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THE PROTECTION OF THE RIGHTS OF MINORITIES WITHIN THE FRAMEWORK OF THE UNITED NATIONS

By Vladimir Kartashkin*

The purpose of my presentation is not to present detailed information on existing United Nations mechanisms for the protection of the rights of minorities. Rather, I will give a brief schematic description of the powers of the United Nations bodies currently concerned with minority protection and suggest some further measures that may be taken to promote and protect the human rights of those belonging to national or ethnic, religious and linguistic minorities.

The first multilateral organizational mechanism for protecting minorities in the modern history of international law and international relations was established following World War I. As pointed out by former Secretary-General Boutros Boutros-Ghali, the "League of Nations provided a machinery for the international protection of minorities."¹ However it was deficient in many ways. The protection it provided was not universal. It applied only in a limited number of States. It lacked a sound international-legal foundation and it contained no unconditional prohibition of discrimination. It also failed to provide for equality before the law for large and small peoples and nations.²

When the United Nations was founded after the Second World War, the prevailing view was that special provisions for the rights of minorities were not needed if individual human rights were properly protected.³ Thus the *Charter of the United Nations* does not even mention minorities. It refers only, in Article 1(3), to the development of co-operation "in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion."

This approach, which subsumes the protection of minority rights in the general protection of human rights, is reflected in the mandates of the main and subsidiary United Nations bodies. The General Assembly may, as stated in Articles 10 and 13 of the *Charter*, make recommendations to promote the protection of human rights and fundamental freedoms. Similarly, the Economic and Social Council may, in accordance with Article 62, "make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all."

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¹ Boutros Boutros-Ghali, *An Agenda For Peace*, UN Doc. A/47/277 (1992), at para. 18.

² C. Macartney, *League of Nations Protection of Minority Rights / International Protection of Human Rights* (London: E. Louard, 1967).

³ J. Humphrey, *No Distant Millennium: The International Law of Human Rights*, 1989, at p. 113.

At the 1946 Peace Conference in London, Hungary submitted a draft treaty for the protection of minorities which was not accepted. Proposals to include a provision on minorities in the *Universal Declaration of Human Rights* also failed. However, the issues of minority rights was not put aside. The Commission on Human Rights, established in 1946, was given the task of making recommendations on various human rights subjects, including the protection of minorities. At its first session in 1947, it approved the establishment of a body of independent experts called the "Sub-Commission on Prevention of Discrimination and Protection of Minorities". This was effectively the first United Nations organ to deal primarily with issues relating to the protection of minorities and the prevention of discrimination. Last month the Sub-Commission was renamed the "Sub-Commission on Promotion and Protection of Human Rights", but it has not stopped dealing with the complex and delicate question of minority protection. This issue is constantly under consideration by the Sub-Commission and its Working Group on Minorities.

In 1992 the General Assembly adopted the *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*. In 1994 the Sub-Commission, for its part, passed resolution 1994/4, subsequently endorsed by the Commission on Human Rights and adopted by the Economic and Social Council, on the establishment of a special inter-sessional working group which meets each year to promote the rights of persons belonging to national or ethnic, religious and linguistic minorities as set out in the *Declaration*. In the course of its sessions the working group discusses theoretical and practical issues relating to the application of the *Declaration*.⁴ Its mandate is: (1) to review the practical realisation of the *Declaration*; (2) to examine possible solutions to problems involving minorities, including the promotion of mutual understanding between and among minorities and governments; and (3) to recommend further measures, as appropriate, for the promotion and protection of persons belonging to national or ethnic, religious and linguistic minorities.

It should also be mentioned that, in addition to the Sub-Commission and its working group, the United Nations has a whole range of mechanisms and special procedures for dealing with minority rights on a case by case basis. These include a confidential procedure for the consideration of communications about human rights violations provided for under Economic and Social Council resolution 1503 (XLVIII) and the activities of various special rapporteurs on such issues as religious intolerance and freedom of thought and expression. Questions relating to the protection of minorities also arise occasionally in specialised agencies such as the United Nations Educational, Scientific and Cultural Organisation (UNESCO), the International Labour Organisation (ILO) and the World Health Organisation (WHO).

In accordance with Economic and Social Council resolution 1503 (XLVIII) the Working Group on Communications was established by the Sub-Commission on Prevention of Discrimination and Protection of Minorities. The task of the Working

⁴ See, for example, the *Report of the Working Group on Minorities on its 4th session*, UN Doc. E/CN.4/Sub.2/1998/18 (1998).

