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'The Fate of Minorities' – Sixty years on

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Summary

The General Assembly Resolution by which the Universal Declaration of Human Rights was adopted noted that 'the United Nations cannot remain indifferent to the fate of minorities' (Resolution 217C(III)). However, the complexities of the subject precluded agreement at that time on a text ensuring the rights of minorities are protected and thus the matter was referred to the Economic and Social Council (ECOSOC). ECOSOC was instructed to request its Commission on Human Rights and the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities 'to make a thorough study of the problem of minorities'.(Id) This article seeks to provide a synopsis of the fate of minorities, set against their historical context, after all, as Nowak notes '[p]rotection of minorities represents one of the most important predecessors to modern, international human rights protection.' (1993: 480). It is remarkable that while international human rights have attained global acclaim and universal acceptance, 'the fate of minorities' has, arguably, yet to be satisfactorily resolved.

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Introduction

On 10 December 1948, the General Assembly proudly proclaimed the Universal Declaration of Human Rights, an historic document predicated on the notion that respect for the equal rights of all peoples and all nations was the foundation of the new world, one in which, as Article 2 notes,

“Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.”

It was clear that the newly declared rights and freedoms would apply to everyone and would (or should) render obsolete minority rights. ‘The Fate of Minorities’ was referred in 1948 to the Economic and Social Council for consideration by its Commission on Human Rights and Sub-Commission on the Prevention of Discrimination and the Protection of Minorities. However, sixty years later while the Universal Declaration remains the prevailing ‘common standard of achievement for all peoples and all nations’ (preamble), the persecution of minorities continues. Ossetia, Darfur, Palestine, Tibet..... all regions populated by minorities and, as events of 2008 demonstrated, unrest and even conflict is barely latent. There is a rich literature examining various aspects of minority rights (eg Henrard 2000, Lerner 1991, Claude 1969, Sigler 1983, Thornberry 1991) thus the present discussion is necessarily brief. This article will start by examining the protection of minorities under the League of Nations then consider the seismic shift in approach embraced by the UN - extending rights to all peoples in all nations. The extent to which minorities can effectively deploy existing human rights to protect their cultures, languages and religions will also be evaluated. Existing ‘soft’ law addressing minority issues and pertinent treaty law demonstrates the problems faced when the international community attempts to legislate on minority issues. First, however, a short note on one of the key obstacles to agreement on the fate of minorities – the scope and definition of ‘minority’?

The problem of definition

It is axiomatic that for the rights of minorities to be protected, agreement on who falls within the term ‘minority’ is essential. The absence of a universally accepted definition is an impediment which appears insurmountable. Both states and the potential minorities themselves obstruct the process of defining the scope of the term. States are reluctant to have so broad a definition that large tranches of their population fall within the definition, secession is a major (and in some instances all too realistic) fear (see Welhengama 2000). Minority people often object to the inferiority

connotations of 'minority' and most find difficulty agreeing objective (or subjective) characteristics of 'minority-ness' which can be accurately encapsulated in law. Even a purely subjective test is problematic as not all minorities wish to be identified as such.

Moreover, '[n]ot every statistical minority is also a political minority, in need of (international) protection' (Robinson 1971 p61 citing Switzerland with its quadrilingual Staatsvolk). Both objective and subjective tests have been proposed and indeed employed. Many countries refute the existence of minorities within their jurisdiction, indicating the potential difficulty for espousing minority rights. In response to a UN study on minority rights (Capotorti 1991), the government of the then Soviet Union stated that

'in the Soviet Union, there are no population groups which could be regarded as ethnic, religious or linguistic minorities whose rights require special protection' (id).

For the same study, Yugoslavia noted that all groups were treated with full equality under the constitution, no groups having a lesser status. Yet twenty years later, Yugoslavia imploded with devastating consequences for the Balkans.

This lack of an acceptable definition of 'minority' has long plagued proponents of minority rights (see, eg Capotorti 1991, Haksar 1974, Sigler 1981). Similarly with 'peoples' rights': definition proved an intractable problem 'the people cannot decide until someone decides who are the people' (Jennings 1956: 56). A failure to determine the scope of 'minority' means that even were rights to be determined, they would be ineffectual, as states could obviate responsibility through definition-selection.

