

UNESCO

INTERNATIONAL EXPERTS MEETING ON FURTHER STUDY OF

THE CONCEPT OF THE RIGHTS OF PEOPLES

PARIS, 27-30 NOVEMBER 1989

REPORT AND RECOMMENDATIONS

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UNITED NATIONS EDUCATIONAL,
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International Experts Meeting
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Division of Human Rights
and Peace

I. REAFFIRMATION OF THE RIGHTS OF PEOPLES

1. Even as the participants in this international meeting gathered at UNESCO Headquarters in Paris, there was vivid and tangible evidence in many lands of the affirmation of the rights of peoples. Amongst the most dramatic was the evidence of the great popular movement for democracy and openness of government in the countries of Eastern Europe. Coinciding with the meeting were large, peaceful democratic gatherings of peoples of these countries. These popular movements are made up of individuals asserting their fundamental human rights. But individuals, acting in isolation or in small groups, could not explain the assertion of group will demonstrated by the popular movements just described. The spontaneous and widespread movements must be explained by reference to the assertion of group rights.

2. The foregoing events should not overshadow or obscure other contemporary but quite different assertions of the rights of peoples, fresh in mind during the meeting. The recently successful achievement of independence of Namibia - by an act of self-determination and the conduct of democratic elections - represented the most familiar and traditional assertion of the principle of the peoples' right to self-determination, which is reflected in Article I(2) of the United Nations Charter and in Article I(1) of the Human Rights Covenants of 1966.

3. In addition to these extraordinary and welcome assertions of the peoples' right to self-determination and democratic forms of government, allowing diversity of viewpoints, other more regular or less dramatic manifestations of the same phenomenon can too easily be overlooked. The conduct of democratic elections in Brazil was proceeding at the time of the meeting. This election - and the forthcoming election in Chile - see the completion of a process of democratisation in South America which has been remarkable and has arisen from the will of the peoples of that continent. The conduct of national elections in India has produced a change of government by the peaceful democratic process of the ballot box. Sadly, in other countries, peaceful change of this kind is not open to all peoples. As the Preamble to the United Nations Charter contemplates, such peoples do not forever have to accept an unacceptable form of government, unresponsive to the human rights of individuals and the collective aspirations and rights of their peoples. Many contemporary examples of assertions of the rights of peoples, particularly to self-determination and democratic self-government were mentioned during the meeting. The rights of the peoples of South Africa, Palestine and the Kurdish people and peoples in other parts of the world were amongst those most frequently referred to.

4. Usually, the rights of peoples are represented in international law by the state in which the peoples live. Frequently, even in states without a homogeneous population, respect for linguistic, cultural and other sources of the diversity of its peoples - and the democratic process of rendering governments accountable for their acts - provide sufficient means, on a national level, for the assertion and protection of the rights of peoples, for example to existence and to self-determination. But it is not always so. The state may be unresponsive to the legitimate aspirations and rights of some - or even virtually all - of the peoples living within its borders. It may (as colonial states illustrate) serve only the interests of the metropolitan power. It may exhibit indifference to minorities within its borders, particularly where a minority is a powerless indigenous people whose rights come into apparent conflict with the perceived needs of economic development. It may be incapable or unwilling adequately to represent a people who are scattered in several contiguous states. Such peoples thus become minorities within each state in which they exist by reason of the earlier drawing of state boundaries in ways indifferent to the sense of unity and identity of such people. Some states are vigilant to protect these interests. Alternatively, the state may be slow to reflect the concerns of peoples about urgent issues of global concern. Issues such as peace and disarmament and the global environment (the so-called Greenhouse Effect) are examples of

this.

5. The right of peoples to self-determination is now well established by international law in the case of colonial peoples, peoples in dependent territories and peoples living under racist regimes. The rights of peoples to self-determination in other states may sometimes come into conflict with the principle of state sovereignty which is an important element in the international legal order for safeguarding the right to peace. There is an understandable fear that, understood in one way, the peoples' right to self-determination might lead to the fragmentation of states, the disruption of settled international boundaries, the breakdown of governmental authority and even manipulation of peoples for the purpose of disrupting the international affairs of states. It is this concern which makes the further study of the rights of peoples both legitimate and important. Especially important is a further attempt to describe the features of a "people" to whom, by international law, rights such as to existence as a people and to self-determination attach. This subject was the topic of much discussion during the meeting. History teaches that where a state does not have the appropriate legitimacy to represent a people or peoples living within its borders, the right of such peoples to self-determination may assert itself in popular unrest, revolution, even war.

