

**THE RIGHTS OF PEOPLES:
IDEALS AND REALITY**



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Edited by Linnart Mäll

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PREFACE

One of the tasks of Unrepresented Nations and Peoples Organisation has always been protection of peoples who do not have their own state. However, as it turned out that in many cases the peoples who do have their own state also need protection, we began developing the Universal Declaration of the Rights of Peoples in 1992. The draft prepared by the Tatar scholar R. Tuzmukhamedov became the basis for this work. It was significantly polished at the conferences held in Tartu and Tallinn between 1998 and 2000. The Declaration finally took shape at the UNPO General Assembly in 2001 where it was also adopted.

Although there is awareness that peoples should have clearly formulated rights, states are not eager to accept these principles. To change the situation, the Institute of the Rights of Peoples was established in Tartu in 2003. The Institute's goal is to provide detailed explanations and comments on the principles and concepts included in the Declaration.

On August 21st, 2004 in Tallinn a conference held by the Institute of the Rights of Peoples on co-operation with UNPO, the Ministry of Justice of Estonia and the Public Service Academy of Estonia. The representatives of various peoples, UNPO, European Parliament, Parliament of Estonia and diplomats of Taiwan were participating on this conference.

The main objective of the conference was to take the first important step towards this goal. Such concepts and principles as 'people', 'indigenous people', 'diaspora', 'a people as a carrier of its language and culture', 'possibility of peoples' representation', 'peo-

ples' right to self-determination' and 'territorial integrity of states' were discussed. Of course, the situation of peoples in today's world was also considered.

The papers and greetings of this conference are published here. I would like to thank for English translating and editing works Mr. Gordon Leman, Mrs. Natalia Schönfeld and Mrs. Gachzhidma Tsybenova. My special thanks belong to Dr. Heno Sarv for revising and unifying terms and styles, used in papers.

Linnart Mäll
Director,
Institute of the Rights of Peoples

RIGHTS OF PEOPLES: WHAT HAS BEEN DONE AND WHAT HAS TO BE DONE?

Linnart Mäll (Estonia)

The Unrepresented Nations and Peoples Organisation (UNPO), established in 1991, were to help its member peoples and nations to achieve their goals. However, the peoples and nations are different and their goals are also different. Therefore, from the very beginning the UNPO has had no unifying attitude or desire to direct the aspirations of all its members towards a certain course. The lack of such an intention is clearly formulated in the Covenant of the UNPO. Still, from the very beginning it was clear that there was no point in avoiding what is in keeping with the interests of most, if not all, member peoples and nations. One of such issues is the attempt to formulate the principles that can be called the rights of peoples. This work, eventually leading to the adoption of the Universal Declaration of the Rights of Peoples, started on 29 May 1992 when a regional meeting of the UNPO took place in Kazan where the draft declaration, written by the renowned Tatar scholar R. Tuzmukhamedov, was discussed and it was recommended to make it the basis for the declaration of the UNPO. Due to different circumstances the actual work only started in 1998 and in following years several meetings of the Tartu Coordination Centre of the UNPO were held to develop the draft. The last discussion took place at the 6th General Assembly of the UNPO and resulted in the adoption of the Universal Declaration of the Rights of Peoples on 17 February 2001.

However, the fact that the declaration was adopted does not mean that it actually works. In today's world it could only work and have an effect in a situation where it is recognised by at least some countries and, of course, the United Nations. It has not happened so far and we are not sure that it can happen in the near future. There are several reasons. One is the certain controversy between states and peoples, which results in the unwillingness to see the major role that peoples have played in history. History is generally considered as the history of states but states have emerged and developed for reasons different from the need to promote the survival or development of peoples. National states only emerged in the 19th century. Unfortunately, some negative tendencies have been associated with this process in the 20th century, which in a way discredited the principle of a national state as such. Here I would jocularly note that the state itself is something alien to human nature. Otherwise why the behaviour model used in relations between states or diplomacy is not that of a normal individual but that of a young thug lacking high human values such as compassion and love for other persons. Instead, the things that are honoured in relations between states are cunningness, intrigues, lies, slander, violence and other traits typical of a ruffian. These are the traits that, due to mankind's great teachers, have at least been condemned in normal people's behaviour. Joking apart, we should say that states are also different and luckily some of them try to promote the implementation of the rights of peoples and, among other things, the establishment of the Universal Declaration. However, the peoples themselves should also protect the Declaration and do everything to make it an important benchmark in

the historic development of humankind in the future. Now we are going to look at the points that should be considered in more detail when explaining the declaration. These are primarily terminological issues.

First, let us take the concepts of state, family and individual, or person, or personality. These are inseparable components of legal systems. Human rights are constantly expanded. Fortunately, it does happen and this is very good. Let us remember what the great Pan-European, Richard Coudenhove-Kalergi, said in the early 1920s when he opposed a total state to a total human being. Now we can ask whether Coudenhove-Kalergi's ideal has been implemented. Does a total human being have more power than a total state? I really doubt it. This has not been achieved even in the most democratic countries. Therefore I would now ask: is the totality of a certain state necessary? Is it inevitable? Have we not reached the situation where a total state and a total individual co-exist or try to co-exist? The world where we live is far from Coudenhove-Kalergi's ideal. I would remind you that before the First World War people could travel only with their name cards. They did not need a passport. They could have a passport but it was not required. For example, Count Keyserling, a great traveller from Estonia, travelled around the world just with a name card. He needed no visas. States did not play a decisive role at the time. Many Estonian artists who lived in Tsarist Russia went to study in Germany in exactly the same way: you could cross several borders just with your card. Then it was possible. There was an idea that states' powers should not be increased. Therefore I am asking: have states become total because it was necessary and is it possible for a total state to co-exist with a total individual? Can an indi-

vidual use the possibilities of his or her totality in a total state? This is the question we should answer.

We can discuss many things when we talk about a state. First, what is an empire? It has not been defined yet. Is an empire just a self-governing formation or a multi-national union and could it exist in the situation of great democracy? Should the parts of an empire only listen to the orders of the central power or do they have any chance of pursuing their own aspirations? Here I would like to remind you again that Tsarist Russia consisted of many parts and some of them had vast autonomy. For example, Finland was part of Tsarist Russia but Russian political refugees went to Finland to seek asylum. The Emirate of Bukhara also belonged to Russia but the Russian Tsar could not visit the city of Bukhara because it was forbidden to Christians and other non-Muslims. When the Russian Emperor wanted to visit the Emirate in 1915, a castle was built outside the city of Bukhara where he had to meet the Emir of Bukhara. For better or worse, this meeting did not take place because the First World War began. But the castle is still there and in ruins.

Now we can ask whether the Soviet Union had any characteristics of an empire. It did. Some peoples had greater autonomy, others smaller. So-called people's democracies had quite an extensive autonomy.

Does the Russian Federation have any features of an empire in the same sense? Do peoples living there have different possibilities? We can say that there are some features of an empire. There are different forms of autonomy. Other existing empires have similar forms of autonomy, for example, the People's Republic of China can also be considered as an empire.

Here we should also mention the concept of confederation. Confederation is a union of almost completely independent states. It is particularly nice to see that in certain parts of Switzerland signs are only in the language that is spoken there: only in French in Geneva, only in German in Zurich, etc. I should say that Estonia's language policy is quite different. We can see a lot of signs in English, which is not encouraging. In the republics of the Russian Federation the Russian language dominates all signs.

Now let us consider the concept of people. The concept is mentioned in many legislative acts and international regulations. The Universal Declaration of Human Rights also says that peoples and nations have the right to self-determination. Still, the concept has never been defined. Let us see how the word «nation» or «people» is used: for example, the term «Iraqi people». President Bush talks about the Iraqi people. Saddam Hussein also talked about the Iraqi people. What are the Iraqi people in this case? This is the population of the country and the word «people» cannot be used in this context. Iraq is multinational and it has also in a way been an empire. The indigenous people of Iraq are the Assyrians who are now in a minority. Another indigenous people are the Kurds whose Indo-European forefathers lived there before the Arabs came. So there are also huge problems here. As we know, the term «ethnos» is more and more often used in research. In comments to our declaration we could also end up defining a people as an ethnos. An ethnos has no certain definition but we could assume that the language and culture are what distinguishes one ethnos from another. It has nothing to do with economic or political phenomena. The word «people» can also have a differ-

ent meaning when we say «there were many people in the theatre» or «some people had a fight in the pub» but we are going to use the word «people» in the sense of «ethnos». We cannot ignore the concept of people because such an important document as the Universal Declaration of Human Rights uses the word «people» saying that peoples have the right to self-determination. Still, sometimes the audience in a theatre is also called «people»: does it also have the right to self-determination?

The concept of people creates some other historical problems. Historically very old tribes are also called ethnoses. Should we use the term «people» here? This is something we should think about. I would draw a historical boundary but I am not yet sure how to do it. There is a lot of work to be done here. Apparently, an ethnic formation that can be considered as a people emerges at a certain stage in history. The problem of peoples is also associated with the problem of dialects. The languages of different peoples are normally divided into dialects and the problem is at what time or moment a dialect becomes a language and is it possible that some part of a people, using a different dialect reunites with the people, comes back to the «mother people». The question is: should we support the existence of dialects and should we do it here in the UNPO? I think that dialects should be supported because they are a natural part of languages and we cannot do without them. It is very good that Estonia has started to support and revive its dialects. For example, the Võru language (the language of South Estonia) is now more extensively taught in schools and hopefully the Setu language will also be more widely used. But, of course, a state should also have a common language and in the case of Estonia it can

only be the written Estonian language shaped on the basis of the language of North Estonia and spoken by all Estonian people.

I would also mention the problem of a people and an individual, a people and a person, a people and a personality. How do you become a member of a people? Generally, you are born into a nation. But being born does not make you a member of a certain people. You should also be brought up in a certain way to become a member of a people and this upbringing takes place in the family. The family should also be considered primarily as part of a people. Unfortunately, the legal system sees the family as part of a state rather than part of a people. The state is not a primary phenomenon in the history of humankind. The people is primary, although there have been attempts to consider the state as primary. Let us ask further: is it possible for a person to change his or her ethnic identity as it is possible to change nationality? Can an Italian become, for example, an Estonian? I think it is possible but only in an exceptional situation. It is possible for extremely gifted people but they can never get rid of their original ethnic background. But obviously there are people belonging to different peoples at the same time. It is possible but this is an exception. There are many exceptions that should be considered but an exception cannot always become a rule.

Does a people have the right to try to enhance its significance and influence on people within a state? For example, does the Estonian people have the right to tell an Estonian not to be involved in other peoples' matters but to be just an Estonian and to be only involved in Estonian matters?! I would say that there could be such a right but then the people should

have its own representative organ and the state is not entirely a representative organ of a people. The state is a representative organ of its citizens and as we know there are many Estonian citizens who have a different ethnic background and therefore the Estonian state does not only represent the Estonian people but also the representatives of other peoples who are Estonian citizens. The relationship between a people and an individual can only be based on mutual respect, understanding and the awareness that we need each other: a representative of a people needs the people and the people needs an individual. And if there is no representative organ of a people, this all happens at a mythological level: we should understand how we relate to each other.

Now let us discuss another important concept, the concept of Diaspora. One people has very successfully used this concept in its history and is still using it. This is the people that has created and restored the state of Israel. The concept of Diaspora is respected there and I think it is used quite correctly. A Diaspora is the part of a people that lives outside the people's historic territory or outside the country where the majority of the people lives. Now let us ask whether a Diaspora can be considered as a separate people. Probably not and therefore a Diaspora cannot have the right to self-determination. In particular, if we look at Estonia again, it is clear that the Estonian people lives in its original homeland and there are also many other peoples in Estonia that are the Diasporas of other peoples or parts of other peoples. The biggest Diaspora in Estonia is undoubtedly Russian but there is also a Komi Diaspora, Mari Diaspora, etc. There is even an Italian Diaspora in Estonia. There are Diasporas of some Indian peoples and a Chinese

Diaspora. But can these Diasporas be considered as separate peoples? Can we say that a separate Russian people lives in Estonia? There has been much debate about it, even internationally. In order to make the question simpler, let us ask: is there a separate Chinese people in Estonia? Certainly not. Therefore we can conclude that there is no separate Russian people here. This is a part of the Russian people, the people that has its historically established territory and that has its rights as a people in its historical territory. Why do they come to Estonia to claim their rights as a separate people? I cannot understand it.

