

## THE RIGHTS OF PEOPLES: "PEOPLES" or "GOVERNMENTS"?

by James Crawford

### The Rights of Peoples and the Structure of International Law

From the perspective of international law, the key feature of the phrase "rights of peoples" is not so much the term "rights" as the term "peoples". From a philosophical point of view, no doubt, the term "right" is itself problematic. But lawyers, including international lawyers, are used to talking about rights, and so long as one accepts Hohfeld's point that one person's right must mean another person's duty, the term seemed unremarkable even in this context. Moreover, international law - in common with many other systems of law - is familiar with the notion of "collective" rights.<sup>1</sup> The basic unit of international law, the state, involves a reference to the social fact of a territorial community of persons with a certain political organisation, in other words, a reference to a collectivity. International law rules that confer rights on states are references, in that respect, to collective rights. However, when international law attributes rights to states as social and political collectivities, it does so sub modo - that is to say, it does so subject to the rule that the actor on behalf of the state, and the entity to which other states are to look for the observation of the obligations of the state, and which is entitled to activate its rights, is the government of the state. This basic rule drastically affects the point that the state qua community of persons has rights in international law, or at least it does so whenever the view or position taken by the government of a state diverges from the wishes of the people of the state that government represents. And it is, so far at least, axiomatic that international law does not guarantee representative, still less democratic, governments.<sup>2</sup>

The proposition that the international law rights of states as communities of persons are moderated through a government (not necessarily representative, but legally the representative, of the people of the state) still represents the general rule. But it is that proposition which makes the term "peoples" in the phrase "rights of peoples" remarkable. Has international law taken up the task of conferring rights on groups or communities of people against the state which those people constitute, and against the government of the state? If so, it would be no great step for it to confer rights on those groups or communities as against other states and their governments. But the people of a state are - to put it mildly - at least as likely to have their rights violated by their own government as by the governments of other states. If the phrase "rights of peoples" has any independent meaning, it must confer rights on peoples against their own governments. To make the same point in other words, if the only rights of peoples are rights against other states, and if there is no change to the established position that the government of the state represents "the state" (i.e. the people of the state) for all international purposes irrespective of its representativeness, then what is the point of referring to the rights in question as rights of peoples? Why not refer to them as the rights of states, in the familiar, well understood, though somewhat elliptical way?

I think it is more profitable to try to answer this question in the context of specific formulations of the "rights of peoples". Which of these

rights are really rights of states in disguise? Which of them are really individual human rights - or aspirations to them? Which can properly be treated as rights of peoples, as distinct from states? And if they can so be treated, what is it that distinguishes them from the other two classes of rights? It should be stressed that these questions are independent of the actual status of any particular right as a matter of general international law, or, if (as I suspect) this is a different category, as one of the recognised body of "human rights". But the questions must be answered before we can make sense of the practice in relation to any asserted "right", so that to this extent at least, the issues are related.

### A Survey of "Peoples' Rights"

Sieghart, in the most recent compilation of general human rights texts,<sup>3</sup> identifies six classes of "collective rights". For present purposes, these may be described as follows:

- . self-determination and equality of rights
- . rights relating to international peace and security
- . permanent sovereignty over natural resources
- . rights in relation to development
- . rights in relation to the environment, and
- . rights of minorities.

One cardinal omission from this list, from the point of view of the "rights of peoples", is the right of groups to exist, normally conceived of as an obligation on the part of states not to engage in, or allow, genocidal acts.

In addition to these seven classes or categories, there are undoubtedly other asserted rights, or provisions in international texts which could be reformulated as "peoples' rights", that could be added. Although the rights set out in Part III of the International Covenant on Economic, Social and Cultural Rights of 1966 are for the most part formulated in terms of individual rights, a number of them could be seen as having collective elements, including the right to form trade unions (article 8), the right to a "continuous improvement of living conditions" (article 11), and the rights in article 15(1) with respect to "cultural life" and "the benefits of scientific progress and its applications". Nonetheless, the seven categories mentioned above are those which are sufficiently clearly formulated in terms of "collective" rights, and which have achieved recognition in at least one international human rights instrument in treaty form.<sup>4</sup> For the purposes of assessing the validity of the notion of "rights of peoples" as a distinct concept or category, these seven seem a sufficient test.

