

Final report of Canberra

Introduction

1. Pursuant to its approved program and budget, Unesco convened an international meeting of experts on the Elucidation and better understanding of the concept of rights of peoples and clarification of the relationship between rights of peoples and human rights as defined in existing universal international instruments. This meeting was held in Canberra, Australia, from 24-28 August 1987, in co-operation with the Australian Commission for Unesco. This meeting comprised part of Unesco activities in the Social and Human Sciences for reflection on Human Rights within Major Program XIII – Peace, International Understanding, Human Rights and the Rights of Peoples – within the Unesco Second Medium Term Plan, 1984-1989.

2. The meeting, which was held at the Australian National University, brought together experts specializing in International Law, Sociology, Anthropology, History and Political Science. Officials of the Australian Department of Foreign Affairs attended as observers. A list of participants and observers is contained in the Annex.

Official opening

3. The meeting was officially opened on Tuesday, 25 August at 9.00 am, with words of welcome from Angela Mays, the Secretary of the Australian National Commission for Unesco, on behalf of the Chairman of the National Commission. Miss Mays expressed pleasure that the Australian National Commission was able to host this symposium, and pointed out that three earlier seminars had been sponsored by the National Commission to discuss the topic of peoples rights in March 1985 in Sydney, in June 1985 in Canberra and in May 1986 in Canberra.

4. On behalf of the Director-General of Unesco, Mrs Marion O'Callaghan expressed gratitude to the Australian National Commission for hosting this symposium, particularly in light of its pioneering work in the field of people's rights.

She pointed out that participants were carefully chosen as individuals in order to elucidate the issues. Unesco has no policy or objective of creating new international law with respect to peoples rights. This is the domain of the United Nations Commission for Human Rights. Rather, Unesco seeks to advance the discussion of ideas within its mandate of promoting intellectual co-operation. If international law is to progress it must be based on a foundation of sound intellectual exposition. The debate about peoples' rights is a reality which cannot be ignored by Unesco, since it is being pursued in the academic communities and by member countries.

Election of officers

5. The meeting elected Professor James Crawford (Australia) as Chairman, Professors Hughes Andriamambavula (Madagascar) and Valery Tishkov (U.S.S.R.) as Vice-Chairmen, and Professor Ed Ratushny (Canada) as Rapporteur.

Secretariat presentation

6. Marion O'Callaghan, Acting Director of the Division of Human Rights and Peace, made an introductory presentation on behalf of the Secretariat. She began by pointing out that the discussion of difficulties in assigning rights to groups as well as to individuals is not a new one. In the nineteen-fifties, the English philosopher Maurice Ginsberg pointed out that the concept of group rights posed no problem for philosophers even though it seemed to cause great difficulties for lawyers. However, the debate has recently sharpened with the African Charter of Human and Peoples Rights of 1981, which includes both individual and peoples rights. It has also been sharpened by the increasing demand for recognition of indigenous rights. Many rights in the International Bill of Rights directly or indirectly raise questions of group rights. The right of self-determination is the most obvious. One might also ask about the group implications of education and cultural rights.

7. A fundamental question, obviously, is what is a people. In the context of self-determination, this question becomes important in the struggle for independence. A starting point for this discussion might be the nineteenth century concept of groupings of people with common features and interests, leading to the demand for independence – one example is the experience following the fall of the Austro-Hungarian Empire.

8. What is ethnicity? A group may clearly be defined as a "people" where there is a common language, culture, or in some cases religion, and a particular historical experience, all accompanied by a land base. However, increasingly in modern society it may be possible to have "peoples" who lack these traditional attributes of ethnicity. Moreover, loss of ethnicity may not be important in defining peoples since under changed political circumstances ethnicity might be re-activated. Some examples are Black Americans, Lithuanians, and more obviously, indigenous populations in various countries. Land rights for indigenous peoples

has been an important issue for the maintenance of cultural identity and a degree of political power. But the most common revindication has been language locally or the integration of languages at the official government level. Another revindication may relate to religious rights and these may go beyond merely the freedom to practice a religion into areas such as guarantees of religious education.

9. Another important issue is the relationship of peoples' rights and State rights. The view has been expressed that peoples' rights might be interpreted from time to time, for example, in asserting the right to self-determination by claiming State power. However, once that occurs, there may be ethnic groups within that State who have claims in relation to the State. This problem must be addressed.

10. The relationship of individual rights and peoples rights is also important. For example, the definition of ethnicity could be such as to eliminate individual choice and freedom. In any definition of peoples rights there is a need to ensure that individual rights are not ignored.

Preliminary discussion

11. *Note:* Comments made by participants, reported under this and subsequent headings, were made in an individual capacity and did not necessarily represent the view of others. The conclusions summarized in Section VIII, to the extent stated there, did represent a broad consensus of views.

