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Minority Situations: In Search of Peaceful and Constructive Solutions

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I.   IMPORTANCE AND AMBIGUITY OF MINORITY ISSUES

The importance of minority issues in contemporary international relations is evidenced by the great flurry of present activities which deal with them. Such efforts at the international level take place within the Conference on Security and Co-operation in Europe (CSCE),[1] the Council of Europe,[2] and the United Nations.[3] Many states are presently involved in a thorough review of their constitutional and statutory provisions concerning minorities. Scholarly activity in this field is also extensive. While it is undoubtedly a growth business, there is much ambiguity about the processes involved. Many different problems are lumped together under the notion of minority rights, and there is considerable confusion over the relevance and usefulness of that notion.

The purpose of this Article is two-fold. The first is to present ideas on what should properly be addressed under the heading of minority issues and what should not. The second is to examine peaceful and constructive ways of handling these matters. This Article does not deal with the question of what rights the minorities should have; that will be covered in other contributions to this Symposium. Nevertheless, the examination below is carried out within the framework of two related, normative issues: international human rights, and the existing and evolving world order. Human rights are concerned with the individual; world order is concerned with the structure and distribution of authority in world society.

We must also be aware of political forces. Existing states have a vested interest in maintaining the present distribution of authority, i.e., retaining their present borders. On the other hand, those same sovereign states must address strong nationalistic sentiments which militate for secession and self-determination within those borders. Whether such secession is useful and constructive from the perspective of human rights, or for world order, may not always be the major concern of those wishing to secede. The values attached to collective self-assertion may be irrational, but they are a force to be reckoned with. They can be neglected only at great peril.

Scholars may seek to explore the ideal options, but in the real world there is also a need to find accommodation between the ideal and the powers that be. Transition and harmonization can take place only gradually; considerable diplomatic and legal skills are needed to seek temporary solutions. These temporary solutions can serve as stepping stones toward the realization of preferred values. The human rights perspective focuses on the rights of the individual—on equality of all human beings in dignity and rights. Essential to this perspective is the application to all human beings of the principle of nondiscrimination.

The perspective of the international legal order is based on three principles: sovereign equality of states, territorial integrity, and political independence; nonaggression and nonintervention; and good-faith, equally-beneficial cooperation between states. There is common ground between these perspectives. Popular sovereignty emphasizes that state authority is based on the will of the people, which means that the people must be able, at regular intervals and through a free choice of options, to determine the general framework for policy-making and to choose their preferred

representatives. The rights of peoples (not states) to self-determination means that the people must at all times be able to determine their own fate, in the short and the long run. Self-determination can be external or internal. The latter requires the existence of democracy, and in some cases, a degree of autonomy for peoples within multinational or multiethnic states.

Human rights were first elaborated within states as part of a threefold struggle. Superficially, the struggle was between those who governed and those who were governed, but it was also a struggle between different groups. The adoption of human rights at the national level solved such conflicts by proclaiming that everyone was free and equal. This freedom embraced, for example, the freedom to have whatever religion one wanted or to express oneself in whichever language one preferred. Equality meant that there should be no discrimination in the enjoyment of such rights.

While human rights were initially developed at the domestic level, they were eventually transferred to the international level. Conversely, minority rights were first elaborated in international relations, as specific solutions to transboundary conflicts; only later were they transferred to the domestic level. Constructive solutions to minority issues should harmonize both human rights and world order concerns. The concrete application of general principles should be tailored to the specific situation of a given country or region.

II.   EVOLUTION OF MINORITY RIGHTS IN INTERNATIONAL LAW

It may be useful to briefly review some aspects of the historical evolution of the rights of minorities in international law. The past teaches valuable lessons, but prior solutions are not necessarily applicable to contemporary conditions. This Article will address three points.

First, as already stated, there are two primary approaches to minority issues in the international legal system. One is to explore the minority issues on the basis of the universal human rights system as it presently exists. By doing this, we focus on the dignity and the equality of the individual, alone or in community with others. The other approach is to look at minority questions from the perspective of world order. By doing so, we recognize that there exists an international system of states which constitutes the

current international legal order. These states have the dominant influence on the structure of the world order. In the context of world order, there is a concern with sovereignty, political independence and territorial integrity, nonaggression, and nonintervention.

While there may be general awareness that the notion of sovereignty towards the end of the twentieth century is much more muted and limited than at the beginning of the century, the basic principle of sovereign equality of states cannot be overlooked in any potential arrangement for minority rights. Mediating between the two concerns (individual human rights versus the world legal order) is the right of self-determination. The scope and extent of this right is subject to considerable controversy, and this Article addresses it only briefly. It is essential, however, to recognize that we cannot properly deal with minority issues without recognizing that the problem of self-determination, by nations or peoples,[4] is looming in the background.

The second point of this discussion is that international law initially developed as a law between "Christian" European states. In its modern form, international law is the result of the formation of the nation-states from the seventeenth century onward.[5]

Third, this article will examine some stages in the evolution of the system of states. From the seventeenth century onward there has been a trend toward a dissolution of empires. The breakdown of the German-Roman Empire in 1648 contributed to the first formation of nation-states. Nevertheless, as an ideology, nationalism did not take root until the end of the eighteenth century. Nationalism caused the weakening, and later the dissolution, of the Austro-Hungarian Empire, the Ottoman Empire, and the Tsarist Russian Empire. Nationalism also led to the shedding of the non-German parts of the German Empire. The process gathered momentum during the 19th century and reached its culmination with World War I and the peace settlements after the war.

A major stage in the dissolution of empires has been the process of decolonization, largely completed during the 1960s. Presently, we are also witnessing the transformation of what some see as the Soviet Empire (a misnomer in many respects), probably

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4 Before the Charter of the United Nations, the common formulation was "self-determination of nations," but from the time of the Charter the relevant phrase is "self-determination of peoples."

5 *See infra* note 6 and accompanying text.

into a loose federation with considerable autonomy for the member states. Consequently, a great number of sovereign states which now exist face significant minority issues. The situation resembles a Chinese box (or Russian doll, both of which contain numerous miniature replicas); when the claim of nationhood results in an independent state, minorities emerge within that new state with a potential or actual need for protection.

Contemporary international law owes its origin to the same phenomena that gave rise to the problem of minorities. It is common to trace the origin of modern international law to the emergence of the nation-state system in Europe, or, more precisely, to the Treaty of Westphalia of 1648, which was the peace settlement after the Thirty Years War. Bert Röling has argued (and I share his views) that modern international law started as a European law between "Christian nations," and soon included decolonized countries settled by European immigrants (the United States, Latin American states, and later Canada, Australia, and New Zealand); that the law expanded to embrace the Ottoman Empire in the nineteenth century, therefore becoming the international law of "civilized states" (which included Japan by the time it defeated Tsarist Russia in 1905); and that it was not until 1945, with the creation of the United Nations and the subsequent process of decolonization, that international law became a global law between states.[6]

The history of minority issues in international law is also intimately linked to the expanding scope of international law as a whole. International law means law between nations. This was long understood to mean law between states which are nation-states, a notion which introduces us to an ambiguity of considerable significance for minorities, namely, the manifold meanings of the word "nation." Stavenhagen suggested an elementary distinction between nationalist ideology that precedes the establishment of an independent nation-state, and the state nationalism of governments that wield power.[7] Irrespective of that distinction, "nation" can be treated both as a socio-cultural concept and as a technical-legal concept.[8]

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6 B. RÖLING, INTERNATIONAL LAW IN AN EXPANDED WORLD 17-45 (1960).

7 R. STAVENHAGEN, THE ETHNIC QUESTION: CONFLICTS, DEVELOPMENT, AND HUMAN RIGHTS 5-6 (1990).

8 For a more detailed discussion of the concept and its uses, see infra Part III.

Traditionally, international law concerns relations between nations in the technical-legal sense: the agglomerate of persons who are citizens of any given state. In European medieval times, religion and secular power were closely interrelated. The wars of religion were also wars which pitted subordination to a universalizing religion (the Catholic church) against national independence, which also appeared to require religious independence. The initial problem for minorities in international law was the protection of religious groups. The issue first emerged between Catholics and Protestants in the seventeenth century, and later between Christians and the Islamic world of the Ottoman Empire in the eighteenth and early nineteenth century.[9]

The dissolution of these empires, and the growth of nationalism in Europe, led to national minorities trapped within newly formed states. Nationalism was at the basis of demands for self-determination, but it was nearly impossible to draw the borders of new states along the territory inhabited by only one nation.[10] Groups which now found themselves to be settled minorities in a territory were in danger of discrimination or assimilation and, therefore, sought protection.

