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To speak or not to speak **The Rights of Persons Belonging to Linguistic Minorities**

Working Paper prepared for the UN Sub-Committee on the rights of minorities

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1. Introduction

This working paper (1) attempts to clarify the nature and extent of the rights of persons belonging to minorities in the area of language. Looking back at historical examples in international law, it will be suggested that many aspects of what are considered "minority rights" actually can be traced back to traditional human rights and values. With these clarifications in mind, it will be shown how the "linguistic" rights of minorities refer to a number of human rights and freedoms that interact in a variety of situations.

These rights and freedoms are subsequently described in order to better appreciate their content and significance for linguistic minorities. Once these factors are understood, the position of the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic minorities (hereinafter the "UN Declaration") becomes clearer. Its provisions and their significance must be analysed and conceptualised not as an isolate element, but as part of an evolving, comprehensive framework based on the values of respect for human worth and dignity, and the effects of the promotion and protection of minority rights on peace and stability.

This working paper also contains as an appendix the main constitutional provisions dealing with the promotion or protection of the identities of minorities in various states of the world.

2. "Linguistic Rights" Prior to the UN Declaration on the Rights of Persons Belonging to a Minority

1. *The Antiquity of the Rights of Persons Belonging to Linguistic Minorities*

The UN Declaration is far from being the first international document dealing with the issue of "linguistic rights". For hundreds of years there have existed international treaties with provisions relating to the use of language or aimed at individuals of a

particular language group.

The 1516 **Treaty of Perpetual Union** between the King of France and the Helvetic state contained a provision identifying those who were to receive certain benefits as the "Swiss who speak no language other than German". (2) The **Final Act of the Congress of Vienna of 1815** (3) also contained certain protections to ensure the conservation of the Poles' nationality. Indirectly, this treaty resulted in the possibility for the Polish minority in some parts of the empire to use Polish for official business. (4)

Other international treaties with provisions protecting religious or ethnic minorities sometimes had linguistic ramifications. For example, in the nineteenth century when the Muslim minority in Greece had largely adopted the Turkish language, a 1881 treaty guaranteeing the free exercise of the Islamic faith, the maintenance of Islamic courts and other community structures also implicitly provided for the continued use of the Turkish minority language as part of the Muslim religious and community activities. (5) Other treaties were even more explicit in providing that cultural institutions, including minority language schools, were to be protected. (6)

The recognition and protection of the rights of linguistic minorities at the international level became more visible at the end of the First World War under the so-called minorities treaties overseen by the League of Nations. Although not constituting a universally applicable regime for the protection of minority rights - a fundamental flaw that probably contributed much to the wide-scale criticisms of the system and possibly its eventual downfall - the minorities treaties did constitute an important first step in this direction.

The minorities treaties fell into three categories. The first category included treaties imposed upon the states of Austria, Hungary, Bulgaria, and Turkey. The second dealt with new states born of the remains of the Ottoman Empire and states whose boundaries were altered under the self-determination principle (Czechoslovakia, Greece, Poland, Romania, and Yugoslavia). The third category included a number of special provisions relating to minorities in Åland, Danzig, the Memel Territory, and Upper Silesia, as well as a series of five unilateral declarations made by Albania, Lithuania, Latvia, Estonia, and Iraq upon their admission to the League of Nations. (7)

The first two categories of treaties described above incorporated the right to equality of treatment and non-discrimination, the right to citizenship, the right of minorities to establish and control their own institutions, a state obligation to provide equitable financial support to schools in which instruction at the primary level would be in the minority language where warranted by sufficient numbers, and the recognition of the supremacy over other statutes of laws protecting minority rights. In addition, a certain degree of territorial autonomy was provided for minority groups in some cases.

Specifically on the issue of language, it has been pointed out that:

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 commerce, 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, 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...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. (8)

The treaties included two principle types of provisions: firstly, individuals belonging to linguistic minorities, amongst others, would be placed on a footing of equality with the other nationals of the state; secondly, the means to preserve the peculiarities and national characteristics of minorities, including language, would be ensured.

The Permanent Court of International Justice explained in one of its key opinions how the two type of measures interact:

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 a minority. (9)

As a result, nationals belonging to linguistic minorities were to enjoy the same treatment in law and in fact as other nationals. In particular, they had an equal right to establish schools and institutions at their own expense. Such schools were distinct from state schools where the minority language was the language of instruction. Finally, in those towns and districts where the minorities constituted a considerable proportion of the population, they would be assured of an equitable share in the enjoyment and application of sums provided out of public funds under state, municipal, or other budgets for educational, religious or charitable purposes.

2.2 The Evolution of the Rights of Persons Belonging to Linguistic Minorities under the United Nations

Since 1945 there has been a noticeable shift emphasising universal protection of individual rights and freedoms:

Throughout the discussions on human rights at the United Nations Conference on International Organisation, the minorities treaties were not referred to, but a considerable amount of influence was brought to bear in favour of a "new covenant" and a fresh approach. (10)

In language matters, this fresh approach can be seen in the widespread commitment towards individual rights. 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-discrimination.

International instruments incorporating provisions related to language came into being at an increasingly frequent pace. On 10 December 1948, the United Nations General Assembly proclaimed the **Universal Declaration of Human Rights**. (11) Article 2(1) provides that "everyone is entitled to all rights and freedoms set forth in this Declaration, without distinction of any kind, such as...language". Pursuant to the International Labour Organisation **Convention No. 107 of 1957 concerning Indigenous and Tribal Populations**, (12) protected indigenous populations have 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.

Central to the genesis of the UN Declaration is of course Article 27 of the **International Covenant on Civil and Political Rights**, which provides that:

[i]n those states in which...linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group,... to use their own language.

In the area of education, the **Convention Against Discrimination in Education** of 1960 (13) prohibits, under Article 1, "any distinction, exclusion or preference" based upon language or other grounds, which "has the purpose or effect of nullifying or impairing equality of treatment in education". The **Convention** makes it clear, in Article 2(b), that it does not constitute discrimination to establish or maintain, for linguistic reasons, separate educational systems or institutions.

The **Convention** also provides in Article 5(1)(c), that it is essential to "recognise 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 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 prejudices national sovereignty".

A number of peace treaties concluded following Second World War II included provisions in which language also figured more or less prominently. The treaties signed with the Allied and Associated Powers in 1947 provided that each state concerned should take all measures necessary to secure to all persons within their jurisdiction, without distinction as to language, the enjoyment of human rights and freedoms, including freedom of expression, of press and public opinion, and of public meeting. (14)

In addition, many countries in Europe and Asia have more recently concluded bilateral agreements dealing with some of their linguistic minorities, at times providing for the protection of language and cultures, and for the maintenance of minority schools.

Finally, in the last few years, international and regional treaties, declarations and other instruments in which language rights and freedoms, and even recognition of a degree of autonomy for territorially-based linguistic communities, have proliferated.

Amongst the more prominent are the **UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities**, the draft **UN Declaration on the Rights of Indigenous Peoples**, the **Vienna Declaration on Human Rights**, the Organisation on Security and Cooperation in Europe's **Document of the Copenhagen Meeting of the Conference on the Human Dimension**, the **Déclaration d'Athènes sur les droits des minorités**, the **Declaración Final de Lenguas Europeas e Lexislacions**, the International Labour Organisation's **Convention (No. 169) Concerning Indigenous and Tribal Peoples in Independent Countries**, the **European Charter for Regional and Minority Languages**, the **Central European Initiative Instrument for the Protection of Minority Rights**, and the **Convention-cadre sur la protection des minorités nationales**.

3. **Minority Rights and Other "Linguistic Rights": What the UN Declaration Does Not Contain**

It is essential to emphasise certain limitations to the UN Declaration in relation to language. It apparently was never intended to be a comprehensive code of all human rights, recognised or nascent in international law, which directly or indirectly relate to language. Strictly speaking, it should mainly be seen to address those rights linked to Article 27 of the **International Covenant on Civil and Political Rights**, the only "minority" provision in the covenant.

The origins of the UN Declaration can thus explain certain omissions. Freedom of expression, for example, is not mentioned specifically in the UN Declaration, even though it is now clear that this freedom protects the private

use of language. In **Ballantyne, Davidson and McIntyre v. Canada**, the United Nations Human Rights Committee clearly indicated that legislation making French the exclusive language of outdoor commercial signs in Québec to the exclusion of all other languages in private matters breached the freedom of expression guaranteed to all by Article 19 of the **International Covenant on Civil and Political Rights**.

For persons who belong to linguistic minorities, freedom of expression can be an extremely important right in relation to the private use of a language, but it is not a right which they can claim as members of a minority group. Everyone has freedom of expression, whether one belongs to a majority or to a minority. Seen in this light, it is clear that whilst freedom of expression may be of great significance for the protection of linguistic minorities in some countries, it does not originate *per se* from Article 27 of the **International Covenant on Civil and Political Rights**. It is not contained explicitly in the UN Declaration because some individual human rights that may have a role in matters such as language (and religion or culture) are not minority rights. Since they are not minority rights, they fall outside the UN Declaration.

The UN Declaration is also silent on the right to an interpreter in criminal proceedings when an accused does not understand the language used by the court. Once again, as this is an individual right and not a minority right, it is not mentioned in the UN Declaration, despite considered by many to be a fundamental right in international law.

A final example of a relevant individual right which the UN Declaration does not directly address is the growing acknowledgment of the impact of non-discrimination in the area of language preferences by public authorities. Although the interpretation of this aspect of the right of non-discrimination in international law is still going through a process of clarification, there is increasing support for the view that the operation of non-discrimination must take into account the need to balance a state's legitimate interests and goals in prescribing certain preferences with the ensuing disadvantage, denial or burden this may effect on individuals. Everything comes down to whether or not in the end the measure or conduct is "reasonable", "arbitrary" or "fair".

Under this analysis, it seems clear that the prohibition of discrimination on the ground of language does not mean a state cannot favour one language over others. A state could never be obligated to conduct all of its activities in every language which is spoken by the inhabitants in its territory. Non-discrimination does not prohibit every distinction involving a language, only those that are "unreasonable" when one considers all relevant factors: those that relate to the state's interests and goals, and those that relate to the individual's interests, rights and how s/he is affected.

By using one language exclusively in public schools, state services, administrative activities, or even prescribing the language in which court trials are conducted, a state is making a distinction based on language. It is showing a preference for this single, official or national language which will benefit some individuals for whom it is a primary language, to the detriment or disadvantage of others who either have no or lower proficiency in it or are denied the benefit or privilege of using their own primary language.

Even though linguistic disadvantages are real, the proper application of non-discrimination does not guarantee that every individual's language of preference can or should be used by state authorities. What is required instead is a balancing act, an attempt to reach a reasonable outcome in light of legitimate state interests and goals, and the effect the state distinction between languages has on the individual and the advantage or benefit which others are

receiving and he or she is not.

