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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by International Educational Development, Inc., 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 May 2011]

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

The right to self-determination and defending the will of the people**

International Educational Development, Inc. and the Association of Humanitarian Lawyers draws to the attention of the Council Article 21 of the Universal Declaration of Human Rights, which provides, in pertinent part: “The will of the people shall be the basis of the authority of government . . .”¹ This provision played a prominent role in the decolonization process and in informing the right to self-determination.

Exercising the right to self-determination and defending the true will of a people can occur a variety ways such as in periodic, democratic and fair elections; plebiscites and referendums, organized by the United Nations or some other authority; peaceful revolt; organizing national liberation movements; or a levée en masse and resort to armed conflict. Some occurrences involve an entire State; others involve a portion of a State, usually based on ethnicity or historic nationality.

There are two situations in which the United Nations promised a people a plebiscite or referendum to determine their will but which have not yet been carried out: Western Sahara and Kashmir. Regarding Western Sahara, the United Nations has actively sought conditions under which the referendum can take place, through the offices of the United Mission for the Referendum in Western Sahara (MINURSO), established in 1991 after the ceasefire between Western Sahara’s military forces and those of Morocco. However, we are profoundly troubled that progress has been very slow. The United Nations and the international community need to act with renewed resolve to ensure the right of the Sahrawi people to their referendum. Inaction or delay will not nullify their right, but will only prolong their misery.

We are equally troubled by the failure of the United Nations to fulfil its promises to the Kashmiri people. The United Nations Military Observer Group for India and Pakistan (UNMOGIP) was established in 1949 as a result of the clashes between India and Pakistan and the actions of Kashmiri militias. The Security Council authorized a plebiscite to determine the will of the Kashmiri people as to their governance. Five United Nations plebiscite administrators were unable to achieve sufficient stability under which to carry out the vote. Since the mid-1950s there has not even been a plebiscite administrator. While India and Pakistan have held talks periodically about the status of Kashmir, most of these take place without the active participation of the Kashmiri people and their leadership. The major last uprising began in the early 1990s and the Kashmiri people formed various militias. Most of the militias have now been dismantled in favor of the use of peaceful means to achieve the plebiscite. However, recent peaceful demonstrations, primarily by Kashmiri youth, have been met with tanks and gun fire by the Indian military forces in Indian-administered Jammu and Kashmir. After resisting Indian rule since 1948, it should be patently clear to the international community that the Kashmiri people will never acquiesce to rule by India, and it must act accordingly. At time of writing, India and Pakistan are again discussing the issue, but again, without the voice of the people whose rights are at stake. In our view, this is completely against the fundamental elements of the right to self-determination. We urge the United Nations to address this situation with renewed resolve. As a minimum, the Council should urge the Secretary-General to appoint

** The Association of Humanitarian Lawyers, an NGO without consultative status, also shares the views expressed in this statement.

¹ This article responds to the third preambular paragraph of the Declaration that provides for the right to rebel against tyranny and oppression.

a plebiscite administrator as soon as possible. Recent polls have indicated as many as 90% of Kashmiri people want complete independence, and a plebiscite administrator may be able to validate informally such results to further the formal plebiscite.

In our view, a major impediment to resolving many of these situations is that the Human Rights Council devalued the right to self-determination, keeping only the issue of the use of mercenaries alive and well on its agenda. The last significant United Nations studies on self-determination were issued 31 years ago. The absence of the impact that the right to self-determination can bring to discussion of serious problems is used to buttress an extreme version of State sovereignty that provides no remedy for seriously abused peoples. While especially true in situations involving ethnic nationalities, it also applies in situations where particular governments have maintained power for far too long by severely restricting opposition parties or even cancelling elections. In these cases, we also consider that the right to self-determination arises as the will of the people is not the basis of authority. We urge the Council to restore the impact of the right to self-determination to its debates and to its aim of protecting human rights. In our view, considering the high placement of the right in international law as a norm of jus cogens, we think the Council should appoint a Special Rapporteur on the right to self-determination and defending the will of the people and provide this topic with its own agenda item.
