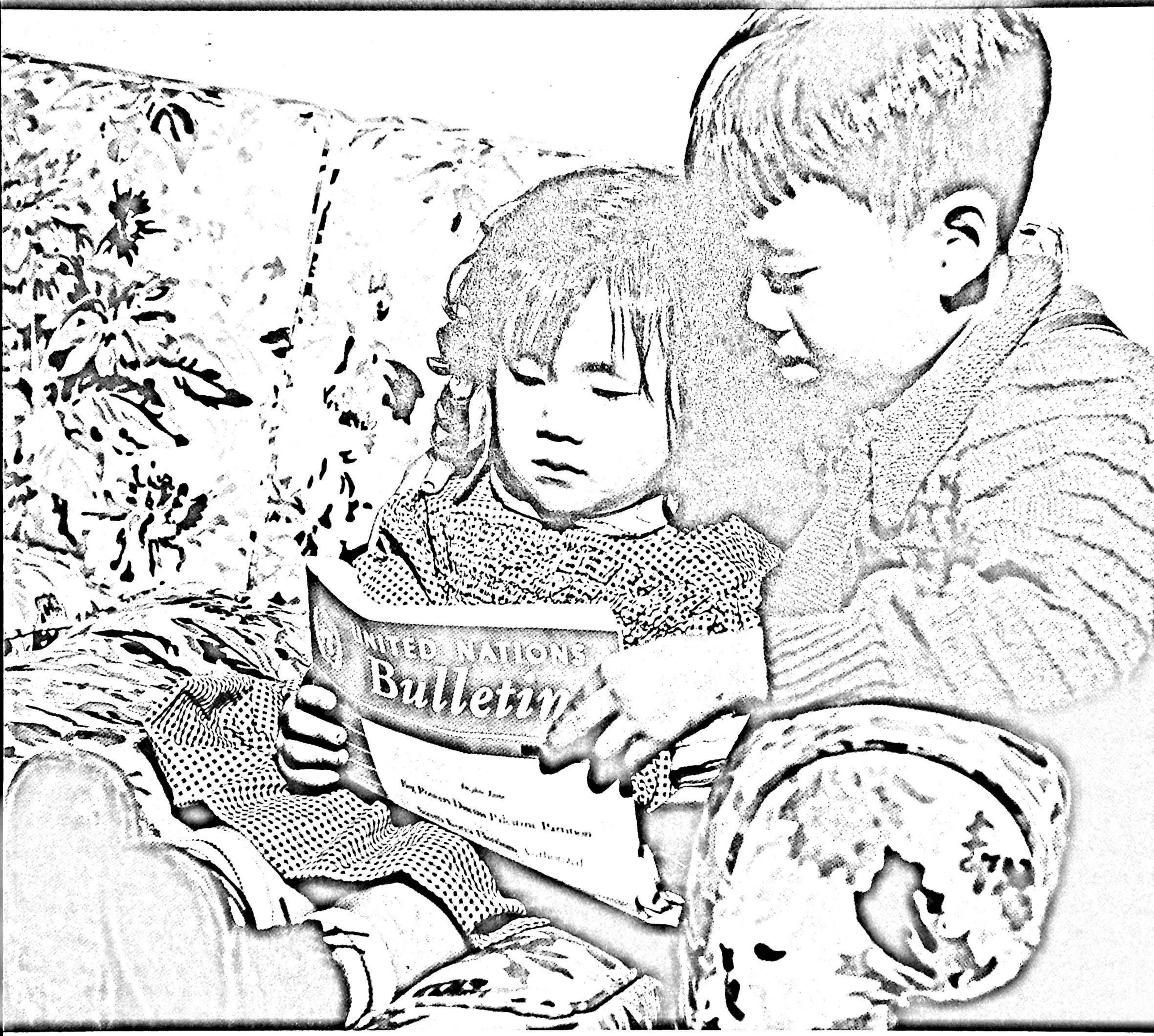
# THE INTERNATIONAL PROTECTION OF MINORITIES

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MINORITY RIGHTS GROUP

The **MINORITY RIGHTS GROUP** is an international research and information unit registered in Britain as an educational trust under the Charities Act of 1960. Its principal aims are –

- To secure justice for minority or majority groups suffering discrimination, by investigating their situation and publicising the facts as widely as possible, to educate and alert public opinion throughout the world.

- To help prevent, through publicity about violations of human rights, such problems from developing into dangerous and destructive conflicts which, when polarised, are very difficult to resolve; and

- To foster, by its research findings, international understanding of the factors which create prejudiced treatment and group tensions, thus helping to promote the growth of a world conscience regarding human rights.

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# THE INTERNATIONAL PROTECTION OF MINORITIES

by Prof. James Fawcett

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From the Universal Declaration
of Human Rights,
adopted by the General Assembly
of the United Nations
on 10th December 1948:

*Article 1*
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.

*Article 2*
Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self governing or under any other limitation of sovereignty.

*Article 10*
Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

*Article 19*
Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

*Article 20*
(1) Everyone has the right to freedom of peaceful assembly and association.

(2) No one may be compelled to belong to an association.

# THE INTERNATIONAL PROTECTION OF MINORITIES

by Prof. James Fawcett

## I Introduction

The international view of minorities, their character and needs, has changed in the last half-century. Many influences, sometimes in conflict with each other, have brought about the changes: the drive for national independence, which has nearly trebled the membership of the UN since its foundation; a larger sense of community between countries and peoples, growing out of a recognized common interest in the sharing of technology and natural resources, including nuclear energy with its promises and dangers, and the need for environmental management, all of which can set limits to the practicality of territorial division or secession; the decentralization of government, manifest in the spread of federalism; and the instability of many regimes, often induced by minority pressures.

In every country there are groups of people, loosely or closely associated for some specific reason or purpose, which may be racial or linguistic or cultural or religious or political or economic, or a combination of them. When then is such a group entitled to special recognition or protection? In a definition of 'minority' proposed in the early debates in the UN, the Subcommission on the Prevention of Discrimination and Protection of Minorities suggested that the term should include only those 'non-dominant groups in a population, which possess and wish to preserve stable ethnic, religious or linguistic traditions or characteristics, markedly different from those of the rest of the population'; further, such minorities must be 'loyal to the State'. This view of minorities leaves out some critical features. First, minority status may be imposed on a group and the will to preserve identity may then be the consequence and not the creator of the status; secondly, a non-dominant group may still be a majority in number in the population. So in the colonial systems the exploitation of ethnic or religious divisions, and the arbitrary drawing of boundaries, could constitute 'tribes' and other groups as involuntary minorities. The requirement that a minority be 'loyal to the State' may then be in certain circumstances incompatible with the political inequity of an oppressive minority being the dominant group. The international protection of minorities in the contemporary world cannot then be limited to those coming within the definition proposed by the Subcommission: for such protection is directed to securing the rights and freedoms of minorities, whether they are non-dominant groups struggling to alter the basis of their 'loyalty to the State', or dominant groups that have lost their political power in the struggle.

A better approach is to recognize the relativity of the term 'minority' and the decisive character of the related majority. So the French sociologist Colette Guillaumin has well said that membership of a majority is based on the freedom to deny that one belongs to a minority, a *freedom* in the definition of oneself which the member of a minority cannot have![1] Closely related is the sense of superiority, to be distinguished from the sense of difference, which often characterizes a dominant group: all other groups are rated by reference to the dominant or central group, and this may lead to fantasies of Aryan superiority or, more moderately, the 'white man's burden' and among non-dominant groups to a crippling acceptance of inferiority.

It follows that the design and effectiveness of the international protection of minorities must vary greatly as will the many different forces at work in the particular relations of majority and minority. In order to understand the design and assess the effectiveness, we may say, as a working definition, that a minority is a group in a country which possesses, and has a common will – however conditioned – to preserve certain habits and patterns of life and behaviour which may be ethnic, cultural, linguistic, or religious, or a combination of them, and which characterize it as a group[2]. Further, such a minority may be politically dominant or non-dominant.

## II Self-determination and non-discrimination

The entitlement of all such minorities to protection, and to the exercise of rights and freedoms, is expressed in two political axioms, which have now gained wide international recognition: the one being that all peoples have a right of self-determination, and the other that discrimination against any human being category is wrong. These axioms have been given classic form in the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights, called in what follows, 'The UN Covenants': see Appendix A.

In the first axiom we see an institutional approach to minorities, in which their collective identity is secured and preserved by some form of self-determination. In the second the approach is social, treating members of a minority as having the common rights and freedoms of all human beings, equal exercise of them being secured by the rule of non-discrimination. These approaches, though they may be sometimes in part combined, lead broadly to two distinct solutions: separation and integration.

How can they, whichever is chosen, be furthered by international action? The protection of minorities, and indeed the maintenance generally of rights and freedoms, are primarily and almost wholly domestic, depending in each country on its political and legal structure, and on the strength and will of government and people; and international rules and standards express, in part at least, what is already the domestic law in many countries, and their observance may be further secured in practice by domestic machinery or domestic reform. But where such rules and standards are rejected or disregarded in a particular country, their enforcement from outside must be a kind of intervention, which ranges from political influence to the use of coercion or force. Further, the interveners may be, for example, the UN, governments acting in association or individually, non-govenmental bodies, or the press.

We shall consider, then, in turn the separation, and the integration, of minorities, the particular position of transnational minorities, and generally means of intervention for their protection.

## III Separation

Separation may be sought and sometimes obtained by a minority, where there are points of confrontation between it and the rest of the population, which emerge because the minority is united ... in a sentiment of solidarity with a view to preserving [its] traditions of language, religion or culture, and the rest of the nation is unwilling in practice to recognize them. But separation is a matter of degree and may range from the provision, for example, for the use of the minority language or for its distinct religious practice, to devolution, federation or independence. So the UN General Assembly has recognized that the identity of a people may be preserved by means of free association with the rest of the nation as well as by the achievement of independence[3]. Here it was envisaging 'geographically separate territories or territories of geographical or cultural or ethnic distinctness', in short, a certain degree of separation in fact. This must probably always be a condition at least of the achievement of independence. So the criteria, prescribed by the Permanent Mandates Commission in 1931 for the end of tutelage of territories under its responsibility, assume a territorial identity: for the people must 'have a settled government and an administration capable of maintaining the regular operation of essential services', and 'laws and a political organization, which will afford equal and regular justice for all', and it must be capable of 'maintaining its territorial integrity and political independence'. Further, the UN General Assembly has, in its Declaration on the Granting of Independence to Colonial Countries and Peoples[4], stated that 'Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the UN Charter'. This statement is unqualified, and, even if its primary purpose is the protection of colonial territories, it implies that the UN Charter principle[5] limits the right of secession. This implication is confirmed by the UN Subcommission in asserting, as described above, that minorities must be 'loyal to the State'. Further, the political pressures after 1945 to bring an end to colonial rule became steadily more active than could have been foreseen when the UN was founded; and the rights of minorities to self-determination, including secession, became overlaid by the achievement of independence by colonial peoples. Self-determination came to be seen in UN practice as ending with independence, and consequently was not accorded to nationalities or minorities living within a larger country, at least if they were seeking autonomy or secession. Half a century earlier, Lenin had accepted this principle when he declared the support of the Party for the self-determination of peoples but with the strong qualification that 'nationalities' must not be allowed to fragment the ideal of a communized society.
'We demand' he said, 'the freedom of self-determination, that is, independence ... the freedom of secession for oppressed nations, not because we dream of an economic parcelling out (of big States) or of an ideal of small States, but on the contrary because we want big states, and a rapprochement, even a merger, of nations on a truly democratic and internationalist basis', and the USSR, having many nationalities and minorities of its own, has been cautious over support, in principle or practice, for activist minorities in other countries, even if they have Marxist inclinations. It is equally noticeable that the newly independent countries have, as members of the UN, with India as a leading voice, been reluctant or unwilling to support its intervention directly on behalf of minorities, given the fear of fragmentation. 'Loyalty to the State' would be particularly insisted on where a minority is located in a part of the country which has natural resources or is economically more developed than the rest of the country, for example, Katanga.

