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STUDY ON THE RIGHTS OF PERSONS BELONGING TO ETHNIC, RELIGIOUS AND LINGUISTIC MINORITIES

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PREFACE

For quite a long time (at least 20 years) after the end of the Second World War, it was thought—and stated in writing—that the question of international protection of minorities was no longer topical. The system of protection built up under the League of Nations had collapsed with the demise of that organization, and the Universal Declaration of Human Rights adopted in 1948 by the General Assembly of the United Nations did not mention the question of the treatment of persons belonging to ethnic, religious or linguistic minorities. Moreover, the emphasis placed in the international legal order on the imperative need to ensure respect for basic human rights seemed to imply that it was no longer necessary to protect in any special way the interests of minority groups or, more specifically, of individuals belonging to such groups.

During the last few years, however, that view has proved to be mistaken. The insertion in the International Covenant on Civil and Political Rights of an article specifically concerning the situation of persons belonging to ethnic, religious or linguistic minorities was the most obvious (although not the only) indication of a reversal of that tendency.[1] It was realized that there would be a serious gap in the list of internationally guaranteed human rights if the rights of persons belonging to such minorities were not included. It was recognized that the experience of the League of Nations in the area of protection of minorities was one of that institution's most important legacies. The question now being asked is what means can be taken to put into practice the principles set out in article 27 of the Covenant and to what extent it is desirable and possible to develop them.

This is the justification for the present study, which demonstrates the attention which is again being paid to the question of the international protection of minorities. Information concerning the initial commissioning of the study and its nature and objectives is given in annex I. It seems necessary, however, to stress at the outset one significant fact: this is the first time during the 30 years of its existence that the Sub-Commission—a body which has been engaged in intensive, continuing and successful action aimed at preventing all kinds of discrimination—has shown, by producing a special report, its desire to examine in depth the problem of the juridical treatment of minorities.

The reader's attention must be drawn to certain special features of the study. In the first place, the study is limited by the Special Rapporteur's mandate from the Sub-Commission. In accordance with this mandate, all the questions of law and of fact connected with the principles enunciated in article 27 of the Covenant have been studied (this has included an analysis of the concept of minority and of the situation of groups in multinational societies). The study does not cover, however, anything that is not connected with those principles (e.g. the special problems of minorities other than ethnic, religious of linguistic and the tragic question of majorities subject to oppression and discrimination—such as the black majority in South Africa—for which article 27 cannot provide an effective remedy). It was furthermore necessary to take account of the procedure followed in preparing studies undertaken by the Sub-Commission. Traditionally, in the preparation of such studies, very considerable use is made of "official" information provided by Governments. The Special Rapporteur also took account of the opinions expressed in the Sub-Commission during the discussion on the preliminary and interim reports which he submitted. Consequently, although the Special Rapporteur assumes responsibility for the statements and ideas contained in the study, it would be inaccurate to regard his work as the result of individual scientific research. He would like to mention here the valuable help provided by the Secretariat's unfailing and most efficient co-operation.

A third point which should be mentioned is that the Special Rapporteur's training and mentality as a jurist naturally influenced his approach to the various aspects of the subject. As defined in his mandate, the question is essentially a legal one; it concerns the scope an application of principles of law enunciated in an international convention. Their political and social implications could obviously not be neglected and in fact have not been; but this has not prevented the study from having an essentially legal character.

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[1] See article 27 of the Covenant, which reads:

"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 of their group, to enjoy own culture, to profess and practice their own religion, or to use their own language."

It should be emphasized finally that the present study will be all the more useful if it leads to other work which aims to examine in detail the many questions connected with the situation of minorities, work which is obviously necessary. The study does not purport to be exhaustive. The Special Rapporteur is conscious of the fact that the large amount of data available would justify an analysis in even greater depth. The analysis and comparison of the information was sometimes rendered difficult by the heterogeneous nature of the documentation, which reflects the diversity of the situations which prevail, and by the fact that the amount and accuracy of the information received were not the same for all the countries studied. The study may, however, serve to stimulate wider discussion, because of the views expressed in it and the factual information which it contains.

Obviously, if practical results are to be achieved, States must be sincere in their acceptance of the idea of international protection of minorities and show a firm determination to observe the principles enunciated in article 27 of the Covenant. Admittedly, there are several obstacles to the general adoption of such an attitude. Any international régime for the protection of members of minority groups arouses distrust and fear. It is first seen as a pretext for interference in the internal affairs of States (particularly where the minorities have ethnic or linguistic links with foreign States). Secondly, the very different situations of minorities in the various countries make States sceptical of a juridical approach to the problem at the world level and they wonder how uniform rules can be applied to profoundly different situations. Moreover, certain States regard the preservation of the identify of minorities as posing a threat to their unity and stability. Another argument put forward is that the special measures of protection aimed at ensuring true equality as between the majority and the minority in each country inevitably lead to differences in treatment; such a situation is thought to contain the seeds of reverse discrimination. In short, Governments would prefer to have a free hand in their treatment of minorities. Those which, on their own initiative, have devised effective protection systems present them to other Governments as models, but the idea that every State must conform to international standards–and possibly be subject to some form of international control–still encounters great opposition.

This should not, however, discourage those who believe in the need for an international system of protection for persons belonging to ethnic, religious or linguistic minorities. Most of the objections to the establishment of such a system which have been expressed–risk of interference in the internal affairs of States, the diversity of situations, the threat to the stability of the State–are basically the same as those raised for many years in respect of international protection of human rights in general. The latter has nevertheless progressed, slowly perhaps, but irrevocably. The first step to be taken in order to ensure effective protection of the rights of persons belonging to minorities is therefore to become convinced that such protection forms an integral part of the contemporary system of human rights. The principles enunciated in article 27 are, from the legal standpoint, an established fact; they should be similarly regarded from the political, social and psychological standpoints. All their implications must also be understood: this will be a lengthy process and should be started at once.

Simultaneously, other steps must be taken. Here we need only mention three useful courses of practical research and action: consideration of the possibility of formulating other principles to supplement those of article 27; development of new international methods of implementation; encouragement of bilateral or regional requirements designed to adapt the world-wide régime to the requirements of different countries. These are difficult and essentially political tasks to which theoretical analysis can however contribute by defining the concepts on which action may be based. It is hoped that the present study, also intended to have some practical effect, will help substantially to further the international régime for the protection of minorities.

F. CAPOTORTI

June 1977

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Introduction

THE HISTORICAL BACKGROUND OF THE PROTECTION OF MINORITIES

1. This study approaches the question of minorities from the standpoint of the contemporary world and in the light of article 27 of the International Covenant on Civil and Political Rights, the first internationally accepted rule for the protection of minorities. It would be inappropriate to try to review here the history of this protection and to draw from it valid conclusions for solving the problems with which the international community is confronted today. Nevertheless, it seems worth pointing out that the desire to contribute towards improvement of the treatment of minorities through international undertakings existed already in the seventeenth century, with particular reference to religious minorities.

2. In order to understand the reasons for the priority given throughout history to the protection of religious minorities, it is necessary to bear in mind the contrast between the tenets of tolerance and non-discrimination common to all religious faiths and the dramatic reality of persecution—the supreme expression of intolerance—of which religious minorities have so often been the victims.

3. Despite the profound differences between them, all religions call for recognition of the notion of brotherhood, without distinction as to race, colour or language. The Hindu religion teaches that the good man makes no distinction between friend and enemy, between brother and stranger, but treats them all impartially.[1] Buddhism condemns racism and racist doctrines and asks that all men and all women, whatever their race or caste, be treated as members of the same family.[2] The ideal of tolerance contained in the message of Judaism is expressed in many passages of the Bible. It has been pointed out that, in Genesis v.1,

> The children of earth are envisaged as one family. ... There is by nature no such thing as caste or class, no differentiation by blood or descent. Human equality is thus a primary fact ...
>
> "... The races and nations and peoples are all seen as clusters on one genealogical tree.[3]

Christianity holds equality and fraternity to be virtues inscribed in the mind of men by their divine creator:

> It is because there is but one God, in whose image all have been fashioned, one Father whose children we all likewise are, that all men are brothers, in a way that no created power can destroy. The only means of denying this brotherhood is to set oneself outside the Fatherhood of God. ... the logical conclusion of racism is the abandonment of Christianity.[4]

The unity of mankind is one of the fundamental precepts of Islam. According to the Islamic doctrine,

> The creator is one, and the human soul is one ...
>
> ...
>
> The Koran's account of the diversity of tongues and colours among men is similar to its account of the variety of features to be found in nature: they are all manifestations of God's omnipotence. Human beings in his sight are sacred and worthy of respect ...[5]

4. Despite these teachings, there have been religious persecutions on many different occasions and in different parts of the world. In Europe in particular, since the Reformation, the lot of religious minorities had become a very serious question, no longer of concern only to the States involved, but also profoundly affecting international relations. In this connexion it should be remembered that the desire to protect religious minorities had served as a pretext for many interventions by foreign countries, for example that of England in favour of the Waldensians in France in 1655, the numerous interventions by Holland in favour of the French Calvinists, and those of Sweden and Prussia in 1707 in favour of the Protestants in Poland. This situation encouraged many European States to stipulate in their mutual relations, especially on the occasion of transfers of territory, the requirement that religious minorities be allowed the right to profess their faith freely without fear of persecution.

5. During the seventeenth and eighteenth centuries, a number of treaties[6] incorporating clauses relating to religious minorities were concluded between various European countries. Examples of this were the treaty of Vienna, signed in 1606 by the King of Hungary and the Prince of Transylvania, which accorded to the Protestant minority in the latter region free exercise of their religion,[7] the Treaty of Westphalia, concluded in 1648 between France and the

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[1] S. E. Frost Jr. (ed.), *The Sacred Writings of the World's Great Religions* (New York, Garden City Books, 1951), p. 390.

[2] G. P. Malalasekera and K. N. Jayatilleke, *Buddhism and the Race Question*, The Race Question and Modern Thought, No. 4 (Paris, UNESCO, 1958), p. 37.

[3] Leon Roth, *Jewish Thought as a Factor in Civilization*, The Race Question and Modern Thought, No. 2 (Paris, UNESCO, 1954), p. 14.

[4] R. P. Yves M.-J. Congar, *The Catholic Church and the Race Question*, The Race Question and Modern Thought, No. 1 (Paris, UNESCO, 1953), p. 16.

[5] Abd-al-Aziz Abd-al Qadir Kamil, *Islam and the Race Question*, The Race Question and Modern Thought, No. 5 (Paris, UNESCO, 1970), pp. 26 and 28.

[6] See Arthur de Balogh, *La protection internationale des minorités* (Paris, Les éditions internationales, 1930), pp. 23-25; I. H. Bagley, *General Principles and Problems in the Protection of Minorities* (Genève, Imprimeries populaires, 1950), pp. 65 and 66; Jacques Fouques Duparc, *La protection des minorités de race, de langue et de religion* (Paris, Librairie Dalloz, 1922), pp. 75-77; C. A. Macartney, *National States and National Minorities* (New York, Russel & Russel, 1968), pp. 157-160; M. Sibert, *Traité de droit international public* (Paris, Librairie Dalloz, 1951), vol. I, p. 493; F. Branchu, *Le problème des minorités en droit international depuis la seconde guerre mondiale* (Lyon, Imprimerie Bosc Frères, 1959), p. 23.

[7] Balogh, *op. cit.*, p. 23.

Holy Roman Empire and their respective allies, which granted religious freedom to the Protestants in Germany on terms of equality with Roman Catholics;[8] the 1660 Treaty of Oliva between Sweden and Poland which provided for free exercise of their religion by the Roman Catholics in the territory of Livonia ceded by Poland to Sweden;[9] the Treaty of Nijmegen concluded in 1678 between France and Holland, which guaranteed freedom of worship to the Roman Catholic minority living in the territories ceded by France to Holland;[10] the Treaty of Ryswick of 1697, concluded between the same parties, in which a similar clause was inserted[11] and the Treaty of Paris of 1763, concluded between France, Spain and Great Britain under which the last-named country accorded freedom of worship to Roman Catholics in the Canadian territories ceded by France.[12, 13]

6. As for the protection of religious minorities within the framework of municipal law, it was achieved gradually and fairly slowly from the eighteenth century onwards. It is true that, in France, the Edict of Nantes regulating the status of Protestants was promulgated in 1598. It was however of limited scope and, furthermore, the concessions which is granted were revoked a few years later. It was the Revolution of 1789 which established in France the principle of freedom of religion and public worship. In England, the disabilities imposed on religious minorities were gradually abolished, first by the Toleration Act of 1698 then by the Test and Corporation Acts of 1828, the Catholic Emancipation Acts of 1829 and 1832 and the Religious Disabilities Act of 1846. In the Near East and the Middle East, in the Muslim countries, the various Christian churches and Jewish communities already enjoyed very considerable tolerance under the Caliphs. Later, the Muslim States adopted the "millet" system, which granted to non-Muslim religious communities complete independence in the management of their affairs. In India, the Criminal Code promulgated in 1860 defined a certain number of offences relating to religion, without making any distinction as between the various religions. In the United States, the 1787 Constitution was amended by the Federal Bill of Rights adopted in 1791. The first amendment provided that the Federal Congress could "make no law respecting an establishment of religion or prohibiting the free exercise thereof".

7. From the nineteenth century onwards, there was a change in the approach adopted by States to international undertakings regarding the treatment of minorities. First of all, clauses designed to protect minorities began to appear in certain multilateral instruments, whereas previously agreements containing such clauses had usually been bilateral instruments. Secondly, measures of protection were extended to groups other than religious minorities. Thirdly, there was a tendency for the rights so protected to increase in number since, in addition to freedom of worship, certain nineteenth-century treaties also provide for equality of civil and political rights.

8. The Treaty of Vienna of 31 May 1815, concluded between Austria and the Netherlands (Annex X, Final Act of the Congress of Vienna)[14] which proclaimed the reunification of Belgium and Holland, contained special guarantees for the Belgian Catholic minority. Article 2 of the Treaty provides that "there shall be no change in those articles of the Dutch Constitution which assure to all religious cults equal protection and privileges and guarantee the admissibility of all citizens, whatever be their religious creed, to public offices and dignities".

9. The Final Act of the Congress of Vienna, signed on 9 June 1815 by Austria, France, Great Britain, Portugal, Prussia, Russia and Sweden,[15] was the first important international instrument to contain clauses safeguarding national minorities, and not only religious minorities. Article 1 of the Final Act provides as follows:

> The Polish subjects of the High Contracting Parties shall be given institutions which guarantee the preservation of their nationality and which shall assume such political form as each of the governments to which they are subject shall deem appropriate.[16]

10. In the Protocol of 3 February 1830, drawn up at the Conference of London and signed by the representatives of France, Great Britain and Russia, freedom of worship for Muslims was stipulated as one of the conditions for the recognition by the signatory Powers of Greek independence.[17]

11. Article IX of the Treaty of Paris of 30 March 1856, concluded between Austria, France, Great Britain, Prussia, Sardinia and Turkey,[18] refers to a communication from the Turkish Sultan to the other Contracting Parties concerning the legislation he had introduced to recognize—mainly for the benefit of the Christian inhabitants of his empire—equality of treatment for his subjects, without distinction of religion or race; the other parties commended "the value of this communication".

12. The Treaty of Berlin of 13 July 1878, concluded between Germany, Austria, Hungary, France, Great Britain, Italy, Russia and Turkey,[19] abolished any difference of treatment on religious grounds in the newly created Balkan States. It may be added that, in recognizing the independence of the Balkan States, the Congress of Berlin linked recognition of the independence of the new States to their

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[8] Fred L. Israel, *Major Peace Treaties of Modern History, 1648-1967* (New York, Chelsea House, 1967), vol. I, pp. 7-49.

[9] Bagley, *op. cit.*, p. 66; Balogh, *op. cit.*, p. 24.

[10] Israel, *op. cit.*, pp. 129-143.

[11] *Ibid.*, pp. 152-161.

[12] *Ibid.*, pp. 305-328.

[13] It will be noted that the treaties instituting the capitulations régime have not been mentioned. The capitulations régime certainly applied to Christians in the East, but was concerned only with the protection of foreigners and not of nationals. As is indicated in para. 57, this study does not deal with the rights of foreigners.

[14] *British and Foreign State Papers, 1814-1815*, vol. II (London, James Ridgway, 1839), pp. 136-140.

[15] *Ibid.*, pp. 7-55.

[16] It will be noted that this text does not precisely define the national rights which are to be maintained. According to some authorities, the rights in question were political rights, whereas, according to other authors, the above-mentioned article should be interpreted as referring to the cultural identity of the minorities mentioned. See Bagley, *op. cit.*, p. 66; and Tore Modeen, *The International Protection of National Minorities in Europe* (Abo, Finland, Abo Akademi, 1969), p. 47.

[17] *British and Foreign State Papers, 1829-1830*, vol. XVII (London, James Ridgway, 1832), p. 191.

[18] *British and Foreign State Papers, 1855-1856*, vol. XLVI (London, William Ridgway, 1865), pp. 8-18.

[19] *British and Foreign State Papers, 1877-1878*, vol. LXIX (London, William Ridgway, 1885), pp. 749-767.

adherence to the principle of non-discrimination on religious grounds.[20] By the terms of articles 5 and 44 of the Treaty, the Contracting Parties declared that they would recognize Romania and Bulgaria only if the following requirements were met:

The difference of religions, creeds and confessions shall not be alleged against any person as a ground for exclusion or incapacity in matters relating to the enjoyment of civil and political rights, admission to public employments, functions and honours, or the exercise of the various professions and industries in any locality whatsoever. The freedom and outward exercise of all forms of worship shall be assured to all persons belonging to the State, as well as to foreigners, and no hindrance shall be offered either to the hierarchical organization of the different communities, or to their relations with their spiritual chiefs.

13. The position of ethnic minorities was also taken into consideration by the Congress of Berlin. Article 4 of the Treaty relating to Bulgaria provides as follows:

In the districts where Bulgarians are intermixed with Turkish, Romanian, Greek and other populations, the rights and interests of these populations shall be taken into consideration as regards the elections and the drawing up of the Organic Law.

14. The International Convention of Constantinople of 24 May 1881, concluded between Germany, Austria, Hungary, France, Great Britain, Italy, Russia and Turkey,[21] contains stipulations relating to the equality of and free exercise of their religion by Muslims living in the territories restored to Greece. Article VIII of the Convention provides as follows:

Freedom and the outward exercise of worship shall be assured to Mohammedans living in the territories ceded to Greece. There shall be no interference with the independence and hierarchical organization of the Mohammedan communities at present existing, or which may be formed, nor with the management of the funds and buildings appertaining to them. No hindrance shall be offered to the relations of such communities with their spiritual chiefs on religious matters. The local ... [religious] courts shall continue to exercise their functions on purely religious matters.

15. It should be noted that no rights were accorded to members of linguistic minorities by the above-mentioned treaties. There is, however, one exception: the Final Act of the Congress of Vienna, in which the participating Powers granted to Poles in Poznan the right to use Polish for official business, jointly with German.

16. It has been generally maintained that the rudimentary system of international protection of minorities, established in respect of some European countries in the nineteenth century on the basis of treaties guaranteed by the great Powers, provided a spurious protection to minorities living in States which were bound by the obligations stemming from those agreements. The system has been criticized for its inadequacy, its imprecision, and, above all, the lack of supervisory machinery to verify whether the treaty stipulations were really being observed. It has also been pointed out that such a system was liable to threaten international peace and security, since it could serve as a pretext for unilateral intervention in the internal affairs of States. On that point, one author has written:

The system could have worked satisfactorily only if the great Powers had acted together; in practice, each Power concerned itself primarily with its own material or political interests, and the Concert of Europe seldom functioned as an instrument for the collective protection of minorities.

The imperfection of the system lay not only in the uncertainty that it would operate effectively when legitimate occasions arose, but also in the possibility that it might afford a pretext for arbitrary and politically motivated intervention by great Powers in the affairs of the treaty-bound States, even when the latter were carrying out their obligations in good faith. This sort of abuse was restricted by the mutual jealousy of the great Powers, but it remained a danger to which the treaty-bound States were acutely sensitive.

The system of minority protection based upon special treaties guaranteed by the great Powers was condemned to failure by the inadequacy of its scope, the vagueness of its substantive provisions, the rudimentary nature of its machinery and organization, and the uncertainty, ineffectiveness and susceptibility to abuse of its sanctions.[22]

17. Referring to the fact that the protection of minorities was originally concerned only with religious minorities, and that the need to recognize the rights of ethnic and linguistic minorities was felt long after, one author observed:

The stages in the development of the protection of minorities were similar to those in the development of the rights of the individual. Just as those rights stemmed from religious freedom, the protection of ethnic minorities was modelled on that of religious minorities. People began by thinking that it was a natural right to have religious beliefs and to practise forms of worship other than those of the majority of the population of the State and by acknowledging that that right should be protected against the power of the State; later, the right was assimilated to that of maintaining and developing the ethnic idiosyncrasies of inhabitants whose origin, race, language or culture differed from the origin, race, language or culture of the majority.[23]

18. The process of recognizing the rights of ethnic and linguistic minorities in internal law developed in the nineteenth century, a period during which the nationalities question was a burning issue. Concern to protect such minorities then became apparent in the legislation of certain countries.[24] Thus, under the terms of article 19 of the Austrian Constitutional Law of 21 December 1867,

All the ethnic minorities of the States shall enjoy the same rights and, in particular, have an absolute right to maintain and develop their nationality and their language. All the languages used in the provinces are recognized by the State as having equal rights with regard to education, administration and public life. In provinces inhabited by several ethnic groups, the public educational institutions shall be organized in such a way as to enable all the ethnic groups to acquire the education they need in their own language, without being obliged to learn another language of the province.

Hungary's Act XLIV of 1868 proclaimed the equality of citizens, irrespective of their nationality, and established regulations governing the official use of the various languages spoken in the country. Article 116 of the 1874 Constitution of the Swiss Confederation stipulated that the three main languages of Switzerland, namely, German, French and Italian, had equal rights in the civil service, in legislation and before the Courts. In Belgium, two laws relating to the use of the French and Flemish languages were adopted on 22 May 1878 and 18 April 1898 respectively. The first provided for the use of the Flemish language in four provinces as the official language of the public authorities in their dealings with those under their

[20] See Macartney, *op. cit.* p. 166; Fouques Duparc, *op. cit.*, p. 105.

[21] *British and Foreign State Papers, 1880-1881*, vol. LXXII (London, William Rigdway, 1885), pp. 382-387.

[22] Inis L. Claude Jr., *National Minorities, An International Problem* (Cambridge, Mass., Harvard University Press, 1955), pp. 8 and 9.

[23] Balogh, *op. cit.*, p. 28.

[24] *Ibid.*, pp. 30-39.

administration. The second stipulated that laws should be promulgated in the two languages.

19. During the twentieth century, major developments with regard to the protection of minorities took place, both at the international and the national level. At the international level, there was, first of all, the League of Nations, an experiment of great historical significance and completely innovative with regard to the provision of guarantees to minorities. This was followed by the work undertaken by the United Nations and the specialized agencies. In addition, after the end of the Second World War, bilateral agreements relating to the rights of minorities were concluded between a number of States. At the national level, a growing number of States in all parts of the world have taken measures to establish, within the framework of their internal legislation, a legal system which takes account of the interests and needs of their ethnic, religious or linguistic minorities. This evolution will be described and analysed in the various chapters of the present study.

Chapter I

THE CONCEPT OF A MINORITY

A. Analysis of the concept of a minority

20. Despite the many references to minorities to be found in international legal instruments of all kinds (multilateral conventions, bilateral treaties and resolutions of international organizations), there is no generally accepted definition of the term "minority". The preparation of a definition capable of being universally accepted has always proved a task of such difficulty and complexity that neither the experts in this field nor the organs of the international agencies have been able to accomplish it to date. The reason for this is the number of different aspects to be considered. Should the concept of a minority be based on the numerical ratio of the "minority" group to the population as a whole or is this quantitative aspect secondary or even unimportant? Is it necessary to limit the concept by introducing the idea of a minimum size? Should only objective criteria be taken into account or should it be assumed that "subjective" factors also have a part to play? Does the origin of the minorities matter for the purposes of a definition? Should we understand by minorities groups of nationals only, excluding groups of foreigners? These - the major issues that arise - must now be analysed.

1. *Interpretation of the term "minority" by the Permanent Court of International Justice*

21. The Permanent Court of International Justice gave its interpretation of the concept of a minority in an advisory opinion of 31 July 1930 in connexion with the emigration of the Greco-Bulgarian communities. Referring to the Convention of 27 November 1919 between Bulgaria and Greece, the Court made the following statement:

> The Greco-Bulgarian Convention concerning emigration constitutes, according to its Preamble, the execution of Article 56, paragraph 2, of the Peace Treaty concluded the same day between the Allied and Associated Powers and Bulgaria. This article forms part of the provisions relating to the protection of minorities.
>
> This shows the close relationship existing between the Convention and the general body of the measures designed to secure peace by means of the protection of minorities.
>
> It was in this spirit, as stated in the Preamble, that the Principal Allied and Associated Powers considered it opportune that the reciprocal and voluntary emigration of minorities in Greece and Bulgaria should be regulated by the Convention. It follows that this Convention cannot apply to persons other than those who formed minorities in either one country or the other.
>
> By tradition ... the "community" is a group of persons living in a given country or locality, having a race, religion, language and traditions of their own and united by this identity of race, religion, language and traditions in a sentiment of solidarity, with a view to preserving their traditions, maintaining their form of worship, ensuring the instruction and upbringing of their children in accordance with the spirit and traditions of their race and rendering mutual assistance to each other.
>
> ...
>
> The question whether ... a particular community does or does not conform to the conception described above is a question of fact ...
>
> ...
>
> The existence of communities is a question of fact; it is not a question of law.
>
> ...
>
> The Court is unanimously of opinion that the answers to the questions submitted to it are as follows:
>
> ...
>
> 1°. The criterion to be applied to determine what is a community within the meaning of the articles of the Convention ... is the existence of a group of persons living in a given country or locality, having a race, religion, language and traditions of their own, and united by the identity of such race, religion, language and traditions in a sentiment of solidarity, with a view to preserving their traditions, maintaining their form of worship, securing the instruction and upbringing of their children in accordance with the spirit and traditions of their race and mutually assisting one another.
>
> From the point of view of the Convention, the question whether, according to local law, a community is or is not recognized as a juridical person need not be considered ...[1]

2. *Definition proposed by the Sub-Commission on Prevention of Discrimination and Protection of Minorities at its third, fourth and fifth sessions*

22. Three times—at its third, fourth and fifth sessions[2]—the Sub-Commission has recommended that the Commission on Human Rights adopt a draft resolution defining minorities for purposes of protection by the United Nations.[3] The draft resolution adopted by the Sub-Commission at the third session and amended at the fourth session indicated, as follows, the factors which it felt should be taken into account in establishing a definition of "minorities":

(*a*) The existence among the nationals of many States of separate population groups habitually known as minorities and having ethnic, religious or linguistic traditions or characteristics which differ from those of the rest of the population and which should be protected by special measures at the national and international levels so that they may preserve and develop such traditions or characteristics;

(*b*) The existence of a special factor, namely, that certain minority groups do not need protection. Such groups include, above all, those which, while numerically smaller than the rest of the population, constitute the dominant element in it and those who seek to be treated in exactly the same way as the rest of the population;

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[1] *P.C.I.J.*, Series B, No. 17, pp. 19, 21, 22 and 33.

[2] E/CN.4/Sub.2/119, para. 32; E/CN.4/Sub.2/140, annex I, draft resolution II; E/CN.4/Sub.2/149, para. 26.

[3] On each of the occasions, the Commission, after considering the draft resolution, referred it back to the Sub-Commission for further study.

(*c*) The undesirability of interfering with the spontaneous developments which take place in a society when impacts such as that of a new environment, or that of modern means of communication, produce a state of rapid racial, social, cultural, or linguistic evolution;

(*d*) The risk of taking measures that might lend themselves to misuse amongst a minority whose members' spontaneous desires might be disturbed by parties interested in fomenting amongst them a disloyalty to the State in which they live;

(*e*) The undesirability of affording protection to practices which are inconsistent with the rights proclaimed in the Universal Declaration of Human Rights;

(*f*) The difficulties raised by claims to the status of minorities by groups so small that special treatment could, for instance, place a disproportionate burden upon the resources of the State.

23. Taking account of the above-mentioned factors, the Sub-Commission at its fifth session recommended that the Commission adopt a draft resolution concerning the definition of the term "minority", according to which the definition would be based on the following elements: (i) the term minority includes 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; (ii) such minorities should properly include a number of persons sufficient by themselves to preserve such traditions or characteristics; (iii) such minorities must be loyal to the State of which they are nationals.

24. At its sixth session, the Sub-Commission resolved, in its resolution F,[4] to initiate a study of the position as regards minorities throughout the world and to apply for the purposes of that study a modified version of the definition contained in the draft resolution referred to in the preceding paragraph. However, that decision was not implemented since, at its ninth session, the Commission on Human Rights, having noted resolution F of the Sub-Commission, invited the latter to give further study to the whole question, including the definition of the term "minority".[5] During the debates in the Commission on the question, several members criticized[6] the definition of "minorities" contained in resolution F of the Sub-Commission. Some felt that it contained provisions that might result in eliminating from the definition certain national groups which should be given special protection. They stated that the inclusion of only such groups as might wish to "preserve ethnic, religious or linguistic traditions or characteristics" was subjective, since dominant groups which did not wish to extend equal rights to certain minorities could justify their action by claiming that those minorities did not wish to maintain their individual character. Others considered that the definition recommended by the Sub-Commission did not make it sufficiently clear that minorities did not include foreigners residing in the territory of the State or groups which had come into existence as the result of immigration. It was also pointed out that it was hard to see how such a study, dealing with every minority in need of special measures of protection, could be made, particularly in the absence of any criterion by which to judge which minorities needed special protection and which did not need it.

25. At its seventh session, in 1954, the Sub-Commission decided to concentrate its attention on the various aspects of the problem of discrimination and to defer work on a further study of the whole problem of the special protection of minorities, including the definition of the term "minority", pending the issue by the Commission on Human Rights of a specific directive on the subject.[7]

26. A memorandum prepared by the Secretary-General in 1950, entitled *Definition and Classification of Minorities* and submitted to the third session of the Sub-Commission, contains the following statement:

> It follows from the analysis [of the concept of the community, the nation and the State] ... that the term "minority" cannot for practical purposes be defined simply by interpreting the word in its literal sense. If this were the case, nearly all the communities existing within a State would be styled minorities, including families, social classes, cultural groups, speakers of dialects, etc. Such a definition would be useless.
>
> As a matter of fact, the term "minority" is frequently used at present in a more restricted sense; it has come to refer mainly to a particular kind of community, and especially to a national or similar community, which differs from the predominant group in the State. Such a minority may have originated in any of the following ways:
>
> (*a*) It may formerly have constituted an independent nation with its own State (or a more or less independent tribal organization);
>
> (*b*) It may formerly have been part of a nation living under its own State, which was later segregated from this jurisdiction and annexed to another State; or
>
> (*c*) It may have been, or may still be, a regional or scattered group which, although bound to the predominant group by certain feelings of solidarity, has not reached even a minimum degree of real assimilation with the predominant group.[8]

27. Both in the Sub-Commission and in the Commission on Human Rights it was generally recognized, therefore, that it was difficult, if not impossible, to group together under a generally satisfactory definition every minority group in need of special measures of protection. In an attempt to describe the reasons for that difficulty, an author writes:

> When the General Assembly of the United Nations expressed the consideration that "the United Nations cannot remain indifferent to the fate of minorities", it thrust itself directly into one of the most complex and perplexing problems in the entire realm of international relations. The "problem of minorities", with all its manifold implications, has troubled world peace and international goodwill for centuries. It has constituted a constant irritating friction between states, an instrument of political design and aggression, a means of toppling state structures and a direct and indirect cause of local and general wars. Its vast international significance has been matched by its awing perplexity. "The" problem of minorities is in reality a multitude of particular problems, each one hinging on a whole network of complex economic, social, historical, ethnic and political factors.
>
> Never before has an international organization concerned itself with the fate of minorities *as such*. The United Nations, without reference to any specific manifestations of a "minority problem" took upon itself the task of "protection of minorities", thereby establishing "minorities" as a general universal conception whose primary characteristics are its imprecision and vagueness and

[4] See E/CN.4/703, para. 200.

[5] See E/CN.4/705, para. 438.

[6] See E/CN.4/705, paras. 422-437.

[7] See E/CN.4/Sub.2/170, para. 171, resolution F.

[8] United Nations publication, Sales No. 1950.XIV.3, paras. 37-38.

breadth of scope. When the League of Nations referred to the minority problem, it was not concerning itself with a general concept: its "minority problem" consisted of the particular problems of certain minorities in a few specified states in a given region, problems which arose from the territorial settlements at the Peace Conference of Paris. The justification for international minority protection and the minorities for which it was devised being sharply outlined and delimited, there was no necessity to make the concepts involved more precise, nor to define them beyond certain broad outlines.[9]

3. *Provisional interpretation by the Special Rapporteur of the term "minority" for the purposes of this study and the observations made thereon*

(a) *Provisional interpretation by the Special Rapporteur*

28. In the plan for the collection of information relating to the study (see annex II) the Special Rapporteur stated that he envisaged for the study the following interpretation of the term "minority":

for the purposes of the study, an ethnic, religious or linguistic minority is a group numerically smaller than the rest of the population of the State to which it belongs and possessing cultural, physical or historical characteristics, a religion or a language different from those of the rest of the population.

29. At that time he requested Governments, specialized agencies and a number of regional governmental organizations and non-governmental organizations to transmit to him their observations and opinions on the following points:

(*a*) The interpretation he envisaged;

(*b*) The extent of the subjective factor involved in the desire, whether expressed or not, of the ethnic, religious or linguistic group to preserve its own characteristics, and particularly whether or not the desire of the ethnic, religious or linguistic group to preserve its own characteristics constituted a factor relevant to the definition of the term "minority";

(*c*) Whether the number of persons belonging to the ethnic, religious or linguistic group was or was not a relevant factor for the definition of the term "minority";

(*d*) The relationships between the concept of an ethnic, religious or linguistic minority and the concept of an ethnic, religious or linguistic group in a multinational society;

(*e*) The applicability, in favour of the members of ethnic, religious or linguistic groups in multinational societies, of the principles enunciated in article 27 of the International Covenant on Civil and Political Rights.

(b) *Observations received from Governments*

30. A relatively small number of the Governments which have furnished information for the study have made observations on these points. Some Governments expressed their approval of the provisional interpretation of the term "minority" envisaged by the Special Rapporteur. According to the Spanish Government, the interpretation of the term "minority" envisaged by the Rapporteur was "correct". The Finnish Government observed that "the interpretation of the Special Rapporteur of the term 'minority' is correct provided that only the numerical proportions of various groups are taken into consideration. Any ethnic, religious or linguistic group different from the majority of a given society constitutes a minority". The Italian Government stated "that it is able to agree with the definition proposed by the Rapporteur which refers to an objective numerical representation but that does not neglect the subjective factor". The Government of the Federal Republic of Germany stated that it shared in principle the view expressed by the Special Rapporteur on the interpretation of the term "minority", and the Swedish Government expressed the view that "there is no reason to object to the Rapporteur's proposal concerning the interpretation of the term 'minority' ".

31. Some Governments expressed the view that the definition proposed by the Special Rapporteur was incomplete and too vague. The Greek Government made the following remarks:

An ethnic, religious or linguistic minority group of persons should be clearly recognizable as such. The following criteria, among others, should be applicable to a group of persons for it to qualify as a minority: the characteristic features should be sufficiently distinctive for the group concerned to be clearly distinguishable as separate from the majority ...

Another fact to be considered in that [the group] is recognized as such by an international treaty or agreement.

Article 27 of the Covenant covers only persons [belonging to] separate or distinct groups, well-defined and long established on the territory of a State.

According to the Government of the Netherlands,

The definition used in the questionnaire is rather wide. The term "minority" would seem to include more constitutive elements than are expressed in the definition. To be regarded as an ethnic, religious or linguistic minority a group should be clearly recognizable as such. The characteristic features should be sufficiently distinctive for the minority concerned to be clearly distinguishable as a separate group. Such features may be visual but this is not essential. Even though there are no visible differences, a group may differ from the rest of the population due to such factors as organizational contacts in particular areas, choice of school or occupation, and housing.

The difference between a minority and the rest of the population should not only be sufficiently distinct but also sufficiently big. All sorts of gradual transitions and minor gradations, which are found everywhere and in large countries in particular, would seem to have little relevance, since otherwise every country would be composed of minorities within the meaning of article 27 of the Covenant.

32. Other Governments indicated that, in their opinion, the Special Rapporteur should adopt a different approach. Thus, the Bulgarian Government stated that:

When conducting a study on this issue on a world scale, it should be taken into account that no generally accepted definition of "minority" exists. The use of the definition proposed by the Special Rapporteur on a world-wide basis might create vague or misguiding interpretation, because of specific conditions in the individual countries.

According to the Yugoslav Government,

it is difficult to give an answer as to what criterion should be applied in formulating a legal definition of the term "minority". The definition given by the Special Rapporteur is not the most suitable because, among other things, it lists language after cultural, physical, historical and religious characteristics. The definition gives too great a prominence to the classical thesis of "minorities" versus "majorities".

However, the Yugoslav Government considers that "although there does not exist a universally accepted definition of the term 'minority', this should not be an obstacle to a consistent implementation of article 27 of the Covenant".

[9] T. H. Bagley, *General Principles and Problems in the International Protection of Minorities* (Geneva, Imprimeries Populaires, 1950), p. 9.

33. The Austrian Government stated that it preferred to make no observations on the substance of the question. In that connexion it stated:

With respect to the theoretical question raised, it may be remarked that these problems have been under discussion in the relevant literature ever since scholars started to examine minority problems. They have not so far succeeded in formulating a generally accepted definition of the concept of minority—whether ethnic, religious or linguistic. In view of these unsuccessful efforts, it may be doubted whether a satisfactory solution of this problem is possible. Similarly, all efforts made in this field within the framework of the United Nations have failed ... Austria therefore prefers not to comment on these questions.

34. Some Governments even challenged the use of the term "minority" and emphasized that it had been replaced by other terms in the legal systems of their respective countries. According to the Government of the Philippines:

the official concept of the term "minority" in the Philippines has a legalistic base and recently to obliterate the presence of a numerical division the term "Cultural Communities" [has been used when] referring to "National Minorities". The term "National Cultural Communities" appeared in the Constitution of the Philippines.

Hence, in referring to "minority" in the Philippines presently, the term must be taken in the context of the existence of several cultural groups in a cultural plural national society where there is a distinct culture which is predominantly in the majority vis-à-vis all others taken together.

The Romanian Government commented that:

The term "minority"—a category too broad and indeterminate—is no longer used to describe differences of race, sex, religion or nationality among citizens. The term used is "co-inhabiting nationality", a term enshrined in the Constitution, the fundamental law of the State.

In the past, the term "minority" in general and the term "national minority" in particular were debased and became almost synonymous with the various forms of inequality between "the majority" and "the minority". The term "national minority" signified a category of citizens whose political, economic and social status was inferior to that of citizens belonging to the majority. In order to indicate in a striking manner the principle of absolute equality characterizing relations between the Romanian nation and the national groups existing in the territory of the country, Romania has adopted the term "co-inhabiting nationality" to describe a separate social and ethnic group, numerically smaller than the group represented by the Romanian nation, having its own cultural, linguistic, historical and religious characteristics.

The Government of the Union of Soviet Socialist Republics stated that "in the Soviet Union, there are no population groups which could be regarded as ethnic, religious or linguistic minorities whose rights require special protection in the sense indicated in the plan for the study prepared by the Special Rapporteur". The Soviet Constitution refers to "nations" and "nationalities". The Yugoslav Government pointed out that, in Yugoslavia, the term "nationalities" is used to designate minority groups. In this connexion, it has been noted that:

The term nationalities is used in the Yugoslav constitutions for national groups usually referred to abroad as national minorities. This more current term is avoided because the status of a minority can never be the status of full equality with the majority, and the Yugoslav Constitution guarantees the full equality, free of even the least discrimination, of all the working people and citizens regardless of the nation, nationality or ethnic group to which each belongs, while state decentralization and self-management secure for the nationalities and their members an active role in realizing their position and equal social relations.[10]

35. Some of the comments and observations received related to taking specific factors into consideration in defining the term "minority", in particular the subjective factor and the numerical factor.

36. According to replies received from several Governments, the subjective factor, that is to say, the desire expressed by the minority group to preserve its own traditions and characteristics, should be an essential element of any definition of the term "minority". In this connexion the Finnish Government stated that "the term 'minority' has relevance only and in so far as an ethnic, religious or linguistic group has indicated its desire to preserve its own characteristics". The Italian Government observed that "it is, in fact, in the consciousness of the minority of its diversity and by its willingness to maintain its own characteristics that a concept of minority can materialize which would be politically relevant ... The important fact is that it is a question of a vital and active group aware of itself". In the view of the Netherlands Government:

The existence of a certain degree of coherence would also seem to be important. The members of a group should exhibit the distinctive features sufficiently, if they are to be regarded as a separate group or minority ... The extent to which a minority actually feels itself to be a separate section of the community, or is felt to be and is perhaps treated as such by the others, may also be important ... Finally there should be specific ties, preferably going back to earlier generations, with the country in question. For a group to be a minority within the meaning of article 27 it should be more or less permanently established in the country concerned.

The Swedish Government stated that in Sweden

We have started, as far as the problem has been discussed, from the same *subjective* concept of a minority as the Rapporteur seems to advocate. The statements made in the Government bill 1962:51 concerning the organization of the nomad schools, in the report "Going to school away from home or at home" (Official Government Report, SOU 1966:55) and in the directives for the Government Commission on Immigrants are based on a concept of a minority involving the desire of the minority group in question to preserve its own characteristics.

However, the Spanish Government believes that "A strongly expressed desire of this kind should certainly be taken into account, but in any event there should exist some objective elements which can be evaluated easily". The Greek Government states that

the subjective factor, that is to say the desire expressed by the minority group to preserve its own traditions and characteristics, should be an essential element of any interpretation of the term minority.

The extent to which a minority actually feels itself to be a separate section of the community or is felt to be and is perhaps treated as such by others should also be taken into consideration for any interpretation of the term "minority".

37. However, the Yugoslav Government expressed some reservations with regard to the importance of this factor. In this connexion, it stated that:

The Yugoslav Government wishes to underscore its conviction that the so-called "subjective factor" is in many respects dependent on the political atmosphere and the cultural and social circumstances prevailing in the individual social communities in which the members of minorities live and work. Historical experiences have shown that the "indifference" of the members of minorities towards their national origin, position and rights are, as a rule, the consequence of the social and other circumstances in which they live.

In societies with a prevailing negative attitude of the "majority" towards the "minority" the members of the minorities are fearful that any declaration of one's national, ethnic, cultural and other

[10] Nada Dragić, ed., *Nations and Nationalities of Yugoslavia* (Belgrade, Medjunarodna Politika, 1974), p. 85.

characteristics might be interpreted as a so-called "civil disloyalty" on his part as citizen of the country concerned.

Therefore, it would be inappropriate to ascribe too much importance to the need of a "declaration of desire" by the members of any minority in order to preserve their own national, ethnic, cultural and other features and to manifest their awareness of their affiliation to a particular minority, especially in the case of a minority which has for decades been subjected to the pressures of systematic assimilation and denationalization.

38. With regard to the numerical factor, the Governments which have commented on this point held that the number of persons belonging to ethnic, religious or linguistic groups does not constitute a very important element for the purpose of defining the term "minority". It should be noted, too, that their observations contain few submissions on whether the number should reach a specified proportion of the total population for the purposes of according special treatment to the members of the said minorities. The Government of Finland observed that "The number of persons belonging to a minority group is not, as such, a relevant factor for the definition of the term 'minority', but it is obvious that the group must consist of a noteworthy number of persons before it constitutes a factor of any significance in a society." According to the Italian Government, the numerical factor is of very little importance. The Netherlands Government observed that

The definition of the term "minority" ... rightly states that it should refer only to a group numerically smaller than the rest of the population of the State to which it belongs. However, a bottom limit can also be assumed in the sense that there would have to be a group, so that an individual could not constitute a minority within the meaning of article 27 of the International Covenant on Civil and Political Rights. Within these limits the size of the group would not seem to be relevant to the question of whether there was a minority within the meaning of that article or not.

The Swedish Government stated "that the concept of an ethnic or national minority in Sweden would presume that the group in question consists of at least one hundred individuals".

39. In India, the Kerala High Court, after observing that the Constitution granted specific rights to minorities, declared that "in the absence of any special definition we must hold that any community, religious or linguistic, which is numerically less than 50 per cent of the population of the State is entitled to the rights guaranteed by the Constitution".[11]

40. According to the Romanian Government, on the other hand, the number of persons belonging to an ethnic, religious or linguistic group cannot, from the political and legal standpoint, constitute a pertinent factor in the definition. The fact that citizens are perfectly equal excludes the possibility of establishing any numerical or quantitative criterion concerning minority groups. According to the Yugoslav Government, a social group or community termed "minority" comprises the inhabitants of a specific area who, as distinct from the population constituting the majority in that particular area, possess their own specific ethnic, linguistic and religious characteristics. With respect to the number of the population of a particular locality, "the minority concept is relative since in some localities the population termed a minority can be greater in number than the rest of the population. Important on the whole is the fact that the number of people belonging to a particular minority group is not taken as the basic criteria for establishing their rights."

41. The Greek Government holds the opposing view that, for a group to qualify as a minority, it should be

sizable and [form] a substantially compact element in the community. It is doubtful that the words "a group numerically smaller than the rest of the population"[12] constitute a sufficiently adequate criterion for an interpretation of the term "minority".

There should be taken into account not only the number of persons belonging to a particular group but also the relation between [that] number and the size of the geographical area in which the group lives.

42. Several Governments commented on the relationship between the concept of an ethnic, religious or linguistic minority and the concept of an ethnic, religious or linguistic group in a multinational society. According to the Spanish Government:

Since the legal régime of protection of minorities is founded on the protection of human rights, the relationship between the concept of ethnic, religious and linguistic minorities and the concept of ethnic, religious and linguistic minorities in a multinational society does not in itself presuppose a substantive distinction of any special relevance. The essential concern should be to secure general respect and, consequently, legal protection for all races, religions and languages, subject to the limitations universally accepted in matters of human rights, but in such a way that the protection granted by virtue of the provisions in question does not differ according to whether or not the specific person protected is part of a multinational society.

The Italian Government held that

in a multinational society, one should not speak, in a strict sense, of minorities, in that the various groups of which they are composed, with their own ethnic, religious and linguistic characteristics, should find themselves on a level of equal representation. Moreover, it could occur that one of the groups, even if not numerically superior, could achieve a predominant position, with tendencies to oppress others and to make them conform to itself.

Moreover, all Governments which have submitted observations on this point stated that in their view the principles enunciated in article 27 of the International Covenant on Civil and Political Rights were applicable to the members of ethnic, religious or linguistic groups in multinational societies.

(c) *Observations of the United Nations Educational, Scientific and Cultural Organization (UNESCO)*

43. According to UNESCO, it is doubtful that "group numerically smaller than the rest of the population" is an adequate definition. In some cases, the majority population is in fact a sociological minority, and it may be useful to take into account the power distribution and who can dispense what in deciding on "minority rights".

(d) *Observations of members of the Sub-Commission*

44. During the discussions on the various interim reports submitted to the Sub-Commission by the Special Rapporteur, many members of the Sub-Commission made suggestions concerning the provisional interpretation by the Special Rapporteur of the term "minority".[13] It was generally recognized that it was extremely difficult to state precisely what the term covered and, in the view of some

[11] R. C. Hingorani, "Minorities in India and their rights", *Revue des droits de l'homme*, vol. V, 2-3, 1972, p. 480.

[12] See para. 28.

[13] See E/CN.4/Sub.2/SR.647-648, 673-677, 693-696 and 719-722.

members, it would be an impossible task to try and define a concept that embraced a very dynamic reality varying considerably from one country to another. Consequently, the attempt should not be made. It was also maintained, however, that the absence of a generally accepted definition should not constitute an obstacle to the application of article 27 of the International Covenant on Civil and Political Rights.

45. According to several members, the numerical factor was of particular importance in any definition of the term "minority". Not only the number of persons belonging to the group but also the relationship between that number and the size of the geographical area in which the group lived should be taken into account. Referring to the complex problem of the existence of many dialects in some countries, several members maintained that it was essential to establish numerical criteria according to which a group could claim the right to have its language or dialect protected. Others took the contrary view that all States had a duty to preserve the characteristics of all minorities, whatever their numerical size.

46. Emphasis was also laid on the need to include in the definition the subjective element, i.e. the desire of the groups to preserve their traditions or characteristics. In addition, each minority should constitute a social and cultural entity which, in the view of some members, was the minimum precondition for recognition as a minority. The comment was also made that the definition should refer to another important element, namely, a sense of community among the members of the minority group indicating the existence of permanent bonds between them.

47. In the opinion of some members, the interpretation envisaged by the Special Rapporteur was too wide and could not be applied to certain countries, notably the countries of Africa. A definition should take account of the sociological factors. In that connexion, it was stated that special problems arose in developing countries and that the case of tribes should not be confused with that of minorities in the industrialized countries. According to other members, groups consisting of immigrants or their descendants should not be included in the definition of the term "minority", because of their voluntary assimilation.

48. It will be recalled in this connexion that similar comments were expressed in the United Nations General Assembly in 1948 during discussions on the question of including an article relating to minorities in the draft Universal Declaration of Human Rights. On that occasion, several representatives of Latin American countries maintained that the problem of minorities did not arise in the American continent in the same way as in Europe and recalled that the Eighth International Conference of American States had approved a resolution providing that immigrants were not entitled to demand special treatment as a community. Similar points of view were expressed in the Third Committee of the General Assembly during the deliberations on article 27 of the Covenant.

49. Lastly, several members of the Sub-Commission held that the term "minority" should not be interpreted solely in its etymological sense. They stated that there were situations, as in southern Africa for instance, where a group which constituted a numerical majority was a sociological minority because of the fact that it was an oppressed group.

4. *Comments made concerning the meaning of the term "minority" at the seminar on the promotion and protection of the human rights of national, ethnic and other minorities, held at Ohrid, Yugoslavia, from 25 June to 8 July 1974*

50. The discussion on the meaning of the word "minority" at the Ohrid seminar was summarized in the report as follows:

The diversity of historical, economic and social conditions all over the world was considered an obstacle to the elaboration of a general concept or definition of the term "minority", as its content varied from region to region and from country to country as well as from one historical period to another. Some minority groups were widely scattered, while others were concentrated, forming a majority in certain regions of a country. It was pointed out that the term "minority" applied in certain cases to national, ethnic or racial groups and in others to linguistic or religious groups, the latter not necessarily coinciding with the former groups.

It was contended that it was inappropriate to apply the term "minority" to the tribes of Africa or to religious groups and castes in certain parts of Asia. It was therefore suggested that the term "minority" should be used only for certain continents or regions of the world, including Europe, where it was already in current usage.

The existence in southern Africa of white minorities having a monopoly of power further complicated the question of the identification and definition of minorities.

It was stated that in certain countries the term "minority", which was felt to have a negative connotation, had been replaced by the term "nationality" to designate national, ethnic, linguistic and other groups that were different from the rest of the population. According to one participant, the term "minority" should be abandoned because it lacked a universal meaning and had become outmoded. He suggested that it be replaced by the expression "national, ethnic, religious, cultural, linguistic and tribal groups".

Several participants attempted to classify or enumerate various minority groups. A distinction was thus drawn between "historical", "classical" or "involuntary" minorities, resulting from events of a historical or geographical character (for example, changes in the borders, transfer of population, and slavery) and "minorities by election", "voluntary minorities" or "new minorities", composed of persons who had recently and voluntarily left their country of origin and moved to other countries (such as immigrants and foreign migrant workers).

Some participants believed that migrant workers should not be considered minorities because they did not usually acquire the citizenship of the State where they temporarily established themselves and consequently they did not enjoy the political rights of the citizens, which were granted to "involuntary" minorities. Several participants thought, however, that migrant workers represented a new and special category of minority, possibly a "social minority", and that they presented a new set of problems. They stressed that, in the field of human rights, emphasis should not be placed on citizenship. On the other hand, many migrant workers had settled down in the State to which they had emigrated and acquired its citizenship, thus forming new minority groups. Reference was also made to the presence in certain countries of refugees, who also presented a separate set of problems.

Some indigenous populations were described by certain speakers as a special category of minority, in the sense that their characterization as "minorities" resulted mainly from the clash between populations with distinctive social values and those who benefited from modern scientific and technological developments.

One participant proposed, however, the following general definition of the term "minority": "a group of citizens, sufficient in number to pursue the aims of the group, but numerically smaller than the rest of the people, linked together by historical, ethnic, cultural, religious or linguistic bonds and wishing to preserve such bonds, which are different from those of the rest of the people".[14]

[14] ST/TAO/HR/49, paras. 29-36.

5. *The Council of Europe and the question of defining the term "national minorities"*

51. In 1973, the Committee of Government Experts of the Council of Europe considered a draft additional protocol, relating to the rights of "persons belonging to national minorities", to the European Convention on Human Rights. Referring to the question of the definition of the term "national minorities" the Committee noted that:

> whilst article 14 of the European Convention on Human Rights referred to national minorities, article 27 of the Covenant referred to ethnic, religious or linguistic minorities. The first question, therefore, was whether these two terms covered the same thing; some of the experts felt that they did, whilst others did not. This difficulty of interpretation led the Committee to consider the definition of national minorities, since its terms of reference were concerned with the rights of national minorities.

The Committee observed that:

> it appears that the term "national minority" does not appear in the minority treaties concluded after the First World War, nor in any United Nations human rights text. The experts noted, however, that the term "national minority" had subsequently been used in the Convention against Discrimination in Education, adopted by the General Conference of UNESCO on 14 December 1960, article 5.1 (c) of which reads (in part): "It is essential to recognize the rights of members of national minorities to carry on their own education activities ...". The term has been used by writers on international law, but no clear agreement as to its significance emerges therefrom.
>
> Consideration of the possible bases for a definition of national minorities that might be deduced from a comparison between article 14 of the European Convention on Human Rights and article 27 of the Covenant on Civil and Political Rights, as well as from the various international instruments and national laws, clearly did not yield any unequivocal answer.
>
> It then became relevant to consider if there were any ethnic, religious or linguistic minorities which did not constitute national minorities, as this term is used in the Assembly's proposal.[15] In most cases a "national minority" would also constitute an ethnic, linguistic or religious minority. On the other hand, there are clearly certain ethnic, linguistic or religious minorities which do not constitute "national minorities". An additional consideration is that there are also certain linguistic minorities whose languages are recognized as national languages. These different factors illustrate further the difficulty of finding any generally-accepted definition of the term "national minority". For this reason, indeed, the experts found it difficult to provide any satisfactory definition of "national minorities".
>
> Some experts considered that if the term "national minority" were to be used in an additional protocol, it should be interpreted as broadly as possible so as to include all ethnic, religious and linguistic minorities, as well as specifically "national" minorities.[16]

6. *Observations of the Special Rapporteur*

52. The Special Rapporteur wishes in the first place to recall that the present study has been carried out pursuant to Sub-Commission resolution 9 (XX) under which the study is to analyse the concept of minority taking into account the ethnic, religious and linguistic factors and considering also the position of ethnic, religious or linguistic groups in "multinational" societies.

53. Examination of the available documentation reveals the existence of different ethnic, religious or linguistic groups in almost all the countries studied. The numerical importance of these various groups varies, however, from country to country and, in general, three types of situations can be distinguished. In some countries these groups are roughly equal in size. In others, besides an ethnic, religious or linguistic group, constituting a numerical majority, there are one or more other groups forming, in some cases, a small and, in others, an appreciable percentage of the total population of the country. Elsewhere, there may be a group which is numerically large, but not a majority, together with a number of other groups which individually constitute communities smaller in size but in conjunction form a majority of the population.

54. The examination of the documentation also confirms the observations concerning the classification of numerically non-majority groups contained in a memorandum submitted by the Secretary-General to the Sub-Commission in 1950:[17]

(*a*) Measured by the criterion of contiguity, the following types of minorities may be distinguished:

(i) Groups which constitute nearly the only population of a section of the country;

(ii) Groups which constitute the largest part of a section of the country;

(iii) Groups, settled in a section of the country, which constitute only a small part of the population of that section;

(iv) A group, the members of which live partly in a section of the country and partly scattered throughout the remainder of the territory;

(v) Groups which are scattered throughout the whole country;

(vi) Groups which live partly within the country and partly in one or more other countries.

(*b*) Measured against the criterion of the origin of groups and their situation in relation to the State, the following types of minorities can be distinguished:

(i) Groups which existed in the country before the establishment of the State;

(ii) Groups which formerly belonged to another State, but which afterwards came under the jurisdiction of the State through annexation or transfer of territory;

(iii) Groups formed by persons having a common origin, religion, language etc. who have become nationals of the State.

55. It is on the basis of these considerations and bearing in mind the observations of Governments and the suggestions made by members of the Sub-Commission that the Special Rapporteur has prepared this study and has indicated in the chapter containing his conclusions and recommendations the elements which, in his view, should be included in a definition of the term "minority". The

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[15] The Consultative Assembly's proposal was as follows:

> "Persons belonging to a national minority shall not be denied the right, in community with the other members of their group, and as far as compatible with public order, to enjoy their own culture, to use their own language, to establish their own schools and receive teaching in the language of their choice or to profess and practise their own religion."

[16] Report of the Committee of Experts on Human Rights to the Committee of Ministers, adopted on 9 November 1973 (Council of Europe, DH/Exo (73) 47).

[17] *Definition and Classification of Minorities* (United Nations publication, Sales No. 1950.XIV.3).

groups whose situation has been examined with a view to determining to what extent the principles enunciated in article 27 of the Covenant have been applied in respect of their members are those which constitute communities possessing, from an ethnic, religious or linguistic standpoint, their own characteristics which differ from those of the rest of the population. This objectively recognizable fact is obviously the starting-point for any definition. It should be emphasized, however, that as soon as one speaks of communities having their own identity, the objective differences are clearly linked with the "subjective" factor (desire to preserve the characteristics of the group). A group as such cannot have an identity throughout history if its members have no wish to help in preserving it. On the other hand, the numerical factor (numerical inferiority as compared with the rest of the population of the State) is of an undeniable importance in view of the fact that the need to protect minorities derives essentially from the weakness of their position even within the context of a democratic State, i.e. one conforming to the model which emerges from the human rights instruments of the United Nations. In such a State, it is the will of the majority which makes the laws and determines the country's general attitude. The object of every international system for the protection of minorities has always been to ensure that the majority does not ignore the special requirements of minority groups. As for the situation caused by dominant minority groups which establish (as in southern Africa) a hateful régime of oppression and racial discrimination in disregard of the elementary principles of respect for the dignity of human beings, it is the application of the principle of the right of peoples to self-determination which is challenged in this case. It is obvious that the dominant minority groups do not need protective measures, while the oppressed majorities have rights which far exceed the very limited contents of article 27 of the Covenant.

56. There are, of course, countries in which groups of almost equal numerical size coexist. In such cases, the situation of all the groups has been taken into account since each of them is numerically in a minority position in respect of the population as a whole. As for the minimum size that a minority should have in order to be recognized as such, the problem is a practical one rather than a theoretical one. In principle, even quite a small group has the right to claim the protection provided for in article 27, to the extent to which it seems reasonable to expect the State to introduce special measures of protection.

57. The interpretation adopted excludes foreigners residing in a country. The Special Rapporteur is not unaware of the problems encountered nowadays as a result of phenomena such as the migration of workers and the establishment of sometimes quite substantial groups of foreign workers in certain industrialized countries. The case of foreigners is different, however, from that of persons who possess the nationality of the country in which they live. As long as a person retains his status as a foreigner, he has the right to benefit from the protection granted by customary international law to persons who are in countries other than their own, as well as from any other special rights which may be conferred upon him by treaties or other special agreements. Article 27 of the Covenant should thus be interpreted as relating solely to nationals of the State.

58. Lastly, with regard to the undoubted influence exercised by the factor of the origin of a minority, the Special Rapporteur is of the opinion that this influence manifests itself in connexion with the group's feeling of identity (which largely depends on its origin) but that the concept of minority is, in itself, independent of this factor. Persons of the same origin who have their own particular characteristics which differ from those of the remainder of the population of a State (e.g. immigrants) are not automatically bound to form a minority group. There can be no doubt regarding the freedom of each individual to help to form a minority group or to integrate himself into the remainder of the population.

B. The question of official recognition by States of ethnic, religious or linguistic minorities within their population

59. The official attitude of States towards minority groups forming part of their population can and does vary considerably. It might be said that the two extremes are represented by the case of recognition in the Constitution of the existence of a minority and the absence of any recognition at all. Between these two extremes, however, there are some middle positions: recognition of the basis of special legislation or administrative measures or the simple recognition of private institutions representing the interests of minority groups.

60. The word "recognition" itself does not by any means always have the same meaning. It could mean that the State grants to one or more minorities the status of legal persons, subjects of law, but this is very rarely encountered. It may mean that a coherent set of rights—connected with the principle of protecting the identity of minorities—is granted to members of such minorities. Sometimes, however, the only measure is the granting of some specific rights to the minorities without there being any over-all plan. In this last case, the recognition of the minority benefiting from the rights is usually implicit and partial.

61. In any case, what must be emphasized—before the attitudes of a number of States are examined more closely—is the fact that international protection of minorities does depend on official recognition of their existence. In the preceding pages, reference has been made to the difficulties of finding a definition of the term "minority". Nevertheless, the presence of sufficient elements to indicate that a minority exists is sufficient to make applicable the pertinent international rules, and particularly article 27 of the International Covenant on Civil and Political Rights.

62. It is, of course, acknowledged that, in practice, the recognition of a minority by the State in which it lives improves this situation, facilitates the application of the principles enunciated in article 27 of the Covenant and gives the members of the minority a solid basis for effective protection of the rights guaranteed them at the international level.

63. The problem involved can be examined from two angles. In the first place, the precise legal meaning of the official recognition of certain population groups as minorities must be determined. In the second place, we must examine the procedure by which the fact that an individual belongs to a group is established, with a view to applying a particular status to the individual concerned.

64. The question of the recognition of religious minorities as such has lost much of its urgency as a result of the almost universal acceptance of the principle of freedom of conscience and religion which is now incorporated into the domestic law of almost all States.[18] The situation with regard to recognition of ethnic and linguistic minorities is not the same, however. The approach adopted by States to this question differs not only from country to country but also, very frequently, within countries according to the groups involved. In some cases, certain ethnic and linguistic groups have been officially recognized as distinct groups entitled to special rights, while others have not been so recognized. Moreover, the terminology used to designate the groups which are officially recognized is not the same everywhere.

65. As for the question of implicit recognition, it should be pointed out that general constitutional provisions forbidding discrimination based on race, national or ethnic origin, religion or language cannot be interpreted as constituting a recognition of ethnic, religious or linguistic minorities. The same applies to official statistics concerning the composition of the population of various countries. Official statistics frequently classify the population by ethnic, religious or linguistic groups and it may be asked whether this presentation has any legal significance. Although such statistics prove the existence of such groups, it does not appear that, in themselves, they enable one to conclude that the State has granted such groups a recognition with legal significance.

1. *Recognition in internal law of the right of ethnic and linguistic minorities to maintain and preserve their own characteristics*

66. In some countries, the existence of an ethnic or linguistic minority is not recognized at all in the internal law. This is particularly the case in most Latin American countries which maintain that immigrants and their descendants do not constitute minorities. The Brazilian Government, for example, has stated that in practice there are no ethnic or linguistic minorities in Brazil "since immigrants are treated in the same manner as Brazilians."

67. On this question, the French Government has stated as follows:

> [France] cannot recognize the existence of ethnic groups, whether minorities or not. As regards religions and languages—other than the national language—the French Government points out that these two areas form part, not of public law, but of the private exercise of public freedoms of citizens. The role of the Government is limited to guaranteeing citizens full and free exercise of these freedoms within the framework defined by the law and respect for the rights of the individual. The French Government also draws attention to the fact that the use of local languages cannot in any way constitute a criterion for the identification of a group for other than scientific purposes. Quite apart from the fact that such use is an individual matter, the very great diversity of local dialects—even inside a linguistic group—the varying degrees of interest shown in such dialects by the inhabitants of a given area by reason, *inter alia*, of the difficulties of adapting them to the development of ideas and techniques and their incapacity to serve beyond their limited framework, prevent them from being considered a necessary and sufficient element to define a community as opposed to the French nation.

68. According to the Government of Niger "it is not possible to distinguish within the country a numerically inferior group having cultural characteristics different from those of the remainder of the population". The Government of the Philippines commented that a single category "of minorities"—national cultural minorities—benefited from legal recognition. It noted in this connexion that the national cultural minorities consisted in fact of the indigenous populations and that population groups other than these national cultural minorities did not have any legal standing as members of national minorities and were not included in the country's concept of minority. The Government of Thailand states that the concept of minority is unknown in the country: "Although this word has a Thai translation from English for the purpose of communication with the outside world, it has no social and cultural connotation whatsoever".

69. Another situation is that where the State, while admitting the existence of minority groups within its population, has nevertheless adopted a pragmatic attitude regarding their legal status in domestic law. Thus, the Government of the United Kingdom has stated that "there is no general procedure for granting official recognition of minority groups in the United Kingdom as a means of safeguarding their rights since they exist without such recognition. It is unnecessary for an ethnic, religious or linguistic minority to be formally recognized by law to exist". As regards Finland, even though there is no law on the matter, the Government states that "the minority groups in the country are officially recognized. They have the right to develop their own culture and to maintain their linguistic traditions".

70. On the other hand, a very large number of countries have expressly recognized certain ethnic and linguistic groups as "minorities", i.e. as groups which must be granted a special treatment in respect of their culture and their language. In some countries, the recognition of these groups has been introduced into the internal law as a result of international treaties or bilateral agreements. This is the case in such countries as Austria, Cyprus, Denmark, the Federal Republic of Germany, India, Italy, Pakistan and Singapore.[19]

71. In several countries, the express recognition of the right of ethnic and linguistic groups to preserve their culture and their language (and this obviously implies recognition of these groups) is incorporated in the constitution or in legislation. It will be noted, however, that the groups whose rights are defined are not always described as being minorities. The groups in question are sometimes called "national minorities" sometimes "nationalities", sometimes "cultural communities" and sometimes quite simply "linguistic groups".

72. In Belgium, the Constitution provides that the country comprises three cultural communities (Dutch, French and German) and recognizes that all three of these communities are placed on the same footing and have the right to maintain and develop their own culture. According to the Government, recent developments in constitutional law give wide recognition to the existence of cultural communities and regions. In Italy, the Constitution mentions among the duties of the State that of safeguarding the rights of "linguistic minorities" by the adoption of special measures. In Switzerland, the Federal Constitution rec-

[18] See paras. 413-415.

[19] See paras. 156-162.

ognizes that the country comprises four linguistic groups; furthermore, the principle of communal autonomy plays an important part in protecting linguistic minorities in the multilingual cantons. The Indian Constitution provides that "any section of all the citizens residing in the territories of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same".[20] It further refers to rights of "all minorities whether based on religion or language". The constitution of Singapore provides that "it shall be the responsibility of the Government constantly to care for the interests and special positions of the racial minorities. The Government shall exercise its functions in such a manner as to recognize the special position of the Malays." Under the terms of the constitution of Iraq, "the nation consists of two main ethnic groups". The constitution also "recognizes the right of the Kurdish nationals as well as the rights of other minorities on an equal footing within a united Iraq". In the Philippines, the constitution provides that the "State shall consider the customs, the traditions, beliefs and interests of the national cultural communities in the formulation of State policies".

