

HISTORICAL BACKGROUND

I. KARENNI HISTORY AND POLITICAL DEVELOPMENT.

A. Description of Myanmar and of the Karenni.

Myanmar (formerly Burma), the westernmost country of Southeast Asia, is comprised roughly of two areas, the Irrawaddy Valley and a horseshoe of hills and mountains surrounding this central valley.³ Its still-underdeveloped economy is primarily agricultural, with rice as the economic mainstay, but forestry, fishing and mining in the mountain regions also contribute to that economy. Its population can be divided into two categories: the "plains" peoples, consisting primarily of the majority Burmans; and the "hill" peoples, consisting of several national groups, of whom the Karenni are one.⁴

Among the various peoples of Myanmar, the Karenni are, with the Mon, perhaps the oldest, having migrated from China in the sixth or seventh century, making them the indigenous group in the present day territory of Myanmar. Four hundred years after this migration, the Burmans migrated from China and then rose to power, annexing the central valley formerly held by the Mon and uniting most of the rest of country. The Karenni territory was not part of this unity, and the Karenni people were never ruled by the Burmans. Instead, the Karenni maintained their own distinct culture and language, as well as an antagonism towards the Burmans that has continued to the present day. In fact, Burman political history, until the conquest of the country by the British at the end of the nineteenth century, was marked by endless struggles between the Burmans and their indigenous neighbors, including the Karenni and other Karen groups.

B. History of Karenni Independence Up To 1948.

The history of Karenni separatism and independence up to the end of the British colonial period in 1948, when Burma achieved its independence, is well-documented, and was summarized by a secret report, in the form of a letter from a

³The sources for this background information are Encyclopedia Britannica (1961) and Encyclopedia Americana (1991).

⁴The Karenni are actually a smaller, autonomous group of the Karen, an indigenous nationality that currently occupies the Kayah state of Myanmar. In the Karen language, the word "Karenni" means "red Karen", a reference to their preferred color of dress. The interests of the Karen and Karenni are similar but distinguishable, and with few exceptions, this memorandum will discuss them separately.

Mr. H. Stevenson⁵, entitled "Relation of the Karenni States to Burma," located in the India Office records in London.⁶ This document reveals that in 1846, six years before the second of three wars between Burma and Britain which resulted in the British annexation of Burma, the Karenni were an independent people. In 1857, a Mr. O'Riley, a British official, stated to a western Karenni chief that the British regarded the Karenni as an independent power (this same gentleman, however, observed that an Eastern Karenni chief considered himself and his people to be subjects of the King of Burma). In 1874, the government of India (then British) expressed the view that the Western Karenni should remain an independent power, and in 1875, signed a treaty with a representative of the King of Burma agreeing that neither side would claim sovereignty over the Western Karenni.

The 1875 treaty was breached in 1891, when the British Indian government issued edicts to the Karenni chiefs propounding to bring them under British rule. Under this plan, the Western Karenni chiefs were to be "feudatories" of the British government although not part of British India. Additional proposals in 1918 and 1920 to bring the Karenni within the governance of India were considered but rejected. In 1926, after reviewing the history of the negotiations with the Karenni, the British government concluded that the Karenni States could not be forced into the federation with the Shan States⁷, but that the Karenni States would be "encouraged" to join through a process of "financial starvation."

⁵Stevenson served in the British "Frontier Areas", which included Karenni traditional lands, before World War II; was the commander of the Oriental Mission in Burma from 1941 to 1942; and was the Frontier Areas Director after the war. Although Stevenson did not support the formation of a separate Karenni state, he did support the Karenni movement for recognition, developing a plan that would have granted such recognition of the Karenni as part of an independent Burma. This plan was rejected by the British. See Klein, The Karens of Burma -- Their Search for Freedom and Justice, 18-24 (1992)(an unpublished manuscript).

⁶ This is an internal document containing several references to various British officials in Southeast Asia that are not explained. Mr. Stevenson clearly assumed that the reader would be familiar with these references. Where these references to specific people are unclear, this paper refers to them as "British officials."

⁷The Shan are another national group in Burma that at that time had formed an alliance with the British.