There exist a pleasant Slavonic people, called Sorbs, living in eastern Germany. It cannot be considered as a Diaspora. But there are also two million Turks in Germany. Can they be considered as a separate Turkish people in Germany? I think they cannot. It is a Diaspora. This should be understood and it is good if the representatives of a Diaspora understand that they are a Diaspora. Because if they do not understand it there is a risk that new colonialism might arise in the future, the colonialism that the world has been trying to overcome.

Now let us talk about the relation between a people and an indigenous people. The term «indigenous people» denotes two things. First, the people who choose to keep traditional social forms. UN documents define an indigenous people as a people that try to maintain traditional social forms. For example, Evenks, many American Indian tribes, and Australian and Taiwanese aborigines, are indigenous peoples according to this definition. Another possibility is to define indigenous peoples as the peoples who have lived in one place for a very long time. Estonians have lived in Estonia for at least five thousand years,

perhaps even longer, but certainly for five thousand years. Are Estonians an indigenous people? Do they have the right to this term? I think they do, although Estonians are not trying to keep old social forms. They may keep some but generally Estonians try to be an advanced people. Still, they are an indigenous people. We should try to define an indigenous people. Are indigenous peoples only the peoples that are backward in their historic development or do they also include some advanced peoples? I think we should first stress that indigenous peoples are the peoples who have lived in the same place for a very long time. We could also set a certain period but I am afraid it is impossible. The declaration of the rights of indigenous peoples is now being prepared. It is actually a very good process but it has been going on for decades and the declaration has not yet been passed. Every year there are meetings in Geneva under the auspices of the UN to discuss the declaration. The first article of the draft says: «Indigenous peoples shall have the same rights as other peoples.» Therefore other peoples should also have rights and the rights of other peoples have first been formulated in the Universal Declaration of the Rights of Peoples passed by the UNPO. This proves that the Declaration of the Rights of Peoples is necessary because the declaration of the rights of indigenous peoples cannot be adopted without it.

Another important issue is the relation between the concepts of people and minority. The words «minority» and the «rights of minorities» have become very popular recently. As we know, there are different minorities. Vegetarians and nudists are also minorities and there are so-called sexual minorities. In recent years the term «minority» has been used to

denote all of them as well as ethnic minorities. What are ethnic minorities? This is also something that can be defined. Ethnic minorities are first and foremost Diasporas. Russians in Estonia are an ethnic minority, Chuvashians in Estonia are an ethnic minority and Uigurs in Estonia are an ethnic minority and they should have their rights, for example, the right to cultural autonomy. In Germany, Turks are an ethnic minority but Sorbs are a people living in their indigenous homeland and therefore cannot be denoted by the term «minority». Each people is major. There is no people that is «minor», only a part of a people can be a minority. Although there are only 200 000 Sorbs, they are a major people because each people is major. There are many people in Holland who come from Indonesia. They are certainly a Diaspora and as a Diaspora they are a minority but there also exists an indigenous people in Holland called Frisians. Can you call Frisians a minority? I think not. Frisians are a people living in its own indigenous area. Therefore, Frisians are a major people, even if there are only three of them. I would not use the word «minority» with regard to peoples at all.

I would finish my presentation with a slightly sad remark that although the Universal Declaration of the Rights of Peoples has been officially adopted, it has not become a universally accepted document. Additional comments should be prepared to make it such a document. We should do some lobbying in parliaments and governments to prepare the ground for the adoption of the Declaration in the UN, whenever it is going to happen. The work should start already now. If we believe that it will be adopted, it will be adopted. We are going to win!

WE NEED TO GLOBALISE JUSTICE

Marino Busdachin (UNPO, General Secretary)

I have the honour and privilege to be here today, to convey to you the compliments of the Unrepresented Nations and Peoples Organisation (UNPO). I would like to take the opportunity to express my gratitude to the Estonian Minister of Justice, and Professor Linart Mäll, who was one of the founders of UNPO in 1991, for giving UNPO the possibility to cooperate and organise this vital conference with participating guests and panellists of such remarkable personality.

First of all, on behalf of the UNPO, I convey to you the salutation of the 55 Members of the UNPO who represent over 150 peoples around the world and who have several members represented here today. I also take this opportunity to renew my appreciation to the Government and the People of Estonia, former Member of UNPO, for the continuous support to UNPO in the past 14 years.

The world's nearly 200 countries contain some 5,000 ethnic groups. Two thirds have substantial minorities; ethnic and religious groups, as well as occupied countries or oppressed peoples. Often at least 10% of the population of countries consist of these groups and oppressed peoples.

In a globalising world territorial intra-state conflicts increasingly challenge international peace, security and the promotion of democracy.

The issue, today, in my opinion, is not how to stop globalisation.

The issue is how we use the power of community and combine this with the implementation of the principles of justice and democracy. If the globalisation works only for the benefit of the few, then it is bound to fail and in my opinion deserves to fail.

The alternative to globalisation namely is mere isolation. We need to globalise justice. We need to globalise democracy.

Principally to bring about the most fundamental rights of all oppressed peoples.

Therefore, I believe this is a fight for freedom, and this is a fight for justice.

I underline, freedom not only in the narrow sense of personal liberty, but in the broader sense of each individual having the economic and social freedom to develop their potential to the fullest.

The starving, the wretched, the oppressed, the dispossessed, the ignorant and those living in the want and squalor of the desert in Northern Africa, to the slums of Gaza, from the mountain ranges of Afghanistan and Chechenia to the exploited forest of Southern Asia, they too are part of our main cause.

It deprives millions of peoples of their basic human rights.

In this new world the principle of and the right to self-determination acquires a new dimension within the interactive corpus of democracy, development and peace.

The Human rights exegesis has to adapt to these contemporary challenges, e.g. (*exempli gratia*) by considering an adjusted approach to the concept of self-determination in a more broad sense. An «ongoing process of choice in order to achieve, in different specific situations, guarantees of cultural security, forms of self-governance and autonomy, economic self-

reliance, effective participation at the international level, land rights and the ability to care for the natural environment, spiritual freedom and the various forms that ensure the free expression and protection of collective identity with dignity as a fundamental people's rights.»

It is an absolute necessity to reaffirm that it is not the right to self-determination that ignites and fuels conflicts, but on the contrary, it is the very denial of this right, which is firmly enshrined in international law and human rights law, which increases the global turmoil and the general disastrous mess?

Over a period of 20 years the UN system has produced a serious study and reliable debate on self-determination. It has become evident that the work is conceptually inadequate to address these new forms of self-determination.

We need to act as UNPO, in a larger network, in order to produce a reformulation or broadening of the idea that the process of self-determination would and could contribute to conflict prevention and resolution.

In this way, the officially adopted Universal Declaration of the Rights of Peoples, and I underline that it has never become an universally accepted document, should start a process and should become an important segment of an international system of guarantees of international law. This happened with the establishment of the International Criminal Court, which operates regarding crimes of genocide, crimes against humanity and war crimes. It was established after the UN Diplomatic Conference in Rome in 1998 and is ratified today by 94 countries around the world as an International Treaty.

Distinguished panellist, dear friends,

Let me now to tell you that I sincerely believe that times are ripe to consider democracy as a fundamental human right. I quote UN General-secretary, Kofi Annan, who in his report on the implementation of the united nations millennium declaration stated that: «Democracy and Human Rights, though distinct concepts, are closely interlinked.»

We should have the goal to operate in a system of communities of democracies in order to realise a World Organisation of Democracy.

Today, mankind has the science and technology to destroy itself or to provide prosperity for all. Yet science can't make that choice for us. Only the moral power of a world acting as a community can.

By the strength of our common endeavour we achieve more together than alone

This conference could be an important step to relaunch concepts and initiatives for the affirmation of the rights of peoples.

As I look around, observe all of you, I feel great admiration for your dedication and devotion.

I am more than aware of your commitment and therefore wish you all the strength to reach your set goals.

PEOPLES' RIGHTS AND INDIGENOUS PEOPLES' RIGHTS: ETHNO-POLITICAL REALITIES AND LEGAL IDEALS

Konstantin Zamyatin (Udmurtia)

I will construct my presentation in such a way that first I will speak about the problem of the subject of collective rights, then I will proceed to the field of ethno-political realities and, at last, I will define some legal ideals concerning the status of this subject and see what one could do to achieve the ideals.

Problem of Subject of Rights

There is the problem of who is sovereign in international politics and collective subject of rights in international law. In the existing system of international law different, sometimes opposite, conceptions were implemented. On the one hand, international society is substantially the international system of states. The corner stone of this system is the concept of nation-state, which implies that the people as the whole population of the state are considered to be the bearer of rights and actor in politics. And most basic international-legal documents are based on this doctrine.

On the other hand, there are much more (ethnically defined) peoples than states in the world, and there are practically no homogenous nation-states. That is why the inter-state system faces challenges of ethno-national diversity. Ethno-national claims can be pre-

sented in ethno-political terms as well as a formal, legal viewpoint.

There are three forms – three statuses, in which the inter-state system tries to incorporate ethno-national diversity in international law; these are rights of peoples, of indigenous peoples and of national minorities.

The first form – rights of peoples is closely connected with the right to national self-determination. The status of a group has symbolic as well as material significance. The status of peoples enables national self-determination, which is why it has such enormous attraction for groups. At the same time different concepts, concurrent for supremacy in its understanding, lead to controversies: at the one end of the spectrum lies the concept of national-sovereignty of states, at the other, the concept of absolute right of peoples (however defined) to self-determination, both resulting in practices of nation-building. In between are situated the concepts of federal state, national autonomy, and others, which grounded first of all in ethno-political practices of state nationalities policies, and then reflected in law.

If national self-determination is the way to achieve implementation of the principle of congruency of national and political units, then unlike the un-democratic state, the democratic state can assert national self-determination of the «whole» nation, being not of elite, social strata or class. Of course, it would be an exaggeration to argue that self-determination «demands» democracy. But a group pretending about implementation of a national self-determination project in a democratic way must take into account ethno-national diversity. So often only in between state-building forms like a federal state or national

autonomy, is partial self-determination possible on both sides of an ethno-political regime.

What concerns the second form of reflection of ethno-national diversity – rights of indigenous peoples – then there is a conditional understanding formed in international law, that indigenous peoples only nominally have the right to national self-determination. And historically those peoples with their territory overseas from their metropolis managed to separate and gain independent statehood.

At the same time, it is recognised that the source of peoples' rights, as well as indigenous peoples' rights, is Article 1 of the International Covenant on Civil and Political Rights and of the International Covenant on Social, Economic and Cultural Rights. For indigenous peoples it is not a substantial right but a remedy for reimbursement for past injustices. It enables them not to fade away in isolation, but modernise themselves and in this way to survive in a contemporary world.

Of course, the issue is raised as to who is indigenous. One might think that limitation of application of indigenous status in the ILO Convention, 169, to peoples with traditional life-styles is meant to restrict its implementation only to a small number of peoples. Another – widening interpretation is possible, when categories «indigenousness» or «traditional life-style» were considered to be not absolute, but relative. For instance, can one recognise people with its culture based on agriculture as indigenous people, if it differs in this way from the urbanised majority's culture? That is, important is not content of cultural traditions, but their difference from the mainstream life-style.

The third form dealing with ethno-national diversity is the concept of rights of national minorities. Unlike peoples' and indigenous peoples' rights, the source of

rights of national minorities is Article 27 of the International Covenant on Civil and Political Rights. This form reflects a liberal approach to ethno-national problematic, which instrumentally assesses ethno-national demands as a minority member's pretensions in the context of the doctrine of human rights. Minorities are not considered here as a subject of collective rights, but individuals have additional rights because of their minority background. However, such a context does not stipulate that the framework of majority-minority relations is the main, if not the only, social reality, rather the context is the matter of ethno-sociological and ethno-political construction. Refusing the very possibility of legal capacity of ethno-national groups, proponents of minority rights' concept are forced artificially to construct subjects of rights and political actors in terms of majority-minority relations. At the same time, an ethno-national group categorises itself too often not as minority but as nation and people.

Even if a group is in a proportional minority of population in a territorial unit, people's self-identification as a rule continues to exist if terms of «rootedness», «difference», «otherness». A group becomes minority not even in communication with another group or majority, with the Other, but in attitude of the state to a group as minority. The state promoting the majority's culture restricts, at the same time, the capacity of groups who it considers as minorities to reproduce their cultures. In other words, even if peoples are sometimes called minorities, this naming does not reflect their own vision, and national intellectuals are afraid that calling peoples minorities, then state nationalities' politics will treat them de facto as minorities, reducing their demands for statehood as realisation of self-determination to just integration

into mainstream society. This explains, by the way, the sceptical attitude of peoples to the idea of ex-territorial cultural autonomy.

