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MINORITIES: ADDRESSING AN EMERGING INTERNATIONAL SECURITY ISSUE

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SUMMARY/CONCLUSIONS:

This paper argues in favour of the "internationalization" of minority rights in order to address an emerging security problem of serious proportions. The re-emergence of the minority issue, particularly in Europe, after almost five decades of artificially-imposed order, has triggered the possibility of major internal and international conflict. This issue will become more acute in years ahead. A fundamental re-thinking of minority rights will be needed to address this problem at the two stages where problem-solving is possible: at the early stages, when conciliation and negotiation are possible; and after conflicts have taken place, when parties are amenable to compromise settlements.

The minority problem is complex, and the traditional "statist bias" of international law and practice is not helpful. But addressing the difficult issue of the trade-off between self-determination and minority rights is not necessary. Practical approaches, through existing institutions, can address most of the key issues.

Among the proposals advanced are the following:

(1) the need for universality: all states must accept new standards and regimes for the management of minority issues, involving degrees of international intrusiveness which might have seemed abhorrent only a few years ago.

(2) the need for automaticity: the mechanisms envisaged for the protection of minority rights should be triggered by the nature of perceived violations of minority rights rather than await the injection of political will on the part of the international community, which may never come.

(3) the need for confidence-building: claims to rights by various minorities cannot be denied forever; the objective is to devise a series of measures which build confidence in concrete problem-solving, and thereby deny the need for minorities to proclaim sovereignty and independence.

Traditional approaches to international human rights law and practice have favoured strengthening national mechanisms; while not questioning the usefulness of this approach, in this paper we advocate a much stronger reliance on international pressure to ensure that states meet international expectations.

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INTRODUCTION:

One of the major threats to the stability of the emerging international security system is the multiplication of ethnic, nationalist and religious conflicts. The case of ex-Yugoslavia, as well as current and potential conflicts in the former Soviet Union (FSU) or other regions of the world, argue for immediate attention to an urgent problem. We need particularly to focus on preventing the most destabilizing effects of these disputes:

- the escalation to armed confrontation, which carries the potential risk of spill-over;
- the fragmentation of the international system through the multiplication of new small states;
- the mass migration of populations; and
- the "ethnicization" of international relations.

While the problem of ethnic, nationalist or religious conflicts is centuries old, and is part of the geopolitical fabric of many regions, it has re-emerged rapidly and convulsively in recent years as the discipline and imposed order of the Cold War have eroded. We should be examining whether there are new approaches to resolve old patterns of conflict.

The heart of the problem, simply put, is to reconcile the twin issues of self-determination and minority rights: to prevent egregious violations of human and minority rights, thereby inducing secessionist movements on the part of a given minority and leading to armed confrontation. The claim to a sovereign state by a minority comes generally from a perception that the guarantees afforded by the international system in the form of "statehood" are the only long-term remedy to its grievances. Alternative ways or "less-than-sovereign" solutions to the problems of minorities should therefore be explored if we are to address this issue effectively.

The most fundamental step towards meeting the aforementioned objectives would be to secure protection of basic human rights, including minority rights, in order to create and maintain a climate conducive to peaceful dialogue and conflict-resolution within the existing state. A mix of regional and international guarantees for respect of these rights could establish the necessary level of confidence for a minority to maintain dialogue and to reach negotiated constitutional arrangements with a majority in the case of specific disputes. In addition to pursuing human rights objectives on the basis of their intrinsic merits, there is therefore an additional international security rationale for giving increased emphasis to the full implementation of minority rights.

THE SCOPE OF THE PROBLEM:

The extent of the potential minority problem* is staggering. According to some estimates, there might be roughly 1,300 identifiable minority groups distributed throughout the existing nation-states in the world today[1]. In addition, in only 27 per cent of the 161 states for which data were available in 1981 did one nation-group account for more than 95 percent of the state's population; in 38 percent, one nation-group accounted for between 60 and 95 percent of the population[2]. If one take the number of languages spoken as an indicator of the potential for fragmentation, the numbers jump dramatically. In the world today - depending of the definition used - there are between 2,500 and 7,000 languages spoken. Two-thirds of all independent states (as of 1984) have linguistic minorities making up more than 10 percent of their population.[3]

In Europe alone, there are 60 existing or potential ethnic, nationalist or religious conflicts, in addition to some 14 other conflicts in the Caucasus and other potential conflicts in the non-European part of the former Soviet Union.[4]

With roughly 180 politically-independent states, the world system is already showing the strain of regulating inter-state relations within frameworks designed for a smaller system with larger states. Adding more states to the current system, as the Secretary General of the United Nations has recently cautioned, might simply lead to its implosion. For example, between the spring of 1991 and July 1992, the CSCE has grown from 35 participating States to 52. Already deemed to be inefficient because of the number and heterogeneity of its membership (as well as its rules of procedure), it could prove to be impossible for this regional organization to fulfil its mandate if membership escalates further. Limiting the number of new states entering the international system might become in its own right an important reason for emphasizing the protection of minority rights.