Stevenson next observes that in 1939, the British government were faced with the question of whether the British Governor in Burma had the power to enact a tax on the Mawchi Mines, located within Karenni territory, that would accrue for the benefit of the Burma government. The Governor decided that, although he had the power to enact a tax on the mines, he did not have the power to legislate for the Karenni States as broadly "as may seem expedient to him," and therefore the separately administered Burma government could not get hold of the tax. This same dispatch observed that the British government could not, at that time, contemplate the annexation of the Karenni States because of the undesirable and embarrassing publicity that would result. It is clear from these records that neither the Karenni people nor their territory had been incorporated into British Burma before World War II.

Discussion on Karenni status continued during the war years. For example, Stevenson cites an official in the British Reconstruction Department in Southeast Asia who noted in 1943 in a government file that getting the Karenni Chiefs to join the Shan States Federation voluntarily was politically

"the easiest way, as it involves the least derogation from their sovereignty . . . I am personally quite satisfied that the best course on moral grounds is to persuade these Karenni chiefs to sacrifice their nominal independence either by joining the Federation or joining separate Karen residency along with [another] [d]istrict."

Stevenson also cites another official who writes in the same file that the Karenni Chiefs probably would not join the Federation voluntarily and that their territory may need to be forcibly annexed, asking, "Would it not be better to have a clear cut now, even though this may not appear to be ethical?"

Stevenson's letter illustrates several key points. Stevenson concludes, after setting out the summary of the status of Karenni independence in 1946, that "the present day Karennis need some convincing before they will agree to join the Frontier Areas," and that they should be so convinced by the British government. This conclusion, along with the summary itself, demonstrates that the Karenni historically maintained their independence from the Burmans (even though many British officials deemed this independence nominal), the British themselves saw the Karenni as a separate group from the Burmans, and that Karenni territory was never annexed into part of Burma. Regardless of the dominance that Britain felt it had but never exercised over the Karenni, this power was assumed to be separate from the power it exercised over Burma. This independent status was changed, however, during the Burman drive for independence from Britain and in the years that followed.

C. Karenni Independence Since 1948.

The British intention that the Karenni States be subsumed within Burma became clear during the negotiations between Britain and Burma by which Burma achieved independence.⁸ During World War II, a group of Burmans formed the Anti-Fascist People's Freedom League ("AFPFL"),⁹ led by Aung San, the former chief executive officer under the British Governor. After forming a broad-based coalition of Burmans, an AFPFL delegation met with British Prime Minister Atlee, who outlined steps to independence for Burma. Later, the AFPFL met with ethnic nationality leaders to obtain support for independence. Only the Karens¹⁰ objected to the formation of a federal union. In February 1947, Aung San issued a statement that the AFPFL was ready to grant the frontier areas internal autonomy and even eventual secession if they would agree to the formation of the union. The Karenni, however, were unlikely to agree to such a union, so the British government established a Frontiers Area Commission of Enquiry ("FACE") which was to draft a report to London on the Karen position.

This report, as the writings of several British officials show, was at best a misrepresentation of Karen opinion designed to further Britain's own interest in including the Karenni in

⁸ The source for the information regarding the independence process is to be found in Klein, op. cit. Harold Klein, the son of Christian missionaries to the Karen, grew up among the Karen people. In this manuscript, he indicates that until recently, and certainly at the time of the end of British rule, the Karen and the Karenni agreed to a common goal of independence from Burman or British Burman rule. The fact that the Karen people may now pursue their goals by supporting the pro-democracy movement in Burma is irrelevant to Karenni claims nor any indication that the Karen may not be able to reinstate sovereignty claims.

⁹ The AFPFL had a checkered past. Originally formed with the cooperation of the Japanese occupation government, it apparently collaborated with the Japanese during World War II, and was indirectly responsible of atrocities committed against the Karenni people. The Karenni themselves were exceptionally brave "guerilla" fighters for the British, even preventing a Japanese attempt to regroup and mount a counteroffensive towards the end of the war. The AFPFL's early involvement ironically also negatively affected the later political development: an early player, General Ne Win, subsequently lead the military coup in 1962 that put Burma under military rule until the present day. See Klein, op.cit.

