged to over 1,000 during that year.(517) "In El Salvador today", it has been

observed, "the abuse of human rights has settled into a routine."(518) The guerilla foces opposing the Government were also responsible for a number of civilian casualties in conflict zones, as well as political assasinations and abductions.(519)

Reports by non-governmental organisations and the United Nations note that while large-scale official massacres in Salvadoran towns and villages had virtually ceased by 1985, "there is considerable evidence that smaller-scale abuses by the Armed Forces against civilians, including murder or torture, continue in the course of military or counter-insurgency operations."(520) Concern was expressed as well over the systematic harassment by the army against medical personnel, hospitals and clinics providing care to guerilla combatants, including the deliberate destruction of an emergency clinic in the Chalatenango region during military operations; humanitarian food distribution activities in that region were also prevented by the armed forces.(521) It will be recalled that the 1949 Geneva Conventions and the Additional Protocols of 1977, to which El Salvador is a party, expressly forbid the preceding conduct (in which respect the United Nations has frequently addressed the belligerents in the civil war).(522)

Relatedly, the activities of individuals suspected of collaborating with the armed opposition continue to fall within the purview of Decree 50, which replaced Decree 507 in February 1984; the former incorporates the 'Act on penal procedures

applicable when constituional guarantees are suspended'.(523) Decree 50 authorized the military system of justice to adjudicate offences deemed to be against the legal person of the State and offences of international relevance, with retroactive effect. Detention for interrogation and 'administrative' proceedings in advance of a military hearing were mandated for a maximum of 33 days; pre-trial proceedings for 60 days; the trial itself could extend for upto 31 days. As under Decree 507, extra-judicial confessions would be admissible, subject to attestations by two witnesses that no coercion was applied. The Government's submissions on the illegitimate or subversive nature of associations would constitute sufficient evidence to that effect.

According to the February 1986 report on El Salvador by the United Nations Commission on Huamn Rights, the implementation of Decree 50 - the constitutionality of which has been challenged by several human rights organisations, Salvadoran and international - entails many hundreds of hearings for a single military judge and four trial courts; the frequent ignoring of time-limits provided for in the Decree; and the encouragement of extra-legal testimony under interrogation "which does not correspond to the facts and is difficult to verify in court."(524) Indeed, testimony submitted to the Duarte Government by Amnesty International indicated that prisoners continued to be routinely subjected to both psychological and physical torture during incommunicado detention."(525)

Concurrently, the capacity of the criminal justice system "to investigate and punish serious politically-motivated violations of human rights" has been generally characterised as "highly unsatisfactory";(526) the Presidential Commission on 'internationally relevant' crimes has been dissolved after failing to resolve the handful of longstanding cases assigned to it;(527) and the overall condition of national socio-economic structures has continued to precipitate, despite minor sectoral gains.(528) With the impasse through 1986 in meaningful political dialogue between the Government and the FDR-FMLN,(529) the optistic promises of 1984 remain indefinitely postponed.

Guatemala

Antecedent to the November 1985 presidential elections in Guatemala, the record of egregious and systematic political violence and intimidation by the armed forces and allied extreme right groups remained by far the worst in Central America. In the first six months of the year alone, human rights organisations reported over 600 'extrajudicial executions' (including 235 deaths resulting from 'collective executions') as well as enforced disappearances averaging 20 per month.(530) Amnesty International observed that under the Mejia Victores regime, abuses were more "selective" but nevertheless "large-scale, and ... part of a deliberate government program":

> "Displaced persons, catechists and lay church workers, trade unionists, students, staff and employees of the

> University of San Carlos (USAC), and peasants living in the Patzun area, Chimaltenango were subjected to torture, 'disappearance' and extrajudicial execution in 1985."(531)

Writs of habeas corpus presented to the judiciary failed to elicit more than token responses, in the context of a legal system severly undermined by assasinations and supervening military authority.(532) The official 'Tripartite Commission' charged in 1984 with investigating reported disappearances was disbanded in mid-1985, "unable to establish the whereabouts of a single one of the many hundreds of 'disappeared' persons whose cases had been submitted to it."(533)

Military repression in rural Guatemala continued to be facilitated by increasingly efficient mechanisms for civilian administration and 'security' monitoring: the system of 'civil patrols' mandated labour and security services by over 900,000 mostly indigenous civilians; the programme of 'model villages' and 'development poles' lodged 200,000-300,000 inhabitants in re-education camps and assorted development projects; and the 'Inter-Institutional Co-ordination System' provided an apparatus of regional and local control within the army's Department of Civilian Matters and Local Development.(534)

In urban areas, trade unions and students were the principal targets of military concern, which engendered overt and systematic acts of harassment, assault and murder throughout 1985.(535) President Mejia Victores repeatedly denied any responsibility whatever for violations of human

rights on the part of the State.(536)

As in previous years, however, the military regime was wholly unsuccessful in dealing with Guatemala's poor economic situation. Capital flight from the country was estimated at $1 billion by 1985, accompanied by the cancellation of IMF stand-by credits worth $122 million.(537) Export commodity prices, the tourist industry, and even subsistence agricultural production experienced acute downturns. Public expenditure by the Government was cut to 3.8% of gross domestic product (GDP) - chiefly at the expense of health and education programmes - while the military absorbed 20% of the national budget. Consistent with traditional oligarchic orientations, tax-rates (at 7% of GDP) were among the lowest in the world, less than one-half the Central American average.(538)

Under heightening international and domestic pressure to honour its pledge for a democratic transition, the military ceded governmental powers to the civilian President-elect, Vinicio Cerezo, in January 1986. A new constitution - operative January 14, 1986 - guaranteed fundamental individual rights and freedoms (conconant with the International Bill of Rights), as well as articulating principles concernig cultural, family and general socio-economic well-being.(539) Judicial independence was recognised, subject to elaboration under additional legislation; judges would exercise complete authority vis-a-vis constitutional guarantees of habeas corpus

and amparo (denunciations against official powers amd actions). An independent Commission and Procurator for human rights were provided for, with extensive responsibilities and powers.(540)

A March 1986 resolution on Guatemala by the United Nations Commission on Human Rights, while welcoming "the process of democratisation and return to constitutionality", noted as well "the determination of the constitutional Government of Guatemala to adopt the necessary measures to investigate earlier violations of human rights with a view to ensuring that this situation does not recur in the future."(541) Likewise, a memorandum by Amnesty International detailing its findings and recommendations in respect of long-standing violations in that country urged the new civilian administration to conduct "an in-depth investigation of how ... 'disappearances' and extrajudicial executions were planned and carried out", in order to "identify and modify the institutionalised structures and policies which had permitted these violations to take place for more than two decades."(542)

During the first year in office of Cerezo's Christian Democrat Government, state-sponsored violence and abductions appear to have declined significantly, while the exercise of political freedoms in urban Guatemala - notably by the resurgent trade union movement - has received active official encouragement.(543) The reform of existing labour and minimum wage legislation are central objectives of the Government, to be pursued in co-operation with the trade unions.

In deference to established oligarchic and military

interests, however, no fiscal or land reform is to be undertaken in the short-term, nor radical measures to combat rampant inflation (estimated at 100% in the staple-food sector). More seriously, the Government has failed to investigate and prosecute on a systematic basis past human rights violations by the security forces; indeed, the latter's apparatus of 'administration' and repression essentially remains intact, particularly in the countryside.(544) "What happened in Argentina", observes Archbishop Prospero Penados (refering to the human rights investigations pursued by the Alfonsin Government against the country's armed forces), "will never happen in Guatemala."(545)

Recent international press reports also indicate that levels of violent crime in Guatemala have reached levels unknown since the 1978-82 period under the Lucas Garcia regime - bearing potentially serious implications for the 'fragile democracy'.(546) Guatemalan leaders attribute the violence in part to extreme right elements, including "former policemen who lost their jobs after Mr. Cerezo took office in January."

As stated earlier in this study, a sustained transition to civilian rule in Guatemala, in defiance of deeply entrenched and pervasive military dominance, cannot be assured by formal democratic and constituional processes alone. In nurturing the latter, that country will require considerable assistance and support from external allies - in particular those whose concerns extend beyond ideological and strategic interests, to

the promotion of human rights and socio-economic justice in Guatemala.(547)

Nicaragua

The national elections of November 1984 (in which non-Sandanista parties secured 33% of the vote), were accompanied by a conspicuous relaxation in the restrictions affecting civil-political rights and freedoms imposed under the 1982 emergency decree in Nicaragua.(548) Notably, freedoms of association and expression and the right to habeas corpus were restored, albeit with some attendant constraints.(549) A process of peaceful dialogue was commenced by the Government with leaders of the Miskito population on the Atlantic coast, aimed at facilitating regional autonomy.(550) Concurrently, the contra (guerilla) war against Managua was denied vital sponsorship by the United States Congress, notwithstanding the Reagan Administration's sustained campaign for large-scale military assistance avowedly designed to overthrow the Sandanista Government.(551)

Although Nicaragua continued to achieve tangible progress in the attainment of socio-economic rights by the majority of the population through 1985-86, political pluralism remained a distant expectation for those expressing oppositition to official policies. The State Security Service (DGSE) was responsible for numerous detentions without charge or warrant, involving individuals suspected of collaborating with the guerilla forces, as well as members of the legal

opposition.(552) Many detainees were held incommunicado over prolonged periods of time; some were released after brief interrogation in respect of political associations.(553)

Detainees facing formal charges were held under the Law for the Maintenance of Public Order and Security, generally entailing summary hearings by the Popular Anti-Somocista Tribunals (TPA).(554) Appeals against the latter's judgements - said to be characterised by "an inordinately high rate of convictions"(555) - lay only to the TPA's own courts. Among those singled out for investigation by the DGSE were leaders of the Nicaraguan Workers Confederation, two lawyers active in defending political detainees and in the legal opposition, and members of the opposition Social Christian Party and the Nicaraguan Conservative Party.(556) Subjected to incommunicado detention for questioning over extended periods, none of the preceding were ultimately charged formally.

On the other hand, numerous prisoners were convicted or charged with politically-motivated violence under the Public Order and Security Law during 1985; some were in detention pending charges under the Law.(557) A number of political prisoners were released through the year under administrative reviews and legislative pardons, including 50 former members of the National Guard.(558)

An amnesty law in April 1985 also affected armed Indian opposition groups (Miskito, Sumo and Rama), resulting in the release of 14 prisoners.(559) In addition to proceeding with regional autonomy negotiations with the Miskito, the Government

modified its policy of mandatory relocation on the Atlantic coast, with many former residents returning to the Coco River area.(560)

Somewhat unexpectedly, the Nicaraguan Government decreed in October 1985 renewed curbs on civil-political liberties throughout the nation, asserting that "brutal aggression by North America and its internal allies has created an extraordinary situation."(561) Freedoms of expression, assembly amd movement were suspended, as were the rights to habeas corpus and to protection from unreasonable search and seizure. Subsequent modification by the legislature partially restored habeas corpus, and relaxed the restrictions on movement and assembly outside the war zones, but essentially preserved the October measures.(562)

In the immediate aftermath, hundreds of opposition political leaders and others suspected of opposition activities were arrested; most were reportedly detained briefly and released without formal charges.(563) The Nicaraguan Catholic Church, the independent newspaper La Prensa, and segments of the trade union movement were principal targets of the clampdown.(564) At the end of 1985, a dozen instances of political killings and disappearnces were attributed to official action; poor prison conditions and "harsh interrogation techniques" were widespread, but no reports of torture have emerged.(565)

Further, official confrontation with the Miskito

population resumed in January 1986, allegedly resulting in a number of civilian casualties from raids by the military.(566) By April, a new exodus of Indian groups from the Atlantic region into Honduras appeared underway.(567) A blurring of lines between armed Miskito Indians - particularly those belonging to the organisation Misurasata - and the insurgent contra forces based in the same area, has continued to plague the search for political accomodation between the Sandanista Government and the indigenous Atlantic communities.(568)

Nicaragua's passage of the October decree and the resurgence of conflict with the Miskito provided further impetus to the campaign by the United States Administration for 'overt' military assistance to the contra forces, notwithstanding the judgement of the International Court of Justice(ICJ) against the legality of American activities against that country.(569) With Congress finally approving a $100 million package of assistance,(570) the consequences of escalating guerilla warfare for the Nicaraguan population include additional strain on a frail economy and continued official restrictions on civil-political rights and freedoms. Ideological conflict within the Central American region can also be expected to intensify, particularly in light of the contras' use of Honduras and El Salvador as staging bases for the insurgency.(571)

Nor can the implications for respect for human rights among the guerilla forces be ignored. Reports in recent months

by, inter alia, Amnesty International, express concern over

> "a pattern of torture and extrajudicial killings by Honduran-based irregular forces opposing the Nicaraguan Government, and about aspects of assistance to these forces from the Governments of Honduras and the United States of America which appeared to encourage or expressly condone such abuses ... Opposition groups acting under the name Union Nacional de Opocion (UNO) ... continued to routinely torture and summarily execute their captives ... Amnesty International was concerned that torture and death threats were apparently tolerated by Honduran and United States officials advising and supplying UNO forces"(572)

Indeed, recent evidence indicates that far from being merely "tolerated" or "condoned" by their principal sponsor, the United States, the preceding violations were actively incited by the American Central Intelligence Agency (CIA), as indicated, for example, in its advisory manual "Psychological Operations in Guerilla Warfare", used in training the contra forces.(573)

It is surely ironic that in invoking the absence of a climate of respect for fundamental rights and liberties in post-revolutionary Nicaragua qua justification for the guerilla war, the United States and its proteges should find themselves implicated in violations more egregious than any known to have been committed by the Sandanistas over the 1985-86 period. In this connexion, it is noteworthy that the right to personal security continues to have greater meaning, de facto and de jure, in Nicaragua than in El Salvador or Guatemala. Nevertheless, Nicaragua shares with both countries the condition of fragile respect for civil and political rights in the context of overbearing authoritarianism, despite the

promises of the 1979 revolution.

2. Canadian Relations With Central America, 1985-86

(1) Declaratory Policy Orientation

The major elements of Canadian policy towards the situation of human rights in Central America through the Trudeau era were reaffirmed without noticeable change during the 1985-86 phase in office of the Mulroney Government. A dominant theme in official policy prounouncements (not necessarily reflected in operative relations) has been the growing militarization of the Central American region, with particular reference to United States sponsorship of the *contra* war against the Nicaraguan Government. Support for the socio-political perspectives of the Contadora Group remained the hallmark of this country's approach to the continuing crisis in the region.

At the United Nations, Canada reiterated in December 1985 its condemnation of the persistent abuses of human rights in Guatemala "in a climate marked by lawlessness and violence", while hoping "that the movement toward civilian democracy and freedom under the rule of law may succeed."(574) Similar expectations attended the Canadian view of developments in El Salvador, where military operations in the countryside, the ongoing guerilla insurgency, and the tardiness of meaningful governmental reform were seen as the major obstacles to the enjoyment of human rights.(575)

Nicaragua's suspension of civil liberties under the

decree of October 1985 constituted, in Canada's opinion, a reversal of the process of political liberalisation pursued hitherto, and was contrary to "the development of a plural democratic system in that nation so recently freed from one form of authoritarian rule."(576) The continued operation of legitimate domestic opposition parties was of particular concern to the Canadian Government.

In appraising this country's role in the promotion of norms of international human rights, the 1986 Report of the Special Joint Committee (Commons and Senate) on Canada's International Relations accorded distinct treatment to the prevailing situation in Central America (as it had to South Africa).(577) Skepticism was expressed over the capacity of the civilian administrations in El Salvador and Guatemala to implement socio-economic change and respect for human rights at the present time, given the level of military entrenchment and civil strife afflicting those nations. In both cases, the Committee recommended Canadian project-assistance to be directed solely to the poor, through "experienced, reputable and independent" non-governmental organisations."(578)

Although concerned over political detentions and harassment of opposition political figures in Nicaragua, the Committee acknowledged that "human rights abuses committed by the government of Nicaragua do not begin to compare in scale or intensity with the violations connected to the governments of Guatemala and El Salvador over the past five years."(579) It

was further noted that "(t)he Sandanista government has made significant progress in meeting the basic human needs of the poorest Nicaraguans, particularly through its literacy, health care and land reform programs." Canada was urged to continue official development assistance to the the poorest in that country, while advocating "political pluralism and religious freedom".

In the context of the cessation of external intervention in Central America - with all its adverse consequences for human rights conditions - Canada was encouraged to support "a negotiated settlement of the differences between Nicaragua and the United States."(580) A minority of members within the Committee favoured "strong public representations" by the Government to the Reagan Administration for a regional policy emphasizing reform rather than militarization, especially in conjunction with the Contadora process.(581)

While Canada's influence in regional security matters was perceived as "limited", it was thought to have "a special opportunity to offer direct, practical and desperately needed help to the hundreds of thousands of refugees in the region", specifically through multilateral programmes for their physical security and economic development.(582) The Committee also recommended a strengthening of Canada's capacity to monitor regional human rights situations, "paying particular attention to the circumstances in each country and the views of Canadian NGOs in these countries". However, a majority of the Committee opposed the proposal by numerous witnesses for the immediate

establishment of a Canadian embassy in Managua(583) - an initiative which would surely facilitate the preceding objective.

A notable lacuna in the Joint Special Committee's assessment of human rights implications for Canadian policy in Central America concerned the issue of bilateral investment and trade relations. It will be recalled that the 1981-82 parliamentary reports on Latin America and the Caribbean recommended affirmative linkages between CIDA and EDC promotion activities and prevailing trends in respect for human rights among partner states - linkages not adopted by Canada in the Trudeau era.(584) Moreover, the Mulroney Government reinforced in 1985 the role of CIDA in facilitating bilateral and trade relations with client countries;(585) a formal Trade and Development Facility was established within the Agency effective April 1986.(586) The prospective divergence between declaratory and operative policies towards human rights in Central America hence remained unaddressed by the Canadian Parliament or the Government.

On the other hand, the concerns in the Committee's Report apropos Canadian development assistance programmes amidst the continuing severe rights abuses in El Salvador and Guatemala, were echoed in briefs submitted to the Government by the Inter-Church Committee on Human Rights in Latin America (ICCHRLA).(587) Canada's observer delegation at the United Nations Commission on Human Rights was urged to maintain close

scrutiny of the institutional problems obstructing meaningful change in those countries, including the ineffectiveness of the judicial system, poor land distribution, and the activities of the armed forces. The ICCHRLA opposed Canadian economic assistance to El Salvador and Guatemala pending further evidence of improvement in the conditions affecting human rights and social justice.(588)

International developments relating to Nicaragua were the focus of Canadian attention in Central America throughout the 1985-86 period. The Government dissented from the application of a trade embargo by the United States against Managua in June 1985, asserting that regional "geopolitical realities" as perceived by Canada rendered sanctions inappropriate.(589) While not introducing a "special programme" to enhance bilateral trade with Nicaragua, the Government would "not discourage" Canadian firms from seeking new business.(590)

As the Reagan Administration escalated its campaign for military action against the Sandanista Government, the International Court of Justice (ICJ) ruled in June 1986 that the United States was "in breach of its obligation under customary international law not to intervene in the affairs of another state".(591) Congress was not thereby dissuaded, however, from approving the Administration's $100 million support package for the contra forces.(592) Notwithstanding the implications thereof for the upholding of the rule of law in transnational relations and, more specifically, for the fate of

the Contadora initiative in respect of regional demilitarization so strongly endorsed by the Mulroney Government, no direct criticism of United States policies emerged from Ottawa. A Canadian commentator observed in the Globe and Mail (Toronto) that the Government's "'quiet diplomacy' is so subdued as to be practically inaudible on the world stage."(593)

An address in September by Prime Minister Mulroney to the Inter-American Press Association partially redressed the quiescence in this regard, at least at the declaratory level.(594) Whereas earlier official statements emphasised this country's recognition of American strategic interests in Central America - despite the ramifications for social justice and peace - the Prime Minster expressed on this occasion disapproval of external intervention "(w)hoever the third-party may be, and regardless of its legitimate interests in the area." The continuing violations of human rights in El Salvador and Guatemala were noted, as were "grave civil rights violations" in Nicaragua, particularly in regard to press and religious freedoms.

In seeking, however, to render a 'balanced' Canadian position on the situation in Central America - in terms especially of condemning third-party intervention by both sides in the East-West conflict - the Prime Minister arguably diffused the potential impact of his address, as appears to have occured with previous official statements. With specific reference to the Contadora process, reaffirmed by Mulroney "as

the best instrument for reconciliation in Central America", the Nicaraguan objection to treaty-limitations thereunder upon its level of armament in the face of increasing United States assistance to the contras is surely valid.(595) Relatedly, the Prime Minister's censure of human rights abuses in Nicaragua failed to extend to the acts of assasination, torture and abduction in which both the contra forces and the United States have been implicated.

Finally, with regard to this country's stance on multilateral development assistance to Central America, the traditional policy of excluding human rights criteria from lending decisions was maintained by the Mulroney Government. Accordingly, this country's limited willingness to oppose the clear politicisation of IADB, IMF and World Bank in respect of credits to El Salvador, Guatemala and Nicaragua by the United States was reinforced, as was the inconsistency between Canadian multilateral denunciations of gross human rights abuses in the region, and the the readiness to finance the countries at fault.

(2) Operative Policy Orientation

Two principal characteristics have attended this country's policy initiatives on the situation of human rights in Central America at the multilateral level in the post-Trudeau period. Firstly, the expiration of Canada's term of membership at the United Nations Commission on Human Rights (596) at a time when the institutionalisation of 'Working Groups' and 'Special Rapporteurs' on disappearances, torture and political killings renders the Commission increasingly effective in addressing patterns of severe violations of fundamental rights. While maintaining 'observer' status at the Commission, Canada will hence lose a vital forum of influence and pressure vis-a-vis Central American compliance with relevant international norms, until eligible for a new membership-term in 1988.

Secondly, and relatedly, membership has not been sought in the major forum for action in hemispheric affairs, including the application of the American Convention on Human Rights, viz. the Organisation of American States (OAS) and the Inter-American Commission on Human Rights (IACHR). Nor has Canada's robust support for the socio-political approach to the Central American crisis within the Contadora framework induced full participation in the diplomatic process.(597) As indicated earlier, a Canadian counterweight to the orientation of the regional policies of the United States affecting human rights conditions constitutes a potentially critical challenge in full

participation in the OAS, the IACHR and Contadora - a fortiori given the recent termination of such participation within the United Nations.

In the multilateral sphere, a Canadian delegation participated officially in international observation of the November 1985 elections in Guatemala,(598) as was the case with the 1982 and 1984 balloting in El Salvador.(599) Somewhat inconsistently, the Mulroney Government declined to witness the Nicaraguan elections at the end of November 1984,(600) where prevailing conditions of security and political freedom were palpably superior to those attending the Guatemalan or Salvadoran polling.

At the bilateral level, Canadian economic relations with the countries under study continued to reflect the 'compartmentalisation' of human rights policy-making evident through the Trudeau era. In particular, rights-criteria were increasingly excluded from policies and practices concerning investment, trade and even development assistance. As noted in Section 1 above, the integration of these activities within CIDA proceeded apace during 1985-86: export subsidies for official development projects, mandatory Canadian content and purchase requirements, and commercial profit-making as a priority within aid programmes, gained renewed momentum.(601) The traditional humanitarian purposes underlying development assistance has clearly been put at issue, given its intrinsic

tension with commercial criteria; as Prof. Linda Freeman cautions,

> "The drive for exports and the general imperative for capital accumulation in (the) recession have intensified a trend that has effectively subordinated all other interests in foreign policy to relatively short-term economic interests."(602)

Equally, as occured earlier in transactions with Guatemala, the EDC's promotional undertakings would remain unimpeded by considerations relating to the non-commercial implications thereof, including indirect suppport for repressive policies by the state.

An early development in the course of the Mulroney Government's term in office was the resumption of bilateral economic assistance to El Salvador, on the grounds that Canada could contribute to the alleviation of severe deprivation affecting the displaced in that country.(603) Consistent with the commercial-orientation of Canadian policy in this regard,a credit line worth $8 million would extend over two years, to be channelled through non-governmental organisations, for the purchase of fertilsers in Canada. It was asserted that "the resumption of aid should not be viewed as an acknowledgement by Canada that the human rights problem in El Salvador has been fully resolved", though no assurances were forthcoming that a restoration of regular programmes would not occur in the coming months.(604) It will be recalled that the original severance of Canadian assistance to El Salvador was based on the absence of adequate physical security for Canadian projects and personnel rather than upon human rights conditions <u>per se</u> (parallel to

the instance of Guatemala, where bilateral aid remained suspended during 1985-86).

Nicaragua, where official capacity to absorb enhanced development assistance for bona fide public welfare projects was beyond dispute, is still categorised as a 'project' rather than 'programme' level recepient.(605) Nevertheless, an active flow of aid for a geothermal electric plant, and for the agricultural and water sectors was maintained through 1985-86, albeit with an 80% Canadian-procurement requirement.(606) Of particular significance in this connexion has been the degree of Canadian NGO participation, continuing to elicit substantial funding from CIDA (though disbursements have currently declined in comparison with the peak levels in 1983-84).(607)

A less favourable trend relates to the expanding utilisation of Mission Administered Funds (MAF) by CIDA, especially in countries where regular assistance programmes are in suspension. A 1986 NGO report comments that MAF projects raise serious questions of accountability in falling exclusively within the purview of individual personnel in Canadian missions abroad, as well as presenting a potential threat to the safety of local financial recepients in countries such as El Salvador and Guatemala, where groups demonstrating interest in "social equity" automatically become targets of repression.(608) In contrast, it should be noted, no MAF assistance is extended within Nicaragua.

Significantly, though operative Canadian commercial and

development assistance policies have diverged in principle from those of the United States - especially in regard to Nicaragua - the effects of Canadian policies have generally continued to converge with the strategic objectives of the Reagan Administration in Central America. Honduras, for example, remains the principal recepient of Canadian devlopment aid in the region, despite the continuing militarization of that country, not least through the contra war.(609) Nicaragua, on the other hand, failed to be benefit from investment and trade promotion by CIDA and the EDC; and El Salvador may well be approaching a full restoratation of Canadian bilateral aid. Likewise, the absence of rights-criteria in Canadian multilateral assistance policies (whether legislative or otherwise) at the IADB, the IMF and the World Bank effectively condoned the existing politicisation of those institutions in their lending to Central America.

It is also noteworthy, in respect of the limited operative divergence between Canadian and United States polcies in the present context, that an official visit to this country by Nicaragua's Vice President Sergio Ramirez, scheduled for late-1986, was cancelled by that country following the refusal of Prime Minister Mulroney and Deputy Prime Minister Dan Mazankowski to meet with him.(610) Coinciding with Ottawa's reaffirmation of support for a rapprochment vis-a-vis the Central American crisis, and the vocal rejection of United States policies towards Nicaragua, the preceding diplomatic

rebuff bodes ill for Canada's declared commitment to the promotion of social justice and stability in the region.

Further, in the domain of military exports to Central America - expressly prohibited under legislative and policy directives in this country - private transactions by Canadians have continued to support the American sponsorship of contra activites in Nicaragua. Specifically, during the 1985-86 period, Propair Inc. of Quebec engaged in two sales of DHC-4 'Caribou' aircraft for $1 million through a Panamanian corporation, destined for use in contra supply operations based in El Salvador and Honduras.(611) Under the Canadian Export and Import Permits Act, the sales required 'end-use' certificates which would have been denied upon disclosure of the actual destination, since the transaction contravenes the provisions of the Act as well as the official position on arms sales to Central America. However, the legislative requirement for a 'delivery verification' certificate did not extend to the transaction.(612) The Government initiated on October 28 an investigation into the sales, which External Affairs Minister Clark repudiated as violating this country's regional policies.(613)

As with earlier Canadian transactions involving military and 'dual-use' items to Central America and South Africa, the de facto implementation of national law and policy affecting military exports has been called into question, resulting in this country's complicity in situations of human rights violations abroad. Aspects of this issue are further addressed

in the appropriate context in Part 4 of this dissertation.