12. Following the Secretariat presentation, there was a wide ranging preliminary discussion in relation to the appropriate focus for deliberations. It was pointed out that the international instruments use a wide range of relevant phrases, such as «men and women», "peoples", and "population". The juridical distinctions between these should be explored. The term "minorities" was once used frequently in discussions of these issues but has receded in popularity. The term seems to be experiencing a revival in recent times.

13. A starting point for the definition of "peoples" might be the Greek work "*ethnos*", which suggests a historical cultural entity which because of climate and location had developed a unique character. There are certain basic features which are identifiable, such as territory, language, way of life and self-identity. However, these are not always present with every people. Perhaps a basic right for peoples is the right to be recognised as a people. For example, the absence of categories in census-taking may mean that certain ethnic groups are not recognised in official statistics.

14. It should also be kept in mind that formations of groups may change through assimilation, through joining together in common purpose and through oppression.

15. The issues as to what is a nation and what is a population may be important. However, peoples seem to represent a more basic level of cohesion than the concept of a nation, and a population may be considered to be merely all those within a particular boundary. Even though there is no generally accepted definition of "peoples' rights" which can be taken as a basis for discussion, there has been recognition of this concept in international law and it has an international context which permits discussion, even though no definition exists.

16. The definition of peoples in international law is not the same as the definition which an anthropologist would use. This does not create a problem provided that we distinguish the content of the word when speaking juridically or otherwise. In international law the term "peoples" is sometimes used, to refer to populations which want to form a state. The problem then is whether all groups who want to form a State are a people, or must the definition be limited to all of these peoples which comprise a state or by other criteria? In international law, a minority group does not have the right to self-determination with respect to the formation of a state, although it may have certain cultural rights.

17. It is important to consider duties as well as rights, since the right of one people will often impose a duty on other peoples. Therefore it is important to be conscious of whom the right is to be claimed against.

18. It is important to view these problems in their historical content. The modern state system is a recent phenomenon, but peoples or nations are very old. It was only with the process of State formation that the distinction between collective entities and individuals assumed its modern form. In earlier times land was often commonly owned or used. The community took responsibility for supervising the adherence to norms and sanctions were often imposed not only against individuals but also against an individual's immediate community. With state formation violations were focused upon the individual.

19. Since there are approximately two hundred state formations in the world but over two thousand peoples, very few states are mono-ethnic. Thus ethnic considerations and peoples rights may be more important domestically than internationally. Nonetheless there may be relevant international law rules on the subject.

20. In the last century and especially in the last thirty years international law has become part of the apparatus of formal relationships between states. At an earlier period it appeared to extend to relationships amongst peoples (as the labels "law of nations", "*droit de gens*", "*jus gentium*" and "*Volkerrecht*" all suggest). Is there now a movement to reverse the "statist" tendency of international law? It is possible to read into statements of the principle of self-determination, rights other than the right to succession, i.e. to include claims of ethnic entities against the state. There are customs amongst some ethnic groups which may go contrary to the law of the state in which they exist. Should international law support the rights of these "peoples" or the law of the state?

21. Some generalizations are possible:

(i) If the category of peoples' rights is legitimate, then they cannot be limited to the populations of existing states. The category must be broader than that.

(ii) Different categories of peoples may exist for different purposes. For example, one grouping might exist for linguistic rights but another for other rights.

(iii) Simply because there are no limitations upon the right to form a state does not mean that there are no other dimensions or rights which can flow from this concept.

22. Perhaps the starting point should be to focus upon a specific right and

go from there to explore to whom that right should apply, otherwise we might be allocating rights to groups to whom they are not appropriate.

23. Are there any rights which are not for people? Why should we artificially divide rights into a number of categories? Perhaps we should be looking at broader concepts, such as "mankind" or "humanity", which have been used in international law. There is a unifying concept in the very first line of the Preamble to the Universal Declaration of Human Rights and that is the "inherent dignity" of every individual. This concept applies whether one is speaking of individual rights, group rights or peoples rights.

Rights of peoples and human rights

24. Dr. Ion Diaconu presented a paper on self-determination and human rights. He pointed to the important role of Unesco in the development of the concept of peoples rights and added that research must continue in this area. Many clarifications are required to improve our understanding of this subject in order to permit the international community to take positive action in this field.

25. After stressing that his paper was concerned only with the relations between the right of peoples to self-determination and human rights, Dr Diaconu referred to the basic elements of the right to self-determination (the right of each people to determine its political status with respect to other peoples and states, respect for the integrity and unity of the territory belonging to a people, the right to choose and to develop freely its political, economic and social arrangements, the right to build and develop its own economy, including the right to permanent sovereignty over its natural resources), as well as its universal and permanent character.