¹⁰ In this case, the reference to Karens includes the Karenni, given the history that this section describes.

the new independent Burma. The report cited the opinion of a minority of Karens, and ignored the opinion of the Karen National Union (KNU) which represented the majority of Karens. In the case of the Karenni, this misrepresentation was all the more egregious since the appendix to the report contained testimony by the Karenni representatives clearly stating the Karenni insistence on sovereignty.¹¹

While Burma pressed for independence, the Karenni continued to resist incorporation and sought to maintain their independence. In September 1946, all of the chiefs and elders of the Karenni States met and formed the Council of the United Karenni Independent States, the purpose of which was to preserve and maintain the sovereignty and legislative power of free and independent Karenni States, and to establish a smoother relationship with Great Britain.¹² Meanwhile, although Aung San and Prime Minister Atlee agreed to include all of the frontier areas in the discussion of independence, the United Karenni Independent States was left out of many discussions on the proposed constitution of Burma following Aung San's assassination.¹³

After the representatives of the Karenni Supreme Council boycotted the readings of the draft constitution, the British and the Burmans went ahead with those proceedings anyway, the Burmans replacing the legitimate Karenni representatives with AFPFL members who agreed to the draft constitution on behalf of the Karenni without their knowledge or consent. The British, anxious to conclude the Burman independence proceedings, passed the Burma Independence Bill even though their representatives in Burma knew this switch had been made, and that the Constitution had been adopted over the opposition of the Karenni.¹⁴

¹¹As part of his testimony, Karenni representative U Bi stated: "[w]e have been independent all along, Sir. . . .We have real independence, but we cannot exercise it because we are weak." The Karenni further presented a statement of their aspirations, which included the intention to remain apart. Unfortunately, the British government ignored these aspirations, although they clearly knew them. Frontier Areas Committee of Inquiry, Report Presented to His Majesty's Government in the United Kingdom and the Government of Burma, Part II, 107-211 (1947).

¹² Karenni Provisional Government, The Karenni Papers, 14.

¹³Harold Klein speculates that Aung San's insistence on granting autonomy to the ethnic peoples in Burma was a reason for his assassination.

¹⁴The passage of the Bill by the British was also in violation of the 1875 Treaty with the Burmans that Western Karenni was to remain an independent state.

In spite of the intentions of the British and the Burmans, the Karenni intention to maintain independence could not be avoided, not the least because it would have involved a costly war of subjugation. Accordingly, the 1947 Constitution recognizes the right of secession of the Karenni States after a ten year period.

The Karenni have resisted the Burmans to the present day. Following the imposition of military rule in Burma by the Communist government in 1962, the Karenni joined the National Democratic Front (NDF), a coalition of ethnic minorities and supporters of democracy in Burma that mounted both political and military opposition to the ruling government. However, the Karenni grew impatient with the political agenda of the NDF and reassessed their own political goals. As a result, in 1987 the Karenni Congress established the Karenni Provisional Government in order to fully exercise Karenni sovereignty rights.

II. MYANMAR, THE KARENNI AND THE CURRENT SITUATION

The hostilities between the Karenni and the Burmese government have escalated in recent years, and the efforts of the government to eliminate the Karenni independence movement have become appalling. This new repression has coincided with efforts by the Burmese regime to suppress pro-democracy supporters, especially that of the National League for Democracy, and indeed all political activism aimed at improving the human rights situation in the country.

A. The State Law and Order Restoration Council

In 1988, General Ne Win, the leader of the military government, was forced to resign in the face of massive anti-government demonstrations. He was replaced by General Sein Win, who himself resigned on August 12, 1988. Civilian Maung Maung then assumed the presidency. On September 18, 1988, the military overthrew Maung Maung and his new government, and Burma, now known as Myanmar, was once again a military state, under a junta calling itself the State Law and Order Restoration Council (SLORC).

The new military government abrogated the old constitution, severed all ties with the old regime, and promised to hold elections once law and order was established. The SLORC regime announced that it would remain in office until the national elections that were to be held in May of 1990. However, although the election took place as scheduled, the SLORC did not announce a timetable for the withdrawal of military rule and remains in power.

