

## MRG Briefing

### Executive Summary

The body of international law that can be applied to minorities reflects a welcome development in the past decade. Evidence of the increased attention given to minority rights is provided by the adoption, in 1992, of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, and the establishment of the United Nations Working Group on Minorities in 1995. There is also evidence, however, that more needs to be done. Minorities' exclusion from political participation and socio-economic development persists and is a major source of inter-community tension in many parts of the world. The severity and the frequency of disputes and conflicts attributable to violations of minority rights indicate that minority protection has to be taken further and that new avenues of conflict prevention need to be found.

The United Nations (UN) recognizes that inter-community tensions and conflicts are serious threats to the peace and stability of a region, but it has not yet adequately addressed the interconnected dimensions of

minority rights and conflict prevention. Relevant human rights special procedures of the Commission on Human Rights and treaty bodies – none of which are entrusted with a minority-specific mandate – may highlight concerns with respect to minority issues within their broader human rights mandates. However, there is insufficient follow-up to their conclusions and recommendations. Alarming, there is a serious lack of coordination between the human rights programme in Geneva and the organization's decision-making bodies in New York. The Secretariat's failure to act on information from a special procedure of the Commission resulted in what has been referred to by the UN itself as the 'preventable genocide' of 1994 in Rwanda.<sup>1</sup> Grave atrocities, such as the one in Rwanda, have alerted UN human rights mechanisms to the need for procedures that can prevent or limit the outbreak of ethnic conflicts.

There is a clear need to introduce an effective minority-oriented conflict prevention mechanism into the UN human

rights system. The appointment of a UN Special Representative of the Secretary-General on Minorities would provide the best institutional response to existing or potential situations involving minorities.

The proximity of the Special Representative to the UN Secretariat would ensure effective early warning on situations involving minorities and proper follow-up to such situations within the core activities of the UN organization. Preventive activities would be pursued by the Special Representative in cooperation with relevant UN bodies and agencies, as well as regional institutions and mechanisms. The Special Representative's task would be to ensure adequate solutions to specific problems that are both politically viable and in line with international minority standards. The nature of this expert's involvement would also enhance the focus on technical assistance to address the problems that lie at the root of tensions and conflicts involving minorities.

### UN requests more effective action in addressing situations involving minorities

In the preamble to the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992), it is stated that the promotion and protection of the rights of persons belonging to minorities contribute to the political and social stability of states in which they live. Ten years on, as ethnic and religious tensions have escalated, the situation of minorities has become a matter of major concern to the UN, as reflected by a plethora of resolutions and recommendations calling for more effective action in addressing situations involving minorities. The Secretary-General, in

presenting his Millennium Report, stressed the urgency of protecting minority rights and establishing more effective and long-term responses for conflict prevention.<sup>2</sup> The 2001 World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance highlighted the connection between minority and non-discrimination issues, and underscored international concern about preventing ethnic conflict.<sup>3</sup> The General Assembly has repeatedly called upon the Secretary-General to make available, at the request of governments concerned, qualified expertise on minority issues, including the prevention and

resolution of conflicts, to assist in existing or potential situations of conflict involving minorities.<sup>4</sup> The Sub-Commission on the Promotion and Protection of Human Rights, at its 53rd session in 2001, endorsed the recommendations of its Working Group on Minorities that consideration be given to the possible appointment of a Special Representative on minority issues, and that regional organizations explore the possibility of establishing institutions similar to the High Commissioner on National Minorities of the Organization for Security and Cooperation in Europe (OSCE).<sup>5</sup>

## Minorities and Conflict Prevention: The Case for a Special Representative

## The UN Declaration on Minorities

Minority rights have attracted an increased level of attention in the past decade. In 1992, with the adoption by the United Nations General Assembly of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, the international community produced the first universal instrument dedicated entirely to the situation and rights of minorities.<sup>6</sup> The Declaration sets forth those rights that make it possible for persons belonging to minorities to preserve and develop their group identity, such as the right to speak their own language, profess and practise their own religion, and enjoy their own culture. It further confirms that persons belonging to minorities have the right to establish and maintain their own associations, to participate in public and political life and in the designing and implementation of development policies and projects that affect them. The principles contained in the Declaration apply to persons belonging to minorities in addition to the universally recognized human rights guaranteed in other international instruments.

Following the adoption of the Declaration, a further major development in the evolution of the UN minority protection system was the establishment, in 1995, of the United Nations Working Group on Minorities. A subsidiary body of the Sub-Commission on the Promotion and Protection of Human Rights, the Working Group was entrusted with the tasks of reviewing the realization of the Declaration on the rights of minorities, examining possible solutions to problems involving minorities and recommending further measures for the promotion and protection of their rights.<sup>7</sup> The five-expert member Working Group meets annually for five days in Geneva. Participation in the sessions of the Working Group is open to government representatives, inter-governmental organizations and non-governmental organizations involved in minority protection irrespective of whether or not they have consultative status with the UN Economic and Social Council, as well as scholars versed in the subject.