6. The experts recognised that these issues raise very

large questions of great sensitivity and controversy, some of which are more appropriately dealt with in the political organs of the United Nations Organization. Many of them are beyond the particular competence of UNESCO, as a specialized agency concerned with educational, scientific and cultural matters. This is not to say that they are irrelevant to UNESCO's concerns. Because war and conflict begin in the minds of human beings, it is still true that it is in the minds of people that the defences to peace must be built. Few ideas are as enduring and powerful as those of cultural, religious, linguistic, racial or other forms of group identity. However, the full dimensions of peoples' rights, including to self-determination, go beyond the immediate and useful involvement of UNESCO at this time. It was for that reason that the experts decided to concentrate their attention on those aspects of peoples' rights which are of particular relevance to the mandate of UNESCO. In doing so, however, they were not unaware of the wider questions which the issue raises.

II. EARLIER UNESCO INVOLVEMENT IN PEOPLES RIGHTS

7. The meeting took place against a background of many years' involvement by UNESCO in studies of the issue of the rights of peoples. Without pretending to be a full chronology, the following events should especially be remembered:

* In 1982 the General Conference decided that the Second Medium Term Plan (1984-1989) would

include a Major Programme on "Peace, International Understanding, Human Rights and the Rights of Peoples";

* In 1984, at the invitation of the Executive Board, the Director-General constituted a panel of counsellors on this topic. This panel reported that there were grounds for pursuing studies on peoples' rights but not towards the establishment by UNESCO of new legal standards. It also recommended emphasis on promoting the wider knowledge of relevant international instruments. A minority of counsellors expressed the view that the concept of "peoples' rights" was still in the process of development in international law. Those counsellors urged that UNESCO's activity in this area should proceed with regard to the plurality of viewpoints already expressed;

* In 1985, at the invitation of the Government of Zimbabwe, UNESCO organized an international meeting of experts on this topic in Harare. The final report of the meeting recommended that further work of scientific analysis should continue with particular emphasis upon inter-cultural exchanges. Research into particular topics was recommended in order to give greater precision to the expression

"peoples' rights";

* Also in 1985, at the twenty-third session of the General Conference, the Chairman of Commission V summarized the debate related to peoples' rights by emphasizing the high level of unanimity achieved about the concept. It was stressed that the rights of peoples were not the rights of states and that UNESCO should encourage further reflection on the relationship between peoples' and human rights;

* In 1986, at the invitation of the Australian Government, UNESCO organized an international symposium on the topic in Canberra. The meeting concluded that UNESCO should further international co-operation and encourage scientific debate, leaving the elaboration of any possible new normative instruments to other competent bodies of the United Nations;

* In 1989, a regional seminar on the implementation in the fields of competence of UNESCO of the African Charter on Human and Peoples' Rights was held in Kampala, Uganda. This meeting paid particular attention to the right to education and cultural rights.

8. There have been other relevant activities carried out by National Commissions for UNESCO or by international

non-governmental organizations under the auspices of UNESCO or supported in various ways by it. Amongst the most important of these have been:

- * In 1982, the National Commission of San Marino organised, in collaboration with UNESCO, an international symposium of experts on "Solidarity Rights, Peoples' Rights";
- * Also in 1982, the "Institut international Jacques Maritain", Rome, under the auspices of UNESCO convened an international symposium on the theme "Human Rights, Peace and International Social Justice";
- * In 1985, the Australian National Commission for UNESCO sponsored two meetings of experts in an endeavour to clarify the discussion of the rights of peoples. The papers presented have been published in a book, "The Rights of Peoples", J Crawford (ed), Clarendon Press, Oxford, 1988;
- * In 1986, in collaboration with UNESCO, the Latin American Association of Human Rights (ALDHU) organised an international seminar on the relationship between human and peoples' rights. This was followed in December 1988, by a further seminar on "Human Rights and Development" organised with the assistance of UNESCO by the Association of International Studies (Tunis).

* In 1988 the Netherlands Commission for UNESCO, in conjunction with the Roosevelt Study Center and supported by UNESCO, called a meeting at Middelburg, Netherlands, on "Human rights - rights of individuals - rights of collectivities";

* Also in 1988 a Joint Commission on co-operation between the Organization for African Unity and UNESCO set in train a series of activities to be carried out jointly for the study of human and peoples' rights.

