

New approaches to minority protection



NEW APPROACHES TO MINORITY PROTECTION

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MINORITY RIGHTS GROUP

Minority Rights Group works to secure rights and justice for ethnic, linguistic and religious minorities. It is dedicated to the cause of cooperation and understanding between communities.

Founded in the 1960's, Minority Rights Group is a small international non-governmental organisation that informs and warns governments, the international community, non-governmental organizations and the wider public about the situation of minorities around the world. This work is based on the publication of well-researched reports, books and papers; direct advocacy on behalf of minority rights in international fora; the development of a global network of like-minded organizations and minority communities to collaborate on these issues; and **the challenging of prejudice and promotion of public understanding** through information and education projects.

Minority Rights Group believes that the best hope for a peaceful world lies in **identifying and monitoring conflict** between communities, **advocating preventive measures** to avoid the escalation of conflict and **encouraging positive action** to build trust between majority and minority communities.

Minority Rights Group has consultative status with the United Nations Economic and Social Council and has a worldwide network of partners. Its international headquarters are in London. Legally it is registered both as a charity and as a limited company under the United Kingdom Law with an International Governing Council.

THE PROCESS

As part of its methodology, MRG conducts regional research, identifies issues and commissions reports based on its findings. Each author is carefully chosen and all scripts are read by no less than eight independent experts who are knowledgeable about the subject matter. These experts are drawn from the minorities about whom the reports are written, and from journalists, academics, researchers and other human rights agencies. Authors are asked to incorporate comments made by these parties. In this way, MRG aims to publish accurate, authoritative, well-balanced reports.



*Kurds, refugee camp just
inside Iran – near Iraq
Border, April '91*
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DECLARATION ON THE RIGHTS OF PERSONS BELONGING TO NATIONAL OR ETHNIC, RELIGIOUS AND LINGUISTIC MINORITIES

The General Assembly, *Reaffirming* that one of the basic aims of the United Nations, as proclaimed in its Charter, is to promote and encourage respect for human rights and for fundamental freedoms for all, without distinction as to race, sex, language or religion, *Reaffirming* faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, *Desiring* to promote the realization of principles contained in the Charter of the United Nations, the Universal Declaration of Human Rights, the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, and the Convention on the Rights of the Child, as well as other relevant international instruments that have been adopted at the universal or regional level and those concluded between individual States Members of the United Nations, *Inspired* by the provisions of article 27 of the International Covenant on Civil and Political Rights concerning the rights of persons belonging to ethnic, religious or linguistic minorities, *Considering* that the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities contribute to the political and social stability of States in which they live, *Emphasizing* that the constant promotion and realization of the rights of persons belonging to national or ethnic, religious and linguistic minorities, as an integral part of the development of society as a whole and within a democratic framework based on the rule of law, would contribute to the strengthening of friendship and cooperation among peoples and States, *Considering* that the United Nations has an important role to play regarding the protection of minorities, *Bearing in mind* the work done so far within the United Nations system, in particular the Commission on Human Rights, the Sub-Commission on Prevention of Discrimination and Protection of Minorities as well as the bodies established pursuant to the International Covenants on Human Rights and other relevant international human rights instruments on promoting and protecting the rights of persons belonging to national or ethnic, religious and linguistic minorities, *Taking into account* the important work which is carried out by intergovernmental and non-governmental organizations in protecting minorities and in promoting and protecting the rights of persons belonging to national or ethnic, religious and linguistic minorities, *Recognizing* the need to ensure even more effective implementation of international instruments with regard to the rights of persons belonging to national or ethnic, religious and linguistic minorities, *Proclaims* this Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities:

Article 1

1. States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories, and shall encourage conditions for the promotion of that identity.
2. States shall adopt appropriate legislative and other measures to achieve those ends.

Article 2

1. Persons belonging to national or ethnic, religious and linguistic minorities (hereinafter referred to as persons belonging to minorities) have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination.
2. Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life.
3. Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation.
4. Persons belonging to minorities have the right to establish and maintain

their own associations.

5. Persons belonging to minorities have the right to establish and maintain, without any discrimination, free and peaceful contacts with other members of their group, with persons belonging to other minorities, as well as contacts across frontiers with citizens of other States to whom they are related by national or ethnic, religious or linguistic ties.

Article 3

1. Persons belonging to minorities may exercise their rights including those as set forth in this Declaration individually as well as in community with other members of their group, without any discrimination.
2. No disadvantage shall result for any person belonging to a minority as the consequence of the exercise or non-exercise of the rights as set forth in this Declaration.

Article 4

1. States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law.
2. States shall take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards.
3. States should take appropriate measures so that, wherever possible, persons belonging to minorities have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue.
4. States should, where appropriate, take measures in the field of education, in order to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory. Persons belonging to minorities should have adequate opportunities to gain knowledge of the society as a whole.
5. States should consider appropriate measures so that persons belonging to minorities may participate fully in the economic progress and development in their country.

Article 5

1. National policies and programmes shall be planned and implemented with due regard for the legitimate interests of persons belonging to minorities.
2. Programmes of cooperation and assistance among States should be planned and implemented with due regard for the legitimate interests of persons belonging to minorities.

Article 6

States should cooperate on questions relating to persons belonging to minorities, including exchange of information and experiences, in order to promote mutual understanding and confidence.

Article 7

States should cooperate in order to promote respect for the rights as set forth in this Declaration.

Article 8

1. Nothing in this Declaration shall prevent the fulfilment of international obligations of States in relation to persons belonging to minorities. In particular, States shall fulfil in good faith the obligations and commitments they have assumed under international treaties and agreements to which they are parties.
2. The exercise of the rights as set forth in this Declaration shall not prejudice the enjoyment by all persons of universally recognized human rights and fundamental freedoms.
3. Measures taken by States in order to ensure the effective enjoyment of the rights as set forth in this Declaration shall not prima facie be considered contrary to the principle of equality contained in the Universal Declaration of Human Rights.
4. Nothing in this Declaration may be construed as permitting any activity contrary to the purposes and principles of the United Nations, including sovereign equality, territorial integrity and political independence of States.

Article 9

The organs and specialized agencies of the United Nations system shall contribute to the full realization of the rights and principles as set forth in this Declaration, within their respective fields of competence.

INTRODUCTION

Since the creation of the United Nations in 1945, over 100 major conflicts around the world have left some 20 million dead. Poverty, disease, famine, oppression and despair abound, joining to produce 17 million refugees, 20 million displaced persons and massive migrations of peoples within and beyond national borders. New racial tensions are rising and finding expression in violence, while fierce new assertions of nationalism and sovereignty spring up and the cohesion of states is threatened by brutal ethnic, religious, social, cultural and linguistic strife. Democracy within nations requires respect for human rights and fundamental freedoms, as set forth in the UN Charter. It requires, as well, a deeper understanding and respect for the rights of minorities and respect for the needs of the more vulnerable groups of society, especially women and children.

It was in these words that Boutros Boutros Ghali, Secretary-General of the United Nations (UN), referred to conflicts involving minorities in different sections of his Agenda for Peace (UN Doc. A/47/277, S/24111). He could have continued by reflecting that the greatest threat to peace today, locally and regionally, arises from internal conflicts within states ranging from former Yugoslavia to Angola, while communal violence can erupt all too easily in established democracies ranging from India to the United Kingdom.

The purpose of this report is to promote new approaches to minority protection. These approaches are based on a major three-year research programme by Asbjørn Eide for the UN Sub-Commission, a set of recommendations drawn from the debate of several international groups of experts and also on internationally agreed standards. These proposals merit wide debate as some of the most comprehensive ones produced so far which promote the rights of minorities alongside peaceful cooperation between communities.

Asbjørn Eide has for many years been the independent Norwegian expert on the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities. He is also Director of the Norwegian Institute for Human Rights and has a distinguished career in the field of human rights, international law and in combatting racial discrimination. It was therefore obvious that Minority Rights Group (MRG) should seek to publish his recommendations but also ask him to write on minority protection. His views and his recommendations are entirely his own, however much other bodies such as MRG may value them.

There is no pretence that this short publication can be a comprehensive overview of minority protection. Those who wish to develop a deeper understanding of the subject should study the full 80-page report presented to the Sub-Commission, the various annexes to this and the two interim reports of Asbjørn Eide in 1991 and 1992. Additionally they should take advantage of the wide range of studies that MRG has published, which are highlighted at the end of this report. These range from reports written a decade ago on *The Social Psychology of Minorities* and

on *Constitutional Law and Minorities* to the new titles on education rights and land rights of minorities. Much can also be learnt from the studies on specific minorities, how situations have developed over time and the different forms of tension or cohesion that emerge. No two situations are identical, though many have common themes.

Ethnic Conflicts – a misnomer

The topic “ethnic conflicts”, which is a misnomer, has dominated many of the debates in the United Nations in the last two years. It is ironic that, though the UN has now been in existence for nearly five decades, it has still failed to come to terms with those practising ‘ethnic and religious cleansing’ within a European state. In the 1930s and the 1940s there were many cases of ‘ethnic cleansing’ in Europe. The persecution and genocide of the Jews is well known; the slaughter of gypsies and homosexuals is less so. Stalin’s horrific crimes against humanity were to some extent hidden by the Soviet Union’s victory in 1945 and its powerful membership of the UN Security Council. These crimes against humanity also have echoes today, where the many deported peoples and suppressed nations are seeking their own identity, understandably with great vigour. In a period of uncertainty, economic decline, fragile governments and, in a number of states, no well-established democratic structure, it is not surprising that this struggle for identity can be manipulated. In former Yugoslavia it is clear that the old politicians, who wished to retain their power, built a base around their ethnic/religious group and manipulated the media to promote ethnic superiority, which then led on to ‘ethnic cleansing’.

It would be a mistake to think that violent conflicts between communities only arise at times of political transition, or that they are the prerogative of European states. Furthermore, it is not always the numerical majority that oppresses the minority. Previously, in Zimbabwe, Namibia and South Africa the white minority denied individual and group rights to the black community. In Burundi, the Tutsi have dominated the Hutu and although there had been hopes of a peaceful accommodation after the elections, leading to majority rule, the attempted coup and killings in 1993 have shown that elections alone do not provide a peaceful, stable society or guarantees of human rights for different communities.

In most countries of the world (and most are multi-ethnic, multi-linguistic and multi-religious) there is a tension between promoting the identity of a specific community and encouraging integration into the majority group that controls the state. Asbjørn Eide tackles this issue in his paper. At the same time, everyone has multiple identities, whether as men or women, young or old, urban or rural, and one particular aspect, that of ethnicity, may be highlighted or exploited at certain times. The report recognizes that it is simplistic and dangerous to give too much currency to the phrase ‘ethnic conflict’. At the NGO World Congress on Human Rights, New Delhi, 1991, this point was examined in more detail:

The phrase ‘ethnic, social and religious conflict’ is often a misnomer and leads to false perception.

Such conflicts are frequently incited by certain politicians (and certain religious leaders) manipulating the situation to obtain power and to control resources.