Hitherto, somewhat greater independence and rights-orientation has attended Canadian policy on the admission of refugees from El Salvador and Guatemala: the overall regional quota for resettlement here was raised to 6,200 (only 1,000 were accepted in 1982), while processing facilities in San Jose and Guatemala City were fully upgraded.(614) Special programmes for the admission of political prisoners and other oppressed persons from El Salvador and Guatemala remained in place, and an agreement was reached for the adoption of orphaned children from the former.(615)

While the moratorium on deportations to Guatemala - consonant with this country's obligations in respect of 'non-refoulement' under the 1951 Refugee Convention as well as customary international law - has been continued,(616) the visitor visa requirement concurrently imposed for Guatemala has remained in effect. The Canadian Government contends that the latter "does not appear to have created obstacles either to legitimate refugee claimants or to bona fide visitors to Canada."(617) Reports of persistent political killings, disappearances and torture in that country do not, however, allow for complacency in regard to the Government's assertion. In at least one instance - that of school teacher and law student Beatriz Eugenia Maroquin - the mandatory visa requirement for entry into Canada proved fatal.(618) In Novmber

1985, following her abduction and torture in Guatemala, Maroquin was successful in obtaining Canadian refugee status; while awaiting the issuance of the necessary visa, she was abducted once again on December 10, subjected to torture, and killed. Canada expressed "alarm and outrage" in connexion with the incident,(619) but has yet to modify the procedural requirements for Guatemalans seeking admission to thos country.

As for the recommendations of the parliamentary Special Joint Committee in respect of Canada's "special opportunity to offer direct, practical and desperately needed help to the hundreds of thousands of refugees in the region",(620) there is no evidence of the Government's readiness to undertake the radical and urgent measures required to alleviate problems of physical security, extreme impoverishment and political uncertainty afflicting Central America's displaced and refugee population.(621) Generous financial and other humanitarian assistance through the United Nations High Commissioner for Refugees (UNHCR) and NGOs, while remaining a Canadian tradition, scarcely constitutes an adequate response to the dimensions of this issue.

III. Conclusions

At the decalartory as well as the operative policy level, the Canadian Government demonstrated from 1981 onwards a new recognition of the political and socio-economic issues affecting human rights in Central America, acknowledging the legal as well as moral responsibilities entailed for this country's foreign policy. Canada joined in the international denunciation of egregious violations of the right to life and security of the person in El Salvador and Guatemala, and censured the poor respect for political pluralism in post-revolutionary Nicaragua. Bilateral economic assistance to El Salvador and Guatemala was virtually terminated under prevailing conditions of civil strife, while official military exports to the region were proscribed.

The 1981-82 reports of the parliamentary Sub-Committee on Canada's Relations with Latin America and the Caribbean accentuated the focus upon the human rights implications of this country's bilateral as well as multilateral policies concerning Central America. Subsequently, the Government was somewhat tentative in its commitment to the Caribbean Basin Initiative (CBI) proposed by the Reagan Administration, professing instead a more balanced perspective towards the diversity of ideology and circumstance in the region. Progressively less emphasis was placed upon purely strategic considerations and more on the socio-economic causes attending the collapse of the rule of law in the region - as the parliamentary reports had suggested.

Yet the Government's divergence from the orientation of United States policies in the region remained more declaratory than operative. Canadian Crown corporations continued to deal most favourably with the regimes in Honduras and Guatemala; the former became the principal beneficiary of official development assistance in Central America. Nicaragua's demonstrated capacity to apply development aid in furtherance of basic socio-economic rights failed to earn priority in CIDA's regional programming. Nor did a Canadian delegation participate in international observation of Nicaraguan elections in 1984, despite attending those in El Salvador and Guatemala under considerably more questionable conditions. Furthermore, the Canadian Government continued to oppose the incorporation of human rights criteria in multilateral lending by the devlopement banks and the IMF, notwithstanding express American legislation to that effect; in the event, El Salvador and Guatemala remained important beneficiaries of multilateral institutional funding, whereas the Sandanista Government suffered the effects of a sustained exclusionary campaign by the Reagan Administration.

Certain fundamental problems with respect to Canadian human rights policy-making in general, and relations with Central America in particular, were highlighted by the 1981-82 parliamentary review. Foremost among these was the ad hoc character of the review process itself, which had no systematic basis or binding force within the framework of Canadian foreign

policy. The Government's accountability in regard to international human rights obligations affecting Central American relations could scarcely be critiqued satisfactorily through occasional parliamentary reviews or questions in the House of Commons.

Indeed, in its submission to the aforementioned parliamentary review, the Taskforce on the Churches and Corporate Responsibility (TCCR) observed that parliamentarians themselves appeared inadequately informed on salient issues concerning hemispheric policy, especially on matters of commercial and economic relations affecting human rights:

> "Given ... the demonstrably rare occasions when Parliament debates foreign policy at all and ... the inherent secrecy that surrounds most commercial activity, this is not altogether surprising ... If human rights is to become a factor in the making and review of Canadian foreign policy, continuing instruments in Parliament and in the state structure must be developed to inform and embody this concern ... "(622)

The TCCR's appeal for "regular public review" of the interaction between international human rights and Canadian foreign policy was endorsed in the Sub-Committee's Final Report of November 1982, which envisaged a "strenghtened" parliamentary function in the policy-making process:

> "(W)e recommend that the House of Commons Standing Committee on External Affairs and National Defence be empowered to play a continuous role in the examination of Canadian foreign policy. As part of that role, the Committee should conduct a periodic review of Canada's relations with Latin America and the Caribbean."(623)

No governmental reforms ensued, however, in response to the foregoing. The parliamentary recommendations were

susceptible to treatment as purely advisory or hortatory for the government in power, a circumstance that invokes another structural problem in Canadian human rights policy-making - the absence of a legislative foundation to the process, already adverted to in the context of South African relations in Part II above.

In the case of Canada's support for multilateral institutional credits to the Garcia and Rios Montt regimes in Guatemala, the Trudeau Government was under no legal obligation to account for the glaring inconsistency between public denunciation and financial assistance; a similar situation obtained vis-a-vis Canadian voting on loans to, inter alia, Chile, El Salvador and the Phillipines. Nor was the Government obliged to ensure that CIDA and Crown corporations such as the EDC and (at the time) de Havilland, did not engage in commercial transactions supportive of those regimes, though such restrictions were applicable in relation to dealings with South Africa.

In the absence of legislative guidelines and constraints appertaining to rights-criteria, moreover, Canadian policy has tended to conform to traditional patterns of orientation in hemispheric affairs: the historic influence of the United States manifests itself forcefully in the sphere of Canadian-Central American relations, frequently to the detriment of human rights principles. Ironically, the Reagan Administration must conduct its hemisperic policies within numerous legislative constraints concerning respect for

international norms of human rights - the enforcement of which by Congress may be questioned in the present context - whereas the legislative support which the Trudeau and Mulroney Governments might have invoked in asserting an independent and rights-oriented Canadian policy has been entirely lacking.

Whatever the limitations of a legislative approach - and the experience of the United States over the past decade is illustrative in that regard - executive accountability in the public domain remains the norm. So does the scope for an enlarged role by Parliament, NGOs and other public actors in the policy process,(624) a matter surely of visceral importance in the context of promoting fundamental human rights and freedoms.

The situation of human rights in post-Trudeau era El Salvador, Guatemala and Nicaragua has, in essence, been one of attenuated overt political violence, disapperance and other egregious abuse, though hardly manifesting systematic respect for the rule of law and fundamental civil liberties. While seeking to remedy long-standing socio-economic injustices through meaningful structural reform, the Nicaraguan Government has failed to uphold the rights and freedoms of those in peaceful and legitimate opposition to Sandanista ideology, including trade unions, churches and the media. Yet, the right to security of the person finds considerably greater respect in that country than in El Salvador and Guatemala - even after their recent 'civilian transitions'. The repressive

institutions and practices of the armed forces and allied extreme right groups have yet to submit to the Duarte and Cerezo Administrations, while the established economic dominance of the oligarchy continue to obstruct fundamental socio-economic change.

Profound public as well as official Canadian concern over the continuing problems of social justice and individual security in Central America attended the 1985-86 phase in office of the Mulroney Government, finding expression in a multiplicity of initiatives. These included private and official project undertakings for reconstruction in Nicaragua, humanitarian assistance to El Salvador, the increased admission of refugees from El Salvador and Guatemala, and renewed diplomatic support for the conciliatory efforts of the Contadora Group. The 1986 Report of the Special Joint Committee on Canada's International Relations commented in this regard:

> "The committee received more submissions on Central America than on any other single subject. A remarkably large number of witnesses had first-hand experience in this area, often as aid workers or members of visiting delegations, and spoke with great conviction and knowledge as a result. Many of the briefs pointed to Canada's special interest in promoting human rights in Central America ... The briefs and submissions expressed the concern - which we share - that human rights violations in Central America arise from the failure of economic development, the frequent absence of political alternatives to dictatorships and military regimes, social upheaval, increasing cycles of violence, and external intervention."(625)

Nevertheless, the principal trends characterising most facets of Canadian multilateral and bilateral policies

affecting the region have experienced no significant change in the post-Trudeau period. Investment and trade promotion activities by CIDA and the EDC not only continue to exclude non-commercial criteria in decision-making, but increasingly dilute the hitherto humanitarian orientation of official development assistance programmes. Protestations in various public fora over the consequences of external military intervention for security and human rights in Central America have not induced forthright criticism of the role of the United States, nor direct participation in the Contadora process. Canada remains an 'observer' at the OAS and the IACHR - and now at the United Nations Commission on Human Rights.

Above all, Canadian policies on Central America - as indeed on South African apartheid and cognate issues - continue to lack a basis in legislation and meaningful parliamentary participation. Where human rights criteria find limited expression in the law - as with the regulation of military exports - the Government's record of enforcement has remained inconsistent, and Parliament's contribution to the process highly circumscribed. The subsistence of private transactions involving aircraft and ammunition sales to Central America are illustrative (as are corresponding exports to South Africa). In consequence, as noted earlier, this country's capacity to undertake policies in conformity more with its normative human rights obligations, rather than with the strategic and ideological interests of the United States in the region, is ultimately questionable.

C. NOTES

1. It is not within the scope of this survey to provide more than a general outline of socio-historical developments relevant to the situation of human rights in the countries under study. Detailed expositions in that regard appear in the documentation cited below, and listed fully in the Bibiliography, infra.

2. See generally Anderson, Matanza (1971); Montgomery, Revolution in El Salvador - Origins and Evolution (1982), pp.49-53; North, Bitter Grounds (1981), pp.34-41.

3. The Marines first landed in Nicaragua in 1909, to safeguard vested United States commercial and strategic interests, in furtherance of which a conservative government was installed in Managua, anti-government forces pacified, and the socio-political system adapted in multiple respects. From 1912 to 1933, the Marines maintained a conspicuous presence in the country, with a brief interval during 1925-26. See Booth, infra note 84, pp.27-50; Diedrich, Somoza (1981), at 6-20. See also Stephen Kinzer,'Marines Is Not a Nice Word in Nicaragua's Lexicon', New York Times, November 7, 1986, A4, drawing historical links between the Marine occupation of the country and the prevailing conflict with the U.S.

4. Melville, Guatemala - Another Vietnam? (1971), pp.37-42; de Solo, Dependency and Intervention - The Case of Guatemala in 1954 (1978), at 83-108.

5. Ibid.

6. The subject receives distinct treatment at Section A:II:3, infra.

7. See also the update at Section B:II:1 infra; Canadian policies are updated in the ensuing segment.

8. LeoGrande and Robbins observe that "(f)or the oligarchy, the growth of even moderate opposition has always raised the spectre of 1932. A strong current of belief persists among the oligarchs that the threat of revolution can only be effectively met as it was in the 1930s by bloody suppression": "Oligarchs and Officers: The Crisis in El Salvador", Foreign Affairs, Vol. 58:5 (Summer 1980), 1084, at 1085-86. See further Anderson, supra note 2, especially pp.144-45, 158-59; Montgomery, supra note 2, pp.5-53; North, supra note 2, pp.35-41.

9. Montgomery, supra note 2, pp.58-59.

10. From May 1944, when Martinez resigned, to October, his Provisional Government included diverse political representation, and reinstituted a number of civic freedoms. The result was an eruption of political activity and popular

demands for additional guarantees of fundamental rights. Apprehensive at the new state of affairs, conservatives within and outside the army staged another coup on October 21, and ensured the election of the only serious remaining candidate at the polls in January 1945, Gen. Castaneda. See Montgomery, supra note 2, pp.60-61.

11. Ibid, at 62.

12. Ibid.

13. Ibid, at 63-64.

14. See Jung, "Class Struggle and Civil War in El Salvador", in Gettleman, et. al.(eds), El Salvador, Central America and the New Cold War (1981), 65, at 74-75; LeoGrande and Robbins, supra note 8, p. 1086, on the nature of the new party. Fisher, "Human Rights in El Salvador and U.S. Foreign Policy", Human Rights Quarterly, Vol. 4 (1982), 2, remarks that the primary objective of PRUD was to institutionalise military dominance, while asserting itself as a unifier of all the sectors of Salvadoran society.(at 6)

15. Trade union organisation in the countryside, however, remained illegal. See Jung, supra note 14, p.75; North, supra note 2, pp.54-56.

16. Montgomery, supra note 2, p.65.

17. Ibid, at 65-72.

18. Ibid. See also Jung, supra note 14, pp.74-75; North, supra note 2, pp.58-59.

19. The October coup was engendered by a radicalist wave whose leaders included Dr. Fabio Castillo, a strong supporter of the Cuban revolution. A counter-wave in the ensuing weeks opposed to communism and the Cuban revolution alike, resulted in the January coup, with Col. Rivera installed as the head of a new junta. In testimony before the United States Congress in 1976, Dr. Castillo asserted that the U.S. embassy and military mission in El Salvador openly and emphatically intervened against the 'October wave', and facilitated the January coup. See Montgomery, supra note 2, pp.72-74; Fisher, supra note 14, pp.6-7.

20. See Fisher, supra note 14, pp.7-8; Montgomery, supra note 2, pp.74-80; Webre, "The Politics of Salvadoran Christian Democracy", in Gettleman, et al (eds), supra note 14, 89.

21. See Americas Watch Committee (AW) and the American Civil Liberties Union (ACLU), Report on Human Rights in El Salvador (1982), pp.227-33, which offers an analytical summary of national constitutional provisions bearing upon human rights.

22. Limited economic liberalisation by the Rivera regime was accompanied by the tightening of political control, particularly through a new paramilitary organisation, ORDEN, that was to emerge in the 1970s as an egregious violator of human rights. See Jung, supra note 14, pp.76-77; Montgomery, supra note 2, pp.76-80; North, supra note 2, p.71.

23. The war followed several rounds of qualifying soccer matches for the 1969 World Cup, an event that elevated dramatically the emotional ante between the populations of the two countries. See especially Montgomery, supra note 2, pp.82-83.

24. The only immediate beneficiary of the 'soccer war' was the Salvadoran military - which initiated the conflict by invading Honduras - with the PCN successfully running 'heroes' of the war in municipal elections, and only being forestalled from gaining a new political momentum by the persistent economic crisis. See North, supra note 2, pp.4-66, 68; Montgomery, supra note 2, pp.82-83.

25. Jung, supra note 14, pp.77-78; North, supra note 2, pp.70-71; Montgomery, supra note 2, pp.84-86.

26. Ibid. See also Fisher, supra note 14, pp.9-10; LeoGrande and Robbins, supra note 8, pp.1087-86.

27. The largest of the broad-based mass organisations was the Popular Revolutionary Bloc (BPR), formed in 1975 and associated with the oldest guerilla group, the Popular Forces of Liberation - Farabundo Marti (FPL-FM). Advocating a socialist political programme, the BPR was a coalition of such groupings as the Christian Federation of Salvadoran Peasants, the Federation of Rural Workers, the National Teachers Association, the Union of Slum Dwellers, and the Union Co-ordinating Committee (composed of over 50 industrial unions), and the Association of University Professors. Several other coalitions of a similar nature were constituted, though opn a smaller scale. See for a succinct picture North, supra note 2, pp.78-79.

28. See Fisher, supra note 14, p.10; Montgomery, supra note 2, pp.88-891; North, supra note 2, pp.74-77.

29. The election was, by all accounts, conducted fraudulently; public demostrations and unrest occured in consequence. See Montgomery, supra note 2, pp.84-90, 94-95; Jung, supra note 14, pp.81-82.

30. See especially Amnesty Internationl Report 1979, section on El Salvador, citing widespread denunciations; Feinberg, "Recent Rapid Redefinitions of U.S. Interests in Central America", in Feinberg (ed), Central America: International Dimensions of the Crisis (1982), 58, at 67-69. See also Fisher, supra note 14, pp.1-2.

31. Ibid. For a detailed and systematic account of relevant legal guarantees and de facto conditions in El Salvador in early 1978, see Inter-American Commission on Human Rights (IACHR), Report on the Situation of Human Rights in El Salvador (1978); the Report is highly critical of the failure to implement the obligations entailed under the national constitution as well as international agreements to which El Salvador is a party.

32. See LeoGrande and Robbins, supra note 8, pp.1090-93; 1084-85; Jung, supra note 14, pp.82-84. From a socio-economic standpoint, the Salvadoran situation in 1979 reflected historic patterns of wealth-ownership and distribution, as well as of national devlopment. A casual survey would reveal that the oligarchic elite - the so-called '14 families' - owned 60% of the land and over 50% of industry, and received half the national income. The countryside remained seriously underdeveloped despite the nation's small size, with the peasantry largely landless. See generally Millet, "The Politics of Violence: Guatemala and El Salvador", Current History, February 1981, 70, at 70-71; Stephens,"The Need for Agrarian Reform", in Gettleman, et al (eds), supra note 14, 159.

33. For a detailed account of the coup, see especially Montgomery, supra note 2, pp.7-25. See also LeoGrande and Robbins, supra note 8, pp.1093-94.

34. LeoGrande and Robbins, supra note 8, pp.1093-95, at 1094. See also Feinberg, supra note 30 pp.72-73. The failures of the October junta stemmed from a mixture of excesive conservatism on the part of some of its members, especially Defence Minister Jose Garcia, and the political naivete of the military officers involved, who entirely failed to account for the level of corruption and inclination toward the use on the part of the army and security forces. It is also widely held that the United States demonstrated limited public support for the Government, in comparison with the endorsement given the succeeding junta.

35. With the exception of Defence Minister Garcia and his sub-secretary, the entire cabinet, along with numerous senior personnel linked with the Government, resigned. The principal conditions for the PDC's participation in the new junta related to the adoption of a programme of economic reform and the nationalisation of banks; the initiation of a dialogue with the popular organisations; and the exclusion of business organisation representatives from the junta. The armed forces acceeded to the conditions. See particularly Montgomery, supra note 2, pp.23, 161; North, supra note 2, p.82.

36. None of those who resigned from the October Government were prepared to return to the new coalition; reportedly, "it was common knowledge in San Salvador that most of the appointees were second and third choices": Montgomery, supra note 2, 161.

37. Feinberg, supra note 30, pp.73-75. For a detailed summary of U.S. economic and military assistance to El Salvador under the Carter Administration, see Report on Human Rights in El Salvador, supra note 21, at pp.181-85. Such was the extent of American concern over stability in that country that at least two potential coups by conservative elements against the January junta - in February and April-May 1980 - were averted through direct pressure from Washington. See Montgomery, supra note 2, pp.163-68; LeoGrande and Robbins, supra note 8, pp.1097-1101.

38. The continuing use of repressive tactics by the army led in early 1980 to the resigantion of key members of the Christian Democartic Party from the junta. An illustratation of the continuing sensitivity of the relationship five years thereafter was provided by the developments attending the kidnapping of President Duarte's daughter, Inez Guadelupe, in September 1985. In response to Duarte's willingness to submit to many of the abductors' demands in exchange for his daughter's release, the army's entire 'partnership' with the Government was called into question, and fears expressed over the possible escalation in repressive practices by the former. See, inter alia, 'Duarte's stance on abduction stirs army', Globe and Mail (Toronto), October 10, 1985, A8. On the President's own earlier concerns over the partnership with the military, including the National Guard and the police, see North, supra note 2, p.89; some of Duarte's political opponents are quoted as being still less optimistic than the President.

39. United States policy priorities, however, remained firmly rooted in perceived geopolitical considerations of security even under the Carter Administration - as evinced particularly by the resumption of military assistance to the El Salvador in early 1980 despite the deteriorating human rights situation. See Montgomery, supra note 2, pp.178-79; Report on Human Rights in El Salvador, supra note 21, pp.181-85, 189-90. Under the Reagan Administration's approach to Central America - articulated forcefully by U.S. Ambassador to the United Nations, Jeane Kirkpatrick, during 1981-83 - the emphasis was almost exclusively upon confronting what was regarded as a pervasive commmunist threat in the region. Kirkpatrick was critical of the Carter Administration's "restless search for constructive change", which rendered it "more eager to impose land reform than elections in El Salvador". See especially Kirkpatrick,"U.S. Security and Latin America", Commentary, Vol.71:1 (January 1981), 29; "This Time We Know What's Happening", in Falcoff and Royal (eds), Crisis and Opportunity - U.S. Policy in Central America and the Caribbean (1984), 165. See further North, supra note 2, pp.89-92, on the pursuit of U.S. strategic interests in El Salvador under both the Carter and Reagan Administrations.

40. In January 1980, the leading mass popular organisations and guerilla forces (referred to in note 27, supra), along with the Communist Party, formed a unified revolutionary opposition,

ultimately to become the United Democratic Front-Farabundo Marti National Liberation Front (DRU-FMLN). By early 1980, Guillermo Ungo and Hector Dada - respectively the senior Popular Forum and Christian Democratic members of the civilian-military junta, and both with strong democratic credentials - resigned in protest to join the revolutionary opposition. Dada's resignation paved the way for Duarte's entry into the Government in March 1980. See especially North, supra note 2, pp.78-84. Former United States Ambassador to El Salvador Robert White observed after his removal from the post by the Reagan Administration that the willingness of the Christian Democrats in the Government to negotiate with the opposition was tempered by the army's reluctance to do so, and that the inclination toward a military solution by the U.S. abetted the impasse: 'Why Not Negotiate?' Washington Post, June 9, 1981. See also Arnson,"The Salvadoran Military and Regime Transformation", in Grabendorff, Krumweide and Todt (eds), Political Change in Central America: Internal and External Dimensions (1984), 97. The conservative perspective in the United States, well expressed in Falcoff,"How to Understand Central America", Commentary, Vol.78:3 (September 1983), 30, is that the failure of dialogue between the Government and the militant opposition owes to the latter's poor response to Duarte's willingness to negotiate, and that power-sharing would lead to a 'leftist' administration with limited respect for human rights. Accordingly, the United States is urged to maintain its substantial military support for the status quo. During the 1984-86 period, political dialogue between the belligerents has consistently failed to materialise, notwithstanding the expressed readiness of both sides to compromise. See further infra, Section B:II:1.

41. Infra Sections A:II and B:II:1.

42. The Provisional Junta that held office pending the 1945 elections underwent a severe internal contest between 'revolutionary' and conservative elements, with the former emerging victorious on that occasion; the conservatives were to regain the upper hand in 1954. See de Solo, supra note 4, pp.111-14.

43. Melville, supra note 4, pp.42-43. Arevalo won 85% of the vote, with an unprecedented 62% electoral participation. See further Torres-Rivas,"Problems of Democracy and Counterrevoluton in Guatemala", in Stanford Central America Network (eds.), Revolution in Central America (1983), 37.

44. Melville, supra note 4, p.45. The first legislative enactment by the new Government was the literacy law of March 1945, aimed in particular at enfranchising the large class of illiterate Indian males,hence preparing the groundwork for radical agrarian reform. See de Solo, supra note 4, at p.118.

45. On Arevalo's reform programme and its record of implementation in face of multiple obstacles, see Melville,

supra note 4, pp.43-56; de Solo, supra note 4, pp.113-28.

46. The July 1948 Law of Expropriation, for example, provided a basis "for the acquisition of private lands when and where there existed a public need", with compensation; and the Labour Code of May 1947 "augmented the rights of all categories of labour and defined the duties and responsibilities of all categories of the management and employers": de Solo, supra note 4, pp.118-19, 124-25. In addition, a comprehensive survey of natural resources and conditions affecting agriculture was commenced in order to provide a statistical base for radical reform; the majority of the undertakings under the project commenced between 1945 and 1947, and and were only completed at the end of Arevalo's term. See Melville, supra note 4, p.49; de Solo, supra note 4, pp.123-24.

47. Arbenz was a member of the transition government of 1944-45; though decisive, his election followed a "polarised and explosive" campaign. See de Solo, supra note 4, p.144. Arevalo's vision was emphatically not communist: he admired United States President Franklin D. Roosevelt's teaching "that there is no need to cancel the concept of freedom in the domocratic system in order to breathe into it a socialist spirit": Melville, supra note 4, p.45. De Solo observes that Arbenz had matured within the ranks of the Guatemalan military -"an extremely conservative political milieu" - in light of which his reputed leftist leanings amounted to "a singular accomplishment".(at pp.144-45) For detailed analysis of the 1952 Agrarian Reform Law, characterised as "the last attempt of the 'revolutionary' forces to institutionalise the Guatemalan Revolution of 1944", see de Solo, pp.166-86, with background and impact assesments at pp.144-65, 196-229. A more succinct and less technical account is offered in Melville, at pp.60-98.

48. The impact of the Reform Law upon the Fruit Co. is examined in de Solo, supra note 4, pp.196-204, and the United States' decision to intervene on the Company's behalf appraised at pp.236-64. See also Melville, supra note 4, pp.79-98. Both treatments emphasise the prevailing ideological attitudes within the United States Government - especially the anti-communism of Secretary of State John Foster Dulles - as an important determinant in the decision to intervene.

49. See Melville, supra note 4, pp.84-85.

50. Ibid, pp.75, 87-88, 67. For a full description of the administrative procedures attendant to the Agrarian Reform Law - under Decree 900 of June 1952 - see de Solo, supra note 4, pp.171-79; the appeals issue is considered at p.176. The attempt to have Decree 900 declared unconstitutional failed. Melville, p.67; de Solo, pp.179-80.

51. Melville, supra note 4, pp.89-93.

52. See note 48, supra.

53. Melville, supra note 4, pp.97-98, 99-103; de Solo, supra note 4, 248-251, 251-60.

54. The Labour Code of 1947, the Agrarian Reform Law and the Laws of Forced Rentals, inter alia, were specifically repealed; decrees reversing property expropriation and re-distribution measures (under Decree 900) were also adopted.

55. Torres-Rivas comments that as many as 8,000 peasants were killed in the first four monthsof the Armas regime, in a "vendetta" by the landlords against their "peons in the countryside": supra note 43, at p.43.

56. Under the new Agrarian Statute (Decree 559 of February 1956), the principle of private ownership was consolidated, and effective 'colonisation' of hitherto undeveloped territories envisaged; the issue of Indian landlessness was ignored. See Melville, supra note 4, pp.126-40. The new Constitution (1956) denounced communism and restricted many of the rights and freedoms provided for in the 1945 Constitution. See de Solo, supra note 4, pp.260-61.

57. Miguel Ydigoras Fuentes, a former aide of dictator Jorge Ubico, 'pursuaded' the Congress to select him as President following an indecisive election in January 1958. Melville, supra note 4, pp.141-71, offers a detailed exposition of Fuentes' policies.

58. Ibid, pp.166-69; Torres-Rivas, supra note 43, pp.118-19.

59. Melville, supra note 4, 169-70.

60. Ibid, pp.172-73; Torres-Rivas, supra note 43, pp.121-23. The United States, for its part, was firmly opposed to Arevalo's return. See especially Gleijeses,"Guatemala: Crisis and Response", in Fagen and Pellicer (eds), The Future of Central America (1984), 187, at 188; and Melville, at p.171.

61. Melville, supra note 4, pp.175, 181-82.

62. Ibid, pp. 192-99, 203; Torres-Rivas, supra note 43, at 42.

63. See Gleijeses, supra note 60, p.191; Melville, supra note 4, pp.204-211; Schoultz,"Guatemala: Social Change and Political Conflict", in Diskin (ed), Trouble in Our Backyard - Central America and the United States in the Eighties (1983), 174, at 190; Torres-Rivas, sura note 43, at p.38. In the absence of strong support for Montenegro by the United States embassy in Guatemala, the military would in all probability have carried through a coup to avert the civilian electoral victory from being announce and realised inthe first instance.

64. On Montenegro's attempts at reform, see Melville, supra

note 4, pp.217-52, which exposing the gap discrepancy between aspiration and achievement, particualrly with respect to agrarian policy. On the disastrous condition of human rights under the Montenegro Government, see Torres-Rivas, supra note 43, pp.38-39; Gleijeses, supra note 60, p.191.

65. Glejeses, supra note 60, p.191; Torres-Rivas, supra note 43, pp.38-39.

66. Ibid; Schoultz, supra note 63, p.190.

67. Gleijeses, supra note 60, pp.191-92.

68. Schoultz comments that Garcia's 'electoral' victory "was extraordinarily fraudulent, even by Guatemalan standards, prompting a Washington Post correspondent to report that "the fraud perpetrated here is so transparent that nobody could expect to get away with it": supra note 63, at p.190. See also Gleijeses, supra note 60, p.193.

