THE QUESTION OF SELF-DETERMINATION
THE CASES OF EAST TIMOR, TIBET
AND WESTERN SAHARA

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INTRODUCTION TO THE WORK OF THE CONFERENCE

At the initiative of the leaders of Tibet, East Timor and Western Sahara, a conference on the subject of self-determination took place in Geneva during the 52nd session of the UN Commission on Human Rights. Both Tibet and East Timor are members of the Unrepresented Nations and Peoples Organization (UNPO), and at their request UNPO coordinated the organization of this event. This corresponds with UNPOs goal to inform the international community on Member situations as they see it. The conference is part of UNPOs UN Participation Program which comprises activities that are aimed at improving effective representation by UNPO Members of their people and their concerns at the United Nations.

The conference on self-determination was not primarily intended to address the theoretical questions related to this issue. Rather, it was intended to look at three prominent situations, all of which center around the right to self-determination, that have remained unsolved for several decades, and to analyse the issues and problems in particular as they relate to UN action. The cases of East Timor, Tibet and Western Sahara are very different in many ways. The histories of the issues and the present dynamics of the respective self-determination movements are different and the international response to the claims differ. Yet all three cases concern important movements that have achieved a degree of recognition; all three have been, at different times, considered at the United Nations. All three involve issues of human rights, including the practice and consequences of population transfer, and all movements have presented clear and viable peace plans which have gained considerable international support.

The United Nations General Assembly has declared this to be the decade for the acceleration of the process of de-colonisation. In this context, the United Nations Decolonisation Committee convened a special seminar on the subject of decolonisation and self-determination in Trinidad and Tobago in July 1995, in which UNPO participated. The organisers of the conference on self-determination built on the results of the Decolonisation Committee's seminars, and took into account the resolutions and decisions of the UN General Assembly, the UN Security Council and the UN Commission on Human Rights on East Timor, Tibet and Western Sahara.

The conference examined the basis and meaning of the right to self-determination as it applies specifically to these three concrete situations. It explored the relationship between human rights violations and self-determination, and assessed the impact of population transfer policies on the exercise of self-determination. It also looked at the proposals and prospects for responding to the claims for self-determination of East Timor, Tibet and Western Sahara and for resolving the conflicts that exist in those areas today.

The principal topics addressed at the conference - self-determination and human rights - were on the agenda of the 52nd session of the UN Commission on Human Rights, along with other topics such as population transfer and conflict prevention and resolution. But these are also issues of major importance for the UN Members at a time when the performance of the UN is being evaluated in connection with that organisation's 50th anniversary, and when various ideas are being proposed for UN reform, some of which relate to decolonisation and self-determination.
Introduction to the Concept of Self-determination

Essentially, the right to self-determination is the right of peoples to determine their own destiny. In particular, the right allows a people to choose its own political status and to determine its own form of economic, cultural and social development, free of outside interference. Exercise of this right can result in a variety of different outcomes ranging from political independence to forms of autonomy or association to full integration within a state. The importance lies in the right of choice, so that the outcome of a people's choice should not affect the existence of the right to make a choice. In practice, the possible outcome of an exercise of self-determination will often determine the attitude of governments towards the actual claim by a people or nation. Thus, while claims to cultural autonomy may be more readily recognized by states, claims to independence are more likely to be rejected by them. Nevertheless, the right to self-determination is recognised in international law as a right of process (not of outcome) belonging to peoples and not to states or governments.

It is important to stress, in order to correct a relatively common misunderstanding, that self-determination has never simply meant absolute independence. Most importantly, it has meant the free choice of peoples to determine their status. This right remains an ongoing choice of the people as to their governance, and their economic, social and cultural development. It is a constant entitlement. It must also be emphasised that democracy in itself does not necessarily satisfy the requirements for the implementation of self-determination although democracy and aspects of self-determination are closely linked. In the case where democracy is defined as the rule of the majority and the people claiming the right to self-determination constitutes a numerical minority in the state in question, a democratic system, in and of itself, does not necessarily respond to the needs of the minority peoples.

Self-determination in an Historical Context

The principle of self-determination is not a 20th-century construct. Its historical roots stretch back to the first stirrings of democracy in classical Greece. In fact, the right of self-determination is inseparable from democracy. For if democracy includes the right of the people to choose by whom they are to be governed and under what political system or ideology, then surely it must of necessity include the right to choose whether to be ruled by one's own leaders, belonging to the same people or territory or by external leaders, belonging to another people or territory, often with traditions, cultures and values that are different. A people should have the opportunity to elect its own leaders, those it trusts, rather than being compelled to accept leaders and systems chosen by a different, dominant and often more numerous people to suit their own interests.

The principles underlying self-determination were embraced by the foremost legal and political theorists of Europe's Enlightenment era. In 1690, John Locke, for example, noted that people have the right "to have such a legislature over them as the majority should approve and flatly acquiesce in." Echoing Locke, jean Jacques Rousseau admonished government officials against wanton sovereignty manipulations stating that it "is making fools of people to tell them seriously that one can at one's pleasure transfer peoples from master to master, like herds of cattle, without consulting their wishes." Similarly, in his seminal treatise On Representative Government, John Stuart Mill

2 Jean Jacques Rousseau, Political Writings, edited by C. Vaughn. 1915 pp 340-341
emphasized the fundamental nature of any system of government, writing: "One hardly knows what any division of the human race should be free to do, if not to determine within which of the various collective bodies of human beings they choose to associate themselves."  

In the 20th century, U.S. President Woodrow Wilson and a number of his contemporaries explicitly embraced "self-determination," establishing it as the guiding principle for reconstructing Europe in the aftermath of World War I. Wilson confirmed that: "Every people has a right to choose the sovereignty under which they shall live." U.S. President Franklin Roosevelt and British Prime Minister Winston Churchill further affirmed the primacy of this principle when they incorporated it into the 1941 Atlantic Charter. The Charter declared the desire of the signatories "to see no territorial changes that do not accord with the freely expressed wishes of all people to choose the form of government under which they will live."  

The principle of self-determination makes its next appearance in the 1944 Dumbarton Oaks proposals, which evolved into the current United Nations Charter. It is prominently included in Article I of the UN Charter in the section articulating the purpose of the institution as the development of friendly relations among nations "based on respect for the principle of equal rights and self-determination of peoples." Since elevated to status as a legal "right," it now prominently figures in a number of other UN instruments.

The Legal Basis for Self-determination

The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Social, Economic and Cultural Rights (ICSECR) share with the Covenant of the Unrepresented Nations and Peoples Organisation the following key phrase:

All peoples have a right to self-determination; by virtue of that right they are free to determine their political status and freely pursue their economic, social and cultural development.

In international law, however, there has been a lack of agreement about the exact meaning, possible application and potential beneficiaries of this right. This is reflected in the gulf between the statist view of self-determination and the perhaps more radical view of the people's seeking self-determination. At one end of the spectrum are those who regard self-determination simply as the right of states to act without external interference. At the other extreme is the belief that each ethnic, linguistic, religious or nationalistic group has the right to secede from the defined state of which it is commonly accepted as a part.

The right to self-determination entered international law, formally at least, in the United Nations Charter. Article 1(2) states:

The purposes of the United Nations are to develop friendly relations among nations based on the respect of the principle of equal rights and the self-determination of peoples...

Using similar language, article 55 enjoins each member state of the United Nations to create stability and well-being "based on respect for the principle of equal rights and self-determination of peoples".

By 960, with the adoption of the Declaration on the Granting of Independence to Colonial Peoples, (GA Res 1514), the principle was elevated to the position of an unconditional right. This declaration and its sister declaration, the Declaration Concerning the Implementation of the Right to Self-determination (GA Res 1541, 1960), affirmed the right to immediate self-determination for peoples under "alien, colonial or oppressive domination" and called for a "speedy and unconditional end to colonialism in all its manifestations". The Declaration on the Granting of Independence marks a significant shift in the law of self-determination. For the first time, in the case of colonial entities, it stressed that "inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence". The contrast with the paternalistic overtones present in the trusteeship scheme could hardly have been more marked.

Meanwhile, the Declaration Concerning the Implementation of the Right to Self-determination outlined three methods by which the self-determination of non-self-governing territories could be achieved. These were independence, free association and integration; the standards of democratic participation required for the latter pair were much higher than those required for independence. The General Assembly had made it clear that the favoured outcome for a process of decolonisation was to be independence.

In 1966, the International Covenants (ICCPR and ICESCR) were adopted and opened for signature, ratification and accession. As previously mentioned, common Articles 1(z) state that "All peoples have the right to self-determination...". Articles r(a) note that self-determination shall include a right to dispose of wealth and resources (economic self-determination), while Articles I(3) oblige state parties to the Covenants "to promote the realisation of the right to self-determination". The International Covenants do not appear to limit the right to self-determination to peoples classified as non-self-governing by the United Nations. The implication is that the right belongs to "all peoples" and must be respected by all states, not only those who may be in a trust relationship with a dependent people.

State practice has commonly accepted the legal interpretation that the right to self-determination belongs primarily to peoples under colonial or alien rule. The principles applicability to classic colonial cases (e.g., India, Nigeria, Mozambique and Algeria) was largely unquestioned in the post World War II period and indeed close to a billion people were liberated from colonial rule through its implementation during this period. The controversy arises particularly when applying to peoples other than those in classical colonial situations. The claims of the Kurds, Baltic States and Eritreans were met with mixed reactions and insufficient support. Bangladesh did obtain international recognition, but only after it achieved independence by force, and with the help of its neighbour India. The Palestinian people, on the other hand, while still struggling toward a workable and acceptable autonomy, have been recognised as possessing the "inalienable" right to self-determination and independence. Thus, under state practice, the right to self-determination was not entirely limited to classical colonial situations, despite the reluctance of states to apply it beyond that context.

The UN, through various instruments, hold that the right of self-determination is a prerequisite to the enjoyment of all other fundamental human rights. In Vienna, in 1993, the United Nations World Conference on Human Rights affirmed in the final Declaration, adopted unanimously by all states, that the right to self-determination is part of the international law of human rights:
All peoples have the right of self-determination. By virtue of that right they freely determine their political status, and freely pursue their economic, social and cultural development. Taking into account the particular situation of peoples under colonial or other forms of alien domination of foreign occupation, the World Conference on Human Rights recognises the right of peoples to take any legitimate action, in accordance with the Charter of the United Nations, to realise their inalienable right to self-determination. The World Conference on Human Rights considers the denial of the right to self-determination as a violation of human rights and underlines the importance of the effective realisation of this right.

In accordance with the Declaration on Principles of International Law concerning Friendly Relations and Co-operation Among States in accordance with the Charter of the United Nations, this shall not be construed as authorising or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent states conducting themselves in compliance with the principle of equal rights and self-determination and thus possessed of a government representing the whole people belonging to the territory without distinction of any kind [emphasis added].

Today, self-determination has been successfully claimed by the peoples of the Baltic states of Estonia, Latvia and Lithuania, by other nations under the former Soviet Union, by peoples of the former Yugoslavia and by Eritrea, Slovakia, and Quebec. None of these are cases of classical decolonisation, and the accepted criteria for applicability of the right to self-determination must be recognised to be much broader than those applying to colonial situations.
SUMMARY OF THE CONFERENCE

The seven speakers who participated in the seminar on the question of self-determination approached the issue from vastly different points along a broad spectrum. From the juridical to the spiritual, from the historical situation to the current status, from the sublime to the passionate - much was brought together in the voices of a few. The focus of the seminar was on the situations of Tibet, East Timor and Western Sahara - as dear examples of the abrogation of the right to self-determination as exist in the world. These specific cases were used as an intellectual catalyst by which to promote a larger discussion of the question of self-determination.

While the speakers each approached the issue in different ways, in relation to their professional and personal backgrounds, several general conclusions were identified and these gave the seminar its particular character and strength.

On the Nature of Self-determination

General Aspects

The speakers agreed on the basic definition of self-determination: the right to self-determination entitles a people to choose its political allegiance and status, to influence the political order under which it lives, and to preserve its cultural, ethnic, historical or territorial identity. As each of them pointed out, this principle has been accepted as a right as part of international law by the community of nations, and is fundamental to the UN human rights agenda.

They emphasized that the United Nations Charter and International Covenants on Human Rights did not create the human right to self-determination. These documents only expressed it and declared what already existed. There has always been a right to freedom, and there shall always be a right to freedom which should therefore be regarded as an inherent and natural right.

The very persistent but false notion that the implementation of the right to self-determination must lead to political independence was roundly rejected. The speakers agreed, however, that this is one of the options that must be available to the people whose right of self-determination is being claimed. Whatever the outcome of the implementation process, such outcome should be the result of a clear, free and well-informed choice through a democratic process. It was further recognised that the limitation on the exercise of the right to self-determination must also be studied. As stated in a number of UN instruments, the right to self-determination, when exercised, must not result in the territorial dismemberment of existing states. However, it was emphasized that the exercise of the right of a people to self-determination, in itself, never caused the fragmentation of a country. This has largely been the result of artificial arrangements imposed on the people; the struggle for the right of self-determination being only one catalysing factor in territorial or political fragmentation. In the case of Tibet, it was pointed out that in the Five-Point Peace Plan of H.H. the Dalai Lama, he indicates that if the Chinese government will allow for more freedom so that the Tibetan people can practice their culture and religion in peace, then His Holiness will try to persuade the people not to totally break away from China.

The basis of the problem, as described by the representatives of Tibet, East Timor and Western Sahara, is that all over the world peoples seek desperately to secure their survival as a people with a language and a culture and the protection of their land and
environment. Only when governments do not meet these basic demands has there been recourse to struggle and has there been an inevitable escalation of the demands. States may have very legitimate concerns in preserving "national unity and territorial integrity", however, these can only be honoured if those in power are sensitive to the basic demands and aspirations of the many indigenous peoples and nationalities that make up the country. As Jose Ramos Horta pointed out, brute force might silence and keep dormant the dreams and aspirations of a people but the anger simmering for decades will inevitably blow open and break up the country.

Although the speakers focused on various specific aspects of the cases of Tibet, East Timor and Western Sahara, some aspects of which are very similar, in fact almost identical, to the extent of the physical/environmental destruction, population transfer, military repression, human rights violations and the religious element in the resistance. This in itself is an important conclusion: there are some elements in legitimate self-determination struggles that one sees occurring again and again in terms of the way in which governments preventing the exercise of self-determination act to crush it. It was suggested that these issues should therefore be addressed thematically and not on only a case by case basis.

Philosophical Aspects

Ajahn Sulak Sivaraksa addressed the question of self-determination from a human and philosophical perspective. In his view, the acceptance of the right to self-determination in Tibet, East Timor and Western Sahara, as elsewhere, is very much linked to five types of possessiveness. These attitudes of possessiveness should be eradicated in order to achieve true human development. If people, notably the aggressors, could develop their attitude to be free of possessiveness, they would understand that self-determination of peoples are as basic as any other human rights.

At the same time, J.M. Mukhi pointed out that there is a "god-given" right to secede. A people remain in political association, whether in a confederation, a federation or a unitary state, by consent and under certain basic assumptions. When these assumptions are belied, when they are subjected to tyranny, the people are entitled to break free.

It is often claimed that the struggle for democracy and human rights is an invention of the West. As several speakers explained, however, both in Islam and various Asian philosophies one finds the right of peoples to be free. There can be no doubt that human rights are universal and inseparable. This means that if there is a conflict between universal human rights and regional particularities, the former must prevail over the latter.

Legal Aspects

In the 1960s and 1970s, the general acceptance of the right to self-determination was reinforced when it acquired a legal content. Most legal instruments developed in these decades are a reflection of what Professor Richard Falk calls "the minimalist conception of self-determination." This notion provides that all peoples under colonial rule are entitled to exercise the right of self-determination. In addition, in the pursuit of this right, a people is entitled to receive support from the international community including, in extreme instances, assistance in armed struggle. Today, these principles have a much broader application, and a "maximalist conception" of self-determination has largely replaced the earlier concept.

In each of the three cases, aspects of international law are being trampled upon. Not only because the right to self-determination is not allowed to be implemented and because the people are subjected to systematic violations of their human rights, but also
because the three peoples were subjugated by the use of force. While international law imposes a duty on states not to recognise situations created by the use of force, again, geopolitical and economic interests are dearly dictating the response of the international community.

The Role of the United Nations

When looking at the role of the UN in relation to the right to self-determination, it is dear that one of its greatest achievements has been the implementation of the right to self-determination within the drive for decolonization. The speakers agreed that the cases of Tibet, East Timor and Western Sahara are three very notable failures of the UN. According to Richard Falk, the source of this failure should not be sought in specific political, moral or legal dimensions of the cases. Falk suggests that together, as part of one organic reality, these factors constitute the basis of each claim of self-determination.

The source of the failure can be found in the unfavourable geopolitical context of the three cases. This view was reinforced by the historical insight given by the representatives from Tibet, East Timor and Western Sahara. The essence of the geopolitical obstacles are that each of the three peoples are, or have been, the target of expansionist territorial ambitions of important neighbouring states, in circumstances where no other state was and is willing to challenge in a serious manner this expansionism. This makes the three cases very dear examples of situations where geopolitical concerns condition the fulfillment of rights vested under international law.

With respect to the implementation of the right of self-determination, different suggestions have been made. In this regard it might be useful to look at the case of Western Sahara, since a method, at least in theory, has been developed to implement the right to self-determination. The prescribed method is a referendum, agreed to by the United Nations, and which is supposed to be implemented under supervision of the United Nations. So one can say that in the case of Western Sahara, the right to self-determination is not being contested, at least not officially nor seriously. Also, the way in which this right should be implemented - a referendum under UN supervision - is officially not being contested either. However, there has been a systematic obstruction of the implementation of the right and the method by the government of Morocco.

On the Cases of Tibet, East Timor and Western Sahara

In the case of Tibet, the speakers dearly agreed that Tibetans are indisputably a people: they possess a distinct language, religion, culture, traditions and customs, a history as a separate state, and a well defined territory. Tibetans also meet all subjective criteria such as shared preferences, values and common destiny. According to Mr. Mukhi, Professor Falk and Mr. Lodi Gyari, Tibet was in the most relevant respects an independent country when it was invaded by China in 1949. Since then, Tibet has been under "alien domination", whereas the Tibetan Government in Exile since that time has been the sole legitimate representative of the Tibetan people's will and aspirations. It has been dearly demonstrated that China has instituted deliberate policies, including population transfer, intended to destroy the Tibetans as a distinct people with their own national and cultural heritage. In all of these instances, international law recognizes a right to self-determination, and there can be no doubt that Tibetans are a people for whom the principle of self-determination applies. This has also been recognised by the
Notwithstanding these resolutions, the international community has refrained, and still refrains, from taking any effective action against China. This can be explained by geopolitics and economic interests: Tibet's remote geographical location and foreign economic interests with China makes it politically inopportune for many governments to take a tough stand with China. The West's actions with regard to Hong Kong and Taiwan show that for political and economic reasons some states have given a priority to pressure China on these unresolved issues.

With regard to the cases of East Timor and Western Sahara, it became clear during the discussion that they have certain similarities. While the annexation of Tibet can be seen as "Third World" colonialism, both East Timor and Western Sahara were subjected to "salt-water" colonialism by Portugal and Spain, before they were illegally annexed by Indonesia and Morocco. For this reason they are both on the agenda of the UN Decolonization Committee. In both cases the UN has recognised its responsibility and has actively been involved in the different negotiations. This does not mean, however, that the UN has in these cases been much more effective than in the case of Tibet.

International law has recognised that the people of a non-self-governing territory possess the right to self-determination. The Indonesian invasion and occupation of East Timor, therefore, violated two fundamental norms of international law: it deprived East Timor of its right to self-determination and it constituted an act of aggression. The same applies to Western Sahara: the Moroccan invasion and occupation of Western Sahara deprived the Saharawi people of its right to self-determination and also constituted an act of aggression. In both cases the aggressors have prevented the full decolonization of the territories in question.

The UN General Assembly and Security Council have both recognised the right to self-determination of the Timorese People. UN Resolutions have called upon Indonesia to withdraw its forces and have rejected the claim that East Timor has been integrated into Indonesia, declaring that the people have not been able to exercise freely their right to self-determination.

The UN General Assembly recognised the inalienable right to self-determination of Western Sahara in 1965, and decided upon a referendum as the appropriate method to implement this right. In 1979, it recognised the Polisario Front as the accepted representative of the people of Western Sahara. The General Assembly has repeatedly reaffirmed the responsibility of the United Nations to ameliorate this situation and has offered the people of Western Sahara an international guarantee for the respect of their will. This position has been reinforced by the international Court of justice which has reaffirmed through an Advisory Opinion (3 January 1975), that the people of Western Sahara possess the requisite factors to invoke their right to self-determination.

Professor Falk pointed out that Indonesia has in fact accepted the application of the principle of self-determination to the territory of East Timor. It has even entered into negotiations about its application. A similar action applies to Western Sahara: Morocco has accepted the application of the principle of self-determination to the territory of Western Sahara. It entered into negotiations with the Polisario Front regarding the implementation of the referendum, which culminated in the Peace Plan of 1991. Whereas the UN has played a more active role in the case of Western Sahara than in the case of
East Timor - not in the least by sending MINURSO to the territory - it has been unwilling to take effective action against Morocco in order to force it to comply with the agreement on the referendum. For more than 30 years now, the implementation of the referendum has been obstructed, first by Spain and since 1975 by Morocco.

**On the Failures of the International Community**

The speakers agreed that, as in the case of Tibet, geopolitics have caused the failure, thus far, of efforts to solve the problems associated with claims for self-determination. At the time of the invasion of East Timor and Western Sahara, the United States and other Western countries considered Indonesia and Morocco to be important allies against communism and, as such, vital to maintain undisturbed relations in order to keep the balance of power. The economic and strategic importance of Indonesia and Morocco remains such that they have been granted the continuing support of the United States and many other countries. This inability or refusal of major powers, especially from the West, to insist upon the active application of the right to self-determination when its exercise is geopolitically inconvenient or seems to interfere in their economic interests, has produced and deepened the tragedies of the Timorese, Saharawi and Tibetan people.

Kasur Lodi Gyari commented during the conference that the issue is not whether the three nations possess the right of self-determination, but how can the international community overcome self-imposed limitations on their implementation. Unless there is enough international pressure even Tibet could be forced into armed resistance. Mr. Gyari states that if the international community keeps ignoring Tibet's problems, these problems will not go away, but will come back much stronger. Professor Falk's comparison between Tibet and Kuwait is worth noting: when President Bush spoke out to justify US military intervention in the Gulf, he said that the US had to take action, because there were three UN Resolutions regarding the illegitimacy of the Iraqi annexation of Kuwait. It is well to note that there are also three UN Resolutions regarding Tibet, and thus the question of implementation of those resolutions hangs in the air.

While foreign governments can often be unsupportive of legitimate efforts of peoples to implement their right to self-determination, Professor Falk noted that even authoritarian governments care about their reputations. He believes that this is exactly the reason why Morocco pretends to implement self-determination, while it in fact obstructs it: it has adopted a very ingenious way of dealing with the situation precisely because it wants to be seen as being legitimate. Falk goes on to say that a way to activate this process is to emphasize the illegitimacy of the existing state of affairs. In the case of Tibet, the international activities of His Holiness the Dalai Lama were instrumental in making visible the illegitimacy of the Chinese occupation. Visibility is a precondition for seeking a more legitimate process.
CONCLUSIONS AND RECOMMENDATIONS

1. The claims to the right of self-determination by East Timor, Tibet and Western Sahara fall within any conception of the right of self-determination in international law and are not subject to legitimate controversy. They are dear and unambiguous from a moral, political and legal perspective.

2. The failure of the international community to vindicate the dear rights of the peoples of East Timor, Tibet and Western Sahara is not to be blamed on the incoherence of the concept of the right to self-determination. The failure is a political failure.

3. Self-determination is an accepted and established human right and is fundamental to all other rights. It is the most elementary responsibility of the current governments of Indonesia, China and Morocco to comply with their human rights obligations including those related to claims of self-determination.

4. It is the responsibility of the international community of governments, and indeed of individuals, to secure respect for these rights. To this end all governing powers should take adequate steps.

5. It is the first duty of states to express their unequivocal condemnation of aggression, genocide and violations of human rights on the part of Indonesia, China and Morocco in East Timor, Tibet and Western Sahara. States care about their reputations for legitimacy, therefore, it is extremely important and effective for the international community, including NGOs and activists, to emphasize the illegitimacy of the existing regimes in these territories. In this regard, international law can be used as an instrument with which to highlight the illegitimacy of the status quo.

6. The international community ought to apply sanctions by way of boycotts or embargoes and thereby prevent their nationals, corporations and agencies from abetting and assisting in the destruction of the Timorese, Tibetan and Saharawi people and the degradation of their environment.

7. If acceptable by the peoples under oppression, a process of accommodation and reconciliation should be encouraged which acknowledges the inability to achieve complete self-determination in the immediate future. International law provides not only for the exercise of self-determination as an outcome, but also provides the basis for a process of its realization which can lead over time to the desired outcome. It is noted that this sense of realism is reflected in the Timorese Peace Initiative (1992), the Five Point Peace Plan of H.H. the Dalai Lama (1989) and the 1991 Peace Plan for Western Sahara.

8. The international community should assist in the promotion and organisation of referenda, under United Nations auspices, which specifically address claims of self-determination. An additional idea is to work for the establishment of a court of arbitration which is constituted to examine claims of self-determination and to provide binding judgments when the claims are found to be legitimate and viable. Other options, albeit secondary in desirability and efficacy, could be a Human Rights Council reporting to the General Assembly of the United Nations and/or an International Court of Human Rights, a High Commissioner for Self-Determination, and re-organised Decolonisation Committee.
9. New efforts should be made with regard to the creation of Zones of Peace: demilitarized areas under international guarantees, free of nuclear wastes, and constituted as ecologically sound territories. The Peace Plans of all three cases under consideration reflect these policies as being desirable and appropriate.
I feel privileged to be part of this seminar and I find it especially appropriate both symbolically and substantitavely that we are meeting in the humanitarian headquarters of the United Nations. We are meeting to discuss three of the greatest humanitarian failures of this organisation. At the very least our discussion should help create an awareness of the gap between the commitments of the UN Charter and the performance of the organization in relation to these very significant issues. My task is to address the international law aspects of self-determination as it applies to Tibet, Western Sahara and East Timor. It is a task that is in one sense very easy and in another sense very difficult. It is very easy in the sense that these three claims of self-determination fall within what I call the "minimalist conception" of self-determination in international law and are not subject to legitimate controversy.