In practice, then, it is doubtful whether minorities can expect any international support for a movement of secession or even to autonomy; and the UN Subcommission on the Prevention of Discrimination and Protection of Minorities has given little attention in the last decade to the actual position or needs of minorities[6].

The creation of Bantustans in South Africa, as part of the policy of *apartheid*, or 'separate development' as it is called, is a form of separation of peoples, which may have an appearance of autonomy or independence for them. It is defended on such grounds as that their lands are rehabilitated by financial aid, that the creation of local light industry can avoid the disruption of life by movement of labour to distant European areas, and that only the Bantu peoples will own land and operate in the Bantustans. But it is an imposed separation, in contradiction of the principles of self-determination; it excludes the Bantu peoples from any effective participation in the government of South Africa, in which as enclaves they must at least economically have great concern; further, separation is carried to the prohibition of mixed marriages, and the practical exclusion of Bantu peoples from European education. It has been repeatedly condemned in the UN, in the form of General Assembly and ECOSOC Resolutions, culminating in the adoption by General Assembly Resolution 3068-XXVIII (1973) of an International Convention on the Suppression and Punishment of the Crime of Apartheid, which came into force on 18.7.1976 and has been ratified by 38 countries.

The 'crime of apartheid' is to apply to the following:

- denial to a member or members of a racial group or groups[7] the right to life and liberty of person by murder, bodily or mental harm, infringement of freedom or dignity, torture or other cruel, inhuman or degrading treatment or punishment, arbitrary arrest and illegal imprisonment, or deliberate imposition of living conditions calculated to cause the physical destruction of a racial group or groups;
- any legislative and other measures calculated to prevent a racial group or groups from participating in the political, social, economic and cultural life of the country (including denial of the rights to work, to form recognized trade unions, to education, freedom of movement and residence, and freedom of opinion, expression and peaceful assembly);
- measures designed to divide the population along racial lines;
- exploitation of the labour members of a racial group or groups;
- persecution of organizations and persons because they oppose *apartheid*.

Article II

It will be seen that the first paragraph brings the 'crime of apartheid' close to genocide, where living conditions

are imposed that can destroy a racial group[8], while the second and third describe the essential features of *apartheid* as a policy designed to divide the peoples of a country on racial lines.

Criminal responsibility could extend to a large number of individuals, as Article III states:

'International criminal responsibility shall apply, irrespective of the motive involved, to individuals, members of organizations and institutions and representatives of the State, whether residing in the territory of the State in which the acts are perpetrated or in some other State, whenever they: (a) commit, participate in, directly incite or conspire in the commission of the acts mentioned in Article II of the present Convention; (b) directly abet, encourage or co-operate in the commission of the crime of *apartheid*.'

The characterization of the crime as international is marked by the provision that persons charged with such acts 'may be tried by a competent tribunal of any State party to the Convention, which may acquire jurisdiction over the person of the accused', or 'by an international penal tribunal having jurisdiction with respect to those States Parties which shall have accepted its jurisdiction.' —Article V. Further, the parties to the Convention positively undertake 'to prosecute, bring to trial and punish in accordance with their jurisdiction' persons so charged: Article IV.

Apartheid is then equated, as far as trial and punishment go, with 'crimes against humanity' and 'grave breaches' of the Geneva Convention (1949). The institution of an international penal tribunal to try crimes of apartheid is probably more likely than under the Genocide Convention, Article VI, from which the provision is plainly taken. There is no record of any charge being brought of a crime of apartheid, but it appears that a list of possible accused is being prepared.

The UN Commission on Human Rights, under Article X of the Apartheid Convention, is empowered to prepare, on the basis of reports from competent organs of the United Nations and periodic reports from States parties, 'a list of individuals, organizations, institutions and representatives of States which are alleged to be responsible for the crimes enumerated in Article II', as well as those against whom legal proceedings had been undertaken by States parties.

At its February 1977 session, the Commission asked competent United Nations organs to provide information relevant to preparation of such a list.

Somewhere between separation and integration there may lie constitutional provisions for minorities ranging from communal representation in the legislature, for example, of Maoris in New Zealand, to forms of federation, for example, the association of the 'agreement kingdoms' (Buganda, Bunyoro, Toro and Ankole) in Uganda before its independence, the position of the Province of Quebec in Canada, and of the Ukrainian and some other 'republics' in the USSR. These may be intended to be covered by the term 'national' minority, introduced in the Yugoslav draft declaration, described below. In 1950 the UN approved the federation of Eritrea with Ethiopia from 1952 by General Assembly Resolution; but in 1962 the federal constitution was abrogated without UN intervention.

## IV Integration

It is then to the integration of minorities that international support has been and will probably continue to be given.

International standards for the treatment and protection of minorities have a long history, their expression ranging from treaties establishing specific regimes, sometimes after armed conflict, to general international conventions. Judgements of the Permanent Court of International Justice and its successor, the present International Court of Justice, have also had their influence.

In the Nineteenth Century and earlier, the protection of religious minorities was of particular concern. In the *Treaty of Kutchuk-Kainardji (1774)* between Russia and Turkey 'La Sublime Porte promet de protéger constamment la réligion chrétienne et ses églises'. In the *Treaty of Berlin (1878)* Article V provided that:

'Les dispositions suivantes formeront la base du Droit public de la Bulgarie: La distinction des croyances réligieuses et des confessions ne pourra être opposée à personne comme un motif d'exclusion ou d'incapacité en ce qui concerne la jouissance des droits civils et politiques ou l'admission aux emplois publics . . . La liberté et la pratique extérieure de tous les cultes sont assurées à tous les ressortissants de la Bulgarie aussi bien qu'aux étrangers.'

Under Article LXI Turkey undertook 'to carry out without further delay the improvements and reforms demanded by local requirements in the provinces inhabited by the Armenians . . . to guarantee their security against the Circassians and the Kurds'. The *Treaty of Sèvres (1920)*, in which Turkey recognized the newly proclaimed Republic of Armenia as 'a free and independent state', was never ratified.

Similar provisions appear in a declaration by the Netherlands in 1814 upon her acceptance of sovereignty over Belgium, and in an agreement in 1830 between Great Britain, France and Russia on conditions of recognition of the independence of Greece.

The territorial changes in Europe following the First World War affected minorities or were influenced by their claims. So 'the immense operation of liquidating the Austrian Empire' — in the words of Lord Balfour[9] — led to the transfer of Croatia, Slovenia, Bosnia, Herzegovina to the new State of Yugoslavia, and of Slovakia and Transylvania, both containing Magyar minorities, to Czechoslovakia and Romania respectively. Romania itself gained the Bukovina and Bessarabia, both with large Ukrainian populations. Austria itself was reduced to a country of under 7 million inhabitants, the South Tyrol being transferred to Italy. Greece concluded agreements with Bulgaria and Turkey for exchanges of populations. In the reconstitution of Poland, it acquired Vilna and Eastern Galicia and in the west the richer part of Upper Silesia and a corridor to the sea close to Danzig, placed under an international regime. Alsace-Lorraine was restored to France.

Of these changes Rohan Butler has said:[10]

'Such . . . was the balkanization of Central Europe, with which the peace-makers were later reproached, not with full justice. For the settlement did, despite shortcomings, unravel a horrid tangle of conflicting claims and considerations broadly according to fresh concepts of self-determination.'

Standards to govern the integration of minorities were set out in paragraph VI of the Wilson-Miller Draft of the League Covenant:[11]

'The League of Nations shall require all new States to bind themselves, as a condition precedent to their recognition as independent or autonomous States, to accord to all racial or national minorities within their jurisdiction exactly the same treatment and security, both in law and in fact, that is accorded to the racial or national majority of their people.'

The imposition of the rule on the new or substantially altered states was seen as a peace-making function. President Wilson had said that the Allies were guaranteeing the peace settlement and should not be expected 'to leave elements of disturbance unremoved, which we believe would disturb the peace of the world'. The rule then, being confined to the new States after 1919, did not generalize the standards;[12] further, it was omitted from the Covenant, the protection of minorities being left to specific agreements, which have come to be known as the Minorities Treaties, including particular provisions of the Peace Treaties. Two features of these treaty arrangements must be noticed: the common provisions, and the League of Nations guarantee.

The provisions concerning minorities, which are to be found in all these special treaties, deserve description because they set out most of the standards that must be generally applied for the protection of minorities in an integrated system. They may be divided into those that gave or protect human or common rights, and those designed to preserve specific characteristics of the minority to preserve its identity. 'Common rights' is an expression which brings out the fact that human rights belong to all individual persons regardless of their group or category or place of abode.

Among the common rights were the acquisition of nationality based on habitual residence, or birth in the national territory of parents domiciled there or birth there without indication of any other nationality; the protection of life and liberty; the free exercise in public or private of any creed, religion or belief where practices are not inconsistent with public order or morals; admission to public employment, commerce, industry or the professions on a basis of equality with other citizens.[13] Identity rights of minority nationals included an 'equal right to establish, manage and control, at their own expense, charitable, religious or social institutions, schools or other educational establishments' and to have an 'equitable share in public grants' for such purposes; further, the minority language was to be used freely and instruction in schools was to be conducted in the minority language in towns or districts where a considerable portion of the nationals of the country, whose mother tongue is not the official language, reside.