In practice, this would generally mean that non-discrimination can only be invoked successfully where there is a sufficiently large or concentrated number of individuals affected in relation to the type of state service or activity, such as public education in a particular language.

Once again, this interpretation of the right of non-discrimination does not find a place in the provisions of the UN Declaration because non-discrimination is not specifically a minority right under Article 27 of the International Covenant on Civil and Political Rights. Whilst linguistic minorities could undoubtedly benefit - in appropriate circumstances - from the application of non-discrimination in state activities involving a linguistic preference, this is strictly speaking an individual right independent of minority status.

4. Content and Scope of the Rights Under the UN Declaration

1. *The Protection and Promotion of the Identity of Linguistic Minorities*

Article 1 of the UN Declaration suggests there is a positive obligation on states: they "shall adopt legislative and other measures" in order to protect the identity of minorities and to encourage conditions for its promotion. In the case of linguistic minorities, this refers to the protection of the minority language and the encouragement of conditions for its promotion.

The type of state legislation required to fulfil this obligation is not elaborated, leaving simultaneously a great deal of latitude to determine what is appropriate in the particular context of a country, but also leaving many uncertainties. One such uncertainty is whether this right should be interpreted to require positive action in terms of the language used by state officials when providing services to the public. For example, does Article 1 imply a state obligation to have civil servants capable of communicating with persons belonging to linguistic minorities in the language of the minority in certain conditions? Or does it refer only to an obligation to adopt legislative or other measures that create a favourable environment under which a linguistic minority can then be free in the enjoyment of their identity? Is to be free to enjoy one's language thanks to legislation, for example, sufficient to satisfy the state obligation "to encourage conditions for the promotion" of a minority language?

These matters are central to the nature and object of the UN Declaration, yet they are also difficult to answer conclusively. What does appear certain is that at the very least there is an obligation to adopt measures that guarantee some form of protection for minority to freely use their language amongst themselves. This is confirmed by the content and tenor of the other provisions of the UN Declaration, and also from the UN Human Rights Committee's General Comment on Article 27.

It would also have appeared logical to add that there must be a state obligation to provide services that are essential for the continued existence of the identity of linguistic minorities. For example, the promotion of a minority's language is highly unlikely if it cannot be used as medium of instruction in schools since, in the words of Claude Jullian, "Une langue qu'on n'enseigne pas est une langue qu'on tue". Yet in this fundamental sphere for the survival of the identity of

linguistic minorities, the UN Declaration itself is non-committal: states "should" provide for adequate opportunities, where appropriate and possible, for persons belonging to minorities to learn their language or to have instructions in their language.

The use of the word "should" instead of "shall" in Article 4(3) is significant as will be explained in another section. Instead of affirming clearly that states must, under certain conditions, offer public instruction of or in a minority language, the UN Declaration only goes so far as to propose that it would be a "desirable" result, but not a necessary one under the UN Declaration. (15)

This may initially appear surprising until one remembers that the UN Declaration is not intended to be a comprehensive compendium of all the rights which linguistic minorities may enjoy under existing fundamental international human rights and freedoms: it is a declaration which is mainly "inspired" by Article 27 of the **International Covenant on Civil and Political Rights**.

As explained in another part of this report, the UN Declaration does not mention the freedom of expression, which protects the private use of language in many situations that are often crucial for the survival and use of minority languages. Neither does the UN Declaration contain any reference to other human rights such as non-discrimination based on language and the right to an interpreter which, although not "minority rights" *per se*, can provide much needed respect and protection for many linguistic minorities.

The best approach to Article 1 is probably to consider it as a programmatic provision which recognises the need for a tolerant, generous and inclusive approach to the existence of linguistic minorities within a state. Instead of a specific set of actions which a state must undertake, Article 1 gives a broad sense of direction: states have an obligation to take appropriate steps through legislation and other measures in order to protect the existence of the language of minorities as the essential component of their identity. States must also adopt legislation or take other measures to encourage an environment conducive to the promotion of minority languages. What this requires in concrete terms will depend on the specific conditions of each state, on any threat to the existence of linguistic minorities, and on any condition which stifles the promotion of their language.

Yet at the very least Article 1 suggests that it is no longer sufficient for a state to claim it has no obligation in respect of linguistic minorities except non-interference in their affairs. Even if the identity of a linguistic minority is not endangered directly because of a state-led policy or some other state conduct, Article 1 gives states a role to play in creating an environment of safety and respect. The minority language must be protected from outside menaces, and the state must encourage conditions for its promotion instead of permitting negative conditions to dominate and pressure a minority. To do otherwise would be contrary to the very essence of human rights: the recognition of the inherent worth and dignity of all human beings, as well as to their diversity.

One example of how this provision could protect the existence of a minority's linguistic identity or encourage conditions for its promotion would be by forbidding acts of intolerance which may demean a minority language and its speakers. Whether it is in a restaurant, bar, or some other location accessible to the public, states may be obliged to

legislate to prevent owners from banning the private use of a minority language on their premises simply because it would "disturb" other customers or be disruptive. Whether an "English-Only" rule, or a "White-Only" rule, this type of conduct signals intolerance of others because they are different and somehow seen as not as "worthy". In both cases of intolerance, the state has an obligation to take concrete steps to create an environment which promotes acceptance of these human differences. (16)

2. *Private Use of A Minority Language in Public or in Private*

Article 2 of the UN Declaration appears limited, as far as linguistic minorities are concerned, to the recognition of the right of persons to use their own language "in private and in public, freely and without interference or any form of discrimination". This provision only addresses the use of a minority language by private individuals or entities, and does not impose obligations on states to provide public services or benefits in a minority language.

It is however an important right for persons belonging for linguistic minorities. This provision prevents a state from interference which would deny the free private use of a minority language, although there are also other human rights which may help to protect the private use of a minority language in some situations, including the right to privacy, non-discrimination, and freedom of expression.

4.2.1 *Minority Names and Surnames*

Whilst the right of a person to have his or her (sur)name in his/her own language would appear to be protected under the right to privacy, (17) it also comes under the protection of Article 27 of the **International Covenant on Civil and Political Rights** and Article 2 of the UN Declaration in the case a person belonging to minorities.

Whether using a person's name during a religious ceremony, a private discussion at home or in a public street, or on a sign or poster on private property, this still involves a person using words from a minority language in the private sphere. A state which would attempt to forbid a person belonging to a minority from using his or her own name because only names in the official, non-minority language are permitted would clearly be in breach of the principle laid down in Article 2.

2. *Script Use by a Linguistic Minority*

A minority's language may include a script (Arabic, Cyrillic, etc.) which differs from that sanctioned by the state. Whilst a state would not be obligated under the UN Declaration to use a particular script in any of its official activities, Article 2 does prevent a state from banning the use of a minority script (as an aspect of language) in the private sphere. Whether involving script use in private correspondence, the printing of a book by private entities, or on outdoor signs by a private entrepreneur, all these activities represent situations where persons have the right, in private or in public, to use their own minority language.

3. *Use of a Minority Language in Private*

Persons belonging to a linguistic minority have the right to use their own language in private. This refers to a vast panoply of situations that are important for the day-to-day life and vitality of many linguistic minorities. Playing music sung in a minority

language, talking to one's children in a minority language at home, to be able to write private correspondence, or to talk to a friend or neighbour in private in one's own language, would all be guaranteed under Article 2. (18) Persons belonging to a linguistic minority must also have the right under this provision to keep documents and books that are written in their minority language. For example, this signifies that persons belonging to a linguistic minority can keep business or association records in a minority language, although they may additionally and validly be asked by the state to also provide such records in the official or majority language. (19)

4. *Use of a Minority Language in Public*

Article 2 also recognises that the right of persons belonging to a minority to use their own language amongst themselves may have in some cases a "public" aspect. This does not imply a state obligation to use minority languages in its own activities. (20) It is rather limited to situations where the private use of a minority language can occur where the public at large may be exposed to this use. If a private radio station broadcasts a minority language programme, it can reach not only members of the linguistic minority, but also other individuals because of its public nature. The same is true where a poster or sign is erected in view of the public, or when a group of individuals speak a minority language when gathered in a public park or street. Although they are still "private" activities since they involve persons acting in their private capacities and not as officials or agents of the state, they nevertheless have a public dimension because their reach may include individuals who are not members of the linguistic minority.

The public use of a minority language thus understood means that persons belonging to minorities must not be prevented from privately distributing printed documents, magazines or books in kiosks simply because they are in a "prohibited" language. Such persons must not be prevented by the state from using their own language during private conferences, meetings, and assemblies, even if the venue is open to the public.

Any state ban preventing a private individual from using a minority language on posters, commercial signs, etc. that would be in public view would be inconsistent with Article 2, as well as involving a breach of freedom of expression.

In the case of private media such as newspapers, books, radio or television broadcasts, the state must not prevent the private use of a minority language. A total ban or severe limitations on the private use of a minority language would go beyond normal state regulatory control of the media. It would be a situation where persons belonging to a linguistic minority could not, for example, publish and distribute publicly a book written in their own language, or where a private radio station would not be allowed to produce and broadcast programmes prepared in a minority language.

5. *Use of Minorities Language in Private "Collective" Activities*

The right of persons belonging to a linguistic minority to use their own language

(Article 2(1)), in community with other members of their own group (Article 3(1)), as well as the right to establish and maintain their own associations (Article 3(4)) can be joined together in such a way as to suggest that the collective use of a minority language is protected under the UN Declaration.

This suggests strongly that a ban on social, cultural or even political groups, simply because they use a minority language as their language of operation, would go against both the letter and the spirit of the provisions of the declaration.

Even more importantly, these provisions confirm that linguistic minorities have the right to establish and maintain their own private schools - including the right to manage these schools - where the minority language can be used as medium of instruction to the extent chosen by them. This right to the collective use of a minority language in terms of private educational activities does not, in itself, mean that a state must provide financial assistance for these activities. Such assistance is however identified by the UN Declaration as a desirable measure in Article 4(3), and will be discussed in more detail in Section 4.3 of this working paper.

It should also be pointed out that whilst linguistic minorities are entitled to freely open and operate their own private minority schools, this does not prevent the state from requiring that all pupils acquire some knowledge of the official or majority language of the country. Numerous international documents and treaties recognise not only that the state can impose such a requirement, but even that it has an obligation to do so in order to avoid the creation of linguistic "ghettos" or seriously disadvantaging minority students. (21)

2. *Desirability of Support for Minority Language Education*

It is clear that in international law, as noted previously, minorities have traditionally been recognised the right to establish and maintain their own private educational activities, using their own language as medium of instruction if they so desire. The UN Declaration does not in itself impose a further obligation on the state to provide the resources so that persons belonging to a linguistic minority can establish and maintain their own private schools, nor does it require that states provide public schooling where a minority language is used as medium of instruction. The UN Declaration in this area is more modest in its goals as can be seen in the wording of Article 4(3):

States **should** take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue.

