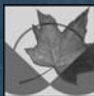
THE HARPER RECORD

Edited by Teresa Healy



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Canada and International Human Rights

Opportunity abandoned

John W. Foster

> The United Nations Convention Against Torture is not a factor in deciding whether to send information to countries such as Syria and Egypt about Canadians detained there.
> *—Official, Department of Justice, Iacobucci Inquiry, January 2008.*

THE CAUSE OF human rights in the global community is threatened as never before. The assault on democratic rights and civil liberties undertaken by many governments following 9/11 and the passage of the *Patriot Act* in the United States continues, although the "moral panic" which led to extreme measures in the immediate wake may have faded. The persistent pressure to protect investor privilege and assert the claims of trade, investment, and intellectual property accords over established human rights treaties and environmental agreements continues apace. The indifference, sometimes ignorance, and posturing of many governments, often leave existing international human rights law without active advocates.

In this context, many eyes have focused on the Canadian government. Canadians, since the writing of the Universal Declaration on Human Rights after World War II, have often been in the vanguard of human rights advances, whether the rights of children, the strug-

gle against violence against women, and the full recognition of equality itself.

Thus, particularly since the election of the Harper minority government, Canadians travelling outside the country can be caught short by the question, "What's happened to Canada?"

For reasons of economy of space and the patience of the reader, we have asked where has Canada had the opportunity to strengthen human rights internationally, to defend key elements which are threatened, and to advance the frontier of rights.

To this end, we have focused on three key and controversial recent instances:

- the resignation of Louise Arbour, UN High Commissioner for Human Rights;
- the government's response to the release of its orientation material on torture; and
- the government's about-turn in opposition to the UN Declaration on the Rights of Indigenous Peoples.

Louise Arbour as High Commissioner for Human Rights: Victim of "friendly fire"?

> The Conservative government essentially said goodbye to Louise Arbour by telling her: Good riddance. You were a disgrace and you won't be missed.[1]

There is a picture, taken in Valstica, Kosovo, in July 1999, showing the Chief Prosecutor for the International Criminal Tribunal for the Former Yugoslavia, visiting the site where several members of the Shabani family had been killed. Louise Arbour, the prosecutor, is holding the hands of two family members, the elderly Mihrije and younger Emin, as they recount the deadly event. The witness of violent and more subtle violation of fundamental rights has been part of the daily work of Louise Arbour in her work for international tribunals and since she left the

Supreme Court of Canada to serve as UN High Commissioner for Human Rights.

Arbour was a former prosecutor who could be not only persistent, but also tough. She had secured the indictment of the late Serbian leader Slobadan Milosevic. What is telling in the 1999 photo is that the visiting prosecutor does not hold back from what she is witnessing; unable to express overt solidarity, she is instead holding hands with two of the survivors as they bear witness together.

With the departure of Louise Frechette from her position as Deputy Secretary-General of the UN, Arbour, who is also Under-Secretary-General of the UN, was the highest placed Canadian international civil servant. Being High Commissioner for Human Rights means being a target for criticism from any state which feels its interests or reputation is under fire on human rights issues, as Arbour's predecessor, Mary Robinson of Ireland, well knew. Being the target of "friendly fire" from her own government was perhaps something Robinson avoided, but it characterized Arbour's final days at the Office of the High Commissioner.

In the Canadian Parliament, Treasury Board President and former Justice Minister Vic Toews yelled, "she's a disgrace" when Liberal Martha Hall Findlay called on the government to salute Arbour's work as High Commissioner. Later, Toews told the House that "the comments that Louise Arbour has made in respect of the state of Israel and the people of Israel are, in fact, a disgrace and I stand by those words."[2]

While newly appointed Foreign Affairs Minister David Emerson was quick to say the government "congratulate(s) the work of Louise Arbour," the Toews remark betrays an underlying attitude that has run long and deep within the government, and which, in denigrating the person, also denigrates the urgent work of international human rights bodies. The fact that the latest attack came from the mouth of a former justice minister, who should know much better, is particularly shocking, and, given his senior status in the tightly reined Harper government, brings his colleagues in Cabinet into question as well.