There are two types of issues that are raised by claims of self-determination. Some are clear and unambiguous from a moral, political and legal perspective. Others are more difficult, especially legally. Chechenia might be an example of a claim involving self-determination that has a certain legal difficulty in gaining the same kind of international acknowledgement that the three issues that are before us today have, partly because of the continuing political strength of ideas of territorial sovereignty. At the same time, my task to address the legal aspect of self-determination is difficult partly because of the considerable complexity of the three cases. Even though self-determination is a common ground, it is also true that each instance has its separate history, its separate set of political, moral, and legal strengths and weaknesses; for each, a separate relationship has evolved as to the way in which the international law argument has been formulated and should be understood.

International law in the first 50 years of the UN can properly claim as one of its greatest achievements the implementation of the right to self-determination, so far as hundreds of millions of colonized peoples are concerned. If one looks back at this period of the late 20th century, there is no question that accommodating the historical movement of decolonisation is one of the most notable achievements and the quality of this achievement has certainly been facilitated by the degree to which the UN system came to endorse and champion the right to self-determination for all colonized peoples. The dimensions of morality, politics, and law are each important to the realization of self-determination in any given context. Part of the confusion in the subject is that these overlapping dimensions are often treated as unconnected with each other. In my opinion they have to be viewed as part of an organic reality that together constitutes the basis of a particular claim of self-determination.

Because the historic achievement of decolonisation is so dramatic compared to the colonial subjection of peoples in Asia and Africa that existed in the first half of the century, the notable failures of the movement stand out very vividly. In this seminar we are dealing with the three most notable failures to do for these three peoples what has been done for virtually all other previously colonized peoples in the world. These are exceptions to the implementation of an historic consensus. This consensus somewhat surprisingly was formed and crystallized during the Cold War. Despite the Cold War,
the rival superpowers agreed that the colonized peoples of the world had the right to self-determination and that the exercise of this right gives the right to political independence. Self-determination does not necessitate statehood or political independence but it certainly was a right that could not preclude such a possibility for those peoples entitled to exercise this right.

It is for these reasons that one is inclined to say that these three cases represent the worst blemishes on this otherwise proud UN record of implementing international law and morality. It also has to be said that each of these situations illustrates the tragedy of peoples whose legal rights get caught up in an unfavourable geopolitical context. It is not a matter of deficiencies in the political support and moral argument among the varied peoples that are subject to regimes of colonial rule that accounts for the failure to achieve self-determination in these cases. It is also not a question of the ambiguity of the legal doctrine. Failure can be explained by grasping the attachment in each of these three cases to a geopolitical context that makes the successful exercise of the right particularly, if unjustly, difficult in practice. The essence of the geopolitical obstacle is that each of these three peoples are, or have been, the target of expansionist territorial ambitions of important neighbouring states in circumstances where no other state is willing to challenge in a serious manner such expansionism.

In two of the cases, those involving Morocco and Indonesia, these powerful neighbouring states enjoy very positive relations with important global actors, particularly the United States. It is the inability or refusal of countries such as the United States to insist upon this right of self-determination when its exercise would be geopolitically problematic that has produced and deepened these tragedies.

The case of Tibet is slightly different in its legal construction. I would associate it more with the situation that led up to the Gulf War than with the strict decolonization context. My understanding is that Tibet, in 1949 when it was invaded by China and operationally and juridically annexed, was in the most relevant respects already an independent country, entitled to be treated as a sovereign state. China's claim of annexation is very similar to what Iraq attempted to do to Kuwait in 1990. The similarity of the two cases arises because of prior historic connections that Iraq had with Kuwait, an argument invoked by the Iraqi government at the time to justify their recourse to force. China, of course, relied on a similar line of reasoning. But in both cases, the claim to annex forcibly an independent state has been repudiated by the international community. The difference is that in the case of Kuwait, it was geopolitically imperative to reverse the aggression. In the case of Tibet it is geopolitically inconvenient - to put it mildly - to challenge the aggression.

The situation is further complicated because of the strategically remote geographical location of Tibet. It is further complicated by the fact that powerful actors on the world scene have become extremely attached to China as a trading partner. Western countries are also extremely concerned with two other sets of unresolved issues - Hong Kong and Taiwan - which for basically political and economic reasons have been given priority as compared to Tibet. The legal clarity of a claim for self-determination as reinforced by political and moral considerations is not sufficient to have that claim satisfied in practice. This insufficiency of law shapes our understanding of the role international law plays in this kind of geopolitically difficult case. Unfortunately, it is a subordinate role; geopolitics conditions the fulfillment of rights vested under international law.

As many of you are aware, international law did not initially lend support to the right to self-determination. It emerged as a matter of morality and politics in different forms out of World
War I. Woodrow Wilson gave self-determination a kind of idealistic twist and Lenin gave it a more of an ideological connection with the struggle to promote world communism and to weaken its chief adversaries. The right of self-determination became an inspiration for and was gradually appropriated by national movements in the colonial world. By the time World War II ended, there was a political and moral acknowledgement, but a rather vague one, of a right of self-determination. It is notable that the Universal Declaration of Human Rights makes no mention of the right of self-determination.

What happened in the period of the 1960s and 1970s was that this right was realised in fact throughout Africa and Asia. It was morally and politically endorsed very widely, and began to acquire a legal content, and as a result became embodied in a number of UN instruments, probably most influentially in the General Assembly Declaration on the Principles of International Law applicable to Friendly Relations among States (UNGA Resolution 2625), adopted in 1970. This resolution formulates the minimalist conception of self-determination as an entitlement of international law. Taken together with the practices of states, the writing of legal experts and the discussions of tribunals, the right to self-determination has been given an authoritative status. This right essentially provides that all peoples that are in a colonial situation are entitled to exercise the right of self-determination. In addition, in the pursuit of this right, a people is entitled to receive support from the intentional community, including in extreme instances, assistance in armed struggle. Such support does not necessarily lead to political independence, but it is one of the options that must be available to the people whose right of self-determination is being bitterly resisted.

The limitation on the exercise of the right, which is also important, although in itself controversial, is that this right when exercised cannot result in the territorial dismemberment of existing states. There is a complicated history that surrounds this limitation. It is partly connected with the notion of sovereignty and statehood and the whole system of states that has controlled the enunciation of the right. But this restriction on self-determination partly also reflected the wish of the leadership of the anti-colonial movements that did not want the post-independence phase of their existence to be beset by secessionist conflict and civil strife. One can endlessly discuss whether this was the best way of moving from colonisation to a situation of independence, but it turned out as the authoritative way and it did produce this minimalist understanding that was incorporated into international law by UN action.

All three of these cases fall dearly within this minimalist understanding. The case of Tibet, in addition, falls within the prohibition against acquiring territory by the use of force and the prohibition against aggression which is the fundamental Charter commitment that the United Nations and international law prescribe. Tibet also qualifies within the narrow conception of self-determination because the combination of occupation and alien domination has created a new circumstance of "colonisation" to which this kind of narrow conception applies.

The broader or "maximalist conception" of self-determination, has been given recent encouragement by what has happened since 1989. First of all, by the way in which the
independence of the Baltic states was validated even though it resulted in the emergence of new states. It has been given even more prominent encouragement by the break-up of Yugoslavia, and the way in which the territorial units within former Yugoslavia were given effective immediate support for claims of self-determination that resulted in territorial dismemberment.

In addition, the movement of indigenous peoples over the course of recent decades to acquire the right to self-determination represents a further challenge to the minimalist notion.

All of these contested claims have put forward the question of what are the outer limits of self-determination under existing international law. The law is not yet crystallised, I would argue, and may not be for a long time. The more maximalist conceptions of self-determination are gaining support both by practice and by the efforts of the peoples that are subject to these oppressive conditions of various sorts, but there is also increasing resistance on the part of states threatened by such claims. With regard to the three cases, let me express the application of this minimalist conception by saying that in case of Tibet, there is the unified will of the people, there is an acknowledged global leader, there is external legitimation for the claim, and there is the UN acknowledgement of it.

In the case of Western Sahara and East Timor, these factors are reinforced by the fact that the governments guilty of violating the right to self-determination are themselves purporting to subscribe to the right of self-determination and have entered into various ways of negotiation about its application to the aggrieved peoples. In East Timor's case, Indonesia has entered into extensive formal discussions with Portugal, the former administrative power, as well as with the UN. In the case of Western Sahara, Morocco has agreed to a referendum that is supposed to include the option of independence. The implementation of that agreement has been so faulty that it looks like a dodge of the right rather than an acceptance of it. Nevertheless, the legal context is shaped by the fact that both Indonesia and Morocco have accepted the minimalist conception of self-determination and its application to these two territories. Indonesia less clearly, because it contests to some extent the expression of the will of the Timorese people to be other than part of Indonesia. But, nevertheless, both offending states have agreed to accept some kind of international accountability.

What can international law do to help in these problematic circumstances? I think it is important to recognise that we are living in an imperfect world where, as earlier mentioned, geopolitics matters. Therefore one should not neglect the impingement of these geopolitical dimensions. Given this challenge, several important observations seem to follow. First of all, it is the most elementary responsibility of the states in control to comply with human rights obligations other than unfulfilled claims of self-determination. Self-determination is a human right and is fundamental to all other rights. It is a particularly aggravating violation of the rights of peoples when not only are they denied self-determination, but are also victims of additional and separate violations of their human rights. This is massively and persistently the case in all three of these instances being considered in this seminar. It is hardly surprising that
efforts to suppress movements for self-determination almost always result in a series of distinct human rights abuses.

Secondly, because these geopolitical actors, these three important states, all care about their reputation for legitimacy, it is extremely important for the international community, including NGOs and activists, to emphasise the illegitimacy of existing suppressive arrangements. One way of closing the gap between promise and performance is to highlight the illegitimacy of the status quo that applies in these three cases, and to use international law as part of the genuine demonstration of this condition of illegitimacy that pertains to the status quo.

The third practical adjustment is to encourage a process of accommodation and reconciliation that acknowledges the inability to achieve complete self-determination in the immediate future. This means the acceptance of a process that leads to substantial de facto autonomy and to a recovery of the symbols and realities of political power without altogether forcing the occupying power to renounce its claims and to acknowledge the illegitimacy, and indeed criminality, of what it has done. In order to take advantage of the historical opportunities for progress on these issues it may be necessary to accept some realistic limits on aspirations in the immediate future. It is not necessarily a matter of giving up these aspirations, but international law provides not only the legitimisation of self-determination as an outcome, but it also provides the basis for a process of its realisation that can lead in time to that outcome, or at least to substantial improvement of present conditions. It is a matter of taking steps in which the peoples subject to oppressive conditions gradually gain the ingredients of self-determination in exchange for allowing these geopolitical actors to avoid the full stain of illegitimacy connected with their current abusive relationship to these territories and to these peoples. of course, it hardly requires saying that in the end such a willingness to defer fulfillment of such aspirations is up to the peoples concerned. All outsiders can do is to point out such intermediate possibilities and their apparent prudential advantages. Each people must weigh their options and decide for themselves whether compromises are in order.

Finally, although these three cases can be analysed within the scope of minimalist conceptions of the right of self-determination, there is no intention to cast doubt on more maximalist views of the right. The tragedies in Chechenia and Kashmir, as well as the plight of many indigenous peoples, underscore the suffering that arises from denials of self-determination which arise in settings where satisfaction would entail territorial dismemberment, which is the maximal right.
THE RIGHT TO SELF-DETERMINATION
AND INTERNATIONAL RESPONSIBILITY

J.M. Mukhi

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Birthright to Freedom

There was always a right to freedom, and there shall always be a right to freedom. There was a time when oppressors and imperialists had a field day. To ask for freedom was then a crime. No question of law or morality or the consent of people. Rome created an empire regardless of the will of the enslaved. But in time the tide turned. There was the French Revolution and the American War of Independence. Modern international law began with President Wilson and his Fourteen Points which included democracy and self-determination, and with the peace treaties, and with the protection of minorities, and with the efforts of the League of Nations, and with the Permanent Court of International justice. And then you had Zaghlul Pasha and Mahatma Gandhi. The United Nations Charter or the Universal Declaration of Human Rights and Fundamental Freedoms did not create the human right to self-determination. They only expressed it, declared it. The right of the people to life, liberty and the pursuit of happiness has existed from the time there have been peoples. This is a natural right, and international law has moved to the point that it fully recognises it as a legal right and a human right.

Right to Secede

There has been debate and discussion as to what is the ambit of this phrase: "the right to self-determination". Does it include the right to secede? Of course it does. There is a god-given right to secede. A people remain in political association, whether a confederation, a federation or a unitary state, by consent and under certain basic assumptions. When these assumptions are belied, when they are subjected to tyranny, to intolerable treatment, of course they are entitled to break free. This was expressed long ago and remains as true today as it was then. The Declaration of Independence of the United States of America begins with words that are now known the world over:

When in the course of human events it becomes necessary for one people to dissolve political bonds which have connected them with another...

and,

when a long train of abuses and usurpations pursuing invariably the same object, evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such government.

However, the right to self-determination and the principle of consent is not limited to a demand for devolution or provincial autonomy.

There are three cases before us today: Western Sahara, East Timor and Tibet. Western Sahara and East Timor are both cases with the background of salt-water colonisation. Tibet is the case of post-United Nations Charter colonisation by a giant neighbour, while the world was sound asleep or sufficiently distracted or simply not interested. In all three cases there has been a use of force in violation of international law. But Morocco and Indonesia are not
superpowers, certainly not nuclear powers. They would not dream of threatening to destroy Los Angeles.

On the other hand, China is totalitarian and still severely adhering to its communist doctrine and methods and all that implies. In the case of Western Sahara there is armed resistance. The Tibetan people are committed to non-violence and passive resistance, with all its advantages and disadvantages. In Western Sahara, there has been some international action towards a referendum. In East Timor, the international community lags behind. These are the major differences. But I am more familiar with the facts of Tibet. Let me deal with that.

**Tibetans as a People**

Are the Tibetans a people? If the Poles are a people, if the Egyptians are a people, if the Bhutanese are a people, if the Lithuanians are a people, if the Mongols are a people, how and why are the Tibetans not a people? In fact, they are the world's most cohesive and culturally compact people, with a distinct geographical area. The Tibetan plateau stands 12,000 feet high. The Tibetans are a homogeneous people, with one written language, a single script modelled on the Brahmi and Gupta scripts, with a special form of Buddhism as the predominant religion founded on a strong belief in the doctrine of Karma and with the Dalai Lama as both the temporal and spiritual head. And it has a rich history of independence.

**Historical Claim**

I am sure it is clear - and the International Court has made it very clear in the Western Sahara case - that the historical claim to independence is relevant, but that the historical claim to subjugation can never be fully relevant. That Rome conquered it and held it for some time is not relevant. That there was a kingdom of Poland is relevant. But that it was overrun by Russia several times is not relevant and cannot give a right to Russia to take it again by force. The Mughal Emperors in India extended their domain to a substantial part of modern Afghanistan. Neither India nor Pakistan can grab or annex Afghanistan on that plea. If historical claims had any relevance for establishing a claim to subjugation, much of Vietnam, Thailand and Burma could be taken by China on that basis.

**Status, Aggression and Occupation**

It is clear however, that Tibet was an independent state in 1950 when it was attacked by China. It had its own government, its own army (however small this might have been) it own flag, its own passports, its own treaty relations and its own policy of neutrality. The manner in which Tibet's independence was breached in 1950 gives it greater entitlement to justice at the hands of the world community. On the 7th of October, 1950, Chinese forces invaded Tibet. The People's Liberation Army, of 40,000 soldiers, fell on peaceful, defenseless Tibet and massacred scores of thousands of people within a space of months.

I do not think it has to be demonstrated that aggression is contrary to international law. I do not think it has to be demonstrated that the use of force except for the purpose of self-defense or of collective security is contrary to international law. We have the Paris General Treaty for Renunciation of War of 1928. The parties to that Treaty agreed not to seek a solution of disputes or conflicts except by peaceful means. The United Nations Charter has gone further. Not only the use of force but even the threat of force is interdicted. International
law now recognises that aggression is an international crime for which punishment can be meted out even to individuals. There can be no quibbling about what is, and what is not, aggression. Aggression can easily be perceived, and of course it can take many forms. And international law imposes a duty on states, on each member of the international community, not to recognise situations created by the use of force.

Tibet is under the military occupation of China. China has an army in Tibet of 250,000 soldiers - more than 30 divisions. It has created more than 30 major military airfields and airstrips. It has sited nuclear missile bases. There are reports of nuclear missile bases at Kongpo, Nyitri, Powo Gamo, Rudok, Golmor and Nagchuka with ICBMs and CSS3s and CSS4s that can reach the Middle East and the Indian Ocean.

Repression

The repression in Tibet has known no bounds. It has been brutal and cruel in the extreme. It has not been a case of an ordinary or sporadic violation of human rights of the kind that the European Commission on Human Rights has had to deal with. What has been happening in Tibet from 1950 until today is comparable with the excesses of Hitler and Nazi Germany. We have had the reports of the International Commission of jurists which first raised the charge of genocide and the violation of at least 16 different types of human rights. 87,000 Tibetans were executed in central Tibet alone. We are told that in 1966, in a period of 17 days, in and around Lhasa, 69,000 Tibetans were executed. The horror and the holocaust cannot be imagined. This has gone on where the world's correspondents are not allowed and where TV cameras cannot reach. The Financial Times of India of the 23rd of March, 1990, reported the execution of 2,000 Tibetans.

Tibet's Case

What is the case for Tibet?

1. It was overrun with the military might of the People's Liberation Army. The invasion began on the 7th of October, 1950, and the People's Liberation Army is still there, its strength having increased to 250,000, and possibly 300,000.
2. A peaceful people have been crushed and decimated without any provocation whatsoever. 400,000 have been killed by military action alone. The estimated loss of lives resulting from such killings, and from flight through the mountains, and of starvation caused by the occupation, is estimated as being over 2 million as against the total Tibetan population of 6 million.
3. A religious people have been harassed and obstructed in diverse ways from practising their religion and bringing up their children according to their culture and traditions.
4. Over the years of occupation more than 6,000 monasteries and places of worship have been looted, desecrated and destroyed.
5. Tibetan children have been separated from their parents and carted away to China for Chinese Communist education.
6. Tibetan women have been herded together and subjected to abortions and forced sterilisation. There is a figure in 1990 of 18,000 women.
7. Freedom of expression and association has been ruthlessly denied. Thousands have been held in prison and put in forced labour camps.
8. Physical torture has been applied to dissenters - particularly to Buddhist monks and nuns. Massacres and killings are almost an everyday affair. The soldiers are assisted by the armed police Wu Jing.
9. Tibetan natural resources are being wantonly and ruthlessly exploited, forests denuded, minerals taken away, and the ecology of rivers damaged beyond repair.
10. China has mounted demographical aggression on Tibet and has sought to destroy Tibetans as a people and reduce them to a minority in their own homeland. They have brought in more than 7 million Han-Chinese overwhelming the Tibetans who are only 6 million in number. This is the Chinese "final solution" to the "Tibetan Problem".
12. The Chinese settlers in Tibet have been given special privileges and turned into overlords. The Tibetans are heavily discriminated against in respect of racial, ethnic, language and cultural differences. This is the slow death of the devout, peace-loving, highly cultured people of Tibet. And the whole world watches on.

Genocide: Crime Against Humanity

Genocide is a crime against humanity. Is it not clear that what has been committed in Tibet is a crime against humanity? The Convention of the Prevention and Punishment of the Crime of Genocide, of 1948, defines genocide as an act with an intent to destroy, in whole or in part, a national, ethnical, racial or religious group. You will recall the words of the Nuremberg Tribunal:

Crimes against international law are committed by men, not by abstract entities and only by punishing individuals who commit such crimes can the provisions of international law be enforced.

Right to independence

in view of what has happened and what is happening, even on the assumption that Tibet was not an international entity in 1950 but was a mere province of China, the Tibetan people would clearly and undoubtedly be entitled to claim independence and the support of the international community. This is as clear as clear can be.

International Action

Of course, an oppressed people have a right to fight but would we have asked Hitler's victims to stand up and fight? Would we have asked the early Christians who were fed to the lions in Rome to stand up and fight? Would we have asked Kuwait to fight against Iraq unaided? Here is an iron fist, a totalitarian regime, and it is the responsibility of the international community to bring about an immediate end to genocide and to bring about the restoration of independence to the Tibetan people.

The first duty of the international community is to condemn the violation of international law by China, multilaterally, bilaterally and unilaterally. Member States of the United Nations and also those who are not members of the United Nations ought to express their unequivocal condemnation of the aggression, genocide and violations of human rights on the part of China.

There is dearly the duty of non-recognition. The members of the international community are under a duty not to recognise a situation brought about by a violation of international law. This finds a restatement in the International Court's Advisory Opinion on Namibia. The court declared that states were under an obligation not to recognise South Africa's illegal
occupation of Namibia. Apart from the Paris Treaty, the so-called Stimson doctrine, the United Nations Charter, the 1970 Declaration on Friendly Relations and Co-operation between States, it is now a fundamental doctrine of international law that acquisition of territory by the use of force amounts only to illegal occupation and cannot be recognised as granting title.

But the international community should not restrict itself merely to condemnation. It must take collective action. Did not the international community led by United States take action when Iraq moved into Kuwait? As a part of collective action or singular action, members of the international community ought to apply sanctions by way of boycott and embargo and prevent their nationals and corporations and agencies from abetting and helping in the destruction of the Tibetan people and the degradation of their environment.

And, of course, the international community should take - as the United Nations General Assembly has repeatedly directed it to take - adequate steps to ensure the restoration of the rights of the Tibetan people.

Finally, the international community should wake up to the fact that aspirations for freedom are perennial and that tyranny is incipient every time that claims arise for independence and complaints are made of gross violation of human rights. The world community cannot afford to sit with folded arms because peace is at stake and lives are at stake. If self-determination or the right to freedom as a principle is "loaded with dynamite", is it not crucial for peace and justice that claims should be examined and accepted where these are legitimate and viable?

Should not there be a Court representing the world's conscience, the world's sense of law and morality, which decides and enforces? Indeed, that suggestion was made by the redoubtable international lawyer Professor (later judge) Hersh Lauterpacht 45 years ago, in his book *International Law and Human Rights*. He pleaded for a Human Rights Council reporting to the General Assembly of the United Nations and an International Court of Human Rights to provide judicial enforcement. And this finds an echo in Lord Avebury's suggestion for a High Commissioner for Self-Determination, a re-organised Decolonisation Committee, and where necessary the organisation of referenda under United Nations auspices.

Ultimately, what the world should work for are "Zones of Peace". The Tibetan plateau, like Switzerland, is an ideal zone of *Ahimsa*, universal benediction and compassion, in keeping with the principles of Lord Buddha and later the ideas of Mahatma Gandhi. It can be a de-militarised area under international guarantee, free of nuclear wastes, ecologically sound and pure. Does the world have the will and the ability to bring this about?
IN EACH OTHERS SHADOW

Senator Michael O'Kennedy
Former Minister for Foreign Affairs
Republic of Ireland

I would like to begin by first addressing self-determination by using some words of my own native language; I do this for a specific purpose:

Se ar sgáth a cheile a mhaireann na daoine.
[We all live in each others shadow.]

I address you in my own language initially, because for 200 years or more the Irish people were deprived of the right to express themselves in their own language. We were also deprived of the right to adhere to our Christian practices and deprived of the characteristics of our culture. When I hear the distinguished representative of His Holiness the Dalai Lama describe the situation in Tibet and the strategy which His Holiness is imposing, I am prompted to say that I hope that the experience that we now have in Ireland will in time be realised in Tibet also.

In Ireland, for 200 years - from the days of the penal laws when it was punishable by death to practice once own religion, until the beginning of the 19th century - oppression prevailed. Then, a movement for Catholic Emancipation was launched and the pace of change from then on was notable and the result was inevitable. It was too sad that it had to involve a revolution - although it was more of a protest than a bloody rebellion. The occupation of the General Post Office in Ireland was not a bloody rebellion except for the callous detention afterwards of the poets, writers and visionaries who proclaimed the right of self-determination "in the name of God and the dead generations". This was followed, unfortunately, by a war of independence and a civil war.

Now we are a member of the family of nations. But because of our history there is a deep sense of fellow feeling with all people seeking self-determination and fundamental human rights in all its forms - whether it is East Timor, Western Sahara or Tibet. I would like to discuss with you the contribution we perhaps could make in the role we have now. I do not want to overstate that role, but at the same time I acknowledge the responsibility we have because of our historical brotherhood with you and the sense of obligation which follows from that.

I will begin by making a confession in a sense. In 1979, Ireland established diplomatic relations with the People's Republic of China. At that time, I was Minister of Foreign Affairs. I was very privileged to have that opportunity. The consequences of that decision are still felt today by my successor, the current deputy foreign minister.

In the course of the numerous parliamentary questions asked by my colleagues about human rights violations committed by the Chinese government, they each time began by saying that when Ireland established diplomatic relations with the People's Republic of China in 1979, the government of Ireland recognized the Chinese government as the sole legal government of China. The Chinese position at that time was, and still is, that China included Tibet. There I can see why perhaps the Chinese authorities can say that there is no one recognizing Tibet, and in that categorical statement they would of course include Ireland. However, it would be very wrong if in this assertion they excluded Ireland from a
deep and constant concern for the vindication of the rights of the Tibetan people. Because at all times, before and since 1979, Ireland has raised the cause of the Tibetan people in the United Nations and other international fora. The Irish government has consistently taken up the human rights violations in Tibet, both at the bilateral and multilateral level.

We believe that we owe it to any people with whom we have diplomatic relations to bring up these fundamental issues. We feel obliged to bring up these issues in brotherhood, understanding and also determination which we have done in this case. The ill treatment of Tibetan citizens, the problems of population transfer, these and many other issues have been addressed by the Irish government on numerous occasions. The strength of the concern of the Irish people cannot be overstated in this respect.