In keeping with the spirit of the UN Declaration, it would be highly desirable if a state took appropriate measures so that such persons have an opportunity to learn or be educated in their own language. These could take the form of support to private schools or to public schools where instruction in or of the minority language is provided. But by using **should** instead of **shall**, the UN Declaration did not impose an unconditional obligation on states.

Once again, this restraint may initially appear rather surprising, given the prominence of education in any attempt to protect and maintain the identity of minorities. Yet it should not be since the UN Declaration is "inspired" by Article 27 of the **International Covenant on Civil and Political Rights** and not a full and comprehensive statement of all human rights that may affect language issues in the public or private domain.

Despite some disagreement, there now seems to exist a fairly widespread agreement that Article 27 (and indirectly the UN Declaration) does not by itself impose a legal obligation on states to provide financial assistance, in education as in other areas, to support specific activities aimed at minorities, including support for private or public

schools using a minority language. (22)

This does not mean that such support may not exist through the application of other rights recognised in international law. The right to equality and non-discrimination would be extremely potent in this area under appropriate conditions. If for example a state provided financial assistance to private schools in general, but refused categorically to provide any financial to the schools of a linguistic minority, this would obviously constitute a discriminatory exclusion and involve a breach of Article 26 of the **International Covenant on Civil and Political Rights** which prohibits discrimination based on language in any area of state involvement. It has also been suggested that where reasonable, some degree of use of a minority language must be made in public schools pursuant to this general prohibition of non-discrimination. (23)

What Article 4(3) of the UN Declaration adds is a more general acknowledgment that states ought to respond favourably to the linguistic needs of minorities in the education field. This once again goes to the very spirit of the UN Declaration for a generous, inclusive approach to the presence of minorities within a state.

3. State Practices Consonant with the UN Declaration

There is a huge variety of state practices involving the rights of minorities. In part this reflects the reality of human diversity in vastly different situations throughout the world. There is however no denying that the treatment of persons belonging to linguistic and other minorities in some states is inconsistent with the requirements of international human rights.

Instead of decrying the intentional or incidental state practices that fall short of those rights that may be said to flow from the UN Declaration (and other relevant human rights contained in international treaties), this part of the working paper will concentrate on positive examples that can be identified in a large number of countries. (24) Furthermore, whilst this paper also attempts to provide a cross-section of state practices from all parts of the world, limited access to information has made it difficult to provide an absolutely representative survey.

1. Names and Surnames, Toponymy

It would appear as suggested earlier that the use of a minority's name in their language is a matter which comes under the right to privacy, but may also come under the right of a person belonging to a linguistic minority to use their language freely with other members of their community. (25)

In practice, most states do not appear to specifically interfere with the choice of the name of a person belonging to a linguistic minority. A few states have however made it clear that individuals belonging to minorities must not be prevented from freely choosing and using their names and surnames in their language. One good example can be found in Hungarian legislation:

Toute personne appartenant à une minorité a le droit au libre choix de son prénom et de celui de son enfant, à l'inscription de son nom de famille et de son prénom au registre matrimonial ainsi qu'à leur utilisation dans les pièces officielles selon les règles de sa langue maternelle et ce dans les cadres et les limites de la réglementation en vigueur... (26)

An increasing number of states have additionally committed themselves to similar respect for the rights of persons belonging to minorities through a variety of bilateral and multilateral treaties and international instruments, including Article 7(2) of the **Convention-cadre sur la protection des minorités nationales**:

Les parties s'engagent à reconnaître à toute personne appartenant à une minorité nationale le droit d'utiliser son nom (son patronyme) et ses prénoms dans la langue minoritaire ainsi que le droit à leur reconnaissance officielle, selon les modalités prévues par leur système juridique. (27)

In a number of countries, governments have furthermore adopted a policy of bilingual toponymy where a linguistic minority represents a significant proportion of the population. For example, in areas inhabited by a considerable percentage (25%) of persons belonging to a linguistic minority, designations and inscriptions of a topographical nature set up by public authorities in Austria must be bilingual.

5.2 Transborder Contacts and Linguistic Minorities

Article 2(5) of the UN Declaration recognises the right of persons belonging to a linguistic minority to have contacts across frontiers with citizens of other states to whom they are related by linguistic ties. Once again, most states do not seem to deny directly this right in their legislation, but few specifically recognise it either. Nevertheless, a number of states, including Lithuania, Poland, Latvia, and others have by treaty agreed to the validity and desirability of this right for persons belonging to minorities. (28)

As explained by one commentator, such an entitlement can be of great importance for minorities separated by a border in that it is a potential source of support and inspiration for its cultural and linguistic activities:

Il s'agit là d'un droit particulièrement important pour les minorités, si elles veulent promouvoir et renforcer leurs caractéristiques communes. Le droit consacré par cet écrit concerne tout d'abord les minorités dispersées sur le territoire d'un ou de plusieurs États. Il est en outre destiné à s'appliquer aux nombreuses minorités établies près des frontières et qui présentent les mêmes caractéristiques ethniques, religieuses ou linguistiques que la population des États voisins. Pour elles, le droit d'entretenir des contacts avec les populations limitrophes, y compris en se déplaçant dans ces États, revêt une importance particulière. (29)

5.2 Minority Private Minority Education

Whereas there may be some uncertainty as to how far a state should actively provide financial and other resources within the context of public or state schools, there is much greater clarity of understanding and exemplary practices in terms of permitting persons belonging to a linguistic minority to carry on private educational activities in their own language. (30)

It should be emphasised that at the international level, there is widespread and long-standing acknowledgment of this minority right. Earlier this century, the Permanent Court of International Justice in **Minority Schools in Albania** commented on the nature and content of Article 5 the **Albanian Minorities Treaty** and concluded that it safeguarded the right of minorities to establish and maintain their own private schools. In the case of indigenous peoples, there is also strong international recognition of a similar right. Article 27 of the **1989 ILO Convention** begins with the principle that educational policies must reflect the special needs and incorporate the histories, knowledge, value systems and the further social, economic and cultural aspirations of indigenous peoples. Moreover, Article 27(3) provides that:

In addition, governments shall recognise the right of these peoples to establish their own educational institutions and facilities, provided that such institutions meet minimum standards established by the competent authority in consultation with these peoples.

Similarly, Article IX of the draft **Inter-American Declaration on the Rights of Indigenous Peoples** (31) confirms this positive and growing state consensus that

indigenous peoples are entitled to establish and operate their own private educational programmes and institutions.

States throughout the world have increasingly and directly lent support to this right of minorities (and indigenous peoples) by various means. There is now widespread recognition of a linguistic minority's right to create and operate its own educational activities and institutions in a large number of bilateral treaties (32) and international instruments. (33)

Furthermore, more "political" statements confirm this acceptance. For example, paragraph 32.2 of the OSCE **Document of the Copenhagen Meeting of the Conference on the Human Dimension**, although limited to national minorities, acknowledges explicitly their right:

...to establish and maintain their own educational...institutions, organisations or associations, which can seek voluntary financial and other contributions as well as public assistance, in conformity with national legislation;

In states such as the United States, court decisions have confirmed this constructive view that a minority is entitled to freely operate its own private schools, confirming the tie in that country between freedom and private schools and instruction in the language of a minority. (34) In **Meyer v. Nebraska**, (35) the Supreme Court also confirmed the tie between a person's liberty as recognised in the Fourteenth Amendment and private teaching in a minority language.

India has a long history of recognising in legal and constitutional provisions the rights of persons belonging to a linguistic minority to freely conduct private education activities in their own language if they so choose. For example, it has recognised that an important aspect of the right of members of a linguistic minority to use their language in the private education field is that educational activities must really be "their own", in other words that they have actual control over the creation and operation of these activities. The recognition of this aspect of a minority's right can be found in Article 30(1) of the **Constitution of India** which guarantees to all religious or linguistic minorities "the right to establish and administer educational institutions of their choice."

5.4 State Support for Private Minority Educational Activities

There is also increasing state receptivity to providing financial or institutional support for the private educational activities of minorities to truly "protect and promote" the linguistic minority's identity.

At the international level, in the case of indigenous peoples who are often minorities in a national context, a number of states have accepted through treaties such as the **1989 ILO Convention** that governments have the responsibility to develop (with the participation of the peoples concerned) action to protect their rights, and stresses the need for respect for their social and cultural identity, their customs and traditions and their institutions, including their linguistic component (Article 2). This includes the right of indigenous peoples, if they so desire, to operate their own private schooling activities. Not only must signatory states "consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly", they must also "establish means for the full development of these peoples' own institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose." Article 27(3) referred to earlier confirms that the State must provide assistance in the case of the private educational activities of indigenous peoples.

In the Americas, the emerging consensus can be seen with Article IX of the draft **Inter-American Declaration on the Rights of Indigenous Peoples** (36) which

specifies that states have the obligation to provide financial or any other type of assistance for indigenous peoples to establish and operate their own private educational programmes and institutions.

In terms of state practice, you have positive models such as France, which has adopted legislation that acknowledges the German-speaking minority's right to create private school and provides for public financial assistance for these institutions in the regions of Alsace and Moselle, as well as apparently Estonia with its 1993 **Law on Cultural Autonomy for Ethnic Minorities**. (37) Minority schools in Australia also receive a subsidy of \$30 (Australian) per pupil, provided they are open to students from any ethnic background, and operate on a non-profit basis.

In the case of Turkey and Greece, despite some serious problems, both states have in place private minority schools according to the terms of treaties concluded in 1920. The Greek Orthodox minority of Istanbul and the Muslim minority of Western Thrace are entitled "to establish, manage and control at their own expense, any charitable, religious and social institutions, any schools and other establishments for instruction and education with the right to use their own language and to exercise their own religion freely therein". The Turkish and Greek governments have in some regards gone beyond these provisions and provide the financial resources for the operation of these private minority schools. For example, the Turkish-speaking minority in Greece runs its own schools (with about 11,000 pupils and 770 teachers) at the expense of the Greek state, although only half of the syllabus is taught in Turkish. The administration of minority schools can choose to use either the Arabic or Roman script.

5.5 State Education in the Language of a Minority

There are numerous other examples of state practices involving linguistic minorities where in addition to the right to freely operate private schools where their language is used partly or in totality as medium of instruction, persons belonging to such minorities also have a right to state (public) education where the minority language is used to some degree as medium of instruction under certain conditions where practical, or at the very least is taught to pupils.