Ethno-Political Realities

The Canadian scientist Will Kymlicka wrote recently on the issue of minority rights and their implementation in political processes. According to him, it is true that individual rights protect the life of groups, but only partially, not giving remedies for challenges such as the search for acceptable adaptation of ethno-national diversity in political life. The principle of non-discrimination helps to protect peoples from the cruellest crimes such as genocide and more evident attempts of forced assimilation. But existing human rights standards are not enough to prevent other, less evident forms of ethno-cultural injustices, because they do not protect from unacceptable forms of state nation-building policies. In the field of human rights, balance of citizens' rights and rights of peoples remains controversial, for instance, in what concerns the right to mobility. The state can breach rights of peoples under the slogan of assertion of human rights in such fields of state policies as migration policies, federal and regional policies of demarcation of national units' borders, and in proxies sharing between the federal centre and regions, especially in language policies.

Ethno-politically, peoples have the right for internal self-determination that is they are able to live in a multinational state by condition of self-government. Democratic multinational federations such as Switzerland or Canada continue to exist even experiencing sometimes a vacuum in the search for a source

of national unity, on the one hand, and often being unjust to their constituent peoples, on the other. The first problem of injustice to constituent peoples is that federal units are often manipulated to reduce self-governance of peoples. It is not wonder that national-territorial units of federation demand more authority functions than administrative-territorial units, because the vision of federation by peoples is federation of peoples. They want that their status as peoples should be symbolically fixed. But this vision is hard to implement in a model of asymmetrical federation and negotiate with the majority people, because if there are no open ethno-political conflicts the majority often sees the federation as just a legal formality, and in the majority's mind territorial units are formed first of all for efficient administrative governance. One could be sure that, proposed by a majority, the understanding of equality of territorial units and voluntary transformation of their borders is a mistake made on an analogy with the equality of rights of citizens. The last equality is an inseparable principle of liberalism, but not equality of territories, Kymlicka argues. Keeping in mind this mistake, the other problem is raised that the attitude that peoples experience better treatment on behalf of federal government than on the side of regional authorities, if they are in the minority in the respective federal unit. Perhaps the reason is that regional elites have no interest and even are against assertion of statehood of the national unit.

Rights of indigenous peoples provide opportunities to solve these problems with the help of the system of territorial reservations, which is outside the federal system and national legislation. Reservations exist in parallel on the basis of treaty with the state.

Rights of peoples are often argued to be in contradiction with individual human rights, with citizenship they are believed to diminish the territorial integrity of the state. But the state promotes the dominant culture and language, that is, asserts a concrete national identity. Rights of peoples are meant, at least to some extent, to compensate groups' consequences of their non-dominant status. It is possible to classify peoples' rights to representation rights, poly-ethnic rights and rights for self-government. Representation rights and poly-ethnic rights help groups to integrate into society. Only self-government rights, which are in fact a form of the right to self-determination, can theoretically challenge citizenship. But the sociological fact is known that state nation-building policies, promoting common citizenship and directed at nation-destroying of small peoples, leads to instability and violent conflicts. Whereas guarantees for self-government rights diminish the probability of such conflicts and allows the federation to continue its existence. States have no other choice than to accept peoples in state structures through recognition of peoples' rights such as self-government rights additionally to human rights.

But even if a people has a nominal form of statehood, its capacity to use state and other public law channels is still restricted, and it would not be exaggeration to call them stateless peoples. It is very hard in conditions of a dominant culture to promote minority nation-building as an alternative to state nation-building, although legitimate.

The vision of results of negotiations with the state is needed as to what root stateless peoples have to follow to ensure their political-legal status. Will Kymlicka proposes a list of conditions for a group to survive as a nation. He argues festivals of ethnic culture and folk-

lore are not enough. First of all, peoples have to be able to implement its minority nation-building project with state funding. Languages have to be taught at all levels, including higher and professional education, have to be used in public spheres, in communication with state authorities, public services and even in the army, but also in private businesses. It is not less important to have definite control over immigration policies to the extent of density and conditions of immigration, that federal authorities would not overwhelm local population with immigrants and, thus, change the ethno-political balance. Finally, in addition to participation and representation in decision-making processes, it is crucial to have the nation's own forum of collective decision-making, Kymlicka argues.

Legal Ideals

Now I turn to the last part of my presentation. In the light of the above-mentioned opportunities for ethno-national groups to advance their status from the context of existing legal context, one can try to imagine legal ideals, visions of where and how peoples could move to a better world with more justice.

It is known that the attitude the state takes towards minorities and other peoples serves as an indicator to show how democratic the state is. Preserving their cultural traditions peoples want to continue modernisation and creation of their own «high culture». Liberalism and national aspirations do not contradict and really assure the state's democratisation. That is why national movements have to emphasise that their project is part of a social movement for democratisation. In order to do this, the national movement has

to know the rules of ethno-political game and clear state nationalities' policies.

One ideal vision lays in the assertion of the status of peoples and nations as bearers, even if nominally, of the right to national self-determination, that is, the status of peoples equal among other peoples in the world. National movements advance ethnic mobilisation not always to achieve secession, but to assert their legal status in the existing state, for instance, in form of federation or autonomy. In doing that they try not to remain the object of state nationalities policies, but want to become an actor in the dialogue and social process of negotiations of different social groups with state authorities. Peoples have the right to national self-determination even in the case, if its practical implementation of this right will happen on a voluntary basis in the form of internal self-determination and self-government in the federal state, form of autonomy, or other national-territorial as well as national-cultural forms. The recognition of statehood and territory has crucial symbolic significance for the formation of national identities.

National movements have to advance an asymmetrical federation, where peoples would be recognised as constituting nations of national territorial units of federation. If this way does not enable minority nation-building, an alternative would be the assertion of self-government rights outside the federal system, acting as indigenous peoples and presenting, on this basis, land pretension.

Status of the nation as people, indigenous people or national minority does not exclude, but complements each other, and nations can combine them to advance their goals. Politicians and lawyers can pragmatically use all remedies of international law at hand such

as peoples' rights, indigenous peoples, rights and national minorities' rights.

Another ideal – next vision would be implemented in a regime, when states would appreciate diversity and reflect multi-nationality in state structures. The problem of peoples, bearing non-dominant cultures and their national movements, is that they cannot create conditions for their survival if they do not participate in political dialogue with state authorities. International standards of human rights demand from states the taking of affirmative measures in relation to non-dominant peoples, in order to ensure the representativeness of their interests in the political sphere. In the contemporary world even stateless peoples, living in existing states, must express their demands politically, because in the post-modern epoch states and dominant cultures so deeply as never before penetrate into the life of citizens and peoples that it is too easy for them to crush other cultures.

Finally, it is commonly recognised that in our day the protection of peoples' rights, indigenous peoples' rights and rights of national minorities, is the issue of international society. That is why, at the same time, with the implementation of international standards of human rights into national legislations, lobbying of more and more widening usage of mechanisms of international-legal protection with no need of ratification by states and straight legal force, is crucial. National movements have to take efforts to acquire qualified lawyers including specialists in international law, who would be able to use legal mechanisms in the domestic legal system as well as at the level of international courts for protection of rights of ethno-national groups.

CONCEPT OF SOVEREIGNTY AND DIASPORA IN EASTERN EUROPE

Heno Sarv (Estonia)

The published primary results of the All-Russia population census of 2002 shocked scholars engaged in Finno-Ugric studies: if before it was known that carriers of the small Baltic-Finnish Votic language remained less than 20 people, then according to primary results of the census there appeared a figure of 2000 individuals. The number of those speaking in the Votic language certainly is not a subject of research for linguists-Finno-Ugrists, but more often it is them who are asked how many bearers of the language we talk about there are nowadays. They used to answer that the question is about a dying language, which is spoken only by 20 old people from the coastal villages of Leningrad region with whom they were personally acquainted. It is natural that results of Russian statistic research caused doubts and the indignation of the scientists. How was it that, for the period of 13 years between the All-Union population census of 1989 and the All-Russia census of 2002, the number of carriers of the one and same language increased 100 times? Linguists will say that, when questioned, statisticians had no idea what is the Votic language. Statisticians will give a more diplomatic answer that the census of 1989 aimed to find out only the number of people considering Votic their native language; the census of 2002 raised the question about language differently: what other language, other than Russian, do you know?

But you may ask what this has to do with the report on concepts of the sovereignty and diaspora and with the discussion between linguists and statisticians. Here, the Tallinn IV World congress of Finno-Ugric peoples has just completed its work. The Votic delegation had to participate in the congress according to «rate of representation at the congress proportionally to the number of people». Participation in international forums is presently one of the basic ways to realise the sovereignty of people.¹ The question arises: who has the right to present the Votic people at such a forum - only those 20 old men and women (familiar to linguists) or also the remaining 1880 among whom there probably were reckoned:

- 1) Persons of the mixed origin who consider their national consciousness (nationality) by one parent and native language by another one:
- 2) Russians and russified neighbours of the old Votic people capable of communicating with them in Votic:
- 3) Linguists and students studying the Votic language:
- 4) Freaks of all sort who were registered in the questionnaire (of their own or by the fault of a register) as knowing the language about the existence of which they had no idea:
- 5) Persons who in reality do not exist but by mistake of statistical calculations appeared as knowing Votic; according to new specified data that have

¹ General Declaration of the Rights of Peoples. Article 16: All peoples have the right to be informed about policies of the state and should be involved in discussion on an international level on matters that affect their existence and their rights.

been just published 774 people know the Votic language in Russia.

From the given example we clearly see that, attached to the concept of the sovereignty of a nationality, there exists the question of **the subject of the sovereignty**. The latter in international relations are traditionally the states formed by the respective nationality. In other words the national state is a complex of legal attributes, which solves the problems of realisation of the sovereignty of nationalities in international relations.

Estonia was the first of the East-European peoples that declared their sovereignty in October of 1988. At that time we perfectly knew that not the declaration but the recognition of it would provide the real sovereignty of peoples and nationalities. The Supreme Soviet of the Estonian SSR had accepted the declaration of the sovereignty of Estonia, which was (if we regard it in the light of history) rather a body of colonial administration than a representative body of Estonian people. That is why, during voting in the Supreme Soviet for the declaration of sovereignty, voices of opposite interests were united: a number of deputies voted for the self-determination of Estonian people, other deputies voted against the central authority that prevented local administration from realising their authority - in other words voting for strengthening of colonial authority.

The difference of interests is concentrated on the subject of the sovereignty. Colonisers regard the subject of the sovereignty as the territory with the population under their jurisdiction. But for the national movement, striving for sovereignty of peoples and

nations, the subject of sovereignty is the human population with their historical and cultural traditions.

In cases when colonised territory is separated from the Parent State by precise natural borders, as in the West-European maritime empires, it was possible to unite interests of the sovereignty of local colonisers and the indigenous population into a national movement under the conditions of weakening of the empire. In such cases the territorial separation provided necessary historical heredity to the subject of sovereignty. At the weakening of the central authority of East-European empires local colonial authorities, wishing to receive the economic sovereignty, face the problems with heredity providing economic development of region. But borders of the region were determined once in the interests of the central management aimed at the destruction of local traditions complicating colonisation. Attempts to create new ethnic communities in continental regions, following the example of overseas territories of former West-European empires, failed.

Thus in continental East Europe, where there are no precise natural borders separating parent states of former empires from their colonies, it is linguistic and historic-cultural borders that play a more important role in the formation of new subjects of the sovereignty. The 'Commission' for research of national structure of Russia and adjacent countries looked for similar borders in post-revolutionary Russia. According to communist ideas the results of the Commission's work had to mobilise historical human populations of the East Europe for fast economic development. The process of communist construction in the 1920-30s was accompanied by terror against personal freedom and then the young democratic

national states of East Europe, (except for Finland), fell victims to the same terror as a result of the Second World War. Due to this, since 1940 there exists wide spread opinion in the world (after Hans Kohn) that the East-European nationalism pays attention to the past and national traditions but denies values of personal freedom and rationalism.² Such a wrong position, discrediting East-European nationalism, will put national movements into a situation more difficult compared to that of local colonial management in a competition for economic levers of the region. As mentioned above the colonial administration and national movement of indigenous people cannot be reliable allies in the struggle for sovereignty when there are no precise natural barriers between the colony and the parent state. The colonial administration needs the myth of ancient traditions of sovereignty and, for this factor it is ready to call the region by the name of indigenous nationality. At the same time, the colonial administration is not interested in annexing adjacent territories with indigenous population and will gladly give the name of diaspora to all representatives of indigenous people outside of territory under their jurisdiction. In reality, very often the indigenous people of former colonies are ethno-cultural, in the

² Kohn Hans 1946, *The idea of nationalism. A study in its origins and background*. Third printing. New York; MacMillan. pp. 329-334, 457, 572-573; Лалдукка Сеппо 2000, Формирование национальных движений на окраинах империй. Вводные заметки. Этническая мобилизация во внутренней периферии Волго-Камского региона начала XX в. Ижевск, с. 10 (Lallukka Seppo 2000, Formation of national movements on suburbs of empires. Introduction notes. *Ethnic mobilization in internal periphery of Volga-Kama region at the beginning of 20th century*. Izhevsk, p. 10.)

case of the diaspora situation, rather in the capital of the former colonial region than in villages adjacent to the region.