The seven classes of "rights" under examination fall clearly into two distinct categories. One which is immediately apparent is the category of rights which in some respect deal with the existence and cultural or political continuation of groups. This category would include the right to self-determination, the rights of minorities, and the rights of groups to existence

(i.e., as a minimum, not to be subjected to genocide).<sup>5</sup> But, it may be significant that the phrase "rights of peoples" tends to be used, especially by Third World proponents, primarily to refer to the other and more miscellaneous category of rights, concerned with a variety of questions including economic development and the "coexistence" of peoples. This second category includes rights in respect of permanent sovereignty over natural resources, rights to development, to the environment or to international peace and security. However, one cannot exclude the first category in asking basic questions about the "rights of peoples", in particular because the three group rights referred to (self-determination, minorities, genocide) appear on their face to be "rights of peoples", and because each has gone through a considerable process of development at least in this century (and in the case of the rights of minorities, in earlier centuries also).

### (1) Self-determination

The principle of self-determination has been one of the most vigorous, and vigorously disputed, collective or group rights in modern international law, and has generated a vast literature.<sup>6</sup> The major focus for arguments about self-determination has of course been the question of decolonisation, and it is controversial whether the principle of self-determination can be restricted to the decolonisation context, or whether it may have consequences in terms of "metropolitan" states, including, for example, minority groups or peoples. As it happens, the term "self-determination of peoples" in the United Nations Charter occurs twice, in Article 1 paragraph 2, and in Article 55, in each case as part of the phrase "respect for the principle of equal rights and self-determination of peoples". In each case the context is quite distinct from questions of decolonisation (which are dealt with in the Charter in Articles 73 and 76). In the United Nations Human Rights Covenants, the phrase has a similar tone of universality, though in each case it is described as a "right" rather than a "principle", and is dissociated from the term "equal rights". Thus Article 1 paragraph 1 of both the Economic, Social and Cultural Rights Covenant, and the Civil and Political Rights Covenant, proclaims that:

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.

The link between self-determination and "economic, social and cultural development" is already explicit, and it is spelt out further by linking with self-determination in paragraph 2 the notion that "all peoples may, for their own ends, freely dispose of their natural wealth and resources ... In no case may a people be deprived of its own means of subsistence". Decolonisation is only expressly referred to in paragraph 3 of Article 1, and then in terms which imply that States parties to the Covenants may have obligations by reference to the notion of self-determination which extend beyond "Non-Self-Governing and Trust Territories".<sup>7</sup>

Whatever view is taken about the scope of the principle of self-determination in international law, from the point of view of the present enquiry the situation is clear. Self-determination is plainly a collective rather than an individual right, although obviously enough individuals are to

be involved in the exercise of the right, and a majority of them at least will benefit from it directly in the sense of retaining or achieving a measure of self-government in accordance with their wishes or preferences. Secondly, self-determination is plainly to be thought of as a right of "peoples" rather than governments. To the extent that it applies, it qualifies the right of governments to dispose of the "peoples" in questions, in ways which conflict with their rights to self-determination.