At the international level, there is some long-standing recognition that a state not only **should** provide for public schooling in a minority language to the degree that is practical, but also that it **must** do so under certain conditions. During the League of Nations era, the minorities treaties contained provisions specifically involving the use of a minority language as medium of instruction in the state school system when appropriate:

Provisions will be made in the public educational system in towns and districts in which are resident a considerable proportion of Albanian nationals whose mother-tongue is not the official language, for adequate facilities for ensuring that in the primary schools 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 teaching of the official language being made obligatory in the said schools. (38)

One Permanent Court of International Justice decision stated that Article 9 of the **Polish Minorities Treaty** which called for adequate public facilities for ensuring to the children of Polish nationals of other than Polish speech primary instruction through the medium of their own language, represented the right of "minorities the members of which are citizens of the state to enjoy...amongst other rights, equality of rights...in matters relating to primary instruction". (39)

More recent treaties and international instruments have been recognising that states must respond in an inclusive and favourable way to the presence of minorities by acknowledging an obligation to provide public schooling in the languages used by

the population of a country, including the language of persons belonging to linguistic minorities, when this is practical and reasonable. These include the **Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities**, (40) the **Central European Initiative Instrument for the Protection of Minority Rights**, (41) the **Document of the Copenhagen Meeting of the Conference on the Human Dimension**, (42) and the **Convention-cadre pour la protection des minorités nationales**. (43)

For example, Article 8 of the **European Charter for Regional or Minority Languages** illustrates how such a realistic and constructive approach operates by identifying under what conditions and to what degree a minority language should be used in public education in a way that accommodates their identity:

At the bottom end of the scale, a state could limit itself to teaching the language of a minority at preschool, or if the number of pupils whose families so request is considered sufficient, go up the scale to a substantial part of the education; if the numbers are even higher, up to a complete preschool programme in the language of the minority, and so on with the higher levels of education, always the more generous where the number of pupils is sufficiently large and concentrated. States should seek a level of use of a minority language which best fits their demographic reality since Article 8 is applicable "according to the situation of each language". This implies that the larger the number of speakers of a regional or minority language and the more linguistically homogeneous the population in a region, the "stronger" the option which should be adopted.

Most of the international instruments and treaties mentioned earlier that contain provisions concerning the entitlement to education in a non-official or minority language, where warranted by the number of speakers, including persons belonging to linguistic minorities, nevertheless add that acquisition of the common or official language must also be possible as part of a state's non-discriminatory education policy. (44)

Although indigenous peoples are not necessarily minorities, many of them do find themselves in a minority position, and as such the treatment of their language in public schools is also relevant. (45) Article 28 of the **1989 ILO Convention** illustrates that at the international level, signatory states to that treaty have also accepted the obligation to provide assistance, wherever practical, to these and other educational activities of indigenous peoples:

1. Children belonging to the peoples concerned shall, wherever practicable, be taught to read and write in their own indigenous language or in the language most commonly used by the group to which they belong. When this is not practicable, the competent authorities shall undertake consultations with these peoples with a view to the adoption of measures to achieve this objective.
2. Adequate measures shall be taken to ensure that these peoples have the opportunity to attain fluency in the national language or in one of the official languages of the country.
3. Measures shall be taken to preserve and promote the development and practice of the indigenous languages of the peoples concerned.

A similar recognition is embodied in Article VIII of the draft **Inter-American Declaration on the Rights of Indigenous Peoples**. (46) This provision would confer on states the obligation to operate educational systems in the indigenous languages, whilst at the same time providing the necessary training and means for mastery of the official language.

There are many other examples of positive state measures dealing with indigenous

peoples who find themselves in the position of a linguistic minority. In 1990, Norway adopted the **Primary School Act** which reads as follows:

1. Children in Sami districts have the right to be taught Sami and to be instructed through the medium of Sami. From the seventh year on the pupils themselves decide on this matter. Children taught in or through the medium of Sami are exempted from instruction in one of the two Norwegian language varieties in the eighth and ninth year.
2. On advice from the local school board the municipality board may decide that Sami-speaking children shall be instructed in Sami all nine years and that Norwegian-speaking children shall learn Sami as a subject.
3. Instruction in or through the medium of Sami may also be given to children with a Sami background outside the Sami districts. If there are at least three Sami-speaking pupils at a school, they may demand instruction in Sami. (47)

In Canada, the **Constitution** enshrines the right of members of the two main linguistic groups representing about 90 percent of the country's population to education in their mother tongue, "where numbers warrant". (48) In Austria, the most numerous and concentrated minorities are the Slovenians, Hungarians and Croats. (49) The Minority Schools Acts for the provinces of Carinthia and Burgenland regulates schooling for persons belonging to these three linguistic minorities in primary and secondary public schools located in the areas where these minorities are concentrated. Outside of these areas of concentration, minority language instruction in Hungarian, Croat or Slovene where there is a minimum number of students, usually between four and nine. Instruction in most of these schools follow for the most part a "bilingual" format, meaning that subjects are taught roughly to the same extent in German and the minority language concerned.

India's **Constitution** contains a provision which directs every state, and every local authority within a state, to endeavour to provide "adequate" public facilities for instruction in the mother-tongue at the primary stage of education to the children of linguistic minorities, (50) adequacy resting mainly on the numerical importance of a minority. This is in addition to the division of India's states along essentially linguistic lines. These political divisions ensure that the larger linguistic communities have control over public schools and other institutions of learning, and thus ultimately they are in a position to ensure that most inhabitants can have their primary language used as medium of instruction in state schools.

Switzerland's regime of cantonal autonomy ensures that most members of the country's three main linguistic minorities have control over the public schools and educational activities in their cantons with a corresponding use of their language as medium of instruction. The scheme is deemed necessary and reasonable in the Swiss context since it adequately ensures most speakers of the main languages in the country have access to state schooling in their language. (51)

Amongst other states which have adopted some form of legislation which permits public schooling in the language of linguistic minorities by relying on a territorial basis are Hungary ("national minority languages"), (52) New Zealand (Maori), Finland (Swedish), Poland (Lithuanian), (53) the United Kingdom (Welsh).

In Nigeria, each of that federation's states adopts its own policy on the language of instruction in state schools. This normally results in the adoption of the primary language of the principal ethnic group of the region - even if it is a linguistic minority at the national level - to use its language as language of instruction in public schools to what is deemed an appropriate degree.

The Chinese government has a generous legal foundation in relation to the rights of linguistic minorities in the area of public schools under Article 37 of the **Act for the**

Implementation of Regional Autonomy for Ethnic Minorities:

1. The ethnic language is the major language from primary school to high school. Chinese is taught from the third or fifth grade of primary school until the end of high school. Students are required to study one or two years of Chinese (Mandarin) before entering college. A special ethnic-language program is offered at college, where only science and technology are taught in Chinese; for all other courses such as language, literature, history, law, and economics the language of instruction is the ethnic language. This type of bilingual education is used by the Uygur in Xinjiang Uygur Autonomous Region.

2. In primary school and middle school the ethnic language is the major language while Chinese is taught as a subject from the second or third grade of primary school to the end of middle school. High schools in some areas continue to use this method, but others will adopt Chinese as the major language. In college the ethnic language is used only in language, literature, and history departments, while the other subjects are taught in Chinese. This system is used by the Mongolians in pastoral areas in the Inner Mongolian Autonomous Region and the Koreans in Yanbian Prefecture in Jilin Province. The Zhuang people in Guangxi Zhuang Autonomous Region are also experimenting with this method. Some primary schools in compact communities of the Zhuang people in Guangxi use Zhuang as the major language from the first to the sixth grade. All textbooks are translated from the standard primary-school textbooks in Chinese. Chinese classes are offered from the third grade until graduation. Where there is preschool education, Chinese language teaching starts from the last term of the second grade... (54)

In the last twenty-five years, Latin American countries have also begun to move in a similar direction as regards the right to use indigenous languages which are in a minority situation. Once again many of the following examples show a movement towards positive state measures which - when faithfully applied - may go a long way to protect the identities of linguistic minorities. In March 1975, Peru enacted **Decree No. 21** recognising Quechua as an official language of the Republic. It stipulates that the Ministry of Education shall provide "all necessary support for institutions engaged in...the teaching and promotion of the language in question". The teaching of Quechua is declared to be compulsory at "all levels of education in the Republic". In Bolivia, the **Supreme Decree No. 23036 of 28 January 1992** contains provision for the implementation of the *Programa de Educación Intercultural Bilingüe* in the Guaraní, Aymara and Quechua communities. (55) In Paraguay, **Law 28 of 10 September 1992** renders mandatory the teaching of both national languages (Spanish and Guaraní) at the elementary, secondary and university levels. (56)

Similar legislation dealing with public education institutions for indigenous peoples as minorities are to be found in many other countries, including the United States:

The Native American Languages Act acknowledges that the "United States has the responsibility to act together with Native Americans to ensure the survival of these unique cultures and languages", and establishes a federal policy "to preserve, protect and promote the rights and freedom of Native Americans to use, practice and develop Native American languages" and to "encourage and support the use of Native American languages as a medium of instruction". (57)

Furthermore, the U.S. government adopted further legislation recognising in **Native American Languages Act (58)** that the federal government has the obligation:

1. To preserve, protect and promote the rights and freedom of Native Americans to use, practice and develop Native American Languages.

2. To recognise the right of Indian tribes and other Native American governing bodies to use the Native American languages as a medium of instruction in all schools funded by the Secretary of the Interior. (59)

State-funded schools for indigenous peoples in the US must thus use indigenous languages as medium of instruction when it is deemed desirable by indigenous peoples themselves.

In New Zealand, because of the implications of the **Waitangi Treaty** signed between this indigenous people and the British Crown in the nineteenth century, courts have decided that the existence of close ties between Maori culture and customs, and their native language, *te reo Maori*, signifies that language is one of the treasures which the state is required to protect, (60) and that this protection includes, at least, the right to acquisition of that language by the Maori people in state-funded schools. (61)

In the French territory of New Caledonia, indigenous peoples have been granted some autonomy powers, including the right to teach their language and culture in public schools. (62) In the Philippines, regional minority languages are used as auxiliary media of instruction in the regions where they are widely spoken.

In Nicaragua, the **Atlantic Coast Autonomy Law** recognises the right of the Atlantic Coast communities to preserve their cultural identity, and their languages, as well as the right to use and enjoy the waters, forests and communal lands for their own benefit. Article 12(5) provides that members of these indigenous communities are entitled to be educated in their own languages, through programmes which take into account their historical heritage, their traditions and the characteristics of their environment, all within the framework of the national education system.

5.6 Private Media and Minority Languages

There are a number of international instruments that help to provide models of positive approaches to the issue of the rights of persons belonging to a linguistic minority in the area of private media. Once again, it should be remembered that strictly speaking not all aspects of these practices can be ascribed to the "inspiration" provided by Article 27 of the **International Covenant on Civil and Political Rights**. Some aspects appear to relate to freedom of expression, whilst others possibly to a non-discriminatory linguistic policy.