A variety of definitions have been advanced over the decades, none have achieved unqualified acceptance. Jurisprudence is of little assistance as few cases have reached the international courts, with little scope for extrapolating general principles applicable to all minorities therefrom (eg *Advisory Opinion on the Greco-Bulgarian Convention* PCIJ Reports Series B., No 17, p19 (1930); *Case Concerning the Question of Minority Schools in Albania* PCIJ Series A/B, No 64, p17 (1935)). The UN has considered various options including the then United Nations Sub-Commission on Prevention of Discrimination and the Protection of Minorities, Resolution UN Doc E/CN.4/Sub.2/117, pp15-17, the then Secretary-General's Memorandum of the Definition and Classification of Minorities (UN Sales 1950.XIV) and commentators adopting definitions solely to define the scope of their study (eg Fawcett 1974; Capotorti 1991). Although some elements of commonality emerge, these relate to 'classic' minorities: those groups identifiable through ethnic, religious and/or linguistic characteristics different from the majority of the State in which they find themselves. There is no consensus on whether migrant populations are included. Thus a universally accepted definition remains elusive, so the fate of minorities remains undecided.

The problem of definition is compounded by the different approach adopted by the United Nations as compared to the League of Nations: the League concerned itself with specific minority problems (ie identified the group in need of protection and acted accordingly) while the United Nations focuses on 'minorities' generally (ie all minorities), and thus more abstractly (see Bagley 1950).

Minorities and the League of Nations

Few would argue that the minority protection regime enacted by the League of Nations was an outright success, indeed it is generally deemed a failure (see eg Azcarate 1945, Bruegel 1971, Thornberry 1980) but there was no viable alternative. When the League of Nations was established, the idea of including general provisions on minority protection in its Covenant when it was drafted in 1919 was mooted but rejected.

Protection of minority groups under the auspices of the League was twofold: guarantees embodied in mandates/trust territory treaties and guarantees imposed on States (primarily the defeated States) by the Peace Treaties. In entrustment of the League with the protection of minorities in the new Europe, a special clause was inserted in the Peace Treaties of Versailles, Neuilly, St. Germain and Trianon by which Poland, Czechoslovakia, Greece, Romania and Yugoslavia agreed to protect minorities within their new borders. The Treaty of Peace between the United States of America, the British Empire, France, Italy and Japan and Poland, concluded at Versailles in 1919, was the first of the peace treaties enshrining minority rights. The end of the first world war also marked a 'kaleidoscope redistribution of sovereign power' (Macklem 2008: 531). Minority rights were but one mechanism of ensuring that a fragile peace could be maintained in Europe and the masses who found themselves in different states (as a result of the redrawing of borders) would have the right to continue with their own languages and religious practices. Minorities were thus objectively identifiable sectors of the population, often, though not necessarily, living near newly delineated borders. Moreover, and as the cases alluded to above demonstrate, the 'beneficiaries' were minority people (ie a discernible group).

The New States Committee of the League imposed minority protection guarantees upon States as a condition of recognition by the Allied and Associated Powers of independence or new frontiers of States. Protection of minorities was also stipulated as a precondition to membership of the League itself. Declarations professing minority protection were recorded by the League of Nations in respect of Albania, Estonia, Latvia, Lithuania and Finland (the Aaland Islands) (see League of Nations 1927).

The League developed an elaborate enforcement mechanism for the minority protection guarantees (for details, see League of Nations 1929). A special 'minorities section' was established within the framework of the League to consider minority complaints before remitting them to a tripartite committee of the Council of the League.¹ Ultimately, a Rapporteur on minority questions would examine the case, if admitted, and make a report to the Council with recommendations for remedial action. Given the state of Europe, the League's systems arguably were never given a fair chance to work. In 1929, about three hundred petitions reached Geneva. About half of these were admitted but only eight reached the Council. In only two instances did

¹ The President of the League sat with two colleagues in each case. No Council member with an interest in the case or a similar ethnic origin to either the State or minority concerned could hear the case.

the Council eventually propose any action to be taken, *viz.* requesting undertakings from the States concerned to the effect that the offending behaviour would cease.