In a defence of Arbour, former Supreme Court justice Claire L'Heureux-Dubé noted the piquant coincidence of Toews attack with the release of a report from the Observatory for the Protection of Human

Rights Defenders, which notes that "human rights defenders around the world are facing increasing state efforts to stifle their actions and to clamp down on dissent."[3]

A detailed examination of Arbour's contribution came from former Canadian Ambassador to the E.U. (and formerly to Russia, the U.K., and various other highly rated capitals) Jeremy Kinsman.[4] Kinsman highlights some of the issues on which Arbour took position, first among them torture. As the U.S. prevaricated on such fundamentals as the definition of torture, Arbour denied that "waterboarding" was "enhanced interrogation," calling it torture. She also called for an absolute ban on the transfer of prisoners who could be tortured. Needless to say, her position was unwelcome in Washington. Arbour was also critical of the U.S. offshore prison at Guantanamo. She intervened at the U.S. Supreme Court with a "friend of the court" brief as it dealt with the status of Guantanamo detainees in August, 2007.[5]

Arbour's interventions in the Middle East seemed to particularly upset Minister Toews, and, according to some observers, was the key in motivating the Harper government's failure to support a further term for her as High Commissioner, as well as its belated and somewhat forced expressions of appreciation. When Israel went to war with Lebanon in 2006, Arbour, while aware of rights violations by Hezbollah, criticized the Olmert government's war as a disproportionate response to the kidnapping of Israeli soldiers by the Lebanese radicals. She also warned that "those in positions of command and control" might be subject to "personal criminal responsibility." As CBC News notes: "These words were seen by many as directed towards Israel, and were rejected by Israel's ambassador to Canada."[6] What may be forgotten is that Israeli bombs had killed, among others, UN peace-observation personnel, including one Canadian citizen.

Reactions to Arbour's assessment were strong, but, as Kinsman notes, a number of bodies, including commission investigations in Israel, have come to similar assessments. Nevertheless, attacks by some Canadian editorialists were nasty: "Was it necessary," Kinsman asks," to accuse her of bias and anti-Semitism, as several commentators did in the *National Post,* calling for her resignation?" The *Post's* nastiness continued through her resignation. Columnist Jonathan Kay could not for-

give her for her assessment of Israel's role in civilian casualties in the 2006 war or for her criticism of the war on terror. "So long, you won't be missed," he snarled.[7]

Arbour was direct and outspoken on a wide variety of regional and thematic human rights challenges, including criticizing the Sri Lankan government for impunity in repressing the Tamils. She was equally critical of the Ugandan and Chinese authorities. She made a very positive yet realistic address to the International Conference on Lesbian, Gay, Bisexual and Transgender Human Rights in Montreal, July 2006, decrying the silence which often obscures violations of their rights and criticizing states who fail to recognize those rights and attack those who defend them.[8]

Arbour was also attacked for her more general but important assessment that the U.S.-defined "war on terror" had "inflicted a very serious setback for the international human rights agenda."

In 2005, as debate over U.S. practices was hot, Arbour declared that, "pursuing security objectives at all costs may create a world in which we are neither safe nor free. This will certainly be the case if the only choice is between the terrorists and the torturers." Then U.S. Ambassador at the UN, John R. Bolton, told Arbour she should concentrate on "real" abusers, not the U.S.[9] Nevertheless, Secretary of State Condoleezza Rice declared that the ban on torture applied to U.S. personnel overseas. Confusion over the U.S. position continued, however, not only because of Bolton's attack on Arbour, but also because Rice did not explicitly repudiate earlier positions taken by U.S. Attorney-General Alberto Gonzales.

U.S. attacks on Arbour were by no means the only pressures she had to deal with. Several assessments specify her disappointment with the behaviour of governments in the new UN Human Rights Council. The Council was created by the reforms instituted in 2005 in reaction to criticisms that the previous Human Rights Commission had become overly politicized. Countries like China, Belarus, Cuba and others resisted a more even-handed approach in the new Council, keeping the spotlight on Israel's policies alone. Given the power of state representatives in the UN system, Arbour found herself unable to bring the Council to more balanced behaviour.