European states which have ratified the **European Charter for Regional or Minority Languages** have agreed to the following:

The parties undertake to guarantee freedom of direct reception of radio and television broadcasts from neighbouring countries in a language used in identical or similar to a regional or minority language, and not to oppose the retransmissions of radio and television broadcasts from neighbouring countries in such a language. They further undertake to ensure that no restrictions will be placed on the freedom of expression and free circulation of information in the written press in a language used in identical or similar form to a regional or minority language. The exercise of the above mentioned freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interest of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of reputation or rights of others, for preventing disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

In practical terms, this means that when the number of speakers of a minority or

regional language reaches a certain level ("according to the situation of each language"), public authorities should adopt measures aimed at ensuring that they are properly served in their language by private media when these authorities are active in this field (through licensing, programme content requirements, etc.). In other words, as the number of speakers of a language increases in a region, the media, and especially the broadcasting media, should respond to the proportionate needs and interests of this population. Public authorities must to the extent of their involvement in the field of private media adopt a policy that reflects these needs and interests with appropriate measures:

b) I. to encourage and/or facilitate the creation of at least one radio station in the regional or minority languages, or

II. to encourage and/or facilitate the broadcasting of radio programmes in the regional or minority languages on a regular basis;

c) I. to encourage and/or facilitate the creation of at least one television channel in the regional or minority languages, or

II. to encourage and/or facilitate the broadcasting of television programmes in the regional or minority languages on a regular basis;

d) to encourage and/or facilitate the production and distribution of audio and audio-visual works in regional or minority languages;

e) I. to encourage and/or facilitate the creation and/or maintenance of at least one newspaper in the regional or minority languages; or

II. to encourage and/or facilitate the publication of newspaper articles in the regional or minority languages on a regular basis;

(63)

At the individual state level, there are other models of protecting the identity of linguistic minorities and encouraging conditions for the promotion of that identity. In Canada, the desire to address the specific cultural and linguistic needs of audiences has been recognised, and includes, in the case of indigenous peoples, the obligation "to play a distinct role in fostering the development of aboriginal cultures and/or, possibly, the preservation of ancestral languages." (64) The Canadian Radio-Television and Telecommunications Commission (CRTC) adopted in July 1985 a comprehensive policy paper on cultural and linguistic plurality whilst solemnly affirming the high value placed on linguistic diversity and how each language is as important as any other. (65) There are of course limitations due to practical considerations as to the degree of use and choice of minority languages which can be accommodated in private broadcasting., it also recognises that, practically speaking, every demand for a private broadcasting.

Despite being official, the Irish language in Ireland is also a minority language, and in terms of private media the courts in that country have indicated that state authorities must be sensitive to the desirability of its presence. Presumably, other minority languages should be properly reflected in the private media in order to properly reflect the "culture of the people of the whole of Ireland" as suggested by the Irish Supreme Court in **Minister for Posts and Telegraph v. Cáit Bean Uí Chadhain**. (66)

Some states demonstrate an even more positive attitude towards the protection and promotion the rights of persons belonging to a linguistic minority by encouraging directly a greater presence of minority languages in private media. In Canada, the federal government provided, until fairly recently under the Natives Communications Programme, financial assistance to fifteen private aboriginal language newspapers

across the country. It also provided funds under the Northern Native Broadcast Access Programme to television and radio broadcasting in indigenous languages, many of them by private, non-profit, entities.

In Hungary, newspapers publishing in the languages of national minorities are guaranteed a financial contribution under the state budget. (67) Under Act No. 416 of 5 August 1981 on the regulations governing publishing houses and measures to promote publishing in Italy, daily newspapers published entirely in French, Ladin, Slovene or German in the autonomous regions of Valle d'Aosta, Friuli-Venezia Giulia and Trentino-Alto Adige, have also received increased grants from the state. (68)

7. *Public Media and Minority Languages*

There are also positive examples of measures which protect linguistic minorities and create favourable conditions for the promotion of their identity in the area of state involvement in public media. Once again, some of these examples are not directly inspired from Article 27 of the **International Covenant on Civil and Political Rights**, but they do indicate as does the UN Declaration what states ought to be doing. In some cases, some of the state practices may also involve the application of a non-discriminatory policy in public broadcasting.

At least one treaty explains generally how a state should conduct itself in relation to public media and minority languages. Practices should generally reflect the actual number of speakers of a minority language in the following way:

- (1) the regular broadcasting of radio programme(s) in the minority or non-official language (these could take diverse forms, from one hour or less a week to many hours every day, according once again to a minority's growing strength);
- (2) the regular broadcasting of television programme(s) in the minority or non-official language (at increasing levels);
- (3) the creation of one or more radio stations operating in the minority or non-official language;
- (4) the creation of one or more television channel(s) in the minority or non-official language;

If the state is actively involved in newspaper publication, it should likewise devote a fair proportion of resources and/or space for the use of minority languages when parts of its population involve sufficiently large linguistic minorities. (69)

In practice, quite a few states recognise more or less explicitly that the needs of persons belonging to linguistic minorities would not be satisfied by the exclusive use in the public media of the official/majority language and that these individuals would not be receiving the same benefit if their language was not being used.

In Switzerland, the effect of language policy in public broadcasting has been to serve the population of each linguistic area in its own language to an appropriate degree. This means that most individuals speaking the three main minority languages in use in the country (French, and Italian, as well as Romansh) will have access to public television or radio in their language. The Swiss have additionally considered that the public broadcasting programming budgets should be divided amongst the three public broadcasting services (German, French, Italian) according to a fixed formula that favours the smaller linguistic populations. Although more generous to the Italian and French populations, the ratio being 42:34:24 for the German, French, and Italian regional television (in radio, the budgetary ratio is 45:33:22), the more favourable treatment of these individuals is probably not discriminatory, since it can be argued that Swiss citizens, regardless of their language, should have access as far as possible

to equivalent public broadcasting services in all three main, territorially-based, languages. (70)

Public media in Australia, (71) Hungary, (72) Italy (especially German, French, Ladin and Slovene), (73) Great Britain, (74) and a multitude of other states similarly include minority language broadcasting to a degree that more or less adequately reflects the demographic weight, needs and interests of their respective linguistic populations. As detailed in one recent UN report, other countries have adopted similar positive approaches:

8. A television programme entitled "Heimat, fremde Heimat" offers information in German and minority languages on living together, cultural diversity and integration in Austria. The ÖRF Regional Bureau in Carinthia transmits radio and television broadcasts in Slovene for the Slovene ethnic group, and in Eisenstadt radio and television broadcast in Croat and Hungarian. Furthermore, the ÖRF is a member of the European Ethnic Broadcasting Association which aims to promote cultural and linguistic diversity in public broadcasting and to increase the participation of ethnic minorities in broadcasting.

5.8 The Language of Public Authorities and Linguistic Minorities

A growing number of international treaties signal that many states have increasingly come to approve of a positive and reasonable response to the presence of linguistic minorities. When authorities at the national, regional or local levels face a sufficiently high number of individuals whose primary language is a minority language, these states tend to accept that they must provide a level of service appropriate to the relative number of individuals involved.

In the case of local districts and their administration, where the speakers of non-official or minority languages are concentrated, local authorities should provide for an increasing level of services in the non-official or minority languages as the number of speakers of those languages increase. Beginning at the lower end of the sliding-scale model and moving to a progressively higher end, this would imply, for example:

1. making available widely used official documents and forms for the population in the non-official or minority language or in bilingual versions;
2. the acceptance by authorities of oral or written applications in the non-official or minority language;
3. the acceptance by authorities of oral or written applications in the non-official or minority language, and response thereto in that language;
4. having a sufficient number of officers, who are in contact with the public, in place to respond to the use of the non-official or minority language;
5. being able to use the non-official or minority language as an internal and daily language of work within public authorities.

Many recent treaties and international instruments embody this concept of a sliding-scale as a proper response to the presence of linguistic minorities on their territory. The **Central European Initiative Instrument for the Protection of Minority Rights** (Article 13: "whenever in an area the number of persons...reaches...a significant level"), the **Convention-cadre pour la protection des minorités nationales** (Article 10: "*Dans les aires géographiques d'implantation substantielle ou traditionnelle...lorsque ces personnes en font la demande et que celle-ci répond à un besoin réel*"), and the **European Charter for Minority or Regional Languages** (Article 10: "within the administrative districts...in which the number of

residents...justifies the measures specified below and according to the situation of each language"), to name but a few, all embody the implicit recognition that minorities and their must be respected and accommodated in certain situations, where appropriate.



Individual state practices can be found that confirm this inclusive, respectful and practical approach. In India, the basic numerical thresholds were adopted in 1956 in a memorandum negotiated between the federal government and individual states: whenever a language is spoken by 30 percent or more of the population in any state or district, the state or district is recognised as bilingual and the relevant minority language is placed on the same footing as the regional language for use by public authorities; whenever the linguistic minority constitutes 15 to 20 per cent of the population in an area, government notices, rules, laws, etc. are reproduced in the language of the minority in that particular area. (75) For its part, the Government of the Philippines uses the main minority languages spoken in the country as auxiliary official languages in the regions where they are concentrated.

Article 8 of the December 1993 draft **Language Law of Estonia** provides that in municipalities where at least one-half of the permanent residents belong to a national minority, every person has the right to receive a response from the state and the municipal institutions of the administrative district and their officials in the language of the national minority as well as in Estonian. It should be pointed out that this requirement that at least half of the population belong to a national minority appears somewhat steep, certainly when compared to the practices in many other countries.

Canada has adopted regulations (76) providing for a rather complicated sliding-scale approach which depends not only upon the total number and/or percentage of speakers of the two official languages, but also upon the type of service provided by public authorities. Other than in a few key areas, where minimal services are to be available in both French and English, most bilingual federal government services are only available when the population in a census subdivision includes at least 5 percent of speakers of the official language minority (or at least 5,000 individuals in major cities having a population of more than 100,000). In some of the lesser populated census subdivisions, a few services can be obtained in both languages, even if there are as few as 500 speakers of the official minority language.

Within the public administration of the Basque Autonomous Community in Spain, Euskara and Castilian are to be used by administrative units in areas where the percentage of Euskara-speakers, a linguistic minority in that country, reaches 20 percent of the population.

The Finnish approach towards the minority Swedish-speakers is even more flexible:

In a bilingual municipality (commune) citizens have the right to be administered in Finnish or Swedish by both local and state authorities. The authorities are required to publish documents and announcements that affect the general public in both languages. The internal administrative language of a municipality is the language of the majority. In principle, state authorities should communicate with the municipalities in the principal language of the municipality. A municipality is considered unilingual  Finnish or Swedish  when the entire population speaks the same language or when the number of inhabitants who speak the minority language is less than eight percent. If the minority exceeds eight percent or numbers 3000 persons, the municipality is bilingual. A bilingual commune is not declared unilingual until the minority falls below six percent. (77)

In Austria, the Slovene and Croat minorities enjoy the individual right to use the Slovene and Croat language in administrative and judicial districts with mixed populations. Regulations under the **Ethnic Groups Act** provides for the use of these

minority languages in official communications with federal, provincial and local authorities, including administrative authorities and courts, as well as in appellate proceedings in superior courts.