Brutality and systematic human rights violations by the SLORC regime are well documented. Thousands of critics and opponents of the government have been detained without trial or imprisoned since the SLORC took power, including Aung San Suu Kyi, winner of the Nobel Peace Prize and the General Secretary of the National League for Democracy. She was denied the opportunity to run in the general election and who has been under house arrest since 1989. Once detained, many political prisoners are tortured.¹⁵

SLORC counter-insurgency groups operating in Karenni and Karen territory have, at least since 1984, carried out "widespread torture and summary and arbitrary executions."¹⁶ In the Kayah (formerly Karen) State, witnesses have testified to the seizure of Karenni villagers as porters for the army, carrying ammunition and food. Those who are forcibly conscripted often are mistreated: porters are poorly fed and provided for; and are beaten, stabbed and killed or left to die simply for falling behind under their heavy loads.¹⁷

Further, under the guise of preserving law and order, the SLORC has been depriving the Karenni of their natural resources and their livelihoods, and moving and destroying entire Karenni villages. When the Burma government nationalized the Mawchi Mines in Western Karenni, once the largest wolfram mine in the world, it brought in landless Burmans to work the mines, depriving the Karenni of jobs they held since the time of the British occupation. Migrants from central Burma snatched up land which belonged to the Karenni following the land nationalization program initiated by the regime. Further, the commanding officer of the regiment stationed near the Mawchi Mines recently issued the order that, since certain Karenni villagers in the area were cohorts of the ethnic insurgents, all residents of villages had to leave their homes, and the vacant areas were then to be classified as lands of terrorists. Following the forced evacuation, which ended on March 31, 1992,

¹⁵ Amnesty International, 'In the National Interest:' Prisoners of Conscience, Torture, Summary Trials Under Martial Law, 27-46 (1990). This document describes in detail many egregious human rights violations committed against the people of Myanmar by the SLORC.

¹⁶ Id. at 7.

¹⁷ Amnesty International, The Kayin State in the Union of Myanmar (Formerly the Karen State in the Union of Burma): Allegations of Ill-Treatment and unlawful Killings of Suspected Political Opponents and Porters Since 18 September 1988 (1989). These allegations also have been made by the Karenni themselves. See Karenni Provisional Government, Karenni Manifesto and Karenni History, 5 (1992).

the army burned the villages.¹⁸ It has become clear, then, that not only has the Myanmar government refused to recognize the Karenni claims of sovereignty, it also has adopted a brutal program of repression bordering on the genocidal.

B. The Armed Conflict

The Karenni people have been at war with the Burmese Army for more forty years, taking up arms to defend themselves following the assassination of Karenni leader U Bee Tu Re in 1948 by the 13th Union Military Police.¹⁹ At that time, the Military Police had begun to attack Karenni villages in spite of promises made during the 1947 constitutional process and the recognition in the 1947 Constitution that the Karenni people had a right of secession after a ten year period.

The Myanmar Army attacks on the Karenni and Karenni armed resistance have increased since the 1988 demonstrations and the creation of SLORC. One clear factor in the regimes attacks against the Karenni has been the influx of student and other protestors from the cities into Karenni territory, where Karenni fighters can provide some security. Another factor frequently presented is the regime's practice of using civilians for porters, enabling the Army to enter into otherwise prohibitively rugged areas defended by Karenni troops.²⁰

The Myanmar Army's main military strategy appears to be to burn villages, forcing the inhabitant to flee in an attempt to dissipate local support for the Karenni armed forces and leaving their lands open for seizure. Direct confrontation with the Karenni forces also occurs, but even with the vastly superior

¹⁸ Aung Than Lay, Population Expulsion in Karenni States, April 2, 1992. This document, prepared by the Vice President of the Karenni Provisional Government, is a special circular describing the dislocation of Karenni villagers that recently has taken place.

¹⁹ A Karenni letter to the United Nations states: "In retaliation [for the assassination of the patriotic Karenni leader] the Karenni people restored to arm[ed] rights across the state in the legitimate struggle for self-determination which has continued until the present day." Karenni Provisional Government, Karenni Manifesto and Karenni History at p. 22.

²⁰The Karenni also claim that the involvement of what was West Germany, especially its Fritz Werner Company which as armed the regime's army and has set up munitions facilities in Burma, is also a factor in increased military activity against Karenni forces.

numbers, the Myanmar Army has been unable to win decisive battles.

THE LAW

Any claim for sovereignty in the modern world invokes both law and politics. The law has become prominent because of the new standards for international affairs inherent in the Charter of the United Nations and binding on the international community. Karenni claims of sovereignty can be supported by three areas of international law: the law of self-determination, humanitarian (armed conflict) law and the general law of human rights.