The major developments which took place through the peace settlement after World War I included League of Nations guarantees. These international instruments, which contain clauses for the protection of minorities, include the following:

> (a) special treaties signed at Paris during the peace conference (There were five, all involving the principal allied powers, as well as Poland,[11] Czechoslovakia,[12] Romania,[13] Greece,[14] and the Kingdom of Serbs, Kroats and Slovenes[15].);

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9 It will be remembered that the Christian settlers to the "New World," particularly the Catholic arrivers in what is now Latin America, for a long time had no tolerance for the religious freedom of the Indian peoples they met, but rather deemed necessary their conversion to Christianity, a task sometimes carried out with severe ferociousness.

10 Here the word "nation" is used in its socio-cultural sense.

11 Treaty Concerning the Protection of Minorities in Poland, June 28, 1919, 225 Parry's T.S. 412. *See also* INFORMATION SECTION, LEAGUE OF NATIONS SECRETARIAT, THE LEAGUE OF NATIONS AND THE PROTECTION OF MINORITIES OF RACE, LANGUAGE AND RELIGION 24, 62-70 (1927) [hereinafter PROTECTION OF MINORITIES].

12 Treaty Concerning the Protection of Minorities in Czechoslovakia, Sept. 10, 1919, 226 Parry's T.S. 170. *See also* PROTECTION OF MINORITIES, *supra* note 11, at 75-76.

13 Treaty Concerning the Protection of Minorities in Romania, Dec. 9, 1919, 5 L.N.T.S. 335. *See also* PROTECTION OF MINORITIES, *supra* note 11, at 24, 70-75.

14 Treaty Concerning the Protection of Minorities in Greece, Aug. 10, 1920, 28 L.N.T.S. 243. *See also* PROTECTION OF MINORITIES *supra* note 11, at 24-25, 45-51.

15 Treaty Concerning the Protection of Minorities in the Serb-Croat-Slovene State,

(b) peace treaties with Germany,[16] Austria,[17] Bulgaria,[18] Hungary,[19] and Turkey;[20] and

(c) separate declarations made before the Council of the League of Nations by Albania,[21] Estonia,[22] Finland[23] (regarding the Åland Islands), Latvia,[24] and Lithuania.[25]

Finally, there were two conventions: one German-Polish convention on Upper Silesia[26] and one convention concerning the Memel Territory.[27] With regard to the declarations, they were based on a resolution by the Assembly of the League, stating:

> In the event of Albania, the Baltic, and the Caucasian states being admitted to the League, the Assembly requests that they should take the necessary measures for enforcing the principles of the minorities treaties, and that they should arrange with the Council the details required to carry this object into effect.[28]

The minority rights guaranteed by the treaties and other instruments included the following main elements:

(i) right to nationality;[29]

Sept. 10, 1919, 226 Parry's T.S. 182. *See also* PROTECTION OF MINORITIES, *supra* note 11, at 25.

16 Treaty of Versailles, June 28, 1919, 225 Parry's T.S. 188.

17 Treaty of Saint-Germain, Sept. 10, 1919, 226 Parry's T.S. 8.

18 Treaty of Neuilly, Nov. 27, 1919, 226 Parry's T.S. 332.

19 Treaty of Trianon, June 4, 1920, 12 Martens Nouveau Recueil (ser. 3) 423.

20 Treaty of Lausanne, July 24, 1923, 28 L.N.T.S. 11.

21 Declaration Concerning the Protection of Minorities in Albania, Oct. 2, 1921, 9 L.N.T.S. 173. *See also* PROTECTION OF MINORITIES, *supra* note 11, at 10-11, 25, 49-51.

22 *See* PROTECTION OF MINORITIES, *supra* note 11, at 11-13.

23 *Id.* at 10-11.

24 *Id.* at 11-13.

25 Declaration Concerning the Protection of Minorities in Lithuania, May 12, 1922, 22 L.N.T.S. 393. *See also* PROTECTION OF MINORITIES, *supra* note 11, at 11-12, 60-62.

26 *See* PROTECTION OF MINORITIES, *supra* note 11, at 13-15, 51-58.

27 Convention Concerning the Territory of Memel, May 8, 1924, 29 L.N.T.S. 85. *See also* PROTECTION OF MINORITIES, *supra* note 11, at 15-16.

28 PROTECTION OF MINORITIES, *supra* note 11, at 10.

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> The principle contained in these provisions is that nationality of a newly-created or enlarged country may be acquired: (a) by the fact that a person was habitually resident in the transferred territory, or had rights of citizenship . . . there at the time of the coming into force of the Treaty, and (b) by the fact that the person was born in the territory of parents habitually resident there, even though at the date of the coming into force of the Treaty the persons concerned were not themselves habitually resident there.

Id. at 20 (footnotes omitted).

(ii) right to life, personal liberty and freedom of worship;[30]

(iii) right to equal treatment;[31]

(iv) rights regarding the use of minority language. (The rights carried three obligations: Respect of use of the language,[32] facilitated use of the language in court,[33] and facilitated use of the language in education[34]);

(v) rights to obtain a share of public funds devoted to educational, religious, or charitable purposes;[35] and

(vi) in some cases, provisions for the application of personal law.[36]

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30 The essence of this right assured the "inhabitants full and complete protection of life and liberty" and entitled the inhabitants "to the free exercise, whether public or private, of any creed, religion, or belief whose practices were not inconsistent with public order or public morals." *Id.* at 21.

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> The various Minorities Treaties embody the following general principles: a) equality of all nationals of the same country before the law, b) equality in the matter of civil and political rights, and; c) equality of treatment and security in law and in fact.
>
> The treaties also lay down that differences of race, language or religion shall not prejudice any national of the country in the matter of admission to public employments, functions and honours or the exercise of professions or industries; that nationals belonging to minorities should have an equal right to establish, manage and control at their own expense charitable, religious and social institutions, schools and other educational establishments, with the right to use their own language, and to exercise their religion freely therein.

Id. at 22 (footnotes omitted).

32 "The obligation [was] to impose no restriction on the free use by any national of any language in private intercourse, in commerce, in religion, in the press or in publications of any kind, or at public meetings." *Id.* at 22-23.

33 "The obligation [was] to grant nationals speaking a language other than the official language adequate facilities for the use of their language, either orally or in writing, before the Courts." *Id.* at 23.

34 In towns and districts which had a considerable portion of nationals who spoke a language other than the official state language, the state was obligated to provide adequate facilities to ensure that primary schools instructed children in their national language. The state could still require the official language to be taught in these schools. *Id.*

35 *Id.*

36 In regard to Muslims, there were provisions in the treaties with Greece, and with the Kingdom of the Serbs, Croats and Slovenes, and also in the Albanian declaration, concerning personal law. The right was "to enable questions of family law and personal status to be regulated in accordance with Moslem usage. At the same time these treaties guarantee[d] the protection of mosques, cemeteries, and other religious establishments." *Id.* at 25.

In addition to the rights, certain duties were imposed upon the minorities. A resolution adopted by the Assembly of the League in 1922 had the following text:

> While the Assembly recognises the primary right of the Minorities to be protected by the League from oppression, it also emphasies [sic] the duty incumbent upon persons belonging to racial, religious or linguistic minorities to cooperate as loyal fellow-citizens with the nations to which they now belong.[37]

The minority protection system under the League of Nations was applied only to those countries which were either bound by a treaty or by a declaration as outlined above. Also, the League could only deal with the protection of minorities, not with human rights for the majority inhabitants of the country concerned, in spite of the fact that several of the rights have a general bearing upon the right to life and the liberty of persons living in that country. Nevertheless, a fairly advanced system of petitions operated during the League of Nations and initially was rather successful. However, the increasing nationalism which finally resulted in World War II gradually diminished the possibility for the League to have any positive function.