Minority protection was of a specialist and limited character under the auspices of the League of Nations – it was primarily a method of securing international supervision of ‘new’ States. The League of Nations had limited success in enforcing the minority guarantee clauses. Arguably, it was rendered impotent by the lack of an effective enforcement mechanism for such guarantees. International obligations were broken without retribution and the power of the League was flouted with impunity. Minority guarantees and protection provisions concluded under the auspices of the League of Nations fell into desuetude as the Second World War spread.

Minorities and the United Nations

Human rights have been a key feature of the work of the United Nations. Minority rights, in vogue between the two World Wars, were superseded by the new notion of universal human rights - a system of law intended to solve minority issues by guaranteeing equality to all peoples, thus alleviating the need for special treatment of certain groups within a State. In the words of Brownlie (1988: 2), the ‘assumption lying behind the classical formulation of standards of human rights,....., has been that group rights would be taken care of automatically as the result of the protection of the rights of individuals.’. The reality has not proven this to be the case. Many vulnerable groups have found the international provisions to be woefully inadequate and, as a consequence, have suffered gross violations of their human rights. Minority groups find themselves in the position of having to individually claim overtly ‘group’ or community ‘minority rights’ as individual rights: the right to speak a minority language as an individual rather than a collective right exercisable by the minority group, for example.

A minority clause was considered for the Declaration but rejected due to its perceived incompatibility with the profession of universal equality - political considerations outweighed pure humanitarian idealism (UN Doc. E/CN.4/21, Annex A, Article 46, p23, see Haksar 1974, pp36-57; Morsink 1999). Such an omission of a minority clause has been regarded as a ‘mistake’ (Capotorti 1991, preface). The need for minority protection was accepted, the precise detail of the form such protection should take could not be agreed. As with all international human rights, there is a need for political will among a number of States before any right can be enacted. Treaty negotiation can sadly result in a ‘lowest common denominator’ decision but for minority rights, this proved too controversial. In a historical context, this must be at least partially excused by the triumphant success of securing agreement on the terms of the Universal Declaration of Human Rights. With the deepening of the Cold War and related issues, had agreement on the UDHR not been reached in 1948, it is likely that years if not decades would have elapsed before agreement would have been reached on a universal declaration of that scope.

The initial idea was that the Commission and Sub-Commission would make a thorough study of the ‘problem of minorities’ in order that the United Nations could subsequently take effective measures for the protection of racial, national, religious or linguistic minorities (see Eide 1999). In 1950 one member of the Sub-Commission submitted a draft resolution (U.N. Doc. E/CN.4/Sub.2/108) under which the

Secretary-General would have been asked to circulate to the Sub-Commission a draft Convention, or a draft protocol (to be attached to the International Covenants on Human Rights) aimed at the protection of ethnic, religious, linguistic and linguistic groups. This proposal was subsequently withdrawn. Consequently, no universal minority clause has been adopted.

Nevertheless, the concept of universal rights provided some succour to minorities – the Declaration firmly entrenched the concept of non-discrimination as a corollary to the guarantee of equal rights for all. Moreover many of the League's 'minority provisions' find general expression in the Universal Declaration. Crucially, however, they are expressed as 'individual' rights, not group rights. The fate of minorities thus became dependant on the fate of individual member of the minority itself.

Equality, and thus a prohibition on discrimination of any kind, is at the foundation of the human rights policy of the United Nations: every individual is accorded basic human rights which previously had been the prerogative of minority groups. Virtually every subsequent human rights instrument reiterates this prohibition on discrimination, particularly on ethnic origin, language, religion and sex, all but the last overtly distinguishing features of minorities. If a 'minority' person is treated differently to a 'majority' person vis-à-vis his or her individual rights, then there is prima facie an infringement of human rights. A minority person explicitly refused access to a court because s/he is of a minority group is contrary to human rights (assuming a majority person could access the court in the same situation). However a minority person can potentially be prohibited from using a minority language in court if s/he speaks and understands the (majority) language used in court. As such, the minority group language rights are not respected, but the individual's right (in this case to a fair trial) is not prejudiced. (Note that some European regional instruments make provision for minority languages in court – these are outwith the scope of the present discussion.)