In the Slovak Republic, the **1990 Official Language Act** recognises that public authorities have the obligation to provide services and respond in a minority language in any region where at least 20 percent of the population consists of a national minority:

If the members of a national minority form in a city or village 20 percent of the population at least, they may in such cities and villages use their language in official contact. If in these cities or villages a citizen who is not a member of the national minority comes into official contact, the procedure is carried on in the official language. The employees of state authorities and local self-government bodies are not obliged to know and use the language of the national minority. Public documents and the official agenda are made up in the official language. (78)

Although it appears that no international instrument attempts to provide a precise demographical standard for assessing when exactly the use of a minority language by public authorities is an appropriate and reasonable response, at least one non-governmental organisation has attempted to do so in a **Draft Protocol to the International Convention on the Protection of National or Ethnic Minorities or Groups, Applicable to the States Members of the Council of Europe**:

The ethnic group's language shall be the official language if in an autonomous corporate entity within a commune (including parts of the commune or factions of a commune equipped with independent sub-organs of the commune) at least 20 percent, in administrative and judicial districts at least six percent, or in larger administrative entities at least five percent of the residing population use the language of the ethnic group. (79)

Certain states have chosen a path which is somewhat different from that described above by opting for various degrees of regional autonomy. When provinces, *oblasts*, cantons or states are granted an extensive array of legal, judicial and administrative powers and corresponding financial resources, it becomes possible for a linguistic minority to acquire control over many facets of the public authority and the corresponding control over public language use. The Swiss cantons, the Åland Islands in Finland, and the Belgian cultural communities are all examples of the so-called principle of linguistic territoriality or *Territorialitätsprinzip*. In the case of Switzerland, for example, this principle signifies that even the relatively small population of Italian-speakers are able to constitute a majority in the canton of Ticino and have an extensive array of public services in their language, in addition to a great deal of local political power.

5.9 Use of a Minority Language in Private Between Individuals

Very few states attempt to prevent individuals from using their language of choice in a private context. (80) Whether a person speaks his or her language with a neighbour on the public street or at home, there is almost universal agreement that a state cannot intrude in this type of language use. It would appear this type of conduct is protected under freedom of expression and would thus apply to all persons, including persons belonging to ethnic minorities.

Most state legislation and constitutions are silent in terms of positive examples in this regard, probably because it appears to be so widely seen as unwarranted state interference.

5.10 Private Use of Minority Language in Public

Most States tend to be silent as to measures dealing with the private use of language in public. Generally, because of the close relationship of this right with freedom of expression, there did not seem to be a need to explicitly guarantee it in constitutional or legislative measures. A few countries have done so to some extent, such as Macedonia in Articles 8 ("The fundamental values of the constitutional order of the Republic of Macedonia [include] the free expression of national identity) and 48 ("members of nationalities have a right freely to express, foster and develop their identity and national attributes. The Republic guarantees the protection of the ethnic, cultural, linguistic and religious identity of the nationalities.") of its Constitution.

Other countries with positive constitutional provisions aimed at the promotion and protection of the right of linguistic minorities to use their language in public include Mongolia ("national minorities of other tongues [have the right] to use their native languages in education and communication and in the pursuit of cultural, artistic, and scientific activities"), Pakistan ("citizens having a distinct language, script or culture shall have the right to preserve and promote the same"), El Salvador ("Indigenous languages spoken in the national territory are part of the cultural heritage and are to be preserved, used and respected"), and Guatemala ("Guatemala is formed of various ethnic groups, including the indigenous groups of Maya origin. The state recognises, respects and promotes their life styles, customs, traditions, forms of social organisation, use of indigenous dress for men and women, their language and their dialect").

5.11 Other State Measures to Promote the Identity of Linguistic Minorities

Under the Ethnic Groups Act of Austria, the federal administration must promote measures and projects that preserve and ensure the existence of linguistic minorities and their identity. This can take the form of federal assistance such as grants, training and counselling of members of these minorities, as well as financial assistance to associations and foundations.

In the Philippines, the Office of the Northern Cultural Communities and the Office of the Southern Cultural Communities have been created to promote and protect the rights of persons belonging to linguistic and other minorities. Various similar entities exist in a large number of countries, fulfilling a variety of roles, including Russia, Canada, Australia, China, India, etc.

The new South African Constitution of 1996 contains also a number of innovative measures. Article 6 recognises a large number of minority languages as official languages. It also adds that:

(4) The national government and provincial governments, by legislative and other measures, must regulate and monitor their use of official languages. Without detracting from the provisions of subsection (2), all official languages must enjoy parity of esteem and must be treated equitably.

(5) A Pan South African Language Board established by national legislation must

(a) promote and create conditions for the development and use of -

(i) all official languages;

(ii) the Khoi, Nama and San languages; and

(iii) sign language ; and

(b) promote and ensure respect for -

(i) all languages commonly used by communities in South Africa, including German, Greek, Gujarati, Hindi, Portuguese, Tamil, Telegu and Urdu; and

(ii) Arabic, Hebrew, Sanskrit and other languages used for religious purposes in South Africa.

Using words very close to the UN Declaration, it also sees the need to take further steps towards promoting and protecting minorities in Article 185:

(1) The primary objects of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities are -

(a) to promote respect for the rights of cultural, religious and linguistic communities;

(b) to promote and develop peace, friendship, humanity, tolerance and national unity among cultural, religious and linguistic communities, on the basis of equality, non-discrimination and free association; and

(c) to recommend the establishment or recognition, in accordance with national legislation, of a cultural or other council or councils for a community or communities in South Africa.

(2) The Commission has the power, as regulated by national legislation, necessary to achieve its primary objects, including the power to monitor, investigate, research, educate, lobby, advise and report on issues concerning the rights of cultural, religious and linguistic communities.

(3) The Commission may report any matter which falls within its powers and functions to the Human Rights Commission for investigation.

(4) The Commission has the additional powers and functions prescribed by national legislation.

Hungary and India are two states which have been adopting very strong and progressive attitudes towards the promotion and protection of the rights of linguistic minorities. In the case of Hungary, the constitution contains a number of provisions which guarantee a whole range of rights for minorities. Furthermore, the Law of 7 July 1993 on the rights of national and ethnic minorities includes respect for the human rights of members of minorities with measures of local self-government. This law provides for the creation of independent councils of local minorities and confers a right to education in the mother tongue of members of minorities, as well as a right to use their language in official organs and to receive from civil servants answers in the languages of the regions in which they traditionally live. The law also provides for television and radio stations to broadcast programmes in the languages of minorities and for the establishment of a mediation process for national minorities.

India for its part has also included strong respect and protection of linguistic minorities in its constitution. This includes the broad recognition of a minority's right to conserve their distinct language, script or culture (Article 29), to establish and administer educational institutions of their choice (Article 30), and to receive government assistance for such private educational facilities in a non-discriminatory way (Article 30(2)).

The constitution also guarantees the right for a minority language to be officially recognised and used by public authorities where the minority represents a substantial proportion of the population (Article 347) as well as to public schooling using a minority language where appropriate (Article 350A).

And finally, because of their importance and the need to ensure that the rights of linguistic minorities are fully protected, the Constitution also establishes a special mechanism to safeguard them:

Article 350B

1. There shall be a special officer for linguistic minorities to be appointed by the President.
2. It shall be the duty of the special officer to investigate all matters relating to the safeguards provided for linguistic minorities under this Constitution and report to the President upon those matters at such intervals as the President may direct, and the President shall cause all such reports to be laid before each House of Parliament, and sent to the governments of the states concerned.

3. The Value and Effect of Protecting the Rights of Linguistic Minorities

Whilst traditional European liberalism tended at best to tolerate or disregard cultural diversity, human rights and international law have evolved in a more inclusive fashion. The rights of linguistic minorities include a panoply of protections which have mainly emerged with the strengthened acceptance in the second half of this century of a "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".

Human rights, including minority rights, are based on the acknowledgment and acceptance of the human person, in all of his or her diversity. Just as one's colour of skin should not diminish one's worth or dignity, so the State should not be prejudiced in its conduct or relationship towards minorities.

It is therefore an oft repeated error to assume that the protection of the rights of minorities is somehow inconsistent with "individual" human rights which have emerged as an integral feature of international law this century. On the contrary, by being founded on the recognition of the intrinsic value of the human person's dignity and worth, human rights at the international level have gone beyond mere tolerance of human differences: respect of the individual includes valuing human diversity. To deny minority individuals access to certain benefits, or to disadvantage them because of their religion or language is - under certain conditions - no longer permissible. Their human differences must be respected and acknowledged to some degree beyond mere tolerance.

States operating within a democratic framework similarly must acknowledge the role and contributions of all of their peoples. Individual human worth and dignity, as a cornerstone of the international human rights edifice, implies a democratic state structure that values all of its citizenry. In terms of language or cultural preferences, this does not exclude a state from adopting a common or official language, but it does mean that value must also be attached to the worth and dignity of the whole population. Minorities within the State which differ from the majority must thus not simply be tolerated, but embraced and accommodated within the State as much as is reasonably possible to do given the situation of the minority and the conditions within the State. That is the very essence of the modern concept of human and minority rights.

This philosophical backdrop concerning the moral underpinning of international human rights does not deny the existence of other desirable effects linked to the recognition of minority rights. Indeed, one could suggest that the effects of protecting and promoting the rights of minorities in themselves should be enough to warrant the development of clearer, more generous standards.

In 1976, UN Special Rapporteur Francesco Capotorti pointed out that it was by recognising and protecting the rights of religious minorities centuries ago that peace and stability in Europe - both between states and within them - could be attained:

❖ since the Reformation, the lot of religious minorities had become a very serious question, no longer the concern only to the states involved, but also profoundly affecting international relations. In this connection it should be remembered that the desire to protect religious minorities had served as a pretext for many interventions by foreign countries... 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. (81)

Human rights scholar Rodolfo Stavenhagen has similarly pointed out that:

❖ in most cases of open ethnic conflict in the world today, the State is not an impartial onlooker or arbiter, but rather a party to the conflict itself. Indeed, in multiethnic societies, the State is frequently either controlled by, or identifies strongly with, a dominant or majority ethnic. (82)

More recently, a study undertaken by the United States Institute for Peace concluded the following:

[I]t is not difficult to establish that violations of the rights of free exercise and non-discrimination intensify conflict❖ nor to project with reasonable confidence that the observance and implementation of those norms will serve to reduce conflict. (83)

When considering state practices affecting the rights of minorities in three situations of conflict, the same study contained the conclusion that breaches of the minorities❖ rights undeniably constituted a major contributing factor to the emergence of these conflicts and that part of the solution seemed to lie with the protection of their rights:

❖ minority populations have been seriously discriminated against because of majority attitudes and beliefs that have tended, respectively, to dominate the governments of those places. At the same time❖ respectable proposals for resolving conflict prominently include references to respect for the rights of free exercise and non-discrimination. (84)

All of the above suggest that the mere presence of minorities within a state is not in itself a danger to the stability of states - most minorities coexist in relative tranquility with the majority in most states, most of the time. They suggest that more often than not it is the refusal of the State to accommodate, to value the individuals who belong to a minority, which contributed to the emergence of many so-called ethnic conflicts. Breaches of human rights, and especially breaches affecting the rights of minorities in areas such as language, religion or culture, can be a recipe for disaster in states where minorities represent a substantial proportion of the population.