Tensions between communities largely emanate on the question of control of resources and are heightened by depressed economic situations and economic dislocations. They are not essentially conflicts between doctrines of religions but more between people, who happen to belong to a religion, and often only a small section of this community is in conflict.

This rise of authoritarianism in response to political and economic challenges is often associated with the abuse of power by the dominant ethnic majority and expresses itself in its most blatant way through the excesses of military and law enforcement authorities identified with the ethnic majority.

The strong identification of state with religion and culture of the majority leads to alienation of the minorities; as a result, the religious minorities tend to become 'exclusivist' which, in turn, escalates conflicts and inhibits dialogue.

The Sub-Commission Study

In August 1990 the UN Sub-Commission on the Prevention of Discrimination and the Protection of Minorities agreed to invite its Norwegian expert member, Asbjørn Eide, to undertake a study on Possible Ways and Means of Facilitating the Peaceful and Constructive Solution of Problems Involving Minorities. The paper appearing in this report is an edited version of that research, and has been written specifically for MRG.

Eide's study involved a survey of the policies and practices towards minorities of all governments. He also invited international non-governmental organizations to contribute evidence and advice towards his study. Substantial progress reports were submitted to the UN in 1991 and 1992 which were also received by member states of the Commission on Human Rights. In 1993, Eide held a major seminar convened by the UN Centre on Human Rights in Geneva. MRG participated in this and also helped organize another in Geneva during which experts from different parts of the world could contribute towards Eide's final recommendations. These are probably the most comprehensive and valuable set of recommendations on the promotion of minority rights and inter-community cooperation being presented in international fora.

They may be criticized as failing to consider a wide interpretation of peoples' right to self-determination or they may be criticized because the preparatory studies involved formal consultation with states but not minority groups. These are criticisms of the UN system itself and of the mandate for the study, nevertheless, the fact remains that this research is a major contribution to the whole field of minority rights. It is therefore remarkable that the one UN forum that meets for four weeks to discuss 'the Prevention of Discrimination and the Protection of Minorities' could only afford a little over two hours for discussion of this item in their last week of

business. Procedurally it was no surprise that the full debate on this crucial paper was postponed for another year, despite most of the Sub-Commission and the Commission on Human Rights' work being dominated by the consequences of failing to protect minorities. The present inability of the Sub-Commission to respond effectively to the Secretary-General's Agenda for Peace and to the issues that are leading to immense global suffering and insecurity requires a complete review of the Sub-Commission and the way in which the Commission on Human Rights considers minority issues. For example, their agenda and timetabling deserves better planning to take advantage of the considerable expertise gathered, while the creation of additional fora is essential to promote a constructive international debate. MRG believes it is essential that this report and recommendations receive wide publicity and are debated fully. The recommendations may be strengthened and implemented by different bodies.

The World Conference on Human Rights (June 1993) called upon the Commission on Human Rights to examine ways and means to promote and protect effectively the rights of persons belonging to minorities as set out in the United Nations Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities (UN General Assembly resolution 47/135). It similarly urged states and the international community to do likewise. The establishment of a permanent working group that would advance both the UN Declaration on Minorities and the Eide study as well as review particular situations involving minorities would be one highly constructive way forward. Their relevance to regional peace and security alone demands that these issues are no longer marginalized within the UN structures.

In a major breakthrough this year, the Commission on Human Rights passed a resolution authorizing the Sub-Commission 'to establish, initially for a three-year period, an inter-sessional Working Group consisting of five of its members, to meet each year for five working days'. The mandate of the Working Group is to promote the rights of persons belonging to national or ethnic, religious or linguistic minorities and in particular extends to (a) a review of the implementation of the UN Declaration; (b) an examination of minority situations including possible solutions, and promoting mutual understanding between and among minorities and governments; and (c) to make recommendations on further measures to promote and protect minority rights. The Working Group will make an annual report of its findings to the Commission through the Sub-Commission, its parent body.

The establishment of the Working Group is a recognition of the growing impact of minority rights on international practices. The challenge ahead lies in ensuring that the Working Group becomes the forum for minority concerns to be discussed in a constructive manner with the active participation of the peoples concerned. To limit or curtail the involvement of the minority communities in the Working Group will be tantamount to a denial of their problems and their need to be heard. With Asbjørn Eide, the author of this report, chairing the Working Group, it could become the mobilizing force in the implementation of the UN Declaration and other international minority rights standards.

If there is only one thought to be given priority over the richness of ideas in both this report and these recommendations it would be the need to take very early action. It is now abundantly clear that a failure to protect minority rights and an inability to build close inter-community cooperation at various levels can readily provide easy opportunities for politicians and bigots to exploit differences and misunderstandings, inciting local tensions and sometimes regional conflicts. Eide shows the immense difficulty of finding peaceful solutions once violence escalates. The challenge ahead lies in an investment of time and resources early on to implement both the UN Declaration on Minorities and the Eide recommendations. The recent experiences in former Yugoslavia and Angola show the cost of failing to make these investments.

Recommendations

The recommendations for protecting minorities are central to this report. If the United Nations and its member states were to make a substantial and sustained effort to implement the UN Declaration on Minorities and the recommendations emerging out of the Eide study they would drastically reduce the risk of social tensions escalating and violent conflicts emerging. The proposals for preventative measures should be costed and compared with the resources needed to assist the victims of violence once conflicts have begun and the resources needed to redevelop once there is stability. However, the greatest cost will be the change in attitude that is needed by the UN, its member states and often the majority and dominant community. It may require a change in political structures with a much more equitable sharing of power and existing resources.

The United Nations and its member states have never given human rights a particularly prominent role. Furthermore, until recently, minority rights has been a fringe issue within human rights activity, which has been dominated by Western lawyers concentrating on individual rights. However, the strong link that the Conference on Security and Cooperation in Europe (CSCE) made between military security, economic cooperation and the human dimension has been crucial and is now influencing approaches globally.

The CSCE and its participating states have made a set of agreements on security, economic cooperation and the human dimension since the Helsinki Accords in 1972. Since the USA and the Soviet Union were the key actors in the negotiations, which were crucial to military security and the risk of a nuclear war, agreements were reached by total consensus and their implementation was mandatory and closely monitored with agreed inspection mechanisms. Suggestions that a state might be in breach of a CSCE agreement was considered to be a very serious issue and all states either conformed or endeavoured to be seen to be conforming. It is for this reason that some distinguished commentators suggest that the political regimes of the CSCE are much more effective than the legal or moral agreements of the UN.

The CSCE agreements were originally binding on 35 states, but in 1994 will concern 53 states. Within these agreements on Security and the Human Dimension, national minorities are seen as a crucial issue and the one

most likely to lead to regional conflicts. However, these agreements have wider ramifications not only because almost 30% of the member states of the United Nations have reached binding agreements on the treatment of minorities, but also because there are substantial discussions on whether such a framework might be adopted for use by African or South Asian states.

This concern for minority rights is not governed by security issues alone; it also reflects endeavours to create good government and promote economic development. The World Development report on the World Bank in 1991 (p.4) states:

As the importance of openness and competition has been realized, the conviction has grown that they are insufficient in themselves. Investing in people, if done right, provides the firmest foundation for lasting development. And the proper economic role of government is larger than merely standing in for markets if they fail to work well. In defining and protecting property rights, providing effective legal, judicial and regulatory systems, improving the efficiency of the civil service, and probably the environment, the state forms the very core of development.

The UN and other intergovernmental organizations have a history of working primarily with governments. However, both peaceful relations between communities and also sustainable development grow from below through traditional, local and already existing structures. In Somalia, the UN is working along two lines: both trying to secure a ceasefire from the political leaders and trying to involve all segments of civil society in the rebuilding of the country through the setting up of district councils. This work, done through local community leaders and clan elders, ensures the participation of women at a regional level and facilitates the development of forms of government at a local level which allow for social differences, in this case, different clans.

Events in Somalia deserve close attention (see MRG report, *Somalia: a Nation in Turmoil*, 1991). Here, different local and international actors have been involved in a power struggle and, in 1993, the UN, through its peacekeeping and peacemaking interventions, has become very actively involved. Classically, this might have been described as an ethnic conflict, yet it is not. It has been a conflict between clans and between sub clans over resources but all are of the same ethnic group, the Somali nation. This is a warning to those who emphasize ethnic identity as the key ingredient in political structures. Ethnic groups are not homogenous, there being many different perspectives and identities within each. Making generalizations and recommendations on minority protection is therefore difficult.

UN Declaration on Minorities

The UN Declaration on Minorities, together with its preamble, is given in full in this report, together with a commentary on it that emerged from a seminar of experts convened by the Finnish government in May 1993 in conjunction with Minority Rights Group and the Åbo Akademi. There is also a set of recommendations on the

UN Declaration from a seminar of UN experts convened by the United Nations Association of the USA (UNA), Jacob Blaustein Institute and Minority Rights Group in New York in October 1993.

A full review of the UN Declaration on Minorities has been undertaken by Patrick Thornberry in an earlier study for MRG. The Declaration is perhaps the single most important UN instrument on minority rights because it is the first exclusively devoted to the subject, but it has been argued by Alfredsson (*Minority Rights: A Summary of Existing Practice*, published by Åbo Akademi University and Minority Rights Group, May 1993) that the text is neither the beginning nor the end of UN efforts to promote and protect minority rights, but only a stepping stone. There are already special measures or special rights for minorities or groups, and for persons belonging to such groups, including those set forth in the International Covenant on Civil and Political Rights (Article 27); the Convention against Genocide; the International Convention on the Elimination of All Forms of Racial Discrimination; UNESCO's Convention against Discrimination in Education; the Convention on the Rights of the Child; UNESCO Declaration on Race and Racial Prejudice; the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religious Belief; the Universal Declaration of Human Rights (Article 26); the International Covenant on Economic, Social and Cultural Rights (Article 13); and the Declarations and Programmes of Action adopted in 1978 and 1983 by the two World Conferences to Combat Racism and Racial Discrimination. The rights of minorities are not well understood and there is a continuing debate over the relationship between group and individual rights. The UN Covenant on Civil and Political Rights under Article 27 declares:

In those states in which ethnic, religious or linguistic minorities exist persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

The Human Rights Committee, the treaty body charged with monitoring the observance of this Treaty by states' parties, is re-examining Article 27 in the light of the UN Declaration on Minorities. This new debate should reflect that the ways of achieving group rights for minorities are highly complex and remain poorly understood to this day. Few people appreciate that protecting and promoting the identity of minorities is a cardinal principle of minority rights. Nor do they realize that the protection of minority rights does not have to occur to the detriment of any other communities or of individual rights. Consequently, promoting minority identity is likely to remain a source of dynamic tension and misunderstanding in all multi-ethnic states.