A further instance of this kind of dispute has been brewing over the coming 2009 UN Conference reviewing the results of the 2001 Durban World Conference Against Racism, which had contributed to the political demise of Mary Robinson, who had presided as High Commissioner. Canada, the U.S. and Israel have all announced they will boycott the event.[10]

When Arbour announced that she would not seek a second term (her first and only term ended June, 2008)[11], she did not accuse any government of holding a knife. A government committed to human rights would presumably have campaigned for a second term. The sad drama of her resignation announcement in March testified to the grudging "support" which the Harper government was willing to offer. Reportedly, "the Canadian diplomat who was present barely acknowledged Mrs. Arbour's presence and issued a statement that other diplomats called remarkable for its blandness: 'Canada is and will continue to be a strong supporter of [the Human Rights Council] mandate and your office's work for the promotion and protection of human rights.'" A "back-handed rebuke."[12] It was reported that a direct order not to comment on her resignation originated in the Prime Minister's Office.

Amnesty International's Geneva representative and former Canadian diplomat Peter Splinter observed of the Canadian representative's statement: "I can't understand how any Canadian can behave like that, especially when she announced her intention to retire." He continued, "The criticism she receives is a tribute to the good work that she's been doing."[13] Reaction was sufficiently strong that Foreign Affairs Minister Maxime Bernier issued a later brief statement praising Arbour for "expanding the concepts of human rights and fundamental justice... She was steadfast in the pursuit of her vision of an independent High Commissioner who acts in new and energetic ways to increase the presence of her office around the world."

The views of many outside the Harper government were much more positive. As the Director of the Danish Human Rights Institute noted, "Despite [the "chill" following 9/11], she contributed a great deal to the creation of the new Human Rights Council at the UN, and she managed to enlarge the budget of the UN's human rights program. On the whole, human rights has been given a higher priority in the UN sys-

tem, thanks to her efforts." Her departure is "sad and regrettable."[14] In an interview with CBC-TV, Arbour was asked if she had expected more from the Canadian government. She simply replied that a "thank you" would have been nice.

Kinsman concludes: "So a good woman steps down. Not a great day for the UN or for human rights. She will be missed."[15] Not a great day for Canada, either.

Torture: A national embarrassment

> An absolute ban on torture, a cornerstone of the international human rights edifice, is under attack. The principle once believed to be unassailable...is becoming a casualty of the so-called war on terror.
> *—High Commissioner for Human Rights, Louise Arbour, 2005.*

Canada signed the Convention Against Torture on August 23, 1985, one of the first countries to do so, and ratified the Convention on June 24, 1987. As the website of the Department of Canadian Heritage states succinctly: "When becoming party to a treaty, a State must execute, in good faith, the provisions of the treaty subject to the reservations it may have made."[16] But Canada's "good faith" has come under severe question as Canadians have suffered torture in jails abroad, as Afghan prisoners have been sent by Canadian forces to Afghan jails where torture is reported, and as Canada's collaboration in the U.S.-led "war on terror" involves our government and its agencies in complicity and collaboration in torture itself.

One of the positive results of the lengthy and tragic story of the treatment of Maher Arar was some attempt to ensure that the Canadian official personnel were better informed and prepared to deal with such threats to the welfare of Canadians abroad in future.[17] One of the modest but essential initiatives was the preparation of a manual and the introduction of training opportunities for Canadian diplomats, dealing with the issue of torture.