The adoption of the Universal Declaration of Human Rights[38] in 1948 created an entirely new situation: it provided for individual human rights for everyone, everywhere. The effort to create equality between minorities and majorities, therefore, lost much of its purpose, except in one respect: the principle of nondiscrimination. Consequently, the main focus of international law after the Universal Declaration was the promotion and protection of individual human rights, including a vigorous development of the principle of nondiscrimination.

It soon became clear that the principle of nondiscrimination, when applied to minorities, needed clarification. The adoption of article 27 of the International Covenant on Civil and Political Rights[39] was one response. Article 27, the main provision in posi-

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37   *Id.* at 26.

38   G.A. Res. 217A, U.N. Doc. A/810, at 71 (1948).

39   International Covenant on Economic, Social and Cultural Rights, *opened for signature* Dec. 19, 1966, 993 U.N.T.S. 3 (*entered into force* Jan. 3, 1976); International Covenant on Civil and Political Rights and Optional Protocol to the International Covenant on Civil and Political Rights, *opened for signature* Dec. 19, 1966, 999 U.N.T.S. 171 (*entered into force* March 23, 1976).

tive international law relating to minorities, is essentially a clari-
fication of the application of the individual human rights to mem-
bers of minority groups. Article 27 contains provisions which can
go a long way to protect the rights of minorities.

The 1970s witnessed a growing concern for indigenous peo-
ples. They were culturally very different from the dominant section
of the country in which they lived, not only in dress, religion, lan-
guage, and cultural practices, but also in their way of life and in
their use of natural resources. Growing awareness of this profound
cultural difference, which had not disappeared in spite of efforts
to acculturate and assimilate for generations, led to a reversal of
attitudes in the United Nations throughout the 1980s. The process
of ensuring indigenous peoples' special rights is still under way.
The process must go beyond the normal concern with minorities,
in that it must also focus on the degree of autonomy required.
Any resolution must be able to protect the material conditions
under which the culture of indigenous peoples can be preserved.

The last stage concerning minority issues is the one which
emerged in Europe at the end of the Cold War. This period has
not only seen a resurgence of nationalist sentiments, but also a
resurgence of minority problems in Central and Eastern Europe,
including the Soviet Union. The minority and nationality problems
had been neglected or treated in an artificial way during the peri-
od of socialism; they have now reemerged with considerable inten-
sity and have generated concerns within the CSCE.[40] Efforts have
since been made to formulate their rights; however, more atten-
tion has been given to the possibility of providing conflict reso-
lution mechanisms.

III.   VARIATIONS IN THE CONTEXT OF
MINORITY ISSUES

A.   Differences in Contexts: Some Features

Minority problems differ greatly in different parts of the
world. The different ethnic, religious or national groups, as well as
variations in culture and dominant ideologies, create significant
dissimilarities among oppressed minorities. Discussions about their
rights have sometimes become unnecessarily confused because the

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40 Paragraphs 30 to 40 of the Copenhagen Document, *supra* note 1, contain rather
strong commitments for the protection of the identity of minority groups and for the
creation of favorable conditions for the preservation of that identity.

participants in the debate draw from such dissimilar experiences. This also applies to scholars, who fall prey to the danger of letting their own cultural traditions and preferences affect their perceptions of the appropriate norms to apply.

To examine the nature of the minority problem, we should realize that the issue of minority protection arises because of the existence of states. The problems affecting state/minority relationships are determined as much by the policies of the state as by the claims and demands of minorities. By definition, minority issues can occur only in pluralistic societies, defined as societies in which groups differ in some significant respects. The existence of a pluralistic society, however, does not make minority problems inevitable. Indeed, where the state is sufficiently flexible, accommodating the different groups in ways which allow for a dignified preservation of their separate, collective identities, minority problems do not arise. When the state partially favors one group or a coalition of groups against other groups, minority problems do arise. Of course, they may also arise when a given minority insists on having benefits and preferences beyond what the majority has, and which are not, therefore, granted to the minority.

Minority problems involve tensions between the state, on the one hand, and religion, nation, ethnicity, or culture, on the other. A brief commentary on each particular tension may be useful. On state versus religion: Where different religions (which may also include groups of secular-minded nonbelievers) exist, the crucial issue is whether the state is impartial in relation to religion, or partisan in favor of one religion. In the former case, the state is not a threat to any of the religious groups, and none of the latter have a need to define themselves as a minority, except when they are subject to harassment from members of other religious groups and the state is not willing to protect them on an impartial basis.

The problem of the state versus the nation is much more complicated. To explore this question, we need to remember the two main meanings of "nation." One meaning is simply the collection of persons who form the citizens of the state. This is its usage in such contexts as "What is your nationality?" The other is a socio-cultural concept: The group of persons who are held to form an "organic" community, and who share a common loyalty. This community may not have a state of its own, or it may have members living in two or more states, or the majority of the nation may live in a state composed essentially of members of that nation, but with minorities living abroad in states dominated by

other groups. In such cases they might be held to form a national minority inside another state. Hungarians in Romania, or Germans in Poland, are typical examples.

A national minority could also be a linguistic minority. The choice between these alternatives (linguistic or national minority) has potentially far-reaching political consequences, affecting the relations between the "mother state" and the state in which the minority is located. In some cases, the choice is between a religious or a national description of the minority concerned. As an illustration, consider the Turks in Greece. Are they a religious (Muslim) or a national (Turkish) minority? They seem to prefer to be considered a national minority; whereas, the Greek authorities prefer to see them as a religious minority. The issue involved here is the ambiguous ideology of the "nation-state" and its related policies. There are two versions of the nation-state ideology, one romantic and one radical (even revolutionary); nevertheless, they both carry certain dangers. Both hold that there should be a congruence between the state and the nation. The "romantic" version sees a "nation" as a social organism, a community of persons, with a common cultural heritage, often reinforced by a common religion and close ethnic ties. At its worst, the congruence represents "blood ties" between its members, which sets them apart from others, the intruders. The nation-state ideology, when applied in this sense, calls for the formation of a state (where it does not yet exist) to serve that particular nation, or for the more deliberate use of the state (where it already exists) to preserve its culture, its common aims, and to become a home for those members of the same nation who presently live abroad. A nation-state in this sense can become highly exclusivist, and as the case of Nazi Germany demonstrated, at times it can become outright racist in its effort to define the "others" or "intruders."

In such situations, members of the so-called intruders feel a need for protection, since they desire to be treated equally with the majority (or with the determinant group, which is not always the majority: witness South Africa under apartheid). These are "minorities subjected to discrimination" in the sense used by the International Convention on the Elimination of All Forms of Racial Discrimination.[41] The discrimination may be due not only to the intention to exclude (the fate Jews have very often faced), but

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41 *Opened for signature,* Mar. 7, 1966, 660 U.N.T.S. 195 (*entered into force* Jan. 4, 1969) [hereinafter Convention on Racial Discrimination].

also for purposes of economic exploitation (the fate very often faced by blacks and other nonwhite groups in white-dominated societies).

The other version of the nation-state ideology, which is radical or revolutionary, goes the other way. It takes the state as the starting point, and calls for all the groups who happen to live inside its borders to be wielded into one nation. This is what is often referred to as "nation-building." It is not exclusivist or racist; on the contrary, it is highly assimilationist. The assimilation process is usually directed in accordance with the preferences of the dominant group in that society. The group's language, its culture, and its way of life become the purported norm for all others living there. In the process, the dominant groups seek to deprive the nondominant group of its own identity, culture, language, and/or religion. In this situation, the nondominant group becomes a minority in search of protection of its right to maintain its own identity, culture, language, and/or religion.