Special measures for minorities, even for limited duration, remain a controversial issue and are often misunderstood as an exception to the 'equal opportunities' and tilting the 'level playing fields' concepts. Well-informed commentators have pointed out that where group rights of the majority are provided for by the state, the equivalent (not

identical) group rights should also be provided for minorities. Minorities are members of a state; they contribute to its finances and should benefit from provisions for their language, religion, association and culture. This concept can be explored through 'pluralism in togetherness' or 'pluralism by territorial sub-division', as explained by Asbjørn Eide. Here the issues of participation, power sharing and devolution of power are central concerns and there are a number of models of good practice that are well documented, including provisions under constitutional laws for minorities.

The UN Declaration on Minorities in its first article affirms that states shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories, and shall encourage conditions for the promotion of that identity. Here and elsewhere the Eide study and the UN Declaration on Minorities come together, with Eide providing the theoretical and practical framework for the development of the principles set forth in the UN Declaration on Minorities.

Alan Phillips, Director
June 1995

NEW APPROACHES TO MINORITY PROTECTION

By Asbjørn Eide

INTRODUCTION: HUMAN RIGHTS, GROUP CONFLICTS AND WORLD ORDER

The Search for World Order

This study analyzes approaches to minority and group conflicts in the light of the ongoing search for a world order based on justice and the rule of law. In terms of legal theory, the discussion is situated in the vague border area between *de lege ferenda* (the law as it should be) and *de lege lata* (the law as it is), but closer to the former than to the latter. General principles of law, as they have evolved on the basis of the Charter of the United Nations (UN), will be given priority attention.

The Role of the State in World Order

The state is considered in this study to be the main intermediary between the individual and the international order. Existing states are not sacrosanct, but promotion and consolidation of the rule of law require their existence and stability. For states to play their role as intermediary between the individual, groups and the international order constructively, they have to conform to certain general principles, primarily derived from the UN Charter as subsequently elaborated by the competent UN bodies.

Conceptually and institutionally, world order is founded on the system of nations organized in states.¹ Admittedly, state sovereignty is becoming increasingly more porous as international organization and trans-border cooperation advance. The role of the state is declining, and this is likely to increase the possibilities for minorities to find solutions to their claims for diversity. National societies are also becoming increasingly multicultural, directly through the migration of peoples, including the growing number of local branches of transnational corporations, and indirectly through the multiple cultural influences experienced via the electronic and other media. There is clearly no way in which the societies of the future can correspond to past idealized versions of homogeneous ethnic states. However, the paramount role of the state will continue far into the foreseeable future as the organizing framework for law and order, to a lesser extent also for the coordination of significant aspects of economic and social activity and less still, but nevertheless significantly, for cultural evolution. Since the state will be the common home for several or numerous cultural groups, it has to become functionally adapted to that requirement.

Internationalization in the fields of technology, culture and education merits further discussion. Many issues related to economic and implicitly also social activity are already regulated in other frameworks than those of nation-states, with the role of international and transnational financial institutions increasingly prominent. Similarly, transnational actors other than states are actively involved in many aspects of culture. Over time it is likely that such phenomena will substantially change the

parameters of discourse over minority issues. Conversely, as states achieve greater flexibility with regard to groups and minorities, this will also advance international cooperation on many levels and thereby probably also peace and stability.

Human rights, to be realized, require a functioning legal order, and for the foreseeable future states will remain the main frameworks for this. States will always be held accountable for their compliance with human rights, but they need also to be helped to create the conditions for the realization of those rights. In providing such assistance, the international community should in general do its best to discourage secessionism, but this should be combined with consistent efforts to encourage constructive accommodations between different groups within the state. The experience of many states demonstrates that such settlements reinforce the stability of the state and weaken the appeal for secession. One such example is the constitutional change made in Spain following the death of Franco in 1975 and the transition to democracy. Through the granting of greater autonomy to Spanish regions inhabited by different linguistic and ethnic groups, the support for secessionist movements has been almost completely eliminated.

Basis for World Order: The United Nations Charter and the International Bill of Human Rights

The UN Charter and the International Bill of Human Rights constitute the main normative framework in the search for an evolving world order and represent a stage in its evolution. In the future there are likely to be further significant changes towards greater legal integration at a global level. For the present, however, the Charter and the International Bill remain the platform on which to build.

Within the existing framework there is considerable room for further development. Several of the main principles contained in the UN Charter remain ill adapted to each other, reflecting tensions and contradictions. Some of these contradictions will be examined below, with particular attention to their human rights dimensions.

The Charter, the State and World Order

The UN Charter represents a substantial advance on the traditional state system on which it is founded. States are part of an international order for which principles of international law apply. They enjoy sovereignty basically in the same way and to the same extent that individuals enjoy freedom: that is, to the extent compatible with equal enjoyment of sovereignty by other states. For this to be ensured for small as well as large states, the international order seeks to protect the sovereignty of small states² and to organize the cooperation necessary for the welfare of the world society as a whole and for its different members.³

Freedom for individuals cannot exist without some form of organized order administered by the state; nor can the enjoyment of sovereignty by states exist without some degree of international order. The administration of this order is still in its infancy, manifested mainly by the emergence and growth of international organizations, with the UN at the apex.

The sovereignty of states cannot be entirely equated with the freedom of individuals, however. Being composite units established to advance the welfare and freedom of their inhabitants, states have responsibilities under international law in regard not only to other states but also to the individuals under their jurisdiction. They are obliged to respect, protect and fulfil the human rights of their own inhabitants.

Sovereignty is therefore both necessary and limited. It is necessary so that states can organize their internal protective order without interference from other states, and also in order to ensure their territorial integrity and political independence from other states and powers. Sovereignty is limited, however, by the obligation of states to cooperate in building a global order and by the obligation to respect the sovereignty of other states. Equality in the enjoyment of sovereignty includes respect for the control by others over their resources. This, in turn, also requires respect for limits to activities which have trans-boundary environmental effects.

The demand for sovereignty, if taken seriously, therefore makes it necessary to accept limits to sovereignty. It is a reflection of this need that there has in recent decades been tremendous growth in international legislation, step-by-step, limiting the scope of state sovereignty.

Two major and partly conflicting obligations of the state bring these issues into central focus from a human rights perspective: the state is obliged to ensure equality in the enjoyment of human rights for all its residents, but is also increasingly considered obliged to respect and protect the existence and identity of minority groups.

The International Bill of Human Rights: The Individual and Human Rights Requirements

Freedom is inconceivable without some degree of order, by which protection and the cooperation necessary for common welfare are ensured. Order is primarily ensured through the existence of states, which by their law and administration should, if they function properly, ensure the scope of freedom compatible with the equal enjoyment of freedom by all. Order by necessity imposes constraints and obligations on individuals to respect the rights of others. Human rights cannot be enjoyed without a concern with common welfare; this was recognized as early as the 17th century by the philosopher John Locke and has been repeatedly stressed by other human rights theorists. Conditions of common welfare cannot exist unless individuals contribute to the extent necessary; consequently, there should be equality in the enjoyment of human rights.

According to Article 1 of the Universal Declaration, all human beings are born free and equal in dignity and rights. 'Freedom' does not mean to be free to do anything one wants; it excludes the harming of others and the denial of the freedom of others. Since, however, there are individuals who for a variety of reasons harm and obstruct others from their full enjoyment of human rights, there is a need for protection by the state of freedoms of individuals as against other private parties.

The Double Requirement: Preservation of Territorial Integrity, and the Pursuit of the national Social Contract through Democracy

The thesis of this study is that Charter-based international law is a future-oriented project with two fundamental norms as its basis: the preservation of territorial integrity of existing states against violent change; and the promotion of inclusive democracy at the national level in order to establish, expand and refine the social contract within every national society. This is supplemented by a quest for increasing international cooperation and facilitation of transnational linkages, one effect of which is to reduce the negative consequences of the emphasis on territorial integrity.

GROUPS BETWEEN THE INDIVIDUAL AND THE STATE

Problems posed by Communal Groups

Group identities become important when members of the group are under some kind of stress. Groups are therefore best understood when examined in the context of the conflicts in which they might be involved. In the following discussion, four types of conflict situation will be examined.

Conflicts between a dominant centre and a peripheral group constitute one major form. The most typical, but not the only example, is the situation of indigenous peoples: groups whose traditional way of life and resource base are challenged by a dominant centre that exploits the resource base of the group and in the process also destroys the capacity of the peripheral group to reproduce and to develop its own culture, including language and religion. In defence, such groups have in recent decades mobilized in resistance and sought international support for their right to be separate, to have a degree of self-government within which they can reproduce their culture and to preserve and consolidate their resource base.

The second category of situation, with many variations, comprises the efforts of groups that are discriminated against to obtain equality. Most obvious are the efforts by groups discriminated against because of their colour or race, but many recent immigrants also experience discrimination on the basis of their ethnic or religious origin. Their identification as a group arises largely out of the negative attitudes held towards them by the dominant or host society. Their primary struggle is for the equal enjoyment of civil, economic and social rights. In some cases their struggle is for citizenship and full political rights. This applies mainly to recent immigrants, but in some cases even long-standing residents have experienced difficulties in obtaining full citizenship.

A third situation consists of conflict between communal contenders or ethno-nationalists. The notion of communal contenders has been used by Ted Gurr;⁴ they are culturally distinct peoples, tribes, or clans in heterogeneous societies who hold or seek a share in state power. They are different from ethno-nationalists in the sense that the group or its leaders do not seek to dominate culturally or linguistically the national society as a whole,

Continued on page 11

PROTECTION OF MINORITIES: RECOMMENDATIONS TO THE UN SUB-COMMISSION

AN MRG INTERNATIONAL PROFILE • 93/4 • NEW APPROACHES TO MINORITY PROTECTION



COOPER + HAMMOND/PANOS

Formal implementation of the Declaration on Minorities could improve the human rights situation of minorities like the Tamils of Sri Lanka.

A set of recommendations on the implementation of the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (UN General Assembly resolution 47/135) was prepared by UN Sub-Commission member Asbjørn Eide and submitted at the Sub-Commission's 1993 meeting. These recommendations were developed during three years of research following consultation with Sub-Commission members and outside experts, including a seminar held in Geneva in August 1993 organized by Minority Rights Group. They are among the most comprehensive proposals produced thus far on the implementation of the UN Minority Rights Declaration.

Possible Ways and Means of Facilitating the Peaceful and Constructive Solution of Problems Involving Minorities

(a) General

- 1 The state should be the common home for all parts of its resident population under conditions of equality, with separate group identities being preserved for those who want it under conditions making it possible to develop those identities. Neither majorities nor minorities should be entitled to assert their identity in ways that deny the possibility for others to do the same, or that lead to discrimination against others in the common domain. A primary role of any state is to

facilitate the equitable sharing of the economic wealth and social benefits of the nation as a whole. Priority in minority protection should be given to members of groups that are truly vulnerable and subject to discrimination and marginalization by the majority.