26. It was essential to stress the established relations between the two concepts, in the sense that the exercise of the right of a people to self-determination is an essential basis for guaranteeing respect for human rights. There was accordingly no justification for opposing, with respect to this right at least, human rights and the rights of peoples. These relationships followed from the fact that humans belonged always to a particular society, which was the basis for development and flourishing of each person.

Discussion

27. In the discussion which followed, one participant pointed out that when people exercise their right to self-determination, they then become the holders of obligations to other peoples. Another pointed out that there are fears in some parts of Africa that certain definitions of peoples' rights would give too many powers to local chiefs which could thereby prevent the State from achieving economic and social progress.

28. It was pointed out that self-determination is relatively easy to identify as a right of peoples since it is written into the Covenants in terms which clearly imply that it co-exists with other human rights. Indeed, there is little potential for conflict between the right of self-determination and other human rights. Another

participant added that the international community has recognized that effective guarantees of human rights depend upon social and political circumstances, and that the right of self-determination provides the opportunity for peoples to achieve their political destiny, assisting in guaranteeing all other human rights.

29. It was pointed out that there were many references in Dr. Diaconu's paper to economic development, the control of resources and the expression of ethnic and cultural identity. This suggests a collective nature to these rights. Most people would consider the collective aspect of rights to be more important than the individual aspect or even the ethnic aspect. Most people would choose social conditions over ethnicity as a priority. It may be more desirable for a people not to have their own ethnic state but to combine to achieve social goals as a multi-ethnic state, so that social objectives should be given priority over ethnic goals. Another participant pointed out that there are frequently difficult choices between development and group identity. For example in Brazil, the Government wants to develop the resources of a particular area but the Indians want to live in that area just as they always have. On what basis is a choice to be made? Another participant disagreed strongly that priority should be given to one category of rights over another. All rights are important, whether they be individual or collective, social or economic. At a certain time and place, greater emphasis may have to be given to one than to another but there are a myriad of circumstances and contents to be taken into account and any attempt to prioritize the abstract can only be counter-productive.

30. It was suggested that the right to development presents the greatest possibility of incompatibility with individual human rights. For example, in the field of education, some people might feel that they have the right not to send their children to a public school but the state might insist, as an aspect of that state's development. Similarly the development of the health of the country might require vaccination of the entire population, although some might object for religious or other reasons.

The rights of peoples and state rights

31. Professor James Crawford began his presentation by pointing out that the category "rights of states" is well established in international law. So too, since 1945 at least, is the category "human rights". The category "peoples' rights", if it is to be accepted as legitimate in international law, must have a function or purpose which is distinct from each of these categories. This issue is quite separate from the question whether any particular people's rights is actually recognized in international law, and it is also quite separate from the question how the term "people" is to be defined for the purpose of any particular right. The issue is whether "peoples rights" is a legitimate category. That is a logically prior issue.

32. Two tests must be applied in assessing whether any particular right is properly described as a right of peoples capable of being recognized in international law:

(i) whether the right inheres in, or accrues by virtue of the existence of, a group or people. That is to say, it is necessary to distinguish individual human rights, including those (e.g. rights to associate) which are exercised in common with other individuals, from group rights.

(ii) whether the holder of the right, the "people", has the right against the government of the state to which it belongs. (That question can be asked, whether the "people" is the whole population of the state or merely part of it.)

The first question distinguishes group rights from individual rights. The second, which is equally important, distinguishes group rights from states rights. If the *only* entity which can complain of a violation of an asserted right is the government of the state, not a peoples' right. (This does not mean that peoples rights cannot also be violated by other states, or that the government of the state concerned does not have standing to challenge such violations by other states).

33. Applying this test to the different people's rights so far articulated in international instruments, only the rights to existence (i.e. not to be subjected to genocide), self-determination, and the associated right of peoples to permanent sovereignty over natural resources, pass the two tests. The rights of linguistic, cultural and religious minorities may perhaps also qualify. The rights to peace, development and the environment do not appear to qualify, since it is not established that other states, or the "people" in question, have international standing to complain of their violation. The category of "peoples rights" is accordingly a proper one in international law, but its content so far is limited.

Discussion

34. A participant recognized the clarity of Professor Crawford's exposition, but asked whether the concept of peoples rights required a more fundamental approach, which would step out of the restrictions of existing international law and explore new horizons. Another delegate suggested that the two criteria established by Professor Crawford were too absolute. Some rights can be exercised against one's State but there is often not much point in doing so. For example the right to peace and security is usually a right asserted against other states. With respect to minorities, some particular rights are recognized to persons belonging to them as individual rights, and only the exercise of such rights may be collective. Peoples are entitled to certain rights beyond what may be regarded as rights of States, and their rights should be safeguarded by the State, since States are ephemeral and historically may disappear, while peoples will continue.