The positions taken by minorities are often in tension with each other. Gypsies want to be protected against the discrimination to which they are often subjected, but they also want to preserve certain aspects of their own culture. We have now set the stage. Nondeterminant groups in society want to enjoy human rights on an equal basis with the members of the determinant group, but some (not all) of them also want to be able to preserve their own identity as separate groups. The policy of the state is set by the determinant group(s). That policy can be aimed at domination and exploitation, which, in turn, generates discrimination and sets groups apart. The policy of a state can also be aimed at assimilation on the basis of the values of the determinant group, or it can pursue policies of accommodation based on the promotion of those interests and values which are common to the different groups. This policy recognizes and tolerates the pluralism of values and interests.

.B.   The "New World": Societies in Which the
        Determinant Group is Composed of
        Settlers Originating from Europe

Three sets of minority issues have arisen in the continents settled primarily by European immigrants during and after colo-

nialism (North America, South America, Australia and New Zea-land[42]). The issues vary between the sets because minority groups in these continents were constituted in at least three distinct ways.

1. Relations Among the Different National Groups of Immigrants and Their Descendants[43]

Here, I refer to voluntary immigrants who joined together to create a new culture and civilization. Minority issues have been considered unimportant among such peoples. Their prevailing attitudes have often been expressed in the notion of the "melting pot," or, more recently, the "salad bowl." The basic assumption is that those who voluntarily immigrate have come to live in, and become a party to the evolution of, a new culture. The consequence is a joint product resulting from the different ethnic and cultural traditions, but shaped into a new kind of entity through a process of transformation. The determinant groups have been Europeans and their descendants. Thus, immigrants from Asia have, during some periods, faced discrimination. Canada is an anomaly in this regard, since its different regions were originally separate colonies settled mainly by immigrants from two different European societies, the British and the French. The existence of separate traditions and language, combined with a history of alleged or real domination, have led to a separatist sentiment among the French-speaking population of Quebec. The determinant group in Quebec has always been French-speaking; the determinant group in most other parts has been English-speaking. The differences still exist, even though both societies are modern, technologically advanced, and market-oriented, and thus have many cultural features in common.

2. Situations which Originated in Slavery

Some immigrants did not freely come to the "New World." On the contrary, they were brought as captives and, as such, were initially subjected to the most extreme form of humiliation and exploitation. Even after the abolition of slavery, their descendants

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42 South Africa falls in the same category, but since the settlers of European descent, while determinant, numerically are a minority, the developments there have taken a different direction. *See infra* Part III(E).

43 While the following observations are particularly relevant to North America, they are also more or less applicable to Australia and New Zealand, with the exception that slavery did not occur in the latter two nations.

continued to be subjected to severe racial discrimination. This has caused the emergence of another kind of minority, explicitly defined in racial terms, whose rights were widely violated until the successes of the American civil rights movement of the 1960s.

3. Situations Involving Indigenous Peoples

Some of the inhabitants in these continents did not form part of the immigration of modern times (during the last four hundred years). In Australia, for example, the inhabitants predated the now dominant group by thousands of years. These indigenous peoples have not in any proper way become part of the "melting pot" or the "salad bowl," rather, they have to a large extent maintained their own culture. They consider the immigrants as intruders, as carriers of an entirely different culture which they call "Western."

C. The "Old World": Western Europe

It was in Western Europe, and particularly in France, that the notion of the nation-state in its radical (revolutionary) sense was first developed and consolidated. The American revolution and its aftermath also influenced this notion. In its radical sense, the nation-state ideology was closely linked with the early assertions of the rights of "man and the citizen,"[44] the notion that the state belonged to the whole people rather than to the monarch, the aristocracy and the church. Since the state belonged to the whole people, all members of the people, without discrimination, should become part of the nation. Assimilation on the basis of nondiscrimination became the dominant ideology.

During the 19th century, Germany and Italy sought to form nation-states. There was, however, a romantic-mythological twist to their efforts. Germany's efforts gave rise to exclusivist racism as a component of the nationalist ideology. Other West European states avoided the rigid combination of "nation" and "state." Belgium, Finland, and Switzerland, each in their own way, found compromises between the different linguistic and cultural groups, and formed what have subsequently been termed "consociational democracies." These nations pursued neither discrimination nor assimilation on the basis of the preferences of the determinant

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44 See, e.g., E. HABSBAWM, NATIONS AND NATIONALISM SINCE 1780: PROGRAMME, MYTH AND REALITY 18-19 (1990).

group. In Belgium and Switzerland, this was partly facilitated by the fact that no group was overwhelmingly predominant. In the case of Finland, the numerical dominance of the Finnish group was offset by the relatively greater economic strength of the Swedish group. Be that as it may, the cases of Belgium, Finland, and Switzerland provided the world with examples of possibilities of constructive coexistence and cooperation, within the same state, of different nations.

Despite this guiding example, most nations in Europe emulated the French ideal of the nation-state. The determinant group, the carrier of the nation in its romantic sense, was often intolerant to other ethnic groups within its boundaries, even to the extent of denying the possibility that different minorities could even exist. Fortunately, nations have exhibited somewhat greater flexibility over the last few years. One illustration is the recent recognition in the Nordic countries of the existence of the Samis ("Lapps") as a separate ethnic group. This has now even been introduced in the constitution of Norway, which for a long time pursued a deliberate assimilationalist policy.

Spain is a multinational state with long historical traditions of local autonomy, allowing different groups to be determinant in their particular region within an overall framework of common values and interests. During the Franco period, Spain pursued severe centralistic policies, but since the fall of Franco, Spain has allowed wide-ranging autonomy for the Catalonians and the Basques, and in Andalucia, Galicia, and other regions.

D.   The USSR and Central and Eastern Europe

Central and Eastern Europe present us with probably the most complex and difficult nationality/minority problems in the contemporary world. The Ottoman Empire, the Austro-Hungarian Empire, and the Tsarist Empire all subjugated nations and ethnic groups. The peoples of these empires were accustomed to accommodations for religious minorities, because for centuries those empires found their legitimation in different religions. Nevertheless, during the mid-nineteenth century, national movements came to the fore, which succeeded only in changing the political landscape. By the beginning of the twentieth century, a number of new, small states emerged, which were devoted to national self assertion. The culmination of this process was the peace settlements after World War I, when the principle of self-determination

of nations made its major breakthrough in that part of the world.[45]

For smaller groups living within those newly determined states, or within the newly drawn borders, national self-assertion caused problems. Different mechanisms, from population transfers (Greece/Turkey) to elaborate minority protection systems, were chosen. While some of the experiments in minority arrangements were innovative and can serve as models today, the political reality confronting those mechanism was not very favorable during the tumultuous interwar years. World War II threw most of them to the wind, and when the storm ended, still other approaches were chosen.

The Soviet Union had developed its own nationality policy from the time of the 1917 revolution. Compared to the previous Tsarist regime, the Soviet Union's initial policy appeared to be constructive in that it allowed for federal structures and local autonomous areas. Within those local areas, different nationalities and ethnic groups had their own administrative frameworks and were allowed to develop their own culture and use their own language. Vernacular education was tolerated, publication in different languages was encouraged, and cultural and educational societies were set up. The creation of literary languages, where they did not previously exist, received state support. Thus, the policy could be considered a model which could well have been applied to other parts of the world.

All of this autonomy occurred, however, within the confines of Marxist ideology, which assumed that differences in culture and ethnicity would disappear over time. Individuals would be "drawn together" in a new socialist, technological culture, where many of the cultural traditions would be obsolete reminiscences of the past. By the mid-1930s, a policy of terror replaced in practice (though not in theory) the nationality policy. A massive terror campaign lasting for more than a decade affected the whole of the Soviet Union, including the different nationalities and minorities. Nationalist and ethnic elites, and their intelligentsia, writers, and teachers were the particular targets of Stalin's paranoia and repression. The clergy had already been destroyed, thus causing the disappearance of that set of intellectual leaders.

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45 *See supra* notes 11-37 and accompanying text.

The population transfers which took place across the vast Soviet territory not only created havoc to those who were being transferred, but also created new tensions and animosities among those who lived in the transferee destinations, and a new set of tensions many decades later when some of them sought to come back to their original home area.