Certainly our discussion about contradictions in the struggle for the recognition of sovereignty is modelled too black-and-white: nowadays representatives of indigenous people are involved in colonial administration and certainly they are not traitors to the interests of their people. The aspiration for sovereignty can lead to the ethno-cultural and language assimilation of the former colonial administration.

The above mentioned 'Commission', on research of the national structure of Russia and adjacent countries, had fallen itself a victim of communist terror before they had time to find out the borders of ethnic areas within the East-European area.

EVOLUTION AND STAGES OF DEVELOPMENT OF THE TYVA PEOPLES' STATEHOOD

Vladimir Bagay-Ool (Tyva)

1. Brief Historical Excursion

Tyva people have passed through hard and, at times, dramatic ways of creating statehood. During the Bronze Age, in the middle of the first millennium B.C., the ancient population of Tyva was engaged in cattle breeding and hunting. During the VII-III centuries B.C. there is a further development of cattle breeding and ancient metallurgy, the way of life becomes half-nomad. Alongside it, in the Tyva hollow there was agriculture with artificial irrigation.

From the end of the first millennium B.C. till the 2nd century A.D. tribes related to the Huns dominantly occupied the territory of Tyva.

Since the 2nd century A.D. Tyva was under the authority of the tribal union of Syan-bi, then of Ju-jyans.

During the period from the end of the 6th century up to the middle of the 8th century, Tyva was a part of the Turk Khanate and was basically inhabited by Turkish-speaking tribes.

In the middle of 8th century the Uigurs, who built settlements – fortresses serving to hold the local population in subservience, occupied the territory of Tyva.

After the Uigur khanate had been defeated by Yeni-sei Kirghiz (Kirghiz khanate) in the middle of the 9th

century a part of the Uigur population (Ondar-Uigur) entered the structure of Tyva people but the Kirghiz people forced out the majority of the Uigur from the territory of Tyva. By the 9th century the feudal relations, complicated with vestiges of a patriarchal-tribal system, characterise the medieval Kirghiz state. All the ancient autochthon tribes and Turks-Tyugu, Uigurs, Kirghiz and separate Mongolian tribes were later turkinised and entered the structure of Tuvinians, forming the ethno-genesis of the Tyva people.

The Mongolian conquerors, led by Genghis Khan, first appeared in the territory of Tyva in 1207. The representatives of Uriankhai took part in Genghis Khan military campaigns including those in the European part of modern Russia. Many Genghis Khan commanders were Uriankhai and enjoyed his special confidence (for example, Subuday-Bator or Subudey Maadyr in the Tyva language). Genghis Khan's bodyguard and other special guards had been mostly formed of Tuvinians-Uriankhai.

From the 13th up to the middle of the 14th century Tyva was under the authority of the Mongolian dynasty of Yuan that ruled in China (1280-1368). After the Yuan dynasty fell then Tyva became the possession of eastern Mongolia.

At the end of the 16th century Tyva entered the structure of Altyn-khans state that existed up to the 2nd half of the 17th century. In 1615, Tyva was visited, for the first time, by the Russian ambassadors V. Tyumenets and I. Petrov who left valuable ethnographic descriptions of some tribal groups (Maads, Soyans, Todjintses).

In the 2nd half of the 17th century a part of Tyva fell under the authority of the Djungar khans.

From 1757 till 1912, the Tyva (Uriankhai region) was under the yoke of the Manchu-Chinese feudal lords by whom Tyva was finally detached from each of their other areas being divided into khoshuns (headed by noyons). On one hand, khoshuns (districts) were the basic administrative unit and, on the other hand, they were in the independent possession of feudal lords. Salchak, Todjin, Oyunnar and Khemchik khoshuns were united into a special administrative unit under the leadership of Ambyn-noyon who was subordinate to the Chinese governor up to 1911. Khasut khoshun, although being independent, was also under the authority of the Chinese governor. Khoshuns Beise, Maads, Shalyk and Nabaza directly submitted to the Mongolian feudal lords and were their property. Tyva people were placed under tribute (albana). Economics was still based on backward nomadic cattle breeding. Agriculture was primitive and did not play any essential role. The greater part of cattle and pastures belonged to secular and spiritual feudal lords. Patriarchal-feudal public relations and heavy colonial oppression prevented development of the productive forces. Serious life conditions induced significant groups of Tuvinians to migrate from the territory of Tyva to Altai, Khakassia, Mongolia and even China. Till nowadays Tuvinians still live in some districts of Mongolia, Xinjiang-Uigur an autonomous district of China, Oka-Soyot national district of the Buryat Republic. In August 2004, the World Congress of Tuvinians was held in Kyzyl, the capital of Tyva.

In 1860, a Russian-Chinese treaty was signed in Peking and after that the economic relations between Russia and Tyva extended. In 1896, the Russia-Tyva trade turnover accounted for 368.5 thousand roubles.

At the end of the 19th century, the first Russian immigrants appeared and by 1917 there were already over one thousand Russian peasant families in Tyva. This was the beginning of active cultural and economic contacts between the local population and immigrants.

The Chinese bourgeois-democratic revolution of 1911 caused a spontaneous national-liberation movement both in Tyva and Mongolia. The authority of the Manchu-Chinese officials in 1912 was considerably weakened for objective reasons. In Tyva a difficult political situation arose: the greater part of the political elite, consisting of noyons and monks, was guided by feudal Mongolia but some of the feudal lords, led by Ambyn-noyon, came out in favour of a protectorate of Russia. The majority of arats (peasants) were far from political interest.

In 1914, the tsarist government made the decision to put Tyva under the protectorate of Russia. The same year the town of Belotsarsk (from 1917- Kyzyl³) was founded. In Addition, construction of the Usinsk road started. This connected Tyva with the Trans-Siberian railway. According to the plans of the tsarist administration Tyva had to become a colony of Russia. The October revolution of 1917 created objective conditions for the national liberation of Tyva people and gave an opportunity for the independent social, economic and cultural development of Tyva. Lenin's famous thesis about the right of peoples to self-determination was realised in Tyva. Not everybody knows about this. Alongside Finland and Poland state independence was given 'de jure' also to Tyva. In 1918-21, however, in Tyva there was a fierce civil war. After the troops of the Red Army

³ Actually, in 1926, the capital (Belotsarsk, since 1918 – Khembeldyr) was renamed as Kyzyl (meaning "Red").

and local guerrillas defeated the divisions of the White Army together with Chinese and Mongolian interventionists, in August of 1921 the All-Tuvianian Constituent Hural (Assembly) was held where the Tannu-Tuva People's Republic was declared. From the moment Tuva People's Republic (TPR) was formed, the new state objectively was connected to revolutionary Russia. In the first Constitution of the TPR (1921), it was declared that the TPP should maintain international relations under the protectorate of Soviet Russia. In 1921, the Soviet Government recognised the independence of the TPR. Next to recognise Tyva was Mongolia. In Kyzyl, the capital of Tyva, the Russian (later Soviet) and Mongolian embassies started to work. There was issued a national monetary unit - aksha. The Tyva People's - Revolutionary Army was formed. The border between the USSR (Russia) and Mongolia was fortified. There appeared frontier guards. The political leaders of Tyva were divided into two combative fighting groups: representatives of the feudal-theocratic elite and pro-communist political groups. It resulted in 1922 in the creation of pro-communist, pro-Russian, and then the pro-Soviet Tyva People's-Revolutionary Party (TPRP) which declared a so-called non-capitalist way of development of Tyva. In 1925, the USSR and the TPR concluded a friendly treaty and established official diplomatic relations. During the period of the next 23 years the USSR rendered all kinds of help to the Tyva republic.

During the 2nd World War, Tyva rendered material aid to the Soviet Union. Moreover, as soon as only Soviet citizens living in the TPR could be mobilised the Tyva people participated in fights against the German army as volunteers.

On the 17th of August 1944, the Emergency session of the Small Khural of the TPR adopted the Declaration

with the request to accept the TPR in the structure of the USSR. On October 11, 1944, the Supreme Soviet of the USSR complied with the request and it was on October 13, 1944, that Tyva entered the structure of the RSFSR with the status of an autonomous region. Any referendum was out of the question since the USSR was still under martial law and the Tyva people had rather vague ideas of this democratic norm of will, let alone the fact that it was never mentioned in the Constitution of the TPR.

On October 10, 1961, the Tyva Autonomous region was transformed into the Tyva Autonomous Soviet Socialist Republic. And since 1990 – it is the Tyva Republic.

2. Constitutions of the Tyva Statehood

In the history of the Tyva people the following Constitutions (Basic Laws) have been adopted:

1. The constitution of 1921 (August 13-16 1921);
2. The constitution of 1923;
3. The constitution of 1924;
4. The constitution of 1926;
5. The constitution of 1930;
6. The constitution of 1936;
7. The constitution of 1941;
8. The constitution of 1978;
9. The constitution of 1993;
10. The constitution of 2001;

In prospect there is the adoption of the new Constitution in which political, social and economic realities of Russia and Tyva should be designated.

3. Prospects of Integration of Regions of the Russian Federation and Destiny of the Tyva Statehood

For quite some time the Russian politicians of different rank argued about the idea of integration of regions of the Russian Federation. Whatever the good reasons for the social, economic and political character caused these ideas, one thing is clear: the question is about the further transformation of statehood of national subjects of Russia in the sense of washing their statehood away. In my opinion, some theorists-lawyers absolutely believe that the creation of seven 'Federal Districts led by Plenipotentiaries of the President of the Russian Federation' is a first step on the way to the real integration of subjects of the Federation. I would like to remind you that the necessity of these seven 'Federal Districts' being created has never been mentioned in the Constitution of the Russian Federation. Some political scientists and lawyers regard it as a direct infringement of the basic laws of Russia. The discussion on this issue is still going on. Some people even believe that the creation of 'Federal Districts' is a realisation of the idea belonging to V. Zhirinovsky, the chairman of the Liberal - Democratic Party of Russia, that is the idea of dividing Russia into provinces. Zhirinovsky himself used to confirm that the creation of 'Federal Districts' was his idea. Perhaps, in case of old-age Russian territories (regions) this idea may be quite acceptable but I think it will create additional problems for national subjects of the Federation in the way of preservation and the further development of their national statehood.

CURRENT AND ONCOMING SITUATION OF CHECHENS

Akhyad Idigov (Chechenia)

The problem, which today is discussed by us, has been on the agenda for more than 200 years, but is not still realised because no universal document on the issue has been adopted. First it was at the Berlin Congress of 1878 when the concept of self-determination was considered. Many participants of the conference were of opinion that lack of such a legal document fatally influenced resolution of problems connected with the right of peoples.

It is quite natural that now there is the Institute of the Rights of Peoples in Estonia since it was the UNPO Tartu centre where the issue of the rights of peoples had been discussed for a long time. What prevents the acceptance of the general declaration from the point of view of the international legislation on human rights?

There are more than 3000 'peoples' in the world nowadays and the number of states is a little more than 200. May we then raise the question of a number of states corresponding to that of peoples? I think that such statement of a question is possible but all the decisions should be made according to the legislation of modern international law. There exist many contradictory opinions as to the rights of peoples and there is no universal integral document to refer to.

If speaking about a referendum as one of legal bases for solving problems the practice shows that it allows only clearing out the attitude of people to a concrete problem for the moment and to find out

a numerical ratio of different points of view. World practice asserts that there are many examples of how public opinion can be manipulated: unilateral pre-election campaigns, a vagueness of the questions put on voting, direct threat of application of military force, etc. Moreover, moods of the electorate may very much change under the influence of various factors. The history of the USSR has many such examples: in March 1991, during the all-Union referendum the population of Azerbaijan and Central Asia almost all voted for unity with the USSR, and then at the end of the same year they almost unanimously supported independence for the republics.

