

**Revue québécoise de droit international**  
**Quebec Journal of International Law**  
**Revista quebequense de derecho internacional**



**MEASURING OUR CIVILIZATION IN TERMS OF MEANINGFUL ACCESS**

John Packer

Volume 12, numéro 1, 1999

URI : <https://id.erudit.org/iderudit/1100413ar>

DOI : <https://doi.org/10.7202/1100413ar>

[Aller au sommaire du numéro](#)

Éditeur(s)

Société québécoise de droit international

ISSN

0828-9999 (imprimé)

2561-6994 (numérique)

[Découvrir la revue](#)

Citer cet article

Packer, J. (1999). MEASURING OUR CIVILIZATION IN TERMS OF MEANINGFUL ACCESS. *Revue québécoise de droit international / Quebec Journal of International Law / Revista quebequense de derecho internacional*, 12(1), 171–177. <https://doi.org/10.7202/1100413ar>

Tous droits réservés © Société québécoise de droit international, 1999

Ce document est protégé par la loi sur le droit d'auteur. L'utilisation des services d'Érudit (y compris la reproduction) est assujettie à sa politique d'utilisation que vous pouvez consulter en ligne.

<https://apropos.erudit.org/fr/usagers/politique-dutilisation/>

**érudit**

Cet article est diffusé et préservé par Érudit.

Érudit est un consortium interuniversitaire sans but lucratif composé de l'Université de Montréal, l'Université Laval et l'Université du Québec à Montréal. Il a pour mission la promotion et la valorisation de la recherche.

<https://www.erudit.org/fr/>

## MEASURING OUR CIVILIZATION IN TERMS OF MEANINGFUL ACCESS

*By John Packer\**

### I. Introduction

As a Canadian, and more particularly as a Winnipegger, I must indicate that I left Canada in 1984 and I address you now from the particular perspective indicated by the Chairperson. I am neither an educationalist, nor a sociologist, and therefore probably not that qualified to speak in detail about some of the substantive matters before us. I speak to you as a jurist and as a responsible official of an international organization which, in particular, addresses matters of conflict prevention in situations involving minorities within OSCE States. For those who do not know, Canada is a participating State of the Organization for Security and Co-operation in Europe.

I would like to commence my remarks by conveying to you the best wishes from the High Commissioner on National Minorities who is very pleased with the undertaking of the Université du Québec à Montréal on the initiative of the United Nations Working Group on Minorities, because education and disputes concerning education are unfortunately at the source of many heated conflicts in many of the countries of the world.

### II. Applicable International Human Rights Norms

I am to address you specifically on "Education in the Mother Tongue" and I will begin by referring briefly to some of the international standards which are applicable. *The fundamental norm of all international human rights law is respect for the equal dignity of all human beings.* That norm permeates all subsequent standards for human rights including education rights. General sources of the right to, and freedom of, education are found in Article 13 of the *International Covenant on Economic, Social and Cultural Rights* and Article 29 of the *Convention on the Rights of the Child*. From a jurist's perspective, the latter is probably more important because it has been ratified by 191 States in the world, in other words, by more States than are members of the United Nations.

The provisions of Article 29 of the *Convention on the Rights of the Child* give the foundation for the elaboration of policy that we should be pursuing with regard to education. Article 29 provides as follows:

---

\* Senior Legal Advisor to the High Commissioner on National Minorities of the Organization for Security and Co-operation in Europe (OSCE).

State Parties agree that the education of the child shall be directed to:

(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

(d) The preparation of the child for responsible life in a free society, in a spirit of understanding, peace, tolerance, equality of the sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(e) The development of respect for the natural environment.

That is the context from which all educational policy and legislation should emanate. In this regard, *it is important to underline the principle of non-discrimination which is found in every international human rights instrument*. This principle is clearly elaborated with special regard for education in the *UNESCO Convention Against Discrimination in Education*.

### III. Standards for Education in the Mother Tongue

Precise standards apply to education in the mother tongue. In the context of the Organization for Security and Co-operation in Europe, paragraph 35 of the 1990 *Copenhagen Document on the Human Dimension* elaborates the right of all persons belonging to national minorities to education of or in the mother tongue, i.e. to "instruction of their mother tongue or in their mother tongue." Canada, as a participating State, is bound to respect this commitment.

In addition, Article 14 of the Council of Europe's 1995 *Framework Convention for the Protection of National Minorities* (*Convention-cadre pour la protection des minorités nationales*) provides almost identical entitlement to the learning of or in the mother tongue for persons belonging to national minorities. This *Convention* is open for signature by non-member States of the Council of Europe. Since last year, Canada has been an observer State of the Council of Europe and it is possible for Canada to become a party to the *Framework Convention*.

The provisions of para. 35 of the *Copenhagen Document* and Article 14 of the *Framework Convention* include important qualifications. They emphasize that there should be a right to adequate opportunities to learn in or of the mother tongue and that this positive obligation places a duty on the State to take positive steps or special measures as may be required to make a real possibility of enjoying this entitlement available to persons belonging to minorities.