By 1960, a new stage had begun. While the overt physical oppression was less severe, the policy of forming one socialist nation, drawing together the different nationalities and minorities, was intensified. Deliberate "Russification"[46] became a major component of Soviet policy in the 1960s and 1970s. The non-Russians were forced to learn Russian; Russians were not forced to learn the other languages. In the economic sphere, almost all communication was carried out in Russian. Within cultural and educational institutions, Russian was promoted in preference to other languages. Groups were thrown into the "melting pot," rather than voluntarily entering it. There was broad-scale, semi-enforced migration, as well as a creation of ethnically mixed work collectives in which Russian served as the working language. There was also a reduction in non-Russian language publishing, since priority was given to publishing in Russian. Assimilation was becoming the dominant policy; the original nationality policy had been scrapped.

Over time, resistance to the assimilation policy grew. *Glasnost* and *Perestroika* allow more open expression of resistance. At the same time, the different republics asserted increasing autonomy, even independence. The republics gave special attention to the restoration of the national languages. In other countries in Central and Eastern Europe, the democratization over the last two years, which in turn was encouraged by the processes of *glasnost* and *perestroika* in the Soviet Union, has also resulted in considerable changes in the minority situations.

An example of this is Bulgaria, a nation with a substantial minority of Turks who practice Islam, and a majority of Slavs with Orthodox religion. In the early decades after the Bolshevist revolution, socialist rule of Bulgaria mirrored the Marxist emphasis on the coexistence of national groups as long as they accepted the centralized control of the Communist party. During the 1970s,

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46 In cultural and linguistic terms, it was a crude Russification with little emphasis on the refinement of Russian language and traditions. Rather, it was "Sovietization," making use of the Russian language for the purpose of communication but not for its cultivation.

however, the Bulgarian government began enforcing assimilation. The Bulgarian government ended the teaching of Turkish. In 1984, the government started an extreme assimilationist policy under which Bulgarian authorities made it obligatory to change the names of all ethnic Turks to Bulgarian. In some parts of Bulgaria, even the wearing of traditional Turkish dress and Turkish speech in the streets, public places, and institutions was prohibited. To justify its policy, Bulgarian authorities claimed that the ethnic Turks were descendants of Slav Bulgarians, who had been forcibly converted to Islam under Ottoman rule. The new assimilationist policy was therefore presented as a reconstruction of the Bulgarian nation. The result was an exodus of about 350,000 Turks from Bulgaria to Turkey.

After the fall of the old government led by Todor Jivkov at the end of 1989, this policy of forced assimilation was brought to an end. The new government called on local organs to eliminate violations and to guarantee the full implementation of rights laid down by law and by international obligations. Nevertheless, frictions have not ended.

In Romania, the substantial Hungarian population (nearly 2,000,000) enjoyed extensive linguistic and cultural rights for long periods. This changed in the late 1960s. Hungarian higher schools and institutions were closed. Particularly serious was the introduction, during the final years of the Ceaucescu period, of the policy of "territorial systematization," which consisted of the destruction of villages and the forced resettlement of the agrarian population. The government carried out the resettlement with great severity. Its purpose was, among other things, to disperse the Hungarians and to completely annihilate their ethnic, cultural, linguistic, and religious identity.

The fall of Ceaucescu in December 1989, and the consequent beginning of democracy, reversed the policy of forced assimilation. Tensions continue to exist, however, between the Hungarian minority and the Romanian majority, and several violent clashes occurred in 1990.

Hungary has only small minority groups inside its borders, while there are large groups of Hungarians outside its borders. During the last few years, the government has made a considerable effort to protect minorities. If successful, these efforts might make Hungary a model for minority relations. A new article has

been introduced in the Hungarian Constitution[47] proclaiming that national and ethnic minorities living in the Hungarian republic are to share in the power exercised by the people. The article also proclaims that the Hungarian republic protects national and ethnic minorities and ensures collective participation in public life, as well as the practice of ethnic cultures. The constitutional article also states that its citizens have the right to use, to be educated in, and to have names in their own mother tongue.

The situation in Yugoslavia, on the other hand, is entering a critical phase. The formal provisions for national autonomy and minority rights may not be sufficient to protect against an entire disintegration—with considerable violence—of the Yugoslav state. As this Article goes to print, Yugoslavia is immersed in a five-month long civil war which began after Croatia declared its independence from the Yugoslav Federation.

The Baltic states and Moldavia were incorporated into the Soviet Union based on the Molotov-Ribbentrop Pact,[48] which has subsequently been declared void by the Supreme Soviet. Nevertheless, the Soviet Union claimed that the formal act of accession to the Soviet Union by the Baltic states in 1940 constituted a valid basis for the continued membership in the Soviet Union. The Baltic states claimed that they were never a legal part of the Soviet Union and, therefore, asserted independence from 1989 onward. Following the failure of the attempted coup in Moscow in August 1991, the three Baltic states were recognized as independent by the international community.

Part of the quest for independence involves a reassertion of national control over language and culture. National languages were becoming defunct as a consequence of the Russification policy. Allegations of discrimination against the sizeable Russian population in Estonia and Latvia have been made both by the Soviet Union and by representatives of the Russian populations living in these countries. Legislation has been prepared, however, which aims at avoiding such discrimination. Controversies concerning the implications of this legislation continue.

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47 HUNGARIAN CONST. ch. XII, § 68.
48 Treaty of Non-Aggression and Secret Protocol between Germany and the Union of Soviet Socialist Republics, Aug. 23, 1939, *reprinted in* DOCUMENTS ON GERMAN FOREIGN POLICY 1918-1945, THE LAST DAYS OF PEACE: AUGUST 9-SEPTEMBER 3, 1939, Ser. D, Vol. VII, at 245 (1956) (U.S. Department of State Publication 6462).

E. Africa

Africa has been particularly hard hit by problems of nation-building and ethnic tension. Religion sometimes adds to the problems by influencing the ethnic boundaries. The Islamic religion penetrated the continent from the north and the east; Christianity penetrated from the coastal regions. In many instances, colonizers drew the country boundaries without regard for religion or ethnicity. Within those borders, therefore, are groups with different languages and different traditions. Moreover, many groups are based upon a traditional, nomadic lifestyle, which forces them to cross national borders.

The problem with nation-building in Africa is that nations were often a product of alien-imposed history, rather than of a voluntary nation-building from the village level upwards to the state as a whole. The "nation" was imposed from without; it did not arise from within. There was little or no tradition of nationhood prior to colonialism. Colonialism drew artificial borders, and often created ethnic tension where none had been before, partly because some members of ethnic groups were given privileged access to jobs or to the colonial economies. During the last stages of colonialism, national liberation movements formed. The nation was then seen as the sum total of the groups living in the territory, irrespective of the artificiality of the groups' presence. A strong nation-state ideology emerged in the postindependence period, opposed in most cases to any recognition of minorities or of different ethnic groups.

While the African Charter on Human and Peoples' Rights[49] appears to give rights to peoples, the predominant understanding of that concept among African governments is that a people is the sum total of the citizens of an independent state which has liberated itself from colonialism or racism. Within this understanding there cannot be several peoples within the same independent state. Due to serious internal conflicts, some countries, of which Nigeria is the most notable example, have nevertheless developed forms of federation and devolution of power which give some recognition to the existence of different groups. These federations faced the difficult problem of building a nation out of a conglom-

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49 June 26, 1981, O.A.U. Doc. CAB/LEG/67/3 Rev. 5 (*entered into force* Oct. 21, 1986), *reprinted in* 21 I.L.M. 59.

erate of ethnic groups, thus, their coherence began to break down after the countries' independence. The "state" was a new institution for these countries, and control over the state became a source of conflict. In some places, the different groups initially established broad-based alliances, but in many cases, those alliances were soon torn by conflicts and cleavages. Tensions were often exacerbated by natural disasters (floods, droughts, environmental degradation) and have often taken the form of open conflicts, with disastrous consequences.

One-party systems, outlawing the freedom of expression, association, and political participation, led to clandestine movements which intensified the difficulty of communication between the different groups. The fact that neighboring states had links to members of the minorities in other countries has also caused international tension and sometimes open military intervention in internal conflicts. Even where this has not happened, the flow of refugees seeking escape from the conflicts has become a very heavy burden on many of the African and Asian states.