## **(2) Genocide: The right to physical existence**

There can be no doubt that international law recognises the obligation of states not to commit or condone genocide against groups of peoples. This idea may be implicit in the notion of self-determination as expressed in Article 1 paragraph 1 of the Human Rights Covenants, but it goes well beyond those provisions, because on any view the "peoples" or "groups" protected by the rules about genocide include groups which would not be described as beneficiaries of the right to self-determination. Article II of the Genocide Convention of 1948 describes the beneficiaries of the rule as any "national, ethnical [sic], racial or religious group" and proscribes certain acts committed against members of such groups with intent to destroy them in whole or in part.<sup>8</sup> It is true that the Genocide Convention is directed at offenders rather than victims; that is to say, the problem is treated in that Convention as a matter of the duties of "persons ... whether they are constitutionally responsible rulers, public officials or private individuals" (Article IV), rather than in terms of the rights of "national, ethnical, racial or religious groups". But plainly the definition of "genocide" can be regarded as having as its object the preservation of those groups, and in this sense it is meaningful to talk about their rights, as well as the obligations of others. But it should be noted that these rights are of a distinctly limited character, notwithstanding (or perhaps because of) the breadth of the notion of a "group" in the Convention. Thus the Convention only prohibits acts which involve or conduce to direct or indirect physical destruction of the group or a substantial part of it, whether by homicide, terrorism, mass deprivation, eugenics or forcible transfer of children. The Convention is not concerned with "cultural genocide" or what has been described as "ethnocide",<sup>9</sup> in the sense of the destruction or disappearance of the distinctive values, traditions or culture of a group, as distinct from the survival of the members of the group as individuals, and its continued existence as a group assuming its members so wish.

## **(3) Rights of Minorities**

As mentioned already, the notion that minority groups may have rights guaranteed to them as such is not a new one in international relations. Indeed, to the extent that minority rights are thought of as more than the product of the individual human rights of members of minority groups (including their rights to associate with each other), it can be argued that these rights were better protected under the international law of the pre-World War II period (in those cases where particular minorities were protected by treaties or other arrangements), than they are now under general human rights law.<sup>10</sup> The relevant provision of the International Covenant on Civil and Political Rights, Article 27, hovers between being a mere extrapolation from the individual rights of members of a minority group, and being a

genuinely "collective" right. Both the formulation of Article 27 in terms of individual rights ("persons belonging to such minorities shall not be denied the right ..."), and its association in modern international jurisprudence with notions of equality and non-discrimination, suggest that minority rights are not necessarily to be thought of as collective rights at all, in modern international law. The crucial issue, of course, is that of "minorities of minorities": if minority rights are genuinely collective, then it presumably follows that dissenting members of minority groups can be compelled to comply with the wishes of the majority of the group (in the same way that dissenting members of "peoples" with a right to self-determination can be compelled to accept a form of self government which the majority of that "people" have elected or accepted).<sup>11</sup>

One of the difficulties here is the underlying assumption that the category "minorities" bears some necessary relation to the category "peoples". This need not be so. A minority cannot cease to be a "people", if it is one, just because, as a result of demographic or territorial change or for some other reason, it becomes a majority of the national population of a state. By definition, a "minority" implies the existence of a "majority" (not necessarily a coherent one, since it could be made up by a collection of other minorities). By contrast, the notion of a "people" says nothing about the relationship of that people to other peoples inhabiting the same or neighbouring states or territories. Thus an individual might have rights as a member of a minority which coexist with rights that person enjoys as a member of (the same or a broader) group properly classified as a "people", for the purposes of the right to self-determination, or for some other purpose. One of the difficulties with 19th century practice in the area of minorities was that it was seeking to protect what are logically and practically distinct values: the "collective" value of national existence or continuity or autonomy within a broader "multi-national" state or empire (a problem now partly at least subsumed under the category of self-determination), and the rights of individual members of minority groups to associate with each other, and to practice their culture or religion. The latter right is certainly capable of being thought of, and is perhaps best thought of, as in principle an individual one: after all, no one can be forced to practice a religion. On this view the Human Rights Committee's treatment of Sandra Lovelace as a member of a "minority" under Article 27 of the Civil and Political Rights Covenant<sup>12</sup> was not necessarily inconsistent with the view that the Indian group to which she claimed to belong, or other indigenous groups with a sufficiently distinctive character, might be "peoples" for the purposes of Article 1 of the Covenant, that is to say, for the purposes of the right to self-determination. But in practice such claims are likely to be met with considerable hostility, especially from the "newly independent" states themselves, whose primary concern is stated to be nation building rather than respect for, or even the maintenance of, the cultures and beliefs of local populations.<sup>13</sup>