- 2 Specific guidelines for the recommendations can be derived from a combined use of the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination and of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. Together, these instruments should be held to constitute minimum rules for peaceful coexistence and constructive cooperation among members of different ethnic, religious and linguistic groups inside states, to be supplemented by the provisions of the Declaration on the Rights of Indigenous Peoples, when the latter is adopted.
- 3 There is a necessity, in all states, to have a common domain where everyone is treated on a basis of equality, based on norms which are impersonal in nature and applied in an impartial way. This will unavoidably imply some degree of integration. This necessity arises from obligations undertaken by states under the international human rights conventions and is required, *inter alia*, for the state to be able to ensure equality and non-discrimination in the enjoyment of human rights. However, the integration should be developed on a basis of equality, with all groups contributing their own values and cultures to shape the common domain where their members all interact.

(b) Measures to Be Taken at the National Level

- 4 For the long-term prevention of ethnic or religious hatred and intolerance, measures should be taken to ensure that the substantive content of childhood and adult education is fully in line with the requirements of the Universal Declaration of Human Rights, Article 26.2, the Convention on the Rights of the Child, Article 29. (1) (b, c and d), and the International Convention on the Elimination of All Forms of Racial Discrimination, Article 7. Human rights education should be made a core curriculum subject in universal primary education.
- 5 Group conflicts often give rise to propaganda and to the emergence of organizations that attempt to justify discrimination based either on notions of racial superiority or the incompatibility of cultures or on other grounds. States should therefore take all necessary steps to implement Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), which prohibits the dissemination of ideas based on racial superiority or hatred, incitement to racial and ethnic discrimination, and all acts of violence or incitement to such acts against any race or group of people of another colour or ethnic origin, and to prohibit organizations based on

such ideas, as mentioned in Article 4.

- 6 States should take all necessary steps to ensure that perpetrators of acts of ethnic and religious violence are quickly apprehended and prosecuted under conditions of fair trial. Impunity for instigators and perpetrators of group violence, whether members of majorities or of minorities, leads to an escalation of conflict. In situations of extreme instability, however, where the state is unable to apprehend the perpetrators, the international community should therefore have a supplementary role. Outside states should, at the least, prohibit their citizens from participating in violent group conflicts inside other states or inciting violence there, and should effectively prosecute those who violate such prohibitions.
- 7 It is recommended that national forums (councils and commissions) be set up to propose, for the national legislature and administration, appropriate guidelines for the combined implementation of ICERD and the 1992 Declaration on Minorities, taking into account the particular situations in the country concerned. The different ethnic, religious and linguistic groups existing in the country, whether minorities or majorities, should be represented in such national forums.

Education, language and culture

- 8 Minorities should have the right to education in their own language. While the need is recognized for one or more official languages for state-wide communication, states should allow for, and take special measures to ensure, education in and the use of regional and minority languages, as appropriate. Majorities and minorities in states not members of the Council of Europe might find it useful for this purpose to seek inspiration from the European Charter on Regional and Minority Languages.
- 9 Minorities should receive education about their own culture and also about the culture of other groups in society, majority or minority.
- 10 The curricula in all states should teach tolerance of all groups.
- 11 Majority groups should learn about the cultures of minority groups in ways which make it possible for them to appreciate those cultures as an enrichment to society as a whole.
- 12 Members of different groups should enjoy the right to participate, on the basis of their own culture and language, in the cultural life of the community, to produce and enjoy arts and science, to protect their cultural heritage and traditions, to own their own media and other means of communication and to have access on a basis of equality to state-owned or publicly controlled media.

Civil rights

- 13 The civil rights of members of minorities, as of majorities, should be given full and equal protection. Visible, impartial and effective implementation of national legislation in this field should be ensured to all. Adequate training should be given to law-enforcement officials and others who deal directly with the public.

Economic and social rights

- 14 Members of different groups should enjoy economic and social rights on a basis of equality. In those situations where members of particular minorities are economically in a weaker position than members of majorities, measures of affirmative action should be adopted on a transitional basis to redress the inequality. In that respect, specific policies should be formulated in cooperation with members of vulnerable groups to achieve equality of opportunity and access.
- 15 Ongoing, systematic monitoring of the situation of vulnerable groups should be established through periodic sampling and collection of statistical information disaggregated by racial or ethnic group, particularly with respect to such fundamental economic and social indicators as infant mortality rates, life expectancy, literacy, level of educational attainment and average disposable income.
- 16 Members of the different ethnic, religious and linguistic groups should on a basis of equality participate in, contribute to and benefit from the right to development. Consequently, development policies should be conducted in ways that decrease the disparities that might exist between different groups. Groups living compactly together should always be fully consulted with regard to development projects affecting the regions in which they live.

Effective political participation

- 17 While it is essential that members of different groups, majority and minority, be given opportunities for effective participation in the political organs of society in ways that avoid obstruction of necessary decision-making, no single formula exists that is appropriate to all minority situations. The basic requirement is that everyone shall have the right and opportunity, without discrimination, to take part in the conduct of public affairs. To avoid this leading to majoritarian neglect of the concerns of minorities, or to a veto by minorities in areas where it would not be justified, various possibilities exist. It is recommended that states and minorities explore the following options, as appropriate to their particular situation:
 - (a) Advisory and decision-making bodies in which minorities are represented, in particular with regard to education, culture and religion.
 - (b) Elected bodies and assemblies ('parliaments') of national or ethnic, religious and linguistic minorities.

- (c) Self-administration (functional autonomy, cultural autonomy) on a non-territorial basis by a minority of matters which are essential to its particular identity, such as the development of its language or its religious rites.
- (d) Decentralized or local forms of government or autonomous arrangements on a territorial and democratic basis, including consultative, legislative and executive bodies chosen through free and periodic elections without discrimination.
- (e) Special measures to ensure minority representation in the legislature and other elected bodies of the national society, even where their numerical strength is too small to have representation under normal conditions. In proportional electoral systems minimum thresholds for representation might be waived where minorities are concerned.

Constitutional arrangements

- 18 Some of the above arrangements should be incorporated into the constitution of the country concerned, in particular where autonomy or another form of pluralism on the basis of territorial subdivision is concerned.
- 19 It should be recognized, however, that group relations change over time and need different responses at different times. It is therefore necessary to ensure flexibility to accommodate the changing relations in the most constructive way possible.

Duties to society

- 20 Members of minorities should recognize and respect their duties to the society at large. The 1992 Declaration on Minorities makes it clear, in Article 8, para. 4, that it cannot be construed as permitting any activity contrary to the purposes and principles of the United Nations, including the sovereign equality, territorial integrity and political independence of states. Members of minorities should also strictly abide by the prohibition of propaganda and of organizations that seek to justify or promote racial or ethnic hatred, and abstain from incitement to acts of violence against members of other groups. No external support should be given, through states or private organizations, to groups that engage in violence against other racial and ethnic groups.

Recourse and conciliation machineries

- 21 Everyone, including members of minorities, has the right of effective remedy by the competent national tribunals for acts violating their rights granted by the constitution or law. Normal legal procedures are often slow and costly, and are not always suited to conflict resolution. It is therefore recommended that states establish, in addition to courts and tribunals, other mechanisms, such as a special ombudsman against ethnic discrimination (now existing in Sweden),

commissions on racial and ethnic reconciliation, which exist in several countries, or human rights committees that are required as one of their tasks to ensure equality and conditions for the promotion of separate identity.

- 22 In times of major political, constitutional or institutional change, pre-existing arrangements applying to nationalities and minorities, such as autonomy structures, should not be immediately demolished even if incompatible with the new structures, but a transition period should be provided to enable the adoption of confidence-building measures whereby the groups concerned can adapt to the new situation without loss of identity or acquired rights.
- 23 Practices of 'ethnic cleansing' must be considered illegal and should not be permitted under any circumstance. Populations which have been forced to flee during periods of ethnic conflict should be entitled to return under conditions of safety and to receive adequate compensation for losses to which they have been subjected.
- 24 State-sponsored mass population transfers give rise to numerous human rights problems and negatively affect group relations. Such transfers should never be undertaken except for short-term emergency purposes, and then only provided arrangements are made for an early return of the population transferred.

(c) Measures at the International Level

Bilateral measures

- 25 Group conflicts sometimes affect bilateral relations between states. For the protection of international peace, stability within states and the preservation of the existence and identity of minority groups, it is essential to use and further develop mechanisms to deal with such issues at the bilateral, sub-regional, regional and universal levels.
- 26 In accordance with the UN Charter, states should strictly observe in their bilateral relations the principle of non-intervention. They should abstain from any use of force and also from any encouragement of the use of violence by parties to group conflicts in other states, and should take all necessary measures to prevent the incursion by any armed group or mercenaries into other states to participate in group conflicts.
- 27 In their bilateral relations states should engage in constructive cooperation to facilitate reciprocal protection of the equality and promotion of group identities. States should conclude bilateral treaties or other arrangements on good neighbourly relations based on the principles of the Charter and on international human rights law, combining commitments of strict non-intervention with provisions for cooperation in facilitating the promotion of conditions for the maintenance of group identities and trans-border contacts by members of minorities.

28 The contents of provisions on minorities contained in such treaties and other bilateral arrangements should be based on universal and regional instruments on equality, non-discrimination and minority rights, including the Document of the Copenhagen Meeting on the Human Dimension of the Conference on Security and Cooperation in Europe (CSCE) of 1990 and the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. Where specific minorities are mentioned in such provisions, the treaty should contain an additional provision ensuring that minorities not mentioned in the treaty shall enjoy the same level of protection and promotion of their existence and identity.

29 Such treaties should include provisions for the settlement of disputes over their implementation. Should disputes arise over the implementation of and compliance with such bilateral treaties or other arrangements, the state parties should first seek a solution in accordance with the procedure foreseen in the treaty or arrangement. When a state feels that this does not give satisfaction to its concern, it should turn to the relevant regional or UN bodies for assistance in conflict resolution. Such assistance could include fact-finding, monitoring, the use of advisory services and, where appropriate, other mechanisms as envisaged by the UN Secretary-General in his Agenda for Peace.

Regional and sub-regional action

- 30 Regional and, as appropriate, subregional organizations should increase their efforts to provide procedures and channels for early and peaceful settlement of disputes involving minorities.
- 31 For the CSCE region, states should for these purposes make full use of the mechanisms and procedures now in existence, including fact-finding and monitoring. They should avail themselves of the office of the CSCE High Commissioner on National Minorities at the earliest possible stage in the evolution of a potential conflict. It is recommended that more resources be placed at the disposal of the High Commissioner to carry out his or her task.
- 32 The Council of Europe should complete as soon as possible the draft now under preparation of a protocol or convention on the rights of national minorities. The handling of complaints under the instrument to be adopted should preferably be placed under the jurisdiction of the European Commission on and Court of Human Rights.
- 33 The Roma (Gypsy) population constitutes the most vulnerable minority in many parts of Europe. Recent changes have caused a deterioration in their position. European-wide measures should urgently be undertaken, coordinated by the CSCE or the Council of Europe, to prevent continued discrimination and to promote their equality in fact.

34 The Commission established under the African Charter of Human and Peoples' Rights, and the Inter-American Commission on and Court of Human Rights, should address the situation of minorities under the provisions of their respective instruments dealing with equality and non-discrimination.