In July, 1996, Ireland will take over the presidency of the European Union. We will than have the role and responsibility of coordinating the common position in political co-operation of the EU members. I can assure you that the issues that are addressed here today will form a major central point of the proposal we will make to our EU partners. Of course, this will not be confined to Tibet. I would like to think that Ireland's position on human rights, self-determination and conflict resolution has always been clear and unambiguous. In fact, I would like to think that it has been predictable.

In the context of the EU consultations starting in the second half of 1996, I would like to invite you - to the extent that you feel that our particular role can be helpful - to convey to us whatever proposals, firm actions or directions you would wish to be brought before the member states of the EU.

As we celebrate 50 years of the United Nations there are some ironies and some inconsistencies that come to mind. When you look back at the achievements made in those 50 years, these are not necessarily made in the political field, in the conventional sense of "political". The more significant achievements have been made in the areas of health, women's rights and children's welfare. Although this might allow for some sense of pride, we have to look back with sadness on the continuing repression of human rights and the inadequacy of the UN to deal with this. This is clearly shown in the cases of Tibet, Western Sahara and East Timor.

We are celebrating 50 years of the United Nations and at the same time commemorating 20 years occupation of East Timor by the Indonesian military. The people of Ireland and its parliament have consistently condemned, without any qualification, the continuing violations of human rights in East Timor. On 7 December 1995, 20 years after the Indonesian invasion of East Timor, the parties in parliament all united in solidarity to speak out against these violations of human rights in East Timor. We want to see an end to the intimidating presence of the military and the climate of fear that it has created. There can be no consultation, much less reconciliation, when there is such an intimidating and repressive presence. We want Indonesia to cooperate fully with the United Nations, with its Commission on Human Rights, and with international non-governmental organisations.

If there is any purpose or meaning to our foreign policy, if there is any role for a small independent country like Ireland - and I believe there is a purpose, role and meaning - it has to defend and assert these principles at all times and on every occasion. I would like to convey to you the same message that our distinguished Senator Norris delivered when he was refused entry into East Timor for the commemoration of the Dili Massacre. He left no one in any doubt about the feeling of the Irish people about the genocide of the East Timorese people. He read to the passengers in the transit lounge of Denpasar airport, where he was detained, a simple but I believe powerful message from singer Bono of the music group U2, but also from the Irish people:
On behalf of most singers, writers and poets, most music, film and object makers both here in Ireland and around the world, please be sure that we know of your struggle and that even if we are not allowed to see you, know that we hear of you and that if we do not hear from you we think of you all the more.

There is no silence deep enough, no black-out dark enough, no corruption thick enough, no business deal big enough, no politician bent enough, no hard heart hollow enough, and no grave wide enough to bury your story and keep it from us.

It is signed: "Love from a short distance, Bono". I might say here: "Love from a long distance, Ireland".

In relation to Western Sahara, I have to say that we need to be a little more activated in Ireland. That is not to say that we are not conscious of the fact that the same principles do apply in the case of Western Sahara. Let me assure you that my presence here, and any information you can convey to me, will be used to animate and invigorate our attitude on that and other issues.

How can one define self-determination? It does not have a specific form; it is something scarcely definable. When it is not there you will be conscious of the fact that people are deprived of it. It is the confident expression of whatever it is that we are. There is a lovely expression in Irish:

_Is linne an dit seo, mar bhfonar ann bn tits._

[This place is ours, for we were here from the beginning.]

The people of Tibet, East Timor and Western Sahara, of whom we are speaking of today were all "here from the beginning". There are changes occurring ethnographically and we welcome refugees and others enhancing our native stock. But, nonetheless, for those who were here from the beginning there has to be an obligation from the rest of us to respect and vindicate this fundamental right to self-determination and freedom.
As expressed in Article 1 of the United Nations Charter, and developed in General Assembly resolution 154, the principle of equal rights and self-determination of peoples is fundamental to the UN human rights agenda. But recently, there have been a number of governments, particularly in Asia, questioning the concept of universal Human Rights in the light of cultural variations. Rather than dealing with the right of self-determination, I will seek to counter such statements by using the Buddhist approach to human rights. Indeed the right to self-determination is, first of all, the right of a people to choose its form of government or the nature of the state. Article 5 of the Universal Declaration of the Right of Peoples adopted in Algiers in 1956, states that: "Every people has an unquestionable and inalienable right to self-determination to determine its political status freely and without interference". This principle applies to the peoples of Western Sahara, East Timor and Tibet, to the indigenous peoples of the world and indeed many others.

The Vienna Declaration and Programme of Action of the World Conference on Human Rights in 1993, which was adopted by consensus, reaffirmed the universality and inseparability of human rights:

All Human Rights are universal, indivisible, interdependent and interrelated. The international community must treat Human Rights globally in a fair and equal manner on the same footing and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of states, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.

In other words, if there is a conflict between universal human rights and regional particularities, the former must prevail over the latter. The Bangkok Non-governmental Declaration of Human Rights of 1993 also stated that:

We affirm the basis of universality of human rights which accord protection to all humanity [.] While advocating cultural pluralism, those cultural practices which derogate from universally accepted human rights, including woman's rights, must not be tolerated.

The notion of human rights usually has four characteristics. First, it is a legal, legitimate claim of individual persons and people. Second, these rights are politically powerful as grounds of grievances. Third, they are often grounds to protest against the "powers that be" to reform policies and redress social justice. Thus, fourth, the entire atmosphere in which human rights questions occur is adversarial - people against government. Here in this atmosphere of rupture between the ruler and the ruled, people, often individual persons, initiate the legal and political protest against the government. Human rights are at the centre of the fight for justice and the right to self-determination of the
indigenous peoples vis-à-vis the powers that be. These people have the legitimate right for self-determination whether they live in the slums of a cosmopolitan city, a vast country like Tibet, East Timor or Western Sahara.

People like Lee Kuan Yew of Singapore or Suharto of Indonesia, who claim that the concept of human rights is not within Asian culture are not only hypocritical but also have no awareness of the scope and subtlety of Asian tradition. The hypocrisy of these leaders whose actions brutally abuse the dignity of ordinary people shows a failure to understand their own roots. The result is only dinging to the form or ceremony of being Asian. Whilst free societies depend on trust between the people, dictatorships try to destroy any trust between citizens.

Lee Kuan Yew is supposed to adhere to the Chinese concept while Suharto claims to be a practising Muslim. For a Muslim, there is no need to examine currently prevailing sharia definitives of human and citizen rights. In other words, what is known as the Universal Declaration of Human Rights is by no means alien to Islam but is grounded in the Quaranic notion of a common human theology (fitrah), couched in an Islamic idiom of moral universalism which predates much of the Western discourse on human rights.

The Chinese claim that in their world view there is no regard for the individual persons, only communal sociality or the solidarity by virtue of a homocosmic continuum. There is no legitimation of people's protest with their assertion of human rights, only the ruler's (or ruling party's) duties to treasure and care for the popular welfare by virtue of the sympathetic exigency of human nature. A government more for the people than of them was Mencius' vision which summed up the tradition concerning the matter. Such a populist government consists in at least three characteristics, the people were: a) the most precious, b) the royal object of the most concern, and c) the heavenly test to confer the mandate to rule.

It is a sad comment on the world today that the universal consensus on human rights (synonymous with the supreme value of common folks) is universally neglected. just ask which nations are implementing Mencius' plan or adhere to the Universal Declaration of Human Rights. Mr. Clinton praises the Tibetan rights for self-determination and laments the persecution by the Chinese. Clearly, however, clearly trade with China is much more important to him than the Tibetan rights. Western business people will jump into Burma now that Aung San Suu Kyi has been released. But the human rights situation in Burma is still very bad and Suu Kyi herself may be in great personal danger. This worldwide political hypocrisy - paying lip-service to human rights - manifests itself in worldwide brutalities towards common folk, as repeatedly documented by Amnesty International. Mencius' scathing words of warning apply to all of us, especially the worldwide political hypocrisy.

Thousands of years of dictatorial brutality in Asia have formed personal habits that are hard to change, as is dramatically demonstrated in China, Tibet, Burma, Indonesia and East-Timor just to mention a few. While self-determination in that region has been denied by dictatorial regimes, governments do nothing to stop the trafficking of women and girls into brothels in other countries. At least SLORC in Burma and the PRC government do not try to hide their practices. In the case of the PRC, they hid their practice in Tibet but not in the recent Tianamen massacre. It is encouraging that the PRC are now publicly announcing regrets over the Tianamen incidents. The PRC claims to learn from the Confucian teaching. If they learned from Mencius they and other world leaders could be less hypocritical.

Speaking as a Buddhist, the principal contribution of Buddhism to the question of rights and ethics is the stress it places on the psychological dimensions of human action. For instance, according to Ven. P.A. Payutto, a leading Siamese commentator on Buddhism and social issues, well-developed human beings are free of the five kinds of macchariya (covetousness or possessiveness):
1. Macchariya of locality and country;
2. Macchariya of family or group, including ethnic and religious group;
3. Macchariya of material wealth;
4. Macchariya of social class or caste, including race, skin, colour, etc;
5. Macchariya of knowledge or learning, including intellectual achievements.

The right to self-determination as it applies specifically to Tibet, East Timor and Western Sahara is very much linked to the five kinds of possessiveness (macchariya), mentioned above. If people, especially the aggressors, could develop their attitude to be free of covetousness or possessiveness, they will understand that self-determination of indigenous peoples are as basic as any other human rights.

True human development, according to the Ven. Payutto leads to the complete eradication of these five kinds of possessiveness. He argues that the time has come to do away with all possessiveness in order to save the world from the threat of war and destruction. In the present time, however, he sees the opposite happening. Unlike technological development, which has provided for increased interdependence and communication, humans at the present time have become more aggressively competitive, looking for personal survival and personal prosperity at the expense of others. Within this context, human rights do serve to hold the world together to some degree within its divisiveness.

From a Buddhist perspective, the establishment of freedom and happiness for human beings must have three levels. The first freedom is the freedom to live with nature and the environment. We could call this physical freedom. This is freedom from want and deprivation; an adequate supply of the four basic necessities of life-food, clothing, shelter and medicine. This also includes freedom from natural dangers and the ability to deal with such dangers when they arise.

The second freedom exists in our relationship with fellow humans. We must have social freedom so that we can live safely together without being exploited by others, including not being exploited by any government or state. From the Buddhist perception, a government or state is only a form recognised by the people for their own benefit. If the state loses its legitimacy by not promoting and protecting human rights and self-determination, it too will not last forever. This can be seen clearly in the cases of the former Soviet Union recently, and British India earlier on. Indeed, the nation state in its most common form was born in 18th and 19th century Europe and the United States, along with the concept of the individual. The basic idea is that the state is composed of, and represents, the people or nation.

The subsequent export of the idea and institution of the nation state by colonialism constitutes probably the major imposition of western values on the rest of the world. Incidentally, those governments which attack the notion of human rights and the individual as a western invention are remarkably subdued in their criticism of the idea of the state. Indeed, unless self-determination by common force is taken seriously the state itself will lose its capacity for self-determination too, as the international corporation will become more and more powerful in relation to the state. And they will direct the state for the benefit of their corporation so that they are diverted to worship the new religion of consumerism, which is dominated by greed.

From a Buddhist point of view, to fight against a dictator state is in fact difficult. It is a fight against power and anger, which is difficult enough. But to fight against consumerism and international corporations, is even more difficult because it is fighting against greed.
To use social engineering, politics and laws against this is not enough. One will need spiritual depth and human development at its best for the protection and implementation of human rights and self-determination. But these two kinds of freedom will not be truly effective if they are not connected to inner freedom. This is freedom on the personal level. Having physical and social freedom, people must learn how to live independently, to be happy and contented within themselves. The most important kind of development is human development on the personal level leading to inner freedom. This is a happiness that is independent of externals; with it we are no longer dependent on exploiting nature or our fellow beings. We become more and more capable in finding contentment within our minds and through our own minds and through our own wisdom. The ability to be content without exploiting nature or our fellow humans can also be called the ability to be content independent of natural and social conditions. With a more independent kind of happiness, social and physical freedom will be preserved and strengthened. Human beings will then have the best possible relationship with both the natural environment and human society.

Currently, and especially in the West, the predominant approach to curing social ills is by the use of social engineering; this form of pseudo-science operates from a purely intellectual base. By contrast, operating from a Buddhist base, we synchronise our heads and hearts, develop inner peace, plant seeds of peace and use critical selfawareness to tackle social problems non-violently. Buddhism, through insistence on the interrelatedness of all life, its teachings of compassion for all beings, its insistence on nonviolence, and - as with many indigenous spiritual teachings throughout the world - its caring for all of existence, has even been leading some Westerners to broader and deeper interpretations of the relationship between peace and social, environmental, economic and racial justice.

If Buddhists are to make a meaningful contribution to world peace and liberation of the modern world from violence and oppression they must confront the three root causes of evil: greed, hatred and delusion, not only in the individual person but in their social and structural dimensions. All practising Buddhists must develop the rightmindfulness that allows them to deal with these issues at the deepest levels.

His Holiness the Dalai Lama has provided an inspiring model for many of us to continue to oppose evil and oppression while cultivating internal seeds of peace and maintaining love for our enemies. I am convinced that one day Tibet will be free from Chinese domination and destruction. At that time, perhaps, it will offer us an example of Buddhist democracy or Dharmic socialism. Similarly, I am convinced that the moral courage of Aung Saan Suu Kyi will one day free the people of Burma from the SLORC military junta.

With kalayanamitta (good friends) in the International Network of Engaged Buddhists, which is linked to Buddhist Peace Fellowship and other similar organisations in the US, Europe and Japan, I have been privileged to work for peace and challenge structures of oppression in Siamese society and other parts of the world. Despite social and political oppression and the destruction of the environment much of my vision for renewing society and for human liberation is partially sustained by the support and community of working with kalayanamitta.

According to Buddha, kalayanamitta are the most important external elements for everyone. We need to have good friends and companions to learn from, to help develop ourselves and societies towards peace and justice, starting with peace and justice within. Once we can restructure our consciousness to be less selfish then, with kalayanamitta, we can surely reconstitute our societies to be free from oppression and exploitation. This may not be easy, but it is possible. This development goes beyond the HumanRights Conventions and points to a positive direction beyond the simple, or not simple, eradication of evil. The eradication of evil is meant to provide the groundwork for the development of a fuller
spiritual life, a reintegration, in Taoist terms, into the higher levels lost before the discussion of justice was ever necessary.
The idea of this seminar was discussed and decided upon just a year ago by a small group of people from the three relevant countries and we then entrusted the Unrepresented Nations and Peoples Organization, the UNPO, with the task of co-ordinating the efforts to make it happen. To the General Secretary of UNPO, Dr. Michael van Walt, and his dedicated and competent staff goes my deepest appreciation for making this seminar possible.

Some of you might recall a picture that made headlines in 1975. I refer to the picture of an American helicopter landing on the roof of the American Embassy in Saigon to rescue fleeing diplomats, CIA agents and their collaborators as Saigon fell to the Vietcong. Cambodia and Laos followed. It was the end of one era and the beginning of another. The picture of the helicopter rescuing the last American diplomats from Saigon illustrated better than a thousands words the ignominious American retreat from Indochina. America was a pitiful giant retreating in defeat and humiliation from Asia. Or so it seemed. For the leaders in Moscow it was the beginning of Russian expansion and influence, the execution of the Brezhnev doctrine. On another continent, the Portuguese empire had collapsed and Marxist forces gained power in two major African countries, Angola and Mozambique. It seemed that the so-called "domino theory" first articulated by President Lyndon Johnson was being proven correct. It was the domino theory that sustained the US intervention in Indochina as it was thought that there would be a domino effect if one single country was to be allowed to fall into the hands of Marxist forces.

It was in this geopolitical context that President Gerald Ford, who succeeded Richard Nixon in the aftermath of the Watergate scandal, visited Indochina. On December 6, 1975, Ford and his Secretary of State, Henry Kissinger, visited Jakarta and conferred with the Indonesian dictator, General Suharto, on security matters in the region. The invasion of East Timor, planned to be launched on December 6, 1975, was put off by Suharto for a few hours so as not to embarrass the American dignitaries and was finally launched only 12 hours after they had left Jakarta. The invasion of East Timor was therefore only a footnote in the geopolitical events of 1975 and the following years. Thousands of people who died in the subsequent days, weeks and months were mere footnotes to the post-Vietnam era and the Cold War.

It has been more than 20 years since the invasion of East Timor by the armed forces of the Republic of Indonesia. What is the balance of Indonesia's occupation? Within five years of the invasion, by 1981, at least 200,000 people had died. Entire villages were wiped off the face of the earth, tribes obliterated, women raped in front of their husbands, parents tortured and killed in front of their children. The wealth of the country has been looted and the environment destroyed. Twenty years later, the people of East Timor have refused to surrender and have contradicted the prophets of doom.

The situation in East Timor, though, remains explosive. Torture is pervasive and is almost a matter of routine. A massive security crackdown has been in effect for several months with hundreds of arrests. The security forces are deliberately engaged in an anti-Catholic Church campaign and are trying to turn the conflict in East Timor into Moslem vs Catholic. A vast military offensive has been under way for several months now. Claims that some troops have been withdrawn are pure propaganda.
Xanana Gusmao, the leader of the people of East Timor, remains virtually incommunicado in a prison thousands of miles away from his country in contravention of the 4th Geneva Convention. His trial, in 1993, was universally condemned as a charade and was no more valid than the Dutch imprisonment and trial of the late President Sukarno, founding father of the Indonesian Republic. Young East Timorese, who use peaceful means to express their anger over the occupation, are sentenced to prison terms ranging from 10 years to life. Indonesian soldiers and officers who, on 12 November 1991, shot 271 civilians in cold blood, escaped with almost total impunity.

Allow me to set the East Timor conflict in its proper context for a better understanding. In June 1974, I visited Jakarta, in my capacity as Secretary for Foreign Affairs of the Timorese Social Democratic Association, and met with then Foreign Minister of Indonesia, Mr Adam Malik. After our third round of talks, Mr Malik addressed to me a letter which reads in part:

The independence of every country is the right of every nation, with no exception for the people of [East] Timor [.]

[w]hoever will govern in Timor in the future after independence can be assured that the government of Indonesia will always strive to maintain good relations, friendship and cooperation for the benefit of both countries.

In the course of our discussions, I conveyed to Mr Malik our desire to develop close relations with Indonesia and our intention to seek membership in the Association of Southeast Asian Nations (ASEAN). In an effort to appease our giant neighbour, I went as far as proposing that our future diplomats and security forces be trained in Indonesia. Mr Malik's words were those of a statesman conscious of his country's lack of any valid historical claim to East Timor. He viewed the emergence of an independent East Timor as a natural outcome of the collapse of the Portuguese colonial empire.

The following year, April 1975, I again visited Indonesia and met with President Suharto's senior advisor, General Ali Mortopo, to whom I reiterated our collective and firm desire to develop friendly relations with Indonesia. General Mortopo reassured me that Indonesia harboured no territorial ambitions over East Timor. However, we soon learned that the word of an Indonesian military officer or diplomat can be broken as easily as spoken.

The current boundaries of the Republic of Indonesia are a product of the Dutch East Indies administration. West New Guinea was absorbed by the Republic not because of historical, cultural, ethnic or geographic continuity. The link that justified its forcible annexation was West New Guinea's brief colonisation by the Dutch. The founding fathers of the Republic of Indonesia claimed the entire Dutch East Indies comprising 250 distinct ethnic groups speaking more than 300 languages as the historical, legal and geographical basis of their new Republic. Consistent with this they did not include East Timor in their land-grabbing and empire-building enterprise.

Respect for the colonial boundaries is what has kept most of Africa, Latin America and Asia from disintegrating. No government should take upon itself the task of redrawning a country's boundaries at the expense of its neighbours. This is what Somalia tried to do in 1977 by invading the Ogaden region of Ethiopia and Somalia's problems of the last few years can be traced back to that fateful adventure. World War II started with attempts by the Third Reich to expand eastwards. This is also what President Suharto and his many generals, Ali Mortopo, Pangabean, Benny Murdani, did in 1975.
East Timor was sacrificed on the altar of the Cold War and Indonesia had no difficulty arguing its case with the bogus communist threat. Now that the Cold War is over, another argument had to be found and there was nothing better than the Yugoslavia scenario to scare off the rest of the world. Now we hear that if East Timor were to be allowed to be independent, it would cause the disintegration of Indonesia.

Twenty years after the invasion, the problem of East Timor has not disappeared. A video camera in the hands of a courageous cameraman recorded for the first time one of the many massacres that took place in my country. The massacre of 271 Timorese civilians in Dili on 12 November 1991 was not an isolated incident. It followed a well documented pattern of gross and systematic human rights abuses in many parts of East Timor perpetrated by members of the armed forces with the full knowledge of, and active participation by, the highest ranking officers in the army.

The Israeli-Palestinian peace talks and South Africa's transition to democracy give us renewed hope in that they demonstrate that seemingly intractable problems can be resolved if there is political will and vision by all involved. Our imprisoned leader; Xanana Gusmao, has proposed and reiterated time and again our very basic stand. We remain ready to enter into a process of dialogue with the Indonesian authorities under the auspices of the United Nations, without preconditions, to explore all possible ideas towards a comprehensive settlement of the conflict.

In April and May, 1992, addressing the European Parliament in Brussels and the Council of Foreign Relations in New York, respectively, I outlined a modest peace initiative which we believed, then and now, offers the best way out of this conflict. The outline of that peace plan is as follows:

**Phase I - Humanitarian Phase**

This phase, which should take up to two years to be fully implemented, would involve all three parties working with the UN to implement a wide range of "confidence building measures", but would not deal with the core of the problem which is the issue of self-determination. This phase of the talks must focus on achieving:

1. Immediate end to all armed activities in East Timor;
2. Reduction of Indonesian troop presence to a maximum of 1000 within a six-month period;
3. Removal of all heavy weapons, tanks, helicopters, combat aircraft, long range artillery;
4. Unconditional immediate and release of all political prisoners;
5. Reduction by 50% of Indonesian civil servants in East Timor;
6. Stationing in the territory of UN Specialised Agencies such as UNICEF, UNDP, WHO, FAO;
7. A comprehensive census of the population;
8. Establishment of an independent Human Rights Commission under the Catholic bishop;
9. Lifting of all media control by the army;
10. Freedom of political activities;
11. Removal of restrictions on the teaching of Portuguese, and establishment of a Portuguese Cultural Institute;
12. Appointment of a resident Representative of the UN Secretary-General.
These are ideas which could be implemented immediately, without loss of face for Indonesia. On the contrary, its international standing would improve significantly and its presence in the territory would be less resented, thus relieving a very tense situation.

**Phase II - Autonomy, 5-10 Years**

Phase II, lasting between five and ten years, would be a period of genuine political autonomy based on ample powers vested in a local, democratically elected Territorial People's Assembly. The following ideas could be explored and effected:

1. Political parties, including those advocating independence for East Timor, are legalised;
2. The EU sets up a legation in East Timor headed by a senior Portuguese official;
3. Elections are held for a Territorial Assembly. The UN to provide technical support and supervision of the entire process;
4. Only Timorese identified as such may vote and be eligible;
5. The Assembly elects a Governor of the Territory;
6. The Assembly and the Governor have a 5-year mandate;
7. The Territory may enter into trade relations with foreign countries, promulgate its own laws affecting investment, land ownership, property, immigration, etc.;
8. Remaining Indonesian troops are withdrawn within three months.
9. The Territory will have no army. A police force is trained by the UN and is placed under the elected governor;
10. Further reduction of Indonesian civil servants;
11. Portugal and Indonesia normalise relations;

At the end of the second phase, the autonomous status of the territory could be extended by mutual accord. Seven years would have elapsed since this peace initiative had been effected. The East Timorese people, having enjoyed a period of peace and freedom without the presence of the most hated symbol of the occupation, the army, might accept to continue this form of association. Conversely, the changing generation, attitudes and perception in Indonesia might also result in Indonesia accepting as natural that East Timor becomes independent.

**Phase III - Self-determination**

If all parties agree that Phase III should enter into effect immediately, then the UN begins to prepare a referendum on self-determination to determine the final status of the territory. However, I must emphasise again that a referendum on independence might not be the necessary outcome. There is a strong chance that if Indonesia were to make a serious effort in changing its policies investing heavily in winning the trust of the people, at the end of Phase II of this peace initiative, the people of East Timor might opt for an extension of the autonomy for another five years.

Allow me to share with you, our vision for our country's future and our role in the region. Assuming that a referendum will result in an independent East Timor, Timorese political parties would form a government of national unity for the first five years. East Timor is the cross-roads of three major cultures: Melanesian, which binds us to our brothers and sisters of the South Pacific region; Malay-Polynesian binding us to Asia;
and the Latin Catholic influence, a legacy of almost 500 years of Portuguese colonisation. This rich historical and cultural existence places us in a unique position to build the bridges of dialogue and co-operation between the peoples and religions of the region.

East Timor would maintain close ties with Portugal, a country that, having colonised us for almost half a millennium, has shown an abiding commitment to our right to self-determination. Portugal and East Timor would be the most valuable partners for the ASEAN in its relations with the EU, Africa and Latin America. Our relations with the Portuguese-speaking countries in Africa, Angola, Cape Verde, Guinea-Bissau, Mozambique and Sao Tome and Principe, will survive the test of time a regimes for our peoples are glued by centuries of a common history. On the other hand, when we were alone, they were behind us, sharing with us their own limited resources. We are forever indebted to them.

The majority of the East Timorese residents outside the country are based in Australia. We would offer ourselves as a bridge between Australia and the South Pacific island states as well as between Australia and Southeast Asia.

We would not have a standing army. For our external security we would rely on a Treaty of Neutrality to be guaranteed by the permanent members of the Security Council. We would endeavour with the UN and our neighbours to declare the seas surrounding East Timor a Zone of Peace and work towards total demilitarisation of the entire East Asia and Pacific regions.