The 2007 document was given to Amnesty International (Canada) as part of a case it was pursuing regarding the treatment of Afghan detainees. It consists of an 89-page power point presentation[18] which

provided legal definitions applied to torture, and informed officials of how to detect signs of abuse among detainees. It specified treatment at Guantanamo as well as a number of other country-specific examples, including Afghanistan, China, Egypt, Iran, Israel, Mexico, Saudi Arabia, and Syria. The manual included in its definition of torture such U.S. techniques as sleep deprivation and forced nudity. The news, injected into the midst of the continuing debate in the U.S. regarding "waterboarding" and other torture techniques, was headline material there and around the world. It also heated up the debate in Canada about the treatment of Afghan detainees in Afghan jails.[19]

The publicity regarding the manual was greeted positively by Amnesty in Canada, and by a number of foreign commentators. Jonathan Turley, Shapiro Professor of Public Interest Law at George Washington University in the U.S. capital, saluted the Canadian release, but stated with regret: "There was of course a time when the United States led the world in a campaign against torture."[20] Needless to say, the reaction from the ambassadors of countries named was less laudatory. Reuters reported: "U.S. ambassador David Wilkins said the listing was absurd, while the Israeli envoy said he wanted his country removed."[21] Canada's ill-fated Minister of Foreign Affairs, Maxime Bernier, on January 19, 2008, issued a disclaimer:

> I regret the embarrassment caused by the public disclosure of the manual used in the department's torture awareness training. It contains a list that wrongly includes some of our closest allies. I have directed that the manual be reviewed and rewritten. The manual is neither a policy document nor a statement of policy. As such, it does not convey the Government's views or positions.[22]

One of the shocking aspects of the torture imbroglio in early 2008 was the almost total absence, either in politician's commentary or in press coverage, of reference to the Torture Convention and Canada's obligations under it. Liberal foreign affairs critic Bob Rae aimed his shots at Foreign Affairs and the manual, rather than at the principles and legal obligations involved:

> "It's incomprehensible to me that a document would establish an equivalency between the United States and Iran on the subject of the treatment of prisoners," said Rae. "It's too hard to understand how it (the document) could have gotten this far. There's a real issue now around the competency of the Conservative government on foreign affairs issues."[23]

Like Bernier, Rae's main concern seems to have been to avoid embarrassing the U.S., rather than reminding the government of its fundamental human rights obligations and legal commitments under the Torture Convention.

Too little discussion of Canada's involvement with torture ensued after the January foreign affairs imbroglio. However, the *Literary Review of Canada* published in May 2008 a useful essay by Calgary researcher Regan Boychuk on the ambiguous history of Canada's role in the development of torture techniques by the CIA.[24] This provoked responses from leading academics. University of Calgary's Barry Cooper argues that the United Nations definition of torture — i.e., inflicting severe pain or suffering — is "sentimental." He accuses Boychuk of being anti-American, but admits that torture is, in any case, ineffective.[25]

For his part, University of Toronto's Wesley Wark disputes Boychuk's emphasis on Canadian contributions to the CIA's buffet of torture techniques, and argues that *complicity* is not the issue. Rather, he suggests that Canadians lack strong moral bearings on the question of torture. "What is really difficult is to define our moral standards when upholding both national security and fundamental justice, and then stick to them."[26] Further, Erna Paris notes the phenomenon of "slippage" with regard to such standards, citing "the undermining effect on the rule of law in other countries when the most powerful democracy on Earth breaks long-established rules".[27] Wark's point is an appropriate evaluation of Canadian political leaders and their advisors. We can find illustrations under Martin as well as Harper of the kind of slippage that Paris specifies. These are allegedly justified by the diplomatic need to "improve" relations with our great ally to the south.

In response, Boychuk refuses to be drawn off course. He reiterates the *absolute* prohibition of torture under the international convention, and goes on to remind readers of Canada's dubious history in the de-

velopment of "sophisticated" torture techniques. The techniques developed in Montreal several decades ago continue to be esteemed by the CIA. When the U.S. ratified the Convention Against Torture, it reserved for itself the possibility of permitting sensory deprivation. The more recent use of sensory deprivation in the treatment of Omar Khadr in Guantanamo sharpens the point. The conscious participation of the Canadian Security and Intelligence Service (CSIS) in its use and in attempting to benefit from it in their interrogation of Khadr brings it home.[28]

