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INTERNATIONAL CONFERENCE ON SELF-DETERMINATION, SASKATOON, CANADA

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A large symposium on the issues of the self-determination of peoples in international law took place in Saskatoon, Saskatchewan, Canada 3-6 March 1993. The conference was organised by the College of Law of the University of Saskatchewan and by International Alert, an important non-governmental organisation which works towards conflict resolution in the global context.

The symposium was called as a memorial to the life and work of Martin Ennals. At the time of his death, he held the chair of Human Rights in the University of Saskatchewan. Martin Ennals was Secretary General of Amnesty International from 1968 for more than a decade. His period at the head of that body saw it grow in size and influence. When in 1977 Amnesty was awarded the Nobel Peace Prize, Martin Ennals characteristically stood aside, leaving the honour to be accepted by a released prisoner of conscience.

In 1983 Martin Ennals established a new international body to work against censorship and for freedom of information called Article 19. Not content with these achievements, in 1985 he founded International Alert and was its inaugural Secretary General. He died in October 1991. As was appropriate to such a life, a large number of non-governmental organisations were represented in Saskatoon for the symposium called in his memory to examine one of the key topics

of contemporary

international law: the peoples' right to self-determination recognised in the Charter of the United Nations and in the international covenants on human rights.

In the opening ceremony, Lord [David] Ennals explored his brother Martin's life's work and its relevance to human and peoples' rights. The sessions which followed included explorations of the concept of self-determination in an effective new world order. Among the leading international lawyers who participated in these sessions was Professor Hurst Hannum of the Fletcher School of Law and Diplomacy, Tufts University, Boston. In subsequent sessions, the relationship of ethnicity, religion and language to demands of self-determination was examined with many illustrations from Asia, Africa and North America. Dr Tove Skutnabb-Kangas of Finland drew attention to the dangers of the destruction of indigenous languages and the impact which this would have upon the survival of cultures and peoples.

After a number of case studies examining ethnic divisions and demands for various forms of self-determination in Africa, India and Papua-New Guinea (Bougainville), the conference spent two stimulating sessions examining the disintegration of Yugoslavia and the challenges of emerging nationalism witnessed in the successor states of the former Soviet Union.

Much of the last day of the conference was spent on self-determination issues as they affect Canada. One session examined the question of Quebec. It addressed the possibility of the secession of that Province from the Canadian Federation. Another examined competing claims for self-determination on the part of the Aboriginal "nations" of Canada, including the demands of such "nations" against the Provincial government of Quebec. Leading

speakers from the Canadian indigenous peoples, including the Cree, Makivik and Inuit explained the damage to their cultures, languages and self respect inflicted by the régimes of the French, English and later settlers. To an Australian ear, many of these complaints appeared all too familiar to a nation addressing the issues presented by the decision in *Mabo v Queensland* (1992) 66 ALJR 408 (HC).

The problems in the way of the achievement of the peoples' right to self-determination, at least where the people in question do not enjoy a discrete territorial land base was explored by a number of speakers both from a legal and political perspective.

The final session of the symposium turned to possible remedies for conflict resolution to:

- * Defend minority rights within states having a majority culture and language;
- * Provide various forms of self-determination short of secession within such states; and
- * Where necessary and appropriate, provide mechanisms for peaceful secession of peoples from states or the reorganisation of peoples presently living in several states into a single state of their own (eg Kashmir, Kurdistan, Palestine).

It was in this final session that Dr Kumar Rupesinghe, the present Secretary-General of International Alert, presented his ideas on the new mechanisms which could be put in place to assist in the achievement of the right to self-determination whose principle is recognised in international law. Other participants in the closing session included Dr Elsa Stamatopoulou, of the UN Centre for Human Rights in New York and Professor Richard Bilder of the University of Wisconsin-Madison. Dr Stamatopoulou outlined the practical difficulties of directing the United Nations Organisation towards the

protection of the rights of minorities, given the fear and distrust which such issues often engender amongst the states members of that body. Professor Bilder cautioned about the "pathology" of some ethnic demands. He suggested the need for special study of multi-ethnic societies rather than the needless proliferation and confusion of an increasing number of separate societies based on ethnic exclusivity. Over the Saskatoon conference hung the pall of the continuing conflict in Yugoslavia, especially Bosnia. It was clear that many of the participants were shocked by the extremist demands of combatants in the former Yugoslav states for ethnic purity. For some, this illustration suggested the need to reconsider the peoples' right to self-determination in the wider context of competing provisions of international law. These include those which address the achievement of international peace and security and reserve from international interference the internal affairs of member states so long as they comply with international law.