Regional approaches to the rights of peoples

35. Under this agenda item an account of the position in various countries and regions was given by one of the participants, and there was then a brief opportunity for questions and discussion. In the time available it was not possible to deal with all the issue raised, and the comments made were, as throughout the discussion, those of the individual participants.

(1) Africa – Professor Andriamambavola

36. Professor Andriamambavola outlined the situation in Africa. When an

African speaks of individual rights, he is also very conscious of collective rights because his identity is linked to the collectivity. Therefore, there is a solidarity with the community and a commitment to support the goals of that community. A central feature of these communities is the tradition of seeking a consensus. Although divergent opinions may be expressed, ultimately, a harmonious consensus must be achieved for the benefit of the community.

37. This approach is opposed to the modern type of political system represented by the models imposed by the colonial powers. These modern forms are imposed from outside are not anchored in the roots of African society. The basic incompatibility has given rise to problems of minorities, whose tribal or ethnic characteristics prevent a sense of national identity in many states.

38. Moreover the agents of power in the State have not always acted in accordance with the interests of the people and reasons of State have been used as justifications for violations of peoples rights. OAU resolutions have confirmed or consolidated the independence and national unity of states and these serve to protect the State from international or external threats to its authority. The difficulty is that such threats tend to be defined in accordance with the perceptions of the agents of the State, who may use the State as a vehicle for oppression.

39. The African Charter is an innovation and a new approach to human rights. It represents an evolution since the Universal Declaration only refers to peoples rights incidentally, and general international law has not evolved to give full recognition to peoples rights. Hence Africans are reawakening to their values and giving more deference to their history beyond State powers, since there must be recognition of the powers of peoples to overcome the oppression of states. It is a remarkable achievement that the African Charter has come into force only five years after it was drafted .

40. The problems which arise in Africa in determining the relations between the rights of peoples and human rights arise from the traditional African of individual and collective rights; the lack of coherence between the two distinct concepts, different in character but coexisting in modern Africa; the heterogeneity of post-colonial African societies, and the parochial culture, and neo-colonial understanding, of power. In confronting these problems, there were significant responsibilities both for Africans individually, for African peoples, and for the States members of the OAU. Unesco had a responsibility to help make peoples aware of their rights and responsibilities, and to increase intellectual cooperation with a view to better understanding between peoples.

Discussion

41. A participant argued that the power of peoples to transcend State authority would only exist at times when the agents of power in the State are acting in a dramatically contradictory manner to the interests of the peoples. He noted the examples given in the paper of the end of the war in Vietnam, the resignation of President Nixon, the condemning of apartheid, the convergent movements, of the ecologists and pacifists, the struggle against underdevelopment and social inequalities. To this might be added the power of the people in peacefully overthrowing the former government of the Philippines. Professor

Andriamambavula responded that we must go beyond the stage of international law which is created by States and for States. If we remain exclusively within the state framework there are too many opportunities for the State to restrict and suffocate rather than to carry out its role as the vehicle to achieve the aspirations of the people.

42. Another participant thought it was important to distinguish regional characteristics from stages of development. Tribal influences are likely to be less influential in future, and to attempt to recognize and embody tribal influences in international law could have the effect of freezing structures and inhibiting development. Another participant responded that peoples rights did not necessarily reflect tribalism or an antistate approach, but appeared to be an attempt to articulate the legitimacy of the power of the people acting in solidarity with each other. The focus of that force could be a tribal leader, the state itself, or multinational corporations.

(2) *Canada – Professor Ratushny*

43. Professor Ratushny stressed the importance of a common perception of human rights and asked how this could be achieved in a world of ideological, economic, cultural and religious diversity. It can be counterproductive to argue whether one category of rights is more important than another, since human rights should represent a core of fundamental and universal human values which every political ideology should protect, respect and foster. All human rights have as their foundation the "inherent dignity" of all persons as expressed in the first line of the preamble to the Universal Declaration of Human Rights. Nevertheless, the particular context in question might require a different balance in the emphasis given to one class of human rights or another. A variety of historical, social, cultural and economic considerations might come into play, determining not only how human dignity may be seriously offended but also the manner in which it can best be preserved and enhanced. Thus the context must be considered in choosing the most effective approach to promote human rights.

44. In Canada there has been a progressive development tending to deal with human rights issues first in the political context, then in a legal context and, finally, on the level of constitutional principles. Individual rights were first protected by a constitutional system similar in principle to that of the United Kingdom. In 1960 a Statutory Bill of Rights was adopted and in 1982 individual rights were entrenched in the Canadian Charter. However, the collective rights of groups or minorities have always been important in Canadian history. The basic constitutional schools established the equality of the English and French languages for certain purposes. The Quebec crisis gave impetus to the entrenchment of linguistic rights in the Charter and in addition, aboriginal rights are recognised in the Charter, although they have not yet been precisely defined. The Charter also refers specifically to the preservation and enhancement of the multicultural heritage of Canadians.