73. In Sri Lanka, the constitution provides that "the State shall endeavour to strengthen national unity by promoting co-operation and mutual confidence between all sections of the people, including racial, religious and other groups. The State shall assist in the development of the cultures and the languages of the people." It further explicity states that "every citizen has the right by himself or in association with others to enjoy and promote his own culture". Under the Burmese constitution, "no minority, whether racial or linguistic, shall be discriminated against in regard to admission into State educational institutions".

74. In other countries, including in particular the socialist countries of Eastern Europe, the term "nationality" is generally used to indicate the ethnic and linguistic groups whose right to preserve their own characteristics is expressly recognized in the constitution or in the laws. The constitution and laws of the Soviet Union and those of the Ukrainian SSR recognize the right of the various nationalities to pursue their cultural development and guarantee the equality of all the nationalities. According to the Romanian Government, the rights of the "co-inhabiting nationalities"—a term which has been used to replace the expression "national minority" to designate a "distinct ethnic social group, numerically inferior to that of the Romanian nation, having its own religious, linguistic and cultural characteristics"—are embodied in the constitution and the laws. The Government of the German Democratic Republic states that the rights of the Wends, the only group considered in that country to constitute a national minority, are officially recognized. Under the terms of the constitution of Czechoslovakia, the state "shall secure to citizens of Hungarian, German, Polish and Ukrainian national origin the possibility and the facilities for their all-round development". In Yugoslavia, the right of the national minorities to autonomous cultural development is recognized in the federal constitution, in the constitutions of the various republics and in the statutes of the municipalities in which they reside. The Hungarian constitution contains provisions intended to ensure to all nationalities the possibility to develop their own culture.

[20] The Constitution of Pakistan contains a similar provision.

75. In the countries in which indigenous populations exist, these populations are generally expressly recognized as constituting distinct groups which should have the benefit of a special régime. This is, *inter alia*, the case of the Indians of Latin America, the United States of America, Canada and Guyana, the Lapps in Finland, Norway and Sweden, the Aboriginals of Australia, Malaysia and New Zealand and the Ainus of Japan. The United States Government, for example, has legally recognized Indians as separate groups by signing treaties with them or by defining their legal status in federal legislation.

76. In many countries,[21] laws and administrative measures concerning the use of the languages of various linguistic groups or questions specifically concerning particular groups have been adopted, although these groups have not been officially recognized as minorities or as communities having the right to a special régime. It would seem that in cases of this kind it might be concluded that there is implicit recognition by the State, even if according to official doctrine the internal legal order does not provide for or does not recognize the existence of "minorities" or of communities which deserve special treatment by reason of their ethnic or linguistic peculiarities. In this connexion, certain comments made by the Spanish and Swedish Governments appear significant. According to the Spanish Government:

> The Spanish State starts from the principle, enshrined in its Fundamental Laws, of the unity of the people and lands of Spain, without prejudice to recognition of the special characteristics of the various regions forming the nation, including, of course, those which present special cultural and linguistic characteristics.

The Swedish Government has observed that:

> Official recognition of the minority groups has not been made. During the last years it has, nevertheless, been emphasized ... how important it is that society create—by different supporting measures—greater possibilities for the linguistic, ethnic and religious minorities to maintain and develop their own language, traditions and culture. Those measures are reflected in the new system of teaching minority languages in the compulsory school, the appointment of the Government Commission on Immigrants and of the Government Commission on Lapp Affairs, the proposition of the Committee on the Relations between the State and the Church concerning the equality of status among all religious communities, as well as declarations made by politicians of all the political parties.

It should also be mentioned that, in a very large number of African countries, the customs peculiar to the different ethnic groups have been maintained in force in the field of private law. Furthermore, in many developing countries, the use of the languages of the various groups has been the subject of a series of legislative or administrative measures. In Sierra Leone, for example, the question of the establishment or maintenance of separate educational systems or institutions for linguistic groups is dealt with by a law. In Laos,[22] an education order of 30 July 1972 stipulates that a particular effort shall be made to ensure for the ethnic groups genuine freedom of access to education. In Malawi, the Constitution empowers the president to nominate to the National Assembly persons to represent "particular minority interests".

[21] Bangladesh, Canada, France, Ghana, Indonesia, Israel, Malaysia, Poland, Senegal, Sweden, Thailand, Turkey, United States of America, Zaire.

[22] In December 1975 the official name of the country was changed to Lao People's Democratic Republic.

77. It is important to bear in mind that in most cases the groups recognized as "minorities" or as communities which are to benefit from special treatment are well-defined groups. Certain groups, including those which are scattered throughout the territory of a country, seldom appear among those forming the subject of recognition by the State with legal effect. Such is the situation, for instance, of the groups described as "Gypsies" in a large number of European countries.

2. *The question of an individual's membership of a given group*

78. A question closely linked with the official recognition of ethnic, religious or linguistic minorities concerns the procedure followed for determining whether an individual is a member of a given group. The available documentation provides little information on this point. It is not always easy in practice to decide whether or not an individual belongs to a minority. When such a determination must be made in order to apply a particular status to the individual concerned, it can, in theory, be done on the basis of a definition provided by the law, of the categorically expressed desire of the individual, or of objective criteria. Problems arise whatever the criterion applied. In the opinion of some, to rely wholly on the subjective criterion is not without danger, inasmuch as an individual who declares that he belongs to a minority may be acting under the influence of external pressure or solely for political reasons. The objective criterion requires membership of a minority to be determined by the presence of certain traits or characteristics which can be evaluated without reference to a statement by the individual concerned. One of the most important traits is undoubtedly the language generally used by the individual. Other such traits or characteristics include the individual's name and origin. But, as has frequently been pointed out, the use of objective criteria does not always lead to satisfactory results. It has been observed that the criterion of the name is, to say the least, questionable and that the value of the criterion of origin is very limited. As for the criterion of language, it has been pointed out in many cases that members of a linguistic minority generally use not only their own language but also the language of the majority. It has been said, for example, that in the Soviet Union ethnographers and demographers consider it incorrect to assign national ethnic affiliation on the basis of mother tongue, since the people inhabiting the Soviet Union have drawn so much together socially that there are frequent cases of individuals making their basic everyday tongue the language not of their own people but of the people among whom they live, though at the same time preserving awareness of their own national identity. Accordingly in Soviet censuses nationality and mother tongue are separate indicators.

79. In several countries,[23] membership of a group is determined, not according to a law or on the basis of precise criteria, but on the basis of the formally expressed wish of the individual. In Romania, for example, the law on the status of the nationalities provides that "each citizen is authorized to establish his own nationality. Any interference by any authority in this matter is prohibited and the official organs are obliged to accept the citizen's declaration." In addition, the Government has stated on this subject that the essential element in the definition of nationality, mother tongue or religion is simply the free declaration by the person concerned: "Each citizen establishes by his free consent his membership of a nationality, his mother tongue and his religion. This decision is not subject to any administrative control". In Czechoslovakia, the constitution provides that each citizen decides his nationality freely.

80. In Austria it is the courts which have had to decide this matter and for this purpose they have adopted neither of the two criteria exclusively. They have made use of them both, while giving priority to the subjective criterion in case of doubt.

81. In countries in which there are indigenous populations, an individual's membership of an indigenous group is generally determined on the basis of a law. In Venezuela, the national census classifies a person as indigenous if he habitually speaks a native language of his own or if his way of life is so obviously original that he could not be classified with the peasant population. In Norway, the use of Lappish is the usual criterion in national censuses of Lapps. In the Philippines, the determination whether an individual belongs to a cultural minority is made by a government agency which makes the certification on the basis of the laws defining minority groups. In the United States of America, while no special legislative or judicial definition is applied, certain conditions must be made by a person to qualify as an Indian: "To be designated as an Indian eligible for basic Bureau of Indian Affairs services, an individual must live on or near a reservation and must be a member of a tribe or group of Indians recognized by the Federal Government."

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[23] Czechoslovakia, Iraq, Italy, Romania, Spain, USSR, Yugoslavia.

Chapter II

THE INTERNATIONAL PROTECTION OF PERSONS BELONGING TO ETHNIC, *RELIGIOUS AND LINGUISTIC MINORITIES SINCE 1919*

A. The system of protection established after the First World War

1. *Drafts discussed at the Peace Conference of 1919*

82. During the First World War many efforts were made to establish an effective system of protection of minorities at the international level. In this connexion it will be recalled first of all that on the initiative of a number of private organizations, various congresses and conferences were held during the years 1915-1919 with a view to formulating draft solutions to the problem on the basis of the right of minorities to the preservation of their culture and their ethnic character, to equality before the law and to freedom of worship and religion. In addition, the setting up of international supervisory commissions to safeguard minority rights and the establishment of a minorities tribunal were recommended by one of these organizations as guarantees of the application of the régime to be instituted. Drafts of this sort were submitted to the Peace Conference in 1919.[1]

83. In addition to the private drafts, the Conference also had before it official drafts concerning the protection of minorities. That submitted by Switzerland advocated, *inter alia*, affirmation at the international level of the principle of equality before the law, freedom of conscience and the right of minorities to use their own language.[2]

84. The question of the protection of minorities was debated when the Covenant of the League of Nations was being drawn up, in the course of discussions on certain proposals aimed at including in the Covenant clauses relating to equality of treatment for "racial and national minorities" and freedom of worship and religion.

85. The second of the draft Covenants submitted by Woodrow Wilson, President of the United States, included a clause in accordance with which new States, as a condition of the recognition of their independence, would bind themselves to guarantee equality of treatment for their "racial or national minorities". The clause was worded as follows:

> 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 several jurisdictions exactly the same treatment and security, both in law and in fact, that is accorded the racial or national majority of their people.[3]

86. In a third draft Covenant submitted subsequently, President Wilson changed and expanded the above clause by adding a stipulation under which all States seeking admission to the League of Nations would bind themselves to accord equal treatment to their minorities. The text of article VI of the draft, as revised, read as follows:

> The League of Nations shall require all new States to bind themselves, as a condition precedent to their recognition as independent or autonomous States, and the Executive Council shall exact of all States seeking admission to the League of Nations the promise, to accord to all racial or national minorities within their several jurisdictions exactly the same treatment and security, both in law and in fact, that is accorded the racial or national majority of their people.[4]

87. However, these proposals of President Wilson's were not retained in the joint American-British draft which ultimately served as the basis for the formulation of the Covenant of the League of Nations. Thus, the Covenant does not include any provision concerning the rights of ethnic minorities. This was in conformity with the British view that the question of minorities should be settled in treaties relating to territorial situations, having regard to the fact that some minorities claimed special treatment while others sought only the guarantee of non-discrimination.[5]

88. The efforts to include in the Covenant a clause relating to freedom of belief and religion likewise had their origin in the draft Covenants submitted by President Wilson. His third draft contained the following clause:

> Recognizing religious persecution and intolerance as fertile sources of war, the Powers signatory hereto agree, and the League of Nations shall exact from all new States and all States seeking admission to it the promise, that they will make no law prohibiting or interfering with the free exercise of religion, and that they will in no way discriminate, either in law or in fact, against those who practise any particular creed, religion or belief whose practices are not inconsistent with public order or public morals.[6]

89. The British representative subsequently proposed the insertion of the following provision:

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[1] See C. A. Macartney, *National States and National Minorities* (New York, Russel and Russel, 1968), pp. 212-218; Arthur de Balogh, *La protection internationale des minorités* (Paris, Les éditions internationales, 1930), pp. 37-39; Jacques Fouques Duparc, *La protection des minorités de race, de langue et de religion* (Paris, Librairie Dalloz, 1922), pp. 141-171.

[2] See Balogh, *op. cit.*, p. 40.

[3] David Hunter Miller, *The Drafting of the Covenant* (New York, G. P. Putnam's Sons, 1928), vol. II, p. 91.

[4] *Ibid.*, p. 105.

[5] "It has been the intention of the British Draft to leave the question of racial or national minorities to be settled in the territorial treaties which are generally guaranteed by the League. This decision is based upon the fact that in some cases such minorities will demand a guarantee of distinct treatment in such matters as linguistic schools, while in others they will demand the equal treatment guaranteed to them by this Article VI ... It seems better therefore to omit Article VI unless and until it becomes evident that it is impossible to deal with these questions adequately in the territorial treaties." (Miller, *op. cit.*, vol. II, p. 129).

[6] Miller, *op. cit.*, vol. II, p. 105.

Recognising religious persecution and intolerance as fertile sources of war, the HCP agree that political unrest arising therefrom is a matter of concern to the League and authorise the Executive Council wherever it is of opinion that the peace of the world is threatened by the illiberal action of the Government of any State towards the adherents of any particular creed, religion or belief to make such representations or take such other steps as will put an end to the evil in question.[7]

90. In the light of the discussions which took place in the Commission on the League of Nations that was set up by the Peace Conference,[8] the Committee whose task it was to prepare a new text of the Covenant expressed the view that it would be preferable not to include a provision on freedom of worship and religion. If, however, there was a strong feeling in the Commission that some such clause should be inserted, the Committee would suggest the following drafting:[9]

The High Contracting Parties agree that they will make no law prohibiting or interfering with the free exercise of religion, and that they will in no way discriminate, either in law or in fact, against those who practise any particular creed, religion, or belief whose practices are not inconsistent with public order or public morals.[10]

91. However, the insertion of this clause in the Covenant was rejected by the Commission by a very large majority. As noted later by the Committee set up by the Council of the League of Nations in its resolution of 7 March 1929 to consider the application of the system of protection of minorities established by the international instruments concluded after the First World War, the suggestion that the principles of religious toleration and racial equality should be included in the Covenant of the League itself "was found impossible, or at any rate undesirable".[11] This shows clearly that the authors of the Covenant were not disposed to treat these principles, which had until then been considered valid only in respect of certain States and a small number of minority groups, as general obligations applicable to all Members of the League of Nations.

2. *International instruments of the period 1919-1932*

92. Although the Peace Conference of 1919 had rejected efforts to include in the Covenant general clauses concerning the protection of minorities, it had nevertheless felt that the maintenance of a lasting peace required the adoption of certain measures relating to that subject. As a result of the territorial changes which had taken place—in particular the establishment of the States of Poland and Czechoslovakia and the enlargement of the Serbian, Romanian and Greek Kingdoms—the inhabitants of the territories of several States included large numbers who differed ethnically or linguistically from the people with whom they had been joined.[12] This situation justified the fear that the minorities within the new frontiers would jeopardize the stability of the States of whose populations they would henceforth be a part, creating within them a state of continuous tension and perhaps seeking outside help from peoples who had the same language and ethnic background as theirs. Thus arbitrary treatment of minorities on the part of the States with whose populations they had been joined would have endangered world peace. "Nothing ... is more likely to disturb the peace of the world than the treatment which might in certain circumstances be meted out to minorities ..."[13] affirmed President Wilson in his statement of 31 May 1919 at a plenary meeting of the Peace Conference.

93. Basing itself on the relevant precedents, but also taking into account the lacunae in the system of protection provided for in the treaties of the nineteenth century, the Peace Conference decided to set up and to place under the guarantee of the League of Nations a system of protection of minorities taking the form of five special treaties, called Minorities Treaties, concluded between the Allied and Associated Powers on the one hand and the newly established or enlarged States mentioned in the preceding paragraph on the other. Concurrently, and with a view to ensuring a certain degree of reciprocity, similar obligations were imposed by the peace treaties on four of the vanquished States (Austria, Bulgaria, Hungary and Turkey).

94. The legal foundation of this system of protection of minorities is found in identical clauses in the Treaties of Versailles, Saint-Germain, Neuilly and Trianon, in which Czechoslovakia, Poland, the Serb-Croat-Slovene State, Romania and Greece declare that they accept "and agree to embody in a Treaty with the Principal Allied and Associated Powers such provisions as may be deemed necessary by the said Powers to protect [in each of the above-mentioned countries] the interests of the inhabitants who differ from

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[7] *Ibid.*, p. 555.

[8] A Commission, called the Commission on the League of Nations, had been set up by the Peace Conference to formulate the draft Covenant (see Miller, *op. cit.*, vol. I, pp. 76-85).

[9] See Miller, *op. cit.*, vol. II, p. 307.

[10] *Ibid.*, p. 237.

[11] *Protection of Linguistic, Racial or Religious Minorities by the League of Nations*, Series of League of Nations Publications, I.B. Minorities, 1931 I.B.1 (C.8.M.5.1931.I), p. 160.

[12] As one writer has stated, "In redrafting the map of Central Europe, the Peace Conference undertook to reduce the number of racial minorities, and thus to minimize this fruitful source of international friction. The recognition of [the new States of Central Europe which arose on the break-up of the old Austro-Hungarian monarchy] was an attempt to make state lines and ethnic lines more nearly coincide, as was the setting up of a Greater Serbia. It is estimated that the total number constituting the ethnic minorities of Europe was reduced from over 50 million to less than 20 million. In some few cases the policy of eliminating minorities was sacrificed to political expediency; the transfer of the Trentino, or South Tyrol ... is an illustration. But it was inevitable that minorities should remain; in fact, many new minorities were created by the Peace treaties. Former Germans of Germany are found in Poland, Danzig, Schleswig, Alsace-Lorraine, the Saar Valley, and Upper Silesia (Poland). So also former Germans of Austria are now in the Italian Tyrol and Trentino, Jugo-Slavia and Czechoslovakia, and former Germans of Hungary in Roumania and Jugo-Slavia. New Hungarian (Magyar) minorities were created in Roumania, Czechoslovakia, and Jugo-Slavia, and new Bulgarian minorities in Roumania, Thrace (under Greece), and Jugo-Slavia. Buell points ont that about one fourth of the population of Jugo-Slavia, one third of that of Roumania, two fifths of that of Czechoslovakia, and well towards one half of that of Poland, consist of ethnic minorities. The peace treaties set off to Italy 400,000 Slavs and 220,000 Germans. Nows living as newly created minorities in Europe are over 7 million Germans and nearly 3 million Magyars, and over 1 million Bulgars. Thus the new frontiers of Europe reduced the number of minority peoples and at the same time accentuated the difficult problem of their protection." (Edmund C. Mower, *International Government* (Boston, D. C. Heath and Company, 1931), p. 455.)

[13] *Protection of Linguistic, Racial or Religious Minorities by the League of Nations*, p. 159.

the majority of the population in race, language or religion".[14]

95. The minorities régime which resulted took four different forms and was embodied in a series of international instruments, as follow: (*a*) the five Minorities Treaties concluded in 1919-1920 in conformity with the provisions of the peace treaties mentioned in the preceding paragraph; (*b*) four special chapters of the peace treaties of 1919-1923 imposed on the vanquished States;[15] (*c*) four subsequent treaties[16] and (*d*) five unilateral declarations, signed by various States between 1921 and 1932 upon their admission to the League of Nations, of which the Council of the League of Nations took note in *ad hoc* resolutions.[17]

96. The racial, religious and linguistic minorities which which were thus brought within the scope of the régime of protection that and been established were those of Austria, Poland (including Upper Silesia), the Serb-Croat-Slovene State, Czechoslovakia, Bulgaria, Romania, Hungary, Greece, the Free City of Danzig, the Åland Islands, Albania, Estonia, Lithuania, Latvia, Turkey, Memel and Iraq.[18]

3. *The content of the régime of protection*

97. It is noteworthy in the first place that the features common to the international instruments mentioned in subsection 2 above far outnumber the differences, particularly as the treaty concluded with Poland—which preceded the others chronologically—served as a model for the formulation of most of the subsequent instruments.

98. With regard to the content of the régime established after the First World War, it is interesting to recall the advisory opinion of the Permanent Court of International Justice of 6 April 1935 on the question of minority schools in Albania. In that opinion, the Court stated that the instruments drawn up for the protection of minorities had two main objectives, namely to ensure that individuals belonging to racial, religious or linguistic minorities should be placed on a footing of perfect equality with the other nationals of the State and, secondly, to ensure for the minority element suitable means for the preservation of their racial peculiarities, their traditions and their national characteristics. The Court rightly emphasized that those two requirements were closely interlocked, for there would be no true equality between a majority and a minority if the latter were deprived of its own institutions and were consequently compelled to renounce that which constitutes the very essence of its being as a minority.

99. The commitments assumed by States under special Minorities Treaties may be classified as follows:[19]

(*a*) In the first place, the Treaties contain stipulations regarding the acquisition of nationality. These stipulations provide, in principle, that the nationality of the newly created or enlarged country shall be acquired: (i) by persons habitually resident in the transferred territory or possessing rights of citizenship there when the Treaty comes into force; (ii) by persons born in the territory of parents domiciled there at the time of their birth, even if they are not themselves habitually resident there at the coming into force of the Treaty. The Treaties also provide that nationality shall be *ipso facto* acquired by any person born in the territory of the State, if he cannot prove another nationality. The Treaties further contain certain stipulations concerning the right of option.

(*b*) The States which have signed the Minorities Treaties have undertaken to grant all their inhabitants full and complete protection of life and liberty, and recognize that they are entitled to the free exercise, whether in public or in private, of any creed, religion or belief whose practices are not inconsistent with public order or public morals.

(*c*) As regards the right to equality of treatment, the Minorities Treaties lay down the following general principles: (i) equality of all nationals of the country before the law; (ii) equality of civil and political rights; and (iii) equality of treatment and security in law and in fact.

(*d*) Moreover, the Treaties expressly stipulate that differences of race, language or religion shall not prejudice any national of the country as regards admission to public employment, functions and honours, or to the exercise of professions and industries. It is also provided that nationals belonging to minorities shall have an equal right to establish, manage and control, at their own expense, charitable, religious or social institutions, schools and other educational establishments, with the right to use their own language and to exercise their religion freely therein.

(*e*) As regards the use of the minority language, States which have signed the Treaties have undertaken to place no restriction in the way of the free use by any national of the country of any language, in private intercourse, in com-

[14] The States which assumed obligations in respect of minorities under these Treaties were the following: Poland (Treaty between the Principal Allied and Associated Powers and Poland, Versailles, 28 June 1919); Czechoslovakia (Treaty between the Principal Allied and Associated Powers and Czechoslovakia, Saint-Germain-en-Laye, 10 September 1919); the Serb-Croat-Slovene State (Treaty between the Principal Allied and Associated Powers and the Serb-Croat-Slovene State, Saint-Germain-en-Laye, 10 September 1919); Romania (Treaty between the Principal Allied and Associated Powers and Romania, Paris, 9 December 1919); Greece (Treaty concerning the Protection of Minorities in Greece, Sèvres, 10 August 1920).

[15] Austria (Treaty of Peace between the Allied and Associated Powers and Austria, Saint-Germain-en-Laye, 10 September 1919); Bulgaria (Treaty between the Allied and Associated Powers and Bulgaria, Neuilly-sur-Seine, 27 November 1919); Hungary (Treaty of Peace between the Allied and Associated Powers and Hungary, Trianon, 4 June 1920); Turkey (Treaty of Peace between the British Empire, France, Italy, Japan, Greece, Romania, the Serb-Croat-Slovene State and Turkey, Lausanne, 24 July 1923).

[16] The Polish-Danzig Convention of 9 November 1920; agreement between Sweden and Finland concerning the population of the Åland Islands placed on record and approved by a resolution of the Council of the League of Nations on 27 June 1921; German-Polish Convention relating to Upper Silesia of 15 May 1922; Convention of 8 May 1924 concerning the Territory of Memel, between the Allied and Associated Powers and Lithuania.

[17] Albania (2 October 1921); Lithuania (12 May 1922); Latvia (7 July 1923); Estonia (17 November 1923); Iraq (30 May 1932). It will be recalled that in an advisory opinion dated 6 April 1935 concerning minority Greek schools in Albania the Permanent Court of International Justice expressed the opinion that those unilateral declarations had the same binding force as conventional undertakings (Permanent Court of International Justice, Series A/B, 64-69). It should likewise be recalled that those declarations were generally signed pursuant to recommendations by the Assembly to the States concerned to the effect that they should, if admitted to the League of Nations, take the necessary measures to ensure the application of the general principles laid down in the Minorities Treaties.

[18] See *Protection of Minorities* (United Nations publication, Sales No. 67.XIV.4), pp. 7-8.

[19] *Protection of Linguistic, Racial or Religious Minorities by the League of Nations*, pp. 162-163; see also *Protection of Minorities* (United Nations publication, Sales No. 67.XIV.4), pp. 47-58.

merce, in religion, in the press or in publications of any kind, or at public meetings. Those States have also agreed to grant adequate facilities to enable their nationals whose mother tongue is not the official language to use their own language, either orally or in writing, before the courts. They have further agreed, in towns and districts where a considerable proportion of nationals of the country whose mother tongue is not the official language of the country is resident, to make provision for adequate facilities for ensuring that, in the primary schools (the Czechoslovak Treaty refers to "instruction" in general), instruction shall be given to the children of such nationals through the medium of their own language, it being understood that this provision does not prevent the teaching of the official language being made obligatory in those schools.

(f) The Treaties provide that, in towns or districts where there is a considerable proportion of nationals of the country belonging to racial, religious or linguistic minorities,[20] these minorities will be assured an equitable share in the enjoyment and application of sums which may be provided out of public funds under the State, municipal or other budgets for educational, religious or charitable purposes.

(g) In addition to these general engagements, the Minorities Treaties establish a number of special rights in favour of certain minorities, viz., the Jewish minority (Greece, Poland and Romania), the Valachs of Pindus (Greece), the non-Greek monastic communities of Mount Athos (Greece), the Moslem minorities in Albania, Greece and the Kingdom of the Serbs, Croats and Slovenes, the Czecklers and Saxons in Transylvania (Romania), and the people of the Ruthene territory south of the Carpathians (Czechoslovakia).

100. It is clear from this account that the régime established contained two types of provision: one containing clauses ensuring equality of treatment to members of minority groups and the other containing special measures for the protection of such groups. The objective of protecting members of minority groups was pursued by imposing on the State a standard of conduct with regard to the treatment of individuals whereby any discrimination based on race, language or religion was prohibited in certain specific domains. Furthermore, provision was made for special measures deriving from the idea of safeguarding the values peculiar to each minority group, namely, language, religion and culture. The clauses relating to nationality were clearly aimed at protecting persons who became members of a minority group as a result of a territorial transfer against the danger of losing their nationality of origin without acquiring that of the new State.

101. It will be noted that, with the exception of certain special cases,[21] minorities were not regarded as collective entities in the above-mentioned instruments. The protection provided is directed to minorities in terms of the individual as opposed to the group. According to some writers, such an approach was adopted to cater to the sensitivity of the States concerned and to protect them against the risk of dismemberment. It is noteworthy nevertheless that associations formed by minorities were on many occasions declared capable of exercising the right of petition.[22]

102. It will also be noted that the instruments do not contain any provision imposing obligations on minorities in exchange for the measures adopted in their favour. This aspect of the question was debated within the League of Nations and, in a resolution adopted on 21 September 1922, the Assembly of the League of Nations declared that:

> 3. While the Assembly recognises the primary right of the minorities to be protected by the League from oppression, it also emphasises the duty incumbent upon persons belonging to racial, religious or linguistic minorities to co-operate as loyal fellow-citizens with the nations to which they now belong.
>
> ...
>
> 5. The Secretariat-General, which has the duty of collecting information concerning the manner in which the Minorities Treaties are carried out, should not only assist the Council in the study of complaints concerning infractions of these treaties, but should also assist the Council in ascertaining in what manner the persons belonging to racial, linguistic or religious minorities fulfil their duties towards their States. The information thus collected might be placed at the disposal of the States Members of the League of Nations if they so desire.

4. *The guarantees of the régime of protection*

103. Apart from the provisions defining the rights accorded to minorities—described in subsection 3 above—the various instruments contained a twofold guarantee: a guarantee under municipal law and an international guarantee.[23] Under the terms of the guarantee under municipal law, the State concerned undertook that the provisions relating to minorities "shall be recognized as fundamental laws, and that no law, regulation or official action shall conflict or interfere with these stipulations, nor shall any law, regulation or official action prevail over them".[24]

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[20] With regard to the application of the stipulations of the Treaties providing for adequate facilities for ensuring that instruction shall be given in the minority language in districts where a considerable proportion of the members of a linguistic minority reside, one writer held that the expression "considerable proportion" has been interpreted in practice as meaning at least one fifth of the population of a country. (Frederick L. Schuman, *International Politics, An Introduction to the Western State System*, 1st ed. (New York, McGraw-Hill, 1933), p. 316.)

[21] Reference may be made, *inter alia*, to the provision whereby minorities are to be assured an equitable share in the enjoyment of the sums which may be provided out of public funds for educational, religious or charitable purposes (article 9 of the Minorities Treaty with Poland and the corresponding articles of other Treaties). Under the terms of article 10 of the Minorities Treaty with Poland, educational committees appointed by the "Jewish communities" provide for the distribution of the proportional share of funds allocated to Jewish schools. Article 2 of the Minorities Treaty with Romania accords local autonomy, in regard to scholastic and religious matters, to the "communities of the Czecklers and Saxons". Article 13 of the Minorities Treaty with Greece accords local autonomy to the "communities" of the Valachs of Pindus in regard to religious, charitable or scholastic matters.

[22] See paras. 112 and 114; see also Balogh, *op. cit.*, p. 93; M. Sibert, *Traité de droit international public* (Paris, Librairie Dalloz, 1951), Vol. 1, p. 498.

[23] See Charles Rousseau, *Droit international public* (Paris, Recueil Sirey, 1953), pp. 218, 219.

[24] *Protection of Linguistic, Racial or Religious Minorities by the League of Nations: Provisions contained in the Various International Instruments at present in Force*, Series of League of Nations Publications, I.B. Minorities, 1927, I.B.2 (C.L.110.1927.I, annex), p. 42.

104. Under the terms of the international guarantee,[25] each State concerned agreed that:

(i) ... the stipulations in the foregoing Articles, so far as they affect persons belonging to racial, religious or linguistic minorities, constitute obligations of international concern and shall be placed under the guarantee of the League of Nations. They shall not be modified without the assent of a majority of the Council of the League of Nations. The United States, the British Empire, France, Italy and Japan hereby agree not to withhold their assent from any modification in these Articles which is in due form assented to by a majority of the Council of the League of Nations.

(ii) ... any Member of the Council of the League of Nations shall have the right to bring to the attention of the Council any infraction, or any danger of infraction, of any of these obligations, and that the Council may thereupon take such action and give such direction as it may deem proper and effective in the circumstances."

(iii) ... any difference of opinion as to questions of law or fact arising out of these Articles between the Polish Government and any one of the Principal Allied and Associated Powers and any other Power, a Member of the Council of the League of Nations, shall be held to be a dispute of an international character under Article 14 of the Covenant of the League of Nations. The ... Government [of the State concerned] hereby consents that any such dispute shall, if the other party thereto demands, be referred to the Permanent Court of International Justice. The decision of the Permanent Court shall be final and shall have the same force and effect as an award under Article 13 of the Covenant.

105. To summarize the three aspects of the international guarantee which have just been described, it may be said that:

(*a*) The Council of the League of Nations assumed exclusive power to agree to any changes in the regulatory provisions established for the benefit of minorities. The States preparing such provisions were thus precluded from curtailing, by means of subsequent legislation, the protection afforded to minorities;

(*b*) The Council further assumed the power to intervene in the event of any infraction, or any danger of infraction, of any of the rules established, taking such action as was appropriate to each case. Although this power was conditioned by the fact that any infraction was to be brought to the attention of the Council by one of its members, it was the essential feature of the supervisory function, which was later developed by the Council;

(*c*) In the settlement of differences between a State in which there was a minority and a State Member of the Council, the way was open for the exercise of the judicial function of the Permanent Court of International Justice, which had compulsory jurisdiction in matters relating to the protection of minorities.

5. *The procedure for the implementation of the League of Nations guarantee*

106. It should be noted in the first place that the treaties relating to the minorities régime were negotiated outside the League of Nations and that the Council was consequently obliged to adopt a resolution in each case, under the terms of which the provisions of the treaties in question were placed under the guarantee of the League of Nations "so far as they affect persons belonging to racial, linguistic or religious minorities".

107. Furthermore, the elaboration of the procedure whereby this guarantee was rendered effective was principally the work of the Council. The procedure relied essentially on two measures, for which no provision was made in the treaties, namely, the institution of the right of petition for the benefit of minorities and the establishment of Minorities Committees.[26] This procedure may be summarized as follows: as a first step, the Secretariat of the League of Nations examined the petition to determine whether it was receivable. Once declared to be so, the petition was transmitted to the State concerned for comment, and then to the members of the Council and, if the conditions laid down by the Council were fulfilled, to the other Members of the League of Nations. In the Council, the examination of the substance of the petition was carried out by a committee of three or four members, according to circumstances, known as a "Minorities Committee". A committee was set up to deal with each petition. At the conclusion of its examination, the Committee could

[25] *Ibid.*, pp. 44-45. (Article 12 of the Treaty with Poland served as the basis for the corresponding articles in the other instruments.) Articles 13 and 14 of the Covenant of the League of Nations read as follows:

ARTICLE 13

1. The Members of the League agree that whenever any dispute shall arise between them which they recognize to be suitable for submission to arbitration or *judicial settlement*, and which cannot be satisfactorily settled by diplomacy, they will submit the whole subject-matter to arbitration *or judicial settlement.*

2. Disputes as to the interpretation of a treaty as to any question of international law, as to the existence of any fact which, if established, would constitute a breach of any international obligation, or as to the extent and nature of the reparation to be made for any such breach, are declared to be among those which are generally suitable for submission to arbitration *or judicial settlement.*

3. *For the consideration of any such dispute, the court to which the case is referred shall be the Permanent Court of International Justice, established in accordance with Article 14, or any tribunal agreed on by the parties to the dispute or stipulated in any convention existing between them.*

4. The Members of the League agree that they will carry out in full good faith any award *or decision* that may be rendered, and that they will not resort to war against a Member of the League which complies therewith. In the event of any failure to carry out such an award *or decision*, the Council shall propose what steps should be taken to give effect thereto.

ARTICLE 14

The Council shall formulate and submit to the Members of the League for adoption plans for the establishment of a Permanent Court of International Justice. The Court shall be competent to hear and determine any dispute of an international character which the parties thereto submit to it. The Court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly.

[26] It should be noted also that a special section entitled "Minorities Section" was established in the Secretariat of the League of Nations to serve as the administrative organ of the Minorities Committees. This section was gradually enlarged, notably by the establishment of a press information service to deal with minorities questions and the publication of a weekly bulletin containing a summary of newspaper articles from the various countries which had entered into commitments with regard to minorities and which were of direct or indirect interest from the point of view of the protection of minorities (see P. de Azcárate, *League of Nations and National Minorities: An Experiment* (Washington, Carnegie Endowment for International Peace, 1945) pp. 123-130; *Protection of Linguistic, Racial or Religious Minorities by the League of Nations*, Series of League of Nations Publications, I.B. Minorities, 1931.I.B.1 (C.8.M.5.1931.I), pp. 170-172.

either reject the petition, attempt to find a solution to the problem through itself negotiating with the Government concerned, or request that the question should be placed on the agenda of the Council. It was understood that any member of the Council had the right to bring the matter before the Council, whatever the decision by the Committee. Once submitted to the Council, the question was examined according to the Council's usual procedure.

(a) *The right of petition*

108. The right of petition was granted to minorities following the Council's adoption on 22 October 1920 of a report concerning the limits and nature of the guarantees established under the various treaties, prepared by Mr. Tittoni, Rapporteur of the Council. The relevant passages of the report read as follows:

The right of calling attention to any infraction or danger of infraction is reserved to the Members of the Council. This is, in a way, a right and a duty of the Powers represented on the Council. By this right they are, in fact, asked to take a special interest in the protection of minorities.

Evidently, this right does not in any way exclude the right of the minorities themselves, or even of States not represented on the Council, to call the attention of the League of Nations of 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.[27]

109. The same report laid down the procedure for the examination of petitions, which was a follows: all petitions were to be communicated, without comment, to the members of the Council for information. Such communication, however, did not of itself constitute a judicial act of the League or its organs. According to the report, "the competence of the Council to deal with the question arises only when one of its Members draws its attention to the infraction or danger of infraction which is the subject of the petition or report". The report added further that the State concerned, if it was a member of the League, was to be informed at the same time as the Council of the subject of the petition in accordance with the procedure generally followed whereby any document forwarded for the information of members of the Council was, in principle, forwarded to all members of the League.

110. On the initiative of Poland and Czechoslovakia, this procedure was eventually revised by a resolution adopted by the Council on 27 June 1921. In this resolution, the Council, referring to Mr. Tittoni's report, decided that:

All petitions concerning the protection of minorities under the provisions of the Treaties from petitioners other than Members of the League of Nations shall be immediately communicated to the State concerned.

The State concerned shall be bound to inform the Secretary-General, within three weeks of the date upon which its representative accredited to the Secretariat of the League of Nations received the text of the petition in question, whether it intends to make any comments on the subject.

Should the State concerned not reply within the period of three weeks, or should it state that it does not propose to make any comments, the petition in question shall be communicated to the Members of the League of Nations in accordance with the procedure laid down in M. Tittoni's report.

Should the State concerned announce that it wishes to submit comments, a period of two months, dating from the day on which its representative accredited to the Secretariat of the League receives the text of the petition, shall be granted to it for this purpose. The Secretary-General, on receipt of the comments, shall communicate the petition, together with the comments, to the Members of the League of Nations.

In exceptional and extremely urgent cases, the Secretary-General shall, before communicating the petition to the Members of the League of Nations, inform the representative accredited to the Secretariat of the League of Nations by the State concerned.

This decision shall come into immediate effect for all matters affecting Poland and Czechoslovakia.[28]

111. Under the terms of another Council resolution, adopted on 5 September 1923:

The extension of the period of two months fixed by the resolution of 27 June 1921 for observations by the Government concerned on the subject of the petitions may be authorized by the President of the Council if the State concerned so requests and if the circumstances appear to make such a course necessary and feasible.

The communication, in accordance with the resolution of 27 June 1921, to the Members of the League of petitions and of observations (should there be any) by the Government concerned shall be restricted to the Members of the Council. Communications may be made to other Members of the League or to the general public at the request of the State concerned, or by virtue of a resolution to this effect passed by the Council after the matter has been duly submitted to it.

112. The question of the receivability of a petition was also a subject of discussion. In the same resolution of 5 September 1923, the Council laid down the following conditions for petitions to be receivable:

In order that they may be submitted to the procedure established by the Council resolutions dated 22 and 25 October 1920 and 27 June 1921, petitions addressed to the League of Nations concerning the protection of minorities:

(*a*) Must have in view the protection of minorities in accordance with the Treaties;

(*b*) In particular, must not be submitted in the form of a request for the severance of political relations between the minority in question and the State of which it forms a part;

(*c*) Must not emanate from an anonymous or unauthenticated source;

(*d*) Must abstain from violent language;

(*e*) Must contain information or refer to facts which have not recently been the subject of a petition submitted to the ordinary procedure.

If the interested State raises for any reason an objection against the acceptance of a petition, the Secretary-General shall submit the question of acceptance to the President of the Council, who may invite two other members of the Council to assist him in the consideration of this question. If the State concerned so requests, this question of procedure shall be included in the agenda of the Council.

113. It will be noted that the exhaustion of internal remedies was not included among the conditions for the receivability of petitions. It will be recalled in this connexion that this particular condition is currently regarded as of fundamental importance to any system of communications or individual recourse to an international organization in the area of human rights. (The provisions of the International Convention on the Elimination of All Forms of Racial Discrimination and the European Convention for the Protection of Human Rights and Fundamental Freedoms are relevant in this context.)

[27] *Protection of Linguistic, Racial or Religious Minorities by the League of Nations*, p. 7. This document also contains the text of the resolutions mentioned in this section.

[28] This procedure was subsequently accepted by all States which had entered into commitments with regard to minorities.

114. As to the manner in which the conditions for receivability mentioned in paragraph 112 were applied in practice, the Committee responsible for examining the procedure whereby the international guarantee was applied had the following views:

As regards the origin of petitions, it should first be observed that, in order to be accepted, they need not necessarily emanate from the minority concerned. Petitions from persons or organizations which not only did not belong to the minority concerned but did not even belong to the country referred to in the petition have often been declared acceptable, provided the source was not anonymous or unauthenticated. As to the question under what circumstances the source may be regarded as anonymous or unauthenticated, in principle, any signed petition is regarded as emanating from an authenticated source. In certain cases, petitions sent by telegram have also been regarded as acceptable before being confirmed by letter.

As regards the form of petitions, the rule laid down by the Council on this point is also given a very broad interpretation. Petitions containing abusive language or terms incompatible with the dignity of the Governments concerned are alone rejected as not fulfilling this condition of acceptability. The Secretary-General takes into account the fact that petitions may come from persons belonging to populations of primitive culture, in which case obviously their wording cannot be judged according to the strictest standards.

As regards the three conditions relating to the contents of petitions, the Secretary-General has merely to carry out a cursory examination of the facts and information submitted by the petitioner. He cannot verify any of the facts or even undertake to examine the substance of the question raised in the petition. In principle, when the statement of facts in a petition is *prima facie* in accordance with the three conditions required, it is declared acceptable.

If a petition is declared unacceptable, no action is taken in regard to it. The petitioner is not informed of the decision, for the reason already indicated, that he is regarded not as an applicant but purely and simply as a source of information for the Members of the Council. For this reason, a petition is regarded as unacceptable only if it obviously does not fulfil one of the conditions laid down by the Council. ...[29]

The fact that, in the procedure as established, petitions are not regarded as actual requests but as sources of information pure and simple means that the conditions governing acceptance must be given a very broad interpretation.[30]

115. It is noteworthy that under the procedure applied until 1929, documentation relating to the examination of petitions remained confidential where a question was not placed on the Council's agenda. No communication was made to the petitioner or to the Council. The documentation became public only if the question was placed on the Council's agenda.[31] It will also be noted, as pointed out in the previous paragraph, that where a petition was declared non-receivable, the petitioner was not informed of the decision taken, whereas in cases where a petition was declared receivable, the Government concerned invariably had an opportunity to challenge the soundness of that decision. To remedy these shortcomings, the Council decided in a resolution of 13 June 1929 that the Secretary-General should inform the petitioner where a petition was declared non-receivable.

116. In this same resolution, the Council also decided to establish procedures for publicizing petitions transmitted to the League of Nations.[32] The relevant paragraph of the resolution reads as follows:

6. *Regular Annual Publications concerning the Work of the League in connexion with the Protection of Minorities*

The Secretary-General will publish annually in the *Official Journal* of the League statistics of: (1) the number of petitions received by the Secretariat during the year; (2) the number of petitions declared to be non-receivable; (3) the number of petitions declared to be receivable and referred to Committees of Three; (4) the number of Committees and the number of meetings held by them to consider these petitions; (5) the number of petitions whose examination by a Committeee of Three has been finished in the course of the year.

117. The essential features of the procedure for the examination of petitions as established in the aforementioned Council resolutions merit particular attention. In the first place, petitions were not regarded as actual requests but as sources of information pure and simple. The procedure adopted thus avoided the petitioner's being considered as a party to a judicial procedure between himself and the Government concerned. Nor did a petition have any judicial status; petitioners did not participate in the Council's proceedings, even as witnesses.[33] In this connexion, the following observations were made:

... petitions from minorities are in the nature of information pure and simple. In accordance with this principle and with the intention underlying the establishment of the procedure, care has always been taken to avoid making its application a kind of *procédure contradictoire* or judicial procedure in which the petitioner and the Government concerned appear as two parties to be heard by the League of Nations. The Council has established for minorities petitions a *sui generis* procedure adapted to the nature of the right of petition established by M. Tittoni's report. The object of this procedure is, not to enable the Council as it were to settle a lawsuit between two parties, but to ensure that reliable information as to the manner in which the signatory States to the Minorities Treaties are carrying those treaties into effect is laid before the Members of the Council.[34]

(b) *The Minorities Committees*

118. During the debates which preceded the Council's acceptance of the obligations placed upon it by the so-called Minorities Treaties, several representatives stressed that a member of the Council who accused a State of having violated the terms of a treaty guaranteeing the rights of minorities would be in a difficult position. Moreover, the introduction of the petition machinery did not alter the provisions of the Minorities Treaties, according to which only States members of the Council could take the initiative of informing the Council of an infraction or the danger of an infraction. On the basis of a proposal by one of its members, and with a view to solving that problem, the Council adopted on 25 October 1920 a resolution providing that all petitions would be considered by a three-member committee before being discussed by the Council itself.[35] This resolution reads as follows:

[29] *Protection of Linguistic, Racial or Religious Minorities by the League of Nations*, p. 176.

[30] *Ibid.*, p. 175.

[31] *Ibid.*, p. 179.

[32] See also para. 120.

[33] See Balogh, *op. cit.*, pp. 233-237.

[34] *Protection of Linguistic, Racial or Religious Minorities by the League of Nations*, p. 175.

[35] In the light of the recommendations made in the report of the Committee established in March 1929 to evaluate the procedure used until that time, the Council decided in its resolution of 13 June 1929 that the President of the Council could, in exceptional cases, invite four members of the Council instead of two to meet as a committee.

For a definition of the conditions under which the Council shall exercise the powers granted to it by the Covenant and by various Treaties for the protection of minorities, the Council approved a resolution which will be inserted in its Rules of Procedure:

"With a view to assisting Members of the Council in the exercise of their rights and duties as regards the protection of minorities, it is desirable that the President and two members appointed by him in each case should proceed to consider any petition or communication addressed to the League of Nations with regard to an infraction or danger of infraction of the clauses of the Treaties for the protection of minorities. This inquiry would be held as soon as the petition or communication in question had been brought to the notice of the Members of the Council."

119. In order to ensure that the Minorities Committees performed their functions with the requisite objectivity, the Council adopted on 10 June 1925 the following resolution, setting out the conditions for the appointment of the members of these committees:

The Council ...

Decides

I. If the Acting President of the Council is:

The representative of the State of which the persons belonging to the minority in question are subjects, or

The representative of a neighbouring State of the State to which the persons belonging to the minority in question are subject, or

The representative of a State the majority of whose population belong from the ethnical point of view to the same people as the persons belonging to the minority in question,

that the duty which falls upon the President of the Council in accordance with the terms of the resolution of 25 October 1920, shall be performed by the member of the Council who exercised the duties of President immediately before the Acting President, and who is not in the same position.

II. The President of the Council, in appointing two of his colleagues in conformity with the resolution of 25 October 1920, shall not appoint either the representative of the State to which the persons belonging to the minority in question are subject or the representative of a State neighbouring the State to which these persons are subject, or the representative of a State a majority of whose population belong from the ethnical point of view to the same people as the persons in question.[36]

120. Furthermore, on the basis of the recommendations of the Committee set up in 1929 to evaluate the application of the procedure used until that time, the Council, in its resolution of 13 June 1929, decided that in the case of petitions whose inclusion in the Council's agenda was not requested, the Committees should communicate the result of their examination to the other members of the Council. In the same resolution the Council also proposed that the Committees should consider carefully the possibility of publishing, with the consent of the Government concerned, the result of the examination of the petitions submitted to them. The Council also expressed the earnest hope "that the Governments will, whenever possible, give their consent to such publication".

121. The functioning of these Committees has been described as follows:

The meetings of the various Minorities Committees which are in existence simultaneously are generally held during sessions of the Council, though they are also held between those sessions. ...

...

The Committees meet privately, no formal Minutes being taken, and each is free to adopt its own procedure. ...

...

Generally speaking, the object of the examination of a petition by the three Members of the Council appointed for the purpose is to consider whether one or more Members of the Council should exercise their right to bring the question to the Council's notice. This right may also be exercised by any individual member of the Committee, whatever view his colleagues may take. When once the question has been brought before the Council, it is dealt with in accordance with the normal procedure, that is to say, the Council considers it on the basis of a report submitted to it by its Rapporteur for minorities questions.[37]

In most cases, the members of the Committees of Three have found that, although the circumstances do not in their opinion justify the placing of the question on the Council's agenda, they do not permit of its being dropped altogether. The members of the Committee may consider, for example, that the information at their disposal does not enable them to decide whether there has or has not been an infraction or danger of infraction of the treaty; or they may feel that they could obtain favourable consideration of the minorities' wishes by approaching the Government concerned in an informal and friendly manner. The Committee then, acting through the Minorities Section, enters into informal negotiations with that Government with a view either to obtaining further information or to securing a satisfactory settlement of the matter. The elasticity of this system enables the various Committees to adapt their methods to the special circumstances of each case. A system of genuine and friendly co-operation has thus grown up between the League, acting through the Committees of Three, and the Governments concerned, with a view to the equitable and satisfactory settlement of such cases. This explains, too, why far fewer questions are submitted to the Council by the Minorities Committees than are the subject of informal negotiations between these Committees and the Governments concerned.

The policy of the Committees of Three of settling the various questions submitted to them by direct and informal negotiations with Governments is based on a consideration which all who have had occasion to sit on those Committees will doubtless recognize as wholly justifiable, namely, that, for the purpose of settling the majority of the questions raised in petitions, informal and friendly negotiations between a Committee of Three and the Government concerned constitute a much more effective method than public discussion by the Council.[38]

122. A former Director of the Minorities Section of the League of Nations secretariat has made the following comments on the efficacity of the procedures used by these Committee:

Generally speaking, the committees found themselves faced with the following alternatives: (*a*) that of putting an immediate end to their examination, if they considered that the observations of the government satisfactorily explained all the allegations of the petition; (*b*) that of asking that the question be placed promptly on the agenda of the Council, if they felt that the explanations of the government did not remove the suspicion of an infraction or danger of infraction, but rather confirmed it; (*c*) that of entering into negotiations with the government concerned in order to obtain supplementary explanations. Sometimes the latter were genuinely desired, but more often the real object of the negotiations was to arrive at certain reforms or modifications which would make it possible for the committee to sanction a legal or factual situation which originally had been considered contrary to the provisions of the Minorities Treaty. Alternatives (*a*) and (*b*) were very rarely adopted; there were but few cases of the first, and of the second I have no recollection at all. Alternative (*c*) was the general rule. In the vast majority of cases, the committees, whether in a sincere desire to complete their information, or as a means of negotiating concessions, brought to the notice of the government concerned the points on which they considered its observations unsatisfactory, and asked for supplementary information.

[36] *Protection of Linguistic, Racial or Religious Minorities by the League of Nations*, p. 10.

[37] According to article III, paragraph 4, of the rules of procedure of the Council of the League of Nations, "At the last ordinary session of each year the Council shall draw up a list of rapporteurs for the various matters with which it is habitually called upon to deal" (League of Nations, *Official Journal*, July 1933, p. 900).

[38] *Protection of Linguistic, Racial or Religious Minorities by the League of Nations*, p. 178.

The minorities, and the governments which encouraged and supported them in their claims ... always displayed great animosity and distrust of this method of negotiation between committees and the "accused" governments. And their attitude was shared by not a few men and women of standing, representing a body of neutral opinion interested in all matters relating to national minorities. I very much doubt whether this attitude was justified, and still more do I question the opinion that it would have been preferable for these questions to be examined and resolved by the Council rather than negotiated by the committees. My own feeling ... is that it would have been not only *not* beneficial, but actually prejudicial, to the cause of the minorities or of international collaboration to have submitted to the Council all those minority questions which were examined and resolved by the committees. Those who are of a different opinion have not perhaps reflected on a point which may or may not seem right, and which we may praise or condemn, but which the League of Nations had to accept as a general postulate in many spheres of activity (and in particular that of minority protection). This is that in view of the limited importance, in general, of each of the questions examined, one could not count on the application of the coercive methods at the disposal of the League in order to force the "guilty" State to adopt the necessary measures for the fulfilment of the Minorities Treaties (particularly since such measures concerning minority questions were *specifically internal* ones); in consequence the only weapons at the disposal of the League were those of moral pressure and wise negotiation, and the only possible outcome a formula accepted by the government concerned. Upon reference to the Council, therefore, of any given case, the Council, like the committees, had no choice but to open negotiations with the government; negotiations which were carried out by the Rapporteur, accompanied in certain cases by two other members of the Council, who formed a new committee (this time a committee of the Council, properly speaking). This new committee did exactly the same as the committee of minorities, that is to say, it sought a formula which, in agreement with the government concerned, should as far as possible respect the terms of the treaty.[39]

6. *The role of the Permanent Court of International Justice in the system*

123. The introduction of jurisdictional supervision has been considered one of the important innovations in the system for the protection of minorities established after the First World War. As already noted, the instruments on the protection of minorities provided for the intervention of the Permanent Court of International Justice in cases where differences of opinion arose between the Government concerned and any of the Allied or Associated Powers or any other Power which was a Member of the Council of the League of Nations relating to the interpretation and application of the provisions concerning minorities. The States which had assumed obligations with regard to minorities were obliged to refer the dispute to the Court if the other parties requested it. Furthermore, the decision of the Court was final.[40] Disputes would thus be submitted to a judicial institution independent of the parties concerned, whereas previously such questions had usually been settled by the party which had the most political power. It will be recalled that in a resolution adopted on 21 September 1922, the Assembly of the League of Nations had recommended that:

In cases of difference of opinion as to questions of law or fact arising out of the provisions of the Minorities Treaties, between the Government concerned and one of the States Members of the Council of the League of Nations, ... the Members of the Council appeal without unnecessary delay to the Permanent Court of International Justice for a decision in accordance with the Minorities Treaties, it being understood that the other methods of conciliation provided for by the Covenant may always be employed.[41]

124. In addition to jurisdictional supervision, the Permanent Court was empowered to perform an advisory function with regard to minorities questions. It will be recalled that the general basis for the advisory competence of the Court was contained in Article 14 of the Covenant of the League of Nations,[42] and that moreover the Council, having the power to take any appropriate measure on the basis of the instruments concerning minorities, could in a given case consider it an appropriate step to request an advisory opinion of the Court.

125. In a number of advisory opinions given at the request of the Council, the Court defined principles relating to various aspects of the problem of protection of minorities,[43] including the definition of the term "minorities" and the nature of the rights accorded to minorities.

126. A writer has made the following comments on the scope of these advisory opinions:

We shall simply confine ourselves to observing that although the opinion is in theory only advisory, that is to say the expression of a view having no binding force and lacking the authority of *res judicata*, it is nevertheless equally true that, in practice, the opinions of the Court have acquired the same authority as judicial decisions. This is fully proved by all the practice of the Council to date. And the Court itself has, from the outset, regarded its task in the advisory field not as that of a simple legal adviser to the Council, but as part of its *judicial* functions. That is the reason why it has sought to ensure that the advisory procedure resembles the contentious procedure as closely as possible. The Committee instructed by the Court to consider the "constitutionality" of the participation of judges *ad hoc* in the preparation of advisory opinions stated in its report that "The Court, in the exercise of this power, deliberately and advisedly assimilated its advisory procedure to its contentious procedure; and the results have abundantly justified its action. Such prestige as the Court to-day enjoys as a judicial tribune is largely due to the amount of its advisory business and the judicial way in which it has dealt with such business."

But although an advisory opinion does in fact have considerable weight, and the Council has no alternative but to abide by it, it would be an error to believe that a request for such an opinion is tantamount to the Council abandoning the case completely to another body. In such circumstances everything will depend on the way in which the request is worded, since the Council is bound only by the limits of the question it has put. But even in cases where the opinion requested covers not one aspect of the problem, but the problem as a whole—and this will generally be the case in minority questions—the Council, after having endorsed the Court's conclusions, will always retain a measure of freedom with regard to their application. As a body which is first and foremost political in nature, it will not consider itself bound by strictly juridical criteria and considerations. Of course, this freedom will be relative and the

[39] Azcárate, *op. cit.*, pp. 117, 118.

[40] See para. 104.

[41] *Protection of Linguistic, Racial or Religious Minorities by the League of Nations*, p. 173.

[42] The text of this article is reproduced in para. 104, note 25, above.

[43] Advisory opinion of 10 September 1923 on German settlers in Poland (*P.C.I.J.*, Series B, No. 6); advisory opinion of 15 September 1923 on the acquisition of Polish nationality (*P.C.I.J.*, Series B, No. 7); advisory opinion of 21 February 1925 on the exchange of Greek and Turkish populations (*P.C.I.J.*, Series B, No. 10); advisory opinion of 28 August 1928 on the interpretation of the Greco-Turkish agreement of 1 December 1926 (*P.C.I.J.*, Series B, No. 16); advisory opinion of 31 July 1930 on the Greco-Bulgarian community (*P.C.I.J.*, Series B, No. 17); advisory opinion of 15 May 1931 on access to German minority schools in Upper Silesia (*P.C.I.J.*, Series A-B, No. 40); advisory opinion of 6 April 1935 on minority schools in Albania (*P.C.I.J.*, Series A-B, No. 64).

Council never go so far as to depart on essential points from the juridical position adopted by the Court.[44]

127. It therefore seems justified to state that the role entrusted to the Permanent Court of International Justice in the system of protection of minorities constituted a very important aspect of the supervision machinery. The essentially political competence of the Council was supplemented and strengthened by the jurisdictional and advisory competence of the Court. If a parallel with the current machinery for the protection of human rights is sought, it may be recalled that the Convention on the Elimination of All Forms of Racial Discrimination, as well as the provisions of the Constitution of the International Labour Organisation (ILO) concerning the conventions prepared by that organization, assign mandatory jurisdictional competence to the International Court of Justice, as well as providing for the possibility of submitting appeals or communications to *ad hoc* organs.

7. *Critical evaluation of the system*

128. The régime for the international protection of minorities established after the First World War undoubtedly represents an advance over the situation which had existed previously, not only as regards the content of the obligations imposed on a number of States with respect to the treatment of their respective minorities, but also, and most important, because of the introduction of the guarantee of the League of Nations. In fact, the former system, based on a very limited number of treaty commitments, contained no provisions relating to the implementation of the obligations imposed therein. Clearly, the establishment of the League of Nations represented the essential condition for the development of international supervision machinery.

129. The system established in 1919 reflects a measure of continuity with respect to the previous treaty provisions, and also new aspects linked to the existence of the League of Nations. This fact was very effectively highlighted in a communication addressed by the President of the Peace Conference to the President of the Council of the Polish Republic, referring to the treaty submitted for signature by Poland:

> 1. In the first place, I would point out that this Treaty does not constitute any fresh departure. It has for long been the established procedure of the public law of Europe that when a State is created, or even when large accessions of territory are made to an established State, the joint and formal recognition by the Great Powers should be accompanied by the requirement that such State should, in the form of a binding international convention, undertake to comply with certain principles of government. This principle, for which there are numerous other precedents, received the most explicit sanction when, at the last great assembly of European Powers—the Congress of Berlin—the sovereignty and independence of Serbia, Montenegro, and Roumania were recognized. ...
>
> 2. The Principal Allied and Associated Powers are of opinion that they would be false to the responsibility which rests upon them if on this occasion they departed from what has become an established tradition. ...
>
> 3. It is indeed true that the new Treaty differs in form from earlier Conventions dealing with similar matters. The change of form is a necessary consequence and an essential part of the new system of international relations which is now being built up by the establishment of the League of Nations. Under the older system the guarantee for the execution of similar provisions was vested in the Great Powers. Experience has shown that this was in practice ineffective, and it was also open to the criticism that it might give to the Great Powers, either individually or in combination, a right to interfere in the internal constitution of the States affected which could be used for political purposes. Under the new system the guarantee is entrusted to the League of Nations. The clauses dealing with this guarantee have been carefully drafted so as to make it clear that Poland will not be in any way under the tutelage of those Powers which are signatories to the Treaty.
>
> I should desire, moreover, to point out to you that provision has been inserted in the Treaty by which disputes arising out of its provisions may be brought before the Court of the League of Nations.[45] In this way differences which might arise will be removed from the political sphere and placed in the hands of a judicial Court, and it is hoped that thereby an impartial decision will be facilitated, while at the same time any danger of political interference by the Powers in the internal affairs of Poland will be avoided. ...[46]

130. It should be stressed once again that the régime established in 1919 nevertheless has a limited sphere of application; in that regard it resembled the system created by the previous treaties. The following comments have been made in this connexion:

> ... it was no part of the purpose of the authors of the Treaties to set out principles of government which should be of universal obligation. They never considered or professed to considered or professed to consider the general principles of religious toleration as applicable to all States of the world, nor did they lay down any general principles of universal application for the government of alien peoples who might be included within the territory or the colonial dominions of all States. Anything of the kind would have been quite outside the scope and powers of the Peace Conference; if anything of this kind had been done, it could only have been in connexion with the drafting of the Covenant of the League of Nations, and as we have seen, it was there deliberately rejected.[47] What the Conference had to deal with was a number of problems which were purely local, which arose only in certain specified districts of Europe, but which at the same time, in view of the political conditions of the moment, were serious, urgent and could not be neglected.[48]

131. The territorial limits envisaged for the application of the system were, of course, directly linked to the reason for that system's existence, which was political and not humanitarian. A writer has stressed this point in the following terms:

> That the organ chosen for the supervision of these agreements was universal in nature does not in any way change the fact that the problems themselves were limited to the particular area of their historical persistence. It is for these problems alone that the League system was devised, as a new step in the progressive handling of the problem.
>
> That the system was neither conceived nor intended for application on a universal or more general basis was clearly indicated at the Peace Conference, where a universal approach was specifically rejected in the drafting of the Covenant of the League of Nations.

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[44] Nathan Feinberg, *La juridiction de la Cour Permanente de Justice dans le système de la protection internationale des minorités* (Paris, Rousseau, 1931), pp. 185-187.

[45] See paras. 123-127.

[46] *Protection of Linguistic, Racial or Religious Minorities by the League of Nations*, pp. 158-159.

[47] It should, however, be noted that in a resolution adopted on 21 September 1922, the Assembly of the League of Nations expressed "the hope that the States which are not bound by any legal obligations to the League with respect to minorities will nevertheless observe in the treatment of their own racial, religious or linguistic minorities at least as high a standard of justice and toleration as is required by any of the treaties and by the regular action of the Council". (*Protection of Linguistic, Racial or Religious Minorities by the League of Nations*, p. 173.)

[48] *Protection of Linguistic, Racial or Religious Minorities by the League of Nations*, p. 161.

The drafting of the Covenant offers concrete evidence that it was not humanitarian principle, but political necessity in certain regions, that was the basis and origin of the League minority protection system.[49]

132. The system's lack of generality has been considered one of its most serious defects. According to this point of view, so long as the obligation to protect minorities is not general, the States which have assumed it will find it unacceptable that this additional obligation should be imposed upon them. For such States, the principle of protection of minorities can be effective only if it is a universal rule. If it is limited to a number of States it is regarded as a degradation and limitation of sovereignty. For those who hold this view, the attitude of the States which had subscribed to the various instruments concerning the protection of minorities was one of the factors which led to the failure of the system.[50] On this point, a writer has observed:

> The confinement of the application of the system to the small states of Eastern and Central Europe was one of the most striking of its defects. The failure of the Peace Conference to impose general minority provisions upon Germany, and to insist that Belgium, Denmark, France and Italy undertake similar obligations at least in respect of the populations of their newly acquired territories, demonstrated conclusively that the international protection of national minorities was not accepted as a fundamental principle of international law, applicable to great as well as to small powers, and to Western as well as to Eastern and Central European countries. It was treated as a mere expedient, to be adopted with discriminatory effect, not as an expression of a universally valid, normative approach to problems of human relations.
>
> It is true that the generalization of minority obligations was not politically feasible, either in 1919 or subsequently; the alternative to a system of limited scope was not a universal system, but rather no system at all. It is also true that external supervision of the treatment of minorities was not everywhere equally necessary, and that no standard set of provisions would have been universally appropriate. It may even be that generalization would have compromised the effectiveness of the League system by making all states reluctant to support the vigorous application of its provisions, for fear of setting precedents which might be used to their own embarrassment.
>
> Nevertheless, the fact remains that the restriction of the League system stimulated the acute resentment of those states which were within its compass, left many minority groups unprotected, diminished its moral authority, and gave it the appearance of tentativeness and the prospect of instability.[51]

133. These considerations may help us to understand why the protection régime set up after the First World War did not have the expected results. As Mr. Azcárate has observed,

> All who consider the matter dispassionately must recognize that the guarantee of minority rights established by the League of Nations on the basis of the Minorities Treaties did not give satisfaction to the governments of the "minority" countries, to the minorities themselves or—and this was the most serious factor of all—to that world public opinion which was interested in minority questions.[52]

134. Without any doubt, the failure of the system was due to complex and varied causes; it should not be forgotten, however, that its effectiveness was closely linked to the general international situation. In this connexion, a writer has observed:

> It is unjust to view the failure of the minority system of the League of Nations independently of the general international conditions of its time. The minorities protection system was but a part of the world structure established at Paris, adopted to meet particular conditions arising from the territorial settlements there. Inevitably the minorities system depended on the general state of international order and relations, and inevitably when that order disintegrated the system collapsed with it, like one floor of a toppling building. To judge it separately is like trying to estimate the performance of a given cylinder when the whole engine blows up. The between-war world was witness to an appalling phenomenon of retrogression, a backsliding of morals and politics. Dictatorships replaced democracies, hate and intolerance flourished, power overrode reason, and passionate nationalism crushed the growing bloom of international cooperation. That minorities should suffer in such a climate was inevitable; in fact, it was quite natural that they should be the first to suffer therefrom. As respect for international obligations declined and the authority of the League of Nations wilted to oblivion, the ability of the organization to carry out effectively its minorities responsibilities declined accordingly, and the ultimate failure of the system accompanied the failure of the League.[53]

B. The question of protection since the Second World War

1. *The Charter of the United Nations*

135. During the Second World War, the question whether the new international organization which was to replace the League of Nations should continue the task assumed by the latter with regard to racial, religious and linguistic minorities was debated both in official circles and in private organizations and associations. According to an important school of thought, the system established under the guarantee of the League of Nations had too many gaps to be resurrected without a radical change in its structure.[54] At the end of the war, it seemed obvious in any event that the political basis for this system no longer existed. Whereas the birth and functioning of the League of Nations had been strictly bound up with European balances and with the solution of the territorial problems arising from the Peace Treaties of 1919-1920, the United Nations was established before any peace treaty and was in no way involved in the settlement of European territorial questions. Consequently, the future approach to the problem of minorities could not fail to be entirely different. The universal character of the principles of the Charter of the United Nations was bound to be reflected in the approach to any question relating to the protection of human rights.

136. The Charter of the United Nations, like the Covenant of the League of Nations, contains no specific provision relating to the question of protection of minorities. Unlike the Covenant, however, the Charter of the United Nations solemnly proclaims, in a series of provisions, the principles of universal respect for human rights and fundamental freedoms, equality and non-

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[49] T. H. Bagley, *General Principles and Problems in the Protection of Minorities* (Geneva, Imprimeries populaires, 1950), p. 68.

[50] See Balogh, *op. cit.*, p. 251; Tore Modeen, *The International Protection of National Minorities in Europe* (Abo, Finland, Abo Akademi, 1969), p. 63.

[51] Inis L. Claude, Jr., *National Minorities: An International Problem* (Cambridge, Mass., Harvard University Press, 1955), pp. 35-36.

[52] Azcárate, *op. cit.*, p. 130.

[53] Bagley, *op. cit.*, p. 126.

[54] See P. de Azcárate, *Protection of National Minorities*, Occasional Paper No. 5 (New York, Carnegie Endowment for International Peace, 1967), pp. 71-72, 75-77; see also Inis L. Claude, Jr., *National Minorities: An International Problem* (Cambridge, Mass., Harvard University Press, 1955), pp. 51-78.

discrimination. Thus, in the preamble, the Charter states "We the peoples of the United Nations determined ... to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, ... have resolved to combine our efforts to accomplish these aims ...". Article 1, paragraph 3, provides that one of the purposes of the new Organization is "To achieve international co-operation ... in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction to race, sex, language, or religion". According to Article 13 the General Assembly, in the exercise of its functions, may initiate studies and make recommendations for the purpose of assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion. According to Article 55, the United Nations is to promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion. Article 56 provides that all Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55. According to Article 62, the Economic and Social Council may make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all. Lastly, Article 76 provides that one of the basic objectives of the trusteeship system is to encourage respect for human rights and for fundamental freedoms for all.