69. See Gleijeses, supra note 60, pp.191-96; Torres-Rivas, supra note 43,p.39.

70. See citations at note 194, infra; and Davis,"State Violence and Agrarian Crisis in Guatemala - The Roots of the Indian-Peasant Rebellion", in Diskin (ed), supra note 63, 156, especially at 163-67. Davis concludes that "(t)he Indian population of Guatemala, once again marginal in the political affairs of the country, is now a crucial factor in the civil war. Having found organisational expressions for their age-old discontent, it will most likely not cease its activism, no matter what the outcome of the present struggle."(at 167)

71. See especially Kirkpatrick,"Dictatorships and Double Standards", Commentary, Vol.68:5 (November 1979), 34, and coments at note 39, supra. See also Sigmund,"Latin America: Change or Continuity?" Foreign Affairs, Vol. 60:3 ('America and the World 1981'), 629; and "Debate Over U.S. Policy on Human Rights" (interviews with Kirkpatrick and Patricia Derian, Assistant Secretary of State for Human Rights in the Carter Administration, given to U.S. News and World Report, March 2, 1981, pp.49-50), in Gettleman, et al (eds), supra note 14, p.339. For a recent succinct comparison between the Carter and Reagan Administration's overall human rights policy orientation, see Carlton and Stohl,"The Foreign Policy of Human Rights: Rhetoric and Reality from Jimmy Carter to Ronald Reagan", Human Rights Quarterly, Vol. 7:2 (May 1985), 205. The authors conclude that while the Carter Administration's rhetoric identified heavily with principles of human rights - unlike that of its successor - the substantive differences have been relatively small; moreover, neither is considered to have "acted in accordance with the established human rights legislative package."(at 227) Cf. Robert White (former U.S. Ambassador to El Salvador),"Human Rights and Foreign Policy: Setting the Tone in Latin America", in Samet (ed.), Human

Rights Law and the Reagan Administration, 1981-1983 (1984), 3, remarking:"Those who defend the record of the Reagan Administration contend that its policymakers have not rejected human rights, but simply placed them in a realistic perspective given the security threat to Central America ... To critics, the Reagan foreign policy towards Central America appears to have abandoned every standard but one: the vague catch-all of "anti-communism"."(at 5)

72. The American State Department announced in May 1981: "the Administration would like to establish amore constructive relationship with the Guatemalan Government. Our previous policy clearly failed to contribute to an improvement of the situation inside Guatemala, while Cuban-supported Marxist guerillas have gained in strength. We hope changes in the situation in Guatemala will soon permit a closer co-operative relationship. We want to help the Guatemalans to defend themselves against the guerillas and to work with them to control indiscriminate violence of all kinds." Quoted in Schoultz, supra note 63, at p.197. Gleijeses, supra note 60, remarks that high-ranking officials in the Reagan Administration, and particularly new appointees, perceived in Guatemala "a 'moderate repressive' regime whose excesses should be understood within the violent context of Guatemala's history and the 'agression from Communist territorists abetted by Cuba and the Soviet Union'", whereas more junio-ranking officials in the Administration recognised that the country "desperately needed social reforms". Both sides in the debate, according to Gelijeses, agreed nevertheless that 'dialogue' rather than 'pressure' was the appropriate solution to the problem confronting American policy toward the Lucas Garcia regime.(at pp.198-99).

73. Gleijeses, supra note 60, at p.200.

74. Ibid, pp.203-04; Guy,"Guatemala on the Brink", International Perspectives, September/October 1982, 26, at 27-28; Riding,"The Central American Quagmire", Foreign Policy, Vol.61:3('America and the World 1982'), 611, at 653-54.

75. Gleijeses, supra note 60, pp.203-04; Millet,"Central American Cauldron", Current History, February 1983, 69, at 70. In June 1982, having initially shared power with a number of young officers, Rioss Montt assumed exclusive control of the Government in a 'bloodless coup'. The extreme right National Liberation Movement was successfully held in check by Rios Montt, and a phase of controlled political liberalisation ensued, prompting optimism over Guatemala's future course in official Washington circles. See, for example, the report in the Washington Post, May 9, 1982, p.20.

76. Millet,"Progress and Paralysis", Current History, March 1985, 109.

77. See infra, text to notes 147, 148.

78. See Millet, supra note 75, at p.70.

79. These factors, rather than the nature of the counter-insurgency, led to Rios Montt's ouster: Millet, supra note 76, at 109.

80. Ibid, at pp.109-10; "Guatemala", TIME, August 26, 1985, p.26.

81. See Millet, supra note 76, at p.110, detailing the results of the election.

82. See infra, text to notes 149-152.

83. See, for example, Stephen Kinzer,"Guatemalan Calls for Chief to Resign", New York Times, September 7, 1985, 4; Rachel Garst,"Guatemalan unrest shakes faith in democracy pledge", Globe and Mail, September 12, 1985, 9.

84. For a concise (but well-detailed and dispassionate) account of the foundation of the dynasty, including U.S. foreign policy toward the Somozas, see Booth, The End and the Beginning: The Nicaraguan Revolution (1982), pp.35-95. See also Christian, Nicaragua - Revolution in the Family (1985), offering a more 'popular' perspective.

85. See Booth, supra note 84, pp.63-69, 77-91, especially at 79 (tabulating the economic situation) and at 86-87 (comparing selected social indicators for Nicaragua and neighbouring states).

86. On the suspicion that Somoza's assasin, Rigoberto Lopez Perez, was part of a larger conspiracy, the National Guard jailed for interrogation or trial an estimated 3,000 individuals in the immediate aftermath, a development that catalysed opposition to the dynasty. See Booth, supra note 84, pp.71-75.

87. LeoGrande,"The Revolution in Nicaragua: Another Cuba?" Foreign Affairs, Vol. 58:1 (Fall 1979), 28, at 29; Booth, supra note 84, pp.91-93, 67-69, 80-81, 73-75.

88. On several occasions between 1963 and 1972, in response to intensifying opposition, the presidential office was ceded to persons outside the family, and phases of liberalisation promoted. In 1974, however, Anastasio Somoza finally assumed the office formally, until his overthrow. Control of the National Guyard, in any case, consistently remained in family hands.

89. Millet,"From Somoza to the Sandanistas: The Roots of Revolution in Nicaragua", in Grabendorf, Krumweide and Todt (eds), supra note 40, 37, at p.40.

90. See Booth, supra note 84, at pp.97-126, 137-42, 145-47.

Among the upper and middle classes, the Conservative Party and the Independent Liberal Party constituted the dominant platforms of opposition to the Somozas, along with the print media. By the mid-1970s, however, the political parties could sustain no significant strength on an autonomous basis, depending instead on alliances with larger, more working-class oriented groupings. The print media, on the other hand, and especially La Prensa, remained an important voice of opposition.

91. Ibid, pp.100-08, 115-16.

92. Ibid, pp.75-77, 128-30. While U.S. economic and military assistance to Latin America generally declined during 1970-75, both forms of aid increased dramatically with respect to Nicaragua; notwithstanding the growing awareness in the U.S. of the condition of human rights under Somoza, military assistance during 1974-76 averaged 67% higher than during 1962-66, after adjusting for inflation.

93. See LeoGrande, supra note 87, at 30.

94. See Jung,"Behind the Nicaraguan Revolution", in Stanford Central America Network (ed), supra note 55, 21, at 25-26; Millet, supra note 89, at pp.4041. See also Booth, supra note 84, at p.93.

95. See Booth, supra note 84, pp.101, 141, 152-54; LeoGrande, supra note 87, at p.30.

96. See Diedrich, supra note 3, pp.139, 148-49, and, on Chamorro, pp.153-75.

97. See LeoGrande, supra note 87, pp.30-31; Millet, supra note 89, at 41-42.

98. Ibid.

99. See Booth, supra note 84, pp.134-37.

100. Ibid, pp.143-45; LeoGrande, supra note 87, at p.32; Millet, supra note 89, at pp.42-43.

101. See Millet, supra note 89, at p.43.

102. Booth, supra note 84, pp.144, 157-58; LeoGrande, supra note 87, pp.32-33. See also Christian, supra note 84, pp.46-48.

103. During the 1977-78 period, average annual economic assistance from the U.S. to Nicaragua declined approximately 75% in real terms, and military assistance by 43%. The 1979 budget contained no funding provision for Nicaragua, but previously appropriated assistance was not withheld from Somoza until his ouster in July. See Booth, supra note 84, pp.128-29; LeoGrande, supra note 87, pp.32-33.

104. Ibid, respectively at pp.144-45, 161-62; and pp.33-34.

105. Official American reaction consisted principally in the withdrawal of the military mission and a reduction in its embassy staff in Managua. This attested in significant part to the effectiveness of the 'Nicaragua lobby' on Capitol Hill, as shown in Schoultz, Human Rights and United States Foreign Policy Towards Latin America (1981): "When the end came in mid-1979, the lobby was still at work attempting to convince the Carter administration that Somoza was the only alternative to communism in Nicaragua."(at 64)

106. See Booth, supra note 84, pp.130-32. Most of 'Los Doce' resided in Costa Rica, which provided open support for the anti-Somoza insurgency. In May 1979, the Front established a government-in-exile, to which diplomatic recognition qua the de jure Government of Nicaragua was extended by Costa Rica.

107. See Millet, supra note 89, pp.46-47; Morrell and Biddle (Center for International Policy, Washington, DC),"Central America: The Financial War", International Policy Report, March 1983, at 11. A June 1978 message from President Carter to Somoza - following the latter's concession to U.S. pressure in permitting Los Doce to return to Nicaragua and the Inter-American Commission on Human Rights (IACHR) to visit the country - congragulated the dictator for his "constructive actions", and was widely interpreted as supportive of the regime: Booth, supra note 84, pp.160-61.

108. See Gleijeses,"Resist Romanticism", Foreign Policy, No. 54 (Spring 1984), 122, at 128; Millet, supra note 89, pp.48-49.

109. Booth, supra note 84, pp.171-75.

110. See Fagen,"Dateline Nicaragua: The End of the Affair", Foreign Policy, No.36 (Fall 1979), 178, at 186-87; LeoGrande, supra note 87, pp.35-36; Millet, supra note 89, 50-51; Jung, supra note 94, p.35.

111. See Booth, supra note 84, pp.179-80; 183-85; Jung, supra note 94, p.36; LeoGrande, supra note 87, pp.37-39. The membership of the Provisional Junta was determined by the revolutionary forces on June 16, 1979, following negotiations aimed at balancing the 'moderates' (Chamorro and Robelo) and the 'radicals' (Ortega and Hasan), the fifth being a 'neutral' (Ramirez).

112. The Council was originally to comprise 33 members, but was modified by the National Directorate of the Sandanista Front and the Junta in April 1980, with the addition of 14 delegates, 12 of whom represented pro-Sandanista organisations. In protest against the action, Alfonso Robelo resigned from the Provisional Junta. See Booth, supra note 84, at 186-88.

113. Ibid, pp.188-89; note 173, infra.

114. See Cruz,"Nicaragua's Imperilled Revolution", Foreign Affairs, Vol. 61:5 (Summer 1983), 1031, offering the perspective of a former member of the revolutionary junta, and now a leading opponent of the Sandanista Government; and Gleijeses, supra note 108, especially pp.128-34. See also Falcoff, supra note 40, pp.34-35.

115. See Feinberg, supra note 30, pp.75-80; Riding, supra note 74, pp.650-53; Sigmund, supra note 71, pp.638-41.

116. Ibid.

117. The Front won 67% of the vote, with a 75% electoral turn-out. See Christian, supra note 84, pp.297-304. See also infra text to notes 178, 548-9.

118. See note 182, infra.

119. Discussed in Section B:II:1, infra.

120. Compare, for instance, Gleijeses, supra note 108, describing the record as "mediocre" yet superior to that of El Salvador, Guatemala and Honduras, (at 133-34) with Falcoff, supra note 40, which only appraises the revolution and its aftermath in an East-West ideological context.

121. For an analytical summary of relevant Salvadoran constitutional provisions adopted prior to the 1979 coup, some of which remain operative in essential respects, see Report on Human Rights in El Salvador, supra note 21, pp.225-43.

122. Ibid, pp.245-46.

123. Ibid, pp.243-70.

124. See IACHR, Report on the Situation of Human Rights in the Republic of Guatemala (October 1981), pp.8-17, for a concise description, with emphasis on human rights provisions; the condition of specific constitutional rights in the country is addressed throughout the Report.

125. See IACHR, Report on the Situation of Human Rights in the Republic of Guatemala October 1983), pp.23-25.

126. See IACHR, Report on the Situation of Human Rights in the Republic of Nicaragua (June 1981), pp.23-38; the Report addresses extensively the condition of specific constitutional provisions concerning hunman rights.

127. Ibid, pp.34-38, 62-68. These included trade union leaders, journalists and members of the clergy.

128. Note 129, infra.

129. United Nations, Human Rights International Instruments,

Signatures, Ratifications, Accessions, etc. (1983). The full range of international human rights commitments undertaken by El Salvador, Guatemala and Nicaragua is duly noted in the documentation cited in notes 121, 124-26, supra.

130. Americas Watch, Human Rights in Central America (June 1984), based upon reports from Tutela Legal, the human rights office of the Roman Catholic Archdiocese of San Salvador.

131. See Amnesty International Report 1980, section on El Salvador, at 136; Report on Human Rights in El Salvador, supra note 21, p.44.

132. Americas Watch, supra note 130, op. cit. (the figure is for April 1984).

133. See Report on Human Rights in El Salvador, supra note 21, pp.91-98. See also U.S. Department of State, Country Reports of Human Rights Practices for 1984 (1985), section on El Salvador, at p.517.

134. Ibid.

135. See Report on Human Rights in El Salvador, supra note 21, pp.68-77, especially at pp.68-69.

136. Ibid, at p.69.

137. See, for example, Country Reports on Human Rights Practices for 1984, supra note 133, at p.512.

138. Cited in Human Rights Internet, Reporter, Vol.10:3 & 4 (January-April 1985), at 435.

139. Ibid, pp.435-36. See also resolution 1985/35 (13 March 1985) of the UN Commission on Human Rights, censuring the persistence of severe human violation in El Salvador.

140. James LeMoyne,'Bombings in El Salvador Appear to Bend the Rules', New York Times, December 20, 1985, A14; Americas Watch, supra note 510, at 524.

141. See citations at note 513, infra.

142. Amnesty International Report 1980, section on Guatemala, especially at 144-45.

143. IACHR, notes 124, 125, supra, respectively at 19-38, and 41-70.

144. ICCHRLA, Brief to the Canadian Representative at the 38th Session, UN Commission on Human Rights (March/April 1982), at pp.41, 43-48. See also IACHR (October 1981), supra note 124, at 40-55.

145. See Amnesty International Report 1980, supra note 142, pp.144-45. The Guatemalan Government continued to maintain this position apropos the responsibility attributed to the state for egregious violations during 1984-85: see infra ?

146. See Americas Watch, Human Rights in Central America (April 1983), section on Guatemala, at p.11.

147. For a detailed account see especially Moyer and Padilla,"Executions in Guatemala as Decreed by the Courts of Special Jurisdiction in 1982-83: A Case Study", Human Rights Quarterly, Vol. 6 (1984), 507.

148. Ibid.

149. Guatemala Human Rights Commission (CDGH), Report Submitted to the 40th session of the United Nations Human Rights Commission on the situation of human rights and basic liberties in Guatemala (February 1984). The figure, according to Americas Watch (June 1984), supra note 130, is in the thousands.(at p.6)

150. Ibid. The U.S. State Department, supra note 133, asserts that the civilian death toll in 1983 and 1984 was "significantly below that of 1981 and 1982".(at p.542) An important cautionary note in this connexion is contained in the 1985 Special Rapporteur Colville's Report for the UN Commission on Human Rights, Situation of human rights in Guatemala (13 November 1985)(UN doc.A/40/865), including a critique of the methodologies employed by various groups and organisations in estimating the scale of violations in Guatemala (at pp.4-14) The Report suggests that many estimates of the level of political killings, disappearances and other egregious violations for 1984-85 in Guatemala are somewhat exaggerated, while conceding that the problem remains serious. For a specific response to Rapporteur Colville's portrayal of the condition of human rights in Guatemala, see Americas Watch, Colville for the Defense: A Critique of the Reports of the U.N. Special Rapporteur for Guatemala (February 1986), which challenges Colville's own methodology. See also the comments in this connexion by LeBlanc, infra note 574. It would seem appropriate to observe at this juncture that the present study does not purport to offer a statistical profile of the violation of human rights in Central America, an undertaking that would be of questionable validity in the practical sense that corroborating such data would be insurmountably difficult under the prevailing circumstances, while also being of doubtful value in conveying the pervasive and systemic character of the undermining of individual security, rights and freedoms within the nations in question. Rather, it is intended here to indicate the salient features attending the general status of human rights in those nations, and the legal-political issues thereby generated for Canadian foreign policy.

151. Even the U.S. State Department, supra note 133,

acknowledges that the number of disappearances had escalated in 1984 from the previous year.(at p.544)

152. Discussed in the context of Canadian policy, infra. See also Special Rapporteur Colville's reports to the UN Commission on Human Rights in 1984 and 1985, Situation of human rights in Guatemala (1984)(UN doc.A/38/465), (1985)(UN doc.A/39/635), and (1985)(UN doc.A/40/865).

153. IACHR (30 June 1981), supra note 126, pp.40-58.

154. See Amnesty International Report 1980, section on Nicaragua, pp.155-56.

155. Ibid.

156. IACHR (June 1981), supra note 126, pp.69-112. It is noteworthy that the rehabilitation programme per se is not criticised in the report by the ICCHRLA, Nicaragua 1984, which followed an on-site visit on the occasion of the November polls.

157. Country Reports of Human Rights Practices for 1984, supra note 133, citing CPDH and IACHR reports, at p.610.

158. Ibid, pp. 610-611.

159. Ibid, pp.612-13.

160. IACHR, Report on the Situation of Human Rights of a Segment of the Nicaraguan population of Miskito Origin (29 November 1983); Country Reports of Human Rights Practices for 1984, supra note 133, section on Nicaragua.

161. IACHR (October 1983), supra note 125, pp.83-96; Country Reports of Human Rights Practices for 1984, supra note 133, sections on El Salvador and Guatemala.

162. Report on Human Rights in El Salvador, supra note 21, pp.122-31, 135-42.

163. Ibid, pp.124-29.

164. See ICCHRLA, Newsletter, May 1981, pp.35-36, 45; Montgomery, supra note 2, pp.97-117, 174-77. Cf. Country Reports of Human Rights Practices for 1984, supra note 133, at 523-24.

165. Both sets of elections were monitored by international teams of observers (including official Canadian representatives). See generally Country Reports of Human Practices for 1984, supra note 133, section on El Salvador, pp.524-26.

166. Ibid, at 522; Americas Watch, Human Rights in Central

America (October 1983), section on El Salvador, p.9; Human Rights in Central America (June 1984), section on El Salvador, pp.3-4.

167. IACHR (October 1983), supra note 125, especially pp.97-109; ICCHRLA (1982/83), supra note 144,? pp.60-64.

168. Americas Watch, (April 1983), supra note 146, p.13; IACHR (October 1983), supra note 125, at 104-08.

169. IACHR (October 1983), supra note 125, p.128.

170. See especially Guatemala Human Rights Commission (CDGH) (February 1984), supra note 149; and Report for the 39th General Assembly of the United Nations on the Human Rights Situation in Guatemala (November 1984). The February Report stated that information gathered by the CDGH since the coup of August, 1983 indicated that violations of basic human rights and liberties had "worsened considerably".(at p.2)

171. Americas Watch (June 1984), supra note 130, section on Guatemala, at p.8. Hence the Guatemalan press was itself able to report, on occasion, disappearances and official killings in the country. As with El Salvador, however, journalisitic latitude in disclosing such occurences was accompanied by a high degree of personal risk. See generally ICCHRLA (1986), infra note 530.

172. See Country Reports of Human Rights Practices for 1984, supra note 133, section on Nicaragua; Americas Watch (June 1984), supra note 130, section on Nicaragua, at p.20.

173. Americas Watch (June 1984), supra note 130, p.22.

174. Ibid; IACHR, Annual Report, 1982-83, section on Nicaragua, at p.18.

175. Americas Watch (April 1983), supra note 146, section on Nicaragua, at p.23; Country Reports of Human Rights Practices for 1984, supra note 133, pp.616-17.

176. Americas Watch (June 1984), supra note 130, p.21; Country Reports of Human Rights Practices for 1984, supra note 133, pp.619-20.

177. See, inter alia, IACHR, supra note 174, pp.27-28; Country Reports of Human Practices for 1984, supra note 133, pp.621-22; Singer,"The Record in Latin America", Commentary, Vol. 74:6 (December 1982), 43, at 43-45.

178. See, inter alia, Paul Knox,'Canadian observers satisfied by election', Globe and Mail (Toronto), November 10, 1984; ICCHRLA, Nicaragua 1984: Democracy, Elections and War (an on-site report); 'Electoral vitality in Nicaragua' (editorial), Toronto Star, November 7, 1984.

179. See IACHR (June 1981), supra note 126, p.159; LeoGrande,"The Revolution in Nicaragua: Another Cuba?" supra note 87, pp.38-48.

180. See Cruz,"Nicaragua's Imperilled Revolution", supra note 114, at 1035; Gleijeses,"Resist Romanticism", supra note 108, at 129; and Center for International Policy (Washington, DC), International Policy Report, March 1983, 7-11.

181. Ibid; Country Reports of Human Rights Practices for 1984, supra note 133, p.623.

182. Statements by Nicaragua's Defence Minister, Humberto Ortega, to TIME, October 14, 1985, 28-33, at 33.

183. Not as seriously as envisaged by the Reagan Administration, however: see "Nicaragua: Raising the Stakes", TIME, May 13, 1985, 32-34.

184. Country Reports of Human Rights Practices for 1984, supra note 133, p.623.

185. Quoted by the Guatemala Human Rights Commission (CDGH)(November 1984), supra note 170, at 30.

186. Ibid, at 29.

187. Ibid, pp.29-36; CDGH (February 1984), supra note 170, pp.66-67.

188. Country Reports of Human Rights Practices for 1984, supra note 133, p.528.

189. See Center for International Policy, supra note 180, pp.2-6; Eliot Abrams,"On Aid to El Salvador", New York Times, January 26, 1984, A23.

190. Report on Human Rights in El Salvador, supra note 21, pp.22-34 (including a summary description of the programme and the record of implementation by the end of 1981); see also Country Reports of Human Rights Practices for 1984, supra note 133, at 528.

191. Country Reports of Human Practices for 1984, supra note 133, p.528. The judgement on the programme in the Report on Human Rights in El Salvador, supra note 21, was more skeptical, with allegations of political expediency and opportunism on the part of U.S. policy-makers who contributed substantially to the design as well as the implementation thereof.(pp.26-34, especially at 30-31)

192. See U.S. Committee for Refugees (non-governmental), World Refugee Survey 1984 (1985), pp.53-54.

193. See Guatemala Human Rights Commission (CDGH)(November

1984), supra note 170, p.37; Guy,"Guatemala on the brink", supra note 74, at 27; Americas Watch (August 1986), note 534, infra, at 14-16.

194. ICCHRLA, Newsletter (Winter 1982/83), at 56; Guy, supra note 74; Americas Watch (August 1986), infra note 534, op. cit.

195. See IACHR (November 1983), supra note 160, describing the historical background to the conflict.(at 3-9)

196. See Christian, Nicaragua, supra note 84, 254-66. A number of Miskito had already joined the contra forces before 1982; this and other developments only fuelled the conflict.

197. See IACHR (November 1983), supra note 160. 198. Ibid; Country Reports of Human Rights Practices for 1984, supra note 133, section on Nicaragua, pp.

199. World Refugee Survey 1984, supra note 192, p.54.

200. Ibid, pp.53-54; United Nations High Commissioner for Refugees (UNHCR), Refugees, No.20 (August 1985), dossier on "Refugees in Central America", 19, at 20-22, 30-31.

201. Americas Watch (June 1984), supra note 130, section on Nicaragua, pp.24-25.

202. World Refugee Survey 1984, supra note 192, pp.53-54.

203. Ibid.

204. Ibid.

205. Ibid, pp.24-27, 53; Americas Watch (October 1983), supra note 166, at 13.

206. Mullaney, Aiding the Desplazados of El Salvador - The Complexity of Humanitarian Assistance (Fall 1984), at 23 (Graph 1).

207. World Refugee Survey 1984, supra note 192, p.26.

208. Ibid.

209. Lawyers Committee for International Human Rights and Americas Watch, El Salvador's Other Victims: The War on the Displaced (April 1984), pp.183-97, at 185, 187.

210. See World Refugee Survey 1984, supra note 192, pp.24-27, 53-55.

211. Ibid, at 54.

212. Quoted in Morales,"A Canadian Role in Central America", International Perspectives, January/February 1985, 12, at 14.

213. 'Latin America' was among the six booklets comprising the White Paper: Canada, Department of External Affairs, Foreign Policy for Canadians (1970).

214. 'Latin America', ibid, p.13.

215. References were made to this country's increasing consciousness of "political and social trends in the southern part of the hemisphere", but specific observations in that regard did not go beyond the per capita income disparity between Latin America as a whole (then averaging $500 per annum) and Canada (then $3,500 per annum): ibid, 11-15.

216. Ibid, pp.20-24. Human rights did not feature in the debate until the parliamentary review of Canadian relations with Latin America and the Caribbean in 1981-82, infra note 232.

217. Except for a brief resuscitation by the 1981-2 parliamentary review of Canadian relations with Latin America and the Caribbean, addressed in Section B:I, infra.

218. 'Latin America', supra note 213, p.22.

219. See Morales, supra note 212, at 14.

220. 'Latin America', supra note 213, p.12.

221. See Morales, supra note 212.

222. See 'Latin America', supra note 213, pp.12-14, 25-31.

223. Where the San Jose embassy as opened in 1961. See Department of External Affairs, note 228, infra, at 2-3; Department of External Affairs,'Canadian Embassies in Central America' (Position Briefing), September 1985.

224. Infra note 232, pp.12-13.

225. Department of External Affairs, 'An Examination of Conscience at the United Nations', UN General Assembly, 34th session, September 25, 1979, Statements and Speeches (No.79/16).

226. Department of External Affairs, September 17, 1979, Statements and Speeches (No.79/15).

227. Department of External Affairs, Ottawa, June 10, 1980, Statements and Speeches (No.80/11).

228. Department of External Affairs, Caribbean and Central American Affairs Division, Response to the Inter-Church Committee on Human Rights in Latin America (ICCHRLA) Brief of October 1983 - Canadian Policy on Central America (March 1984), p.2.

229. Ibid, pp.2-3.

230. Department of External Affairs, note 223, supra.

231. Resolution 33(XXXVII)(11 March 1981), adopted by 28 votes to 2, with 10 abstentions.

232. Canada, House of Commons, Minutes of Proceedings and Evidence of the Standing Committee on External Affairs and National Defence, Issue No.78 (October-November 1982), 14th Report (Final Report - Latin America and the Caribbean), including - as 'Attachment A' - the 'Interim Report' of December 15, 1981.

233. See Walker,"Foreign policy formulation - a parliamentary breakthrough", International Perspectives, May/June 1982, 10; House of Commons, 'Interim Report', supra note 232, p.58.

234. Department of External Affairs, Statements and Speeches (No.81/7), February 2, 1981, at the Federal-Provincial Conference on Human Rights, Ottawa.

235. 'Interim Report', supra note 232, pp.59-61, at 61.

236. Ibid, p.58.

237. Canadian International Development Agency (CIDA), 'Canada to Increase Aid to Central America', February 12, 1982, News Release (No.82/05).

238. Ibid.

239. Department of External Affairs,'International Canada', supplement to International Perspectives, May/June 1982, 5-16.

240. Ibid, p.6.

241. Ibid.

242. Ibid.

243. Department of External Affairs,'Central America and Canadian Foreign Policy', March 31, 1982, Statements and Speeches (No.82/12).