45. In Canada economic, social and cultural rights are viewed primarily as reflecting the obligations of the government of a state to all of the people within that State. Although Canada has ratified the International Covenant on Economic,

Social and Political Rights, such rights are not entrenched in the Constitution. Rather they exist through universal legislative programs for such matters as public education, unemployment insurance, medical treatment and hospitalisation, old-age pensions, family allowance and others.

46. Professor Ratushny also stressed the importance of the participation of minorities in the central governmental institutions. In Canada, a massive "affirmative action" program was followed to increase the representation of French-Canadians in higher levels of the federal public service, federal agencies and Federal crown corporations. In his view, the devolution of power to minorities in particular regions of a country without central participation by them may lead to further alienation.

47. The notion of peoples rights as a separate category of human rights has not been prominent in Canada and it finds little expression in Constitution, Laws or even normal vocabulary. Nevertheless it is possible to discern an emerging reality of obligations which might be linked to a corresponding human right. There is also a focus on development, environmental issues and world peace. Often this sense of solidarity is expressed through non-governmental organizations as well as through state agencies.

(3) The Soviet Union – Professor Tishkov

48. 70 years ago, 2 November 1917, in a Declaration of Rights of Peoples of Russia we can find an attempt to formulate major people's rights as seen by Soviet power at that time in that historical situation. Among them were: a) equality and sovereignty of the peoples of Russia; b) a right of peoples to free self-determination, extending as far as separation as an independent state; c) abolition of all national and national-religious privileges and limitations; d) free development of minorities and ethnic groups inhabiting the territory of Russia. The policy of the Soviet State in this sphere of broadening and enriching the notion of "peoples rights" was and still is one of its highest priorities. The major reason for this was that goals set by the social revolution were impossible to achieve without solving the problem of peoples rights in such a multiethnic country, where more than one hundred culturally distinctive ethnic groups live. What lessons can we learn from this in many respects unique experience?

49. The right of self-determination in the USSR was basically realized in the form of building a federation or union of national republics, and in granting different forms of statehood to major ethnic groups, which were reflected in state-administrative divisions. Probably it is not a universally applicable solution, but in territories inhabited by a majority of more or less distinctive ethnic peoples, the granting of political autonomy provides more favourable conditions for social and cultural development, and for respecting the ethnic identity of the people. But in the course of development in the all-union state (federation) the situation may arise in which formerly ethnically homogeneous regions (republics in the USSR) become more and more multi-ethnic and the autochthonous population may even lose its majority status (while at the same time retaining the dominant position in government and other spheres). In this case problems of equal representation of non-autochthonous groups may arise. That kind of situation is occurring now in the USSR. It is a new challenge and it demands a search for new solution.

50. Among the people's rights the most crucial one is a right to economic and social development that constructs a material basis for equal status and cultural prosperity of the people. For many decades in the USSR, formerly underdeveloped ethnic regions (republics) received considerable help, including grants from the all-union budget (at the expense of more developed regions), in order to raise their economic status and improve social conditions. But at a certain point, when all the peoples reach approximately the same level of development and the same material standards of living, further progress may depend more and more on efficiency of labour and securing an all-union economy. This situation demands a shift in priorities to the question of how a proportionally larger contribution from each people and region can contribute to the economy of the whole state. Certain obligations become a condition for a further realization of the right to economic development and social progress.

51. The right to preserve and develop the cultural heritage and identity of the peoples in a multi-ethnic state will often require affirmative action and certain privileges in respect of those groups whose culture was previously suppressed. This applies especially in the field of education, language and also in the field of material culture. But when an equal level of education status is attained, the form which then "special measures" take may need to be changed. There may then be new priorities, such as how open a certain culture is to others, how ethnic cultures can mutually enrich each other, how they can acquire some cultural features which are common to the whole state, how ready they are to absorb the cultural achievements of modern civilization.

Discussion

52. One participant agreed that equal opportunity may not always be sufficient to ensure adequate treatment of disadvantaged persons, but it should not be forgotten that equal opportunity is still an important principle and is not necessarily excluded by affirmative action.

(4) Western Europe – Professor Murswiek

53. Individual human rights, as well as the right of peoples to self-determination including the right to existence, have a solid basis in existing international law instruments, and they are recognized world-wide as rights. Moreover they can be clearly enough defined (in terms of holder, duty-bearers and contents) to be regarded as rights in the strict sense of international law. Other suggested "rights of peoples" like the right to peace, the right to development or the right to a healthy environment, on the other hand, cannot be regarded as rights on the level of positive international law, for two reasons: there is no universal consensus about these rights, and their contents are rather vague; even holders and duty-bearers are not clearly enough defined. So they form only political concepts, political desires or moral principles. Peoples rights are not human rights, but another category of rights. They can be regarded as conditions for the best possible realization of human rights. On the other hand, the right of peoples to self-determination can hardly be realized without individual freedom of expression being given.