137. The provisions just mentioned show clearly that one of the traditional aspects of any international system for the protection of minorities—that is, the principle of non-discrimination—was included among the basic principles of the Charter of the United Nations. There is, however, a very important change in approach in comparison with the past; since 1945, this principle has been included in the context of the protection of the human rights and fundamental freedoms of all human beings, and not the context of measures designed especially to protect minorities. It should be added that, in the view of one of the Governments which participated in the drawing up of the Charter of the United Nations, the fact that the principle of the protection of human rights and fundamental freedoms for all was included in the Charter might have made it unnecessary to adopt rules designed especially for minorities.

2. *The Universal Declaration of Human Rights*

138. Like the Charter, the Universal Declaration of Human Rights adopted by the General Assembly on 10 December 1948 does not contain any reference to the rights of persons belonging to ethnic, linguistic or religious minorities. The question of including in the Declaration an article relating to the rights of "national minorities" was nevertheless discussed, both in the Third Committee of the Assembly and in plenary session. In the opinion of some representatives, the omission of such a reference would considerably reduce the scope of the Declaration. Others took the view that, considering its complexity, the question warranted further study. The Assembly finally rejected a proposal by the representative of the Soviet Union that the following paragraph, relating to minorities, should be included in the Declaration:

> Every people and every nationality within a State shall enjoy equal rights. State laws shall not permit any discrimination whatsoever in this regard. National minorities shall be guaranteed the right to use their native language and to possess their own national schools, libraries, museums and other cultural and educational institutions.[55]

139. In its resolution 217 C (III) of 10 December 1948, entitled "Fate of Minorities", the General Assembly stated that the United Nations could not remain indifferent to the fate of minorities, but added that it was difficult to adopt a uniform solution of this complex and delicate question, which has special aspects in each State in which it arises. It seems that this difficulty was one of the principal reasons for the decision not to mention the problem of minorities in the Universal Declaration of Human Rights.

3. *Juridical extinction of the minorities protection régime established in 1919-1920*

140. A study prepared by the Secretary-General in 1950, at the request of the Economic and Social Council, set forth the reasons why the engagements regarding minorities assumed after the First World War should be considered to have ceased to exist. The following comments were made in that study:

> ... If the problem is regarded as a whole, there can be no doubt that the whole minorities protection régime was in 1919 an integral part of the system established to regulate the outcome of the First World War and create an international organization, the League of Nations. One principle of that system was that certain States and certain States only (chiefly States that had been newly reconstituted or considerably enlarged) should be subject to obligations and international control in the matter of minorities.
>
> But this whole system was overthrown by the Second World War. All the international decisions reached since 1944 have been inspired by a different philosophy. The idea of a general and universal protection of human rights and fundamental freedoms is emerging. It is therefore no longer only the minorities in certain countries which receive protection, but all human beings in all countries who receive a certain measure of international protection. Within this system special provisions in favour of certain minorities are still conceivable, but the point of view from which the problem is approached is essentially different from that of 1919. This new conception is clearly apparent in the San Francisco Charter, the Potsdam decisions, and the treaties of peace already concluded or in course of preparation. From the strictly legal point of view, the result seems clear in the cases in which the formal liquidation of the war has been completed by the conclusion of peace treaties; the provisions of the treaties and the opinions expressed by the authors of the treaties imply that the former minorities protection régime has ceased to exist so far as concerns the ex-enemy countries with which those treaties have been concluded. It would be difficult to maintain that the authors of the peace treaties would have adopted that attitude if they had supposed that the engagements assumed in 1919 respecting the treatment of minorities would remain in force for the States which do not fall within the category of ex-enemy States.
>
> Reviewing the situation as a whole, therefore, one is led to conclude that between 1939 and 1947 circumstances as a whole changed to such an extent that, generally speaking, the system should be considered as having ceased to exist.[56]

4. *Activities of United Nations organs*

141. In the light of the foregoing, it is clear that since the adoption of the Charter of the United Nations, the protection of minorities should no longer be considered as a

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[55] *Official Records of the General Assembly, Third Session, Part I, Annexes*, agenda item 58, document A/784.

[56] "Study of the legal validity of the undertakings concerning minorities" (E/CN.4/367 and Add.1), chap. XIV.

political problem concerning certain areas of the world, but a question concerning all States whose solution must be sought in the wider context of the problem of respect for human rights and fundamental freedoms, without excluding the possible conclusion of bilateral or multilateral agreements. It should also be noted that in the United Nations General Assembly the discussions concerning the general question of the protection of minorities have always been held in the Social, Humanitarian and Cultural Committee, and not the Political Committee, as was the case in the Assembly of the League of Nations.

142. Some years after the adoption of resolution 217 C (III), referred to in paragraph 139 above, the General Assembly made a new general reference to the problem of minorities in its resolution 532 B (VI) of 4 February 1952, by stating that the prevention of discrimination and the protection of minorities were two of the most important branches of the work undertaken by the United Nations.

143. For its part, the Economic and Social Council, in its resolution 502 F (XVI) of 3 August 1953, recommended that in the preparation of any international treaties, decisions of international organs or other acts which establish new States or new boundary lines between States, special attention should be paid to the protection of any minority which might be created thereby. This recommendation seems to reflect a tendency to deal with the problem of minorities in relation to specific territorial situations. In this sense it seems in a way to return to the approach adopted after the First World War.

144. The decisions of principal organs of the United Nations which have dealt with special protective measures for ethnic, religious or linguistic groups include three General Assembly resolutions: resolution 181 (II), on the future government of Palestine; resolution 289 (IV), on the question of the disposal of the former Italian colonies; and resolution 390 (V), on the question of Eritrea. The Statute of the City of Jerusalem, approved by the Trusteeship Council on 4 April 1950, also provides for special protective measures for ethnic, religious or linguistic groups in articles dealing with human rights and fundamental freedoms (article 9), the Legislative Council (article 21), the judicial system (article 28), official and working languages (article 31), the educational system and cultural and benevolent institutions (article 32) and broadcasting and television (article 33).[57]

145. A special organ, the Commission on Human Rights, was established to develop and implement the provisions of the Charter relating to human rights and fundamental freedoms. This Commission was the only functional commission of the Economic and Social Council specifically provided for in the Charter of the United Nations itself. Article 68 of the Charter states that the Council shall set up commissions in economic and social fields and for the promotion of human rights, and such other commissions as may be required for the performance of its functions. The Commission's tasks include the protection of minorities.[58] The Commission itself was authorized by Economic and Social Council resolution 9 (II) to establish sub-commissions on the protection of minorities and on the prevention of discrimination.[59] Since their establishment, the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities have been concerned with the protection of minorities, on the basis of the new approach adopted in the Charter of the United Nations.

146. It should, however, be noted that it was only in the period 1947-1954 and again after 1971, following the adoption of the decision to undertake this study, that the problem of minorities was included among the subjects dealt with in depth by the Sub-Commission. From 1955 to 1971, the Sub-Commission concentrated its activities almost entirely on questions of discrimination. Its efforts between 1947 and 1954 to define the notion of minority and to specify what measures the General Assembly should recommend to Member States for the protection of minorities yielded no tangible result, for the Commission on Human Rights confined itself to taking note of the work of the Sub-Commission and inviting it to pursue its efforts. The only positive result of the work accomplished between 1947 and 1954 was therefore the preparation of the draft text of article 27 of the Covenant.

147. Several documents dealing with the protection of minorities have been prepared by the Secretary-General at

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[57] Extracts from these resolutions appear in the document entitled *Protection of Minorities* (United Nations publication, Sales No. 67.XIV.4), pp. 40-46.

[58] The terms of reference of the Commission, approved by the Economic and Social Council in resolution 5 (I) of 16 February 1946, as amended by Council resolution 9 (II) of 21 June 1946, are as follows:

> "The work of the Commission shall be directed towards submitting proposals, recommendations and reports to the Council regarding:
>
> (*a*) an international bill of rights;
>
> (*b*) international declarations or conventions on civil liberties, the status of women, freedom of information and similar matters;
>
> (*c*) the protection of minorities;
>
> (*d*) the prevention of discrimination on grounds of race, sex, language or religion;
>
> (*e*) any other matter concerning human rights not covered by items (*a*), (*b*), (*c*) and (*d*).
>
> "The Commission shall make studies and recommendations and provide information and other services at the request of the Economic and Social Council.
>
> "The Commission may propose to the Council any changes in its terms of reference.
>
> "The Commission may make recommendations to the Council concerning any sub-commission which it considers should be established."

[59] The Commission, at its first session, held from 27 January to 10 February 1947, decided to establish one Sub-Commission on Prevention of Discrimination and Protection of Minorities instead of creating separate sub-commissions, as empowered to do by the Council. The Sub-Commission's initial terms of reference were clarified and extended in scope at the fifth session of the Commission on Human Rights, in 1949 (see *Official Records of the Economic and Social Council, Ninth Session, Supplement No. 10*, para. 13). They are as follows:

> "(*a*) To undertake studies, particularly in the light of the Universal Declaration of Human Rights, and to make recommendations to the Commission of Human Rights concerning the prevention of discrimination of any kind relating to human rights and fundamental freedoms and the protection of racial, national, religious and linguistic minorities; and
>
> "(*b*) To perform any other functions which may be entrusted to it by the Economic and Social Council or the Commission on Human Rights."

the request of the Commission or of the Sub-Commission.[60]

148. With regard to the activities of the Secretary-General in the field of the protection of minorities, it should also be recalled that, at the invitation of the Yugoslav Government, he organized, within the framework of the programme of advisory services in the field of human rights established by General Assembly resolution 926 (X), two seminars at the world level on the question of the rights of minorities.[61]

5. General international conventions concluded under the auspices of the United Nations and the specialized agencies

149. Besides the International Covenant on Civil and Political Rights, the principles set forth in article 27 of which form the basis for this study, a number of general international conventions adopted under the auspices of the United Nations or the specialized agencies provide special protective measures for ethnic, religious and linguistic groups.

150. Under the Convention on the Prevention and Punishment of the Crime of Genocide, adopted on 9 December 1948,[62] genocide means any act committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such. The Convention defines as genocide: killing members of the group, causing serious bodily or mental harm to members of the group, deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part, imposing measures intended to prevent births within the group, and forcibly transferring children of the group to another group.

151. Under the terms of the ILO Convention No. 107 of 1957 concerning indigenous and tribal populations,[63] special measures must be adopted for the protection of the institutions, persons, property and labour of the "populations concerned" so long as their social, economic and cultural conditions prevent them from enjoying the benefits of the general laws of the country to which they belong. However, such special measures of protection must not be used as a means of creating or prolonging a state of segregation and must not prejudice in any way the enjoyment, without discrimination, of the general rights of citizenship. The Convention further stipulates that, in applying the provisions of the Convention relating to the integration of the populations concerned, due account shall be taken of the cultural and religious values and of the forms of social control existing among these populations. In defining the rights and duties of the "populations concerned", regard shall be had to their customary laws. The rights of indigenous populations which Governments are called upon to protect include, in particular, the right of the said populations to retain their own customs and institutions where these are not incompatible with the national legal system or the objectives of integration programmes; the right to have the benefit of education programmes adapted, as regards methods and techniques, to the stage these populations have reached in the process of social, economic and cultural integration into the national community, the right to be taught in their mother tongue or, where this is not practicable, in the language most commonly used by the group to which they belong.

152. Under the UNESCO Convention against Discrimination in Education, adopted on 14 December 1960,[64] the States parties to the Convention agree that it is essential to

[60] These documents are listed below:

Symbol	*Title*
E/CN.4/367	Study of the legal validity of the undertakings concerning minorities
E/CN.4/Sub.2/6	The international protection of minorities under the League of Nations
E/CN.4/Sub.2/8	Definition of the expressions "prevention of discrimination" and "protection of minorities"
E/CN.4/Sub.2/80	Contribution of the Convention on the Prevention and Punishment of the Crime of Genocide to the prevention of discrimination and the protection of minorities
E/CN.4/Sub.2/81, 83, 84, 86	Activities of organs of the United Nations in the field of prevention of discrimination and protection of minorities
E/CN.4/Sub.2/85	*Definition and Classification of Minorities* (United Nations publication, Sales No. 50.XIV.3)
E/CN.4/Sub.2/133	Treaties and international instruments concerning the protection of minorities 1919-1951
E/CN.4/Sub.2/194	Activities of the United Nations relating to the protection of minorities
E/CN.4/Sub.2/L.45	Provisions for the protection of minorities
E/CN.4/Sub.2/214/Rev.1 – E/CN.4/Sub.2/221/Rev.1	*Protection of Minorities* (United Nations publication, Sales No. 67.XIV.4). This booklet contains the following two documents: (*a*) Compilation of the texts of those international instruments and similar measures of an international character which are of contemporary interest and which provide special protective measures for ethnic, religious or linguistic groups (E/CN.4/Sub.2/214; (*b*) Special protective measures of an international character for ethnic, religious or linguistic groups (E/CN.4/Sub.2/221)

[61] For the reports of the seminars see: *Seminar on the Multinational Society*, Ljubljana, Yugoslavia, 8-21 June 1965 (ST/TAO/HR/23); *Seminar on the Promotion and Protection of the Human Rights of National, Ethnic and Other Minorities*, Ohrid, Yugoslavia, 25 June-8 July 1974 (ST/TAO/HR/49).

[62] This Convention entered into force on 12 January 1951. For the text, see *Human Rights: A Compilation of International Instruments* (United Nations publication, Sales No. E.78.XIV.2). For information concerning ratifications as at 31 December 1977, see *Multilateral Treaties in respect of which the Secretary-General Performs Depositary Functions: List of Signatures, Ratifications, Accessions, etc. as at 31 December 1977* (United Nations publication, Sales No. E.78.V.6).

[63] This Convention entered into force on 2 June 1959. For the text, see United Nations, *Treaty Series*, vol. 328, p. 249.

[64] This Convention entered into force on 22 May 1962. For the text, see *Human Rights: A Compilation of International Instruments* (United Nations publication, Sales No. E.78.XIV.2).

recognize the right of members of "national minorities" to carry on their own educational activities, including the maintenance of schools and, depending on the educational policy of each State, the use or the teaching of their own language, provided however that this right is not exercised in a manner which prevents the members of these minorities from understanding the culture and language of the community as a whole and from participating in its activities, or which prejudice national sovereignty. Furthermore, the standard of education must not be lower than the general standard laid down or approved by the competent authorities.

153. The principle of non-discrimination—the role of which in the protection of minorities has been repeatedly stressed in this study—is reaffirmed, strengthened and developed, in relation to problems posed by differences of race, colour, and national or ethnic origin, in the Convention on the Elimination of All Forms of Racial Discrimination, adopted by the United Nations General Assembly in 1965. Under article 5 of this Convention, the States parties undertake to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equal treatment in the enjoyment of civil, political, economic, social and cultural rights. Another interesting feature of the Convention is the reference, in article 2, paragraph 2, to the "special and concrete measures" which

> States Parties shall, when circumstances so warrant, take, in the social, economic, cultural and other fields ... to ensure 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. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

6. *Activities of the Council of Europe*

154. The European Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950, contains a clause on non-discrimination which refers expressly to "association with a national minority". By virtue of article 14 of this Convention, the enjoyment of the rights and freedoms set forth in the Convention "shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status". It will also be noted that the Committee of Governmental Experts of the Council of Europe, after considering the question of the adoption of an additional protocol to the Convention in which the rights of minorities would be more clearly defined, concluded, in a report which was approved by the Committee of Ministers, that such a protocol was unnecessary.[65]

7. *Other international instruments adopted since the Second World War*[66]

155. The Treaties of Peace with Bulgaria, Finland, Hungary, Italy and Romania of 10 February 1947 contain general provisions under which those countries are obliged to take all measures necessary to secure to persons under their respective jurisdictions, without distinction as to race, sex, language or religion, the enjoyment of human rights and of fundamental freedoms. The Treaties of Peace with Hungary and Romania contain in addition provisions prohibiting those States from discriminating between their nationals, particularly in reference to their property, business, professional or financial interests, status, or political or civil rights. It should also be noted that in the Treaty of Peace with Italy, the obligation to guarantee enjoyment of human rights was imposed even on States to which Italian territories were ceded. The preamble to the Peace Treaty with Japan of 8 September 1951 contains a general provision relating to the realization of the objectives of the Universal Declaration of Human Rights in Japan.

156. According to the agreement between the Austrian and Italian Governments signed in Paris on 5 September 1946 (annex IV to the Treaty of Peace with Italy, signed on 10 February 1947), "German-speaking inhabitants" of the Bolzano Province and of neighbouring bilingual townships are granted a number of rights, in particular the right to elementary and secondary teaching in their mother tongue, parification of the German and Italian languages in public offices and official documents, as well as in topographic naming, the right to re-establish German family names which were Italianized in the preceding years and equality of rights as regards the entering upon public office, with a view to reaching a more appropriate proportion of employment between the two ethnical groups. In addition, a special autonomy, comprising legislative and administrative powers, was provided for the Province of Bolzano, where German-speaking citizens constitute the majority of the population.

157. Under the Agreement between Pakistan and India, signed at New Delhi on 8 April 1950, the Governments of India and Pakistan solemnly agreed that each should ensure to the "minorities" throughout its territory, complete equality of citizenship, irrespective of religion, a full sense of security in respect of life, culture, property and personal honour, freedom of movement within each country and freedom of occupation, speech and worship, subject to law and morality. Members of the minorities were to have equal opportunity with members of the majority community to participate in the public life of their country, to hold political or other office, and to serve in their country's civil and armed forces. Both Governments declared these rights to be fundamental and undertook to enforce them effectively. The two Governments emphasized that minorities owe allegiance and loyalty to the State whose citizenship they possess and that to obtain compensation they must apply to the Government of that State. It was planned to set up minority commissions with a view to the effective implementation of the agreement.

158. The Special Statute contained in the Memorandum of Understanding between the Governments of Italy, the United Kingdom, the United States and Yugoslavia regarding the Free Territory of Trieste, initialled in London on 5 October 1954, laid down that the ethnic character and the unhampered cultural development of the "Yugoslav ethnic group" in the Italian-administered area and of the "Italian ethnic group" in the Yugoslav-administered area were to be safeguarded. It stipulated, in particular, that the

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[65] Information furnished by the Secretariat of the Council of Europe on 20 February 1973 and 3 December 1976.

[66] Excerpts from these instruments appear in *Protection of Minorities* (United Nations publication, Sales No. 67.XIV.3).

two groups were to enjoy the right to their own press in their mother tongue, that the educational, cultural, social and sports organizations of both groups were to function freely and that primary, secondary and professional school teaching in the mother tongue should be accorded to both groups. The Memorandum of Understanding also provided for the establishment of a special Mixed Yugoslav-Italian Committee to assist and advise on problems relating to the protection of the "Yugoslav ethnic group" in the area under Italian administration and of the "Italian ethnic group" in the area under Yugoslav administration. By virtue of the Treaty of Osimo between Italy and Yugoslavia, signed in 1976, the London Memorandum of 1954 ceased to have effect, but article 8 of the Treaty guarantees the ethnic groups referred to in the Memorandum an equivalent level of protection, including the maintenance of the favourable measures already adopted.

159. The Austrian State Treaty for the Re-establishment of an Independent and Democratic Austria, signed at Vienna on 15 May 1955, grants Austrian nationals of the "Slovene and Croat minorities" in Carinthia, Burgenland and Styria the same rights on equal terms as all other Austrian nationals, including the right to their own organizations, meetings and press in their own language, and the right to elementary instruction in the Slovene or Croat language and to a proportional number of their own secondary schools. The Treaty also provided that the activity of organizations whose aim was to deprive the Croat or Slovene population of their "minority character or rights" would be prohibited.

160. Under the Agreement reached between the United Kingdom Government and a delegation from Singapore at the Singapore Constitutional Conference, held in London in March-April 1957, special arrangements were agreed upon with a view to protecting Malay and "minority" interests in Singapore. A provision was to be included in the preamble to the Constitution of Singapore to the effect that it was the responsibility of the Government constantly to care for the interests of racial and religious minorities in Singapore, and that:

> In particular, it shall be the deliberate and conscious policy of the Government of Singapore at all times to recognize the special position of the Malays, who are the indigenous people of the Island and are in most need of assistance, and accordingly, it shall be the responsibility of the Government of Singapore to protect, safeguard, support, foster and promote their political, educational, religious, economic, social and cultural interests and the Malay language.

161. The Memorandum setting out the agreed foundation for the final settlement of the problem of Cyprus, signed in London on 19 February 1959 by the Prime Minister of the United Kingdom of Great Britain and Northern Ireland, the Prime Minister of the Kingdom of Greece and the Prime Minister of the Turkish Republic, contained detailed provisions relating to the rights of the Turkish minority in the Republic of Cyprus and provided, in particular, for recognition of the official character of the minority language and its use in legislative and administrative documents.

162. Following negotiations between the Government of Denmark and the Government of the Federal Republic of Germany on the status of the "national minorities" in the provinces situated on either side of their frontier, the two Governments made unilateral, but substantially identical, declarations in 1955 to their respective parliaments regarding the status of German and Danish "minorities" in their respective countries, particularly with regard to the use of the minority language, the establishment of schools and the right of German and Danish minorities to maintain religious and cultural relations with Denmark and the Federal Republic of Germany, respectively.

163. The Government Declarations of 19 March 1962 concerning Algeria, made by France and Algeria under the cease-fire agreement in Algeria, contain special provisions relating to the protection of Algerians of French civil status. By virtue of these declarations, the right of members of this group to retain their own cultural, linguistic and religious attributes is guaranteed. Provision is also made for the establishment of a safeguard association with a view to protecting the rights granted to this group and for the establishment of a Court of Guarantees, an institution of Algerian domestic law, to ensure respect for these rights.[67]

164. There seem to be grounds for concluding that even since the Second World War, international instruments for the protection of specific minorities still retain their usefulness and *raison d'être.* One could even go so far as to say that the regulation of this question on the basis of specific individual agreements is proving to be even more useful, since the requirements for the protection of minorities have not yet been fully satisfied by the international instruments of a universal nature in force in the field of human rights. One advantage of individual agreements is that they state clearly the responsibilities of the States to which the minorities belong; moreover, the protection they guarantee tends to be more comprehensive than that provided under the system established after the First World War. In this connexion it is enough to compare the provisions concerning the use of the minority language, education and cultural institutions contained in most of the international instruments mentioned in paragraphs 152-160 above with the corresponding provisions of the 1919-1920 international instruments. It must, however, be added that there are not yet enough agreements of this nature and that they have very often been concluded as a result of exceptional historical and political circumstances.

C. Background to article 27 of the International Covenant on Civil and Political Rights

1. *Sub-Commission on Prevention of Discrimination and Protection of Minorities, third session, 1950*[68]

165. At its third session, in 1950, the Sub-Commission included in its agenda as item 8 consideration of General Assembly resolution 217 C (III), concerning the fate of minorities. In that resolution, the Assembly had in particular requested the Economic and Social Council to ask the Commission on Human Rights and the Sub-Commission "to make a thorough study of the problem of minorities, in order that the United Nations may be able to take effective measures for the protection of racial, national, religious or linguistic minorities".

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[67] *Journal officiel de la République française*, 20 March 1962, No. 67.

[68] Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, E/CN.4/358, paras. 39-48.

166. During discussion of that agenda item, one member of the Sub-Commission, Mr. Mansani, submitted a draft resolution (E/CN.4/Sub.2/108) under which the Secretary-General would have been asked to circulate to the Sub-Commission a draft convention or a draft protocol to be attached to the International Covenant on Human Rights, for the protection of the ethnic, religious and linguistic traditions and characteristics of minorities.

167. A further draft resolution on the protection of minorities was jointly introduced by two members of the Sub-Commission, Mr. Black and Mr. Ekstrand (E/CN.4/Sub.2/106/Rev.1). This draft resolution stated that the rights of minorities should in principle be accorded protection by international instruments and stressed that "the right of using the minority language before the courts and of teaching the minority language as one of the courses of study in State-supported schools is not covered by either the Universal Declaration of Human Rights or the draft International Covenant on Human Rights". The draft resolution called upon the Sub-Commission to decide in particular that the best means of affording protection to those two rights must be a matter for further study in the light of the definition of minorities for purposes of protection by the United Nations and also in the light of the final form of the draft International Covenant on Human Rights.

168. During the discussion several members expressed the view that the insertion of certain provisions in the draft Covenant on Human Rights represented the best method of protecting the rights of minorities. Several members of the Sub-Commission thought that the draft resolution submitted by Mr. Mansani was premature, since the provisions of the International Covenant on Human Rights might make the preparation of a separate convention on the rights of minorities unnecessary. It had, indeed, been proposed that the Commission on Human Rights should be asked to insert in the draft International Covenant a clause guaranteeing the use of their own language by minorities.

169. Some members also pointed out that the draft resolution submitted by Mr. Ekstrand and Mr. Black was incomplete since it guaranteed the protection of minorities in a limited field, that of language.

170. Following the discussion, consideration of the draft resolution submitted by Mr. Mansani was deferred until the fourth session of the Sub-Commission,[69] and a new draft resolution on the inclusion of an article in the draft International Covenant on Human Rights, prepared by a drafting committee and taking into account the comments and suggestions made, was submitted (E/CN.4/Sub.2/112). This draft resolution called upon the Sub-Committee to state that it was of the opinion that the most effective means of securing the protection of minorities would be the inclusion in the Covenant on Human Rights of the following article:

Ethnic, religious and linguistic minorities shall not be denied the right to enjoy their own culture, to profess and practise their own religion, or to use their own language.

171. During the discussions on this new draft resolution, one member of the Sub-Commission, Miss Monroe, suggested that the word "minorities" should be replaced by the phrase "persons belonging to minorities", since, in her opinion, minorities as such were not subjects of law whereas persons belonging to minorities could easily be defined in legal terms. To maintain the idea of a group she suggested the insertion of the words "in community with the other members of their group" after the words "shall not be denied the right". An amendment to this effect was adopted by the Sub-Commission and the draft resolution, as amended, was adopted by the Sub-Commission by 9 votes to none, with 1 abstention [resolution E (III)]. The resolution reads as follows:

Resolution on measures for the protection of minorities to be included in the International Covenant on Human Rights

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Having considered the problem of the fate of minorities referred to it by the General Assembly in its resolution 217 C (III),

Having adopted, in resolution C of its third session, a definition of minorities for purposes of protection by the United Nations,

Is of the opinion that the most effective means of securing such protection would be the inclusion in the International Covenant on Human Rights of the following article:

"Persons belonging to ethnic, religious or linguistic 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."

2. *Commission on Human Rights, ninth session, 1953*[70]

172. The Commission on Human Rights discussed the question of the inclusion of an article relating to the rights of minorities in the draft Covenant on Civil and Political Rights at its ninth session in 1953.[71] In addition to the proposal of the Sub-Commission contained in the above-mentioned resolution E, the Commission had before it various draft articles submitted by a number of representatives.

173. The representative of the Soviet Union proposed the following draft article:

The State shall ensure to national minorities the right to use their native tongue and to possess their national schools, libraries, museums and other cultural and educational institutions.

174. The representative of Yugoslavia proposed the following draft article:

Every person shall have the right to show freely his membership of an ethnic or linguistic group, to use without hindrance the name of his group, to learn the language of this group and to use it in public or private life, to be taught in this language, as well as the right to cultural development together with other members of this group, without being subjected on that account to any discrimination whatsoever, and particularly such discrimination as might deprive him of the rights enjoyed by other citizens of the same State.

175. Subsequently, the representative of Yugoslavia withdrew his proposal but submitted the following amendment to be added at the end of the draft article proposed by the Sub-Commission: "without being subjected on that account to any discrimination whatever, and particularly such discrimination as might deprive them of the rights enjoyed by other citizens of the same State".

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[69] At the 69th meeting of the Sub-Commission Mr. Mansani withdrew his proposal (E/CN.4/641, para. 31).

[70] *Official Records of the Economic and Social Council, Sixteenth Session, Supplement No. 8* (E/2447), paras. 51-56.

[71] E/CN.4/SR.368-371.

176. The representative of Chile proposed the addition of the following clause at the beginning of the draft article submitted by the Sub-Commission: "In those States in which ethnic, religious or linguistic minorities exist".

177. The representative of Uruguay submitted the following text as the second paragraph of the draft article proposed by the Sub-Commission:

> Such rights may not be interpreted as entitling any group settled in the territory of a State, particularly under the terms of its immigration laws, to form within that State separate communities which might impair its national unity or its security.

178. While noting that the provisions of article 2 of the draft Covenant, which relate to non-discrimination, and those of article 19, which relate to the equality of all persons before the law, provided certain guarantees to persons belonging to minorities, the members of the Commission were generally agreed in thinking that it was necessary to guarantee the rights of such persons by means of a specific clause and therefore to insert in the draft International Covenant on Civil and Political Rights a supplementary provision ensuring to them, independently of other rights, the possibility of using their own language, of professing and practising their own religion and of enjoying their own culture. Several representatives, however, stressed the need to prevent discrimination against members of minority groups on the pretext that as a minority they enjoyed certain special rights. They maintained that the granting of a special status to persons belonging to a minority should not deprive those persons of the enjoyment of the rights of the other citizens of the same State. As an example, they stressed that access to all types of public schools should in no case be prohibited to the members of minority groups to whom the right to education in their own language had been granted.

179. There was a division of opinion as to what the term "minorities" should cover. Some representatives were in favour of "ethnic, religious or linguistic groups within States", while others were in favour of "national minorities". According to the latter, the expression "ethnic, religious or linguistic groups" was narrower in scope than "national minorities", since a group of persons could be called an "ethnic, religious or linguistic group" before attaining the status of a national minority. The adoption of the expression "ethnic, religious or linguistic groups" would, they said, result in protecting groups which might never become national minorities. Other representatives felt that the reference should be to "national, ethnic, religious and linguistic minorities".

180. A number of representatives expressed the opinion that "minorities" should be understood as meaning minority groups which were clearly defined and had long existed. In their view, the special rights accorded to the persons belonging to a minority should not be interpreted as permitting a group settled in the territory of a State as a result of immigration to form within that State separate communities which might impair its national unity or its security. They therefore opposed the inclusion in the draft Covenant of a provision which, in their view, might encourage the formation of new minorities, artificially prolong the existence of present minorities and delay the integration of certain groups which tended to lose their distinct characteristics and to become assimilated in the population as a whole. Other representatives, on the other hand, stressed the need to take account of the situation of minority groups which, as a result of their dispersion among the population of a country, were unable to take full advantage of the right to develop their own culture.

181. The proposal of the Soviet Union was rejected by 8 votes to 4, with 4 abstentions.

182. The Yugoslav amendment was rejected by 5 votes to 3, with 8 abstentions.

183. The Chilean amendment was adopted by 5 votes to 1, with 10 abstentions.

184. The Uruguyan amendment was rejected by 7 votes to 5, with 4 abstentions.

185. At its 371st meeting, the Commission adopted in its entirety, by 12 votes to 1, with 3 abstentions, the draft article proposed by the Sub-Commission, as amended by Chile, with the modifications made necessary by the adoption of the Chilean amendment. The text adopted by the Commission became article 25 of the draft International Covenant on Civil and Political Rights. It reads as follows:

> 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.

3. *Third Committee of the General Assembly, sixteenth session, 1961-1962*

186. The Third Committee of the General Assembly, at its 1103rd and 1104th meetings, considered the text of the article adopted by the Commission on Human Rights. No amendments were submitted.[72]

187. There was general agreement on the basic provision that persons belonging to a minority should 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. The text elaborated by the Commission on Human Rights was widely regarded as satisfactory.

188. Many delegations representing countries of immigration stressed, however, that persons of similar origin who entered their territories voluntarily, through a gradual process of immigration, could not be regarded as minorities, as this would endanger the national integrity of the receiving States; while the newcomers were free to use their own language and follow their own religion, they were expected to become part of the national fabric. It was emphasized that the provisions of article 25 should not be invoked to justify attempts which might undermine the national unity of any State.

189. It was further stressed that the autochthonous populations in Latin American countries could not be regarded as minorities. They should be treated as a vital part of the nation and should be assisted in attaining the same levels of development as the remainder of the population.

190. A certain amount of discussion took place on the general questions of integration of minorities and pro-

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[72] *Official Records of the General Assembly, Sixteenth Session, Annexes*, agenda item 35, document A/5000, paras. 116-126.

tection of minorities. The question was raised whether protection should be accorded to individual members of a minority group or to the group as such. It was emphasized in this connexion that any assimilation which might take place must be clearly voluntary, and that members of minority groups should not be deprived of the rights enjoyed by other citizens of the same State, so that they may be able to integrate should they so desire. Several delegations stated that existing minorities were groups which had succeeded in maintaining their separate identities and that article 25 should not be used to encourage the emergence of new minorities.

191. Several delegations pointed out that the protection of minorities was not meant to derogate from the principle of majority rule; there were regions, such as certain parts of Africa, which were dominated by privileged minorities and article 25 was not intended to protect such domination.

192. The question was raised whether there was any need to repeat, in respect of minorities, the limitations clause concerning freedom to manifest one's religion or belief contained in article 18, paragraph 3, namely, that "freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others". It was pointed out that there was no need to do so, since article 18 was of a general nature and applied to "everyone", therefore to minorities and majorities alike.

193. At its 1104th meeting the Committee, by 80 votes to none, with 1 abstention, adopted article 25 as drafted by the Commission on Human Rights.

4. *General Assembly, twenty-first session, 1966*

194. At its 1496th plenary meeting, on 16 December 1966, by its resolution 2200 A (XXI), the General Assembly unanimously adopted the draft International Covenant on Civil and Political Rights in its entirety. Article 25 of the draft Covenant became article 27 of the final text.

D. Scope of article 27 of the International Covenant on Civil and Political Rights

195. The formulation of article 27 of the International Convenant on Civil and Political Rights raises a number of problems of interpretation which must be solved if this article is to be correctly applied. The most important problem is obviously that of defining the term "minority", which has been dealt with in chapter I of this study. There are others, however, including that of specifying the meaning to be given to the expression "ethnic minorities" (compared with the concept of "racial minority"), defining the scope of the phrase "In those States in which ethnic, religious or linguistic minorities exist", analysing the reasons why the article grants rights to persons belonging to minorities and not to the groups as such, determining the nature of the obligation imposed on States and formulating certain considerations on the right of members of minorities to enjoy their own culture, to practise their own religion and to use their own language. Lastly, it is necessary to determine how the concept of the protection of minorities—and hence the field of application of article 27—differs from the concept of equality and non-discrimination, and consequently from the field of application of the principle laid down in article 2, paragraph 1, and article 26 of the International Covenant on Civil and Political Rights, and in article 2, paragraph 2, of the International Covenant on Economic, Social and Cultural Rights.

1. *Observations concerning the term "ethnic minorities"*

196. Up to 1950, the term "racial minorities" and not "ethnic minorities" was generally used in resolutions and documents of United Nations bodies concerning the protection of minorities. It should be noted, for example, that General Assembly resolution 217 C (III) relating to the protection of minorities refers to "racial" and "national" minorities, not "ethnic" minorities.

197. At its third session, in 1950, when considering a draft resolution on the definition of minorities,[73] the Sub-Commission decided to replace the word "racial" by the word "ethnic" in all references to minority groups described by their ethnic origin. Some members considered that the term "racial" should be eliminated because so-called racial groupings were not based upon scientific facts and tended to become indistinct as a result of evolutionary processes, intermarriage, and changes in ideas or beliefs. Although the word "racial" had been used in General Assembly resolutions, it was pointed out, the word "ethnic" seemed to be more appropriate, as it referred to all biological, cultural and historical characteristics, whereas "racial" referred only to inherited physical characteristics. It was also recalled in this connexion that in the 1949 Convention on the Prevention and Punishment of the Crime of Genocide the term "ethnic" had been used to cover cultural, physical and historical characteristics of a group.[74]

198. Referring to problems of discrimination between certain groups, one author rightly observed that it was

> difficult to separate the problem of race, which is correctly used to refer to groups varying in genetic characteristics, from related problems of conflict or discrimination between groups of different religion, language, national origin, cultural characteristics or any combination of these. The question might well be raised as to whether discrimination based on race differs fundamentally from that directed against a group divided by the other features mentioned. It might be better to speak of *ethnic* rather than *racial* discrimination.[75]

199. After noting that "in the most common usage race refers to aggregates of people based upon physical differences, particularly skin colour", another author defines ethnic groups as follows: "Ethnic groups may be defined as peoples who conceive of themselves as one kind by virtue of their common ancestry (real or imagined) who are united

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[73] The relevant paragraph of the draft resolution read as follows:

> "*Recognizing* that there exist in many States distinctive population groups possessing racial, religious, linguistic or cultural characteristics different from those of the rest of the population, usually known as minorities" (E/CN.4/Sub.2/103).

[74] E/CN.4/Sub.2/SR.48; E/CN.4/Sub.2/119, para. 31.

[75] Otto Klineberg, "What are the specific problems of racial discrimination on which scholarly and comparative research are needed? ", *Report on the International Research Conference on Race Relations*, Aspen, Colorado, 7-9 June 1970, p. 127. The conference was organized jointly by the United Nations Institute for Training and Research and the Center on International Race Relations, Graduate School of International Studies, University of Denver.

by emotional bonds, a common culture, and by concern with preservation of their group."[76]

200. The following definition of the term "ethnic" was formulated by an author referring to different population groups in one of the countries studied:

> The designation "ethnic group" is ... used to refer to categories of the population ... who distinguish themselves or are distinguished by the ... majority groups as differing from each other and the latter in acquired behavioural characteristics or culture, regardless of whether or not they differ in inherited or racial characteristics.[77]

The same author further adds that such an examination should not be taken to mean that the population of the country concerned is deeply divided along ethnic lines. On the contrary, it may well be that on the whole the society of that particular country is remarkably homogeneous.

201. In the context of article 27 of the Covenant, the substitution of the term "ethnic minorities" for the term "racial minorities" and the omission of any reference to "national" minorities would seem to reflect a wish to use the broadest expression and to imply that racial and national minorities should therefore be regarded as included in the category of ethnic minorities.

2. *Interpretation of the expression "In those States in which ethnic, religious or linguistic minorities exist"*

202. During the debate in the Commission on Human Rights, the text of article 25 of the draft Covenant, as prepared by the Sub-Commission, was amended, on the proposal of the Chilean representative, by the addition, at the beginning, of the phrase: "In those States in which ethnic, religious or linguistic minorities exist". It seems that the purpose of the amendment was to restrict the enjoyment of the rights recognized by the article to minorities already long established in the territory of the State, so as to prevent the protection conferred by the new rule from encouraging the formation of new minorities or awakening a "minority consciousness" in groups formerly assimilated into the population of a State.

203. The expression in question might also be understood to mean that it is the responsibility of each State to recognize the existence of a minority in its territory, and that such official recognition is a condition for the applicability of article 27. It should be remembered in this connexion that the internal law of some States does actually include rules (even constitutional rules) which implicitly or explicitly recognize the existence of minorities in those States, as was mentioned in chapter I.

204. However, it is inadmissible that the only States with obligations under article 27 should be those which officially recognize the existence of a minority in their territory. That would be tantamount to making the application of article 27 dependent on the good will of the States parties to the Covenant. If that were the case, a State would only have to withhold official recognition of a minority to deprive it of the benefits guaranteed by this rule. The existence of a minority must be established on the basis of objective criteria and, although it is true that opinions on some of these criteria differ, in no circumstances can one go so far as to replace an objective approach by an entirely subjective approach, that is to say, imply that the States concerned have discretionary power in the matter.

205. In view of the general nature of the rules for the protection of human rights adopted within the framework of the United Nations, it is also inadmissible that a distinction could be made between "old" and "new" minorities. It is certainly not the function of article 27 to encourage the formation of new minorities; where a minority exists, however, the article is applicable to it, regardless of the date of its formation.

3. *Holders of the rights guaranteed by article 27: persons or groups?*

206. Although the expression "rights of minorities" is used in common parlance, it is persons belonging to minorities, in community with the other members of their group, who are regarded in article 27 as having the right to enjoy their own culture, to practise their own religion and to use their own language. There appear to be three reasons for this.

207. The first is historical. In the system of protection of minorities established in 1919-1920, rights were accorded to individuals only. The theory of an international personality of minorities developed later, mainly owing to the fact that the right of petition was granted not only to members of minority groups but also to the groups themselves. But the treaties and other international instruments relating to minorities were concerned expressly with individual rights—the rights of persons belonging to minorities.

208. The second reason was the need for a coherent formulation of the various provisions of the International Covenant on Civil and Political Rights. This Covenant, like the International Covenant on Economic, Social and Cultural Rights, lays down a number of individual rights. The only right of collective bodies is the right of peoples to self-determination. But this is an entirely different matter from the rights of members of minorities, not only because it derives directly from a principle already included in the Charter of the United Nations but also because it conditions the enjoyment of all the other fundamental human rights.

209. Lastly, there is a political reason. The fact of granting rights to minorities and thus endowing them with legal status might increase the danger of friction between them and the State, in so far as the minority group, as an entity, would seem to be invested with authority to represent the interests of a particular community vis-à-vis the State representing the interests of the entire population. Moreover, the freedom of each individual member of a minority to choose between voluntary assimilation with the majority and the preservation of his own distinctive characteristics might be disregarded by the organs of the entity formed by the minority group, in its concern to preserve the unity and strength of the group.

210. All this shows that the formulation of article 27, whereby rights have been conferred on persons and not on groups, is based on sound reasons and should not be misjudged or underestimated by the exegetist. At the same

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[76] Richard M. Burkey, "Discrimination and racial relations", *Report on the International Research Conference on Race Relations*, Aspen, Colorado, 7-9 June 1970, p. 62.

[77] Frank J. Moore, *Thailand, its People, its Society, its Culture* (New Haven, Hraf Press, 1974), p. 64.

time, it must be borne in mind that the rights in question will be exercised by their holders "in community with the other members of their group", as stated in article 27. That is easily understandable when it is considered that the rights provided are based on the interests of a collectivity, and consequently it is the individual as a member of a minority group, and not just any individual, who is destined to benefit from the protection granted by article 27.

4. *Nature of the obligation imposed on States*

211. Another question which arose in the Commission on Human Rights during the discussion on the inclusion of an article concerning minorities in the draft International Covenant on Civil and Political Rights was that of determining the nature of the obligation imposed on States. After noting that the text submitted by the Sub-Commission stipulated only that persons belonging to ethnic, religious or linguistic minorities "shall not be denied the right ... to enjoy their own culture ...", some representatives expressed the opinion that the article to be included should contain a more precise description of the State's obligations. In their view, the words "persons ... shall not be denied" were devoid of meaning and would probably have no effect. It was therefore necessary to specify in the article that the State should adopt special legislative measures to guarantee to minorities the enjoyment of certain rights. On the other hand, some speakers pointed out that a proposal of that nature would place undue emphasis on the rights of minority groups instead of stressing the importance of tolerance—the only new duty which should be imposed on States which had accepted the obligation of non-discrimination. It was generally agreed that the text submitted by the Sub-Commission would not, for example, place States and Governments under the obligation of providing special schools for persons belonging to linguistic minorities. Persons who comprised ethnic, religious or linguistic minorities could, as such, request that they should not be deprived of the rights recognized in the draft articles. The sole obligation imposed upon States was not to deny that right.[78]

212. The same question was raised at the twentieth session of the Sub-Commission during the discussions which preceded the adoption of resolution 9 (XX), in which the Sub-Commission decided to undertake the present study. It was stated that article 27 of the Covenant adequately reflected the prevailing attitude of the international community. In accordance with that article, States were obliged to allow individuals who belonged to minorities enjoyment of their culture, practice of their religion and use of their own language, but that did not imply that members of minorities had the right to demand that the State should adopt positive measures.[79]

213. Nevertheless, there is reason to question whether the implementation of article 27 of the Covenant does not, in fact, call for active intervention by the State. At the cultural level, in particular, it is generally agreed that, because of the enormous human and financial resources which would be needed for a full cultural development, the right granted to members of minority groups to enjoy their own culture would lose much of its meaning if no assistance from the Governments concerned was forthcoming. Neither the non-prohibition of the exercise of such a right by persons belonging to minority groups nor the constitutional guarantees of freedom of expression and association are sufficient for the effective implementation of the right of members of minority groups to preserve and develop their own culture.

214. With regard to the attitude of States towards minorities in cultural matters, it should also be pointed out that the obligations imposed by the International Covenant on Economic, Social and Cultural Rights undoubtedly have the character of positive obligations. Articles 13 to 15 of this Covenant, relating to the right to education and the right to take part in cultural life, clearly all concern the members of minorities as well as any other individual. But the right to education can only be realized through appropriate measures on the part of the State, and the right to take part in cultural life likewise implies that the State should take the necessary steps for the conservation, the development and the diffusion of science and culture (article 15, paragraph 2). It would be inconceivable that the State should have fewer cultural obligations vis-à-vis minorities than towards its people in general.

215. The essential role of governments in the matter of cultural development has been stressed in many conferences on the subject held under the auspices of UNESCO. For example, at the Intergovernmental Conference on Institutional, Administrative and Financial Aspects of Cultural Policies held in Venice in 1970 it was agreed that, while the degree of direct governmental involvement depended upon the socio-economic system, ideological character and degree of economic and technological development of the country concerned, all governments should take responsibility for two essential tasks: the adequate financing and the proper planning of cultural institutions and programmes.[80] The following observations were made in documents prepared for the Intergovernmental Conference on Cultural Policies in Europe, held at Helsinki in 1972:[81]

> ... The right to culture implies a duty for governments and for the international community to make it possible for everyone, without distinction or discrimination of any kind, to take part in the cultural life of his community and of mankind generally. For this universal participation to be effective, the State must furnish the necessary means to those who are underprivileged in their access to cultural life (because of their low level of education for example, low standard of living, or poor housing conditions). To overcome such obstacles, and counteract the effects on the cultural life of individuals of disparities in technical and economic progress generally, States must prepare coherent policies on the basis of their long-term forecasts for cultural development. Cultural development is taken to mean the continuous improvement of those technical, economic and social factors which can significantly help to improve the level of cultural life; and "level of cultural life" is taken to mean the individual's degree of access to and freedom to participate in the cultural life of the community.
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> The formal or implicit introduction of this right to culture into the general trend of ideas which was to predominate after 1950 was bound to have widespread and important consequences. Since the individual was acknowledged to have this new right, he also had to be given the means to exercise it. Public authorities, conscious of this need, were to turn their attention more and more to meeting it.

[78] E/CN.4/SR.368-371.

[79] E/CN.4/Sub.2/286, paras. 155-157.

[80] *Final Report on the Intergovernmental Conference on Institutional, Administrative and Financial Aspects of Cultural Policies, Venice, 24 August-2 September 1970* (Paris, UNESCO, 1970) (SHC/MD/13), chap. I, para. 51.

[81] UNESCO documents SHC/EUROCULT/1, para. 7, and SHC/EUROCULT/3, para. 10.

Unquestionably, States had for a long time exercised some power in matters of culture. For the most part, however, they had confined themselves to empirical and secondary action associated with a general liberal outlook and based on the old idea of patronage. This action was usually, moreover, the responsibility of a series of scattered bodies which had acquired their limited powers through the chance workings of administrative development. The first aim therefore became to group services together and to systematize cultural policy in accordance with an overall view of the problems.

216. It may also be noted that at the seminar on the promotion and protection of the human rights of national, ethnic and other minorities, held at Ohrid, Yugoslavia, in 1974, the role of Governments, as regards the cultural rights, was described as follows:

Several participants referred to the right of individual members of minorities, as well as to the right of groups in their collectivity, to enjoy the free expression of their individuality and group culture, to maintain their cultural identity and originality, to preserve their distinctive traditions, including artistic and theatrical traditions, and to maintain a natural link with the countries of their origin. It was considered the responsibility of the authorities to guarantee in law and in practice the maintenance and preservation of such traditions and customs and to provide for their autonomous development, where necessary by public financing.[82]

217. Article 27 of the Covenant must therefore be placed in its proper context. To enable the objectives of this article to be achieved, it is essential that States should adopt legislative and administrative measures. It is hard to imagine how the culture and language of a group can be conserved without, for example, a special adaptation of the educational system of the country. The right accorded to members of minorities would quite obviously be purely theoretical unless adequate cultural institutions were established. This applies equally in the linguistic field, and even where the religion of a minority is concerned a purely passive attitude on the part of the State would not answer the purposes of article 27. However, whatever the country, groups with sufficient resources to carry out tasks of this magnitude are rare, if not non-existent. Only the effective exercise of the rights set forth in article 27 can guarantee observance of the principle of the real, and not only formal, equality of persons belonging to minority groups. The implementation of these rights calls for active and sustained intervention by States. A passive attitude on the part of the latter would render such rights inoperative.

5. *Observations concerning the right of ethnic, religious and linguistic minorities to have their own culture*

218. In neither the Sub-Commission nor the Commission on Human Rights did the debates on the definition of minorities and the inclusion of an article on minorities in the draft Covenant provide any specific indication as to the implication of the right of persons belonging to ethnic, religious and linguistic minorities to enjoy their "own culture".

219. It will be recalled, firstly, that at its third session, in the debate on the preparation of a definition of minorities, the Sub-Commission decided that, in view of the substitution of the word "ethnic" for "racial", it was superfluous to list cultural characteristics among the factors constituting a minority. The Sub-Commission considered that the cultural characteristics of minority status were adequately covered by the concept of ethnic, religious and linguistic characteristics.[83]

220. In article III of the draft Convention on the Prevention and Punishment of the Crime of Genocide (E/794) the following acts were considered as constituting the crime of "cultural" genocide:

(1) Prohibiting the use of the language of the group in daily intercourse or in schools, or the printing and circulation of publications in the language of the group;

(2) Destroying or preventing the use of libraries, museums, schools, historical monuments, places of worship or other cultural institutions and objects of the group.

221. During the debate on this article—which, it will be remembered, was not adopted—it was maintained that such acts would result in losses to humanity in the form of "cultural contributions" for which it was indebted to the destroyed group.[84]

222. In a publication of UNESCO entitled *Race and Culture*, the word "culture" was defined as follows:

Whereas race is strictly a question of *heredity*, culture is essentially one of *tradition* in the broadest sense, which includes the formal training of the young in a body of knowledge or a creed, the inheriting of customs or attitudes from previous generations, the borrowing of techniques or fashions from other countries, the spread of opinions through propaganda or conversation, the adoption—or "selling"—of new products or devices, or even the circulation of legends or jests by word of mouth. In other words, tradition in this sense covers provinces clearly unconnected with biological heredity and all alike consisting in the transmission, by word of mouth, image or mere example, of characteristics which, taken together, differentiate a milieu, society or group of societies throughout a period of reasonable length and thus constitute its culture.

As culture, then, comprehends all that is inherited or transmitted through society, it follows that its individual elements are proportionately diverse. They include not only beliefs, knowledge, sentiments and literature (and illiterate peoples often have an immensely rich oral literature), but the language or other systems of symbols which are their vehicles. Other elements are the rules of kinship, methods of education, forms of government and all the fashions followed in social relations. Gestures, bodily attitudes and even facial expressions are also included, since they are in large measure acquired by the community through education or imitation; and so, among the material elements, are fashions in housing and clothing and ranges of tools, manufactures and artistic production, all of which are to some extent traditional ...[85]

223. As regards the interpretation of the right of minorities to have their own culture, the following observations were made at the seminar on the multinational society held at Ljubljana, Yugoslavia, from 8-21 June 1965:

107. It was generally agreed that the right of autonomous action to ensure the preservation and continuity of a group's traditions and characteristics ... provided the surest means of protecting its collective identity. ... encouragement of variety helped to assure harmonious coexistence between a country's varying ethnic, religious, linguistic and national groups, giving to each a sense of contributing to the national heritage ...

...

111. A number of those taking part in the debate drew attention to the need for protecting ancient values in the developing countries; in the past, many of their inhabitants had been caught in the cross-current of an officially discouraged traditional way of life and of an alien culture to which they could never fully adjust. Today, therefore, every effort had to be made to awaken the masses to the needs of respect for their national or continental personality, while simultaneously striving for the attainment of modern objectives and the elimination of anachronisms or stultifying superstition.

[82] ST/TAO/HR/49, para. 79.

[83] E/CN.4/Sub.2/SR.48.

[84] *Official Records of the General Assembly, Third Session, Part I, Sixth Committee*, 83rd meeting.

[85] Michel Leiris, *Race and Culture* (Paris, UNESCO, 1951), pp. 20 and 21.

Some of these participants added that the maintenance of indigenous traditions was greatly assisted in their countries by a policy of strengthening tribal institutions, such as the authority of local chiefs, or by an enlightened codification of customary law.

112. Other participants urged recognition of the importance of maintaining permissible legal traditions, in fields such as laws of succession, marriage, dietary laws ...

113. In citing examples of traditions and customs prevalent in their countries, several speakers referred also to diverse other matters, *inter alia*: distinctive clothing; manners; accepted local standards of civility and hospitality; literature and the graphic and performing arts; and the significance of ritual and ceremonial in communities of varying regions and in different stages of advancement.

114. Turning to more specific questions, many participants spoke of the kinds of traditions and characteristics for which the right of autonomous development should be guaranteed. There was general agreement that the guarantee should extend to such traditions and customs as did not hinder progress and, above all, to those which directly assisted it; the test should be that of compatibility with the attainment of social or economic objectives. Other speakers, while generally concurring with this view, thought that traditions and characteristics could not in reality be "guaranteed" by statute; their best protection lay in universal tolerance of one's neighbour's right to be different if he so wished; and in a truly democratic society the question of special minority rights in this context should never even arise. Others pointed out that, in States aiming at complete integration of all groups and races, it was sometimes best for the authorities to maintain a tolerant but somewhat unenthusiastic attitude towards group exclusiveness.

...

116. The question was also raised whether the traditions and characteristics under discussion should include those relating to a group's social and economic organization. It was agreed by several speakers that there was no need for special incentives for separate traditional activities in this regard. The pursuit of social and economic objectives, according to this view, must follow the State's general orientation towards modern goals. Here again, the only limitations should be directed against impediments to progress, perhaps with additional safeguards against attempts by any group to monopolize any sector of public life.

117. Some speakers expressed the opinion that special encouragement should be offered by States to the types of autonomous expression under review, not only by legislative means but also by other efforts, both official and informal, to conserve and expand the nation's cultural heritage. Others, however, felt that there was no duty owed by the State in this regard, save the assurance of equal treatment. Certain participants also thought that a distinction should be drawn between cultural traditions of proven value and those which contained little beyond elements of mere quaintness or charm.

118. There was general agreement that useful work could be done by organs such as Ministries of Culture or Arts Councils, which compiled and maintained records, co-ordinated cultural activities and encouraged the revival of traditions and customs of national and international interest.[86]

224. The above-mentioned texts show clearly what is implied by the right of members of minority groups to enjoy their own culture and the observations in those texts have been taken into account in preparing chapter IV, section A, of this study.

6. *Observations concerning the right of religious minorities to profess and practise their own religion*

225. In connexion with the rights of religious minorities, it will be recalled that the Sub-Commission initiated in 1956 a study of discrimination in the matter of religious rights and practices and entrusted to a Special Rapporteur, Mr. Arcot Krishnaswami, the task of preparing it.[87] This study, which was published in 1960, covered extensively the various issues involved in the implementation of the rights belonging to religious minorities to profess and practise their own religion, such as the nature of the right to freedom of thought, conscience and religion, the freedom to maintain or to change religion or belief, the freedom to manifest religion or belief and the status of religion in relation to the State. The study further contained a number of proposals or recommendations concerning the basic rules which could be adopted for the universal application of the right of everyone to freedom of thought, conscience and religion. On the basis of the report, the Sub-Commission prepared draft principles on freedom and non-discrimination in the matter of religious rights and practices.[88]

226. Since 1962, the matter of freedom of religion and conscience has been under discussion at one time or another before several organs of the United Nations as a result of the adoption by the General Assembly of resolution 1781 (XVII) of 7 December 1962 in which the Assembly requested the Economic and Social Council to ask the Commission on Human Rights, bearing in mind the views of the Sub-Commission, to prepare both a draft declaration and a draft convention on the elimination of all forms of religious intolerance. Suffice it to mention that at its sixteenth session, in 1964, the Sub-Commission prepared and submitted to the Commission a preliminary draft of a United Nations Declaration on the Elimination of All Forms of Religious Intolerance (see A/8330, annex I) and that at its twenty-first, twenty-second and twenty-third sessions, the Commission on Human Rights adopted the preamble and twelve articles of a draft International Convention on the subject (*ibid.*, annex III). At the twenty-second session of the General Assembly, in 1967, the Assembly's Third Committee adopted the preamble and the first article of a draft Convention on the subject on the basis of a text submitted by the Commission on Human Rights (*ibid.*, paras. 19-21). The complexity of the question has, however, prevented the various United Nations organs concerned from fulfilling the objective laid down in General Assembly resolution 1781 (XVII), and at the present time priority has been given to the preparation of a draft declaration, a task which has been entrusted to the Commission on Human Rights by the General Assembly.

227. From the well-documented study on discrimination in the matter of religious rights and practices prepared by Mr. Krishnaswami, and, in particular, from the work already done by the Sub-Commission, the Commission on Human Rights and the General Assembly in the field of the elimination of religious intolerance, many indications can be drawn concerning the right of each individual to profess and practise the religion of his choice. There is indubitably a particularly close relationship between article 18 of the International Covenant on Civil and Political Rights, regarding freedom of thought, conscience and religion, and article 27 in so far as it concerns religious minorities; there is even reason to wonder whether, viewed in this light, it may not duplicate what is stated in article 18. From the specific point of view of

[86] ST/TAO/HR/23, paras. 107, 111-114, 116-118.

[87] *Study of Discrimination in the Matter of Religious Rights and Practices* (United Nations publication, Sales No. 60.XIV.2).

[88] *Ibid.*, annex I.

article 27, it is above all problems of minority religious communities which must be taken into consideration, particularly questions of the establishment and maintenance of religious institutions and schools, laws governing the property of these communities, the status of religious ministers and the protection of religious rites and holy places. These will be discussed in chapter IV, section B, below.

7. *Observations concerning the right of linguistic minorities to use their own language*

228. During the debate in the Commission on Human Rights on the inclusion of an article on minorities in the draft International Covenant on Civil and Political Rights, and later in the Sub-Commission, during discussions on the subject of interim reports concerning this study, it was pointed out that the right of persons belonging to linguistic minorities to use their own language might create difficulties in countries where many indigenous languages were used.[89]

229. The question of the right of persons belonging to linguistic minorities to use their own language was also raised at the seminar on the multinational society held at Ljubljana, Yugoslavia, in 1965. Some participants believed that distinctions should be drawn between, on the one hand, languages which might not have developed to the point of having a written tradition or even a written script but which were in fact distinct languages, and on the other hand, dialects of existing languages, which differed in varying degrees from their parent languages. It was stated that financial considerations would militate against giving the same attention to every local variation or dialect as was required for major language groups and that each case should be resolved on a pragmatic basis.[90]

230. In multilinguistic societies, discussion of the status of the languages spoken by the various linguistic groups has several dimensions which vary from country to country, according to the stage of economic, political and social development of the country concerned, and also within a country, from group to group. Many factors have to be taken into account in the formulation of a language policy and the question is so complex that any solution given to it may contain in itself the seeds of a potential conflict. For example, the designation of the language of one group as the official language may be in certain circumstances a source of constant controversy since it may upset the political balance between various population groups, especially in cases where each group constitutes a significant percentage of the total population or is concentrated in specific areas. On the other hand, it may be totally impracticable, in particular in countries where numerous languages are spoken, to recognize all of them as official languages, if only in view of the financial cost that such a solution would involve. It should further be mentioned that in many countries the view is widely held that the consolidation of the unity of the people, the spiritual integrity of the nation and the need to create a sense of national identity would require that only one language be declared the official language. Therefore a just equilibrium must be found between these conflicting requirements in order to safeguard the fundamental rights of the persons belonging to the various linguistic groups as well as the interests of the nation as a whole.

231. In the countries surveyed, replies to the question whether the languages spoken by the various linguistic groups of a country should be given official status vary considerably. Great differences of approach to the solution of the problem are also evident between developed and developing countries. In this connexion, it should be noted that a special situation exists in many developing countries in which not only do many ethnic groups speak their own language but the language of the former colonial Power is widely used, since in many cases that language is the only one common to members of different linguistic groups. In this connexion, it may be worth recalling that at the seminar on the multinational society held at Ljubljana in 1965, many participants felt that

> given the need for a readily understood national medium of communication and a common administrative system, it was necessary for the countries in question to decide whether one or more national languages should be designated as official languages, or whether the language used during the colonial period should retain its former position either indefinitely or for a specified period. It was stressed that the difficulties encountered were compounded when the major indigenous languages differed widely in their structure. On the other hand, the view was expressed that the use of a foreign language could be a divisive rather than a unifying factor.[91]

232. In a study of the problems which developing countries face in formulating a language policy, it has been noted that the symbolic value of language as a means of group identification makes languages politically and socially very strategic. Hence languages naturally become a prime element in the struggle for national unity. The authors observed that:

> ... The very pressures that create the needs for some national language as a unifying force almost inevitably also create a contrary reaction in favour of regional languages. Whether people actually feel threatened by the emphasis upon national unity in language is hard to say, but certainly the emphasis upon a single language very frequently makes them more and more aware of their own regional language.
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> This local emphasis on regional languages depends partly upon the degree of cultural vitality of the particular regional group, and upon the group's sense of identification or non-identification with the national society. ...
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> ...
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> For a language to become a national language certain very important features are needed. In the first place, it should be politically neutral. If it is not characterized by political neutrality it is too often regarded merely as a tool by which a particular language group seeks to extend its domination. Quite naturally, this is a cause for alarm among other language communities ...
>
> ...
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> If a language is to be a national language it should also be linguistically related to the various local languages of the area.[92]

233. In a report issued by UNESCO, the question to what extent the designation of a single language as the

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[89] For a definition of the expression "indigenous language", see para. 429, note 24.

[90] ST/TAO/HR/23, para. 49.

[91] ST/TAO/HR/23, para. 57.

[92] Eugene A. Nida and William L. Wonderly, "Communication roles of languages in multilingual societies" in *Language Use and Social Change*, Studies presented and discussed at the ninth International African Seminar, held at University College, Dar es Salaam, in December 1968, edited by W. H. Whiteley, pp. 61, 62, 63 and 64.

official language would foster unity in developing countries was discussed in the following terms:

"Using the vernacular impedes national unity." It cannot be denied that the business of government is easier in a monolingual than in a multilingual nation. However, it does not follow that legislation or school policy requiring the use of the official language at all times will give the same results as actual monolingualism. On the contrary, it is fairly likely that absolute insistence on the use of the national language by people of another mother tongue may have a negative effect, leading the local groups to withdraw in some measure from the national life. In any event, it seems clear that the national interests are best served by optimum advancement of education, and this in turn can be promoted by the use of the local language as a medium of instruction, at least at the beginning of the school programme.[93]

8. *The concept of "protection of minorities" and the concept of "equality and non-discrimination"*

234. The Permanent Court of International Justice stated in 1935 that the idea underlying the treaties for the protection of minorities was to secure for them the possibility of living peaceably alongside the rest of the population, while preserving their own characteristics. In order to attain this objective, two things were regarded as particularly necessary. The first was to ensure that members of racial, religious or linguistic minorities should be placed in every respect on a footing of perfect equality with the other nationals of the State. The second was to ensure for the minority elements suitable means for the preservation of their own characteristics and traditions. According to the Court, "these two requirements are indeed closely interlocked, for there would be no true equality between a majority and a minority if the latter were deprived of its own institutions, and were consequently compelled to renounce that which constitutes the very essence of its being as a minority".[94] For this reason, the so-called Minorities Treaties concluded after the First World War all contained provisions stipulating that members of minorities should enjoy equality before the law and the same civil and political rights as other nationals. These treaties laid down a régime of juridical equality for minorities with a view to preventing racial, linguistic or religious difference from becoming a reason for according them inferior juridical treatment or a *de facto* obstacle to the exercise of the rights accorded to members of minorities.

235. During the discussions on the protection of minorities in both the Sub-Commission and the Commission on Human Rights the question was asked whether a distinction should be made between the concept of "protection of minorities", on the one hand, and that of "equality and non-discrimination", on the other.

236. At its first session, in 1947, the Sub-Commission discussed the meaning of the terms "prevention of discrimination" and "protection of minorities" and adopted a decision indicating, for the benefit of the Commission on Human Rights, the considerations which, in its opinion, that body should take into account in framing provisions to be included either in the Universal Declaration of Human Rights or in the International Covenant on Human Rights. The Sub-Commission suggested that the final drafting of articles on the prevention of discrimination and the protection of minorities might be facilitated by the following considerations:

1. Prevention of discrimination is the prevention of any action which denies to individuals or groups of people equality of treatment which they may wish.

2. Protection of minorities is the protection of non-dominant groups which, while wishing in general for equality of treatment with the majority, wish for a measure of differential treatment in order to preserve basic characteristics which they possess and which distinguish them from the majority of the population. The protection applies equally to individuals belonging to such groups and wishing the same protection. It follows that differential treatment of such groups or individuals belonging to such groups is justified when it is exercised in the interest of their contentment and the welfare of the community as a whole...

If a minority wishes for assimilation and is debarred, the question is one of discrimination and should be treated as such.[95]

237. At its second session, the Commission approved the text concerning the prevention of discrimination but postponed a study of the text concerning the protection of minorities.[96]

238. The following remarks were contained in a memorandum submitted by the Secretary-General, entitled *The Main Types and Causes of Discrimination*:

The texts adopted by the Sub-Commission ...[97] indicate the fundamental difference between the prevention of discrimination and the protection of minorities. From these texts, it would appear that discrimination implies any act or conduct which denies to certain individuals equality of treatment with other individuals because they belong to particular groups in society. To prevent discrimination, therefore, some means must be found to suppress or eliminate inequality of treatment which may have harmful results, aiming at the prevention of any act or conduct which implies that an unfavourable distinction is made between individuals solely because they belong to certain categories or groups of society. The aim is to prevent any act which might imply inequality of treatment on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Thus the prevention of discrimination means the suppression or prevention of any conduct which denies or restricts a person's right to equality.

The protection of minorities, on the other hand, although similarly inspired by the principle of equality of treatment of all peoples, requires positive action: concrete service is rendered to the minority group, such as the establishment of schools in which education is given in the native tongue of the members of the group. Such measures are of course also inspired by the principle of equality: for example, if a child receives its education in a language which is not its mother tongue, this might imply that the child is not treated on an equal basis with those children who do receive their education in their mother tongue. The protection of minorities therefore requires positive action to safeguard the rights of the minority group, provided of course that the people concerned (or their parents in case of children) wish to maintain their differences of language and culture.[98]

239. It will be recalled that in the Commission on Human Rights, during the discussion on the inclusion of an article on the rights of minorities in the draft International Covenant on Civil and Political Rights, it was generally agreed that, if persons belonging to minorities enjoyed special rights, they should not on that account be deprived of such rights as were enjoyed by the other citizens of the same State. It was also generally agreed that the presence in

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[93] *The Use of Vernacular Languages in Education* (Paris, UNESCO, 1953), p. 50.

[94] *Minority schools in Albania*, advisory opinion of 6 April 1935, P.C.I.J. publication, Series A-B, No. 64, p. 17.

[95] E/CN.4/52, sect. V.

[96] *Official Records of the Economic and Social Council, Sixth Session, Supplement No. 1*, paras. 39 and 40; see also para. 168.

[97] See para. 236.

[98] United Nations publication, Sales No. 49.XIV.3, paras. 6 and 7.

the draft Covenant of provisions containing a general prohibition of discrimination did not constitute an obstacle to the inclusion in the draft Covenant of an article granting differential treatment to minorities in order to ensure them real equality of status with the other elements of the population.[99]

240. The idea of a close link between the two concepts is also evident in certain international instruments. For example, the UNESCO Convention against Discrimination in Education, while recognizing the right of members of national minorities to carry on their own educational activities, declares that the standard of education in the schools envisaged shall not be lower than the general standard laid down or approved by the competent authorities. The ILO Indigenous and Tribal Populations Convention, for its part, stipulates that enjoyment of the general rights of citizenship, without discrimination, shall not be prejudiced in any way by the special measures of protection it provides. The same concern appears also in a number of bilateral treaties relating to minorities.