Nevertheless, it can be argued that the Universal Declaration covered minority rights insofar as many minority issues are included expressly or impliedly. To illustrate this, consider freedom of expression (article 19) which does not limit expression to the official language of State; freedom of religion (article 18) which includes the freedom to manifest religious beliefs in community with others; freedom of association (article 20) which would facilitate meetings of minority peoples; and the prohibition on discrimination on grounds of race, colour, language, religion, national or social origin, birth, or other status (article 2), all characteristics which may define minority persons within a State. Minority rights were undoubtedly disregarded in the early days of the United Nations while the universal regime was established.² Minority tensions did not seem to dissipate. Although many of the rights and freedoms have 'group' characteristics, the provisions of the UDHR proved incapable of being used to preserve minority groups in the manner they desired, being drafted to protect individuals not groups.

² It is noted that the Genocide Convention does provide a considerable element of group protection, enshrining that most fundamental of all rights: the right to an existence. However, cultural genocide was excluded from its ambit

Encapsulating universal rights in a legal treaty proved more problematic than anticipated and it was not until 1966 that the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) were adopted (both taking ten further years to enter into force). These offer the prospect of the rhetoric of protection becoming a reality, though in the case of minorities, this is indeed a thorny issue. Many States remain reluctant to address minority issues due to fear of encouraging dissidence and secession. Genocide in Rwanda, the dissolution of the Soviet Union and Yugoslavia as well as Sudan and DR Congo are obvious embodiments of those fears although infringements of minority rights remain part of the problem. As Asbjorn Eide notes:

‘a substantial portion of the human rights violations that come to the attention of the United Nations are related to some kind of group conflict, to majority-minority relations. And yet, the United Nations has been singularly ill-equipped to deal with these issues. Initially, there was great hesitance within the organisation with regard to minorities and groups relations inside state, due in part to a widespread feeling that the experience with minority rights in the period of the league of nations (from 1919 until the eruption of the World War II) had been rather disastrous and had contributed to the outbreak of World War II. It was also widely thought that the international protection of individual human rights would make it unnecessary to deal specifically with minority protection’ (Eide 2001: 381)

Individual rights, as enshrined in the Declaration and Covenants undoubtedly can be deployed in protection of minorities. However, they are ultimately weak when being applied to the collective enjoyment of rights, a key element of minority claims. The individual has hope, the group despair.

Enforcing and monitoring minority rights: Article 27 ICCPR

The International Covenants opened up national policies and laws to the scrutiny of international committees. An optional protocol to the ICCPR facilitated individual complaints against those states accepting such a competence of the Human Rights Committee.³ Indeed, many alleged violations of minority rights are, in fact, brought under these provisions: wearing of headscarves for religious reasons was discussed in *Hudoyberganova v Uzbekistan* UN Doc. CCPR/C/82/D/931/2000; prohibition on Afrikaans being used in official communications with Afrikaans minority people breached Article 26 of the ICCPR (*Diergaardt v Namibia* UN Doc CCPR/C/69/D/760/1996); and issues of State funding of certain secular schools (*Waldman v Canada* UN Doc. CCPR/C/67/D/694/1996). In some instances, traditional minority rights have been recognised more creatively – in *Hopu and Bessert v France* (UN Doc. CCPR/C/60/D/549/1993) the Human Rights Committee accepted the deployment of Article 23 on family life by indigenous Polynesians protesting over the construction of tourist facilities in Tahiti on grounds in which their ancestors were allegedly buried. Elements of minority rights are capable of being addressed in the existing framework of the ICCPR.

³ An optional protocol to ICESCR was approved in December 2008 by the General Assembly. It will open for signature in 2009.

Remarkably, one article of the ICCPR explicitly provides for minority rights: Article 27:

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

On the face of it, this appears to afford protection to groups. However, as the Human Rights Committee makes clear, ‘it establishes and recognises a right which is conferred on individuals belonging to minority groups’ and is additional to the other rights in the covenant (Human Rights Committee para 1 – see also *Lubicon Lake Band v Canada* UN Doc.CCPR/C/38/D/167/84). Thus it can be claimed by individual members of the group not the group itself, despite the fact that Article 27 was viewed as plugging an identified gap in the sequence of internationally recognised human rights (Nowak 1993). In *Ballantyne, Davidson and MacIntyre v. Canada* UN Doc. CCPR/C/47/D/359+385/89, a numerical criteria was deployed by the Committee meaning those belonging to an English speaking minority in a Quebec town could not rely on Article 27 as English speakers were a numerical majority in Canada as a whole (at para 11.2). Thus francophones could potentially invoke the minority provisions in Quebec. The same applied under the minority guarantees of the League of Nations - these were sometimes applied to ‘minority’ people who were a majority in the area in which they lived but a minority in the State as a whole.

