

## INTRODUCTION

by The Honorable Justice M D Kirby

The withdrawal of the United States of America from the United Nations Educational, Scientific and Cultural Organisation (UNESCO), and notice given by the United Kingdom of its intention to withdraw, focuses attention upon dissatisfaction expressed by a number of Western countries about UNESCO. One expressed source of dissatisfaction concerns the on-going debate about "peoples' rights".<sup>1</sup>

The "rights of peoples" are referred to in a number of the Articles of the United Nations Charter. For example, Article 1(2) refers to the right of peoples to self-determination in the list of general purposes of the Organisation. Article 80(1) refers to the rights "of any peoples" in the context of the trusteeship system. This provision was central to the decision of the International Court of Justice in the **Namibia** case.<sup>2</sup> But more recently, the rights of peoples has been the subject of a burgeoning literature and of considerable controversy. At the 22nd Session of the General Conference of UNESCO in Paris in November 1983, the United States representatives identified the inclusion of "peoples' rights" in Major Program XIII of UNESCO as an important source of United States anxiety about the Organisation. That program deals with UNESCO activities on peace, international understanding, human rights and the rights of peoples. As recorded in the Australian National Commission for UNESCO's most recent triennial report,<sup>3</sup> the Australian delegation endorsed the study of "peoples' rights" as a concept but as "one that does not enjoy the universal recognition accorded to 'fundamental human rights'". The United States anxiety was voiced on the basis that, in the name of peoples' or group rights, measures might be introduced by member States, with the support of UNESCO, which diminished respect for individual human rights.

Following the United States notice of intention to withdraw from UNESCO, and partly in reaction to the deep divisions evidenced concerning UNESCO's program, the UNESCO Executive Board in October 1984 recommended to the Director-General of UNESCO that he should summon a panel of Counsellors to review Major Program XIII. The Director-General accepted this recommendation. The panel of Counsellors, of which I was a member, convened in Paris at UNESCO headquarters on 15-18 January 1985. The 24 Counsellors framed a document embodying "Advice and Recommendations of the Panel of Counsellors on Major Program XIII".<sup>4</sup> Amongst other things, this document records the view expressed by some of the Counsellors (myself included) that "the precise content of the expression 'peoples' rights' is still in the process of development and crystallisation in international law" and an appeal that the subject should be studied "rigorously and with dispassion, having regard to the plurality of viewpoints".<sup>5</sup>

Partly as a follow-up to the Paris meeting and to the conflicts of view expressed there, the Australian National Commission for UNESCO organised two national symposia on the rights of peoples. The first of these took place in Sydney on 28-29 March 1985. Its purpose was to provide a focus for discussion by Australian and overseas visitors concerning the concept of "peoples' rights". The principal papers given at the first of these symposia are reprinted in this special issue of the **Bulletin**.

At the Seminar I reported on the meeting of the Panel of Counsellors, and on the concerns a number of us had about the concept of "peoples' rights". These include (1) the lack of a clear definition of the meaning of "peoples' rights" and the fear that it might be, for that reason, used as a means of over-riding individual human rights; (2) concern that a hierarchy of rights might be established, diminishing the respect for individual human rights and excusing neglect or breach of those rights; (3) concern at the definition of "peoples", having regard to the transborder character of a number of "peoples" and the importance of defining the territory within which "peoples" would be determined for the purpose of defining "peoples' rights"; and (4) the susceptibility of individual human rights to justiciable issues before courts and tribunals as compared with the more diffuse, political nature of alleged peoples' rights and their generally non-justiciable character. These concerns are the more serious given the large, and increasing number of putative rights said to be "peoples' rights". The list now extends beyond the right to self-determination and the right to the use of natural resources. Other so-called "peoples' rights" now asserted include the right to international peace; the right to development; the right to the protection of the environment; the rights of minorities and the right to existence.

The Australian National Commission for UNESCO is holding a second symposium on the rights of peoples in Canberra on 14-15 June 1985. It will be addressed by Professor Richard Falk, of the Center of International Studies, Princeton University.

The two seminars, involving the participation of academics, public officials and representatives of public interest groups, provide an important initiative by the Australian National Commission for UNESCO which should enable a useful contribution by the Australian delegation to the important 23rd General Session of UNESCO to be held in Sofia, Bulgaria in October 1985. It is likely that the on-going debate on "peoples' rights" will be on the agenda, as part of the wider range of concerns of some member States (especially through not exclusively Western States) about the need for reform within UNESCO.

One special concern in this area is that of "peoples" who happen to be minorities. The "rights of peoples" may warrant exploration. But discussion of group rights, which are in some way different from individual human rights or rights of States may involve special dangers for States with minorities or with populations shared with other States. Thus, consideration of the "Arab peoples" or the "Jewish peoples" or the "Armenian peoples" involves transborder populations with common interests of culture, language, history and identification. Similarly, States with large minorities, or even small minorities but which have distinct historical or other features (such as the Australian Aborigines) must approach the issue of "peoples' rights" with a clear understanding of the broad implications that may be involved. These include, particularly, the implications for the principle of self-determination, in respect for "peoples' rights" when the "peoples" concerned are not taken to coincide with the people within the borders of a particular State. This point was made effectively by Professor Dinstein.<sup>6</sup> In the early 1950s the Ewe tribe in Africa numbered about 700,000. It inhabited the coastal plains in the then Gold Coast, British Togoland and French Togoland. They aspired to unify in a single country, "Eweland". Instead, the independent States of Ghana and Togo, whose borders intersect the coastal Ewe

population, and incorporate other tribes in the hinterland, were ultimately established as independent States. In British Togoland a plebiscite was held on the recommendation of the General Assembly of the United Nations. As a result, the territory was united with Ghana. However, the overwhelming vote of the southern coastal district (the Ewes) was in favour of separation. As Professor Dinstein comments:

manifestly, had the plebiscite been held in the coastal areas alone, its results would have been totally different.<sup>7</sup>

Evidently "peoples' rights", even if confined solely to the suggested peoples' right of self-determination, contain significant implications for most States, and particularly for countries, such as Australia, with a significant indigenous population, increasingly assertive of its "rights", or with large ethnic communities, encouraged by policies of multi-culturalism to maintain their ethnic (racial, religious or linguistic) identities.

#### Notes

1. The Executive Summary of the U.S. Department of State's **Policy Review of US-UNESCO Relations** (1984) (text in [1984] **Australian Int'l Law News** 432) commented that:

This statist trend has been evident in UNESCO's human rights activities. The U.S. was foremost among those countries significantly involved in the teaching and promulgation of traditional human rights through UNESCO. In recent years, however, UNESCO has been pressured, particularly by African States (encouraged by the Soviet Bloc), to give equal or greater attention to "the rights of peoples". A political "right of self-determination" has long been recognized and endorsed by the U.S., but other purported "rights of peoples", generally economic in character, such as the "right to development", are exceedingly vague and ill-defined. This stress on "collective rights" tends to strengthen the prerogatives of a non-democratic State, at the expense of the human rights of individuals.

2. ICJ Rep. 1971 p.16 at 28-9.
3. Australian National Commission for UNESCO, **Report for the Three Year Program Period 1981-83** (AGPS, Canberra, 1985) 18.
4. UNESCO, Panel of Counsellors on Major Program XIII, **Advice and Recommendations** (BEP/85/301/5, 1985).
5. id, para 20.
6. Y. Dinstein, *Collective Human Rights of Peoples and Minorities* (1976) 25 ICLQ 102.
7. id, 109.