### Weaknesses in the UN system for minority protection

Within the UN system, human rights treaty bodies and special procedures – that is, the considerable number of special rapporteurs and working groups of the Commission on Human Rights – constitute an essential cornerstone of the UN's efforts to promote and protect human rights.<sup>8</sup> None of these mechanisms specifically address minorities. In relation to thematic issues such as religious intolerance and racial discrimination, or with respect to country mandates, treaty monitoring bodies and special rapporteurs do tend to highlight situations of concern with respect to minorities. However, given that the subject-matter falls within a broader mandate, their engagement with minority issues is limited, as is their capability to provide insight into situations involving minorities, and the impact they can have in providing solutions. Furthermore, the capability of these mechanisms to provoke timely and urgent responses rests on proper consideration of their reports and adequate follow-up to their conclusions and recommendations. Recent reviews of these aspects by a working group of the Commission on Human Rights indicate an inadequate level of attention to the reports of the Commission's special rapporteurs and other subsidiary bodies, and a serious lack of ongoing follow-up to their recommendations and the related conclusions of the Commission.<sup>9</sup>

Given the lack of a minority-specific supervisory body or special procedure, the Working Group on Minorities has quickly become the major focal point for the activities of the UN in the field of minority protection. The Working Group plays an important role in fostering dialogue and promoting greater global understanding of the situations of minorities. Since its inception, it has carried out extensive work, for example, in looking at best international practice in minority rights legislation and in the interpretation, clarification and development of standards pertaining to minorities.<sup>10</sup> However, debates in the Working Group also underscore that, in the face of ethnic and religious tensions and inter-communal violence often resulting from violations of minority rights, an international mechanism for rapid, responsible and constructive handling of minority questions is needed. Hence the recent call for a UN-appointed expert to complement the Working Group's role and take the work of minority protection further. Past experience and present concerns lend support to the belief that an area in which a

minority-specific mechanism would provide a particularly effective input is in early warning and conflict prevention, aimed at defusing tensions that are likely to spark imminent conflicts.

It is noteworthy that, against the background of the grave and violent ethnic conflicts that erupted in the 1990s, treaty bodies such as the Committee on the Elimination of Racial Discrimination (CERD) stretched their supervisory role to include early warning and urgent procedures to respond to problems requiring immediate attention. However, the actual impact of the actions attempted under the early warning and urgent procedures by such bodies appear limited.<sup>11</sup> Moreover, any action by treaty bodies can only relate to States Parties to the international human rights instruments over which these bodies exert supervision.

At the regional level, the establishment of the OSCE High Commissioner on National Minorities has provided the single most effective institutional response to potential conflicts involving minorities. The essential contribution of this instrument for peace and stability in the OSCE area is widely acknowledged and demonstrates the need for a comprehensive and sustained approach to minority questions on the international level.<sup>12</sup>

### A minority-oriented mechanism for early warning and preventive action

Early warning has three fundamental elements: information, analysis and a communications channel that opens the way for taking appropriate preventive action.<sup>13</sup> The need to improve the early warning capacity of the UN, in particular its capacity to analyse and react to information, has been highlighted ever since the incident in which a Special Rapporteur of the Commission on Human Rights had predicted a year in advance the genocide in Rwanda without any action being taken.<sup>14</sup> The recent independent inquiry launched by the Secretary-General into the UN's handling of the Rwanda crisis found, for example, that:

'At Headquarters there was not sufficient focus or institutional resources for early warning and risk analysis. Much could have been gained by a more active preventive policy aimed at identifying the risks for conflict or tension ...'<sup>15</sup>

To ensure that developments and trends concerning minority situations are incorporated in the early warning activities of the UN, a minority-specific mechanism

would have to be sufficiently close to the political organs of the UN empowered to deal with human rights violations that might threaten international peace and security, notably the UN Secretariat and the Security Council.

Despite repeated emphasis being placed on the connection between human rights and peace and security,<sup>16</sup> consultation between holders of human rights mandates in Geneva and the UN Secretariat in New York is intermittent at best and entirely lacking at worst. Recent UN practice allows special rapporteurs of the Commission on Human Rights to consult on an *ad hoc* basis with the Security Council under the so-called 'Arria Formula', to advise on specific issues that fall within the scope of their mandate.<sup>17</sup> While discussions out of the Council chambers are increasingly being arranged, especially in relation to the establishment of peacekeeping operations,<sup>18</sup> the *ad hoc* and informal nature of this procedure means there is no guarantee that relevant information is brought to bear in the internal deliberations of the Secretariat on early warning and preventive action.