Each decision of the committee stands alone, restricted to the facts under consideration. This renders the extraction of general principles difficult. A divorced Canadian Indian woman precluded by law from reverting to pre-marriage indigenous ‘Indian’ status, was however able to engage Article 27 rights to effect a return to her reserve (*Lovelace v Canada* UN Doc. CCPR/C/132/D/24/77 para 17) but a Sami man whose reindeer husbandry and other indigenous usufructory rights had been revoked under Swedish law when he took more lucrative work, could not reclaim them as the law protected the minority as a whole, albeit at the expense of an individual member thereof (*Kitok v Sweden* UN Doc. CCPR/C/33/D/197/1985). Minority rights remain a vexed issue, even under Article 27.

Article 27 ICCPR is not to be understood as requiring a museum-esque approach to minorities, rather groups are entitled to modernise while still observing the tenets of their minority-ness (see eg *Mahuika v New Zealand* UN Doc.CCPR/C/70/D/547/1993). However, States are also permitted to modernise, even if this potentially impacts on the rights of minorities – this was illustrated in two communications in which logging operations were claimed to impede reindeer husbandry (*Lansman v Finland* UN Doc. CCPR/C/58/D/671/195 and *Aarela & Nakkalajarvi v Finland* UN Doc.CCPR/C/73/D/779/97). As Joseph et al (2005, p793) note ‘article 27 rights will be balanced against other countervailing interests, such as those regarding economic development’. Not all states accept Article 27 - France famously avoided it with a declaration effectively removing claims of linguistic (Breton) minorities from the scope of the covenant (*Guedson v France* UN Doc. CCPR/C/39/D/219/1986).

As Hannum argues it is surely necessary to ‘ensure that, within the context of universal human rights, due attention is paid to the rich diversity and heritage of the

world's cultures and religions, at a time when intolerance of differences threatens to undermine that heritage' (Hannum 2007: 92). As inter-national relations 'thawed', with the recession of the Cold War, minorities re-emerged onto the international stage – latent nationalism as the iron curtain was opened is perhaps ceding to the 'clash of civilizations' Huntington famously (and controversially) espoused (1997). (However, note that derogations are permissible from Article 27 under Article 4 'in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed...', though the same does not apply to non-discrimination and some of the other provisions mentioned above which are non-derogable.)

In our pluralistic and heterogeneous society, minorities are a fact of life. 'One people, one nation' is an unworkable ideal in an ever more globally focussed world. Throughout history, political and geographic factors have delineated borders between States, with little weight given to State affinities or even transnational kinship. Additionally, economic, cultural, political and personal reasons combine to increase figures for permanent and temporary migration with a myriad of asylum and refugee issues combining to render States increasingly multicultural and ethnically diverse. While this may be viewed as positive, inevitably one result is the creation of multiple minority groups within State boundaries. Minority groups are frequently maligned, indeed often persecuted. History is constantly being repeated with minority tensions causing intra and inter State hostilities. Surely the fate of minorities is at least partially sealed by the international community (through the monitoring bodies) determining that minority groups cannot enforce collective rights, only individual ones.

Advancing minority rights – UN developments

The International Bill of Rights (Universal Declaration of Human Rights, ICCPR and ICESCR) has been further augmented by a variety of treaties. There are now nine core UN human rights treaties, many of which take a sectoral approach to protection of human rights: a specific section of the population is identified as requiring protection, the treaty focuses attention thereon. Should the 'classic' definition of 'minorities' be used, then clearly these treaties have a different focus, sectors of the population (women, children) have their rights reinforced and reiterated. The treaties were often adopted as a response to international events. For example, racial discrimination came to prominence with decolonisation, civil rights campaigns in the US of A and in the wake of the emergence of apartheid in South Africa. The International Convention on the Elimination of All Forms of Racial Discrimination 1965 in fact predates the international covenants which gave effect to the UDHR. In April 2009 Geneva will host the Durban Review conference (2001 Durban conference against racism, racial discrimination and related intolerance). This will once again focus the world's attention on the inequalities which persist and racial divisions of wealth, power and resources. Unfortunately the process is already besmirched by withdrawals and political jostlings. Given the fate of the 2001 conference, this is far from encouraging though it does demonstrate some of the challenges posed when addressing race.