UN human rights bodies

35 Group conflicts within states, including racial discrimination, constitute a problem of such magnitude that a global and system-wide strategy for peaceful and constructive solutions appears necessary.

36 The Sub-Commission on Prevention of Discrimination and Protection of Minorities was established in 1947 with the primary task of making recommendations in this field. It should now consider the feasibility and usefulness of the preparation of a comprehensive programme of action that would include measures for the elimination of racial, ethnic and religious discrimination combined with measures to promote the rights of members of ethnic, religious and linguistic minorities, based on respect for territorial integrity and the promotion of the political and social stability of states. The programme of action should be seen in conjunction with efforts to promote the rights of indigenous peoples.

37 To develop such a comprehensive programme would correspond to the mandate of the Sub-Commission as reflected in its title. A broad, coherent strategy would require considerable efforts, drawing together the Programme of Action for the Third Decade to Combat Racism, the concluding observations and general recommendations adopted by the Committee on the Elimination of Racial Discrimination (CERD), recommendations for the implementation of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, recommendations for the implementation, when adopted, of the Universal Declaration on the Rights of Indigenous Peoples, and other elements. Should the Sub-Commission take it upon itself to draft such a broad programme of action, it would reflect its multi-dimensional work in the field of prevention of discrimination and protection of minorities.

38 It is recommended that a task force be set up, without financial implications, to present to the Sub-Commission at its forty-sixth session suggestions for an outline of such a programme.

39 More specifically, the Sub-Commission should study problems affecting the situation of minorities in several parts of the world.

40 It should study the problem of nationality laws (citizenship) and their implementation, with special emphasis on situations where federations or other larger entities have been dissolved into two or more independent states. Whether such states are considered as successors or as restored states, the needs and

concerns are the same for the human beings who have taken up what was intended to be permanent residence in that territory in accordance with the law in force when they did so. International law is vague on this matter, and experts have given conflicting views on how it should be resolved. The Executive Committee of the Office of the UN High Commissioner for Refugees (UNHCR) has recommended that UN human rights bodies address issues of statelessness, including the problem of arbitrary deprivation of nationality and the content of the right to a nationality.

41 With regard to self-determination, while the scope and meaning of the right to self-determination have been the subject of two earlier studies by the Sub-Commission, they have focused mainly on the situation of peoples living in colonial or other non-self-governing territories, including territories occupied in violation of the UN Charter. The controversies over alleged rights to self-determination of groups living within sovereign states have severely obstructed peaceful solutions to contemporary ethnic conflicts. It is therefore recommended that the Sub-Commission study the meaning and scope of self-determination for groups living within sovereign states.

42 Concerning the prevention of group conflicts, as is demonstrated in the present study, regional and UN human rights bodies already play a role in preventing group conflicts based on ethnicity, language and religion. Recommendations will be made below as to how these bodies can strengthen their preventive role. It is recommended, however, that the Sub-Commission undertake a more comprehensive study on ways in which the organized international community, in particular the human rights bodies, can become more effective in preventing violent group conflicts.

43 On monitoring by the use of indicators, the Sub-Commission might study ways to assist states in carrying out ongoing, systematic monitoring of the situation of vulnerable groups through periodic sampling and collection of statistical information disaggregated by racial, ethnic, religious or linguistic groups.

44 The Commission on Human Rights should consider establishing a Working Group on minority issues, which should provide access to representatives of both governments and minorities. The mandate of the group might be to examine the situation in different parts of the world and to develop more specific guidelines for the implementation of the 1992 Declaration on Minorities. The Commission and its Working Group should thereby be made the focal point for all UN activities undertaken within respective mandates. By providing a voice for the groups concerned, it would serve to facilitate communication between minorities and governments and to develop methods for conflict resolution or direction of the conflict into peaceful channels.

45 The Commission on Human Rights should ensure that fact-finding and reporting under the special procedures

(the thematic and country rapporteurs and the Working Groups on disappearances and on detention) also address minority issues under the respective mandates.

- 46 The Centre for Human Rights should consider the formation of a team dealing with prevention of discrimination and protection of the rights of vulnerable minorities and of indigenous peoples, ensuring continuity and competence in the subject.
- 47 In its programme of technical assistance and advisory services the Centre should develop its capacity to help in the prevention of group conflicts. As requested in the Vienna Declaration (Section II, para. 25), the Centre should at the request of governments provide qualified expertise on minority issues and human rights, as well as on the prevention and resolution of group conflicts. The programme of advisory services and technical assistance should develop training manuals on inter-ethnic relations and on ways to consolidate and stabilize pluri-ethnic, pluri-linguistic and pluri-religious societies, including constitutional models, national forums and conciliation arrangements and approaches to devolution of power. In cooperation with the United Nations Educational, Scientific and Cultural Organisation (UNESCO) and the Committee on the Rights of the Child, the programme of advisory services could also provide assistance and manuals on education in human rights and tolerance, including suggestions for core curricula in these fields.
- 48 The treaty bodies (committees monitoring the implementation of human rights conventions) can play a significant role in the early warning and prevention of conflict. They should pursue an active dialogue with state parties, through the reporting procedure, on the dual task of ensuring equality and non-discrimination and of allowing groups to promote their respective identities. In the further development of their preventive role the various treaty bodies could concentrate on different aspects of the problem, in line with their particular competence.
- 49 The CERD has a crucial role to play in harmonizing the two concerns: for non-discrimination and for measures to create equality in fact. The CERD should discuss, inter alia, the matter of allocation of citizenship and its consequences for indirect discrimination on grounds of race, colour, descent or ethnic or national origin.
- 50 The Committee on Human Rights has already contributed significantly to the clarification of minority rights through its case law under Article 27 of the International Covenant on Civil and Political Rights. It should now pursue its analysis of that article in the light of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.
- 51 The Committee on Economic, Social and Cultural Rights, in its dialogue with reporting states, has already initiated and should strengthen its examination: (a) under Article 11, in particular, of standards of living for

different groups; (b) under Article 12, of the level of health enjoyment by the different groups; (c) under Article 13, of access to education that promotes equality but at the same time allows for the preservation of group dignity; and (d) under Article 15, which concerns cultural rights, of attention to the preservation of the cultural heritage of the different groups and their access to and participation in the media in the country concerned. The Committee should draw on the 1992 Declaration on Minorities in formulating its questions.

- 52 In the guidelines used by the Committee on the Rights of the Child, reporting states are requested to provide information regarding non-discrimination in respect of all articles of the Convention. The Committee should give attention to the equal enjoyment, by children of minority as well as of majority groups, of the rights contained in the Convention. Special protection of children of minorities is provided for in Article 30. The Committee should encourage the elaboration of statistics on the relative situation of children of majorities and minorities.
- 53 Also in the guidelines of the Committee on the Rights of the Child, states are requested to provide information on how respect for the views of the child (Article 12) is ensured. The Committee should give attention to the ways in which respect for the views of the children of minorities is ensured.
- 54 The Committee on the Rights of the Child should give special attention to the implementation of the aims and content of education, as provided for in Article 29 of the Convention, examining whether and how the educational policies of states pursue the dual task of promotion of equality and tolerance of separate identities.
- 55 The Committee on the Elimination of Discrimination against Women (CEDAW) should in its dialogue with governments explore the relative situation of women belonging to minorities as well as to majorities, and make suggestions as to ways in which inequalities can be addressed.

Specialized agencies and other organs of the UN

- 56 In general terms, UN agencies should give priority and additional resources to programmes that encourage cooperation between groups and reduce the prospect of group conflicts. Great care should be taken to avoid measures that can reinforce ethnic cleavages and to concentrate on activities that can serve to build bridges between the groups.
- 57 The work of the Office of the UNHCR is deeply affected by group conflicts, which lead to large-scale refugee flows and to internal displacement of peoples. Prevention, as well as resolution, of group conflicts is therefore essential to reduce the burden and tragedy of refugee flows. UNHCR fieldworkers should therefore be provided with adequate information about the rights of minorities, and should also be called upon to provide

early warning of emerging conflicts in order to facilitate prompt assistance by the international community in the resolution of conflicts.

- 58 UNESCO should further develop its dual role, particularly in the fields of education and culture, of promoting respect for universal values of human rights on a basis of equality at the national and international levels, while harmonizing this with the promotion of respect for different cultures and identities. It should continue its efforts to compile and publish a comprehensive collection of national legislation on the rights of persons belonging to minorities, which is foreseen for 1994-5.
- 59 The International Labour Organization (ILO) should further develop its efforts, particularly in the fields of workers' rights, employment and access to sources of livelihood. Vulnerable minorities are often subjected to discrimination in access to work and conditions of work (equal wages and benefits, training, etc.). The ILO should harmonize the quest for equality and non-discrimination with the protection of separate identities, which in some cases may require special arrangements in both the workplace and the economy at large. The experience derived from its comprehensive work with indigenous peoples might be drawn upon also in some other minority situations.
- 60 The financial and development institutions of the UN should evaluate their development policies and projects to ensure that they do not lead to unequal benefits for the different groups in society. They should ensure that groups who live compactly together in regions of the states concerned are appropriately consulted about projects affecting their region. When differential impact of development projects is unavoidable, financial institutions should encourage governments to redistribute, through their fiscal, social and other policies, the gains and losses of economic development activities. Projects should include arrangements by which adequate compensation can be given to members of groups affected when losses do occur.
- 61 There should also be more systematic training and information programmes directed to the staff of financial and development agencies of the UN concerning the relevant international standards of non-discrimination and protection of minorities, and the need to support and assist efforts to prevent and resolve group conflicts.
- 62 The World Bank, which to an increasing extent concerns itself with the promotion of good governance, development and human rights, should seek to ensure that all groups, minority as well as majority, can benefit from and make use of the transparency and accountability of decision-making and performance in the economic field that the Bank seeks to promote.
- 63 The UN Research Institute for Social Development, whose programme of studies carried out over the last few years on ethnic conflicts and their solution has

provided many useful insights, should be called upon to provide the Secretary-General with its suggestions, for use among the human rights bodies, on ways in which its findings may be used in the prevention and solution of group conflicts.

Non-governmental organizations

- 64 Non-governmental human rights organizations can play a significant and constructive role in the prevention of group conflicts. They have, in some cases, better contact and communication with minority groups than inter-state organizations have, and could thereby help to create awareness of problems before they erupt into violence.
- 65 Treaty bodies should encourage non-governmental organizations to provide them with information supplementary to that provided by states. This could facilitate a more realistic, and thereby more constructive, dialogue between the treaty bodies and the states, which could contribute to the early settlement of grievances that otherwise could erupt into violence.
- 66 Non-governmental organizations should take fully into account the dual tasks of promoting the enjoyment of human rights by everyone on a basis of equality, and of promoting conditions for the preservation and promotion of separate identities.
- 67 They should at all times abstain from, and actively oppose, incitement to any act of ethnic or religious discrimination, xenophobia or hatred, and should never persuade minority groups to assert their demands in ways which can lead to the exclusion or persecution of or discrimination against members of other groups on ethnic, religious or linguistic grounds.
- 68 Non-governmental organizations should actively work for the building of bridges between groups in conflict, isolating those who incite hatred and encouraging those who seek cooperation on the basis of reciprocal respect.
- 69 International religious organizations and authorities should recognize their special responsibility in dissuading local groups belonging to their religion from engaging in xenophobia or incitement to hatred based in part or wholly on religious intolerance. They should cooperate with the UN and its agencies, including UNESCO, and with regional organizations in developing programmes to combat intolerance on grounds of religion and belief.