The Treaties placed the protection of minorities under League of Nations guarantee and their provisions could not be modified without the assent of a majority of the League Council. It adopted certain principles in October 1920 which were to govern its supervision of the minorities treaties: 'the provisions of the protection of minorities are inviolable... The League must ascertain that the provisions are always observed... The right of calling attention to any infraction or danger of infraction is reserved to the Members of the Council. Evidently this right does not ... exclude the right of the minorities themselves, or even of States not represented on the Council, to call the attention of the League ... to any infraction or danger of infraction. But this act must retain the nature of a petition, or a report pure and simple; it cannot have the legal effect of putting the matter before the Council and calling upon it to intervene. Consequently, when a petition ... is addressed to the Secretary General he should communicate it, without comment, to the Members of the Council, for information ...'

The supervision procedure established by League Council Resolution in June 1921 will be described below.

Its limited use and effectiveness were among the reasons advanced for regarding the minorities treaties as extinct, at least in effect, after 1945. So a UN report[14] suggested that the undertakings for the protection of minorities under League guarantee were terminated, with some exceptions[15], given the dissolution of the League[16]; the changes in status and position of the States which had given the undertakings; and the establishment of *general* protection of rights and freedoms under the UN replacing these localized systems.

The evolution of this generalized system may be briefly described. One of the early steps to place minority rights within the broad framework of non-discrimination, and so to adopt indirectly the principle of minority integration, was taken by the Institute of International Law in a Resolution adopted in October 1929[17]. In effect it restates the various rights and freedoms, specifically assured to minorities in the treaties and declarations described above, as being those to which every individual is entitled. Members of minorities are then included in this entitlement, though they are not expressly mentioned in the Resolution; further, the distinction between common rights and identity rights disappears. The first three of the six Articles of the Resolution are sufficient to illustrate:

*Article I*

It is the duty of every state to recognize the equal right of every individual to life, liberty and property and to accord to all within its territory the full and entire protection of this right, without distinction as to nationality, sex, race, language or religion.

*Article II*

It is the duty of every state to recognize the right of every individual to the free practice, both public and private, of every faith, religion, or belief, provided that the said practice shall not be incompatible with public order and good morals.

*Article III*

It is the duty of every state to recognize the right of every individual both to the free use of the language of his choice and to the teaching of such language.

In judgements and advisory opinions concerning aspects of the minorities treaties, the Permanent Court of International Justice more than once subscribed to the principle of integration. So, on the position of Greek minority schools in Albania, it said: 'The idea underlying the treaties for the protection of minorities is to secure for certain elements incorporated in a State, the population of which differs from them in race, language or religion, the possibility of living peacably alongside that population and co-operating amicably with it, while at the same time preserving the characteristics which distinguish them from the majority, and satisfying the ensuing special needs.'[18]

The UN Charter does not speak of minorities, save in the oblique reference to the equality of rights of 'peoples': Article 55, and rests in its human rights provisions on the controlling principle of non-discrimination, which is invoked in the Universal Declaration of Human Rights and the Peace Treaties after 1945[19], and the European Convention on Human Rights (1953) which, apart from applying the principle of non-discrimination to them (Article 14), makes no express provision for minorities, though a 'group of individuals' may bring an application to the Commission claiming to be a victim of a breach of the Convention, and the Fourth Protocol prohibits the 'collective expulsion of aliens'. The International Convention on the Elimination of all Forms of Racial Discrimination (1969)[20] states that racial discrimination is 'any distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin, which has the purpose or effect of nullifying or impairing the recognition, engagement or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life'; it prohibits such discrimination against 'persons, groups of persons, or institutions', though it excepts and so allows 'distinctions, exclusions, restrictions or preferences made ... between citizens and non-citizens': Articles 1(1), 2(1)a and 1(2). The permitted distinction between citizens and non-citizens is qualified by the requirement that provisions concerning nationality, citizenship or naturalization shall not discriminate against any particular nationality: Articles 1(3) and 5(d)iii.

Positive measures called for are the encouragement of 'integrationist multi-racial organizations and movements': Article 2(1)e, and the 'adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms'. The Civil and Political Rights Covenant (1976), however, contains an express provision on minorities in addition to the principle of non-discrimination: see Appendix A. These provisions are directed to individuals, and not to minorities as collective units, and are an expression of the requirement that the 'special needs' of a minority must be met, if necessary by particular differential treatment, or a process of 'reverse discrimination', so that equality in fact is achieved as well as in law, as distinguished by the Permanent Court of International Justice cited above.

The International Labour Organization has made extended inquiries into the conditions of life and work of 'indigenous peoples', tribally organized, in independent countries, and adopted a *Convention on Indigenous and Tribal Populations* (No.107[1957]), Part 1; however, it does not envisage self-determination for them. Reminiscent in part of Article 22 of the League Covenant on Mandates, it envisages populations 'whose social and economic conditions are at a less advanced stage' than other sections of the national community, and 'whose status is regulated wholly or partially by their own customs or traditions or by special laws': Article 1(a)a. Main objectives are 'the protection of the populations concerned and their progressive integration into the life of their respective countries'; but 'national integration' must exclude 'artificial assimilation': Article 2(1), 2(2)c. The Convention prescribes a number of standards for the administration of such populations divided into: land-holding, recruitment and conditions of employment, vocational training, handicrafts and rural industries; social security and health; education and means of communication.

What the international instruments then have been broadly aiming at, at least since 1945, is the assimilation of all persons, regardless of category, in the grant and exercise of common rights and freedoms, and the application of non-discrimination as a principle governing the whole social order. It follows that integration, rather than separation, is seen as the solution of minority problems in such an order, though some 'special needs' may still have to be met to secure equality, prescribed sometimes by bilateral agreements[21]

But the international instruments give little direction for dealing with the intractable problem of trans-frontier minorities, such as the Kurds. These minorities are numerous in Africa and parts of Asia.

## V International protection

After this brief survey of the principles and standards that the international conventions have set for the life of minorities, and their place in nation-states, we have to ask how they can be implemented, how the international protection of minorities can be achieved.

International protection involves some kind of intervention, and intervention is or can be seen as a trespass. If a State is to be master in its own house, other states cannot be allowed to intervene in its internal affairs, whether by suggestions, organized persuasion, economic coercion, or armed force; and the principle of non-intervention has been long recognized as a necessary brake on foreign policy, but with exceptions. Is the State always to be master?

The principle of non-intervention in the internal affairs of countries is to be found in the UN Charter and other declarations by the UN. So, apart from enforcement measures under Chapter VII of the Charter, nothing in it is to 'authorize the UN to intervene in matters which are essentially within the domestic jurisdiction of any State or shall require the Members to submit such matters to settlement' under the Charter.[22] Further, the General Assembly adopted by consensus a declaration[23] on principles of international law concerning friendly relations and cooperation among States which contains the following:

'No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are in violation of international law ...'

Further, '... no State shall organize, assist, foment, finance, invite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the régime of another State or interfere in civil strife in another State.'

Again, 'Every State has an inalienable right to choose its political, economic, social and cultural systems, without interference in any form by another State.'

These statements are embodied in substance in Principles VI and VII of the Helsinki Final Act, which have been much invoked as an instrument of foreign policy. But there are significant differences between them. Like the General Assembly Resolution, Principle VI is directed against intervention by States, acting alone or in a group, in contrast to intervention by the UN as a collectivity under the Charter. Further, intervention is more strictly proscribed than in Article 2(7), where UN intervention is permissible in matters not '*essentially* within the domestic jurisdiction'. Under Principle VI it may not be direct or indirect, or for any reason whatever, or touch on either internal or external affairs of a country. Further, despite the express prohibition of the use of various kinds of force, the rule against intervention is not, given the generality of the principle and the language, confined to the use of force, as is sometimes suggested. But, at the same time, these declarations, in prohibiting interference in any form by one State in the choice by another State of its political or social arrangements do not mean that that choice can be, or is to be, internationally condoned.

The notion that some rights and freedoms are common to all human beings, regardless of category or frontiers, and are to be recognized and exercised to at least minimum standards, has grown over the last century or so, and with it a sense of collective responsibility among nations for them. It began, perhaps, with the progressive abolition of the slave trade. Notable, too, were the interventions in the Ottoman Empire during its slow disintegration: the French expedition to Syria in 1850 after massacres in the Lebanon and interventions by western powers in Bosnia in 1875 and Cyprus in 1878, as Christian-populated provinces of the Ottoman Empire. The Treaty of Berlin in 1878 approved such interventions. Mr. Gladstone was able, in the Midlothian campaign, to declare that 'foreign policy should always be inspired by the love of freedom'; and in a draft code of international law prepared in 1888 by Bluntschli, the German jurist, founder of the still prestigious Institute of International Law, it was stated that, where human rights are denied in a country, there is a right of foreign intervention – the so-called *intervention d'humanité*.

'Humanitarian intervention' was justified by the distinguished jurist, Edwin Borchard, writing in 1915: 'When these "human rights" are habitually violated, one or more States may intervene in the name of the society of nations, and may take such measures as to substitute, at least temporarily, if not permanently, its own sovereignty for that of the state thus controlled.'

Collective responsibility is close to the trusteeship underlying the Mandates and Trusteeship systems. So the International Court of Justice, in its advisory opinion on the *Legal consequences of the continued presence of South Africa in Namibia* (1971), said:

'It is self-evident that the mandate had to be exercised for the benefit of the peoples concerned, who were admitted to have interests of their own and to possess a potentiality for independent existence on the attainment of a certain stage of development.'

UN practice illustrates this internationalization of common rights and freedoms. Since its earliest days objections raised by UN members to discussions or recommendations in the General Assembly or Security Council on the ground that they interfered with the domestic policy or practices of a country, have been constantly rejected by the majority where the maintenance of human rights was seen to be in question. The reasoning broadly was that the gradual internationalization of notions of human rights and freedoms made it no longer possible to regard them as 'essentially within the domestic jurisdiction of a State' – to use the language of the Charter restricting UN intervention. The UN, through the General Assembly and the Security Council, has then constantly intervened in countries by inquiry, discussion and recommendations on their practices involving human rights; and indeed the first compulsory order for economic sanctions by the Security Council was indirectly for the protection of human rights in Southern Rhodesia, a step which the drafters of the UN Charter would have hardly imagined.

Andrew Scott has observed that 'neither a powerful nation nor an international organization can offer leadership and rigidly adhere to the doctrine of non-intervention at the same time. The means available to them in offering leadership constitute intervention'.

How, then, is such leadership or initiative in exercise of collective responsibility for the protection of the rights and freedoms of minorities to be reconciled with a principle of non-intervention in internal affairs?

A limited protection was achieved after the first World War by international agreement: in other words, the observance of the rights and freedoms of minorities by the nations-state in which they lived was prescribed in treaties with the Allied and Associated Powers or made a condition of admission to membership of the League of Nations. The protection of minorities was covered in a number of treaties: in the five so-called minorities treaties between the Allied and Associated Powers and Poland – the first, which became the model – Czechoslovakia, Romania, Greece and what was to be Yugoslavia; and in special provisions in the Peace Treaties with Austria, Bulgaria, Hungary and Turkey repeated to some extent in the Peace Treaties of 1947. Special arrangements were also made by Germany and Poland for the division of Upper Silesia, and agreements for the exchange of populations between Greece and Bulgaria, and between Greece and Turkey. Further, the Baltic States, Albania, Finland and Iraq made declarations undertaking to protect their minorities on being admitted to membership of the League of Nations.

