



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/2005/NGO/210
4 March 2005

ENGLISH AND FRENCH ONLY

COMMISSION ON HUMAN RIGHTS
Sixty-first session
Item 5 of the provisional agenda

**THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO
PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN
OCCUPATION**

**Written statement* submitted by the International Human Rights Association for
American Minorities (IHRAAM),
a non-governmental organization on the Roster**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[11 February 2005]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION

Article 1 of the United Nations Charter calls upon States to develop friendly relations among Nations, based on the respect for the Principle of Equal Rights and Self-Determination of Peoples, and to take other appropriate measures to strengthen universal peace and security.

Article 55 of the United Nations Charter underlines the significance of respect for Equal Rights and Self-Determination of Peoples for the creation of conditions of stability so necessary for peaceful and friendly relations among Nations.

The U.N. General Assembly's Declaration of 1960 categorically states that the subjection of peoples to alien subjugation, domination, and exploitation constitutes a denial of fundamental human rights, which is contrary to the Charter and it is an impediment to the promotion of world peace, cooperation and security.

The Right to Self-Determination is indisputably a norm of *jus cogens*. *Jus cogens* norms are the highest rules of international law and must be strictly obeyed at all times. Both the International Court of Justice and the Inter-American Commission on Human Rights of the Organization of American States have ruled on cases in a manner that supports the view that the Principle of Self-Determination also has the legal status of *erga omnes*. The term "erga omnes" means "flowing to all." Accordingly, *ergas omnes* obligations of a State are owed to the international community as whole: when a principle achieves the status of *erga omnes* the rest of the international community is under a mandatory duty to respect it in all circumstances in their relations with each other.

Unfortunately, when one reviews situations invoking the Principle of Self-Determination, one encounters, what one must call, the politics of avoidance: The international community, therefore, has abandoned peoples who have claim to the Principle of Self-Determination. However, it must be insisted that the international community address those situations invoking the Right to Self-Determination in the proper, legal way.

International Human Rights Association of American Minorities (IHRAAM) and the International Council for Human Rights (ICHR) sponsored the "*First International Conference on the Right to Self-Determination and the United Nations*" in Geneva in August 2000 and the "*Second International Conference on the Right to Self-Determination and the United Nations*" in August 2004. These Conferences, with a view to securing peace and security for Humanity, recognized the need to establish a body similar to the *De-Colonization Committee* but with wider mandate to explore the realization of all aspects of the Right to Self-Determination, **unanimously adopted** a resolution to establish the International Civil Society Tribunal, for which a task force has been constituted. It is evident that these Conferences acknowledged the importance of the Human Right to Self-Determination.

The people of Jammu and Kashmir have been denied their Right to Self-Determination for more than 57 years. The United Nations' interest in the situation of Kashmir began in 1947-1948, during the de-colonization process of the British Empire in South Asia. The leaders of what became Pakistan and India reached an agreement with the British that the people of Kashmir would decide their own disposition. The then Prime Minister of India, Mr. Nehru, publicly went on record as saying that the disposition of the Kashmiri people will be up to them. Due to a great deal of turmoil in the area, including a full fledged revolt in Kashmir against the British imposed Maharaja, the United Nations began to formally address Kashmir in 1948. That year, the Security Council itself adopted resolutions mandating that the final disposition of Kashmir was to be via a plebiscite to be carried out under the auspices of the United Nations.

Unfortunately, the plebiscite has still not occurred. By the mid-1950's, the Cold War deepened and the alliances in the region fell under different spheres of influence during the Cold War. The United Nations Security Council and the Commission established a plebiscite administration directly under the authority of both the President of the Security Council and the President of the Security Council Commission on India and Pakistan. However, a series of plebiscite administrators were unable to secure a situation on the ground for enabling a plebiscite to take place. The last plebiscite administrator finished his term between 1955-1956.

IHRAAM and ICHR welcome the composite dialogue currently taking place between India and Pakistan and hope that all their bilateral issues are resolved. However, on the issue of Jammu and Kashmir, it is critical to have tripartite negotiations (India, Pakistan and representatives of Jammu and Kashmir) and these negotiations must be seen to be tripartite to be effective, meaningful and enduring.

The issue of the right of the Kashmiri people to Self-Determination is in need of serious work to overcome the obstacles and hindrances which stand in the way of implementing the international legitimacy for enabling the Kashmiri people to exercise their Right to Self Determination. It is, therefore, the responsibility of the United Nations to ensure the realization of the Kashmiris Right to Self-Determination and to devise the mechanism for accomplishing the same.

IHRAAM believes that the U.N. should play its role, as there is a dire need for a new mechanism on one crucial issue of human right to Self-Determination. Indeed, this would be a step in the right direction and a step long awaited. The U.N must heed the call of the NGO's and the resolutions of the *First and Second International Conference to the Right to Self Determination*.