9. In November 1989, a workshop was convened in Banjul, the Gambia, under the auspices of the African Commission of Human and Peoples' Rights and the African Association of International Law. The general topic of this workshop was the relationship between internationally recognised individual human rights and group rights. The workshop specifically examined the concept of peoples' rights.

10. The above list is not exhaustive. It shows, however, the considerable interest in the subject of peoples' rights in the international scientific community. The same interest is reflected in scholarly literature - some of it stimulated by the meetings set out above.

III. MANDATE OF THE EXPERT GROUP

11. It was against this background that the present meeting

of experts was convened by the Director-General of UNESCO. In 1987, the General Conference invited the Director-General to contribute to further reflection on human rights and to the elucidation and better understanding of the concept of rights of peoples and of the relationship between rights of peoples and human rights as they are defined in existing international instruments of universal scope.

12. Accordingly the Director-General called this meeting of experts. In doing so, he drew particular attention to a further resolution of the General conference (13.1 - Human rights and cultural identity in existing international instruments of universal scope). By paragraph 1 of this resolution, the Director-General was invited:

"Within the context of UNESCO's contribution to reflection on human rights and to the elucidation and better understanding of the concept of rights of peoples, and to clarifying the relationship between rights of peoples and human rights as they are defined in existing international instruments ... to prepare an analysis of the relevant provisions of such instruments relating to the preservation, safeguarding and development of cultures and cultural identities."

13. The meeting duly convened. It elected Justice Michael Kirby (Australia) as Chairman and Professors Vamireh Chacon (Brazil), Walter Poeggel (German Democratic Republic) and Guy Rajaoson (Madagascar) as Vice-Chairman. It elected Professor Charles Leben (France) as Rapporteur. It had the assistance of the United Nations Centre for Human Rights. The experts had before them, in addition to a Secretariat paper outlining

the above background of UNESCO involvement in the issue of peoples rights, two papers commissioned for the meeting:

- * Relations between rights of peoples and human rights; and
- * Compilation of provisions relating to the rights of peoples in existing international, universal and regional instruments.

Also before the meeting were the reports of the earlier UNESCO meetings. Various other papers were distributed as referred to during the meeting, including papers expressing reservations or concern about the concept of peoples' rights and its implication for international human rights law.

IV. THE CONTROVERSY OF PEOPLES' RIGHTS

14. The experts decided to face directly the expressions of concern (some of them voiced in the meeting and others referred to in the papers circulated) about the concept of peoples' rights. In the context of the recent history of UNESCO no other approach was acceptable. The experts recognised and respected some of these expressions of concern. They shared the determination that the concept of peoples' rights should on no account be used as a means of diminishing or derogating from individual human rights. Unfortunately, some of the language used in some contributions to the debate on peoples' rights over the past ten years has given rise, perhaps unwittingly, to confusion.

Thus, the image of "third generation" human rights, as including peoples' rights, is liable to be misunderstood as suggesting that earlier generations of rights - such as the "first" generation of civil and political rights - might now be discarded. Nothing could be further from the truth. The notions of peoples' and human rights are distinct. Although each is an aspect of the international "rights debate", and each ultimately impinges on individual human beings, the two concepts should not be confused. Each of them has its own history and legal sources. Each is a precondition to the fulfilment of the other. A full enjoyment of individual human rights will not be possible if the people, of whom the individual is one, is denied its rights - such as to existence, self-determination, cultural identity, economic development, etc. Similarly the attainment of peoples' rights, eg to self-determination, requires for its fulfilment freedom of expression and the exercise of other individual human rights.

15. The experts recalled that reservations about the concept of peoples' rights as discussed in the context of UNESCO were amongst the reasons given for the withdrawal of the United States of America and the United Kingdom from the Organization. Explicitly it was said, in a summary of the United States State Department Policy Review of US-UNESCO Relations (1984), that UNESCO had been "pressured ... to give equal or greater attention [than to human rights] to the 'rights of peoples'". The latter were described as

"generally economic in character, ... exceedingly vague and ill defined ... [laying] stress on "collective rights [which] tends to strengthen the prerogatives of a non-democratic state, at the expense of human rights of individuals". The experts gave anxious consideration to these reservations and to others expressed by writers on the subject, particularly in (but not limited to) the United States. It is in their opinion timely to reconsider these objections, in the context of the above-described international moves to reduce ideological tensions and to increase democracy, respect for human rights and diversity of opinion in all parts of the world.