One might hope that the conclusions and recommendations of the inquiry into the case of Maher Arar would have closed the book on Canadian complicity with torture, but it didn't. Government officials testifying at its sequel, the Iacobucci Inquiry into the overseas detentions of Muayyed Nureddin, Ahmah Abou El Maati, and Abdullah Almalki, indicate little has been learned or applied. For example, Justice Department witness Michael Pierce, testifying at the latter inquiry, stated that the government was justified in sharing information with other governments that have a reputation for torture:

> Michael Pierce also told the internal inquiry yesterday that the United Nations Convention Against Torture is not a factor in deciding whether to send information to countries such as Syria and Egypt about Canadians detained there.[29]

Is the Canadian government truly opposed to torture? Does that opposition bind its agencies and security forces? Are the parliamentary and civilian review and accountability mechanisms adequately informed and vigilant in holding the government to account, given our international treaty obligations under the Convention?

Omar Khadr: Torture as public policy

The Khadr case is of urgent importance, not only because of torture, but because it brings into play (and into question) a number of other human rights concerns. The government has a fundamental obligation to protect the security and liberty of Canada's citizens. The contemporary

world is replete with actual and potential challenges, given the multitude of legal and questionable activities of a highly mobile population.

In a recent joint article, former Rights and Democracy head Ed Broadbent and Amnesty International (Canada) Secretary-General Alex Neve summarize the issues involved:

- Khadr was a child soldier when the incidents from which charges of his alleged acts emerge. Child soldiers are due protection and rehabilitation under international law which views them as victims rather than criminals.

- Khadr's detention in Guantanamo violates Canadian and international human rights law, and Guantanamo detention has three times been ruled in violation of the U.S. Constitution.

- As indicated above, Khadr has been subjected to torture and other harsh treatment, with the collaboration of certain Canadian agencies.

- The legal processes instituted by the U.S. authorities are military and inappropriate.

Canada is the only developed democracy which has permitted one of its citizens to remain incarcerated in Guantanamo and in the U.S. procedures. He is being subjected to: "an illegal military commission, contrary to international law" as a joint release of the Canadian Arab Federation and the International Civil Liberties Monitoring Group stated on July 10, 2008.[30] The Canadian government has consistently refused to bring him home. On the other hand, the Harper government sent a private jet, at considerable public cost, to return another citizen, Brenda Martin, convicted under Mexican law, back to Canada. Bringing Khadr back to Canada would, of course, put in question U.S. practices — intelligence gathering and military legal — in Guantanamo, but no more question than either Canada's other Western allies or the U.S. courts have already raised.

Refusing to do so, as Broadbent and Neve point out, could create a nasty precedent. "The UN Special Representative for Children in Armed Conflict has warned against the precedent the Khadr case may set in

prosecuting individuals as war criminals for acts they committed as children."[31] As the *Calgary Herald* put it recently: "They did it for Michael Kapoustin, and they did it for Brenda Martin. Now the federal government should do the right thing for Omar Khadr and bring him back to Canada. It's the only place where he can get due process."[32]

The Declaration on the Rights of Indigenous Peoples: Why does the government continue to do things it needs to apologize for?

> The Declaration provides a principled framework that promotes a vision of justice and reconciliation. In our considered opinion, it is consistent with the Canadian Constitution and Charter and is profoundly important for fulfilling their promise. Government claims to the contrary do a grave disservice to the cause of human rights and to the promotion of harmonious and cooperative relations.
> — *Open letter from over 100 legal experts and scholars.*[33]

On June 12, 2008, Prime Minister Harper made the first formal apology by a Canadian Prime Minister for the treatment of Aboriginal students in residential schools, terming the policy of assimilation on which it was based "wrong, has caused great harm, and has no place in our country."[34] While the indigenous apology by Prime Minister Harper was perhaps the most positive moment in his government's history, several responses to the apology urged that Canada reverse its opposition to the UN Declaration on the Rights of Indigenous Peoples. The apology represented a significant advance over the posture of the government on indigenous issues when it took office, but its role in active opposition to the UN Declaration stands to undermine the forward momentum that could emerge from the apology.

