



## General Assembly

Distr.  
GENERAL

A/HRC/9/NGO/51  
4 September 2008

ENGLISH ONLY

HUMAN RIGHTS COUNCIL  
Ninth session  
Agenda item 3

### **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. (IED),  
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.

[25 September 2008]

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

## **Self-determination<sup>1</sup>**

1. The Human Rights Council has been repeatedly apprised of situations in which armed conflicts or other serious unrest affecting a particular group implicates the principle of self-determination and that, in our view, will not be resolved without the realization of self-determination by the affected people.
2. In spite of the many statements by rapporteurs, member and non-member States, non-non-governmental organizations and others regarding these armed conflicts, neither the Council nor the international community has responded in a cohesive, coherent fashion. Rather, a State may accept the right of self-determination of one people, for example the Kosovans, yet deny it to Tamils, Kurds or South Ossetians. The Council (and the Commission before it) rightly addresses some serious situations of self-determination wars while wrongly ignoring others equally bad if not worse. The Council and some States have also ignored Security Council Resolutions and even judicial opinions of the International Court of Justice or other international or regional tribunals relating to some conflicts, picking and choosing to align with some groups and abandoning others completely.
3. Usually these choices are made based purely on geophysical interests of third-party States to ensure a particular outcome, with little or no regards to the elements of self-determination, the application of humanitarian law, the plight of the affected people, or even in resolving the situation.<sup>2</sup> The 5-part classic elements of the legal test for self-determination are clearly and strongly met in many of these situations: the affected people are (1) a distinct people; and have (2) an identifiable historic land; (3) a pre-colonial or pre-occupation self-governance in that land; (4) the will for self-determination and (5) the capacity for self rule. By law, the international community has an imperative duty to act in support of the affected groups. Further, both with and absent a strong “elements” showing, there are clearly situations where racist policies or regular and severe humanitarian and human rights law are occurring against a group that leads to the obvious conclusion that there is no way to save that group from annihilation if it remains under the control of the oppressor group. Even in these most extreme of situations, States and the Council still act from geopolitical interests and with almost total incoherence: invoking the mantra of territorial integrity (that, of course, does not apply when a State in question does not have the legal right to the territory at issue) in some but not others at will. Obviously, the issue of “terrorist versus freedom fighter” exasperates the situation, and has been a key reason why the international community cannot come to an agreement on the definition of international terrorism. The incoherence has also played a major role in the near demise of humanitarian law.
5. Even with long histories of international inaction, these situations do not just resolve themselves. While there is often a possibility of national reconciliation in situations of civil war where ethnic strife has not been a factor, there is realistically no chance of effective national reconciliation that fully respects the rights of all when a people with the right to self-determination -- whether by application of the elements or because of serious and long-time oppression -- especially when a people have used force to realize it. Even if

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<sup>1</sup> The Association of Humanitarian Lawyers also shares the views expressed in this statement.

<sup>2</sup> We view that the actions of certain States in allowing the Kashmir situation to continue for so long is part of their plan, preferring prolonged conflict to a just resolution.

an affected party were to “lose” in a conflict, the international community cannot expect that they will submit to the same oppression and tyranny by the other group[s] that led them to resist in the first place and that has already cost them dearly. The conflict, as has been for example repeatedly shown in regards to Kashmir, will just reemerge at a later date. It is unreasonable, for example, to ever expect the Tamils, who have faced massacres and genocidal policies for years, to quietly submit and bury their dreams. In like fashion, even with their weaker “elements” test and a relatively shorter and milder period of oppression, it is unreasonable to assume that the Kosovan people will ever accept Serbian rule. In these situations recognizing the affected groups claim is the only practical solution in terms of saving lives. Further, in most cases, the States involved in these conflicts have other pressing issues that are unaddressed due to the high cost of military operations.

6. In situations where the United Nations has already acted to establish referenda to assess the will of the people, all States must act in a way to allow these to occur. At present there are several unresolved situations, including Kashmir and Western Sahara, awaiting this showing of the will of the people. Other situations, perhaps including South Ossetia and Abkhazia, might benefit by showing the international community the true wishes of the people in question.

7. The Advisory Committee addressed the situation of self-determination with a very modest proposal set out in A/HRC/AC/2008/1/L.18. We note that there has been no thematic work on the issue of self-determination since the reports of Hector Gross Espiell (Sales No. E.79.XIV.5) and Aurelio Cristescu (Sales No. E.80.XIV.3) nearly 30 years ago. In our view, the steady erosion of the issue of the right to self-determination to the point where it (along with humanitarian law) is near extinction, is in part due to the lapse of time since these two reports as well as by the failure of the Council to maintain a separate agenda item for it.<sup>3</sup> While clearly some situations, including those mentioned in this statement, cannot await for Advisory Council action should the Council request it, the Council could ask the Advisory Committee to undertake work in this area. Perhaps as an antecedent to that, the Council might request the High Commissioner to hold a seminar on the issue, seeking to ascertain those areas of the law of self-determination that are less settled in international law (such as in the context of the right to development) that could usefully benefit from the Committee’s work.

8. Due to the pressing situations in a number of regions invoking the right to self-determination, we urge the Council to hold a special session on this topic, perhaps leading to the establishment of a Council procedure on self-determination. A mandate holder on self-determination could not only contribute to resolving some of these conflicts, but could also meaningfully contribute to the work of the Secretary-General’s Special Advisors Deng (genocide) and Egeland (conflicts).

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<sup>3</sup> We were initially hopeful that its inclusion in the general human rights item (item 3) would be sufficient, but it has clearly been buried in a vast, over-burdened item.