I. THE LAW OF SELF-DETERMINATION

The Karenni people and their political leadership invoke the principle of self-determination in their efforts to secure independence and sovereignty. There are serious political difficulties with application of self-determination to the Karenni situation as the following section will show.

A. Definition of the Right to Self-determination.

Self-determination is a collective right of a people to choose their political status and to pursue their economic, social and cultural development freely without interference from outside powers.²¹ Self-determination is one of the fundamental principles of international law and of the Charter of the United Nations.²² Its importance as a fundamental principle is underscored by its appearance in article 1 of each of the two major international human rights treaties, the International Covenant on Civil and Political Rights²³ and the International Covenant on Economic, Social and Cultural Rights.²⁴ Although it began as a right of developing nations to be free from European colonialism, the right to self-determination now arises

20. A. Critescu, *The Right to Self Determination* at 32, U.N. Doc. E/CN.4/Sub.2/404/Rev.1, U.N. Sales No. E.80.XIV.3 (1981).

²²Article 1 of the U.N. Charter identifies respect for the principle of self-determination of peoples as one of the purposes of the U.N. The principle was reinforced by the General Assembly in its resolution 1514 (XV)(1961): Declaration on the Granting of Independence to Colonial Countries and Peoples.

²³999 U.N.T.S. 171 (1967).

²⁴999 U.N.T.S. 3 (1967).

from other forms of colonialism, neo-colonialism, alien domination and racist regimes.²⁵

The right to self-determination has been subject to careful scrutiny in two important reports prepared by two United Nations Special Rapporteurs, Hector Gros Espiell and Aureliu Critescu.²⁶ Both rapporteurs analyze international practice and instruments relating to the right to self-determination, and although each rapporteur addresses the issue from different mandates, they concur regarding the basic elements of the right to self-determination.

B. Self-Determination and "Peoples"

Application of the right to self-determination generally requires that the claimants be "peoples" as defined by international law.²⁷ In international law, "peoples" have (1) identifiable territory and a history of sovereignty with that territory;²⁸ (2) a shared "common desire to establish an entity

²⁵See United Nations General Assembly resolution 3103: "The struggle of peoples under colonial and alien domination and racist regimes for the implementation of their right to self-determination is legitimate and in full accordance with the principles of international law. See also Protocol Additional I to the Geneva Conventions of 1949, Article 1, 1125 U.N.T.S. 3 (1977), expanding the rules of international armed conflicts to include "peoples fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right to self-determination".

²⁶ Critescu, *op.cit.*, and H. Gros Espiell, The Right To Self Determination: Implementation of United Nations Resolutions, U.N. Doc. E/CN.4/Sub.2/405/Rev.1, U.N. Sales No. E.79.XIV.5 (1980). All references to either Mr. Critescu's or Mr. Gros Espiell's work are to these two important documents.

²⁷The International Court of Justice decided that the principle of self-determination is a right held by peoples. *Western Sahara Case*, 1975 I.C.J. 12, 31.

²⁸In the case of the Palestinians, the international community grants them the right to self-determination based on their right to territory yet to be delineated.

capable of functioning to ensure a common future";²⁹ and (3) a common language, traditions, and culture.³⁰

Given the current state of international law, merely being an ethnic group in a larger state is not sufficient to support a sovereignty claim. For the most part, ethnic groups are referred to as "ethnic minorities" and do not have self-determination rights. The Karenni people are almost universally regarded as an "ethnic minority" by the international community except for some who now regard them as "indigenous peoples". (See the next section).

Much of the problem regarding self-determination for many groups is a direct result of the tendency of the colonial powers to have created unitary states out of separate, ethnically or politically based smaller independent nations. When the colonial power left, the international community generally recognized the unitary state, assuming, usually incorrectly, that the ethnic components of the unitary state agreed to the unity.³¹ Because of the many States in this situation, a claim by an ethnic group in any of them for sovereignty is met with extreme hostility.

As a reflection of this animosity, Mr. Critescu sets out the international view that the territorial unity and integrity of independent states must be protected in spite of the serious problems for the effected peoples in these unitary States. Under this widely-held view, self-determination cannot be raised to violate that unity and integrity by encouraging secession of "ethnic" or other groups.³² There are, fortunately some small breaks in this solid wall of resistance: Mr. Gros Espiell points out a growing tendency to qualify the denial of the right to secession and allow secession rights in situations where "the

²⁹Gros Espiell, op.cit. at para. 56.