In the closing session, the writer as chairman offered a summation of the conference to pilot through to acceptance the *Saskatoon Statement on Self-Determination* and the *Recommendations on Self-Determination* emanating from the symposium. Also received in the final session was the report of the Symposium rapporteur, Dr Nihal Jayawickrama, who was one-time Minister of Justice of Sri Lanka and now teaches law at the University of Hong Kong. Dr Jayawickrama is presently Martin Ennal's successor as Visiting Professor at the University of Saskatchewan.

The conference generally favoured adopting a principled approach to the definition of the peoples' right to self-determination. It recognised that this right was, at its heart, a liberation idea. But the right was not an absolute one. It exists in the context of other international legal rights and duties,

including those to respect individual human rights, to safeguard certain rights of minorities and to uphold international peace and security.

The need to reinforce the United Nations institutional machinery to safeguard and advance the peoples' right to self-determination as contemplated by the Charter was generally accepted by the participants. Various suggestions for updating the 1945 Charter were proposed ranging from the appointment of a Special Rapporteur or High Commissioner on Self-Determination to the revamping of the Trusteeship Council with new duties added to protect peoples deprived of their right to self-determination. Many participants at the conference favoured bold new initiatives to turn the Charter promise of self-determination into practical reality. Several speakers urged imaginative approaches and the obligation to think afresh, unhampered by current institutions and perspectives. Lord Avebury (UK), for example, called for a new international instrument with powers to redraw boundaries, often determined in earlier times by reference to strategic considerations (such as rivers and mountains) which are no longer pertinent or logical. Several of the speakers from Quebec urged that lessons could be learned in Canada from the European moves towards regional rather than state arrangements. The Inuit representatives argued for an escape from the legal concepts of the past which had shackled their achievement of their rights. In this regard they included the notion that their lands were *terra nullius* before the advent of European settlement. The decision in *Mabo v Queensland* naturally aroused a great deal of interest.

Amongst the many practical impediments to the achievement of the peoples' right to self-determination which were identified in the meeting were the resistance of nation states; the inadequacy of the

machinery of international institutions; the lack of sympathy of certain international agencies (the World Bank was singled out); the "colonialisation of the mind" of successor post-colonial governments in their relationships with their minorities; the emotionalism of ethnic nationalism; the complexity and deficiencies of various forms of intra-state relationship; the enormous number of ethnic minorities and groups in the world; the fear of the destructive side of nationalism witnessed in the Yugoslavian and other recent conflicts; the concern of the re-birth of populist nationalism with its Fascist elements, often advocated by the *Nomenklatura* re-emerging to positions of political power; the rebirth of intolerant religion; the growth in power of military mercenaries; the ignorance and insensitivity of the international mass media; and the advent of new trans-national problems such as the spread of narcotic drugs.

Against all of these difficulties glimmers of hope were identified in the Saskatoon conference for the peaceful advance of the idea of self-determination. These included the positive rôle which the media sometimes plays in bringing the horrors of the excesses of ethnic oppression to global attention; the growing recognition of the demands of justice, particularly on the part of indigenous peoples living on the edge of relatively prosperous societies; the spreading environment of democracy and human rights throughout the developing world; the impact of new technologies and super-national arrangements which tend towards a truly new world order; the growing and positive influence of international law; and the mobilisation of non-governmental organisations to put legitimate issues of self-determination on the political agenda.

The Saskatoon conference was one of a large number of "satellite" conferences preparatory to the World Human Rights

Conference in Vienna in June 1993. The Saskatoon Statement and Recommendations will be transmitted to the Vienna Conference by the convenor of the Saskatoon Symposium, Professor Don Clark of the Saskatoon College of Law.