The appointment of a Special Representative on Minorities, mandated to assess developments and trends in situations involving minorities, and provide early warning when such situations are likely to escalate and threaten peace and security - would strengthen the UN's conflict prevention capabilities and contribute to an effective UN minority protection system. Reporting directly to the Office of the Secretary-General, the Special Representative would provide the Secretariat with accurate, timely and unfiltered information and enable the Secretary-General to draw the Council's attention to a developing crisis.<sup>19</sup> The Special Representative would be further required to pursue, in consultation with the UN Secretariat and relevant departments, appropriate actions to de-escalate emerging tensions. As a mechanism of the UN human rights system, the Special Representative would ensure adequate liaison with the human rights programme in Geneva, particularly with the Office of the High Commissioner for Human Rights (OHCHR).

Actions to de-escalate tensions and enhance the situation of minorities should be pursued in cooperation with relevant UN agencies and bodies, as well as regional institutions. Regional organizations are in a position to adapt policies to local realities and allow for innovative approaches to be transmitted both to affected countries within their regions and to the international system

as a whole.<sup>20</sup> The Special Representative's involvement would increase awareness of the particular needs of minorities and encourage relevant institutional arrangements under regional systems, in particular with the African Union and the Organization of American States, or contribute to strengthening regional initiatives where such arrangements already exist.

The Special Representative's mandate will need to be attuned to the particular complexity of minority questions, and the sensitivities involved. Although the mandate should be open to direct approaches and submissions from the concerned persons, the nature of the Special Representative's role would be focused on finding solutions which are both politically possible and in line with international standards on minorities. Reported violations of minority rights from the treaty bodies and human rights special procedures constitute an important source of information which, along with information retrieved from other sources, may inform the decision as to whether the Special Representative should engage in a particular situation. International standards on minorities should constitute the principal framework of analysis and the foundation of specific recommendations that will follow the Special Representative's involvement.

### Addressing the root causes of conflicts: advisory services and technical assistance

A comprehensive approach to minority questions and conflict prevention also needs to address the underlying issues of contention, that is, the social, economic and political problems at the root of tensions, and conflicts involving minorities. Such problems often lie in institutional arrangements that do not permit access of minorities to, and their participation in, governmental programmes and institutions. Or they may be rooted in competition for scarce resources or economic benefits, unequal development or persistent non-fulfilment of basic human needs.

The root causes of tensions and conflicts involving minorities can be addressed through technical assistance projects initiated or encouraged by the Special Representative under the UN Technical Cooperation Programme. The provision of advisory services and technical assistance is an integral part of the UN human rights system, which has grown significantly in recent years.<sup>21</sup> The Commission on Human Rights reiterates requests to its experts and rapporteurs to include in their

recommendations proposals for specific projects to be realized under the technical cooperation programme.<sup>22</sup> There is little evidence that such constructive measures are being taken to address existing or potential situations involving minorities.<sup>23</sup> The Special Representative would constitute a unique source of expertise and advice in an area that requires highly sophisticated knowledge and understanding of the political, social and economic context within which assistance is to be provided.

The appointment of a Special Representative on Minorities would give a strong signal that safeguarding the protection, rights and welfare of minorities everywhere is an important issue, and would ensure that more effective action is taken to address situations that have profound effects on the prospects for durable peace, security and development.

### Notes

1. See Report by the Secretary-General on the prevention of armed conflict, UN document A/55/985, S/2001/574.
2. A/54/2000.
3. A/CONF.189/12.
4. See, for the latest, A/54/163 and A/56/162.
5. Sub-Commission on the Promotion and Protection of Human Rights resolution 2001/9. See also the Report of the Working Group on Minorities at its seventh session, E/CN.4/Sub.2/2001/22.
6. A/47/135.
7. Commission on Human Rights Resolution 1995/24.
8. Special procedures cover, to date, 24 thematic and 13 country mandates. All the mandates, except one, were created by the Commission on Human Rights. The General Assembly created the mandate on children in armed conflict entrusted to a Special Representative of the Secretary-General.
9. Report of the Inter-Sessional Working Group on Enhancing the Effectiveness of the Mechanisms of the Commission on Human Rights, E/CN.4/2000/112.
10. See the Commentary on the UN Declaration of the Rights of Minorities, by Asbjørn Eide, Chair of the Working Group, E/CN.4/Sub.2/AC.5/2001/2.
11. A sober account of this procedure is offered by former CERD member: Van Boven, T., 'Prevention, early-warning and urgent procedures: a new approach by the Committee on the Elimination of Racial Discrimination', in E. Denters and N. Schrijver (eds), *Reflections on International Law from the Low Countries*, The Hague, Kluwer, 1998.
12. For a detailed analysis of the work carried out by the first High Commissioner on National Minorities, Max van der Stoep, see Kemp, W. (ed.), *Quiet Diplomacy in Action: The OSCE High Commissioner on National Minorities*, The Hague, Kluwer, 2001.
13. Sutterlin, J., 'Early warning and conflict prevention: the role of the United Nations', in K. Van Walraven (ed.), *Early Warning and Conflict Prevention - Limitations and Possibilities*, The Hague, Kluwer, 1998.