³⁰This last category of common language, traditions and culture may be viewed as optional in circumstances of a foreign invasion of an ethnically diverse nation.

³¹An exception was the situation of Kashmir, to which the United Nations granted the right to a plebescite to determine its status. The United Nations has not held the plebescite because of occupation and annexation of much of Kashmir by India, and the unwillingness of the international community to challenge India.

³² Critescu, at p. 40.

association in question had been accomplished illegally against the wishes of the people concerned." ³³

C. Self-determination and Racism.

Another indication of the growing awareness of problems inherent in attempts to maintain the unitary states created by colonial powers is the realization that a majority ethnic group in the unitary state is likely to act on its long-held animosity toward peoples who are now "minority" groups under their power. The result is frequently a pattern of oppression and discrimination. This has been painfully apparent in a number of states such as Sri Lanka, where the Sinhala ethnic majority has denied rights of the Tamil minority; and many African states, where tribal animosity has led to nearly constant states of war. There has also been intense concern over the racist policies of the South African regime, especially if policy of apartheid.

Primarily because of the concerns of racism in South Africa, the international community (mostly through action at the United Nations) created a right to self-determination arising from racism. So far, it has only been applied to South Africa and Namibia under South African control in any meaningful way. Passing gestures to racism are made by diplomats regarding some other groups in other countries such as Sri Lanka, but without acceptance of the legal right to resist based on the racist policies. In other words, the situations are described as "racism" not "racist regimes" and there is no recognition that the situation is sufficiently bad to warrant a call to self-determination.

C. Self-determination and Indigenous Populations

Ethnic groups not meeting the definition of "peoples" may qualify as indigenous populations rather than be considered mere minorities. An indigenous population is one that has an historical continuity with pre-invasion and pre-colonial societies that developed on their territories, and, consequently, consider themselves distinct from other sectors of societies now prevailing in those territories.³⁴ While this

³³Gros Espiell at para.43. In paragraph 44, Gros Espiell indicates a claim to national unity may be based on "legal fictions which cloak real colonial and alien domination."

³⁴ The term is defined by Mr. Jose Martinez Cobo, Special Rapporteur of the Working Group on Indigenous Populations, a working group established under UNESCO. See J. Martinez Cobo, (continued...)

status does not give rise to full self-determination or sovereignty rights, indigenous peoples' rights as they are now developing in international law at least includes the concept of a right to partial self-determination. The right includes:

1. The right to possession of traditional lands;
2. The right to the protection of these lands, wildlife and natural resources against deterioration or destruction;
3. The right to maintain traditional ways and economic structures and styles of life and livelihood, including traditional ways of religion, family life, fishing, hunting and gathering;
4. The duty of the State to obtain prior consent of the indigenous peoples before any substantial action involving them or their lands and resources.³⁵

International recognition of the serious problems of indigenous populations led to the formation of the Working Group on Indigenous Populations of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities with a mandate to prepare a Declaration on the Rights of Indigenous Populations. This document, still in process, should further enhance the rights of indigenous populations, including a further enhanced concept of partial self-determination.³⁶

³⁴(...continued)

Study of the Problem of Discrimination Against Indigenous Populations at p. 29, U.N. Doc. E/CN.4/Sub.2/1986/7/Add.4, U.N. Sales No. E.86XIV.3 (1987).

³⁵See International Labour Organisation Convention 169 (Indigenous and Tribal Peoples Convention, 1989); the March 26, 1990 decision of the United Nations Human Rights Committee on Communication 167/1984 (Ominayak v. Canada), U.N. Doc. CCPR/C/38/D/167/1984; and Case 7615, Inter-American Commission on Human Rights (1985)(the Yanomami case).

³⁶The present draft reads: "Indigenous peoples have the right to self-determination, in accordance with international law. By virtue of this right, they freely determine their relationship with the State in which they live, in a spirit of co-existence with other citizens, and freely pursue their economic, social, cultural and spiritual development in conditions of freedom and dignity." U.N. Doc. E/CN.4/Sub.2/1991/40/Rev.1 (Annex II at p. (continued...))