244. Ibid.

245. 'Canadian Economic Relations with Countries that Violate Human Rights', June 1, 1982. According to the brief, the TCCR's 'Human Rights and Social Justice Conference on Latin America' in October 1980, which coincided with a Canadian business conference on the region, was not attended by invitees from the Department of External Affairs, whereas the business gathering received heavy official support and representation. "Human rights violations", the brief observes, "were not on the

(latter's) agenda and the subject was not mentioned by either Canadian or Latin American participants."(at 4)

246. Ibid, pp.12, 25-26.

247. Ibid, p.27. In 1983, once again, Canada supported an IADB loan of $52.6 million (US) to Guatemala, while continuing to condemn the country's record of rights-violations. See "Aid for the unworthy" (editorial), Globe and Mail (Toronto), March 12, 1984, 6.

248. TCCR, supra note 245, p.28.

249. Ibid, pp.12-14, at 13. The brief also expresses the distress of the church community in this country that the late-1981 bank loans to Guatemala proceeded notwithstanding the assasination of Canadian lay-missionary Raoul Leger in July, with other church-workers also facing serious harassment and death-threats in Guatemala.(at 13)

250. Canada, Senate - House of Commons, Issue No.77 (1982), 11th Report (the Caribbean and Central America), pp.7-12. See also Walker, supra note 233, p.12.

251. Senate - House of Commons, 11th Report, supra note 250, at p.15.

252. Ibid, pp.14-16.

253. Ibid, pp.17-18, 20.

254. Ibid, pp.33-34.

255. Ibid, at 16.

256. Ibid, pp.18, 24.

257. Ibid, pp.16-17.

258. Ibid, at 17.

259. Ibid, pp.23-24.

260. Ibid, at 20.

261. Ibid, pp.28-29.

262. Ibid, pp.30-31.

263. Ibid, pp.29-30.

264. Supra note 232, pp.7-9.

265. Ibid, at 11.

266. Ibid, pp.14-15.

267. Ibid, pp.13-14. No effort was made by the Committee in considering how trade sanctions might be rendered 'effective'.

268. Ibid, at 14.

269. Ibid, pp.16-22, at 17, 19.

270. Comments on the Recommendations of the Final Report to the House of Commons by the Standing Committee on Canada's Relations with Latin America and the Caribbean (May 1983), pp.6-7.

271. Ibid, pp.8-9.

272. Ibid, at 2.

273. See generally the remarks in this connexion in Shepherd, Anti-Apartheid: Transnational Conflict and Western Policy in the Liberation of South Africa (1977), at 128-34.

274. Supra note 233, at 10, 12.

275. Supra note 270, at 17.

276. Department of External Affairs,'Human Rights and Canadian Foreign Policy', Ottawa, April 22, 1983, Statements and Speeches (No.83/6).

277. Ibid.

278. Secretary of State for External Affairs, Statement, Ottawa, June 3, 1983. Note that Secretary MacEachen's sentiments on Central America in general, and Nicaragua in particular, were echoed in the Canadian statement at the United Nations in November: Department of External Affairs,'The Situation in Central America: Threats to International Peace and Security and Peace Initiatives', statement by Deputy Permanent Representative Davis Lee, 38th General Assembly, November 10, 1983, Statements and Speeches (No.83/23).

279. Ibid, pp.9-10.

280. Ibid, pp.8-9, at 11. It is especially noteworthy in this connexion that allegations by the Reagan Administration over arms flows from and to Nicaragua during 1981-83, as well as in respect of the level of official repression directed against the church and press in that country, were severely discredited in statements by former Central Intelligence Agency (CIA) senior analyst on Nicaragua, David MacMichael, to the Canadian Broadcasting Corporation (CBC) in January 1986. According to MacMichael, the White House had requested reports from the CIA

with reference to the preceding, in support of U.S. policies towards the Sandanistas; upon reporting that no evidence of such flows was available, and that civil-political rights received greater respect in Nicaragua than elsewhere in Central America, MacMichael's employment with the Agency was terminated. CBC T.V. - The Fifth Estate, 'Faking the News', Transcript (January 14, 1986).

281. Statement, supra note 278, p.3.

282. See, for example, the parliamentary discussions on Central American policies in July 1982 (El Salvador),'International Canada', to International Perspectives, September/October 1982, p.9; in December 1982 (El Salvador and Nicaragua),'International Perspectives', International Perspectives, January/February 1983, pp.7-8, and 'International Canada', International Perspectives, March/April 1983, pp.6-7; and in October-November 1983 (general), 'International Canada', International Perspectives, January/February 1984, 4-5.

283. Supra note 228, which cites the recommendations of the ICCHRLA's October brief, and offers specific replies thereto.

284. Ibid, pp.6-7.

285. Ibid, pp.1-2.

286. Ibid, pp.9-10.

287. Ibid, p.10.

288. Ibid, pp.10-11. See remarks infra, at Section B:II:2.

289. Secretary of State for External Affairs, Ottawa, May 10, 1984, Statement, at p.4.

290. Ibid, at 3.

291. On the basis of reports by Amnesty International and the Archdiocese of San Salvador (Tutela Legal), civilian non-combatant casualties in the region approximated 50,000 over that period. Americas Watch (April 1983), supra note 130, pp.1,6.

292. See Part 1 of the dissertation, supra, at Section A:I:2.

293. Including, as indicated in Section A:II, supra, the Guatemalan Human Rights Commission (CDGH), Amnesty International, Americas Watch and the ICCHRLA. supra.

294. Department of External Affairs,'International Canada', International Perspectives, February/March 1983, at 12.

295. Convenient text in International Legal Materials, Vol.9 (1970), 673. For an excellent historical and analytical survey

of the 'Inter-American System for the Protection of Human Rights', see Sohn and Buergenthal, International Protection of Human Rights (1973), Chapter 8. See also Farer and Rowles,"The Inter-American Commission on Human Rights", in Tuttle (ed.), International Human Rights Law and Practice (1978), 47.

296. IACHR, Report on the Situation of Human Rights in Nicaragua (17 November 1978); Report on the Situation of Human Rights in El Salvador (17 November 1978); and Report on the Situation of Human Rights in the Republic of Guatemala (13 October 1981). Several updates have followed for each country through 1985-86.

297. Preamble.

298. Article 2.

299. Article 27, paragraph 2.

300. Notes 147, 148 and accompanying text, supra.

301. Supra note 296.

302. See, for instance, the address by Secretary of State MacEachen to 'Seminar on Latin America' (June 1983), supra note 278, at 3.

303. House of Commons, Final Report, supra note 232, at 17.

304. Ibid.

305. Address to 'Seminar on Latin America' (June 1983), supra note 278, at 6-7.

306. See especially on the applicable legal framework in this regard Lawyers Committee for International Human Rights, El Salvador's Other Victims: The War on the Displaced (April 1984), at 198-202. Convenient texts in Brownlie, Basic documents on human rights (1971) (Convention); International Legal Materials, Vol.6 (1967), 78 (Protocol).

307. Article 1 of the Convention and of the Protocol. See especially Wydrzyinski,"Refugees and the Immigration Act", McGill Law Journal, Vol.25 (1979), 154.

308. Article 33 of the Convention; see also Article 32, restricting the grounds and means for the expulsion of refugees.

309. Article 35 of the Convention; Article 2 of the Protocol.

310. See generally Dirks, Canada's Refugee Policy (197?), especially at 179-82, 228-31, for an account of Canada's evolving position vis-a-vis the Convention since its inception, including relations with the UNHCR.

311. See for a succinct critique Grey, Immigration Law in Canada (1984), 107-08, 130-32.

312. See Response to the Inter-Church Committee, supra note 228, at 10; World Refugee Survey 1984, supra note 192, at 41 (ranking Canada among the top five donors towards assistance to international refugee agencies, including the UNHCR). See however, text to notes 618-21, infra.

313. See UNHCR and ICCHRLA citations at note 306, supra.

314. World Refugee Survey, supra note 192, at 40-41.

315. See note 307, supra.

316. See especially Lawyers Committee for International Human Rights (April 1984), supra note 306, at 57-61 (on the Red Cross) and 183-97 (on the Geneva Conventions). See also citations at note 36, supra.

317. House of Commons, 11th Report, supra note 250, pp.30-31, at 31.

318. Ibid, at 30.

319. Ibid, at 32.

320. Ibid, at 30-31.

321. Ibid, at 31-32.

322. Commencing March 1981, relaxed humanitarian and refuge criteria have been applied to Salvadorans, facilitating their admission to Canada from where application for permanent residence could be made. The 1982 Political Prisoners and Oppressed Persons Regulation was extended in June 1983 to cover Salvadoran political prisoners, enabling some 700 to resettle in Canada. Immigration criteria for Guatemalans were eased in March 1984, parallel to the March 1981 regulations for Salvadorans. Overall admissions under the foregoing programmes between 1981 and 1984 numbered approximately 7,000. Central Americans applying from the U.S., which hosted a half-million refugees over that period, were only admissible into Canada as 'Convention refugees', dehors the preceding programmes. See for a concise statement Employment and Immigration Canada (Public Policy Development Branch), Refugee Perspectives 1984-85 (May 1984), at 17-19.

323. Refugee Perspectives 1984-1985, supra note 322, p.18.

324. On the Assembly's strong expressions of concern over conditions of human rights in El Salvador, see, inter alia, resolutions 35/192 (15 December 1980), 36/155 (16 December 1981), 37/185 (17 December 1982) and 38/101 (16 December 1983); on Guatemala, see resolutions 37/184 (17 December 1982), 38/100

(16 December 1983) and 39/120 (14 December 1984). Security Council deliberations commencing in 1981 centered upon complaints from Nicaragua over military tensions stemming from external intervention in the region, principally through El Salvador and Honduras; counter-complaints alleged Cuban and Soviet intervention. Resolution 530 (1983)(19 May 1983), adopted unanimously, invoked the Charter principle of nonuse of force, and expressed support for the mediatory efforts of the Contadora Group in that regard: Security Council, Official Records, 38th Year(1983), 2437th Meeting. See also note 325, infra.

325. Four OAS member-states - Mexico, Colombia, Venezuela and Panama - constituted the Contadora Group in 1983, following a series of joint peace initiatives for the region by Mexico and Venezuela. Four other OAS members - Argentina, Brazil, Peru and Uruguay - subsequently formed the 'Contadora Support Group', which Canada has declined to join. Contadora's mediation efforts through 1983-84 produced a Draft Act in 1985, which has yet to gain unanimous affirmation in Central America, owing especially to disagreements between Nicaragua and the U.S. See, inter alia, 'Peace plan proposed for Central America', Gazette (Montreal), August 26, 1985, C14; Canada, Departmnt of External Affairs, 'Contadora' (Position Briefing), March 1986.

326. Resolution 32 (XXXVI) (11 March 1980), adopted by 26 votes to 2, with 14 abstentions.

327. Resolution 1984/53 (14 March 1984), adopted by 28 votes to 3, with 11 abstentions.

328. General Assembly resolution 35/192 (15 December 1980), expressing deep concern over the grave violations of human rights in El Salvador and requesting the Commission to examine, at its 37th session, the situation in that country.

329. Resolution 32 (XXXVII) (11 March 1981), adopted by 29 votes to 1, with 11 abstentions.

330. See resolutions 1982/28 (11 March 1982), 1983/29 (8 March 1983), and 1984/52 (14 March 1984).

331. Texts of agreements in United Nations, Treaty Series, Vol. 75, Nos.970-973; International Committee of the Red Cross, Protocols additional to the Geneva Conventions of 12 August 1949 (Geneva: 1977), 89.

332. La Mission Permanente du Canada aupres des Nations Unies a Geneve, Intervention du representant du Canada a la Commission des Droits de l'homme (32 session), l'Ambassadeur Yvon Beaulne, (sur le point 12).

333. Ibid.

334. Supra note 380.

335. La Mission Permanente du Canada aupres des Nations Unies a Geneve, Intervention du representant du Canada a la Commission des Droits de l'homme (31 session), l'Amabassdeur Yvon Beaulne, (sur le point 12).

336. Supra Section B:I:1.

337. 'International Canada', International Perspectives, May/June 1983, pp.10-11.

338. Supra note 377.

339. Secretary of State for External Affairs, Statement, Standing Committee on External Affairs and National Defence, Ottawa, May 10, 1984.

340. See, inter alia, 'Peace plan proposed for Central America', supra note 325; James LeMoyne,'Nicaragua's Neighbours Are Wary', New York Times, March 23, 1986, E2.

341. Department of External Affairs, 'Canada's Human Rights Obligations', address by Secretary of State for External Affairs, Mark MacGuigan, Statements and Speeches (No.81/7), March 27, 1981, at 3-4.

342. See further remarks infra, Section B:II:2.

343. When multilateral sources other than those considered here (the E.E.C., U.N., and others) and bilateral aid are factored in, the 'distortion' is exacerbated: see data in U.S. Department of State, Country Reports on Human Rights Practices for 1984, supra note 133 (respective countries in Central America).

344. See Section A:II:1, supra.

345. See particularly Morell and Biddle,"Central America: The Financial War" (March 1983), supra note 107; Rossiter (Center for International Policy, Wshington, D.C.), "The Financial Hit List", International Policy Report, February 1984; Taskforce on the Churches and Corporate Responsibility (TCCR), Annual Report 1982-1983, pp.2-5, 47-48, and Annual Report 1983-1984, pp.3-8.

346. "Central America: The Financial War", supra note 107, at 4.

347. Ibid; Jew Mayseung,'Canadian $$ aids El Salvador military', Toronto Clarion, April 9, 1983, 9.

348. Ibid; TCCR, Human Rights and International Lending (May 1984), at 18-19.

349. See Globe and Mail (Toronto), March 24, 1983 (citing Jim Morell of the Center for International Policy).

350. "Central America: The Financial War", supra note 107, pp.2-3; Martin Mittelstaedt,'Loan to El Salvador Broke Tradition', Globe and Mail (Toronto), September 13, 1982.

351. Ibid.

352. Ibid.

353. Richard Erb, the U.S. representative, conceded at the Board meeting that American interests were being broadly served by the Fund's monitoring activities, but denied that specific national security or policy objectives were affected: "Central America: The Financial War", supra note 107, pp.2-3.

354. Ibid, p.3. Canadian representative T.H. Williams speculated that the Salvadoran export short-fall over the loan-period would not exceed the level beyond which it could not be regarded as 'temporary' under IMF practice, but refrained from criticising the Fund's staff over their refusal to forcast probable Salvadoran earnings. In fact, Williams' prediction turned-out to be inaccurate.

355. Mittelstaedt, supra note 350.

356. Ibid; Robert Walters,'Drafting the U.S. financiers', Mail Star (Halifax), August 6, 1983; 'The IMF's ordeal over apartheid', Maclean's, August 8, 1983.

357. "Central America: The Financial War", supra note 107, pp.3-4. In the final vote, however, only Denmark dissociated itself from the Fund's approvalof the loan.

358. See TCCR, Proposal to Establish Basic Human Rights Criteria As a Co-Determinant of Canada's Voting Decisions in the International Monetary Fund (IMF) (June 1983), p.4.

359. "Central America: The Financial War", supra note 107, p.4.

360. Ibid, p.6.

361. Ibid.

362. Ibid, pp.6-7; TCCR, Annual Report 1982-1983, pp.47-48.

363. "Central America" The Financial War", supra note 107, pp.6-7.

364. Resolution 37/185, note 324, supra.

365. "Central America: The Financial War", supra note 107, p.7.

366. See "Aid for the unworthy", supra note 247.

367. See TCCR, supra note 362, p.48.

368. IBRD, Annual Report, 1984, 'Summaries of Projects Approved'; and notes 379-81 and text thereto, infra.

369. "Aid for the unworthy", supra note 247.

370. "Central America: The Financial War", supra note 107, p.7.

371. Ibid, pp.7, 10.

372. Ibid.

373. Quoted in Jack Ferguson,'Tying loans to rights is opposed', Globe and Mail (Toronto), September 9, 1982.

374. "Central America: The Financial War", supra note 107, p.10.

375. Ibid; Walters,'Drafting the U.S. financiers', supra note 356.

376. "Central America: The Financial War", supra note 107, at 10. 376. In a letter dated January 30, 1985, from U.S. Secretary of State George Shultz to the IADB, that country threatened to withdraw from the Bank over a proposed $58 million (US) loan to Nicaragua, unless the Sandanista Government undertook major domestic policy changes. Bank members, however, have been critical of the U.S. position on Nicaraguan loans. Toronto Star, March 8, 1985.

377. IBRD, Nicaragua: The Challenge of Reconstruction (Washington, 1981).

378. "Central America: The Financial War", supra note 107, p.10.

379. IBRD,'Nicaragua - Country Program Paper'; cited in "Central America: The Financial War", note 107, supra, at 10.

380. See Table 3:3.

381. It is noteworthy that the IBRD was subsequently able to approve a $1.1 billion (US) assistance package to Chile, including (contrary to the standard Bank practice of providing project assistance only) a large loan component. Yet the authoritarian regime in that country had accumulated a foreign debt of over $20 billion, amidst a questionable record of economic management. Canada voted in favour of the decision. 'U.S. Supports World Bank Loan for Chile', Washington Post, June 19, 1985, A28; 'World Bank okays loan for Chile', Globe and Mail (Toronto), June 21, 1985.

382. See "Central America" The Financial War", supra note 107, p.11; Walters,'Drafting the U.S. financiers', supra note 356.

383. Ibid.

384. Ibid.

385. A 1981 IMF mission to Managua failed to resolve the continuing dispute between the parties, which the Fund attributed to "emotionalism" on Nicaragua's part: "Central America: The Financial War", supra note 107, p.11.

386. Canada, Senate - House of Commons, 11th Report (1982), supra note 250, at 20.

387. Canada, House of Commons, Debates, Friday, March 25, 1983 ('Question Period').

388. Canada, House of Commons, Minutes of Proceedings and Evidence of the Standing Committee on External Affairs and National Defence, Issue No.86, March 29, 1983 (Testimony of Secretary of State for External Affairs, Allan MacEachen).

389. Ibid.

390. Quoted in TCCR, supra note 362, p.5.

391. Under Section 701 ('Harkin Amendment'), International Financial Institutions Act. An exception is provided for where "such assistance is directed specifically to programs which serve the basic human needs of the citizens of such country." See Part 1 ??, Part 2 ???, supra.

392. (June 1983), supra note 358.

393. Quoted in TCCR, supra note 362, p.5.

394. Section B:I:4, supra.

395. See note 223, supra.

396. Section B:I:6, infra.

397. Text to note 451, infra.

398. See the parliamentary report on Central America and the Caribbean (1982), supra note 250, at 56, 59-60; Gerald Caplan,'A uniquely Canadian dilemma', Maclean's, August 25, 1986, 48 (on the vulnerability of Canadian NGOs to the. military confrontations affecting Nicaragua). See also infra note 399.

399. Ibid; Latin American Working Group,"Overview of Canadian Aid to Central America, 1980-1985", LAWG Letter, Vol.IX:3; 'El Salvador kicks out Two Quebec students', Gazette (Montreal), July 18, 1986, A2.

400. See, for instance, Statement by Secretary of State for External Affairs, Allan MacEachen (1984), supra note 339, at 5; and the parliamentary Report on Central America and the

Caribbean (1982), note 398, supra.

401. Statistics Canada, Exports by Country, 1980. Total Canadian exports to Latin America and the Caribbean in 1980 amounted to $2,249.8 million, and to Central America and the Antilles $1,528.4 million, respectively 25.5% and 17.3% of aggregate exports to the Third World.

402. Costa Rica, Honduras and even Panama have been more significant; hemispherically, Brazil, Mexico and Venezuela have been the leading trade partners.

403. CIDA, Canadian Development Assistance to Latin America, Briefing Paper No.5 (April 1979).

404. Section B:I:3, supra.

405. Supra, at Section A:III:2.

406. Supra, at Section B:I:6.

407. Note 213 and text thereto, supra.

408. See Latin American Working Group (LAWG),'Canadian Investment, Trade and Aid in Latin America', LAWG Newsletter, Vol. VIII:1&2 (May-August 1981), pp.22-29, at 29.

409. Bilateral trade with Latin America and the Caribbean as a whole amounted to $7,784.8 million in 1980: Statistics Canada, supra note 401; Imports by Country, 1980.

410. An important exception to the pattern was Canadian trade with Nicaragua between 1982 and 1984, dominated by food items (meat, fish, marine animals) in the case of imports and by dairy produce and beverages in the case of exports. See Statistics Canada, Exports by Country, Imports by Country, various years.

411. Supra note 250, pp.19-20.

412. Supra note 232, p.14.

413. EDC, Annual Report, 1979-1984.

414. EDC, Annual Report 1978.

415. See Part 2, supra Sections I:1 and I:6.

416. Supra note 232, at 8-9.

417. Ibid, at 13-14.

418. Ibid.,

419. Secretary of State for External Affairs, Statement (April

1983), supra note 276, at p.4.

420. Part 2, supra, at Sction B:I:1.

421. See "Canadian Investment, Trade and Aid in Latin America", supra note 408, pp.11-21, at 15-16 (data derived from standard business sources). The companies in question - including Inco. Ltd. and the Molson Group - were registered in Canada. See also TCCR, Annual Report 1983-1984, pp.73-74, reporting on the activites of several Canadian corporations in Guatemala during 1983-84 from a human rights policy perspective.

422. "Canadian Investment, Trade and Aid in Latin America", supra note 408, p.15.

423. Ibid, at 8.

424. Statistics Canada, Canada's international investment position, 1979 and 1980. From the late-1970s onwards, however, the Asian region has been the major locus of growth in Canadian investment: Statistics Canada, Balanace of Payments, Canada's international investment position, 1978-1984 (cat.67-202P).

425. See the July 1982 parliamentary report on the Caribbean and Central America, supra note 250, at 20. At least one Canadian company in Guatemala - Inco Ltd.'s local subsidiary, Exmibal - suspended operations during the post-1979 strife: "Canadian Investment, Trade and Aid in Latin America", supra note 408, at 10.

426. Supra note 250, at 21. See also the Report's proposal relating to the creation of an 'Overseas Investment Agency' to promote joint ventures between Canadian and Latin American entrepreneurs (at 'Appendix C'). The Final Report, supra note 250, did not adopt this recommendation.

427. See text to note 499, infra.

428. See 'Report on Business', Globe and Mail (Toronto), January 18, 1982.

429. See especially TCCR, Canadian Economic Relations with Countries that Violate Human Rights supra note 245, pp.12-15.

430. See Human Rights and International Lending, supra note 348, pp.4-5.

431. Ibid.

432. See "Canadian Investment, Trade and Aid in Latin America", supra note 408, pp.34-35. Bilateral aid policies, as noted in the text below, incorporate substantial Canadian-purchase and content requirements on the part of recepients, further reinforcing the aid-trade linkage. See further LAWG Letter, supra note 399.

433. See "Canadian Investment, Trade and Aid in Latin America", supra note 408, pp.34, 36.

434. Ibid, p.36.

435. CIDA, Annual Report 1979-1980, pp.20-21.

436. The linkage has since received enhanced institutionalised form: see text to notes 601-02, infra.

437. Note that human rights criteria were not cited as influencing the decision to terminate bilateral assistance to either country, though featuring in subsequent official statements on the issue. See Department of External Affairs, Response to the ICCHRLA, supra note 228, at 9.

438. See ICCHRLA, Canadian Policy and Central America: Renewing the Dialogue (Brief to Secretary of State for External Affairs Allan MacEachen, June 12, 1984), pp.15-16; Department of External Affairs (March 4, 1984), supra note 228, p.4.

439. CIDA,'Canada to Increase Aid to Central America', February 12, 1985, News Release (82-05).

440. Ibid. The Mulroney Government was to restore bilateral assistance to El Salvador in mid-1985, asserting sufficient improvement in the situation of human rights in that country: see infra, text to notes 603, 604.

441. Department of External Affairs, supra note 228, pp.4-5; ICCHRLA (June 1984), supra note 438, p.18.

442. The Government's data on overall aid to Nicaragua (1980/81 to 1982/83), cited in ICCHRLA, supra note 438, were as follows:

Bilateral projects	- $ 239,800-00
Food aid	- $ 4,500,000-00
Industrial co-operation	- $ 621,200-00
Institutional co-operation	- $ 1,638,000-00
Non-governmental Organisation Programme	- $ 4,770,200-00
Mission Administered Funds Programme	- $ 714,200-00
Total	- $12,484,100-00

The ICCHRLA held, however, that Canadian official development aid to Nicaragua amounted only to $5,544 million over the period in question, the third, fourth and fifth items above being private sector contributions for the most part. In comparison, the ODA figure for Honduras was $10.5 million over the same period, excluding items 3-5 above. For details pertaining to each of the preceding aid categories, see the annual reports of CIDA for relevant years.

443. See Department of External Affairs, address by Secretary of State for External Affairs MacGuigan (March 1982), supra note , at p.4.

444. CIDA, Aid dimensions and dilemmas, address by CIDA President Catley-Carlson, Vancouver, October 14, 1983, pp.11-12, at 12.

445. Ibid.

446. See Fleming and Keenleyside, note 497, infra, at 21; Gallon,"CIDA - aiding or trading?", International Perspectives, July/August 1984, 17; LAWG Letter, supra not 399.

447. Supra note 232, at 14.

448. Supra note 250, at 24.

449. Ibid, at 23-24.

450. CIDA, Elements of Canada's Official Development Assistance Strategy, 1984, pp.35-36, at 36.

451. See CIDA, Annual Report 1984, p.31; External Affairs Minister MacEachen's statement to the Standing Committee on External Affairs and National Defence (May 1984), supra note ??, at 5.

452. See Section B:I:1, supra, and text below.

453. It is noteworthy that U.S. Secretary of State for Human Rights, Eliot Abrams, expressly rejected conditioning that country's aid to El Salvador under the Initiative upon rights-considerations, contrary as well to relevant national legislation: 'On Aid to El Salvador', New York Times, January 6, 1984. See especially the extensive critique of the Initiative as well as the National Bipartisan ('Kissinger') Commission's endorsement thereof, particularly in respect of the 'Marshall Plan' assumptions underlying both, in Jeffrey Garten,'Aid in the Eighties', New York Times Magazine, March 25, 1984.

454. Note 243, supra.

455. 'Interim Report' (December 1981), supra note 232, at 58.

456. See, for instance, the exchange between the Department of External Affairs and the ICCHRLA, supra note 228, at 4-5. Honduras' human rights record as well as political stability have contined to be questioned in various contexts: see Stephen Kinzer,'Human Rights is Also an Issue in Honduras', New York Times, January 22, 1984, E3; '3 Human Rights Groups Say Abuses Increase in Honduras', New York Times, February 10, 1984, A8.

457. See especially text to notes 242, 285, supra.

458. Address by Secretary of State for External Affairs MacGuigan (March 1982), supra note 243.

459. Department of External Affairs (March 1984), supra note 228, p.7.

460. Leonard (for Canada-Caribbean-Central America Policy Alternatives (CAPA)), Canadian Links to the Militarization of the Caribbean and Central America (1985); TCCR, Canadian Economic Relations with Countries that Violate Human Rights (June 1982), supra note 245, pp.29-41; and the TCCR annual reports, 1979-84.

461. Ibid.

462. See Leonard, supra note 460, pp.2-4. See also Naiman, Bhabha and Wright (for Canadians Concerned About Southern Africa), Relations Between Canada and South Africa, 1948-1983 (1984), at pp.14-15.

463. Department of External Affairs,'Notice to Exporters' (Export and Import Permits Act)(as amended), at para.7. See further Part 4 of dissertation, infra.

464. Leonard, supra note 460, pp.4-5. The sale of De Haviland in 1985 to the Boeing Co. of Seattle, USA, rendered the prospective adoption of human rights safeguards to its exports still less probable.

465. See TCCR, Annual Report 1982-1983, pp.45-46. See also Council on Hemipheric Affairs (Washington, D.C.), 'Canada Urged Not To Get Dragged into Central American Conflict', Press Release (July 1982).

466. Ibid.

467. Ibid.

468. TCCR, Annual Report 1983-1984, pp.11-12; Leonard, supra note 460, p.5.

469. Financial Post, March 19, 1983, p.?

470. Leonard, supra note 460, p.5.

471. Ibid.

472. Ibid, p.6.

473. Supra Part 2, at Section B:I:7.

474. Peter R. McCormick,'With Nicaragua Rebels: Rosaries and Rifles', New York Times, May 13, 1983; Gillian Mackay, Ann Finlayson, William Lawther, 'The Trail of Canadian Bullets', Maclean's, June 13, 1983.

475. John Picton,'Ottawa probes how our bullets get to Nicaragua', Toronto Star, May 29, 1983.

476. 'The Trail of Canadian Bullets', supra note 474.

477. Ibid.

478. Leonard, supra note 460, p.4. See further on the persisence of private Canadian links to the contras as recently as 1986 infra, text to notes 610-12.