241. It can, therefore, be stated that the two concepts are distinct in the sense that the concept of equality and non-discrimination implies a formal guarantee of uniform treatment for all individuals—who must be ensured the enjoyment of the same rights and accept the same obligations—whereas the concept of protection of minorities implies special measures in favour of members of a minority group. None the less, the purpose of these measures is to institute factual equality between the members of the minority group and other individuals. This confirms the thesis that prevention of discrimination, on the one hand, and the implementation of special measures to protect minorities, on the other, are merely two aspects of the same problem: that of defending fundamental human rights. As was shown during the discussions on the questions of the protection of minorities at the thirteenth and twentieth sessions of the Sub-Commission, the two concepts, although distinct, are closely linked.[100]

242. It was pointed out in this respect that the problem of ethnic, linguistic or religious groups, commonly referred to as minorities, had two main aspects: (*a*) the rightful demand of all such groups that they receive equality of treatment with the majority of the population, and (*b*) the claim of some groups to special measures of protection, in addition to the rights accorded to the population as a whole.[101] Article 27 of the International Covenant on Civil and Political Rights cannot therefore be considered separately from article 2, paragraph 1, of the same Covenant which establishes the principle of equality and non-discrimination.[102] It must be interpreted as an additional provision ensuring for members of minorities, independently of the other rights enumerated in the Covenant, the right to enjoy their own culture, to profess and practise their own religion and to use their own language. Consequently, care must be taken not to lose sight of the links between article 27 and the other provisions of the two Covenants, without, however, overlooking the fact that article 27 has an independent role to play. In conclusion, it is on the basis of their position of entitlement to human rights and fundamental freedoms, without discrimination, that persons belonging to minorities are given the rights set forth in article 27, which are specially designed to ensure the maintenance of their own characteristics vis-à-vis the members of majority groups.

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[99] A/2929, para. 183; E/CN.4/SR.303, 368.

[100] E/CN.4/Sub.2/SR.338 and 339; E/CN.4/Sub.2/SR.513-515.

[101] E/CN.4/Sub.2/211, para. 225.

[102] Article 2, paragraph 1, reads as follows:

"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."

Chapter III

THE POSITION OF PERSONS BELONGING TO ETHNIC, RELIGIOUS AND LINGUISTIC MINORITIES IN THE SOCIETY IN WHICH THEY LIVE

243. This part of the study deals with the position of persons belonging to ethnic, religious and linguistic minorities in the society in which they live and covers four main topics. It attempts first to determine in relation to a certain number of States how these persons generally view themselves within the framework of the country in which they live, in particular whether they have shown a common desire to preserve their characteristics and their traditions. Secondly, it analyses some of the most important issues involved in inter-group relationships within the countries surveyed. It then describes the general approach followed by various Governments in formulating their policies towards persons belonging to ethnic, religious and linguistic minorities. Lastly, the role of the principle of non-discrimination in the field of protection of minority groups is examined. A discussion of these topics, on the basis of the experience of a number of minority groups, appears to be important for a better understanding of the complex problems they face.

A. The sense of identity of minority groups

244. A question often raised when discussion of minority rights takes place is whether the rights to be accorded to persons belonging to minority groups should not depend on the expression by those groups of a desire to preserve their own characteristics. This was in fact one of the criteria of the definition of the term "minority" proposed by the Sub-Commission when it expressed itself on the question some years ago. It will also be recalled that, with few exceptions, Governments which commented on the provisional definition suggested for this study indicated that, in their view, such a desire constituted an important element of the concept of minority. There can be no doubt, in any case, that the sense of identity of a minority is strictly linked with a strong desire of the group (or at least of most of its members) to preserve its own characteristics.

245. In nearly all the countries surveyed, there is evidence of the fact that, in differing ways—sometimes explicitly, often implicitly—and in varying degrees, ethnic, religious and linguistic groups generally show a desire to preserve their own characteristics and their own traditions, irrespective of the length of time during which they have lived under another culture.

246. In countries where ethnic and linguistic minorities have been officially recognized as such, the fact of recognition may be interpreted as constituting in itself a response to the desire of the minorities concerned to maintain their own characteristics. Moreover, the constitution, the laws or the international instruments under which recognition has been granted often provide to the members of the group concerned the mechanisms for expressing their requirements. Thus, under the constitution and the laws of Switzerland, persons belonging to linguistic minorities may have recourse to a referendum, as a tool to ensure the respect of their right to autonomous development. This right has been exercised in the past on numerous occasions, the most recent case being the creation of a new territorial division for the French-speaking population of a mainly German-speaking canton.

247. The Government of Denmark writes that the German-speaking population, which is officially recognized as a minority by a governmental declaration having also international relevance, constitutes a group rooted in history and characterized by its bonds of solidarity with the German people and that, for reasons of tradition, the Danish citizens of German extraction feel attached to the German nation and generally wish to have their children educated in a German cultural context.

248. Independently of the action that may be taken by States on the question of recognition, other objective criteria can be used to determine whether ethnic and linguistic groups have demonstrated a desire to preserve their characteristics. It could rightly be argued, indeed, that when members of a population group display in their everyday life a strong sense of ethnic identity, when they persevere, sometimes against heavy odds, in the use of their language, when by their general attitude and their way of life they regard themselves and are perceived by others as belonging to a distinct group, then it seems logical to conclude that their desire to preserve their characteristics is implicitly affirmed. Only when a group has been assimilated to the point of giving up its traditions, its customs, and the use of its religion and its language, a process which could be easily and objectively evaluated, can one assume that such a group stands outside of the scope of any special measure intended to safeguard the identity of minority groups.

249. There are instances where not all the minorities living in a country have expressed a desire to preserve their own characteristics. In its observation on this particular point, the Austrian Government states that considerable differences exist in this respect among the members of minority groups in Austria. Though some of the Burgenland Croats tend to assimilate to some extent and, in particular, to abandon the use of the Croatian language, the Slovenes of Carinthia show little inclination towards assimilation. The Italian Government writes that, though some minority groups, such as the Albanian-speaking group, do not distinguish themselves substantially from the national society, others, including the German and Slovenian groups, have retained the desire to maintain their own traditions and culture.

250. On the other hand, it is possible that, though most of the members of a minority group may be resolved to maintain their identity, some individuals will prefer to be

assimilated into the majority population. If that is their free choice, obstacles should not be placed in their way in the name of a misconceived group solidarity. Any such obstacle would constitute a violation of the freedom of the individuals concerned; in other words, it is not acceptable that an individual should be forced to conform to the choice made by the greater part of the minority group to which he belongs (and in relation to which those individuals who have no desire to preserve their culture, language and religion are themselves in a minority). This confirms, if confirmation were needed, that the right to enjoy special measures of protection should be accorded to the individual members of minorities (who thus remain free to renounce them) and not to groups as such.

251. As the available information tends to indicate, the persistence of a group's distinctiveness within a State may be attributable to a number of causes.

252. Religion is often cited as one of the most important causes of a group's distinctiveness. For example, with respect to Ghana, it has been observed that the traditional religions play an important part in the daily life of the people and have retained enormous strength and influence because of their intimate relation to family loyalties and local *mores*. The fact that each ethnic group generally has its own distinct religious traditions, uses its own language and applies its own customary laws accounts for the persistence of ethnic identification. It may also be added that ethnicity is still one basis for political affiliations. Observations of a similar nature apply to the United Republic of Tanzania.

253. The role of religion is also evident in other countries. With respect to Thailand, it has been observed that most of the Thai Moslems, a closely knit religious group, have only a slight knowledge of the national language, mainly because they do not wish to learn it, as they consider it to be associated with Buddhism; they even object to their children being educated in schools where the language of instruction is Thai because they are afraid this would lead to cultural assimilation. It has been said that, in Egypt, although Copts and Moslems share a common Egyptian culture, they are set apart by their different religious faiths. It has been observed that the Druzes living in Israel have made what was a religious community into an ethnic entity. In Northern Ireland, religion plays a central role in inter-group relationship. With regard to the Jewish minorities in a large number of countries, it has been said that it was through Judaism that they have been able to preserve their identity. In Iran, minority groups are usually differentiated from other groups by their religious beliefs and customs rather than by their ethnic and linguistic characteristics.

254. Language is another major element which helps to determine whether a population group desires to preserve its characteristics. It is, indeed, a widely held view that while group solidarity is promoted above all by the existence of a distinctive national identity and of a sense of belonging to a recognizable national community, the existence of a distinct language and culture is vital to the expression of such national or ethnic consciousness. Regarding Iraq, for example, the various population groups have been defined by themselves and by others in terms of ethnicity, but with language playing a major part. This is said to be particularly true in the case of the Kurds. The official recognition of the Kurdish language has been one of the main demands formulated by the leaders of that community. In Algeria, although the Kabyles and certain Saharan groups have adopted Islam as their religion, they have preserved some identity of their own by using the Berber language. In Sri Lanka, the two main ethnic groups–the Sinhalese and the Tamils–are distinguished primarily by language and secondarily by religion. In the United States of America, the Spanish-speaking groups have retained their language to a relatively higher degree than most ethnic groups. They have thus managed to maintain a strong sense of unity, social solidarity and cultural and ethnic pride. Language maintenance efforts have played an important role in the efforts of these groups to retain and develop their cultural heritage. In Belgium, language is the main factor behind the cohesion of the "cultural communities". The same observation could be made as regards the French-speaking linguistic group of Canada.

255. The way of life of persons belonging to minority groups and the manner in which they have organized their social and family relationships are yet another type of criterion which can be used for determining whether they desire to maintain their customs and traditions. Certain customs which give overt evidence of a distinctive culture present a formidable barrier to the assimilation of certain ethnic groups. With respect to the indigenous populations and to the Gypsies, for example, the available information suggests that their imperviousness to the encroachment of the dominant culture is due to their strong attachment to their own traditions. Any attempt to impose assimilation would lead to conscious and deliberate resistance.

256. Indigenous cultural patterns generally show a high degree of stability. It has been noted that the complexity of the social and political organization of the Indian groups in Latin American countries has given them an impregnable ethnic cohesion. In spite of an extensive process of racial mixing, Indian groups have managed to maintain their traditional values and way of life. The Government of the Philippines has reported that the groups referred to as "national cultural minorities" have manifested the desire to preserve their characteristics through the formation of their own communities and the continued practice of their own customs, religion and beliefs, the wearing of their own particular dress and the use of their own language. This fact led to the inclusion in the new constitution of a provision which guarantees that "the State shall consider the customs, traditions, beliefs and interests of the National Cultural Minorities in the formulation and implementation of State policies". In Ethiopia, where the distinctiveness of the various population groups lies not only in their religion or their language but, in a more general way, in their culture and their social system, the sense of ethnic identity is naturally strong. The same is true of many other African countries.[1] With respect to Trinidad and Tobago, it has been said that, while the East Indians have accepted a number of socio-economic features from the other communities, they have, nevertheless, successfully reconstructed the social institutions of their native lands.

257. The sense of identity of population groups is also shown by the way in which they organize their com-

[1] Ghana, Niger, Nigeria, Senegal, United Republic of Tanzania, Zaire.

munities. In Tunisia, for example, although the Bedouin and Berber groups are generally considered as part of the Arab majority by virtue of their religion, they nevertheless show strong attachment to their own particular traditions and folkways; they have preserved their characteristics by voluntary isolation, in the case of the Bedouin, or in communal enclaves, in the case of the Berbers. In Malaysia, also, the various ethnic groups have maintained themselves in closed enclaves, each of them retaining their own distinct cultural identity and their language, as the differences in cultural values, life styles and religious beliefs between these communities are broad and deep-rooted.

258. A similar situation is found in many other countries where a group's distinctiveness can be explained by its isolation from the dominant cultural centre of the country. This is particularly the case of indigenous populations and of the Gypsies in European countries. Also, in a number of Latin American countries, notwithstanding the strong policy of assimilation, some immigrant groups, the immigrants of Japanese origin in particular, live in a way that makes them recognizable entities, distinct from the rest of the population. With reference to Brazil, it has been said that, despite conscious and overt efforts on the part of the Government to assimilate all populations of alien origin, there still exist groups referred to in Brazil as "unassimilable ethnic cysts". These are groups of immigrants who, either as a result of circumstances or by design, remain outside the country's culture. Of these the Japanese form the largest and most consolidated ethnic element. It has been emphasized that, although they have had every opportunity to assimilate, they have remained aloof and have preferred to perpetuate their own culture and to marry into their own group. While no apparent prejudice has existed on the part of Brazilians towards the Japanese as a race or culture, strong disappointment has been expressed over their failure to become physically and socially integrated with the national culture. In Singapore, the pattern of settlement along ethnic lines that was set up in the early years of colonization has persisted, and the residential separation of the various communities is still a pronounced feature of Singapore life. In Iran, members of minority groups, including the Armenians, tend to reside in their own communities in the cities, thereby partially insulating themselves from the majority. In Iraq, the sense of identity of some groups has been reinforced by the clear and continuing separation of different groups in specific quarters of the cities and towns. Moreover ethnic differences are often associated with occupational specialization.

259. The isolation produced by discrimination often tends to strengthen a group's sense of distinctiveness. With reference to Panama, it has been said that the hostility of the majority has welded the West Indians into a minority group united by the cultural antagonisms around them.

260. The geographical concentration of ethnic and linguistic groups is also a factor which usually reinforces the sense of identity of these groups. Such a situation is found in various countries throughout the world. In Sri Lanka and Indonesia, for example, the association of ethnic groups with particular regions is said to have increased community consciousness to an extremely high degree. A similar observation can be made concerning Ghana and Nigeria. In Pakistan, each of the principal language groups has a strong regional focus, and linguistic regionalism has led to changes in the country's political structure. The desire of these linguistic groups to constitute separate regional entities is deep-seated and of long standing. In Switzerland, cantons are generally constituted on the initiative of linguistic groups. In Canada, as in Belgium, the concentration of a linguistic group in one region of the country has had a strong impact on the formulation of the official language policy.

261. Sometimes, it happens that ethnic or linguistic groups live close to their ethnic centres (i.e., States where groups of the same ethnic character or language constitute the majority); in such a situation they often develop a more pronounced sense of identity than they would otherwise. This is, for example, the case of the Danish minority in the Federal Republic of Germany, the German minority in Denmark and the Arab minority in Israel. The same observation could be made about the minority groups of Chinese origin in the countries of South East Asia and of the German-speaking minority living in Italy (South Tyrol). The problems which may arise from the close link of minority groups with their ethnic centres led many participants at the seminar on the multinational society held in Ljubljana, Yugoslavia, in 1965 to stress that in order to avoid internal unrest due to inter-ethnic tension it was essential that adjoining States abstain from interfering in each other's domestic affairs and refrain from any action that might put in jeopardy the unity and the integrity of a State on the pretext of protecting a kindred group residing in an adjoining State.

262. In many countries[2] ethnic and linguistic groups have shown their desire to preserve their culture and language by creating associations pursuing cultural and political objectives. Thus in Austria the desire of the Slovene and Croat populations to preserve their culture is frequently affirmed by their own organizations. These include the Council of Carinthian Slovenes, the Central Union of Slovene Organizations, and Croat associations, which regularly issue memoranda, communiqués and programmes setting out the requirements of the Croat and Slovene minorities. In recent years, with the creation of Slovene savings and loan banks, co-operatives and farmers' associations, a growing interest of the minorities in preserving their individuality has been much in evidence. In Denmark, the German minority has constantly expressed its desire to preserve its culture and its language through a number of organizations pursuing political and cultural objectives. The same can be said of the German-speaking minority living in Italy (South Tyrol), whose identity is strongly defended by a political party of the minority itself.

263. History helps to explain the attitude of population groups. The case of minority groups in Central and Eastern Europe illustrates this point, though the influence of historical circumstances on the behaviour of minority groups is by no means limited to these regions. With respect to the United Kingdom, for example, it has been observed that, while Wales has been united politically, administratively and economically with England since the Act of Union in 1536, it has been able to preserve, maintain and

[2] Australia; Austria; Czechoslovakia; Denmark; Finland; France; German Democratic Republic; Germany, Federal Republic of; Hungary; Italy; New Zealand; Norway; Poland; Sweden; United Kingdom; United States of America; Yugoslavia.

develop a cultural identity that is quite different in some important aspects from that of England. The pluralistic character of Canada has been described as a legacy of the colonial period. To keep Quebec British, it was necessary to reassure the settlers that it would remain culturally French. Under the Quebec Act of 1774 passed by the British Parliament, the Catholic religion and French civil law were maintained. The "nation-building model" of the cultural assimilationists was rejected, and a confederation which took into account the existence of a French-speaking population group was set up. In this connexion it should be added that the sense of identity of minority groups is generally much stronger among groups constituted by people who are a minority, not by their own choice, but because they have been included within the national border of a State by political accident.

264. Population groups are less successful in their efforts to maintain their language and culture if they are small in numbers or live dispersed or if they are weak in terms of political influence. In its observations on this aspect of the question, the Austrian Government noted that, because of the small size of the Slovene minority group in Styria, it seemed doubtful that they would succeed in keeping their language alive. With reference to the Jews and the Gypsies of the USSR, the following observations have been made by a Soviet scholar:

> The Jews, of whom, according to the census of 1970, there are 2,151,000, live in the territories of all the Union Republics, for the main part in towns. In 1970 the relative proportion of urban dwellers among Jews was 95.5 per cent. Living for several generations in the midst of other nationalities, the Jews assimilate with these socialist nations (particulary with the Russians, Ukrainians, Byelorussians, Georgians and others). This intensive process of assimilation of Jews with other nations is evidenced by the fact that under the census of 1969 only 21.5 per cent, and under the census of 1970 only 17.7 per cent, of Jews gave Yiddish as their mother tongue. The large majority of Jews gave their mother tongue as Russian or the language of another nationality.
>
> The proportion of Jews in the population of the Jewish Autonomous Region is also fairly small. At the same time it should be noted that it was precisely in the Soviet Union that, after many centuries, the Jews achieved territorial national State autonomy for the first time in modern history (the Jewish Autonomous Region was formed in 1934). However, when considering the Jewish population of the USSR as a whole, it is more correct to regard the Jews as a national group in process of intensive assimilation with other socialist nations.
>
> The Gypsies also live dispersed in most of the Soviet Republics and many of them have assimilated and are continuing to assimilate with other socialist nations.
>
> As for ethnic (or ethnographic) groups, this is the name given to various, generally small, groups within a particular socialist nation which have retained certain tribal, ethnic peculiarities gradually disappearing in the process of that nation's consolidation ... .[3]

265. Social change is also a factor which may contribute to a lessening of the sense of identity among minority groups. In this connexion, it has been observed that the mobility of the population resulting from economic development and social change provides an explanation for the decrease of the number of minority groups in some countries. With regard to Yugoslavia, for example, it has been said that the decline in the number of persons declaring as their monther tongue the language of a national minority group within the republics of Yugoslavia[4] is a result of their great geographical distribution and of their intermixture with the other inhabitants. The progress in the educational development of the young people belonging to national minorities has greatly influenced the pattern of employment and residence. More and more of these young people now live in large cities and industrial centres. As a consequence, there are many mixed marriages and in most cases the children born of these marriages declare themselves "Yugoslavs" and not members of national minorities.

B. Inter-group relations: difficulties and remedies

266. The information given above clearly indicates that minority groups generally attach great importance to the survival of their cultural, religious and linguistic characteristics. The question that will now be discussed concerns the impact that the desire of these groups to maintain their identity has on the relations between them and other population groups, and in particular the causes of inter-group tension and friction, as well as the policies adopted with a view to the elimination of such causes.

267. Some governments state that their policy aims at the cohesion and unity of their people and at the creation of an atmosphere in which the various ethnic, religious and linguistic groups may find the opportunity to transcend the differences between them. On the basis of that assumption, the tendency among the governments concerned has been to de-emphasize the scope of inter-group differences, or even to deny their existence altogether, and to stress that the existence of various population groups does not constitute a problem. Thus, for example, the Egyptian Government states that: "Egyptian society is composed of a unique, homogeneous and cohesive people whose values and traditions have been unified". For the Government of Iran, "relations between the different population groups are harmonious and the existence of minority groups does not create any particular problems". A similar evaluation is made by the Governments of Bulgaria, the German Democratic Republic, Hungary and Sweden.

268. There are, however, instances where inter-group tension has led to violent political agitation or has threatened the stability of the political structure of the State. The civil war which opposed the southern and northern regions of the Sudan from 1956 to 1972, the Kurdish rebellion in Iraq during the early 1970s, the civil wars in Nigeria during the years 1967-1970, the internal strife in Northern Ireland and the sporadic rioting in Malaysia during the post-independence period are dramatic manifestations of inter-group conflictual situations. Tension having important political consequences has also occurred in Belgium, where the language issue, after remaining relatively dormant for some time after the war, came into prominence during the 1960s and led to demonstrations and riots, frequent realignment of the language boundary, and even the resignation of governments. It would appear from the available information that harmonious relations between the various ethnic, religious and linguistic groups within a country depend to a large extent on the attitude of the dominant political forces of the society of that country and on their willingness to allow members of each group to

[3] I. P. Tsamerian, *Theoretical Problems of the Creation and Development of the Soviet Multinational State* (Moscow, 1973), pp. 142-143.

[4] Yugoslavia is a multinational State composed of members of six "nations" and a number of "national minorities".

pursue their economic, social and cultural development according to their own tradition in an atmosphere free of discrimination. When population groups are assured of their rights, when they are able to participate fully in the political, economic and social life of their country, when the contributions of their culture are recognized, they gain the sense of security which is indispensable for the elimination of intergroup tension.

269. An analysis of the available information tends to show that inter-group tension and friction may be attributed to a number of causes, including the adoption by States of a policy of forced assimilation; the discriminatory practices to which population groups may be subjected; economic imbalance between population groups; differences in outlook between groups and the stereotyped views held by groups concerning one another. With regard to developing countries, the negative consequences of colonialism are to be added to this list.

270. Tension and friction between population groups may be the consequence of a policy of forced assimilation. This occurs when the concept of a multi-ethnic or multi-cultural society has not been accepted by the politically dominant ethnic group of a country, which feels convinced of the need for the assimilation of other groups. Problems of that nature have been found in many of the countries surveyed.

271. With respect to Latin American countries, it has been observed that tension is rare among immigrant groups, and the harmony existing between these groups is generally attributed to the high rate of assimilation of most of them. It appears, however, that in some other countries resentment is shown towards groups whose members fail to become fully assimilated into the predominant culture. This is, for instance, the case of the Japanese immigrant groups in Brazil. In those cases the cultural animosities marring inter-group relations are based primarily on cultural rather than ethnic or racial factors.

272. Harmonious inter-group relationships are seriously threatened when groups feel alienated from the rest of the population or are victims of discriminatory practices. It has been said that, though the Moslems of Thailand constitute the largest population group in the region in which they live, very few of them occupy important posts in the local administration; they feel strongly that their interests are not served and therefore do not identify with the nation. This leads to frustration, which, in turn, generates violence. In Spain, the very strong nationalist spirit shown by large sectors of the Basque community has been attributed to the feeling of alienation of members of that community from the political institutions of the country. Regarding Israel, it has been observed that because of discriminatory government practices only a very few members of the Arab minority occupy positions for which they are qualified. This situation thus contributes to deepening the cultural chasm separating Jews and Arabs within that country. In Ethiopia the designation of Amharic as the official language causes resentment among the Eritreans, who feel that they are discriminated against in the field of education and in government service as a consequence of that measure.

273. With respect to the United Kingdom, it has been said that the immigrant groups have realized that, although British society has pluralistic facets, they have to adjust to an inferior status. This status gap has been a source of social tensions in the areas where immigrant groups are concentrated. The Arab minority in Israel confronts problems of a similar nature. In this respect it has been said that, since Israel is by definition a Jewish State, it is very difficult for non-Jews to integrate into the mainstream of national life.

274. In the countries where indigenous populations exist, alienation appears to be the main cause of many of the problems they face in their relations with other groups. They generally occupy no significant economic or social position and remain largely outside the national structure, both in their own view and in the eyes of the other groups.

275. Economic factors or exorbitant income disparities play a major role in the relations between population groups. In this connexion, one may recall the following observations made at the seminar on the multinational society held in 1965 in Ljubljana, Yugoslavia.

> With reference to the importance of economic factors in the orderly arrangement of a multinational society, several speakers stated that the first prerequisite for any effective solution of the difficulties besetting certain national groups was the redress of economic imbalances. When each region of a country received its fair share of the benefits of industrialization, technical training and agricultural development, the acquisition of political and social rights, including cultural rights, followed as a matter of course. By contrast, a group might have, for example, a declared right to maintain its own educational or cultural institutions, but in the absence of adequate participation in the country's expanding fiscal assets, such a right was bereft of substance.[5]

276. According to the available information, the relationship between the two main ethnic groups in Fiji contains all the ingredients of a potentially explosive situation as a result mainly of their different degree of involvement in the cash economy and their different positions or attitudes with regard to land utilization and population growth. While there is no official policy of racial segregation, segregation has nevertheless taken place as a natural outcome of the fact that Fijians and Indians have not reached the same level of economic development. To remedy the situation, one of the main objectives of the Government is to reduce and ultimately eliminate income disparities between the two groups. In Indonesia, the existence of an imbalance in the participation of the population group of Chinese origin in the economy has been reported to be a source of inter-ethnic conflict. In the United States, the black population, the Indians and the Spanish-speaking group are said to be distinguished by the minor role they play in the economy of the country; such a situation contributes in a large measure to the strengthening of the barriers separating the races. With respect to Malawi, it has been said that, in the past, income disparities between ethnic groups were such that they made harmonious relationships impossible. In Malaysia, relations between the major ethnic groups are often marked by tension. In this regard, it has been said that:

> A racial balance has been achieved on the basis of a division of responsibilities and functions between the three main ethnic groups. The dominance of political life by the Malays is offset by the economic prominence of the Chinese and to a lesser extent of the Indians. This *modus vivendi* seemed to have been jeopardized by the 1969 disorders, which highlighted the dangers of explosion and breakdown inherent in a multiracial society where prejudices based on ethnic origin are exacerbated by the disparities and structural changes caused by economic growth and development. As a result,

[5] ST/TAO/HR/23, para. 29.

the Government's economic and social policy was recast. In particular, the Second Plan for 1971-1975, which was approved recently, lays greater stress than its predecessor on the reduction of racial imbalance as a criterion for allocating resources.[6]

277. With regard to Canada, it has been observed that the economic dominance of the English-speaking population meant that the French-speaking Canadians and other immigrant groups were compelled to learn English in order to take advantage of opportunities for upward social mobility. Some of their grievances are economic in nature. In many cases the basis of their complaint has been the unavailability of employment in industry without a knowledge of English—in a province which was 81 per cent French-speaking. This has had strong effect on inter-group relations. Another example of how the economic factor may play a role in the relationships between population groups is the case of Wales in the United Kingdom. In that respect it has been stated that:

> Wales provides a classic example of a small nation that, while deriving some economic advantage from being a part of a larger entity, nevertheless feels that it is in danger thereby of losing its identity. ...
>
> Wales has tended to be regarded economically as a problem area and as a country whose economic difficulties are accentuated by the fact that they are overlain by a national consciousness that is tending to sharpen and of whose existence Whitehall, until recently, either was not or did not wish to be aware. Without entering into the political arena, it can be stated with some confidence that the future of Wales lies in the kind of partnership within the United Kingdom that will allow national identity and self-respect to be preserved through an understanding of national problems and an attempt to fit the country's economy into that of Britain as a whole. If this is not done, and seen to be done, extremist movements will undoubtedly gather ground.[7]

278. The adhesion of population groups already separated by ethnic, religious or linguistic differences to divergent sets of socio-political values may also have in some cases a negative influence on their relationship. Nigeria, for example, confronted ethnic and regional tensions from the outset of independence not only as a consequence of the unequal economic development of its Northern and Southern Regions but also because political and ideological divergences were added to long-standing differences based on ethnicity and language. While one school of thought favoured a united republic as goal, another proposed a loose union of ethnic entities or regional amalgams of related ethnic groups. It was in this climate of regional and ethnic antagonism that the civil war was erupted, at the end of which a broad programme of reconciliation was drawn up in which the country's history of ethnic and regional differences was taken into account.

279. Characteristics ascribed by the majority to the minority, and vice versa, and the stereotyped views one group may hold of another often impede understanding and the willingness to accept heterogeneity.

280. Also, the fact that one ethnic group which is a minority in a country constitutes a majority in a neighbouring State may influence its relationship with other population groups, as well as relations between the States concerned. With respect to Sri Lanka, for example, it has been observed that although the Sinhalese constitute numerically by far the largest ethnic group in the country, they nevertheless feel themselves to be a small and isolated group because the combined Tamil population in Sri Lanka and in neighbouring areas in India outnumber them by more than six to one. This feeling of encirclement was in part responsible for the mistrust which in the past divided the two communities. Observations of a similar nature could be made about the relationship between the Jewish population and the Arab minority in Israel.

281. Historical circumstances and policies followed during the colonial period have been in many instances the main causes of friction in inter-ethnic relations. Referring to the countries of East Africa, an author has stated:

> The maintenance of colonial rule does not require that the people in the territory in question constitute a nation; indeed it is sometimes necessary to ensure that they do not constitute a nation. Thus racial and tribal distinctions are preserved, if not actually encouraged. To maintain independence in these circumstances is difficult. It is necessary to forge a feeling of common nationhood and to underplay racial and tribal differentiations.
>
> ...
>
> ... One of the most striking features of colonial rule in East Africa was the compartmentalization of society in three or more racial groups, which was reinforced by economic, social and political discrimination and segregation. Though Tanganyika avoided the worst excesses of this system because of her status as a mandate, and later, trust territory, it nevertheless formed the pattern of organization of the society. Thus there were separate residential areas for the different communities, whether in law or *de facto*, separate schools, hospitals, maternity homes, clubs; on the political level, the institution of separate electoral communal representation stimulated racial political parties and made racial interests inevitable as political issues. On the economic level, the compartmentalization was reinforced by (*a*) a racial salary structure in the public and, imitatively, in the private sector, (*b*) the alienation of the best agriculture land to the Europeans, (*c*) wide disparities in the quality and number of social and economic services provided by the government for the different races. The result of all these policies was to preserve and strengthen the political, economic, and social dominance of Europeans in Tanganyika. The Asians tended to occupy the middle place in this system, while the Africans were at the bottom. For the African population the British adopted the system of indirect rule, which employed the existing tribal institutions and thus tended to reinforce tribal distinctions.[8]

282. On the subject of colonialism, the following observations were made at the seminar on the promotion and protection of the human rights of national, ethnic and other minorities, held in Ohrid, Yugoslavia, in 1974:

> ... many participants dwelt upon the negative consequences of colonialism on minorities in the parts of the world that had been or still were under such a régime. It was held that the colonial system had hampered the development of the national cultures of both majorities and minorities. The colonial Powers had played minorities off against one another and against the majority among the peoples governed and had maintained and exploited their division in order to facilitate the functioning of the colonial administration ... It was also mentioned that the arbitrary drawing of boundaries by the colonial Powers further aggravated and complicated problems relating to minorities, especially in Africa. Thus, the newly independent States found it difficult to solve the minority problems inherited from the period of colonial domination; for instance, the illogical frontiers tended to lead to agitation in favour of union between groups who were separated by them.[9]

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[6] J. P. Arlès, "Ethnic and socio-economic patterns in Malaysia", *International Labour Review*, vol. 104, No. 6 (December 1971), p. 527.

[7] *The New Encyclopaedia Britanica*, 15th ed. (Chicago, 1974), vol. 19, p. 530.

[8] Yashi Ghai, "Ethnicity and group relations", *Two studies on ethnic group relations in Africa: Senegal, the United Republic of Tanzania* (Paris, UNESCO, 1974), pp. 107-109.

[9] ST/TAO/HR/49, para. 24.

283. It has been said that Sri Lanka, a country where the relationship between the two major ethnic and linguistic groups has always been a significant factor in the life of the people, colonial policies and historical circumstances had upset the equilibrium and introduced new stresses into society. As regards Ghana, it has been observed that one major cleavage in society resulted from the policies followed during the colonial period under which the ethnic groups living by the coast and those living in the interior were accorded different treatment in the fields of education, commerce and administration. With respect to Zaire, it has been said that the colonial administration met strong resistance from the large ethnic groups and, in order to counteract that resistance and weaken the influence of those groups, sought support among the minority ethnic groups. This had the effect of deepening inter-ethnic rivalries.

284. Historical factors of the same nature have often contributed to exacerbating ethnic differences and to fostering to an extreme degree a feeling of exclusiveness among population groups which continued to persist after independence. The case of the Asian minority groups in some African countries offers an example. As regards Malawi, it has been reported that little common ground appears to exist between the Asian minority and the other ethnic groups of the country. As a consequence of the policy of racial segregation followed during the colonial era, the Asian minority lives in isolation and does not participate in the social life of the nation in any significant way. With regard to the United Republic of Tanzania, it has been said that Asian-African relations developed in the context of the racist society which colonialism established with a view to eliminating contact between population groups. During the years following independence, the immigrant Asian minority was regarded as alien, a view reinforced by the large number of persons of Asian origin who declined to become citizens of the new State. Furthermore, the fact that members of that group were more prosperous than the rest of the population because of the privileged position they had occupied during the colonial period generated resentment. Ethnic particularism in Burma is said to have been encouraged by a colonial policy which aimed at the isolation of the various ethnic groups from each other and from the dominant ethnic group, the Burmans. The sense of ethnic difference felt by various Burmese population groups was further strengthened by the colonial government's practice of recruiting persons belonging to some ethnic groups for the administration and armed forces and excluding others. According to the available information, the persistence of ethnic distinctiveness shown by ethnic groups in Burma is more the result of these historical factors than the result of significant differences in culture from the Burmans. It has been further observed in this connexion that, while most minority groups in Burma profess the Buddhist faith, each keeps its religious institutions separate from those of the others, expressing thereby a strong desire to preserve their customs and traditions in their own way. Observations of a similar nature have been made with respect to Fiji, where isolation is still the pattern between the two main ethnic groups of the country, the Indian and the Fijian. Consequently, each group has maintained its distinctive ethnic identity, cultural traditions and social structure. Another major group, the Moslems, also functions as a distinct community which possesses its own culture, its own language and its own system of private law.

285. Many efforts have been made to combat the various causes of inter-group antagonism. Thus, the establishment of a socio-political structure which reflects the realities of cultural, religious and linguistic differences between various components of the society concerned has been regarded in some countries as an effective means to promote understanding, co-operation and harmonious relations between population groups.[10] For example, it has been observed that Switzerland has developed over the years a remarkable linguistic stability despite the imbalance in the number of speakers of each of the four national languages. While certain linguistic tensions occasionally erupt in a few regions, political decentralization has kept the language groups from confronting each other at the national level. As a result, language issues seldom disrupt the political life of the country.

286. Regarding Yugoslavia, the following observations have been made:

> The Constitution of Yugoslavia not only proclaims the principle of the equality of the peoples and nationalities, but guarantees it as well. Aside from its provisions explicitly dealing with this matter, it binds the republics and provinces as well as the communes and narrower self-management communities to elaborate this principle in regulating economic and political relations in their own constitutions or statutes.
>
> ...
>
> In defining its minority policy, Yugoslav practice and theory works on the basic assumption that it is necessary "to assure national minorities the broadest rights which a socialist community can provide and which are necessary for minorities to be able to live their normal national life within the Yugoslav community of nations. In other words, so that in our country they do not feel like minorities but like *equal nationalities.*
>
> It is not a matter, then, of simply guaranteeing national minorities all national rights but of providing real opportunities for national minorities as national and ethnic groups, in the commune or work organization, to exercise these rights alone and in conjunction with other nationalities within the system of self-management. From this standpoint, the material base under autonomy or local self-government is of special importance. The organs of self-government in the commune and the autonomous province are the main organs which should look after the special interests of minorities in regard to schooling, use of mother tongue, the training of professional personnel, etc.
>
> Through the development of self-management in socio-political communities and communities of interest of various social services, the national minorities gain even more; namely, they can "solve their own problems" in satisfying their special interests. Minorities "in conjunction with other nationalities" can directly exercise their rights.
>
> This aspect of the political system in Yugoslavia implies a certain measure of mutual trust and an awareness of the common interest. Mutual co-operation is being facilitated, and all working people are being mobilized, regardless of nationality, to make joint creative efforts to satisfy their local interests and develop the forces and potential of a given self-managing socio-political community, thus creating better conditions for realizing their specific interests.[11]

287. In Iraq, autonomy and the right of self-government are reported to have been granted to the area where the Kurds are concentrated. The Government has written:

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[10] India, Switzerland, USSR, Yugoslavia.

[11] Nada Dragić, ed., *Nations and Nationalities of Yugoslavia* (Belgrade, Medjunarodna Politika, 1974), pp. 110, 111, 172 and 173.

In accordance with Revolutionary Council resolution No. 288 of 11 March 1970, granting national rights to the Kurds and autonomy within Kurdistan, an amendment to the Interim Constitution was adopted on 11 March 1974 adding the following words to article 8:

"3. The zone inhabited by a majority of Kurds shall be autonomous in accordance with the provisions of the Act."

In accordance with the Constitutional amendment, the Kurdistan Territorial Autonomy Act, No. 33, was passed on 11 March 1974 ...

The Autonomy Act contains three main parts: the first concerns the basis of the autonomy; the second concerns its institutions; and the third states the connexion between the central government and the autonomous administration. The legal bases of the autonomy are general and financial. Article 1 of the Act lays down that the zone of Kurdistan shall enjoy autonomy. That zone is defined as one in which the majority of the inhabitants are Kurds and which is deemed to be an administrative unit having meaningful personality and autonomy within the framework of legal, political and economic unity with the Republic of Iraq. The zone is an undivided part of the territory of Iraq, and its population is an undivided part of Iraq's population. Under the same article the organs of the autonomous administration are considered part of the organs of the Republic of Iraq. Article 2 of the Act provides that the Kurdish language shall be, together with Arabic, the official language of the region and the language of instruction for the Kurds. The instruction in educational institutions for young Arab persons is to be given in Arabic, and the teaching of Kurdish in them is obligatory... Article 12 defines [the] powers... [of the Legislative Council, the elected legislative organ for Kurdistan] and gives it authority to enact the legislation necessary for the development of the region and of its social, cultural and economic qualities, and of the culture, characteristics and racial traditions of its inhabitants. ...[12]

288. As lack of contact usually has a detrimental effect on inter-group relations, the manner in which channels of communication are established between ethnic and linguistic groups may have a decisive influence. It has been noted, with respect to Malawi, that it was unlikely that the pattern of isolation which had created a feeling of uneasiness between the various ethnic groups would remain unchanged. Many forces are at work which will undoubtedly lead to the breakdown of isolation. In particular, it is hoped that the abolition of communal schools will have the effect of bringing together the different communities. Furthermore, in many spheres of life, contacts are multiplying through organizations, such as the trade unions, which until recently were organized along ethnic lines. Concerning Ghana, it has been observed that intermingling in schools, urban centres and employment has the effect of lessening the significance of ethnicity but not eliminating it. On the other hand, regarding the Bedouin of Egypt, it has been reported that their assimilation was only a matter of time, as economic necessity was gradually forcing them out of the desert and into the populated areas of the Nile Delta. This process of assimilation was for a time slowed by a law which, in exempting all Bedouin, settled or nomadic, from military service, encouraged members of this group to preserve their minority identity. With the modifications of the law to apply only to pure nomads, it has become unusual to find any settled Bedouin claiming Bedouin descent.

289. In many countries, special efforts are being made to promote understanding between the various population groups. Indeed, as one author observed, "the realization of the multi-ethnic society can be furthered by legal measures, but it will require also a programme of action designed to reduce the barriers to the acceptance of minority rights by people generally. It becomes necessary, therefore, to identify these barriers, as well as the techniques that may be used to promote the required changes in attitude ... ."[13]

290. However, while contacts and communications between various population groups may play an important role in inter-group relations, they must be conducted, in order to be fruitful, within a context of equality. In this connexion, an author has written:

There is a widespread belief that if members of different groups come into contact with one another, friendlier attitudes will develop as a consequence. This is not always true. No amount of contact between [members of different groups] is likely to improve relations [in] cases [where] judgements of superiority or inferiority may merely be reinforced. What is needed is *equal-status* contact, in which the members of the ethnic groups which meet represent comparable levels of position and prestige. Research has further indicated that contact has the best results when the two groups work together to achieve a common goal, particularly when success depends on co-operation. It has been suggested that ethnic relations could be greatly improved if one could multiply occasions designed to reinforce the pattern of co-operation rather than competition by creating situations characterized by common, interdependent goals.[14]

291. The relations between population groups may be improved as a consequence of the adoption by States of bilateral agreements or by specific commitments of an international character. As regards Denmark, it has been stated that one effect of the strict application of the principles laid down in the government declaration of 1955, which was based on the agreement reached with the Federal Republic of Germany, has been the elimination of tension in North Schleswig, the area where the bulk of the German minority lives. Furthermore, in accordance with the objectives of that declaration, efforts are constantly being made to provide the minority with more and more outlets to express its feelings and press for its requirements. One result of this attitude was a decision adopted recently by the county of North Schleswig to raise the county council membership from 25 to 29 in order to expand minority representation in the council. It has been further noted that one paradoxical consequence of the favourable conditions accorded to the German minority has been the difficulty it now encounters in its endeavours to retain and develop its identity. As differences between the German minority and the Danish majority become negligible and social contacts, including mixed marriages, are multiplying, there is now a trend towards a certain amount of slow assimilation of the German minority—although it is not expected that that minority, which is rooted in tradition, will disappear. The fact that during the last decade the number of pupils in German schools remains stagnant seems to confirm such a trend.

292. Measures reported by governments as adopted on the national level in order to improve inter-group relations include the following:

(*a*) The representation of members of various ethnic groups in government, in the civil service and in professional associations;[15]

[12] *Yearbook on Human Rights for 1973-1974* (United Nations publication, Sales No. E.76.XIV.1), pp. 119-120.

[13] Otto Klineberg, Background paper G, prepared for the seminar on the multinational society held in Ljubljana, Yugoslavia, in 1965, p. 26.

[14] *Ibid.*, p. 37.

[15] India, Iraq, Philippines.

(*b*) The establishment of special committees or institutions with a view to ensuring that members of all ethnic groups are in a position to play an active part in the socio-political life of the country;[16]

(*c*) Efforts to improve relations between the police and minority groups, such as the recruitment of police members from those groups, the organization of a special training course in the field of race relations, the holding of race seminars and the teaching of minority group languages in police academies;[17]

(*d*) The establishment of a system of national service whereby members of different ethnic groups live and work together and perform tasks which cannot but increase racial understanding and produce a spirit of togetherness transcending ethnic and racial differences;[18]

(*e*) The organization of activities designed to improve in the economic and social fields the situation of disadvantaged minority groups and increase the educational opportunities offered to them;[19]

(*f*) The establishment of educational institutions for the development of national groups with a view to providing training for selected members of various population groups to help in the implementation of the national ethnic policy;[20]

(*g*) The creation of special programmes in universities whereby students are required to undertake field study on the customs and social systems of minority groups;[21]

(*h*) The reform of the educational system with a view to eliminating any differences in the education provided to members of different ethnic groups and thereby reducing inequalities in income between them;[22]

(*i*) The setting up in schools of cultural programmes and other similar activities on a regular basis designed to strengthen mutual understanding and friendship among the youth of different nationalities;[23]

(*j*) The revision of school textbooks which contain comments or expositions of historical facts that are not conducive to understanding and respect between ethnic or linguistic groups;[24]

(*k*) The use in schools of new textbooks and teaching materials stressing the history of minority groups along with that of the majority;[25]

(*l*) The organization of activities designed to educate the public on problems of inter-group relationships and on the role played by minority groups in the development of the country;[26]

(*m*) The prohibition of exclusive social clubs and the adoption of an uncompromising attitude towards manifestations of racial arrogance;[27]

(*n*) The organization under government auspices, both at the national and the local level, of increasing contacts between ethnic groups.[28]

C. The objectives pursued by governments in formulating their policies towards persons belonging to ethnic, religious and linguistic minorities

293. In multi-ethnic, multi-religious and multilingual societies, the main options which are open to Governments when they formulate policy towards persons belonging to minority groups can be described in terms of pluralism, integration, assimilation, segregation (even admitting that some of those terms have a certain degree of ambiguity). A policy of pluralism has the fundamental goal of preserving the identity of minority groups; it pursues this objective by granting them a large degree of freedom in the administration of their own affairs.[29] Its application may thus entail the establishment of a special political and administrative structure or the granting of local autonomy on a wide range of matters to the regions where minorities live. Integration have been described as a process which aims at the unity of the various groups of a given society while allowing them to maintain their own characteristics through the adoption of specific measures. Pluralism and integration are therefore two policies which can be followed simultaneously. The objective of a policy of assimilation would be the establishment of a homogenous society in which persons belonging to minority groups would have to abandon—even if gradually and not forcibly—their traditions, their culture and the use of their language in favour of the traditions, the culture and the language of the dominant group. Although minority groups are not necessarily rejected under such a policy, they are, nevertheless, required to accept the primacy of the culture of the dominant group. The aim of a policy based on segregation would be to keep minority groups separate and maintain them in a position of inferiority. At the seminar on the promotion and protection of the human rights of national, ethnic and other minorities held in Ohrid, Yugoslavia, in 1974, the following observations were made on this question:

> It was pointed out that assimilation, though desired by some minorities, should not be forced upon any minority, as it was a process that should depend exclusively on free will. One participant felt that the pursuance of a policy of forced assimilation for minorities violated the fundamental principles of self-determination and equality of nations and the basic human rights which were enshrined in the Charter of the United Nations. Moreover, assimilation implied a series of measures of direct or indirect coercion for the purpose of denationalizing minorities, negating the rights of individuals of their own identity and thereby the rights of a national and ethnic minority as a whole, and from that point of view it could be considered to approach the threshold of genocide. A harmonious integration rather than full assimilation might be a way of preserving the characteristics of various groups and thus achieving unity among

[16] Austria, Belgium, Canada, Hungary, Poland, Romania, United Kingdom, United States of America.

[17] United Kingdom.

[18] Singapore, United Republic of Tanzania.

[19] Burma, Iran.

[20] Burma.

[21] Burma.

[22] United Republic of Tanzania.

[23] Hungary.

[24] Australia. In Austria, a new history textbook, prepared by a joint Austro-Italian commission, has been issued.

[25] United States of America.

[26] Australia, Iraq, Ukrainian SSR.

[27] United Republic of Tanzania.

[28] Sweden.

[29] For a fuller discussion, see Brewton Berry, *Race and Ethnic Relations* (Houghton Mifflin Co., Boston), pp. 181-364. See also *Racial Discrimination*, revised study prepared by Hernán Santa Cruz, Special Rapporteur of the Sub-Commission (United Nations publication, Sales No. E.76.XIV.2), paras. 356-379.

diversity and the building of pluralistic or multicultural societies, which might be preferable, under certain circumstances, to multinational federal structures.[30]

294. From the analysis of the available information, three general observations can be made at the outset concerning governmental attitudes towards members of minority groups. First, in none of the countries surveyed has segregation been adopted as the official State policy. As indicated elsewhere in the present study, the constitution or the laws of all the countries surveyed prohibit discrimination based on race, ethnic origin, religion and language, and aim at equality for all (see para. 320). The second observation concerns religious minorities which are not differentiated from the larger population by ethnicity or language. Since freedom of conscience and of religion has now generally been recognized as a fundamental right, no particular problem arises as regards the recognition of the right of everyone to profess and practise his own religion. The third observation relates to governmental attitudes towards ethnic and linguistic minorities. They not only vary from one national situation to another, but in some countries from group to group within the same country (which is quite possible due to the numerous differences of nature, attitude, size, etc. that minority groups present). Thus, a policy of assimilation may be applied in the same country as regards some groups only, while pluralism is the prevailing concept concerning others.[31] Also, there may be instances where the official policy, as proclaimed, does not entirely correspond with actual practice. Generalization, therefore, should be made cautiously and tentatively.

295. Those countries studied which have officially recognized the existence within their territories of ethnic and linguistic groups as entities having special needs or requiring a special status have adopted either a policy of integration or one based on a pluralistic concept. In some instances the adoption of a federal structure[32] or the granting of administrative or regional autonomy to the areas inhabited by distinct ethnic and linguistic groups[33] have been considered as an efficient means of safeguarding and protecting the individuality and the rights of these groups. Such a solution presupposes a geographical concentration of these groups. However, it should be pointed out that, though such an approach contributes in a significant way to the solution of the problems of the main ethnic and linguistic groups concerned, it lacks flexibility since it does not provide the same protection to other ethnic and linguistic groups residing in the various political or administrative subdivisions of the State.

296. In some countries, the pluralistic approach has been implemented, not through the establishment of a federal system of government or by the granting of autonomy to a particular region, but by the adoption of special measures designed to ensure that members of minorities are effectively able to enjoy the rights granted to them within the framework of a unitary system of government. Such a solution is usually adopted when minority groups are relatively small in number or are scattered throughout the country concerned.

297. The Government of Sweden reports that the general principles for the treatment of persons belonging to ethnic, religious and linguistic minorities have varied according to the group concerned. As to the treatment of persons belonging to immigrant minority groups, the government policy in the past was characterized by a desire to assimilate these groups as soon as possible with the majority of the population. Since 1965, however, there has been a debate on the measures that should be adopted in order to encourage these minorities to preserve their language and on the desirability of supporting such efforts with public funds. The Government Commission on Immigrants have been entrusted with the task of shaping the new policy.

298. In Austria, Denmark, the Federal Republic of Germany and Italy—countries where the status of minorities has been the subject of international obligations—the official policy can be described as aiming to ensure to persons belonging to ethnic and linguistic minorities the right to preserve their own characteristics. To this effect they have included in their constitutions or in their laws a number of special measures dealing with minority rights. In the United Kingdom and in the United States of America, special measures have also been taken concerning minority rights. The Government of Belgium states that its policy towards linguistic groups is to grant them official recognition and to provide them with the means to preserve and develop their own characteristics. Thus the constitution contains the following provisions:

> Article 3 *bis*—Belgium consists of four linguistic regions: the French region, the Dutch region, the bilingual Brussels-Capital region and the German region.
>
> Each commune in the Kingdom is part of one of these linguistic regions.
>
> The boundaries of the four regions can be changed or rectified only by an Act adopted by a majority of each linguistic group voting in each of the Chambers, provided that a majority of the members of each group is present and that the total of the affirmative votes of the two linguistic groups amounts to two thirds of the number of votes cast.
>
> Article 3 *ter*—Belgium consists of three cultural communities: French, Dutch and German.
>
> Each community has attributes recognized by the Constitution or by laws adopted under the Constitution.

299. The State structure of Singapore is said to be such that it does not reflect the social or cultural characteristics of one ethnic group only but rather reflects the objective of forging a multiracial and multilingual society. All the minority groups have their interests and special positions protected by the constitution. Moreover, although the Chinese form 75 per cent of the population, the national leadership stresses that it has formulated policies which do not correspond entirely or even mainly with the values of the majority population alone. Integration of the diverse values of the population is the objective; hence the emphasis on multiracial and multilingual cultural and educational policies. It has further been observed that the official assurances which have been given as to the preservation of the cultural heritage of all communities and the wide acceptance of the government policies have led to

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[30] ST/TAO/HR/49, para. 42.

[31] For example, Finland has granted autonomy to the Aland Islands as a means of protecting the cultural and linguistic characteristics of the Swedish minority group. However the same approach has not been adopted as regards another officially recognized minority group, the Lapps.

[32] Canada, Czechoslovakia, USSR, Yugoslavia.

[33] Finland, Iraq, Nigeria, Sudan.

progress towards the integration of all communities into a distinct national identity.

300. In the Eastern European countries surveyed, special measures have been adopted as regards the rights of national groups. It has been observed with regard to Romania that "the settlement of the national question [in that country after the Second World War] was essential in order to consolidate the unitary Romanian national state and to proceed with the organic integration of the co-inhabiting nationalities into public life on the basis of thoroughly democratic principles which presuppose complete equality of rights for all citizens without distinction as to nationality".[34] According to the Romanian Government, this policy has been raised to the status of State policy and consistently applied in the general context of the economic, social and cultural development of the country as a whole; the "co-inhabiting nationalities" are represented in the legislative and executive organs at all levels, and there is a large network of educational and cultural institutions using the mother tongues of the various nationalities.

301. The Hungarian and Ukrainian Governments have stressed that they were committed to the respect of the specific interests of the different "nationalities" living within their territory, including their participation in public affairs, the free use of their native tongue, education in their native language and preservation of their national culture. The Hungarian Government has further emphasized that one essential feature of its policy was the fact that it was not based on the number of persons belonging to "nationalities". The constitution of Czechoslovakia provides that "the State shall secure to citizens of nationalities the possibilities and the facilities for their all-round development". The constitution contains specific provisions relating to the participation of persons belonging to Hungarian, German, Polish and Ukrainian nationalities in State organs and their representation in legislative bodies in proportion to their numbers. In Bulgaria and in the German Democratic Republic similar measures concerning national groups are said to have been taken. As regards the national groups of the USSR which do not constitute autonomous units, an author writes:

> ... of the 119 nationalities recorded in the 1970 All-Union population census, 58 nations and nationalities in the USSR have national statehood (and State structures) while 61 have no separate national statehood. The latter consist mainly of numerically small national minorities and also relatively numerous ones who live dispersed in different parts of the country, such as Gypsies. Certain national groups, some of which are quite numerous (for example, Germans, Poles, Koreans, Bulgarians and Hungarians), also have no separate national statehood. It should, however, be borne in mind that the fact of not having separate national statehood in no way limits the opportunities for a nationality or national group to develop its culture fully, promote its national interests and satisfy its needs. All districts with sizeable national minority communities have local soviets, schools, cultural and educational amenities, radio programmes, press, etc. in their languages. Members of all national groups and nationalities are fully represented in all Soviet State electoral bodies.[35]

302. In Yugoslavia also, the federal constitution and the constitutions of the various republics contain provisions intended to ensure to "nationalities" living in these republics the right to preserve and develop their own characteristics.

303. The available information indicates that the reported official policy of the countries in which indigenous populations reside is to take into account the special situation of these populations by the adoption of special measures.[36] In this connexion, the Government of Sweden has stated that, until the very recent past, the situation of the Lapps had been handled in Sweden as a question of economic policy and that as a consequence problems concerning the development of their culture and language had been neglected. However a new policy has been set in motion since 1971, with the passage of the new Reindeer Husbandry Act, under which the Lapps will be granted a greater measure of self-determination, and by the adoption of a number of measures designed to encourage the development of their culture and their language.

304. In countries in which population groups having characteristics different from the rest of the population have not been officially recognized as entities entitled to special rights, assimilation is in most cases the official policy adopted towards these groups. A clear sign that such a policy is being applied is the granting of official status only to the language spoken by the majority of the population. This is particularly the case in Ethiopia, Indonesia, the United Republic of Tanzania and the Latin American countries surveyed.

305. It has been said with regard to Thailand that the official policy is to bring about complete assimilation of non-Thai ethnic groups and to create a common national outlook for all citizens, regardless of racial or cultural origin. The nature of the measures used to implement this policy varies from group to group, depending on the degree of ethnic solidarity shown by the groups concerned. As the Government is aware of the importance of language barriers as an obstacle to the assimilation of the various ethnic groups, it strives to achieve the goal of eliminating minority problems by absorbing the minority populations into the national culture, by placing emphasis on the weakening of the linguistic roots of the ethnic groups and by promoting the knowledge of Thai among all residents.

306. With reference to Turkey, the available information indicates that the Government is making a continuous effort to achieve cultural homogeneity, as evidenced by the education system, which is designed to channel the minorities into a uniform stream of Turkish culture. This obviously tends to reduce the prospects of preserving the cultural identity of minority groups. The Turkish Government has stressed that the rights granted to national minorities by the Treaty of Lausanne are fully respected and that the Treaty has the force of law in Turkey.

307. In the Latin American countries surveyed, assimilation is generally the policy followed by governments. For example, it has been said that ethnic group activities on an official level, such as the use of languages other than Spanish in official matters, are not permitted in Argentina. Furthermore, the educational system has been organized in

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[34] Janos Demeter, Eduard Eisenburger and Valentin Lipatti, *Sur la question nationale en Roumanie, Faits et chiffres* (Bucharest, Editions Meridiane, 1972), p. 28.

[35] Tsamerian, *op. cit.*, p. 144.

[36] Australia, Brazil, Canada, Chile, Costa Rica, Finland, Mexico, New Zealand, Paraguay, Philippines, United States of America, Venezuela.

such a way as to eliminate ethnic consciousness and to provide an effective means of instilling in all children the sense of national identity. In Chile, the assimilation of immigrant groups is said to have been firmly pursued throughout the country's history. With respect to Brazil, it has been reported that the assimilation policy is an objective reflected both in attitudes and in law. During the 1930s the Government adopted a number of measures designed to promote cultural assimilation. They included, in particular, the law which provided that in all schools the instruction must be given by Brazilian-born teachers in the Portuguese language, the law which stipulated that the names of all commercial or industrial enterprises must be Portuguese, and the law which detailed the duties of each governmental ministry in effecting the assimilation of immigrant groups. Thus, the Ministry of Education was required to exercise vigilance over the teaching of languages and history, to promote patriotic organizations among minority ethnic groups and to provide libraries with works of national and civic interest. The official attitude towards minority groups was further expressed in a 1934 law according to which the assimilation of immigrant groups must be realized through their acquisition of the Portuguese language when necessary and their adaptation to national customs.

308. In some instances specific measures concerning the use of regional languages have been taken, although the official policy is one of assimilation. France is an example of such a situation. The policy of France towards regional languages has been described as follows:

> By "nation" the Frenchman understands a community of consent ...
>
> ... That nation, although an abstract concept, embraces all persons, whatever their race, language, or religion, with the sole proviso that they agree to subscribe to the social compact and to retain French nationality ...
>
> ... there has always been a historical disregard of ethnic realities ...
>
> Although the abstract concept of the nation leads, outside the State, to the abandonment of minorities, it results, within the State, in their assimilation. A politically French population that does not speak French and a foreign population that speaks French are two anomalies of the same kind. However, whereas in the latter case the French State can, at the very most, through its abstention, promote the elimination of French minorities, in the former it has the means of equalizing them.
>
> However, there should be no misunderstanding. In strict doctrinal orthodoxy, French democracy harbours no hostility towards alien languages. It wishes them neither life nor death: it ignores them. Therefore, it will issue no prohibition against the use of these languages ... France allows newpapers to be published in the German, Basque and Breton languages. That this is not simply a propaganda gesture can be seen by the fact it is little publicized and hardly known; the "stay-at-home" Frenchman is always surprised, for example, when he is informed that two thirds of the daily newspapers and periodicals in Alsace are printed in German. These activities, moreover–like the theatre, folklore, the practice of religion–are private activities. It is from the standpoint of public freedoms that France views linguistic problems. The freedom of expression in any language–French, regional or foreign–is implicitly recognized by the Constitution and laws concerning public order cannot be the subject of restrictions–in theory at least.
>
> Unfortunately, a language is a social being, and its continued existence implies some degree of organization of the linguistic community. Yet French liberal democracy neither recognizes nor subsidizes any linguistic community distinct from the nation. French is the only official language throughout the territory, a language, therefore, which it is essential to know and the only one taught in the primary schools. In the lycées, moreover, only "foreign" languages are taught–for example, German and Italian–and not "regional" languages such as Breton, Basque, Occitan and Catalan.
>
> There are only minor exceptions to these principales, which have been recognized since the Revolution ... .[37]

309. On the other hand, there are instances where a process of voluntary assimilation of ethnic and linguistic groups is officially encouraged although the proclaimed policy is one based on the pluralistic concept. With reference to the USSR, an author wrote:

> The national composition of the population of the USSR and the national structure of Soviet society have undergone major changes during the years of Soviet rule. The gradual decrease in the number of nationalities in the country's population has been an important constant feature of the development of the national structure.
>
> A comparison of data supplied by censuses carried out in the country between 1926 and 1970 shows that the number of nationalities recorded decreased with each successive census.
>
> The decrease in the number of nationalities in the USSR between one census and the next can be explained by the consolidation processes which took place in the life of ethnic communities during the construction of socialism and the years which followed. In the period of socialist construction, when a process of radical transformations was taking place in the country's social life, the national structure of Soviet society also changed. Old bourgeois nations were transformed into socialist ones. As a result of the liquidation of the age-old backwardness of the less developed nations and their gradual transition to socialism by-passing the capitalist phase, a number of nationalities and tribes were consolidated into socialist nations and nationalities. This is the principal reason for the decrease in the number of nationalities listed in the censuses.
>
> The names of those ethnic communities which, in the process of the formation of new socialist nations and nationalities, merged with these and ceased to have independent existence gradually dropped out of the list of nationalities used for the censuses.[38]

310. The official policy of a country towards its minority groups may be profoundly influenced when a state of war exists with countries having majority populations linked by ethnicity and religion to those minority groups. As regards Israel, for example, it has been said that the lack of a consistent government policy towards the Arab minority often resulted in the paradox of a benevolent approach by some government agencies while others seemed to be primarily motivated by the desire to keep the Arab minority under strict security control.

311. Developing countries face particular problems, as a result, in many cases, of the policy followed during the colonial era. On the one hand, the fragility of the society of these countries requires unity of all its elements if the integrity of the nation is to be preserved. National unity, the security of the State and loyalty to the State are indeed three themes often stressed in these countries whenever the question of the scope of individual rights is raised. On the other hand, the population of a large number of these countries includes various ethnic and linguistic groups having each it own characteristics; therefore, the multiethnic and multilingual character of such countries must be recognized in order to ensure the harmonious development of the nation as a whole. Those apparently conflicting requirements led some of these nations to adopt either an uncompromising policy of assimilation or a prudent policy of integration while stressing the need for unity, with assimilation as the ultimate objective. In a study dealing

[37] Guy Héraud, *Peuples et langues d'Europe* (Paris, Denoël, 1966), pp. 193-197.

[38] Tsamerian, *op. cit.*, pp. 155-159.

with the question of inter-ethnic relations in East Africa, published under the auspices of UNESCO, the following observations were made:

> One of the persistent themes in the constitutional, political and economic development of the countries in East Africa has been racial and tribal conflicts and their resolution. The colonial situation was characterized by the treatment of the various people in the country on a communal and racial basis, so that communities rather than individuals formed the organizational or legal units. It was inevitable in a situation like this that some groups received an importance quite out of proportion to their numbers. Such a situation, however, was incompatible with the imperatives of independence. The maintenance of colonial rule does not require that the people in the territory in question constitute a nation; indeed, it is sometimes necessary to ensure that they do not constitute a nation. Thus racial and tribal distinctions are preserved, if not actually encouraged. To maintain independence in these circumstances is difficult. It is necessary to forge a feeling of common nationhood and to underplay racial and tribal differentiations. Difficult as this task is, there is another complication: colonial society was not merely based on communal distinctions, it was also at the same time an unequal society. Merely to overlook racial distinctions after independence would not necessarily produce a just society. Unless a just society is produced, there cannot be any real prospects of national integration or political stability. Yet to produce a just society out of a colonial system introduces its own tensions and dissatisfactions and can lead to the alienation of whole sections of the population. Some groups must be stripped of privileges they have enjoyed hitherto; often these groups are "minority" groups, and so the process of producing a just society can all too easily be seen as a case of racial or tribal persecution. On the other hand, not to pursue this process can build up bitterness and frustrations, which pose a grave threat to racial harmony. In the circumstances, the tasks that confront the government of a newly independent country in Africa are difficult and delicate.[39]

312. With reference to the problems of the developing countries, a member of the Sub-Commission on Prevention of Discrimination and Protection of Minorities made certain observations in 1972 during the discussion of the preliminary report on the present study, which are recorded as follows in the summary record of the meeting:

> The question of the rights of minorities was an explosive one. The tragic events that had recently occurred in Africa and Asia showed that it was necessary to determine whether the question of defining minorities did not obscure other and graver questions which might lead to secession and separatism. The terms were radically different in the "new" and the "old" countries. In the European countries, which had achieved their internal unity centuries ago, the problems of minorities were met with only in their juridical and rationalized form; but the younger countries of Asia and Africa had to grapple with the problem in all its bitterness and tragedy. These countries had just shaken off the yoke of colonial domination, and the colonialists had used the problem of minorities to divide and rule. As everyone knew, many of the great Powers had based their colonial policy on stirring up trouble between minorities: Berbers and Arabs, Jews and Moslems; Moslems and Hindus. The problems the new countries were now facing were really part of the aftermath of colonization. The Europeans' ideas of country, nation and state were rooted in centuries of history; but the new States were torn by opposing social forces. They had not yet achieved their national unity and they were feeling the pressure of both centrifugal and centripetal forces, inevitably with painful consequences, for no Government could allow the forces that made for dispersal overcome those that made for unity. The tragic cases of Biafra and Bangladesh were still fresh in the public mind.[40]

313. In most developing countries, in particular those in which the existence of population groups requiring a special legal status is not officially recognized, the assimilation of all elements of the population into the mainstream of the nation is a basic objective. For the governments of these countries, the recognition and the observance of the principles of equality and non-discrimination constitute sufficient guarantees for the protection of the rights of all individuals or groups. Some of these governments further feel that their respective population is basically homogeneous and that ethnic or linguistic differences, if they ever existed, have now been overcome by centuries of harmonious coexistence. As regards Algeria, for example, it has been observed "that the exchanges between the Berber and Arab ethnic groups have been so intensive and so protracted that it now requires a real mental effort to distinguish between the terms used, such as Arabism and Berberism".

314. As regards Ghana, it has been observed that the Government's general policies are aimed at encouraging loyalty to the country and its government, while at the same time the maintenance of local traditions and the use of local languages are not discouraged. The policy of the Government of Burma is to de-emphasize ethnic differences in order to prevent national disunity, and one of the most important actions taken was to withdraw the status of national religion formerly accorded to Buddhism. Other measures included the prohibition of the use of the terms "racial minorities" and "nationalities" in official acts, and the listing in official documents of ethnic groups by alphabetical order rather than, as formerly, in descending order of population strength. According to an official statement of 1964, it is essential that all nationalities, irrespective of their ethnic origin, be committed to national solidarity. While all the ethnic and linguistic groups have the right to work for the preservation and development of their traditions and of their cultures, they should refrain from any action that would adversely affect national unity. In Senegal, Tanzania and Zaire the importance of the concept of nation is stressed and assimilation of the various minority ethnic groups is therefore said to be one of the main objectives pursued by the Government. Through the educational system, citizens are taught to take pride in nationhood rather than in their tribal background traditions.

315. The need to safeguard the integrity of the State and to avoid encouraging separatism is of course the legitimate concern of any government. This may be regarded as a natural limit to any policy of protection for minorities, even a policy pursued in the form of a very broad pluralism. Nevertheless, it is a matter for regret that concern to avoid weakening the integrity of the State or opening the door to separatist tendencies sometimes presents an obstacle to the adoption of special measures in favour of individuals belonging to minority groups.

D. *Non-discrimination as a pre-condition of special* measures in favour of persons belonging to ethnic, religious and linguistic minorities

316. As has been stressed earlier in this study, the effective implementation of the right of persons belonging to ethnic, religious and linguistic minorities to enjoy their own culture, to profess and practise their own religion and to use their own language requires, as an absolute precondition, that the principles of equality and non-discrimination be firmly established in the society in which those persons live.

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[39] Yash Ghai, "Ethnicity and group relations" in *Two Studies on Ethnic Group Relations in Africa: Senegal, the United Republic of Tanzania* (Paris, UNESCO, 1974), pp. 107-108.

[40] See E/CN.4/Sub.2/SR.647.