We would endeavour to build a strong democratic state based on the rule of law which must emanate from the will of the people expressed through free and democratic elections. We would encourage a free and independent media as the voice of the people: a media that informs and educates. We believe that there can be no foreign interest controlling the local media. We believe the media should be as independent as the judiciary. International human rights treaties would be submitted to the Parliament for ratification. We believe that human rights transcend boundaries and prevail over state sovereignty. We would introduce in the school curriculum from very early the subject of human rights. We would actively work with like-minded countries, NGOs and the media to strengthen the UN human rights machinery. We would actively support the creation of an international human rights court and a penal court to try war crimes and crimes against humanity. We would seek the co-operation of UN human rights agencies as well as of NGOs to assist us in our own efforts to promote respect for human rights and the rule of law in our country.

We would proclaim a general amnesty and national reconciliation. To be true to ourselves we would forgive our worst enemies. Our society would not be based on hatred and revenge. Because of its credibility and standing of the past twenty years, the Catholic Church would be expected to play a major role in the healing process for our society.

East Timor is a relatively small country. But with an area of 18,889 km2 and a total population of 700,000 (1974 figures), it is at least equal to, if not larger, in size and population, than some 40 independent states. It is four times the size of Brunei and 40 times larger than Singapore. It is potentially self-sufficient in most agricultural goods, meat and fish. It also has large reserves of natural gas, manganese and oil.

On the economic front, we would channel our resources into food production in order to feed our people. We would seek the co-operation of the UN Specialised Agencies such as the FAO, World Food Program, UNDP. However, all our policies would be the result of close consultation with the people in each region, town and village. In addition, in co-operation with the FAO and other international bodies, we would initiate a massive reforestation program to save our badly damaged environment.

The invasion uprooted thousands of people. Properties were abandoned, destroyed or sold at unfair prices. This situation would be redressed. A voluntary resettlement plan would be
effected to allow the many tens of thousands of displaced East Timorese to return to their ancestral lands.

We believe in free education and health care for our people. The money saved from not having a standing army would be well used in these areas. At least 40% of our resources would be allocated to our best resource - our people - through massive investment in health, education, and food production. With the co-operation of WHO we would seek to eradicate malaria, tuberculosis and other preventable diseases within a decade.

It is estimated that over 100,000 Indonesians are now living in East Timor. Most are poor Indonesians who came to our country looking for a better life. We would not be true to our selves if we were to turn our backs on our poor neighbours. Indonesian migrants in East Timor would be welcome to stay and build with us a better home for us all. They have brought with them the wealth of their culture which can enrich the whole community.

We are conscious of our geography which compels us to coexist with our neighbours in this part of the world. We would seek membership in ASEAN and the South Pacific Forum within days of our independence.

For the last 20 years our neighbours have turned their backs on us. They should offer a word of wisdom to their Indonesian neighbours to seize with an open mind the olive branch we have been offering since 1974 when I met with Adam Malik. Indonesia is mediating the conflict in Mindanao and is credited along with Australia for the peace process in Cambodia. Should not we expect that the Indonesian government which has shown such willingness in mediating its neighbours internal problems show also similar willingness in negotiating an end to its own occupation of East Timor?

We are as determined as we are optimistic about our future. To Indonesia and our other neighbours in the ASEAN we are offering a hand to friendship and appealing to them to help us bring peace and freedom to East Timor. More pain and misery and loss of lives can be spared, more embarrassment in the international fora can be avoided, if ASEAN live up to its responsibilities.

We extend our solidarity to the people of Burma and their elected leader, Nobel Peace Laureate Daw Aung San Suu Kyi, in their struggle for democracy, rule of law and human rights. In July 1994, I spent almost two weeks in Mannerplaw meeting with leaders and representatives of all Burma's nationalities. I was overwhelmed by their hardship but also by their resilience and faith. I felt small in the face of their greatness. At a time when the ASEAN rulers are conniving with the SLORC regime to deny the people of Burma their legitimate victory, the peoples of this region must stand up and redouble their efforts to restore democracy to Burma.

To the people of Tibet and their leader, His Holiness The Dalai Lama, we extend our profoundest admiration. Their struggle, courage and hope, the greatness of their heart in forgiving their enemies teach us about tolerance. The Tibetan people deserve their country back and freedom for their world needs a free and independent Tibet. With its wisdom Tibet can be a major player in this turbulent world.

To the people of Western Sahara whose tenacity and diplomatic wisdom have gained international recognition goes our admiration and prayers that they soon will occupy their rightful seat at the UN.

But I cannot forget here the great peoples of West Papua, the Moluccas, Aceh, Kalimantan, whose destinies are glued to our own struggle and of those in Indonesia in their courageous fight for dignity, democracy and human rights.

From the Chittagong Hill Tract in Bangladesh to Bougainville in the South Pacific, from Sri Lanka to India, Chechenia, Abkhazia, and the Ogoni in Nigeria, millions of peoples seek desperately to assert their right to self-determination. Some demand full independence.
Others demand some measure of self-rule. If we attempt to find a common denominator for the problems I have just listed, there is one: the right of these peoples to self-determination. Governments must be sensitive and wise to the basic demands of their own people and in most cases these demands are not for secession. In most cases the demands about their survival as a people with a language and a culture, with their land and environment protected from rapacious multinationals. Only when these basic demands are not met has there been recourse to other forms of struggle and an inevitable escalation in their demands.

We understand the very legitimate concerns of developing countries like Indonesia and India in preserving their national unity and territorial integrity. Many developing countries experienced a traumatic nation building with numerous attempts from within and without to break up the unity of the state. Hence the security culture that permeates the military and the ruling elites. However, the preservation of the territorial integrity of a country can be achieved only if those in power are sensitive to the basic demands and aspirations of the many indigenous peoples and nationalities that make up the country. Brute force might silence and keep dormant the dreams and aspirations of a people but the anger simmering for decades will inevitably blow open and break up the country. The exercise of the right of a people to self-determination has never caused the fragmentation of a country. This has been largely the result of artificial arrangements imposed on the people. The break-up of the Yugoslavia and the USSR do not lend credibility to those advocating the argument that self-determination is the cause of instability and war. The opposite is true.

The world has changed dramatically in the last few years. There seems to be more conflict today than ten years ago. But I remain optimistic and I am mesmerised by the mind boggling changes that have occurred in the last 10 years. The theories of irreversibility and status quo have been discredited by the collapse of the USSR. The movement for democracy, human rights and the rule of law is irreversible. Even in our tortured region, Asia, some extraordinary events without precedent are taking place. The events in South Korea are of enormous significance for democracy and the rule of law in the entire Asia region. The brave people of South Korea who endured decades of dictatorship and occupation won the struggle for democracy not with guns but with their tenacity in fighting the troops in the streets of Seoul and Kwangju. They conquered a democratic form of government but they have not given up the struggle for real democracy and justice. For the first time in the history of Asia, former heads of states and other leaders are being prosecuted for crimes committed while in office. The people of South Korea are challenging the impunity of public office and the sacrosanct myth of national security interest which allows leaders to imprison, torture and murder. The South Korean struggle is being watched closely in Asia and is sending tremors to Thailand, Burma, China and Indonesia. To the brave people of South Korea I bow in admiration for their courage and inspiration for all of us in Asia.

The peoples of Burma, Thailand, the Philippines, South Korea, the democracy movement of China, the democracy movement of Indonesia, are telling the rest of the world that the struggle for democracy and human rights is not an invention of the West or of Western NGOs. The rest of the world owes the peoples of Asia a sacred duty to stand by them.

Last but not least, for the prophets of doom, for those in government who counsel us "realism", allow me to remind you of a news report on the BBC a few years ago. I was driving from Nyon to Geneva to yet another round of futility in this building where diplomats, not all, but many, do not listen to us: they are too busy, or pretend to be busy or important, but who are always eager to give us advice about being "realistic". A soviet cosmonaut had gone into space a few months earlier in another attempt at record breaking permanence in space. When he was blasted off from somewhere in the Soviet Union he carried with him a passport and had a nationality of the mightiest and most feared military empire in the world. Having completed his tour of duty, to the pride of the socialist
motherland, he prepared the spacecraft for the return home. But he no longer had a country to return to. The mighty empire had ceased to exist. He was forced to circle the earth a bit longer until people of goodwill on earth decided to which country he should go. Who ever thought it possible that the great Armenian nation, persecuted, humiliated for hundreds of years would have regained their country, Armenia? Who thought it possible that the brave people of Eritrea, victims of conspiracy by the entire world, socialist and non-socialist, would rebuild their beloved Asmara in freedom and dignity? The captive nations of the Baltic states will tell us not to lose hope.

I hope that one day, in our life time, I will be able to climb up to the roof top of the world, to the abode of peace and wisdom, and meet again my good friend, His Holiness the Dalai Lama, restored to his temporal seat in his monastery in Lhasa. With this note, I will end with renewed hope that no matter the brute force used against us, our dreams will never die.
Since its invasion and continued occupation of Tibet, China has denied the Tibetan people many basic rights recognized under international law. One such basic right is the right to self-determination. By forcibly occupying Tibet, China has prevented Tibetans from exercising control over their lives in many spheres, from the political and economic to the cultural and religious.

The accepted definition of the right to self-determination is contained in Article 1 common to the International Covenants of Human Rights: "All peoples have a right to self-determination; by virtue of that right they are free to determine their political status and freely pursue their economic, social and cultural development". Thus this right may best be viewed as entitling a people to choose its political allegiance, to influence the political order under which it lives, and to preserve its cultural, ethnic, historical or territorial identity. The principle of self-determination of peoples has been accepted as part of international law by the community of nations. It is enshrined in Article 1 of the Charter of the United Nations, which states that one of the purposes of the United Nations is "to develop friendly relations among nations based on respect for the principle of equality and self-determination of peoples". Article 55 of the Charter also speaks of international economic and social cooperation "with a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples."

The Tibetans are certainly a "people" to whom the right of self-determination applies. While there is no one clear definition of a "people", the Tibetans would clearly fall under any reasonable definition. The most accepted definition of a people in international law who possess the right to self-determination was prepared by the ECOSOC Group of Experts on the rights of peoples:

a. "A group of individual human beings who enjoy some or all the following common features:
   (i) a common historical tradition, (ii) racial or ethnic identity; (iii) cultural homogeneity; (iv) linguistic unity; (v) religious or ideological affinity; (vi) territorial connection; (vii) common economic life.

b. The group must be of a certain number who need not be large (e.g., the people of micro states) but must be more than mere association of individuals within a state.

c. The group as a whole must have the will to be identified as a people or the consciousness of being a people - allowing that groups or some members of such groups, though sharing the foregoing characteristics, may not have the will or consciousness.

d. Possibly the group must have institutions or other means of expressing its common characteristics and will for identity."³

1 Morton H. Halperin & David Scheffer, Self-Determination in the New World Order, 1992
2 Charter, Article 1, Paragraph 2.
The Tibetan people satisfy each of these criteria and are a distinct people with the right to self-determination under international law. In fact, the People's Republic of China itself has in its constitution, legislation and practice, identified and treated the Tibetans as a separate and distinct people.4

A Country With It's Own Government and a Distinct Territory
Tibet is a land mass of 2.5 million square kilometers with a population of 6 million Tibetans. The Chinese not only illegally invaded and occupied independent Tibet, they also divided up the country. Most of Kham was annexed into the neighbouring Chinese provinces of Sichuan and Yunnan by the Chinese, while a part of Amdo was incorporated into the Chinese province of Gansu. A major portion of Amdo was renamed Qinghai and turned into a Chinese province. This has been an attempt to weaken the unity of the Tibetan people and to divide and rule - an endeavour that has not succeeded.

We hear time and time again from the Chinese government about their historical claim to Tibet. These claims are simply not true. Prior to the Chinese invasion, Tibet was a fully functioning independent state. In its 1959 and 1960 reports on Tibet, the International Commission of jurists noted that at the time of China's invasion Tibet demonstrated all the necessary conditions of statehood. The 1960 final report states, "In 1950 there was a people and a territory, and a government which functioned in that territory, conducting its own domestic affairs free from any outside authority. Foreign relations of Tibet were conducted exclusively by the Government of Tibet and countries with whom Tibet had foreign relations are shown by official documents to have treated Tibet in practice as an independent state."5 Furthermore, in 1987 the research department of the German Bundestag examined the status of Tibet and confirmed, for its part, that Tibet was indeed an independent country at the time of the Chinese invasion.

A Case for Tibetan self-determination
China's human rights, environmental and development policies in Tibet are based on a colonialisit structure long rejected by the international community. The UN Declaration on the Granting of Independence to Colonial Countries and Peoples states, "The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations, and is an impediment to the promotion of world peace and co-operation." The document then declares, "All peoples have the right to self-determination."6

The enjoyment of the right to self-determination is a prerequisite for the enjoyment of all other human rights. There cannot be respect for human rights in Tibet until the conflict over the political status of Tibet is resolved. Political opposition in Tibet focuses almost entirely on the perceived colonial nature of Chinese rule in Tibet.

Tibetans are entitled to exercise this right to self-determination because they are indisputably a people. They possess all the necessary objective, identifiable criteria of a distinct people, including a distinct language, religion, culture, traditions and customs, history, and territory. Tibetans also meet all other subjective criteria, such as shared preferences, values and common destiny. In 1961, the U.N. General Assembly recognized this right and passed a resolution calling for "the cessation of practices which deprive the Tibetan people of their fundamental human rights and freedoms, including their right to self-determination".7

4 For more on Tibet and self-determination, see, Tibet: The Position in International Law, 1993
6 The U.N. Declaration on Granting of Independence to Colonial Countries and Peoples
7 United Nations General Assembly, Resolution 1723 (XVI), New York, 1961
During the deliberations on Tibet at the United Nations in 1959, Mr. Shanahan, the head of the New Zealand delegation to the U.N. stated, "it is, indeed, a matter of record that the Tibetan people have for centuries preserved their separate identity, their own institutions of government and their unique way of life within the borders of their own homeland. It would be difficult to conceive of circumstances in which any stronger case could be made for the exercise of self-determination."8 Prince Ali Khan, head of the Pakistani delegation, said, "The people of Pakistan have been greatly concerned over the unfortunate events in Tibet. The Tibetan people are our close neighbours. For hundreds of years they have pursued their traditional way of life. They have a right to choose the way in which they wish to live. Equally, it is the duty of the rest of the world to respect their choice."9 

In fact, the Chinese are fully aware that given the opportunity to determine their own fate, the Tibetans would choose independence and a return of His Holiness the Dalai Lama. But, they are being denied the opportunity to choose for themselves. In fact, the Tibetan people's inalienable right to self-determination is being completely violated.

The right to self-determination, as stated above, includes the right of a people to freely determine its political status and to freely pursue its economic, social and cultural development. Tibetans exercise no real control over the development of their own country. Tibet's natural resources are being depleted without benefiting Tibetans, and the country is being purposefully inundated by Chinese settlers in order to undermine any possible exercise of self-determination by Tibetans even in the future.

China has not only denied the Tibetans their right to self-determination, but has also instituted deliberate policies to destroy the Tibetans as a distinct people, with their own national and cultural heritage. In the Convention on the Prevention and Punishment of the Crime of Genocide, of which China is a signatory, genocide is defined as "acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group as such, and [is] deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part." In 1960, the International Commission of jurists found "that acts of genocide had been committed in Tibet in an attempt to destroy the Tibetans as a religious group."12 Religion is an integral and inextricable aspect of Tibetan culture. Any attempt to destroy the religion should be regarded as an attempt to destroy the culture.

Population Transfer

Today there is a new and extremely threatening form of cultural genocide being pursued, an essential element of which is the government induced influx of Chinese settlers to Tibet and which is in violation of international law.13 Under international law, the transfer of civilians into occupied territory is prohibited by the IVth Geneva Convention of 1949. Moreover, the practice of population transfer constitutes a serious violation of human rights. It has been condemned by the U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities in August of 1991 and 1992, and has been described by experts as a crime against humanity.14

While accurate figures do not exist, it is undeniable that Chinese outnumber Tibetans in cities and larger towns throughout Tibet. There are fewer Chinese in small villages or rural areas.

8 Bureau of His Holiness the Dalai Lama, Tibet in the United Nations 1950-196, p.61
9 ibid, p.119
10 The U.N. Declaration on the Granting of Independence to Colonial Countries and Peoples
11 Convention on the Prevention and Punishment of the Crime of Genocide
For three decades, from 1950 to 1980, the transfer of Chinese into Tibet was largely a centrally planned and co-ordinated strategy. The first wave of Chinese consisted of the invading armies, many of whom remained in Tibet by order of their commanders. In fact it is common to meet Chinese in Tibet today who are the sons and daughters of PLA soldiers who came to "liberate" Tibet, a task that involved the PLA for several decades, and to some extent is still going on. Later Chinese settlers came to Tibet as road builders, civilian and military workers, as well as cadres and administrators. An estimated 1 million Chinese prisoners and ex-prisoners were sent to, and are now settled in, the Tibetan province of Amdo, which has since become the Chinese province of Qinghai.

Today the movement of Chinese into Tibet is both centrally and locally induced by transfers, development, subsidies and incentives. A mobile work force has arisen who are willing and able to relocate wherever the state provides sufficient incentives and bonuses. Incentive packages typically include higher wages, lengthier vacations, better housing and medical care and preferential opportunities for the education of children. The Panchen Lama noted, "The expense of keeping one Chinese in Tibet is equal to that of four in China. Why should Tibet spend its money to feed them? ...Tibet has suffered greatly because of the policy of sending a large number of useless people. The Chinese population in Tibet started with a few thousand and today it has multiplied manifold." By saying this publicly, the Panchen Lama put his very life in danger as he tried to work within the Chinese system to try to ameliorate the situation for Tibetans in Tibet. In fact, he died shortly after making this statement.

The extent and nature of government benefits for the Chinese in Tibet is relatively well documented. The government has openly admitted that it must give rewards to get Chinese to come to Tibet. A 1991 fact finding mission of the International Campaign for Tibet confirmed reports that services have been provided to Chinese coming to Tibet ranging from housing, meals, laundry, long vacations and paid transport back to their hometown in order to keep the Chinese in Tibetan regions. The 1995 US State Department Country Human Rights Report acknowledges the increasing demographic shift in favour of non-Tibetan people and says, "Most of these migrants profess to be temporary residents, but small businesses run by ethnic Han and Hui peoples (mostly restaurants and retail shops) are becoming more numerous in or near some Tibetan towns and cities." Government induced migration of Chinese into Tibetan areas is motivated by strategies aimed at reshaping the demographic composition of the region. Outnumbering and assimilating the Tibetans with loyal and patriotic Chinese renders the area politically stable - a necessary pre-condition for the government's development plans to succeed. Isolating Tibetan resistance movements or intimidating those groups by an overwhelming military and civilian presence effectively counters movements for independence or self-determination.

By manipulating the demographics of Tibet, the Chinese government is able to control the disputed territories and maintain policies to sinicize Tibet. The systematic assimilation of Tibet threatens not only the culture and way of life of the Tibetan people, but also the very existence of Tibetans as a people. This is a dear example of colonialist behaviour. If the present trends continue, Tibetans will, before long, be reduced to a small and insignificant minority in their own country in the same way as is happening to the Turkic people of Eastern Turkestan and the Mongolians of Inner Mongolia.

15 Panchen Lama's Address to the TAR Standing Committee Meeting of the National People's Congress held in Peking on 28 March, 1987
16 Liang Ming, Tibet's Population: 1 Million in 40 Years, Beijing Review, April 22-28, 1991
Some of the other grounds on which a compelling case for the Tibetan people's right to self-determination can be made are:

A. Alien Domination

In 1949 and 1950, the independent nation of Tibet was invaded by troops of the People's Liberation Army (PLA), who claimed to be "peacefully liberating" the Tibetan people. China's unprovoked aggression violated Tibet's national and territorial integrity, killed thousands of innocent people, and deposed a legitimate government, most certainly not "a peaceful liberation." After unsuccessfully appealing to the United Nations, the Tibetan Government in 1951 signed, under duress, a "17-Point Agreement" devised by the Chinese occupying forces. The autonomy guaranteed under the agreement was soon violated as China moved quickly to consolidate its control over Tibet.

Despite a wholly inadequate and unprepared military force, the Tibetans' defence of the Chinese invaders erupted into a massive revolt in Eastern Tibet in 1956, and spread throughout Tibet, reaching Lhasa three year later. According to China's own statistics, 87,000 Tibetans were killed in Lhasa and the adjoining areas alone during the 16month period following the uprising in Lhasa in March 1959. His Holiness the XIV Dalai Lama narrowly escaped the killing and was forced to flee over the border to India in order to continue his leadership of the Tibetan people. He was followed by over 100,000 Tibetan refugees who survived the treacherous journey into exile.

The use of force and the imposition of a new government by China deprived the right of the Tibetans to control their own fate and represents a violation of the principle of self-determination. The continued strong opposition of the Tibetan population to Chinese domination by a foreign power. International law recognizes a right to self-determination for those under alien domination.

The international response to these events was muted by world events, geopolitical realities and Tibet's own isolationism. Although the international community did not actively become involved in Tibet, they recognized the Tibetan people's right to self-determination. In 1959, 1961 and 1965, the United Nations General Assembly passed three resolutions that strongly condemned China for its actions in Tibet and a number of governments reiterated their view of Tibetan independence during the debates.

B. Destruction of Tibet's Distinct Religious and Cultural Identity

The Tibetans who remained in Tibet following the 1959 uprising have since endured the darkest period in Tibet's 2000-year history. Following the first of two fact-finding delegations to Tibet, the Tibetan Government in Exile issued a report documenting the deaths of over 1.2 million Tibetans who died as a direct result of China's occupation: victims of war, famine, internment, execution, torture and suicide. Over 6,000 monasteries, including temples and historic buildings, the primary institutions of Tibetan culture, were dismantled and destroyed. Many of Tibet's treasures, including ancient and irreplaceable religious items, were subsequently sent off to China.

Beginning in 1959 and lasting through the end of China's Cultural Revolution in 1976, the Chinese occupation forces conducted a well-organized effort to systematically destroy outward manifestations of Tibet's distinct religious and cultural institutions. Although they were extremely effective in destroying the monasteries and artifacts, they could not quell the Tibetan spirit, nor could they put an end to the thriving Tibetan culture in exile. Through it all, the Tibetans continued to follow their exiled leader, His Holiness the Dalai Lama, who has steadfastly advocated peaceful resistance based on principles of non-violence.
China's bloody response to demonstrations in Lhasa in 1987 and 1988, against the Chinese occupation and the declaration of martial law in Tibet in 1989 increased international awareness of the Tibetans' non-violent struggle. His Holiness the Dalai Lama was awarded the 1989 Nobel Peace Prize for his commitment to non-violence in his work to liberate Tibet, helping to raise awareness of the Tibetan cause. In August 1991, the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities passed the first United Nations resolution on Tibet in 26 years, expressing its concern "at the continuing reports of violations of fundamental human rights and freedoms which threaten the distinct cultural, religious and national identity of the Tibetan people." Human Rights Watch, in a recent report, asked why it was that in Tibet, "a country whose population accounts for only around 0.2 percent of the total population of China, there are currently more known political and religious prisoners reported to be in jail than in the rest of the country combined." Amnesty International, in its 1995 report on Tibet states, "Repression of political dissent in the Tibet Autonomous Region (TAR) of the People's Republic of China, already endemic for many years, increased further during 1993 and 1994. New forms of repression were introduced, targeted primarily against people actively promoting the independence of Tibet. Hundreds of political prisoners, the overwhelming majority of them prisoners of conscience, were held".

"The government strictly enforces limits on the number of monks in major monasteries, and in March acknowledged publicly for the first time that these limits exist." Of all the intrusions by China's atheist rulers into religious matters in Tibet perhaps the most ironic is the government's oversight of the search for, and recognition of the 11th Panchen Lama. In a blatant example of the total violation of the Tibetan people's freedom to religion, the communist government rejected the true 11th Panchen Lama endorsed by His Holiness the Dalai Lama and the Tibetan people and announced a candidate of their own. The six-year-old Gedhun Choekyi Nyima, the 11th Panchen Lama and his family are under house-arrest somewhere in Beijing.

C. The Tibetan Government in Exile

The Tibetan Government in Exile is the continuation of the legitimate and recognised government of Tibet. It is the institution that expresses the Tibetan people's "common characteristics and will for identity." When His Holiness left Tibet in 1959, the legitimate Tibetan government left with him. It is still the only legitimate government of Tibet and representatives of the Tibetan people. To fulfill the aspirations of the Tibetan people, this government must return to a free Tibet. The government is currently making efforts to democratize while in exile and incorporate what is has learned from democracies around the world into a new system for an independent Tibet. Since 1990, the cabinet of the Tibetan Government in Exile has been elected by the Tibetan Parliament in Exile. This reflects a major change from the earlier system where the cabinet members were appointed by His Holiness the Dalai Lama. In less than 10 days, Tibetans throughout the world will be going to the polls to elect members of the

18 UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, Resolution 119/10, 23 August 1999
19 Human Rights Watch, Detained in China and Tibet, February 1994, p. xxxvi
22 One of the criteria for the definition of the concept of "peoples" in the report published by the UNESCO's International Meeting of Experts on Further Study of the Concept of the Rights of Peoples: Final Report and Recommendations, 1990
XIIth Assembly of Tibetan People's Deputies, the parliament in exile. This right is not enjoyed by the Tibetan people inside Tibet. Tibet today is run by officials who are hand-picked by the communist party. His Holiness the Dalai Lama has called for any decisions that are made concerning the future of Tibet to be decided by the Tibetan people. Furthermore, he has said that a new government in Tibet should incorporate Tibetans who have lived under Chinese control and who have suffered for their political and religious beliefs, Tibetan officials working in the Chinese bureaucracy, and those Tibetans who have made a contribution in exile over the last 46 years.

The Tibetans, lead by His Holiness the Dalai Lama, have worked tirelessly to find a peaceful solution to end the Chinese occupation of Tibet. His Holiness has consistently offered new plans to the Chinese government for discussion, only to have them rejected. On September 21, 1987, His Holiness presented the "Five Point Peace Plan" before members of the U.S. Congress, calling for the restoration of Tibet as a zone of nonviolence, or "Ahimsa", and the commencement of earnest negotiations on the future status of Tibet.