479. Ibid, p.6.

480. Ibid.

481. See, inter alia, Department of External Affairs, Annual Review 1977 (1978), referring to the "800 agreements, treaties, memoranda of understanding and other arrangements relating to Canada-U.S. defence co-operation".(at p.45)

482. See relevant Appendices, infra.

483. See Ploughshares Monitor, Vol.2:2 (December 1978), at 6. See also Don Cockburn (LAWG),'Is Canada adding to the pressure on Nicaragua' (Letter to the Editor), Toronto Star, November 28, 1984.

484. Leonard, supra note 460, at 3.

485. Julie Morrigan and Derek Rasmussen,'High-Tech Militarism', Nuclear Free Press, September 1983; quoted in Leonard, supra note 460, p.3.

486. Supra Part 2, at Section B:I:7. Note that while under investigation in 1980 by the RCMP for its role in the South African transaction, Space Research nonetheless obtained an official security clearance to participate in the International Conference on Artillery Systems at the Government Conference Center in Ottawa: Ploughshares Monitor, Vol.2:6 (May/June 1980), at 9.

487. Supra note 232, pp.45-47, at 47.

488. United Nations, Treaty Series, Nos.21-22, p.93 (English text).

489. Supra note 232, pp.21-22. The Sub-Committee's vote on the recommendation in favour of membership was split 7-4, with one abstention.

490. (Paragraph (a)(2)). Convenient text in U.S. House of Representatives, Committee on Foreign Affairs, Human Rights Documents (1983), 28. The presidential certifications in the provision are "to the Speaker of the House of Representatives and the Chairman of the Committee on Foreign Relations of the

Senate". In addition, under paragraph (3)(b), the Secretary of State is required to submit, with the assistance of the Assistant Secretary of State for Human Rights and Humanitarian Affairs, detailed annual reports concerning the "practices regarding the observance of and respect for internationally recognised human rights in each country proposed as a recepient of security assistance."

491. Ibid, paras.(b) and (c).

492. See, for instance, American Association for the International Commission of Jurists (AAICJ), Human Rights and U.S. Foreign Policy - The First Decade 1973-1983 (1984), pp.15-44; Morrell (for the Center for International Policy), 'Achievements of the 1970s: U.S. Human RightsLaw and Policy', International Policy Report, November 1981, pp.2-4; Carlton and Stohl,"The Foreign Policy of Human Rights: Rhetoric and Reality from Jimmy Carter to Ronald Reagan", supra note 71.

493. See AAICJ, supra note 492, pp.39-41. The politicisation of the certification requirement is starkly revealed in comparing the entries for the countries under study in the U.S. State Department's Country Reports on Human Rights Practices with the Amnesty International Report for each year since 1979: the portrayal of rights-conditions in states friendly to the U.S. by the State Department frequently contradicts widespread information to the contrary cited in NGO documentation. See especially in the present context Americas Watch, Managing the Facts: How the Administration Deals with Reports of Human Rights Abuses in El Salvador (December 1985).

494. Morell, supra note 492, comments with respect to the corpus of American human rights enactments: "the great significance of the legislation was that it established a standard that remained in force beyond the four-year term of an administration that came in proclaiming its commitment to human rights. It continues in force today although it is under serious attack by a new administration that is busily de-emphasizing human rights. Presidents come and go, media fads rise and fall, but law remains law."(at 2)

495. Canadian Economic Relations with Countries that Violate Human Rights, supra note 245, at 35.

496. Supra note 232, Recommendation 47 (at p.16).

497. See TCCR, supra note 245, pp.29-41; Keenleyside and Taylor,"The Impact of Human Rights Violations on the Conduct of Canadian Bilateral Relations: A Contemporary Dilemma", Behind the Headlines, Vol.XLII:2 (1984), 14. See also Council on Hemispheric Affairs,'Business As Usual in Argentina for Trudeau Government', Press Release (May 25, 1982).

498. TCCR, supra note 245, p.29; Keenleyside and Taylor, supra note 417, at 20.

499. Quoted in TCCR, supra note 245, at 30.

500. Part 1, supra, at Section B:I:6.

501. TCCR, supra note 245, pp.33-34.

502. Ibid, at 34.

503. Ibid, at 38-41; Keenleyside and Taylor, supra note 497,pp.14-17. Canada also exported military and dual-purpose equipment to Argentina until the 1982 Falklands War, and sold a nuclear reactor to South Korea with the suppport of an EDC loan notwithstanding prevailing international denunciations of that country's human rights record: see Keenleyside and Taylor, at 20-23.

504. See TCCR, supra note 245 (citing numerous sources), at 38-41.

505. See further the discussion on this issue infra, Part 4, at Section B:1.

506. Supra note 497, at 20.

507. Cited in Lawyers Committee for Human Rights, El Salvador: Human Rights Dismissed, A Report in 16 Unresolved Cases (1986), op cit.

508. Supra Section A:II:1.

509. Report by Special Rapporteur Ridruejo for the UN Commission on Human Rights, Situation of human rights in El Salvador (9 November 1984) (UN doc.A/39/636), ay p.35.

510. Ibid, at 35-36; Americas Watch, Settling Into Routine, Human Rights Abuses in Duarte's Second Year (1986), pp.124-26.

511. Situation of human rights in El Salvador (November 1984), supra note 509, at 37; Lawyers Committee for Human Rights, supra note 507, pp.vi-vii.

512. Situation of human rights in El Salvador (November 1984), supra note 509, at 11-12.

513. James LeMoyne,'Salvadoran Army's Abuses Continue', New York Times, August 19, 1986, A3; 'Salvadorans Still Suffering' (editorial), Gazette (Montreal), July 12, 1986, B2; Americas Watch (1986), supra note 510. Cf.'Progress on Salvador Rights Seen', New York Times, November 21, 1985, A10 (referring to the most recent UN Special Rapporteur's report on the situation).

514. A major effort at peace talks between Duarte and the guerilla forces in September 1986, for example, collapsed following the Government's refusal to withdraw army units stationed at the venue, Sertori, in eastern El Salvador, in

response to the security concerns of the guerilla representatives. The army units in question included the Arce Battalion under Lieut. Col. Staben, reputed to have among "the worst human rights records in the military": New York Times, September 16, 1986, A6. A subsequent offer by the guerillas to renew the dialogue - deemed still more urgent in the wake of the highly destructive earthquake in October 1986 - was spurned by the President. 'Rebels urge El Salvador Peace Talks', Gazette (Montreal), November 7, 1986, C16. On relevant aspects of the implications of continuing substantial U.S. assistance to the Salvadoran military, including the latter's human rights practices, see Americas Watch, supra note 510, pp.129-50; 'El Salvador', NEWSWEEK, July 15, 1985, 35; 'Salvador Gets 12 U.S. Gunships to Battle Rebels', New York Times, September 7, 1985; Jefferson Morley,"Salvador Justice", The New Republic, September 8, 1986, 13.

515. Accordingly to the most widely accepted source, Tutela Legal (of the Roman Catholic Archdiocese of San Salvador), 'targeted killings' and disappearances by the security and armed forces, death squads and civil defence personnel totalled 321 during 1985: cited in full in Americas Watch, supra note 510, op cit. See also the detailed exposition in Special Rapporteur Ridruejo's Final Report to the UN Commission on Human Rights (3 February 1986) (UN doc.E/CN.4/1986/22), pp.15-18. The Report concludes that the considerable decline in political murders witnessed in the second half of 1984 'levelled off' during 1985, in light of the available data.

516. 'Final Report' to the UN Comission on Human Rights, supra note 515, pp.18-20, at 18.

517. According to estimates by Tutela Legal, supra note 515. However, in situ investigations could not be conducted, hence precluding precise tabulations. 'Indiscriminate killings' by the armed forces in the course of military operations numbered 371, based on precise counts by the same source. See also 'Final Report' to the UN Commission on Human Rights, supra note 515, pp.29-35.

518. Americas Watch, supra note 510, op cit.

519. Tutela Legal, supra note 515, attributed to the guerilla forces during 1985 66 'targeted killings, 62 'indicriminate killings' and deaths from mines, 45 abductions pending release at the end of the year. See also 'Final Report' to the Un Commission on Human Rights, supra note 515, pp.23-28, 34-35.

520. Americas Watch, The Continuing Terror (September 1985) (Seventh Supplement to the Report on Human Rights in El Salvador), cited in Special Rapporteur Ridruejo's 1985 Report to the UN Commission on Human Rights, Situation of human rights in El Salvador (5 November 1985) (UN doc.A/40/818), at 33.

521. Situation of human rights in El Salvador (November 1985),

supra note 520, pp.34-35. See also the numerious incidents of this nature listed in Americas Watch, supra note 510, pp.32-34, 35-36.

522. Specifically under Protocol II to the 1949 Conventions, Articles 7, 10 and 14. Convenient text in International Legal Materials, Vol.16 (1977), 1391. See generally Lawyers Committee for International Human Rights (1984), supra note 306, at 183-94; Americas Watch (1986), supra note 510, pp.28-32; Situation of human rights in El Salvador (November 1985), supra note 520, pp.30-31, 24-26.

523. Situation of human rights in El Salvador (November 1984), supra note 509, pp.20-22, detailing the provisions.

524. Supra note 515, pp.22-23. On the many objections to Decree 50 advanced by Christian Legal Aid of El Salvador as well as the Lawyers' Committee for International Human Rights (focussing upon the features thereof mentioned in the text), see Situation of human rights in El Salvador (November 1984), supra note 509, at 21.

525. Amnesty International Report 1986, section on El Salvador, at 155. See also 'Final Report' to the UN Commission on Human Rights (February 1986), supra note 515, pp.18-20.

526. 'Final Report' to the UN Commission on Human Rights (February 1986), supra note 515, pp.20-23, 39-41, at 39. According to the Lawyers' Committee for Human Rights, supra note 507, op cit, the justice system is "undermined by pervasive patterns of intimidation and corruption. Courts and prosecutors are reluctant to bring cases against the military because they are afraid. Those accused of violent crimes often buy their release or rely on connections with powerful corrupt judges. In some sensitive cases judges and jurors have resigned after receiving physical threats." The Report further observes that the U.S.-sponsored programme ofjudicial reform, however well-intentioned, is similarly characterised by intimidation and lack of judicial independence; the Judicial Protection Unit (JPU) due to be established thereunder remains non-operational. See also Americas Watch, supra note 510, pp.89-104.

527. Marlise Simons,'Duarte Rights Unit Replaced, But Investigations Still Lag', New York Times, November 23, 1985, 4; Lawyers Committee for Human Rights (July 1986), supra note 507.

528. See 'Final Report' to the UN Commission on Human Rights (February 1986), supra note 515,'Economic, Social and Cultural Rights', at pp.9-14.

529. Supra note 514.

530. According to the non-governmental Guatemala Human Rights Commission (CDGH), cited in Inter-Church Committee on Human

Rights in Latin America (ICCHRLA), Guatemala - Report to the 42nd Session of the United Nations Commission on Human Rights (1986), at 5.

531. Amnesty International, supra note 525, section on Guatemala, at 159. See also 'New Army Slayings in Guatemala Reported by Villagers and Church', New York Times, July 28, 1985, 1.

532. See Special Rapporteur Colville's Report for the UN Commission on Human Rights, Situation of humn rights in Guatemala (13 November 1985) (UN doc.A/40/865), pp.14-16; Amnesty International, supra note 525, at 161.

533. Amnesty International, supra note 525, at 161.

534. Americas Watch, Civil Patrols in Guatemala (August 1986); ICCHRLA, supra note 530, pp.7-8. Cf. Situation of human rights in Guatemala (November 1985), supra note 532, pp.47-55, taking a somewhat more benign view of the human rights implications of the army's 'projects'.

535. ICCHRLA, supra note 530, at 9-10.

536. See,for example, James LeMoyne,'In Guatemala, The Army's Retreat May Be Good Politics', New York Times. August 11, 1985, E5.

537. ICCHRLA, supra note 530, pp.3-4.

538. Ibid. See also LeMoyne, supra note 536.

539. See Situation of human rights in Guatemala (November 1985), supra note 532, pp.63-64, offering a synopsis of rights-related provisions. Cerezo won 68% of the vote in the 'run-off' elections on December 8, following an inconlusive poll in November, commencing a five-year presidential term January 14, 1986. See Stephen Kinzer,'Guatemala Democrats of the Past Meet the Future', New York Times, December 12, 1985, A2.

540. Ibid.

541. Resolution 1986/62 (13 March 1986), adopted without a vote.

542. Supra note 525, at 162.

543. See Richard Lapper,'Unionists out of the closet', SOUTH, October 1986, 43. Of the 1,500 registered trade unions in Guatemala, only some 200 remain currently active, attesting to the intensity of military repression over the years.

544. Ibid; Americas Watch, supra note 534, pp.3-6, 8-11.

545. Cited in Americas Watch, supra note 534, at 9. Moreover, President Cerezo is quoted as stating that if such prosecutions were undertaken, "I would be committing suicide." See also similar comments in this connexion by Gen. Mejia Victores, Globe and Mail (Toronto), November 6, 1985, A1.

546. Stephen Kinzer,'A Ride in Crime Stirs Fear for Guatemala's New Democracy', New York Times, August 10, 1986, 13; Americas Watch, supra note 534, pp.3-6.

547. See Mark O. Hatfield,'Aid Guatemala Doesn't Need', New York Times, June 16, 1986, A23, urging the U.S. Government to withhold "all military assistance to Guatemala until the regular military, the the security forces, the paramilitary forces and the special police become accountable to their new President, and to the civilians whom they serve"; ICCHRLA, supra note 531, at pp.14-18.

548. See ICCHRLA, Nicaragua 1984, supra note 178; Oakland Ross,'Election called triumph of revolution', Globe and Mail (Toronto), November 6, 1984.

549. The pre-election amendment to the 1982 state of emergency affirmed the ruling of the Supreme Court in 1984 that habeas corpus was operative in all except security-related arrests or investigations. See Americas Watch, Human Rights in Nicaragua 1985-1986 (March 1986), at 38-40.

550. Amnesty International, supra note 525, section on Nicaragua, at 182.

551. See, inter alia, Shirley Christian,'Reagan Aides See No Possibility of U.S. Accord With Sandanistas', New York Times, August 18, 1985, 1; 'U.S. Warned Congress of G.I. Role in Nicaragua', New York Times, August 27, 1985, A8; Larry Rohter,'Sandanista Predicts Rebel Rout Soon', New York Times, October 21, 1985, A3.

552. See Amnesty International, supra note 525, at 180; Americas Watch, supra note 549, pp.21-28.

553. Ibid.

554. Ibid.

555. Americas Watch, supra note 549, pp.44-45.

556. Ibid, pp.21-28; Amnesty International, supra note 525, p.180.

557. Amnesty International, supra note 525, p.182, estimates that over 1,000 individuals faced charges or convictions for violent offences, with half as many in detention pending charges.

558. Ibid, at 183. Further official pardons in mid-1986 resulted in the release of 308 political prisoners, including some former National Guardsmen. The non-governmental Permanent Commission on Human Rights (CPDH) in Nicaragua estimates the number of political prisoners in the country at 6,500, including 2,300 former Guardsmen. New York Times, June 7, 1986, 5.

559. Ibid, at 182. It is also noteworthy that the Sandanista Government commenced monthly disbursements to approximately 99 Miskito families whose members were killed or disappeared during 1981-82: Americas Watch, supra note 549, at 61.

560. Between 1985 and early 1986, the returnees reportedly numbered approximately 15,000: Americas Watch, supra note 549, pp.61-64.

561. New York Times, October 17, 1985, A1. See also 'Nicaragua Bares the Nightstick' (editorial), New York Times, October 18, 1985, A30; 'No excuse for curbs' (editorial), Gazette (Montreal), October 18, 1985, B2.

562. Americas Watch, supra note 549, pp.15-19; Amnesty International, supra note 525, p.182.

563. Americas Watch, supra note 549, pp.5, 21-28.

564. Ibid.

565. Ibid, pp.28-38. See also Lisa Wolf,'Nicaraguan Repression Cited', New York Times, July 14, 1986, A2, refering to the highly critical findings of the International League for Human Rights (New York) in early 1986.

566. The renewed conflict apparently centered upon the activites of Miskito leader Brooklyn Rivera, resulting in aerial bombardment of the Layasiksa area by official forces. Contra fighting in the region during late-1985 only compounded existing tensions. See Americas Watch, supra note 549, pp.66, 79-86. In addition, continued forced evacuations and relocations by the Government with respect to the Indian populations have continued to occur on occasion, allegedly in furtherance of security and strategic considerations in the context of the contra war. Investigations by Americas Watch suggest that these official measures violate the 1949 Geneva Conventions and the 1977 Protocols. (at 69-79)

567. James LeMoyne,'Exodus of Indians from Nicaragua Feared as Fighting is Reported', New York Times, April 2, 1986, A4.

568. Supra note 566; see generally Americas Watch, supra note 549, pp.59-78.

569. See 'U.S. Rules Out New Nicaragua Talks', New York Times, December 3, 1985, A3; 'Reagan Presses Hard for Contra Aid', New

York Times, June 7, 1986, 5; 'Excerpts from Reagan's Speech on Aid for Nicaraguan Rebels', New York Times, June 25, 1986, A12; 'World Court Supports Nicaragua After U.S. Rejected Judges Role', New York Times, June 28, 1986, 1. See also supra, at note 280, with regard to some of the questionable tactics apparently used by the White House and the Central Intelligence Agency (CIA) in publicly portraying the political and military situation in Nicaragua.

570. 'House Votes, 221-209, To Aid Rebel Forces in Nicaragua, Major Victory for Reagan', New York Times, June 26, 1986, A1. The Senate had already approved the aid-package in March, and ratified the House vote in August: New York Times, August 13, 1986, A8.

571. See James LeMoyne,'Nicaragua's Neighbours Are Wary', New York Times, March 23,1986; Aryeh Neier,'The Misuse of Human Rights', New York Times, August 4, 1986, A17; 'Contra Aid Is Seen Hindering Accord', New York Times, September 18, 1986, A19; 'U.S.-Salvadoran Ties Called Strained', New York Times, October 21, 1986, A3. Cf. Adolfo Calero, Arturo Jose Cruz and Alfonso Robelo Callejas (then collectively the Directorate of the Nicaraguan Opposition (UNO), the principal contra organisation),''Contras' Are on the Right Track', New York Times, December 13, 1985, A35, asserting, inter alia, a "commitment to respect human rights" on the part of the contras in al circumstances. See in that regard the text below.

572. Supra note 550, at 183. See also Americas Watch, supra note 549, pp.86-109; Abraham Brumberg,'Climate of an Undeclared War', New York Times Book Review, January 26, 1986, 3, reviewing Christopher Dickey's With the Contras (New York: Simon and Schuster, 1985), an indictment of the contras conduct of the war, and of the Reagan Administration's sponsorship thereof.

573. See Brumberg, supra note 572; Americas Watch, supra note 549, detailing official U.S. complicity in contra abuses.

574. Canadian Delegation to the United Nations, Intervention by the Canadian Representative, Leo Duguay, M.P., Third Committee, 40th General Assembly, December 5, 1985 (Item 12). See also LeBlanc,"Canada at the UN Human Rights Commission", International Perspectives, September/October 1985, 20.

575. Ibid. However, contrary to Canadian NGO recommendations and the burden of available evidence on the human rights situations in both countries, Canada's 'observer delegation' sought to accomodate a milder resolution sponsored by the U.S., in place of a more incisive draft. The milder version was indeed adopted by the Commission (with Canada unable to vote owing to its current status). See LeBlanc, supra note 574, at 21-22.

576. Supra note 574; Department of External

Affairs,'Nicaragua's Enhanced State of Emergency' (Canadian position).

577. Report of the Special Joint Committee of the Senate and the House of Commons on Canada's International Relations, Independence and Internationalism (June 1986), Chapter 8, at pp.111-14.

578. Ibid, at 112-13.

579. Ibid, at 113.

580. Ibid.

581. Ibid, pp.112-13. A majority of the Committee, however, averred that "U.S. policy has been designed, in part, to counter other foreign military intervention in Central America and that Canada should oppose outside intervention by all countries."(at 112)

582. Ibid, at 114.

583. Ibid, at 113-14. The opposition of the majority was based upon the perception that "Canada's commercial and immigration interests in Nicaragua are in fact quite limited, and they appear to be looked after adequately under current arrangements."(at 114)

584. Supra text accompanying notes 265-68, 277, 282.

585. LAWG Letter, supra note 399, at 15; Dan Turner,'Pushing to Get Business More Involved', Citizen (Ottawa), February 1, 1986. See further note 601, infra.

586. Ibid.

587. Supra note 530 (Guatemala); ICCHRLA, El Salvador: Report to the 42nd Session of the United Nations Commission on Human Rights (1986).

588. Ibid, 'Recommendations'.

589. Department of External Affairs,'Outline of Canadian Policy in the Light of U.S.A. Trade Embargo on Nicaragua' (June 5, 1985).

590. Ibid. The Government brief also stated that Canada received "high level USA assurances that the embargo does not have extraterritorialreach."

591. Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v. U.S.), I.C.J. Rep. (1986) (Merits); 'World Court Supports Nicaragua After U.S. Rejected Judges Role', New York Times, June 28, 1986, A1. See also Rowles,"Human Rights Implications of the World Court's Decision

on the Merits in Nicaragua v. United States", Human Rights Internet Reporter, Vol.11:3 (September 1986), 7.

592. 'House Votes, 221-209, To Aid Rebel Forces in Nicaragua, Major Victory for Reagan', New York Times, June 26, 1986, A1. The Senate had already approved the aid package in March, and ratified the House vote in August: New York Times, August 13, 1986, A8.

593. Timothy Draimin (a specialist on Central America at the Jesuit Centre for Social Faith and Justice, Toronto),'Time for Canada to act on contras', Globe and Mail, September 5, 1986, A7. Noting that "Canada's analysis of the Central America conflict differs substantially from that of the United States", Draimin urges, inter alia, "renewed support for the World Court decision", and the (e)stablishment of an embassy in Managua to assess the fluctuating situation more effectively." See also 'Help to contras is wrong' (editorial), Gazette (Montreal), August 5, 1986, B2.

594. 'Mulroney condemns superpower moves in Central America', Globe and Mail (Toronto), September 16, 1986, A4; 'Canada on Nicaragua' (editorial), Globe and Mail (Toronto), September 17, 1986, A6.

595. See, for instance, 'Canada on Nicaragua', supra note 594; Wayne S. Smith,'Reagan's Policy: A Blind Alley', New York Times, December 13, 1985, A35. Equally, Canada's affirmative vote on a UN Geberal Assembly resolution in November reaffirming the ICJ's judgement against U.S. military intervention against Nicaragua, was accompanied by the statement that "the resolution points only to the U.S. and fails to mention others, including Nicaragua, that are intervening in the internal affairs of other states in the region": Globe and Mail (Toronto), November 4, 1986, A10. In light of such recent events as Nicaragua's thwarting of a contra supply mission piloted by American Eugene Hasenfus, with probable links to official circles in the United States, Canada's determined 'evenhandedness' appears somewhat questionable. See 'A Plane Goes Down, The Political Ante Goes Up', New York Times, October 12, 1986, 2E; Richard Harwood,'Contras Private Pipeline Pumps at U.S. Behest', Washington Post, Ocotber 19, 1986, A1; 'Nicaragua Formally Charges Hasenfus', New York Times, October 21, 1986, A3.

596. Members are elected to the Commission for a term of three years; Canadian membership spanned three successive terms, commencing in 1977.

597. On the Canadian Government's diplomatic support for the Contadora process, including the prospective signing of a Protocol to the Contadora Peace Treaty, see Department of External Affairs,'Contadora' (Canadian position) (March 1986). The brief asserts that in Canada's view, the United States "also favours a successful conclusion to this peace process", a

contention not borne-out by current regional developments. See 'Contra Aid Seen Hindering Accord', supra note 571; 'U.S. Rules Out New Nicaragua Talks', supra note 569.

598. The Canadian team was headed by Gordon Fairweather, Chief of the Canadian Human Rights Commission. See Department of External Affairs, 'Guatemala' (Canadian position) (March 1986).

599. Section B:I:1, supra.

600. 'Clark advisers cool to observer role', Globe and Mail (Toronto), October 25, 1984; 'Missing Monitors' (editorial), Globe and Mail (Toronto), Novemnber 30, 1984; ICCHRLA, note 178 supra, at 40-42. Canadian Human Rights Commissioner Gordon Fairweather reportedlyobserved in this connexion: "If I were the Government of Nicaragua, I'd wonder about how we're able to choose some within the geographic area but not others":'An eye on Nicaragua' (editorial), Globe and Mail (Toronto), November 6, 1984.

601. See especially the detailed exposition of CIDA and the Canadian Government's policy-orientation in the four-part series by Dan Turner, 'The Commercialisation of CIDA', Ottawa Citizen, February 1, 3, 4 and 5, 1986. Turner observes that Canada "leads all major donor countries in the percentage of aid it ties, using the argument that at least some other donors enjoy advantages such as closer geographic proximity and lingering colonial ties. A confidential Treasury Board study completed in 1976 estimated that the average loss incurred by countries receiving Canadian aid which was attributable to the tying of that aid was 16 per cent of the aid's value": Ottawa Citizen, February 5, 1986, C7.

602. Quoted in Turner (February 5, 1986), supra note 601.

603. 'Canada to restore aid to El Salvador, Vezina says', Globe and Mail (Toronto), June 12, 1985, 5; Department of External Affairs,'Resumption of Aid to El Salvador' (April 1986).

604. Ibid. See 'Aid and human rights' (editorial), Globe and Mail (Toronto), May 27, 1985, B2; 'Be careful with aid', Gazette (Montreal), June 14, 1985, B2.

605. "Aid watchers", according to a Canadian NGO report, "infer that the refusal to upgrade Nicaragua stems at least partially from an unwillingness to be seen systematically - instead of occasionally - contradicting U.S. policy": LAWG Letter, supra note 399, pp.10-12, at 11.

606. Ibid; Department of External Affairs,'Canada and Central America' (March 1986). The Canadian contribution to the $52 million geothermal project, co-financed Italy and France, will total $11.8 million, principally in the form of loans.

607. 'Overview of Canadian Aid to Central America', supra note

605, pp.19-23, at 21.

608. Ibid, p.25 and Appendix 1.

609. Ibid, pp.7, 17-18; Amnesty International, supra note 525, section on Honduras. See also 'U.S. Said to Plan A Long Presence In Honduras Bases', New York Times, July 13, 1986; 'Honduras', TIME, September 29, 1986, 44.

610. Nicaragua dispatched Ambassador Sergio Lacayo to Canada instead: see Gazette (Montreal), November 8, 1986, C14.

611. 'Canadian sold two planes linked to supplying contras', Globe and Mail (Toronto), October 22, 1986, A5; 'Quebecer sold planes used by contras', Gazette (Montreal), October 22, 1986, B7.

612. 'Notice to Exporters', supra note 463. The exports fell within the provisions of the 'Export Control List', Group 7 ('Arms, Munitions, Military, Naval or Air Stores'). According to Appendix C of the Notice, a delivery verification certificate is required solely in respect of the 'strategic' exports.

613. Gazette (Montreal), October 30, 1986, A10; Ottawa Citizen, October 30, 1986, A5. It should be noted that the Mulroney Government instituted a new export control policy in September 1986, entailing fewer restrictions on military sales on human rights grounds; the content and implications thereof are addressed infra, Part 4, at Section B:1.

614. Department of External Affairs,'Social Justice in Central America: Canadian Position' (March 1986).

615. Ibid.

616. See note 322, supra.

617. Supra note 614.

618. Amnesty International, supra note 525, section on Guatemala, at 163.

619. Supra note 614.

620. Text to note 582, supra.

621. See,for example, comments by the Minister of State for Immigration, Gerry Weiner, to the effect that under impending legislation to improve Canada's refugee determination process, most claimants will probably fail to qualify for resettlement in Canada: Globe and Mail (Toronto), October 24, 1986, A8. See also the remarks on the implications of the Government's immigration criteria in connexion with potential applicants from, inter alia, Chile and El Salvador, by the New Democartic

Party (NFP) immigration critic: Gazette (Montreal), October 31, 1986, B16.

622. 'Canadian Economic Relations with Countries that Violate Human Rights', supra note 245, pp.5-7, at 6.

623. Ibid, at 7.

624. A legal basis for parliamentary demand for executive accountability on specific questions (beyond 'Question Period') is afforded under Standing Order 99(2), which mandates a comprehensive governmental response to formal submissions by various standing committees. Clearly the practical scope for human rights policy input by Parliament in this connexion is highly limited. See generally the exposition on executive-power concentration in Canadian decision-making in Kirton and Dimock,"Domestic access to government in the Canadian foreign policy process, 1968-1982", International Journal, Vol.XXXIX:1 (1983-4), 68. The authors find the streamlined access to power a function not only of prevailing structural arrangements, but also of the "rarified backgrounds" from which "those at the centre have long come."(at 69) See also in the same volume Pratt,"Dominant class theory and Canadian foreign policy: the case of the counter-consensus", 99.