317. At the seminar on the multinational society held in Ljubljana, Yugoslavia, in 1965, the question of equality and non-discrimination with respect to minorities was discussed in the following terms:

> Certain speakers recalled the many historical instances in which inequitable treatment of ethnic, religious or linguistic groups within a State had provoked internal and international unrest. In this connexion, many of those taking part in the discussion supported the view that certain principles had to be accepted as mandatory: first, the majority must not practise against the minority any form of discrimination whatever, but must extend to it every cultural freedom and an absolute equality of opportunity; secondly, the minority must have the right and facilities to play an active role in the social life of its country of residence; ...
>
> ...
>
> In the opinion of many participants, the essential aim was the attainment of equality of treatment in every sphere. It was elementary that every human being had the right to grow to his full stature, enjoying economic security, cultural equality and the freedom of thought and expression; and from that principle of equality flowed the almost universally expressed determination to prohibit discrimination in any form. The State's preventive function in the matter of discrimination, in its turn, called for protective action to safeguard the rights of minority groupings. Some speakers who supported this view also felt that there had been too great a tendency to look on minority problems as merely an issue of liberty. Differences in cultural levels and in living standards often complicated matters; and the primary requirement was not so much liberty in the abstract as equality of opportunity in everyday life.[41]

318. On the reason why non-discrimination is an essential aspect of the international status of minorities, an author wrote:

> The concern frequently expressed by the United Nations Commission on Human Rights, as well as by many Member States, for the protection of minorities and the harmonious development of the multinational or multi-ethnic society appears to owe its origin to two major considerations. In the first place, the goal of abolishing discrimination against *individuals*, as embodied in the Universal Declaration of Human Rights, is seen to be inseparable from the problem of discrimination against ethnic *groups*. Many of the desires, needs and values of an individual arise from and are identified with a way of life characteristic of a group, and can be realized only through group activity. An undertaking to abolish discrimination against an individual if he becomes similar to the majority is obviously unsatisfactory in the case of those who do not seek to become completely like the majority. In the second place, it seems highly probable that one of the motives operating here is the growing belief in the value of diversity, the enrichment of community life through the maintenance of cultural variations, the fruitfulness of continuing contrast between different ways of life. Both of these objectives may be said to have been accepted in high places (at United Nations and, in theory at least, by most governments).[42]

319. This attitude implies respect for minorities and for the uniqueness and individuality of persons with different cultures, religions and linguistic backgrounds. It also means that the numerical strength of a group may not be the decisive element in formulating a policy in that matter. The important guiding principle is that no individual should be placed at a disadvantage merely because he is a member of a particular ethnic, religious or linguistic group. Above all, because inter-ethnic differences are in most instances deep-rooted, the display of a spirit of tolerance and the strict application of the principles of equality and non-discrimination are indispensable requirements for maintaining the political and spiritual unity of the States concerned and achieving understanding and harmonious relations between the various components of society, in any multi-ethnic, multi-religious and multilinguistic country.

320. The constitutions or the laws of all the countries surveyed contain provisions which proclaim the principles of equality and non-discrimination and provide that all persons are entitled to the fundamental rights and freedoms of the individual regardless of their race, place of origin, colour or creed. In some constitutions, reference is also made to language,[43] while in some others it is specified that the principle of equality is to be applied to all aspects of the economic, political, juridical, social and cultural life of the country.[44]

321. It should be pointed out that most of the constitutional provisions referred to above are of a general nature. They are addressed to all persons living in the country concerned and it is thus logical to conclude that the general protection provided by a constitution for the human rights and fundamental freedoms of all citizens also applies to persons belonging to minority groups. Several constitutions, however, refer to "nationalities" and contain provisions specifically dealing with their rights.[45] Thus the Czechoslovak constitution states that "the equality of all citizens without regard to nationality shall be guaranteed". The constitution of the Soviet Union declares that "any oppression of national minorities in whatsoever form, any restriction of their rights and, still more, the granting or toleration of any national privileges whatsoever, whether direct or indirect, are wholly incompatible with the fundamental laws of the Republic". In some other instances, the constitution stipulates that the principles of non-discrimination and equality before the law apply to persons belonging to all ethnic or linguistic groups. In Switzerland and in Belgium, for example, the rights of the different linguistic groups are safeguarded in various provisions of the constitution. The constitution of Burma provides that no minority, religious, racial or linguistic, shall be discriminated against in regard to admission into State educational institutions. The constitution of India contains a similar provision but it further adds that "the State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language". Under section 16 of the constitution of Sri Lanka, the State pledges to carry forward the progressive advancement towards the establishment in Sri Lanka of a socialist democracy, the objectives of which include the full realization of all rights and freedoms of citizens, including group rights.

322. In addition to the provisions included in their respective constitutions, some States have enacted laws specially intended to forbid discrimination against the "national groups" residing in their territories. Thus, according to a law enacted in Romania in 1945, an investigation of the racial origin of Romanian citizens with a view to establishing their juridical position is forbidden.

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[41] ST/TAO/HR/23, paras. 26 and 30.

[42] Otto Klineberg, Background paper C, prepared for the seminar on the multinational society held in Ljubljana, Yugoslavia, in 1965.

[43] Denmark; Egypt; Germany, Federal Republic of; Greece; India; Israel; Italy; Kuwait.

[44] Bulgaria, Czechoslovakia, Romania, Ukrainian SSR, USSR, Yugoslavia.

[45] This is the case of the constitutions of the Eastern European countries.

The law further states that difference of language, religion, race or nationality cannot form an obstacle for a Romanian citizen to the acquirement and enjoyment of civil and political rights, to his admittance to State offices, or to his exercising a profession. It also provides that "Romanian citizens belonging to nationalities" will be awarded the same treatment and the same *de jure* and *de facto* protection as other Romanian citizens.

323. Many countries have also enacted laws dealing with racial discrimination in general. Such laws, in particular those dealing with interracial relations, are of special interest to persons belonging to ethnic minority groups. Mention of these laws is made in the relevant chapters of the present study. It will also be recalled that, whenever bilateral agreements dealing with minority rights are concluded, the importance of the principle of equality before the law and of non-discrimination is emphasized.

324. The available information shows no example of discrimination permitted by law among the countries studied. However, it tends to indicate that, while no group may be discriminated against by law, some of them are in fact, for various reasons and in a number of ways, victims of discriminatory practices. The examination of the problems confronted by population groups in their mutual relations shows clearly the forms that such practices can take.[46] Indigenous populations and the Gypsies in Europe are among the most conspicuous cases of groups suffering from discrimination on a large scale in various spheres of activity. For example, with reference to the Aboriginals in Australia, the Australian Government wrote:

> State and Commonwealth Governments in Australia acknowledge that although legislative discrimination has been progressively removed, there is still discrimination in practice in some areas against Aboriginal people. While there is widespread public concern and sympathy about the problems faced by people of Aboriginal descent in adjusting to life in Australian society, prejudiced attitudes towards Aboriginals are not uncommon. Prejudice against Aboriginals is often based on mistaken views about the inferiority of the indigenous culture and people; and the relatively low socio-economic status of most Aboriginal Australians tends to be taken as evidence of ethnic inferiority.

325. As regards the United States of America, it has been observed that there are broad categories of problems that affect most Indians. They revolve around two aspects of cultural conflict: the American non-recognition of or hostility to Indian culture and the problems resulting from poverty, poor education and the varying forms of discrimination that the Indian experiences from the larger society. These observations are illustrative of the general situation of indigenous populations. With regard to the Gypsies, it is worth recalling that the Committee of Ministers of the Council of Europe adopted on 22 May 1975 resolution (75) 13, containing recommendations on the social situation of nomads in Europe. The Committee, after having noted that prejudice or discriminatory practices on the part of the settled population against such persons had not entirely disappeared in States members of the Council, recommended, among other things, that all necessary measures within the framework of national legislation should be taken to stop discrimination against nomads and that the prejudices which form the basis of discriminatory attitudes and behaviour towards them should be countered.

326. *De facto* discrimination is said to occur in other instances also. With reference to the overseas departments of France, an author describes in the following terms the reality of a *de facto* discrimination despite strong legal action to promote equality:

> Although it is clearly understod that in Martinique and Guadeloupe race does not automatically determine the social class to which a person belongs, it constitutes at the very most an element (uncertain) of *presumption* of such affiliation, for it is undeniable that there is at the present time in these *départements* —except as concerns private relationships, and in this connexion in accordance with the customary law with regard to marriage—no overt racial discrimination either official or unofficial (the fact of belonging to one or other category not being mentioned in the civil register and not appearing in a person's papers, since all persons are entitled to similar services and jobs regardless of their colour and, moreover, since no district or meeting place is expressly closed to any category regarded as undesirable), it is clear that the racial prejudice introduced by the white settlers continues to prevail there and that the concept of race constantly appears, either implicitly or explicitly, in the life of the community, so that no segment of West Indian society can be considered to be free from this vestige of the slavery era.[47]

[46] See paras. 268-284.

[47] Michel Leiris, *Contacts de civilisation en Martinique et Guadeloupe* (Paris, UNESCO, 1955).

Chapter IV

APPLICATION OF THE PRINCIPLES SET FORTH IN ARTICLE 27 OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

327. This part of the study contains an analysis of the actual state of implementation in the various countries surveyed of the principles set forth in article 27 of the International Covenant on Civil and Political Rights. This article is not a source of legal obligations for States which have not yet ratified the Covenant, but as the General Assembly of the United Nations has approved the Covenant, its articles may be considered as having the value of general principles, in the same way as those set forth in solemn United Nations declarations. From this point of view, the rights granted by article 27 to persons belonging to ethnic, religious and linguistic minorities can be considered as forming an integral part of the system of protection of human rights and fundamental freedoms instituted after the Second World War under the aegis of the United Nations and its specialized agencies.

328. With regard to the three categories of rights whose enjoyment article 27 of the International Covenant on Civil and Political Rights is designed to guarantee for members of minority groups, it should be pointed out that, on the basis of a logical and literal interpretation of that article, the right to enjoy a culture of their own has been regarded as referring to members of ethnic minorities, the right to profess and practise a particular religion as referring to members of religious minorities, and the right to use their own language as referring to members of linguistic minorities. It stands to reason that, if a minority is both ethnic and linguistic, its members should enjoy both categories of rights. It should be added, however, that the boundary between language and culture—and to a lesser degree between culture and religion—is not a rigid one. In consequence, many aspects of the right to a culture concern not only persons belonging to ethnic minorities but also members of linguistic minorities: literature, mass communications and education are examples. It may also be claimed that the right to their own culture is also, to a certain extent, the concern of members of religious minorities. This is clearly evident in such matters as religious literature, religious journals and religious customs. In examining the three categories of rights separately, therefore, one should not lose sight of the link that exists between them.

A. The right of persons belonging to ethnic minorities to enjoy their own culture

329. In this section the Special Rapporteur proposes to examine how the right of persons belonging to ethnic minorities to enjoy their own culture has been implemented in the various countries surveyed (see also paras. 218-224). The following topics will be dealt with: the general policy followed by governments on this question, the educational policy followed in the countries surveyed with respect to members of ethnic minorities, development of the literature and the arts of minority groups, diffusion of their culture, and measures adopted for the preservation of their customs and of their legal traditions.

1. *General policy*

330. Before analysing the available information about the attitude of the governments of the countries considered, it should be pointed out that the fundamental right of everyone to take part in cultural life is recognized and governed by article 15 of the International Covenant on Economic, Social and Cultural Rights. Article 13 of that Covenant in its turn concerns the right to education, which—while distinct from the right to take part in cultural life—must be considered a prerequisite for it; moreover, the right of members of minorities to their own cultural life undoubtedly, and first and foremost, includes the right to an education which protects the distinctive characteristics of the group. In connexion with the right to education, attention should also be drawn to the provisions of the UNESCO Convention against Discrimination in Education. Lastly, the idea of "culture" in article 27 of the International Covenant on Civil and Political Rights appears to be strictly linked, both historically and from the point of view of the logic of human rights, with freedom of expression, a principle set forth in article 19 of that Covenant.

331. The Declaration of the Principles of International Cultural Co-operation, adopted by the General Conference of UNESCO at its fourteenth session, in 1966, contains the following provisions which, although not directly concerned with the question of minority groups, may inspire States in the formulation of policies dealing with the right of persons belonging to such groups to enjoy their own culture:

Article I

1. Each culture has a dignity and value which must be respected and preserved.

2. Every people has the right and the duty to develop its culture.

3. In their rich variety and diversity, and in the reciprocal influences they exert on one another, all cultures form part of common heritage belonging to all mankind.

Article II

Nations shall endeavour to develop the various branches of culture side by side and as far as possible simultaneously ...

Article IV

The aims of international cultural co-operation in its various forms, bilateral or multilateral, regional or universal, shall be:

...

4. To enable everyone to have access to knowledge, to enjoy the art and literature of all peoples ... and to contribute to the enrichment of cultural life;

...

Article VII

1. Broad dissemination of ideas and knowledge ... is essential to creative activity, the pursuit of truth and the development of the personality.

...[1]

332. In countries in which the existence of minority groups having ethnic and linguistic characteristics different from those of the rest of the population is officially acknowledged, the right of members of these groups to maintain and develop their own culture is generally recognized. Thus, for the Austrian Government, cultural autonomy is of particular importance to the survival of a minority. The Government of Finland states that minority groups are "at liberty to maintain their cultural heritage". The Government of the German Democratic Republic declares that "through generous financial support from public funds, national groups have increasingly become an integral part of the cultural life of the country". The Government of Hungary states that it regards the promotion of the culture of national groups as an essential task. The preservation of the cultural heritage of the various population groups in India is reported to be one of the fundamental objectives of State policy. The Government of Iraq reports that the law entitles all minorities to maintain and preserve their inherited culture. The Government of Norway writes that "there are no restrictions *de jure* or *de facto* on the rights of the minority populations to establish their own cultural institutions". In the Government's view, minorities represent cultural values which must be protected and promoted by suitable means in the same way as the cultural characteristics of the larger group of the population. The Government of the Philippines has expressed the view that its new policy of national integration provides to members of the ethnic groups which are officially recognized as minorities the opportunity to preserve their cultural identity. The Government of Romania has stated that it regards the cultures of the "co-inhabiting nationalities" as a component part of the culture of the country as a whole and that, in consequence, its policy is simultaneously to preserve and to enrich the specific characteristics of each of them. According to the Government of the Ukrainian SSR, "all the conditions exist for members of all nationalities and national groups to exercise their creative ability and thus participate in the development of the national culture". With respect to the Union of Soviet Socialist Republics, the Government is said to pay great attention to the cultural development of its various "nationalities and national groups". The general policy reported to be followed in Yugoslavia as regards the culture of national groups has been formulated with a view to stimulating cultural creation and, accordingly, a broad network of cultural institutions and organizations has been established to meet the cultural needs of "nationalities". It has been stressed that the Yugoslav socio-political system is organized in such a manner as to enable the "nations and the nationalities" living within the various republics and autonomous provinces to develop and pursue their cultural policy independently, in accordance with their own interests and responsibilities. However, the cultural development of the "nations and nationalities" has not been the same in every region of the country, since their stage of economic development varied widely when they entered the Federation. Observations indicating that ethnic groups have the right to maintain and develop their own culture have been made regarding several other countries, including Belgium, Canada, Italy, Malaysia, Sri Lanka, Sweden, the United Kingdom and the United States of America.

333. This right has also been affirmed in the constitutions of certain of the countries surveyed. For example, the constitutions of India and Pakistan provide that "any section of the population having a distinct culture shall have the right to conserve the same". The constitution of Hungary guarantees to all nationalities the preservation and the development of their own culture. Under the Yugoslav constitution and the constitutions of the various republics, each "nationality" is "guaranteed the right to free development of its national characteristics and culture". The federal constitution further provides that "all citizens shall be guaranteed free expression of their culture". The constitution of Czechoslovakia states that "the Czechoslovak Republic shall secure to citizens of Hungarian, German, Polish and Ukrainian (Ruthenian) national origin the possibilities and the facilities for their all-round development". The constitution of the Philippines contains provisions in which the right of minorities to autonomous cultural development is recognized. The constitution of Sudan provides that "the State shall maintain the national heritage, promote and disseminate culture, literature and the arts".

334. The right of members of minority groups to preserve their own culture is also provided for in some treaties. Thus the agreement between the Austrian and Italian Governments of 1946 contains provisions designed to "safeguard the ethnical character and the cultural development of the German-speaking element" of the Bolzano and Trento provinces of Italy. The agreement between India and Pakistan of 1950 provides that each Government shall ensure to minority groups complete equality of citizenship in respect of culture. The unilateral but substantially identical declarations made in 1955 by the Governments of the Federal Republic of Germany and Denmark regarding the status of the Danish minority in the Federal Republic and the status of the German minority in Denmark contain a clause stating that profession of Danish or of German culture by the Danish and German minorities is free and may not be challenged or examined by the authorities. Article 7 of the State Treaty for the Re-establishment of an Independent and Democratic Austria of 1955 states that Austrian nationals of the Slovene and Croat minorities in Carinthia, Burgenland and Styria should participate in the cultural system in these territories on equal terms with other Austrian nationals.

335. In the countries in which indigenous populations exist, special measures are generally adopted which provide, among other things, for the right of these populations to preserve and develop their own culture. Thus the Government of Canada states that there are no impediments to the exercise of the rights of indigenous populations to promote their culture. In New Zealand, the Maori Affairs Amendment Act of 1974, which gives official recognition to the importance of Maori culture, is among a number of laws adopted with a view to protecting the cultural rights of the indigenous population. The Government further stresses that there has been in the country a tremendous revival of

[1] *Cultural Rights as Human Rights* (Paris, UNESCO, 1970), appendices, p. 124.

interest in Maori culture among both Maoris and non-Maoris. According to the Australian Government, the federal and local governments are actively promoting a policy of encouraging and assisting Aboriginal Australians to develop their own culture. Furthermore it should be noted that States which have ratified, or acceded to, the ILO Indigenous and Tribal Populations Convention have assumed special responsibilities concerning the cultural development of indigenous and tribal population groups.

336. In countries which have a federal structure and in which ethnicity and political subdivisions coincide, no particular problems arise. In those cases, responsibility for the preservation and development of the culture of the population groups residing in the areas concerned generally rests upon the local administrations, unless they lack the necessary financial resources and receive no assistance from the central government. Thus in Switzerland, in accordance with the principle of linguistic territoriality, cantonal authorities are responsible for promoting cultural activities in their respective cantons, but the national government has taken direct action in favour of the less prosperous cantons and grants annual sums for the preservation and furtherance of the cultural and linguistic individuality of the Italian- and Romansh-speaking communities.

337. Very different is the situation of groups in countries in which no federal structure of government has been established and that of groups residing within the subdivisions of a federal State. The available information indicates that comprehensive legislative measures designed specifically to implement the right of these groups to preserve and develop their own culture have been drawn up in only a very few instances. In this connexion the Belgian law relating to the functioning of the cultural councils set up under the constitution may be mentioned. This law provides that the cultural councils for the French, Flemish and German communities may deal with the following questions: defence and promotion of the language concerned; encouragement and training of research workers; fine arts, including the theatre and the cinema; the cultural heritage, museums and other scientific and cultural institutions; libraries, record libraries and similar services; radio and television; youth policy; continuing education and cultural promotion; physical education, sport and open-air life; leisure activities and tourism. The law also provides that "the competence of the cultural councils to deal with cultural matters includes the power to adopt decrees concerning the infrastructure".

338. The particular situation prevailing in developing countries should however be taken into account in the consideration of problems relating to cultural development. First, it should be remembered that during the colonial period an alien culture had often been superimposed on the societies of these countries and, as a result, artistic and literary expression were strangled. After independence, the main problem of these countries was the revival of the national culture and in many instances the cultural development of particular minority groups could not receive the proper attention that it required. Secondly, as stressed in conferences held by UNESCO on the question of promotion of culture in developing countries, there is a wide recognition of a relationship between cultural development, on the one hand, and social and economic development, on the other. At the Conference held in Venice in 1970, it was observed, in this connexion, that: "In the developing countries, cultural development is being increasingly recognized as an essential component of social and economic development. The establishment and strengthening of national identity through cultural action can even be regarded as a prerequisite for social and economic progress in post-colonial conditions."[2] It was further noted that in many developing countries "the resources devoted to culture are totally insufficient. They lack established cultural institutions, private sources of funds, and trained personnel".[3]

339. The view has also been expressed that a definite link exists between the right of an individual to culture or to enjoy his own culture and the right to an adequate standard of living proclaimed in article 25 of the Universal Declaration of Human Rights. A learned author has written the following on that point:

> ... [The right of an individual to culture] assumes firstly that the individual has attained a "standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care ..." (article 25 of the Universal Declaration of Human Rights). For, if the individual has not reached this standard because he is undernourished or even starving, because he has no decent lodging or lacks the possibility of receiving the most elementary medical attention, it is evident that he will have neither the desire nor the possibility of taking part in the cultural life of his community and there can be no question of his enjoying the arts and literature; still less of participating in scientific advancement.
>
> In other words, the concept of ... [cultural] rights is, at the outset, without value for more than half of mankind. A minimum of material well-being is necessary if the very notion of culture is to have the least significance.[4]

340. Observations of a similar nature were made by participants at the seminar on the promotion and protection of the human rights of national, ethnic and other minorities held in Ohrid, Yugoslavia, in 1974, as follows:

> Several participants emphasized that economic and social development represented the essential basis on which the promotion and protection of human rights of minorities were possible. The situation of a minority depended primarily on its members' standard of living as defined in article 25 of the Universal Declaration of Human Rights, according to which everyone had the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care, and on their enjoyment of the right to education as defined in article 26 of the Universal Declaration. The gap between the levels of economic development of various regions of the world constituted an essential element in the sharp differentiation between the situation of minorities in the advanced industrial States and that of minorities in the developing countries. The promotion and protection of the latter could not be realized so long as various groups, because of their economic, social and cultural underdevelopment, could not enjoy even elementary human rights, such as the right to work or the right to culture. It was pointed out that the highest priority had therefore to be given to the economic and social development of those countries. The achievement of the necessary progress in that direction was a prerequisite for the promotion of the rights of minorities in the developing countries. It was further stated that it would, therefore, be a mistake to apply general concepts with respect to the rights of minorities without specifically relating them to the over-all economic and social environment.

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[2] *Final Report on the Intergovernmental Conference on Institutional, Administrative and Financial Aspects of Cultural Policies, Venice, 24 August-2 September 1970* (Paris, UNESCO, 1970) (SHC/MD/13), chap. I, para. 29.

[3] *Ibid.*, para. 31.

[4] B. Boutros-Ghali, "The right to culture and the Universal Declaration of Human Rights", *Cultural Rights as Human Rights* (Paris, UNESCO, 1970) (SHC.68/XIX.3/A), p. 73.

[Reference was also made] ... to the need for special economic aid to underdeveloped regions of a country where minorities lived, in order to build the economic foundation for the promotion and protection of their rights.[5]

2. *Educational policy*

341. Discussing the relationship between culture and education, an author made the following observations:

> ... the mere existence of cultural rights supposes that the right to education, as set forth in article 26 of the Universal Declaration of Human Rights, has first found a practical application. Indeed there is no right to culture without a minimum of education. The person who can neither read nor write and who has not received the most elementary instruction is impervious to any true culture. And a large part of humanity remains illiterate.
>
> Which being said, some sociologists, taking the word "culture" in a broader sense, maintain that "mass culture" can, owing to new methods of collective information, reach the individual without his having first acquired a minimum of education.
>
> Despite an element of truth in this view, it remains that an illiterate has much less chance of being able to take part in the cultural life of his community and that the claim of cultural rights is not in his case matched by any tangible reality.
>
> Thus it seems that the content of cultural rights will vary according to whether these two prerequisites have or have not been realized. The two prerequisites, "right to an adequate standard of living" and "right to education", have never yet found a true application over a large part of the planet.
>
> ...
>
> Cultural rights are also closely attached to the concept of rehabilitation ...
>
> ...
>
> The concept of cultural rights in underdeveloped areas is closely associated with the idea of development, much more than with the idea of leisure. This means that the right to culture is still identified, to some extent, with the right to education. A practical education which aims at helping the individual to master the poverty which is his lot, before troubling itself with his culture or that of the community... .[6]

342. There can be no possible development of the culture of any group if members of that group are denied the right to education or are treated in a discriminatory manner in the field of education. Educational policy is therefore a key element in evaluating the situation of persons belonging to minority groups as regards their right to enjoy their own culture. What will be discussed in the following paragraphs is the general educational policy of various countries towards minority groups and the type of problems confronted by a number of these groups. The specific question of the use of minority languages in schools will be examined in another chapter.

343. Governments of nearly all the countries surveyed have emphasized that, in matters of education, the principles of non-discrimination and equality are strictly applied. In reports concerning the implementation of the UNESCO Convention against Discrimination in Education, governments generally stressed that in their countries there were no legal regulations or practices which could be regarded as constituting discrimination and that they were following a policy consistent with the principles set forth in that convention. In a very large number of the countries surveyed, discrimination in education is specifically prohibited by the constitution or by law. The constitution of Burma, for example, provides that "no minority, religious, racial or linguistic, shall be discriminated against in regard to admission into State educational institutions". In Sierra Leone, the Educational Act of 1964 provides that all enactments and administrative instructions relating to education must be administered and interpreted in such a manner as to ensure that there is no discrimination between pupils in the matter of admission to and treatment in any educational establishment in the country except for the establishment or maintenance of separate educational systems for religious or linguistic reasons. In Malaysia, the constitution prohibits discrimination on the grounds of ethnic origin in the administration of educational institutions maintained by public authorities or in providing public funds for the maintenance of educational institutions.

344. The institution of compulsory and free primary education for all children and the provision, on a wide scale, of opportunities for a free education at the secondary and university levels, are generally regarded as measures of fundamental importance for the educational development of individuals, including in particular—on a basis of full equality and non-discrimination—persons belonging to minority groups. In nearly all the countries surveyed such action is reported to have been taken. Another important measure is the right of these persons to enter any school of their choice, whether or not minority schools are available.

345. Other action taken in the field of education in order to improve the situation of minorities includes recognition of the right of persons belonging to minority groups to establish their own schools under certain conditions, regulation of the diplomas delivered by these schools, financial assistance for the training of a competent staff and for the maintenance of buildings, and subventions and grants to children attending those schools. In Denmark, for example, members of the German minority group are granted the right to establish their own schools, and diplomas delivered by these schools, when their establishment has been authorized, have the same validity as those delivered by public schools. Approval of the curriculum and control of the academic qualifications of the supervising staff and of the suitability of the premises, in order to ensure that they meet the general standards set for public schools, are regarded as essential pre-conditions for the establishment of privately operated minority schools. In Austria, special measures have been taken to ensure that minority schools operate under the same standards as other schools. The law expressly provides in this connexion that not only must every public school be linked to a school district but also that every child must be admitted to the appropriate type of school. However, in order to guarantee further the right of access to education to children belonging to minority groups, the law specifies that members of linguistic minorities of compulsory school age must not be refused admission to a school outside their regular district, when no suitable schools for the minority concerned are available. These provisions are said to ensure that a child belonging to a minority can at all events attend a primary school established especially for members of that minority. In India, the constitution grants to all minorities the right to establish and administer educational institutions of their choice, and this, it has been observed, implies a duty of non-interference by the State. In Norway, distinct schools have been established for the Lapps and

[5] ST/TAO/HR/49, para. 28.

[6] B. Boutros-Ghali, *loc. cit.*, pp. 73-74, 75.

representatives of that population group are granted the right to participate in the decision-making process as elected members of the school boards. Similar measures concerning the Kurds are said to have been adopted in Iraq. It has been reported that in Israel separate elementary and secondary schools have been established for members of the Arab minority and that the curriculum and teaching methods are identical in Jewish and Arab schools. In Singapore, the three main ethnic groups operate their own schools. The Federal Republic of Germany guarantees to members of the Danish minority the right to operate their own schools. In Greece, the number of minority schools is reported to have increased from 86 elementary schools in 1923 to 295 in 1975.

346. In the various Eastern European countries surveyed, the educational system is said to have taken into account the special interest of the nationality groups through the establishment and continued expansion of a State-operated network of special educational facilities for persons belonging to these groups, according to the ethnic composition of the population, the supply to pupils of textbooks free of charge, and the granting of scholarships and other forms of material aid to pupils and students belonging to the various ethnic groups. The Government of Hungary, for example, reports that the education of members of national groups has been undergoing a notable evolution since 1945, as shown by the increase registered in the number of educational institutes at the elementary and secondary level established for those groups and in the number of pupils attending these schools, and by the series of measures taken concerning the training of the teaching staff. Teachers in "national" schools are now trained partly in Hungary and partly outside Hungary in the ethnic centres of the "nationalities" concerned. The Government further notes that the educational policy with respect to national groups is co-ordinated by the Department for Nationalities at the Ministry of Education and by the National Faculty of the Pedagogic Institute. Since 1949 more than 600 school books for "national" schools have been published. The Yugoslav Government observed that since 1945 a number of measures concerning the establishment of autonomous educational institutions using the languages of national minorities have been adopted.

347. In some instances, specific action has been taken in order to adapt the educational system to the special needs of minority groups. In Sri Lanka, the language policy which is being applied has been considered as a measure giving weight to the principle of equality of opportunity for all, including persons belonging to minority groups. One essential innovation of that policy has been to define literacy in reference to the local languages spoken by the two ethnic groups of the country. In the Philippines, a special scholarship programme has been set up to assist qualified and deserving members of the "National Cultural Minorities" who cannot afford a college education. The number of scholarships granted increased from 109 in 1958, when the programme started, to 6,000 in 1973.

348. While countries often maintain separate elementary and secondary schools for minorities, universities are, however, usually found only in autonomous republics or regions of federal States where minorities live in compact groups. The University of Pristina in Yugoslavia, which has been established mainly for the development of the Albanian minority, could be regarded as an exception. Large-scale assistance is given to this university by the University of Belgrade and other Yugoslav universities, as well as by the State University of Tirana, Albania.

349. As the available information tends to show, a number of factors, such as the level of socio-economic development and the geographical concentration of the groups concerned, may adversely influence the educational policy adopted in various countries with respect to minority groups. Some are more numerous and concentrated in specific areas, while others are relatively small in number or are scattered throughout the country. Some live in developed regions, while others reside in isolated areas. Such factors may affect profoundly the educational development of some minority groups and lead, in particular, to disparities in illiteracy ratios among various groups in the same country. It has been reported, for example, that in Yugoslavia, though the educational standard of the whole population has improved notably within recent years, the percentage of persons with a secondary or higher education in 1961 varied among the individual "nationalities"—4.4 for the Turkish national group, 5.0 for the Albanians, 14.0 for the Slovaks, 18.5 for the Hungarians, 21.6 for the Italians and 26.3 for the Slovenes. It was, however, stressed that the number of persons throughout the country with a secondary or higher education had almost doubled in the ten-year period from 1961 to 1971 and that educational standards tended to rise more rapidly among the groups where they had previously been the lowest. In the case of other "nationalities", the rise in educational levels had proceeded at a fairly even rate as compared with the all-Yugoslav average.

350. The available information further suggests that for a variety of reasons—historical circumstances, deprivation, inferior social status, prejudices on the part of the dominant sectors of society, *de facto* segregation—some minority groups confront in a number of countries severe obstacles in their quest for equality in the field of education. In the United Kingdom the social environment is said to be the main cause of the educational backwardness of immigrant children. Their educational development is plagued by lack of teachers, inadequate school buildings and overcrowded classrooms. Furthermore the extra strain caused by the arrival of an increasing number of immigrant children has been exacerbated in areas where the majority of immigrants are persons with a mother tongue other than English. In Iraq, the illiteracy rate among Kurds is reported to be higher than that of the rest of the population. The percentage of Kurds in secondary schools was half that of Arabs, and less than 7 per cent of university students came from Kurdish areas. In the United States, non-white minority groups are said to face serious problems in their educational development. With respect to the blacks, the Government writes that State aid, and more recently grants of federal funds, are helping to equalize educational opportunity. The lag in educational achievement among the black population is recognized today as deriving in large measure from more general cultural deprivation and similar factors. Children without inspiration from the home or community tend to start behind and stay behind, and they often become drop-outs. As regards the Indians, it has been observed that for a long time the federal authorities had not taken into account their real educational needs and had indeed contributed to undermining their sense of identity

and faith in their own culture. Furthermore, the severe disabilities of poverty and disease suffered by Indians made their education more difficult. While much has been done to improve Indian education, many problems remain unsettled. The educational level of the Indians continues to be considerably lower than the national average. In this connexion the Government reports that efforts are being undertaken with a view to redressing the situation. It also notes that at present the majority of Indian children are enrolled in public schools and that federal facilities are operated for those who live in areas not served by public schools or who come from disorganized homes and require boarding-home care in addition to educational services.

351. It has been observed that discriminatory treatment based on language and cultural differences is among the main obstacles to equal educational opportunities for the Spanish-speaking minority groups in the United States. It has been noted that exceedingly high drop-out rates, low achievement scores, inability to integrate into the larger society and low participation in higher education attest to the fact that education for Spanish-speaking groups is deficient. Among the practices which are said to limit the ability of the Spanish-speaking groups to progress educationally, mention has been made of the prohibition of the use of Spanish in schools, the placement of minority children in "Educable Mentally Retarded" classes, not because they belong there but because they have an insufficient knowledge of English, and the lack of language programmes to prepare the Spanish-speaking child to participate fully in the present English education programme. In this connexion, it has been reported that:

> In May 1970, the U.S. Department of Health, Education and Welfare took the first official step toward prohibiting discriminatory treatment of children with language and cultural differences. A memorandum was issued to all school districts having five percent or more national-origin minority children, clarifying responsibilities for providing equal educational opportunity. The four points in the memorandum:
>
> (1) Whenever language excludes national-origin children from effective participation, school districts must take steps to rectify the language deficiency.
>
> (2) School districts must not assign pupils to Educable Mentally Retarded classes on the basis of criteria which essentially measure English language skills; nor may they deny students access to college preparatory courses on the basis of the school's failure to teach language skills.
>
> (3) Any ability grouping or tracking system must be designed to meet these needs as soon as possible, so as not to operate as a dead end educational track.
>
> (4) School districts are responsible for notifying the parents of national-origin students of school activities called to the attention of other parents, even if it must be done in a language other than English.[7]

352. Gypsies and Lapps in Finland and Sweden and indigenous populations in several countries are also said to confront particular difficulties. Although no existing regulations prevent the Gypsies and Lapps of Finland from receiving an education similar to that of the main population, the prevailing legislation is not as explicit about their educational rights as it is about the Swedish-speaking minorities. As a result, despite various activities concerning their education, they find themselves in an unequal position, as compared with other children in the country. For example, while the literacy rate of Finnish- and Swedish-speaking citizens is almost 100 per cent, only 26 per cent of the heads of Gypsy families were considered to be literate in 1969, 20 per cent of them had not completed primary education and 11 per cent had not mastered writing. In order to remedy that situation, government and private organizations have launched a campaign against illiteracy among Gypsy adults. In a report issued in 1972 on the application of the UNESCO Convention against Discrimination in Education, the Government of Finland stated that within the framework of the educational reforms envisaged, the Committee on Linguistic Security had proposed in 1971 several measures to be taken in order to guarantee equal opportunity in education and to prevent discrimination. Such measures included a guarantee that minority schools would not be of inferior standards. Both the Committee on Gypsy Education and the Committee on the Development of Lapp Education also suggested measures designed to ensure that children of Gypsies and Lapps do not suffer from discrimination and are able to enjoy standards equalling those of the majority of the population. These committees, however, felt that the implementation of the education programmes for these population groups calls for the co-operation of all the Nordic States.

353. In Sweden, while the official policy is to avoid special schools for minorities, the particular situation of the Lapps has led the Government to set up special nomad schools in some places. In other cases, regular schools for Lapps have also been established, which are organized according to the principles of the ordinary comprehensive school. In addition to the regular school curriculum, those schools provide instruction in handicrafts and reindeer husbandry, two of the main activities of the Lapp population.

354. The Government of Norway observes that one of the main obstacles to the educational development of the Lapps has been the difficulty of obtaining suitable textbooks and of finding qualified people to prepare them. Since 1975 increased funds have been set aside for the publication of school books for Lapps. Furthermore a separate department has been established in one teacher-training college to train Lapp teachers and to develop teaching material in Lappish. Comprehensive research is now being undertaken with a view to finding ways of improving the situation of the Lapps. Mention has been made of the proposal made to Parliament in 1973 to establish a separate Lapp Schools Council and of the formation by the Ministry of Church and Education of a Select Committee, including representatives of the Lapps, whose mandate is to report on the facilities for further education for Lapps.

355. Problems of another type are confronted in Malaysia: because of past inequalities whose effects are still being felt, the most numerous ethnic component of the population, although not a majority thereof, has found itself in a position of relative inferiority as a result of policies applied during the colonial period. It has been observed with respect to Malaysia that ethnicity was one of the elements associated with differences in literacy levels among the various groups and that literacy standards among Malays were generally lower than among the two other major groups.

[7] "Civil rights and education for the Spanish speaking", *Civil Rights Digest*, vol. 4, No. 4 (December 1971), pp. 12-13.

3. *Promotion of literature and the arts*

(a) *Literature*

356. Action taken by States with a view to promoting the literature of members of minority groups includes the publication and translation of books, financial assistance to writers, the establishment of specialized publishing enterprises, the creation of special cultural sections for minority groups within departments of culture and, in developing countries in particular, work on the structure of the languages spoken.

357. The Romanian Government reports that the two elements which are capable of ensuring the development of a culture—full enjoyment of the cultural heritage, and the stimulation of creativity—are guaranteed in Romania. Thus the "co-inhabiting nationalities" enjoy equal conditions for the creation and circulation of literary works through a wide network of publishing houses and other cultural centres which publish and translate the works of members of those "nationalities". It is stated in this connexion that, in addition to the special sections maintained in most publishing houses in Romania for the literature of the co-inhabiting nationalities, a publishing house has since 1969 been devoted exclusively to the publication of works in their languages. It is stated further that the literary creativity of the co-inhabiting nationalities has flourished in recent years. Literature in Hungarian, for example, has recently scored remarkable successes in the drama, in literary criticism and history, in the history of the folklore civilization and in art history. In addition, the cultural and literary traditions of the Hungarian population have received particular attention from research workers, and this flowering of the Hungarian cultural heritage has been reflected in the appearance of several important works in recent years. Increased attention has also been paid by members of the co-inhabiting nationalities to the acquisition of a better knowledge of one another's works. While Romanian authors have published studies on the merits of the literature of the co-inhabiting nationalities, authors of those nationalities have studied the fundamental aspects of Romanian literature. This dialogue has continued through the translation of Romanian works into the languages of the co-inhabiting nationalities and, conversely, the translation of the works of those nationalities into Romanian. It should also be noted that a commission of the co-inhabiting nationalities, whose aim is to contribute to their advancement, functions within the Writers' Union, and that the Council of Culture and Education has a section concerned exclusively with the cultural activities of the co-inhabiting nationalities.

358. In the United Kingdom, funds for the development of Welsh and Scottish literature and for literary activities and publication of books in the Welsh and Gaelic languages are allocated through the Welsh Arts Council and the Scottish Arts Council. Financial support is also given to writers to enable them to undertake specific projects. In Yugoslavia particular attention is said to be given to the publication of books in the languages of the "nationalities" and to the establishment of publishing houses for each "nationality".

359. In Ghana, one of the functions of the Bureau of Ghana Languages is the production and translation of books in the nine officially sponsored languages spoken in the country, portraying various aspects of Ghanaian culture and customs. In Sri Lanka, the Section on Literature set up within the Department of Cultural Affairs grants financial assistance to literary societies and to writers belonging to various ethnic groups.

360. Research on the cultural background of population groups has been used in some countries as a means to promote the culture of these groups. Thus, in Burma a government-sponsored programme of cultural revival designed to rekindle national group identification in terms of Burmese cultural symbols was launched immediately after independence under the Ministry of Culture with the help of a member of private learned societies. Under this programme, research in Burmese literature is encouraged and books have been published or translated and distributed in Burmese as well as in minority languages.

361. In the German Democratic Republic, in 1951 the Institute for Sorb Ethnic Research of the Academy of Sciences was founded at Bautzen, associating linguists, historians, ethnographers and sociologists in joint research. Research on the culture of the national groups in Hungary is carried out by a special committee of the Hungarian Academy of Sciences, while in Yugoslavia an Albanological Institute has been established with a view to studying the culture of the Albanian nationality.

362. In Iraq the study of the history and culture of the Kurds has been entrusted to the Kurdish Islamic Institute, created under the Kurdish Academy Act of 1970. Furthermore an Order of the Revolutionary Council enacted on 24 January 1970 empowered the scholars, poets and writers of Turkmenistan to found a society to aid their people to publish literature, increase their linguistic capacity and work in association with Iraqi scholars. Act No. 183/1970 established a Kurdish Literary Society the objects of which include preservation of the purity of the Kurdish language, its development and its adaptation to the needs of science, literature and art. In accordance with Order 251 of the Council of 24 April 1972 granting the Syriac-speaking ethnic groups of Assyrian, Chaldean and Syriac origin equal cultural rights, an association of Assyrian-speaking scholars and writers has been formed, with representatives in the country's learned and cultural societies. The same order envisaged the establishment of an association for Syriac-speaking authors and playwrights, to guarantee their representation in the national federations and in literary and cultural associations. On 10 July 1972, an Act (No. 82 of 1972) was promulgated establishing the Syriac Language Academy as an independent body possessing the status of a legal entity and endowed with financial and administrative autonomy, to act as a scientific and linguistic authority on the Syriac language and to revive the Syriac language, literature and cultural heritage.

363. The universities have also played an active role in efforts undertaken in favour of the development of the literature of various ethnic groups. Thus, in Nigeria they have established institutes, departments or schools which carry out studies and research in Nigerian languages, promote research and publications in many aspects of African culture, including language and history, and provide degree courses in several of the Nigerian languages. For example, the University of Ibadan has set up an Institute of African Studies and a Department of Linguistics and Nigerian Languages. At the University of Nigeria, the activities of the Hansberry Institute of African Studies

include the production of annotated bibliographies and anthologies and the acquisition of oral and written pictorial and cartographic source material for the study of the history, government, law and religion of Nigeria. The Institute of African Studies at the University of Ife regularly sponsors, alone or jointly with other organizations, lectures, colloquia and seminars on various aspects of the Yoruba language. Topics covered included a survey of the components of Yoruba oral literature, the growth of African culture, use of the Yoruba language in education, and the importance of the mother tongue as a medium of instruction. The main objective of the Centre for Nigerian Languages at the Ahmadu Bello University is to publish research findings and to build a library of source materials in Nigerian languages. Its activities are at present devoted to Hausa and they include a collection of Hausa poetry, a Hausa grammar and the writing of reference books, textbooks, prose, poetry, plays, fiction and books for general reading. In addition, the Centre is actively engaged in the study of the less widely spoken Nigerian languages which are in danger of disappearing. Furthermore, through seminars and journals, many of which are supported by the universities, learned and professional associations, scholars and authors contribute to the development of literature in the various languages spoken in Nigeria. Furthermore, a number of literary journals are exclusively devoted to the study of Nigerian languages, history, customs, traditions, art, music and rituals.

364. In the United Kingdom the universities in Scotland are giving increasing attention to the study of Scottish history and literature, though the extent varies from university to university. A School of Scottish Studies is attached to the University of Edinburgh. In India, it has been reported, national academies have been created with a view to promoting the culture of the various linguistic groups.

365. Research work on the structure of the languages concerned is considered in many countries as being essential to the development of ethnic and linguistic groups. Committees have thus been set up in Ghana to consider the adoption of a uniform orthography for several languages. The committee that was established to consider the adoption of a standard orthography for the three main languages spoken in the southern part of the country has completed its work and another one has been set up for the main languages spoken in the Northern and Upper Regions. At present a number of Ghanaian languages have writing systems and several of them have developed a rich literature. In Australia, Aboriginal languages have been studied and recorded by a variety of public and private institutions. Since its creation in 1961, the Australian Institute of Aboriginal Studies has carried out a vigorous and wide-ranging programme of research on Aboriginal languages. In 1965 a Linguistic Programme was initiated with a view to stimulating interest in these languages in the universities. The Institute has sponsored over 100 studies, some of them involving work on disappearing languages spoken by a few persons only. It has been observed that the Government of the USSR has given particular attention to the development of the "national languages", in particular those of the smaller groups. The efforts undertaken have led to the elaboration of alphabets and to the promotion of written forms of languages that were previously only spoken.

366. Work on the structure of the Lapp language is being actively pursued in Norway as the need for a standard orthography of Lappish is considered essential to the development of the culture of the Lapps. In Colombia, language research has centred on the attempt to study and record the country's indigenous languages with a view to devising a written system for each language so that it can be translated into Spanish. In India, cultural research institutes have been established in some states for the study of tribal dialects. In Canada, systems of syllabics for the languages of the indigenous populations are being devised by the Linguistic Section of the Education Division of the Department of Indian Affairs and Northern Development. In the United States of America, with funds provided by the Federal Government, a project to make the Navajo language a written one has been undertaken.

367. An analysis of the available information shows that the development of the culture of minority groups may be severely hampered by problems linked to the structure of the language spoken. Reference is made in this connexion to the situation of the Croat minority in Austria. The Government of Austria has stated that the language of its Croat minority is not being sufficiently developed and cultivated owing to the lack of a varied spectrum of Croatian literature, a fact which works against the preservation of the Croat cultural heritage. It is further pointed out that the Croat minority of Austria is largely cut off from its cultural centre, as the language spoken by this minority substantially differs from the Croatian language spoken in Yugoslavia. Consequently, books published in standard literary Croatian are not comprehensible to the Burgenland Croats. Moreover, the minority has no publishing house of its own. It has, however, been observed in this connexion that the Croat minority is not unanimous as to the action which should be taken to remedy the situation. While some Croat associations favour measures to preserve and develop their language, another group, composed of the elected local officials of the Croat and bilingual communities, holds that the Burgenland Croatian dialect lacks the linguistic equipment to cope with the ideas and conditions of the modern world and the therefore no great emphasis should be placed on the Croatian language in efforts to preserve the Croatian national heritage.

(b) *The arts*

368. In several countries a number of measures have been taken in order to promote, co-ordinate and direct the cultural activities of ethnic groups in the arts field. One such measure has been the creation by governments of agencies financed by public funds. In Ghana, for example, an Arts Council was established in 1959, its main functions being the development of all forms of art and the preservation and encouragement of the traditional arts and culture of the country. Each of the eight administrative regions of the country has its own regional organizer and its own regional arts committee. Since the creation of that Council, there has been an impressive effort at qualitative improvement in all the art forms sponsored by the Council. The Ghana drama studio was established in 1961 to maintain the African tradition in the training of amateur groups, and the Council's dance group gives instruction in several types of traditional dancing of the different sections of the community. In Sri Lanka the Arts Council created by Parliament in 1952 is divided into panels which

represent the various ethnic groups of the country and whose activities cover a wide range of arts. For example, there are panels for Sinhala drama, Tamil drama, Islamic fine arts and Kandyan dancing. The Government further provides regular financial support to the district arts councils and to the ballet dance troupes of the different regions. In the United Kingdom, government assistance for the arts in Wales and Scotland is afforded through two bodies, the Welsh Arts Council and the Scottish Arts Council. Funds for art, music and drama are allocated by the Councils, which also provide grants to amateur societies, particularly for the commissioning of new works. In the German Democratic Republic, a State-operated art centre for the Sorb national group, the "House of Sorb Folk Art", has been established. In New Zealand an Institute of Maori Arts and Crafts operates under government auspices. In Canada a Cultural Development Programme set up under the Department of Indian Affairs and Northern Development provides grants to Indian individuals and groups for the advancement of traditional cultural activities.

369. Other measures include activities such as the organization of arts festivals and exhibitions of art work, the constitution of theatre companies and the formation of dance troupes with a view to providing an opportunity to the ethnic groups of the country concerned to promote and protect their culture. In India, the central and state governments recognize as public holidays the main festivals of all the important communities of the country. In Nigeria, the organization at both the local and the national level, on an annual basis, of the Festival of Arts, in which all the ethnic groups of the country participate, provides an opportunity to promote and project the culture of the Nigerian people. There are also numerous cultural organizations and clubs throughout the country designed to stimulate the arts of the ethnic groups of the country and to serve as places of exhibition for local artists. In addition, in several places, exhibition centres have been established for the display of contemporary works of art and local handicrafts. Since 1971, these organizations have begun to arrange cultural fairs featuring handicrafts and art works of various ethnic origins. In Sweden, in recent years, as a result of the efforts undertaken by private Lapp associations, Lapp home craft designers have developed new forms of decorative art which have brought about, to some extent, a revival of the Lapp handicraft tradition. In Austria, it has been observed that in spite of the lack of cultural creativity in the field of literature and fine arts among the Croatian minority, the Croat artistic heritage is cultivated by numerous music and glee clubs. The German Democratic Republic reports a strong artistic revival among the Sorbs. Since the Second World War more than 80 folklore groups have been constituted with the assistance of the House of Sorb Folk Art.

370. In several countries[8] the cultural development of ethnic groups finds expression in the existence of their own theatre companies, dance troupes and cultural clubs. For example, there are at present in Romania six Hungarian-language theatres, two German-language theatres and one Yiddish theatre at Bucharest, while the Institute of Dramatic Art periodically holds drama classes in the languages of the "co-inhabiting nationalities" in order to provide their actors with training. The co-inhabiting nationalities are equally active in the fine arts and in music. Apart from the Romanian opera, there is a Hungarian opera with a high artistic reputation in the country. Many performers of the co-inhabiting nationalities have received State prizes. In addition many choirs and dance troupes have been formed and fairs and popular art exhibitions have been organized to foster appreciation of the co-inhabiting nationalities' folklore, customs and traditions. In the United Kingdom the Welsh National Opera Company operates under the aegis of the Welsh Arts Council, which also grants aid to art exhibitions and, through the Welsh Theatre Company, to drama. The Council also sponsors the formation of regional art associations. In Ghana, with the Government's financial assistance, many ethnic groups organize their own folk dance clubs and musical groups.

[8] Bulgaria, Czechoslovakia, German Democratic Republic, Hungary.

4. *Dissemination of culture*

371. It is generally agreed that a cultural policy, if it is to be effective, must afford a variety of opportunities for the widest dissemination of culture. A number of facilities and methods are available in the modern world for this purpose. Apart from the traditional means, such as libraries, museums, press, theatres, concerts, etc., a most important role is played now by radio and television. Another element to be taken into account is the contribution which may be made by committees on the arts and culture, cultural associations, councils for cultural affairs, artists' unions, etc., in facilitating the diffusion of culture. In a number of countries action has been taken to promote the diffusion of the culture of ethnic groups by these means.

372. In Denmark, with funds provided by the Government, the German minority operates its own library system. In Burma, the Government maintains five museums and a large number of public libraries in various regions of the country in order to encourage public interest in the culture of the various ethnic groups and makes special efforts to collect and display historical records and achievements, paintings and works of art by Burmese and artists of other ethnic origins. In Sri Lanka, a government programme was launched in 1969 designed to build up a national library system in which the number of books written in the languages spoken by all ethnic groups in the country was to be considerably increased. It should be noted in this connexion that until the 1950s, during the time when the country was under foreign domination, books in public libraries were almost exclusively in English. By 1968, through government action, about 90,000 titles in Sinhala and Tamil had been made available. In Poland and other countries of Eastern Europe, national groups are reported to have been provided with a large number of libraries, museums and cultural centres exclusively devoted to their needs.

373. In New Zealand the museums in the large cities devote a major section to Maori cultural material. Museums in the Ukrainian SSR display material relating to the history of the various national groups, their achievements and their participation to the cultural life of the country. The National Museum of Canada maintains an extensive programme of research and exhibition of Indian art and culture. In Hungary, museums have a separate nationality section. In the United Kingdom, the National Library of

Wales, a government-aided institution, is a repository of documents and manuscripts relating to Wales from earliest times. Other cultural institutions include the National Museum of Wales, the Welsh Folk Museum, the National Library of Scotland, the Scottish National Gallery of Modern Art and the Royal Scottish Museum.

374. The available information reveals, however, that it may happen that in the same country the facilities offered are not the same for all ethnic groups. For instance, it is reported that the number of books available in Yugoslav libraries in the languages of the different "nationalities" varies considerably from one group to another.

375. At conferences held on the question of cultural rights under the auspices of UNESCO, the importance of modern communication media for cultural dissemination and artistic creation has been stressed. At a conference held in Helsinki in 1972, it was widely recognized that the media could play a prime role in the implementation of cultural policies and, if properly used, could in particular enormously contribute to the enhancement of all traditional forms of culture.[9]

376. Specific information on the use of communication media such as radio and television for promoting the cultural development of persons belonging to minority groups is available for very few of the countries surveyed. In Nigeria, radio and television, in the areas where they are available, are intensively used with a view to promoting the various Nigerian cultures and languages. Programmes in the Nigerian languages include, among other things, poetry, drama and music. With respect to Sweden, the Government has stated that it is considered of vital importance for the survival of Lappish self-awareness that the language and culture of the Lapps be represented on radio and television. Regularly scheduled cultural programmes in the Lappish language are broadcast throughout the Swedish Lapp territory and, in this connexion, it should be mentioned that proposals have been made for the creation of a common Scandinavian production centre for Lappish broadcasts. In India, the main purpose of the National Programme of Regional Music is to propagate the musical and folkloric traditions of the various regions. Once a month an outstanding play in the language of one of the linguistic groups is broadcast by the regional stations. The New Zealand Broadcasting Corporation has regular programmes related to Maori culture. It is reported that in Yugoslavia, as in some other countries, radio stations regularly broadcast cultural programmes intended for members of all national groups.

377. In several countries members of minority groups have formed cultural associations, often with the financial assistance of the government concerned, which play an active role in the preservation and development of their culture. In Poland, for example,[10] a number of such socio-cultural associations have been constituted which set as their objective the propagation of culture in the minorities' own languages and also serve as liaison between public authorities and the members of the minority groups concerned. Their activities also include providing club and library facilities and organizing amateur artistic groups for which performances and festivals are periodically arranged. In Romania, workers' councils of the "co-inhabiting nationalities" have been set up *inter alia* to help in fostering the artistic and cultural activities of those nationalities. In Austria, Croats and Slovenes have set up their own cultural associations. The Popular Council of the Carinthian Slovenes and the Central Union of Slovene Organizations in Carinthia both maintain a great variety of subsidiary cultural associations which organize various activities, including efforts to maintain and preserve the customs and traditions of the Croat and Slovene minorities. These associations receive substantial subsidies from the federal and provincial authorities and, often, from local authorities. Mention should be made in particular of the Burgenland Popular Culture Service which has been set up by the provincial authorities in Burgenland to support the cultural activities of the members of minority groups. In the Union of Soviet Socialist Republics, as in Yugoslavia, the right of members of national groups to establish associations financed by public funds is granted by the constitution itself. Thus all the national groups in Yugoslavia are said to have formed cultural associations with a view to preserving their national identity. For example, the Hungarian and Czech national groups maintain a large number of cultural centres throughout the country, and in all the Italian communities cultural centres have been formed.

378. It has been noted that the right of national minorities to preserve their culture is reinforced when these groups are allowed to maintain regularly unhindered contacts with their ethnic centres. Thus the declaration made by the Government of Denmark regarding the rights of persons belonging to the German minority contains a provision stating that "the special interest of the German minority in cultivating its cultural relations with Germany is recognized". In Yugoslavia, the federal constitution, the constitutions of the various republics and the municipal statutes contain provisions intended to ensure the right of national minorities to maintain contact with their country of origin.

5. *Preservation of customs and legal traditions*

379. The right of persons belonging to ethnic minorities to preserve the customs and traditions which form an integral part of their way of life constitutes a fundamental element in any system of protection of minorities. On the other hand, it has also been argued that the maintenance of distinct juridical institutions among minority groups ought to be conditioned by the State's legislative policy, since a State could not be expected to acquiesce in practices which could impede social progress or may be regarded as offensive to morality. In this connexion, the following observations were made at the seminar on the multinational society held in Ljubljana, Yugoslavia, from 8 to 21 June 1965:

As to the limitations which should be placed on traditional group customs, participants were unanimous in stating that nothing should be prohibited unless it threatened the freedom of others or was contrary to public order, morality or health—in the sense of constituting an offence known to the law—or conflicted with the technological, social or economic advancement of the nation as a whole. One speaker stressed, in particular, the need to eradicate

[9] See *Final Report on the Intergovernmental Conference on Cultural Policies in Europe, Helsinki, 19-28 June 1972*, Part II, Report of Commission I, para. 3.

[10] Also in Australia; Bulgaria; Canada; Denmark; German Democratic Republic; Germany, Federal Republic of; Hungary; New Zealand.

certain traditional remnants of the caste or class system, which erected intolerable barriers between fellow citizens.[11]

380. In the countries surveyed for which information on this question is available, the right of ethnic groups to maintain and preserve their customs is recognized, although there are a few instances where the manifestation of particular customs, such as the use of distinctive clothing, has been either actively discouraged or reluctantly tolerated by State authorities. The available information further reveals that some minority groups, in particular those which occupy an inferior position in the society in which they live, confront severe problems in their efforts to maintain their customs. The situation of the Gypsies in Europe and of the indigenous populations in various countries is illustrative of that point.

381. The preservation of the legal traditions of minority groups in the field of private law is impeded by the trend towards applying a uniform set of rules to all nationals. In federal States, matters of private law are usually under the jurisdiction of the local authorities. In Africa and Asia, particularly in those countries in which customary law is an integral part of the general legal system, various ethnic groups are still governed in matters of personal status and other fields of private law by their own rules. Also, Gypsies in Europe and indigenous populations in some countries are allowed under certain conditions to apply their own customary laws in the field of private law.

382. In Ghana the customary law of the major ethnic group of the country remains the most important source of law as regards marriage, devolution of succession, property and other family matters. Thus three types of marriage are recognized: those performed under the statutory marriage ordinance, those conducted according to customary law and those conducted under Islamic law. In Iran the law further provides that, in order to ensure the protection of the traditions of minority groups, the courts are under obligation to enforce their customs in matters of personal status. In the Niger the ancestral customs of each of the ethnic groups which make up the Niger nation have been preserved in private law and the law governing personal status. Furthermore, in order to ensure that the special characteristics of every ethnic group are effectively respected, the law governing the organization and competence of the courts provides that the courts shall apply the custom of the parties in cases relating to their capacity to make contracts and to participate in juridical proceedings, and in matters of personal status. In Laos, although there are no special laws on the subject, the different ethnic groups have preserved their legal customs in matters of private law. Furthermore, a special procedure is applicable to the mountain tribes. In this connexion article 53 of the Code of Civil Procedure provides as follows:

> ... Nevertheless, before the close of proceedings in cases concerning individuals belonging to the mountain races, which have no written records, the court shall call in for consultation one or more chiefs of the tribes concerned in order to acquaint itself with their particular customs and usages. Such consultation shall be mentioned in the judgment.

In Sri Lanka, each major ethnic group organizes family life according to its own system and, as a result, marriage, family and inheritance are governed by a variety of codes. While the Sinhalese follow the Roman-Dutch law, Tamils are ruled by a code derived from South India and Moslems by their own customary law. The administration of justice is itself based on the application of legal rules which have evolved in part from three distinct customary laws.

383. The application of the customary laws of certain groups is subject to reservations in some countries. In the Philippines, for example, only marriages between members of the "national cultural communities" living in "non-Christian provinces" may be performed in accordance with their customs, rites and practices. In some other cases, the freedom of persons belonging to some minority ethnic groups to follow their own customary law in matters of personal status is subject to the requirements of morality, public order and the general policy of the State. Thus, in Malaysia, a special rule applies to Aboriginals: they are allowed to retain their own customs, laws and social institutions only when these are not incompatible with the national legal system. In Sudan, matters of personal status are governed by customary laws, provided that such customs "are not contrary to justice, equity or good conscience".

384. There are instances where some legal traditions of minority groups are not considered valid. Thus the Government of Guyana states that the traditional laws of the Amerindians are not recognized. In the Federal Republic of Germany, as in other European countries, marriages of Gypsies performed according to their traditional laws are not recognized by the State. Children born of these marriages are therefore considered "illegitimate". In Israel, despite the deep-rooted traditional customs of the members of the Arab minority, the law makes polygamy an offence. In this connexion the Supreme Court of Israel has stated that freedom of religion is not to be interpreted as freedom to do what the religion permits but freedom to fulfil what the religion commands; the polygamy practised by Moslems does not constitute a part of Moslem belief or its religious commandments. The Government of Australia reports that while official policy is not to interfere with traditional Aboriginal laws and customs, it has generally been considered inappropriate to accord formal recognition to them. Thus, while the form of Aboriginal marriage has not been officially restricted, neither has it been officially recognized. In relation to certain social service benefits, customary marriages are fully recognized, but this administrative practice has not been extended to recognition of the entitlement in relation to all the wives of polygamous unions.

385. It should be noted that not all African and Asian countries recognize a plurilegal system in matters of private law. There appears to be a trend towards discarding such systems, in particular when they are considered as a legacy of the colonial period. In Morocco and in Tunisia, a number of ethnic groups were ruled by their own set of laws, by decision taken during the Protectorate. In both countries, upon achievement of independence, it was found that the existence of several legal systems was detrimental to national unity. As a result of the reform undertaken in Morocco in 1958, traditional Islamic law, Berber customary law and the French and Spanish codes which were in force during the Protectorate were abrogated and replaced by a civil code applicable to all. In some instances, modernization or the need to ensure the unity of the people were advanced as the main reasons for the adoption of reforms

[11] ST/TAO/HR/23, para. 115.

designed to abrogate a country's diverse family laws and substitute a civil code in their place. In Burma, for example, it was decided in 1964 to apply a uniform set of laws to every region of the country in which the administration of justice had been based on the customary laws of the minority groups involved. The essential purpose of this measure was to promote the common awareness of national identity. In Ethiopia, local customs govern family law in many respects. However, the Government sought to provide a uniform set of rules by the adoption in 1960 of a civil code which in principle abrogates all previous rules unless their retention was expressly provided for. There are, thus, recognized ways in which the customs of each ethnic group may still continue to apply.

B. The right of persons belonging to religious minorities to profess and practise their own religion

386. The question of the rights of persons belonging to religious minorities can be looked at, first, from the standpoint of non-discrimination—which involves consideration of the problems presented by the enjoyment and exercise of freedom of thought, conscience and religion, a freedom which should, of course, be recognized for all individuals without discrimination of any kind—and also from the point of view of special measures of protection. By the very nature of religions and religious communities, the exercise of freedom of religion has many implications not only at the individual level but also at the collective level, as witness the extremely complex nature of the relations between States and the various religions. From the standpoint of special measures of protection, it would be more appropriate to concentrate on measures by which the State can promote the material equality of religious communities. Through a policy of subsidies, for instance, the State can give assistance to the activities of minority communities. This aspect of the question tends to be overlooked, and more attention is generally given to the multiple implications of freedom of thought, conscience and religion at the collective level. In the opinion of the Special Rapporteur, both the subject itself and the practical attitude of Governments, as revealed in the available information, are such that the two aspects mentioned above cannot be clearly separated, even though from the logical point of view they appear distinct. In the paragraphs that follow, problems concerning freedom of thought, conscience and religion and problems relating to special measures in favour of members of religious minorities, where such measures are conceivable or have been adopted, will be examined together.[12]

387. The following topics will be covered: (i) the question of the status granted to a religious minority: the analysis of this question will be concerned with examining the practice of formal recognition followed in some countries, as well as the problem of financing by the State of the activities of religious communities, and with determining whether religious laws and customs in certain fields are recognized as valid within the State; (ii) the free participation by members of the religious minority in the worship and rites of their religion; (iii) the right of members of religious communities not to be compelled to participate in the activities of other religions; (iv) the right of persons belonging to religious minorities to administer the affairs of their communities; (v) the question of the establishment and maintenance of religious institutions and denominational schools and the granting of financial assistance to such institutions and schools.

1. *Juridical status of a religion professed by a minority*

(a) *The question of recognition*

388. From the point of view of the juridical relationship between the State and minority religions, the countries surveyed fall into two broad categories: those in which a religious community must be formally recognized in order to have a juridical status, and those in which no religion is accorded a juridical status, religion being considered a purely private affair.

389. It cannot be assumed that the mere fact of separation of State and religion ensures non-discrimination and that the existence of a State religion or the need for formal recognition necessarily gives rise to discrimination. In this connexion the observations made by Mr. Arcot Krishnaswami, Special Rapporteur of the Sub-Commission for the question of religious rights and practices, are worth recalling:

> There is no doubt that historically the principle of separation of State and religion emerged as a reaction against the privileged position of the Established Church or the State religion, and that its purpose was to assure a large measure of equality to the members of various religions. Within the framework of this principle of separation, however, *de facto* pre-eminence is sometimes achieved by a particular religion and the law of the country—although equally applicable to everyone—reflects in certain important matters the concepts of the predominant group. Thus rules regulating marriage and its dissolution are often taken over from the religious law of the predominant group. Similarly, official holidays and days of rest in many countries correspond to a large extent to the religious holidays and days of rest of the predominant group.
>
> The State, even when applying the principle of separation, may accord a special status to religious organizations, distinct from that accorded to other kinds of associations. But such a status may be granted only on condition that the religious group satisfies certain specified conditions—a possibility for some but not for others.
>
> Even if a State maintains strict neutrality as between various faiths, inequality of treatment is not necessarily excluded. The demands of various religions are different, and a law prohibiting certain acts, or enjoining the performance of others, may prevent one religious group from performing an essential rite or from following a basic observance, but be of no importance at all to another group.[13]

390. In Switzerland it is found that, in most of the cantons with a predominantly Roman Catholic population, the Evangelical Church enjoys formal recognition by the State. Conversely the Catholic Church also has to be recognized in this way in those cantons where the population is predominantly Protestant. In Finland, while the

[12] As indicated in paras. 225-227, a comprehensive study on the question of discrimination in the matter of religious rights and practices was prepared by Mr. Arcot Krishnaswami, Special Rapporteur of the Sub-Commission. Furthermore, the question of the elimination of all forms of religious intolerance is under active consideration by various organs of the United Nations. At the request of the General Assembly, the Commission on Human Rights is elaborating a draft declaration on the subject. In the light of these developments and in order to avoid unnecessary duplication, this chapter will be limited in scope.

[13] *Study of Discrimination in the Matter of Religious Rights and Practices* (United Nations publication, Sales No. 60.XIV.2), pp. 47-48.

Evangelical Lutheran Church and the Orthodox Church have been granted by law a special national status, the operation of other religious communities is subject to specified conditions. They are in particular required to draft a statute for their community and to give to the Council of State a written announcement, signed by at least 20 persons, of their establishment. Only after registration in the register of religions and confessions kept by the Ministry of Education is a religious community considered as a juridical entity having all the capacities which such status entails. It has been further emphasized that because of the position of the Evangelical Lutheran Church as the church of the overwhelming majority of the population and that of the Orthodox Church for historical reasons, these two religions possess certain rights and privileges not possessed by others. In Japan, under the Religious Juridical Persons Law, persons wishing to establish a religious organization need to file the regulations of the proposed organization with the Government for authentication, and to give public notice of their intention. If the competent authority is satisfied that the organization is religious in character, that its regulations are in conformity with the law, and that it has followed the proper establishment procedure, that authority authenticates the regulations, and the organization then comes into existence. In Israel, the Government reports that recognition as a religious community entails jurisdiction in matters of personal status, in some instances concurrently with civil courts, in others, to the exclusion of the civil courts. Non-recognition of any religious community does not affect its right or the right of any of its members to the free exercise of their religion, but the courts of non-recognized religious communities have no legal jurisdiction.

391. In Austria also the law makes a clear distinction between legally recognized and non-recognized churches and religious communities. Only the former possess legal personality. The Government has made the following observations concerning the relevant provisions of the law on the matter:

Conditions under which members of unrecognized religious denominations may obtain recognition and form religious communities are set out in the Act of 20 May 1874.