NEW APPROACHES TO MINORITY PROTECTION



BY ASBJØRN EIDE



MRG INTERNATIONAL REPORT • 92/4 • NEW APPROACHES TO MINORITY PROTECTION



MINORITY RIGHTS GROUP

Minority Rights Group is an international research, education and information unit which aims to secure justice for minority and majority groups suffering discrimination and prejudice. We aim to educate and alert public opinion throughout the world, both through our publications and our work at the UN.

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by Asbjørn Eide.

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Additional copies of the profile are available from MRG at 50p each.

nor do they try to secede from the national society; but they seek to enhance their own position or to maintain their position when challenged by other communal contenders. Therefore, the description suits well the situation in most post-colonial societies where borders were drawn rather arbitrarily by colonial powers in such a way that different ethnic groups, tribes or culturally distinct clans came to be included within the same state. Such cases are primarily a struggle for political power, and for the benefits deriving from the holding of power - not only for the power-holders themselves, but also those other members of the tribes or ethnic groups who are rewarded through a clientelist relationship for having supported the people in power.

Ethno-nationalists are people, using a relatively large and geographically concentrated ethnic group as a basis, who seek either to dominate a heterogeneous national society or to secede from it. Dominating the national society would consist in assimilating the non-dominant parts of the population into the culture and language of the dominant ethno-national group, or in excluding members of other ethnic groups from the national society, either by denial or deprivation of citizenship or by outright 'ethnic cleansing'.

The alternative strategy for ethno-nationalists who are unable to dominate the national society is to secede or separate from it, by establishing an independent state which their ethnic group can dominate, or by redrawing borders to become part of another state dominated by their own ethnic group.

Not all homogenizing societies are driven by ethno-nationalist efforts to dominate. Some are better characterized by a process of (imperfect) fusion, the proverbial melting-pot effect.⁵ Whether subjected to assimilationist ethno-national domination or to a process of fusion, some groups seek to defend their own cultural identity, to maintain their own language and traditions. This can be done without any intent to dominate others and without objecting to equal treatment in the common domain.

The Myth and the Necessity of the Social Contract

Early Western thinkers on human rights claimed that legitimate government was founded on a social contract. The authority of the sovereign was based on consent by the subjects. John Locke developed the theory of social contract in his *Second Treatise of Government*. He built on assumptions of humanity's original freedom in the state of nature. Humanity had recognized that there were certain inconveniences in that situation, however. The most serious had been the lack of legal regulation and of protection through application of the law, and therefore human beings had established between themselves the social contract in order to obtain a written law, impartial judges to apply it and police to enforce it. To obtain such functions in a civilized society could not and should not require authoritarian rule. On the contrary, whenever political power is exercised by anyone beyond what is strictly required for regulation in the interest of all, that power becomes illegitimate and can be challenged.

As a theory of the way in which government authority had

emerged, the social contract was a myth. States and legitimate government have rarely, if ever, originally emerged as the product of voluntary agreement by free human beings in order to solve common problems while retaining the freedom that was compatible with the functioning of a government whose authority was based on the will of the people.

The reality is very different. States have emerged and their borders have been set by a multitude of factors, including conquest, colonialism and feudal struggles. Even in the few cases where states have emerged as a consequence of joint, free action by human beings, present borders nearly everywhere contain some groups who had no choice but were forced into submission and now live within those borders.

The consequence of this is not, however, that we should tear apart established states or redraw their borders. Balancing our concern for human rights with the need to preserve international peace and security, we must find a compromise in the democratization of society. This means ensuring that all groups are allowed adequate and effective participation, the opportunity to influence all decisions of government and in particular those decisions that directly affect them, and beyond this the freedom to preserve and to develop their own identity within the overarching framework of universal human rights enjoyed without discrimination.

To comply with international human rights law, states should be impartial in dealing with individuals and members of different groups under their jurisdiction. States should secure the enjoyment by everyone, on a basis of equality, of the universally recognized human rights. Under international minority rights law, states must respect and promote the possibility for members of each group to preserve and promote their own identity on an egalitarian basis.

While, historically speaking, the social contract is a myth, it is necessary to pursue it for the future, as a democratic goal. States should increasingly replace coercive power by responsibility and accountability, which are the essence of democracy. This should be done by accommodating all groups on a basis of equal respect for their identity, allowing for effective participation and ensuring consultation whenever their interests are affected by decisions made at the centre. Accommodation does not mean anarchy. There is a need to maintain order throughout the transition period. Territorial integrity and basic political stability should be ensured through a process of inclusion and adaptation by which all groups are given the possibility to be equally at home in the common state.

While the assertion of ethnicity in politics can give cultural gains and be a means to achieve equality where there has in the past been discrimination, it also carries considerable risks: 'yet if one looks down the dark ravines of history, one sees that men in social groups need some other group to hate. The strength of a primordial attachment is that emotional cohesion derives not only from some inner "consciousness of kind", but from some external definition of an adversary. Where there are *Gemeinde* there are also *Fremde*.'⁶

It is essential to recognize the often very irrational processes of conflict dynamics. Sometimes conflict is initiated, from a condition of peaceful relations, by allegations (true or false) made by activists within a minority group that it is subject to discrimination or is deprived of its culture. Such allegations, gradually combined with protests and political demonstrations, sometimes lead to an over-reaction on the part of government security forces, and in turn to a violent response by the minority group concerned. This can agitate public opinion on both sides, leading to massacres and much heavier repression by the security forces, generating a guerrilla response on the other side and eventually escalating into a total cataclysmic polarization beyond all rational control.

The Threat of Ethno-Nationalism

The ideology of ethno-nationalism, in its expansionist, exclusivist and secessionist modes, is one of the most serious contemporary threats both to a peaceful evolution of the international order and to the advancement of human rights protection. This ideology, all too frequently justified in terms of the alleged right to self-determination, constitutes a retrogressive development which needs to be counteracted.

Yet this does not mean that group defence through ethnic mobilization is inherently negative. The preservation of ethnic identities in multicultural societies is an enrichment rather than a problem. States must become more flexible by allowing for cultural pluralism, whereby groups can maintain and develop their own identity, to the extent compatible with universal individual human rights and with the legitimate interests of the state. What those legitimate interests are shall not be spelled out here beyond the responsibility of the state to ensure human rights for everyone living within its jurisdiction.

Constructive Group Accommodation as Response to Ethno-Nationalism

The best way to counter the threat posed by ethnic conflicts is an appropriate and effective policy of minority or group protection, combined with a quest for national confidence-building and cooperation within the international order of existing sovereign states, and with full respect for their territorial integrity.

A human-rights-based quest for minority protection must therefore be threefold: to search for approaches which can safeguard equality between all human beings in society; to promote group diversity when required to ensure the dignity and identity of all; and to advance stability and peace, both domestically and internationally.

A FRAMEWORK OF ANALYSIS OF POSSIBLE APPROACHES

The following analysis is based on international human rights norms relating to non-discrimination and minority rights. A human-rights-based approach in pluralist societies must combine efforts to ensure equality in the common domain with acceptance of diversity in the separate domains. The 'separate domain' is that reserved to the minority or its members to protect its identity as a

group, and has now found detailed expression in the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted by the UN General Assembly in Resolution 47/125, 1992 (hereafter referred to as the 1992 Declaration on Minorities). The 'common domain' includes all other aspects of social life which are subject to regulation by the authorities. Further explanation follows below.

Equality and Non-Discrimination in the Common Domain

Two issues are relevant with regard to the common domain. First, members of minorities shall not be discriminated against in the larger society. This is essential; many minority conflicts emerge from real or sometimes imagined discrimination on the part of the majority against the minority. This is the primary subject-matter addressed in the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), adopted by the General Assembly in 1965. Article 1 of the Convention defines 'racial' discrimination as including ethnic discrimination. Second, and less examined, are the limits that have to be set for, and observed by, minorities and their members in order to safeguard the principle of equality. The search for a separate existence and identity implies, to some extent, a request for diversity, and this may be on a collision course with equality but does not have to be so. Among the difficult questions arising are access to employment, land and property, and whether the minority can reserve for itself preferential access in certain areas and at the same time require equal access in the larger society.

The 1992 Declaration on Minorities has addressed this issue. It is a significant step forward that, in Article 8, para. 3, it states that 'measures taken by states to ensure the effective enjoyment of the rights set forth in this Declaration shall not prima facie be considered contrary to the principle of equality contained in the Universal Declaration of Human Rights'. Nevertheless, the issue has to be faced. When do measures intended to protect and promote the separate existence of groups violate the principle of equality?

A definition of the concept of discrimination influenced by developments within both the UN and the Council of Europe has been given by Tomuschat:⁷ 'Discrimination is invidious treatment which introduces unreasonable classifications within the specific context of the rights concerned.' The task, then, in a given circumstance, is to determine whether the preferential treatment given to members of minorities constitutes discrimination against other members of society. There are three elements involved: somebody must be subjected to invidious treatment as a consequence of the measures adopted for minorities; it must result from the introduction of a classification or distinction; and that classification must in the given context be unreasonable.

The first requirement for a distinction to constitute discrimination is that it leads to invidious treatment. Special measures for minorities, such as access to education in their own language, will in most cases not lead to invidious treatment of others provided that

members of the minority can voluntarily choose education in their own language or in the official language of the country. However, measures taken for the protection of minorities can under some circumstances lead to deprivation for others in the enjoyment of human rights, such as when certain jobs are exclusively reserved for members of the minority.⁸

Invidious treatment, according to the formulation used by Tomuschat, is discrimination only when it introduces unreasonable classifications. Whether the distinction made is reasonable must be seen in the light of the right concerned and the purpose for which the distinction is made; its reasonableness also depends on whether the classification made has no more harmful (invidious) consequences for the category of people concerned than what is necessary in order to achieve the purpose of the classification, that is, to preserve the identity of the group concerned.

Transitional preferential measures ('affirmative action') can be taken in order to create or restore equality in the common domain, where there has in the past been a policy or practice of discrimination that has deprived members of one group of equal opportunities. Such measures, however, are not intended and shall not have the effect of preserving differences; guidance on this point is found in ICERD, Articles 1.2 and 2.4: measures shall not 'lead to the maintenance of separate rights for different racial groups' and 'shall not be continued after the objectives for which they were taken have been achieved'. Such measures do not establish group rights in any sense of the word, but provide rights for individuals to be used in some contexts of competition. Transitional preferential treatment or 'affirmative action' is therefore entirely different from the measures envisaged under the 1992 Declaration on Minorities, where the intention is to allow for a lasting manifestation of difference. Instead of transitional affirmative action, the Declaration addresses the rather different issue of special measures.