625. Note 577, supra, at 111. On the other hand, it should be observed that Canadian mass public opinion apropos the issues at hand has yet to manifest itself in opinion polls, demonstrations, or other public channels of expression (cf. Polls concerning South African apartheid, Part 2, supra, notes 369, 370, and text thereto).

PART 4

A CONCLUDING OVERVIEW

"We want to affirm what so many Canadians proclaimed before the committee: that the international promotion of human rights is a fundamental and integral part of Canadian foreign policy. It is a vital and natural expression of Canadian values. Moreover, the promotion of human rights is in conformity with the international legal rights and obligations that Canada has accepted freely, including the Universal Declaration of Human Rights, the Covenant on Civil and Political Rights, and the Covenant on Economic, Social and Cultural Rights."

Report of the Special Joint Committee on Canada's International Relations, Independence and Internationalism (June 1986), at 99.

Does the proposed simple matrix constitute an appropriate analytical framework for appraising rights-orientation in foreign policy? How far is such orientation in Canadian external relations overall reflected by the preceding empirical studies concerning the crisis in Central America and apartheid in South Africa? Is the current policy-phase under the Mulroney Government indicative predominantly of continuity or change vis-a-vis relevant trends in the Trudeau era?

Section A below reappraises the methodological framework adopted for this study, given the objectives outlined in the research design in Part 1, and the empirical applications in Parts 2 and 3. It is suggested that the research methodology of the matrix (conceptual and empirical alike) is not only distinguishable from 'traditional' juridical analysis but allows for a meaningful appraisal of the nexus between normative human rights obligations and foreign policy.

The detailed conclusions drawn through each of the case-studies require no repetition here. Section B of this Part, however, offers a survey of critical issue-areas in Canadian human rights foreign policy not pursued in Parts 2 and 3, suggesting themes of particular saliency in contemporary Canadian relations. This contributes to a somewhat broader perspective upon rights-orientation within the latter, dehors the framework of the matrix.

A. THE MATRIX FRAMEWORK REVISITED

In presenting a conceptual critique of an international human rights foreign policy in the form of a simple matrix, it was suggested in Part 1 that its empirical application would yield a comprehensive analytical perspective on the array of inter-relationships involved, beyond the domain of conventional legal analysis stricto sensu. Further, that the structuring of the ensuing case-studies to correspond with the matrix would facilitate their critical comparison in practical as well as substantive terms, yielding patterns of compliance and divergence in relation to the normative regime of international human rights. Pursuant to the 'narrative' and 'hierarchical' application of the critique to Canadian policies towards apartheid in South Africa (Part 2) and the socio-political crisis in Central America (Part 3), the operative validity of the aforementioned methodological objectives may now be considered.

Principally, the case-studies sought to provide a systematic exposition of, on the one hand, relevant commitments and obligations under the normative rights-regime, and on the other, the readiness of governmental actors to integrate the latter into the formulation and conduct of specific foreign policy questions - within the dynamics of the attendant policy-making environment, domestic and transnational. The matrix required a preliminary assessment of the implications for, inter alia, bilateral economic and military assistance,

multilateral lending and assistance, 'normal' inter-state diplomatic, and cultural and social relations, of the 'internationalisation' of concern over sovereign human rights conduct through regional as well as universal institutional arrangements. In light thereof, Canadian relations with Central America and South Africa were appraised for adherence to applicable human rights norms through the Trudeau era and beyond.

Perhaps the clearest methodological advantage of the preceding analyses relates to the inter-connected application of rights-orientation criteria to specific issues of policy: 'ends and means' are examined in totality, with situations of severe rights-violations abroad engaging the whole panoply of available instrumentalities for appropriate action. This is premised upon the scope of legal obligations stemming from pertinent international norms, requiring states not only to refrain from 'aiding and abetting' in such situations, but to actively promote the restoration of respect for human rights principles. In contrast to an ad hoc or case-by-case assessment, the approach provides a more integrated critique of rights-orientation, incorporating the continuum of national interest interpretations affecting relevant issues of policy. It is maintained implicitly that the consequences for states of the jus cogens illegality of apartheid, for example, can scarcely be perceived in isolation from attendant socio-economic and political realities weighing upon decision-makers.

Nor can the operative condition of human rights in a given situation be subjected to a juridical appraisal outside the applicable historical, ideological and cultural context. A traditional juridical perspective (focussing upon civil-political rights and liberties) on the egregious situation of human rights in Central America during the 1979-84 period, oblivious of the orientation of institutional developments affecting the military, the oligarchy and indigenous Indian interests, risks irrelevance as well as accusations of idiosyncratic bias.(1) Without abandoning the quest for universal consensus over a corpus of rights and liberties not subject to derogation under any circumstances,(2) it must be recognised that the ideological and socio-cultural variants generally attending the transnational implementation of human rights are, as Carty observes, "far too intractable to be reduced to the illusory lucidity of liberal concepts of political human rights norms."(3) Antecedent to the application of the matrix-framework to the case-studies, therefore, it was sought to convey aspects of the broader context within which questions of respect for human rights were anchored.

With regard to Canadian foreign policy-making in response thereto, the structuring of both studies in accordance with the indices constituting the matrix rendered more discernible the patterns of symmetry (and asymmetry) in rights-orientation; such 'internal' analytical comparison would be considerably more difficult within an ad hoc methodology.

This is not intended, of course, to obscure distinctions and nuances among situations of rights-violation (and foreign policy responses thereto), but rather to identify and highlight common issues (and policy options) generated by disparate violations under the rights -regime. Narratively applied, the critique rejects the passive assembly of data unaccompanied by the examination of inter-relationships therein, while emphasizing as well the analytical differentiation between 'professed' and 'operative' policies.

Given the substantive focus of this study upon the implementation of relevant norms within the fabric of transnational relations, the foregoing approach would appear to converge with what Johansen advocates as a relatively 'progressive' perception of foreign policy-making gua "a value-realising process":

> "Most foreign policy analysis falls into one of two categories. Some authors treat foreign policy as history. They emphasize a chronological description of events. In contrast, behavioral scientists focus on the processes by which policy is made, negotiated or executed ... In both of these approaches, past scholarship has usually focussed on the use of power, without giving much attention to the value impact of policy and to who benefits or should benefit from policies. Traditional approaches have impoverished reality and discouraged use of the imagination by excessive emphasis on the way things are and by inattention to the way they ought to be." (4)(Emphasis added)

While attending in due measure to the behavioural and historical dimensions involved, the empirical studies have sought to reflect the degree of orientation in Canadian policy

(rhetorical and actual) towards values postulated in the international regime of human rights, in terms facilitatory of a juridical assessment as to the degree of national compliance with fundamental normative obligations. As argued above, this requires an 'integrated' rather than a strictly 'legal' approach to the subject-matter at hand.

The emphasis upon value-realization contributes also to a comparative perspective on Canada's role in the transnational advancement of respect for human rights norms, vis-a-vis other principal state and non-state actors. Apposite in this respect is the inclusion within the matrix of various multilateral policy criteria and of non-governmental input in policy-making, amidst the de jure internationalisation of situations of severe rights-violations.

A possible objection to the components of the proposed framework might relate to the absence therein of the domestic status of human rights qua an indicator of a state's readiness to pursue a rights-oriented foreign policy. Certainly, the credibility of foreign demarches on human rights matters is not unrelated to the latter's 'condition' at home. However, the instrumentalities and indicators of rights-orientation in external policy remain conceptually distinct from the situation of human rights domestically, irrespective of mutual determinative relevance. Canadian legislation outlawing racial discrimination, for example, while germane to this country's rejection of South African apartheid, is scarcely indicative of

Canadian policy undertakings over the latter. In any case, the influence of domestic rights-conditions upon the formulation of foreign policy on related issues finds appropriate reflection in analysis of the attendant policy-making environment (along the horizontal axis in the matrix).(5)

Facets of the matrix are subject, as indicated in Part 1, to adaptation where empirical peculiarities require appropriate accomodation;(6) this applies especially to the prescribed hierarchical order of policy-indicators, and the level of significance of non-governmental and even legislative actors in the policy process. Nevertheless, the emphasis in applying the matrix remains on systemic trends and tendencies in human rights policy, predicated upon its value-realising significance not only for the individual state, but the transnational community at large. Chronological and behavioural considerations in policy-analysis have thus been subordinated in favour of a less static approach.

B. OTHER SALIENT THEMES IN CANADIAN HUMAN RIGHTS POLICY: A BRIEF SURVEY

The principal rationale for the selection of the specific empirical situations to which the matrix was applied in Part 2 and 3 lay in the spectrum of international human rights norms and policy-issues thereby implicated, facilitating a sustained exposition of the Canadian response in systemic terms. General as well as situation-specific substantive conclusions have been duly detailed in that regard.(7)

It would seem appropriate, however, to touch briefly upon other significant issues of policy relevant to the present analysis, for a wider overview of the human rights-foreign policy relationship. An elaborate compilation of such issues would encompass, inter alia, the transnational protection of refugees, the implications of the conventional and nuclear arms race for collective as well as individual security, the campaign against torture and cognate practices, the longstanding question of Palestinian self-determination, the persistence of severe and systematic civil-political rights violations under Third World and East bloc authoritarianism, the acute problems of hunger and institutionalised poverty in Africa, the protection of the rights of the child and the handicapped, and the ramifications of widespread and pervasive forms of terrorism for societal and personal rights and liberties.(8) While far from exhaustive, the preceding list patently exceeds the scope of this study - though each issue has received noticeable attention in contemporary Canadian

policy,(9) and could well serve as a thematic case-study within the matrix-framework.

On the other hand, a number of questions of particular saliency apropos this country's commitment to fundamental principles of international human rights are engaged in the short survey undertaken below. The 'organising themes' within which these questions arise are, firstly, policies concerning military and cognate exports to countries in gross and systematic violation of basic international rights and freedoms; and secondly, Canadian responsibilities under the 'Helsinki process' of the Conference on Security and Co-operation in Europe (CSCE). Both themes constitute matters of enduring, indeed increasing, importance for transnational conditions affecting human rights, inter-related as they are with issues of weapons-proliferation, the abetting of repression abroad through bilateral exports, the protection of political dissidents in 'partner' states, and East-West detente in the nuclear age.

1. Of Military Exports and Repressive Clients

Axiomatically, the transnational race in conventional and nuclear armaments (including biological, chemical and space weapons) constitutes a profound challenge to basic precepts of human rights.(10) In addition to directly vitiating individual and collective rights to life and security, the arms race indirectly undermines those rights through spiralling military expenditure, entailing the diversion of scarce economic resources from essential social welfare sectors. Estimated currently at $900 billion (US),(11) world military expenditure has expanded through the 1980s at 3.6% per annum, representing 6% of aggregate gross domestic product, and outpacing annual economic growth in most nations by a significant margin.(12) This expansion in national military and nuclear establishments is widely sustained through the promotion of exports, predominantly to Third World nations engaged in regional conflict and domestic repression.(13)

Canada is seldom perceived as a major exporter in a trade long dominated by the United States and the Soviet Union, which together enjoy a market-share of 72% of total conventional exports, over 60% directed at the Third World.(14) This country ranks, nevertheless, among the ten leading exporters of conventional armaments to the Third World (see Table 4:1), partaking in full measure in the aformentioned 'export-dependency syndrome'.

Moreover, this has occured within the context of detailed legislation governing Canadian arms exports, including

criteria relating to norms of human rights. Questions accordingly arise as to the implementation and enforcement of official policies, as was the case with numerous aspects of Canadian relations with South Africa and Central America (where appropriate legislation is generally absent altogether).

Similarly export-oriented is the Canadian nuclear industry, in respect of both uranium resources (20% of global estimates subsisting in Canada) and the 'Candu' reactor.(15) While this dimension to military and related exports is not within the purview of the present analysis, it should be noted that Canadian reactor sales through the Trudeau era to Argentina, India, South Korea and Taiwan have unquestionably contributed to regional proliferation tendencies;(16) nor have uranium fuel exports to the United States and other clients consistently complied with the imperatives of a global non-proliferation regime.(17)

Prevailing trends affecting the Canadian military (as well as nuclear) establishments appear only to have accentuated the existing tension between declaratory and operative conduct in this regard.

Table 4:1 Leading Exporters of Major-Weapons to the Third World, Selected Years, 1975-84
(US$ Millions) (1975 Prices), Selected Years, 1975-1984

Country(b)	1975	1976	1977	1978	1982	1983	1984
USSR	2,160	1,554	2,156	3,526	2,986	3,404	1,836
USA	2,434	3,892	4,826	4,727	2,971	2,682	2,069
France	593	553	1,282	1,070	1,025	1,123	1,018
U.K.	647	587	536	553	503	352	634
Italy	72	159	348	341	571	373	311
F.R. Germany	138	131	60	41	93	371	549
China	63	57	66	154	218	221	430
Netherlands	42	29	72	64	44	15	20
Canada	6	34	29	116	90	21	11
Switzerland	1	8	5	6	25	31	45

a. Including licenses sold to the Third World for local arms production.

b. The ranking order corresponds to five-year average export values for 1982.

Source: Stockholm International Peace Research Institute (SIPRI), World Armaments and Disarmament - Yearbook 1985.

Table 4:2 Canadian Military Exports, 1970-85
Selected Years
($ millions)

Year	United States	Europe	Other	Total
1970	226.5	41.2	68.5	336.2
1977	314.1	76.0	163.9	554.0
1980	481.7	142.1	97.9	721.7
1981	826.6	149.4	174.8	1,150.8
1982	1,027.9	157.8	248.4	1,434.1
1983	1,207.4	128.6	145.2	1,481.2
1984	1,360.5	243.1	149.8	1,753.4
1985	1,644.2	154.0	104.5	1,902.7

(a) Predominantly Third World sales, though inclusive of minor exports to Australia and New Zealand.

Source: Canada, Department of External Affairs, Defence Trade Statistics.

Viewed superficially, Canadian legislation might appear sufficiently restrictive in regard to permissible exports of military and cognate items. Regulations passed under the Export and Import Permits Act have long provided that "military, military-related and strategic equipment" (specifically itemised in 'Group 7' of the Export Control List) may not be exported without a permit, not to be issued for importers in the following categories:

(a) countries deemed as representing a military threat to Canada or its allies;
(b) countries involved in hostilities, including imminent threats thereof;
(c) countries subject to United Nations resolutions against arms exports;
(d) countries with governments wholly repugnant to Canadian values.(18)

The re-export from Canada of goods originating in the United States also remains subject to permit-requirements.(19)

However, the preceding constraints do not apply "if the country of final destination is the United States."(20) Accordingly, over 80% of Canadian military exports elude legislative regulation by Ottawa.(21) Further, since the Canadian defence industry is engaged primarily in the manufacture of components of military and related items (rather than of complete products),(22) an undertaking by an exporter that the "final destination" of the items is the United States would be pro forma correct even where the finished product was destined for use in a situation proscribed under Canadian law.

Nor do the constraints extend to the official re-export of Canadian supplies through United States military assistance or sales to countries falling within the prohibited categories.

As for the rights-related criterion suggested in the prohibition affecting governments "wholly repugnant to Canadian values", the record evinces no instance of a country so designated by the Canadian Government (exports to South Africa, which would appear to qualify, have already been subject to a mandatory arms embargo by the United Nations Security Council).(23) In any case, the implementation of the export permit regulations in other respects - such as sales to coutries engaged in hostilities - was shown in Parts 2 and 3 above to have been seriously deficient, permitting private transactions with El Salvador and Nicaragua; the enforcement of the Security Council embargo on South Africa was likewise inadequate, allowing major Canadian sales to the apartheid regime via the United States (and Antigua). Recent trends in Canadian military policies and practices evince a persistent absence of meaningful operative concern over implications not related to perceived geopolitical and economic considerations.

Consistent with the Mulroney Government's undertaking to enhance Canada's military capability and contribution within the NATO alliance, the national defence budget for the 1984/85 fiscal year exceeded the previous year's allocation by 3%, with capital expenditure accounting for 26% of the budget, the highest level since fiscal 1959.(24) In the process, contracts

for the Canadian defence industry amounted to $7 billion during 1985, with higher values projected for the ensuing years.(25) Critically, for an industry uniquely dependent on foreign sales, the export-component through 1985 approached $2 billion - as compared with $722 million during 1980 (see Table 4:2). It is noteworthy that official data fail to disclose the value of Canadian military exports to the Third World; nor do the statistics in Table 4:2 encompass 'dual-use' items.(26)

In June 1985, it was revealed in the House of Commons that the Government specifically authorised numerous military transactions with nations whose human rights records were the subject of widespread international concern, including public censure by this country.(27) Pursuant to documentation obtained under the Access to Information Act, Nelson Riis of the New Democratic Party (NDP) informed the House that export permits were granted for assorted military sales to Chile, Paraguay, the Phillipines (under the Marcos regime), South Korea and Taiwan, worth $163 million. The sales, Riis argued, were "undermining Canada's reputation abroad as a defender of human rights", and were tantamount to "utter hypocrisy" on the part of the Government.(28)

Relatedly, an export permit was granted recently to Pratt and Whitney of Quebec for engine parts for Iran, purportedly destined for use in commercial ('Bell 212') helicopters.(29) Following considerable adverse publicity over the transaction - in conjunction with revelations concerning concurrent official United States military supplies to Iran in

contravention of the former's own embargo thereon (30) - the Canadian Department of External Affairs launched an investigation into Iran's de facto use of the Pratt and Whitney engines; further shipments under the contract (which was worth $2 million in aggregate) were suspended.(31) While maintaining that the items in question were not readily adaptable for use in military helicopters in the Iran-Iraq war, the Government could offer no firm assurances in that regard, nor as to the potential uses of commercial helicopters in the context of the war.

Canadian military parts and ammunition have also reportedly found their way into American-manufactured weaponry used in, inter alia, Grenada, Lebanon and the Iran-Iraq war, in addition to the Central American instances mentioned earlier.(32) Conversely, private American military shipments to Iran were channelled through Canada during the 1983-85 period, in order to circumvent the Reagan Administration's embargo against that country.(33)

The growing export capability and outreach of the Canadian defence industry receives more than passive facilitatory support from the present Government. The latter's promotional activities on behalf of arms exports currently include the organisation of trade missions abroad, salesmanship through Canadian consulates and embassies, and private initiatives by senior members of the armed forces and the Department of National Defence and of External Affairs.(34)

Complementing perceived considerations of national security in this connexion is Ottawa's perspective on the economic factors at stake: 300 companies employing 35,000 Canadians are officially estimated to be under defence contracts, with prospects for considerable expansion.(35)

In the Fall of 1986, the Mulroney Government announced new guidelines affecting export controls on military and related items, including applicable human rights criteria.(36) Emphasizing the "importance of Canada's defence industry in meeting our obligations to our NATO allies", the Government would henceforth authorise component and assembly exports to all countries covered by suitable bilateral agreements; indeed, "the authorisation to export the completely assembled product will now rest with the country of final manufacture."(37)

While the general four-fold prohibition relating to the approval of export permits was maintained, the terms of the human rights criterion were altered significantly. Military exports to governments with "a persistent record of serious violations of the human rights of their citizens" would only be proscribed in the presence of a "reasonable risk that the goods might be used aganist the civilian population". An official list of countries falling within that characterisation was to be maintained - but remain classified and outside the scope of the Access to Information Act.(38)

Exports to the United States actually destined for "areas of conflict or of human rights abuse" would be subject to a 'good faith' requirement only, in regard to the issuance

of export permits.(39) Dual-use items (such as the helicopter parts sold to Iran by Pratt and Whitney) would remain excluded from the Export Control List, which would continue to govern military, military-related and strategic goods only.

When considered in light of the Government's renewed emphasis upon the export-dependency of the national defence industry - a consideration which expressly undergirds the Fall guidelines as a whole - and the de facto record of Canadian military exports to severe rights-violators, the implications for this country's orientation in respect of a meaningful human rights foreign policy are disturbing.

2. Of Human Rights and East-West Security

If the foregoing underlines the consequences for a human rights foreign policy of aspects of the arms race, the broader relationship between transnational peace and stability and respect for essential principles of human rights demands appropriate recognition. Article 55 of the United Nations Charter, it will be recalled, expressly predicates the attainment of "peaceful and friendly relations among nations" upon the promotion of, inter alia, "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction". Certainly, the historical propensity toward conflict in various forms where individual and collective rights are subverted, and conversely, toward the violation of those rights in situations of sustained conflict, cannot be gainsaid.(40)

This existential interdependence receives the fullest normative epression under the 1975 Helsinki Final Act of the Conference on Security and Co-operation in Europe (CSCE), comprising members of both the principal military alliances (NATO and the Warsaw Pact) and a number of 'neutral' states.(41) Among the principles agreed upon as governing 'security in Europe' (constituting one of three substantive areas of concern or 'baskets' within the Final Act), the signatories recognised that of respect for human rights and fundamental freedoms qua "an essential factor for the peace, justice and well-being necessary to ensure the development of friendly relations and co-operation".(Principle VII)

Furthermore, considerations pertaining to humanitarian co-operation - including family reunification, freedom of information and of movement, and enhanced cultural exchange - form a distinct substantive category ('Basket III') within the Act, emphasizing the breadth of linkages that attend the pursuit of detente through the CSCE process.(42)

Central to the implementation of undertakings under the Final Act was the institutionalisation of a review mechanism mandating periodic follow-up meetings, designed to foster as well as to monitor actual compliance and progress by the CSCE. Full reviews in respect of the Act in toto were conducted at Belgrade (1977-78) and Madrid (1980-83), with a third commencing in Vienna in November 1986.(43) In addition, numerous conferences have been held apropos specific areas of common interest under the Act - including 'confidence building measures' for military security, scientific and cultural co-operation, and human rights.(44)

Admittedly, the CSCE did not confer upon the Final Act the status of a treaty or other overtly binding instrument; on the contrary, the non-legal character thereof was reiterated by the conferees.(45) The Act repeatedly invokes, however, elementary norms of international law affecting transnational relations, such as the principles of nonuse of force, nonintervention, self-determination and respect for human rights, urging due compliance with relevant United Nations agreements by the participating states.(46) Indeed,

commentators have observed that provisions of the latter agreements, not least those articulating general principles of human rights, frequently receive potential interpretative guidance in the Final Act apropos the conditions prevailing in the signatory states.(47) Moreover, the aforementioned Principle VII expressly recognises "the right of the individual to know and act upon his rights and duties", entailing a correlative governmental obligation in terms of the implementation of the Act.

Above all, from the perspective of international human rights law and policy, the CSCE review mechanism has engendered a dynamic of official and non-governmental examination of sovereign conduct under the Act, irrespective of the socio-political system concerned, unencumbered by the somewhat narrow legal processes characteristic of more conventional agreements.(48) The 1983 'Concluding Document' of the Madrid Review of the CSCE affirmed the parties' "determination to promote and encourage the active exercise of human rights and fundamental freedoms ... and to assure consistent and tangible progress in accordance with the Final Act."(49) In effect, this ongoing accountability at the international level for sovereign divergence from the provisions of the Act has generated an increasingly well-defined normative regime of human rights in the East-West context, premised upon the consent of all the parties.(50)

The assessment below of Canada's role within the

preceding dynamic of law and policy demonstrates also that notwithstanding the ostensibly 'political' character simpliciter of the 'Helsinki regime', its significance for the implementation of international human rights law remains considerable.

Canada and the Helsinki Process

As a major sponsor of the human rights clauses within Basket III of the Final Act - especially those under the rubric of 'human contacts' (51) - Canadian policy interest in their implementation is well established. Of direct concern to this country's sizeable East European immigrant population has been the Act's undertakings to facilitate family reunification and temporary visits based on family ties - the focus of official and non-governmental Canadian representations to the CSCE.(52) Equally, the Canadian perspective on 'security' within the Helsinki process stresses the importance of the 'human dimension' thereto, as indicated by this country's representative at the 1977 Belgrade Review:

> "(P)ublic opinion in Canada focuses unequally on the Final Act. It does so because the different parts of the Final Act are different in their relevance to the concerns and priorities of Canadians. And it does so because Canadians have their own perception of what a policy of detente, practiced conscientiously, should imply. In essence, Canadians will assess such a policy by one simple test, and that is whether, as a consequence of supporting their Government's policy of detente, they are living in a safer and more humane world."(53)

While questions of national performance vis-a-vis the humanitarian undertakings at Helsinki featured prominently on

the agendas at the Belgrade and Madrid follow-ups (albeit in the face of East bloc resistance), agreement on substantive measures in furtherance of those undertakings proved difficult.(54) The 'Concluding Document' for each conference contained only modest proposals in connexion with Basket III, essentially reaffirming the principles in the Final Act.(55) Accordingly, widespread cynicism was expressed in the West over the humanitarian value of the CSCE process; characteristic was the assertion of a French diplomat that the latter created "a fantastic international illusion that something will really happen in the field of human rights."(56)

The criteria for assessing progress in this regard, however, must surely extend beyond the attainment of formal agreements and commitments in the short-term, given the nature of the exercise gua a process of fostering humane practices in diverse fields of national policy, and integral to East-West detente. Importantly, the process is not designed to effect structural change amongst the participant socio-political systems, but rather to enhance respect thereunder for individual rights and freedoms.(57) Appropriate indices of 'progress' would hence include increased respect for 'human contacts' by the hitherto relatively closed societies of Eastern Europe, such as through more permissive policies on emigration and tourism; the promotion of information flows and of cultural and educational exchanges between East and West; and more generally, the willingness of participant governments to publicly discuss their own human rights conduct under the

Final Act, despite traditional norms and practices to the contrary. These criteria suggest a somewhat more complex record of achivement under the Helsinki regime.

Barriers to emigration and travel from East to West have demonstrably been eased during the post-Helsinki period, though the trend was more favourable in the late-1970s than through the 80s.(58)(see Table 4:3 below) With specific reference to Jewish emigration from the Soviet Union (the principal component of aggregate permanent departures from Eastern Europe), a total of 113,285 exit visas were granted during the five years following Helsinki, compared with 19,367 for the 1971-75 period; however, only 15,486 departures have been sanctioned over the past five years.(59) Relevant figures for other East European countries yield a broadly similar pattern, though without the acute decline in current flows experienced in the Soviet Union.(60) The flutuations appear to reflect variant trends in East-West - and especially Soviet-American - relations,(61) graphically illustrating the <u>de facto</u> interrelationship between conditions affecting human rights and detente.

Table 4:3 Soviet Emigration and Temporary Visits to the United States, 1970-83

Year	Total Emigration(a)	Total Temporary Visits(b)
1970	1,250	1,411
1971	1,200	1,446
1972	3,499	1,540
1973	3,758	1,445
1974	4,281	1,867
1975	6,050	2,197
1976	9,576	2,356
1977	10,531	1,785
1978	18,576	3,757
1979	32,940	4,477
1980	20,514	4,067
1981	9,775	2,342
1982	1,211	2,570
1983	698	2,350

a. Includes indirect arrivals to the U.S., primarily through Israel and Vienna.

b. Includes professional and government-sponsored visits, as well as toursim.