Group is to consider all communications and governmental replies received by the United Nations from individuals and non-governmental organisations with a view to bringing those which reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms to the attention of the Sub-Commission. Each year more than a hundred thousand communications are received concerning one hundred States. Quite a few of these are submitted by the Working Group to the Sub-Commission, including some which concern violations of the rights of minorities.

The protection of minority rights is discussed not only in the organs of the United Nations system, but also in the treaty bodies established under various human rights conventions by the United Nations General Assembly. These treaty bodies have three functions:

- (1) They consider reports submitted by State parties on the steps they have taken to give effect to the rights contained in the *Convention*;
- (2) They consider complaints by State parties about failure to fulfil obligations under the *Convention* by another State party; and
- (3) They consider communications from individuals under the jurisdiction of State parties alleging violations by the State of a right set out in the *Convention*.

One of the first treaty bodies was the Human Rights Committee, established under the *International Covenant on Civil and Political Rights*. Under the *Covenant*, State parties undertook specific obligations relating to the protection of minorities. Article 27 specifies that:

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.

In its consideration of Article 27, the Human Rights Committee has emphasized that this article recognizes a right conferred on individuals belonging to minority groups and that each individual has other rights recognised in the *Covenant*. This right is not to be confused with the right of peoples to self-determination. The *Covenant* draws a distinction between the collective right to self-determination and the individual rights protected under Article 27. The terms used in this article indicate that the persons designated for protection are those who belong to a group and who share in common a culture, a religion or a language. They need not be nationals or citizens, or even permanent residents of the country against which the complaint is made. They might be migrant workers or even visitors to a State party. Article 27 imposes specific obligations on State parties and minority rights as such are protected along with other rights conferred on individual members of minorities under the *Covenant*.

During consideration of their reports by the Committee, some State parties have claimed that Article 27 of the *Covenant* does not apply to them because there are no minorities living on their territory. In such cases the Committee has considered possible violations of other relevant articles of the *Covenant*, such as Article 26, which prohibits discrimination and calls on State parties to “guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” However, the very refusal by a State party to the *Covenant* to acknowledge the existence of minorities on its territory, probably merits consideration by the Committee.

A significant amount of the Committee’s work is taken up with the consideration of individual complaints. About a hundred States, including Canada, have now acceded to the *Optional Protocol* which provides for the consideration of communications from people claiming that they are victims of violations of a right contained in the *Covenant*. One well-known case which considered Article 27 is *Lovelace v. Canada* in which Sandra Lovelace, a Canadian Indian who had married a non-Indian, submitted a communication to the Human Rights Committee stating that under the 1970 Canadian *Indian Act* an Indian woman who married a non-Indian lost her status as an Indian, whereas a male Indian who married a non-Indian did not. When Ms. Lovelace divorced she wanted to return to her reservation, but she was not entitled to do so because non-Indians were prohibited from living there. Accordingly she claimed that the *Indian Act* violated her rights under the *International Covenant on Civil and Political Rights*, particularly by discriminating contrary to Article 2, by failing to provide equal rights for men and women contrary to Article 3 and by denying her the right, in community with the other members of her group, to enjoy her own culture contrary to Article 27.

Having considered the arguments of Canada and Ms. Lovelace, the Committee decided that she had the right to return to her reserve and live with other members of her people, ruling that her rights as contained in the *Covenant*, including those in Article 27, had been violated.⁵ As well as giving a detailed interpretation of Article 27, the Committee recommended measures for the protection of minority rights.

Besides the Human Rights Committee, a number of other treaty bodies consider the protection of minorities and the prohibition of discrimination. For example, the Committee on the Elimination of Racial Discrimination has adopted a broad interpretation of discrimination based on national or ethnic origin and including religious and linguistic minorities. It has called on State parties to adopt special measures for the protection of minorities. The Committee on Economic, Social and Cultural Rights, which considers the protection of minorities in cases arising out of economic and social difficulties, has called on State parties to adopt measures to preserve minorities’ languages, cultures and traditional ways of life. The *Convention*

⁵ *Report of the Human Rights Committee*, UN Doc. A/36/40, annex XVIII.

on the Rights of the Child, which has been ratified by almost all countries, specifies in its Article 30 that:

In those States in which ethnic, religious or linguistic minorities [...] exist, a child [...] shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

The guidelines adopted in reference to this article include such issues as access to education and medical services, use of language, freedom of religion and ways and means of preserving and developing minority cultures.

The treaty bodies are often faced with difficulties related to such problems as the absence of a generally recognised definition of minorities, lack of clarity concerning some questions associated with self-determination and autonomy and the contradictory stance of States with regard to the acknowledgement of minorities. These difficulties are due to lack of agreement and co-ordination among the treaty bodies and the absence of a special convention relating to minorities.