54. The right to self-determination does not lose its legal significance once a people has build its own state. Then, it can be invoked as a legal defence against foreign aggression and interference.

55. In Western European legal doctrine it is controversial whether the right to self-determination only applies against foreign domination and subjugation, or whether it comprises also an internal component and can be invoked against the government of the state the people concerned live in. As far as the first view is concerned, it is argued that it would make no sense, if a people could have rights against its own government, with the only exception being if the people were oppressed by a dictatorship. For a people can only articulate itself through institutions, and a democratically elected government is the institution which expresses the people's will. So there cannot be a contradiction, between the people and its government in a democracy, the holders of this opinion argue. From this point of view, Western Europe is presently not afflicted by any problems regarding the right to self-determination. The consistency of this opinion is based on the assumption that only the citizenship of a state (respectively the sum of people in a given territory wanting to form a state; for instance in the case of an anti-colonial liberation struggle) can be the holder of the right to self-determination. But according to another legal opinion, groups that are clearly definable by ethnic criteria, like language or culture, can be regarded as peoples in the sense of the right to self-determination. And such peoples might, without having the right to secede, have rights against their own democratically elected government, that can be deduced from the right to self-determination.

56. As far as other suggested rights of peoples are concerned – such as the right to a healthy environment, the right to peace and to development – a clear understanding of their possible scope and meaning is still lacking. On the traditional inter-state level, the substance of these alleged rights of peoples is generally covered by rights and duties as between states. In more cases, it may be not useful, and may even be contradictory, to postulate rights of peoples against their own governments, in so far as these peoples are represented by their governments. However, rights of peoples may be understood as a label for goods and interests of paramount importance for all peoples. Imaginative methods, in particular mechanism and procedures, must be devised which are capable of effectively contributing to uphold and protect those goods and interests.

57. Professor Valéry added that while the protection of the identities of some groups in Europe is not as serious as in some other parts of the world, there are problem areas. However there are also interesting new perspectives. For example, the Catalan question in Spain has been resolved in a very interesting way.

58. He added that it was important to consider the actual mechanisms which are created for the promotion of human rights. For example, human rights decisions not only deal with specific cases but also permit general comments on human rights situations. Regional mechanisms for protecting human rights are important if they are to be achieved in reality as well as expressed theoretically.

Discussion

59. A delegate suggested that many Western European countries are not as homogeneous as it sometimes is in Switzerland; there are indigenous peoples in

Northern European countries and there is a large population in England formed by immigration from the former colonies. The latter may not have a distinct ethnic identity but has distinct characteristics.

(5) *Asia – Professor Raichagool*

60. In approaching the problems of peoples rights, human rights and state's rights, it is crucial that they are viewed in the context of state formation. Most, if not all, states in mainland Asia are recent phenomena, i.e. around the turn of the century. The geo-political dimension of states do not, in many cases, coincide with ethnic group boundaries. We are therefore witnessing a number of claims by certain ethnic groups to enjoy the right to self-determination.

61. Most Asia states perceive a need to their own authority and interests and they often at times disregard peoples rights and human rights. The situation of these rights often leaves much to be desired.

62. Although the overall situation of human rights and peoples rights in this region is rather deplorable, some positive actions are being taken to bring about certain instruments and mechanisms to observe them. A human rights committee within the Parliament is likely to be established in Thailand in the near future. It very much hoped that organizations with such functions could also be established in other countries.

(6) *Australasia and the Pacific – Professor Crawford*

63. Professor Crawford discussed the situation in Australasia and the Pacific. Although group rights are of importance in many of these countries (especially in the context of the rights of indigenous peoples) the principal context in which there has been legal recognition of these rights has been that of indigenous or communal rights to land, which have achieved some degree of recognition in many countries. Communal rights to self-government or to autonomy have achieved little or no recognition.

64. The level of compliance with human rights standards is uneven. Only a few countries in the region are parties to the international human rights treaties, although some other countries have their own bills of rights in constitutional or legislative form.

65. The category of peoples rights has achieved little or no recognition in the region, either in national laws or in the international practice of countries in the region.

Scope of the concept of rights of peoples in international law

66. There was considerable discussion, and a measure of agreement, on the various issues listed capacity. The views expressed were based on the information and papers presented by participants, and on their assessment of the position based on their individual research. The meeting did not attempt to deal com-

prehensively with the topic, and in particular, was not concerned to formulate existing rules, let alone new rules, in this area. It was stressed that the role of Unesco is to foster intellectual co-operation and scientific discussion, and research that the elaboration of new normative instruments in the field of general human rights, where these are called for, is the function of other bodies within the UN system.