Source: Commission on Security and Co-operation in Europe (U.S.), The Helsinki Process and East West Relations: Progress in Perspective

Considerably less progress has attended the declared commitment to developing freer information flows across traditional East-West barriers, particularly in respect of dessiminating printed information. Official restrictions have been conspicuosly relaxed in selected areas such as scientific information flows, documentary film distribution and foreign journalistic access to official news sources.(62) However, organisations monitoring CSCE compliance with the Final Act report that East European governments "have passed laws designed to restrict foreigners' access to unofficial sources within their countries, subject foreign correspondents to harassment and expulsion on politically-motivated grounds and (with the exceptions of Romania and Hungary) continue selectively to jam Western radio broadcasts."(63) The distribution of Western newspapers in those countries is considered to have deteriorated, along with general working conditions for Western journalists in those countries.(64)

Nevertheless, it is widely recognised that relevant provisions of the Final Act have furnished a vital referrant for governmental as well as private discussions and representations concerning the preceding as well as other rights-related issues, while also serving as a form of 'quid pro quo' pressure vis-a-vis negotiations over questions of military security. In response to the East European tendency to 'reward' accomplishments in the latter field by liberalising conditions affecting human rights, the United States and its Western allies have, on occasion, asserted the reverse

pre-conditioning.(65)

Most significantly, the integration of rights-factors into the spectrum of East-West relations under the Helsinki process has further legitimised public (as well as private) deliberations on pertinent aspects of national law, policy and practice, vis-a-vis countries that have long invoked sovereign jurisdiction as a barrier thereto.(66) The latter objection features progressively rarely in rights-related bilateral and multilateral exchanges among the CSCE states (and is effectively surmounted when so raised).(67) Although the interpretation of those rights continues to be coloured by ideology and socio-cultural differences, substantial common ground is articulated in the Final Act and the Madrid Concluding Document, often, as stated earlier, in terms less equivocal and more explicit than in the International Bill of Rights.(68)

A decade following the proclamation of the Helsinki Final Act, the first CSCE forum devoted exclusively to questions of human rights was hosted by Canada;(69) two subsequent rights-related assemblies have convened, the Budapest Cultural Forum of October-November 1985, and the Human Contacts meeting at Berne in April-May 1986.(70) It is scarcely conceivable that, in the absence of the Helsinki process, official human rights practices within Eastern Europe could have been subjected to the searching and critical scrutiny, indeed forthright challenge, facilitated by the preceding

fora.(71) Especially active in that respect were the many Western non-governmental organisations spawned by the adoption of the Final Act (though their Eastern counterparts remain uniformly suppressed); few other international agreements have generated as extensive a network of 'unofficial monitors', evoking the public dimension to the CSCE.(72)

Addressing the Ottawa human rights forum in May 1985, External Affairs Minister Joe Clark reiterated the historical bases of Canada's particular concern over Basket III of the Final Act; progress in its implementation, Clark asserted, would bear upon European defence issues, which in turn were indivisible from Canadian security.(73) However, a coalition of Canadian public groups observing the forum was critical of this country's underplaying of socio-economic and disarmament issues,(74) consistent with traditional Western orientations in that regard. The conflicting emphases by Eastern and Western participants respectively upon the observance of socio-economic and of civil-political rights and freedoms was to forestall the adoption of a concluding document by the CSCE.(75) Canada's chief delegate, Harry Jay, held nevertheless that the sustained public focus upon the latter, including the presence of the news-media during the closing session of the conference, was in itself a significant achievement.(76)

A similar fundamental rift in substantive perceptions between East and West afflicted the Budapest Cultural Forum later that year, where the Canadian delegation consisted

principally of eminent private personalities.(77) The overriding Western (and Canadian) interest centered upon artistic freedom and the rights of individuals and minorities to free cultural expression; Eastern participants focussed on more abstract issues concerning the role of culture in relations between nations.(78)

The April 1986 meeting on CSCE human contacts, on the other hand, explored in considerable detail the more clearly defined issues stemming from the implmentation of Basket III of the Final Act, especially in respect of family reunification and visitation, and freer personal or professional travel.(79) While acknowledging that all the participant countries likely had "some domestic legal or administrative problem" in treating those issues, Canada's William Bauer emphasized the supervening importance of complying with applicable "obligations" under the Act, mindful of attendant security as well as moral imperatives:

> "How states make or change their laws and regulations is their own sovereign responsibility. What political or social system influences those laws is a matter of each state's own determination ... Nevertheless, where states have entered into international obligations and into commitments in respect of the Helsinki Final Act and the Madrid Concluding Document, they must surely be ready to listen to and - we urge - carefully consider observations on the implementation of their obligations and commitments. Our purpose here must be to recognise specific obstacles in the path of security and cooperation in the CSCE area, and to identify the necessary corrective action. Beyond that, we should, in a positive spirit, seek to identify how we can expand our efforts to develop personal, institutional and organisational contacts."(80)

Ambassador Bauer singled-out the Soviet Union for its

restrictive practices affecting prospective emigration and travel to Canada on the basis of family ties, noting that pertinent statistics for 1985 compared unfavourably not only with those for preceding years, but also with pre-1975 levels.(81) Canadian family contacts with a number of other Eastern states were said to have improved, following "a welcome liberalisation of passport issuance and the introduction of less restrictive travel regulations".(82)

However, the Ambassador refrained from naming the "few" states in question; nor were specific instances of prolonged visa applications by Soviet citizens wishing to emigrate or travel to Canada cited or enumerated. This appears to be characteristic of Canadian human rights diplomacy apropos the Helsinki process: though forthright in asserting the general significance of human contacts and other Basket III provisions vis-a-vis the overall scheme of East-West relations, this country has been highly circumspect in detailing official violations of those provisions by various CSCE participants.(83) In contrast, extensive and methodical critiques in that regard have been undertaken in the United States and Western Europe, particularly with reference to East European compliance.(84) Without such detailed monitoring of progress on pertinent norms, their promotion in national foreign policy is necessarily limited in potential effectiveness.

In considerable measure, the preceding deficiency in

Canadian policy stems from the absence of appropriate institutional structures - in the form of a public agency or the like - to 'advice and assist' the Government in CSCE matters; parliamentary and private citizen participation through such structures would surely afford a broader base for public interest and support for Canada's role.(85) Thus the United States Commission on the CSCE, established under legislation in 1976, performs a vital advisory function in that country's policy-making in respect of the humanitarian norms under the Final Act, focussing on East European implementation.(86) In Canada, this task devolves upon the division on East European affairs within the Department of External Affairs, as well as the community of non-governmental organisations. Both operate under severe constraints in the present context: the former must deal with all facets of bilateral and multilateral relations with the countries in question, often involving 'competing' considerations, whereas non-governmental organisations are perforce subject to acute resource-limitations as well as to partisan concerns.

It should be observed, as well, that in the presence of national legislation linking human rights criteria in general to external relations, Canadian policy within the Helsinki process would clearly be enhanced. Indeed, the Madrid Concluding Document commited the CSCE to consider giving "legislative expression" to the principles in the Final Act - including the promotion of human rights and fundamental freedoms under Principle VII.(87) In addition to consolidating

Canada's declared commitment to the latter, such legislation would provide a basis for meaningful 'co-determination' in foreign policy by Parliament in the domain of human rights.

3. Final Remarks

It is submitted that the foregoing survey of 'salient themes' in Canadian human rights foreign policy echoes the systemic patterns and tendencies suggested by the empirical studies in Parts 2 and 3 of the dissertation. Export controls in respect of Canadian military and related sales to repressive governments patently accord precedence to commercial and perceived security considerations, notwithstanding official rhetoric against the rights-practices of many client states. The decision of the Mulroney Government to enhance this country's military role within NATO, entailing substantial increases in national defence expenditure, coupled with the promotion of military exports in support of Canada's defence industry, raises further questions over the operative policy commitment to human rights in external relations.

Yet the nexus between conditions affecting transnational security on the one hand, and governmental respect for humanitiarian norms on the other, is recognised in Canadian perceptions in the context of the Helsinki process. In addition to hosting the first CSCE forum devoted to international human rights, this country has been vocal in asserting the centrality of 'human contacts' and other rights-factors to substantive progress on East-West detente, correctly seeing both in a continuum of interdependence. Nevertheless, the absence of an appropriate institutional framework of support for Canada's CSCE role circumscribes its capability in exerting pressure for meaningful change abroad.

In terms more broadly of 'attentive public' input within the Canadian decision-making process, it has been observed that "there are grounds for calling the missing middle of society to the defence of the foreign policy centre in the state apparatus, lest the latter be overwhelmed by strong single-centre claimants, or tempted to define the national interest on their own."(88) Enhanced institutionalisation of this country's legal and political commitments to a human rights foreign policy (through, inter alia, relevant legislation) would facilitate public access to the 'state apparatus', and hence to operative interpretations of 'national interest'. Such a development could scarcely occur too soon, in light of the exposition in this study.

The recent establishment of the Commons Standing Committee on Human Rights is certainly a commendable development in this respect. Through the assertive use of its power under Standing Order 99(2) to elicit comprehensive policy responses from the Government, the Committee can add a modicum of formal executive accountability to Parliament over and above 'Question Time' and similar exercises. Equally, the entrenchment of the practice of governmental consultations with the Canadian NGO community on human rights issues - in advance of the annual working sessions of the the Commission on Human Rights in Geneva - is to be welcomed.

Fundamentally, however, Canadian legislative action in furtherance of a rights-oriented policy in general, and with regard to South African apartheid and the Central American

crises in particular, has remained minimal in scope and implementation through the Trudeau-era and its aftermath. Standing Order accountability, ad hoc policy-making, and 'friendly consultations' with NGOs are no substitute for clear statutory commitment. From the perspective of safeguarding individual and collective rights and freedoms, the imperatives of the 'rule of law' surely appertain not only to the realm of domestic behaviour, but also to that of foreign policy-making: the alternative is a steadily widening gulf between obligation and performance, rhetoric and reality.

C. NOTES

1. See especially the critique of Western legal anthropocentrism in this connexion by Carty,"Human Rights in a State of Exception: the ILA and the Third World", in Campbell, Goldberg, McLean and Mullen (eds.), Human Rights- From Rhetoric to Reality (1986), 60 (including remarks infra, at note 3). See also Farer,"Human Rights and Human Wrongs: Is the Liberal Model Sufficient?", Human Rights Quaterly, Vol.7 (1985), 189 (focussing on conditions in Central and Latin America); and Renteln,"The Unanswered Challenge of Relativism and the Consequences for Human Rights", Human Rights Quarterly, Vol.7 (1985), 574.

2. The scope of which must encompass the socio-economic dimensions of the rights to life and security of the person, as suggested in Part 1, supra.

3. Note 1, supra, at 72: "It is more realistic to recognise that at an international level the concepts of democracy, public safety and national security are meaningful, if at all, only in a particular ideological and cultural context. It is this complexity which the lawyer should endeavour to unravel, taking fully into account the significance of the fact that international law formulations of ... political human rights ... seem to be breached more often than observed." (footnote omitted) See also Bay,"A Human Rights Approach to Transnational Politics", Universal Human Rights, Vol.1:1 (January-March 1979), 19:"Until we endeavour to bring human need priorities in to the picture ... the natural preferences of jurists and philosophers for the wellbeing of members of their own class will tend to determine the prevailing views of the relative importance of rights" (at 29).(Emphasis added)

4. Johansen, The National Interest and the Human Interest (1980), Chapter 1, at 20.

5. Part 1, Section C, supra.

6. Ibid.

7. At Section B:III, supra, common to Parts 2 and 3.

8. See, inter alia, the range of issues confronting the international community presented in United Nations, The United Nations and Human Rights (1978).

9. See, for instance, Report of the Special Joint Committee of the Senate and Commons on Canada's International Relations, Independence and Internationalism (June 1986), at Chapters 3, 5 and 8.

10. The "intrinsic incompatability" between those precepts and the pursuit of the arms race has been explored by the present author in "Human Rights Perspectives on the Arms Race", McGill

Law Journal, Vol.28:3 (1983), 628. See also in the same volume Vlasic,"Raison d'etat v. Raison de l'humanite - The United Nations SSOD II and Beyond", 455.

11. According to the annual study by Ruth Leger Sevard: 'World is spending nearly $900 billion U.S. for arms in '86', Gazette (Montreal), November 24, 1986, A-5.

12. Ibid; Stockholm International Peace Research Institute (SIPRI), World Armaments and Disarmament - Yearbook 1985, Chapter 7 (including Appendix 7A).

13. See SIPRI, note 12, supra, Chapter 11. The Institute's list of the 20 largest Third World major-weapon importing countries (1980-84) includes Argentina, Cuba, Indonesia, Iraq, Israel, Libya, Pakistan, South Korea and South Yemen, all of which have featured prominently in international denunciations of systematic official human rights violations (see, inter alia, Amnesty International Report 1984 (1985), Amnesty International Report 1985 (1986)).

14. Ibid. Among the leading major-weapon exporting countries, China, France and Italy direct over 80% of aggregate exports to the Third World.

15. See Doern and Morrison,"Canadian Nuclear Policies: Issues and Alternatives", 1, and Morrison and Wonder,"Canada's Nuclear Export Policy", 99, in Doern and Morrison (eds.), Canadian Nuclear Policies (1980).

16. Ibid; SIPRI, World Armaments and Disarmaments - Yearbook 1983, at 88, 86 (Table 4.7). See generally Regehr and Rosenblum, Canada and the Nuclear Arms Race (Toronto: Peter Lorimer, 1983).

17. See for a full official statement of Canadian positions on various aspects of the matter Department of External Affairs, Canada's nuclear non-proliferation policy (1985). See citations at note 15, supra, for a general critique.

18. Department of External Affairs, 'Notice to Exporters' (Export and Import Permits Act), Serial No.21, July 18, 1984 (as amended).

19. Ibid, paragraph 9.

20. Ibid, op. cit.

21. Qua the proportion of sales to the U.S.: see Table 4:2, infra. See also Carol Goar,'Arms scandal raises doubt about Canada-U.S. link', Gazette (Montreal), December 19, 1986, B3 (addressing issues raised by Canada's role in financing U.S. arms shipments to Iran in recent months - see note 29, infra).

22. See 'Policy - Background Paper', note 23, infra.

23. Department of External Affairs,'Exports Control Policy - Background Paper', Communique (No. 155; September 10, 1986).

24. Standing Committee on External Affairs and National Defence, Statement of the Minister of National Defence, Defence Estimates 1984/85 (1984). For 1985-86, the allocation to capital expenditure was projected at 27%: see Department of National Defence, Defence 85, op. cit.

25. See William Marsden,'Why Canada is a big-league arms pedlar', Gazette (Montreal), November 22,1986, A-1.

26. See Regehr,'The Military Industry in Canada: Street Vendor to the Global Arms Market', Ploughshares Monitor, Vol.V:3 (September 1984).

27. 'New Democrat catches Clark off guard over sale', Globe and Mail (Toronto), June 19, 1985, 5; 'Canadian firms sold military goods to Chile', Globe and Mail (Toronto), June 20, 1985, 5; 'Canada arms policy decried as hypocrisy', Globe and Mail (Toronto), June 22, 1985, 13.

28. 'Canada arms policy decried as hypocrisy', supra note 27. See also Richard Goldman,'Canada arms sales bolster brutality', Globe and Mail (Toronto), December 13, 1985, A7.

29. 'Canadian copter parts sent to Iran', Globe and Mail (Toronto), November 17, 1986, A1; 'Copter parts for Iran not for military craft, Ottawa official says', Gazette (Montreal), November 18, 1986, A1; 'What we sell to Iran' (editorial), Globe and Mail (Toronto), November 18, 1986, A6. The same company had applied unsuccessfully in 1985 for a permit to export engine parts specifically for Iranian military helicopters, also belonging to the 'Bell' group of products.

30. 'Reagan Reported to Have Approved Contacts on Iran', New York Times, November 8, 1986, A1; 'Dealing With Iran Said to Undercut Credibility of U.S.', New York Times, November 9, 1986, A1.

31. 'Canada withholding export of copter parts pending probe of use', Globe and Mail (Toronto), November 19, 1986, A12; 'Pratt and Whitney agrees to suspend shipments of helicopter parts to Iran', Gazette (Montreal), November 19, 1986, A-13.

32. See Marsden, supra note 25.

33. A U.S. court convicted six private individuals for violationg that country's Arms Export Control Act through the Iran transactions, while citing as co-conspirator Canada's Regency Tubes Inc. The latter has yet to face charges in either jurisdiction for its role. Marsden,'Arms for Iran: the Montreal connection', Gazette (Montreal), November 24, 1986, A1. Furthermore, the director of the Central Intelligence Agency (CIA), William Casey, testified before Congress that Canadian

middlemen facilitated the Reagan Administration's own surreptitious shipments of armaments to Iran in recent months. An official Canadian investigation in the matter was triggered by Casey's testimony, amidst assertions by External Affairs Minister Joe Clark that neither Canadian law nor policy appeared to have been breached. New York Times, December 11, 1986, A1; 'Ottawa probes Canadian link to Iran arms', Gazette (Montreal), December 12, 1986, A-1;

34. See Department of External Affairs (U.S. Division, Defence Programs Bureau),'The Canada-United States Defence Development and Defence Production Sharing Arrangements' (Briefing; Revised and Reissued), October 1985; and Marsden, supra note 25.

35. Department of External Affairs (September 1986), supra note 23.

36. Ibid; 'Canada loosens export controls on high-tech, some other goods', Globe and Mail (Toronto), Sewptember 11, 1986, A5.

37. Ibid. The new authorization stipulates the existence of "a bona fide joint venture arrangement between the Canadian and the foreign manufacturer."

38. Ibid. See also 'Blood on our hands' (editorial), Gazette (Montreal), September 17, 1986, B-2, addressing the implications of the new guidelines with particular reference to Canadian arms exports to Chile.

39. Department of External Affairs (September 1986), supra note 23.

40. For some valuable Canadian insights into this relationship, see the report of the 1984 colloqium thereon sponsored by the Canadian Human Rights Foundation, Human Rights and Peace (1985), especially at pp.5-19.

41. See Part 1, supra, notes 28-30, and text thereto.

42. Note that the Final Act also provides in 'Basket III' for 'Co-operation in the Field of Economics, of Science and Technology and of the Environment', as integral to the CSCE process.

43. Belgrade Review, 'Concluding Document', International Legal Materials, Vol. 17 (1978), 414; Madrid Review, 'Concluding Document', International Legal Materials, Vol. 22 (1983), 1398; 'Parley on European Security Pact Starts in Vienna', New York Times, November 5, 1986, A8.

44. The full schedule of CSCE multilateral sessions, commencing with the the 1977 Belgrade Review, appears in the Appendices, infra. Numerous bilateral sessions between East and West have also occured within the CSCE framework, most significantly

between the Federal Republic of Germany (FRG) and the German Democratic Republic (GDR). See generally Commission on Security and Co-operation in Europe (U.S.), The Helsinki Process and East West Relations: Progress in Perspective (1985), detailing developments in all substantive areas encompassed by the Final Act.

45. See Jonathan and Jacque,"Obligations Assumed by the Helsinki Signatories", in Buergenthal (ed.), Human Rights, International Law and the Helsinki Accord (1977), 43, at 51; Kiss and Dominick,"The International Legal Significance of the Helsinki Final Act", Vanderbilt Journal of Transnational Law, Vol. 13:2 and 3 (1980), 293, at 303-04. The text of the Act, it should be recalled, expressly renders it ineligible for registration qua a treaty under Article 102 of the UN Charter.

46. See especially the 'Declaration on Principles Guiding Relations between Participating States' in Basket I.

47. Frowein observes, for instance, that the 'escape clauses' accompanying provisions of the International Covenant on Civil and Political Rights, allowing for various exceptions to the general principles involved (such as the freedoms of information and of travel), are effectively constricted by relevant commitments under the Final Act to facilitate the exercise of those rights: "The Interrelationship between the Helsinki Final Act, the International Covenants on Human Rights, and the European Convention on Human Rights", in Buergenthal (ed.), supra note 45, 71, at at 74-77. See also Cassesse,"The Approach of the Helsinki Declaration to Human Rights", Vanderbilt Journal of Transnational Law, Vol. 13:2 and 3 (1980), 275, especially at 282-86.

48. Noting the limitations that attend the implementation procedures under the International Covenants on Human Rights, Frowein argues that the absence of such formal procedures in the CSCE process may facilitate access to the more general remedies for the peaceful resolution of international complaints, including bilateral and multilateral diplomacy. "In the final analysis", it is held, "the more subtle system of Helsinki may prove to be the strong one." Note 47, supra, pp.77-80, at 80.

49. Supra note 43 (Principle 9).

50. Forsythe, Human Rights and World Politics (1983), remarks on the Final Act in this connexion: "Its overriding significance is twofold: (1) this agreement creates the expectation that the thirty-five signatory nations will implement certain specific human rights which transcend philosophical and other differences; and (2) the subject is important enough to merit periodic reviews by signatories to ascertain who is meeting the expectations and who is not. The accord thus performs the function of law while avoiding a legal label. More attention has probably been directed to these

diplomatic standards than to most international law." (at 18-19)

51. Lyon,"Canada at Geneva, 1973-5", in Spencer (ed.), infra note 52, 110; G.G. Crean,"European Security - The CSCE Final Act: Text and Commentary", Behind the Headlines, Vol. XXXV:2 and 3 (1976), at 17. See also Goldblatt,"Canada and European Security", International Perspectives, January/February 1973, 35, at 37-38.

52. See generally Skilling,"The Belgrade Follow-up", 283, and "The Madrid Follow-up", 308, in Spencer (ed.), Canada and the Conference on Security and Co-operation in Europe (1984). See also note 53, infra.

53. Department of External Affairs, Opening Canadian Statement by Klaus Goldschlag, Special Representative of the Secretary of State for External Affairs, October 6, 1977, Statements and Speeches (No. 77/8). Goldschlag added: (t)he dispositions of the Final Act in the matter of human contacts are of special concern to Canadians ... The Canadian Government has pursued a policy that attaches priority to the reunification of families. It has looked to the Final Act to break the impasse that has often inhibited the pursuit of that policy." Similar sentiments were expressed by Canada at the Madrid Review: see Secretary of State for External Affairs, Statement, Mark MacGuigan, Opening Session of the Madrid Follow-Up Meeting of the CSCE, Madrid, November 12, 1980.

54. See Skilling, supra note 52; Best,"Human rights on agenda despite Soviet opposition", International Perspectives, July/August 1978, 16; John Darnton,'Madrid yields up half a loaf only', Gazette, (Montreal), July 26, 1983.

55. Ibid. (Text citations supra, at note 43).

56. Francois de Rose,'Rights Charade in Madrid', New York Times, August 17, 1983, A23. See also Avital Scharansky,'Flimsy Madrid pact would harm Soviet dissidents', Gazette (Montreal), August 3, 1983, B3. Cf. Fascell,"Did Human Rights Survive Belgrade?", Foreign Policy, No. 31 (1978), 104 (answering the question affirmatively).

57. This is implicit in the opening principle affirmed in Basket 1 of the Final Act, requiring parties to "respect each other's right freely to choose and develop its political, social economic and cultural system as well as its right to determine its laws and regulations." The Madrid Concluding Document makes it clear, however, that "constant and tangible progress in accordance with the Final Act" must be pursued by the parties "irrespective of their political, economic and social systems." (Principle 9)

58. A number of official East European measures affecting emigration and travel have been changed during the

post-Helsinki period, permitting the numerical increases in departures for the West. These include fee reductions for exit visas; shorter review intervals for rejected applications; and the decentralisation of authority in approving applications. Official procedures concerning 'binational' marriages and contacts among religious representatives have also been rendered more permissive, albeit subject to the historical fluctuations noted in the text. The adoption of the new measures is attributed directly to developments within the CSCE process. Commission on Security and Co-operation in Europe (U.S.), supra note 44, Chapter IX. Of particular concern to prospective emigrants from the Soviet Union is the adoption of new legislation (effective January 1, 1987) restricting 'family reconciliation' exits to those with "invitations" from immmediate kin abroad. 'Soviet exit law faulted by Scharansky', New York Times, Dcember 10, 1986, A3.

59. Ibid; International Council of the World Conference on Soviet Jewry, The Position of Soviet Jewry, 1983-1986 (1986), op. cit. Of particular concern to prospective Jewish emigrants from the Soviet Union is the adoption of new legislation (effective January 1, 1987) that would restrict departures on the basis of family reunification to those with "invitations" from immediate relatives abroad, thus disqualifying almost 400,000 pending applications for exit visas: 'Dissident Seeks Support', New York Times, December 9, 1986, B14 (regarding discussions on the subject between the emigre Anatoly Scharansky and U.S. Government officials); 'Soviet exit law faulted by Scharansky', New York Times, December 10, 1986, A3.

60. Commission on Security and Co-operation in Europe (U.S.), supra nore 43.

61. As evinced from the 'fall-out' attending developments such as the reactions to the Soviet invasion of Afghanistan (1979) and the emergence of 'Solidarity' in Poland (1981), as well as the pre-1979 'thaw' and post-1980 'chill' in, respectively, the Carter and Reagan Administration's diplomatic relations with the Soviet Union. See generally Skilling, "The Madrid Follow-up", supra note 52; Robert L. Bernstein,'A Ray of Light for Soviet Rights?', New York Times, December 28, 1986, A3.

62. Commission on Security and Co-operation in Europe (U.S.), supra note 43, Chapter X.

63. Ibid, at 161.

64. Ibid.

65. See,for instance, statement by Canadian Ambassador William Bauer to the CSCE Experts Meeting on Human Contacts in Berne (April-May 1986), infra note 80: "How, Canadians may ask, can ... confidence be achieved among states if, at a much more

modest level, some governments will not allow their citizens to receive freely Canadian relatives or friends, or to visit family members and friends in Canada? How can they place confidence in disarmament proposals if existing obligations in the area of human contacts are not honoured?"

66. See Henkin,"Human Rights and 'Domestic Jurisdiction'", in Buergenthal (ed.), supra note 45, 21, at 28-29; Forsythe, supra note 50, at 19.

67. As was the case, for instance, at the recent Ottawa human rights conference of the CSCE: infra notes 69, 71. See also 'Gorbachev aide signals willingness to discuss jailed dissidents: lawyer", Gazette (Montreal), November 26, 1985, A-6 (on the experience in his longstanding human rights case-work on behalf of Jewish dissidents in the Soviet Union of Canadian Prof. Irwin Cotler).

68. See note 7, supra.

69. The May 1985 conference in Ottawa was agreed upon at the CSCE's Madrid Review: 'Concluding Document', supra note 43.

70. See Department of External Affairs,'The CSCE Budapest Cultural Forum' (1985); and 'Canadian Delegation to CSCE Human Contacts Experts Meeting, April-May 1986', Communique (No.73; April 1986).

71. See, inter alia, 'Ottawa Meetng on Human Rights Opens; Agenda in Dispute', New York Times, May 8, 1985, A4; 'West wants press at human rights talks', Globe and Mail (Toronto), May 7, 1985, 4; 'U.S., Soviets spar verbally at rights talks', Globe and Mail (Toronto), May 10, 1985, 5; 'Human rights a universal concern, Clark says', Globe and Mail (Toronto), May 8, 1985, 5; 'Soviet Spokesmen Joust With Critics', New York Times, November 4, 1986, A9 (on human rights issues at a press conference preceding the Vienna Review).

72. See especially Matas,"Helsinki Watch in Budapest", International Perspectives, January/February 1986, 3; Leary,"The Implementation of the Human Rights Provisions of the Helsinki Final Act - A Preliminary Assessment: 1975-1977", in Buergenthal (ed.), supra note 45, at 121-17. 73. Secretary of State for External Affairs, Joe Clark, Statement (No.85/27), Ottawa, May 7, 1985.

74. Globe and Mail (Toronto), June 14, 1985, 9.

75. 'Conference on human rights ends with failure to agree', Globe and Mail (Toronto), June 18, 1985, 5.

76. Globe and Mail (Toronto), June 24, 1985, 5.

77. Department of External Affairs, supra note 70. See also Matas, supra note 72.

78. Ibid.

79. See Selection of Statements, infra note 80.

80. Department of External Affairs, Selection of Statements By the Delegation of Canada to the Human Contacts Experts Meetings of the Conference on Security and Co-operation in Europe (CSCE) (Berne; April 2-May 26, 1986), Statement of April 16, (at pp. 9-10).

81. Ibid, Statements of April 23 (at 16-17) and April 30 (at 38-39).

82. Ibid, Statement of April 23 (at 16).

83. See, for instance,the observations by Skilling, supra note 52, on Canada's conference strategy at the Belgrade Review, pp.299-303, at 302.

84. See, inter alia, the reports by the Commission on Security and Co-operation in Europe (U.S.) (March 1985), supra note 44, and infra note 86. See also International Helsinki Federation for Human Rights (a non-governmental organisation representing Western CSCE participants, including Canada), Asylum Policy and Family Reunification Policy (in ten West European countries) (June 1985).

85. See expert testimony of the head of Canada's Helsinki Monitoring Group, Prof. Irwin Cotler, before the Special Joint Senate-House Committee on Canada's International Relations (March 11, 1986), supra note 9.

86. U.S. Public Law 94-304 (June 3, 1976). The Commission comprises 12 members of Congress, and 3 members of the Executive branch of the Government. See U.S. Government Accounting Office, Report to the Chairman of the Commission on Secutity and Co-operation in Europe, Helsinki Commission: The First 8 Years (March 1, 1985); Galey,"Congress, Foreign Policy and Human Rights Ten Years After Helsinki", Human Rights Quarterly, Vol.7 (1985), 334.

87. Supra note 43 (Principle 1).

88. Kirton and Dimock,"Domestic access to government in Canadian foreign policy, 1968-1982", International Journal, Vol.XXXIX:1 (1983-4), 68, at 98.