#### **(4) Rights to International Peace and Security**

In this insecure, and not particularly peaceful, world, the idea that there might be individual or collective rights to international peace and security has a certain paradoxical quality. There have been various attempts since 1945 by legal means to address some of the causes of war, in particular measures prohibiting incitement to racial, national or religious hatred, and a

number of the international human rights instruments contain provisions requiring certain forms of incitement to "national, racial, or religious hatred", and "any propaganda for war" to be prohibited by law.<sup>14</sup> Article 23 (1) of the African Charter goes beyond this, and declares that:

All peoples shall have the right to national and international peace and security. The principles of solidarity and friendly relations implicitly affirmed by the Charter of the United Nations and reaffirmed by that of the Organisation of African Unity shall govern relations between States.

Article 23 (2)(b) goes on to provide that the territory of states parties "shall not be used as bases for subversive or terrorist activities against the people of any other State party to the present Charter". Article 23 is of considerable interest in revealing the interplay, or perhaps one should say the confusion, between the notions of "peoples" and "states". The first sentence of Article 23 (1) declares a right of all peoples. The second sentence refers to principles of solidarity and friendly relations between states. But Article 23 (2), for the purpose of "strengthening peace, solidarity and friendly relations" imposes an obligation not to allow territory to be used as a base for subversive or terrorist activities against "the people of any other State party". Evidently the "people" referred to is assumed to be synonymous with the whole population of the state, at least for the limited purpose of Article 23 (2)(b).

Of course, there is in practice a relationship between the maintenance of general human rights, individual or collective, and the existence of a state of peace, if not friendly relations, between states. As a reference to this important though underlying reality, provisions such as Article 23 of the African Charter, or for that matter Article 28 of the Universal Declaration of Human Rights,<sup>15</sup> cannot be criticised. But to treat rights to international peace and security as distinct and independent, as it were "foreground" rights, whether individual or collective, raises questions of an altogether different kind. To say that states have the right to international peace and security is to repeat in obverse established and well known guarantees such as those stated in Article 2 paragraph 4 of the United Nations Charter. But to say that "peoples" have that right, even if in this context "peoples" means the populations of states as a whole, might appear to make a range of foreign policy questions justiciable in the African Commission of Human and Peoples Rights, more particularly since the Article 23 makes no distinction between actions (e.g. invasion, military intervention etc.) which themselves breach the peace, and actions, policies or attitudes which have a more diffuse disruptive tendency. As is well known the United Nations Charter, and the international law founded on it, while acknowledging the link between respect for human rights and maintenance of international peace and security, placed a considerable priority upon avoiding outright conflicts between states, whatever their origins, requiring underlying disputes to be settled by other means. Paradoxically, provisions such as Article 23, in avoiding these distinctions and in conflating respect for human or peoples' rights and international peace and security, may tend further to blur or confuse the basic premisses upon which the Charter order was to be based. To be sure, there are other aspects of modern international relations and diplomacy having the same tendency, but it is by no means clear that debate on this central question is assisted by reformulating the issue in terms of peoples' rights.

### (5) Rights to Permanent Sovereignty over Natural Resources

The notion of permanent sovereignty over natural resources has gained considerable currency in the last two decades, and is recognised in the same terms both in the Civil and Political Rights Covenant, and in the Economic Social and Cultural Rights Covenant. Article 1 paragraph 2 of both instruments provides that:

All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit and international law. In no case may a people be deprived of its own means of subsistence.<sup>16</sup>

So that the precedent for treating questions of permanent sovereignty over natural resources as rights of peoples, rather than as rights of states, is an established one. The African Charter is to that extent on firm ground when it elaborates upon the notion of permanent sovereignty in a similar, though more explicit, way. Article 21 provides that:

(1) All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it.

(2) In case of spoliation the dispossessed people shall have the right to lawful recovery of its property as well as to an adequate compensation.