His Holiness elaborated on this plan in 1988 during a speech to members of the European Parliament in Strasbourg, France. In what is referred to as the "Strasbourg Proposal", it was proposed that all the Tibetan people be reunited in one self-governing administrative unit with responsibility of all affairs affecting Tibet and the Tibetan people. Under this plan, China would remain responsible for Tibet's foreign affairs. Despite these major concessions, which many Tibetans criticized as a "sell-out", the Chinese leadership failed to respond positively to these overtures.

Conclusion

The international community should embrace a broader and less alarmist view of self-determination. The exercise of self-determination need not result in the outcome feared by some: independent statehood for every single ethnic group. Rather, the exercise of self-determination can lead to a number of outcomes, ranging from minority-rights protection, to cultural or political autonomy, to independent statehood. A plebiscite or elections among the Tibetan people inside Tibet today will certainly show that the Tibetan people would support an exercise of self-determination. However, the situation in Tibet does not permit the holding of such an exercise. In the absence of elections or a plebiscite, the international community must look at other forms of expression to determine the will of the Tibetan people. The enormous support for His Holiness the Dalai Lama in Tibet and for his efforts "to resolve the issue of Tibet in a spirit of reconciliation, compromise and understanding" is such an expression.23

To speak today on the rights of the Tibetans to self-determination is of particular significance. According to the UN Declaration on Friendly Relations, a state can invoke the principle of territorial integrity against a claim for self-determination only when that country has a government truly representing the whole population.

Recently, Chinese authorities decided to abolish the elected legislative body of Hong Kong as soon as Hong Kong reverts to Chinese sovereignty. Before that, we all witnessed the extremely aggressive and militaristic posture China adopted to try to thwart the democratic elections in Taiwan. Fortunately, China's rattling of sabres across and in the Taiwan Straits had the opposite effect than that anticipated by Beijing. Proponents of "re-unification" lost badly, and the two principal parities, the KMT and the DPP, both of whom work for greater international recognition of Taiwan's separate status, came out on top.

23 Statement of H. H. the Dalai Lama on the occasion of 37th Anniversary of the Tibetan National Uprising, March 10, 1996
I mention this to illustrate the extent to which China fears and opposes democracy, even in territories outside its present borders. Little surprise, therefore, that inside China, no form of democracy is allowed. And the government in Beijing cannot, consequently, claim to be a government representative of the whole people - not even the whole Chinese people, let alone of the Tibetans, Uyghurs, or the Mongolians.
When the great powers gathered in Berlin in 1888 to divide the world, Western Sahara came under Spanish rule. Until February 1975, it remained a Spanish colony, in spite of the UN General Assembly resolution A/2072(XX) of 16 December, 1965. This Resolution urges Spain to take the necessary steps for the organization of a referendum of self-determination for the "non-self-governing territory" it administers. Up until today this referendum has never been organised in Western Sahara, for reasons that have nothing to do with the will of the Saharawi people nor with international law.

The General Assembly, for more than 30 years, has reaffirmed that the question of Western Sahara is in the first place a problem of decolonisation. In accordance with the famous Declaration on the Granting of Independence to Colonial Peoples (GA Res. 1514(XV) this problem should be solved by the exercise of the Saharawi people of its inalienable right to self-determination and independence. This declaration interprets the provisions of the United Nations Charter in light of customary evolution of international law on decolonisation. It makes self-determination a rule applicable to all colonial situations with the view to bringing these to a speedy end, and with independence as the normal outcome.

While Resolution 1514 makes independence the normal outcome of the self-determination process for the people of the colony, international law at the same time recognizes that self-determination can not only lead to independence but also to integration within or free association with a state. Whatever the outcome, it should be the result of a dear and free choice of the people concerned, expressed through democratic channels and with their full knowledge of the facts. The General Assembly has affirmed the special responsibility of the United Nations Organisation in this process, thereby offering the population of the territory an international guarantee for the respect of their will.

In the case of Western Sahara, the General Assembly assigned the Secretary General to immediately nominate a UN mission. This mission would go to Western Sahara, in conformity with Spain, to take practical measures for the complete application of the relevant General Assembly resolutions and to decide on the role of the United Nations in the preparation and supervision of the referendum. The organization of the referendum depended hence on the co-operation of Spain who, as the administrative power, was given this role to facilitate the exercise of the right to self-determination of the Saharawi people and to apply in good faith the General Assembly resolutions on the implementation of this right.

From 1966 to 1974, Spain voted against the resolutions on the right to self-determination of the Saharawi people. It persistently hindered the organization of the referendum, of which the General Assembly has not ceased to reiterate the necessity. The prolongation of the colonial situation, which violated the General Assembly resolutions, contributed to the resurgence of the resistance movement against the colonial occupation, which in turn led to military and police repression. This totally contradicted the obligation of Spain to create a favourable climate for the holding of the referendum.
The General Assembly, though, did not possess the necessary powers to force Spain to comply. Therefore, it simultaneously recognised the legitimacy of the struggle led by the colonised peoples for the exercise of the right to self-determination and their right for assistance in their struggle.

The constitution of "Frente Popular para la Liberation de Seguia el hamra y Rio de Oro" (Frente Polisario) on 10 May 1973, is the expression of the will for independence of the Saharawi people and an instrument for mobilisation and liberation from colonial domination, by all means, including armed struggle. The constitution is part of the framework of decolonisation which, after resolution 1514, prohibited the use of force to deprive colonised peoples of their right to self-determination, and which gave these peoples the right to receive support in their resistance against measures of coercion aiming to deprive them of their right to self-determination.

On May 20, 1973 Polisario Front started its nation liberation struggle with the spectacular operation of El Khanga, during which it captured several Spanish soldiers. Afraid that events would follow the example of what happened in the Portuguese colonies, Spain started negotiations with Polisario in October 1975 regarding the transfer of power. On October 16, 1975, to influence Spain in such a way that it will denounce its plan for the transfer of power to Polisario, Morocco started its so-called "green march" of several thousand people in Western Sahara.

The UN's obligation to act rapidly to prevent the use of force denying the Saharawi people their right to self-determination was pressing more than ever. However, the intervention of the Security Council did not in any way match the imminence and severity of Morocco's threat to the illicit use of force. Indeed, the Security Council called by Spain on October 17, did not even incriminate Morocco and refrained from urging Morocco to renounce the green march. It recommended negotiations and entrusted the Secretary General a consultation mission in order to allow the Security Council to adopt the appropriate measures to face the situation! In the absence of any will of the Security Council to exercise pressure on Morocco, Spain made a U-turn, and "delivered" Western Sahara to Mauritania and Morocco with the secret agreement of Madrid, on November 14, 1975.

With this agreement - concluded in violation of the fundamental obligations of the administrative power towards the Saharawi people and the UN - Spain "disposed" of a population and a territory of which it exercised no sovereignty. This same agreement serves the invading Moroccan army by giving it a legitimate appearance. The Security Council, the body responsible for maintaining peace, did not intervene when the Moroccan army invaded Western Sahara and step-by-step occupied the urban centers. Nor when it turned into a merciless war against the Saharawi people and its liberation movement which bravely resisted and persistently pursued its struggle.

The persistent occupation of Western Sahara by Morocco; the extension of this occupation into the area from which Mauritania had withdrawn after signing a peace agreement with Polisario Front; the repeated violations of the rules of war and humanitarian rights by Morocco; the military support provided to the aggressor by certain members of the Security Council; nothing can bring this body - primarily responsible for the maintenance of peace, and who, in the fulfillment of this duty must act in accordance with the goals and principles of the UN Charter (Art. 24) - to any condemnation. In all of the 21 years of war without mercy the Security Council refrained from considering collective action to force the aggressor to renounce the pursuit of this international crime. The failure of the international organization to condemn the illegitimacy and to prevent aggression was then complete.
The Polisario Front - whose authority had been consolidated after the parliament elected by Spain had abolished itself when the majority of the members opposed the agreement of Madrid (Proclamation of Guelata, November 28, 1975) - had been shocked deeply by the betrayal of the administrative power. Now, confronted with the aggression of Morocco, its bitter disappointment with the UN grew. After the unilateral withdrawal of the Spanish army and administration, it proclaimed the Saharan Arab Democratic Republic (SADR). Through this proclamation, Polisario Front intended to bring about a legitimate process of self-determination. A process for which the UN had been given the responsibility to bring about a satisfactory end, but had been incapable of upholding because of the lack of political will of certain states, who instead supported the aggressor.

As a full member of the Organization of African Unity (OAU), the Saharawi State is today recognised by 78 countries throughout the world, with which it maintains diplomatic relations. Other states have recognised Polisario Front as the legitimate representative of the Saharawi people. The UN Security Council should have juridically qualified the use of force by Morocco and its persistence to occupy Western Sahara as aggression. It should have taken coercive measures to force Morocco to retreat from the Saharawi territory. In its search for an international settlement for Western Sahara, both in the framework of the OAU and the UN, the Security Council has, however, given preference to solutions that are acceptable to both parties. This way it risks placing at the same level the aggressor and the people struggling for the re-establishment of peace and the respect of their fundamental rights.

The conclusion of the peace agreement between Mauritania and Polisario Front on 5 August 1979, was facilitated by the unilateral decision to a cease-fire of Polisario Front on 12 July 1978, after the military coup in Mauritania. This led, on 21 November 1979, to General Assembly resolution 34/37 in which it recognized Polisario Front as "the representative of the people of Western Sahara", recommended its "full and whole participation in the search for a solution", and reaffirmed the legitimacy of the independence struggle of the Saharawi people (34/37;35/19 Par.1).

Notwithstanding this resolution, the General assembly adopts from 1976 to 1985 a low profile by giving itself a secondary role compared to the OAU. It counted primarily on the good offices of the OAU to find a just and durable solution to the problem of Western Sahara, while reaffirming the joint responsibility of the UN in the decolonisation of the Sahara and its will to cooperate with the OAU. Resolution AHG Res. 104 (XIX), unanimously adopted during the 19th summit of the OAU (Addis Ababa, June 1983) will serve as the basis of the UN Secretary General peace plan approved by the Security Council. With resolution 38/40 of 7 December 1983, the UN General Assembly will make OAU resolution AHG 104 its own.

In 1985, the General Assembly decided to give the UN a major role again in the search for a solution based on the right to self-determination and the organisation of a referendum. Resolution AHG Res. 104 (XIX) remained the basis of the good offices pursued by the OAU. It also remained the basis on which the General Assembly requests the UN Secretary General to join these good offices to fulfil his mandate to bring together the two conflicting sides to negotiate the conditions of a cease fire and the modalities of the organisation of the referendum (Res. 40/50, Par-5, 2 December 1985).

These good offices led on 30 August 1988, to the separate acceptance by the two conflicting sides of the peace proposals as formulated by the president of the OAU and the Secretary General of the UN. Included in the points of agreement was the crucial question on the determination of the electoral body. The proposals offer a framework for a cease-fire agreement and the necessary conditions for the organisation of "a credible referendum which allows the people of Western Sahara to exercise its right to self-determination, without
military or administrative constraints”. The referendum must be organised, supervised and realised by the UN in collaboration with the OAU under the authority of the Security Council, who in this matter takes binding decisions. The referendum will offer the population the choice between independence or integration with Morocco.

The Security Council - intervening for the first time since its resolution S/380 of 6 November 1975, that had no result - authorized the Secretary General to nominate a Special Representative for Western Sahara. On 27 June 1990, the Security Council anonymously approved the peace plan of the Secretary General based on the joint proposals accepted by the two conflicting sides in August 1988 (Doc. S/21360). On 29 April 1991, the Security Council authorized the creation of MINURSO (Mission des Nations Unies pour un Referendum au Sahara Occidental). On 6 September 1991, MINURSO was partially stationed on the territory and the cease-fire it supervised had entered into force.

The UN referendum has still not taken place. Why? Because Morocco introduced major obstacles and violated the peace plan, both militarily and with regard to cooperation with MINURSO. The most serious concern was the alteration of the composition of the electorate body. The peace plan agreed upon by both sides and approved by the Security Council stipulated that the electoral body should be established on the basis of the Spanish Census of 1974 (S/21360, Par.61). However, Morocco has tried to obtain modifications of this agreement from the Secretary General. At the same time, since September 1991, Morocco proceeded with massive transfers of Moroccan population to Western Sahara, thereby trying to transform the just and impartial referendum into a plebiscite for its occupation.

The peace plan approved by the Security Council binds all states. Foremost it is binding for the state that has caused the illicit situation. All UN member states must work to its realization, in particular the permanent members of the Security Council who approved it. When looking at the history of the mediation efforts of the UN in this matter and analyzing the results so far obtained by the Saharawi people, we have to conclude that the time of "good offices" is over. Now the time has come to force Morocco, through international pressure, to respect the right to self-determination of the Saharawi people and the decisions of Security Council on its implementation. Indeed, Morocco, through its equivocations, through its policy of deliberate obstruction of the efforts of MINURSO, the United Nations, the Security Council and the international community, has prevented since 1991 any progress in the implementation of the peace plan to allow the Saharawi people to exercise freely their right to self-determination and independence.

The Moroccan occupying force desperately tries to avoid attention to the fact that it denies the people its most elementary right to freely and democratically determine its destiny. It desperately tries to exert a policy of repression towards the vulnerable population living in the occupied zones of Western Sahara, where the press and foreign observers are denied entry. The few NGOs, such as Human Rights Watch, that succeed in entering these occupied zones, have reported overwhelmingly on the violations of human rights committed by Morocco. From 1975 to 1991, 856 Saharawis were reported missing. Morocco has publicly denied detaining these people.

Under the combined pressure of the Organisations for the Protection of Human Rights, Morocco opened some of its secret prisons and released 300 of the missing Saharawis. These missing persons were never charged nor given a trial and served more than 16 years of forced and arbitrary detention. Since the release of these 300 persons, no information on the remaining 526 missing persons filters through and their fate remains unknown and extremely alarming.

As we approach the year 2000, it is not very honourable for the Community of Nations to remain indifferent when numerous peoples across the world, like those represented
here today, remain under occupation and their right to life, to freedom, and to human dignity is still not recognised or respected.
PROGRAM

Monday, 25 March

- Opening by Chairman, Dr. Michael van Walt
  
  *(General Secretary, Unrepresented Nations and Peoples Organization)*

- Professor Richard Falk *(Princeton University, USA)* The Right to Self-determination and International Law
  
  J. M. Mukhi
  
  *(Seniore Advocate, Supreme Court of India, former adviser, Ministry of External, India)* The Right to Self-Determination and International Responsibility

- Senator Michael O'Kennedy
  
  *(Former Minister for Foreign Affairs, Ireland)* In Each Others Shadow

- Remarks by Chair to open discussion
- Conclusion

Tuesday, 26 March

- Opening by Chairman, Mr. Erkin Alptekin
  
  *(Chairman, Unrepresented Nations and Peoples Organization)*

- Kasur Lodi G. Gyari
  
  *(Special Envoy of His Holiness the Dalai Lama)* Tibet: The Right to Self-Determination

- Jose Ramos Horta
  
  *(Special Representative of National Council of Mauber Resistance)* Self Determination: The Case of East Timor

- Dahi Bashir
  
  *(Director of International Relations, Ministry of Foreign Affairs, Polisario Front)* The Case of Western Sahara and the Failure of the United Nations

- Ajahn Sulak Sivaraksa
  

- Remarks by the Chair to open discussion
- Conclusion
PRESS STATEMENT

United Nations, Geneva - 26 March:

East Timor, Tibet and Western Sahara Conference Concludes Despite Pressure

Inspite of tremendous pressure from certain governments, a two-day conference on the Question of Self-Determination: Comparative Studies on East Timor, Tibet and Western Sahara, concluded today at the United Nations. The conference organised by several organisations was addressed by eminent experts and leaders of East Timor, Tibet and Western Sahara.

"The case of East Timor, Tibet and Western Sahara are three extreme failures of the international community to uphold the right to self-determination," said Prof Richard Falk of Princeton University. Mr, J.M. Mukhi (former legal advisor to the Ministry of External Affairs, India), Senator Michael O'Kennedy (former Foreign Minister of Ireland) and Ajahn Sulak Sivaraksa (1994 Nobel Peace Price Nominee and 1995 Recipient of the Right Likelihood Award) from Thailand were the other expert speakers. Mr. Jose Ramos Horta (Special Representative of National Council of Maubere Resistance), Kasur Lodi G. Gyari (Special Envoy of H.H. the Dalai Lama and President of International Campaign for Tibet) and Mr. Dahi Bashir (Director of International Relations, Ministry of Foreign Affairs, Polisario Front) were the country speakers.

"This experience has created a new spirit of solidarity and co-operation among the three Nations," said Mr. Jose Ramos Horta of East Timor. The conference was attended by government and NGO delegates to the UN Commission on Human Rights as well as by UN officials.

The well-attended meeting appealed to international bodies, including the ongoing UN Commission on Human Rights to recognise and implement the inalienable right to self-determination of the people of East Timor, Tibet and Western Sahara. The speakers reaffirmed that acts of genocide has occurred in the three cases and expressed concern that geo-political interests were obstructing the aspirations of Timorese, Tibetan and Saharawi people to determine their own future.

"People like Lee Kuan Yew of Singapore or Suharto of Indonesia, who claim that the concept of Human Rights is not within Asian culture are not only hypocritical but also have no awareness of the scope and subtlety of Asian tradition," said Mr. Sulak Sivaraksa in the concluding statement at the conference today.

The conference noted that in the three cases, authoritarian regimes have resorted to military occupation of neighbouring countries, genocide and population transfer of their own citizens.

"The message of His Holiness the Dalai Lama on the need to peacefully resolve conflicts through dialogue was strongly imbued in the spirit of this conference," said Dr. Michael van Walt, the General Secretary of Unrepresented Nations and Peoples Organisation (UNPO), the conference coordinator.
UNPO STATEMENT ON SELF-DETERMINATION

UNITED NATIONS COMMISSION ON HUMAN RIGHTS 52nd SESSION

GENEVA, 20 March 1996

Statement on behalf of Society for Threatened Peoples in association with Unrepresented Nations and Peoples Organization (UNPO) by Dr. Michael C. van Walt van Praag

AGENDA ITEM 7 - The Right to Self-determination

Governments, NGO's and international organizations, including the UN, are struggling with the concept and implementation of the right of self-determination of peoples. There has always been a certain degree of discussion on the subject, but since the Cold-War so unexpectedly ended, we are all faced with a new challenge: many of today's conflicts and many of today's worst and systematic human rights violations are directly related to situations involving the claim and denial of the right to self-determination. Consequently, the issue is one of major importance, which requires a willingness to go beyond slogans and cliches and to attempt to understand the essence of the problem.

The concept of self-determination is as fundamental as that of democracy and closely linked to it. For what is the meaning of democracy if a people can not choose whether it is to be governed by its own chosen leaders or by leaders of an alien people imposed upon them? The fundamental nature of the principle and right of self-determination is reflected in the fact that it is contained at the beginning of such important documents as the Charter of The UN and the two International Covenants on Human Rights. It is also reflected in the fact that the realization of this rights has been recognized by the UN General Assembly as a pre-requisite to the enjoyment of other human rights.

Self-determination does not necessarily mean secession from an existing state. A wide range of outcomes are possible from a free exercise of the right to self-determination. No right is absolute, even fundamental rights. Thus, the exercise of the right to self-determination is subject to a weighing process, to take into account other rights and principles, including that of territorial integrity, so often invoked against a claim to self-determination. Neither the right to self-determination, nor the principle of territorial integrity may be unilaterally imposed by force. Accepting the need to undertake this weighing process in no way should diminish the fundamental nature of the right of self-determination of all peoples, as laid down in the documents referred to above.

The UN General Assembly, in Resolution 2625 (XXV) (referred to as the "Declaration on Friendly Relations and Co-operation among States") set out the principle that "territorial integrity or political unity could be invoked against a claim to self-determination by States conducting themselves in compliance with the principle of equal rights and self-determination of peoples... and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour [Emphasis added]."
This goes to the core of the issue of the legitimacy of states and their governments. States exist for the sole purpose of fulfilling three fundamental tasks: i) to protect the population of the state; a) to promote the economic, social and cultural welfare of that population; and 3) to represent the interests of that population externally, that is, internationally.

Where a state, or its government, does not fulfill these functions over a period of time, but, instead represses or even kills the people it is supposed to protect; destroys their culture, economically exploits them; or represents other interests than those of the people, then that state or government lacks legitimacy in respect of the whole population of the state or of that section of the population which it oppresses.

Why would Chechens, who have for centuries been oppressed, massacred and deported by Tsarist and Communist dictators of Russia, and who are now again being literally bombed out of their ancestral land to serve an economic and political interest of leaders in Moscow who call themselves democrats, wish to remain part of a Russia that has brought nothing but suffering to them and their ancestors? I was in Chechenia, and could not believe the massiveness of the destruction and its senselessness. It continues today, and threatens to spread again into the neighbouring Ingush Republic, where Russian troops killed an Ingush girl only two days ago and are making preparations to bombard the village of Slepzorskaya as we speak.

Why would Tibetans, whose land and people have suffered so much under Chinese rule, consider the regime in Beijing as representing their interests? The Chinese government can attempt to prevent a discussion of the Tibetan people's call for an implementation of their right to self-determination in this forum and others, but it is that government's own actions towards the Tibetans - whom they don't even allow to choose their own religious leaders according to age-old traditions - that strengthens that people's determination to free themselves.

The more a people is oppressed and its identity is denied by the rulers, the stronger grows the determination to assert and protect that identity and heritage, even if that means separation. The urge for separation would be enormously reduced if states would respect the desire of diverse peoples to express their own values, and their cultural and spiritual traditions.

Thus, the issue before us is not how to suppress the many calls for self-determination and the desire for national identification and recognition. It is, instead, how to ensure that states do respect the rights and aspirations of peoples and minorities within their borders and how the UN and other organizations can protect these vulnerable groups from abuse and destruction.

Today, many of these peoples feel abandoned and betrayed by the organization which, in their belief, was created for "we the peoples" of the world, not for the governments. The UN was conspicuously silent when Russia destroyed Grozny and other Chechen civilian targets. It will do nothing to prevent the bombing of Ingush villages. The people of Kosova and Sanjak, who have refused to use violence in their struggle for survival, are running out of patience with European and other governments who seem to reward violence more than restraint. Unless their legitimate demands are acted upon seriously, violence will erupt there also.

More violence may also result from the increase in Indonesian repression on East Timor and the lack of visible progress in UN chaired negotiations between Portugal and Indonesia. The suffering caused to the people of Abkhazia by the Georgian and Russian blockade around Abkhazia, together with those two countries' retreat from agreements signed with Abkhazia in April 1994, in the presence of Secretary General Boutros Boutros Ghah, are also hardly conducive to the realization of a lasting peace in that region.
The Saharawi people may end their cease-fire if they continue to be denied their recognized right to self-determination. Morocco continues to send thousands of settlers into Western Sahara to pre-determine the outcome of a referendum, in contravention to the UN agreements.

The population transfer of millions of Chinese into Eastern Turkestan and the continuation of nuclear tests there, despite strong protests of the people, will also, sooner or later cause eruption of violence there.

In all these and many other cases, it is not the peoples claiming self-determination who first use force. In each case, the state in question violently suppressed them. If we are serious about wanting to prevent violent conflicts, let us seek ways to prevent, not encourage states to suppress their people in the name of "sovereignty", "territorial integrity" or "national security". For these terms are empty slogans where the state or its government no longer possesses the required legitimacy. Whose sovereignty, whose integrity, and whose security are we really talking about?
Treaty of 1989 between Australia and Indonesia concerning the "Timor Gap" Objection that there exists in reality no dispute between the Parties - Disagreement between the Parties on the law and on the facts - Existence of a legal dispute.

Objection that the Application would require the Court to determine the rights and obligations of a third State in the absence of the consent of that State - Case concerning Monetary Gold Removed from Rome in 1943 - Question whether the Respondent's objective conduct is separable from the conduct of a third State.

Right of peoples to self-determination as right erga omnes and essential principle of contemporary international law - Difference between erga omnes character of a norm and rule of consent to jurisdiction.

Question whether resolutions of the General Assembly and of the Security Council constitute "givens" on the content of which the Court would not have to decide de novo.

For the two Parties, the Territory of East Timor remains a non-self-governing territory and its people has the right to self-determination.

Rights and obligations of a third State constituting the very subject-matter of the decision requested - The Court cannot exercise the jurisdiction conferred upon it by the declarations made by the Parties, under Article 36, paragraph 2, of its Statute to adjudicate on the dispute referred to it by the Application.

JUDGMENT

Present: President BEDJAOU; Vice-President SCHWEBEL; Judges ODA, Sir Robert JENNINGS, GUILLAUME, SHAHABUDEEN, AGUILAR-MAWDSLEY, WEERAMANTHY, RANJEVA, HERCZEGH, SHI, FLEISCHHAUER, KOROMA, VERESHCHETIN; Judges ad hoc Sir Ninian STEPHEN, SKUBISZEWSKI; Registrar VALENCIA-OSPINA.

EAST TIMOR (JUDGMENT) and that it did so pass to Indonesia; Australia affirms moreover that, if the power in question did pass to Indonesia, it was acting in conformity with international law in entering into the 1989 Treaty with that State, and could not have violated any of the obligations Portugal attributes to it. Thus, for Australia, the fundamental question in the present case is ultimately whether, in 1989, the power to conclude a treaty on behalf of East Timor in relation to its continental shelf lay with Portugal or with Indonesia.

28. The Court has carefully considered the argument advanced by Portugal which seeks to separate Australia's behaviour from that of Indonesia. However, in the view of the Court, Australia's behaviour cannot be assessed without first entering into the question why it is that Indonesia could not lawfully have concluded the 1989 Treaty, while Portugal allegedly could have done so; the very subject-matter of the Court's decision would necessarily be a determination whether, having regard to the circumstances in which Indonesia entered and remained in East Timor, it could or could not have acquired the power to enter into treaties on
behalf of East Timor relating to the resources of its continental shelf. The Court could not make such a determination in the absence of the consent of Indonesia.