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(*)This compilation excludes generically textual sources for treaties and international agreements, as well as the extensive news-media references above. Both are documented exhaustively in relevant footnotes. Moreover, for the record, numerous personal and written consultations were conducted with Canadian Government departments, the Canadian Delegation to the United Nations (New York), and with non-governmental organisations. Pertinent documentation stemming therefrom is cited and/or reproduced elsewhere in this study. Finally, it should be noted that bibliographical items appertaining to more than one of the three substantive divisions below appear only once; equally, article-citations are frequently subsumed under appropriate book-citations.

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8. Nuclear Tests (Australia v. France) (New Zealand v. France), ICJ Reports (1974), 253 and 457, respectively;

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APPENDICES

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External Affairs Canada
Affaires extérieures Canada

'APPENDIX A'

Statements and Speeches

No. 82/23

THE CANADIAN APPROACH TO THE INTERNATIONAL PROMOTION AND PROTECTION OF HUMAN RIGHTS

An Address by the Honourable Mark MacGuigan, Secretary of State for External Affairs, to the Annual Meeting of the Canadian Section of the International Commission of Jurists, Toronto, August 31, 1982

The international community will mark next year the thirty-fifth anniversary of the Universal Declaration of Human Rights. Today I would like to anticipate that anniversary and review with you old problems and recent progress in the promotion and protection of human rights throughout the world.

In a symposium sponsored by UNESCO [the United Nations Educational, Scientific and Cultural Organization] in 1948, Jacques Maritain issued a warning that even now should be the daily watchword of those who profess attachment to the cause of human dignity.

What he said was this: "The function of language has been so much perverted, the truest words have been pressed into the service of so many lies, that even the noblest and most solemn declaration could not suffice to restore to the peoples faith in human rights. It is the implementation of these declarations which is sought from those who subscribe to them; it is the means of securing effective respect for human rights from states and governments that it is desired to guarantee."

A few months after Maritain wrote these words the UN General Assembly adopted the Universal Declaration of Human Rights. The Declaration, together with the UN Charter itself, gave a constitutional expression to the basic rights and freedoms of the human person. Since 1948 these rights and freedoms have been further defined in more than 20 conventions and covenants. Indeed that number more than doubles if we include the related agreements developed under the auspices of the International Labour Organization.

All these international instruments are major achievements in themselves. Each of them, we hope, brings us closer to conditions of true civilization and to the ideal of man's humanity to man. Yet each must be examined in the light of Maritain's admonition that faith in human rights can be restored only by implementation of those rights and not by their mere enumeration.

Human rights' place in foreign affairs

Regrettably – and perhaps inevitably – we have made more progress in enumeration than in implementation. It is a sad truth that even governments which have freely subscribed to international agreements on human rights can still be heard to claim

that their application of these agreements is a purely internal matter. Even states with a reasonably proud record in the field of human rights at home still sometimes assert that human rights have no place in foreign affairs.

Such claims and assertions are wrong on many counts. They are wrong, above all, as a matter of treaty law. For international agreements on human rights operate on both the domestic and international planes. States that become parties to these agreements assume obligations both to their own citizens and to the international community. Every stateparty to such a treaty in effect has invited every other stateparty to examine the treatment it affords its citizens. Thus a government that expresses its concern about violations of human rights by another government is not intervening in an internal matter. Rather it is exercising a legitimate treaty right – and indeed discharging a treaty obligation to promote universal respect for human rights and fundamental freedoms.

Those who would deny human rights a place in foreign affairs are wrong as well even in terms of realpolitik. A treaty-breaker is a treaty-breaker, whether the treaty concerned may deal with human rights or international trade or nuclear disarmament. Respect for treaty obligations cannot be a sometime thing if treaties are to be more than scraps of paper. And an affront to human freedom in Poland or elsewhere engages our self-interest in other ways as well – not only because no man is an island but because freedom is truly indispensable to peace and security in the world. Oppression may give the appearance of stability to some societies and some groupings of states. Stability of that kind, however, is a tragic and dangerous illusion.

What, then, can we do to ensure genuinely effective promotion and protection of human rights and freedoms as a legitimate objective of Canadian foreign policy?

Our first priority, in my view, must be to ensure the health of our own society and institutions. There is no paradox involved in this statement. Human rights do not end at home but they do begin there. Thus our immediate duty is to preserve and expand our heritage of freedom in Canada. The Canadian Charter of Rights and Freedoms, which you have been discussing today, is a great milestone in this regard. Its origins and objectives are Canadian but it also bears upon our international obligations. For one thing, it is our domestic record that – despite its blemishes – gives us a credible voice in the field of human rights within the wider forum of the international community.

Canada's actions

In that wider forum, Canada has been mindful of the watchword enunciated by Maritain. In the UN context, both at the General Assembly in New York and in the Commission on Human Rights in Geneva, Canada has been active on three fronts. First, we have supported the elaboration of new international instruments for the protection of human rights, focusing on particular types of violations or victims. Second, we have explored creative ways to promote the observance of existing rights

and freedoms. And finally, we have initiated a study that seeks to analyze the causes of certain human rights abuses, in the hope of preventing their recurrence.

On the first front – the development of new international instruments – the General Assembly last December unanimously adopted the Declaration Against All Forms of Intolerance and Discrimination Based on Religion or Belief. This declaration, 20 years in the making, spells out in detail the right to freedom of religion that was first enunciated in general terms in the Universal Declaration of Human Rights. When the Declaration on Religious Intolerance was finally adopted, a number of delegations paid tribute to the important role played by Canada in the elaboration of this instrument.

Again in December of last year, Canada ratified the International Convention on the Elimination of All Forms of Discrimination Against Women. We were one of the principal drafters and supporters of this convention, and a Canadian has been elected to sit on the committee that will monitor its implementation.

Canada is also actively participating in a working group that is elaborating a draft convention against torture. I am optimistic that the working group will submit a final draft of the convention to the Human Rights Commission in the very near future. The terrible practice of torture cannot be allowed to go unpunished. We have pressed hard to ensure that the convention, when it emerges, will include a provision on universal jurisdiction. Such a provision would allow the prosecution of a torturer in any state, regardless of his nationality, the nationality of his victim, or the place where the torture occurred.

On the second front I mentioned a few minutes ago, Canada recently sponsored an initiative focusing on the right and responsibility of individuals and groups to promote existing human rights and freedoms. This initiative was adopted at the last session of the Human Rights Commission. We hope that a declaration on this subject will help to deter countries from punishing their citizens for merely asserting rights embodied in universally accepted instruments. We hope too that the declaration will better enable organizations such as the International Commission of Jurists to carry out their mandates.

Disappearances

I should also mention here the important activities of the UN Working Group on the Disappeared – a dreadful new concept that has entered our modern vocabulary. This working group embodies many of the aims of Canadian foreign policy in the field of human rights. It attempts to deal with the problem of disappearances on a generic basis by attacking it wherever it occurs, without singling out individual countries for special consideration. The working group has carried out its mandate in a manner that has been commended even by some of the countries under investigation. Most important of all, it has proven itself effective and has reported on more than 2 100 missing persons in 22 different countries. The working group has also established an emergency procedure – the first of its kind within the UN – which authorizes the

chairman of the group to respond to urgent reports of disappearances by an immediate direct approach to the government concerned. This procedure has saved many lives and has acted as an important deterrent against arbitrary action.

Finally, on our third front, relating to the prevention of further abuses of human rights, Canada recently took the initiative in bringing about the preparation of a report that analyzes the root causes of massive exoduses of people. The report explores a number of ways to prevent this sad phenomenon and the human rights violations that inevitably result. It was considered by the Human Rights Commission last winter and will now be taken up by the General Assembly this fall.

CSCE follow-up

Moving beyond the UN context, Canada has tried to make full use of the opportunities offered by the Helsinki Final Act of the Conference on Security and Co-operation (CSCE). It was at Helsinki of course that the Eastern bloc officially acknowledged that human rights are indeed a matter of international concern. We are insisting that this acknowledgment be given meaningful effect. At the Madrid review meeting of the CSCE, Canada has taken a firm stand on human rights, and especially on the implementation of the Final Act's provisions regarding freedom of movement. We have also demanded that progress in the field of military security be matched with comparable progress in humanitarian matters. That is why we have proposed a meeting of experts to discuss human rights in the follow-up to Madrid. We are determined that the final document from Madrid reflect a strong concern for human rights.

It is the radically different philosophy of life prevailing in the Eastern bloc that explains so many human rights violations there and so many problems of implementation of human rights agreements in the international arena. So long as these violations and problems continue, human rights must necessarily figure among the critical issues of East-West relations.

For similar reasons, human rights must also be addressed in the North-South dialogue. Ideology, however, does not play the same role in human rights violations in the developing countries. These countries naturally tend to attach more importance to economic rights than to the traditional civil and political liberties of the Western world. Canada, of course, recognizes that the basic necessities of life are essential to a life with dignity. We believe, however, that human rights are indivisible and we do not agree that some can be sacrificed in favour of others. While developing countries have the primary responsibility for their own development, we accept that we too must make major commitments of money and resources if disparities are to be eliminated and if all forms of human rights are to be protected.

Canada has played its full part in contributing to international development. We have also supported other initiatives directed to improving human rights in the developing world. Thus we have helped turn the Commonwealth into one of the newest agencies for the promotion of human rights. At their 1981 meeting in Melbourne, the

Commonwealth heads of government endorsed in principle the establishment of a special human rights unit within the Commonwealth Secretariat. We hope that this unit will advance the cause of humanity by helping all Commonwealth member countries share their experience in law-making and law reform.

The brief review I have just conducted shows that the record of the past 35 years is not entirely a gloomy one even with regard to the implementation of human rights conventions. I think it is fair to say that Canada has done more than most countries to encourage better implementation. Yet Canada's responses to human rights violations — in the Eastern bloc or in the developing world — are the subject of considerable debate in this country.

For my part I believe there is a place in Canada's foreign policy for vigorous public diplomacy. In appropriate circumstances we have not hesitated to speak out openly and bluntly in expressing the very real indignation of the Canadian people. I have in mind, for instance, our condemnation of human rights violations in Poland, El Salvador, South Africa and Cambodia.

Value of quiet diplomacy

On the other hand, there are situations where so-called quiet diplomacy may be more appropriate. Our views may sometimes have a greater impact when expressed as humanitarian concerns or concerns for the advancement of bilateral relations. Confrontation and condemnation in some cases may only serve to harden attitudes and provoke harsher measures. Should we, for instance, sever all diplomatic ties with South Africa as we have been urged to do? I think not. Such action might give vent to our frustrations. It would not, I fear, make a real contribution to ending *apartheid.*

The Canadian government is also frequently urged to suspend all aid to states that are serious human rights offenders. But doing so may only work against the achievement of basic human rights for the very victims of such offences. Our principal aid objective is to deliver assistance to the poorest people of the poorest countries. Should we doubly penalize them by cutting them off from our assistance because their governments abuse them? Obviously not. It seems to me what we can do, however, and what we do in fact is to take account of human rights considerations in determining eligibility for Canadian aid, and in deciding on the amount and the kind of aid given. Both the needs of the country and the readiness of the government to channel assistance to its neediest citizens are important factors in establishing such eligibility. In addition, we exclude from consideration that tiny number of countries whose governments' excesses have resulted in massive social breakdown — as in Uganda under Amin.

alue of public pinion

The debate on the most appropriate way of responding to human rights violations will go on. It is a constructive debate. Governments need to be prodded and to be kept informed by organizations like the International Commission of Jurists. An alert public opinion is still one of the best bulwarks against crimes of inhumanity.

Maritain in 1948 ventured to express only the most guarded optimism about the chances of securing effective respect of human rights from states and governments. He wrote, of course, against the background of horror of the Second World War. Since then, we have mercifully been spared from horror on that same scale. What we have lost in scale, however, we have made up for in refinement. The new science and the new technology of the postwar years have been used to mount new assaults upon the integrity of man, new invasions of his innermost being, new obscenities against the human spirit. The jailers of the mind, the specialists of pain and terror and degradation – all the enemies of decency and dignity – have found new weapons for their works of darkness.

But on our side we have weapons too. The best is mankind stands higher, stronger than the worst. The best endures. The international instruments we have forged since 1948 will not rust from want of use. They will lead us slowly, painfully closer to the end Maritain had in mind in 1948 when he wrote: "Pending something better, a Declaration of Human Rights agreed by the nations would be a great thing in itself, a word of promise for the downcast and oppressed of all lands, the beginning of chances which the world requires, the first condition precedent for the later drafting of universal Charter of civilized life."

The International Commission of Jurists is one of the guides and guardians of the road to "something better". I wish you well in your work. I invite your comments and criticisms on Canada's performance in the field of human rights. And I thank you for the honour you have done me in asking me to join you today.

Public Affairs Branch, Department of External Affairs, Ottawa, Canada

GLENEAGLES DECLARATION

statement on apartheid in sport

'APPENDIX B'

member countries of the Commonwealth, racing peoples of diverse races, colours, uages and faiths, have long recognised racial udice and discrimination as a dangerous sick- and an unmitigated evil and are pledged to all their efforts to foster human dignity every- re. At their London Meeting, Heads of Gov- nent reaffirmed that apartheid in sport, as in :r fields, is an abomination and runs directly nter to the Declaration of Commonwealth ıciples which they made at Singapore on 22 uary 1971.

y were conscious that sport is an important ıns of developing and fostering understanding veen the people, and especially between the ng people, of all countries. But, they were also ıre that, quite apart from other factors, sport- contacts between their nationals and the onals of countries practising apartheid in sport l to encourage the belief (however unwar- ted) that they are prepared to condone this ıorrent policy or are less than totally committed the Principles embodied in their Singapore :laration. Regretting past misunderstandings l difficulties and recognising that these were tly the result of inadequate inter-governmental ısultations, they agreed that they would seek to ıedy this situation in the context of the reased level of understanding now achieved.

:y reaffirmed their full support for the inter- ional campaign against apartheid and wel- ned the efforts of the United Nations to reach universally accepted approaches to the question of sporting contacts within the framework of that campaign.

Mindful of these and other considerations, they accepted it as the urgent duty of each of their Governments vigorously to combat the evil of apartheid by withholding any form of support for, and by taking every practical step to discourage contact or competition by their nationals with sporting organisations, teams or sportsmen from South Africa or from any other country where sports are organised on the basis of race, colour or ethnic origin.

They fully acknowledged that it was for each Government to determine in accordance with its law the methods by which it might best discharge these commitments. But they recognised that the effective fulfilment of their commitments was essential to the harmonious development of Commonwealth sport hereafter.

They acknowledged also that the full realisation of their objectives involved the understanding, support and active participation of the nationals of their countries and of their national sporting organisations and authorities. As they drew a curtain across the past they issued a collective call for that understanding, support and participation with a view to ensuring that in this matter the peoples and Governments of the Commonwealth might help to give a lead to the world.

Heads of Government specially welcomed the belief, unanimously expressed at their Meeting, that in the light of their consultations and accord there were unlikely to be future sporting contacts of any significance between Commonwealth countries or their nationals and South Africa while that country continues to pursue the detestable policy of apartheid. On that basis, and having regard to their commitments, they looked forward with satisfaction to the holding of the Commonwealth Games in Edmonton and to the continued strengthening of Commonwealth sport generally.

London, 15 June 1977

'APPENDIX C'

Canadian Companies with Subsidiaries, Affiliates or Representative Offices in South Africa (As of March 1, 1986)

	Notes
Alcan Aluminium Limited	(2), (7)
AMCA International Limited	(1), (4)
Bayer Foreign Investments Limited	(8)
Bata Limited	(1), (6)
Champion Road Machinery Limited	(2), (4)
Cobra Emerald Mines	(8)
COMINCO Limited	(1), (5)
Delcan Limited	(2), (4)
Dominion Textile Incorporated	(1), (4)
Falconbridge Limited	(2), (5)
Ford Motor Company of Canada Limited	(2), (4)
International Thomson Organisation Limited	(1), (4)
Jarvis Clark Company	(1), (4)
Massey-Ferguson Limited	(2), (5)
Moore Corporation	(1), (5)
QIT-Fer et Titane inc.	(2), (4)
Joseph E. Seagram and Sons Limited	(3)
Sternson Limited	(2), (4), (8)

Notes:

(1) Company holds 50% or more of equity of South African subsidiary.
(2) Company holds less than 50% of equity of South African subsidiary.
(3) Company has representative office only; no investment.
(4) Company has one subsidiary in South Africa.
(5) Company has two subsidiaries in South Africa.
(6) Company has three subsidiaries in South Africa.
(7) Company announced sale of its equity in South African subsidiary on March 20, 1986.
(8) Company has not yet submitted report for the year 1985.

Government of Canada, Administration and Observance of the Code of Conduct Concerning the Employment Practices of Canadian Companies Operating in South Africa, First Annual Report, 1985 (May 1986).

'APPENDIX D'

Canada, Department of External Affairs (1985)

SOCIAL JUSTICE IN CENTRAL AMERICA: CANADIAN POSITION

The promotion of peace, social justice, and economic development are the highest priorities of Canadian foreign policy in Central America. Two cornerstones of this policy are Canada's active aid role in the region and our strong support for the Contadora process.

Canadian Development Assistance

The Canadian Government believes that the roots of the current instability, tension and violence in Central America lie in social/economic disparities which have been heightened by the introduction of East/West tensions. Consequently, we have concentrated our efforts in the region on attempts to address these problems through humanitarian and development assistance at the grass roots level.

Our aid to Central America is needed, appreciated and highly respected because it is directed to the basic economic, social development and humanitarian needs of people and societies. This includes such undertakings as potable water systems, agricultural production programmes, and community development projects, many of which benefit family units and in particular women in these societies. Canadian aid in Central America is not determined by the political complexion of the recipients. This is consistent with our view that aid policy is intended to help the countries of the region overcome the disabilities which are the primary causes of social, political and economic injustices.

Canadian Refugee Programs in Central America

Canada has substantially increased the number of Central American refugees accepted for resettlement in this country. For 1985, the target has been set at 3,000 persons (out of a global total of 11,000). This compares with a target of some 1,000 refugees accepted in 1982. Along with this increase, we have expanded Embassy staff in both San José and Guatemala where full immigration sections are now in operation. Thus, not only have we increased the number of refugees being accepted, we have also increased the ease with which such persons can be identified and processed for resettlement in Canada. Canada's refugee programme in Central America as a whole has served to complement the efforts of the United Nations High Commissioner for Refugees for local resettlement and to assist particularly needy cases which could not be accommodated in the region. An agreement for the adoption of orphaned children from El Salvador also has been completed.

There has been some concern expressed over the visitor visa requirement for Guatemala. The requirement was announced concurrently with a series of special measures to assist Guatemalans endangered by unrest within the country. This policy was established to allow Canada to exercise control over individuals seeking to remain in Canada as refugees. The visa requirement does not endanger the lives of Guatemalans fleeing persecution. They need not approach the Embassy personally and there is no requirement that they be interviewed on the premises. With the establishment of an immigration section in the Embassy, we are now able to deal with all such cases very quickly.

Canadian Efforts to Promote Peace in Central America: Contadora

With respect to the military situation in Central America, Canada has not played and does not intend to play a security role in that region. Our policy is to refrain from supplying arms to any country in Central America; if other countries adopted the same policy a peaceful solution would be quicker at hand. Moreover, we have stated on several occasions that all third parties should withdraw their military presence in the area as proposed by the Contadora Group.

Canada continues to regard the Contadora initiative, the regional peace effort undertaken by Colombia, Mexico, Panama and Venezuela, as the only viable instrument for reconciliation in Central America. The Canadian Government and the Secretary of State for External Affairs, the Right Honourable Joe Clark, have consistently expressed Canada's strong support for Contadora, at the United Nations, in meetings with officials of other countries and in public interviews.

Earlier in 1985, Mr. Clark returned from Mexico, his first visit to a Contadora country as Secretary of State for External Affairs. He had the opportunity there to discuss the Central America situation and Contadora with President de la Madrid and Foreign Minister Sepulveda. At Mr. Clark's meeting with Contadora Ambassadors on November 26, 1984, he reiterated Canada's strong support for the Contadora initiative and our desire to play a constructive role wherever feasible and appropriate in the peace process. Mr. Clark offered to provide some of the expertise we had gained in the course of a number of peacekeeping operations in which Canada had taken part. Following his discussion with the Contadora Ambassadors, the Canadian Government, at the request of the Contadora Governments, prepared a series of written comments on the security and control provisions of the Contadora Draft Act. These were forwarded to all Contadora Governments and reviewed in Mexico.

Because of the delicate nature of the negotiations now underway among the parties concerned, the Contadora countries have requested that details of our recommendations not be published. However, some of the general lines of our comments on the Contadora Act may be provided. In preparing these comments, we were guided by a number of considerations, including our attempt to ensure that our observations were drafted in a neutral and objective manner without displaying bias toward any of the conflicting parties. In a general sense, we also were conscious of the need to ensure the viability of a control and verification commission that would presumably be established by the Contadora Act. Specifically, we thought that the financing of such an operation should be addressed in detail by the parties concerned to try to ensure that whatever mechanisms were established, these would be as cost-effective and as inexpensive as possible in the circumstances.

With regard to the question of whether Canada would be willing to join such a commission, we would wish to be open to such an invitation if it were extended. Among the factors that we would need to take into account before responding would be the extent to which important tightening and precisions were added to the security and control features of the Contadora Act to ensure a workable and effective commission. In addition, any decision on Canadian participation would call for a full assessment of Canadian priorities and resources during a period of fiscal restraint.

We will continue to express our strong support for the Contadora Initiative in public and private fora. We also have attempted to assist the reconciliation efforts in Nicaragua by witnessing talks between representatives of the Sandinistas and the indigenous opposition group MISURASATA. This dialogue has broken down, but we have encouraged both parties to renew those discussions.

Finally, with respect to the issue of third-party intervention, the Canadian Government is not in favour of this development and has publicly regretted the extension to Central America of East/West confrontation and the related militarization of the area. Canada does not approve of the supply of armaments by any country to opposing factions in Central America. That position has been expressed on a number of occasions to the United States Government, to the various Central American governments and to others such as Cuba. The Government has emphasized that Canada believes strongly that the countries of Central America must be free to seek their own solution without interference from any source.

Human Rights

Human Rights violations in Guatemala and El Salvador continue to be of great concern to the Canadian Goverment. Canada has been monitoring the human rights situation in both countries, and we also have pursued investigations of a number of cases of particular interest to Canada. Our delegations to the United Nations have co-sponsored Assembly resolution on Guatemala and voted in favour of resolutions on El Salvador.

With particular reference to reports of the bombing of civilians in El Salvador, it is clear that human rights abuses and politically-motivated murders in that country continue, perpetrated by both extremes of the political spectrum. These are a cause for very serious concern, and Canada joined with other nations at last year's United Nations General Assembly in supporting a resolution deploring that fact. However, although figures vary depending on the source, it appears clear that over the past year there has been an overall downward trend in civilian deaths attributed to human rights violations. These sources include various human rights organizations in El Salvador, such as the Archbishop's Legal Aid Office (Tutela Legal), the private Human Rights Commission of El Salvador (CDHES) and the Government Human Rights Commission, and also the Special Representative of the U.N. Commission on Human Rights whose 1984 report is based on a detailed study of the current situation. In particular, there has been a substantial decrease in right-wing death squad activities although a number of conservative figures have been assassinated in recent months, apparently by leftist groups.

'APPENDIX E'

RELEVANT CANADA - U.S. DEFENCE AGREEMENTS

1. Hyde Park Declaration - April 20, 1941
   A joint declaration by the Prime Minister of Canada and the President of the United States regarding cooperation for war production.

2. Joint Defence Statement - February 12, 1947
   Issued jointly by the Prime Minister in Ottawa and by the U.S. State Department in Washington covering the standardization of military equipment and training.

3. Statement of Principles for Economic Cooperation - October 26, 1950
   A joint statement of principles to meet common objectives in the area of industrial mobilization signed by the Secretary of State for the United States and the Canadian Ambassador to the U.S.

4. Letter Agreement - February 10, 1952, reaffirmed July 27, 1956 and amended May 31, 1957, January 6, 1961 and October 5, 1962
   An agreement between the Department of Defence Production and the Military Departments of the U.S. setting out policies and procedures applicable to all contracts placed with the Canadian Commercial Corporation, including certain reciprocal arrangements.

5. U.S.-Canada Industrial Security Agreement of 1952
   An exchange of Notes in February and March, 1952 between the then acting Secretary of Defense and the Canadian Minister of Defence Production resulted in Procedures being introduced supporing this Agreement.

6. Basic Standardization - 1964
   The Basic Standardization Agreement was approved by the Armies of the United States, United Kingdom, Canada and Australia (ABCA). This approval commits each Army to assist ABCA Army Standardization interests of the other Armies. This supersedes a previous agreement dated June 6, 1960.

7. USAF/RCAF Agreement on Research & Development - December 31, 1958
   Signed by Deputy Chief of Staff Development, United States Air Force, Air Member for Technical Services RCAF, and Chairman of Defence Research Board. "Basic arrangement on collaboration in Research and Development between the United States Air Force and the Defence Research Board of Canada/Royal Canadian Air Force."

8. Canada-U.S. Agreement re Conditions and Procedures for Qualifications of Products of Non-Resident Manufacturers - March 4, 1960
   Letter April 19, 1960 Deputy Assistant Secretary Defense U.S. to Deputy Minister, DDP.
   Letter May 5, 1960 Deputy Minister, DDP to Secretary Defense U.S.

9. Memorandum of Understanding in the Field of cooperative Development between the United States Department of Defense and the Canadian Department of Defence Production - November 21, 1963.

Canada, Department of External Affairs, 'The Canada-United States Defence Development and Defence Production Sharing Arrangements' (1985)

'APPENDIX F'

HELSINKI INTERNATIONAL MEETINGS-- 1977 TO 1986

Belgrade Review Meeting

Preparatory Meeting		06/15/77-08/05/77
Main Meeting		
Phase I	- Opening Session	10/04/77-11/14/77
Phase II	- Introduction and Discussion of New Proposals	11/15/77-12/22/77
Phase III	- Concluding Document	01/17/78-03/09/78

Experts Meetings

Bonn, FRG

Meeting to Prepare for Scientific Forum	06/20/78-07/28/78

Hamburg, FRG

Scientific Forum	02/18/80-03/03/80

Montreux, Switzerland

Peaceful Settlement of Disputes	10/31/78-12/11/78

Valletta, Malta

Cooperation in Mediterranean	02/13/79-03/26/79

Madrid Review Meeting

Preparatory Meeting		09/09/80-11/10/80
Main Meeting		
Phase I	- Opening Session	11/11/80-12/19/80
Phase II	- Consideration of New Proposals and Drafting Work	01/27/81-07/28/81
Phase III	- Review of Implementation	10/27/81-12/18/81
Phase IV	- Impasse over Military Security and Human Rights Issues	02/09/82-03/13/82
Phase V	- Complete Work on Concluding Document Based on RM-39	11/09/82-12/18/82
Phase VI	- Adopt Concluding Document	02/08/83-07/15/83
Phase VII	- Concluded With Speeches of Foreign Ministers	09/07/83-09/09/83

'APPENDIX F'

Follow-up Meetings To The Madrid CSCE Review Meeting

Date	Place	Meeting
		1983
10/25/83	Helsinki, Finland	Preparatory Meeting to Stockholm Meeting
		1984
01/17/84	Stockholm, Sweden	Conference on Confidence and Security Building Measures and Disarmament in Europe (4 sessions in 1984; 4 scheduled for 1985)
03/21/84	Athens, Greece	Experts Meeting on Peaceful Settlement of Disputes in the Mediterranean
10/16/84	Venice, Italy	Venice Seminar on Economic, Scientific and Cultural Cooperation in the Mediterranean Within the Framework of the Valletta Meeting of Experts
11/21/84	Budapest, Hungary	Preparatory Meeting to the Cultural Forum
		1985
04/23/85	Ottawa, Canada	Preparatory Meeting to the Experts Meeting on Human Rights
05/07/85	Ottawa, Canada	Experts Meeting on Human Rights
08/01/85	Helsinki, Finland	Commemorative Meeting on the Tenth Anniversary of the Helsinki Final Act
10/15/85	Budapest, Hungary	Cultural Forum
		1986
04/02/86	Bern, Switzerland	Preparatory Meeting to Experts Meeting on Human Contacts
04/16/86	Bern, Switzerland	Experts Meeting on Human Contacts
09/23/86	Vienna, Austria	Preparatory Meeting to the Vienna CSCE Review Meeting
11/04/86	Vienna, Austria	Vienna CSCE Review Meeting