(3) The free disposal of wealth and natural resources shall be exercised without prejudice to the obligation of promoting international economic co-operation based on mutual respect, equitable exchange and the principles of international law.<sup>17</sup>

Despite the substantial body of support for rule or principle of permanent sovereignty over natural resources, there are difficulties in treating it as a collective right of peoples as distinct from states. In its application to states, the notion of "permanent sovereignty", though something of an euphemism in that states themselves are not necessarily "permanently sovereign" (states can be extinguished in a variety of ways, and new states formed), nonetheless makes reasonable sense as an extrapolation from underlying notions of sovereignty and independence. Agreements, whether on the international or municipal level, with respect to the use of natural resources, do not extinguish a state's sovereignty over those resources while they remain within its territory. The notion of permanent sovereignty may also be concerned with establishing, or reaffirming, certain hierarchies of international law rules. For example, states may remain "sovereign" over their natural resources though their conduct in relation to those resources violates other principles of international law (e.g. in the context of expropriation of foreign-owned property).

So far "permanent sovereignty" fits sufficiently well within existing categories, whatever conclusions one arrives at on the merits of particular issues. But introducing the notion that the "permanent sovereignty" is a sovereignty of "peoples" adds another dimension. If those "peoples" constitute a part only of the population of the state, then the notion of permanent sovereignty presumably limits the power of the national government freely to dispose of the natural resources of the state without the consent (or against the wishes or contrary to the interests) of the "people" in question. Alternatively, if the "people" is the whole population of the state, nonetheless the principle appears to be established that transactions entered into by or on behalf of the state and involving the disposal of natural resources are subject to subsequent scrutiny, and to invalidation or avoidance, if these turn out not to have been in the interests of the population. Moreover, such a rule can hardly make sense when it is limited to "foreign economic exploitation" (which to be effective cannot be wholly foreign: like charity, exploitation usually begins at home). Formulated in this way, the principle of permanent sovereignty over natural resources is certainly capable of operating as a guarantee of peoples against their own governments, limiting the capacity of governments for the time being in the interest of the community.<sup>18</sup> In the case of provisions such as Article 21 of the African Charter, that would tend to make a state's natural resources policy justiciable in the African Commission on Human and Peoples Rights. No doubt the real point of provisions such as Article 21, or Article 1 paragraph 2 of the United Nations Human Rights Covenants, is that they provide a forensic basis for disputing existing contractual and other arrangements relating to natural resources. But thought of as a right of "peoples", the argument seems a dangerously double-edged one.

## **(6) The Right to Development**

So far this is recognised as such in human rights treaties only in the African Charter, Article 22 of which provides that:

(1) All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.

(2) States shall have the duty, individually or collectively, to ensure the exercise of the right to development.

It seems clear, notwithstanding its scanty recognition in international human rights treaties, that the notion of a right to development as a human or peoples' rights is very much at the centre of the debate about peoples' rights.<sup>19</sup> For present purposes, the analysis of the possible distinctions between a right to development as a peoples' right, and that right as a right of states, does not differ significantly from the situation with respect to the right of permanent sovereignty over natural resources. If anything, the right to development is, outside specific contexts and specific instruments (e.g. relating to development aid, or the distribution of benefits in the law of the sea regime), less well integrated into the body of international practice than the notion of permanent sovereignty. So far as other states are concerned, the notion that "peoples" have a right to development does not

appear to differ from the proposition that states have such a right. But the former proposition might have an independent content if its effect was to countermand deliberate governmental policies vis-a-vis the population of the state in question, leading designedly to nondevelopment or to differential development of regions. It is difficult to believe that states would be interested to assert the legitimacy of such policies on the part of another state against its own peoples (basic questions of racial discrimination or genocide apart), or that the "defaulting" governments themselves would be prepared to accept such assertions (whether or not accompanying the provision of development aid) as a matter of right. In the end, the assessment made by at least one leading African international lawyer seems accurate:

The right to development ... appears not to have attained the definitive status of rule of law despite its powerful advocates. Its inclusion in the African Charter will be as effective as the Charter itself. The negative duty not to impede the development of states may go down well; the positive duty to aid such development, in the absence of specific accords, is a higher level of commitment that still rests on nonlegal considerations.<sup>20</sup>

### **(7) Rights to the Environment**

Much the same can be said of the notion of "rights to the environment", which are again reflected so far only in the African Charter. Article 24 provides that:

All peoples shall have the right to a general satisfactory environment favourable to their development.