#### IV. Questions Concerning Policy

I am going to follow up on the first speaker's remarks in the tradition of posing questions, rather than lecturing, because I think it might lead us to a more concrete understanding of what might be necessary in policy terms in order to respect the standards I have mentioned.

##### A. To whom does the entitlement apply?

The entitlement applies to persons belonging to minorities. That means *all* persons belonging to minorities. It does not mean only the largest groups that might be recognized by the State or those which, for whatever purposes, might find satisfaction in the political deals that might be made in States.

It applies specifically where persons belonging to minorities may exist in "substantial numbers" and "to the extent possible." The notion of "substantial numbers" is probably recognizable to Canadians because we are used to a similar notion of "where numbers warrant." In fact, it is a broader idea because "substantial" is not defined and "substantial" is certainly not limited to the weight of numbers. "Substantial" also includes implicit reference to the possibility for the State to deliver the entitlement. "To the extent possible" is exactly this type of reference. It is a maximalist, not a minimalist, notion. "To the extent possible" refers to use of all resources available within the State.

Unfortunately, the standards nonetheless lack a certain precision. They do not indicate exact policy conclusions for every State. For example, at which levels is this entitlement guaranteed – the primary, the secondary, the tertiary level? Which types of education does this entitlement guarantee? To clarify such matters, the High Commissioner on National Minorities invited a group of distinguished, internationally recognized independent experts to elaborate policy guidelines and make recommendations for the purposes of policy development within States. These are known as *The Hague Recommendations Regarding the Education Rights of National Minorities* (*Les Recommandations de La Haye à l'égard des Droits des minorités nationales à l'instruction* ; for the original English text and related analyses, see the special issue of the *International Journal on Minority and Group Rights*, vol. 4, no. 2 (1996/97)). One of the distinguished members of that group was Professor Eide, who chaired the process of elaboration of those standards. These *Recommendations* are based on an expert interpretation of binding obligations and political commitments and are, therefore, not mere suggestions. They include conclusions based on the obligations that States are bound to respect.

**B. What is State practice?**

There is also the issue of identifying State practice with regard to ensuring entitlement to the right to instruction of or in the mother tongue. In order to have a better idea about how this standard is interpreted in practice and the range of possibilities for its application, the High Commissioner conducted a survey of all OSCE participating States in 1996 and 1997. The result of this survey, published by the OSCE High Commissioner on National Minorities in March of this year, is the *Report on the Linguistic Rights of Persons Belonging to National Minorities in the OSCE Area*, for which an annex is available containing the full texts of the replies received from 51 of the 54 participating States surveyed. This might be of interest for policy makers and researchers in so far as it shows a substantial range of possibilities with regard to entitlements. In particular, it shows that even States which deny the existence of minorities provide opportunities for these specific entitlements. For example, France, which denies the existence of linguistic or ethnic minorities, provides a range of possibilities for people to receive instruction of or in their mother tongue, i.e. in languages other than French.

The survey is important for policy makers because it indicates possibilities for increasing the reference points they may make, and options they may pursue, with regard to their own policy within their own States. It may help overcome the tendency of limited thinking as a result of biases in perspective or simply of habitual political tendencies which are not conducive to facilitating respect for the entitlements in question. As a consequence, I again invite you to look at this study.

**C. Why was the Entitlement Elaborated?**

I am not a linguist, but I detect at least two values with regard to language, which I do not refer to in hierarchical order. The first is a functional value or the utility of language, and the second is a spiritual or cultural value with regard to language. With regard to the functional element of language, in a free society with equality of persons there is a common interest in determining a language, not only for public use, but also for education. This facilitates the structural development of society and creates opportunities for people to plan and organize themselves, to invest, to trade and to develop. We must, therefore, determine at least one language for the functional purpose of organization – for government, for public administration, for justice in the courts, for employment opportunities and for other similar objectives. I emphasize “at least one language” because the functional perspective tells us that one language is the minimum. Certainly more languages will facilitate greater possibilities for meaningful opportunities.

**D. How does a State choose the language of administration?**

How do we determine which of the languages which exist in the world would be the one(s) to choose by our society? Typically we do it through majority decision making, but the effect of majority decision making is to disadvantage non-

speakers of the chosen language. Let me ask again, is it, in fact, necessary that there be only one or two languages chosen to fulfil the functions of the State of all levels, in all regions and with regard to all services? I can speak from personal experience that when I worked for the Worker's Compensation Board of Manitoba, we could provide assistance in some ninety languages, drawing, of course, on a list of stand-by interpreters. So, it is possible even in a relatively small jurisdiction and limited field to go well beyond just one or two languages.

#### E. Why educate in the mother tongue?

As discussed earlier in this conference, education is conducted in the mother tongue to ensure cognitive learning as well as the spiritual or cultural identity of the person. In order to serve common interests within the society. A functional capacity in a second language can then be added, as a foreign language, for the person concerned.