The international law recognises three forms of realisation of the rights of peoples for self-determination stated in the resolution 1514 (XV) of the General Assembly of the United Nations accepted in 1960:

- Transformation of non-self-government territories into the sovereign independent state;
- Free association with the independent state.
- Amalgamation with the independent state.

Regulations of the basic pacts of 1966, regarding the right of the peoples on self-determination, directly speak about this position, but immediately the UN Committee on Human Rights made an attempt to limit Item 11 of the XXI General recommendation of the forty eighth session of the UN Committee on human rights of 1996 saying: «*In opinion of the Committee the international law does not recognize the right of peoples on unilateral separation from one or other state...*»

The Helsinki agreements of 1975 speak about the expediency of preservation of the territorial integrity of states.

Linguists assert that sometimes terms are purposely substituted. For example, a word «nation» can be translated from English into Russian as «nation» and as «people» not specifying the ethnic sense of «nation» and geographical sense of «people» that designates rather «population» than «people». These collusions allow politics and countries to use double standards.

It is possible that these problems also arise due to different interpretations of one or other important principles of the right that is absolutely inadmissible. In addition, some states – members of the UN Security Council have usurped the right of veto - practically they have the right to impose a ban on any decision.

As is seen from the mass-media and reports of the UN Security Council, the right of banning can be used not only by the members of the UN SC. I would like to cite Anthony Klein, a high official of the United Nations: «From 1946 up to 1992, during 46 years, 750 resolutions of the UN SC were accepted. And for next 8 years – from 1992 to 2000 – the UN Security Council accepted 775 resolutions! A significant number of these resolutions were mandatory for execution. But how many of them have been executed? Very few! We remember Korea, Somalia, Iraq, Kosovo, Israel...»

These examples show us that the new idea of the right of the population to decide the status of its own territory yields to a much more ancient right - the right of force. So it was in conformity with this right when, after the Second World War, in 1945 countries – winners annexed territories of Estonia, Latvia, Lithuania and a part of the territory of Finland. Nowadays we also have the case when the ancient right

has been exercised. It is the aggression against the Chechen Republic Ichkeria from Russia.

Mr. A. Eide, director of the Norwegian Institute of human rights emphasised that there are international documented texts from which are supposed a wide and uncertain interpretation of the idea of self-determination. At the same time, we can observe that many world politicians interpret the right of peoples to self-determination quite unequivocally: peoples can realise this right only by being in colonial dependence or under occupation!

In a word, the existing international law demands changes. This is an opinion of many authoritative people in the world. New principles are necessary for the settlement of relations between the states and peoples in the interests of human rights. People should not be torn away from their native language, history, culture and historical motherland.

In the case of the governments of countries-UN members adopting the General Declaration of the Rights of Peoples it might serve as a powerful stimulus, and a factor to change the present world situation. Therefore, the question we have on the agenda is extremely important and demands certain efforts for its promotion but I hope that no obstacles will stop us.

Dear friends, now I would like to pass on to a concrete example that can help us see the real state of things in the world concerning the rights of peoples. I have in view the right of Chechen people to self-determination.

As is known, the Russian Empire – the USSR – collapsed and on its territory there appeared new independent states. Almost two years prior to the fall of this empire the status of all 20 autonomies of the

USSR had been transformed into that of union republics. On the 26th of April 1990, the Supreme Council of the USSR passed a Law on Delineation of Powers between the USSR and Subjects of the Federation.

At the moment of the collapse of the USSR (December 8, 1991) there were in fact already 32 union republics. Three Baltic republics had earlier departed from the USSR as territories occupied by Moscow during the Second World War.

The new independent states were formed of the USSR, including the Russian Federation – Russia on the basis of the federal agreement dated March 30, 1992. The agreement was signed by 15 union republics out of 32 appearing after the crash of the Soviet Union. We point out that the Chechen Republic was not included in the number of those 15 republics, which had signed the federal agreement with Moscow.

The Chechen Republic, as well as other new independent states, did not raise a question of establishing federal relations with the Russian Federation – Russia. Our country actively negotiated with Moscow as a state with their state on mutual recognition, delineating of union property, division of arms, etc. Under the agreement between our countries all Russian (former Soviet) troops were withdrawn on the 7th of July 1992, from the territory of the Chechen Republic

Even earlier, before the formation of a new federative state of the Russian Federation, on 12 of March, 1992 Chechenia accepted the Constitution of a sovereign and independent democratic lawful state, in conformity with what the government of the Chechen Republic had no right to sign any agreement limiting independence of the country.

It follows from this that all statements of the Kremlin about Chechen Republic being a component part of Russian Federation are devoid of any basis.

The international conference in Montevideo (1933) adopted the Final Convention that gave a legal definition of the state, four criteria being included:

- a) Resident population
- b) Certain territory
- c) Existence of the government
- d) Ability of the state to enter the relations with other countries.

All these attributes of statehood were present in the Chechen Republic which later has been transformed into the Chechen Republic Ichkeria after the Chechen Republic was arbitrarily entered as a component part of the Russian Federation into the Constitution of Russian Federation accepted in December 1993.

In this connection from the point of view of international law actions of the Russian Federation since 1994 against the Chechen Republic Ichkeria can only be classified as aggression. The Russian Federation arranges economic and political blockade of the Chechen state and then occupies its territory and purposefully kills Chechen people. In order to cover and justify its crimes, Russia carries out anti-Chechen propaganda all over the world misrepresenting real facts and telling about cruelty of Chechens and their belonging to the international terrorist Islamic movement.

We must change the negative public opinion of Chechens created by Russians in the West. It is difficult but we should work to make it possible. For this we need help and support from everywhere because what occurs in Chechenia concerns not only Chechen

people. There were correct words said by Mr. Tiit Matsulevitsh – «When we refuse from the observance of human rights we refuse from those principles on which our democratic constitutions are being built. And we are ready for cooperation in this question with everybody including human right protection and public organisations all over the world including the Russian Federation».

When during the first war the Chechen government addressed the United Nations with a request to consider the issue of aggression against Chechenia, the UN General Secretary, Boutros Ghali, declared «the United Nations will discuss the Chechen problem only if Russia but not Dzhokhar Dudayev requests». Elena Bonner, the widow of academician Sakharov commented on this position of the West in the following way: «It's above all – and I am amazed – how easily the West (I mean traditionally democratic countries of Europe and Northern America) leaders peck lies from Russia. One of the biggest deceits in world public opinion is that lies spread not only from Russia as it was in the USSR but also with the help of leaders of these western countries – that Russia struggles with international terrorism in the Chechen Republic. It is an absolute lie! In the Chechen Republic, Russia conducts a terrible war with the destruction of people using the excuse of a struggle against world terrorism. And the war, which is still conducted today by Russia, stimulates terrorism! In addition, the West does not want to notice that all international conventions on the protection of the peaceful population, on the protection of refugees, on the protection of persons who found a refuge in neighbouring countries, are broken by both Russia and the western democracies».

It is difficult to pick up more exact words to show the real state of things in existing international law. Today Chechen people continue their struggle for the rights despite all losses. And its most important part is a legal basis from the point of view of international law. Lack of sufficient legal base in this question was sharply felt all these years of struggle by the Chechen people.

We believe that acceptance of the General Declaration of the Rights of Peoples will make an invaluable contribution to the cause of the realisation of rights of peoples.

We propose that a resolution of the conference should request Tartu Institute of the Rights of Peoples to develop a document giving a legal evaluation of the Chechen-Russian relations from the point of view of modern international law.

THE CHUVASH PEOPLE AND THE 21ST CENTURY

Nikolay Lukiyanov (Chuvashia)

The Chuvash people live more or less compactly on the territory of the Middle Volga and Ural region. The population of the Chuvash Republic is approximately two million. We had our statehood in the form of Volga Bulgaria which existed on the territory of the Middle Volga region from the 8th to the 14th century.

In the 16th century our people, as a result of Moscow expansion, were forced to enter the structure of the Russian state as well as other peoples - Tatars, Mari, Erzya, Moksha, etc. The theory of «voluntary entry» being propagated by our so-called historians does not stand any criticism, as it is a reflection of the certain political situation.

Up to the 20th century the Chuvash were deprived of any opportunity to determine for themselves their status. Two revolutions at the beginning and end of the twentieth century in Russia created favourable conditions for the Chuvash people to determine its political status: the national state formation, appearance of rudiments of a political system, formation of, more or less, an independent economic system with all its institutes, appearance of structured society and intellectual layers of society etc. National statehood was restored in 1920. Due to certain historical events our statehood has undergone an essential transformation. Nowadays, the Chuvash state is a Republic entering the Russian Federation as its subject. The

acting Constitution was adopted on November 30, 2000.

Hence, the last century in our opinion has created huge potential for the further positive development of the nation. I would even say that the twentieth century became the time of accumulation of quantitative potential for our people and has created favourable conditions for its transition to a new qualitative state.

And we believe that it is in the 21st century that the Chuvash will turn their quantitative potential into a qualitative one.

It is obvious that the leading part belongs to the state. Therefore the preservation and further development of our national statehood, strengthening of its status in the 21st century is the most important task. Unfortunately, now the Chuvash state does not identify itself with the Chuvash people and the national component is not dominant.

Therefore, in the nearest future, the essential role will belong to national movement in its various forms. However, in its turn the national movement has to prove itself as an independent political force and take the most active part in the political life of society.

Due to the above-mentioned one of the priorities is the changing of the republican legislation on elections to the authoritative bodies in Chuvashia. Elections should be carried out not only on the basis of one-mandatory districts as is practised today but participation of the political parties, expressing certain ideologies, should be essentially increased. There is, however, no republican law on elections which provide for the participation of regional political parties. The current Russian legislation provides participa-

tion in elections (including regional) for only those parties, which are registered as 'all-Russian'. In that case elections to republican authorities will turn into fiction since the all-Russian parties with their organisational, political, financial, informative, administrative and other resources will seize state power in Chuvashia.

Hence, in order to provide a national oriented component in government bodies in Chuvashia there should be adopted independent statutory acts about elections to various branches of republican authority, which should also exclude participation of the all-Russian parties.

The political life in Chuvashia will certainly depend on the political situation in Russia. Nowadays, there are outlined some tendencies of Russia to ignore federal principles of state formation and instead to reconstruct the imperial authoritative bases. If these tendencies, as well as the policy of unification and russification of the peoples living in its territory, will have further development it will inevitably lead either to the disintegration of the Russian Federation or to its transformation into a confederate state with wide powers for member states. Both ways, in the situation of their peaceful non-violent character, will be objectively positive for peoples living in the territory of modern Russia and having national state formations. However, we hope that political forces in Russia have enough common sense to realise that there is only the one way for further development of the Russian state, i.e. the way of strengthening federal bases, the way of respect for the rights of the nations and peoples living on the territory of Russian Federation, the way for their revival and prosperity. The Chuvash people, represented by its national state and social-

political organisations, should do everything possible to essentially affect these processes.

We believe that, until our Chuvash state is not an independent subject of international law, the nation will search for opportunities to be submitted as the full and equal subject of the international relations through social organisations. We will also search for some means to act through the UN and European bodies and other international non-governmental organizations. In this respect the UNPO is the very organisation in which we can be adequately represented.

Our geopolitical position will promote the title 'peoples of the Republics located in the territory of Volga-Ural region' to arrange national movements as uniform structures in order to unite our efforts in the struggle for national rights. There are all the favourable conditions for this: compact location, historical ties, identical character of problems etc. I dare to state that, due to certain objective circumstances, the Chuvash national movement should play an initiating and vanguard role in the process.

It is obvious that modern means of communication may promote the representation of our people in the global world. Therefore, in this century we should do our best to integrate into universal information space in order to be heard by the world community.

Thus, nowadays the revival and prosperity of the people will not be promoted by its isolation from universal «global» tendencies. The people should not only preserve its originality by keeping up old traditions and customs but it should develop the assimilating of all advances and progressiveness that modern civilisation offers. There is no other way and there cannot be.

NIKOLAY LUKIYANOV (CHUVASHIA)

Unfortunately, the time limit does not allow me to speak on the problem in detail and all stated above bears a very sketchy and general character. The Chuvash people has had a remarkable past and I believe it will have a better future.