67. The agenda item was subdivided, for the purpose of discussion, into nine areas.

(1) *Rights of peoples recognized in existing universal international instruments*

68. So far only a few rights have been formulated as rights of peoples in existing universal international instruments.

These include:

(a) *The right of peoples to self-determination* (Art. 1 (1) of both Human Rights Covenants of 1966)

(b) *the right of peoples to permanent sovereignty over their natural resources* (Art 1 (2) of both Human Rights Covenants of 1966)

(c) the right of peoples, as well as of more broadly defined groups, not to be subjected to genocide: this can be regarded as seeking to guarantee to some degree, *the right of peoples and groups to existence* (Genocide Convention 1948). An implied right of peoples to existence can also be derived from the principle of self-determination.

(d) Different views were expressed on the question whether *minority rights* (as defined in Art. 27 of the Civil and Political Rights Covenant) constitute individual rights or collective rights. A number of participants referred to developments in minority rights of a collective character. One issue (common also to the rights of indigenous peoples) is the question of the right of a minority group to recognition as such by the State.

(e) Reference was also made to the limited recognition of the *rights of indigenous peoples* in ILO Convention 107, in particular their rights to ownership of and a measure of control over their traditional lands. It was noted that much criticism had been made of that Convention, and that it was in the process of revision. Developments in a number of countries, involving the recognition of the rights of indigenous peoples in a more extensive way than that provided for the Convention, were also noted.

(2) *The right to development*

69. Strongly contrasting views were presented on the question whether the right to development had been recognised as a right of peoples in existing universal international instruments. There is no doubt that the right to development is recognised as a right of peoples in Art. 22 of the African Charter of Human and Peoples Rights of 1981. On the other hand it was pointed out that General Assembly Resolution 41/128, the Declaration on the Right to Development, adopted on 4 December 1986, proclaims the right to development as «an inalien-

able human right by virtue of which every human person and all peoples are entitled to participate in, contribute to and enjoy economic, social, cultural and political development» (Art. 1). Article 2 states that «the human person is the central subject of development». This language contrasts with that in preambular paragraphs 6 and 7, which refer expressly to the rights of peoples to self-determination and to full and complete sovereignty over their natural wealth and resources.

70. According to one view, the Declaration deliberately stops short of recognising the right to development as a right of peoples, although its aim is to foster the development of peoples as well as individuals. Others argued, however, that the Declaration has to be read in the context of the broader debate about the right of peoples to development, and that it does affirm the right to development as both a human right and a right of peoples.

71. Whatever their views on this issue, it was agreed by all that the right of peoples to development should occur:

(a) with respect for their social and cultural heritage and their identity.

(b) in recognition of the need for co-operation and mutual enrichment amongst various peoples; and

(c) with the opportunity to have access to technological, social and economic achievements and to participate in decisions affecting the direction and pace of development.

(3) *Rights not, or not yet, recognized in universal international instruments*

72. A number of "rights of peoples" have been the subject of discussion but are not, or not yet, recognized as such in universal international instruments. It was not considered useful to discuss all these rights, many of which, referred to in the literature on the subject, are of an ephemeral nature. Instead it was thought desirable to focus on those rights recognised in the African Charter of Human and Peoples Rights of 1981 (which came into force in 1986), since that Charter is undoubtedly the most comprehensive instrument in the field. In addition to the rights referred to already, the African Charter recognizes the following rights as rights of peoples:

* the right to economic, social and cultural development (Art. 22);

* the right to national and international environment security (Art. 23);

* the right to a general satisfactory environment favourable to development (Art. 24).

(4) *The relationship between human rights and peoples rights*

73. It was agreed that claims based on a right of peoples could never be used as a pretext for denying to individuals their rights as defined in existing universal international instruments. Those instruments themselves define the circumstances and considerations relevant to limitations on human rights, including limitations in times of public emergency. The fact that some human rights cannot be derogated from, under Art. 5 of the International Covenant on Civil and

Political Rights, emphasized the fundamental character of these particular rights.

74. On the other hand it was stressed that, in respect of the right of self-determination, there was no conflict or tension between that established right and the human rights recognized in universal international instruments. Recognition of those human rights was also an important element in ensuring the free exercise by a people of its rights to self-determination was an important condition in securing the individual human rights of that people.

(5) The relationship between peoples rights and States rights

75. Some participants argued strongly that peoples rights was a completely separate category from states rights, and that if that category was to be accepted in international law it was necessary that those rights be held vis-a-vis the government of the State in which the people concerned lived, as well as against the governments of other States. This condition was met, for example, with respect to the right to self-determination, which is an established right of peoples in international law.