29. However, Portugal puts forward an additional argument aiming to show that the principle formulated by the Court in the case concerning Monetary Gold Removed from Rome in 1943 is not applicable in the present case. It maintains, in effect, that the rights which Australia allegedly breached were rights *erga omnes* and that accordingly Portugal could require it, individually, to respect them regardless of whether or not another State had conducted itself in a similarly unlawful manner.

In the Court's view, Portugal's assertion that the right of peoples to self-determination, as it evolved from the Charter and from United Nations practice, has an *erga omnes* character, is irreproachable. The principle of self-determination of peoples has been recognized by the United Nations Charter and in the jurisprudence of the Court (see *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, LCJ. Reports 1971, pp. 3132, paras. 52-53; *Western Sahara*, Advisory Opinion, LCJ. Reports 1975, pp. 31-33, paras. 54-59); it is one of the essential principles of contemporary international law. However, the Court considers that the *erga omnes* character of a norm and the rule of consent to jurisdiction are two different things. Whatever the nature of the obligations invoked, the Court could not rule on the lawfulness of the conduct of a State when its judgment would imply an evaluation of the lawfulness of the conduct of another State which is not a party to the case. Where this is so, the Court cannot act, even if the right in question is a right *erga omnes*.

30. Portugal presents a final argument to challenge the applicability to the present case of the Court's jurisprudence in the case concerning Monetary Gold Removed from Rome in 1943. It argues that the principal matters on which its claims are based, namely the status of East Timor as a non-self-governing territory and its own capacity as the administering Power of the Territory, have already been decided by the General Assembly and the Security Council, acting within their proper spheres of competence; that in order to decide on Portugal's claims, the Court might well need to interpret those decisions but would not have to decide *de novo* on their content and must accordingly take them as "givens"; and that consequently the Court is not required in this case to pronounce on the question of the use of force by Indonesia in East Timor or upon the lawfulness of its presence in the Territory.

Australia objects that the United Nations resolutions regarding East Timor do not say what Portugal claims they say; that the last resolution of the Security Council on East Timor goes back to 1976 and the last resolution of the General Assembly to 1982, and that Portugal takes no account of the passage of time and the developments that have taken place since then; and that the Security Council resolutions are not resolutions which are binding under Chapter VII of the Charter or otherwise and, moreover, that they are not framed in mandatory terms.

31. The Court notes that the argument of Portugal under consideration rests on the premise that the United Nations resolutions, and in particular those of the Security Council, can be read as imposing an obligation on States not to recognize any authority on the part of Indonesia over the Territory and, where the latter is concerned, to deal only with Portugal. The Court is not persuaded, however, that the relevant resolutions went so far.
For the two Parties, the Territory of East Timor remains a non-self-governing territory and its people has the right to self-determination. Moreover, the General Assembly, which reserves to itself the right to determine the territories which have to be regarded as non-self-governing for the purposes of the application of Chapter XI of the Charter, has treated East Timor as such a territory. The competent subsidiary organs of the General Assembly have continued to treat East Timor as such to this day. Furthermore, the Security Council, in its resolutions 384 (1975) and 389 (1976) has expressly called for respect for "the territorial integrity of East Timor as well as the inalienable right of its people to self-determination in accordance with General Assembly resolution 1514 (XV)". Nor is it at issue between the Parties that the General Assembly has expressly referred to Portugal as the "administering Power" of East Timor in a number of the resolutions it adopted on the subject of East Timor between 1975 and 1982, and that the Security Council has done so in its resolution 384 (1975). The Parties do not agree, however, on the legal implications that flow from the reference to Portugal as the administering Power in those texts.

32. The Court finds that it cannot be inferred from the sole fact that the above-mentioned resolutions of the General Assembly and the Security Council refer to Portugal as the administering Power of East Timor that they intended to establish an obligation on third States to treat exclusively with Portugal as regards the continental shelf of East Timor. The Court notes, furthermore, that several States have concluded with Indonesia treaties capable of application to East Timor but which do not include any reservation in regard to that Territory. Finally, the Court observes that, by a letter of 15 December 1989, the Permanent Representative of Portugal to the United Nations transmitted to the SecretaryGeneral the text of a note of protest addressed by the Portuguese Embassy in Canberra to the Australian Department of Foreign Affairs and Trade on the occasion of the conclusion of the Treaty on 11 December 1989; that the letter of the Permanent Representative was circulated, at his request, as an official document of the forty-fifth session of the General Assembly, under the item entitled "Question of East Timor", and of the Security Council; and that no responsive action was taken either by the General Assembly or the Security Council. Without prejudice to the question whether the resolutions under discussion could be binding in nature, the Court considers as a result that they cannot be regarded as "givens" which constitute a sufficient basis for determining the dispute between the Parties.

33. It follows from this that the Court would necessarily have to rule upon the lawfulness of Indonesia's conduct as a prerequisite for deciding on Portugal's contention that Australia violated its obligation to respect Portugal's status as administering Power, East Timor's status as a nonself-governing territory and the right of the people of the Territory to self-determination and to permanent sovereignty over its wealth and natural resources.

34. The Court emphasizes that it is not necessarily prevented from adjudicating when the judgment it is asked to give might affect the legal interests of a State which is not a party to the case. Thus, in the case concerning Certain Phosphate Lands in Nauru (Nauru v. Australia), it stated, inter alia, as follows:

"In the present case, the interests of New Zealand and the United Kingdom do not constitute the very subject-matter of the judgment to be rendered on the merits of Nauru's Application . . . In the present case, the determination of the responsibility of New Zealand or the United Kingdom is not a prerequisite for the determination of the responsibility of Australia, the only object of Nauru's claim . . . In the present case, a finding by the Court regarding the existence or the content of the responsibility attributed to Australia by Nauru might well have implications for the legal situation of the two other States concerned, but no finding in respect of that legal situation
will be needed as a basis for the Court's decision on Nauru's claims against Australia. Accordingly, the Court cannot decline to exercise its jurisdiction." (LCJ. Reports 1992, pp. 261-262, para. 55.)

However, in this case, the effects of the judgment requested by Portugal would amount to a determination that Indonesia's entry into and continued presence in East Timor are unlawful and that, as a consequence, it does not have the treaty-making power in matters relating to the continental shelf resources of East Timor. Indonesia's rights and obligations would thus constitute the very subject-matter of such a judgment made in the absence of that State's consent. Such a judgment would run directly counter to the "well-established principle of international law embodied in the Court's Statute, namely, that the Court can only exercise jurisdiction over a State with its consent" (Monetary Gold Removed from Rome in 1943, Judgment, LCJ. Reports 1954, p. 32).

35. The Court concludes that it cannot, in this case, exercise the jurisdiction it has by virtue of the declarations made by the Parties under Article 36, paragraph 2, of its Statute because, in order to decide the claims of Portugal, it would have to rule, as a prerequisite, on the lawfulness of Indonesia's conduct in the absence of, that State's consent. This conclusion applies to all the claims of Portugal, for all of them raise a common question: whether the power to make treaties concerning the continental shelf resources of East Timor belongs to Portugal or Indonesia, and, therefore, whether Indonesia's entry into and continued presence in the Territory are lawful. In these circumstances, the Court does not deem it necessary to examine the other arguments derived by Australia from the non-participation of Indonesia in the case, namely the Court's lack of jurisdiction to decide on the validity of the 1989 Treaty and the effects on Indonesia's rights under that treaty which would result from a judgment in favour of Portugal.

36. Having dismissed the first of the two objections of Australia which it has examined, but upheld its second, the Court finds that it is not required to consider Australia's other objections and that it cannot rule on Portugal's claims on the merits, whatever the importance of the questions raised by those claims and of the rules of international law which they bring into play.

37. The Court recalls in any event that it has taken note in the present Judgment (paragraph 31) that, for the two Parties, the Territory of East Timor remains a non-self-governing territory and its people has the right to self-determination.
38. For these reasons,

THE COURT,

By fourteen votes to two,

Finds that it cannot in the present case exercise the jurisdiction conferred upon it by the declarations made by the Parties under Article 36, paragraph 2, of its Statute to adjudicate upon the dispute referred to it by the Application of the Portuguese Republic.

IN FAVOUR: President Bedjaoui, Vice-President Schwebel; Judges Oda, Sir Robert Jennings, Guillaume, Shahabuddeen, Aguilar-Mawdsley, Ranjëva, Herczegh, Shi, Fleischhauer, Koroma, Vereshchetin; Judge ad hoc Sir Ninian Stephen;

AGAINST: Judge Weeramantry; Judge ad hoc Skubiszewski.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this thirtieth day of June, one thousand nine hundred and ninety-five, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the Portuguese Republic and the Government of the Commonwealth of Australia, respectively.

(Signed) Mohammed BEDJAOUI, President.

(Signed) Eduardo VALENCEIA-OSPIINA, Registrar.

Judges ODA, SHAHABUDDEEN, RANJEVA and VERESHCHETIN append separate opinions to the Judgment of the Court.

Judge WEERAMANTRY and Judge ad hoc SKUBISZEWKI append dissenting opinions to the Judgment of the Court.

(Initialled) M.B.
(Initialled) E.V.O.
Hidden Terror in East Timor
In 1975, after Portugal freed its colony of East Timor, Indonesia forcibly annexed the territory as its 27th province. Ever since, the Timorese people have been waging a struggle for independence. José Ramos-Horta fled just before the army invasion and has been one of his country's main spokesmen abroad. Now special representative for the National Council of Maubere Resistance, a coalition of Timorese parties and organizations, he spoke recently with NEWSWEEK's Anne Underwood in New York. Excerpts:

UNDERWOOD: What brings you here?

RAMOS-HORTA: I came to deliver a letter from resistance leader Cmdr. Xanana Gusmão to the U.N. secretary-general, reiterating our willingness to engage in dialogue without preconditions, under the auspices of the U.N., between Indonesia on the one hand and East Timor and Portugal on the other. We are willing to explore all ideas, but so far Indonesia has refused the inclusion of East Timor in the talks.

How would the peace process unfold?

As a first step, we would recommend giving East Timor special status as an autonomous territory. This could last five years, during which we would elect a local assembly and enact our own domestic laws. At the end of five years, it could be renewed, or we could hold a referendum on our future status. This would save face for Indonesia and also prevent any aggravation of the situation.

How active is the resistance now?

If you refer to the guerrillas alone, they do not present a major threat to Indonesia. Actual numbers of people engaged in armed resistance number only a few hundred. They serve mainly as a powerful symbol for the people, who are constantly engaged in political, cultural, religious and psychological resistance.

Passive resistance?

The most important form of resistance is joining the [Roman] Catholic Church. Catholicism in East Timor exploded from a mere 30 percent of the population to almost 100 percent in a little over 10 years, because the church has stood firmly on the side of the persecuted. So many priests have been beaten severely in the countryside, spat at, their houses searched. The bishop himself is under constant surveillance and harassment.

José Ramos-Horta

One day a history of this will be done. People will say, `My God, it was true.
You've been out of the country nearly 17 years. How do you get your information?

An underground network smuggles out letters, photographs and reports. I also get information from specialists I send to East Timor-mostly foreigners who go as tourists. Other important sources are churches, diplomats, foreign embassies in Jakarta, Asia Watch and Amnesty International.

We heard a lot about the massacre last November 12 because two Western journalists happened to be there and were beaten. Would you say this massacre was unusual?

It was not an aberration. In the Indonesian military culture, violence is an instrument of policy and a means to extract loyalty and obedience.... It's hard for people abroad to believe because they don't know the nature of the Indonesian Army. One day a history of all this will be done. People will say, "My God, it was true." But by then it will be too late.

Is the government still claiming that only 19 people died in the November attack?

No, they're now saying that about 50 were killed and 91 "disappeared." We believe that more than 200 died.

What documentation do you have about the current situation?

Information I received indicates that there are 500 to 600 people detained in the countryside. Many are held in military camps; others are imprisoned in private homes of military officers, which are in fact slave houses and torture centers. Indonesia denies the existence of these places, and they are beyond the reach of any international organizations. What [Red Cross] officer would dare ask to investigate a private home?

Part of the reason the Western powers did not support East Timor was that they saw the conflict in East-West terms, claiming that the resistance was communist. Is that a valid argument? Was it ever?

There were perhaps half a dozen Marxists. But the West still continues to support Indonesia, which shows that the old argument was a false one. Now they claim that an independent East Timor would cause the disintegration of Indonesia-the Yugoslavia scenario. There is no such parallel. There are no forces pulling in different directions that make conflict resolution difficult. A solution would be easy if only there were political will.

How were you received in Washington?

Very well. Rep. Tony Hall has just introduced a bill that calls for mandatory sanctions against Indonesia, cutting off trade and military assistance until Indonesia agrees to a referendum.

As a result, have you seen any changes in the State Department position?

Absolutely not. I met with them in a clandestine fashion. They asked me to see them at the Hilton Hotel instead of the State Department, probably because a meeting at the State Department itself would upset Indonesia. Diplomats do not like to disturb the status quo. But if the State Department, without calling for sanctions or anything of the sort, were to state unequivocally that Indonesia has to move toward holding a referendum under U.N. supervision, Indonesia would start to rethink its policies.
THURSDAY, JANUARY 25, 1996
JOSE RAMOS-HORTA
A road to peace in East Timor

Parallels with the Israeli-Palestinian conflict may help bring a solution in East Timor.

AT LAST week's London talks on East Timor, hosted by the UN Secretary-General, Dr Boutros Boutros-Ghali, and bringing together Indonesia's Foreign Minister, Ali Alatas, and his Portuguese counterpart, Dr Jaime Gama, the latter made an unexpected announcement. He offered to fly to Jakarta for discussions with his Indonesian colleague if the Indonesian side would allow him to meet the East Timorese resistance leader, Xanana Gusmao, who is serving a life sentence in jail after a charade of a trial in May 1993. This was the seventh round of talks between Portugal and Indonesia. Again no tangible progress was made and the basic demand of the people of East Timor for self-determination continues to be rejected.

Instead of scaling down its army presence in East Timor, Jakarta has increased the number of troops and there has been a dramatic deterioration in the overall human rights situation. Dr Gama's offer held the potential to break this impasse. But, caught off guard, Mr Alatas responded that the two countries had no diplomatic relations.

Neither did Egypt and Israel when, about 15 years ago, the late President Anwar Sadat of Egypt made a dramatic journey to Israel. In fact there was a state of war between the two countries. Sadat was gunned down not long after his historic journey but his courage paved the road to peace in a war-torn region.

As I read the media coverage of the recent Palestinian election, I could not help but wonder why Indonesia hasn't shown the courage and wisdom of Israel. The Israeli-Palestinian conflict is of far greater importance and complexity. On the one hand there are the East Timorese who were never part of the Dutch East Indies and to which the new Indonesia never laid any claims; on the other side is Indonesia alone. There are no other foreign parties to the dispute, as in the Middle East with its overlapping and conflicting interests pulling in different directions.

I also noticed the similarity between the Israeli-Palestinian peace process and an earlier peace proposal by the National Council of the Maubere Resistance (CNRM) in 1992. In a speech to the European Parliament in Brussels, I outlined a three-phase peace proposal, starting with demilitarisation, release of prisoners, setting up of a UN human rights monitoring presence in East Timor, followed by genuine autonomy based on UN-supervised elections for a Territorial Assembly. A referendum on self-determination after a period of five to 10 years would settle the question of the legal status of the territory. This peace proposal remains valid. The Indonesian side has rejected it.

It was agreed in London last week that the UN Secretary-General would consult with Jakarta, Lisbon and the East Timorese in order to prepare a package of ideas aimed at a comprehensive settlement to the problem. The two foreign ministers would consider this proposal in the next round of talks in July in Geneva.
The East Timorese resistance will continue to display solid determination to pursue our goal of self-determination. At the same time, we will be flexible in exploring ideas aimed at achieving real peace and freedom. Instead of mumbling an unconvincing excuse, Mr Alatas should display the same courage and goodwill of his Portuguese counterpart and invite Dr Gama to visit, and allow him to meet with the man the East Timorese revere most, Xanana Gusmao. Like Nelson Mandela, Xanana Gusmao can deliver peace if the other side shows wisdom and courage and enters into a serious dialogue with him. Who knows, in five years from now, with President Soeharto departed from the scene and a new generation in power in Jakarta, free from the security culture that has dominated the country since its formation, Indonesia may even consider granting East Timor its independence.

Jose Ramos-Horta is the special representative of the National Council of Maubere Resistance (CNR.bf).
OCCUPIED EAST TIMOR

Indonesia must be made to rescind its illegal annexation.

Indonesia marked 48 years of independence yesterday. For 18 of those it has robbed the people of East Timor of theirs. President Suharto, who has ruled, seldom gently, for over a quarter of a century, told a puppet parliament that he was "aware that frictions, conflicts or even controversies" existed, but that Indonesians "must develop the rules to solve these in a peaceful, ethical, fair and civilised manner". East Timor's reduction to a state of vassalage has been violent, unethical, unfair and uncivilised.

Indonesia is in illegal occupation of East Timor, a former Portuguese colony whose right to independence Portugal champions. Forcible annexation violates the UN Charter and customary international law. President Saddam Hussein was compelled to realise that, as was General Gaitieri. But Jakarta has ignored, with complete impunity, several resolutions of the UN Security Council and General Assembly calling for the withdrawal of Indonesian troops and upholding the Timorese right to self-determination.

Seeking to mollify critics of Indonesia's human rights record. President Suharto has pared the sentence of Xanana Gusmao, the jailed Timorese resistance leader, from life to 20 years. This is an empty palliative. Mr Gusmao's imprisonment in May for "rebellion" and "conspiracy to set up a separate state" was objectionable in substance and procedure. Indonesia has no right to try him because it has no right to be on the territory to which he belongs. The illegality is so fundamental that it vitiates the trial in low. That said, it seems almost banal to note the following: he did not have a counsel of his own choosing; no security was provided for defence witnesses; the governor of occupied East Timor banned officials from testifying and many of the prosecution witnesses were themselves in military custody. The trial was not open to the public; translation facilities were woeful; and, the crowning disgrace, Mr Gusmao's statement was excluded by the court as "irrelevant".

Indonesia treats occupied East Timor as lebensraum. Only Bahasa Indonesia is taught in schools, not Portuguese or the indigenous Tetum. A third of the population is immigrant, and the Timorese are facing cultural death by demography. Since the UN does not recognise Indonesia's writ, all such migration is illegal. There has, of course, been death of a more conventional cut: over 200,000 Timorese have died since Indonesia invaded in December 1975.

World reaction has been shamefully feeble. America has treated General Suharto Mth kid gloves. Indonesia, Britain's third largest arms customer. recently closed a deal worth E500 million for British Aerospace Hawks. Perhaps for these reasons, Douglas Hurd, when extending credit in April to Jakarta worth 1.65 million. said, egregiously, that it would not be a "sensible and fruitful thing" to link aid to human rights.

Washington has now woken up. President Clinton has blocked the resale of F-15E jets by Jordan to Indonesia. But the EC has failed to swing its weight behind Portugal's diplomatic campaign. Britain should use its permanent seat on the UN Security Council to insist that Indonesia be subjected to sharp sanctions until it unconditionally vacates occupied East Timor. Port Stanley and Dili are on the same side of the same coin.
Double-think about East Timor

THE Australian-Indonesian security agreement, with a few notable exceptions, has been praised by Australian commentators. However, the Portuguese would have said with their Latin flair: A montanha pariu urn ralo - or, the mountain gave birth to a mouse. A careful reading of the "treaty", which Foreign Minister Ali Alatas now dismisses as an "agreement" without the force of a binding international instrument, shows that it adds little to existing military cooperation between Australia and the Indonesian dictatorship.

A security treaty is usually entertained by countries with shared values. There was nothing extraordinary in the conclusion of the ANZUS, NATO and Warsaw Pact treaties by like-minded countries during a turbulent period. It is somewhat unusual for a democratic country to enter into a security treaty with a dictatorship at a time of lessened global tension. It is also striking that there was no debate before the Federal Government committed Australia to this treaty. This flies in the face of the recommendation of the Senate Legal and Constitutional References Committee's recent report, Trick or Treaty? Commonwealth Power to Make and Implement Treaties, that: "... the Government increase its efforts to identify and consult the groups that may be affected by a treaty which Australia proposes entering into, and groups with expertise in the subject matter".

Australia, notwithstanding its supine record of actions and policies betraying the East Timorese, stands out as a healthy democratic country with considerable international prestige. This cannot be said of the other signatory to the "treaty". For more than 30 years, Indonesia has been ruled by a ruthless dictator, trained by the Japanese Imperial army during the war years when Indonesians welcomed the Japanese "liberators". Even in the most volatile years of the Cold War, Indonesia faced no external threat to its territorial integrity. Since independence, Indonesia itself has on three occasions embarked on land-grabbing adventures against Malaysia, West New Guinea and East Timor. As well, there have been numerous military incursions into Papua New Guinea, with which Australia also maintains a security arrangement.

The only serious threats Indonesia has faced are of a domestic nature and of the regime's own making. The next two to five years will see Indonesia in a period of transition. This transition will be peaceful if Soeharto acts with the wisdom of a Frederik de Klerk, or will be marked by bloodshed if he clings to power with the brutal force that has been the hallmark of his regime.

I do not argue that Australia should lead a trade war against Indonesia. Nor do I suggest that Australian warships be sent to "liberate" East Timor in the same manner in which they helped to "liberate" the oil of Kuwait during the Gulf War. When Bob Hawke thundered that "big countries should not invade small countries and get away with it" the eternally naive East Timorese thought he might be referring to our little country.

I am at a loss to comprehend the complex thinking of two of the most intelligent men in Australia, the Prime Minister and his Foreign Minister. In February 1995, Gareth Evans
informed the International Court of Justice that the East Timorese had a right to self-determination. At the same time, Paul Keating told the 7.30 Report that "East Timor is a province of Indonesia".

I am mesmerised by such intellectual dexterity. If the people of East Timor have the right to self-determination, then independence is surely an option. But if East Timor is a "province of Indonesia", the independence aspirations of the East Timorese must amount to secession. Secession would mean the breaking up of Indonesia's territorial integrity. Would Australia intervene in support of Indonesia?

I welcome the statements by Senator Evans on human rights in East Timor. And I have been told by a Western diplomat of the forceful and frequent diplomatic representations made by the Australian Embassy in Jakarta in this respect. I understand that in a recent meeting with the UN Secretary-General, Senator Evans devoted a good deal of time to the question of East Timor.

Public expressions of concern and private demarches are all crucial in impressing upon the military in Indonesia that they are being watched by the world. In an increasingly interdependent and competitive age, no country can survive as an island in defiance of world public opinion. If Indonesia aspires to regional and world leadership, it must pay its dues. These dues are respect for human rights and the rule of law, freedom of the press, labour rights and the right of the people of East Timor to self-determination.

While there has been some shift in recent months, 19 years of Australia's acquiescence have produced nothing for the East Timorese. According to a recent survey, almost 70 per cent of Australian people do not support current government policies. They demand a new direction. This direction must be in support of the right of the East Timorese to self-determination.

Australia must reopen dialogue with Portugal. The generous people of Portugal have gained the respect and affection of the East Timorese for their courage in standing up for a people with whom they share almost 500 years of history. Australia and Portugal should be able to work together towards peace and justice for the East Timorese.

Australia must enlist the support of New Zealand, Canada, the US and the European Union for a strategy in dealing with Indonesia. A public confrontation with Jakarta is not needed. This strategy can be discreet yet firm, offer incentives, but also make the adverse costs of a refusal to contemplate seriously a political settlement of the conflict understood in Jakarta.

This settlement will be possible only if Jakarta agrees to a policy of gradual disengagement from East Timor, starting with demilitarisation, release of all prisoners, repatriation of at least half its civil servants and transmigrants and granting genuine political and economic autonomy to the territory as an interim measure.

A decision on the legal status of East Timor should be left to a later stage.

Jose Ramos-Horta is the Special Representative of the National Council of Maubere Resistance (CNRM), an umbrella body linking all East Timorese independence groups.
FACTS ON TIBET

Tibet at a glance

SIZE 2.5 million sq. km.

CAPITAL Lhasa

POPULATION 6 million Tibetans and an estimated 7.5 million Chinese

RELIGION Tibetan population is up to 90% Buddhist although Bon [indigenous religion of Tibet] and Islam are also practiced.

LANGUAGE Tibetan (Tibeto-Burmese language family); The official language is Chinese

STAPLE FOOD Tsampa (roasted barley flour)

NATIONAL DRINKS Salted butter tea and chang (Tibetan beer)

TYPICAL ANIMALS Yak, Dri (female Yak), Bharal (blue) sheep, Musk deer, Tibetan antelope, Tibetan gazelle, Kyang (wild ass), Pica and Panda

TYPICAL BIRDS Black-necked crane, Lammergeier, Great-crested grebe, Bar-headed goose, Ruddy shelduck and Ibis-bill

MAJOR ENVIRONMENTAL PROBLEMS Rampant deforestation in eastern Tibet; poaching of large mammals, excessive exploitation of mineral and other natural resources

AVERAGE ATTITUDE 14,000 feet

HIGHEST MOUNTAIN Chomo Langma (Mt. Everest), 29028 feet

AVERAGE RAINFALL Varies widely. In the west it is 1 mm in January to 25 mm July. In the east it is 25-50 in January and 0 mm in July

MINERAL DEPOSITS Bauxite, uranium, iron, copper, chromite, coal, salt, mica, lithium, tin, gold, and oil

MAJOR RIVERS Zachu (Mekong), Drichu (Yangtze), Machu (Huangho), Gyalmo Ngulchu (Salween), Tsangpo (Brahmaputra), Sengye Khabab (Indus), and Langchen Khabab (Sutlej).