One of the main effects of promoting and protecting the rights of minorities is therefore the maintenance of peace and stability. Documents such as the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities are part of a process to increase understanding and respect for human rights which are anchored upon the value of human worth and dignity. It is in this spirit that the rights of linguistic and other minorities must be seen: measures aimed at reaching a balance of harmony and inclusion rather than conflict and exclusion.

Notes

1. Parts of this paper rely on material from de Varennes, Fernand (1996), **Language, Minorities and Human Rights**, Martinus Nijhoff, The Hague.
2. Dessementet, François (1984), *Le droit des langues en Suisse*, Éditeur officiel du Québec, Québec, at p. 29. The author also mentions an earlier 1515 treaty containing a similar linguistic definition, as well as a 1403 treaty between the cities of Bern and Fribourg which used a German word, *welsche*, signifying someone who speaks a foreign language, in order to identify a potential enemy.
3. **British and Foreign State Papers**, 1814-1815, Volume II, 1839, at pp. 7-55.
4. Article 1 of the **Final Act of the Congress of Vienna: Les Polonais, sujets respectifs des hautes parties contractantes, obtiendront la conservation de leur nationalité, d'après les formes d'existence politique que chacun des gouvernements, auxquels ils appartiennent, jugera convenable de leur accorder.**
5. **Convention for the Settlement of the Frontier between Greece and Turkey**, 24 May 1881, (1881) 158 Consolidated Treaty Series 367, Article 7. See other similar provisions involving Muslims in the **Treaty of Peace between Serbia and Turkey**, Article 7, signed 14 March 1914 in Constantinople, (1913-1914) Vol. 219 Consolidated Treaty Series 320, at p. 322, and the apparent protection of private schools of numerous linguistic and religious minorities in Article 29 of the **Treaty of Peace between Austria-Hungary, Bulgaria, Germany and Turkey, and Romania**, signed 7 May 1918 in Bucharest, (1917-1918) Vol. 223 Consolidated Treaty Series 241, at p. 264.
6. See for example the case of the Vlach minority, who speak a distinctive form of Romanian, whose schools were protected under the **Treaty of Peace between Bulgaria, Greece, Montenegro, Romania and Serbia**, signed 10 August 1913, (1913) Vol. 218 Consolidated Treaty Series 322, at pp. 335-337; see also the provisions regarding German language schools in Articles 38 to 41, **Treaty between Germany and Romania supplementary to the Treaty of Peace**, 7 May 1918, signed in Bucharest, (1917-1918) Vol. 223 Consolidated Treaty Series 304, at pp. 311-312, and the provisions regarding Turkish language private schools for Muslims living in Serbia, Article 9 of the **Treaty between Serbia and Turkey**, signed at Constantinople, 14 March 1914, (1913-1914) Vol. 219 Consolidated Treaty Series 320, at p. 324.
7. See *Study on the Rights of Persons belonging to Ethnic, Religious and Linguistic Minorities* (1976), UN Special Rapporteur Francesco Capotorti, UN Doc. E/CN.4/Sub.2/384/Add.1-7..
8. *Study on the Rights of Persons belonging to Ethnic, Religious and Linguistic Minorities, supra*, at pp. 18-19.
9. **Advisory Opinion on Minority Schools in Albania**, (1935) Permanent Court of International Justice, Series A/B, No. 64, 3, at p. 4, also known as the **Minority Schools in Albania** case.
10. McKean, Warwick (1983), *Equality and Discrimination under International Law*, Clarendon Press, Oxford, United Kingdom, at p. 53.
11. General Assembly Resolution 217 A (III), UN GAOR, 3rd Session, Resolutions, Part 1, at p. 71 (1948).
12. United Nations Treaty Series, Volume 328, at p. 249.
13. (1960), United Nations Treaty Series, Vol. 428, at p. 93.
14. **Treaty with Italy**, United Nations Treaty Series, Vol. 49, at p. 3; **Treaty with Romania**, United Nations Treaty Series, Vol. 42, at p. 3; **Treaty with Bulgaria**, United Nations Treaty Series, Vol. 41, at p. 21; **Treaty with Hungary**, United Nations Treaty Series, Vol. 41, at p. 135; **Treaty with Finland**, United Nations Treaty Series, Vol. 49, at p. 203; **Austrian State Treaty**, United Nations Treaty Series, Vol. 217, at p. 223.
15. The UN Declaration is thus much more ambiguous than the **European Charter for Regional or Minority Languages** where states "undertake to make available" education partial or complete education in a minority language where appropriate (Article 8). See similar provisions in other treaties and international instruments such as the Convention-cadre.
16. This interpretation is confirmed later in the UN Declaration. Article 4(2) would seem to require measures to create favourable conditions for individuals to be able to use their language, including in the described situation.
17. **Coeriel and Aurik v Netherlands**, UN Human Rights Committee, Communication No. 453/1991, 31 October 1994.
18. Whilst many of these examples may seem self-evident, they actually involve recent instances where a state has tried to prohibit the private use of a minority language.

19. For a more detailed explanation of the interaction between the private use of language and additional requirements to comply with a state's official language policies, see de Varennes, Fernand (1996), **Language, Minorities and Human Rights**, Martinus Nijhoff, The Hague, Chapter 3.
20. Such a state obligation may arise from the application of other human rights standards in appropriate situations. See Chapter 4, de Varennes, Fernand (1996), **Language, Minorities and Human Rights**, Martinus Nijhoff, The Hague.
21. See for example Article 5(i) of the **Convention Against Discrimination in Education**. It is important to warn against the argument that educational activities in a minority language necessarily restrict employment or higher educational opportunities of the minority, or will obviously be of lower educational quality. Quality of education and the language of instruction are two different matters: one can obtain a high quality education in any language, given proper teaching resources and conditions. Similarly, it appears nonsensical to suggest that the use of a major international language such as English or Spanish, in a state where it is a minority language, would automatically result in an inferior standard of education. As for limiting employment or advanced educational opportunities, this would normally not become a major difficulty when it is recognised that there is a recognised international obligation for minority schools to teach the official or majority language.
22. See in particular de Varennes, Fernand (1996), **Language, Minorities and Human Rights**, Martinus Nijhoff, The Hague, Section 5.6.1.
23. de Varennes, Fernand (1996), **Language, Minorities and Human Rights**, Martinus Nijhoff, The Hague, Section 6.2.2.
24. Whilst an attempt has been made to provide up-to-date information, the rate of legislative and constitutional changes that occur throughout the world obviously makes this an impossible task for the author.
25. A name can identify a person as belonging to a community, and any state restriction on the use of a person's name in a minority language would be an intervention in what is by its very nature a private matter.
26. Article 12(1) of the 1993 **Act No. LXXVII on the Rights of National and Ethnic Minorities**.
27. Among other treaties and instruments with similar provisions are Article 14 of the draft **Declaration on the Rights of Indigenous Peoples**, Article 11 of the **Central European Initiative Instrument for the Protection of Minority Rights**, Paragraph 6 of the **Resolution on the Languages and Cultures of Regional and Ethnic Minorities**, Article 10(5) of the **European Charter for Regional or Minority Languages**, Article 4 of the **Convention on Providing Special Rights for the Slovenian Minority Living in the Republic of Hungary and for the Hungarian Minority Living in the Republic of Slovenia**, Article 9 of the **Declaration on the Principles of Cooperation Between the Republic of Hungary and the Ukrainian Soviet Socialist Republic in Guaranteeing the Rights of National Minorities**, Article 10(1)(c) of the **Treaty of Peace with Italy**, Article 14(1) of the **Treaty Between the Republic of Lithuania and the Republic of Poland on Friendly Relations and Good Neighbourly Cooperation**, Article 15 of the **Treaty Between the Republic of Poland and the Republic of Belarus on Good Neighbourliness and Friendly Cooperation**, Article 15(2) of the **Treaty Between the Republic of Poland and the Republic of Latvia on Friendship and Cooperation**, Article 11 of the **Treaty Between the Republic of Poland and Ukraine on Good Neighbourliness, Friendly Relations and Cooperation**, and Article 20(3) of the **Vertrag zwischen der Bundesrepublik Deutschland und der Republik Polen über gute Nachbarschaft und freundschaftliche Zusammenarbeit**. It should be noted that as regards the above-mentioned **Convention-cadre** and other instruments such as the **European Charter for Minority or Regional Languages**, the rights are not, strictly speaking, aimed at minorities generally. They are limited to guaranteeing certain rights to long-established groups of citizens living within state borders, sometimes referred to as "national minorities". However, as explained in de Varennes, Fernand (1996), **Language, Minorities and Human Rights**, Martinus Nijhoff, The Hague, at Section 5.6.3, this does not exclude the application of those rights to other minorities in general. These two treaties do not exclude the application of other, more general human rights.
28. See Article 2(5) of the United Nations **Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities**, Article 23 of the **Central European Initiative Instrument for the Protection of Minorities**, Article 14 of the **European Charter for Regional or Minority Languages**, Article 17 of the **Convention-cadre sur la protection**