PROBLEM OF THE BURYAT ETHNOS LIVING IN FIVE AREAS OF THE RUSSIAN FEDERATION

Bata Bayartuev (Buryatia)

Buryats are the Mongol-speaking people residing in China, Mongolia and Russia. In China, Buryats are identified as Mongols and live in the Evenk khushun side by side with Bargut, Dagur, Duncyan and Chinese people. In Mongolia, Buryats are settled in six aimaks (districts): Dornod, Hantay, Orkhon, Selenga, Bulgan and Khubsugul. The great bulk of the Buryat ethnos occupies the Baikal region of Russia and represents the most numerous people in Siberia.

The Buryat ethnos, residing in three different states, has developed in a different way with its own peculiarities, problems and difficulties.

In our report we deal with the problems of Buryat people living in the Russian Federation, i.e. we attract particular attention to the issue of ethnos development in the conditions of a one state formation. It would seem that the situation, when the ethnos lives within the territory of one state, removes many problems since it supposes a single national policy to be pursued. But it is not quite like that and further on we will speak about the real state of affairs.

'Russian' Buryats live in five subject areas of the Russian Federation: Aginsk and Ust-Ordyn Buryat autonomous regions, the Buryat Republic, Irkutsk and Chita regions, i.e. in its historical homeland – the Baikal region.

It is natural that Buryats strive to preserve and develop their national-cultural originality, native language, traditions and customs, national mentality and world outlook, their tenor of life in a native biosphere of mountains, forests and steppes of the Baikal region.

Long being in the structure of the Russian Empire, then the USSR and nowadays the Russian Federation has certainly left its imprint on the mentality of the aborigine's human existence, made him ready for any kind of surprise happening and adapt himself to the policy of tsars, general secretaries, presidents, oligarchs and other rulers of men's minds.

The end of the 20th century and the beginning of the 21st has been marked by a number of shocks: society changed its reference points and shifted to market relations that were ambiguously accepted by the population of the country.

This period has been also marked by the splash of national consciousness, the striving of peoples for self-determination leading to the formation of various people's fronts, units, foundations, associations but by the end of 20th century this somehow calmed down and a national idea, based on the exclusiveness of the ethnos, designated its weakness and narrow-mindedness.

An individual suddenly found himself in the expanded society without the habitual ideals and values he had had under the totalitarian supervision of the state and when distemper ended he was left in private with his own problems in the conditions of competition and a «barbarous market».

As for the peoples they not only have not received their promised sovereignty but found themselves in conditions much worse than those of the so-called

advanced socialism. Representatives, of indigenous peoples and national minorities, have lost in all pseudo-democratic elections, and Buryats in five subject areas of the Russian Federation failed to elect at least one deputy to the government bodies.

The 'Nation', as ethnos, is the community of people with their own original vision of the world, with a particular mentality, language and culture. It has specific forms of interaction with nature and society, a specific microcosm of family and macrocosm of habitable space. It is a historical category having a particular system of relations with each other, with neighbours, other peoples and confessions.

However, nowadays all this is not taken into consideration and only economic, chauvinistic and totalitarian-political interests dominate in all interrelations.

The dogmatism of communism used to give a definition of nation as community of territory, economic ties, language and culture. Stalin added to this a psychological type of character.

According to this definition Buryats are far from being a nation since they neither have common administrative territory nor economical ties because even neighbouring regions conduct different economic policies. For example, electricity charges in the Buryat Republic are 10 times higher than in Irkutsk, although Irkutsk hydro-electric power stations are fed with water from the Baikal Lake i.e. from Buryat water resources. If speaking about the language component, it is like the following: Buryats, living in the Irkutsk and Chita regions, have no opportunity to learn their native language because it is not provided by the school curriculum. Then it is natural enough that there are no national theatres, universities and other educational and cultural institutions. That is

how Buryats live nowadays in their historic homeland: separated from each other by different subject areas with different policies and different standards of living. Even human rights work against the Buryats since the national minority can never elect their representatives to government bodies. Unemployment is another factor that effects very negatively upon Buryat society. During the «perestroika» period local oligarchs almost fully eliminated cattle breeding, which hit the Buryat population most of all. As a result of these activities, today we have only 200 thousand sheep compared to 2 million before, herds of cows were many times reduced, and other problems have been created - the Machine-tractor Park is completely worn out. Almost every factory, plant and other enterprise has been sold to other regions. Unemployed nomad-cattlemen and ploughmen have remained without means of existence. Very often their main occupation is home brew drinking. Feeble-minded and weak children are born. The jobless youth cannot afford to have a family because they cannot earn a living, to say nothing of building a house. The population is being reduced.

A new trouble is added to all the above-mentioned. The idea of integration of regions is being discussed. An attempt is being undertaken to abolish the Ust'-Orda Buryatia autonomous region and join it as a district to the Irkutsk region. It is supposed to carry out a referendum the result of which is clear since voices of the natives making up the minority will be hardly heard on the top floors of authority. It is quite clear that any attempt by the Buryats from the Aga region, Republic of Buryatia to participate in the process will be estimated as intervention in the competence of another subject of the Federation. Formally

everything will be observed according to the laws based on human rights, but not the rights of peoples. In this case, the fate of Ust'-Orda Buryats will be sad enough. The pre-Baikal Buryats are the most injured part of the ethnos, it is here that problems of preservation of native customs and traditions, culture and outlook are the most painful. Natives of this region know the Buryat language very poorly, having a specific mentality being Christians and shamanists, i.e. their world outlook is based on a folklore-utilitarian perception with the accent on categories of utility and necessity instead of ethical Buddhist norms of good and mercy that are guides for the Buryats of Baikal area.

BADC considers that, in the modern conditions of the Russian state, the present situation can be changed only if the United Nations adopts 'the Declaration of the Rights of Peoples, the Rights of Indigenous Peoples and the Rights of National Minorities':

- Federal relations should be developed and regulated with the account of the rights of peoples within the Russian Federation;
- Legal and political rights of indigenous and small peoples should be secured;
- The state support for the development of languages and cultures of peoples should be provided in the context of the state policy on strengthening a generality of peoples in the uniform state.

Only in this case the positive development of people can be achieved. All other variants the ethnos should hope again for the specific internal force to survive in extreme conditions of the unipolar world. And that will be extremely hard, as the Buryats will be hardly given an opportunity to unite into the single

BATA BAYARTUEV (BURYATIA)

sovereign state adequate even according to the Stalin definition of nation.

In these conditions Buryats probably should struggle for the creation of a uniform cultural - national autonomy with the rights of a republic, and then to assert their legitimate rights for sovereignty, for the republic and independent statehood.

RIGHTS OF PEOPLE, THE RIGHT OF EACH INDIVIDUAL

Vladimir Kozlov (Mari)

Finno-Ugric peoples have a good tradition for asking a question when they meet: «How do you live?» Therefore, today I, as Mari Onyzha - the chairman of the All-Mari Council, would like to acquaint you very briefly with the life of Mari people. I am happy to mark the achievements of my people in the field of culture and art. At the same time I have to state negative facts, which took place for this period of time.

During 4 years the life of Mari people underwent some serious changes. Unfortunately many of them were not for the best. In the end of 2000 the authority in the Republic of Mary El was replaced, and a new President was elected. Nothing remains but to regret that the new authority did not quite understand the national problems the Republic faced. And it resulted in misunderstandings between authorities, social organisations and representatives of progressive-minded intellectuals. Later it gave rise to an about thousand people rally in February, 2001 in defence of Mari culture. It happened for the first time during the last 80 years. In April of the same year an extraordinary Congress of Mari people was held where the delegates passed a vote of no confidence in the President of the Republic.

The same year government officials were very careless in declaring that the Mari language would no longer be a compulsory subject in the school curriculum but could only be studied voluntarily. Thus, the

prestige of the Mari language was lost and nowadays Mari children learn their native language very reluctantly. At the same time, the national department of the Republic's Ministry of Education was closed.

The intellectuals and simple people made a protest against the liquidation of Mari and all of the Mari people were insulted in the part of the official republican newspaper by the following words: «... each Mari not infected with a virus of Nazism... », «Ordinary fascism... ».

We had to assert the honour of Mari people in court.

Well, Finno-Ugric peoples of Russia have many problems that leave much to be desired. Therefore we think that it would be expedient to hold the following congress in Russia.

As many of those sitting in this hall know one of the most painful problems in the Republic of Mari El is freedom of speech. Since 2001, newspapers expressing views different from that of government have had no opportunities to be printed in the republic. Up till the present day they were printed in the Kirov region. But recently this very opportunity was also lost. And the governmental mass media provide people with not quite true information thus constitutional rights of citizens are being broken.

It was support on the part of kindred peoples that helped us to endure hard times. And today we want to express words of gratitude to the Finnish students and journalists, in particular to the deputy of the European Parliament from Finland Tytti Isohookkana-Asunmaa. Under the initiative of this courageous woman the deputies from Finland, Great Britain, Spain and Sweden made a statement about the situation in Republic of Mari El.

Unfortunately during these four years many leaders of the Mari people have been dismissed on some pretext or other. Because of the lack of normal conditions for life and work there was a big outflow of highly educated representatives of Mari intellectuals. Several Ph.D. students, and about ten candidates of sciences, left Mari El in search of work. It is a very serious loss of scientific potential for the not so numerous Mari people.

Well, we have never concealed that we wish the President of the Republic be of the Mari nationality. And it should not be searched for in this either signs of nationalism, or anything else. This is the natural desire of the titular nationality. The problem is that today there are almost no Mari among high level officials. We regard it as a political skew. For example, both senators representing the Mari Republic at the Council of Federation are not Mari El residents. There is not a single Mari or at least a resident in the staff of the Mari El permanent representatives in Moscow. We consider that all this negatively effects on the moral and psychological state of Mari people as well as representatives of other peoples living in the republic. The opinion is being imposed that the provinces lack people capable of holding high posts. It is none other than a lie. The last scandalous fact when a person, who has no idea of the problems of the Mari people, has been elected a deputy of the State Duma and this can be regarded as a political show.

Mari people are well aware that we live in the different countries with different political structures and economic conditions. But if we feel mutual support I am sure we can cope with our problems.

I wish also that the Advisory Committee worked with Finno-Ugric peoples more closely. Unfortu-

nately, sometimes your voice is not quite audible. For example, it was not audible in the case of such an extremely serious issue as the liquidation of the Komi–Perm autonomous region... I can't help asking a question: Who of Finno-Ugric peoples is the next? Komi, Udmurts, Mari, Erzya, Moksha, Karelians ...?

Early in July of 1917 the delegate of the 1st All-Russia Congress of Mari people, an Estonian Alexander Põrk said: « Estonians will never forget Mari. » These were prophetic words. In the 50s-70s of the last century many Mari scientists have gone through the genuine school of the outstanding Estonian scientist Paul Ariste, the Patriarch of Finno-Ugric studies. I would like to note especially the beginning of the 90s when there were signed government agreements between the Estonian Republic and Republic of Mari El about cooperation in the field of culture and education. Due to this about 80 Mari students have been or are being trained in the universities of the Estonian Republic nowadays. It is most gratifying that Udmurts, Komi, Karelians and other representatives of Finno-Ugric peoples are also trained. We do hope that they will return home and become a serious scientific potential for their peoples.

Allow me to express our great and sincere gratitude to Mr. Arnold Rüütel, the President of the Estonian Republic.

Three years ago when I, together with Mari professor Yuri Anduganov, received the order of the Maarjamaa Cross, the state award of the Estonian Republic from the hands of the ex-president Lennart Meri I couldn't help thinking : How come that outstanding scientists, culture and art workers from Finno-Ugric peoples are not practically rewarded with high state

awards of Russia? » I dare hope that our remark will be heard and regarded.

I apologise if some issues sounded somewhat sharp.

Mari people are settled almost in all regions of Russia and our diaspora makes a great contribution to the cause of development of native culture, art and science. We highly appreciate their efforts.

Allow me, on behalf of all Mari people, to wish the 4th Congress of Finno-Ugric peoples successful work and adoption of final documents which will work for the good of preservation and development of all our related peoples.