Paragraph 1 of this Act lays down as conditions for the recognition of a religious community (1) that the doctrine, divine service, constitution and chosen title of the denomination shall contain nothing which is contrary to law or morality, and (2) that when the community is established the existence of at least one religious congregation organized in accordance with the terms of the Act shall be assured. Hence when the recognition of a religious community in Austria is considered, a decision must also be taken regarding the establishment of at least one local religious congregation, for in the absence of such there can be no religious community. Responsibility for both these matters rests with the Minister of Education. Before permission for the establishment of a religious congregation may be issued, however, it must in particular be satisfactorily proved that the congregation is to be organized on viable lines. The necessary full information may be embodied in the draft constitution of the religious community itself; otherwise a statute, likewise subject to ministerial approval, must be submitted. Under article 15 of the Basic State Act of 1867, internal organization is entirely a matter for the religious community itself.

Should an application for permission to establish a new religious community be rejected on legal grounds, the rejection is not to be interpreted as meaning that the denomination concerned is prohibited; it merely remains an unrecognized denomination, whose adherents' right to worship at home is secured by the Basic State Act, 1867, while their right to public worship is also secured by the more recent Treaty of Saint-Germain-en-Laye, 1918.

Recognition confers on the religious community concerned the status of a public corporation. In virtue of the right of self-determination granted such a corporation under the Constitution, the community acquires an independence in internal affairs which is limited only by generally applicable State law. The Act provides no definition of what constitutes "internal church affairs". The term is understood to cover decisions concerning dogma, the form of worship, i.e. of service and ritual, disciplinary authority and spiritual administration, in general, religious instruction and approval thereof, denominational schools and church discipline.

392. In Poland, regulations concerning the legal recognition of minority religions were adopted after the Second World War. It should be mentioned, in particular, that by a special decree enacted in 1949 some of the provisions of the law dealing with associations have been amended in order to legalize the religious activities of small denominations which until that time were functioning without legal recognition. The legal existence of a religious denomination may now take the form of ordinary associations or of registered associations which, as such, are required to have a statute approved by the public authorities.

(b) *Financing by the State of the activities of religious communities*

393. Financing by the State of religious activities is one of the factors which may place members of minority religions at a disadvantage if the organizations of the religious majority receive subsidies from the State while the others do not, or when individuals are compelled, through taxation, to support a religion to which they do not belong. In this connexion, mention should be made of a provision contained in the draft declaration on the elimination of all forms of religious intolerance prepared by the Sub-Commission on Prevention of Discrimination and Protection of Minorities[14] according to which "No State shall discriminate in the granting of subsidies, in taxation or in exemptions from taxation, between different religions or beliefs or their adherents".

394. In various countries, the law prohibits government financing of the activities of any religious group. Thus, the Government of the Philippines has reported that no official assistance of any kind is provided for any religious group and that no government funds or property may be used for religious purposes. The constitution of Japan provides that no religious organization shall receive any privileges from the State. Under the Bill of Rights, separation between Church and State in the United States of America means that no law may provide for financial assistance to any religion or organization or give preference to one religion over another. This rule was applied by the Supreme Court when it declared that "no tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practise religion".

395. In some other countries, only the State religion or the Established Church is entitled to financial assistance from public funds. Denmark is one example of this type of situation. While the expenses of the Established Church are covered in their greater part by State funds and by a special Church tax imposed on members of that Church but

[14] See A/8330, annex I.

collected by State authorities, no State funds are provided for the support of other religious communities.[15]

396. In still others, financial assistance is given to some minority religions on a *de facto* basis but not as a legal requirement. Regarding Sweden, for example, it has been said that the Lutheran Church, which is the established church of the country, is entitled to full financial support by the Government, whereas the activities of minority churches, as a rule, are funded entirely by voluntary contributions. It will be noted, however, that the State Church Committee which was set up by the Government to investigate State-Church relations has recommended that in principle all religious communities should have an equal position and that Government support should be given according to the extent of their activities. Furthermore, certain government subsidies have been given to churches outside the established Swedish Church. Through the National Immigration and Naturalization Board, religious associations and organizations connected with the Jewish community in Sweden received, during the financial year 1972/73, 10,000 Swedish crowns, the Roman Catholic Church, 75,000 crowns, communities and organizations connected with Orthodox churches 82,445 crowns, and communities and organizations connected with Moslem minorities, 1,300 crowns. Government funds have also been used to pay the salaries of Greek Orthodox priests. It should further be mentioned that, in some cases, church buildings belonging to the Swedish Church can be used under certain exceptional conditions by other churches. In Thailand, while the official policy, as proclaimed, is to promote Buddhism, the State religion, financial assistance is given to a number of other religious organizations.

397. In several countries, the Government provides financial assistance, directly or indirectly, to all legally established religious communities. In accordance with article 26 of the Austrian State Treaty of 1955, the Government of Austria pays an annual sum of money to a number of religious communities. Moreover, legally recognized religious communities have been accorded, as already indicated, the status of public-law entities and enjoy the special status provided for such entities. This entails, among other things, tax privileges allowing church expenses to be treated as special expenditures, exemption from land tax for certain church buildings and a reduced rate of tax on estate inheritance and gifts. In other instances, financial support to religious communities is provided through the payment of salaries to clergymen and construction and maintenance of places of worship.[16] The Government of Czechoslovakia, for example, reports that, in accordance with a law adopted in 1951, the State supports the expenses of all churches and religious communities.

(c) *Validity of the laws and customs of the religion professed by a minority in the field of private law and in some other matters*

Celebration of marriage

398. The Sub-Commission recommended in the draft declaration on the elimination of all forms of religious intolerance that "everyone shall have the right to have marriage rites performed in accordance with the prescriptions of his religion or belief and no one shall be compelled to undergo a religious marriage ceremony not in conformity with his convictions". Once the freedom to celebrate a religious marriage is recognized, it remains to be ascertained whether the State recognizes such a marriage as producing effects at civil law. In some countries it does so; and wherever this possibility is open, the marriage ceremonies of minority religions should have the same effects as those of the majority religion.

399. In a number of the countries surveyed, the avaiable information indicates that, in varying ways, marriages performed according to the rites of a minority religion are regarded as legally valid. Thus in Sweden, the marriage code provides that a marriage may be concluded in a civil or religious ceremony and that a religious marriage may be solemnized "according to the usages of any religious society if so authorized by the Crown and if one or both of the prospective spouses is a member of that society. Marriages solemnized according to the usages of religious societies other than the Established Swedish Church shall be solemnized by the person authorized to do so."

400. Under the terms of the Marriage Act of Finland, marriage may be concluded in a church ceremony. But after stating that a church ceremony can take place according to the rites of any religious community other than the Evangelical Lutheran Church or the Orthodox Church, to which the Government has granted the right to celebrate marriages, the law adds, however, that, if either of the partners or both belong to a non-recognized religious community, marriage must be concluded in a civil ceremony. The law further declares that the same rule applies if one of the partners belongs to a Christian religious community and the other to a non-Christian community, or if both belong to a non-Christian religious community. The Governments of Denmark and Norway report that the fact that a religious community is recognized has the consequence that ministers of this religion have the right to perform acts such as weddings with civil validity. No such right is granted to non-recognized religious communities. In Italy, under a law adopted in 1929, a person who wishes his marriage to be performed by a minister of a religion other than the Catholic religion must apply to the registrar who would be competent to perform the marriage. Having ascertained that there is no obstacle to the marriage under civil law, the registrar issues a written authorization stating the name of the minister who is to perform the marriage and the date of the measure which sanctioned his appointment. The Government of Canada reports that:

> In general, religious laws and customs do not receive any recognition except insofar as they are embodied in a statute. In Ontario, recognition is given to religious marriages by conferring civil authority upon clergymen of any denomination which has been in existence for a continuous period. This allows the performance of legally valid marriages by the religions officials of many minority religions. In addition, where the religion does not have a clergy as such, an exemption may be made in their favour so as to allow marriages to be solemnized according to their customs. This now exists in favour of the Society of Friends (Quakers) ... .

401. In India, Moslem, Christian and Parsee marriage customs are protected by special laws. In Trinidad and Tobago legally valid marriages may be performed according

[15] A similar observation can be made concerning the United Kingdom.

[16] Bulgaria, Czechoslovakia, German Democratic Republic, Hungary, USSR, Yugoslavia.

to Hindu and Moslem rights. Sudanese law also provides that a legally valid marriage may be performed according to the customs of any religious group.[17] There are, however, instances where the validity of the marriages performed according to the rites of religious minorities is subject to some restrictions. In the Philippines, for example, the Civil Code stipulates that marriages between members of the Moslem minority may be performed according to their own rites only if they live in the non-Christian provinces.

Other matters of personal status

402. In several countries the validity of the laws and customs of the religion professed by a minority is recognized in other matters of personal status. In India, for example, family life continues to be governed in many instances by the laws of the various religious communities. Although local governments are empowered to legislate in the field of private law, efforts undertaken to modify or eliminate certain customs which are regarded by the central Government as obsolete in a modern State are reported to have met limited success.

403. In Malaysia, members of all religious minorities are granted the right to follow their religious laws and customs in all matters of personal status, whereas in some countries only certain specified minorities have been granted that right. Thus, in Ethiopia a law was adopted in 1942 with a view to allowing Moslems of that country to apply the law of their religion in civil and religious matters which are governed by the Koran. The law allows members of the Moslem minority to set up their own courts in matters affecting their family life. No such right appears to have been granted to other religious minorities. In Greece, members of the Moslem community are governed by the Koran in all matters relating to family law. Israel has recognized the right of the Druzes to jurisdiction in matters of personal status. Christian religious courts have also sole jurisdiction in matters of marriage, divorce, maintenance and the executing of wills. In Singapore and in Thailand, religious courts are empowered to hear cases relating to the personal status of the members of the Moslem religious group. The Government of Iraq observes that under the constitution special religious courts have been set up for the Christian and Jewish communities.

404. The Egyptian Government reports that, although the State recognizes the identity of religious faiths and communities, the religious courts have been abolished and only the national courts are competent to rule on matters of personal status. However, since the unification of the courts has not been accompanied by unification of the legislation, the law provides that decisions taken with regard to personal status among non-Moslem Egyptians of the same faith should nevertheless be in accordance with their religious law. There are, however, matters in which the laws of religious minorities are not taken into account in Egypt. Questions of succession in particular are subject, for all Egyptians of different religions, to an Act of 1943 which unified the provisions on the devolution of estates and made Moslem law applicable in all cases of succession.

Observance of religious holidays

405. Every faith attaches great importance to the observance of its religious holidays. The question that arises is whether the State takes into account the faith of persons belonging to religious minorities in this respect and allows them to observe their religious holidays as official holidays. It may be mentioned that the draft declaration on the elimination of all forms of religious intolerance proposed by the Sub-Commission contains a provision stating that "due account shall be taken of the prescriptions of each religion or belief relating to days of rest and all discrimination in this regard between persons of different religions or beliefs shall be prohibited". Measures of that nature have been taken in some countries.

406. It has been reported that in Egypt the State recognizes the religious festivals of Christian minorities, permits employers to suspend work in order to celebrate their holidays and allows Christian employees of government institutions paid leave on religious feast days. In Malaysia, the schedule to the Holiday Ordinance lists 11 public holidays, which include the religious celebrations of the main ethnic and religious groups of the country. In Poland, where the principle of separation of Church and State is applied, the law recognizes the most important Christian feasts as holidays. With regard to the members of religious groups which celebrate other religious holidays, a principle of tolerance is practised whereby employees and employers are authorized to make mutually satisfactory arrangements. In such cases, however, employees must subsequently make up for the days of leave granted to them. In Sri Lanka, the religious festivals of the four major religions professed in the country are celebrated as national holidays. In Israel the non-Jews have the right to observe their own weekly religious holidays and festivals as rest days. The Government of Iraq reports that the Official Holiday Act of 1972 provides that "religious festivals are additional public holidays for the following communities: Christian, Jewish, Samaean and Yazidi". Eighteen holidays are officially observed in Pakistan, of which four are national, eight Moslem, four Hindu and two Christian. In addition, provision is made for 16 "optional holidays", of which two are national, four Moslem, three Hindu, two Christian, two Parsee and three Sikh.

407. The observance as days of rest of the holidays of all the religious groups may give rise to some difficulties. In this connexion the Government of Austria reports that the Holiday Rest Act of 1957 provides that to the extent justifiable in a modern State with a modern economic system, no work is to be done on the days prescribed as holidays or days of rest by the religious communities most widespread in the country. To the extent that exceptions to the general rule of rest on Sundays and holidays are permissible, the law also provides that persons working on those days must be granted the free time necessary to attend religious services. Nevertheless, it would be out of the question to take account of all the holidays or days of rest of all the religious communities which now exist in the country without the most serious consequences for the general public. However, as regards attendance at schools, pupils belonging to religious minorities are exempted from classes in order to observe the holidays of their religions.

Conscientious objection to military service

408. In countries where the principle of conscientious objection is recognized, members of religious minorities would find themselves at a disadvantage if their religion was excluded from the application of such principle. The

[17] As in Bangladesh, Malaysia, Pakistan, Singapore and Thailand.

available information tends to indicate that all authorized religions are taken into account when conscientious objection is a right recognized in legislation.

Taking of an oath

409. In some circumstances, in particular when testifying before courts, individuals are required in many countries to take an oath and that oath is usually based on the religion professed by the majority of the population. It can be affirmed that the right of persons belonging to religious minorities is violated if they are compelled under the law to take an oath in disregard of the prescriptions of their faith. That situation was taken into account by the Sub-Commission when it recommended in the draft declaration on the elimination of all forms of religious intolerance that "no one shall be compelled to take an oath of a religious nature contrary to his convictions".

410. In the countries for which information is available, the rule is that no one should be compelled to take an oath contrary to the prescriptions of his religion, at least when such religion is legally recognized.

2. *Freedom of persons belonging to religious minorities to participate in the worship and rites of their religion*

411. The right of everyone, including persons belonging to minority groups, to freedom of thought and conscience and to participate in the worship and rites of his religion is now a principle universally recognized. It is embodied in article 18 of the Universal Declaration of Human Rights and in article 18 of the International Covenant on Civil and Political Rights.

412. The draft articles for an international convention on the elimination of all forms of religious intolerance prepared by the Commission on Human Rights[18] contain the following provisions:

Article III

1. States Parties undertake to ensure to everyone within their jurisdiction the right to freedom of thought, conscience, religion or belief. This right shall include:

(*a*) Freedom to adhere or not to adhere to any religion or belief and to change his religion or belief in accordance with the dictates of his conscience without being subjected either to any of the limitations referred to in article XII or to any coercion likely to impair his freedom of choice or decision in the matter, provided that this subparagraph shall not be interpreted as extending to manifestations of religion or belief;

(*b*) Freedom to manifest his religion or belief either alone or in community with others, and in public or in private, without being subjected to any discrimination on the ground of religion or belief;

(*c*) Freedom to express opinions on questions concerning a religion or belief.

2. States Parties shall in particular ensure to everyone within their jurisdiction:

(*a*) Freedom to worhisp, to hold assemblies related to religion or belief and to establish and maintain places of worship or assembly for these purposes;

(*b*) Freedom to teach, to disseminate and to learn his religion or belief and its sacred languages or traditions, to write, print and publish religious books and texts, and to train personnel intending to devote themselves to its practices or observances;

(*c*) Freedom to practise his religion or belief by establishing and maintaining charitable and educational institutions and by expressing in public life the implications of religion or belief;

(*d*) Freedom to observe the rituals and the dietary and other practices of his religion or belief and to produce or if necessary import the objects, foods and other articles and facilities customarily used in its observances and practices;

(*e*) Freedom to make pilgrimages and other journeys in connexion with his religion or belief, whether inside or outside his country;

(*f*) Equal legal protection for the places of worship or assembly, the rites, ceremonies and activities, and the places of disposal of the dead associated with his religion or belief;

(*g*) Freedom to organize and maintain local, regional, national and international associations in connexion with his religion or belief, to participate in their activities, and to communicate with his co-religionists and believers;

(*h*) Freedom from compulsion to take an oath of a religious nature.

413. In all the countries surveyed, including those in which a religion has been declared the State religion, the constitution or the law proclaims the principle of freedom of religion and generally guarantees to everyone the freedom to change his religion or belief and in particular the freedom, either alone or in community with others, and both in public and in private, to manifest his religion or belief in worship, teaching and observance. In some countries, this right is also guaranteed on the basis of treaties concluded with other countries.

414. Undoubtedly, there are still cases where this principle has not been fully applied, and the United Nations has undertaken within recent years efforts with a view to ensuring greater respect for the right to freedom of religion. It must be further pointed out that while this right is now universally accepted, it is also generally agreed that it may be subject to some limitations. It may be recalled in this connexion that the above-quoted article 18 of the International Covenant on Civil and Political Rights confirms the admissibility of certain limitations, when it states in paragraph 3 that "freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others".

415. In nearly all the countries studied, limitations of this kind have been introduced. Thus, in Sweden, the law dealing with freedom of conscience and religion specifies that everyone is entitled to practise his religion so long as he does not thereby disturb the peace or cause a public nuisance. With respect to the Philippines, the Government reports that the State does not interfere in religious affairs when they do not contravene the laws of the country. As regards Austria, the constitution provides that "all inhabitants of Austria shall be entitled to the free exercise whether public or private of any creed, religion or belief, whose practices are not inconsistent with public order or public morals". The constitution of Ethiopia stresses that religious rites should not be utilized for political purposes and should not be prejudicial to public order or morality, whereas the constitution of Switzerland stipulates that the exercise of religious freedom is confined "within the limits compatible with law and order". According to the constitution of Egypt, "the State shall protect the freedom of worship provided that law and order and morality are not affected". The constitution of Tonga puts as a condition for the exercise of the right of citizens to practise their religion that they do not commit "evil and licentious acts".

[18] See A/8330, annex III.

3. *The right of persons belonging to religious minorities not to be compelled to participate in the activities of other religions*

416. A corollary of the freedom of persons belonging to religious minorities to profess and practise their own religion is the right not to be compelled to participate in the activities of other religions. In several of the countries studied,[19] measures have been taken to that effect either by the constitution or by law.

417. The provisions contained in the constitutions of Sweden and Switzerland may be cited as examples of the type of action taken. In Sweden, the law provides that "no one shall be compelled to belong to a religious denomination. Any agreement contrary to this provision shall be null and void." In Switzerland, the constitution stresses that "no one may be forced to belong to any religious association". In connexion with the application of that right, two questions appear to require special attention: the payment of special taxes for the support of a religion, and compulsory religious education in public schools.

(a) *The right of persons belonging to religious minorities not to be compelled to contribute financially to the activities of a religious denomination other than their own*

418. The constitutions of some countries contain provisions according to which no person should be compelled to pay any tax, the proceeds of which are allocated in whole or in part for the support of a religion other than his own.[20] In some other countries, in particular in the countries in which a religion has been declared the State religion, a special tax collected by State authorities is levied upon all citizens, irrespective of their faith, to support a particular church. Measures to remedy the discriminatory situation thus created have been adopted in some of these countries. In Sweden, for example, individuals who are not members of the Swedish Established Church pay a church tax reduced by 70 per cent. The reduced amount for non-members, it has been stated, has to be paid because the Established Church is in charge of the civil registration of the population. The Government of Norway reports that, while the law exempts non-members of the State Church from personal contributions to the Church, a certain portion of the municipal taxes paid covers the expenses of the State Church. Only taxpayers who are registered members of an organized dissenter congregation are exempted from this municipal tax. Otherwise, it is up to the municipal council to decide whether an exemption should be granted.

(b) *The right of persons belonging to religious minorities not to be compelled to follow instruction in a religion other than their own*

419. The principle according to which "no one shall be compelled to receive instruction in a religion or belief contrary to his convictions or, in the case of children, contrary to the wishes of their parents or legal guardians" has been included among those proposed by the Sub-Commission in the draft declaration on the elimination of all forms of religious intolerance. In most of the countries surveyed, including those having a State religion, such a right has been affirmed in the constitution or in the law. Thus, in Malaysia the Constitution provides that no person shall be required to receive instruction in a religion other than his own and "for the purpose of this clause, the religion of a person under the age of eighteen shall be decided by his parents or guardian". Under the terms of article 49 of the Swiss constitution, "no one may be forced to receive any religious instruction, it being understood that the right to decide on the religious education of children up to the age of 16 years vests in their parents or guardians". According to the laws of Finland, no one may be compelled to receive instruction in a religion to which he does not adhere. The Nigerian constitution provides that "no person attending any place of education shall be required to receive religious instruction or take part in or attend any religious ceremony or observances if such instruction, ceremony and observances relate to a religion other than his own". Regarding Ethiopia, it has been said that, while religious instruction given in public schools is based upon the teaching of the National Church, every parent enjoys full freedom to withdraw his child from religious classes. In Austria, the School Organization Act provides that a child cannot be forced against his parents' will to take part in the religious rites or to follow instruction in a religion other than his own.

4. *The right of persons belonging to religious minorities to administer the affairs of their own religious communities*

420. The available information indicates that the State generally refrains from interference in questions relating to internal discipline in religious communities, except in cases where the practices of a religion may conflict with requirements of public order, good morals or national security. It also usually accords the same kind of freedom as regards the administration of a church's financial affairs, although in some instances the power of religious communities to undertake financial transactions is subject to a number of restrictions. The Government of Sweden has reported that general legislation regarding the finances of associations also applies to organizations of a religious character outside the Established Swedish Church and that such legislation does not prevent a religious community from itself appointing its representatives or from making decisions relating to the property and assets of the community. In some countries, the right of members of religious minorities to administer their own affairs is contained in specific provisions of the constitution or the law. In Romania, under the terms of the constitution, religious denominations have their own administration and manage their own property. Every religious denomination is free to draw up its own organizational and operational statutes, to lay down the principles of eligibility to its governing bodies, to determine the functions and powers thereof and to lay down rules for their operation. The leaders of religious denominations, without distinction as to nationality, are elected by the statutory authorities of their denomination and recognized by decrees of the State Council. The constitution of Malaysia provides that every religious group has the right to manage its own religious affairs, to acquire and own property and hold and administer it in accordance with the law. The Government

[19] Bulgaria; Bangladesh; Germany, Federal Republic of; Guyana; Hungary; India; Iraq; Italy; Japan; Malaysia; New Zealand; Pakistan; United Kingdom; Ukrainian SSR; United States of America; USSR.

[20] India, Italy, Malaysia, Switzerland, United States of America.

of Iran has reported that religious minorities decide for themselves on the choice of their leaders and on the conditions for appointment to a governing post in their religious communities, and that there is no restriction on the financial management of, or the acquisition and administration of property by, religious communities. In Austria, the right of religious minorities to administer their own affairs is guaranteed by law. Thus under the terms of article 26 of the Basic Law of 1867, every recognized religious society has the right to administer its internal affairs autonomously and retains possession of its institutions, endowments and funds devoted to worship, instruction and welfare, but is, like every society, subject to the general law of the land. In various other countries the right of persons belonging to religious minorities to administer their own affairs is provided by law.[21]

5. *The right of persons belonging to religious minorities to establish educational institutions*

421. It is a widely held view that the right of members of religious groups to establish denominational schools, and to maintain institutions to train the personnel required for the practices prescribed by their religion, is also a corollary of everyone's freedom to manifest his own religion.

(a) *Establishment of denominational schools*

422. In several countries, the establishment of schools is considered to be the exclusive responsibility of States, and religious communities are not therefore permitted to establish separate schools.[22] However, in a great number of the countries studied, various religious groups are reported to have established their own schools at the primary and secondary level, often with financial assistance from the State. Thus, in Malaysia, the constitution accords to every religious group the right to establish and maintain institutions for the education of children and to provide therein instruction in its own religion. It further provides that there shall be no discrimination on the ground only of religion in any law relating to such institutions or in the administration of any such law. The constitution of Nigeria provides "that no religious community or denomination shall be prevented from providing religious instruction for persons of that community or denomination in any educational institution maintained wholly by that community or denomination".

423. There may be, however, instances where the question of the establishment of denominational schools has been a subject of friction between various population groups. Thus it has been said, regarding Sri Lanka, that after independence that question created controversy because, as a result of the patronage extended to Christian missionary schools during the colonial period, schools managed by the Christian minority occupied a pre-eminent position. Liberal State aid was available to these schools, while the funds allocated to public schools were said to be grossly inadequate for their barest needs. A further cause of bitterness against Christian denominational schools was that the large numbers of non-Christian children who attended them were denied education in their religion. It is in these circumstances that during the post-colonial period, popular agitation led to the taking over by the State of a number of denominational schools. Also in Sudan, action is reported to have been taken to curb the expansion of schools operated by Christian missionaries. Under a law adopted after independence, non-Mohammedan religious schools are to be regulated by the Council of Ministers. No religious school can be opened without the consent of the Regulatory Ministry, which may grant such consent unconditionally or subject to such conditions as it sees fit.

424. A question of great importance for the operation and development of schools run by members of religious minorities is whether these schools are subsidized by the State. The way this problem is dealt with varies from one country to another, and often from one group to another within a country. In some cases, such schools or some of them receive financial assistance, while in others the principle of strict neutrality between the State and religion is applied and consequently no public funds are provided to denominational schools. Thus the Government of Sweden reports that it does not financially support the Catholic schools established in the country, but provides funds for one Jewish school. The official attitude is that in principle the general Swedish compulsory school is responsible for the education of all children and, consequently, except in special circumstances, religious schools founded on private initiative do not receive State subsidies.

425. Under the terms of the constitution of Ethiopia, financial aid may be provided for the establishment and maintenance of Moslem institutions or the instruction in the Moslem religion of persons professing that religion. Four exclusively Moslem schools are maintained by the Ministry of Education. It is further noted that scholarships or other forms of aid to students, such as free or subsidized housing, meals, transportation and clothing are provided without discrimination. In Switzerland the federal court has ruled that subsidies for denominational schools are compatible with the federal constitution but that the manner of granting such subisidies is a matter for the jurisdiction of each canton. In Finland, subject to requirements laid down by the law, schools established by religious communities may be subsidized by the State. The constitution of Fiji provides that "every religious community shall be entitled, at its own expense, to establish and maintain places of education and to manage any place of education which it wholly maintains".[23] Notwithstanding, it has been reported that the Government of Fiji trains teachers for primary schools run by members of the Christian minorities and pays a substantial part of their salaries. In Austria, according to the Act on Private Schools, total staff expenses for teachers employed by authorized denominational schools are now paid by the State. Furthermore, pupils attending denominational schools enjoy the same advantages as do the pupils of public schools, such as allowances, free transportation and free supply of educational material. This is also the case in a number of communities in the United States of America.

426. Since the public schools in all countries are educational institutions open to every child, the question may be asked whether pupils belonging to religious min-

[21] Bangladesh; Germany, Federal Republic of; Greece; India; Iraq; Israel; Italy; Malaysia; Norway; Pakistan; Singapore; Thailand; Turkey; United Kingdom; United States of America.

[22] Bulgaria, Czechoslovakia, German Democratic Republic, Hungary, Poland, USSR, Yugoslavia.

[23] The constitution of Nigeria contains a similar clause.

orities are given in such schools the opportunity to receive instruction in their religion. In some instances, no such opportunities are offered, while in others religious instruction is given on a voluntary basis. In still other countries, the State is under obligation to provide at its own expense facilities for religious instruction in public schools. The Government of Sweden states that special religious instruction is not provided in the Swedish compulsory schools. In the Philippines lay schools offer religious instruction outside the normal curricula and school hours. Furthermore, these classes of religious instruction are voluntary on the part of teachers and students and are undertaken only upon the petition of parents or guardians. The constitution of Switzerland provides that "the public schools shall be open to the adherents of all faiths, who shall not be made to suffer in any way in their freedom of conscience or belief". Consequently, religious instruction in public schools can only be optional. Most municipalities in Switzerland, however, facilitate the provision of such instruction by making school premises available to ministers and priests. Moreover, school prayers are still the rule in many places.

427. The Government of Poland reports that the right to give religious instruction is granted to each religious denomination. When secular education was introduced, the State not only allowed religious instruction to be organized in special centres outside the schools but also took measures to ensure that members of religious communities would not be liable to additional expenditures by providing a special remuneration to religious instructors and by placing them on an equal footing with public service officials. In Finland, according to the Act on Elementary Schools and the Act on the Principles of the School System, when five or more pupils belong to the same religious denomination, instruction in their own religion shall be given to them, if so required by their parents or guardians. In Austria, the School Organization Act provides that the public schools have, *inter alia*, the task of fostering the talents and potential abilities of young persons, in accordance with religious values, and schools are therefore required to draw up syllabuses accordingly. Under the Act on Religious Instruction, the preparation of manuals and educational material for the purposes of religious instruction is the responsibility of the legally recognized churches. The Act further provides that the staff expenses for religious instructors at public schools are borne by the State. A minimum number of five pupils is however required for the application of this provision.

(b) *Establishment of educational institutions for the training of clergy*

428. In many of the countries surveyed, the State provides facilities to religious minority groups to train their personnel, whereas in some others, each religious group has to provide the facilities for training its personnel at its own expense. While the available information does not reveal any case where the State hinders or prevents a religion from training its clergy, it shows, however, that in a number of cases minority religions are given a treatment different from that accorded to the State religion, which very often enjoys considerable financial assistance from public authorities for that purpose.

C. The right of persons belonging to linguistic minorities to use their own language

429. This section will describe the prevailing situation in the various countries surveyed as regards the implementation of the right granted to persons belonging to linguistic minorities to use their own language. It contains some general observations on the status of the languages spoken by the various linguistic groups and then deals with four main topics, relating to the use of these languages (*a*) in non-official matters, (*b*) in official matters, (*c*) in communication media, and (*d*) in the school system.[24]

1. *Status of minority languages*

430. As an author has noted, in federal States composed of diverse linguistic groups, the question whether there should be a single or two or more official languages has always arisen,

> since linguistic minorities usually press for the recognition of their languages as official federal languages because of anxiety that otherwise they would be handicapped in participating in federal affairs. Opposing them, centralists have generally stressed the importance of a single national language not only to facilitate inter-regional communications and administration but also to provide a focus for unity. These conflicting points of view have frequently clashed sharply and because language can affect access to jobs and powers, the issue has invariably been an explosive one.[25]

431. By and large, these observations apply not only in federal States but in all plurilinguistic countries, independently of the political system under which they are governed. In such countries, the selection of a language as a national official language is primarily a political decision based on a number of factors, such as the numerical importance of the respective linguistic communities, their political and economic position within the country concerned, the existence at the frontiers of the country concerned of a powerful State in which the main language is one which is spoken by a minority group of that country and also, particularly in the developing countries, the stage

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[24] In this chapter, reference will be made on many occasions to the "national language", the "official language", the "mother tongue", the "lingua franca", the "regional language" and the "indigenous language". In order to avoid confusion, these terms will be used with the meaning given to them in a UNESCO report issued in 1953: *The Use of Vernacular Languages in Education* (Paris, UNESCO, 1953), p. 46, as follows:

> "*Indigenous language.* The language of the people considered to be the original inhabitants of an area.
>
> "*Lingua franca.* A language which is used habitually by people whose mother tongues are different in order to facilitate communication between them.
>
> "*Mother or native tongue.* The language which a person acquires in early years and which normally becomes his natural instrument of thought and communication.
>
> "*National language.* The language of a political, social and cultural entity.
>
> "*Official language.* A language used in the business of government – legislative, executive and judicial.
>
> "*Regional language.* A language which is used as a medium of communication between peoples living within a certain area who have different mother tongues."

In the present report, the term "vernacular language" is used in the same sense as "mother tongue".

[25] Ronald L. Watts, *Multicultural Societies and Federalism*, Studies of the Royal Commission on Bilingualism and Biculturalism, No. 8 (Ottawa, Canada, July 1967), p. 79.

of the development of the minority language as an effective means of wide communication in all fields.

432. Among the countries surveyed, various types of approach seem to have been followed as regards the question of the status to be granted to the languages spoken by the various linguistic groups. One type of solution given to the problem is to declare national or official all the languages spoken by the main linguistic groups. In Switzerland, for example, although 75.5 per cent of the population belong to the German linguistic group, and the French, Italian and Romansh groups comprise only 20, 4 and a little less than 1 per cent of the population, respectively, the four languages spoken in the country have been declared by the federal constitution national languages (it is to be noted, however, that under the same constitution, only three of those languages—French, German and Italian—were declared official languages). Furthermore, within multilingual cantons, two or more of these languages may be declared official languages of the canton. Thus, German and French are both official languages of three cantons, while in another canton the official languages are German, Italian and Romansh. In these cases, the principle of territoriality also applies in the sense that some areas within the canton may recognize only one of the languages of the canton as its official language. At the cantonal level, all the languages of the canton enjoy equal status, although the main language of the canton is given preference in the interpretation of legal texts. However, on the federal level, equality of all the official languages is absolute and in the interpretation of divergent multilingual texts, their meaning is determined by the history of their implementation. In Belgium, where there are three linguistic groups, French, Dutch and German are recognized as national languages. In Singapore, Chinese, Malay and Tamil are official languages.

433. In a second type of approach, some minority languages, but not all, have been designated as official languages. Thus, in Finland the language of the Swedish minority, but not that of the Lapps, has been designated as a national language in addition to Finnish by article 14 of the constitution. The Language Act of 1 June 1922, which in accordance with the constitution makes no distinction between the status of Finnish and that of Swedish, treats both languages equally in all respects, although the Swedish population comprises less than 10 per cent of the total population. Since the country is divided into monolingual Finnish or Swedish or bilingual communes, the practical effect of that law is to accord the same status to a Finnish minority in a predominantly Swedish district as to a Swedish minority in a predominantly Finnish district. It may be useful to note in this connexion that a commune is considered to be bilingual if at least 10 per cent of the inhabitants belong to the minority group. Any commune in which the number of persons belonging to the minority exceeds 5,000 is also considered to be bilingual. Israel, Canada, Czechoslovakia and New Zealand offer further examples of such an approach. In Israel, Arabic has been declared an official language in addition to Hebrew. Under the Official Languages Act, the English and French languages are the official languages of Canada, though other minority languages do not enjoy the benefits of this status. Likewise, in Czechoslovakia, under article 6 of the constitution, only the Slovak language is granted status equal to that of the Czech language. In New Zealand, draft legislation that would provide for the recognition of the Maori language as an official language, equal to English, was recently introduced.

434. According to a third type of approach, the languages of some minorities have been given an official status at a strictly regional level, but not at the national level. An example of such an approach is given by Austria: article 8 of the federal constitution declares German to be the official language of the country, without prejudice, however, to the rights which may be granted to linguistic minorities by federal laws or by international treaties. In fact, under the terms of the State Treaty of 1955, the Slovene and Croat languages are recognized as official languages in addition to German in those districts of Carinthia, Burgenland and Styria where the population is Slovene, Croat or mixed. In the Soviet Union, in each union republic, autonomous republic or autonomous region the national language is used on the same footing as Russian. In Italy, in the Valley of Aosta, French is on an equal footing with Italian; in the province of Bolzano, German has the same status, and in the area corresponding to the former Territory of Trieste equal treatment between the Italian and Slovenian languages is guaranteed. In Iraq, article 2 of the Kurdistan Territorial Autonomy Act, adopted in 1974, states that Kurdish is an official language of the Kurdish region together with Arabic. A similar situation occurs in some developing countries where the former colonial language has retained its place as the official language, at the national level, and the main languages of the various population groups are accorded official status in the areas where they are spoken. Ghana and Nigeria are examples of this situation.

435. In the fourth type of solution, minority languages have not been granted official status either at the national or at the regional level but their use is guaranteed by the constitution, by law or by treaties in a wide range of activities. In Sweden, the Government reports that while no minority language has been granted official status by the constitution, the use of these languages is guaranteed in a variety of fields. With respect to Denmark, the governmental statement of 1955 guarantees the use of the German language in specified matters. A similar situation obtains in several other countries, including Bulgaria, Czechoslovakia, Malaysia, Poland, Romania, Sri Lanka and the United States of America. Lastly, it is to be noted that among the countries of Africa and Asia for which information on this point is available, a number have not granted official status to any of the languages spoken by persons belonging to minority groups. They have instead selected, as national language, the language spoken either by the majority of the population, as in the case of Algeria, Egypt, Iran and Morocco, or the language spoken by one of the main ethnic groups of the country, as in the case of Ethiopia and the Philippines.

2. *Use of minority languages in non-official matters*

436. The available information furnishes no example showing that the right of persons belonging to linguistic minorities to use their own language in non-official matters has been prohibited or made the subject of legal restrictions, although it has been reported in a few instances that the use of these languages is not particularly encouraged. However governments which have supplied information on this question generally emphasize the freedom of members

of linguistic groups to use, as they wish, their own language in matters such as social life, private relations, commerce and religious services.

437. The Government of Iran writes that while Parsee is the official language in the administration and at the university, "the Assyrian, Armenian and Jewish minorities are free to use their own language in their social and cultural relations, in religious ceremonies, in schools and in newspapers". The Government of Finland reports that Swedish is used in all these spheres. In Denmark and the Federal Republic of Germany, the declarations made by the two Governments in 1955 provide that "persons belonging to the [German or Danish] minority and their organizations shall not be prevented from using the language of their choice, either in speech or in writing". The Government of Austria declares that "all minorities in the country have the inalienable right to use their language in private life, in commerce and in religion". The Government of Egypt, after recalling article 2 of the constitution, which provides that Arabic is the only language spoken by the Egyptian people and is therefore the sole official language of the country, states that minorities in Egypt are guaranteed the right to use their own language in their religious rites and in their private schools. In Lebanon the Assyrians are increasingly using Arabic as their spoken language, but they continue to use Syriac for religious purposes. Many Christian communities use Syriac as a liturgical language, others use Greek, Arabic or Latin, and the Jews continue to use Hebrew. The Government of India reports that there is no law which hinders the use of any language a person chooses in everyday life or in public or in assembly. The Government of Bangladesh states that there is no restriction on the use of dialect in informal transactions.

438. In Norway the Church has used Lappish longer and more often than any other institution. In Lapp districts the whole church service is conducted in Lappish, often with simultaneous translation into Norwegian. Lappish hymn-books have been published, and the publication of other literature in Lappish is supported by government grants.

3. *Use of minority languages in official matters*

439. This section of the report will describe the policy followed in various States as regards the use of minority languages by legislative and executive State organs in the courts, and by administrative authorities. One observation can be made at the outset: while in some countries minority languages are used extensively in official matters, in some other countries their use is restricted to specified activities.

(a) *Use of minority languages in the legislative and executive branches of government*

440. Minority languages are more likely to be used in the executive and legislative branches of government in countries where minority languages have been granted official status, either at the national or the regional level. Thus, in Switzerland, the three official languages—French, German and Italian—have equal status in the Federal Parliament, although in practice they are treated in a different manner. While all laws are published in the three languages, the German and French languages are in certain other respects in a privileged position as compared to Italian. For example, simultaneous translation during debates is provided only in German and French and, except in especially important cases, working documents of the Federal Assembly, including committee reports, are issued in those two languages only. In the Federal Council, the executive branch of government, the linguistic groups are equitably represented, although there is no constitutional or legislative guarantee of proportional representation. At the local level, the principle of linguistic territoriality is strictly applied and the languages of the cantons are those which are used in the legislation and executive organs of the canton concerned. It should further be noted that although Romansh is not an official language, important orders of the Federal Council are translated into that language. In Finland, the representatives of the Swedish-speaking minority are granted the right to use their own language in Parliament, but interpretation from Finnish to Swedish is not provided, nor are legislative acts automatically translated into Swedish.

441. In Canada, under the Act Respecting the Status of the Official Languages of Canada of 7 July 1969, all notices, rules, orders, regulations and by-laws promulgated or issued under the authority of the Parliament of Canada must appear in both languages. Section 5 provides for the issuing of all final decisions, orders and judgements of any judicial or quasi-judicial body established by Parliament in both French and English, where the circumstances require it, and section 9 provides that government departments "in the National Capital Region or other central locations", or in "a federal bilingual district" must ensure that services can be provided in both official languages. Moreover, any enterprise providing services to "the travelling public" must ensure that either official language can be used in the provision of those services anywhere in the country.

442. In Czechoslovakia, under article 6 of the constitution,

> the Czech and the Slovak languages are used with equal authenticity in declarations of law and other generally binding legal regulations. In the proceedings of all State organs of the CSSR and the two republics, in proceedings before them and in the other contacts they have with citizens, both languages are used with equal authenticity.

443. Under article 140 of the constitution of the USSR, laws passed by the Supreme Soviet must be published in the languages of all the union republics, while laws adopted by the supreme soviet of each soviet socialist republic are published in the languages of the peoples that make up the population of the republic concerned.

444. In Yugoslavia, under article 269 of the constitution, federal laws and other regulations and general acts are to be passed, and published in the Official Gazette of the SFRY, in their authentic textual version in the languages of the peoples of Yugoslavia, as established by the constitutions of the republics, and all such acts are to be published in the official Gazette "as authentic texts" also in the languages of the Albanian and Hungarian "nationalities".

445. In Belgium, laws are passed, approved, promulgated and published in the French and Flemish languages; royal decrees and departmental orders must also be drafted in French and Flemish. They may, however, be monolingual if they relate only to a monolingual region or concern monolingual officials.

446. In New Zealand the use of Maori in the Parliament is provided for in the Standing Orders of the House of Representatives, if a member so wishes. According to the Government, Maori members of Parliament have made little use of this provision.

447. In Singapore all debates and discussions in Parliament and in committee hearings are conducted in four official languages (Malay, Chinese, Tamil and English) with simultaneous translation.

448. In some developing countries, though minority languages have not been granted a status equal to that of the national language, they are given some kind of recognition as regards their use in the legislative and executive organs of the States concerned. Thus in Sri Lanka, while all laws must be enacted in Sinhala under the terms of the constitution, it is also provided that they will be translated into Tamil as expeditiously as possible. In Nigeria the language used by local assemblies is the lingua franca of the region concerned, although English retains its dominant position at the federal level and in many of the states. For example, the Legislative House of the Northern Region conducts its business in both English and Hausa. Laws are generally printed in English and occasionally in Hausa, but in case of conflict preference is given to the English text. In the House of Representatives in Fiji, speeches may be made in English or they may be made in Fijian or Hindustani, the mother tongues of the two major linguistic groups, but interpretation from one language into the others is provided at the discretion of the speaker. Furthermore, all bills, motions, amendments and other proceedings must be submitted in English. It is further specifically prescribed that "no proceedings of the House will be delayed by reason only of the fact that no interpretation was provided". Also, while petitions may be drafted in Fijian and Hindustani, they must be accompanied by an English translation. In India, although Hindi or English are used in the Parliament, the presiding officer of each House is empowered to permit any member who cannot express himself in either of those two languages to speak in his mother tongue. So far as the states are concerned, the language or languages to be used in the legislatures are the official language or languages of the state or Hindi or English. However, if a member cannot express himself in any of these languages, the presiding officer may permit him to use his mother tongue.

449. In Romania, although no law provides for the direct translation of legislative acts, a decree of 1971 provides that "in districts where, alongside the Romanian population, there is a population belonging to the co-inhabiting nationalities, special attention shall be paid to the dissemination of the legislation in force in the languages of these groups".

450. In Austria, the federal and provincial representative bodies use only the German language in the course of their deliberations. All laws are promulgated in German and according to the Government the question of the use of minority languages in federal and provincial legislatures has not so far arisen. However, on the municipal level, in communes in which there is an important minority population, the languages of those minorities are among those used in the deliberations of municipal organs.

(b) *Use of minority languages in dealings with administrative authorities*

451. In some of the countries surveyed, the right of persons belonging to linguistic minorities to use their own language when dealing with administrative authorities is guaranteed by the constitution or by law, or by bilateral treaties or other special arrangements. Methods used to implement that right usually include translation of texts at the Government's expense, the hiring of interpreters and the appointment of personnel having a fluent knowledge of minority languages in the public services located in areas where there is a concentration of persons belonging to the group concerned. It should be further noted that within the same country it happens in some cases that not all the minority languages enjoy the benefit of that right. In some cases, also, practices of a similar nature are followed, though not prescribed by any text of a legal nature.

452. In Denmark and the Federal Republic of Germany the right of the German and Danish minorities respectively to use their own language before the courts and administrative authorities is laid down in the legislation. In Switzerland, at the local level, as a result of the principle of linguistic territoriality, the major language of the area is used in contacts with the authorities. Communications between the Federal Council and its ministerial departments, on the one hand, and the cantons, on the other hand, are generally conducted in the language of the cantons. In internal matters, civil servants are free to employ their mother tongue, but they are, in principle, required to master two official languages. According to Iraqi Law, every inhabitant of the Kurdish region may use Kurdish in administrative proceedings in the region.

453. In Finland, the use of only one of the minority languages is guaranteed in the areas where the minority is concentrated. According to article 14 of the Constitution Act, the right of Finnish citizens to use their mother tongue, whether Finnish or Swedish, before administrative authorities and to obtain from them documents in such language is to be guaranteed by law. The General Language Act, which was enacted in accordance with the above-mentioned constitutional provision, provides, in addition, that Swedish is the official language of State authorities in the province of the Åland Islands and that that language will also be used in correspondence between officials of the provincial governments and State officials serving in the province, and between all such officials and the Council of State, the central authorities and other authorities having administrative jurisdiction over the province. The law further requires that no person may be employed in that province unless he possesses a complete mastery of spoken and written Swedish. Elsewhere in Finland, according to the Language Act, citizens are required in their dealings with administrative authorities to use the language of the district in monolingual districts, whereas in bilingual districts or at the national level either language may be used. Also, official notices, announcements and communications in bilingual districts must be in both languages. Furthermore, at the municipal level, according to the Act of 1 June 1922 concerning the knowledge of languages required of civil servants, the holder of an office for which a university degree is required must fully know the language of a monolingual district and be able to understand the other national language of the country. The same rules

apply to central State authorities. Civil servants in ministries and other departments must, therefore, be fully competent in Finnish and have a satisfactory knowledge, both oral and written, of Swedish.

454. In Sri Lanka, although Sinhala is constitutionally the official language, Tamil is used before administrative authorities under certain conditions. The Tamil Language Act contains a provision allowing for the reasonable use of that language in northern and eastern provinces of Sri Lanka. "Reasonable use" was defined in the law as use in educational instruction, for entrance examinations for the civil service of those provinces and for "prescribed administrative purposes". Tamil-speaking persons are thus given the right to correspond with the local and central governments in their own language. Under the authority of the language legislation, the Department of Official Language Affairs was established at the national level to carry out programmes necessary to the implementation of the new language policy. At present all government forms are issued in both Sinhala and Tamil.

455. In Romania, article 22 of the constitution provides that "in districts inhabited by a population of other than Romanian nationality, all organs and institutions shall also use the language of that nationality in speech and in writing and shall appoint officials from among that population or from among other citizens conversent with the language and way of life of the local population".

456. In Italy, in the Valley of Aosta free use of the French language is permitted in contacts with the political, administrative and judicial authorities. In the area of the former Territory of Trieste, persons belonging to the Slovenian minority are free to use their own language in contacts with the administrative and judicial authorities. The same applies to German-speaking persons in the Province of Bolzano.

457. As to Austria, it has already been noted that, under the terms of the State Treaty of 1955, the Slovene and Croat languages are recognized as official languages in addition to German in the administrative districts of Carinthia, Burgenland and Styria where there are Slovene, Croat or mixed populations. The Treaty further provides that Austrian nationals of the Slovene or Croat minorities of the above-mentioned provinces shall participate in the administrative system in these areas. The use of the Slovene language before administrative authorities of the province of Carinthia and of the federal government is further reinforced by directives issued by both the provincial and the federal governments, instructing the administrative authorities to use the services of interpreters and to translate relevant documents, at government expense, whenever necessary, in their dealings with members of the Slovene community. Hence petitions in Slovene are now admissible in the federal administrative system and must be accepted by the authorities. While no special rules have been issued for the use of the Croatian language in Burgenland, similar practices are followed in that province and the Croatian language can in fact be used before administrative authorities.

458. In Sweden, although there are no laws on the question, a government programme has been in operation since 1965 under which information from government and local authorities is translated to an increasing extent into a large number of languages spoken by immigrants and linguistic minorities. In certain spheres of activity, the labour market in particular, extensive documentation is provided to minority members in their own languages. Though the language of the administration is Swedish, letters written to authorities in a minority language must not be rejected by the authorities, according to administrative instructions in force. In this connexion, a central translation service has been established by the national immigration and naturalization board, amond others, and in about 40 places local immigration centres provide the services of interpreters. The law also provides that in their dealings with administrative authorities, persons belonging to linguistic minorities are entitled to be assisted by an interpreter free of charge. Under the Administrative Procedure Act, the administrative authorities themselves can, on their own initiative, appoint an interpreter to assist them in their dealings with non-Swedish-speaking nationals.

459. In Yugoslavia, the statute on the manner of realization of the right of members of "nationalities" to use their languages and alphabets before republican agencies provides that in proceedings before such agencies they shall use their own languages and alphabets; that they may submit applications, lodge complaints, bring charges, or make recommendations, requests and other submissions in their own language; and that at their request they shall be provided in their own language with transcripts of decisions, verdicts and other acts which decide their rights and duties and also with testimony, certificates, confirmations, explanations, etc. If a petition is submitted in the language of a nationality, it shall be considered as valid. The Federal Executive Council's guidelines of June 1970, "for accelerating the work of federal organs of the administration on implementing the Federal Assembly Resolution relative to the application of constitutional provisions on language equality" require, among other things, that federal administrative organs assure the following conditions: the equitable use of the languages and alphabets of the peoples of Yugoslavia in the drafting of documents and other materials, the keeping of official books, accounting and internal administrative regulations, as well as in correspondence and in other kinds of contacts with other federal organs and organizations at federal level; the exclusive use of the language and alphabet employed in the respective republic in correspondence and other contacts with organs and organizations in the republics, including the circulation of documents and other materials; the use by all participants in proceedings initiated or conducted by federal administrative organs of their own language in line with valid regulations and the issue, to such participants, of all communications (summonses etc.), and all decisions relating to these proceedings, in the language and alphabet of the nation or national minority to which they belong.[26]

460. In Belgium, the Royal Decree of 18 July 1966 co-ordinating the laws on the use of languages in administrative matters lays it down that local authorities in the French-speaking region or the Flemish-speaking region must draft notices, communications and forms intended for the public, exclusively in the language of the region. In the communes of the German-speaking region, notices, communications and forms intended for the public are issued in

[26] Nada Dragić, *Nations and Nationalities of Yugoslavia* (Belgrade, Medjunarodna Politika, 1974), pp. 264-266.

German and French. In the communes on the language borderline, they are issued in French and Flemish. Thus a local authority in the French-speaking, the Flemish-speaking or the German-speaking region uses exclusively the language of its own region in its relations with private persons, without prejudice to the option open to it to reply to persons residing in another language region in the language those persons employ. The reply must however always be in the language the private person employs when the latter addresses in French or in German an authority in a Malmédy commune or in a commune of the German-speaking region. In the communes on the language borderline, authorities are required to address private persons in whichever of the two languages—French or Flemish—those persons have employed or have asked shall be employed.

461. The Norwegian Government states that, although the rules governing use of language in the civil service provide no legal authority for the use of Lappish in the administration, no prohibition can be deduced from this against the use of Lappish by a civil servant replying to a letter written in that language.

462. The constitution of India provides that "every person shall be entitled to submit a representation for the redress of any grievance to any office or authority of the Union or a State in any of the languages used in the Union or in the State, as the case may be". The Government further reports that at district level and below, where a linguistic minority constitutes 15 to 20 per cent of the population, important government notices, rules and other publications are to be published in minority languages also. At the district level, where 60 per cent of the population uses a language other than the official one, that language may be recognized as an additional official language for that district. Knowledge of the state official language is a prerequisite for recruitment to state services, and the option of using English or Hindi as a medium of examination is allowed. A test of proficiency in the state official language is held during the period of probation.

(c) *Use of minority languages in courts*

463. In several countries, the use of minority languages in courts has been regulated by the constitution or the law, although in many cases the measures adopted are not directed at the protection of members of minority groups but at allowing any person, whether he is a national or a foreigner involved in a court action, to understand the proceedings.[27] The extent of the rights granted varies from country to country but methods generally applied to implement the right of persons belonging to minority groups to use their own language before the tribunals may include the designation of interpreters, the translation of documents and, in some countries where persons belonging to certain linguistic groups are recognized officially as minorities, the appointment of judges belonging to the minority group concerned or the establishment of an administration of justice which reflects the language structure of the country.

464. In Sweden,[28] while the law provides for the exclusive use of the Swedish language in courts, it nevertheless requires the courts to appoint interpreters whenever a party to a suit is not versed in Swedish. Under this system, extensive use of interpreters is made and, as an illustration of the importance of the practice, it should be mentioned that on the suggestion of the commission on immigrants, interpreters are now required to hold a university degree. A training and examination programme has also been established under the supervision of the National Immigration and Naturalization Board. In the financial year 1970/71, the costs for interpretation at the courts of appeal and city courts amounted to about 900,000 Swedish crowns.

465. In Switzerland, the composition of the federal courts reflects the language structure of the country, and in the cantons the principle of linguistic territoriality is applied. Before the federal courts, appeals concerning civil suits are conducted in the language of the canton where the suit originated, while in criminal cases the language of the accused is used, if it is one of the official languages. In Denmark, the government statement of 1955 guarantees to members of the German minority the use of their own language before the courts. Interpretation is provided when necessary.

466. In Sri Lanka, although the language of the courts is, in principle, Sinhala, the National Assembly has been empowered under the constitution to provide otherwise in the case of institutions exercising jurisdiction in the Tamil areas. In these areas, parties and applicants in court proceedings or their representatives may submit their pleadings, applications, motions and petitions in Tamil and participate in the proceedings in Tamil. Every participant in the case—parties, judge, members of the jury—not conversant with the language used in court has the right to interpretation and to translation into Tamil of any part of the record at the expense of the State. As regards the use of other minority languages, the law empowers the Minister of Justice, with the concurrence of the Cabinet of Ministers, to issue instructions permitting the use of a language other than Sinhala or Tamil by a judge. In Fiji, English is by law the language used in courts, but under the provisions of the code of criminal procedure, evidence given in a language not understood by the accused, while he is present in person, must be interpreted to him. Also, when documents are submitted for the purpose of formal proof, the court may, if it deems necessary, order a translation of such material.

467. In Finland, the right of members of the Swedish-speaking minority in predominantly Finnish districts to use their own language before the courts and to receive relevant documents in that language, free of charge, is guaranteed by the constitution and by law. The law further requires that opinions and judgements of the Supreme Court in all matters affecting the province of Åland Islands, where the Swedish-speaking minority is concentrated, shall be issued in Swedish.

468. In Romania, the right of the "co-inhabiting nationalities" to use their own language before the courts at all stages of the proceedings is guaranteed by the consti-

[27] See *Study of Equality in the Administration of Justice* (United Nations publication, Sales No. E.71.XIV.3), paras. 72-73, 176-177.

[28] Similarly, Bulgaria, German Democratic Republic, Iraq, Japan, New Zealand, Singapore, Trinidad and Tobago, Turkey, Ukrainian SSR, United Kingdom.

tution and by a series of laws, in particular the codes of civil and criminal procedure, the Judicial Organization Act and the Act setting up the mixed courts. Thus, in regions or districts inhabited by these "nationalities", the parties to a lawsuit and the witnesses not only have the right to use their own language but may also ask for translation of all the documents in the case and for the assistance of an interpreter if necessary. Moreover it will be noted that, under article 22 of the constitution, all organs and institutions of the State are required to employ in these regions a number of officials conversant with the language of the nationality concerned.

469. With respect to Austria, the Federal Act of 19 March 1959, which was adopted for the implementation of the provisions of article 7 (3) of the State Treaty of 1955, designated three districts in the province of Carinthia where the Slovenian language must be used in courts and provided that in those districts petitions may be written in Slovenian. In proceedings before the courts, the parties concerned and witnesses may choose to speak Slovenian, whether or not they know German. Should a person avail himself of this right, the proceedings must be conducted in German and Slovenian, with the assistance of interpreters if necessary. Records of the proceedings must be kept in both languages and, while the judge is required to announce the court's decision in German, that decision must be immediately translated if Slovenian was used in the proceedings. The same rule applies to written decisions or rulings. Before the court of appeal, however, petitions must be written in German and public records are also kept in that language, but the cost of translation continues to be borne by the State. While there is no similar legal provision regarding Styria or Burgenland, these provinces, as well as those judicial districts of Carinthia which are not covered under the law of 19 March 1959, are nevertheless covered by article 66 of the Treaty of Saint-Germain-en-Laye, which provides that non-German-speaking Austrian citizens are to be given reasonable facilities to use their languages in court, whether in writing or orally. Furthermore, Austria is a party to the European Convention for the Protection of Human Rights and Fundamental Freedoms, under which anyone charged with a criminal offence has the right to the free assistance of an interpreter if he cannot understand or speak the language used in court.

470. Under the constitution of Malaysia, all proceedings except the taking of evidence shall, in principle, be in English for a period of ten years after independence and thereafter until Parliament otherwise provides. In the Philippines, only Tagalog, the official language of the country, is used in court proceedings, but interpreters may be provided if necessary.

471. In Belgium, documents concerning the investigation and evidence of crimes and offences and documents relating to taxation are drafted in French in the Walloon communes and in Flemish in the Flemish communes. In the communes of greater Brussels, the documents are drafted in French or Flemish according to the language used by the person concerned in his statements or, in the absence of any statement, according to the requirements of the case. The documents are drafted in German in the German-speaking communes of the jurisdictional cantons of Eupen, Saint-Vith and Malmédy. In the other German-speaking communes of Verviers *arrondissement*, the documents are drafted in French or German according to the language used by the person concerned in his statements or, in the absence of any statement, according to the requirements of the case. The proceedings in disputed actions before civil and commercial courts are in principle in the language of the region in which the court sits. However, where there are several defendants in the same case and the defendant has the right to choose the language of the proceedings, the language requested by the majority is employed. The judge may nevertheless refuse to accede to this request if the elements of the case show that the majority of the defendants possess sufficient knowledge of the language in which the document initiating the case was drafted. In the event of the defendants being equally divided, the judge himself decides what language the proceedings are to be in, taking the requirements of the case into account.

472. In Canada every court exercising any criminal jurisdiction conferred upon it by or pursuant to an Act of the Parliament of Canada has the duty to ensure that any person may give evidence before it in the official language of his choice, and, if it is located in the National Capital Region or a federal bilingual district, it has the duty to ensure that, upon request by any party to the proceedings, it can make available facilities for simultaneous interpretation.

473. In India the language of the higher courts continues to be English; but, so far as the lower courts are concerned, the language used for all purposes (except for the judgement or order, which has to be written in English) is that of the particular region. Under the Act of 1963, the governor of a state, with the consent of the President, may authorize the use of Hindi for the purpose of any judgement, decree or order passed or made by the high court of the state, and where such judgement, decree or order is in any other language, those texts must be accompanied by a translation in the English language.

474. In Italy, the German-speaking population of the Province of Bolzano is permitted to use German in all dealings with the judicial authorities.

475. In Peru, under decree 21156 (1975), the judiciary must take all the necessary steps to ensure that, as from 1 January 1977, court cases the parties to which are able to speak only Quechua are to be conducted in that language.

476. In the United States of America the Government states that, in some cases, Indian tribal courts conduct business in a tribal language, and transcripts of court cases are in both the tribal language and in English. Some tribes have official interpreters who speak both the tribal language and English and who are called upon to function in particular tribal situations. The rights of the individual Indian as viewed from the non-Indian community are not adequately protected in many Indian court processes on reservations where the judicial system is a tribal one. Both the American Indian leadership and the Bureau of Indian Affairs are making efforts to improve this situation.

477. In the Union of Soviet Socialist Republics, the constitution establishes the complete equality of all citizens in legal matters and specifies that every citizen has the right to use his native language in court proceedings. In each union republic, autonomous republic or autonomous region, the national language is used for judicial proceedings. Persons not knowing the language concerned are

guaranteed the opportunity of acquainting themselves with the material of the case through an interpreter. These provisions are contained in article 110 of the Soviet constitution and in the corresponding articles of the constitutions of all the union republics and autonomous republics. Thus article 78 of the Tatar ASSR stipulates that legal proceedings shall be conducted in the Tatar language in rural or urban districts where a majority of the population is Tatar, in the Russian language in rural or urban districts where the majority of the population is Russian, and in both languages in the central courts. Persons not knowing these languages may fully acquaint themselves with the material of the case through an interpreter and use their own language in court.

478. In Yugoslavia, proceedings are conducted with the assistance of a court interpreter if the official conducting the proceedings does not have sufficient knowledge of the language of the nationality of the party concerned. As a rule, persons who, on the basis of special regulations, have been designated permanent court interpreters for a given language shall be appointed as interpreters. As an exception, the court before which the proceedings are being conducted may appoint as interpreters persons who are not permanent court interpreters, if competent institutions have determined that they are capable of performing interpretation from the Serbo-Croatian language into the language of the nationality and vice versa.

(d) *Use of minority languages to name geographic places*

479. Information on this question is available for a small number of countries. In Sweden, many places in the northern part of the country bear only Lapp and Finnish names, while in Denmark, Danish is the sole language used for places in the North Schleswig, the province where the German minority is concentrated. In Austria, the question has been dealt with by treaty provisions, by the constitution and by law. Under article 7 (3) of the Treaty of Saint-Germain-en-Laye, which article has been incorporated into the constitution, "in the administrative and judicial districts of Carinthia, Burgenland and Styria, where there are Slovene, Croat or mixed population, the Slovene or Croat language shall be accepted as an official language in addition to German. In such districts topographical terminology and inscriptions shall be in the Slovene or Croat language as well as in German". The Government of Austria has however reported that the law adopted in 1972 to implement that provision could not be enforced because part of the majority population was strongly opposed to it. The Government of Iraq reports that it appears from an examination of the geographical names of various regions in Iraq that regions inhabited by linguistic minorities—for example, by Kurds, Turkmens or Assyrians—bear names borrowed from their language. In Italy, in the Province of Bolzano place names are indicated in both German and Italian in German-speaking areas. The Government of Norway reports that the regulations in force concerning the use of Norwegian names on the maps of northern Norway envisage that, if the local population uses only a Lappish name, this is entered on the map. If, however, the local population uses also a Norwegian name, as a general rule only the Norwegian name is entered on the map. If the Lappish name in question is of such kind as to represent a particularly good description of the locality concerned, this too shall be entered on the map, space permitting. The Lappish name may be translated in its entirety, when its Norwegian form provides an apt name and the translation excludes all doubt as to the original name. If the translation has a close acoustic resemblance to the original, the Lappish name may be entered on the map beside the translation. The Geographical Survey of Norway has taken steps to have these regulations annulled, with a view to establishing in the area the same system as is used for the rest of the country, that is, that in principle the name forms to be entered on the maps must be those used by the local population.

4. *Use of minority languages in communication media*

(a) *Newspapers and other publications*

480. When information on this question is provided by governments, they generally state that, subject to the general laws governing the matter, no obstacles exist, in principle, to the publication of newspapers, books or periodicals in the language of any minority group by the members of such groups. In many of the countries surveyed the available information indicates the existence of newspapers and publications in minority languages.

481. In Austria, the Slovene minority owns two publishing companies and its press comprises weeklies and cultural magazines as well as a number of youth periodicals and other publications. In Sri Lanka and Malaysia, a number of newspapers are published in the languages of some of the minority groups. In New Zealand the Maori and Island Affairs Department produces a quarterly bilingual magazine containing matters of interest to the Maori people. In Pakistan a number of newspapers are printed in a variety of languages other than Urdu and English; they are printed in Sindhi, Pushtu, Gujarati and Punjabi. In France, newspapers are published in German, Basque and Breton. In Alsace, for example, a large number of newspapers and periodicals are published in German. In Yugoslavia, newspapers are published in the languages of all the "nationalities". A newspaper in the language of the Romanies (Gypsies) has been published recently. In the German Democratic Republic the nationally-owned Domovina publishing house is the editor of 11 Sorb-language newspapers and periodicals.

482. In Norway two newspapers are issued partly in Norwegian and partly in Lappish. There is also a periodical published by the Ministry of Agriculture partly in Norwegian and partly in Lappish. The religious publication "Nuorttanoste" appears only in Lappish, and "Samenes Vinn", the Lapp Missionary Society's press medium, usually includes an article in Lappish. The public notices addressed to the national press in connexion with the information service on statutes and regulations in force are also sent to the Lappish-language publications, which themselves translate as much of the material as they deem necessary. In addition, some information brochures have been issued in Lappish, for example by the National Insurance Institution on national insurance questions.

483. In the union republics and the autonomous republics of the USSR, newspapers and periodicals are published in national and minority languages. Thus, in Uzbekistan 207 periodicals out of 294 are published in Uzbek; in Turkmenistan a total of 310 newspapers and 44 periodicals are published, most of them in Turkmen; in the Bashkir SSR a total of 93 newspapers and 6 periodicals are

published, most of them in the indigenous national languages. In the Buryat Autonomous Republic the total newspaper print in 1956 was 29 million copies, most of them in the Buryat language.

484. In Iraq a department for printing and publishing in Kurdish issues a Kurdish-language magazine and a newspaper. An order of the Revolutionary Council, N89 of 24 January 1970, recognized the cultural rights of the Turkmens and envisaged the publication of a weekly review and a monthly journal in the Turkmen language. An order of the Revolutionary Council, 251 of 24 April 1972, granted cultural rights to the Ithurian, Chaldean and Assyrian minorities speaking the Assyrian language and envisaged the publication of a monthly magazine in the Syriac language.

485. Some governments have felt it necessary to help minorities in this particular field of activity and subsidize their publications. In Nigeria, for example, special efforts are being made, in particular by the language institutes of the main universities, to increase the number of publications in the various languages of the country. In Sweden, there is a general policy in this respect and under that policy a special government subsidy is granted to a Lapp periodical. It may also be mentioned, in this connexion, that a committee of Parliament found objectionable the decision of the Committee for press support to withhold a subsidy to a newspaper published in a minority language on the grounds that it was not published in Swedish.

(b) *Radio and television*

486. In most of the countries for which information on the use of minority languages in radio and television is available, the broadcasting systems are under State control. In general, even where linguistic groups are not officially recognized as groups requiring special rights, attempts have been made, by different methods, according to the country concerned, to allow each linguistic group to the entertained and informed in its mother tongue. In some instances a separate broadcasting system is set up for each language group. Where only one broadcasting system operates, a number of hours, either weekly or daily, are devoted to programmes in minority languages.

487. Regular programmes in Lapp and in Finnish are available in the State-owned broadcasting and television systems of Sweden. In the statement of 1955 concerning the rights of the German minority, Denmark pledged that "within the framework of the rules which may at any time apply to the use of the State broadcasting system, reasonable regard shall be paid to that minority". In Switzerland, three complete and equal systems of radio and television representing the three official languages have been set up. The Moroccan broadcasting system has an information programme in Berber, while the Nigeria Broadcasting Corporation maintains a network of 17 stations spread throughout the country which broadcast programmes in a large number of local languages. In Fiji, in addition to English, programmes are broadcast in the mother tongues of the two major ethnic groups of the country. Since 1966, both the national and commercial services of the broadcasting corporation of Sri Lanka include programmes in Sinhala and Tamil as well as in English. In 1970 more than 70 hours were broadcast each week in Sinhala and 60 in Tamil. Moreover, about 20 hours of school programmes are broadcast each week in the languages of the two main linguistic groups of the country.

488. In Austria, a 45-minute radio programme in Slovenian is broadcast daily in the province of Carinthia. However, despite strong protests by associations of persons belonging to minorities, no television programmes are conducted in a minority language. In Malaysia, for an over-all weekly air-time of about 457 hours, Radio Malaysia devotes 192 hours to programmes produced in the languages of two of the major minority groups of the country. Special information programmes are broadcast six hours weekly in two aboriginal languages. In addition, the television uses minority languages in its locally produced programmes.

489. In Israel, the Arabic radio programme consists of political commentary, press reviews, entertainment, and 15 newscasts each day. Educational broadcasts are beamed to the country's Arab schools. In addition, there are religious programmes and a daily hour of Arab music. In New Zealand, there are regular Maori language news broadcasts and in addition, under a reorganization of the Broadcasting Service, a radio station is to be set up in Auckland which will cater especially to the Maori people and other Polynesians in New Zealand. In Hungary, programmes for minorities are broadcast by three wireless stations in the German, Serbo-Croatian and Slovak languages. In the German Democratic Republic there have been radio broadcasts in Sorbian since 1948, and for 20 years now Cottbus radio station has run a special Sorb studio.