The League was to be guarantor of the observance of the treaty provisions for minorities, and a report adopted by the League Council in October 1920 stated that:

'the provisions for the protection of minorities are inviolable ... and cannot be modified in the sense of violating in any way rights actually recognized, and without the approval of the majority of the Council ...'.

The right of Members of the Council and of the minorities themselves to call the attention of the League to any infraction or danger of infraction of various treaties was recognized. But how were these rights to be exercised in practice? Some of the obstacles, familiar in the development of the European Convention on Human Rights, appeared. So it was said that the League Council should

not be *bound* to intervene and that petitions from minorities should rank as 'reports for information only'. Again Lord Balfour sought to avoid a process which placed on individual Members of the League 'the invidious task of accusing another Member'; and Poland and Czechoslovakia both objected to such petitions at all on the ground that they could contain 'one-sided information, which is often unreliable or biased ... The possibility of subsequently refuting the accusations made against them, afforded to the States concerned, does not always compensate for the injury suffered from this procedure'. The objection would of course not hold if investigation by the League Council of complaints in a minorities petition were authorized and accepted by the nation-state concerned, a process which has worked in the context of the European Convention on Human Rights.

However, the League had by October 1923 gradually worked out a petition procedure for minorities. Certain conditions were laid down which had to be met if a petition was to be admitted by the League Council; in particular, a petition must not be repetitive and must not emanate from an anonymous or unauthenticated source having in view the protection of a minority in accordance with the treaty provisions. It would appear that an authenticated source would be one or more members of a minority or an association acting for them. The criterion of membership of a minority was subjective in the German-Poland Convention (1922) Article 74 of which provided that

'The question whether a person does or does not belong to a racial, linguistic or religious minority, may not be verified or disputed by the authorities'

and Article 131 stated that the language of a pupil or child was to be determined by the person legally responsible for ensuring their education, initially the parents. The right of petition by associations was assured since, as was said in a League meeting 'the protection of minorities would be illusory if the associations for the maintenance of minority rights did not possess the right of petition'.

Finally, a petition must not request the 'severance of political relations' between the minority and the State of which it formed a part.

The general rule that international claims or petitions may not be brought unless domestic remedies, which are available and effective in the State concerned for making the complaints, have been first exhausted, was not expressly applied in the League petition procedure. However, petitions from minorities had to be communicated to the State concerned, which was required to give notice within 3 weeks of its intention to comment, and then to provide comments within 8 weeks. A refusal to comment, or alternatively, the petition with comments would be communicated to members of the League Council, unless the State concerned asked for wider communication. Petitions with comments were examined and reported on to the Council by a Committee of Three – the President and two members, not including a representative of the State concerned or of a neighbouring State or of a State with a population majority of the same ethnic group as the minority petitioning. Publication of the result of the examination of the petition could only be made with the consent of the State concerned. In Upper Silesia, where there was a resident League High Commissioner, petitions could be brought directly to him.

773 petitions were received in the first ten years, of which 292 were found inadmissible; 8 reached the League Council, which took some action on 2. In 1933 Germany repudiated the system and Poland denounced its treaty. However, during this first period three cases involving Poland or Upper Silesia, as well as cases on the exchange of populations between Greece, Bulgaria and Turkey, went to judgement by the PCIJ. The League Council also obtained advisory opinions from that Court on the position of the minority schools in Albania and in Upper Silesia, and also the administration.

The League as guarantor of minority rights was then not only confined to minorities in the new or substantially enlarged countries in Europe – any suggestion that the protection of minorities should be generalized even throughout Europe was vehemently opposed – but its interventions were few and of slight effect. But the influence of the minorities treaties and declarations may still have been wider than the public record suggests. The mere existence of their provisions could have some control both of law-making and administration; and the relative confidentiality of the petition procedure through the Committee of Three and the Minorities Section of the League probably also helped this. It is the experience of the European Commission of Human Rights in the largely confidential handling of applications that not every application rejected by it has had no effect.

The decisions of the Permanent Court of International Justice were also not without influence, though limited to Poland, Danzig and Upper Silesia in the north and in the south to the position of minority schools in Albania, and to certain problems arising in the Greco-Turkish and Greco-Bulgarian exchanges.

For example, it identified and helped to clarify at least two elements in the protection of minorities, which are still material to it. In its advising opinion on the *Treatment of Polish Nationals in Danzig* (1932) it observed that:

'The members of minorities, who are not citizens of the State enjoy protection – guaranteed by the League of Nations – of life and liberty and the free exercise of their religion, while minorities in the narrow sense, that is, minorities, the members of which are citizens of the State, enjoy – under the same guarantee – amongst other rights, equality of rights in civil and political matters and in matters relating to primary instruction.'

This differentiation between citizens and non-citizens is not wholly accepted in the contemporary international conventions on human rights, and remains a problem in practice, at least for migrant workers, who constitute a new kind of minority.

Its description in *Minority Schools in Albania* (1935) of integration as the real objective of the protection of minorities, has already been mentioned[24]. But it is important to recall what it had to say about equality:

'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'.[25]

The system of minority protection between the two world wars was limited in area and seen by its creators

as primarily serving the balance of power and peacekeeping in Europe. Minorities must be granted their rights so that they do not get out of hand; and C.A. Macartney ended a review of this system by saying:
'There is . . . at least some practical case for imposing these obligations only on states in which, owing to their special conditions, minority situations exist which might really endanger the peace of the world.'

But since 1945 the international climate has greatly changed: the drive for national independence which has nearly trebled the membership of the UN; a larger sense of community between countries and peoples growing out of a recognition of common interests in the sharing of technology and natural resources, including nuclear energy with its dangers, and of the need then to set limits to territorial divisions, autonomy and secession; the instability of many regimes, especially in newly independent countries where the populations are still deeply divided by tribal and ethnic loyalties – all these influences have changed the international view of minorities, their character and their needs. Above all, perhaps, international organizations like the UN and the OAU have been influenced by the consideration that countries inheriting the arbitrary and unnatural frontiers resulting from the colonial partitions of the last century would be especially liable to irridentist pressures by the ethnic groups straddling those frontiers. It has therefore come to be widely held that the imperatives of 'nation-building' must take priority over many of the rights formerly attributed to ethnic minorities.

The two axioms – the right of self-determination and the principle of non-discrimination – and the alternative approaches, political or social, on which they can lead to the protection of minorities, have been briefly described above. It can be said that at the first approach, in which the collective identity of a minority is secured and preserved by some form of political self-determination, has been largely eliminated as far as UN intervention goes. Even in the early debates in the UN it was said[26] that minorities deserving protection should comprise only those 'non-dominant groups in a population, which possess and wish to preserve stable ethnic, religious or linguistic traditions or characteristics markedly different from those of the rest of the population'[27]; further, they must be 'loyal to the State'[28]. It will be seen that this requirement is maintained, though with an important qualification in Article 28 of the Draft Convention: Appendix C. So the Capotorti Report, described further below, stresses that 'the need to safeguard the integrity of the State, and to avoid encouraging separatism, is of course the legitimate concern of any government': Ch.111 §73, but recognizes that this can be an obstacle to the adoption of special measures, favouring individuals belonging to minorities. Yet in the final recommendations, in which the Report urges the conclusion of bilateral agreements between countries having common minority problems, it is stated that such agreements must be 'based on mutual respect for the principles of sovereignty and territorial integrity of the States concerned and non-interference in their internal affairs'.

Political pressures grew both outside and in the UN after the second World War for the end of colonial rule, and the movement of countries to independence, particularly after 1955, became steadily more rapid and widespread than could have been predicted when the UN was founded. The protection of minorities became overlaid by the pursuit of independence by colonial peoples. The UN interest in minorities was then reduced, unless they could be seen as subjects of colonial rule or apartheid, and there was no intervention on their behalf save in peacekeeping operations. Self-determination had in fact in UN practice become virtually identified with the achievement of independence by colonial peoples, and this has expressed itself in two ways. A distinction is made between a people, however small in number or territory, deemed capable of independence and UN membership, and nationalities or minorities living within a larger country. Self-determination is accorded to the first but not necessarily to the others.

An active advocate generally of the principle of non-intervention, the USSR has argued that in any colonial *war* the metropolitan country is the aggressor and that any intervention in support of the oppressed colonial people is justified as a way of defeating aggression. The USSR even condemned UN intervention in the Congo as 'collective colonialism'. The preoccupation with liberation from colonial rule has led the UN itself to come close in several declarations to approving the use of force, and foreign intervention, in conflicts over that liberation.

The Economic and Social Council empowered the UN Commission on Human Rights to establish the Subcommission, and its terms of reference were stated in February 1947; it was in particular to examine and define the principles of non-discrimination and the protection of minorities and to make recommendations on urgent problems. Its proposals for means of access to relevant information and for a petition system were requested by the Commission and in its first two decades it concentrated on studies of discrimination in respect of specific rights. It has examined submissions from non-governmental organizations; for example, reports of the Anti-Slavery Society on the condition of the Indians in Brazil and Paraguay.

In 1967 the Subcommission decided to initiate a study of the implementation of Article 27 of the Civil and Political Rights Covenant. On the further recommendation of the UN Human Rights Commission, the Economic and Social Council authorized the appointment of a Special Rapporteur: Resolution 1418-XLVI (6.6.69). Francesco Capotorti was appointed in 1971 by the Subcommission and his Report was submitted in June 1977, including comments by governments. This Report is a comprehensive study, historical and conceptual, of the international protection of minorities, and it offers a new definition of a minority as:
'a group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members – being nationals of the State – possess ethnic, religious or linguistic characteristics differing from those of the rest of the population, and show, if only implicitly, a sense of solidarity directed towards preserving their culture, traditional religion or language': Ch.V §10.

The recommendations at the conclusion of the Report are modest. Apart from regional seminars and research awards, it proposes that UNESCO take action on minorities, and that countries concerned seek the conclusion of bilateral agreements. In August the Subcom-

mission adopted the conclusions and recommendations in the Report and proposed that the UN Human Rights Commission draft a declaration of minority rights within the context of Article 27 of the Covenant. The Commission established a working group, a Yugoslav draft declaration being taken as a starting point. It appears to be still under consideration.

Three features of the Yugoslav draft declaration may be noted: it refers to 'national' as well as ethnic, religious or linguistic minorities, the term not being explained; in calling for the grant to minorities of 'full equality in relation to the rest of the population, regardless of their number' it rejects the numerical criterion adopted in the Capotorti Report; and it also adopts the principles of 'strict respect for the sovereignty, territorial integrity and political independence, and non-interference in internal affairs' in the promotion of minority rights.