The introduction of such special measures establishes a distinction between the common domain and the separate domains. Issues that may without controversy be left to the separate domains include the regulation of religious matters and standardization activities regarding minority languages. But when minorities or members thereof run their own institutions, such as schools and hospitals, or hold fixed or movable property that they seek to reserve for the use of the minority and its members, numerous problems of discrimination can arise.

The scope of 'common concern' depends on what is taken out as 'separate domain'. Groups that are powerful through the control of resources, technology and organizational skill may want to limit the area of 'common concern' in order to preserve privileges in what they consider separate domains. This has occurred in the past with the concept of 'common affairs' in apartheid rhetoric.

In discussing the common domain it must be recognized that every sovereign state is obliged to ensure to all its inhabitants, on a basis of equality, the enjoyment of the whole range of human rights as provided for in the Universal Declaration of Human Rights: civil, political, economic, social and cultural rights. It follows that

whenever pluralist arrangements are contemplated, they must be limited in such a way as not to prevent the state from ensuring, without discrimination, the enjoyment of human rights to everyone under its jurisdiction.

States' obligations under human rights law require them to assist all inhabitants in enjoying their human rights, and to fulfil their justified claims as spelled out in human rights instruments. This means that equal enjoyment of human rights must be achieved through active legal regulation and its administrative implementation. This can, however, negatively affect the preference by minority groups to control their own destiny.

Enjoyment of economic and social rights can redress past inequality by ensuring an adequate standard of living for all. Attention must then first be given to those who are the most disadvantaged, which may or may not be members of the majority. In some circumstances, particularly with regard to indigenous peoples, restoration of land rights can be a useful tool in this effort.

Pluralism in Togetherness

The origin of pluralism affects its evolution. Many states in Africa and parts of Asia inherited at independence multi-ethnic and multi-religious societies that prior to the colonial period had not formed part of a common 'state' or administrative unit. In many places, borders were drawn by the colonial metropolis. The initial pro-independence efforts, whether armed or not, were usually the work of broad-based multi-ethnic movements; some time after independence, however, ethnic and sometimes religious divisions usually made themselves felt.

A number of different approaches to managing these divisions have been tried. Some governments have sought to control ethnic tension through strictly centralized and often authoritarian political control; others have tried confidence-building and power-sharing measures among the different ethnic groups. Problems have arisen in both cases. Success does not and cannot depend solely on the wisdom of government measures but is also the result of the policies and behaviour of the different ethnic or religious groups and their leaders.

In the Americas and in Australia and New Zealand, the diversity arose in other ways. The outcome of past history in North America, for example, has been a threefold composition of the population, consisting first of the voluntary immigrants and their descendants, secondly of those human beings who arrived but did not 'immigrate' of their free will - they were coercively brought there as slaves - and thirdly of the indigenous peoples, who lived there before the arrival of settlers from Europe. With regard to the black North American population the main issue has been to prevent discrimination on the grounds of race; as for the indigenous population, policy has oscillated between non-discrimination and the preservation of this minority's separate existence.⁹

In Europe, particularly in Central and Eastern Europe, a major factor in the formation of minorities has been centuries of intermittent warfare accompanied by the drawing and redrawing of borders. Empires have been formed, expanded and disintegrated. Minority situations are the result less of immigration to independent or 'new'

territories than of internal migrations within empires or federations since dissolved, and of repeated changes of the political units within which settled populations find themselves. When the large entities disintegrate, the demographic map reveals a mixture of ethnic groups; some live compactly together, while in other areas members of different ethnic groups are interspersed; large numbers do not belong to any single ethnic group, because they are descendants of mixed marriages.

As a general rule, peripheral areas (often, but not always, rural) have the least diverse ethnic composition, whereas urban centres often have mixed populations.

Most states recognize the existence of minorities within their society. Classifications of minorities differ, however, with the most elaborate being used in some countries of Central and Eastern Europe.

The obligation of states to protect the existence and identity of minorities can take several forms. Two issues can be briefly mentioned here: education and political participation.

The issue of the content of education is essential both for the preservation of minority identity and for socialization into the common values of the national society. This is a question that causes much controversy. Guidance can now be taken from Article 29 of the Convention on the Rights of the Child, which spells out the requirement to education. States that are parties to the Convention agree that the education of the child shall be directed to 'the development of respect for the child's parents, his or her own cultural identity, for the national values of the country in which the child is living, the country from which he or she may originate and for civilizations different from his or her own'. Also important is 'the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origins'.

The issue of the institutional participation of minorities in the political and legal system brings us to questions of 'consociational democracy', power-sharing and constitutional devices to ensure effective participation, for which the term 'consociational democracy' has been coined (see below).

'Government by the people' means that everyone shall be entitled to take part in political decision-making, either directly or by freely chosen representatives. Democracy should ideally serve as the best way of ensuring the peaceful resolution of conflicts, in that everyone can make their interests felt in the common political arena. Hence there is the minimum requirement that members of minorities are in fact able to participate on an equal basis with everybody else.

The dilemma is that majorities can easily overlook the interests of minorities if society is polarized along ethnic, national or religious lines. Being in the position of a disadvantaged minority means, in fact, that one's interests can be neglected even within a democratic order.

Various devices have been developed to compensate for

this problem. States participating in the seminar on minority issues held in Geneva in July 1991 by the Conference on Security and Cooperation in Europe (CSCE) took account of the diversity of and variations in constitutional systems and identified the following positive approaches pursued by European democracies:

- advisory and decision-making bodies in which minorities are represented, in particular with regard to education, culture and religion;
- elected bodies and assemblies of national minority affairs;
- local and autonomous administration, as well as autonomy on a territorial basis, including the existence of consultative, legislative and executive bodies chosen through free and periodic elections;
- self-administration by a national minority of aspects concerning its identity in situations where autonomy on a territorial basis does not apply;
- decentralized or local forms of government;
- encouragement of the establishment of permanent mixed commissions, either inter-state or regional, to facilitate continuing dialogue between the border regions concerned.

In an effort to sum up the many variations in democratic experience that seek to accommodate a degree of pluralism, recent political science has seen the introduction of the notion of consociational democracy.¹⁰ Its main theoretical analyst is Arent Lijphart. It is a form of power-sharing through a multiple balance of power among the segments of a plural society, allowing for decision-making by the 'grand coalition method'. The concept of consociational democracy is seen as an alternative to the majoritarian type of democracy, and more suitable for good government in plural societies divided by ethnic, linguistic, religious or cultural differences, where the groups are clearly identifiable. Consociational democracy is built on the principle of executive power-sharing and a certain degree of self-administration for each group, whether they live together or separately.

Pluralism by Territorial Subdivision

'Territorial subdivision' is used here as a generic term to refer to all forms of local self-government within a sovereign state. The extent of local self-government can range from a minimum (local councils with authority over minor issues within the municipality) to a maximum that comes close to full sovereignty. It can include federalism, autonomy and regional and municipal local government. The options available can be examined from two different perspectives: what safeguards do they contain for the minorities? And, conversely, do they create inequality for other members of society?

In analytical terms, several issues can be examined. Is the subdivision based on entrenched or delegated power? Is the scope of local self-government established in ordinary legislation, in the constitution and/or in an international agreement so that it cannot be altered without

constitutional change or a new international agreement? What is the scope of authority or competence for the regional or local self-government bodies?

The origins of territorial subdivisions are at least twofold, with many intermediate forms, and they affect the content and scope of local self-government. In some cases, several units have joined together, either voluntarily or as the result of coercion, but the different units have reserved for themselves or been given some scope of authority within the territorial region they cover. In other cases, a centralized system has been found to be too cumbersome or has caused too many conflicts; consequently, a territorial subdivision has been adopted to avoid either governmental/bureaucratic overload or unnecessary conflicts, or both. Intermediate cases are those where the incorporation of a particular region or enclave has been the subject of international dispute, resulting in a compromise arrangement of autonomy under some form of international guarantee.

Territorial subdivisions with a pluralistic intent include federative systems based on differences in national or ethnic (or sometimes also religious) identity. Past examples were the Soviet Union and Yugoslavia (now dissolved); a present example is China. A different approach, providing for a territorial subdivision to accommodate the concerns of different nationalities or ethnic/linguistic groups, can be found in the constitution of Spain, probably one of the most successful innovations in recent times. Switzerland provides us with another, somewhat different example; and Belgium gives us another very interesting model that should be studied for the lessons it might give to other plural societies. India is of great interest because of the attention given to linguistic divisions as a basis for the federal system, and also for its efforts to avoid a form of political mobilization grounded in religious communalism.

Elsewhere, a number of specific autonomy arrangements have been made for minorities or groups to enjoy self-government, or 'home rule', and to extend the scope of self-government over time. Examples are Greenland, the Faeroes and the Åland Islands, models that are closely examined in the Minority Rights Group Report *Minorities and Autonomy in Western Europe*. Some of these are autonomies formed on the basis of international negotiations or disputes.

Other territorial subdivisions, made without a pluralistic intent, can under some circumstances have a pluralistic effect. This applies to systems of local government with a high degree of delegated power, where the purpose is generally governmental and administrative decentralization. The effect can be that minorities living compactly together, in areas where they form the majority, are able to develop material and cultural aspects of their identity within the scope of the power delegated to each local entity.

Numerous territorial subdivisions, however, have neither the intention nor the effect of pluralism. This applies to federations that are not based on language, ethnicity or nationality but result from the historical process by which members of the same ethnic groups in the past initially settled in or organized separate political units. Examples

are Australia, the German Federal Republic and the United States. In these cases, federation is maintained partly because of tradition and partly for administrative and political convenience. Since minorities do not have a dominant position in any such federal units, they do not constitute a framework for pluralism in ethnic, national or religious terms.

Territorial subdivision is not without problems from a human rights perspective. For example, is there freedom of movement and residence for all inhabitants in the state throughout the whole of the national territory, in accordance with Article 13 of the Universal Declaration, or is that freedom (particularly of residence) restricted to the ethnic, linguistic or religious group concerned? Similarly, is there freedom of employment, a right to own property, including land and other fixed assets, and a right to participate in economic activity within the different regions of the sovereign entity as a whole for all inhabitants, or are there restrictions on ethnic, religious or linguistic grounds?

The way any such territorial subdivision is brought about requires attention. It has sometimes in the past, as well as in the present, been sought through the employment of inhuman policies of 'demographic homogeneity', leading to population exchanges and forced removal. Such policies are blatantly in violation of contemporary human rights.

The displacement directed against Muslims in Bosnia-Herzegovina is the most serious contemporary case in point and has to be redressed. Those who have occupied the homes or properties of Muslim or other groups they have displaced should be required to vacate these dwellings and places. Those who have taken part in burning and looting should be required to participate in the rebuilding of the homes to facilitate the return of the displaced persons. It is essential to reject 'ethnic cleansing' measures, which must be held to constitute gross and systematic violations of human rights.

