



1-7-1990

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### Recommended Citation

Kirby, Justice Michael and Nariman, Fali S. (1990) "Report on UNESCO experts, meeting on the rights of peoples," *National Law School Journal*: Vol. 2: Iss. 1, Article 8.

Available at: <https://repository.nls.ac.in/nlsj/vol2/iss1/8>

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## Report on UNESCO experts meeting on the rights of peoples

MR JUSTICE MICHAEL KIRBY & FALI S. NARIMAN

Recent developments in a number of the outlying republics of the Union of the Soviet Socialist Republics, the emergence of new political movements in the States of Eastern Europe and renewed suggestions about German reunification call attention once again to the controversy in international law about the "rights of peoples."

After the 1982 General Conference, the United Nations Educational, Scientific and Cultural Organisation (UNESCO) launched a number of meetings and studies designed to clarify the concept of "people's rights." One result of this initiative was the conduct of the series of symposia in Australia on the subject, organised by the Australian National Commission for UNESCO and the Australian Society for Legal Philosophy. These meetings took place in 1985 and 1986.

However, the notion that the "people" existed and could have rights cognizable in international law, as distinct from the rights of States, organisations and individuals recognised by such law, has led to vigorous and sometimes heated debate. This controversy emerged in the Australian symposia and is reflected in a collection of papers partly derived from those meetings. See J Crawford (ed) *The Rights of Peoples*, Clarendon Press, Oxford, 1988.

Notwithstanding the controversy, successive meetings of UNESCO resolved to continue the study of the notion of people's rights. This decision was resisted by the United States of America and the United Kingdom, then members of UNESCO. When those States withdrew from UNESCO in 1984, one of the reasons given, at least by the United States, was the attention being given within UNESCO to the "Rights of Peoples." In a State Department Policy Review of US-UNESCO relations (1984) it was explicitly stated that UNESCO had been "pressured partially by African States (encouraged by the Soviet Bloc) to give equal or greater attention [than to human rights] to the rights of peoples." The latter were described as "generally economic in character such as the 'right to development'; exceedingly vague and ill-defined [laying] stress on 'collective rights' [which] tend to strengthen the prerogatives of a non-democratic State, at the expense of human rights of individuals." See (1984) *Aust Intl Law News* 432.

The other two principal reasons given by the United States for its withdrawal from UNESCO were the alleged defects of the administration of the then Director General, Mr. M'bow and the initiatives of UNESCO on a New World Information Order. Mr M'bow has since been replaced by Mr F Mayor who has introduced many administrative reforms. Earlier proposal on UNESCO's information policy have been modified. But the impediment of the rights of peoples to the restoration of universality of UNESCO membership remained. The return of the foundation Members (USA and UK) with their substantial contributions to the budget and intellectual endeavour of UNESCO is widely regarded as important for the success of that body.

It was against the background of the practical illustrations of popular assertions of

peoples' right in Eastern Europe and the institutional controversy within UNESCO about peoples' rights, that a meeting of experts was convened at UNESCO headquarters in Paris on 27-30 November, 1989. The experts elected Justice Michael Kirby (Australia) as Chairman of the meeting. Justice Kirby is the President of the New South Wales Court of Appeal. They elected Professor Charles Leben (France) as rapporteur. Professor Leben is Professor of International Relations in the University of Bourgogne. The report and recommendations of the meeting were distributed by UNESCO in February 1990. This document is likely to be more influential because:

It sets the controversy about peoples' rights into the context of contemporaneous illustrations of the assertions of peoples' rights as distinct from state rights in many parts of the world, especially Eastern Europe;

It summarises the state of the international debate about peoples' rights and the earlier UNESCO contributions to that debate;

It confronts directly the controversy about peoples' rights and the concerns, legitimate or otherwise, which have been expressed that the notion of peoples' rights might be used by States to derogate from individual human rights; and

It addresses specifically the expressed concerns of the United States, by illustrating from its own constitutional and political history the influence in that country of the notion that peoples have rights, cognizable in international law, and distinct from those of the State of which they happen to be members or of the individuals who make up such peoples.

The experts unanimously concluded that peoples' rights, as such, are now represented in international law. The most familiar of such rights is that to self-determination. The expert report points out that the assertion of this right was the very foundation of the establishment of the United States of America itself. In familiar language the US Declaration of Independence 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 . . ." It is also pointed out that Presidents Wilson and F D Roosevelt insisted that the self-determination of peoples should be included in the Allied war aims in both the First and Second World Wars. It was the insistence of the United States which led to the opening words of the United Nations Charter being expressed: "We the peoples of the United Nations. . ." The authority of the Charter is thereby founded, by its terms not upon the States which are parties but upon the peoples they represent. The second purpose of the United Nations set out in that Charter is to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples." Similar priority and emphasis to peoples rights exist in the human rights covenants.

Against this background it is surprising that the experts concluded that peoples' rights exist in international law. The debate, now, their report declares, is about the content of the such rights. Upon that debate the experts acknowledge room for legitimate difference of opinion. But they urge that one forum for the exchange of ideas and opinions aimed to clarify the concept of peoples' rights was UNESCO. Participation in that forum not opting out of the debate or erroneously rejecting the idea out of hand, is the way that progress about peoples' rights will be made.

In the current developments in Eastern Europe, the notion of a peoples' right to open, accountable and democratic government appears to lie behind the significant popular movements which have accompanied or led to recent changes. In the opinion of the experts, the assertion of group concerns and identity as a people represent enduring features of human history.

To meet the objection that "peoples' rights" is ill-defined, the experts offered a description of a "people" for the purpose of peoples' rights. They suggested that it should comprise a group of individual human beings who enjoy certain common features, such as historical tradition, cultural homogeneity or linguistic unity. But as well there must be will to be identified or consciousness as people usually accompanied by institutional or other means for expressing common characteristics and the will for identity.

Whilst acknowledging the need for further clarification of the concept of peoples' rights and of the content of such rights and whilst urging respect for the diversity of viewpoints, the experts urged the need for a continuance of the debates on this topic. Without limiting issues that should be studied, they singled out for particular attention:

The implication of peoples' rights, including for rights to internal self-determination and democratic forms of government;

The implication of peoples' rights for a safe environment and for effective responses to disaster of transnational significance such as occurred at Chernobyl Nuclear Power Plant in the Soviet Union; and

The implication of the suggested peoples' rights to peace. See General Assembly Resolution 39/11, November, 12, 1984.

The report of the expert meeting concludes with a substantial list of recommendations for further work within UNESCO and member States designed to advance the understanding of the notion of peoples' rights.

The United Nations and its specialised agencies, including UNESCO have contributed greatly to the clarification during the past forty years of notions of human right as well as to other developments of international law. Notwithstanding resistance in some quarters it appears likely that in the years ahead there will be increased attention to peoples' rights., It also seems likely that UNESCO will play a continuing, and useful, role in this connection.