Given that twelve years have now elapsed since the Sub-commission initiated the implementation of Article 27 of the Covenant; that the working group and governments concerned are still engaged in the discussion of principles, only imprecisely expressed in the Yugoslav draft declaration; and that both the Capotorti Report and this draft stress the need to respect the sovereignty and domestic jurisdiction of States, the observations made above appear to be justified: that the Subcomission has done little for the protection of particular minorities , and that it is the integration of minorities, which is gaining international support.

UN intervention has then only indirectly served the protection of minorities. The identification of self-determination with colonial independence[29], the emphasis on integration – the multi-racial community being the goal, and separation seen as apartheid – and the assertion that the function of UN intervention is to be broadly limited to peace-keeping, all led to this result. It is illustrated by UN practice where it has intervened in areas in which minorities are a force – Southern Africa, Rhodesia and the former Palestine. Certain features of these and other interventions must be noticed, in particular how minorities concerned were regarded. First, there is the human tendency to polarize all conflicts into two sides. In fact, in Southern Africa and Rhodesia there are many minorities at varying levels of differentiation or conflict. In South Africa the population in 1976 was distributed between approximately 18.6 million Africans, 4.3 million whites, 2.4 million coloureds, 0.75 million Asians. Apart from some division between whites of English and Dutch origin, it is clear that the Asians, though still discriminated against, form a group in terms of wages, education and health consistently better placed than the Africans and coloureds.[30] In Rhodesia, too, there might be said to be at least three minorities – white, Mashona and Matabele – between whom tension is visible; and in Namibia there are a number of communities, of which Ovamboland was detached for separate political development by South Africa in 1973 on the Bantustan principle. In Cyprus, the position is the reverse for there are two communities, not helped by both being treated by interested countries as minorities and both having to some degree the sense of minority[31]. While the Greek-Cypriots outnumber the Turkish Cypriots by about 4 to 1, both were more or less evenly distributed over the island until the intervention by Turkey in July 1974. Secondly, all four areas have been, or are, areas of crisis; regional in the cases of Southern Africa and Rhodesia and the former Palestine, and 'intramural' in the case of Cyprus[32]; and it is this that has determined the scale of UN intervention.

Apart from its early resolutions on the position of Indians in South Africa, the UN has paid little direct attention to particular minorities in these areas, and while Article 2(7) of the Charter has not been a barrier to investigations, debates and recommendations by the General Assembly and other bodies, it has operated as a hidden brake on more direct intervention to protect minorities, unless UN action can be justified as peace-keeping under the Charter. Mandatory sanctions were imposed by the Security Council on Rhodesia on the ostensible ground that the wide discrimination against the African majority – politically a minority – constituted a threat to the peace. While the threat may have been by some considered slight in 1965, the evolution of Rhodesia has shown that the finding was prophetic and that, in the contemporary world, there can be a close link between peace and human rights, and that minorities, frustrated by delay in ending discrimination against them, will take to arms. But where it has exercised a peace-keeping function, its intervention has not extended to efforts to bring about a political settlement. So, where the planned secession of Katanga led to armed conflict in the Congo (Zaire) and the intrusion of foreign military personnel and mercenaries, the Security Council authorized the creation of a UN force (ONUC) and 'all appropriate measures to prevent the occurrence of civil war in the Congo, including ... the use of force, if necessary, in the last resort'. In the words of the International Court of Justice[33] the object was 'to assure the peaceful solution' of the domestic conflict. But it was not to influence the political shaping of that solution or to support or deny autonomy for Katanga. The mission of UNFICYP to Cyprus since 1964 has not been dissimilar. The UN Secretary-General had, at the request of the Cyprus Government, appointed a Personal Representative in January 1964 as observer of the attempts to resolve the open conflict that had begun between the communities later in 1963. In February 1964 President Makarios referred the situation to the Security Council, which in two resolutions[34], created UNFICYP with the consent of the Cyprus Government, as a 'United Nations peacekeeping force' to be established 'in consultation with the Governments of Cyprus, Greece, Turkey and the UK'; 'the functions of the force' said the Security Council 'should be, in the interests of preserving international peace and security: to use its best efforts to prevent a recurrence of fighting and, as necessary, to contribute to the maintenance of law and order, and a return to normal conditions'.

Unlike ONUC, UNFICYP members were allowed to use arms only in self-defence, and as the Secretary-General stated[35],

> 'In carrying out its functions, the United Nations force shall avoid any action designed to influence the political situation in Cyprus, except through contributing to a restoration of quiet and through creating an improved climate in which political solutions may be sought.'

Following the cease-fire, after the Turkish intervention in July 1974, UNFICYP had to supervise the cease-fire, establishing observation posts where possible between

rival forces, and to assist in humanitarian and relief operations, in collaboration with the UN High Commissioner for Refugees and the International Committee of the Red Cross.

Where then the UN has gone beyond recommendations and taken action, it has been strictly confined to peacekeeping, in the sense of reducing the expected risks of international conflict (Rhodesia; Congo) or of acting as a policeman, to maintain public order and keep the parties in conflict apart and so keep open the door to some political settlement (Congo; Cyprus). The protection of the interests of minorities involved has been wholly incidental.

Namibia remains a special case in that the UN assumed the task of supervising the Mandate, and having terminated the Mandate took over full responsibility in law for the administration and coming to independence of the territory. The reconciliation of the interests of the different communities, in particular the Ovambo, Okavango, Damara and Herero, seen as minorities, may still have to be achieved.

UN forces in the Middle East, UNEF, UNTSO and the UN Disengagement Observer Force on the Golan Heights, have been extended so as to reduce Israeli occupation of the Gaza Strip and the West Bank, or to prevent the extension of settlements there. But the right of self-determination of the Palestinians, who now form a diaspora constituting more than half the population of Jordan, has been asserted in the UN. These and other recent declarations in the UN concerning minorities illustrate its relatively passive role in their protection.

Concerning the Palestinians, General Assembly Resolution 3376-XXX expressed grave concern at the lack of progress towards:

(a) The exercise by the Palestinian people of its inalienable rights in Palestine, including the right to self-determination without external interference and the rights to national independence and sovereignty,

(b) the exercise by Palestinians of their inalienable right to return to their homes and property from which they have been displaced and uprooted.

The UN Commission of Human Rights, in condemning a number of specific Israeli policies and practices called upon Israel

to release all Arabs detained or imprisoned as a result of their struggle for self-determination and the liberation of their territories, and to accord to them, pending their release, the protection envisaged in the relevant provisions concerning the treatment of prisoners of war:

*Resolution 1-XXXIV(2.1978)*

In the same session it reaffirmed

the inalienable right of the peoples of Namibia, South Africa and Zimbabwe, of the Palestinian people and of all peoples under colonial or alien domination or foreign occupation to self-determination, national independence, territorial integrity, national unity and sovereignty without external interference;

*Resolution 2-XXXIV*

but there was little concern with minorities as such.

## VI European Convention on Human Rights

The European Convention on Human Rights (1953) offers a measure of protection to minorities in that Article 14 states that 'The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as ... race, colour, language, religion ... association with a national minority ...'. 'Association with' is perhaps clearer in the equally authentic French text as 'l'appartenance à'. Applications could then be brought to the European Commission of Human Rights by individuals or groups claiming to be victims of discrimination as members of a minority, since the Commission considers that, provided the discrimination complained of relates to one of the Convention rights or freedoms, the complaint of discrimination can be taken up; in other words, a restriction on some trade union activity that might be permissible under Article 11(2) of the Convention could still be contrary to it if it discriminated against a particular group, characterized in Article 14. The record of the Commission since 1954 shows that the Convention can, apart from other influences it may have, give some effective protection through the process of applications. However, the Commission cannot take any initiative. Minority rights in issue could only be brought to it on an application by a government, an individual or a group, alleging a denial of the rights by one of the Convention countries.

Little use has been made of the Convention by recognized minorities, though the applications concerning the choice of language of instruction (French or Flemish) in the Belgian schools[36], and those brought by UK citizens of Indian origin, expelled from Eastern Africa, concerning refusal of entry to the UK[37], may be regarded as involving minority rights, as do certain applications concerning the Tyrol, Northern Ireland and Cyprus.[38]

## VII Intervention by governments

From this brief review of intervention to protect minorities by international institutions, we turn to intervention by governments.

Intervention by a single country or by a small group of associated countries, aimed at minority protection is a matter of moral and political judgement, and law may enter into the question whether in given circumstances it is justifiable. The decision then by a government to intervene for the protection of minority rights in another country by taking some coercive measures, or by taking a public position, or by diplomatic action, will depend on many factors. So it can be asked whether such intervention may not be sometimes counterproductive if it is seen as being hypocritical or inconsistent. President Theodore Roosevelt, in a message to the Senate in 1904, offered some advice which can still be relevant to the first doubt: 'We have' he said 'plenty of sins of our own to war against, and under ordinary circumstances we can do more for the general uplifting of humanity by striving with heart and soul to put a stop to civic corruption, to brutal lawlessness, and violent race prejudices here at home than by passing resolutions on wrongdoing elsewhere.'

We must also ask whether governmental intervention must be seen to be consistent, if it is to be effective, or whether it can be selective of target countries. The suspicion will be always strong in the latter circumstances that the intervention is a political tactic, designed less to protect minorities than to serve some national interest. There may be also a different kind of intervention by a country exercising its right, recognized in international law, to protect its nationals abroad, even by force within certain limits. But can this be extended to a minority sharing its language and culture, which lies beyond its frontiers? The history of German minorities in Europe shows the dangerous pressures that can arise. In the spirit of the Volksbund für das Deutschtum im Ausland, and the National Socialist Party after 1933, over three hundred organizations were established outside Germany, itself asserting the principle of Auslandsdeutschtum, which became a political force behind German intervention in Czechoslovakia and later Poland. The movements, voluntary and involuntary, after the Second World War of the Volga Germans, who had formed an Autonomous SSR since 1924, was a reflection of it.

The principle of non-intervention set out as Principle VI of the Helsinki Final Act is designed to reduce or prevent such conflicts. But does Principle VII of the Final Act, concerned with the protection of human rights, including the rights of minorities, override Principle VI? The Final Act itself expressly states that no one Principle is to be given any priority, and the record of the Belgrade Conference does not disclose whether the position of minorities in Eastern or Western Europe was discussed, for example, the Basques and Catalans; the Bretons; Croats; Hungarians, and the gypsies and migrant workers in Western Europe. A conference directed to European cooperation might be expected, under Principle VI, to do something to stop the profitable trade in illegally entered migrant workers and their harassment in expulsion from country to country.