F.   Asia

The situations in Asia vary so much that it would be meaningless to examine them here. Asia is comprised of countries with very old civilizations and very different experiences. India has very advanced constitutional provisions on relations between nationalities, religious communities, and minorities.[50] As a state, India is secular and protects freedom of religion for the different groups. The federal structure combines central government with degrees of autonomy in those member states where different ethnic or cultural groups dominate. Linguistically, India has sought to pursue a policy in which teachers teach in three languages: in the regional language, in Hindi where it is not the regional language, and in English (or another European language). India also has an advanced but controversial policy of affirmative action provided for in the constitution.[51]

Some other states are Islamic in orientation. To a certain degree, Sharia is the law of the land, but provisions do exist for religious freedom for non-Islamic groups. The principle of nondiscrimination is central to the constitutions of these states. Fiji, how-

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50 INDIAN CONST. arts. 25-30.

51 *Id.* at art. 46.

ever, is a special case. The two major communities there are the indigenous people on the one hand, and the several generations of immigrants on the other, many of whom arrived as indentured laborers from South Asia during the period of Colonialism. The independence constitution provided for each community to have its own reserved seats in a parliament, but within each community there should be competition for the seats, so that different parties would be active and could then form interethnic alliances in the parliament. The hope was to reduce interethnic conflict, but it failed. The alliances did not develop a consociational democracy, rather, the trend was toward competition between two parties, on predominantly ethnic grounds. The "winner takes all" parliamentary system became a threat to the indigenous people who found themselves in a minority. This resulted in the military coup of 1987 and the proclamation of a clearly nondemocratic constitution. It is necessary to manage the conflict between the two major groups.

In some cases, the postindependence democratic majority sought to readjust the inequalities which had been generated during the colonial period. Members of the latter groups perceived the readjustment as discrimination. In some cases (as in Sri Lanka), the tension ultimately led to efforts of secession, which were severely repressed by the national authorities.

IV. "PEACEFUL AND CONSTRUCTIVE SOLUTIONS"

This author is presently carrying out a study on peaceful and constructive solutions to situations involving minorities for the United Nations Sub-Commission on Prevention of Discrimination. Six guidelines have been adopted for the study. The first guideline is the paramount importance of nondiscrimination, as well as the full participation of all individuals and groups. The two international covenants on human rights[52] and the Declaration on the Right to Development[53] contain this credo. Because the search for peaceful and constructive solutions shall here be examined within the framework of the international human rights system, the starting point must be the International Bill of Human

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52 International Covenant on Economic, Social and Cultural Rights, *supra* note 39; International Covenant on Civil and Political Rights, *supra* note 39.

53 G.A. Res. 41/128, 41 U.N. GAOR Supp. (No. 53) at 21, U.N. Doc. A/41/925 (1986).

Rights.[54] The foundation is article 1 of the Universal Declaration of Human Rights:

> All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.[55]

Equality in the enjoyment of human rights requires abstention from, and prevention of, discrimination; equality in dignity requires respect for the self-identification of individuals with their group. Denial of the right to profess religion leads to forced assimilation. Denial of rights for an ethnic minority amounts also to forced assimilation ("ethnocide"). Denial of the right to speak the group's language is also forced assimilation.

The principle of nondiscrimination, if properly applied to situations involving minorities, can go a long way to preventing conflicts. Very often, the intensity of religious, national or ethnic conflicts can be traced to the lack of respect for individual human rights. This has long been a primary concern for the Sub-Commission, as evidenced by its numerous former studies. Time and again it has been emphasized that nondiscrimination is vital to ensure complete impartiality in the administration of justice, particularly in regard to the conduct of law enforcement officials and security forces. Many serious ethnic or religious conflicts arise in cases where the administration of justice is seen to be partial. In these circumstances, minorities feel the agencies of law and order do not adequately protect them. Ultimately, such a feeling of vulnerability can lead minorities to take the law into their own hands. Such a situation can easily degenerate into bloody internecine conflict.

To solve minority problems, governments should preserve the rule of law for all citizens. Governments should also encourage a full-fledged democracy which allows the articulation of different views, opinions, and values in a pluralistic society. The society, in turn, must offer free articulation of the views of the different religious and ethnic groups, provided they do not try to block other groups from enjoying equal freedom. Nor should minorities be given privileges denied to the other parts of the population. What this means in practice requires careful analysis, some of which will be addressed below in the fourth guideline.

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54 G.A. Res. 217, U.N. Doc. A/810, at 71 (1948).
55 *Universal Declaration of Human Rights, supra* note 38, at 72.

The principle of nondiscrimination as a means of preserving equal dignity for all has a number of further consequences. For instance, the right to freedom of association, if applied without discrimination, means that religious, ethnic, and national groups can establish their own associations. Freedom of expression and information means that they can express themselves, and seek information, in the language they prefer, including their mother tongue, orally and in writing. Freedom to participate in the cultural life of the community, in accordance with article 27 of the Universal Declaration of Human Rights,[56] means that they can do so within the community constituted by their minority group. But how much guidance can this interpretation give us?

If the state provides resources to facilitate the flow of cultural or religious information, then a proportional share should be given to the corresponding activities of minorities in order to avoid the challenge of discrimination. Can the same argument be made in regard to resources provided for education? What would be the implication of an affirmative answer to this question?

The analysis of the substantial and positive implications of the principle of nondiscrimination for minorities, if connected to the preservation of equal dignity, has not been fully exhausted. There are probably only three of limitations to nondiscrimination and equal dignity: (1) minorities cannot demand special privileges and, thus, obtain a better status than the others in society, but that applies conversely as well; (2) minorities cannot use their religious freedom, or practice their culture, in ways which impede the equal exercise of others (this precept also applies to majorities); (3) both minorities and majorities must uphold public order, as required in a fully democratic society.

Article 21 of the Universal Declaration of Human Rights,[57] article 25 of the International Covenant on Civil and Political Rights,[58] and article 1 of the Declaration on the Right to Development[59] each provides for full and equal participation in the human rights system. Participation in this human rights system should be on two levels: within the society as a whole, and within the particular community of which the minority forms a part. At this stage we confront the complex issues of constitutional and

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56   *Id.* at 76.
57   *Id.* at 75.
58   *Supra* note 39, at 55.
59   *Supra* note 53.

administrative arrangements. This Article will not explore the possible arrangements, which could include federal structures, devolution of power, advisory assemblies, and special representa-' tion in government bodies at both the national and local level.

Dilemmas can arise in regard to full participation, because different groups may have different priorities regarding development. Some may emphasize economic growth, while others may emphasize the protection and preservation of natural resources, and the protection of the traditional ways of life. Thus, equal participation is not as simple in practice as it might appear in theory. These issues will be further examined below, under guideline five.

The second guideline is the necessity of promoting the rights and development of minorities in a manner that is consistent with the unity and stability of states, in light of the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations.[60] It is essential to the United Nations and the international community to recognize the importance of the stability of states, but it is equally important to promote the rights and development of minorities within that framework. International discussions about minority rights have emphasized the need to safeguard the stability of states. A primary concern for all governments is to maintain the political independence and territorial integrity of their own state, while similarly requiring outside states to respect their sovereignty and integrity. Contemporary international law, as reflected in the Charter of the United Nations and the Declaration on Friendly Relations, makes this point clear, with some modifications. The most important modification is the right of peoples to external and internal self-determination. The external right to self-determination consists of the possibility for a people to determine its own status—to decide whether it should possess statehood by itself or be part of another state. The exercise of this right is often claimed to be limited, in customary international law, to peoples under colonialism or subjected to alien subjugation, domination, or exploitation. What this means is subject to controversy and will not be examined here.

More important for the purpose of this study is the right to internal self-determination, which is the right of a people living

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60   G.A. Res. 2625, 25 U.N. GAOR Supp. (No. 28) at 121, U.N. Doc. A/8028 (1970), *reprinted in* 9 I.L.M. 1292 [hereinafter *Declaration on Friendly Relations*].

within an independent and sovereign state to freely choose its own government, to adopt representative institutions and to periodically, or at reasonable intervals, elect their representatives through a free procedure and with freedom to choose among alternative candidates or parties. This can be organized through a unitary state system, a federal system, or a system with arrangements for autonomy (home rule) or devolution of power.