The United Nations General Assembly, on September 13, 2007, voted 143 to 4 (with 11 abstentions) in favour of adopting the Declaration on the Rights of Indigenous Peoples.[35] The four countries opposing the Declaration were Australia, Canada, New Zealand, and the United States. On September 12, 2007, Indian Affairs Minister Chuck Strahl announced that Canada would vote against the Declaration, because:

> it is fundamentally flawed and lacks clear, practical guidance for implementation, and contains provisions that are fundamentally incompatible with Canada's constitutional framework. It also does not recognize Canada's need to balance indigenous rights to land and resources with the rights of others.[36]

Reading these concerns, the priority interests of a government strongly committed to resource exploitation and the interests of the corporate sector engaged therein become clear. Strahl objects to "prior and informed consent when used as a veto," is concerned about "lands, territories and resources" and references to "self-government" related to them, intellectual property and the need to achieve appropriate balance between the rights and obligations of indigenous peoples, governments, and "third parties."[37]

The resource sector interests are just as strongly represented in examination of the concerns motivating Australia's objection to the Declaration. A joint risk briefing by the Centre for Australian Ethical Research and the Ethical Investment Research Services focused on seven companies (two — Barrick Gold and Suncor Energy — of Canadian origin) operating in countries with recognized indigenous peoples and engaged in activities that have the potential to infringe on indigenous peoples' land and/or sea rights. It examines issues and responses in such areas as litigations (by native peoples in New Guinea against BHP Billiton and other mine owners, for example), increased regulation provoked by inadequate consultation with indigenous peoples, injury to corporate public relations, etc.[38] Clearly the Declaration touched on many areas of considerable sensitivity and, while non-binding, could find its way into guiding the setting of standards and argument in litigation.

The Declaration, however, as its many advocates point out, is not a treaty; it is a statement of intention or aspiration. In fact, a number of native leaders considered it lacking. The spokesman for the Confederation of Indigenous Nationalities of Ecuador (CONAIE), Manuel Castro, concluded: "Twenty years of debate...and we end up with a non-binding Declaration that does not force governments to do anything; this is a disgrace." Others, like José del Val, former director of the Inter-American

Indigenous Institute, were more qualified in assessment: the Declaration should be taken "as an ethical and moral reference point for indigenous peoples, but nothing more than that."[39]

Nevertheless, the Declaration it is not without significance, as the minority opposition it engendered demonstrates. It recognizes the right of indigenous peoples to determine and develop priorities and strategies for the development and use of their lands, territories, and other resources, including the right to require that States obtain their free and informed consent prior to the approval of any project affecting their lands, territories or other resources (Art. 30).[40] As a joint statement by international NGOs, including several Canadian bodies, pointed out on passage: "Adoption of the Declaration sends a clear message to the international community that the rights of Indigenous peoples are not separate from or less than the rights of others, but are an integral and indispensable part of a human rights systems dedicated to the rights of all."[41]

The Declaration was the product of more than 20 years negotiation. Mary Simon, President of the Inuit Tapiriit Kanatami, one of the Canadians who participated in developing the Declaration, stated:

> The UN Declaration promotes minimum human rights standards necessary to the "survival, dignity and well-being of the Indigenous peoples of the world." These include the right of self-determination, protections from discrimination and genocide, and recognition of rights to lands, territories and resources that are essential to the identity, health and livelihood of Indigenous peoples.[42]

Canada, as Amnesty International (Canada) points out, after initial resistance, then became an active and positive ally, working with indigenous representatives and others in the UN Working Group on the Draft Declaration. However, with the Harper government setting policy, and Canada as a member of the new Human Rights Council, Canadian officials were "implacably and inexplicably opposed to the Declaration."[43] They forced a vote opposing consensus, and joined Russia in opposing the Declaration.