Economic disadvantage is both a cause and a consequence of discrimination against minorities; and in the four areas described economic inequalities run deep and can provoke both colour prejudice and religious or language conflicts; and the prohibition, in the Fourth Protocol to the European Convention on Human Rights, of the 'collective expulsion of aliens' is doubtless directed against measures that might be taken in time of high unemployment.

Inter-State applications have been brought under the European Convention on Human Rights, raising indirectly issues of minority protection, including that of a minority within a minority[37].

## VIII Conclusions

What conclusions can be drawn from this record of international action to protect minorities?

First, it must be stressed that the protection of minorities is, with the exception of transfrontier peoples, a domestic matter; hence the need for some kind of intervention, if international protection is to be resorted to. But it does not follow that the declarations of minority rights, and of standards of protection, to be found in the international conventions are useless. International rules and standards express in part at least what may already be the domestic law and practice in many countries, and their observance may be secured through domestic machinery. But these rules and standards have an intangible influence, in and between countries, through their mere existence. The short, comprehensible and pregnant propositions of the UN have had a far greater impact around the world than its drafters could have expected; and to the extent that the international rules and standards form or declare the law of common rights and freedoms, law has a part to play in intervention for their protection.

The proposed extensions of the European Social Charter rely on this influence. So it is proposed that Article 19 (migrant workers) be strengthened 'with a view to eliminating obstacles to family reunion, preventing arbitrary expulsions, giving immigrants the right to instruction in the language of the host country, and, as far as possible, the right to vote in local elections'. The Draft Convention, forming Appendix C, is a valuable attempt to set out, at least for information and discussion, the essential standards of protection of minorities.

Secondly, a great force in the protection of human rights in general, and of minorities in particular, is publicity. But it can have both positive and negative effects and some choice has to be made between them. The influence of the work in inquiry and reporting of such non-governmental organizations on the international plane as Amnesty International and the World Council of Churches is plainly protective of minorities, in that publicity is given to their position and needs, and the reaction of the public in other countries cannot always be politically ignored by responsible government. But here comes the negative effect of publicity. No government in the contemporary world can find it easy to face public criticism of its treatment of minorities, particularly when it is made by other governments, whether in the UN or public conference. The government charged may even over-react and intensify its policy by way of defiance. The disregard of the principle of non-intervention, manifested in public declarations by governments on human rights in Eastern Europe, particularly in a context of efforts at European cooperation, has not been productive; though that is not to say that diplomatic action by governments, exerting pressure for human rights or the protection of minorities in, for example, the negotiation of trade agreements, or publicity given to denials of human rights by the press or non-governmental bodies are not justified. Neither in fact are really intervention in the sense of Principle VI.

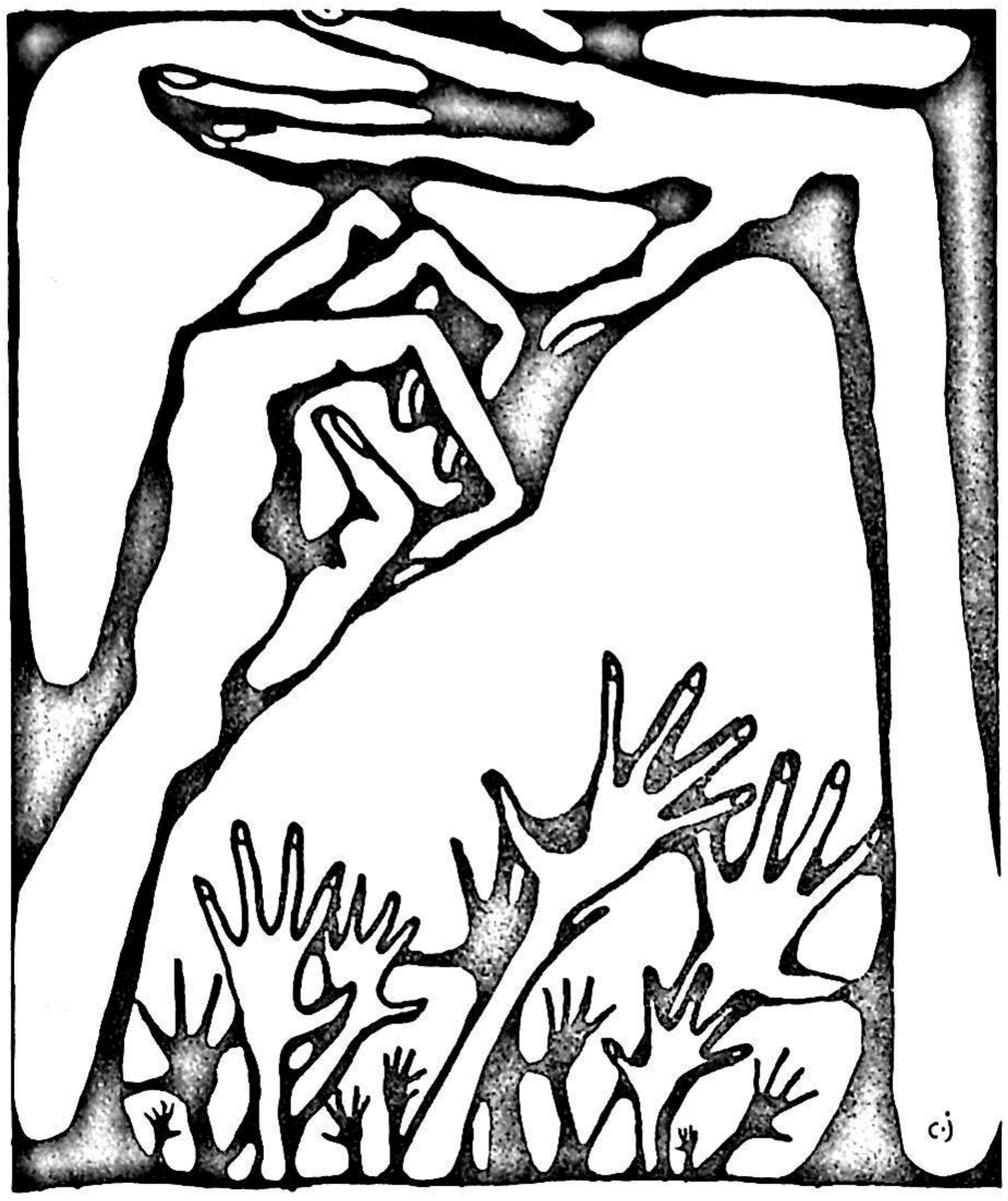
Thirdly, the record since 1945 shows that at least the international approach to minorities has shifted from special treatment to their absorption in systems of non-discrimination, that are far wider politically and geographically than the minorities treaties.

In sum it may be said that:

(i) the bare existence of the international conventions and declarations on human rights has a political force serving the interests and protection of minorities;

(ii) integration in a generally just social order has taken the place of separation and special treatment as the desired goal of the international and national protection of minorities;

(iii) if the international protection of particular minorities is made a goal or instrument of foreign policy of governments, acting alone or in association, little is achieved by public declarations; and that more is achieved by pressure or coercion in private diplomatic exchanges or negotiations.



## APPENDIX A

The common Article 1(1) of the Civil and Political Rights Covenant and the Economic Social and Cultural Rights Covenant, following UN General Assembly Resolution 1514-XV states that:

'All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Tous les peuples ont le droit de disposer d'eux-mêmes. En vertue de ce droit, ils déterminent librement leur statut politique et assurent librement leur développement économique, social et culturel.'

The principle of non-discrimination is stated in slightly different terms in the two Covenants, but the Civil and Political Rights Covenant sets out the essentials:

*Article 2(1)*

Each State party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status.

Les Etats parties au présent Pacte s'engagent à respecter et à garantir à tous les individus se trouvant sur leur territoire, et relevant de leur compétence, les droits reconnus dans le présent Pacte, sans distinction aucune, notamment de race, de couleur, de sexe, de langue, de religion, d'opinion politique on de toute autre opinion, d'origine nationale ou sociale, de fortune, de naissance, ou de tout autre situation.

*Article 26*

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as ... [as Article 2(1)]

Toutes les personnes sont égales devant la loi et ont droit sans discrimination à une égale protection de la loi. A cet égard, la loi doit interdire toute discrimination et garantir à toutes les personnes une protection égale et efficace contre toute discrimination, notamment ... [as Article 2(1)]

There is also express mention of minorities:

*Article 27*

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

Dans les Etats ou il existe des minorités ethniques, religieuses ou linguistiques, les personnes appartenant à ces minorités ne peuvent être privées du droit d'avoir, en commun avec les autres membres de leur groupe, leur propre vie culturelle, de professer et de pratiquer leur propre religion, ou d'employer leur propre langue.

## APPENDIX B

*Treaties and Declarations following World War I affecting Minorities*

| Treaty of | Concluded | In force | between Allied and Associated Powers and |
|---|---|---|---|
| Versailles | 28.6.1919 | 10.1.1920 | Germany |
| St Germain | 10.9.1919 | 16.7.1920 | Austria |
| Neuilly | 27.11.1919 | 9.8.1920 | Bulgaria |
| Trianon | 4.6.1920 | | Hungary |
| Sèvres | 10.8.1920 | Not ratified | Turkey |
| Lausanne | 24.7.1923 | | Turkey |

The transfer of Transylvania to Romania included a Magyar minority.

*Bilateral Agreements*

| | | |
|---|---|---|
| Poland-Danzig: | Convention | (9.11.1920) |
| Germany-Poland: | Convention on Upper Silesia | (15.5.1922) |
| Greece-Bulgaria: | Exchange of Populations | (27.11.1919) |
| Greece-Turkey: | Exchange of Populations | (30.1.1923) |

*Declarations before League Council*

| | |
|---|---|
| Finland (Aaland Islands) | 27.6.1921 |
| Albania | 2.10.1921 |
| Lithuania | 12.5.1922 |
| Latvia | 7.7.1923 |
| Estonia | 17.9.1923 |

## APPENDIX C

## Draft International Convention on the Protection of National or Ethnic Groups of Minorities*, presented by the Minority Rights Group to the UN Human Rights Commission, 1979.