Plainly we are here at the outer limits of the justiciability of rights of this general kind.

### **Some Tentative Conclusions**

So far I have only dealt with what might be called the concept of peoples' rights, and only by reference to those rights already recognised in international instruments in treaty form. That is a fair test in the longer term, whatever view one takes about General Assembly (or other international) resolutions. It would be possible to undertake the same analysis of other items in Alston's list, which includes such rights as:

the right not to be exposed to excessively and unnecessarily heavy, degrading, dirty and boring work;

the right to identity with one's own work product, individually or collectively (as opposed to anonymity);

the right to access to challenging work requiring creativity ...

the right to social transparency;

the right to co-existence with nature;

the right to be free to seek impressions from others (not only from the media); and

the right to be free to experiment with alternative ways of life.<sup>22</sup>

(Parenthetically, they are a remarkably Western, even bourgeois list!) But it is sufficient to draw conclusion from the seven classes of rights surveyed here.

Dealing first with the group rights associated with self-determination, the rights of minorities and related questions, it has to be said that each of these is, as a collective right, still a law of exception. If Professor Brownlie's suggestion equating minority rights with the general principle of self-determination<sup>23</sup> is accepted, then a further intellectual charge will be added to what is, in so many third world countries, already a political and social time bomb, one which would make the current negotiations and renegotiations with indigenous peoples in developed countries appear a trivial, though no doubt fascinating, pursuit.

So far as the other rights are concerned, as rights of states some of these are merely affirmative reformulations of existing duties. Others are merely contentious. As rights of peoples, their real content is with respect to the government of the state in question. No doubt this may not be intended by proponents of those rights, and if they do not intend it, perhaps they would do well to revert to more orthodox terminology. But whatever the case, these third generation rights as so interpreted seem consistent with basic concerns about equity between peoples and their governments which are by no means confined to the Third World. Whether such rights can be made internationally justiciable may be another question, although, as modern administrative law, and the experience with Bills of Rights in a number of countries, show, almost anything can be justiciable at a certain level, and given a sufficient political mandate to the adjudicating body. In the case of the African Charter, the mandate is to the African Commission on Human and Peoples Rights, there being no African Court of Human Rights. It will be interesting to see - once governments (not peoples) have ratified the African Charter, and it is in force - to what extent the members of the African Commission turn out to be representatives of peoples, as distinct from representatives of governments.

#### Footnotes

1. Unlike, perhaps, the common law, which has long had difficulties with 'collective' or 'corporate' personality.
2. Cf. the **Tinoco Arbitration** (1924) 1 RIAA 369. But the "right to have a democratic government representing all the citizens without distinction as to race, sex, belief or colour" is asserted by Article 7 of the Algiers Declaration, and F. Rigaux comments that "le peuple est l'ensemble ou la majorite de la population d'un Etat dont un des droits fondamentaux est de n'etre pas soumis au pouvoir d'une minorite": "Remarques generales sur la Declaration d'Alger" in A. Cassese & E. Jouve (eds), **Pour un Droit des Peuples : Essais sur la Declaration d'Alger** (1978) 41, 46.