As Amnesty points out, Canadian officials had for years played a central role in drafting the Declaration. It was not only surprising but also

unsubstantiated for the Indian Affairs Minister, Jim Prentice, to claim in the House of Commons that the Declaration was inconsistent with "the Charter of Rights...our Constitution...the National Defence Act... our treaties, and...with all of the policies under which we have negotiated land claims for 100 years."[44]

The current Canadian government spent the year following the Council's approval, actively worked to undermine the work which Simon, together with other international indigenous leaders and diplomats, had contributed. Assembly of First Nations National Chief Phil Fontaine pointed out that, while the Department of Indian and Northern Affairs promotes international rights on its website, at the UN Canadian government officials are actively lobbying other countries against the Declaration.

"I can't believe our own government would act this way," former Conservative cabinet minister David MacDonald said. "Our country should be setting a good example internationally."[45] High Commissioner for Human Rights Louise Arbour expressed her "astonishment" at the Canadian position and her "profound disappointment."[46]

While the Declaration was passed in mid-2006 by the UN's Human Rights Council, recommending speedy approval by the General Assembly, Canada was among those seeking further delay. When the document came to the General Assembly more than a year later, Canadian UN Ambassador John McNee stated that no "open, inclusive or transparent process" had occurred between the Council's approval and the General Assembly's consideration. He stated that Canada had urged such a process "with the effective involvement of indigenous peoples."[47]

Australia's Howard government collaborated with Canada in opposing the Declaration, but the chance that the Rudd government which replaced it may open a more positive path remains at time of writing. The new Australian government has announced its intention to consult with stakeholders on the possibility of reversing Howard's opposition. Two leading Australian human rights bodies, the Human Rights Law Resource Centre and the Indigenous Law Centre, have urged it to do so, supporting the "aspirational character" of the Declaration and

arguing that the former government's opposition was based on "myths and misperceptions."[48]

The Canadian Parliament, on April 8, 2008, voted to endorse the Declaration, an action which has also been taken by the Government of the Northwest Territories. Here's how it was described:

> The declaration was endorsed by 148-113 in a vote divided exclusively along party lines, with the Conservative party providing all of the nay votes, said Craig Benjamin, campaigner for the Human Rights of Indigenous Peoples for Amnesty International Canada. "The three opposition parties — the Liberals, the New Democratic party and Bloc Québécois — brought forth the motion in direct response to requests made to them by national Aboriginal organizations," Benjamin said.[49]

The Harper Government appears to have felt the need to do some "damage control" at the UN, with Indian Affairs Minister Chuck Strahl hosting a luncheon at the Canadian Permanent Mission to the UN to "share...some of the novel approaches that my government has championed to increase the inclusion of Canada's Aboriginal peoples in the social and economic fabric of our country." Strahl admitted that the Declaration signalled "good intentions," but "fell short of our expectations in a number of areas — particularly the sections on lands and resources; the concept of free, prior and informed consent; and self-government."[50]

The government's position has continued to be negative since the General Assembly's overwhelming approval of the Declaration. The Human Rights Council renewed the mandate of the Special Rapporteur on the Situation of the Human Rights and Fundamental Freedoms of Indigenous People in the fall of 2007 and that person, S. James Anaya, a professor of human rights at the University of Arizona, began his mandate in March, 2008.[51] Canada insisted in inserting the words "where appropriate" in the mandate of the new rapporteur as it related to the Declaration. "Canada made it clear," Amnesty comments, "that the Special Rapporteur should not have jurisdiction to promote the Declaration in countries which had voted against its adoption." The U.S. later emphasized the point.

Amnesty International notes that this approach sets a very negative precedent. The Declaration is an aspirational document (in one sense like the UDHR) meant to guide and inspire governments and others. If some governments can opt out of such a statement of purpose when it has been overwhelmingly approved by their counterparts, this "dramatically undercuts the integrity of the international human rights system."[52]

With the Harper government's apology in June, responses from the New Democratic party and Bloc Québécois leaders stressed the importance of the government moving from opposition to support on the Declaration. The July meeting of the Council of the Federation was urged by AFN Chief Fontaine to join in pressure for Canadian endorsement of the Declaration.[53] Council host Québec Premier Jean Charest confirmed that the premiers had discussed the Declaration "and expressed the hope to see Canada eventually endorse the document." However, Charest indicated, "some premiers want clarifications on the Declaration" before acting. The AFN plans to continue its advocacy for the Declaration in provincial and territorial capitals.[54]