(prepared by Dr. Felix Ermacora† and colleagues in Vienna)

The States Parties to the present Convention,

*Realising* that the General Assembly of the United Nations in its Resolution 217 C (III) has declared itself not to be indifferent to the fate of Minorities,

*Regarding* Art.27 of the International Covenant on Civil and Political Rights which provides for the protection of certain characteristics of persons belonging to ethnic, religious or linguistic minorities,

*Appreciating* the valuable work contained in the Special Report submitted to the Sub-Commission on the Prevention of Discrimination and Protection of Minorities in the Study UN-Doc. E/CN.4/Sub.2/384,

*Regarding* Art.1 of the UN Convention relating to the Elimination of all forms of Racial Discrimination which includes in its concept of Race also the concept of ethnic groups and protects them and their members against all forms of racial discrimination,

*Welcoming* Art.1 of the International Human Rights Covenants recognizing the right of all peoples to self-determination and its application to all peoples under foreign occupation and colonial domination,

*Regarding* regional instruments on Human Rights, in particular Art.14 of the European Convention on Human Rights which guarantee for everyone belonging to a national minority the enjoyment of the human rights and fundamental freedoms recognized in these instruments,

*Considering* the fact that the prevention of discrimination against persons belonging to ethnic or national minorities or groups is already deprecated by other international instruments in different fields and by many constitutional provisions in different countries of the world,

*Considering*, however, that no general international instrument relating to the protection of ethnic groups and minorities has been elaborated so far,

*Taking into account*, that many national or ethnic groups or minorities in different regions of the world are not yet legally recognized,

*Anxious* to prevent in the future any further threat to international or national peace and security caused by racial hatred and struggles of ethnic groups or minorities against oppression, such as the world experienced between the two World Wars, by the policies of racist regimes, by forms of genocide and other gross violations of human rights and fundamental freedoms,

*Aware* that universal or even regional protection of national and ethnic groups or minorities depends primarily on the democratic , economic, social, cultural, and political development in the different regions of the world and that therefore the system of protection of ethnic groups and minorities must be secured by appropriate international instruments,

*Taking note* of the UN attempts to draft an International Declaration on religious intolerance and discrimination on grounds of religious beliefs,

*Considering* it inappropriate, however, to draft rules for the protection of religious minorities and national or ethnic groups or minorities in one and the same instrument,

*Have decided* to adopt a system of measures aiming at the protection of national or ethnic groups of minorities which may be implemented by Member States, but should in any case be considered as a first step towards a State policy designed to construct a peaceful pluri-ethnic [Utz] national society for the benefit of internal and international peace and security in conformity with the principles of the UN Charter and the statutes of regional intergovernmental organizations,

*Realizing* that the national or ethnic groups of minorities and their members, having duties towards other ethnic groups and minorities and their members, are also under a responsibility to refrain from ethnic [Utz] prejudice and to strive for ethnic [Utz] tolerance,

*Agree* upon the following provisions which constitute elements of Human Rights and Fundamental Freedoms.

*Section I: General Principles*

*Art.1*: Every national or ethnic group or minority has, on an international as well as on a national level, the inalienable right to be recognized as a national, ethnic and cultural entity and must be granted the right to be recognized as such in accordance with the provisions of the present Convention.

*Art.2*: National or ethnic groups or minorities having the character of entities possess the inalienable right to their own ethnic and cultural identity and to self-determination within the framework of the present Convention.

*Art.3*: Every member of a national or ethnic group or minority has the right to use his own language or dialect in private, in all social, economic and similar relations, and in public, notwithstanding the legal position of his group or minority.

*Art.4*: National or ethnic groups or minorities are free to pursue their economic, social, and cultural development and may not be discriminated against for reasons connected either directly or indirectly with these activities.

*Art.5*: National and ethnic groups and minorities have a right to a legal and social environment favourable to their legitimate aspirations.

*Art.6*: The physical character as well as the demographic composition of a territory in which national or ethnic groups or minorities are living must not be changed without legitimate cause and the consent of those concerned [Francis].

*Art.7*: The State must not undertake, support or favour a policy of artificial or [Veiter] enforced assimilation.

*Art.8*: Genocide against national or ethnic groups or minorities is a crime against humanity.

*Art.9*: Mass-expulsions of members of national or ethnic groups or minorities have to be considered as genocide; involuntary transfers of members of national or ethnic groups or minorities within or outside the borders of a State Party to this Convention are not permitted for any reasons whatsoever.

*Art.10*: Nobody may be denied the right to associate or identify himself voluntarily with the majority of the population of the State of which he is a national.

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* Into this draft have been integrated provisionally

a) linguistic improvements submitted by Mrs. Mary Wuschek, and

b) proposals as to changes of text made by Professors Francis, Simma, Utz, and Veiter, as well as by Dr. Kloss. These changes are underlined and the name of the proposal's author is shown in brackets.

† A Member of the Austrian Parliament, of the European Commission of Human Rights and of the UN Commission.

*Section II: The Recognition of Groups, Prevention of Discrimination, and Measures of Protection in general*

*Art. 11* §1: The States Parties to this Convention recognize national or ethnic groups or minorities within their jurisdiction. They recognize furthermore the right of persons freely to join such groups or minorities.

§2: A national or ethnic group or minority in the sense of the present Convention exists if a number of nationals of the given State, being in numerically inferior, or non-dominant position, and possessing ethnic or linguistic characteristics differing from the rest of the population, show, if only implicitly, a sense of solidarity with a view [Francis] towards preserving their culture, traditions, or language, and possessing also an adequate representation, asks for legal recognition as a national or ethnic group or minority.

§3: A group or minority recognized according to §2 may appeal for recognition by the UN or, if it so desires, by a relevant regional intergovernmental organization. As to the criteria according to which recognition is granted to such a body, UN-ECOSOC or the given regional intergovernmental organization shall decide, guided by the principles laid down in §2. By force of recognition, the minority or group receives a special consultative status within the UN-ECOSOC or the respective intergovernmental organization.

*Art. 12* §1: National or ethnic groups or minorities are guaranteed their political, cultural, economic, and social development on the basis of non-discrimination by the State. The authorities will also take appropriate measures to discourage‡ discrimination on the part of the general population [Francis].

§2: Members of a minority or group may not be discriminated against, either in fact or in law, in the enjoyment of human rights, especially those guaranteed by the UN Covenant on Social, Economic, and Cultural, and on Civil and Political Rights; the provisions of the UN Covenant on the Elimination of all forms of Racial Discrimination have likewise to be applied.

§3: Members of a minority or group must not be obliged to render military service outside the territory in which the group resides unless in times of war or of public emergencies which do not involve specific interests of the minority or group concerned [Kloss].

*Art. 13* §1: The protection of a national or ethnic minority or group may be organized on a national or international level or on both levels. The kind, range and scope of the protection depends on the freely expressed will of the members of the minority or group, on its demographic distribution as well as on international obligations of the given State.

§2: The main kinds of protection on a national level are the dollowing:

a) the right to self-determination as expressed in the UN Declaration of Principles of International Law on Friendly Relations and Cooperation among States in accordance with the Charter of the UN (GA Res. 2625 (XXV);

b) cultural autonomy;

c) linguistic autonomy;

d) participation in legislative, administrative, and/or judicial processes and decisions;

e) distribution of public funds for the promotion of the economic, cultural, and social development of the minority or group;

f) adequate competences to dispose of, [Veiter] and to use the natural resources located in the territory wherein the minority resides;

g) the right to economic, social, and cultural development based on the guarantees laid down in the UN Covenant on Economic, Social, and Cultural Rights.

§3: The main kinds of protection on an international level are the following:

a) adjudication of a given type of self-determination on application by an internationally recognized minority or group by the General Assembly of the UN or the competent organ of a regional intergovernmental organization;

b) fact-finding, conciliation or mediation in a conflict about group-protection between States at the request of a State, or in conflict between a State and a group at the request of the latter, on the basis of a resolution of the UN General Assembly or of the competent organ of a regional intergovernmental organization; the procedure must follow the rules determined as model procedure by the Hague Convention VII of 1907 (Peaceful Settlement of Disputes);

c) arbitration and/or judicial decision on an alleged violation of national or international instruments concerning group-protection; the procedure to follow the rules of the aforementioned Hague Convention of 1907; competence for judicial decisions shall be assigned primarily to a Court or Commission of Human Rights established by an international regional agreement or, provided that no such agreement exists, to the International Court of Justice*;

d) international recognition of the minority or group by the UN or by a regional intergovernmental organization in the sense of Art.11 §3.

*Section III: The Right of Self-Determination*

*Art. 14*: The modes of implementing the right of self-determination of a national or ethnic minority or group consist in the right to

a) freely secede from the given State in order to establish a sovereign and independent State, or to associate with or integrate into an independent State, in the second alternative with the consent of the receiving State; [Veiter]

b) voluntary emergence into any other political status (for instance, territorial autonomy, self-government, political autonomy or any other agreed arrangement within the framework of the State directly concerned) or

c) freely form legislative and/or administrative regional or local autonomy within the framework of the State directly concerned.

*Art. 15* §1: The type of self-determination mentioned in Art.14 litt. a) may only be granted to national or ethnic minorities or groups living in territories bordering on the receiving State or separated from it by the sea or a sea-belt, [Veiter, Francis] provided that the secession has been voted upon in a free plebiscite by the majority of the population residing within the respective territory; the State may not hinder the free expression of the will to make use of the right of self-determination. The State may contribute to the exercise of the right of self-determination. The implementation of that right may, in agreement with the given State, be supervised by an intergovernmental organization.

§2: Should the State be unwilling to recognize the group's right to self-determination in the sense of §1, the group may appeal to the UN General Assembly or a competent regional intergovernmental organization for a decision on the legitimacy of its claim to self-determination.

‡ 'minimize' [Francis]

* Simma: Agreement to this rule of competency pre-supposes the amendment of the ICJ statute.

§3: If a minority or group is not accorded the right to self-determination in the sense of §1, the State concerned may, by agreement with the duly authorized representatives of the minority or group, or by plebiscite, make arrangements in the sense of Art.14, litt. b) or c).

*Art.16*: The types of self-determination mentioned in Art.14, litt. b) and c), may also be granted if, in a given part of the State territory, nationals reside possessing ethnic, or linguistic characteristics differing from the rest of the population and showing, if only implicitly, a sense of solidarity with a view towards preserving their culture, traditions, or language and also possessing an adequate representation, ask for such an arrangement.

*Section IV: Other Forms of Autonomy*

*Art.17*: Every national or ethnic minority or group has the right to preserve its own cultural identity, whatever its manifestation (archives, museums, libraries, monuments, theatres, orchestras, cultural institutions of any other kind etc.) may be, and to administer them independently. Every minority or group has the right to establish its own information and Press service.

*Art.18*: A national or ethnic minority or group has the right to use a specific wireless and television channel – channels to be accorded in concordance with pertinent international understandings [Simma] – and to transmit any programme in its own language at appropriate times.

*Art.19*: Cultural autonomy consists further in an educational system providing instruction on all educational levels in the language of the group. Every child belonging to the group has the right to this education, provided the persons responsible for his education [Veiter] are willing to make use of this right. The relevant curricula have to take into account the needs of the group as well as the principles enshrined in the State's Constitution. Diplomas and certificates issued by the educational institutions of the group shall have public recognition. The provisions of the UNESCO Convention against Discrimination in Education of 1960 shall be applied respectively.