Internal self-determination is intimately linked to the notion of pluralist democracy. The key to the right to internal self-determination is partly found in the Declaration on Friendly Relations, and partly in the Universal Declaration of Human Rights, article 21.[61] The provision in the Declaration on Friendly Relation which is of special significance is found in the formulation of the principle of the right to self-determination, which states:

> Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above *and thus possessed of a government representing the whole people . . . without distinction as to race, creed or colour.*[62]

The formulation in italics emphasizes the principle that government must represent all people over whom it claims to have jurisdiction. This means that *all* people are entitled, free from discrimination, to participate in the election of their government. When it is found suitable through peaceful negotiations to subdivide jurisdiction in regard to some aspects of authority, making it easier for ethnic groups or nationalities within the state to control their own fate in certain functional areas, this may strengthen rather than weaken the self-determination of the various sections of the people. In other cases it would have negative consequences. No general model for solving these issues is likely to emerge.

There are requirements for both the governments in which minorities live, and outside states. The former should give access in the decision-making process to any group existing in that country; the outside states should abstain from any action which tends to impair the integrity of any state. Thus, a reciprocal set of ex-

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61 *Supra* note 38, at 75.

62 *Declaration on Friendly Relations, supra* note 60, at 124 (emphasis added).

pectations applies both to the state in which minorities live, and to outside states. Irresponsible behavior by any of these states can damage minority relations.

The policies of the so-called "mother countries" are crucial. By "mother country" we mean the country in which the group, constituting a national minority in another country, has a dominant position. The mother country should not seek to destabilize other countries by encouraging secession or engaging in direct intervention. On the other hand, states in which minorities live should seek constructive ways in which to relate to their own minorities; this would facilitate peaceful and confident relations with their neighbors. We should recognize that it will be difficult at times for an outside government to remain silent and passive when members of its own nationality in a different country are subject to serious discrimination and prosecution. A delicate balance, therefore, emerges between two such neighboring countries. The problem of integrity and stability of states is particularly difficult and important in such circumstances.

Nonrecognition of the rights of minorities can increase instability by encouraging subversive action rather than open political activity. Thus, it is crucial for governments to find the appropriate balance by which peaceful and democratic accommodation can be carried out between the different groups in society, avoiding both a complete rejection or denial of minority concerns, and also avoiding external intervention to destabilize the country.

The third guideline is to take into account the danger posed to regional, national, and individual security by ethnic and national conflicts. The study explores possible ways and means of facilitating the peaceful and constructive solution of problems involving minorities because of the potentially serious nature of ethnic and religious conflicts, which endanger regional and national security.

National and even personal security is injured by ethnic and religious conflicts, which often lead to serious dislocations, internally displaced populations, and international refugee flows. These phenomena not only destabilize, they also create severe obstacles to the realization of human rights for all.

The dynamics of ethnic and religious conflicts are often quite irrational. In the beginning there may be nothing more than some feeling of unease about alleged discrimination. Such allegations gradually combine with protests and political demonstrations. Rumors emerge and are easily believed. If security forces overreact at this stage, the earlier fears become a self-fulfilling prophecy.

The self-appointed militants among the minority exploit their group's fears, responding in kind to the action by the security forces; this in turn can lead to new and more violent responses by the security forces. It should not be ignored that the violence is deliberately provoked by militants on both sides, with the purpose being to agitate public opinion and to create firm and confrontational alignments, leading eventually to massacres and reprisals by both sides. Eventually it can degenerate into a guerrilla/counterguerilla process, bringing about full polarization, where extralegal executions in the form of liquidation become a part of the process, and with internal repression by both the majority and the minority groups, eventually developing into a cataclysm of infantile regression.

It is important to stop this evil spiral in its early stages. This cannot be done simply by police and military measures, but requires communication and dialogue between the parties. The problem for both parties is to find acceptable compromises. This depends also on what they expect in terms of external support. While expectations are often exaggerated, they can, nevertheless, make the minorities intransigent in their demands to the government.

In such circumstances, it is essential that principles of humanitarian law are taken into account. Here it is necessary to recognize that international humanitarian law is very weakly developed in regard to internal conflicts. Recent studies of this issue have demonstrated the need for parties to take much stronger precautionary measures in order to avoid an irrational escalation of the conflict.

Also important is early warning and early response. When members of a minority start to vociferously assert that they are subjected to systematic discrimination, the government and the international community should quickly explore the case. It may be a wrong assertion in objective terms, but even so it can lead to a tragic spiral of violence. In such cases, much could be achieved if internal procedures existed in order to settle the allegations of discrimination at an early stage. Such mechanisms exist in many countries today, but not in all. Individual procedures through domestic courts may be too slow and ineffective in such circumstances. Justice must be done, and seen to be done, quickly.

Recent figures show that internal conflicts occur in a wide range of countries.[63] The risk that such conflicts may spill over and become an international conflict is substantial. The dangers of intervention and counter-intervention are imminent. Sometimes intervention is limited to the delivery of armament and other support to the contending parties, but on some occasions it takes the form of direct, open military participation by external forces.

Regional peace is endangered by such conflicts when the fate of a given minority is of paramount concern to another state. The risk of interference by that other state leads to insecurity and can also be exploited by militants among the minorities. It may be difficult for that other state to resist domestic public opinion which demands action when serious violations of a related minority is claimed to have taken place in a neighboring state. Sometimes it is held to be justified as a humanitarian intervention, and it cannot be denied that such situations do occur. Nevertheless, it should generally be agreed that it would be best to avoid such situations. To do so requires that both sides of the internal conflict seek to settle their conflict by peaceful means. It is, therefore, quite appropriate to stress, as did Halima Warzasi during the 1990 session of the Sub-Commission, that:

> The solution to the minority problem must be based on three indispensable conditions, namely the political will of the State having minorities; the will of the various communities to live together in peace and harmony, and consequently, to get to know and respect one another; and the cooperation and positive assistance of the State which felt itself concerned by a minority problem even though it was not the State in which the minorities lived.[64]

The best way to prevent external intervention is to find constructive, domestic solutions based on consistent confidence-building efforts. It is also desirable to develop international mechanisms which make it possible for parties to ask the international community for help in resolving a conflict. When it is claimed that national recourse institutions are biased and political, international recourse mechanisms could act as an important safety valve. The

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63   *See* STATES IN ARMED CONFLICT (K. Lindgren ed. 1989).

64   SUMMARY RECORD OF THE 9TH MEETING OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES at 5, U.N. Doc. E/CN.4/Sub.2/1990/SR.9 (1988).

question of domestic and international institutions and procedures for conflict resolution will therefore be given prominent attention.

Established international institutions can be utilized in many of these situations, but not all. The combination of article 27 of the International Covenant on Civil and Political Rights,[65] with the Optional Protocol,[66] and the application of the Convention on Racial Discrimination with its article 14,[67] would make it possible for the parties to address the international community. But this is not enough. It would not help to solve the basic conflicts over the range of rights that should be held by minorities.

The fourth guideline is to recognize the importance of both negative (nondiscrimination) and positive (special assistance or status) measures for effective protection. From a human rights perspective, three issues are important. First, members of minorities should enjoy all the core human rights (civil, political, economic, social, and cultural) in the same way as all other people, without discrimination. For this to happen, nondiscrimination measures are essential, as discussed above. Second, minorities should be allowed to preserve their dignity as members of a particular community based on religion, language or culture. This may or may not require special measures. Third, in some cases minority peoples may need protection for the material basis of their cultures and lifestyles. This will undoubtedly require special measures. A brief discussion of these three aspects follows.

We should first sort out those questions which are no more than an application of the principle of nondiscrimination combined with a respect for equal dignity. It has been suggested above that measures adopted by the state for the majority (support for religious institutions, culture, etc.) should be extended to minorities in their pursuit of similar aims. This would not constitute special treatment of minorities, rather, minorities would merely be treated in the same way as majorities.