ECONOMY Tibetans: predominantly in agriculture and animal husbandry; Chinese: predominantly in government, commerce and the service sector
<table>
<thead>
<tr>
<th>PROVINCES</th>
<th>U-Tsang (Central Tibet), Amdo (N.E. Tibet) and Kham (S.E. Tibet)</th>
</tr>
</thead>
<tbody>
<tr>
<td>BORDERING COUNTRIES</td>
<td>India, Nepal, Bhutan, Burma, Eastern Turkestan, Mongolia and China</td>
</tr>
<tr>
<td>NATIONAL FLAG</td>
<td>A mountain with snow lions with red and blue rays over sun. Outlawed in Tibet.</td>
</tr>
<tr>
<td>HEAD OF STATE</td>
<td>H.H. the XIV Dalai Lama. In exile in Dharamsala, India.</td>
</tr>
<tr>
<td>SPIRITUAL LEADER</td>
<td>H.H. the XIV Dalai Lama (Full title: Jetsun Ngawang Lobsang Yeshi Tenzin Gyatso Sisum Wangyur Tsungpa Mepai Dhe Palsangpo)</td>
</tr>
<tr>
<td>GOVERNMENT IN EXILE</td>
<td>Parliamentary</td>
</tr>
<tr>
<td>GOVERNMENT</td>
<td>Communist</td>
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<tr>
<td>RELATIONSHIP</td>
<td>Colonial WITH CHINA</td>
</tr>
<tr>
<td>LEGAL STATUS</td>
<td>Occupied</td>
</tr>
</tbody>
</table>

| POPULATION        | About 130,000 (India 100,000; Nepal 20,000; Bhutan 2,000; 59 Switzerland 2,000; USA 1,500; Canada 500). |
| REPORTING DOCUMENTS | Government Democratic. Popular & electoral college voting systems. |
| HEAD OF STATE     | H.H. the XIV Dalai Lama |
| ELECTIONS         | Assembly and Cabinet elections every 5 years. |
| SEAT OF GOVERNMENT | Dharamsala, Northern India |
| SEAT OF PARLIAMENT | Dharamsala, Northern India (Assembly of Tibetan's People's Deputies, 46 Members) |
| GOVT EMPLOYEES     | Over 2,000 |
| GOVT PUBLICATIONS  | Sheja, Tibetan Freedom (Tibetan); Tibetan Bulletin (English, Hindi, French); Tibet Tsushin (Japanese); and, News Tibet (English). |
| INDEPENDENT PUBLICATIONS | Rangzen, Dha-sar, Tibetan Affairs (Tibetan; Tibetan Review, Tibet Journal, Rangzen, Lungta (English); Junges Tibet, Tibet Forum (German); Xizang Luntan (Chinese); news letters are also published by Tibet groups in more than 30 countries. |
LITERACY

60% (90% of Tibetan children attend school)

MILITARY & POLICE

none

GOV'T INCOME

Annual voluntary fund, business revenue and donations

NATIONAL FLAG

A mountain with snow lions with red and blue rays over sun.

NATIONAL HOLIDAYS

10 March-Uprising Day; 6 July-birth of H.H. the Dalai Lama; 2 September-Democracy Day; 2 October-Birth Anniversary of Mahatma Ghandi; 10 December-World Human Rights Day; and Losar, Tibetan New Year (date changes).

MAJOR INSTITUTIONS

Tibetan Institute of Performing Arts, Library of Tibetan Works & Archives, Tibetan Medical & Astro Institute, Institute of Higher Tibetan Studies, Amnye Machen Institute, etc.

TIBETAN NGOs

Tibetan Youth Congress, Tibetan Women's Congress, Tibetan Freedom Movement, etc.

LANGUAGE

Tibetan, the host country's language is also spoken.

RELIGION

The overwhelming majority are Tibetan Buddhists. Some remain Bonpos. A very few are Muslims and Christians.

HEALTH PROBLEMS

Tuberculosis, malaria, and gastro-intestinal ailments.

ECONOMY

Agriculture, agro-industrial, handicrafts, small business, carpet weaving.

LEGAL STATUS

Stateless. A small percentage of Tibetans bear foreign passports. Most hold Indian registration certificates.

Source:
The Tibet Bureau, Office of the Representative of H.H. the Dalai Lama (United Nations Affairs)
London Conference

1.1 Between 6 and 10 January 1993, in London, a number of lawyers from many countries with expertise in international law, met to consider issues relating to the exercise of the right to self-determination by the people of Tibet. Also present during the conference were a number of officials and observers. The conference was preceded and accompanied by the distribution of papers written by the participants. It was concluded with a high measure of dialogue and a full and free exchange of views designed to elucidate the matters under consideration. Chief among these was the right of self-determination for the people of Tibet under international law, the status of Tibet, population transfer to and from Tibet as affecting the exercise of the right to self-determination of the people of Tibet and various issues concerning departures from basic human rights, including cultural and social rights, affecting the people of Tibet as a whole and individual Tibetans.

1.2 The participants of the conference are set out in Part I of the Report.

1.3 The programme of the conference is set out in Appendix A of the Report.

Invitation to the People's Republic of China

2.1 Prior to the conference, the chairman (Justice Michael Kirby, Australia) wrote to the Ambassador of the People's Republic of China (PRC) in London inviting his participation in the conference or the attendance of a representative or expert nominated by the PRC able to express the Chinese viewpoint on the matters to be discussed, which were described to the Ambassador.

2.2 The Ambassador, by letter, declined the invitation. His letter is set out in Appendix B of the Report. As appears, he insists that the conference was an interference in the domestic affairs of the PRC and should be cancelled. A representative of the Chinese Embassy in Canberra, Australia, called on the chairman to press this request. However, it was declined and, to the contrary, the chairman urged again the participation of a nominated expert able to express the Chinese viewpoint.

2.3 Notwithstanding the refusal of the PRC to participate in the conference, the Chinese Embassy in Australia provided to the conference a number of booklets and a statement setting out the PRC's position on Tibetan questions. These booklets were tabled at the conference. They were all available to participants and were referred to from time to time. A list of the booklets is set out in Chapter 2 of the Report.

2.4 Amongst the booklets in Chapter 2 of the Report is the White Paper "Tibet - It's Ownership and Human Rights Situation", published by the Information Office of the State Council of the People's Republic of China. Copies of that White Paper were provided to participants in advance of the conference. Also provided to all participants was the statement summarising the position of the PRC, made available to the chairman.
2.5 The participants welcomed the involvement of Tibetans in the conference. They also welcomed the provision of the White Paper, the statement and the other documents in Chapter 2 of the Report as an indication of the increasing sensitivity of the PRC to international opinion about the right of peoples to self-determination and about departures from human rights norms established by international law. In particular, the participants noted an increased willingness on the part of the PRC to express and defend its position. It was therefore welcomed. Out of dialogue may emerge an understanding of competing and different points of view. It may lead in time to reconciliation based upon international law and respect for the friendly relations between states and peoples. 2.6 In the course of their deliberations and in reaching the conclusions stated below, the participants have taken into account the expressions of the Chinese viewpoint and distributed documentation. The participants approached the issues under consideration rigorously, with neutrality and professionalism, basing their conclusions only upon clearly established evidence of facts and clearly established principles of international law.

Evidentiary Committees
3.1 Before the conference, planning was undertaken in various countries to permit the gathering and synthesis of evidentiary material which could be placed before the participants upon the basis of which they could express their conclusions.
3.2 The first two days of the conference were devoted to the work of committees dealing with evidence relevant to what may generically be described as self-determination issues (Committee A) and human rights issues (Committee B). On each subject discussed within the committees the participants had papers setting out the position and arguments of the PRC and the opposing views, which included in many cases the views of the Tibetans.

3-3 At the outset of the plenary sessions of the conference the respective chairman of each committee (Judge Grogan (A) and Justice Einfeld (B)) presented reports on the principal conclusions reached by each committee. During the plenary sessions which followed, frequent reference was made to the respective conclusions of the two committees. Those conclusions form part of the record of the conference and are set out in Chapter 3 of the Report.
3-4 In addition to statements from Tibetan participants and observers, the participants had available to them a vast collection of literature which has earlier examined self-determination and human rights issues relevant to Tibet. This has been taken into account by the participants in reaching their conclusions. This literature is listed in Chapter 2 of the Report.
3-5 The conclusions of the conference were reached by consensus of the participants.

Tibetans as a people entitled to the people's right to self-determination
4.1 In the international law there has been a controversy about "peoples' rights" and about who constitute a "people" for the exercise of such rights in international law, which binds all states and peoples.
4.2 Nevertheless it is clear that international law recognises the peoples' right to self-determination. The principle of self-determination of peoples is expressly recognised in the
United Nations Charter. The "right of all peoples to self-determination" is also recognised in the International Covenants on Human Rights and in numerous other international instruments and writings. Manifestations of the exercise of the peoples' right to self-determination - peaceful and non-peaceful - can be seen in all parts of the world at this time. Accordingly, if the Tibetan people are "people" for the purposes of the peoples' right to self-determination, then, within the context of that right, they are entitled, by international law, to exercise the right to self-determination, which belongs to them.

4-3 There is no universally accepted definition of who is a "people" entitled by international law to enjoy the peoples' right to self-determination recognised by that law. However, a useful description of the criteria commonly taken into account in deciding that a group of individuals is a "people" for this purpose is contained in the conclusion of the UNESCO meeting of Experts on Further Study of the Rights of Peoples (Paris, February 1970). The conclusions referred to the following characteristics:

"A people for the rights of peoples in international law, including the right to self-determination, has the following characteristics:

I. A group of individual human beings who enjoy some or all of the following common features:
   (a) A common historical tradition; (b) Racial or ethnic identity; (c) Cultural Homogeneity; (d) Linguistic unity; (e) Religious or ideological affinity; (f) Territorial connection; (g) Common economic life.

2. The group must be of a certain number who need not be large (e.g., the people of micro-states) but must be more than a mere association of individuals within a State; 3. The group as a whole must have the will to be identified as a people or the consciousness of being a people - allowing that groups or some members of such groups, though sharing the foregoing characteristics, may not have the will or consciousness; and 4. Possibly the group must have institutions or other means of expressing its common characteristics and will for identity."

4-4 Various other criteria have been suggested from time to time, and were discussed during the conference. These include economic viability, a measure of international recognition, willingness to submit to a referendum to ascertain the will of the "people" involved and willingness to respect fundamental human rights and peoples' rights. However, for the purpose of these conclusions, the participants accepted the UNESCO Committee's description.

4-5 By the application of those criteria, the participants concluded that the Tibetan people satisfied the requirements and are a "people" for international law purposes. Indeed, it was noted that, to some extent at least, by the constitution, legislation and practice of the PRC, the Tibetan people have been treated as separate and distinct within the Chinese state. Under the
law of the PRC the "autonomy" of the "Tibet Autonomous Region" is based upon the distinct nationality of the Tibetan people.

• 4.6 Furthermore, three Resolutions of the United Nations General Assembly (Nos. 1353, 1723 and 2079) have recognised the status of Tibetans as a "people". Resolution No. 1723 (reaffirmed in Resolution No. 2079) expressly refers to the right of the Tibetan people to self-determination.

• 4.7 The PRC and its organs of state power which exercise de facto control over the territory of Tibet deny the people of Tibet the exercise of their right to self-determination.

• 4.8 The PRC, by its publications and statements, deny both the entitlement to and claim for self-determination by the people of Tibet. These denials are unconvincing. So far as the entitlement is concerned, this rests upon international law once it is established that the Tibetans are a "people" for international law purposes. It is not for the state apparatus of the PRC, or any other nation or state, to deny the Tibetan people's right to self-determination. This belongs to the Tibetan people, not to a nation or state.

• 4.9 So far the denial of the claim to self-determination is concerned, the PRC's assertion that "separatism" is the wish of no more than a handful of Tibetans, members of the Dalai Lama's "clique", would be more credible if it were submitted to the freely expressed wishes of the Tibetan people - by referendum or other appropriate process. According to the evidence, there is no such facility of free expression on the part of the Tibetan people.

• 4.10 The preponderance of evidence suggests the abiding desire of the Tibetan people for: *
  * the free return from exile of the Dalai Lama;
  * the end of Chinese control;
  * the cessation of human rights abuses;
  * the establishment of an independent Tibetan state.

• 4.11 The participants analysed various legal means and alternative structures by which these desires could legitimately be achieved. The participants considered the principles of national unity and territorial integrity of states. However, they concluded that these principles are compatible, in the particular case of Tibet and having regard to its long history of separate existence, with their right to exercise the right to self-determination. They therefore concluded that the Tibetan people are entitled, in the manner and to the extent allowed by international law, to the exercise of the right to self-determination.

Tibet as an independent state under occupation

• 5.1 It is important for the issue of self-determination and also for other purposes of international law to consider the status of Tibet prior to 1949-50 when it was entered by forces of the People's Liberation Army (PLA) of the PRC.

• 5.2 According to the PRC, the PLA in 1949-50 "peacefully liberated" Tibet, with the concurrence of its people and institutions restoring them to the fully integrated status which the PRC claims had existed for centuries prior to the temporary weakness of China during the period between razz-1950 before the establishment of the PRC.

• 5.3 According to the Tibetan government in exile, the PLA is an army of occupation. They entered Tibet which was then an independent state for the purposes of international law. They thereby committed an act of aggression. They have remained ever since in occupation of Tibet against the wishes of its people. They have thereby breached international law and, as one consequence, have continued to deny to the people of the sovereign state of Tibet the
right to self-determination formerly enjoyed by Tibet prior to the act of aggression. Much material and evidence placed before the participants supported this view.

- 5.4 As has recently been acknowledged by the Verdict of the Permanent Tribunal of Peoples (Session on Tibet, Strasbourg, November 1992) there are indications which support - and some which cast doubt upon - the claim that Tibet was, before 1949-50 an independent state for the purposes of international law.

- 5.5 By consensus, the participants of this conference reached the conclusion that the attributes of sovereignty were sufficiently present at that time, in the context of a nation such as Tibet and given its history, to sustain the Tibetan argument as the preferable one. In doing so they took fully into account the arguments of the PRC concerning the historical relationship between China and Tibet.

- 5.6 Two considerations of particular importance reinforce the foregoing conclusions: * The relationship of a tributary - sometimes contended for by China - necessarily implies the separate identities of the tributary and the dominant state. It is therefore inconsistent with a claim that Tibet was an integral part of China in the period prior to 1911; and

* The fact that, upon the establishment of the Republic of China, Tibet was invited to "join" the new republic. It was not asserted - at least not until the military action of 1949-50 and the later military action of 1959 - that Tibet was already a part of the Republic. The invitation to join the Republic was an acknowledgement by the Republic of China that Tibet was not, as such, a part of the Republic and would need an act of self-determination to join it.

- 5.7 No such act of self-determination has ever occurred. On the contrary, by reason of the act of aggression and military occupation the Tibetan people's right to the exercise of self-determination has been denied. Since the military action of 1949-50, Tibet has been under the alien occupation and domination of the PRC and has been administered with the characteristics of an oppressive colonial administration.

**Tibetan territory and population transfer**

- 6.1 The participants concluded that part of the traditional territory of Tibet has been purportedly included in neighbouring provinces of China. The map of Tibet has been redrawn by the PRC. The boundaries of Tibet certainly extend beyond the "Tibetan Autonomous Region". Without an act of self-determination on the part of the Tibetan people involved, this alteration of their traditional territory does not conform to international law.

- 6.2 Following to the PRC's military action of 1949-50 significant settlements of non-Tibetans from China have occurred in the traditional territory of Tibet without the free consent of the Tibetan people. These settlements have been actively encouraged by the policies of the PRC. According to the evidence, this has had, and is having serious consequences for Tibetan culture, religion, institutions and national identity. It poses a serious threat to the survival of the Tibetan people. There are other serious consequences for the environment.

- 6.3 To the extent at least that such population transfers have occurred for the purpose, or with the effect of diminishing the exercise by the Tibetan people of their right to self-determination and of other basic rights belonging to them by international law. They should
cease at once. Peaceful and lawful steps should be taken to reverse them with due regard to the wishes and needs of all the people concerned.

Abuses of individual rights
• 7.1 The evidence before the participants demonstrates that there is a consistent pattern of serious violations of universally recognised human rights in Tibet.

• 7.2 The serious abuses include the following:

(1) Interference in the practice of Tibetan Buddhism and restrictions on freedom of religion;
(2) A lack of due process of law;
(3) A lack of an independent judiciary;
(4) Loosely defined and oppressively enforced criminal and security laws - including punishments for such offenses as:
   (i) The writing of letters to the United Nations;
   (ii) The collection of the names of detainees;
   (iii) Publication of documents including the translation into the Tibetan language of the Universal Declaration of Human Rights;
   (iv) Teaching "reactionary" songs;
   (v) Possession of a Tibetan flag
(5) Denial of the rights of freedom of association and freedom of assembly;
(6) Torture of detainees and prisoners and the practice of cruel punishments in a harsh penal system;
(7) Oppressive censorship, obstruction of the free flow of information and undue limitations of freedom of expression;
(8) Limitations upon free movement both within and outside Tibet; (9) Forced sterilizations and unconsensual abortions; and
(10) Unequal access to, and discrimination in, housing, education, health, employment, political office and cultural rights.

7.3 Such violations of fundamental human rights are contrary to international law. The PRC is the state responsible for such violations. The violations should cease forthwith.

7.4 Harsh violations of fundamental human rights typically accompany attempts to deny a people the exercise of their right to self-determination. Such is the case in Tibet. In this way, the denial of basis human rights is indissolubly linked to the denial of the right to self-determination. Only by the establishment of conditions in which the latter right may be freely exercised will the fundamental causes of grave human rights violations be removed.

• 7.5 The PRC is required by international law to ensure the respect of the fundamental human rights of the Tibetan people. It cannot evade that legal requirement by an appeal to its domestic jurisdiction. On the contrary, the violation of fundamental human rights is an additional justification by the Tibetan people for the exercise of their right to self-determination.
1723 (XVI). Question of Tibet

The General Assembly,

Recalling its resolution 1353 (XIV) of 21 October 1959 on the question of Tibet,

Gravely concerned at the continuation of events in Tibet, including the violation of the fundamental human rights of the Tibetan people and the suppression of the distinctive cultural and religious life which they have traditionally enjoyed,

Noting with deep anxiety the severe hardships which these events have inflicted on the Tibetan people, as evidenced by the large-scale exodus of Tibetan refugees to the neighbouring countries,

Considering that these events violate fundamental human rights and freedoms set out in the Charter of the United Nations and the Universal Declaration of Human Rights, including the principle of self-determination of peoples and nations, and have the deplorable effect of increasing international tension and embittering relations between peoples,

1. Reaffirms its conviction that respect for the principles of the Charter of the United Nations and of the Universal Declaration of Human Rights is essential for the evolution of a peaceful world order based on the rule of law;

2. Solemnly renews its call for the cessation of practices which deprive the Tibetan people of their fundamental human rights and freedoms, including their right to self-determination;

3. Expresses the hope that Member States will make all possible efforts, as appropriate, towards achieving the purposes of the present resolution.

1085th plenary meeting, 20 December 1961.
United Nations Resolution 18 December 1965

2079 (XX). Question of Tibet

The General Assembly,

Bearing in mind the principles relating to human rights and fundamental freedoms set forth in the Charter of the United Nations and proclaimed in the Universal Declaration of Human Rights,

Reaffirming its resolutions 1353 (XIV) of 21 October 1959 and 1723 (XVI) of 20 December 1961 on the question of Tibet,

Gravely concerned at the continued violation of the fundamental rights and freedoms of the people of Tibet and the continued suppression of their distinctive cultural and religious life, as evidenced by the exodus of refugees to the neighbouring countries.

1. Deplores the continued violation of the fundamental rights and freedoms of the people of Tibet;
2. Reaffirms that respect for the principles of the Charter of the United Nations and of the Universal Declaration of Human Rights is essential for the evolution of a peaceful world order based on the rule of law;
3. Declares its conviction that the violation of human rights and fundamental freedoms in Tibet and the suppression of the distinctive cultural and religious life of its people increase international tension and embitter relations between peoples
4. Solemnly renews its call for the cessation of all practices which deprive the Tibetan people of the human rights and fundamental freedoms which they have always enjoyed:
5. Appeals to all States to use their best endeavours to achieve the purposes of the present resolution. 1403rd plenary meeting. 18 December 1965.
The UN/OAU Peace plan on Western Sahara will, in the next few weeks, move into the most critical phase since its approval by the Security Council in June 1991. The referendum on self-determination, envisaged by the United Nations in this plan as a peaceful solution to the conflict of the decolonisation of Western Sahara, was delayed sine die, in December 1991, as a result of the Moroccan will to obstruct and change it, to legitimate its illegal occupation of the Saharawi territory.

As it is known, the original peace plan was changed unilaterally when its most important clause, considering the 1974 Spanish Census (conducted by Spain before its withdrawal) as the unique basis for the establishment of the electoral body for the referendum, was replaced by new criteria of votes, which permits Morocco to include in the electoral lists a Moroccan population which has been previously transferred to Western Sahara. As demonstrated by events, this radical change was a fatal blow to the perspective of a free and fair referendum in Western Sahara.

A DECISIVE REPORT: CAUSES OF A POSSIBLE FAILURE.

The possibility that the Secretary General of the United Nations, in his forthcoming report to the Security Council on May 15, 1996, will announce the failure and withdrawal of the MINURSO, is a serious and unavoidable eventuality.

What are the causes of this possible failure?

It is essentially due to the combination of an open Moroccan opposition to a free and fair referendum and a surprising lack of fairness shown by MINURSO in the management of the peace plan. The lack of fairness led to a situation whereby nothing can be proposed or done without the approval of the occupying power of the territory. This element of total dependency, hidden and, at times, denied by MINURSO, has emerged little by little until its existence has become crystal clear to the international public opinion. There are immediate and remote factors which can explain the eminent failure:

I. Among the first, the categorical opposition of Morocco to the principle of transparency in the management of the peace process was a decisive factor. As it is known, the Secretary General, in his January 1996 report to the Security Council decided "that the MINURSO provides the two parties, Morocco and Polisario Front, with the list of persons that have been, so far, declared by the identification commission as voters in the forthcoming referendum" (para. 16 of the report S/1996/43).
This decision of the Secretary General was a wise and justified act. Transparency is an essential element and a basic principle of any operation of peace in the hands of the United Nations. Its non-application will lead to the raising of legitimate and pertinent questions and will result in a serious blow to the credibility of the international organization in charge of a referendum operation.

The Polisario Front welcomed wholeheartedly this decision. However, Morocco categorically opposed it. This Moroccan veto paralyzed the MINURSO and confirmed the lack of independence of the United Nations in the management of the peace process, in that without transparency there can be no free and fair referendum.

This unjustified behaviour of the kingdom of Morocco is the latest in a series of obstructions which dearly attest to the fact that the occupying power refuses to accept, both now and in the future, the holding of a referendum on self-determination as absolution to the conflict of decolonization of Western Sahara.

2. Among the remote factors that have led to the imminent failure of the peace process are, as seen, the imposition of a radical change of the original peace plan in December, the massive transfer of Moroccan settlers into the territory, the rejection of direct dialogue with the Polisario Front and statements of high-level Moroccan authorities declaring that they will not accept the result of a referendum in favour of independence.

These elements of information and assessment seem to show that the peace process was doomed to failure from the beginning due the UN's unwillingness to act.

Several international independent observers such as Human Rights Watch (letter addressed to the UN Security Council on September 19, 1995) have concluded that Morocco "has manipulated the operation of the referendum". In this regard, the former number two of the MINURSO, US Ambassador Frank Ruddy, has come the same conclusions, which he stated in a hearing before the US Congress in January 1995. It could also be for this reason that he was prevented from giving a testimony before the fourth committee of the UN General Assembly in October 1995. On the other hand, newspapers such as The New York Times (March 5, 1995) noticed that "few are those who believe that Morocco will give up Western Sahara, regardless of the outcome of any referendum".

THE IDENTIFICATION OF VOTERS: THE BEGINNING OF THE END.

In any referendum, particularly one of decolonization, the electoral body is the most important element, along with the circumstances and condition surrounding such a vote.

1. The Polisario Front, in a spirit of co-operation with the United Nations during the negotiations which led to the elaborations of the peace plan, accepted that Morocco kept 65,000 troops, in addition to its administration and settlers, during the transitional period. The UN mediators assured the Polisario Front that, in order to counteract these factors of military and administrative pressure, it was of utmost importance to have faith and confidence in the moral and political authority of the United Nations.

In the meantime, an unequivocal agreement on the question regarding the electoral body was reached. It stipulates that "all Saharawis 18 years old or more, that are included in the 1974 Spanish census will have the right to vote". Such a census registered a population of about 75,000 persons. This agreement was in fact what permitted the elaboration of the plan and the establishment of the MINURSO.
2. Once the implementation of the plan was initiated and after the cease-fire came into force on September 6, 1991, and a date for the 1992 referendum was scheduled, Morocco reneged on its commitment and began transferring waves of thousands of its own citizens into the territory, in order to include them in the voters list.

The United Nations opted for silence in the face of this violation of the peace plan, which was, among other things, what led to the then special Representative of the Secretary General, Swiss Ambassador Johannes Manz. Four months later, on December 19, 1991, Morocco imposed on the UN a criteria of eligibility aimed at allowing newly transferred Moroccan population to vote in violation of the original peace plan.

Since then, the door has been left open for a plebiscite whose electoral body was compiled according to the desire of the Kingdom of Morocco. The submission of the Moroccan authorities of 183,000 applications to the identification commission of MINURSO was only the numerical expression of a premeditated fraud. (See annex).

3. After almost two years of work, carried out under dubious circumstances imposed by Morocco, the examination commission was only able to examine the applications of 60,000 people, from a total of 242,000, of which some 100,000 were forwarded by the Moroccan authorities as so-called Saharawis.

The applications presented by Morocco do not meet with the conditions required by the original peace plan nor those contained in the so-called "Proposals of Compromise" of the current Secretary General, presented in June 1993, that specifies that the applicant must prove that "he/she belongs to a Saharawi sub-fraction included in the 1974 Spanish census."

During all this time, it has been demonstrated that the Moroccan authorities have been engaged in a strategy of large scale fraud culminating in Morocco's adamant refusal to allow the identification commission to publish and give to the two parties the specific results of its work during the first phase of voters identification.

The Moroccan opposition to transparency shows that it seeks to impose a procedure that is incompatible with a free and fair referendum and contrary to the wishes of the international community.

PERSPECTIVES

The original peace plan which went into crisis in December 1991, due to Morocco's deviation from its objective, was also characterised by serious ambiguities from the start which were never clarified despite the repeated requests of the Polisario Front.

Among these ambiguities is the code of conduct which governs the electoral campaign, the confinement of troops, the presence of international observers and reporters, and, above all, the mechanisms required to guarantee the respect of the final outcome of the referendum.