However, even the Working Group text fails to grant total sovereignty.

D. Elements of the Right to Self-determination.

The right to self-determination has a number of elements necessary in order for the right of self-determination to be fully effective. These elements include, political, economic, social and cultural rights.

1. Political rights.

The first element is the right of peoples freely to determine their political status. Mr. Critescu states that "[t]he principal meaning of self-determination is the establishment of a sovereign and independent State -- the right to independence of peoples which aspire to it but do not possess it." This right to independence has two components: the right of every people not to be exchanged or ceded against its will, and the positive right of a people to form part of the State of its choice or to form an independent State.³⁷

If a people has the right to self-determination, that people also have "the inherent right to struggle by all necessary means at their disposal against colonial Powers which suppress their aspiration for freedom and independence."³⁸ Any attempts to suppress such a struggle is incompatible with the Charter of the United Nations, as well as other international agreements.

2. Economic rights.

The right of peoples to pursue their economic development is also an essential element of the right of self-determination, and provides the ability to achieve and maintain political independence. The United Nations General Assembly has affirmed the right of peoples freely to control their natural wealth and

³⁶(...continued)

32). The 1992 session of the Working Group (July 1992) may result in a final version of this text.

³⁷Critescu, at p. 47.

³⁸ Programme of action for the full implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, Resolution 2621 (XXV).

resources.³⁹ The legal regime controlling resources must be established in accordance with the will of those peoples who have a right to exercise this exploitation. Further, this permanent sovereignty over natural resources is vested in peoples themselves whether or not they have achieved their independent status:⁴⁰ economic rights prohibit all forms of foreign economic exploitation.

3. Social Rights.

An increasingly important element of the right to self-determination is the right of peoples to freely pursue their social development. Such development can only be achieved if the obstacles of war, exploitation, inequality, colonialism and racism are eliminated. Social rights include the freedom from racial prejudice and against the exploitation of labor; the protection against torture and other cruel, inhuman and degrading treatment; and the right to housing, social security and education.⁴¹ Social rights also encompasses raising of the material and spiritual standard of living, the protection of health and the eradication of hunger.

4. Cultural Rights.

An element of self-determination the right of peoples to protect their traditional ways and to pursue their own cultural development their own way. Like the right to social development, the right to cultural development implies the right to labor and education, and to an active participation in the sustaining the community's spiritual and material values. The right to cultural development requires the right of every member of a culture to freedom of opinion and expression, and to a democratic form of government.⁴²

³⁹General Assembly resolution 1514 (XV). The resolution is reinforced by The Charter of Economic Rights and Duties of States, General Assembly resolution 3281 (XXIX).

⁴⁰ Critescu at p.78.

⁴¹ Critescu at p.93.

⁴²The importance of the cultural rights of indigenous populations is reinforced by Communication 167/1984 (Ominayak v. Canada) cited above. In this case, Canada was found to violate the cultural rights (protected by Article 27 of the International Covenant on Civil and Political Rights) of Canadian Cree Indians of the Lubicon Lake Band by allowing mineral and petroleum exploitation on the Band's traditional
(continued...)

E. The Karenni Case for Self-determination.

1. The Karenni are a "people" for purposes of self-determination.

Karenni history strongly supports a claim of self-determination because the Karenni can meet the test to be a people: they have an identifiable territory and a history of sovereignty in that territory; they have a common desire for independence and have demonstrated a willingness to fight for it; and they have a common language, culture and traditions. The Karenni arrived in Myanmar long before the Burmans, were never historically conquered or ruled by the Burmans. Their lands were never assimilated into those ruled over by the Burmans, and therefore they cannot be considered a minority within a Burman state. The Karenni have continually asserted their own independence.

Karenni claims to self-determination are enhanced by the historical deception of the Burmese and the British in passing the Burmese Independence Bill. In this respect, the Karenni meet the situation of an illegal association against the wishes of the people in question set out by Mr. Gros Espiell. In this sense, then, national unity is truly based on "legal fictions which cloak real colonial and alien domination" -- in this case the attempted domination of Karenni States by the Myanmar regime.

Karenni claims to self-determination are further enhanced by the provision in the 1947 Constitution allowing the Karenni to secede if they wished after a ten year period. In spite of the Constitution, the plebiscite to determine the Karenni choice was never held.