There is no doubt that the issue of self-determination examined in Saskatoon will continue to be one of the major practical and theoretical concerns of international law and of international government for the foreseeable future.

The Saskatoon Statement and Recommendations on Self-Determination, adopted by the symposium, are an annex to this note.

THE SASKATOON RECOMMENDATIONS ON SELF-DETERMINATION

Adopted unanimously at the Martin Ennals Memorial Symposium on Self-Determination Co-sponsored by the College of Law, University of Saskatchewan and International Alert

Saskatoon, Saskatchewan, Canada

6 March 1993

The participants in the Symposium unanimously adopted the following recommendations. They requested that the Co-Sponsors take steps to ensure that the recommendations are drawn to the attention of the World Conference on Human Rights to be held in Vienna, Austria in June 1993 and other relevant governmental and non-governmental bodies:

1. The Symposium recommends that the following actions be taken by the United Nations:

1.1 The United Nations and its Member States should give serious consideration to the progressive development of

the concept of self-determination and to identifying or creating a mechanism which could consider self-determination claims where there is a risk of disturbance to the peace or violations of fundamental human rights. Without pre-judging the issue, such a mechanism could involve a new United Nations Commission on Self-Determination (equivalent to the existing Commission on Human Rights) or expanding the mandates of existing bodies such as the Trusteeship Council, Committee of 24, Fourth Committee of the General Assembly, or the Security Council. Pursuant to Article 36(3) of the United Nations Charter, the Security Council should consider referring appropriate situations to the International Court of Justice for an advisory opinion or, where the parties agree, a judgment. The peoples affected should have direct and effective access to any such mechanism.

1.2 The United Nations should immediately establish a High Commissioner, Working Group or Special Rapporteur with appropriate resources, to monitor implementation of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities. Similar action should be taken immediately upon adoption of the Declaration on the Rights of Indigenous Peoples which is now being drafted by a Working Group of the Sub-Commission on Prevention of Discrimination and Protection of Minorities. The peoples or minorities affected should have direct and effective access to any such person or body.

1.3 The United Nations, Member States and the

Secretary-General should pay particular attention to claims for self-determination in implementing the Secretary-General's *Agenda for Peace*. Where legitimate claims for self-determination are denied - or illegitimate claims are made - there is an obvious potential for breaches of international peace and security. The range of options available to the Secretary-General - from early warning to peace-keeping, peace-making, and peace enforcement - should be fully utilized.

1.4 The United Nations should consider the adoption of a convention or conventions to protect cultures and languages from destruction.

2. To assist the United Nations and to stimulate action by the international community, the Symposium further recommends the establishment of an independent, non-governmental Commission on Self-Determination.

2.1 The Commission should be charged with:

- * Examining the scope and content of the right to self-determination;
- * Identifying the relevant criteria for determining the legitimacy of a claim to self-determination;
- 5 * Recommending specific mechanisms which would have the competence to decide such claims;
- * Proposing means of encouraging dialogue in respect of such claims; and
- * Suggesting effective ways in which the right to self-determination might be exercised in the face of resistance by those with the power to deny the right.

2.2 The Commission on Self-Determination should receive

information from all relevant sources and cooperate with existing institutions relevant to this issue, including the International Commission on Global Governance.

Members of the Commission should serve in their individual capacity and the Commission's membership should reflect as broad a political and regional representation as is possible.

In constituting the Commission, due regard should be paid to ensuring an appropriate participation by women and men. Access to the Commission by all concerned peoples, minorities groups and individuals should be assured.

THE SASKATOON STATEMENT ON SELF-DETERMINATION

Adopted by substantial majority at the Martin Ennals Memorial Symposium on Self-Determination

Co-sponsored by the College of Law, University of Saskatoon and International Alert

Saskatoon, Saskatchewan, Canada

6 March 1993

1. All peoples have the right to self-determination under international law. This right is now well established in customary international law, and the principle is recognised in the *Charter* of the United Nations. As well, more than 115 States are legally bound by this norm through their adherence to one or both of the *International Covenants* on human rights. The inclusion in both *Covenants* of the right to self-determination underscores the fact that full implementation of this right also implies the guarantee of all other civil, political, economic, social and cultural rights, in

particular the rights to equality and non-discrimination.