«THE DECLARATION OF THE RIGHTS OF PEOPLES»: POSSIBILITIES OF ACCEPTANCE IN THE CONTEXT OF INTERNATIONAL LAW PRACTICE

Ken-Marti Vaher (Estonia)

Ethnic and linguistic diversity in themselves can be considered fundamental values of humankind. Diversity gives value to life, and loss of such diversity would mean the loss of humankind's unique quality – its humanity – to be replaced with a machine-like existence. Everything that threatens diversity must be averted and, if necessary, combated. The protection of national, linguistic and cultural diversity on the global scale means the protection of every people, their language and culture through social, including most certainly legal, regulation. Care for the preservation and national welfare of each nation is the duty not only of the nation in question but of all other nations as well. It is clear that it is far simpler to protect a nation, culture and language within a state. Therefore, we must place even greater emphasis on our duty towards those peoples who have yet to achieve statehood. The protection of the rights of peoples within the international law context must above all translate into the obligation of the subjects of international law to preserve and develop the diversity of which I speak.

If we wish to compare and contrast the rights of peoples and rights under international law, we must first understand what is meant by each. The Universal Declaration of the Rights of Peoples speaks of

the rights of peoples as the rights of a group who share a common identity based on a particular origin, language and culture. If human rights are rights conferred on every person simply because they are human, then the rights of peoples can be viewed as collective human rights that belong to a group simply because they share a common identity and are distinguishable from other peoples or nations. And whereas international law is also sometimes termed «the law of nations», international law is the label we give to the body of legal norms, principles and customs which regulate the relations among states and among international organisations founded by states. Several nations have been able to forge their own state on their ancestral territory and thus shape their own national legal system, but there are many more peoples who have never been so fortunate or are not so today. Just by looking briefly at these concepts it is obvious it is not easy to recognise the rights of peoples, as they are set out in the Universal Declaration, within the context of international law.

All the while, two fundamental principles of international law are in competition. On the one hand there is the principle of state sovereignty which encompasses both the power of a state over its territory as well as over the persons living on that territory. On the other, there is the principle of equality of nations and the right of self-determination. This latter principle has been recognised both in the UN Charter as well as in the first articles of the International Covenant on Civil and Political Rights. The recognition of the rights of peoples and nations within the context of international law will help determine the relationship between the right of self-determination and the right of states to preserve their sovereignty

and territorial integrity. To date, international law has sought to strike the balance between these two principles through the enactment of rights for national minorities and their members.

If by «people» we mean not the population of a state but rather an ethnic group, then the issue of the rights of peoples is often the issue of the rights of national minorities and of how to safeguard the identity of unrepresented peoples who live in states founded by other peoples. Unfortunately, the first obstacle regarding national minorities is also related to their definition. There is no consensus on the definition of «national minority». This concept is not revealed even in the Council of Europe's 1995 Framework Convention for the Protection of National Minorities, which leaves the definition of minority up to each state party to the Convention. In acceding to this Convention, Estonia declared that it considers national minorities to be those Estonian citizens who live on the territory of Estonia, have longstanding and ongoing ties with Estonia, are distinguishable from Estonians based on their ethnic origin, culture, religion or language and who desire to collectively preserve the cultural traditions, religion or language that underlie their common identity. In so doing Estonia views national minorities in rather broad terms, but clearly excludes immigrants who do not have longstanding ties.

From the standpoint of the Universal Declaration on the Rights of Peoples and in particular of the issue of unrepresented peoples, it is important to emphasise that protection of the rights of national minorities is still limited by recognition of territorial integrity. Notably, the instruments of international law to which I referred are in the form of inter-state agreements, in which states have undertaken certain

obligations with regards to the peoples living on their territories. Thus, for example, the provision set forth in Article 3 of the Universal Declaration of the Rights of Peoples, which stipulates that the right of self-determination prevails over territorial integrity, exceeds the framework of obligations undertaken by states under international law.

One of the most important issues in this debate is undoubtedly the status of peoples and nations as subjects of law. Pursuant to Article 8 of the Universal Declaration of the Rights of Peoples, peoples have the right to obtain the status of subjects under international law through their representative organs. There is no doubt that states and international organisations are subjects of international law. Individuals also can be viewed as subjects of international law in so far as rights and obligations arising from the rules of international law are conferred directly on individuals. From this we could conclude that since there exist rules of international law that provide for the rights of peoples, then peoples can be regarded as subjects of international law. However, this immediately gives rise to the question of how to define «people» or «nation». From the perspective of a state it is simplest to define «people» as the permanent population of the state, with population in this context being one of the defining characteristics of a state. Yet this definition is not possible considering the topic of today's conference. When we speak of «people» as a community that shares a common identity based on origin, language and culture, we must inevitably figure out how to delimit this group. If a state is characterised by a defined territory and population, and if a state can be defined as a subject of international law based on this territory and population, then definition with

regard to a people is not nearly so simple, particularly where a people has no statehood. Evidently this is precisely why peoples and nations have yet to be recognised as subjects of international law.

The next problem we face is the binding force of rights and obligations, and the actual opportunities for exercising them. When discussing rights it is always important to scrutinise how the exercise of the rights is guaranteed in practice. This question arises both with regard to rights arising from natural law, as well as those accorded by states through legislation. Therefore, declaring a right is but half the battle. The preamble to the Universal Declaration of the Rights of Peoples begins by stating that the Universal Declaration of Human Rights is not yet universally respected in all parts of the world. Yet this Declaration was adopted by the most influential international organisation in the world, the United Nations. There is no implementing mechanism by which the declared rights can be guaranteed in actual fact. On a parallel note, regarding human rights, the system established by the European Convention for the Protection of Human Rights and Fundamental Freedoms is rightly deemed to be their most effective guarantor. The rights contained in the Convention are guaranteed through the right of every person whose rights have been violated to address a specially established international body, the European Court of Human Rights. It would, however, be far more complicated to create a similar system to defend the collective rights of peoples, as this raises the question of how to define «people» as the holder of collective rights, as well as of who has the right to represent a people in the protection of such rights. According to Article 6 of the Universal Declaration of the Rights of Peoples,

«all peoples have the right to organise and to form legitimate representative bodies». In practice, however, we must still decide how to judge whether such representative bodies are truly legitimate.

The Unrepresented Peoples and Nations Organisation represent peoples and nations who are not represented in the United Nations or who consider their representation to be inadequate. Thus, the Universal Declaration summarises, in concentrated form, the desires and aspirations of the individuals who are members of such peoples and nations, as well as their concerns and the injustice they have suffered or continue to suffer. The Universal Declaration with its wishes, aspirations, concerns and protests is of considerable significance on the international scene. The question is whether the declaration actually has any legal force and whether and to what degree the rights it lists are binding. Under international law the Universal Declaration does not have the same force as international treaties since it is a unilateral statement. In order to be legally binding, the rights and principles set forth in the declaration must be accepted by states. Formally, this would be possible by means of a convention. Unfortunately, it may be a little bit too optimistic to expect that the states of the world would be easily willing to adopt a convention that recognises something to be superior to their sovereignty and territorial integrity. The greatest obstacles to international acceptance are therefore Articles 4 and 5 of the Declaration, which establish that the right of self-determination is superior to the principle of territorial integrity. As I said earlier, recognition of peoples and nations as subjects of international law is foremost complicated by the difficulties of definition and the legitimacy of a people's representative

organs. Acceptance of the rights provided for in Article 13 would also mean the surrender of state sovereignty.

It is undoubtedly right that, by nature, every people and nation has the right to its own state, and every community has the right to self-determination and self-government as it sees fit. But it would be too much to presume that others will agree to this. The territorial integrity and sovereignty of states are not necessarily goals in and of themselves. Just as in existing states there are often conflicts between the people with statehood and the peoples without, such conflicts also arise when states disintegrate, divide or unite or when new states are created. Thus, in preserving their integrity, states may also be protecting the rights and interests of a people or peoples.

It is also noteworthy that the preamble to the Universal Declaration of the Rights of Peoples recognises that «in the history of humankind, peoples have endured longer than the states of the world.» Let's take the closest example. The Estonian nation, like many other small European nations, won its statehood for the first time only in the 20th century. The duration of our statehood is negligible when compared to the thousands of years that our people have lived on this land. Achievement of statehood in 1918 and becoming free in 1991 both required the existence of a strong nation. A strong nation means a strong common identity. A common identity in turn requires a common culture and language, as well as the opportunity to preserve them and, most importantly, develop them further. Culture is not what we find on display in a museum. Culture must live within the people.

Whereas in the context of international law it is problematic to accept the rights of peoples which

may threaten the current sovereignty and territorial integrity of states, the other rights set out in the Declaration have already been accepted at least on the international level. The cultural and social human rights conferred on all persons by birth as human beings amount, in the aggregate, to the collective rights of peoples. For these to be exercised, however, a nation above all needs a strong sense of unity and systematic efforts.

If we speak of rights, we could say that what is needed is the active exercise of the right of association. The right of association is one of the most important elements of democracy, without which there cannot be political democracy and no civil state. On the individual level, this right is one form of every person's right of self-realisation and freedom of expression. As such, the freedom of association is a vital precondition for each person's and every people's unhindered development as well as for the protection of their rights. For the right of association to be realised, the will of every person and the unanimity of the nation are needed. At today's conference as well as a couple of days ago at the Finno-Ugric World Congress, I have witnessed the speeches and opinions of many nations and peoples who do not have statehood. From witnessing these I am convinced that such will exists.

For the reasons I mentioned earlier this a scenario which is quite hard to put into effect that, in this stage of development in international relations and international law, the Universal Declaration of the Rights of Peoples or, more precisely, the rights contained therein, will become part of the written international law. Nevertheless, these rights may become part of the so-called «voluntary» international law, which

KEN-MARTI VAHER (ESTONIA)

is recognised in international practice and jurisprudence, but which is distinguished from treaty law due to its unilateral and autonomous nature. It is possible that unilateral statements, such as is the Universal Declaration, will become common in international practice and, in the long term and with wide recognition, perhaps even part of international customary law. The desire of human society and above all of today's unrepresented nations and peoples will be the key in shaping international law in this direction. Therefore – I wish you all a lot of persistence and wisdom on your way.

INDIGENOUS PEOPLES OF TAIWAN: CURRENT SITUATION

Chen Hsi-chung (Taiwan)

First of all, I would like to express my sincere gratitude for being invited to the UNPO conference in Tallinn. I have much pleasure to take this opportunity to present the condition of indigenous peoples of my country.

Currently there are roughly four hundred fifty thousand (450,000) indigenous people in Taiwan. However, based on the research of archaeology, anthropology and linguistics, it shows Taiwan indigenous people belong to the Austronesian family which spreads all over islands in Southeast Asia and Oceania.

According to an early Taiwan document, the Ching Dynasty differentiated Taiwanese people into three groups: Han people, mountain people and Pingpu people. Mountain people resided in the mountainous areas of east Taiwan. Pingpu people stayed in the plains area of west Taiwan and have been assimilated, more or less with the Han people.

During Japanese rule from 1896 to 1945, Taiwanese indigenous people included at least 19 ethnic groups. Nevertheless, nowadays there are 11 groups recognised as indigenous peoples by our government, including Atayal, Amis, Bunun, Puyuma, Paiwan, Rukai, Saisiyao, Thao, Tsao, Kavalan, and the Dao (Yami) which are isolated on the Orchid Island of the seashore of eastern Taiwan. Mountain people were recognised as minorities by the government before 1994. After the lifting of martial law, Taiwan's human rights have been encouraged and the sense

of multi-culture has been recognised by the general public. Therefore, after the third constitutional reform in 1994, mountain people were named formally «the Indigenous People» by the government. Moreover, President Chen Shui-Bian signed a «The New Partnership between Indigenous Peoples and the Taiwan Government» as guidelines during his 1999 presidential campaign, which uncovered a new era for indigenous peoples. This means our ethnic policy has set a new milestone for the respect of the rights of minorities.

The Council of Indigenous Peoples of Executive Yuan is held responsible for national affairs with regards to indigenous peoples and monitors the enforcement of relevant tasks, including promoting the living standards and dignity of indigenous peoples, strengthening the self-confidence and social status of indigenous peoples and preserving the cultural heritage of indigenous peoples. The Council was established on December 10, 1996. It consists of a Chairman, Commission of Committee, three Vice-Chairmen, General Secretary, Planning Department, Education and Culture Department, Hygiene and Welfare Department, Economic and Public Construction Department, Land Management Department, Personnel Department; Accountancy Department and the Bureau of Culture Park Management. Now the Chairman of the Council of Indigenous Peoples is Mr. Chen Chien-nian, 57 years old, a native of Puyuma a former Governor of Taiting County and former legislator.