2. The Karenni are an indigenous population.

While meeting the test as a "people" more strongly supports a claim to complete independence, the Karenni could also claim rights as an indigenous population. No other group can claim prior occupancy of Karenni lands, and the Karenni have continuously occupied these lands. They pre-date the Burmans in Myanmar. Under the status of indigenous people, the Karenni could claim all rights inherent in the partial notion of self-determination that applies to indigenous people.

⁴²(...continued)

territories. This case is one of the most significant in international law regarding indigenous peoples.

3. The Karenni right to self-determination has been violated by the Myanmar government.

As a people capable of asserting their right to self-determination, the Karenni have the right to determine their political status, pursue their economic, social, and cultural development. Each of these rights has been and continues to be violated, both by the British government during Burma's colonial period, and by the current Myanmar government. Because the Karenni have the right to determine their political status, they have both the right to form their own independent state, and the right not to be forced into political arrangements against their will.

During the colonial period, the British government began its relations with the Karenni by recognizing their independence under the 1875 agreement. However, by the end of their governance of Burma, they, along with the AFPFL, conspired against the Karenni by creating an independent Burma that included the Karenni against their will. Since then, the successive governments in Myanmar consistently have refused to allow the Karenni to form an independent state. The Karenni, therefore, have not been allowed their right to determine their own political status.

The Myanmar regime has also violated Karenni rights to pursue their own economic development. Although their lands contain several large and potentially profitable mineral deposits and mines, the Karenni have not been allowed to work them. Rather, the Myanmar government has given mining jobs to Burmans who have moved up from the valley. The Karenni have not been allowed to exploit their own natural resources, a right granted to them as a part of their right to self-determination. Finally, the Karenni have not been able freely to pursue their social or cultural development. The Myanmar government has moved them off of their lands and out of their villages, it has, through the army, forced Karenni villagers to work as porters under conditions that amount to slavery, and it has initiated a program of detention without arrest and torture against many of the ethnic minorities in Myanmar, including the Karenni. Under these conditions, the Karenni are unable to develop either socially or culturally.

4. The Regimes' Denial of Karenni Self-determination is Invalid.

The Myanmar government makes three arguments against the Karenni right to self-determination. First, the regime claims that the Karenni are merely an ethnic minority, and therefore do not have any such right. According the regime, it has the right to Karenni lands in law as they claim on paper. Second, the Myanmar government argues that they obtained Karenni lands

legitimately from the British and with the agreement of the Karenni themselves. Burma and then Myanmar has characterized its actions against the Karenni as necessary to protect their right to maintain their own territorial integrity. These argument must fail in light to of the historical facts and law set out above. In particular regarding the second Burmese claim -- the United Kingdom could not legally give the Karenni lands to the new independent Burma. It would defeat the basic concept of self-determination if the colonial power defined the successor States or if the colonial power had the legal right to extinguish self-determination rights for peoples.

As a final argument, the Myanmar regime argues that their own domestic laws allow the repression of the Karenni, and that they have not agreed to recognize or support the right of self-determination in the international community. This argument also must fail. First, as signatories of the United Nations Charter, the Myanmar government has agreed to support the right of self-determination as set forth in that document and explained more fully in subsequent resolutions. The fact that the Myanmar government has not ratified any subsequent human rights treaties does not relieve them of their obligations under the Charter.

Second, even if the domestic laws of Myanmar allow such acts, those domestic laws are in violation of binding international standards. In conclusion, the Karenni, a sovereign people with the right to self-determination, have been denied their rights under international law by the Myanmar government in a consistent and brutal fashion. The Karennis' rights must be recognized by the international community, and the Myanmar government must end its violations of those rights.

II. HUMANITARIAN LAW

The Karenni people have been engaged in an armed struggle against successive regimes in Burma for much of the post-colonial period. The international community does not always recognize the existence of wars, and accordingly may treat combatants as "terrorists". In spite of that, humanitarian law is automatically invoked by war meeting the conditions set out below. Application of humanitarian or armed conflict law to the Karenni war against the Myanmar regime may enhance Karenni claims to self-determination and help generate international will to support resolution of the Karenni political situation according to the wishes of the Karenni people and to provide immediate aid to the Karenni people.

A. Sources of Humanitarian Law