16. To the extent that objections to the notion of peoples' rights is a slogan on which to hang international political or economic policies, the experts recognised that there was little that they could contribute. However, to the extent that the reservations about peoples' rights represent genuine intellectual differences of opinion, the experts considered that they should express their opinions in response to the principal objections which have been expressed about the concept.

17. First, it is said in some quarters that peoples' rights do not exist at all, or do not exist separately from individual human rights. This objection cannot now be admitted. Whilst it is true that the content of peoples' rights is not settled and the catalogue of such rights is in

the process of refinement and development, it is equally clear that peoples' rights, as such, are now represented in international law. Indeed, the foregoing document of the United States State Department acknowledges this in terms. It says: "A political 'right of self-determination' has long been recognized and endorsed by the United States". In the light of the history of the United States of America itself so much could not seriously be disputed. Perhaps the first text in which both human and peoples' rights are simultaneously proclaimed, is the Declaration of Independence of the United States. In familiar words, it begins:

"When in the course of Human Events it becomes necessary for one people to dissolve the political bonds which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the laws of Nature and Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation."

18. The insistence by Presidents Wilson and F D Roosevelt, in turn, that self-determination of oppressed peoples should be included in Allied war aims in both the First and Second World Wars reflected the United States' commitment to the rights of peoples - as distinct from states (the normal subject of international law) - to enjoy such a right to self-determination. This insistence has profoundly, and beneficially, influenced the course of events of this century. The power of the idea of self-determination of peoples - including its relevance to democratic modes of

internal government - is still exercising its influence throughout the world. It was the insistence of the United States which led to the opening words of the United Nations Charter being expressed in these terms:

"We the peoples of the United Nations determined...".

The authority of the Charter is therefore founded not upon the states, as such, but upon the peoples. The second of the purposes of the United States includes "to develop friendly relations among nations based on respect for the principle of equal of equal rights and self-determination of peoples". The Human Rights Covenants give similar priority and emphasis to this peoples' right.

19. Therefore peoples' rights exist. They clearly also extend beyond the right to self-determination to the right to existence (Genocide Convention) and to other peoples' rights now recognised in universal instruments. They are also elaborated and are in the process of development in regional instruments (such as the African Charter of Human and Peoples' Rights) and in relevant resolutions of the General Assembly of the United Nations. The the debate amongst experts is no longer whether peoples' rights are recognised by international law. Clearly they are. The debate now is about their content. This is a subject of legitimate difference of opinion. It is a dynamic subject where the content of peoples' rights is changing and developing. These

self-evident facts make it appropriate to continue the dialogue about peoples' rights in the international fora appropriate for that purpose. UNESCO is one such forum. It is by the exchange of ideas and opinions that progress and clarification of concepts is made - not by opting out of the debate or by erroneously rejecting the idea out of hand.

20. Then it is said that the concept of peoples' rights is a "statist" concept which runs the risk of over-emphasizing duties, diminishing individual human rights and justifying non-democratic state oppression of individuals. The experts wish to make it plain once again that:

- * peoples' rights are not state rights;
- * peoples' rights may not be used to derogate from individual human rights;
- * peoples' rights, to the contrary, provide the preconditions necessary to the fulfilment of individual human rights; and
- * peoples' rights, far from justifying anti-democratic actions by states against peoples assert and protect peoples from anti-democratic actions against them by the state, where it is undemocratic or otherwise illegitimate.

In the context of the recent developments in Eastern Europe, peoples' rights advance and do not restrict democracy. The same is true elsewhere in the world. In the context of poor

countries, heavily burdened by debt, famine, poverty and other afflictions, talk of individual human rights is hollow without the establishment of the necessary political, economic and environmental preconditions to the enjoyment of these rights in peoples' rights.

21. Next it is said that peoples' rights are vague and that they represent a needless proliferation of rights and a lack of "quality control" in the expression of rights. It is true that the content and definition of several of the rights sometimes expressed as peoples' rights are not yet precisely settled. It is also true that about some of them there is no present agreement. But this is not surprising. In earlier times there were similar controversies about the content and definition of individual human rights. For example, it was long contested that human rights should be extended to be enjoyed by slaves, women, intellectually handicapped or other groups. It has taken a remarkable effort of the international community, particularly over the past forty years, to clarify the concepts of individual human rights and to establish institutions for their implementation and protection. We are now embarked upon a similar process in the elucidation of the rights of peoples. The fact that this will take time and result in vagueness and uncertainty on the way should surprise least of all a person brought up in the legal tradition of the common law. International law has similar features by dynamism. The development of the concept of peoples' rights is merely one example of this feature of

law, domestic and international - its constantly evolving character.