Attention should also be paid to the negative consequences of population transfer aimed at altering the demographic structure in a given region. However, once people have settled in good faith (not contrary to international law as articulated by international organizations with reference to that particular territory) they should as individual human beings be given full rights in that territory when its political status changes.

A Workshop on the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (UN General Assembly Resolution 47/135), was organized by representatives from the Institute for Human Rights of the Åbo Akademi University (Finland), Minority Rights Group (International) and the Finnish Ministry for Foreign Affairs and its Advisory Board for International Human Rights Affairs to study the Declaration and its place in a wider framework of the contemporary protection of minority rights. The Workshop, held in Turku/Åbo, Finland on 7-8 May 1993 benefited from the participation of 21 experts from 11 European countries. A draft of the Workshop report was considered by all participants. The final version is the sole responsibility of Allan Rosas, Director, Åbo Akademi University Institute for Human Rights and Alan Phillips, Director, Minority Rights Group (International). For further reading on this Workshop please consult the Minority Rights Group publication entitled 'The UN Minority Rights Declaration' which includes the prepared speeches of the Workshop as well as a list of the contributors and participants.

Report on a Workshop on the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, held in Turku/Åbo, Finland, 7-8 May 1993.

1. Participants in the Workshop welcomed the adoption, by consensus, of the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992) and the momentum created by the adoption of this first international human rights instrument devoted solely to the promotion and protection of minority rights.
2. It was underlined that non-discrimination and special measures leading to the equal enjoyment of all human rights remain the basis of minority rights protection. Provisions in the new Declaration which constitute further development of previously existing standards, such as those relating to existence, identity and full participation, were particularly noted. The planning and implementation of national policies and programmes as well as programmes of cooperation and assistance among states, in accordance with Article 5 of the Declaration, calls for due regard for the legitimate interests of persons belonging to minorities. New state mechanisms were called for to fulfil this commitment. It was also noted that the full participation of minorities in public life may, in some cases, call for special arrangements involving, inter alia, local government, federalism or autonomy.
3. In 1986 the General Assembly agreed that new standards should only be set when accompanied by implementation procedures in order to monitor and encourage compliance with these standards. As to the implementation of the Declaration itself, it was suggested that the UN Commission on Human Rights establish a Working Group with a mandate to review minority situations falling within the scope of the Declaration and, in so doing, to hear the views of governments, minorities, persons belonging to minorities and non-governmental organizations. The principles expressed in the Declaration could be of use for treaty bodies in applying the interpreting treaty provisions relating to minority rights, such as Article 27 of the International Covenant on Civil and Political Rights.
4. The provisions of the Declaration, recent resolutions adopted by the UN General Assembly and the Commission on Human Rights, and activities recently undertaken by the Advisory Services and Technical Assistance Programme of the UN Centre for Human Rights concerning technical cooperation for the promotion of minority rights, and the involvement of non-governmental organizations and academic institutions, were said to be essential for the realization of the rights set forth in the Declaration. Particular reference was made to the dissemination of information, human rights education and training, and the drafting of relevant domestic law.
5. The Declaration considers that the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities contributes to the political and social stability of states in which they live. The full implementation of the Declaration can play a significant role in the prevention of violent conflicts involving different communities within states. Drawing on the comprehensive approach proposed by the UN Secretary-General's Agenda for Peace, it was emphasized that respect for minority rights has a major role to play in the whole range of peace-building and peace-making efforts from early action to prevent conflict to the restoration of peace and stability after conflict.
6. With respect to all of the above-mentioned activities, the importance of the provisions in the Declaration on the role and functions of the United Nations and its specialized agencies in the realization of minority rights was underlined. The conviction was expressed that these organizations, as well as regional institutions such as the CSCE and the Council of Europe, and non-governmental organizations, should do more in order to incorporate minority rights into their various activities and to implement the Declaration as well as minority rights provisions in other existing human rights instruments.
7. In the promotion and protection of minority rights, not least the activities undertaken by inter-governmental organizations, representatives of minorities should have the opportunity to participate and present their views. This opportunity should be extended to standard-setting, implementation, promotional activities, technical assistance and the prevention and resolution of conflicts. Full consideration should be given to the establishment of a Voluntary Fund to encourage the participation of minorities in this work.
8. The Declaration expresses minimum standards relevant to all national or ethnic, religious and linguistic minorities and applicable in all situations. It is important to recognize that the implementation of the Declaration is a continuing process requiring sustained attention and resources by all parties concerned.

A Workshop on proposals for the implementation of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (UN General Assembly Resolution 47/135) was organized in early October 1993 in New York by Minority Rights Group (International), the United Nations Association of the USA and the Jacob Blaustein Institute for the Advancement of Human Rights. The 25 participants in the Workshop included staff members of the UN Secretariat, UN agencies, and non-governmental organizations as well as academics and independent experts.

Summary of Workshop on Proposals for implementing the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, held in New York, October 1993.

1. Participants welcomed the Secretary-General's support for the Declaration on Minorities as expressed in An Agenda for Peace (paragraph 18) and his stress on the need for special sensitivity to "the situation of minorities as well as the stability of states". Enhanced minority rights protection by the UN is important and timely. The Secretary-General's report on the implementation of the Declaration accordingly could have an important impact on the way the UN system responds and organizes itself to address minority protections. This in turn will influence the effective preservation of human rights and international peace and security.
2. Effective implementation of the elements in the Declaration requires that all parts of the UN system – including each department and specialized agency – strive for greater cooperation and coordination on matters affecting the rights of persons belonging to minorities.
3. There is a critical need for relevant UN statistical and economic departments to regularly collect and disseminate data on the treatment of different minorities as part of their analyses provided to UN operational agencies. Special training may be needed to sensitize personnel on these topics. Such information should be disaggregated as appropriate for relevant sectoral work of departments and programmes of the UN and its specialized agencies.
4. Means should be established to promptly ensure that information from the specialized agencies, governments and all appropriate non-governmental agencies should be efficiently channelled to relevant Secretariat offices to aid in the new early warning and preventive diplomatic efforts. This too will require enhanced coordination among the various branches of the UN system, and specialized training of field officers about the principles of human and minority rights.

To accomplish this, the executive head of each specialized agency and other UN departments and programmes should inform field officers that they have specific duties in relation to the Declaration and should prepare, circulate and analyze the results of questionnaires addressed to field officers regarding these duties. Further, the executive heads should explore means to train agency personnel appropriately, and should make use of the information and expertise on the rights of persons belonging to minorities that is available from non-governmental organizations. The Department of Public Information should be encouraged to cooperate actively in these endeavours, to appoint officers to work closely with the operational personnel and allocate funds to the preparation of relevant education material relevant to the Declaration.
5. Each of the specialized agencies and other organizations and programmes of the UN system should be asked to appoint one or more persons to be responsible for that agency's contribution to the "full realization" of the rights and principles set forth in the Declaration in accordance with Article 9, and in fulfilment of the operative paragraph 3 of the accompanying resolution. Among the responsibilities of such 'focal points' should be the assessment and evaluation of the effect of relevant programmes on minority communities.
6. Sensitivity to minority issues is crucially relevant to peacekeeping and post-conflict peace-building. There is a special need for training peacekeepers and others involved in national reconciliation programmes about the rights of minorities and other non-discrimination instruments. Special efforts should be made in the field of post-conflict peace-building to develop cross-community programmes.
7. Greater use should be made of the Voluntary Fund for Technical Advisory Services with regard to the rights of persons belonging to minorities at the Centre for Human Rights, as recommended by the World Conference on Human Rights in Vienna. These and other parts of the UN system should offer assistance to governments in protecting diversity.
8. There is a critical need to insure the perspectives of and participation of persons belonging to minorities in the deliberations and activities of the UN system. Participation should be encouraged in all areas where the interests of minority groups are at stake.
9. One mechanism for raising minority concerns, encouraging participation, and addressing grievances should be to establish a Working Group, perhaps within the human rights programme, to examine questions related to the implementation of the Declaration. The Working Group should be empowered to receive credible and reliable reports from all appropriate sources, including governmental, intergovernmental and non-governmental organizations, and should have the capacity to respond effectively to credible and reliable information affecting cases and situations involving the rights of persons belonging to minorities, and to make urgent enquiries with the aim of humanitarian resolution of problems. It should promote positive measures to implement the Declaration. The Working Group could invite persons to present testimony in person and might dispatch members of the group or their representatives to examine situations. The Working Group should submit regular reports, as information warrants, regarding the implementation of the Declaration on Minorities, including the occurrence and extent of incidents inconsistent with the provisions therein, together with conclusions and recommendations.
10. The practice of annual reporting by the Secretary-General to the General Assembly on the implementation of the Declaration should become a regular practice.

NOTES

to *Approaches to Minority Protection*

- 1 The concept of 'nation' is currently used in several different meanings; see further below in the text. Here it is understood in a purely legal/technical sense as the permanent population of a state.
- 2 The prohibition of the use of force – UN Charter Article 2 (4) – and the role of the Security Council in the maintenance of international peace under Chapters VI and VII are intended to protect the sovereignty of states against external threats and aggression.
- 3 Provided for in UN Charter, Chapter IX on international economic and social cooperation.
- 4 Gurr, Ted, *Minorities at Risk: A Global View of Ethnopolitical Conflict*, Washington, DC, United States Institute of Peace, 1993, p.18.
- 5 That the 'melting pot' is a somewhat simplified and misleading concept to describe the reality even in the United States, was shown by Glazer, Nathan, and Moynihan, Daniel Patrick, in their book *Beyond the Melting Pot: The Negroes, Puerto Ricans, Jews, Italians and Irish of New York City*, Cambridge, MA, Harvard University Press, 1970.
- 6 Daniel Bell, quoted in Moynihan, Daniel Patrick, *Pandemonium*, New York, Oxford University Press, 1993, p.61.
- 7 Tomuschat, C. 'Equality and non-discrimination under the International Covenant on Civil and Political Rights', *Staatsrecht, Völkerrecht, Europarecht. Festschrift für Hans-Jürgen Schlochauer*, Berlin and New York, de Gruyter, 1981, pp.691-716, at p.715, where this definition appears as a summing-up rather than as a proposal advanced by the author.
- 8 An issue of a different nature arises when the culture of the protected group upholds systematic discrimination among its own members, e.g. on the grounds of gender or sex. Article 8, para. 2, states: 'The exercise of the rights set forth in this Declaration shall not prejudice the enjoyment by all persons of universally recognized human rights and fundamental freedoms.' In practice this may require that state authorities do not interfere in the separate domain of the group concerned, which will lead to friction, as evidenced for example in India.
- 9 On the ambivalent treatment of the indigenous population by the United States, see Sharon O'Brien, 'Tribes and Indians: with whom does the United States maintain a relationship?' *Notre Dame Law Review*, 66, (5), 1991.
- 10 Lijphart, Arent, 'Majority rule versus democracy in deeply divided societies', *Politicon*, 4 (2), 1977.

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