76. Other participants stressed that the right of peoples are exercised mainly in relation to other peoples and other States, which have obligations correlative to these rights. The question of the exercise of rights of peoples in relation to their own State would arise mainly for multi-national States.

(6) The definition of "people"

77. Most participants favoured a broad definition of "people", a definition extending not only to the whole population of a particular State but also to distinct peoples within the State, having their own identity. (Some participants preferred the formulation "ethnic identity", rather than "identity as a people".) It was pointed out that what constituted a "people" would be different for the purpose of different kinds of rights. The definition of a "group" in the Genocide Convention, for example, is broader than the definition of "people" for the purpose of the principle of self-determination. The term "rights of peoples" refers to a category of rights, and it is necessary to examine in the context of any particular rights who its beneficiaries are or should be.

(7) Regional perspectives

78. The accounts of regional perspectives on peoples rights, summarized in paragraphs 35-66 of this Report, make it clear just how diverse the experience of the different regions of the world is, in this context. There is a need for considerable caution in formulating peoples rights and devising ways and means for their implementation, so as to take into account the great diversity of circumstances. It may be more fruitful to concentrate on approaches within particular regions or sub-regions, as appropriate, rather than on the elaboration of new universal instruments. The African Charter is of particular significance in this respect, and the experience with peoples rights under that Charter will not doubt be important.

(8) Conditions for realizing the rights of peoples

79. Proclaiming a right does not guarantee its realization. It is necessary to focus on the political, economic, educational and social conditions, both at the national and international levels, for assuring rights, and on the ways and means for their implementation and enforcement. As far as Unesco is concerned, the participants noted the importance of research, information and education about human rights and the rights of peoples, and the role of Unesco in fostering programs in this field. In the context of implementation, it was noted that under the African Charter the African Commission on Human and Peoples Rights is given the task of promoting human and people's rights and ensuring their protection in Africa, and that there is provision for communications to that Commission from groups and individuals, as well as from States parties (Arts. 55, 56). By contrast the petition procedure under the Optional Protocol to the International Covenant on Civil and Political Rights allows only for individual petitions, and not for petitions from peoples or communities.

(9) Possible new areas for exploration

80. Some participants were of the view that there is a further dimension to the concept of peoples rights which warrants further examination. Inevitably this examination is tentative and exploratory, and the possible approaches and ideas cannot be fully elaborated in this Report.

81. A number of participants stressed that these "new perspectives" could only be considered within the framework of and in order to further the rights of individuals, in the spirit of the Universal Declaration of Human Rights.

82. According to one view, the development of new ideas such as those of "peoples rights" are not, or not only, matters relating to international law and the formal level of interstate relation. They concern the growth of a wider common consciousness between peoples of the world, exemplified, for example, by support for the work of non-governmental organizations and by popular movements against apartheid and other forms of oppression. There is, according to this view, a growing realization of a moral obligation on all people to provide mutual support to others whose rights are denied. This obligation also extends to respect for the heritage of past generations and to conserving the legacy to be passed on to future generations. These moral obligations may be primarily expressed through the vehicle of the state, of international organizations. But where the state itself is the cause of abuses of the denial of rights, it is the obligation of all peoples to express their disapproval.

83. This perspective does not diminish the legitimacy of the state as the basic organization for achieving the goals of its people, whether in development of its human and natural resources, the preservation of peace or in respect for the rights of other peoples.

84. Some participants stressed the need for the peoples and governments of developed countries to support the exercise of the rights of peoples in developing countries.

85. There were also obligations, as a correlative of the rights of peoples,

especially in this broader perspective. These include the obligation to respect the free choices made by other peoples. Given the dangers created by global and regional conflicts, and the widespread violations of rights such conflicts could cause, there was a need for balance and consideration of the rights and needs of others. Peoples rights are not intended, according to this view, to result in insular or parochial attitudes, or to increase hostility and conflict between peoples. In this broader perspective they are a vehicle towards greater accommodation and cooperation between peoples, leading to mutual enrichment, and an openness to the achievements of other civilizations and cultures. No more than individuals, peoples are not islands unto themselves. The values of particular cultures and traditions have thus to be assessed by reference to universally accepted values, especially the universal values inherent in basic human rights.

Adoption of the Report

The Report was duly adopted, subject to minor revision and editing to be carried out by the Chairman and the Rapporteur. Copies of the Report would be forwarded by the Secretariat to all participants.

Closure of the Meeting

The Chairman thanked the participants, the Secretariat, the translators, and in particular Mrs. Judy Middlebrook of the Australian National Commission of Unesco for extensive work in preparing for and assisting in the running of the meeting. These views were echoed by Mrs. O'Callaghan, speaking for the Secretary-General of Unesco. She hoped that participant would be available in future to assist with Unesco's work in the field of human and peoples rights. The meeting closed at 11.00 a.m. on Friday 28 August. ■