- des minorités nationales**, Article 14 of the **Treaty Between the Republic of Lithuania and the Republic of Poland on Friendly Relations and Good Neighbourly Cooperation** and Article 15(2) of the **Treaty Between the Republic of Poland and the Republic of Latvia on Friendship and Cooperation**.
29. Malinverni, Giorgio (1991), "Le projet de Convention pour la protection des minorités élaboré par la Commission européenne pour la démocratie par le droit", in *Revue universelle des droits de l'Homme*, Vol. 3, N° 5, 157-165, at p. 161.
 30. Although it should be obvious, it is worth stating that recognition of the right of persons belonging to linguistic minorities does not signify that they must not learn a state's official or common language. A state may legitimately require that all children in private minority educational activities also learn the common or official language without this being perceived as an interference with the minority's right, as long as the minority can continue to use its language as medium of instruction to the extent it feels is appropriate. In fact, it could even be claimed that it is essential for linguistic minorities to teach the common or official language whilst retaining the minority language as medium of instruction in order to avoid the creation of linguistic ghettos that would result in the possible exclusion of members of these minorities from participation in the wider society. This is acknowledged in instruments such as the **UNESCO Convention Against Discrimination in Education** where it is stated that linguistic educational activities must not prevent "members of these minorities from understanding the culture and language of the community as a whole and from participating in its activities..."
 31. Draft approved by the Inter-American Commission on Human Rights, OEA/SER/L/V/II.90, 21 September 1995.
 32. Among the relevant provisions of treaties are Article 8 of the **Agreement between the Czech Republic and the Slovak Republic on Cooperation and Good Neighbourly Relations**, Article 1 of the **Agreement between the Ministry of National Education of the Republic of Poland and the Ministry of Culture and Education of the Republic of Lithuania Regarding the Educational System and University Education**, Article 4 of the **Germany-Russian Federation Protocol of Collaboration on the Gradual Restoration of Citizenship to Russian Germans**, Article 8 of the **Treaty Concerning the Protection of Minorities in Greece**, Article 6 of the **Treaty on Friendship and Cooperation between the Lithuanian Republic and Ukraine**, Article 67 of the **Treaty of Peace with Austria**, Article 40 of the **Treaty of Peace with Turkey**, Article 14 of the **Treaty between the Republic of Lithuania and the Republic of Poland on Friendly Relations and Good Neighbourly Cooperation**, Article 8 of the **Treaty between the Republic of Poland and the Czech and Slovak Republic on Good Neighbourliness, Solidarity and Friendly Cooperation**, Article 15 of the **Treaty between the Republic of Poland and the Republic of Belarus on Good Neighbourliness and Friendly Cooperation**, Article 15 of the **Treaty between the Republic of Poland and the Republic of Latvia on Friendship and Cooperation**, and Article 11 of the **Treaty between the Republic of Poland and Ukraine on Good Neighbourliness, Friendly Relations and Cooperation**.
 33. See for example Article 14 of the draft **Declaration on the Rights of Indigenous Peoples**, Article 16 of the **Central European Initiative for the Protection of Minority Rights** (limited to national minorities), Paragraph 32.2 of the **Document of the Copenhagen Meeting of the Conference on the Human Dimension** (national minorities), Article 11 of **Parliamentary Recommendation 1134 (1990) on the Rights of Minorities** (Council of Europe), Article 5(1)(c) of the United Nations **Convention against Discrimination in Education**, Article 30 of the **United Nations Convention on the Rights of the Child**, Article 27(3) of the International Labour Organisation **Convention (No. 169) Concerning Indigenous and Tribal Peoples in Independent Countries**, and Article 13 of the **Convention-cadre pour la protection des minorités nationales**.
 34. In **Farrington v. Tokushige**, 273 U.S. 284 (1927) (United States), at p. 298.
 35. 262 U.S. 390 (1923) (United States),
 36. Draft approved by the Inter-American Commission on Human Rights, OEA/SER/L/V/II.90, 21 September 1995.
 37. Article 8 of the **Loi relatif au statut et à la promotion de la langue en Alsace et en Moselle**, January 1993. This right has been confirmed in more recent French legislation, Article 11 of the **Loi 94-665 du 4 août relative à l'emploi de la langue française**.
 38. **Advisory Opinion on Minority Schools in Albania**, (1935) Permanent Court of International Justice, Series A/B, No. 64, 3, at p. 21, also known as the **Minority Schools in Albania** case.
 39. **Treatment of Polish Nationals in Danzig** (1932), Permanent Court of International Justice,

- Series A/B, No. 44, 1, at p. 9.
40. Article 4(3) indicates that where possible, persons belonging to minorities are entitled to appropriate state measures so that they may learn their mother tongue or be taught in their language. This provision is surprisingly timid in its wording since, regardless of a minority's numerical importance, a state could possibly claim that it is conforming to the **Declaration** by simply permitting teaching of the language, and not its use as medium of instruction. Another, perhaps more consistent interpretation would be that the use of terms such as "appropriate measures" in the provision signals the need to assess each case according to criteria such as the minority's relative size. Most other instruments spell out more precisely the need to take into account the demographic realities of the populations involved when determining the appropriate state measures in education.
 41. Article 17.
 42. Paragraph 34. The wording is quite similar to the UN **Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities** and should probably be interpreted in the same way.
 43. Article 14(2) provides: *Dans les aires géographiques d'implantation substantielle ou traditionnelle des personnes appartenant à des minorités nationales, s'il existe une demande suffisante, les parties s'efforcent d'assurer, dans la mesure du possible et dans le cadre de leur système éducatif, que les personnes appartenant à ces minorités aient la possibilité d'apprendre la langue minoritaire ou de recevoir un enseignement dans cette langue.*
 44. Legislation such as Article 4 of the **Slovak National Council Act No. 428/1990** of 25 October 1990 which requires in the schooling and education system that all citizens master the Slovak language to the extent required for the official and everyday use is therefore not objectionable *in se*.
 45. See de Varennes, Fernand (1996), "Minority Aspirations: The Revival of Indigenous Peoples", *International Review of Education*, 42(4): 309-325.
 46. Draft approved by the Inter-American Commission on Human Rights, OEA/SER/L/V/II.90, 21 September 1995. .
 47. *Supra*, at p. 91.
 48. Article 23 of the **Canadian Charter of Rights and Freedoms**, in Section 3.23 of the Appendix. It should be emphasised that this provision contains a number of suspect qualifications on the exercise of the right. While the Supreme Court of Canada has recognised the validity of the sliding-scale approach in the field of education in **Mahé v. Alberta**, [1990] 1 S.C.R. 342 (Canada), it has failed to appreciate that it is in fact essentially applying the principle of non-discrimination. Canadian legal scholars and legislation have generally failed to realise that language policies are not simply a matter of a state's political prerogative, but can be subject to restrictions due to individual rights such as equality and freedom of expression. It then comes as no surprise that Canada has been "reprimanded" twice by the United Nations Human Rights Committee for measures affecting language in **Lovelace v. Canada**, Communication 24/1977, UN Document A/36/40, and **Ballantyne, Davidson and McIntyre v. Canada**, Communications 359/1989 and 385/1989.
 49. These minorities are also "national minorities" since they are living and traditionally rooted in Austria (*beheimatet*).
 50. Article 350A, **Constitution of India**.
 51. French translation of judgement in German: *La garantie de la survie des quatre langues nationales, contenue dans l'article 116, premier alinéa, de la Constitution fédérale, serait impensable sans la garantie de leur emploi dans leurs cadres linguistiques respectifs. Cette prescription garantit la composition linguistique traditionnelle du pays. Il incombe aux cantons de veiller, dans le cadre de leur juridiction, sur le maintien et l'homogénéité des régions linguistiques. Ces mesures...doivent servir à la réalisation du but d'intérêt public qu'est le maintien des régions linguistiques et, d'autre part, protéger la dignité et la liberté de l'individu.*
 52. Article 43 of **Act No. LXXVII of 1993 on the Rights of National and Ethnic Minorities**.
 53. *The Protection of Ethnic and Linguistic Minorities in Europe* (1993), John Packer and Kristian Myntti (eds.), Institute for Human Rights, Åbo Akademi University, Åbo, Finland, at p. 110: There are about 20,000 Lithuanians in Poland, living predominantly in the north-eastern part of Suwalki province, specifically around Sejny. Quite numerous Lithuanian communities have also been recorded in Silesia (Wroclaw), Pomerania (Szczecin, Slupsk) and in Gda_sk, Olsztyn and Bialystok... It is of particular note that Lithuanian language education in Suwalki province is very well organised in 11 primary schools and one secondary school. Unlike the cases of Ukrainian

- and Byelorussian language education, Lithuanian language education meets almost in full the needs of the community.
54. Yaown, Zhou (1992), "Bilingualism and Bilingual Education in China", in *International Journal of the Sociology of Language*, Vol. 97, 37-45, at pp. 40-41.
 55. Gaceta oficial, 13 March 1992.
 56. Gaceta oficial de la República del Paraguay, 11 September 1992.
 57. Fettes, Mark (1994), "The International Context of Aboriginal Linguistic Rights", in *Canadian Centre for Linguistic Rights Bulletin*, Vol. 1, N° 3, 6-11, at p. 10.
 58. 30 October 1990, 104 STAT. 1153.
 59. *Ibid.*, Article 104.
 60. See **New Zealand Maori Council v. Attorney General**, [1992] 2 N.Z.L.R. 576 (New Zealand), and the preamble of the **Maori Language Act, 1987**: "Whereas in the Treaty of Waitangi the Crown confirmed and guaranteed to the Maori people, among other things, all their taonga: And whereas the Maori language is one such *taonga*..."
 61. See generally Hastings, William K. (1988), *The Right to an Education in Maori: The Case From International Law*, Victoria University Press, Wellington, New Zealand, at pp. 22-26.
 62. Article 7, **Loi no 88-82 du 22 janvier 1988 portant statut du territoire de la Nouvelle-Calédonie**, Journal officiel de la République de France, 26 January 1988, at p. 1231.
 63. Article 11(1) of the **European Charter for Regional or Minority Languages**.
 64. **Native Broadcasting Policy**, 20 September 1990, Canadian Radio-Television and Telecommunications Commission, Ottawa.
 65. **Public Notice 85-139**, 4 July 1985, Canadian Radio-Television and Telecommunications Commission, Ottawa.
 66. 16 July 1982, quoted in O Mâille, Tomas (1990), *The Status of the Irish Language* ♦ *A Legal Perspective*, Bord na Gaeilge, Dublin, at p. 12.
 67. *The Situation of Regional or Minority Languages in Europe* (1994), Council of Europe, Strasbourg, at p. 46.
 68. *Ibid.*, at p. 71.
 69. See also Article 11(1)(a) of the **European Charter for Regional or Minority Languages**.
 70. See Council of Europe (1994), *The Situation of Regional or Minority Languages in Europe*, Strasbourg, at pp. 135-136: Article 2 of the Federal Broadcasting Act stipulates that radio and television should, broadly speaking, "help listeners and viewers to form their opinions freely, provide them with varied and accurate information, see to their general education and their entertainment, and extend their civic knowledge". They should also "make the public aware of the country's diversity and its population, promote Swiss artistic creation and make it easier for listeners and viewers to participate in cultural life by conveying knowledge and ideas". This extract setting out the aims of the Act, formulated in general terms, covers all aspects of language promotion (duties of information, education, variety, cultural promotion and stimulation of the public). In a wider framework, one can say that yet another of the Act's provisions is concerned with language promotion: "The various regions of the country must be adequately served by radio and television" ... The Federal Broadcasting Act (Article 26 et seq.) also stipulates clearly that the Swiss Broadcasting Company (SSR) is primarily responsible for attaining the general aims and carrying out the functions assigned to it ♦ in the interests of linguistic diversity and national understanding. With regard to languages, an important provision requires the SSR to broadcast specific radio programmes in each region in which a national language is spoken (Article 27, paragraph 1).
 71. Zolf, Dorothy (1989), "Comparisons of Multicultural Broadcasting in Canada and Four Other Countries", in *Canadian Ethnic Studies*, Vol. XXI, No. 2, 13-26, at pp. 18-20.
 72. See *The Situation of Regional or Minority Languages in Europe*, at p. 46, and Article 18 of the **Act No. LXXVII of 1993 on the Rights of National and Ethnic Minorities**.
 73. *The Situation of Regional or Minority Languages in Europe*, at p. 71.
 74. *Ibid.*, at pp. 141-142.
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