*Art.20* §1: Linguistic autonomy consists in facilitating the use of the mother tongue before administrative and judicial authorities. If more than a certain percentage of the inhabitants of a judicial or administrative district – the percentage to be fixed by agreement between the competent State authorities and the representatives of the relevant minority or group [Veiter] – belong to one or more national or ethnic minority or group, their languages have to be recognized as official languages. Districts may not be delimited in a way so as to prevent the realization of this right. In cases of linguistic autonomy, topographic signs have to bear bi- or multilingual inscriptions.

§2: This linguistic autonomy should particularly be observed with regard to the rights of personal liberty, of fair trial and in all matters of social welfare.

§3: If necessary, State authorities shall consider the possibility of applying ethnic criteria with regard to the assignments of posts, especially in regions where the group language is recognized as the official language. In areas where the group resides, a percentage of posts in the Public Service of the State, the provinces and communes – the percentage to be fixed by agreement between the competent State authorities and the representatives of the relevant minority or group – shall be made available to members of that minority group.

*Art.21*: Economic autonomy consists particularly in the right of the national or ethnic minority or group to establish federations and trade unions on an ethnic basis, to control the application of the principle of non-discriminatory job reservation, and to reserve jobs for the members of the group adequate to their job training.

*Section V: Group Representation and Group Behaviour*

*Art.22*: National or ethnic minorities or groups may be represented by political parties or by corporations of a cultural or social nature. These associations must have free, democratically elected organs. [Simma]

*Art.23*: In the fulfilment of tasks connected with the preservation and development of the characteristics of resident national or ethnic minorities or groups, the State has to give adequate material, and especially financial aid and assistance. In federal States, this applies also to their composite territorial units.

*Art.24*: The State (including in federal States their composite territorial units), the provinces and municipal bodies [Kloss] where national or ethnic minorities or groups reside in considerable strength (the percentage to be fixed by agreement between the competent State authorities and the representatives of the relevant minority or group) [Veiter] may create Councils in order to render it possible for the groups to formulate and articulate their interests and desires, in particular with regard to the provisions laid down in the present Convention.

*Art.25*: If, for reasons of insufficient numerical strength, national or ethnic minorities or groups cannot be represented in legislative bodies or administrative organs, or if self-determination or autonomy is not granted, the State shall provide for a sufficient number of national or ethnic representatives to be integrated into those bodies or organs in order to enable the minorities or groups to formulate and articulate their interests and desires. In matters where the principles of the present Convention are at stake or might come into jeopardy, it may be provided that no resolution may be passed nor any administrative decision be arrived at without the concurrence of the representatives of the minority or group.

*Art.26*: Group representatives have the right to present the interests of the respective group before intergovernmental organizations; they have the right to present petitions in the name of the members of their group if individual rights or collective interests are alleged to be violated by public authorities.

*Art.27*: The representation of group interests before national or international authorities shall be peaceful; it should not be made the basis of action against the group itself, their members or representatives or relatives or friends of these persons.

*Art.28* §1: National or ethnic minorities or groups owe loyalty towards the State in which they reside as long as the authorities of the State respect the principles set forth in the present Convention and do their best to enforce them. In no case may members of groups be expatriated because of their political activities connected with the representation or protection of the rights and collective interests of groups.

§2: It may not be considered disloyal if representatives of a minority or group communicate with authorities of another State in matters concerning group interests, with regard to principles enshrined in the present Convention or in matters concerning bilateral agreements referring to group-protection, provided that members of the group belong to the people of the other State or that there exist cultural or traditional links between the group and the people of the other State.

*Art.29*: With regard to international group protection (see Art. 12), the representation of a national or ethnic minority or group shall be given a legal status as to the claim for international recognition of the group (Art.11 §3), as to the determination of the right of self-determination (Arts.14-16), as to the decision in conflicts between States and groups (Art. 13 §3); representatives of groups shall be permitted to participate as legal representatives in cases concerning an alleged violation of human rights of a member of a group. Rules of procedure applied to international bodies shall be interpreted in this sense.

*Section VI: Rules for International Implementation*

*Art.30*: The States Parties to the present Convention shall adapt their respective laws and regulations with a view to bring them into harmony with the principles of the present Convention within two years after its entering into force.

*Art.31* §1: All international conventions and instruments on cultural, economic, and social rights, on civil and political rights, as well as instruments relating to the friendly settlement of disputes shall be applicable to the prevention of ethnic [Utz] discrimination in the field of human rights.

§2: States Parties to the present Convention shall become Parties to the UN Convention on the Elimination of All Forms of Racial Discrimination.

§3: The States Parties to the present Convention undertake to use their influence, both individually and jointly, towards the adaption of the Statutes of those intergovernmental organizations of which they are members, with regard to human rights in the sense of the principles laid down in the present Convention, in particular with regard to its Sections III and IV and its Art.28.

§4: States Parties to the present Convention agree that the procedure set up in ECOSOC Resolution 'Procedure for dealing with communications relating to violations of human rights and fundamental freedoms' (Res. 1503 (XLVIII)) shall be applied, as may be appropriate, for the purposes of the present Convention.

*Art.32* §1: The States Parties to the present Convention shall appoint a High Commissioner for the Protection of the Rights of National or Ethnic Minorities or Groups whose functions are determined by a Special Statute annexed to the present Convention. The decision of the States Parties to the present Convention to appoint the High Commissioner has to be made unanimously.

§2: If no agreement is reached as to the appointment of the High Commissioner, the States Parties to the present Convention will submit a list of at least three names to the UN Secretary-General with the request to propose one of these persons for High Commissioner. The States Parties to the present Convention undertake to appoint the UN Secretary-General's nominee.

*Section VII: Religious Minorities*

*Art.33*: The States Parties to the present Convention undertake to concentrate their efforts on the elaboration of international instruments on the protection of religious groups and minorities whose member rights are recognized in Art.27 of the International Covenant on Civil and Political Rights.

*Section VIII: Regional Arrangements*

*Art.34* §1: The provisions of Art.13, Art.14 litt. c, Art.18-20 and Arts.22-26 of the present Convention demand different forms of application in different regions of the world. These provisions should be implemented either by bilateral or by multilateral regional arrangements.

§2: These agreements should take into account the annexed model-protocol about specific rights of ethnic groups and minorities.

*Section IX: Concluding Provisions*

*Art.35*: For the purposes of the present Convention, Art.2 §3 and Arts. 4 and 5 of the International Covenant on Civil and Political Rights may be applied respectively.

*Art.36*: National or international rules more favourable to national or ethnic minorities or groups than the provisions of the present Convention shall not be affected by the coming into force of the present Convention. In cases of a dispute over this problem between States Parties to the present Convention, or between States Parties to the present Convention and international organizations, or between States Parties to the present Convention and nationally or internationally recognized minorities or groups, such dispute may be referred for discussion to the International Court of Justice on the demand of one of the parties to the dispute.

*Art.37*: Part VI of the International Covenant on Civil and Political Rights shall be applied to this Convention with regard to signatures and accessions, entry into force, extension to federal States, amendments, notification, and authentic languages.

*Art.38*: States Parties to the present Convention are permitted to interpretative declarations only with regard to the ways and means of the intended application of the right of self-determination within their jurisdiction.

*Art.39*: States Parties to the present Convention shall encourage bilateral and regional cooperation among themselves as well as between themselves and other interested States with regard to the rights and the protection of national or ethnic minorities or groups as outlined in the present Convention. Particularly, agreements shall be concluded on the exchange of lecturers, students, pupils and apprentices, on the recognition of diplomas and certificates, on the exchange of information and experiences as well as the achievements of national or ethnic minorities or groups in cultural, educational, scientific and other fields of human endeavour.

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## FOOTNOTES

[1] L'idéologie raciste (1972) 196

[2] The features of a communal group described by the Permanent Court of International Justice in the *Greco-Bulgarian Communities Case* (1930) PCIJ – B17 at 21.

[3] Resolution 1541 – XV (1960) Principles VII and VIII

[4] Resolution 1514 – XV (1960)

[5] Stated in Article 2(4)

[6] See 25 below

[7] Not necessarily a numerical minority.

[8] The language of the Genocide Convention, Article II-c is here substantially the same.

[9] Quoted by *Rohan Butler* – The Peace Settlement of Versailles 1918-1933: *XII Cambridge Modern History* 456

[10] *op. cit.* 457

[11] *D.H. Miller* – The Drafting of the Covenant II 91

[12] A Japanese draft clause prescribing racial equality for *aliens* was not adopted.

[13] Some rights may be extended to all inhabitants of the territory.

[14] UN Doc. E/CN4/367 (7.4.1950)

[15] In particular, the declarations by Albania, Finland and Iraq: see Appendix B, and the Treaty of Lausanne (1923) affecting Greece and Turkey.

[16] This basis may be questionable given the declaration by the International Court of Justice that the Mandate for South West Africa 'continued in force despite the dissolution of the League'.

[17] Text in *24 American Journal of International Law* (1930) 126

[18] *Minority Schools in Albania* (1935) PCIJ: A/B 64 at 17; See also *Polish Nationals in Danzig* (1932) PCIJ: A/B 44 at 39

[19] Romania, Art. 3; Hungary, Art. 2; Bulgaria, Art. 2; Finland, Art. 6; Austria, Art. 6(2)

[20] Adopted by GA Resolution 2106A-XX (21.12.1965)

[21] e.g. Austria; Italy Agreement (5.9.1946) on treatment of the German-speaking minority in the South Tyrol; FRG-Denmark Agreement (29.3.1955) on minorities in Slesvig. The Austrian State Treaty, Art. 7 provides for the protection of Croat and Slovene minorities in Carinthia, Burgenland and Styria.

[22] Article 2 (7)

[23] Resolution 2625-XXV (14.12.1970)

[24] See note 8

[25] The French text is authentic, and 'l'équilibre' would be perhaps better translated as 'balance'.

[26] UN Document E/CN4/Sub. 2/384 and Additions 1-7

[27] This is a variant interpretation of minority

[28] UN Document E/CN4/L. 1367 Rev. 1

[29] It is doubtful whether the independence of West Irian in 1969 under 'UN supervision' was in the interest of its people, seen as a minority.

[30] See *Indian South Africans:* M R G Report No. 34 pp 3, 14-16

[31] Belgium and Northern Ireland are in many ways similar

[32] As described by *Coral Bell* – The Convention of Crisis (1971) 8, an intramural area being one 'of the power spheres or alliance systems of dominant powers'.

[33] *Certain Expenses of the UN:* Advisory opinion (1962)

[34] Resolutions 186, 187 (1964)

[35] UN Document S/5653 (11.4.1964)

[36] *Belgian Linguistic Cases:* Commission Report (1965), Court Judgment (1968)

[37] e.g. Application 4403/70

[38] See Austria v. Italy (788/60); Ireland v. UK (5310/71); Cyprus v. Turkey (6780/74: 6950/75; 8007/77)

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