The elements mentioned in the above point to the reasons that the peace process in Western Sahara took a road which will unfortunately lead to its ultimate failure.

The Polisario Front has trusted that the UN's moral and political authority, deriving from its responsibility in the decolonization of Western Sahara, would stand up to the Moroccan challenge. This confidence was translated to an attitude of great flexibility during the elaboration of the peace plan as well as during the continuous efforts to save it from the various deviations that occurred since its violation in 1991.

The challenge and obstinacy with which Morocco continued to "manipulate the operation" (Human Rights Watch) reached a scandalous point when it opposed the publication of the list of voters already identified.

Furthermore, both the unjustified rejection by the Moroccan government of a direct dialogue with the Polisario - which could facilitate the implementation of the peace plan - and Morocco's proclaimed intention not to respect any referendum that does not guarantee
beforehand a result favourable to its interests are factors that demonstrate that there is indeed a parry which is responsible for the failure of the peace plan.

The United Nations either did not want or was unable to respond firmly to the Moroccan abuses. Its laissez-faire attitude allowed Morocco to do as it wished.

Thus, the UN's inability to organise a free and fair referendum and the inconsistency of its implication in the fraud, as wished by Morocco, are the indications of the organization's failure. As reported by the international media, the United Nations is preparing the announcement of the end of its mission for the referendum in Western Sahara (MINURSO). The likelihood of this announcement will come just after independent observers have stated that: "serious human rights violations have continued to be committed by the Moroccan security forces in Western Sahara, in violation of international human rights treaties ratified by Morocco and despite the presence since 1991 of the United Nations Mission for the referendum in Western Sahara (MINURSO)" (Amnesty International, 18 April 1996, MDE 29/04/96).

It is difficult to argue that this failure is due to a lack of finances or of co-operation of the two parties. All of the UN member states, and particularly those in the Security Council, are well aware of the real reasons of what would become the most famous failure of the UN. The reason is crystal clear: the lack of firmness on the part of the UN in the face of the intransigence of Morocco.

A partial withdrawal of MINURSO that will leave in place only the military component is not only a symbol of a failure, which could and should have been prevented, but it also reflects the extent to which the UN is held prisoner to Morocco's wishes.

Up to now, the MINURSO military contingent has had the responsibility, in conformity with the peace plan, to monitor the cease-fire, which is the first step in the referendum process. Once it is realised that it is impossible to hold a free and fair referendum, the maintaining of the cease-fire without a perspective referendum will only serve to give an international blessing to the illegal occupation of the territory. This goes against the UN's commitment to decolonisation.

An alternative option, which does not take into consideration the colonial nature of the problem and does not count on support of both parties, is neither realistic nor advisable. Furthermore, it would implicate both the United Nations and the Security Council in a unilateral approach, again contrary to the principles contained in the UN Charter.

The Polisario Front considers that Morocco's attitude not only prevents the continuation of the peace process in a transparent and credible way, but could lead to a major crisis. The Saharawi People do not desire war and will continue to undertake all possible efforts to secure a peaceful and just solution to the conflict for a lasting decolonization of Western Sahara. However, the Saharawi People will spare no efforts, if need be, to defend their right to self-determination and independence.

The international community has a responsibility to bring the process to its completion, in order to prevent a regional crisis of dangerous and unpredictable portions. In this regard, a decisive action should take into account the following:
I. The decolonization nature of the problem. The occupying power must respect the right to self-determination of the Saharawi People and renounce its attempts to substitute this people with a Moroccan population.

2. The identification process of voters may be resumed, provided that the process is ruled by transparency. Transparency is the main guarantee for credibility. Morocco fears this sacred principle, but the UN should not.

3. An appeal to the two parties in the conflict to start direct negotiations under the auspices of the United Nations, in order to resolve the outstanding problems. The negotiations would facilitate the task of both the UN and OAU to implement the settlement plan in a transparent manner.

4. A possible failure of the United Nations should not lead to the adoption of unilateral options that jeopardise the right of the Saharawi people to self-determination and independence, in conformity with the principle of the UN Charter.

ANNEX

I. Within the Settlement Plan (Report S/21360 of June 18, 1990) it is indicated with regard to the identification:

- Para. 25:

"In order to facilitate the counting in a census of the Saharawis, the Secretary General will establish, in consultation with the President of the OAU, an Identification Commission to review carefully and scrupulously the 1974 Spanish Census and to update it"

- Para. 27:

"The role of the Identification Commission of the Saharawis is to:

a. Examine carefully the census examined by the Spanish authorities in the Territory in 1974 and to update it.

b. To proceed with the counting of real Saharawi population growth during the period from the date of the census above mentioned to the date of the organization of the referendum taking into account the following elements:
   i) birth and death
   ii) displacement of the Saharawi populations".

2. From the coming into force of the cease-fire, September 1989, Morocco started in violation of paragraphs 72 and 73 of the Settlement Plan, the transfer of thousands of Moroccan citizens into Western Sahara in order to include them into the identification process. Despite this new fait accompli, the UN Secretary General, Mr. Perez de Cuellar, enacted new criteria of eligibility (in his Report S/23299 of December 19, 1991) that ignored the framework defined by the Settlement Plan itself.

These five new criteria are:

I. Persons who are counted in the revised list of 1974;
2. persons who resided in the Territory as of a Saharawi tribe at the time of the 1974 census, but have not been counted in the census;
3. members of immediate families of these two first groups (father, mother children) 4. persons of Saharawi father born in the territory;
5. persons, members of Saharawi tribes belonging to the territory, who have resided 6 consecutive years or an intermittent time cumulative of a total of 12 years before December 1, 1974

For the implementation of these criteria, the Secretary General's Report S/23299 made it dear in paragraph 21 that: "the Commission will above all have in mind, that in order to carry a particular identification, it is the belonging of a person to a familial group (subfraction of a tribe) belonging to the territory which will prevail to determine the right to participate in the referendum." The Report of December 1991 was a dear violation of the original peace plan and an obvious alignment with Morocco's desires.

While the identification should have dealt only with 74,902 persons counted in the 1974 census and a few hundred persons that have reached the age of 18 at the time of the referendum (Feb. 1992), the new criteria (mainly 4 and 5) widely opened the door for the identification of thousands of new persons coming from Morocco. The Moroccan authorities claimed that these people are of "Saharawi origin" and that they can "prove" it by a sheikh's oral testimony. But who are the sheikhs? Who are the subfractions belonging to the territory?

3. The period from December 1991 to June 1993 was reserved for the interpretation of the criteria. This exercise led to the so-called "Secretary General Compromise Proposal" (Report S/266185 of July 28, 1993)

In this text, the Secretary General, while reaffirming the five criteria, indicated:

a. A sub-fraction belonging to the territory is "a sub-fraction included in the Spanish census". This interpretation came from a Moroccan official document. However, the belonging of any applicant to a sub-fraction included in the 1974 census is a precondition for its identification.

b. With regard to the proofs:

"For an exceptional case, in the case where the interested does not have any document or possesses incomplete or insufficient Spanish documents, the Identification Commission could judge for his or her eligibility to vote in taking into account the testimony of the Chiefs of tribes."

c. Regarding the Chioukhs: "Only the Chioukhs of subfractions included in the 1974 Spanish census will be eligible to testify before the Identification Commission...."

4. Despite the reservations publicly expressed, the Polisario Front accepted to cooperate on the basis of the compromise presented by the Secretary General. The Identification Commission started its work in August 1994 and, since then to December 1995, it has been able to identify some 62,000 persons (40,000 in the occupied territories and 22,000 in the Saharawi refugee camps). Since then, the operation has been halted. At this stage it is necessary to notice the following data:

The first seven tribes (A to G) are subdivided into subfractions (AII to A62; B1i to 1381; CII to C35; DII to D22; EII to E21; FII to F51; GII to G61).

However, the tribes H, I and J, are not classified into subfractions, which makes their identification impossible through the compromise of the Secretary General. For instance, H41, H61 and J51-52 are groups of tribes (H41 are an undetermined number of tribes, H61 more than 17 tribes, and J51-52 close to 62 tribes) Once more, the problem of subfractions of Chioukhs is braised.

b. The number of persons that have already submitted applications is 242,000. The number of persons counted in the 1974 census, and still alive, is 61,000. It must be pointed out that the different census carried out by the colonial Spanish authorities in the Territory throughout more than one century, disclosed the following numbers:

- 24,563 inhabitants in 1955 - 33439 in 1963
- 37,500 in 1964 - 54178 in 1965

c. Morocco has presented 181,000 applications out of 242,000. From that amount, 100,000 still live in Morocco. Based on Morocco's claims, these so-called Saharawis were expelled by the Spanish authorities during their colonial rule in the Spanish Sahara. On these grounds it seems unexplainable why all these supposedly Saharawis have not yet returned to their motherland after the withdrawal of the Spaniards from the territory, and subsequently to Morocco's annexation.

Furthermore, 110,000 Moroccan applications come from tribes or groups of tribes H, I, and J. It is necessary to recall that the total number of persons from these tribes which were counted in the Spanish census are around 8,000 (14% of the census). They now have come to represent 45% of all applications, which surpasses any logical updating of the Spanish census. This strange situation also applies to the group H61, which originally had 536 persons counted in the Spanish census. This same group has now submitted 56,000 applications, among which 46,000 are still living in Morocco.

d. The proposal of compromise presented by both the acting Special Representative and the Secretary General regarding the identification of certain contested groups (H41, H61, J51-52) on the basis of "a document published by the competent authorities within the recognised borders of the territory before 1974" (letter to the Security Council S/1995/924) has been rejected by Morocco.

5. From the above, it appears that Morocco was seeking the support of the international community in its intention to divert the process from its original objective (selfdetermination of the people of Western Sahara) to a plebiscite for Moroccan citizens.

Morocco, which originally committed itself to the above-mentioned principle, later abandoned it and, even worse, used a vote to prevent the United Nations from carrying on the identification process in a transparent and fair way, as stipulated by the Secretary General in
paragraph 16 of his January 1996 report (S/1996/43): "It has decided that the Commission will take its disposition to share with the two parties, in an appropriate form, the list of applicants identified so far as voters as well as the list of the applicants still to be identified."

### 76 THE QUESTION of SELF-DETERMINATION

Explanatory table for applications for participation in the Referendum

<table>
<thead>
<tr>
<th></th>
<th>Total</th>
<th>Western Sahara (occupied areas)</th>
<th>Sahrawis in the liberated areas and camps</th>
<th>Morocco</th>
<th>Mauritanian</th>
<th>Increase compared to the 1974 census</th>
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<tbody>
<tr>
<td><strong>Total of applicants</strong></td>
<td>242000</td>
<td>85140</td>
<td>42300</td>
<td>98371</td>
<td>16189</td>
<td>181000</td>
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<tr>
<td></td>
<td>61000</td>
<td>28000</td>
<td>27000</td>
<td>1000</td>
<td>5000</td>
<td>(296.72%)</td>
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<tr>
<td><strong>Applicants in the sub-fractions of tribes A D E F G</strong></td>
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<td>47754</td>
<td>38252</td>
<td>37869</td>
<td>7863</td>
<td>78630</td>
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<td></td>
<td>53100</td>
<td>22800</td>
<td>25700</td>
<td>580</td>
<td>4020</td>
<td>(148.07%)</td>
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<tr>
<td><strong>Applicants among groups of tribes H41, H61 J51-52</strong></td>
<td>66472</td>
<td>17786</td>
<td>1706</td>
<td>53590</td>
<td>3390</td>
<td>64272</td>
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<td></td>
<td>2200</td>
<td>1200</td>
<td>200</td>
<td>50</td>
<td>750</td>
<td>(2921.45)</td>
</tr>
<tr>
<td><strong>Applicants among other tribes H, I and J</strong></td>
<td>43798</td>
<td>19600</td>
<td>2342</td>
<td>16912</td>
<td>4936</td>
<td>38090</td>
</tr>
<tr>
<td></td>
<td>5708</td>
<td>4000</td>
<td>1100</td>
<td>370</td>
<td>230</td>
<td>(668 38%)</td>
</tr>
</tbody>
</table>
ORDER

The President of the International Court of Justice,
Having regard to Article 66, paragraph 2, of the Statute of the Court;

Whereas, on 13 December 1974, the General Assembly of the United Nations adopted a resolution requesting the International Court of Justice to give an advisory opinion on the following questions:

"1. Was Western Sahara (Rio de Oro and Sakiet El Hamra) at the time of colonization by Spain a territory belonging to no one (terra nullius)?

If the answer to the first question is in the negative,

II. What were the legal ties between this territory and the Kingdom of Morocco and the Mauritanian entity?"

Whereas certified true copies of the English and French texts of the aforesaid resolution of the General Assembly were transmitted to the Court by a letter of the Secretary-General of the United Nations dated 17 December 1974 and filed in the Registry on 21 December 1974;

Whereas the General Assembly has requested that the advisory opinion of the Court be given at an early date, and having regard to Article 87, paragraph 2, of the Rules of Court:

decolonization of non-self-governing territories. Consequently, in order to appraise the correctness or otherwise of Spain's view as to the object of the questions posed, it is necessary to recall briefly the basic principles governing the decolonization policy of the General Assembly, the general lines of previous General Assembly resolutions on the question of Western Sahara, and the preparatory work and context of resolution 3292 (XXIX).

54. The Charter of the United Nations, in Article 1, paragraph 2, indicates, as one of the purposes of the United Nations: "To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples..." This purpose is further developed in Articles 55 and 56 of the Charter. Those provisions have direct and particular relevance for non-self-governing territories, which are dealt with in Chapter X i of the Charter. As the Court stated in its Advisory Opinion of 21 June 1971 on The Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970):

... the subsequent development of international law in regard to non-self-governing territories, as enshrined in the Charter of the United Nations, made the principle of self-determination applicable to all of them" (I.C.J. Reports 1971, p. 31).
55. The principle of self-determination as a right of peoples, and its application for the purpose of bringing all colonial situations to a speedy end, were enunciated in the Declaration on the Granting of Independence to Colonial Countries and Peoples, General Assembly resolution 1514 (XV). In this resolution the General Assembly proclaims "the necessity of bringing to a speedy and unconditional end colonialism in all its forms and manifestations". To this end the resolution provides inter alia

"2. All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

5. Immediate steps shall be taken, in Trust and Non-Self-Governing Territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire, without any distinction as to race, creed or colour, in order to enable them to enjoy complete independence and freedom.

6. Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purpose and principles of the Charter of the United Nations."

The above provisions, in particular paragraph 2, thus confirm and emphasize that the application of the right of self-determination requires a free and genuine expression of the will of the peoples concerned.

56. The Court had occasion to refer to this resolution in the abovementioned Advisory Opinion of 21 June 1971. Speaking of the development of international law in regard to non-self-governing territories, the Court there stated:

"A further important stage in this development was the Declaration on the Granting of independence to Colonial Countries and Peoples (General Assembly resolution 1514 (XV) of 14 December 1960), which embraces all peoples and territories which 'have not yet attained independence'." (I.C.J. Reports 1971, p. 31.)

It went on to state:

'. . . the Court must take into consideration the changes which have occurred in the supervening half-century, and its interpretation cannot remain unaffected by the subsequent development of law, through the Charter of the United Nations and by way of customary law" (ibid.).

The Court then concluded:

"in the domain to which the present proceedings relate, the last fifty years, as indicated above, have brought important developments. These developments leave little doubt that the ultimate objective of the sacred trust was the self-determination and independence of the peoples concerned. In this domain, as elsewhere, the corpus iuris gentium has been considerably enriched, and this the Court, if it is faithfully to discharge its functions, may not ignore." (Ibid., pp. 31 f.)

57. General Assembly resolution 1514 (XV) provided the basis for the process of decolonization which has resulted since 1960 in the creation of many States which are today Members of the United Nations. It is complemented in certain of its aspects by General Assembly resolution 1541 (XV), which has been invoked in the present proceedings. The latter resolution contemplates for non-self-governing territories more than one possibility, namely:
(a) emergence as a sovereign independent State;
(b) free association with an independent State; or
(c) integration with an independent State.

At the same time, certain of its provisions give effect to the essential feature of the right of self-determination as established in resolution 1514 (XV). Thus the principle VII of resolution 1541 (XV) declares that: "Free association should be the result of a free and voluntary choice by the peoples of the territory concerned expressed through informed and democratic processes." Again, principle IX of resolution 1541 (XV) declares that:

"Integration should have come about in the following circumstances:

(b) The integration should be the result of the freely expressed wishes of the territory's peoples acting with full knowledge of the change in their status, their wishes having been expressed through informed and democratic processes, impartially conducted and based on universal adult suffrage. The United Nations could, when it deems it necessary, supervise these processes."

58. General Assembly resolution 2625 (XXV), "Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations", to which reference was also made in the proceedings mentions other possibilities besides independence, association or integration. But in doing so it reiterates the basic need to take account of the wishes of the people concerned:

"The establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people." (Emphasis added.)

Resolution 2625 (XXV) further provides that:

"Every State has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples in accordance with the provisions of the Charter, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of the principle, in order:

(b) To bring a speedy end to colonialism, having due regard to the freely expressed will of the peoples concerned."

59. The validity of the principle of self-determination, defined as the need to pay regard to the freely expressed will of peoples, is not affected by the fact that in certain cases the General Assembly has dispensed with the requirement of consulting the inhabitants of a given territory. Those instances were based either on the consideration that a certain population did not constitute a "people" entitled to self-determination or on the conviction that a consultation was totally unnecessary, in view of special circumstances.
60- Having set out the basic principles governing the decolonization policy of the General Assembly, the Court now turns to those resolutions which bear specifically on the decolonization of Western Sahara. Their analysis is necessary in order to determine the validity of the view that the questions posed in resolution 3292 (XXIX) lack object. In particular it is pertinent to compare the different ways in which the General Assembly resolutions adopted from 1966 to 1969 dealt with the questions of Ifni and Western Sahara.

61. In 1966, in the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, Spain expressed itself in favour of the decolonization of Western Sahara through the exercise by the population of the territory of their right to self-determination. At that time this suggestion received the support of Mauritania and the assent of Morocco. As to Ifni, Spain suggested establishing contact with Morocco as a preliminary step. Morocco stated that the decolonization of Ifni should be brought into line with paragraph 6 of resolution 1514 (XV).

62. On the basis of the proposals of the Special Committee, the General Assembly adopted resolution 2229 (XXI), which dealt differently with Ifni and Western Sahara. In the case of Ifni, the resolution:

"3. Requests the administering Power to take immediately the necessary steps to accelerate the decolonization of Ifni and to determine with the Government of Morocco, bearing in mind the aspirations of the indigenous population, procedures for the transfer of powers in accordance with the provisions of General Assembly resolution 1514 (XV)."

In the case of Western Sahara, the resolution:

"4. Invites the administering Power to determine at the earliest possible date, in conformity with the aspirations of the indigenous people of Spanish Sahara and in consultation with the Governments of Mauritania and Morocco and any other interested party, the procedures for the holding of a referendum under United Nations auspices with a view to enabling the indigenous population of the Territory to exercise freely its right to self-determination . . .

In respect of this territory the resolution also set out conditions designed to ensure the free expression of the will of the people, including the provision by the administering Power of "facilities to a United Nations mission so that it may be able to participate actively in the organization and holding of the referendum".

63. Resolution 2229 (XXI) was the model for a series of resolutions the provisions of which regarding Western Sahara were in their substance almost identical. Only a few minor variations were introduced. In 1967 the operative part of resolution 2354 (XXII) was divided into two sections, one dealing with Ifni and the other with Western Sahara: and in 1968 resolution 2428
(XXIII), similarly divided, included a preamble noting "the difference in nature of the legal status of these two Territories, as well as the processes of decolonization envisaged by General Assembly resolution 2354 (XXII) for these Territories". Since 1969 Ifni, having been decolonized by transfer to Morocco, has no longer appeared in the resolutions of the Assembly.

64. In subsequent years, the General Assembly maintained its approach to the question of Western Sahara, and reiterated in more pressing terms the need to consult the wishes of the people of the territory as to their political future. Indeed resolution 2983 (XXVII) of 1972 expressly reaffirms "the responsibility of the United Nations in all consultations intended to lead to the free expression of the wishes of the people". Resolution 3162 (XXVIII) of 1973, while deploring the fact that the United Nations mission whose active participation in the organization and holding of the referendum had been recommended since 1966 had not yet been able to visit the territory, reaffirms the General Assembly's:

".. attachment to the principle of self-determination and its concern to see that principle applied with a framework that will guarantee the inhabitants of the Sahara under Spanish domination free and authentic expression of their wishes, in accordance with the relevant United Nations resolutions on the subject".

65. All these resolutions from 1966 to 1973 were adopted in the face of reminders by Morocco and Mauritania of their respective claims that Western Sahara constituted an integral part of their territory. At the same time Morocco and Mauritania assented to the holding of a referendum. These States, among others, alleging that the recommendations of the General Assembly were being disregarded by Spain, emphasized the need for the referendum to be held in satisfactory conditions and under the supervision of the United Nations.

66. A significant change was introduced in resolution 3292 (XXIX) by which the Court is seised of the present request for an advisory opinion. The administering Power is urged in paragraph 3 of the resolution "to postpone the referendum it contemplated holding in Western Sahara". The General Assembly took special care, however, to insert provisions making it clear that such a postponement did not prejudice or affect the right of the people of Western Sahara to self-determination in accordance with resolution 1514 (X V).

67. The provisions in question contain three express references to resolution 1514 (X V). In the General Assembly debates the representative of the Ivory Coast, one of the sponsors of resolution 3292 (XXIX), after describing the text before the General Assembly as the result of a compromise, called attention to these references to resolution 1514 (X V), explaining that they had been introduced into the original text in order to enable the General Assembly to be consistent. In the light of the terms of resolution 3292 (XXIX) this must be understood as indicating the intention to ensure the consistency of that resolution with previous resolutions of the General Assembly.

68. The third paragraph in the preamble of resolution 3292 (XXIX) reaffirms "the right of the population of the Spanish Sahara to self-determination in accordance with resolution 1514 (X V)". In paragraph I of the operative part, where the questions asked of the Court are formulated, the Court is requested, "without prejudice to the application of the principles embodied in General Assembly resolution 1514 (X V)", to give its advisory
opinion. This mention of resolution 1514 (XV) is thus made to relate to the actual request for the opinion. The reference to the application of the principles embodied in resolution 1514 (XV) has necessarily to be read in the light of the General Assembly's reaffirmation in the third paragraph of the preamble of "the right of the population of the Spanish Sahara to self-determination in accordance with resolution 1514 (XV)".

69. In paragraph 3 of the operative part it is urged that the referendum be postponed "until the General Assembly decides on the policy to be followed in order to accelerate the decolonization process in the territory, in accordance with resolution 1514 (XV)". This third mention of resolution 1514 (XV), which has also to be read in the light of the preamble, thus refers to it as governing "the decolonization process in the territory" and "the policy to be followed in order to accelerate" that process.

70. In short, the decolonization process to be accelerated which is envisaged by the General Assembly in this provision is one which will respect the right of the population of Western Sahara to determine their future political status by their own freely expressed will. This right is not affected by the present request for an advisory opinion, nor by resolution 3292 (XXIX); on the contrary, it is expressly reaffirmed in that resolution. The right of that population to self-determination constitutes therefore a basic assumption of the questions put to the Court.

71. It remains to be ascertained whether the application of the right of self-determination to the decolonization of Western Sahara renders without object the two specific questions put to the Court. The Court has already concluded that the two questions must be considered in the whole context of the decolonization process. The right of self-determination leaves the General Assembly &measure of discretion with respect to the forms and procedures by which that right is to be realized.

72. An advisory opinion of the Court on the legal status of the territory at the time of Spanish colonization and on the nature of any ties then existing with Morocco and with the Mauritanian entity may assist the General Assembly in the future decisions which it is called upon to take. The General Assembly has referred to its intention to "continue its discussion of this question" in the light of the Court's advisory opinion. The Court, when considering the object of the questions in accordance with the text of resolution 3292 (XXIX), cannot fail to note this statement. As to the future action of the General Assembly, various possibilities exist, for instance with regard to consultations between the interested States, and the procedures and guarantees required for ensuring a free and genuine expression of the will of the people. In general, an opinion given by the Court in the present proceedings will furnish the General Assembly with elements of a legal character relevant to its further treatment of the decolonization of Western Sahara.

73. In any event, to what extent or degree its opinion will have an impact on the action of the General Assembly is not for the Court to decide. The function of the Court is to give an opinion based on law, once it has come to the conclusion that the questions put to it are relevant and have a practical and contemporary effect and, consequently, are not devoid of object or purpose.
74. In the light of the considerations set out in paragraphs 23-73 above, the Court finds no compelling reason, in the circumstances of the present case, to refuse to comply with the request by the General Assembly for an advisory opinion.

75. Having established that it is seised of a request for advisory opinion which it is competent to entertain and that it should comply with that request, the Court will now examine the two questions which have been referred to it by General Assembly resolution 3292 (XXIX). These questions are so formulated that an answer to the second is called for only if the answer to the first is in the negative:

"I. Was Western Sahara (Rio de Oro and Sakiet El Hamra) at the time of colonization by Spain a territory belonging to no one (terra nullius)?

If the answer to the first question is in the negative,

II. What were the legal ties between this territory and the Kingdom of Morocco and the Mauritanian entity?"

The suggestion has been made that the two questions are so far connected in substance that an affirmative answer could scarcely be given to the first question without also investigating the answer to be given to the second. It is possible, however, that, in the actual circumstances of the case, a negative answer to the first question may be called for irrespective of the Court's
ADDITIONAL READING

On East Timor:


Carey, Peter and G. Carter Bentley (eds.) East Timor at the Crossroads: The Forging of a Nation. (Cassell, University of Hawaii, USA, 1995)


On Tibet:

Department of Information and International Relations. The Legal Status of Tibet by Leading jurists. (Central Tibetan Administration, Dharamsala-176215 (HP), India, 1983)


On Western Sahara:

- Trois Francais au Sahara Occidental, 1784 - 1786. (L'Harmattan, France, 1984)


Perrault, Gilles. *Notre Ami Le Roi.* (Folio Actuel, France, 1992)