490. In Norway, there is a separate news programme in the Lapp language on the national network. Lappish is also used for a regular morning news bulletin transmitted over the national radio network as well as for a local programme every afternoon. Lappish speech or text is used sporadically on television. In Iraq a Kurdish language section was set up in the Iraq Broadcasting Service thirty years ago, and a Turkmen section was added in 1959. A notice of March 1970 announced an increase in Kurdish time at the Kirkuk television station; and a special Kurdish language television station is being completed. In Pakistan, broadcasts are made in 22 different languages.

491. In the United States of America there are Spanish radio and television stations in areas where there are large numbers of Spanish-speaking people. The Government states that it has appropriated funds for radio broadcasts in Indian languages. In Canada, French being an official language, the French-speaking minority receives radio and television service in that language. Radio broadcasting in other minority languages (Croatian, German, Greek, Italian, Polish, Portuguese, Slovene and Ukrainian) is growing at a fast rate. In the United Kingdom the British Broadcasting Corporation broadcasts news, music and church services in Gaelic and Welsh.

492. In Italy, the Slovenian ethnic group has its own radio station. In Yugoslavia there are radio programmes in the languages of all the "nationalities" and national groups living within the republics and television programmes in Albanian, Hungarian and, on a smaller scale, Turkish. After the completion of a television studio in the Autonomous Province of Voivodina, there will also be television programmes in Romanian, Ruthenian and Slovak.

5. *Use of minority languages in the school system*

493. In multi-ethnic and multilinguistic countries, the use of the languages of the various population groups in the educational system is a crucial test for determining the ability of these groups to maintain and develop their own characteristics, their own culture and their own traditions. The language of a minority group being an essential element of its culture, its capacity to survive as a cultural group is in jeopardy if no instruction is given in that language. Therefore, the efficacy of measures concerning the cultural life of a group which is deprived of instruction in its own language is open to question.

494. However, in developing countries there may be practical difficulties which could impede the use of the mother tongue of minority groups as languages of instruction. The UNESCO report on the use of vernacular languages in education lists some of these difficulties as follows:

Inadequacy of the vocabulary. The first difficulty is that the language may not yet have a vocabulary sufficient for the needs of the curriculum. In this case a second language will have to be introduced at an early stage, and as soon as the pupils have learnt enough of it the second language can become the medium of instruction. ...

Shortage of educational materials. One of the most important and difficult problems connected with the use of the vernacular languages in education is that of providing reading materials. It will often happen that even a language which is quite capable of being used as a medium of instruction will be almost or entirely without school books or other materials. The difficulty is not so much in printing, since there are various machines and techniques in existence which are designed to produce books and other printed matter in small quantity. The difficulty is to find or train competent authors or translators; to obtain supplies to materials (such as paper, type and machinery) in days of general shortage; to distribute the finished product under conditions of great distances and poor communications; and above all to find the money. These are practical problems, extremely difficult and of the highest importance. ...

Multiplicity of languages in a locality. If a given locality has a variety of languages it may be difficult to provide schooling in each mother tongue simply because there are too few students speaking certain of the languages. In such cases it may be necessary to select one of the languages as the medium of instruction, at the cost of using a language other than the mother tongue of some of the students. ...

Multiplicity of languages in a country. A country which faces the problem of providing schools for a number of different linguistic groups may find itself temporarily unable—for lack of resources and personnel—to provide for all of them in the mother tongue. In this case, it may have to begin with the language spoken by the largest populations or having the most developed literature of the greatest number of teachers. The ideal of education in the mother tongue for the small groups can be worked toward as conditions make it possible.

...

The shortage of suitably trained teachers. Teachers who have themselves received their education and professional training in a second language have real difficulty in learning to teach in the mother tongue. The main reasons for this difficulty are of two kinds. First: they have to teach subjects in a language which is not the language in which they are accustomed to think about them; and some of what they have to teach involves concepts which are alien to their pupils' culture and therefore have to be interpreted in a tongue to which they are alien. Secondly, there is often a lack of suitable books to guide or help them both in teaching and in teaching through the mother tongue; they have to depend, therefore, more on their own initiative and skill than when teaching through the second language in which they themselves have been trained. In those regions where a mother tongue is spoken by a large population, it should not be difficult to give teachers much of their theoretical training and all their practice teaching in the mother tongue. In those regions where there is a multiplicity of languages, it may be very difficult to do this. ...

Popular opposition to use of mother tongue. Some people in a locality may be unmoved by the benefits to be derived from the use of the mother tongue in education and may be convinced that education in the mother tongue is to their disadvantage. We believe that educationists must carry public opinion with them if their policy is to be effective in the long run, since, in the last resort, the people of a country must always be in a position to express their free choice in the matter of the language in which their children are to be educated; and we urge that the educational authorities should make every effort to take the people into consultation and win their confidence. The problem will lose many of its elements of conflict if the people are confident that the use of languages in the educational system does not favour any section of the population at the expense of others. ...

Lingua franca. Sometimes, as in the case of Swahili in parts of East Africa, there is a lingua franca which is so widely used that there is a great temptation to use it instead of the mother tongue as the medium of instruction. This has the great advantage of economy and of simplicity of administration, and in particular cases in the problem of supplying textbooks and other reading matter, both for schoolchildren and adults. ...[29]

495. The additional cost to governments of the special arrangements necessary for providing instruction in minority languages is one of the factors that may impede the development of the use of minority languages as languages of instruction. This question is therefore intimately linked with the economic position of the countries concerned. Providing instruction in minority languages generally involves the construction of new buildings, the printing of new textbooks and often an enormous work of translation, and also the training of new staff. In countries where minority schools operate within the public school system, the State usually bears all the costs. In Sweden, for example, in the financial year 1974, the public schools received grants of about 20 million Swedish crowns for the instruction they provided in minority languages. In Austria, as in Romania, the State ensures that minority schools where a minority language is a language of instruction enjoy the same status as other schools, including the granting of financial assistance, the free distribution of textbooks to pupils and the training of teachers.

496. In the countries surveyed, the rules governing the use of minority languages in the school system differ from country to country and from group to group within a country and also according to the level of education envisaged. Indeed, measures that may be considered practical at the primary level may not necessarily be applicable at the secondary or at the university level. The following paragraphs contain a description of the measures adopted in the various countries surveyed as regards the use of minority languages in the school system.

(a) *Establishment of private schools*

497. In some countries, one of the methods followed concerning the use of minority languages in the school system is to allow persons belonging to linguistic minorities to establish their own private schools at the primary or at the secondary level in which instruction will be given in their own language. For example, in Turkey, the Armenian, Greek and Jewish minorities have their own private schools

[29] *The Use of Vernacular Languages in Education*, Monographs on Fundamental Education, No. VIII (Paris UNESCO, 1953), pp. 50-54.

of pre-primary, primary and secondary level in accordance with the Treaty of Lausanne (in 1971, there were 50 such schools in Turkey). In these cases, no particular problems arise. However, the States concerned usually exercise some control over the functioning of these schools in order to ensure that they do not operate under standards inferior to those of State-run schools.

(b) *Use of minority languages at the primary level in the public school system*

498. The use of minority languages in the public school systems of the various countries surveyed is in some instances guaranteed by the constitution or by special laws, or by both. In a few cases, such a guarantee is contained in treaties or other instruments of an international character, such as the declarations of the Governments of Denmark and the Federal Republic of Germany of 1955. Arrangements to implement the right thus granted generally include the establishment of separate schools, or the creation of separate sections or separate classes in the same school. Most of the regulations concerning the use of minority languages in the public school systems concern the primary level. The use of minority languages in secondary schools or higher education, according to the information available, is made possible in only a very few of the countries surveyed.

499. In countries in which the languages of minority groups have been designated as official languages, either on a national or on a regional level, such languages are generally admitted as languages of instruction at the primary level, in the areas where the minority groups concerned are concentrated. Examples of this type of situation are found in Switzerland, Finland, Austria and, in a more complex form, some developing countries.[30]

500. In Canada, which is a bilingual and bicultural country, there are two official languages, English and French, though provision for the use of French as a medium of instruction is not embodied in the legislation of all the provinces. Each province has a different approach:

The provinces of Quebec and New Brunswick use only the two official languages of Canada, which are treated on an equal basis within their educational systems. While Ontario and British Columbia have no legislation governing this question, by tradition and for practical reasons, English alone is used as medium of instruction in British Columbia, while a French language advisory committee entitled to make recommendations to the local school board has been set up in Ontario. The School Act of 1970 of Alberta authorizes the use of French or any other language than the two official ones. Teaching materials and programmes of study must be approved by the Minister of Education, and the standard of education in other languages must be the same as that required for instruction given in English. In Saskatchewan, the School Act allows for the use of French as language of instruction if it has been authorized by the board of a school district. The amended School Act of 1970 of Manitoba provides for the use of English and French as medium of instruction in public schools, and an English language advisory committee has been established together with a French language advisory committee to whom the Minister of Education might refer appropriate matters on the subject. According to administrative provisions in Nova Scotia and Prince Edward Island, French may be used as a first language in schools belonging to francophone areas, and can be chosen as an optional second language at all levels from grades 7 to 12. Other languages such as Ukrainian and German have not been given the same privileges as French in Manitoba, although both these languages are acceptable as subjects of instruction in elementary and secondary schools. Furthermore, efforts are being made to provide for teacher aides proficient in native Manitoba languages to help children with little knowledge of English to adapt themselves to the school situation. Special training for native Manitobans (Indians) is provided with native language teacher aides to adults with a view to help bridge the gap between those whose basic language is Cree or Saulteaux on the one hand, and English on the other hand. However, as already stated, small groups of families living apart from population centres of their own language group do suffer from lack of educational opportunities in their mother tongue.

Public French-language schools are provided for the French-speaking minority in the provinces of Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia and Prince Edward Island. These schools are operated by the school board of the district and have to apply the same educational standards as all the other schools of the provinces.[31]

501. In Switzerland, the language used in the school systems of the four linguistic regions of the country—German, French, Italian and Romansh—is the language of the corresponding region. Under the constitution, education is basically a cantonal matter and intervention by the Federal Government is limited to financial assistance. In unilingual cantons, however, no special schools are, in principle, provided to children belonging to another language group. In Finland, primary education is organized at communal level but is subsidized by the State. The language of instruction is therefore the language of the commune.

502. In Austria, the rule guaranteeing the use of minority languages as languages of instruction in the school system at the primary level is laid down in the constitution, and detailed provisions on its implementation are contained in two basic laws: the Linguistic Minority School Act for Carinthia of 19 March 1959 and the Burgenland Provincial School Act of 1937. Under these laws, the right to use the Slovenian and Croatian languages as languages of instruction or to learn them as a compulsory subject is granted to every pupil whose parents so wish. As a rule, primary schools are operated for the Slovene minority in municipalities of the province of Carinthia in which bilingual instruction was given in the academic years 1958/59. In the municipalities concerned, all pupils belonging to the Slovene minority may obtain instruction in schools that are particularly established for the benefit of that minority. For both the Slovene and Croat minorities, three types of primary schools are provided: schools with Slovenian or Croatian as the sole languages of instruction; bilingual schools with both German and Slovenian as languages of instruction, and German schools in which special sections for instruction in Slovenian or Croatian have been set up.

503. By the Nigerian constitution, each state determines for itself its policy on the language of instruction in primary school education; under that policy the various states have generally designated the mother tongue of the ethnic group of the region as the language of instruction, but with certain conditions. Whether there is a reasonable amount of literature in the language concerned and an adequate supply of teachers who speak the language are factors which influence the decision taken. Within recent times, clearly defined patterns have emerged in the process

[30] Further examples of this approach may be found in Belgium, Canada, the German Democratic Republic, Peru, the USSR and Yugoslavia.

[31] UNESCO, Second Report of the Committee on Conventions and Recommendations in Education (General Conference, seventeenth session, Paris, 1972) (17 C/15, 15 September 1972), pp. 99-100.

of selecting the language to be designated as the language of instruction. The first pattern is that applied in an area which has one of the three major Nigerian languages—Hausa, Igbo and Yoruba—as the mother tongue. In such a case, the selection of that language as language of instruction is the rule. The second pattern emerges in an area where one of the three major Nigerian languages is widely spoken although it is not the mother tongue. In this case, as primers in the smaller languages are usually not available and teachers who speak that language are in short supply, the policy generally adopted is to make the major language the medium of instruction. The third pattern is found in an area in which the mother tongue languages are relatively numerous but where no common major language is spoken. In those situations, the policy is to use English as a medium of instruction from the start and to teach in the vernacular when teachers who speak the language are available. It should, however, be obeserved that the present trend in Nigeria is to develop the mother tongue whenever that process does not raise insurmountable obstacles.

504. In Fiji, in the lowest classes of primary schools the mother tongue languages of the two major ethnic groups are the media of instruction: Hindustani and Urdu in the case of Indians and Bauan for Fijians.[32] From about the fifth class onwards English becomes the medium of instruction. In Ghana, the major Ghanaian languages are used under certain conditions as a medium of instruction in primary schools, although English remains the principal language of instruction. The pattern followed varies according to the regions. In some areas English is used and a Ghanaian language is taught as a subject throughout the primary course. In some others, a Ghanaian language is used in the lowest classes but is gradually replaced by English from the second year. The goal is to develop and maintain literacy in both English and the Ghanaian languages. It will be noted in this connexion that the primary aim of a mass literacy campaign which was started some years ago is to teach adults to read and write in their own language. Furthermore the Government has set up a programme of publication of textbooks in Ghanaian languages.

505. In some countries where minority languages have not been granted official status on the national level or on a regional basis, special laws or other measures have been enacted to allow the use of these languages in the primary school system. The situation in Poland and Romania appears to illustrate this type of approach.

506. With respect to Poland, it has been stated that although the degree of ethnic homogeneity achieved as a result of post-war boundary changes greatly reduced the need to maintain schools conducted in languages other than Polish, the Government continues the pre-war policy of supporting two basic types of minority schools, one with the minority language as the language of instruction and another where that language is one of the compulsory subjects taught.

507. In Romania the Act of 13 May 1968, adopted pursuant to article 22 of the constitution, provides for education at all levels to be carried on both in Romanian and in the language of the "co-inhabiting nationalities". To give effect to this Act, units using the language of the co-inhabiting nationality as the language of instruction have been established in the schools in districts where members of such a nationality live. Article 9 of the Act reads as follows:

> Education at all levels shall be carried on in Romanian.
>
> In accordance with the provisions of the Constitution, education at all levels shall also be carried on in the language of the co-inhabiting nationalities.
>
> The Ministry of Education shall train the teaching staff needed in order to carry on education in the languages of the co-inhabiting nationalities.
>
> Candidates sitting the entrance examinations prescribed by this Act shall be entitled to take in their mother tongue the tests in subjects which they have studied in that tongue.

508. In France, under a law adopted in 1956, teachers in primary schools can devote one hour per week of the time reserved for subjects outside the programme to teach regional languages as optional subjects.

509. In Czechoslovakia, the School Law in force provides that the teaching at the schools established for children of Hungarian, Ukrainian and Polish nationality shall be in the mother tongue. The Ministry of Education and Culture can authorize some schools to teach some subjects in a language other from Czech or Slovak. However, if the language used in teaching is not Czech or Slovak, one of these languages is also taught. In Hungary, a law of 1961 on the system of education in the Hungarian People's Republic lays down that school-age children belonging to "nationalities" shall be given facilities for receiving education in their native tongue. There are two types of minority elementary schools. In the first type of school the majority of the lessons are given in the mother tongue, but some of the lessons in the Hungarian language and the natural sciences are taught in Hungarian. In practice, there is a bilingual education in this type of school: in the case of subjects taught in Hungarian, the technical terms and the most important expressions are also taught in the mother tongue. In the second type of school the majority of the classes are held in Hungarian, accompanied by a mother-tongue education for the non-Hungarian pupils and for the Hungarian children wishing to master the language of a national minority. There is a bilingual education in the grammar schools of "nationalities" similar to that given in elementary schools of the first type. In the Ukrainian SSR, under article 26 of the National Education Act of the Ukrainian SSR of 28 June 1974, pupils have the opportunity of being taught in their mother tongue or in the language of another people of the USSR. The parents or those replacing them have the right to choose for the children a school in which instruction is given in the language they desire. Along with Ukrainian schools, there are many schools in which classes are conducted in Russian, Polish, Hungarian or Moldavian.

510. In Australia the Government's policy is that Aboriginal children living in predominantly Aboriginal communities should receive their early education in their own language, and funds are provided in support of Aboriginal linguistic work and bilingual education programmes throughout Australia. In Indonesia teaching is in the regional vernacular for the first three years and after that in Indonesian, except in cases where the children already know the national language and are able to use it from the beginning, as in certain areas of Sumatra. In Iraq,

[32] The Fijian language has many dialects. The one that has been adopted for universal use, and is recognized as standard Fijian, is the dialect of Bau.

article 6 of the Local Languages Act, passed in 1931, lays down that the language of instruction in the kindergarten and elementary schools shall be the domestic language of most of the pupils: Arabic, Kurdish or Turkish. The Council directed, in its order No. 251 of 24 April 1972, that Assyrian should be the language of instruction in schools where the pupils speaking it predominated. The Syriac language is the main language of instruction in all the primary schools with a majority of Syriac-speaking pupils, and Arabic is taught as the compulsory second language. In Italy, under legislative acts in force in the provinces of Bolzano, Trieste and Gorizia, school instruction is given to the pupils in the mother tongue; in the Valley of Aosta, the same number of hours weekly is devoted to instruction in the French language as is spent on instruction in the Italian language, and certain lessons are given in French. In Greece and Turkey the use of the mother tongue in primary schools in districts inhabited by minority groups is provided for in the Treaty of Lausanne of 1923. In Norway, Lapp parents are free to choose for their children initial instruction in Lapp or Norwegian. The children who have their first instruction in Lapp are taught Norwegian as a foreign language, which at a further stage can then be used as a medium of instruction. The syllabus in the elementary schools in districts with substantial Lapp elements in the population has its starting-point in the Lapp's own language and traditions. In the case of the United Kingdom, special provision is made for education in the minority language in areas where the potential speakers of the minority language form the majority. In the United States of America, title VII of the Elementary and Secondary Education Act of 1968 authorized funding of bilingual education programmes for children from low-income families who have limited English speaking ability.

511. In Sweden, children belonging to minority groups, in principle, receive their basic education in the ordinary public schools, in which two hours a week is devoted to instruction in the respective minority language. In exceptional circumstances they may be offered possibilities through special arrangements to study in their own mother tongue as special homework or as remedial instruction. During 1972, 9,000 children were taught a minority language in 116 municipalities. In the case of the Finnish minority it has, however, been observed that in the large cities there are now classes where virtually only Finnish is used.

512. In some countries, the use of minority languages as languages of instruction depends on the number of pupils attending the classes. In Austria, the Burgenland Provincial School Act provides that a minority language will be a language of instruction if the last census has shown that 70 per cent of the school district population is composed of members of that linguistic minority. When the percentage is between 30 and 70 per cent, bilingual schools are to be established in which both the national language and the minority language are to be used as languages of instruction. If the percentage is less than 30 per cent, the State language is the only language of instruction, but the district school board must ensure that children belonging to the minority are taught their mother tongue. In other cases, the introduction of the minority language as a compulsory subject requires the consent of the chairman of the provincial school board, but such authorization may not be denied if at least 20 children attend the classes. In Romania, whenever in a district the number of children belonging to minority groups reaches at least 6 in the lowest classes and 15 in the higher ones, separate units, sections or classes must be established. In 1971-1972, German was used as a language of instruction in about 3,230 units or sections attended by more than 280,000 pupils. In Finland, primary education being a communal responsibility, it follows that the language used in primary schools is that of the commune. At the present time, a minority school, as a rule, must be set up if the number of children speaking a minority language reaches 18. This rule applies in principle whether the commune is bilingual or monolingual. In Hungary, kindergarten and primary schools teaching minority languages or language teaching groups are established in villages where there are about 15 children of a particular minority. In view of the great dispersion of the national minorities, there is often a compromise on the participation rate of 15, and it may occur that minority schools or groups are run with only 7 pupils. In India, at least one teacher is appointed to teach in the mother tongue at the primary level if there are 40 pupils in a class desirous of learning in that language. With respect to Yugoslavia, it has been said that:

> A certain number of members of the nationalities do not go to elementary schools with instruction in their mother tongue. The percentage share of such children in the entire population of a given nationality varies both by nationality and region amounting to 56 per cent in the case of some nationalities. The situation in this respect is most favourable among children of Italian and Bulgarian nationality. The reasons why members of some of the nationalities do not acquire education, at least elementary, in their mother tongue, differ and it is virtually impossible to derive one common rule. The reason in some cases is the comparatively small number of members of a nationality who live scattered over large territories, this making it difficult or practically impossible to open elementary school departments with instruction in the mother tongue of the nationality. Such is the case, for example, with the Ruthinians, over 60 per cent of whose children do not attend classes in their mother tongue. Some 3,000 children of school age of Ruthinian nationality live on the territory of the SR of Bosnia-Herzegovina, the SR of Croatia and the Autonomous Province of Voivodina. Now, in Bosnia-Herzegovina, owing to a high degree of dispersion, it has not been possible to organize complete instruction for them in their mother tongue, although they are able to learn their national language as an additional subject. The situation is similar in Croatia, but for one exception, while in Voivodina, where the concentration of this nationality is highest, ower 50 per cent of all Ruthinian children attend classes in their mother tongue. The situation as regards the number of children covered by compulsory eight-year elementary education is particularly favourable among the Bulgarian nationality, despite the fact that they live in a mountainous region where communications are poor, thanks primarily to tradition. That teaching in the national language can be organized in developed regions even under conditions of a small population of a given nationality and a correspondingly small number of pupils is shown by the example of the Italian nationality.[33]

513. It is now generally agreed that when persons belonging to minority groups cannot pursue their education in their own language beyond the primary level, they should be taught the official language, in particular in order to be able to enter educational establishments of a secondary or higher level on an equal footing with all other pupils. In this connexion, article 5 of the UNESCO Convention against Discrimination in Education provides that the right of members of minority groups to carry on their own educational activities should not be exercised in a manner

[33] Nada Dragić, *Nations and Nationalities of Yugoslavia* (Belgrade, Medjunarodna Politika, 1974), pp. 351-352.

which prevents them from understanding the language of the community as a whole.

514. In the separate schools established for minorities in Austria, instruction is given in the minority language in all grades but the language of the main population is extensively taught as a compulsory subject. In bilingual schools both languages are, approximately to the same extent, languages of instruction in the low grades, while in the higher classes the minority language is taught only as a compulsory subject. In New Zealand, instruction is carried out in English, but Maori is taught as a compulsory or optional subject in some schools.

515. In some of the developing countries where the language of one of the ethnic groups has been granted the status of the national language, that language has been also designated as the sole language of instruction for primary education; this policy is officially declared to have the aim of fostering a sense of national unity. In Ethiopia, for example, Amharic is the sole official language in primary schools. In the Philippines, minority languages are used only as auxiliary or support languages, but in Malaysia primary education continues to be offered in Chinese and in Indian languages, although Malay is the country's national language.

516. The available information further indicates that members of some minorities receive a different treatment from that accorded to others. The Lapps, the Gypsies and, in general, the indigenous populations are examples of minority groups which are placed in a disadvantaged position in the countries where they live. Thus, in Finland, while the Swedish minority receives primary education in its mother tongue according to the law on compulsory education, the Lapps do not fully benefit from such a privilege. The Primary Education Act of 1958, which contains provisions dealing specifically with the situation of the Lappish minority, only provides that the education of Lapps should be arranged in their mother tongue in primary schools according to the needs and possibilities, such as sufficient teachers familiar with the Lapp language and the availability of textbooks. However, as the problem of the most suitable orthography for Lappish has not yet been solved, Finnish remains the main language of instruction in a few schools set up in areas inhabited by Lapps; in those regions, Lapp is used in oral instruction as an aid. In Sweden, while schools for the Lapps have been established in various places in areas inhabited by Lapps, they have been organized according to the principles of the ordinary public schools, with Swedish as the main language of instruction. Only in a few nomad schools is Lappish used as a language of instruction in the lower grades of primary schools.

(c) *Use of minority languages in secondary schools*

517. In most of the countries surveyed, secondary education is not provided in minority languages. Lack of funds, unavailability of competent teaching staff, and a desire not to fragment the educational system are generally considered the main factors for this exclusion, in the developing countries in particular.

518. In Ghana and Nigeria, instruction in the local languages is limited to primary education. At all other levels, the language of instruction is English. One of the reasons advanced for the designation of English as the sole medium of instruction in higher education is the fact that students in colleges and universities are drawn from a wide range of ethnic groups speaking different languages. In Nigeria a similar situation prevails; however, a new policy appears to be emerging with the announcement in November 1971 by the Commissioner of Education in the Mid-Western State that Hausa would soon be a subject in the secondary schools of the State.

519. In a very few of the countries surveyed, education is given in secondary schools in minority languages. In Austria, a secondary school with instruction in Slovenian has been established. In Canada, a law adopted in the Province of Quebec provides that instruction may be given in French or English where there are 23 pupils in a secondary school who could be grouped together for instruction and whose parents desire them to be taught in either French or English. The board of the school district, division or area may—or, if the parents of the pupils in question petition the board, shall—group those pupils in a class and provide for instruction in the desired language. The law further provides that the competent minister may in his discretion specify a language of instruction where there are fewer than the required number of pupils. In Czechoslovakia there are secondary schools and vocational schools where Hungarian, Ukrainian or Polish are used as the medium of instruction. In Finland, a large number of Swedish secondary schools have been established. Furthermore, as regards the teaching of Swedish, reciprocity between the two languages is complete. Swedish is taught in Finnish schools in as many lessons as Finnish in Swedish schools. In India the constitution provides for the use of modern Indian languages as media of instruction at the secondary level. For the purpose of providing instruction at the secondary level in a mother tongue of the linguistic minorities, a minimum strength of 60 pupils in the last four classes and 15 pupils in each class will be necessary, and for the first four years a strength of 15 in each class will be sufficient. In Italy, in the province of Bolzano instruction in secondary schools is given in the mother tongue of the pupils by teachers whose mother tongue is the same. In Romania, in accordance with the Act of 13 May 1968, while no separate secondary schools have been established, special sections or units have been set up in secondary schools and in a number of schools of higher education which provide courses in the minority languages on an increasing number of subjects. In the Union of Soviet Socialist Republics, the mother tongue is used for instruction in grades I to X in all the union republics and in grades I to VIII or I to VI in the autonomous republics.

(d) *Use of minority languages in the universities*

520. In principle, in countries where minority languages have been declared official languages on a national or on a regional basis, there exist universities giving instruction in these languages.[34] In Finland, in addition to an autonomous university giving instruction in Swedish, students with Swedish mother tongue can also attend a number of purely Swedish colleges. Furthermore, the State University, which has a number of chairs with Swedish as the language of instruction, allows the students to use Swedish or Finnish at examinations. In Iraq, the Suleiman University

[34] Belgium, Canada, the USSR and Yugoslavia offer examples of such a situation.

Act, adopted in 1968, lays down that the languages of instruction in the university are to be Arabic and Kurdish. In India, a decision was taken in 1967 to use Indian languages as languages of instruction at the undergraduate level.

521. The available information tends, however, to show that, as a general rule, universities using minority languages are not created unless linguistic groups are concentrated in areas which form a political subdivision of the State. As indicated earlier, one remarkable exception is the University of Priština in Yugoslavia, which gives instruction in Albanian.

D. Procedures provided in order to ensure the respect of the rights granted to members of ethnic, religious and linguistic minorities

1. *General observations*

522. A crucial question which arises in connexion with article 27 of the International Covenant on Civil and Political Rights is whether appropriate procedures designed to deal effectively with violations of the rights granted to members of minority groups have been adopted. In principle the need for such procedures is widely recognized. States parties to the Covenant specifically undertook under article 2, paragraph 3, to ensure that any person who had had one of the rights or one of the freedoms recognized in the Covenant violated would have an effective remedy, that any person claiming such a remedy would have his right thereto determined by competent authorities, and that the competent authorities would enforce such remedies when granted. These principles clearly apply to violations of article 27. Moreover, means of implementation are provided for in the Covenant and in the Optional Protocol thereto.[35] The need for measures which ensure that the Covenant is completely effective has thus been recognized at both the domestic and the international level.

523. So far as domestic measures are concerned, the importance of meaningful avenues of recourse was discussed at the seminar on the multinational society held in Ljubljana, Yugoslavia, in 1965, in the following terms:

> ... several participants stressed that Bills of Rights enunciated in Constitutions could remain mere empty pronouncements unless affirmed by comprehensive and detailed legislation providing for judicial remedies against the violation of fundamental human freedoms which the courts and the administration conscientiously applied. Particular emphasis was laid by certain speakers on the absolute need for an independent judiciary ever ready to provide the judicial remedy which, in their view, was the most effective guarantee of civic rights. Some speakers pointed out, in this connexion, that the possibilities of judicial redress must be accessible to all on the same footing ...
>
> Legislative and judicial action, in the opinion of certain participants, was not in itself sufficient: it had to be buttressed by progressive administrative measures, including, in the opinion of some, the establishment of conciliation machinery which could be called upon before the more drastic recourse to civil or penal proceedings. Some speakers drew attention to the successful results achieved in certain countries by the Parliamentary Commissioner, or Ombudsman, who had the power to investigate every allegation of administrative misfeasance and, if persuasion failed, to report thereon to Parliament or even to initiate proceedings before the courts; it was widely agreed, however, that the applicability of this institution to all countries had not yet been adequately studied.[36]

2. *Avenues of recourse open to members of minorities and penal rules protecting their interests*

524. The available information tends to show that no procedures of a judicial character dealing specifically with the rights proclaimed in article 27 of the Covenant have been adopted in any of the countries surveyed. Observations made on this question generally indicate that members of a minority enjoy exactly the same status as any other citizens and that the ordinary judicial system constitutes the normal avenue of recourse open to all persons who allege that their rights have been violated. There is nothing to indicate that in the countries surveyed any individual who wishes to initiate proceedings may be precluded from doing so on grounds of race, religion or language.

525. In many countries, however, avenues of recourse before civil courts against violations of the principle of equality and non-discrimination are provided by the constitution or by the law. In this connexion, the Austrian Government observes that the institution of a Constitutional Court ensures that any administrative measure or legislative enactment violating the principle of equality is subject to judicial review. It has further stressed that no other rule of Austrian federal constitutional law has led to so rich a crop of case law as the principle of equality and non-discrimination. The Constitutional Court has always interpreted this provision as meaning that legislators as well as executive authorities should in their dealings with problems of citizens be guided by an objective analysis of the case concerned. According to the Constitutional Court's jurisprudence, the principles of equality and non-discrimination provide all-embracing protection against arbitrary legislation and law-enforcement measures. Of special interest in this context was a ruling of the Court declaring void a clause of the Victims of Persecution Art which favoured only the German-speaking population, on the grounds that it was unconstitutional because it violated the principle of equality. On that occasion, the Court categorically stated that "discrimination against the language of a minority could never form an objectively justifiable basis for a legal provision".

526. The available information also indicates that in some countries the law allows anyone with grievances and complaints to approach, by way of petitions in particular, appropriate organs of the State other than the regular courts, including ombudsmen where they exist, for redress and to use existing administrative procedures in order to have illegal administrative acts declared void.

527. The penal laws of several of the countries surveyed also contain provisions that can be invoked by persons belonging to ethnic, religious and linguistic groups, when certain rights granted to them have been violated. The legal provisions referred to are essentially those dealing with incitement to hatred of members of ethnic or religious groups and violations of the principle of freedom of conscience and religion. It will be noted in this report that in some of these countries the penal codes have been amended to include new provisions punishing discrimination on account of race or national or ethnic origin as a result of the ratification by these countries of the International Convention on the Elimination of All Forms of Racial Discrimination.[37]

[35] See paras. 552-558.

[36] ST/TAO/HR/23, paras. 41-42.

[37] Denmark, Finland, Sweden.

528. Incitement to hatred on the grounds of ethnic origin is considered a crime by the constitution and the laws of several of the countries surveyed.[38] Thus, in Sweden, the penal code punishes a number of acts which have been defined as "agitation against a national group". Section 8 of the Swedish penal code reads as follows: "Anyone who publicly or otherwise in a statement or other communication that is distributed to the public threatens or expresses contempt for a national group of a particular race, with a particular skin colour, of a particular national or ethnic origin, or of a particular religion, shall be guilty of agitation against a national group and liable to imprisonment not exceeding two years or, if the offence is slight, to a fine." In Denmark and in Finland, the penal code punishes by a fine or imprisonment any person who in public or with the deliberate aim of dissemination to wider circles makes any statement or announcement by which a group or groups of persons are threatened, ridiculed or humiliated because of their race, national extraction, ethnic origin or religion.

529. In Poland, the penal code forbids the spreading of hatred among ethnic groups as well as public commendations of interethnic strife. In Romania, both the constitution and the penal code contain provisions dealing with incitement to hatred on the grounds of national origin. Under article 317 of the Romanian penal code, "Nationalist-chauvinist propaganda and incitement to national or racial hatred shall be punishable by rigorous imprisonment for not less than six months and not more than five years". Propaganda based on race, ethnic origin or ethnic regionalism is also expressly dealt with in the penal code of Niger, which provides that "any act of racial or ethnic discrimination, any regionalist propaganda and any manifestation likely to arouse the citizens against one another shall be punishable by a penalty of imprisonment or forced residence".

530. It should also be noted that in many countries the law punishes a number of acts as constituting the crime of genocide.[39] As an example, article 357 of the Romanian Penal Code can be quoted; it reads as follows:

> Any person who commits any of the following offences with intent to destroy, in whole or in part, a national, ethnical, racial or religious community or group:
>
> (*a*) Killing members of the community or group;
>
> (*b*) Causing serious bodily or mental harm to members of the community or group;
>
> (*c*) Inflicting on the community or group conditions of life or treatment calculated to bring about its physical destruction;
>
> (*d*) Imposing measures intended to prevent births within the community or group;
>
> (*e*) Forcibly transferring children belonging to one community or group to another community or group
>
> shall be liable to the death penalty and total confiscation of fortune or to rigorous imprisonment for not less than 15 and not more than 20 years, the deprivation of certain rights and partial confiscation of fortune.
>
> If the offence is committed in time of war, the punishment shall be death and total confiscation of fortune.
>
> Complicity in the commission of genocide shall be punishable by rigorous imprisonment for not less than five and not more than 15 years, the deprivation of certain rights and partial confiscation of fortune.

531. The available information further indicates that in a large number of countries surveyed, violations of the right to freedom of conscience and religion are considered a crime.[40] The acts punishable as offences against freedom of conscience and religion include insults to the religion of a group, disruption of religious ceremonies, interference with religious practices by violence or threats, vilification or humiliation of citizens on account of their religion, printing of books or other religious publications recognized as holy by a religious group with deliberate alterations in the text such as to distort its meaning, imitation of a religious ceremony or religious act in a public place in order to make it an object of ridicule or entertainment to those present, and affronts to religious sentiments, such as desecration of objects of religious reverence.

3. *Establishment at the national level of special organs of an administrative or political nature*

532. In several of the countries surveyed, organs of an administrative or political nature have been instituted with the task of assisting in the implementation of governmental policies relating to members of minority groups. The following paragraphs contain in a summarized form a description of the main attributions and activities of these organs.

533. In Australia the Racial Discrimination Act of 1975 established the office of a Commissioner for Community Relations, whose main functions are to inquire into alleged infringements of the Act and to endeavour to develop and conduct programmes aimed at combating racial discrimination. The Act has also established the Community Relations Council as the central mechanism for reviewing governmental and national policies relating to the prohibition of racial discrimination. The Council's functions are to advise and make recommendations to the responsible Minister and the Commissioner concerning the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination, the promotion of educational, study and research programmes, and the promotion of understanding, tolerance and friendship amongst racial and ethnic groups. Mention should also be made of the newly constituted Department of Immigration and Ethnic Affairs. The functions of the Ethnic Affairs Unit include the development, in consultation with the ethnic communities, of approaches to remedy the devaluation of ethnic cultures and ensure preservation of cultural traditions of migrant communities within the context of a diverse but cohesive envolving Australian culture.

534. In Austria, "contact committees" have been set up within the Federal Chancellery for the Slovene-speaking and the Croatian-speaking minorities. These committees, which are required to meet at regular intervals, include members of the Federal Government, the provincial government concerned, the political parties represented in Parliament and the provincial legislative assemblies concerned,

[38] Bulgaria, Czechoslovakia, Denmark, Finland, France, German Democratic Republic, Iraq, New Zealand, Niger, Norway, Panama, Poland, Romania, Sweden, United Kingdom, USSR.

[39] Bulgaria, Costa Rica, German Democratic Republic, Hungary, Romania. To these may be added all those States which have ratified and put into force the Convention on the Prevention and Punishment of the Crime of Genocide.

[40] As in Belgium, France, Greece, Israel, Italy, Norway, Pakistan, Thailand.

as well as representatives of the minority groups. Their main task is to consider measures for the implementation of the provisions of the State Treaty of 1955 relating to minority rights as well as other action relating to the peaceful cohabitation of the various ethnic groups. They are also empowered to deal with problems concerning the ethnic groups as a whole and with problems concerning individual members of these groups as well. The institution of these contact committees was intended to promote harmonious relations between ethnic groups and tolerant attitudes toward minorities.

535. In Belgium, the constitution set up cultural councils for the French and Flemish cultural communities.[41] These cultural councils, each in its own sphere, decide by decree upon cultural matters, education, co-operation between cultural communities, and the use of languages. The decrees issued by the councils have force in the French-speaking region and the Flemish-speaking region respectively, and also apply to institutions in the bilingual Brussels metropolitan region which by virtue of their activities are to be regarded as belonging exclusively to one cultural community or to the other. The law of 21 July 1971 on the powers and proceedings of the cultural councils provides that each cultural council shall have the right of inquiry and the right to receive written petitions. Each council moreover has a committee the function of which is to encourage co-operation between the French cultural community and the Flemish cultural community. Meeting in joint session, these committees constitute the united co-operation committees.

536. In Canada the office of a Commissioner of Official Languages has been created. Under the Official Languages Act of 1969,

> it is the duty of the Commissioner to take all actions and measures within his authority with a view to ensuring recognition of the status of each of the official languages and compliance with the spirit and intent of this Act in the administration of the affairs of the institutions of the Parliament and Government of Canada and, for that purpose, to conduct and carry out investigations either on his own initiative or pursuant to any complaint made to him and to report and make recommendations with respect thereto as provided in this Act.[42]

537. In the Federal Republic of Germany an advisory committee for questions concerning the Danish minority has been set up in the Federal Ministry of Interior in order to compensate for the fact that the Danish minority is without representation in the Bundestag since 1961. Under the chairmanship of the Minister of the Interior, the committee is composed of two representatives of each of the three Bundestag parties, one representative of Schleswig-Holstein, one representative of the Federal Ministry for Intra-German Relations and three representatives of the Southern Schleswig Electors' Association, an association of the Danish minority.

538. In Finland, the Government has established a Commission on Lappish Affairs composed of representatives of the Ministries of Justice, Education and Agriculture and of representatives of the various organizations of the Lapps. The functions of the Commission are to make suggestions to the Council of State on measures to be taken in order to promote the culture of the Lapps, to attend to their cultural needs and to improve their conditions of life. On all matters concerning the Lapp population, the Commission is consulted by State as well as local authorities. Also a special organization, the Gypsy Mission, was established in 1906 to improve communications between the Gypsy population and the appropriate communal authorities. In referring to these organizations, the Government has emphasized that measures are intended mainly to promote the full integration into society of those parts of Gypsy and Lapp communities that have retained their traditional ways of life.

539. In Hungary a Nationality Advisory Committee composed of government representatives and members of organizations of the various "nationality" groups has been established. Its main task is to make studies on the situation of the national groups and to assist in the implementation of the Government's policies towards nationalities. Also, in places where national groups reside, the local city councils have set up nationality committees with a view to submitting proposals and recommendations on matters relating to these groups.

540. In India, the constitution provides for the appointment by the President of a special Officer for Linguistic Minorities, whose duty is to investigate all matters relating to the safeguards provided for linguistic minorities under the constitution and report to the President upon those matters at such intervals as the President may direct. Such reports are to be laid before each House of Parliament and sent to the governments of the states concerned.

541. In Mexico the main functions of the Instituto Nacional Indigenista are to study matters relating to the indigenous populations, to make appropriate recommendations and to report on the implementation of action taken for improving their situation.

542. In New Zealand, two government agencies have been created to deal with questions relating to Maoris; the Department of Maori and Island Affairs, which co-ordinates and implements government policies in respect of Maoris, and the New Zealand Maori Council, which, as a consultative body, expresses its views on all proposed legislation affecting the Maori population. Also the office of a Race Relations Conciliator was created under the Race Relations Act of 1971. The Conciliator is empowered to investigate, either on his own initiative or on the basis of a complaint, any act or practice which appears to constitute a violation of the provisions prohibiting discrimination. Where the Conciliator is of the opinion that a breach has occurred, his function is to secure a settlement between the parties concerned and, in appropriate cases, a satisfactory assurance against the repetition of discriminatory acts or omissions. If a settlement cannot be reached the Conciliator may recommend that the Attorney General bring a suit against the person considered to have committed a breach of the law.

543. In Norway two organs dealing with questions concerning the Lapp population have been established. One of these, the Norwegian Lapp Council, consisting of eight members, all of whom are Lapps, in an advisory body set up to make recommendations on matters concerning the economic, social and cultural situation of the Lapps. The other is a Select Committee consisting of government

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[41] The Cultural Council for the German cultural community was set up by a law.

[42] *Commissioner of Official Languages: First Annual Report 1970-1971* (Canada, Information Canada, 1971), p. 1.

representatives and of Lapp representatives, which has been established by the Ministry of Church and Education to examine questions relating to the educational development of the Lapps.

544. In the Philippines, the Government has established by law an agency known as the Commission on National Integration. This Commission is said to be the Government's arm for national integration and its objective is "to achieve within the political system the recognition of the different religious, ethnic and cultural groups within the State and to effectuate in a more rapid and complete manner the economic, social, moral and political advancement of the national cultural communities and to render real, complete and permanent the integration of [these] communities into the body politic". The composition and functions of this Commission are laid down in section I and II of the above-mentioned law as follows:

Section 1. It is hereby declared to be the policy of Congress to foster, accelerate and accomplish by all means and in a systematic, rapid and complete manner the moral, material, economic, social and political advancement of the non-Christian Filipinos, hereinafter called National Cultural Communities, into the body politic.

Section 2. To effectuate the said policy and to achieve the aims and objectives of this Act, there is created a Commission to be known as the Commission on National Integration, hereinafter called the Commission, which shall be composed of a Chairman and two other members. The Chairman of the Commission, who shall also be known as the Commissioner on National Integration, and the two other members, who shall be known as the Associate Commissioners on National Integration or Associate Commissioners, shall be appointed by the President of the Philippines with the consent of the Commission on Appointments and each of them shall be selected solely upon the basis of expert knowledge of the customs and social organizations of the said National Cultural Communities and their economic, educational, religious and political problems.

Furthermore, a public assistance unit has been set up by the Commission on National Integration in order to hear complaints, grievances and requests by members of minority groups and provide assistance to them whenever necessary.

545. In Romania, workers' councils composed of people belonging to the Hungarian, German, Serbian and Ukrainian minorities were established in 1968 in order to enable members of those minorities to participate actively in the economic, political and cultural life of the country. They vary in number according to the numerical size of the minority, but operate under exactly the same rules. The councils are empowered to take part in the discussions of the main organs of State about the economy, science and culture and about measures relating to the general progress of society. In addition, the councils are required to assist State bodies in examining questions of specific interest to the minority concerned and to help in stimulating creative scientific, artistic and literary work in their mother tongue. One author gives the following account of what these councils have done since they came into being:

The Councils of the co-inhabiting nationalities did a great deal in 1970 to improve the education provided in the languages of the co-inhabiting nationalities, with regard both to the size of school units and to curricula and textbooks. They also helped to improve policy with regard to publications in the languages of the co-inhabiting nationalities... after a very detailed survey of local conditions for the publication and circulation of books. They co-operated in the action undertaken by the Government to study the application of the Act concerning the Organization and Operation of People's Councils to the use of the languages of the co-inhabiting nationalities at the level of local authorities, the courts, cultural establishments and other public institutions.

The Councils of the Hungarian, German, Serbian and Ukrainian nationalities are continuously consulted by the departmental committees of the Romanian Communist Party in order to identify and solve the specific problems of the population in their sectors of activity. Furthermore, as members of the Socialist Unity Front, the Councils of the nationalities take part in the Front's activities at the departmental level, and particularly in the examination and public discussion of the principal documents issued by the Party and the State, of the annual long-term plans for the development of the national economy, education, science and culture and, in short, of all measures designed to ensure the general progress of the country.

Consequently the representatives of the co-inhabiting nationalities are aware of the relevance and utility of these Councils ...

In their first three years of existence, the Councils of the co-inhabiting nationalities, both at the centre and at the departmental level, showed that they could play the part assigned to them ... Their activity undoubtedly contributes to the promotion of political and civic freedoms and forcefully reaffirms the unity and brotherhood of the Romanian people with the co-inhabiting nationalities.[43]

546. The constitution of Singapore has established a Presidential Council for Minority Rights. The main functions of the council are to consider and report on matters concerning persons belonging to racial and religious minorities which may be referred to it by Parliament or by the Government. In particular, it may "draw attention to any bill or to any regulation which in its opinion is likely to be, if applied, disadvantageous to a community and not equally disadvantageous to persons of other communities".

547. In Sweden, a Commission on Lapp Affairs was set up in 1970 for the purpose of taking measures in favour of the development of the language and the culture of the Lapps. Its main task will be to examine the various problems confronting the Lapps in Swedish society, particularly those Lapps who left reindeer husbandry and moved away from breeding areas. It is now estimated that 75 per cent of the persons in Sweden identifying themselves with Lappish culture and speaking Lappish are no longer engaged in reindeer breeding. The Commission will also attempt to ascertain their degree of identification with other Lapp groups and their attitudes towards their own culture and to the various forms of assistance provided by the State. The task of creating a policy for other ethnic and linguistic minorities has been entrusted to another government commission, the Commission on Immigrants, which will propose measures for the improvement of their culture and for financial assistance by the State to immigrant and minority organizations.

548. In the United States of America, under the Civil Rights Acts of 1957 and 1964, two bodies have been set up to deal with matters relating to racial minority groups: the U.S. Commission on Civil Rights and the Community Relations Service. The functions of the Commission include the study of legal development and the appraisal of federal policies relating to equal protection of the law in such areas as education. It has also been authorized to serve as a national clearing-house for civil rights information. One of the functions of the Community Relations Service is to aid communities in developing plans to improve racial relations and understanding through conferences, publications and

[43] János Demeter, Eduard Eisenburger and Valentin Lipatti, *Sur la question nationale en Roumanie, Faits et chiffres* (Bucharest, Editions Meridiane, 1972), pp. 60-61.

technical assistance. As regards the indigenous population, four committees within the Congress are primarily concerned with Indian matters. Within the Executive Branch, a Bureau of Indian Affairs has been set up at the Department of the Interior. Another organ, the National Council of Indian Opportunity, which is headed by the Vice-President of the United States and whose members are Indians selected by the Vice-President, serves as an umbrella over all Indian programmes.

4. *International machinery offering avenues of recourse to members of minority groups*

549. Under the International Convention on the Elimination of all Forms of Racial Discrimination and the International Covenant on Civil and Political Rights there exists international machinery which can be used as an avenue of recourse by members of minority groups who feel that their rights have been violated.

(a) *International Convention on the Elimination of All Forms of Racial Discrimination*

550. Article 8 of the Convention provides for the establishment of an international body, the Committee on the Elimination of Racial Discrimination. It is composed of 18 experts of high moral standing and acknowledged impartiality elected by States parties to the Convention from among their nationals who serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as of the principal legal systems.

551. Under the terms of article 14 a State party may at any time declare that it recognizes the competence of the Committee to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by that State party of any of the rights set forth in the Convention. Any State party which makes such a declaration may establish or indicate a body within its national legal order which shall be competent to receive and consider petitions from individuals and groups of individuals within its jurisdiction who claim to be victims of a violation of any of the rights set forth in the Convention and who have exhausted other available local remedies. In the event of failure to obtain satisfaction from the national body, the petitioner is to have the right to communicate the matter to the Committee within six months. The Committee is to bring confidentially any communication referred to it to the attention of the State party alleged to be violating any provision of the Convention, but the identity of the individual or groups of individuals concerned is not to be revealed without his or their express consent. Within three months, the receiving State is to submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State. The Committee is to consider communications in the light of all information made available to it by the State party concerned and by the petitioner. The Committee is not to consider any communication from a petitioner unless it has ascertained that the petitioner has exhausted all available domestic remedies. However, this is not to be the rule where the application of the remedies is unreasonably prolonged. The Committee is to forward its suggestions and recommendations, if any, to the State party concerned and to the petitioner. The Committee is to include in its annual report a summary of such communications and, where appropriate, a summary of the explanations and statements of the States parties concerned and of its own suggestions and recommendations.

(b) *International Covenant on Civil and Political Rights and Optional Protocol thereto*

552. The Covenant also provides for a reporting procedure as the main method of international implementation. The instrumentality of implementation is the Human Rights Committee, an organ established by the States parties to the Covenant. The Committee consists of 18 members elected by the States parties and serving in their personal capacity. The States parties to the International Covenant on Civil and Political Rights undertake to submit reports on the measures they have adopted which give effect to the rights recognized in the Covenant and on the progress made in the enjoyment of those rights. These reports are submitted to the Human Rights Committee, the task of which is to study the reports submitted by the States parties and to transmit its reports and such general comments as it may consider appropriate to the States parties. The Committee may also transmit these comments to the Economic and Social Council along with the copies of the reports which it has received from States parties. The States parties have the right to submit observations on any comments that may be made (articles 28, 29 and 40 of the International Covenant on Civil and Political Rights).

553. In addition to the reporting system, the International Covenant on Civil and Political Rights also provides for a system of inter-State proceedings in matters concerning the application of the Covenant and for the conciliation of differences arising in this regard. Under the Covenant this system is optional. It operates only if a State party declares that it recognizes the competence of the Human Rights Committee to receive and consider communications to the effect that a State party claims that another State party is not fulfilling its obligations under the Covenant. This optional system operates only on a reciprocal basis. Only a State which has made a declaration recognizing the competence of the Human Rights Committee in regard to itself is authorized to set the procedure in motion with regard to another State party which has also recognized this competence of the Committee. Moreover, the system will start operating only when the States parties have made declarations recognizing the competence of the Committee in regard to State-to-State proceedings.

554. If these general conditions are complied with, a State party to the Covenant may, if it considers that another State party is not giving effect to the provisions of the Covenant, bring the matter to the attention of that State party. The receiving State shall afford the State which sent the communication an explanation or any other statement clarifying the matter. If the matter is not adjusted to the satisfaction of both States parties concerned within six months either State has the right to refer the matter to the Human Rights Committee. It is a condition for any action on the part of the Committee that all available domestic remedies have been invoked and exhausted in the matter in conformity with the generally recognized principles of international law. This is not the

rule where the application of the remedies is unreasonably prolonged. The task of the Committee is to make available its good offices to the States parties concerned with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in the Covenant. The examination of State-to-State communications of the described type takes place in closed meetings of the Committee. The States concerned have the right to be represented when the matter is being considered in the Committee and to make oral and written submissions. If a solution is reached the Committee confines its report to a brief statement of the facts and of the solution reached. If a solution based on respect for human rights and fundamental freedoms as recognized in the Covenants is not reached, the Committee confines its report to a brief statement of the facts. The written submissions and the record of the oral submissions by the parties concerned are attached to the report which is communicated to the States parties (article 41).

555. The Covenant provides for the establishment of an additional organ: if a matter referred to the Committee is not resolved to the satisfaction of the parties concerned, the Human Rights Committee may, with the prior consent of the States parties concerned, appoint an *ad hoc* Conciliation Commission. The Commission shall consist of five persons acceptable to the States parties concerned. If the States parties fail to reach agreement on all or part of the composition of the Commission, the Human Rights Committee is authorized to fill the vacancies on the Commission by electing the necessary number of members from among its own (the Committee's) members by secret ballot, by a two-thirds majority vote. The main task of the *ad hoc* Conciliation Commission is to make available its good offices to the States parties concerned with a view to an amicable solution on the basis of respect for the Covenant. If such a solution is not reached, the Commission's report shall embody its findings on all questions of fact as well as its views on the possibilities of an amicable solution of the matter (article 42).

556. The Human Rights Committee is to submit to the General Assembly through the Economic and Social Council an annual report on its activities (article 45).

557. The Optional Protocol provides, as far as the States parties to the Protocol are concerned, for a third method of implementation of the International Covenant on Civil and Political Rights, additional to the reporting procedure and the system of State-to-State communication and conciliation. A State party to the Covenant that becomes a party to the Protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State party of any of the rights set forth in the Covenant. The right to communicate with the Committee is given to individuals claiming to be victims of a violation, irrespective of their nationality or lack of it. The right to address communications to the Committee is subject to the exhaustion by the individual concerned of all available domestic remedies. A communication which is anonymous or which the Human Rights Committee considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of the Covenant is inadmissible. The Committee is called upon to bring any communication submitted to it under the Protocol to the attention of the State party concerned. The receiving State undertakes to submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State. The Committee considers communications received under the Protocol in the light of all written information made available to it by the individual and by the State party concerned. The Protocol provides that the Human Rights Committee shall not consider any communication unless it has ascertained that the matter is not being examined under another procedure of international investigation or settlement. The rule of exhaustion of all available domestic remedies applies under the Protocol in the same way as it applies under the Covenant.

558. Following its consideration of communications, the Commission is to forward its views to the State party concerned and to the individual.

Chapter V

CONCLUSIONS AND RECOMMENDATIONS

1. *Preliminary observations*

559. An analysis of the data collected shows clearly that the application of the principles set forth in article 27 of the International Covenant on Civil and Political Rights is an extremely complex matter which does not readily admit of a uniform solution. These principles, like all other rules laid down in the Covenants were unquestionably meant to have universal application; it is therefore desirable that they should be put into effect wherever ethnic, religious or linguistic minorities exist. Nevertheless, when it comes to determining what groups constitute minorities, all kinds of difficulties arise. We have seen that, religious minorities apart, relatively few States expressly recognize the existence in their populations of groups described as "ethnic or linguistic minorities" and that, while a considerable number of States have introduced measures granting special rights to various ethnic and linguistic groups, the majority prefer not to apply the term "minorities" to them. The scope of the measures also varies from country to country, and very frequently from group to group within a country. Nevertheless, in spite of reticence, differences of opinion, and persisting wariness of any international system for the protection of minorities, some general criteria for the application of article 27 must be laid down. The extremely terse wording of the article calls for additional indications; the wide diversity of situations that arise must be taken into account, without prejudice, however, to the universal applicability of the rule. In this connexion, the observations of participants in the seminar held in Ohrid, Yugoslavia, in 1974 should be borne in mind:

> ... though the basic principles of respect for human rights were applicable to members of all minorities, the variety of the historical and socio-economic conditions under which minorities had been formed and developed in various regions of the world might require a diversified approach to the problem of the protection and promotion of their human rights. Minorities, having developed in countries very different from the point of view of their historical, economic and social evolution, each had their own characteristics. It was pointed out that, taking into account the specific economic and social features of the developing countries, European criteria and the results of European experience could not necessarily apply to the question of minorities in those countries. Some speakers felt, however, that all minorities, notwithstanding their diversity, had certain fundamental problems in common.[1]

2. *The concept of a minority*

560. The first chapter of the present study was devoted to an analysis of the concept of a minority, with particular reference to the observations of various Governments on the factors to be included in a definition of the term "minority". Reference was also made to the fact that the Sub-Commission on Prevention of Discrimination and Protection of Minorities had on several occasions submitted draft definitions to the Commission on Human Rights, which had not however reached any decision on the definitions.

561. At the present stage, it would be illusory to suppose that a definiton likely to command general approval could be achieved. In the view of the Special Rapporteur, such a definition would certainly be of great value on the doctrinal plane, but it should not be considered a pre-condition for the application of the principles set forth in article 27 of the Covenant. There are other examples of the occasional application of a rule in positive law without general agreement having been reached on the precise meaning of its terms. It should be noted in this connexion that the Commission on Human Rights did not consider it necessary to define the term "minority" before setting up the Sub-Commission on Prevention of Discrimination and Protection of Minorities. It will also be recalled that the General Assembly of the United Nations did not wait for an exhaustive and universal definition of the notion of the "right of peoples to self-determination" before proclaiming the application of the principle.

562. The problem of defining the term "minority" has never been an obstacle to the drawing-up of the numerous international instruments containing provisions on the rights of certain groups of the population to preserve their culture and use their own language. The terminology used to refer to such groups varies from one instrument to another. We have seen, for example, that the UNESCO Convention against Discrimination in Education mentions "national minorities", while the expression "national, ethnical, racial or religious group" is used in the Convention on the Prevention and Punishment of the Crime of Genocide and "racial or ethnic groups" in the International Convention on the Elimination of All Forms of Racial Discrimination. Further examples are the fact that the agreement signed in 1946 between the Italian and Austrian Governments speaks of the "German-speaking inhabitants" of Bolzano Province and some communes of Trento Province; that the agreement between Pakistan and India refers to "minorities"; that the 1954 memorandum of understanding on the status of Trieste refers to Italian and Yugoslav "ethnic groups"; and that the 1955 Austrian State Treaty speaks of the "Slovene and Croat minorities".

563. In the municipal law of States, even more varied terminology is used to refer to groups of the population the preservation of whose culture and the use of whose language are guaranteed by law or the constitution. In Belgium the term is "cultural communities"; in Romania reference is made to "co-inhabiting nationalities". In other countries, particularly in eastern Europe, the term "nationalities" is the only one in use. In yet others, the straightforward term "minority" is used. It will be noted

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[1] *Seminar on the Promotion and Protection of the Human Rights of National, Ethnic and Other Minorities*, Ohrid, Yugoslavia, 25 June–8 July 1974 (ST/TAO/HR/49), para. 22.

that in the above-mentioned cases no formal definition of the terms used has been considered necessary.

564. Application of the principles set forth in article 27 of the Covenant cannot, therefore, be made contingent upon a "universal" definition of the term "minority", and it would be clouding the issue to claim the contrary. Moreover, the question has so often been complicated by a desire on the part of some Governments to restrict or refine the definition that no minority is recognized as existing in their territory, and that consequently no international obligations arise for them in relation to the protection of minorities. If, however, the problem is examined without political prejudice and from a truly universal point of view, there can be no gainsaying that the essential elements of the concept of a minority are well known, and that the only point at issue as far as the definition is concerned is whether an indisputable objective "core" can be widened or restricted by means of a few controversial considerations.

565. In discussions on the definition of the term "minorities" two sorts of criteria have in fact been proposed: criteria described as objective and a criterion described as subjective.

566. The first of the criteria described as objective to which general reference is made is the existence, within a State's population, of distinct groups possessing stable ethnic, religious or linguistic characteristics that differ sharply from those of the rest of the population. The inclusion of such a component in the definition of the term "minority" is not controversial; as the Permanent Court of International Justice pointed out, the existence of such groups is a question of fact. It is therefore essential that it should be regarded as a basic element in any definition. A second objective criterion concerns the numerical size of such groups: they must in principle be numerically inferior to the rest of the population. But two remarks are called for in this connexion. In the first place, it must be emphasized that in countries in which ethnic, religious or linguistic groups of roughly equal numerical size coexist, article 27 is applicable to them all. In the second place, it seems sensible to take account of the difficulties that would arise from the application of article 27 to groups so numerically small that it would be a disproportionate burden upon the resources of the State to grant them special status. Here, a question of fact arises that can only be solved upon consideration of each particular case in the light of the following notion: that States should not be required to adopt special measures of protection beyond a reasonable proportionality between the effort involved and the benefit to be derived from it. A third objective criterion consists in the non-dominant position of the groups in question in relation to the rest of the population: dominant minority groups do not need to be protected; on the contrary they violate, sometimes very seriously, the principle of respect for the will of the majority which is a corollary of the right of peoples to self-determination. The last objective criterion concerns the juridical status of members of the above-mentioned groups in relation to the State of residence. It is generally accepted that they must be nationals of the State.

567. As to the subjective criterion, it has generally been defined as a will on the part of the members of the groups in question to preserve their own characteristics. If the existence of such a will had to be formally established before applying article 27, there would be reason to fear that any State wishing to evade the rule might justify its refusal by claiming that the groups themselves did not intend to preserve their individuality. Apart from this point, however, it must be said that the will in question generally emerges from the fact that a given group has kept its distinctive characteristics over a period of time. Once the existence of a group or particular community having its own identity (ethnic, religious or linguistic) in relation to the population as a whole is established, this identity implies solidarity between the members of the group, and consequently a common will on their part to contribute to the preservation of their distinctive characteristics. Bearing these observations in mind, it can be said that the subjective factor is implicit in the basic objective element, or at all events in the behaviour of the members of the group. It is possible to bring these considerations together in a tentative definition of the term "minority".

568. The Special Rapporteur wishes to emphasize that the definition he proposes is limited in its objective. It is drawn up solely with the application of article 27 of the Covenant in mind. In that precise context, the term "minority" may be taken to refer to: 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, traditions, religion or language.

3. *The recognition of minorities in the legal systems of States*

569. It has been noted above, in connexion with the question of the recognition of minority groups within States, that the approach adopted differs considerably according to the country concerned, and very often within a country according to the group concerned.[2] To summarize, the solutions adopted may be classified into four categories: (i) constitutional recognition of the existence of distinct groups and of the right of their members to a special régime, particularly with regard to the development of their culture and the use of their language; (ii) recognition of certain minorities and safeguards for the special rights of their members on the basis of *ad hoc* international juridical instruments; (iii) implicit recognition through laws or administrative measures concerning development of the culture of certain linguistic groups; (iv) non-recognition of minorities in the municipal legal order—which may go with either a political attitude of utter denial of the existence of such groups or an official attitude of neutrality which allows cultural or linguistic measures to be taken privately.

570. Obviously the desirable solution in all cases would be that constitutional instruments or *ad hoc* laws should contain provisions expressly recognizing the right of persons belonging to ethnic and linguistic groups to preserve and develop their culture and use their own language. In any event, it must be emphasized that the application of article 27 of the International Covenant on Civil and Political Rights should not be made contingent on the solution adopted in municipal legal systems; these must be brought into line with international obligations and not

[2] See paras. 59-81.

vice versa. If the existence of a minority group within a State is objectively demonstrated, non-recognition of the minority does not dispense the State from the duty to comply with the principles in article 27, which is entirely feasible if the appropriate laws or administrative measures are adopted—even in the absence of general recognition at the constitutional level.

4. *The sense of identity of minority groups and the freedom of choice of their members*

571. It has already been noted that the desire of members of minority groups to preserve their own characteristics and their own traditions is generally implied by the mere fact that a distinct group has continued to exist. In countries where ethnic or linguistic groups have been officially recognized as entities entitled to specific rights, no particular problem arises for determining whether such desire has been manifested, since the fact of recognition constitutes the official admission of the existence of such groups, which is thus established, and there is no further need to test it by invoking the subjective criterion. However, in the absence of official recognition, this criterion may be used for determining whether a minority group does exist. Indeed, when its members display in their everyday life a strong sense of identity, unity and solidarity, when they strive to maintain their traditions and culture and persevere, sometimes against heavy odds, in the use of their language, when they regard themselves and are regarded by others as belonging to a distinct group, it is logical to conclude that their general attitude should be viewed as a clear affirmation of their will to preserve and develop their own characteristics.[3]

572. These are manifestations which should be taken into account by States when formulating their policy towards persons belonging to minority groups. Only when a group has been assimilated to the point of giving up its traditions, its customs, its religion and the use of its language can it be assumed that such a group stands outside the scope of any special measure intended to safeguard the identity of minority groups.

573. There is however one problem to which attention should be drawn. It is possible that, within a minority group which is resolved to maintain its identity, some individuals will prefer to be assimilated into the majority population. If that is their free choice, obstacles should not be placed in their way in the name of a misconceived group solidarity. Any such obstacle would constitute a violation of the individual's freedom of choice; in other words, it is not acceptable that an individual should be forced to conform to the choice made by the greater part of the minority group to which he belongs (and in relation to which those individuals who have no desire to preserve their culture, language and religion are themselves in a minority). As the right to enjoy special measures of protection is accorded by article 27 of the Covenant to the individual members of minorities, each of them remains free to renounce them.

5. *Intergroup relations: difficulties and remedies*

574. It has been indicated that the tendency among many governments is to de-emphasize the scope of intergroup differences and to stress that the existence of various ethnic, religious and linguistic groups does not constitute a problem. While the concern of governments for the cohesion and unity of their people is amply justified, the fact that intergroup tension may lead to violent political agitation or even threaten the stability of the political structure of States should not be disregarded.[4]

575. An analysis of the available information tends to show that intergroup tension and friction may be attributed to a number of causes. They include, in particular, the adoption by States of a policy of forced assimilation, the discriminatory practices to which population groups may be subjected, economic imbalance between population groups, the differences in outlook between the groups, the stereotyped views held by groups concerning one another and the lack of communication between groups, as well as, in some developing countries, the negative consequences of colonialism. It appears that harmonious relations between the various ethnic, religious and linguistic groups within a country depend to a large extent on the attitude of the dominant political forces of the society of that country and on their willingness to allow members of each group to pursue their economic, social and cultural development according to their own traditions in an atmosphere free of discrimination. When population groups are able to participate fully in the political, economic and social life of their country, when the richness and the contributions of their culture are recognized, they gain the sense of security which is indispensable for the elimination of intergroup tension.

576. States should therefore undertake to combat the causes of intergroup antagonism and adopt concrete measures designed to promote understanding, co-operation and harmonious relations between population groups. The elimination of tension and friction cannot be achieved if the realities of cultural, religious and linguistic differences between the various components of the society concerned are not taken into account.

6. *The policies followed by governments with respect to persons belonging to ethnic, religious and linguistic minorities*

577. Because of the differences of nature, origin, attitude and size that minority groups present, government policies towards them vary from one country to another, and often from group to group within the same country. There are even instances where the official policy, as proclaimed, does not correspond with actual practice.[5] In those countries surveyed which have recognized the existence within their territories of ethnic and linguistic groups as entities requiring a special status, a policy based on a pluralistic concept is applied. In some of these countries, the establishment of a federal structure of government or the granting of autonomy to a particular region has been considered an efficient means of safeguarding and protecting the individuality and the rights of these groups. Such a solution presupposes a geographical concentration of the minority groups concerned. While the merits of such measures are obvious, they can create unbalance since it is often impossible to provide an equivalent protection to

[3] See paras. 244-265.

[4] See paras. 266-292.

[5] See paras. 293-315.

other ethnic and linguistic groups residing in different areas of the same State. In other countries the pluralistic concept has been implemented through the adoption of measures granting to members of minority groups special rights within the framework of a unitary system of government. Such a solution is usually adopted when minority groups are scattered throughout the country concerned.

578. In countries in which minority groups are not explicitly or implicitly recognized, assimilation is generally the policy adopted. A sign that such a policy is applied towards linguistic minorities is the granting of official status only to the language spoken by the majority of the population.

579. Attention should be drawn to the particular situation of developing countries. Because of the fragility frequently found in the society of these countries, the values of national unity, security of the State and loyalty to the State are often stressed. At the same time, the multi-ethnic and multilingual character of many of these countries is a fact to be reckoned with. These apparently conflicting requirements have led a number of them to regard assimilation of the minority groups as an appropriate objective.