The treaty on non-discrimination against women (Convention on the Elimination of All Forms of Discrimination against Women 1979) addresses historical and cultural differences in treatment between men and women. That on children (UN Convention on the Rights of the Child 1989) partially fulfils the promise made in 1924 that

‘mankind owes to the child the best it has to give’ (preamble League of Nations Declaration on the Rights of the Child 1924). However, children are not even a numerical minority in many countries of the modern world. Kallehaug (2007) argues that the recent 2006 Convention on the Rights of Persons with Disabilities is a major milestone in rendering an invisible minority visible (p337) though once again, the classic definitional characteristics of ‘minorities’ are not necessarily met by disabled peoples.

Arguably these treaties contribute to minority rights discourse, reinforcing the fact that the Universal Declaration itself (or as part of the International Bill of Rights with the International Covenants on Civil and Political and on Economic, Social and Cultural Rights), does not satisfactorily ensure equality for all. However, they do little to address the fate of classic minorities, those groups with a different ethnic, religious, linguistic and/or cultural tradition to the majority of the state.

Political reality gave impetus to developments on minority rights in the early 1990s. Mounting ethnic tensions (the dissolution of the Soviet Union and the break-up of Yugoslavia) hastened the adoption of the UN Declaration on the Rights of Person Belonging to National or Ethnic, Religious and Linguistic Minorities in 1992 – itself the product of more than ten years of protracted negotiations and debate. The Declaration provides that

‘persons belonging to national or ethnic, religious and linguistic minorities [(.)] have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination.’ (Article 2(1)).

The Declaration owes its existence to the inspiration provided by Article 27 of the ICCPR but aims at promoting peace and stability. The basic provisions of the declaration target discrimination and, ‘where appropriate’ encourage States to actively promote aspects of minority culture. The latter includes provision of minority language education, cultural and historical education of all and political participation.

Article 1 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities 1992 provides:

‘1. States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories, and shall encourage conditions for the promotion of that identity. 2. States shall adopt appropriate legislative and other measures to achieve those ends.’.

Thereafter the text embodies certain rights imperative to the realisation of that goal, including a restatement of Article 27 of the International Covenant on Civil and Political Rights (at Article 2). The Declaration guarantees the rights of such minority groups collectively and individually (Article 3). Not only are these groups entitled to be treated without discrimination and in full equality before the law, but they are also entitled to ‘express their characteristics and [...] develop their culture, language, religion, traditions and customs’ (Article 4). Moreover, States are implored to take measures in the field of education to ‘encourage knowledge of history, traditions, language and culture’ of such groups within their jurisdiction. Full realisation of this would allow minority groups to flourish and develop their culture should they so desire. The only permissible restriction

on the exercise of rights articulated in the Declaration concerns cultural and traditional practices which violate national law and are contrary to international standards. Most obviously, this would cover female genital mutilation and various sacrificial practices. This Declaration is a clear indication of the regard with which the peoples of the United Nations hold the diverse cultural heritage of the world. It also demonstrates a recognition that minority groups need protection over and above that afforded by universal human rights. Indeed, Article 8(3) impliedly acknowledges the potential need for affirmative action measures. The effect of the Declaration remains to be seen.