On May 1, 2008, in an open letter, 101 lawyers and academics across Canada stated that there is no legal barrier to Canada's endorsing the Declaration, ripping away the prevarications of the Harper team: "No credible legal rationale has been provided to substantiate these extraordinary and erroneous claims." The letter rejects the government's charge that the instrument is unbalanced. Further, the experts state, "The Declaration provides a principled framework that promotes a vision of justice and reconciliation. In our considered opinion, it is consistent with the Canadian Constitution and Charter and is profoundly important for fulfilling their promise. Government claims to the contrary do a grave disservice to the cause of human rights and to the promotion of harmonious and cooperative relations."

The letter goes on to express concern about the negative international consequences of the government's behaviour. "We are concerned that the misleading claims made by the Canadian government continue to be used to justify opposition, as well as impede international cooperation and implementation of this human rights instrument."[55]

The government's record: Opportunities missed or consciously denied

The three instances outlined above deal with only a few dimensions of Canada's role in the protection of human rights. It should be underlined that the failure in leadership in human rights goes far beyond rights-specific agencies, to the core of foreign policy and international relations. The Harper government, for example, has made much of a new "strategy" for the Americas. Secretary of State for Foreign Affairs Helena Guergis gave a major speech in Philadelphia on June 28, 2008, on the strategy. But many observers are skeptical, as a *Toronto Star* reporter commented: "A couple of trips, a couple of free trade agreements does not a foreign policy make."

Precisely. A foreign policy informed by human rights priorities would make developing strong links with indigenous-led Bolivia a priority, and would take the welfare of the indigenous people fighting mining exploitation in Ecuador much more seriously. Such a strategy would never forward a bilateral trade and investment agreement with Colombia as long as it is the worst human rights violator in South America. Such a strategy would prioritize the ratification, with appropriate gender-sensitive reservations, of the American Convention on Human Rights and the companion Protocol of San Salvador on Economic, Social and Cultural Rights. A human rights-infused strategy in the hemisphere would make the eradication of poverty and support of governments which share that value central. It would resist further U.S. militarization of the region.

When one adds the list of human rights implications, intermingling domestic and international, arising from the various border, immigration, military, intelligence and policy "harmonization" agreements made by Canada and the United States since 9/11, the challenges to human rights become even more daunting. Security analyst Maureen Webb says that: "In many ways, the era we entered with 9/11 is an Age of Terror, an Age where an individual at any time can be presumed guilty and blacklisted from a job, dragged out of a line, denied the right to travel, listened in on, detained and even kidnapped, tortured and killed without ever knowing the allegations made against him or the criteria by which he is being judged."[56]

The international human rights framework provides a positive reference point in this maelstrom of forces. It needs to be respected, better known, applied, strengthened and expanded. While we highlight three dimensions here, Amnesty International (Canada) published an assessment late in 2007 which offers a more complete menu of issues.[57] It also provides a menu for those of us who wish to see the system strengthened and made more useful to every person. We must continue to hold the Canadian government up to the measure provided by that standard and evaluate whether it is working to strengthen or to undermine this singularly important framework.

With a Canadian of strong reputation as head of the UN Human Rights system, the Harper government had a clear opportunity to take and support leadership in advancing the cause of international human rights. Instead of working for a further term for Louise Arbour, it expressed faint praise conveying lack of support. The world community faces dire and destructive forces. Strong leadership reinforcing the human right to health, to food and adequate nutrition, and to water is urgently required. The rights of long marginalized peoples, particularly indigenous nations and GLBT populations, need to be brought into full recognition, protection and advancement.

The challenge of advancing the full family of human rights against the claims of private profit and corporate privilege is ever greater. We are clearly in need of a renaissance of Canadian conviction and action for human rights. An agenda grounded in that rebirth needs to be fully integrated into the program agenda for political change in this country and the movement that will achieve it.