### V. Participation and Control in the Development of State Policy

Now I turn to the question of how policy is to be made in this field, and the answer is relatively obvious: ask those concerned. We heard yesterday that it is important to facilitate authentic voices. "Authentic voices," in my view, means the voices of those concerned. Ask them. Involve them. This is a question of participation, which may be divided into two fundamental notions. One notion is the possibility to *have a say* with regard to policy making and development. This is the minimum level of participation, and it must be a meaningful say. It must be a respectful, open participation which is inclusive. International standards guarantee such an entitlement to participation. They guarantee "effective participation" with regard to elaboration of policy in all spheres, but especially in this sphere and more particularly for those matters affecting the persons concerned.

That leads us to the second element of participation, which is *having control* over the decision making process. While having a say should be the minimum, control surely is a desired end or even the preferred way of involving persons in policy making with regard to those things which actually affect them. These ideas have not only been included in international human rights standards, but have been elaborated in *The Hague Recommendations* which, as I mentioned earlier, advocate the participation of persons belonging to minorities with regard to education. The ideas have been even more broadly addressed in another set of recommendations recently elaborated, also with the involvement of Professor Eide, known as the *Lund Recommendations on the Effective Participation of National Minorities in Public Life*. (Lund, incidentally, is a small city in southern Sweden.)

## VI. Devolution and Decentralization of State Policy

If control is our preferred objective, we inevitably come to a discussion about devolution and decentralization of education policy. Yes, it is necessary to maintain standards through adequate oversight. There is a legitimate public interest and need to do so, but the objective must be to accommodate diversity via the variable possibilities and regimes which we know to exist *as recommended and preferred by those affected*.

Let me address this idea of variability. Yesterday, Professor Zachariah mentioned correctly that it is not possible to accommodate all demands. In an absolute sense, he is correct. But, increasingly it is possible to accommodate an enormous variety of demands. We should not think, therefore, in terms of either none or a few. Rather we must think in terms of most or all. Let me give you some real life examples. In the State of Switzerland, the language of the Romansch community representing some 40,000 people (less than .01% of the total Swiss population) enjoys equal status with German, French and Italian as "official languages" of the State.

Let me also refer to the Sami population in Finland, Sweden and Norway. In Finland, where I believe they number only about 6,000 as a total population group, they are guaranteed their language rights as well as education rights. So, it is possible to provide opportunities even for tiny or dispersed groups. This is increasingly so as a result of technological developments – through the internet, for example, and through satellite broadcasting, but also through old techniques such as home learning. We must think of being more creative about developing more opportunities to achieve equal respect for the dignity of all persons. It can be done.

Another example concerns a difficult situation within Europe. The Roma and Sinti, or "gypsies", as they are commonly referred to in the derogatory, are a long alienated group that is highly diverse and spread over many territories. Their diversity is now being addressed. The High Commissioner on National Minorities has recently issued an executive summary of a major forth-coming report on the situation of the Roma and Sinti in the OSCE area. By using sensitive and creative participatory processes, it is possible to respond even in such difficult cases. The policy should be to respect people's dignity by being more responsive and more accommodating, rather than less.

## VII. Questions Concerning Terminology

Perspective is, of course, important and the terms chosen are often a reflection of thought. In this regard, permit me, as a Canadian who has been away for a long time, to express my surprise at some of the language I heard yesterday. For example in Quebec one speaks of "French, English and ethnic groups" as divisions within the educational framework. It strikes me that French and English are probably also ethnic groups. They are, at least, linguistic groups and if "ethnic" includes "Germans, Ukrainians and other" then I wonder what exactly is the basis of the distinction being made. I am not fully naive in this regard, but let me just pose this

question. I even wonder about two other Canadian notions: "Founding Nations" and "First Nations". If I think about Germans, Ukrainians and Chinese, are they not entitled to equal respect of their equal dignity? Do they not have similar functional needs and also identity, spiritual and cultural needs? I pose these questions because it is sometimes helpful for an outsider to reflect on what is going on inside. One should be conscious of insularity and try to avoid prejudice in the terms, thoughts and perspectives which may become the basis of policy development.

As a matter of fact Canada is a multicultural, multilingual society. I think anyone who arrived at Dorval Airport yesterday knows this is true. I wonder about designations like "immigrant" or the invocation of "tax-paying" as distinguishing markers for educational needs. Are indigent persons not without the right to equal enjoyment of their dignity? And what exactly does "immigrant" mean? If a person becomes a citizen, are they not entitled to equal respect of their cultural difference and their dignity without further qualification? I just suggest these as considerations for policy development in Canada.

\* \* \*

Let me suggest that if we focus on the facts of multilingualism as the increasing reality in the world, humans have the capacity to absorb and function in many languages, and there are many alternatives for delivering education in the mother tongue both for functionality and to respect spiritual needs or cultural identity (i.e. human dignity). We should be developing our policies in an inclusive, accommodating and facilitating manner. The policy challenge is to focus on making laws and policies on the basis, of fact rather than presumptions or fictions – to be future-oriented, to serve the basic objective of respect and dignity and to achieve this through inclusive, participatory processes. Let me conclude by saying that I think we would wish to measure our civilization in terms of options and alternatives for meaningful access, not in terms of restrictions.