One of the first conventions adopted by the United Nations for the protection of minorities and the punishment of criminal violations of their rights was the 1948 *Convention on the Prevention and Punishment of the Crime of Genocide*. In this *Convention*, the contracting parties declared that genocide was a crime under international law and that those committing genocide should be punished, whether they were the leaders of their countries, public officials or private individuals. Article 2 defines "genocide" as "acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group [...]." Article 6 states that those charged with genocide "shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction" with respect to the contracting parties. No limitation is placed on the prosecution of those committing such crimes. They may be charged and punished irrespective of the time that has passed since the crime was committed.

One peculiarity of such international crimes is that they are usually committed, not by private individuals, but by those who hold an official State position and issue the relevant orders. It is therefore hard to imagine that the courts of that State would try such people, much less find them guilty. That is why it was essential to establish an international criminal court which is not temporary in nature, but permanent.

On July 17th, 1998, the *Statute of the International Criminal Court* was adopted in Rome by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court. It will enter into force once ratified by 60 countries. The Court's jurisdiction covers the crimes of genocide, crimes against humanity, war crimes and the crime of aggression. Among other crimes under its jurisdiction, the Court's *Statute* includes "persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural,

religious, gender [...] or other grounds.”⁶ The entry into force of the *Statute of the International Criminal Court* and the commencement of the Court’s work will mark a major development in the international protection of minorities and the punishment of criminal acts endangering their existence.

The universal system within the United Nations is supplemented by regional co-operation which, in some respects, is more effective in protecting minorities and guaranteeing fundamental rights and freedoms. Within regional organisations, such as the Council of Europe, the Organisation for Security and Cooperation in Europe and the Commonwealth of Independent States, quite a few steps have been taken to protect minorities. The member States of the Council of Europe and the Commonwealth of Independent States have adopted conventions for the protection of national minorities, though both lack detailed mechanisms for implementation.

What conclusion can be reached from the activities of the United Nations in the field of minority protection? Because member States currently regard protection for the rights of minorities as part of the broader issue of protecting and promoting human rights and fundamental freedoms in general, insufficient attention is paid by several United Nations bodies to considerations which are crucial for the preservation of peace and stability in inter-State relations. Since the founding of the United Nations only one fundamental document on minority rights has been approved: the *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, and this contains no mechanism to ensure its implementation.

The decision to set up the Working Group on Minorities was an important step. Its mandate and activities should expand steadily to encompass all new aspects of the problems that concern minorities and to recommend protective measures. However, insufficient attention is paid to the problems of minorities by various treaty bodies founded in accordance with the United Nations conventions on human rights. They face objective difficulties including lack of a generally-accepted definition of minorities, inadequate exploration of many issues connected with minorities and the discrepant positions that States adopt with regard to the recognition of minorities. Their activities concerning minorities also suffer from a lack of agreement and co-ordination.

The establishment of an International Criminal Court will have great significance for the protection of minorities and the punishment of persons found guilty of criminal violations of their rights. The early entry into force of the *Statute* of the Court and the start of work by the Court itself will certainly help to forestall criminal violations of minority rights.

No generally-agreed definition of the concept of a “minority” has been reached during the development of the many world wide and regional treaties on the protection of minorities. There have been several attempts to develop such a definition and to have it accepted. Thus far these have ended in failure, yet the development of a universally-recognised definition of the concept of a “minority” is

⁶ UN Doc. A/CONF.183/9, at s. 7, para. 1(h).

of crucial importance. Such a definition would increase the effectiveness of the various global and regional organs concerned with the protection of minorities and improve co-operation with the relevant States. The definition need not necessarily be all-encompassing. It could be based on the *International Covenant on Civil and Political Rights*, with due regard to consistency among the most widely-recognised criteria. The Working Group should begin by working on a definition of the concept of a "minority" which is concise and acceptable to all States, instead of trying to cover all criteria and characteristics. This could be the first step towards the development of a world-wide convention on the protection of persons belonging to minorities.

We witness with grave concern the continued violation of the rights of minorities in various parts of the World. The latest conflict in Yugoslavia is just one of many examples that demonstrate the need to use peaceful means to resolve violations of minority rights at both the national and international levels. The threat of use of force in contravention of the provisions of the United Nations *Charter* is a violation, not only of minority rights, but also of the general principles of international law. The drafting of a convention on minority rights with a well elaborated mechanism for implementation, its adoption and subsequent ratification will have a great impact by providing better protection for persons belonging to national or ethnic religious and linguistic minorities.