A Working Group on Minorities was established in 1995 to review the practical implementation of the 1992 Declaration and to recommend further measures appropriate for promoting and protecting the rights of minorities with a view to 'contributing to mutual tolerance understanding and peace' (Eide 1999, p721). The UN Human Rights Council elected to build on this activity, establishing a Forum on Minority Rights (Resolution 6/15, 28 September 2007) with a focus on Article 27 of the International Covenant on Civil and Political Rights and the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. The purpose of the forum is to provide a platform for promoting dialogue and cooperation on issues pertaining to minorities which shall provide thematic contributions and expertise to the work of the independent expert on minority issues. Best practices, challenges, opportunities and initiatives for implementing the declaration are to be identified and analysed (all para 1). The Forum will meet annually for a couple of days discussion on thematic issues. The first session was 15-16 December 2008 centred on minorities and the right to education. To pursue peace, mutual tolerance and understanding, education is obviously of fundamental importance. Majority and minority must understand each other's history and culture. Language, for example, can be a barrier to education, hence bilingual and plurilingual education policies being advanced to ensure a linguistic minority group can access education yet also learn the majority (official) language facilitating greater employment options within the state. Education has long been identified as a key issue (eg Eide 2001 p388). Perhaps its work will renew hope for a resolution of the fate of minorities.

Conclusions

Universality is predicated on respect for equality and a prohibition on discrimination, both of which appear in the Universal Declaration and which testify to the intention of the drafters to apply to all individuals irrespective of diverse ideologies, creeds, languages or skin tone. The Universal Declaration is undoubtedly the moral skeleton upon which several hundred international instruments, constitutional documents and bills of rights of States hang. Minorities as well as majorities thus have their individual rights guaranteed and protected in full. However, as the communications discussed above indicate, articulating minority rights as individual rights can be challenging, especially with respect to enforcement. Arguably the UN anticipated this in 1948 when tasking the Commission and Sub-Commission with investigating minority rights. Neither of those bodies exists today. Minorities most patently do. Sixty years of persecution can virtually eradicate a minority culture. Such persecution can also lead to conflict. The plight of minorities is 'one of the most pressing human rights concerns in the world.as stated in the Minorities Declaration, 'the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities contribute to the political and social stability of States in which they live'.

(Hannum 2007 at pp91-92). With alleged Russian racial discrimination in South Ossetia South, Abkhazia and adjacent areas in Georgia currently pending before the International Court of Justice (*Case Concerning Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*) 15 October General List No. 140 p41 para 149, <<http://www.icj-cij.org/docket/files/140/14803.pdf>>), following the events of 2008, the ramifications of not addressing minority rights satisfactorily is clear. That it is difficult is axiomatic – although the UN’s process of multilateral negotiations may be slow and unwieldy, sixty years is excessive. Many more treaties, including some of controversial and difficult topics have been adopted in the intervening years. The ‘[i]ssues surrounding minority rights and group accommodation remain a battlefield, not only in the United Nations but unfortunately more so on the ground’ (Eide 2001, p389). Any progress, however slow, must thus be welcomed. History shows that the fate of minorities can have direct consequences for international peace and security. The subject cannot be relegated to history, it requires careful consideration and must be addressed adequately.

Politics are undoubtedly the major stumbling block. Minorities remain indelibly linked with violence, secession and protests in the minds of some governments, not without basis, it must be conceded. Minorities are controversial. However, Europe has successfully adopted a range of instruments aimed at protecting the rich tapestry of indigenous minority culture in the region – eg the Council of Europe’s European Charter for Regional and Minority Languages 1992 and Framework Convention for the Protection of National Minorities 1995 and the Organisation of Security and Cooperation in Europe’s 1996 Hague Recommendations Regarding the Education Rights of National Minorities, 1998 Oslo Recommendations on the Linguistic Rights of National Minorities and the 1999 Lund Recommendations on the Effective Participation of National Minorities in Public Life. Admittedly enforcement mechanisms are comparatively weak in each instance and the instruments all seek to defuse simmering conflicts and restore peace and stability to the region, being adopted while Yugoslavia was breaking up and the Soviet Union dissolving. Minority rights remains controversial in Europe (the Roma people are a prime example of a cross-border minority still claiming persecution) despite the remarkable success of regional human rights.

Perhaps the overriding problem remains that of definition. As Capotorti noted ‘[d]espite the many references to minorities to be found in international legal instruments of all kinds... there is no generally accepted definition of the term ‘minority’’ (1991, p5). The situation is no different today. For a lawyer, surely that is a fundamental issue which must be remedied. Until there is agreement on who constitutes a minority and whether their rights can be exercised and enforced as a collective, the fate of minorities remains resolutely undecided.

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