Minority Rights Group International (MRG) is a non-governmental organization working to secure the rights of minorities and indigenous peoples, and to promote cooperation and understanding between communities.

We work with the United Nations, among other international bodies, to promote awareness of minority rights, in conjunction with partner organizations. We coordinate training on minority rights internationally and work with different communities to counter racism and prejudice. We have a wide-ranging publications programme covering issues facing oppressed groups around the world.

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rights  
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14. Report of the Special Rapporteur on Extrajudicial, Summary and Arbitrary Execution, E/CN.4/1994/7/Add.1.
15. Independent inquiry into the actions of the UN during the 1994 genocide in Rwanda, 15 December 1999. The report is available at [www.un.org/News/press/docs/1999/19991215\\_rwanda\\_report.htm](http://www.un.org/News/press/docs/1999/19991215_rwanda_report.htm)
16. See, among others, the Report of the Secretary-General to the General Assembly, Renewing the United Nations: A Programme for Reform, A/51/950, 14 July 1997.
17. The 'Arria Formula' is an informal arrangement that allows the Security Council to be briefed by one or more persons considered as expert in a matter of concern to the Council. Devised by Amb. Diego Arria of Venezuela in 1993, Arria Formula meetings have opened the Council to the outside world. Today the Council holds Arria Formula briefings with NGOs as well.
18. See, for instance, the report of the Special Rapporteur on the situation of human rights in the Democratic Republic of Congo, E/CN.4/2001/40.
19. UN Charter Article 99 authorizes the Secretary-General to draw the Security Council's attention to any matter that, in his/her opinion, may threaten the maintenance of international peace and security. Under the implicit responsibilities of Article 99, Secretaries-General have appointed staff, authorized research, made visits and engaged in diplomatic consultations.
20. The increasing importance of regional organizations is highlighted, for instance, in the reports of the Representative of the Secretary-General on internally displaced persons. His contacts with regional bodies have been pivotal in enhancing institutional arrangements at the regional level for displaced persons. See, among others, A/51/483.
21. The UN technical cooperation programme is financed through the UN Voluntary Fund for Technical Cooperation in the Field of Human Rights and partly from the regular budget for technical cooperation in the field of human rights.
22. Commission on Human Rights resolutions 1995/53, 1996/5, 1997/46, 1998/57, 2000/80.
23. For an overview on the implementation of activities and use of funds, see the OHCHR Human Rights Annual Report 2000, available at [www.unhcr.ch](http://www.unhcr.ch)

## Recommendations

1. To mark the 10th anniversary of the adoption of the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, MRG urges the implementation of recommendations made by the Working Group on Minorities (E/CN.4/Sub.2/2001/22), which call for the establishment of a Special Representative on Minorities and the establishment of a voluntary fund to facilitate the participation of minority representatives in the Working Group.
2. MRG calls on the UN Commission on Human Rights to appoint a Special Representative of the Secretary-General on Minorities, thus responding to specific requests made in this regard by the Sub-Commission on the Promotion and Protection of Human Rights and the Working Group on Minorities. A special mechanism on minorities was also called for by a number of representatives of minority communities at the 7th session of the UN Working Group on Minorities in 2001. The Special Representative's mandate would primarily focus on the prevention of conflicts involving minorities and

particularly devastating both for minority communities and for regional, and often global, peace and stability.

The mandate would include the promotion of inter-community dialogue and cooperation between states and minority communities to address latent conflicts and to de-escalate tension and, as necessary, provide early warning to the Security Council and Secretary-General, as well as other relevant bodies. The Special Representative could encourage or initiate technical assistance projects under the UN Technical Cooperation Programme in order to address the root causes of tensions and conflicts involving minorities. The cost in human and financial terms of failing to stem conflict far outweighs the relatively nominal sums required to have in place a person mandated to provide preventive diplomacy.

- 3 MRG requests the Office of the High Commissioner for Human Rights to carry out research assessing existing UN mechanisms and procedures that may address minorities and conflict prevention and the degree of success achieved.

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MRG Briefings provide concise, accurate information about issues and situations of immediate concern to minorities and indigenous peoples, and those working with them. Briefings deal with questions which warrant the attention of governments, policy-makers and the international community and include recommendations for effective action.

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Published March 2002

ISBN 1 8976 93 49 4

Typeset by Kavita Graphics.

Printed in the UK on recycled paper.

*Registered charity no. 282305. An international educational agency with consultative status with the United Nations (ECOSOC). A company limited by guarantee in the UK no. 1544957.*

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