580. The Special Rapporteur is of the opinion that assimilation is a process which should in no case be imposed on members of minority groups but should always depend on their free will. Experience shows that in a multicultural society, the most effective way to build a just, peaceful and united nation is for the State concerned to adopt a policy which allows members of ethnic, religious and linguistic groups to preserve their own characteristics.

581. The need to safeguard the integrity of the State and to avoid encouraging separatism is of course the legitimate concern of any government. This may be regarded as a natural limit to any policy of protection for minorities, even a policy pursued in the form of a very broad pluralism. Nevertheless, it is a matter for regret that concern to avoid weakening the integrity of the State or opening the door to separatist tendencies sometimes presents an obstacle to the adoption of special measures in favour of individuals belonging to minority groups.

7. *Non-discrimination as a pre-condition of special measures in favour of persons belonging to ethnic, religious and linguistic minorities*

582. It is generally recognized that the effective implementation of the right of persons belonging to ethnic, religious and linguistic minorities to enjoy their own culture, to profess and practise their own religion and to use their own language requires, as an absolute pre-condition, that the principles of equality and non-discrimination be firmly established in the society in which those persons live.[6]

583. Members of minority groups are entitled to non-discriminatory treatment, as is the rest of the population; furthermore, as indicated elsewhere in the study, non-discrimination as applied to them means substantially non-discrimination against the groups to which they belong. Indeed, as an author rightly points out, "many of the desires, needs and values of an individual arise from and are identified with a way of life characteristic of a group, and can be realized only through group activity". The available information shows that in some countries persons belonging to certain minority groups are for various reasons and in a number of ways victims of discriminatory practices.[7]

584. Undoubtedly, all States have the duty to take all appropriate steps, including constitutional and legislative measures, in order to ensure that members of minority groups enjoy their fundamental human rights on a basis of equality and in an atmosphere free of discrimination. It is imperative that States which have not yet done so should ratify the International Convention on the Elimination of All Forms of Racial Discrimination.

585. Respect for the uniqueness and individuality of persons with different cultural, religious and linguistic backgrounds is closely linked to a strict application of the principles of equality and non-discrimination. It must be emphasized that while the two concepts are distinct—in the sense that equality and non-discrimination imply a formal guarantee of uniform treatment for all individuals, whereas protection of minorities implies special measures in favour of members of a minority group—the purpose of these measures nonetheless is to institute factual equality between the members of such groups and other individuals. This shows that prevention of discrimination, on the one hand, and the implementation of special measures to protect minorities, on the other, are merely two aspects of the same problem: that of fully ensuring equal rights to all persons.

586. The important guiding principle is that no individual should be placed at a disadvantage merely because he is a member of a particular ethnic, religious or linguistic group. Above all, in any multi-ethnic, multireligious and multilinguistic country, the strict application of the principles of equality and non-discrimination is an indispensable requirement for maintaining the political and spiritual unity of the State concerned and achieving understanding and harmonious relations between the various components of society.

8. *Nature of the obligation imposed on States by article 27 of the International Covenant on Civil and Political Rights*[8]

587. It is well known that serious misgivings were expressed, in the discussions leading up to the adoption of article 27 of the International Covenant on Civil and International Covenant on Civil and Political Rights, on the scope of the following words: "persons belonging to such minorities shall not be denied the right ... to enjoy their own culture ...". One widely held view was that the use of the words "shall not be denied" meant that States and Governments were not obliged to take positive measures, involving, for example, administrative action or financial support. The only obligation imposed upon them was not to deny or impede the enjoyment and exercise of the rights stipulated for members of minorities.

588. In the opinion of the Special Rapporteur, such an interpretation is too restrictive and does not meet the

[6] See paras. 316-326.

[7] Otto Klineberg, Background Paper C, prepared for the seminar on the multinational society held in Ljubljana, Yugoslavia, in 1965.

[8] See paras. 211-217.

requirements of the situation. As regards culture, for instance, it was pointed out that adequate cultural development required the provision of considerable human and financial resources, and that consequently the right of persons belonging to a minority to preserve their own culture would become entirely meaningless if the Governments concerned did not provide assistance. There seems to be no doubt about governmental responsibility. Whatever the country concerned, there are few if any groups that possess the necessary means to carry out a task of such magnitude. In order to give effect to the rights set forth in article 27 of the Covenant, active and sustained measures are required from States. A purely passive attitude on their part would render those rights ineffective.

9. *Application of the principles set forth in article 27 of the International Covenant on Civil and Political Rights*

(a) *General observations*

589. The Special Rapporteur wishes to emphasize that, in his opinion, the rights provided to members of ethnic, religious and linguistic minorities under article 27 should be regarded as forming an integral part of the system of protection of human rights and fundamental freedoms established after the Second World War by the United Nations. They are not intended to confer a privileged status on some groups as compared to others, but they may be considered as special in the sense that they address themselves to certain persons as members of specific groups and entail the adoption by States of a number of measures in addition to those required to guarantee to all persons living within their territories respect for and protection of human rights and fundamental freedoms.

590. Another point must also be stressed. On the basis of a logical and literal interpretation of article 27, the rights relating to culture have been regarded as referring to members of ethnic minorities, the rights relating to the practice of religion as referring to religious minorities, and the rights relating to the use of language as referring to linguistic minorities. It is evident that when a minority is both ethnic and linguistic, its members should enjoy both categories of rights. It should also be borne in mind that the dividing line between culture and language—and to a lesser degree between culture and religion—is not as clear as it may appear. Therefore, some aspects of the right relating to culture concern not only persons belonging to ethnic minorities but also persons belonging to linguistic or religious minorities. Although the three categories of rights have been examined separately in the study, one should not lose sight of the link that exists between them.

(b) *The right of persons belonging to ethnic minorities to enjoy their own culture*

591. While many governments have made statements indicating that in their respective countries members of ethnic groups are free to preserve and develop their own culture, this right is expressly affirmed in the constitution or in the law of a relatively small number of countries. Furthermore, very few among those countries have adopted comprehensive legislative and administrative measures specifying the modalities under which the preservation and the development of the culture of minority groups are to be put into effect. In most cases, the action taken has been of a fragmentary character. The analysis of the available information shows that when members of ethnic groups are concentrated in certain areas, they have greater opportunities to preserve and develop their culture. Naturally, in countries in which areas inhabited mainly by particular ethnic groups have been granted political autonomy, responsibility for cultural policy usually rests upon the local administrations, but they cannot fulfil their task when they lack sufficient resources and receive no financial assistance from the central government.[9]

592. As the preservation of the cultural identity of minority groups is of particular importance to their survival, not only should their right to the development of their own culture be recognized in constitutions and in laws, but specific action should be taken concerning the implementation of this right.

593. In the field of literature, measures taken by some States include publication and translation of books in minority languages, the establishment of specialized publishing enterprises, financial assistance to writers belonging to minority groups, the creation of special cultural sections for minority groups within departments of culture, research work on the culture of minority groups and on the structure of the languages spoken (this point is of particular importance in developing countries). Among measures taken in the field of the arts, the creation by governments of agencies financed by public funds is of great importance. The arts councils which have been established in several countries play a significant role in the protection and promotion of the arts of minority groups. Other measures include the organization of activities such as festivals of the arts, exhibitions of art work, the constitution of theatre companies and the formation of dance troupes. Needless to say, the initiative of members of minority groups is the pre-condition of all progress in this field, but public authorities have to encourage and support it.[10]

594. As regards the diffusion of the culture of minority groups, the action taken in a number of countries consists in particular in drawing up programmes designed to build up library systems in which books written in the languages spoken by minority groups would be readily available, in setting up within national museums special sections devoted to minority groups and in establishing cultural centres dealing exclusively with matters of interest to them.[11] In some countries socio-cultural associations have been constituted which set as their objective the propagation of the culture of minority groups and also maintain liaison between public authorities and members of the groups concerned.

595. It is a generally accepted view that to be effective a cultural policy must afford a variety of opportunities for the wide dissemination of the culture concerned. The facilities and methods available in the modern world for the spreading of culture should therefore be fully exploited. Apart from the traditional means, such as libraries, museums and the press, a most important contribution is made today by radio and television. Another element to be taken into account is the role played by committees on the arts and culture, cultural associations, councils for cultural

[9] See paras. 329-385.

[10] See paras. 356-370.

[11] See paras. 371-378.

affairs, artists' unions, etc. in facilitating the diffusion of culture.

596. With respect to the preservation of the legal traditions of minority groups,[12] the general tendency is to apply a uniform set of rules throughout the country. However, in countries in which political autonomy has been granted to areas where a minority group is concentrated, matters of private law are often within the competence of the local legislature. In Africa and Asia, particularly in the countries in which customary law is an integral part of the general legal system, various ethnic groups are still governed in matters of personal status and other fields of private law by their own rules. There cannot be any doubt that an effective and full protection of the culture of minorities would require the preservation of their customs and legal traditions, which form an integral part of their way of life. However, in the opinion of the Special Rapporteur, there is ample justification for the widely expressed view that the maintenance of juridical institutions among minority groups ought to be conditioned by the State's legislative policy.

597. For members of minority groups, the right to maintain and to promote their cultural heritage is an essential guarantee. Governments have, therefore, the duty to provide them with the means of reaching this goal. Nevertheless, it must be recognized that the governments of many countries would confront serious problems in fulfilling a task of this nature. It is impeded by economic and social obstacles, such as lack of financial resources, a low standard of living and the inadequacies of educational systems which perpetuate inequality of opportunity. The extra burden of special programmes designed to meet the special needs of particular groups is therefore a factor which must be taken into account. This does not mean that governments should not undertake to organize, assist and encourage the cultural development of their minority groups, within the limits of their resources.

598. Education is another field in which enormous efforts are necessary to promote the culture of the members of minority groups.[13] It is self-evident that their culture will not develop if they are denied the right to education or are treated in a discriminatory manner in the field of education. Indeed the available information suggests that for a variety of reasons—historical circumstances, deprivation, low level of economic development, inferior social status, prejudice on the part of the dominant sectors of society, *de facto* segregation—members of some groups confront in a number of countries severe obstacles to their quest for equality in the field of education. Educational policy should therefore be considered a key element in evaluating the situation of persons belonging to ethnic and linguistic groups as regards their right to enjoy their own culture. It is imperative that all States apply strictly the principle of non-discrimination and equality in the matter of education and adhere to the principles set forth in the UNESCO Convention against Discrimination in Education. The establishment, whenever possible, of special schools for children belonging to minority groups should be regarded as a fundamental measure for the educational development of persons belonging to minority groups. However, it is equally important that their right to enter any school of their choice, whether or not minority schools are available, should be guaranteed.

599. The experience of States that have pursued a policy of protecting the cultures of minority groups provides valuable indications of what should be done to implement article 27 of the Covenant. A great deal depends on the distinctive characteristics of each minority and the spontaneous measures it takes. In general, it can be said that States are obliged not only to allow such measures to be pursued and to support them, but also to contribute by direct action to safeguarding the cultural values peculiar to minority groups in such a way that the numerical inferiority of the latter in relation to the rest of the population and a lack of resources do not lead to the extinction of those values. The objective to be attained is the preservation and natural development of the cultural identity of minorities: the State is therefore called upon to adopt all necessary measures to that end.

(c) *The right of persons belonging to linguistic minorities to use their own language*

600. Measures taken in various States concerning the use of minority languages in official and non-official matters, in the media and in the school system have been described in detail in the present study.[14]

601. In all plurilinguistic societies the selection of a language as an official language is primarily a political decision based on a number of factors, such as the numerical importance of the respective linguistic groups, their political and economic position within the country concerned, the existence at the frontiers of the country concerned of a State in which the main language is one which is spoken by a minority group of that country. A further consideration, particularly in the developing countries, is whether the languages spoken have developed to the point where they can be used as an effective means of communications in all fields.

602. In the countries surveyed, various types of approach have been followed as regards the status of the languages spoken by minority groups. One type of solution given to the problem is to declare equally "official" all the languages spoken by the main linguistic groups. In a second type of approach, some minority languages, but not all, have been designated as official languages. According to a third type of approach, the languages of some groups have been given an official status at the regional level but not at the national level. In the fourth type of solution, minority languages have not been granted official status either at the national or at the regional level but their use is guaranteed by the constitution, by laws or by treaties in a wide range of activities. It is to be noted, however, that among the countries of Africa and Asia, a number have not granted official status to any of the languages spoken by members of minority groups. They have instead selected as the national language the language spoken by one of the main ethnic groups of the country.

603. The problem of the status of minority languages is of great importance, particularly since it conditions the régime governing their use in relations between members of

[12] See paras. 379-385.

[13] See paras. 341-355.

[14] See paras. 429-521.

the minorities and the political authorities, in judicial procedure and in official documents. A uniform solution is difficult to apply in these fields. Nevertheless, it seems entirely justifiable that, in all cases where a minority language does not have official status, adequate facilities should be made available to members of the minority linguistic group to ensure that they are not at a disadvantage merely because they speak a different language from the majority. In judicial proceedings and relations with the authorities, for example, provision should be made for a system of translation at the expense of the State.

604. The use of the languages of minority groups in the educational system is a crucial test for determining the ability of these groups to maintain and develop their own characteristics. Language being an essential element of culture, the capacity of a minority group to survive as a cultural group is in jeopardy if no instruction is given in its language. Therefore the efficiency of measures concerning the cultural life of a group deprived of instruction in its own language is open to question.

605. It must be recognized, however, that in some countries—developing countries in particular—there are practical difficulties that can impede the use of languages of minority groups as languages of instruction. The additional cost to governments of the special arrangements necessary for this purpose is one of these factors. The question is therefore closely linked with the economic position of the countries concerned. Providing instruction in minority languages generally involves the construction of new buildings, the printing of new textbooks (and often an enormous work of translation) and the training of new staff. The rules governing the use of minority languages in the school system differ from country to country, from group to group within a country and also according to the level of instruction envisaged. Indeed, measures that may be considered practical at the primary level may not necessarily be applicable at the secondary or at the university level. Attention is drawn in this connexion to that part of the study which contains an analysis of the problems confronted by governments in this connexion.[15]

606. Some further observations need to be made with regard to the use of minority languages in instruction. In conformity with the principle of non-discrimination, States should ensure that members of minority groups are given the opportunity to be taught in the national language of the country concerned even when teaching in the minority language is provided. In this respect, article 5 of the Convention against Discrimination in Education adopted by UNESCO in 1960 should inspire the action to be taken by States. Under the terms of this article, the right of members of minority groups to carry on their own educational activities should not be exercised in a manner which prevents them from understanding the language of the community as a whole.

607. Another question that may be raised is whether the establishment of special schools or special classes for members of minority groups must depend on the number of pupils attending them. It may be useful at this juncture to recall the provisions on the matter contained in the Minorities Treaties adopted under the auspices of the League of Nations in 1919-1920. The treaty dealing with the rights of minorities in Poland, for example, refers to towns and districts in which there is "a considerable proportion of Polish nationals of other than Polish speech" and covers primary schooling only. Similar terms are used in the treaties dealing with minorities in the Serb-Croat-Slovene State and in Romania. The German-Polish Convention relating to Upper Silesia contains, however, some detailed provisions on the question. Under this Convention the needs of the minorities as regards public elementary and secondary education were to be supplied by means of the following educational institutions: (*a*) schools employing the minority language as the language of instruction, i.e. minority schools; (*b*) classes employing the minority language as the language of instruction, established in schools employing the official language of the country, i.e. minority classes; (*c*) teaching of the minority language, i.e. minority language courses.

608. With respect to the question of the number of pupils, the German-Polish Convention relating to Upper Silesia provided that a minority elementary school was to be established for the education of at least 40 children of a linguistic minority, and that minority language classes were to be established in elementary schools for the education of at least 18 pupils. With respect to secondary and higher education, minority State schools were to be established for the education of at least 300 pupils, and minority classes for the education of at least 30 pupils in each of the four lower classes and of at least 20 pupils in each of the higher classes.

609. The situation in the countries for which information on these questions is available has been described in the present study.[16] It appears that no universally applicable solution can be formulated. In each country, the decision on the matter depends on the manner in which the educational system as a whole is organized.

(d) *The rights of persons belonging to religious minorities*

610. As indicated above,[17] a comprehensive study on the question of discrimination in the matter of religious rights and practices was prepared by Mr. Arcot Krishnaswami, Special Rapporteur of the Sub-Commission, and on the basis of this study the Sub-Commission adopted a number of draft principles on freedom and non-discrimination in the matter of religious rights and practices.

611. In its resolution 1781 (XVII) of 7 December 1962, the General Assembly requested the Economic and Social Council to ask the Commission on Human Rights, bearing in mind the views of the Sub-Commission, to prepare a draft declaration on the elimination of all forms of religious intolerance and a draft international convention on the same subject. In 1964 the Sub-Commission submitted to the Commission a preliminary draft of a declaration.

612. With respect to the draft convention, at the twenty-second session of the General Assembly, the Third Committee adopted the preamble and the first article, on the basis of a text submitted by the Commission on Human Rights. From that time until its twenty-seventh session, the General Assembly did not consider the question.

[15] See paras. 498-521.

[16] See paras. 512-519.

[17] See paras. 225-227.

613. In resolution 3027 (XXVII) of 18 December 1972, the General Assembly decided to accord priority to the completion of a declaration before resuming work on the convention. In resolution 3267 (XXIX) of 10 December 1974, the General Assembly requested the Commission on Human Rights to submit to it, through the Economic and Social Council, a single draft declaration. Since 1974 the Commission has considered the question and at each of its sessions has set up an informal working group to elaborate the text of such a draft declaration.

614. The question of the elimination of all forms of religious intolerance logically includes the protection of the rights of members of religious groups. The facts recalled above show that for 15 years now the question has been under consideration by United Nations organs. For this reason, the Special Rapporteur feels that the only useful recommendation that he can make is that the Sub-Commission should urge the Commission on Human Rights to act with speed and complete as soon as possible the work that has been assigned to it by the General Assembly. In doing so, the Commission should bear in mind the impact of article 27 of the Covenant on the treatment of religious minority groups and the need for special measures to protect such groups.

(e) *Procedures aiming at ensuring the respect of the rights granted to members of ethnic, religious and linguistic groups*[18]

615. The International Covenant on Civil and Political Rights and the Optional Protocol thereto contain procedures of implementation more or less similar to those provided for in other international instruments on human rights. The Special Rapporteur hopes that they will be fully used with regard to article 27, not only because such procedures would contribute in a decisive manner to the effective respect of the rights granted by that article but also because the practice of using them would afford new elements for the clarification of the complex issues involved in the protection of minorities and of the many implications of the said article.

616. On the national level, it would be desirable for appropriate procedures to be provided to deal effectively with violations of the rights granted to members of minority groups under article 27. In the countries surveyed, violations of the principles of equality and non-discrimination and of freedom of conscience and religion are the only aspects of minority rights which can be remedied by the ordinary courts. No avenues of recourse of a judicial character are provided for violations of the right of members of ethnic and linguistic groups to enjoy their own culture and use their own language. It is arguable whether judicial action would be a proper procedure for settling problems arising from the implementation of such rights; clear and detailed legal provisions seem to be the essential ground for any judicial remedy. In some of the countries surveyed, the law allows anyone with grievances and complaints to address organs of the State other than the courts, usually by way of petition, in order to obtain redress. It would appear that measures of an administrative or political nature, such as the establishment of conciliation machinery or of investigative bodies which would include among their members persons belonging to minority groups, are also suitable procedures.[19] The particular features of the legal order in each country are obviously to be taken into account. However, it is to be hoped that there will be an increase in the number and the effectiveness of the remedies available to members of minority groups, in conformity with the general obligation imposed on States parties to the International Covenant on Civil and Political Rights and in consideration of the particular need to ensure the respect of the rights granted to members of those groups.

10. *Further measures to be taken at the international level*

(a) *Possibility of a United Nations declaration on the rights of members of minority groups*

617. The study clearly shows that the principles set forth in article 27 of the International Covenant on Civil and Political Rights are not applied in all countries. One of the reasons for this is the fact that, particularly as regards ethnic and linguistic minorities, the implications of the right of such minorities to preserve their own culture and use their own language are not clearly defined. With a view to helping States to carry out the task incumbent upon them, it would be useful to draw up certain principles to which the Governments of all States could turn for guidance. In the opinion of the Special Rapporteur, the function of such principles should be to contribute to the fulfilment of the objectives set forth in article 27 of the Covenant by indicating the means by which they can be achieved. The Special Rapporteur does not see any need to replace article 27 by a broader or differently conceived rule (which in any case would give rise to serious problems at the present stage, since although the Covenant has entered into force, many States have not yet ratified it). The essential requirement is to throw light on the various implications of article 27 and to specify the measures needed for the observance of the rights recognized by the article. Accordingly, on the basis of the conclusions of this study, the Sub-Commission might consider recommending to its superior organs the preparation of a draft declaration on the rights of members of minority groups, within the framework of the principles set forth in article 27 of the Covenant.

(b) *Bilateral and regional co-operation between interested States*

618. History shows that the minority problem can poison international relations. However, with the new standards set by the United Nations in the framework of human rights, minority groups can now play a positive role in international relations. When their rights are guaranteed and fully respected, minority groups can serve as a link between States which have among their population persons belonging to the same ethnic and linguistic groups, and thus help strengthen co-operation and promote peaceful and friendly relations between the countries concerned. This is a question which, it may be recalled, was emphasized at the seminar on the promotion and protection of the human rights of national, ethnic and other minorities.[20] The

[18] See paras. 522-558.

[19] Examples of such an approach are found in paras. 532-558.

[20] ST/TAO/HR/49, paras. 133-137.

Special Rapporteur strongly believes that bilateral agreements dealing with minority rights concluded between States where minorities live and the States from which such minorities originate (especially between neighbouring countries) would be extremely useful. It must be stressed, however, that co-operation with regard to the rights of members of minority groups should be based on mutual respect for the principles of the sovereignty and territorial integrity of the States concerned and non-interference in their internal affairs.

(c) *Regional seminars*

619. As already indicated, two world-wide seminars on the subject of minority rights were held in Yugoslavia, in 1965 and 1974 respectively, under the programme of advisory services in the field of human rights. They contributed to a better understanding of the problem and were extremely useful. The conclusions and recommendations made at the seminars are a source of inspiration for all States in which minority groups live. As the present study reveals, there are special problems in different regions of the world: those in African countries, for example, are different from those in European or Asian countries. In the opinion of the Special Rapporteur, it would be desirable to organize seminars on a regional basis dealing with the problems of minority groups in different parts of the world.

(d) *Fellowship awards*

620. Also under the programme of advisory services, human rights fellowships are awarded to candidates proposed by governments and nominated by the Secretary-General. A programme of fellowship dealing with the question of the protection of members of ethnic, religious and linguistic groups would undoubtedly contribute to increasing awareness and to an improvement in the situation in the countries from which the fellows come.

(e) *Action by the United Nations Educational, Scientific and Cultural Organization (UNESCO)*

621. The study reveals that many problems would have to be overcome before the right of members of minority groups to preserve their culture could be fully implemented in all countries. UNESCO, which has always been very active in initiating programmes dealing with the right to culture, has recently included in its plans of action the specific problems of minority groups. The Sub-Commission may, therefore, consider recommending to the competent organs of the United Nations that UNESCO should be encouraged to pursue the study of the cultural problems of minorities and give particular attention to the situation in developing countries.

(f) *Dissemination of the study*

622. Educational efforts on an international level are also a most effective way to promote awareness of the problems of minority groups. The present study is probably the first one in which the situation of minority groups in various countries of the world has been examined in a comprehensive manner. The Sub-Commission may wish to decide, as it has done in respect of previous studies it has undertaken, to recommend that the study should be printed for the use of Governments, specialized agencies, research centres, non-governmental organizations and any interested persons, and otherwise to give it wide publicity.

623. The Sub-Commission may also consider whether to retain the question of minorities on its agenda. Indeed, an analysis of the present situation would seem to indicate that there is a clear need for vigilance with respect to the enjoyment of the rights of members of minority groups.

ANNEXES

Annex I

HOW THE STUDY WAS PREPARED

1. At its twentieth session, in 1967, the Sub-Commission adopted resolution 9 (XX), relating to the protection of minorities, in which it decided, in particular, to include in the programme of its future work, and to initiate as soon as possible a study of the implementation of the principles set out in article 27 of the International Covenant on Civil and Political Rights with special reference to analysing the concept of minority taking into account the ethnic, religious and linguistic factors and considering the position of ethnic, religious or linguistic groups in multinational societies. On the recommendation of the Commission on Human Rights, the Economic and Social Council, in resolution 1418 (XLVI) of 6 June 1969, approved the Sub-Commission's decision and authorized it to designate a Special Rapporteur from among its members to carry out the study in question. At its twenty-fourth session, in 1971, the Sub-Commission adopted resolution 6 (XXIV) in which it appointed the author of the present report as its Special Rapporteur.

2. The above-mentioned resolutions of the Sub-Commission, the Commission on Human Rights and the Economic and Social Council give no indication of the procedure to be used in carrying out the study. In that regard, it should be borne in mind that the special rapporteurs of previous studies of discrimination undertaken by the Sub-Commission have usually followed the guidelines laid down by the Sub-Commission at its sixth session, and modified by the Commission on Human Rights at its tenth session, for the study of discrimination in education (E/CN.4/703, para. 97). Although the present study differs from those dealing with discrimination, the Special Rapporteur considered that the instructions in the above-mentioned guidelines offered a number of advantages and consequently decided to make use of them for the present study, subject, however, to certain modifications.

3. In the light of these guidelines, the Special Rapporteur adopted the following criteria in drawing up his report:

(*a*) The question considered in the study has been dealt with on a global basis;

(*b*) The report has been conceived as a factual and objective study describing the *de facto* as well as the *de jure* situation;

(*c*) Account has been taken of the relevant activities undertaken by United Nations bodies or specialized agencies and of the conclusions reached by those bodies;

(*d*) In addition to the material and information collected and embodied in his report in the form of an analysis, the Special Rapporteur has formulated conclusions and proposals to enable the Sub-Commission to make recommendations to the Commission on Human Rights concerning the problem under study;

(*e*) In drawing up his report, the Special Rapporteur has also borne in mind resolution IX adopted by the Commission on Human Rights at its twelfth session in 1956, which states that "the materials and studies in the field of discrimination should relate to States Members of the United Nations and of the specialized agencies and that such recommendations as may be made should be of an objective and general character, in accordance with the Charter of the United Nations";

(*f*) The report has been drawn up not only to serve as a basis for the Sub-Commission's recommendations, but also with a view to educating world opinion.

4. The procedure for preparing the study involved three successive stages: (*a*) collection, analysis and verification of material; (*b*) preparation of the report; (*c*) formulation of recommendations.

5. As in previous studies, the main sources of material have been the following: (*a*) Governments of States Members of the United Nations and members of the specialized agencies; (*b*) the Secretary-General; (*c*) the specialized agencies; (*d*) non-governmental organizations in consultative status with the Economic and Social Council; and (*e*) writings of recognized scholars and scientists. The Special Rapporteur prepared summaries of material dealing with each country and forwarded them to the Governments concerned for comment and supplementary data. Although this procedure gave rise to some delay in the preparation of the final report, the Special Rapporteur considered that it offered the best guarantee of objectivity. It was devised to enable the Special Rapporteur, on the basis of verified and checked data, not only to avoid controversies but to prepare the material in a rational, systematic and easily accessible manner.

6. At the request of the Special Rapporteur, the Secretary-General sent a note verbale on 24 October 1972 to the Governments of States Members of the United Nations and members of the specialized agencies, in which he indicated that he would be grateful to the Governments consulted for any help they could give the Special Rapporteur in the preparation of his study. He added that the Special Rapporteur wished, in particular, to receive information or observations on each of the points contained in the plan for the collection of information which was annexed to the note. Another annex to the note contained the criteria to be followed in the study.

7. In addition, the Director of the Division of Human Rights sent a letter on 30 October 1972 to the heads of the secretariats of the ILO and UNESCO inviting them to make available to the Special Rapporteur any documentation they thought relevant to the study, especially information on each of the points contained in the plan. In reply to this letter, the ILO and UNESCO sent a number of documents to the Special Rapporteur. UNESCO also submitted some comments on certain points in the study.

8. On 30 October 1972, a similar letter was sent to the heads of secretariat of the following regional intergovernmental organizations: Council of Europe, League of Arab States, Organization of African Unity, Organization of American States. The Secretariat has received replies from the Council of Europe and the League of Arab States.

9. The Director of the Division of Human Rights also sent a similar letter, dated 13 November 1972, to many non-governmental organizations in consultative status with the Economic and Social Council, chosen for their competence in the matter. The Secretariat has received replies from eight non-governmental organizations in category II: All-Pakistan Women's Association, Associated Country Women of the World, Bahá'i International Community, Friends World Committee for Consultation, International Commission of Jurists, World Alliance of Young Men's Christian Associations, World Confederation of Organizations of the Teaching Profession, World Young Women's Christian Association.

10. Pursuant to Sub-Commission resolutions 2 (XXVI) and 1 (XXVII), Governments which had not yet transmitted information were again called upon to do so in two notes verbales dated 14 December 1973 and 27 November 1974.[a]

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[a] In reply to the notes verbales of 24 October 1972, 14 December 1973 and 27 November 1974, the Special Rapporteur received information from the following Governments:

Australia
Austria
Bangladesh
Barbados
Belgium
Bulgaria
Canada
Chile
Denmark
Dominican Republic
Egypt
Fiji
Finland
German Democratic Republic

11. The Special Rapporteur prepared, with the assistance of the Secretariat, draft monographs summarizing the situation in the 76 countries listed in the following paragraph. Each draft monograph was communicated to the Government concerned, with the request that it submit observations and provide supplementary information, where appropriate, within a period of two months. When such observations or supplementary information were received, they were taken into consideration by the Special Rapporteur and the draft monographs were revised accordingly. In view of the decisions adopted by the United Nations General Assembly concerning the reduction of documentation, the Special Rapporteur felt that the previous procedure concerning country monographs should be modified and they have not been prepared as documents for general distribution as in the past. However, the Secretariat of the Sub-Commission has been requested to see to it that a copy of each monograph is available in case a member of the Sub-Commission wishes to consult it.

12. The 76 monographs prepared in accordance with the above procedure contain information on the situation of ethnic, religious or linguistic groups in the following countries:

Country	Monograph No.
Algeria	2
Argentina	42
Australia	62
Austria	24
Bangladesh	59
Barbados	19
Belgium	41
Bolivia	51
Brazil	37
Bulgaria	66
Burma	9
Canada	63
Chile	44
Colombia	32
Costa Rica	70
Czechoslovakia	65
Denmark	13
Dominican Republic	33
Egypt	16
El Salvador	56
Ethiopia	25
Fiji	5
Finland	8
France	50
German Democratic Republic	35
Germany, Federal Republic of	38
Ghana	18
Greece	75
Guyana	47
Hungary	46
India	36
Indonesia	57
Iran	17
Iraq	48
Israel	74
Italy	23
Japan	29
Kuwait	14
Laos [now Lao People's Democratic Republic]	11
Lebanon	45
Malawi	12
Malaysia	28
Mexico	64
Morocco	6
New Zealand	55
Niger	10
Nigeria	3
Norway	34
Pakistan	68
Panama	43
Paraguay	54
Peru	52
Philippines	27
Poland	21
Romania	30
Senegal	49
Sierra Leone	4
Singapore	73
Spain	31
Sri Lanka	1
Sudan	76
Sweden	26
Switzerland	22
Thailand	61
Tonga	15
Trinidad and Tobago	60
Tunisia	7
Turkey	20
Ukrainian SSR	58
Union of Soviet Socialist Republics	69
United Kingdom of Great Britain and Northern Ireland	72
United Republic of Tanzania	53
United States of America	71
Venezuela	39
Yugoslavia	67
Zaire	40

13. In preparing the present report, the Special Rapporteur has taken into account the information contained in these monographs. However, it must be pointed out that in some cases, owing to its fragmentary nature, the information collected has been of only very limited use. Because of the limited resources of the secretariat of the United Nations Division of Human Rights and the large number of studies undertaken by the Sub-Commission at the same time, no other monographs were prepared.

14. At the Sub-Commission's request, the Special Rapporteur prepared a preliminary report (E/CN.4/Sub.2/L.564) and then two progress reports (E/CN.4/Sub.2/L.582 and L.595) and a draft report (E/CN.4/Sub.2/L.621). Each of these documents was the subject of a debate in the Sub-Commission.[b] The draft report published under the symbol E/CN.4/Sub.2/L.621 was considered by the Sub-Commission at its twenty-eighth session, in 1975.[c] At its thirtieth session, in 1977, the Sub-Commission considered the final report of the Special Rapporteur (E/CN.4/Sub.2/384 and Add.1-7) and adopted resolution 5 (XXX), in which it endorsed his conclusions and recommendations, recommended that the Commission on Human Rights consider drafting a declaration on the rights of members of minorities, within the framework of the principles set forth in article 27 of the International Covenant on Civil and Political Rights, and requested the Commission on Human Rights to recommend to the Economic and Social Council that the report be printed and disseminated on the widest scale.[d]

15. After considering the conclusions and recommendations contained in the report of the Special Rapporteur (E/CN.4/Sub.2/384 and Add.1-7), the Commission on Human Rights at its thirty-fourth session adopted resolution 14 (XXXIV), in which it recommended that the Economic and Social Council request the Secretary-General to print the Special Rapporteur's study and to disseminate it as widely as possible. The Economic and Social Council, by its resolution 1978/16, followed the recommendation of the Commission on Human Rights.

(Foot-note [a] continued)

Germany, Federal Republic of
Greece
Guyana
Hungary
India
Iran
Iraq
Italy
Japan
Kuwait
Laos [now Lao People's Democratic Republic]
Malawi
New Zealand
Niger
Nigeria
Norway
Pakistan
Philippines
Poland
Romania
Singapore
Spain
Sweden
Switzerland
Thailand
Tonga
Turkey
Ukrainian SSR
Union of Soviet Socialist Republics
United Kingdom of Great Britain and Northern Ireland
United States of America
Yugoslavia

[b] See Sub-Commission resolutions 1 (XXV), 2 (XXVI) and 1 (XXVII) (E/CN.4/1100, chap. XIV; E/CN.4/1128, part B; and E/CN.4/1160, chap. XIX, respectively).

[c] E/CN.4/1180, chap. IV and annex II.

[d] See E/CN.4/1261, chap. XVII.

Annex II

PLAN FOR THE COLLECTION OF INFORMATION

I. Observations and opinions on the concept of minority and the scope of article 27 of the International Covenant on Civil and Political Rights

1. Observations and opinions on the following points:

(*a*) Interpretation of the term "minority". The Special Rapporteur envisages the following interpretation: for the purposes of the study, an ethnic, religious or linguistic minority is a group numerically smaller than the rest of the population of the State to which it belongs and possessing cultural, physical or historical characteristics, a religion or a language different from those of the rest of the population.

(*b*) Extent of the subjective factor involved in the desire, whether expressed or not, of the ethnic, religious or linguistic group to preserve its own characteristics, and particularly whether or not the desire of the ethnic, religious or linguistic group to preserve its own characteristics constitutes a factor relevant to the definition of the term "minority".

(*c*) Whether the number of persons belonging to the ethnic, religious or linguistic group is or is not a relevant factor for the definition of the term "minority".

2. Observations and opinions on the relationships between the concept of an ethnic, religious or linguistic minority and the concept of an ethnic, religious or linguistic group in a multinational society.

3. Observations and opinions on the applicability, for the benefit of members of ethnic, religious or linguistic groups in multinational societies, of the principles set forth in article 27 of the International Covenant on Civil and Political Rights.

II. General information

Existence of ethnic, religious or linguistic minorities

4. Information which can be used to determine the existence of ethnic, religious or linguistic minorities in the country.

5. Statistical or other data indicating the total population of the country and the proportion in this population of individuals who belong to ethnic, religious or linguistic minorities.

6. Information showing whether ethnic, religious or linguistic minorities are confined to a specific part of the country, or, on the contrary, are scattered throughout the territory of the country.

7. Information indicating whether ethnic, religious or linguistic minorities have, as groups, expressed the desire to preserve their own culture, religion or language. If so, by what means?

8. It should be noted whether such groups have been officially recognized as ethnic, religious or linguistic minorities and whether such recognition also implies express recognition of the right of such minorities to maintain and develop their own culture and to maintain their religious and linguistic traditions. Information on the criteria used to grant such recognition.

Background of the question

9. Historical survey of the origin and establishment of ethnic, religious and linguistic minorities in the country. It should be indicated in particular whether the presence of these minorities is due to the existence of an autochthonous population, immigration or an alteration of the country's borders.

10. Information on the historical evolution of ethnic, religious or linguistic minorities in the country. The following, for instance, should be indicated: (*a*) whether these minorities have increased or diminished in number; (*b*) whether they have shown a tendency to integrate themselves into the population of the country, or whether they have attempted to preserve their own characteristics.

General principles

11. Information indicating whether the country has entered into any international commitments with respect to the protection of minorities (or persons belonging to a minority) other than the International Covenant on Civil and Political Rights. Any bilateral or multilateral treaties in force to which the country is party and which contain such commitments should be mentioned. Information on the application of such treaties in the domestic legislation.

12. Information indicating the general principles applied in the country with respect to ethnic, religious and linguistic minorities. Reference should be made to the relevant texts (constitutional provisions, laws, regulations, judicial decisions) providing for special treatment for ethnic, religious or linguistic minorities or persons belonging to such minorities.

13. Information indicating whether an individual is considered a member of an ethnic, religious or linguistic minority on the basis of a definition prescribed by law or of the person's formally expressed will, when such status must be established for the purpose of according the individual special treatment.

III. Information concerning the right of persons belonging to ethnic minorities to enjoy their own culture

14. Information on measures guaranteeing persons belonging to ethnic minorities the right to equality before the law without discrimination and without distinction of any kind.

15. Information on measures that enable persons belonging to ethnic minorities to preserve their identity and cultural heritage. Reference should be made in particular to measures taken to ensure that these persons are effectively able to enjoy the right to autonomous cultural development, as regards literature, the graphic and dramatic arts, the establishment and maintenance of museums, theatres and libraries, and access to mass communications media such as the press, radio and television.

16. Information on measures enabling persons belonging to ethnic minorities to transmit their cultural heritage and way of life from generation to generation. It should be reported in particular whether the minority's legal traditions are maintained in private law (succession, matrimonial régime, etc.). An indication should also be given of the measures taken to permit persons belonging to ethnic minorities to preserve their customs, such as dietary practices and the wearing of distinctive clothing.

17. Information on measures to ensure the educational development of ethnic minorities. Indicate the methods and techniques used in setting up autonomous educational establishments for persons belonging to ethnic minorities.

18. Information on measures taken to guarantee persons belonging to ethnic minorities the right of association for the purpose of preserving and developing their own culture. Indicate whether this right extends across national borders and allows

persons belonging to ethnic minorities to maintain ties with their ethnic centre, if any.[a]

IV. Information concerning the right of persons belonging to a religious minority to profess and practise their own religion

19. Information on measures guaranteeing persons belonging to religious minorities the right to equality before the law without discrimination and without distinction of any kind.

20. Information on measures according official status to the religion professed by a minority.

21. Information on measures regarding the free participation of the members of a religious minority in the worship and rites of their religion (religious services, religious festivals, burials, days of rest prescribed by the religion, the use of symbols and images, processions, dress and dietary habits).

22. Information indicating whether persons belonging to a religious minority have the right to determine the conditions which must be fulfilled in order to occupy a position of leadership in the religious community. Indicate also whether there are restrictions with respect to financial management and to the acquisition and administration of the religious community's property.

23. Information on measures taken to ensure that members of a religious minority are not compelled to participate in or contribute to the exercise of the religious rites of other population groups.

24. Information on measures relating to the establishment and maintenance of religious institutions. Indicate whether measures have been adopted to provide the religious institutions of a minority with official assistance, for example, making available places of worship or paying the salaries of religious leaders. Information on measures relating to the protection of holy places, including religious buildings and cemeteries, and to reparations for war damage to holy places.

25. Information on measures adopted with respect to the establishment of denominational schools for the purpose of preserving the traditions or characteristics of persons belonging to a religious minority. Indicate whether such schools are subsidized directly or whether assistance is provided indirectly, for example by granting students schorlarships and allowances.

26. Information showing whether lay schools offer religious instruction to children belonging to a religious minority. Indicate also whether measures have been adopted to ensure that pupils belonging to a religious minority are not given religious instruction which is not in keeping with their religious traditions and characteristics.

27. Indicate whether the validity of the religious laws and customs of a religious minority is recognized in such matters as family law (marriage and dissolution of marriage, parental authority, maintenance, law of succession). Indicate also whether minority religions are taken into consideration in cases of conscientious objection.

28. Information showing to what extent persons belonging to religious minorities are free to maintain ties with their religious centre, if any.

29. Information indicating measures which ensure that persons belonging to religious minorities are able to enjoy the rights granted to them in community with the other members of their group.

V. Information concerning the right of persons belonging to linguistic minorities to use their own language

30. Information on measures guaranteeing persons belonging to linguistic minorities the right to equality before the law without discrimination and without distinction of any kind.

31. Information on measures concerning the use of minority languages in official matters, particularly as regards:

(*a*) Recognition of the official status of these languages;

(*b*) Use of these languages in representative assemblies, in official documents, publications and notices and in radio and television broadcasts;

(*c*) Use of these languages in the courts;

(*d*) Use of these languages in contacts with the authorities;

(*e*) Use of these languages to name geographical features.

32. Information on measures concerning the use of minority languages in non-official matters, particularly as regards:

(*a*) Use of these languages in private life and social relations;

(*b*) Use of these languages in religious services;

(*c*) Use of these languages in public meetings;

(*d*) Use of these languages in commerce and industry;

(*e*) Use of these languages in newspapers, books, periodicals and private radio and television broadcasts.

33. Information on measures concerning the use of minority languages in education:

(*a*) Kindergartens;

(*b*) Elementary schools;

(*c*) Secondary schools;

(*d*) Institutions of higher education;

(*e*) Vocational schools and other special schools.

34. Indicate whether the methods and techniques used to provide education in the language of linguistic minorities involve the establishment of autonomous institutions, bilingual schools or separate classes within schools.

35. Information on measures concerning the establishment and maintenance of cultural institutions (libraries, museums, theatres, literary societies, etc.) for the purpose of preserving the linguistic traditions of minority groups.

36. Information on measures taken to extend official grants or some other kind of assistance to schools which use minority languages as languages of instruction.

37. Indicate, in particular, whether funds are allocated for the construction and repair of school buildings, the training and remuneration of the teaching staff and the preparation of text-books.

38. Information showing to what extent persons belonging to linguistic minorities are free to maintain ties with their linguistic centre, if any.

39. Information indicating measures which guarantee that persons belonging to linguistic minorities are able to enjoy the rights granted to them in community with the other members of their group.

VI. Avenues of recourse open to members of ethnic, religious or linguistic minorities

40. Information on measures according effective protection to members of ethnic, religious or linguistic minorities who believe that their rights have been violated. Indicate in particular whether special

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[a] A number of references have been made in the plan to the ethnic, religious and linguistic centres of minorities. It would seem necessary in this connexion to draw attention to paragraphs 73 and 76 of the report of the seminar on the multinational society held at Ljubljana, Yugoslavia from 8 to 21 June 1965 (ST/TAO/HR/23). These paragraphs read as follows:

"73. Certain speakers emphasized that the right of association must, except in emergency situations, extend across national borders; where the ethnic, religious, linguistic or national group involved had counterparts in other nations, it had to be permitted, in order to maintain its desired special identity, to maintain both formal and more direct informal ties with the latter. In certain instances, according to this view, however elusive the notion of such association might seem to others not directly involved, a continuity of contact with the group's country of origin, or cultural or religious centre, was indeed the only means of assuring its collective cultural, religious or linguistic survival."

"76. The question arose whether association across national borders, however the notion was conceived, should be of a strictly non-political character. There appeared to be general agreement that this question should receive an affirmative reply."

procedures exist for deciding on administrative measures which concern them.

VII. Relations between ethnic, religious or linguistic minorities and other groups of the population

41. Information on relations existing between the various ethnic, religious and linguistic minorities in the country.

42. Information on measures taken to promote understanding, tolerance and friendly relations between the various ethnic, religious and linguistic groups.

43. Information on measures taken to ensure that the preservation of the characteristics and traditions of ethnic, religious or linguistic minorities does not conflict with the security, general policy and development of the country.

Annex III

SUMMARY OF AVAILABLE INFORMATION ON THE EXISTENCE, SIZE AND PROPORTION OF ETHNIC, RELIGIOUS AND LINGUISTIC MINORITIES WITHIN THE POPULATION OF SOME SELECTED COUNTRIES

This annex in no way purports to present exhaustive statistical data on the composition of the population of the countries studied. The Special Rapporteur would not have been in a position to undertake such a task, which would necessitate a specific competence and very extensive documentation. He nevertheless considered that a number of concrete examples would help to highlight a fact which, surprisingly enough, is sometimes disputed: the existence, in every continent, of various ethnic, religious or linguistic groups in a great many national communities. An awareness of this fact is helpful in understanding the universal nature of the problem of minorities. All the information which follows is contained in the country monographs; each monograph was transmitted to the Government concerned for comment,[a] in accordance with the procedure followed in preparing the study. Moreover, a large part of the data was communicated by the Governments themselves in their replies to the questionnaire circulated by the Special Rapporteur. The fragmentary nature of the information furnished, and the difference in approach from country to country, are often due to the type of official information received or to the nature and quality of information which may have been obtained from other sources.

Australia

Eighty per cent of the population are of British stock. Immigrant groups from various European countries constitute about 18 per cent of the population, and the Aboriginals, 1 per cent. There are also small immigrant groups from some Asian countries. The Aboriginals have been recognized as a group requiring special status.

Persons belonging to the Catholic Church and to the Church of England constitute numerically the most important religious groups. Minority religious groups include various Protestant congregations, the Jewish community and a small community of Moslems.

Austria

Austria has within its borders minorities of Slovene or Croat ethnic origin which are concentrated in the provinces of Carinthia, Burgenland and Styria. According to the 1971 census, they constituted 0.69 per cent of the total population of the country. It should be noted, however, that the Austrian State Treaty for the Re-establishment of an Independent and Democratic Austria of 15 May 1955 officially recognized the Slovene and Croat groups as minorities. Article 7 of this Treaty provides that: "Austrian nationals of the Slovene and Croat minorities in Carinthia, Burgenland and Styria shall enjoy the same rights on equal terms as all other Austrian nationals ...".

Belgium

Belgium comprises three "cultural communities"—French, Netherlands and German—and four linguistic regions: the French-speaking, Dutch-speaking and German-speaking regions and the bilingual region of the capital, Brussels. The Government has stated that, as a result of the latest developments in constitutional law, the existence of cultural communities and regions is widely recognized.

Brazil

The population of Brazil is composed of three main racial stocks—whites, blacks and Indians—all three made up of many ethnic groups. In the last 50 years, a fourth racial stock, consisting of a substantial body of Japanese immigrants, has added its contribution to the composition of Brazil's multiracial and multi-ethnic population.

The overwhelming majority of the population professes the Catholic faith. Minority religious groups include Protestants of various denominations, the Jewish community, the Maronites (who are confined to a single immigrant ethnic group, the Syrians) and the Buddhists (who are found only among the Japanese immigrants).

Burma

Many separate ethnic groups inhabit Burma. The Burmese are numerically the largest ethnic group, forming 70 per cent of the population. Other ethnic groups include Karens, Kayahs, Shans, Kachins, Chins, Indians, Pakistanis and Chinese. The Karens, forming 10 per cent of the country's population, are, after the Burmese, the largest ethnic group. All these groups are concentrated in specific areas.

Besides Burmese—the national language—individual ethnic groups use their own language or dialect as their mother tongue. A very high percentage of the members of ethnic groups use Burmese as a second language.

Eighty-five per cent of the population practise Buddhism. The rest of the population is made up of a number of religious groups.

Canada

According to the census of 1971, the distribution of linguistic groups in the country was as follows: English, 60.2 per cent of the total population; French, 26.9 per cent; German, 2.6 per cent; Italian, 2.5 per cent; Ukrainian, 1.4 per cent, other, 8.1 per cent. (Under the term "other" all language groups numbering 179,820 or less are included.) English and French are the two official languages.

Religious groups include: United Church of Canada (17.5 per cent); Anglican Church (11.8 per cent); other Protestant Churches (13.7 per cent); Roman Catholic (46.2 per cent); Ukrainian (Greek) Catholic (1.1 per cent); Jewish (1.3 per cent); Greek Orthodox (1.5 per cent); other (6.9 per cent).

Chile

The population is predominantly of mixed European and Indian descent. Minority groups include the indigenous population and relatively small immigrant groups from various European countries.

Except for a small part of the indigenous population, everyone speaks Spanish as his first language. German is, however, widely spoken in some areas.

Catholicism is the religion professed by the great majority of the people. Religious minority groups constitute about 10 per cent of the population.

Czechoslovakia

In Czechoslovakia the term "nationality" is used to define the various ethnic groups found in the country. Czechs and Slovaks constitute the main "nationalities". They represent respectively 66.6 per cent and 27 per cent of the total population. Other ethnic groups include Ukrainians, Poles, Germans, Hungarians, Gypsies and a small Jewish community. The Constitution provides that the "republic as the common state of the Czech and Slovak nations shall secure to citizens of Hungarian, German, Polish and Ukrainian national origin the possibility of and the facilities for their all-round development".

The largest church is the Roman Catholic. Minority religious groups consist of a number of Protestant communities.

Denmark

Denmark has a population group of German origin numbering approximately 20,000 persons. (The estimated population of

[a] See annex I, para. 11.

Denmark in 1971 was 4,960,000.) The German-speaking group has been officially recognized as a minority and is concentrated in a specific region of the country.

The vast majority of the population belongs to the Lutheran Evangelical church, which has the status of a State religion. There are a number of other religious communities. Before they can operate as such, they must be recognized by means of a special procedure.

Egypt

In Egypt, a single ethnic group professing the same religion and speaking the same language constitutes the vast majority of the population. However, there are also other ethnic religious or linguistic groups, including the Copts, who form approximately 7 per cent of the population, the Nubians and the Bedouins.

Islam, the State religion, is the religion of the owerwhelming majority of the population. Religious minorities in Egypt form between 5 and 10 per cent of the total population. They comprise Copts, a small number of Catholics, a sprinkling of Protestants and a Jewish community whose numbers dwindled after the Second World War.

Arabic is the official language in Egypt and the mother tongue of 98 per cent of the population. However, the Berbers and the Nubians use their own language as well as Arabic.

Finland

Finland has a Swedish-speaking minority which makes up 6.5 per cent of the country's total population. Other minority groups include Gypsies (5,100), Lapps (2,500) and the Jewish community (1,300). Together these groups form a very small percentage of the country's total population, which has been estimated at approximately 4.6 million. All the above-mentioned groups have been officially recognized as minorities.

The Swedish-speaking minority is concentrated in the Aland Islands and in the coastal regions of the west and south, while the Lapps are found in the far north. The other minorities are scattered throughout the country.

As for religious groups, more than 92 per cent of the population belong to the Evangelical Lutheran Church, which possesses a special national status. There are several other religious communities, in particular, the Orthodox Church of Finland with some 61,000 members. In order to operate as religious communities, they must be registered by means of a special procedure.

Germany, Federal Republic of

Persons of Danish descent and a small community of Gypsies constitute the main minority ethnic groups in the country. The rights of the Danish minority, which is concentrated in southern Schleswig, have been officially recognized in a government declaration approved by Parliament in 1955.

As regards religious groups, Protestants constitute about 49 per cent of the population and Roman Catholics, 45 per cent. A minute fraction of the population belongs to what are known as the free churches, such as independent Protestants (Lutherans and Calvinists), Methodists, Jehovah's Witnesses and members of the Eastern Orthodox Church. A very small proportion of the population professes the Jewish faith.

Guyana

The Guyanese population is composed of two main ethnic groups, almost equal in size. Citizens of East Indian descent constitute slightly more than half the total population, while the Afro-Guyanese account for about 44 per cent. The remainder of the population is composed of the indigenous population, the Amerindians (4.6 per cent), persons of Portuguese descent (1 per cent) and persons of Chinese ancestry (0.6 per cent).

Hungary

In Hungary, the term "minority" is not used. The official terminology refers to "nationalities" or "nationality groups." According to the census of 1970, a very small part of the population, altogether 1.5 per cent, declared that they were members of a "nationality" other than Hungarian. Officially recognized "nationality groups" include Germans, Romanians, Serbs, Croats and Slovaks. Another population group, the Gypsies, has not been recognized as a "nationality" but is regarded as a well-defined "ethnic group".

India

India has a federal structure and the component states generally correspond to linguistic areas. There are 14 main languages recognized by the Constitution.

Hinduism is the religion of the great majority of the population. Minority religious groups include Moslems, Christians, Sikhs, Buddhists and Jains.

Indonesia

There are about 54 ethnic groups in the country, of which the nine major ones are the Javanese, constituting half the population; the Sundanese, 15 per cent; the Coastal Malays, 8 per cent; the Madurese, 8 per cent; and the Atjehnese, Batak, Balinese, Makasarese-Buginese and Minangkabau, ranging from 1.5 per cent to 4 per cent.

Indonesian (Bahasa Indonesia) is the official language. Other major languages spoken in Indonesia include Javanese, spoken by 40 to 50 per cent of the population; Sundanese, spoken by about 15 per cent of the population; and Madurese and Malay, each spoken by 5 to 10 per cent of the population. Lesser but still regionally influential languages are Balinese, Minanghabau, Batak, Marasarese and Buginese.

Islam is the country's predominant religion, with more than 90 per cent of the population professing that faith. Of the remainder of the people, 4 per cent are Christian; about 3 per cent, Hindu; and 2 to 3 per cent, Buddhist-Taoist.

Iraq

The population of Iraq consists of two major communities, an Arab majority and a Kurdish minority. The greater part of the Kurdish minority is concentrated in the north and north-east of the country, where another ethnic minority, the Turkmens, also lives. Other minority groups include the Athurians, the Chaldeans and the Armenians. All these ethnic groups have been officially recognized as "minorities".

Ninety per cent of the total population profess the Islamic faith. Religious minority groups include the Christians (about 4 per cent of the total population) and a small Jewish community.

Israel

Non-Jews comprise about 12 per cent of the population. Nearly all of these are Arabs. About 72 per cent of the non-Jewish population is classified as Moslem, about 18 per cent as Christian and the remainder as Druze.

Italy

In Italy there are German-speaking, French-speaking and Slovene-speaking groups, concentrated respectively in the provinces of Bolzano, Valle d'Aosta, and Trieste and Gorizia. Other ethnic groups include the Ladins, who are concentrated in the provinces of Bolzano, Trento and Belluno, and groups of Albanian and Jewish origin. The two latter groups are scattered throughout the country, while the German- and French-speaking groups constitute a majority in the regions in which they are concentrated. Although the total size of these ethnic and linguistic groups is small in relation to the population as a whole, they have been officially recognized as minorities.

Lebanon

The population is divided more or less equally between two major traditions, the Christian and the Islamic. However, within this situation of over-all numerical balance, the population adhering to each tradition is again split up into various communities corresponding to particular religious persuasions or rites.

Malaysia

Malaysia has been described as a nation with a complex ethnic and cultural structure. Its distinctive characteristic is its pluralism. Ethnically the population is composed of Malays, Chinese and Indians. There is also another small group: the Aboriginals.

Linguistically, there are six language groups and English is still a prominent feature of the nation's cultural life.

With respect to religion, the Malays profess the Islamic faith, while the majority of the Chinese adhere to Buddhism, Confucianism or Taoism and nearly three quarters of the Indians are Hindus.

New Zealand

The Maori population constitutes numerically the most important minority group in the country. It represents 8.1 per cent of the total population and has been officially recognized as a "minority" requiring special rights. The Maori language has recently been given the status of official language. Other minority groups include immigrants from European countries, Indians and Fijians.

Nigeria

From the ethnic and linguistic point of view, Nigeria presents a complex picture. According to the 1963 census the population includes more than 200 ethnic groups, none of which constitutes a majority. Three of them—the Hausa, the Yoruba and the Ibo—have more than 9 million members each. The Fulani number nearly 5 million, the Kanuri and the Ibibio more than 2 million, and the Tiv, the Ijaw and the Edo more than 1 million. Twenty-seven other groups each number between 100,000 and 1 million. The remainder consists of communities each numbering fewer than 100,000 members. The total population of the country was estimated in 1963 to be approximately 55 million.

Most of these ethnic groups use their own mother tongue, so that no one language can be regarded as the language of the majority of the population. Hausa is the language spoken by the largest number of people, followed by Ibo, Yoruba and English, although English cannot be considered the mother tongue of any ethnic group. More than 100 other languages or dialects are used by various other ethnic groups as their mother tongue.

Pakistan

Linguistic diversity is a striking feature of Pakistan life. Each of the principal languages has a strong regional focus, although statistics show that some languages are distributed between various provinces because administrative boundaries cut across linguistic regions. The distribution of the main languages which are claimed as mother tongues is about as follows: Punjabi (60 per cent); Sindhi (13 per cent); Pashto (8 per cent); Urdu (8 per cent); Baluchi (2 per cent); Brahui (1 per cent).

With regard to religious groups, about 98 per cent of the population are Moslems. Minority religious groups include Hindus, Christians, Parsees and Buddhists.

Panama

Panama's population is predominantly *mestizo*. Other ethnic groups of numerical significance include the "Antilleans" (13 per cent) and the Indians (6 per cent). The term "Antillean" refers to the group that has emigrated from the Caribbean islands formerly under British control.

Spanish, the official language, is spoken by nearly all Panamanians. English is, however, used extensively by the "Antilleans". A number of indigenous languages are also in common use among the Indians.

Philippines

The Filipino population is predominantly of the Malay physical type, with cultural differences producing recognizable ethnic categories. Despite the identification of over 40 ethnic-linguistic groups, 90 per cent of the population fits into what has been described as "a relatively homogeneous Christian category". Within this category are groups having their own language, a sense of group identification and a known geographical distribution. Only groups not fitting into this "Christian category" are recognized as minorities. They are located mainly in Luzon and Mindanao. They constitute the indigenous population and they are officially referred to as "national cultural minorities".

The indigenous population is composed of variety of ethnic, linguistic and religious groups, with varying social and economic characteristics.

Poland

In Poland a number of ethnic groups of non-Polish origin, which together form less than 2 per cent of the total population, have been recognized as ethnic and linguistic minorities.

Romania

The Government has declared that Romania is a unitary State in which "co-inhabiting nationalities" live side-by-side with the Romanian people. According to the latest census (15 March 1966), 87.7 per cent of the population are Romanians. The co-inhabiting nationalities include Hungarians (8.5 per cent), Germans (2 per cent), Serbs, Ukrainians and other nationalities (1.8 per cent). The co-inhabiting nationalities are generally concentrated in particular areas of the country.

The majority of the population belong to the Romanian Orthodox Church. Religious minorities include Catholics, various Protestant sects and the Jewish and Moslem communities.

Senegal

The Wolof are numerically the most important ethnic group. Other major groups are: the Serer, the Fulani, the Tukulor, the Diola, the Malinke and the Sarakolé. The major languages of the country are Wolof, Serer, Pulaar (the language of the Peul and Toucouleur) Diola, Manding and Sarakolé. There are a number of others, corresponding roughly to the number of minor ethnic groups. Eighty per cent of the population are Moslems and about 6 per cent Christians—most of them Roman Catholics. The remainder adhere to indigenous religious beliefs.

Singapore

In Singapore, persons of Chinese origin predominate, forming 76 per cent of the total population. Malays form another 15 per cent and Indians 7 per cent. Besides Chinese, Malay and Tamil, the respective languages spoken by the two minority groups have been recognized as official languages. Religious affiliations reflect ethnic patterns.

Spain

The Government reports that the numerically most important ethno-linguistic groups are the Basques and the Catalans. The Basques are concentrated in three provinces and the Catalans in four.

Catholicism, the State religion, is professed by the great majority of the population. Minority religious groups include small Protestant communities of various denominations.

Sri Lanka

Sri Lanka is a State composed of several ethnic communities which are conscious of their identity and differ from one another in language, religion, customs and, to some degree, race. The Sinhalese make up slightly more than 69 per cent of the population and thus are the largest group. The Tamils, with 23 per cent of the population, are the second largest group; they comprise two communities: Tamils of Sri Lanka origin and those of Indian origin. The Moslems, forming 7 per cent of the population, are the third group. According to the information supplied, this community, which came originally from north-west Africa and whose members are also called Moors, is considered to be a distinct ethnic group. Lastly, the Burghers, a community of mixed Eurasian and European origin, constitute the fourth ethnic group, with 1 per cent of the population.

There are four religious groups in Sri Lanka. Approximately 90 per cent of the Sinhalese, or 69 per cent of the population, practise Buddhism; 95 per cent of the Tamils, or 20 per cent of the population, practise the Hindu religion; 9 per cent of the population practise Christianity. The latter group includes Sinhalese, Tamils and Burghers.

Three languages are spoken in Sri Lanka: Sinhala, Tamil and English. Sinhala and Tamil are languages of specific ethnic communities (the Sinhalese and the Tamils) and are used in specific areas; English is the language of the Burghers, and the Moslems, for the most part, speak Tamil.

As regards the geographical distribution of the various minority groups, the Tamils of Sri Lanka origin are concentrated in the northern part of the country and in the coastal regions, while those of Indian origin are found in the central plateaux. Most of the Moslems live in the coastal regions of the western and eastern provinces, the others being scattered throughout the country. The Burghers are essentially an urban group.

Sweden

The Government reports that at the end of 1972 the total population of the country was estimated at 8,140,000 persons. The following estimates of the number of persons belonging to minority groups were made by the Government Commission on Immigrants: Finnish, 76,000; Estonian, 22,000; Hungarian, 5,000; Lappish, 5,000. Other small minority groups are the Italian, Latvian, Polish, Serb and Croat groups. While the Lapps and the Finns are concentrated in specific areas, the other minority groups are scattered throughout the territory, mostly in urban areas.

Minority religious groups include Catholics, Jews, Orthodox and Moslems.

Switzerland

In Switzerland, according to the 1970 census, 74.5 per cent of Swiss citizens have German as their mother tongue; 20.12 per cent, French; 4 per cent, Italian; and 1 per cent, Romansh. Although German is the language of nearly three quarters of the population, Switzerland has four linguistic regions corresponding to the languages of the above-mentioned linguistic groups. Each of these languages has been declared a national language. The country is divided into cantons and half-cantons, the territory of most cantons forming part of one of the four linguistic regions of Switzerland. Each canton has an official language: German, French or Italian. It should be pointed out that in every Swiss canton one linguistic group has a heavy majority, and in all but three the majority constitutes at least 77 per cent of the canton's population.

As regards religious groups, 55 per cent of Swiss citizens are Protestants, 43 per cent Roman Catholics and 0.2 per cent Jews. It should be noted, however, that Protestants are in the majority in 13 cantons and Catholics in 12.

Ukrainian SSR

According to the revised 1970 census data, the total population of the Ukrainian SSR consists of persons belonging to various "nations, nationalities and national groups" as follows: Ukrainians, 74.9 per cent; Russians, 19.4 per cent; Jews, 1.6 per cent; Byelorussians, 0.8 per cent, Poles, 0.6 per cent; Bulgarians, 0.5 per cent; other nationalities, 1.6 per cent. The Government reports that "the nationality of all persons belonging to these groups is officially recognized".

Union of Soviet Socialist Republics

The population of the USSR consists of more than 100 "nations and nationalities". On the basis of the territories in which they live, peoples of the Soviet Union have formed 15 republics, 20 autonomous republics, 8 autonomous regions and 10 national districts. The Soviet people receive their official recognition in the composition of these politicial entities. The nationalities forming the union republics comprise 90 per cent of the total Soviet population. The most numerous are Russians (53.4 per cent) followed by Ukrainians (16.4 per cent), Uzbeks (3.8 per cent), Byelorussians (3.7 per cent), Tatars (2.5 per cent), Kazakhs (2.2 per cent) and numerous other smaller groups of less than 2 per cent. Nationalities not living in a district ethnic area include Koreans, Poles, Bulgarians, Czechs and Gypsies. The number of Jews living in the Jewish Autonomous Region is fairly small. The Jews, of whom, according to the census of 1970, there are 2,151,000, live in the territories of all the union republics, for the most part in cities and towns.

United Kingdom of Great Britain and Northern Ireland

The United Kingdom comprises four main ethnic groups—English, Welsh, Scots and Irish—each with its own historical traditions and surviving customs, language and culture. Other ethnic groups include the Jewish community and a large number of non-white immigrants from former colonies or dominions who have settled in the country since the Second World War.

The Church of England is the established church in England; in Scotland the established church is the Presbyterian Church of Scotland. There is no established church in Wales or Northern Ireland. Roman Catholics constitute a numerically substantial religious group. Various other minority groups profess their own faith.

United Republic of Tanzania

Asians and Arabs constitute district ethno-linguistic minority groups in the country. The African population, however, is characterized by its ethnic diversity, and in the connexion, the country has been described as a multi-ethnic State in which, historically, culturally and politically, no single group is dominant. While members of each ethnic group speak generally their own language, Swahili is considered as an essential component of Tanzania's society and has been designated as the official language of the country.

United States of America

The population of the United States of America comprises a wide range of racial, ethnic, religious and linguistic groups. This stems from the fact that the United States absorbed more than 35 million immigrants from various countries from the time of independence in 1776 to 1921, when immigration quotas came into force. Diversity in terms of racial, linguistic and ethnic backgrounds is the main characteristic of the population. The white population comprises a large number of ethnic groups. Non-white minority groups include the black population, persons of Asiatic origin, the Spanish-speaking groups, and the Indians.

Venezuela

The great majority of the population consists of *mestizos*. Other ethnic groups are made up of immigrants, blacks, mulattos and Indians. Each of these groups tends to display some regional concentration.

Spanish is spoken by almost all Venezuelans, but among Indians and immigrant groups other languages are commonly used.

The vast majority of the people are Roman Catholics. Protestants of various denominations and Jews form relatively small religious communities.

Yugoslavia

Yugoslavia has been described as a complex multinational State and social community. It is composed of members of six nations (Montenegrins, Croats, Macedonians, Moslems, Slovenians, Serbs) and nine national minorities (Albanians, Bulgarians, Czechs, Hungarians, Italians, Romanians, Ruthenians, Turks and Ukrainians).

The population of Yugoslavia, by nationality, in 1971 was as follows:

Nationality	*1971*	
	Number of inhabitants	*Percentage*
Total population	20 522 972	100.0
Peoples of the SFRY:		
Montenegrins	508 843	2.5
Croats	4 526 782	22.1
Macedonians	1 194 784	5.8
Moslems	1 729 932	8.4
Slovenes	1 678 032	8.2
Serbs	8 143 246	39.7
Nationalities of the SFRY:		
Albanians	1 309 523	6.4
Bulgarians	58 627	0.3
Czechs	24 620	0.1
Hungarians	477 374	2.3
Italians	21 791	0.1
Romanians	58 570	0.3
Ruthenians	24 640	0.1
Slovaks	83 656	0.4
Turks	127 920	0.6
Other nationalities and ethnic groups:		
Austrians	852	0.0
Greeks	1 564	0.0
Jews	4 811	0.0
Germans	12 785	0.1
Poles	3 033	0.0
Romany (Gypsies)	78 485	0.4
Russians	7 427	0.0
Ukrainians	13 972	0.1
Vlachs	21 990	0.1

Source : Nada Dragić, *Nations and Nationalities of Yugoslavia* (Belgrade, Medjunarodna Politika, 1974), pp. 19-21.

With reference to religious groups, about one third of the population is Roman Catholic, one tenth Moslem, and the rest Eastern Orthodox. The Yugoslav constitution in its article 170 guarantees to every citizen the free expression of his affiliation to a respective nation or nationality.

Zaire

The population of the country displays wide ethnic and linguistic diversity. The numerically largest groups are the Ba-Kongo, the Ba-Lunda, the Ba-Luba and the Ba-Mongo.