2. Self-determination serves at least two primary purposes: ensuring a representative, democratic and participatory framework in which people have the possibility of effective participation in political, social and economic life, and in creating the conditions necessary for a people to protect and develop its identity. Achievement of these purposes is equally important to all individuals - women and men - minorities, and other groups within society.

3. National, ethnic, religious, linguistic, and other minorities are entitled to respect and to have the fullest opportunity to maintain and develop their distinctive characteristics. Minorities lacking adequate resources to do so should be accorded a fair share of public funds, sufficient to enable the preservation of their distinctive characteristics. States should, at a minimum, conform to the principles set forth in the *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, which was adopted by the United Nations General Assembly in December 1992. The legitimate rights of the majority in a State should be exercised in the context of effective participation by members of minorities in the larger society.

4. Peoples may exercise their right to self-determination in a wide variety of forms, responding to their particular circumstances. The right to self-determination may conflict with other rights, and is often reflected in constitutional arrangements such as confederation, federation, autonomy, self-government, devolution, decentralisation, and other mechanisms which are devised by mutual agreement.

5. Recent events have starkly drawn attention to the ways in which the purported exercise, or denial, of a people's right to

self-determination can give rise to violations of individual human rights and the rights of minorities, based on intolerant notions of ethnic superiority and exclusivity. Self-determination is not necessarily tied to ethnicity. A heterogeneous, multicultural and multilingual society may reflect its peoples' right to self-determination as effectively as a more homogeneous society would.

6. The formation and re-formation of states may be one outcome of the exercise of the right to self-determination but it is not a necessary or even usual consequence of fulfilment of a people's right to self-determination. There are some circumstances in which the international community has recognised the right of peoples to form or re-form a State. Without purporting to exhaust the instances in which such rights have been so recognised, they include:

- * situations of colonisation;
- * situations in which the government of a State is unrepresentative of its peoples by virtue of the fact that it excludes a distinct group from equal participation in political life;
- * cases of the occupation or domination of the population of a State as a whole by foreign forces; and
- * by agreement of the peoples of the State concerned.

7. There is not yet widespread agreement on all of the conditions which would give rise to a right to secession under the international law. However, it should be emphasised that international law does not prohibit secession or dissolution of a State. In addition, a people may possess a right to self-determination which should be respected, even if the exercise of that right does not include secession in their particular circumstances at that time.

8. In this International Year of Indigenous Peoples, it is

especially appropriate to recognise and reaffirm the right of indigenous peoples to self-determination as provided by international law. By virtue of this right, they should be free to determine their political status and freely pursue their economic, social and cultural development. Many indigenous peoples have been systematically excluded from the formation of, and participation in, the States which now surround them.

9. In addition, it is essential that indigenous peoples have the possibility of effective, direct access to international forums, including those which are considering the definition of their rights. Indigenous peoples should be recognised as active and effective participants in international bodies which consider matters of direct concern to them. Governmental and non-governmental bodies must become more aware of the unique situation of indigenous peoples and their extreme vulnerability to ecological degradation, exploitation and gross violations of human and peoples' rights.

10. Additional legal and political attention needs to be given to elaborating the substantive content of, and procedural mechanisms for, achieving self-determination. Concepts such as sovereignty, statehood, nationalism, territorial integrity and discovery and settlement based on the doctrine of *terra nullius* having evolved in specific historical contexts, have not prevented human rights abuses or wars, and do not respond adequately to the complex and often contradictory requirements of political, economic and technological realities as they exist at the end of the twentieth century. New solutions must be found that go beyond the current, limited domain of international law so as to address the changing nature of State sovereignty and the implications of an increasingly inter-dependent world in which borders are becoming less relevant.

11. The participants in the Symposium considered that it should be

followed by:

- * Similar symposia in other parts of the world to monitor progress in the self-determination of peoples; and
- * An international conference on the rights of indigenous peoples to self-determination.

12. In its essence, the right of peoples to self-determination is a liberating concept. Therefore, its achievement must be secured in a way that will promote respect for the rights of women and men, minorities and other groups within society. Equally it must contribute to peace and security in the world.