3. P. Sieghart, **The International Law of Human Rights** (1983) 367-78.
4. This is not to suggest that other instruments, such as General Assembly resolutions, may not be significant. But such resolutions do not create obligations for States voting for them, however influential they may be as evidence or sources of argument.
5. Another "right" sometimes asserted in this context which would also fall into this category (if it is not merely a reformulation of the three "rights" referred to) is the "right to be different": cf. Article 1(2) of the UNESCO Declaration on Race and Racial Prejudice, 27 November 1978: "All peoples have the right to be different, to consider themselves as different, and to be regarded as such." Principles of equality and non-discrimination are also relevant, though usually expressed as individual rather than group rights: cf. **Case Concerning Minority Schools in Albania** PCIJ Ser A/B No.64 (1935), 17.
6. See J. Crawford, **The Creation of States in International Law** (1979) 85-102 and works there cited.
7. Art I(3) provides that States parties "**including** those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realisation of the right of self-determination ... " (emphasis added).
8. 78 **UNTS** 277. See also L. Le Blanc, **The Intent to Destroy Groups in the Genocide Convention: The Proposed US Understanding** (1984) 78 **AJIL** 369. The requirement of intent has led to arguments that the disappearance of indigenous groups as a more-or-less direct effect of government policies is not genocide because unintended: cf. *id.*, 380-1 (Ache Indians in Paraguay).
9. cf. P. Thornberry, **Is there a phoenix in the ashes? International law and minority rights** (1980) 15 **Texas ILJ** 421, 444.
10. On the pre-World War II minorities treaties and their replacement by general human rights provisions after 1945 see e.g., J.B. Kelly, **National Minorities in International Law** (1973) 3 **Denver JILP** 253.
11. As is the case of dissentients in the various U.N.-supervised plebiscites in Trust and Non-Self-Governing Territories: see A. Rigo-Sureda, **The Evolution of the Right of Self-Determination** (1973).
12. GAOR 36th Sess., Supp. No.40 (A/36/40), Annex XVIII, 166.
13. Cf. the Human Right's Committee's reluctance to deal with an application brought on behalf of the Miqmaq Indians under the Optional Protocol to the ICCPR, alleging a violation of self-determination under Art 1 of the Covenant: **Miqmaq Tribal Society v Canada**, noted in (1984) 33 **Int Com Jurists Rev** 45.
14. See e.g. ICCPR, Art.20 (1) ("any propaganda for war") (2) ("any advocacy of national, racial or religious hatred that constitutes incitement to

discrimination, hostility or violence ... "). To similar effect Art.13(5) of the American Convention on Human Rights of 1969. The African Charter contains no equivalent prohibition. Of course the balance to be struck between the right to freedom of speech and the use of the criminal law in this field has been, and to some extent remains, controversial.

15. This provides that "Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realised".
16. Art.47 of the ICCPR (Art.25 of the ICESCR) further states:
 

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilise fully and freely their natural wealth and resources.
17. Art.21(4) refers to the need to exercise this right "with a view to strengthening African unity and solidarity"; by contrast, Art.21(5) entails an obligation "to eliminate all forms of foreign economic exploitation", so as to maximise a people's benefits from their natural resources. Apparently, local economic exploitation has no such deleterious effects.
18. But, wholly exceptional situations apart, in the existing conditions of international relations the state acts through its government, and if a state's acts are ever to be definitive so too must the government's be.
19. E.g. H.G. Espiell, *The Right of Development as a Human Right* (1981) 16 **Texas ILJ** 189. For a more objective account see Roland Rich's discussion, this **Bulletin**, 120.
20. U.O. Umozurike, *The African Charter on Human and People's Rights* (1983) 77 **AJIL** 902, 907.
21. See further W.P. Gormley, **Human Rights and Environment: The Need for International Co-operation** (1976), and the works cited in the Bibliography below. This is not to say that treaty provisions about the environment cannot be justiciable. But in the **Tasmanian Dam** case, the Australian High Court was obviously more comfortable with the specific obligation undertaken with respect to the region through its listing under the World Heritage Convention of 1974 than with the notion of an international obligation under Art. 4 and 5 of the Convention with respect to the natural heritage generally: **Commonwealth v Tasmania** (1983) 46 ALR 625.
22. P. Alston, *Conjuring up New Human Rights: A Proposal for Quality Control* (1984) 78 **AJIL** 607, 610-11 (where these are listed among 29 candidates).
23. See above p.108.