In order to preserve indigenous peoples' cultures, to provide academic researches and exchanges and to collaborate with the development of tourism, «the Indigenous People's Culture Park» was established

in Pingtung County, the southeast part of Taiwan. The park plays an interpretative role as a window of indigenous peoples. It has made every effort to become a social culture centre for indigenous peoples. In «the Indigenous Peoples' Culture Park», there are tourists' service centre, food and beverage resort centre, cultural museum, handicraft gallery, audio and video hall, natural ecosystem classroom, special exhibition hall and a number of traditional architectures of eleven tribes of indigenous peoples. In addition, traditional singing and dancing of indigenous peoples are daily presented to the audience.

Earthquakes and typhoons often brought heavy damages to the livelihood of many indigenous peoples living in native regions of central Taiwan. The government of the Republic of China has mobilised its entire efforts to be involved in the reconstruction works for disaster regions. Our government provides residents in reconstruction regions with emergency assistance in the course of daily life, such as in-house care and food delivery, provides indigenous students with scholarships and funds to continue schooling, rebuilds the damaged roads, bridges, churches, electricity and water supply in the reconstruction region, relieves the dilemma of unemployment and develops local enterprises with native features. Our government also provides indigenous peoples' housing loans for building and renovation, middle/low income family housing aid for building and renovation, and sets temporary shelters for them.

With the effort of indigenous peoples, they have earned unprecedented respect in society. Furthermore, indigenous peoples have more autonomous powers. In the meantime they are encouraged to eagerly pursue self-management and collective

CHEN HSI-CHUNG (TAIWAN)

development. They are talented in singing, dancing and sports. An indigenous couple's singing was chosen as the theme for the Atlanta Olympic Games in 1996. Their beautiful songs are renowned all over the world. Nowadays the most popular singers, dancers and athletes of our country are indigenous peoples. The indigenous peoples have created a brand new opportunity and bring new vitality to Taiwan society.

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Tunne Kelam (Member of the European Parliament)

Chairman! Your Excellency the Representative of the Republic of Taiwan and all participants!

I am delighted to greet you as a fresh member of the European Parliament, which gives a new dimension to the activities of the Unrepresented Nations and Peoples Organisation, and as a member of the Estonian political party Pro Patria Union. The predecessor of this party, the Estonian National Independence Party, was established sixteen years and one day ago, in 1988, and at the time this name stood for everything: Estonia's independence which was considered to be a utopia but became a reality three years later exactly on the same day.

Estonia, having been unrepresented on the political map of the world for half a century, perhaps feels particularly close to the nations and cultures that are still unrepresented and have no certainty about the future of their language and culture or their national dignity.

In August 1972, i.e. already 32 years ago, one of the first appeals to the UN was made in Estonia as to the situation where Estonia was not represented. I had a chance, together with Mr. Kalju Mättik who is present here and has been a political prisoner, to participate in the writing of this appeal, which, of course, took place «underground». One of our key ideas was that the diversity of cultures and languages is the richness of the whole world. This diversity and difference

should be maintained and protected. Furthermore, each nation and each culture have the right to self-determination: this does not necessarily mean the political independence that already established states sometimes fear. This means being sure that the right of each ethnos to survive and to develop its language and culture is recognised and guaranteed and these rights can also be safely and publicly exercised. This is our common duty and responsibility.

Today's conference is particularly interesting and useful in terms of how the equal right of all peoples to self-determination can be implemented in practice. Estonia's way was to re-establish its independence based on international law and various UN declarations on human rights. We were successful and regained independence in a civilised and, luckily, peaceful way. I believe that Estonia can share its experience with other peoples.

As an MEP I would like to urge the European Parliament to work on these issues and establish a support group that could raise and consider the problems of unrepresented peoples and nations. The largest political group of the European Parliament, the European People's Party consisting of Christian Democrats and Conservatives, at the beginning of February made a very important resolution: a resolution condemning totalitarian Communism. This was the first event of the kind in the European Parliament where Communism was condemned along with Nazism. This condemnation is also essential to give many small peoples that suffered under a communist regime a chance to exercise their rights in a better way. One of our objectives is that the new European Parliament should take a clear position with regard to totalitarian Communism. I believe that this would create

much better and more realistic possibilities for small peoples to exercise their rights.

I have the honour to greet all the participants who have arrived from such faraway places and I hope that your fruitful work at this conference will provide great results! Thank you very much!

*Andres Herkel (Chairman of the Support Groups
of Tibet and Chechenia in the Riigikogu)*

Your Excellencies, experts and representatives of unrepresented peoples and nations!

It is symbolic that the conference on the rights of peoples is held here in Tallinn. As the guests know, the 13th anniversary of Estonia's re-independence was celebrated yesterday. However, Estonia's independence is much older. Thus, not so long ago Estonians also were an unrepresented nation and 13 years ago we certainly hoped that there would be more freedom in the former Soviet Union and other parts of the world. We hoped that the use of national languages would expand and that the peoples would be able to decide the key issues of their cultural and economic development independently and democratically and even become politically independent if they so wished. Unfortunately, we can see that no such positive developments took place in the former Soviet Union during the 13 years. The space of freedom has not expanded. If such a situation had existed in the Russian Soviet Empire when Estonia, Latvia and Lithuania regained their independence, it would

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have been much more difficult to do it than it actually was at the time.

The war in Chechnia, which is in fact a large-scale violation of human rights, is not just a war against the Chechen people who have borne irreparable losses – not only human loss but also economic and environmental loss. I think it has one more dimension. This war seems to be telling us: peoples, do not think of freedom, look what it may bring about! But the responsibility of any thinking individual is to protect his or her country's language and culture. The right of peoples to self-determination is not only a basic humanistic value. It is also one of the key categories of international law. Indeed, its practical implementation is associated with enormous problems. The concept of «unrepresented nations» that we use here contains paradoxes and controversy, even irony – irony towards the UN as most nations in the world are unrepresented. Even most of approximately six thousand languages are permanently in danger. However, we should be encouraged by the knowledge that the cultural richness of mankind has never been in unification and alignment. It has been and will be in the diversity of national and linguistic forms of existence. Our cultures should not become a museum exhibit in the backyard of a super-state. Our cultures should live. This is, no doubt, not just a matter of folklore studies but a deep political issue. I wish success to the conference and to all participants and speakers and long life to the peoples and nations! Thank you!

*Tiit Matsulevitsh (Chairman of the Support
Group of Taiwan in the Riigikogu)*

Your Excellencies, ladies and gentlemen, guests from faraway and nearby places, experts, all who have gathered here today to find answers to the questions that are on the agenda! First of all, to the questions why international law ignores the principle of the rights of peoples, why international politics, in its turn, ignores international law, why the rights of peoples and human rights set in charters and conventions, leave alone innumerable declarations that are passed almost every week at all levels, often remain just on paper, why do these documents step back before real politics and current political considerations? A renowned German law professor once asked what an empire meant. In the slightly cynical but very realistic opinion of this professor an empire is a state that can ignore international law without being punished. This definition is cynical and cruel but unfortunately in international practice it has proven to be true tens, hundreds and thousands of times.

Only 13 years ago Estonia also was an unrepresented nation and I would like this conference to make all Estonian politicians and decision-makers, all policy-makers not only in Estonia but throughout the world aware that the actual threat to stability and peace, the actual threat to our civilisation arises not when nations talk about their goals and when peoples formulate their national interests but when they do not do it or if they do it somehow messily or vaguely, based on current politics rather than on their national interests. I hope that this conference will not only be an exchange of information and ideas

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but will also have a message both for the nations that are unrepresented and for those that are so to speak represented. We should remember that if we do not protect the right of peoples to determine their life and future independently, we will abandon the principles, on which our state and our constitution are based. We are not a silent obsolete page in the book of time. I would like today's conference to forward this message to the world! Thank you!

*Enn Tarto (Estonian fighter for
independence and politician)*

Your Excellencies, ladies and gentlemen!

I am happy to participate in this conference and greet all of you. I have been a political prisoner in Communist concentration camps three times and already there I participated in cooperation between representatives of subjugated peoples. We dreamt that the Soviet Union would collapse. It happened. Estonia, Latvia and Lithuania managed to restore their independence but unfortunately not all peoples became free. There are many peoples that are not free both in the Russian Federation and the rest of the world. I hope that struggle for human rights and the rights of peoples will continue and I hope that the powerful of this world will understand that the good things that were done during the cold war cannot be abandoned but should be maintained, although the cold war is over and relations and power distribution between the states are different. I believe that Esto-

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nia has contributed to this just process and is going to do it further. Unrepresented peoples and nations have also made their contribution and today's conference is going to make its contribution. Thank you and good luck!

Appendix:

UNIVERSAL DECLARATION OF THE RIGHTS OF PEOPLES

Preamble

Whereas the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (jointly referred to as the International Bill of Human Rights) are universal and should be universally respected and implemented,

Whereas not all states respect human rights, including the right to self-determination of peoples, and the International Bill of Human Rights has not yet achieved universal implementation,

Whereas human rights cannot be fully realized without the recognition of the right to cultural, national, linguistic, and ethnic identity of individuals and peoples,

Whereas the coexistence of different peoples is a necessary condition for the preservation and development of all cultures, languages, and spiritual traditions,

Whereas the diversity of peoples, cultures, languages, and spiritual traditions constitutes the genuine richness of human existence, guaranteeing the continued survival and development of humankind,

just as preservation of the variety of natural species ensures continuation of life on Earth,

Whereas in the history of humankind, peoples have endured longer than the states of the world,

Whereas the attempts to force people to adopt new identities to suit the political objectives of states have led to violations of human rights and the rights of peoples,

Therefore, **the General Assembly of the Unrepresented Nations and Peoples Organisation** reaffirms the universal human rights and the rights of peoples as inalienable rights in international law and declares:

Article 1

All peoples have the equal right to self-determination. According to this right they freely determine their political status and freely determine their economic, social and cultural development. States shall respect this right and the principle of territorial integrity shall not unilaterally form an obstacle to its implementation.

Article 2

All peoples have the equal right to live in dignity and to be respected. It is the duty of all states to treat equally and justly all peoples living within their respective jurisdictions.

Article 3

All peoples have the right to their own abode, within their ancestral territory, where they can exercise their right to self-determination. Peoples shall not be expelled from their respective territories. These territories or portions thereof shall not be taken from them, annexed or otherwise altered by force or without the agreement of the people or peoples concerned.

Article 4

All peoples have the right to return to their own abode if they have been expelled therefrom or their territories have been taken in violation of Article 3.

Article 5

All peoples have the right to sovereignty over the natural wealth and resources within their territories. All peoples also have the right to intellectual property. They are obliged to respect the equal right to natural wealth and resources of all other peoples.

Article 6

All peoples have the right to organize and to form legitimate representative bodies. This may, if they so wish, include their diaspora.

Article 7

In accordance with the exercise of their right to self-determination, peoples should, if they so desire, exercise self-government and create appropriate organs for self-government within their territory.

Article 8

The right to self-determination includes the right to independent statehood where the exercise of the right to self-determination cannot be implemented without establishing an independent state.

Article 9

All peoples have the right to self-preservation and physical existence. Peoples with small populations shall not be involuntarily subjected to harmful demographic policies, such as population transfers and coercive birth controls.

Article 10

All peoples have the right to live in peace. States shall not use force against peoples peacefully exercising their right to self-determination. Peoples have the right to defend themselves against such use of force against them.

Article 11

All peoples have the right to security and international legal protection. They shall be protected against genocide and illegal use of force, including terrorism, against them.

Article 12

All peoples have the right to ecological security and protection of their natural environment.

Article 13

All peoples have the right not to allow the production, testing, storage, transportation and use of weapons of mass destruction, including nuclear, chemical and bacteriological weapons, on their territory and the right to strive for the demilitarisation of their territory.

Article 14

All peoples have the right to development as well as the right to preserve and develop their traditional way of life.

Article 15

All peoples have the right to self-identification and have the right to know, learn, preserve and develop their own culture, history, language, religion and customs.

Article 16

All peoples have the right to be informed about policies of the state and should be involved in discussions on an international level on matters that affect their existence and their rights.

Article 17

All peoples have the right to demand from state and international organisations the observance and protection of their rights, as listed in this Declaration.

Article 18

All peoples shall respect the equal rights of all other peoples and therefore abide by all the provisions of this Declaration with respect to all such peoples.

Article 19

The provisions of this Declaration should be interpreted in the context of the international law of human rights, including, in particular, the right to self-determination of peoples.

*Adopted by the UNPO VI General Assembly
In Tallinn, Estonia, February 17th, 2001*