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## Human Rights Council

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Human rights situations that require the Council's attention

### **Written statement\* submitted by the International Human Rights Association of 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.

[16 February 2010]

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

## **The Right to Self Determination of Unrepresented Peoples and Nations**

The Right to Self-Determination of unrepresented people and nations is as relevant today as it was ever before. With the ending of Cold War, there has been an international expansion in the desire for democracy. Halperin and Scheffer have described this expansion in the following terms:

“The democratisation process can often resolve self-determination claims by giving rise to a political system capable of protecting and accommodating groups that would otherwise be seeking changes in political arrangements or borders. But in other cases electoral democracy may not be enough.

Democracy may mean little to a minority group that is constantly outvoted. It may mean little to an indigenous people whose political culture and traditions are different from those of other groups within the state. And it may mean little to a group that feels a historical claim entitles it to greater protection (or) more political power...”

This follows that the concept of democracy and the right to self-determination are inter-related. But the words ‘self-determination’ immediately conjure up the notion of a territory seceding from another. It therefore, becomes essential to analyse the term “self-determination”.

In the aftermath of World War I, self-determination in International Law evolved into an enforceable right to freedom from colonial rule.

Bearing in mind that motivation for decolonization did not stem merely from concerns about justice but from the realisation that the instability created by peoples seeking their independence from colonial occupation could easily lead to conflict, undermine peace and security and the strategic balance between the countries of east and west.

Thus, in the Declaration on Granting of Independence to Colonial Countries and Peoples, adopted by the UN General Assembly on December 14, 1960, a first attempt was made to link the evolution of the field of human rights to the right to self-determination. The declaration begins with the words:

“The subjection of peoples to alien subjugation, domination and exploitation (i.e. the denial of self-determination) constitutes a denial of fundamental human right”

No doubt this firmly establishes “self-determination” as a legal principle only as far as it concerns people under colonial rule. The words ‘self-determination’ appears in the UN Charter as an enunciated principle – tied to the notion that “peoples have equal rights”. This was subsequently incorporated into the preambles to the International Covenant on Economics, Social and Cultural Rights and the International Covenant on Civil and Political Rights.

Although international instruments do not provide a succinct definition of the right to self-determination of peoples – the Declaration of Principles of International Law Concerning Friendly Relations and Cooperation Among States stipulates that the creation of a sovereign and independent state, the free association or integration with an independent state or the acquisition of any other freely decided political status, are all means through which a people can exercise the right to self-determination.

Strictly speaking, no perfect definition has emerged. The UN appears to have recognized three types of situations in which the right to self-determination is applicable. The first is, of course, that of colonial peoples to self-determination. Next is when a state falls under the

foreign domination of another power, as this is seen as a violation of the right to self-determination. The third situation covers racist domination and has only been applied in the South Africa situation.

Broadly speaking, this has developed a division of the concept of self-determination into two limbs. The first limb entails the right to external self-determination, i.e. the right of a people to undertake external roles such as foreign policy and defence, usually reserved for states alone, and as such, seemingly almost indistinguishable from secession. The second limb entails internal self-determination, i.e. the right of minorities to varying degrees of jurisdiction over affairs internal to the state.

The notion of internal self-determination has evolved into what seems to be an articulation of the type of rights most often demanded by national minorities. This articulation has been achieved, not so much by altering the scope or beneficiaries of the first articles of the International Covenants, but by evolution of minority rights in Customary International Law. Thus, looking at Article 1 of the ICCPR, which provides for self-determination and Article 27 of the ICCPR, which provides for minority rights, both these articles have evolved through Customary International Law. This clearly follows that demands for minority rights are demands for self-determination.

As to external self-determination, the right to secede, in practice it is confined to populations of fixed territorial entities, such as overseas colonies, forced occupation, unrepresented peoples and nations.

Article 1 of the ICCPR stipulates that “State parties.....shall promote the right in conformity with the provisions of the Charter of the United Nations.” Under this right, the ICCPR declares, “peoples freely determine their political status and freely pursue their economic, social and cultural development.”

Thus, the Declaration of Principles of International Law Concerning Friendly Relations and Cooperation Among States declares that the creation of a sovereign and independent state, or acquisition of any other freely decided political status, the free association, are all means through which a people can exercise the right to self-determination.

A clear conclusion can be drawn that self-determination grew out of the historical traditional “practices of states”. The first articles of both International Covenants and Article 27 of the ICCPR, as well as Article 55 of the UN Charter, act to codify the meanings of the right to self-determination as derived from Customary International Law.

Politically speaking, Article 1 of the ICCPR, which includes the right to secession, is available for legal support to those socio-politically stronger nations or groups that, by whatever means or for whatever reasons, are able to effectively or credibly declare themselves “peoples”, pursuant to Article 1 or as colonial territories.

Many of the current threats to international peace and security stem from the struggles of various minorities, indigenous populations, unrepresented peoples and nations to claim their right to self-determination. Wherever one looks, such claims are creating the sorts of tensions, which have a major impact on the good relations between states. Therefore, the notion of continuing process and of popular participation is especially relevant to the human right of self-determination.

With a view to secure peace and security for humanity, and acknowledging that there is a need for the establishment of a body similar to the Decolonization Committee but with a wider mandate to explore the realization of all aspects of the right to self-determination.

Therefore in the on going efforts of reconstruction of the United Nations in line with the requirements for the success of its mission, it is vital that the UN establishes a mechanism in terms of:

1. The establishment of an office of the High Commissioner for Self Determination; and
2. The establishment of a Self-Determination Commission comprised of representatives of the United Nations member states.

With the regard to the state of Jammu & Kashmir, we are yet to see an acceptable and just resolution of the long-standing issue. The United, through its resolutions, has recognized Kashmiris right to self-determination.

On 13 August 1948, for example, the UN Security Council passed a resolution which, inter alia, said:

“The Government of India and the Government of Pakistan reaffirm their wish that the future status of Jammu and Kashmir shall be determined in accordance with the will of people”.

Regrettably, the people of Kashmir have been persistently denied this right by the Government of India for the last 62 years.

The Indian leadership made unreserved commitments to the Kashmiris on this issue.

Mohandas Ghandi, on 30th October 1947, said:

“The accession was provisional upon an impartial plebiscite being taken by the Kashmiris”.

Jawahar Lal Nehru, the then Prime Minister of India, on 2nd January 1952 said:

“We have taken the issue to the United Nations and given our word of honor. We cannot go back on it. We have left the question of final solution to the people of Kashmir”.

The Government of India has attempted to legitimise its occupation by imposing a series of elections upon the people of Jammu and Kashmir. Independent sources have reported in clear terms that the people of Jammu & Kashmir overwhelmingly rejected the process.

Recently the European Union upheld the people of Kashmir’s right to self-determination in several reports. The ad hoc delegation report (2004) emphasised the need for a tri-lateral process that involved the Kashmiris if a just solution was to be found. The “Nicholson” report (2008) that the people Kashmir have the right to freely determine their political status under international law and international norms.

The right of the Kashmiri people to self-determination is enshrined in the United Nations resolutions pursuant to the UN Charter, other international documents and by the European Union.

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