The concept of special assistance or status should, therefore, refer only to measures made for minorities without the provision of corresponding measures for majorities. The only justification for doing so would be to restore equality where, in the past, there had been inequality, or where structural factors make equality difficult to preserve. The United Nations Human Rights Commit-

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65 *Supra* note 39, at 56.
66 *Id.* at 59.
67 *Supra* note 41, at 230.

tee, in its general comment 18(37), states that the principle of equality sometimes requires states to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination. Where the general conditions of some groups prevent or impair their enjoyment of human rights, the Committee points out that specific action should be taken even if it might amount to preferential treatment. "[A]s long as such action is needed to correct discrimination in fact, it is a case of legitimate differentiation under the Covenant."[68]

The issue of special measures or status has often been addressed in the practice of the Committee on the Elimination of Racial Discrimination, and the experience gathered through its work will be of great significance in the future analysis of responses in regard to this guideline. In the Convention on Racial Discrimination the following formula is used:

> Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.[69]

"Equality in law precludes discrimination of any kind; whereas equality in fact may involve the necessity of different treatment in order to attain a result which establishes an equilibrium between different situations."[70] International Labor Organization Convention (No. 169) Concerning Indigenous and Tribal Peoples in Independent Countries also allows for separate measures to safeguard the maintenance of characteristics as a group.[71]

Special measures create problems because they make distinctions based on group membership, and those distinctions inevitably exclude persons from receiving the benefit of the special

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68 *Report of the Human Rights Committee*, 45 U.N. GAOR Supp. (No. 40) at 175, U.N. Doc. A/45/40 (1990).

69 Convention on Racial Discrimination, *supra* note 41, at 216.

70 Minority Schools in Albania (Advisory Opinion), 1935 P.C.I.J. (ser. A/B) No. 64, at 19 (April 6).

71 *Opened for signature* June 27, 1989, 72 INT'L LAB. OFF. OFFICIAL BULL. 59 (Ser. A, No. 2), at art. 4[1], *reprinted in* 28 I.L.M. 1382.

measures. With the best of intentions, unexpected and unwanted consequences arise. The very necessity of classifying ethnic groups in order to establish rules for positive measures can in some cases lead to discrimination, and it is often objected to by the minorities themselves.

One possibility is to use a system of voluntary self-identification with a given ethnic or national community, an approach used in the legislation of some countries. Nevertheless, when the distinctions made concern access to scarce resources, it may not be wholly satisfactory to rely on subjective self-identification.

The complications increase when minorities are provided a degree of autonomy and exclusive control over land and natural resources in a given region. Autonomy may include control over family law and similar matters (nonterritorial autonomy based on personal membership) or control over a given region (territorial autonomy). Such autonomy may be required to shield the minority against deprivations and/or assimilation, but it also generates difficult dilemmas for the preservation and protection of individual rights for all, including freedom of movement.

The fifth guideline is to examine the role of the development process in removing the economic and social obstacles to cooperation and mutual respect among all groups in society. For some time it was assumed that development, in the sense of technological modernization, would reduce or eliminate the traditional national and ethnic conflicts and even reduce the intensity of religious confrontations. This would result, it was often thought, from advanced education and urbanization and from reduction in economic disparities. Today we know better. Development and so-called "modernization" has tended to increase rather than decrease national and ethnic identification and interethnic cleavages.

The causal factors are several, but two stand out: first, development often tends to increase rather than decrease economic disparities by creating prosperity for some and deprivation for others; and, second, groups attach different values to different kinds of development. Some emphasize environmentally safe and sustainable developments which preserve traditional lifestyles, and thereby the possibility to preserve the established cultural basis of dignity, while others favor quick technological transformation, even when environmental degradation results and lifestyles are disrupted.

More troublesome is the possibility that decisions concerning developments are made in one part of a country, often the urban

or metropolitan center, while the consequences for the environ-
ment and lifestyles are felt in another part, among people who
did not participate in those decisions.

In many cases development policies are adopted and imple-
mented without sufficient consultation with the people living in
the region concerned. Major hydroelectric projects, dams, irriga-
tion schemes, and other projects are sometimes carried out with-
out giving due attention to their impact on the local people who
have traditionally lived in that region. Their lack of political influ-
ence may lead to disastrous consequences for them, even when
there is a general net gain in economic development for the
country as a whole. Serious problems arise if natural resources are
exploited in such a way that the possibility of survival on the basis
of the traditional way of living is destroyed.

Conversely, when development projects are directed toward
improving the conditions of areas which have been lagging behind
in economic development, substantial improvement in the rela-
tions between the different national or ethnic groups can occur. It
would greatly increase confidence between the groups if the local
people were empowered through their representatives to take part
in all decisions affecting them. Particular attention should be paid
to the impact of development policies in regions densely populat-
ed by minorities. Development projects affecting such territories
should be based to the largest extent possible on free and in-
formed consent, and wherever possible such projects should be
decided upon and administered by the local representatives of the
minorities.

Deprivation of natural resources in areas necessary for their
livelihood should never be allowed to take place unless those
persons who depend upon the resources have been provided with
a voluntarily accepted resettlement option, or effective compensa-
tion. It would probably go too far to give them an effective veto,
but when they can demonstrate that proposed projects will have
serious negative consequences for them, governments should pay
due attention to such warnings. On the other hand, the represen-
tatives of the local people, whether of the same or different na-
tional or ethnic groups, should be encouraged to submit proposals
for projects that would positively affect their region. Preferably
they should also be given the possibility and the capacity to carry
out the projects by themselves, but with national and international
support and funding where applicable.

The sixth guideline is to recognize the necessity of ensuring that measures adopted to protect minorities also respect the human rights of majorities. The general principles of equality and nondiscrimination require that minorities and their members must not be given privileges which cannot be enjoyed by members of the majorities. This does not exclude the possibility that measures adopted for minorities can be reserved entirely for them, as long as similar measures are also adopted for majorities. As stated in the Convention on Racial Discrimination,[72] however, special measures shall in no cases entail as a consequence the maintenance of unequal and separate rights for different racial groups after the objectives for which they have been adopted have been achieved.

In their pursuit of equality and nondiscrimination, members of minorities are not entitled, nor are their opponents, to use means and methods which violate the human rights of members of majorities, or the rights of those members of the minority concerned who disagree with their leaders. Extralegal execution, abductions, maltreatment, denial of freedom of movement, and denial of contacts with members of majorities are as much violations when carried out by minorities as when they are carried out by governments.

The individual members of majorities must also be respected by the minorities in terms of integrity and dignity. In areas where minorities are dominant, they are not entitled to humiliate or terrorize members of the majority.

V.   CONCLUSIONS

This Article has sought to underline the following main points:

(a) The existence of a minority "problem" depends on the policies pursued by the government as much as it depends on the minority. The coexistence of different groups does not constitute a minority problem unless some groups pursue policies which endanger, or are held to endanger, the interests or values of other groups. When they do, minority problems arise.

(b) A distinction should be drawn between what a minority, or a member of a minority, can claim by right and what it can only aspire to obtain through negotiations with the other groups. International minority rights intended to have a global application

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72 *Supra* note 41.

should provide only a minimum threshold and some general principles; above that level, the different groups in society should work out the particular solutions over and above the minimum threshold and within the framework of the general principles.

(c) The paramount task is to ensure a free and open democracy, with freedom of expression, information, movement (including movement across borders), and freedom of association.

(d) In plural states, such democracy might benefit from consociational forms of government—forms of power-sharing which are sufficiently flexible not to constitute unsurmountable obstacles to government, but which encourage the adoption of policies which are positive both to majorities and to minorities.

(e) A necessary component of democracy is the application of the principle of equality and nondiscrimination. When applied to members of minority groups it means that they are equally entitled, as are others, to form their own associations, to have their own contacts for information and movement with related groups in neighboring countries. In brief, they are entitled to respect for, and protection of, their identity. Whether they are also entitled to material support for that preservation depends on the particular situation.

(f) Minorities are no more entitled to privileges than any other groups. Some claims by minorities are for privileges, not for equality; such claims can of course not be supported by the human rights system. There are also situations where the minority claims to have been discriminated against when there has been nothing more than an effort to redress a past inequality where that minority had a privileged position.