23. Then it is said that the definition of "peoples" is uncertain and that the notion of peoples' rights could lead to dangerous proliferation of claims, undermining settled borders, national sovereignty and international peace and security. In earlier times, and in some places today, individual human rights were equally criticised as dangerous and subversive to law and order. It is true that there is need for further efforts to define "peoples" for the purposes of peoples' rights. It is possible that the concept has universal features. For example, during the meeting the following characteristics were amongst those mentioned as inherent in a description (but not a definition) of a "people" for this purpose:

1. A group of individual human beings who enjoy some or all of the following common features:
 - (a) a common historical tradition;
 - (b) racial or ethnic identity;
 - (c) cultural homogeneity;
 - (d) linguistic unity;
 - (e) religious or ideological affinity;
 - (f) territorial connexion; and
 - (g) common economic life.
2. The group must be of a certain number which need not be large (eg the people of micro states) but

which must be more than a mere association of individuals within a state;

3. The group as a whole must have the will to be identified or consciousness as a people - allowing that some groups or some members of such group, though sharing the foregoing characteristics, may not have that will or consciousness; and possibly
4. The group must have institutions or other means of expressing its common characteristics and will for identity.

24. It is possible that, for different purposes of international law, different groups may be a "people". A key to understanding the meaning of "people" in the context of the rights of peoples may be the clarification of the function protected by particular rights. A further key may lie in distinguishing between claims to desirable objectives and rights which are capable of clear expression and acceptance as legal norms. The experts were of the opinion that there is a need for further study and reflection on this topic. Such study and reflection should recognise the diversity of viewpoints which already exist. Further study is appropriately done in the context of UNESCO. It should include not only legal expertise but anthropological, sociological, psychological and other studies to help identify the meaning of a people for the purposes of particular suggested peoples' rights and the content of those

rights as legal norms.

V. CONCLUSIONS

25. Against the background of these deliberations, the experts therefore concluded as follows:

1. The concept of peoples' rights is now established by universally recognised international law. Its existence cannot now validly be controverted;
2. Some peoples' rights are universally accepted. These include the peoples' right to right to existence, the right to self-determination and other rights;
3. There is however a continuing and legitimate debate about the precise content of still other rights claimed to be peoples' rights;
4. The concept is a dynamic one which is in the process of elucidation and clarification. International and regional legal instruments, resolutions of the General Assembly of the United Nations, national constitutions, scholarly writings and other texts contribute to this process;
5. UNESCO is an appropriate forum for such elucidation and clarification, particularly because of the direct relevance of peoples' rights to cultural identity, educational

practices and other established areas of UNESCO's competence.

VI GENERAL RECOMMENDATIONS

26. UNESCO should continue the work of elucidation and clarification of the concept of peoples' rights. It should be sensitive to the diversity of viewpoints which have been expressed on the subject. It should not be dissuaded from continuing its exploration of the subject by the problems to which peoples' rights, as a slogan, have sometimes given rise in the past. But it should endeavour, as this meeting of experts has done, to answer and accommodate so far as possible, the concerns that are expressed about peoples' rights. It should try to find common ground for it is the belief of the experts that such common ground exists.

27. The work of elaboration within UNESCO should not be directed, at least at the present stage, at the elaboration of standard-setting measures. However, learning from the valuable experience of the United Nations Commission on Human Rights, and the work of the Centre for Human Rights referred to in this meeting, UNESCO should provide further reflection on the institutional means for the definition or description of a people for this purpose, the elaboration of peoples' rights, the further exploration of the relationship of human and peoples' rights and the evaluation of claims that particular peoples' rights have not been observed.

28. In the context of the contemporary changes in the ideological debates which have so profoundly affected the international community - and necessarily UNESCO - in the recent past, UNESCO should extend the reflection upon the rights of peoples to new subject areas. Without limiting the generality of this observation, such extension should include:

- (a) the implications of peoples' rights, including to the internal self-determination, especially democratic forms of government;
- (b) the implication of peoples' rights including to a safe global environment for such issues as the so-called Greenhouse Effect and global warming or in response to disasters of transnational significance, such as occurred at Chernobyl; and
- (c) the implication of the peoples' right to peace (see General Assembly Resolution ... (give reference)).

VII. RECOMMENDATIONS CONCERNING FUTURE ACTIVITIES OF UNESCO

Not produced.