The task of addressing conflicts involving minority rights will not be easy. In 1988 there were 111 armed conflicts involving states, of which 63 were internal and 36 were conflicts between one government and an opposition group demanding autonomy or secession for a particular ethnic group or region[5]. Since 1988, at least 16 new ethnic

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* For the purposes of this paper, we will use the term minority in the sense of a "minority group" i.e.:

> An aggregate of persons who perceived themselves or are perceived by the surrounding community as different and sharing distinctive common features (religion, language, race, culture...), common history and destiny as well as the feeling of belonging to the same group. Although the notion of minority implies a numerical imbalance, we will also use it to qualify the non-dominant position - real or perceived - of the "group" in a community.

This definition draws heavily on the approach proposed by Nathan Lerner in, "Group Rights and Discrimination in International Law", (1992), Martinus Nijhoff.

conflicts have emerged[6]. These conflicts between a state and a segment of its population also tend to be highly lethal. Since the end of the Second World War, between 1.6 and 3.9 million unarmed civilians on average have died at the hands of their own state in each decade[7]. In fact, this kind of "state-sponsored" massacre of members of ethnic and political groups has in recent decades claimed more victims than all other forms of deadly conflict, including inter-state conflict. This is consistent with a trend that has emerged in recent years, where the number of classic inter-state wars has been decreasing and the number of intra-state conflicts, particularly in the Third World, is increasing.[8]

Although these disputes have different historical roots and are not easily amenable to universal solutions, they present similarities from which some prescriptive principles of conflict prevention and conflict management could be drawn. To put these conflicts involving ethnic minorities into perspective, it is useful to have some sort of schematic classification of each situation in which ethnic groups interact. The most common situations are[9]:

(a) Ethnic groups within a state identified as being multi-ethnic or multi-national. Such groups may base their identity on language (Belgium, Canada, Switzerland), religion (Sikhs, Hindus and Muslims in India), nationality (former Soviet Union) or race (South Africa). In such cases, ethnic groups which are different from the dominant or majority nationality may or may not enjoy special legal status, and they are usually in a minority and non-dominant position.

(b) Ethnic groups within a state that does not formally recognize its own multi-ethnic composition, such as France, Japan, Indonesia, Turkey or numerous African States. Minorities may be regionally based, such as Bretons and Corsicans in France, or Scots and Welsh in Britain, or they may be racial (Blacks in the United States), religious (Copts in Egypt, Catholics in Northern Ireland or the Baha'i in Iran), linguistic (Berbers in Algeria), or tribal (as in Afghanistan), or a combination of several of these elements.

(c) Minorities that identify with their ethnic kin in a neighbouring state where they have a majority status (such as the Hungarians in Romania, the various Russian minorities in the former Republics of the ex-USSR, the Turks in Bulgaria, the Albanians in Kosovo, the Mexicans in United States).

(d) Multiple ethnic groups within a state in which none enjoys a particularly dominant position, specifically in recently independent, formerly colonial countries, in which the state itself is a relatively artificial construct; this situation tends to prevail in Africa south of the Sahel.

(e) Ethnic minorities which straddle international boundaries and with minority status in each of the countries, as in frontier areas in Southeast Asia, the Basques in Spain and France, and the Kurds in the Middle East.

(f) Ethnic immigrants and refugees resulting from extensive migrations, particularly from the Third World into other Third World countries or into industrialized nations. In the latter case, immigrants often settle in urban areas, constituting ethnic enclaves in numerous countries and giving rise to social and cultural tensions (such as the immigrants from Maghreb in France and Indian sub-continent in England). A similar situation has been created by the migrant worker phenomenon in Germany.

(g) Indigenous and tribal peoples which contest the sovereignty of the state in which they have been incorporated. Their claim is based on the anteriority of their presence and occupation of the land. The North American Amerindian, the Inuit and Samis of the North Pole and the Melanesian of New Caledonia are cases in point.

Conflicts between ethnic groups are not intrinsic to differences among human beings. They are the result of the inter-play of divergent political, social or economic interests as expressed by "different groups of people" within the boundaries of the same State. When the end result is conflict, they generally involve asymmetric or ranked relations between the groups or are the result of change in a pre-existing balance which has upset the relative equilibrium of groups vis-à-vis each other. This is the case of Russian minorities in the former Republics of the USSR. Rightly or wrongly, the group in the non-dominant position perceives its interests or its values as threatened by the policies, ideology or practices of a government dominated by the majority. When the state is incapable or unwilling to accommodate ethnic or cultural diversity, conflict is generally the end product.

On the other hand, accommodation to the demands of minority groups is not without risk or consequence. It always entails the danger that, if minorities are given too much autonomy, a recognition of their collective rights may lead to demands for self-government, self determination, political secession and independence, all of which could threaten the very existence of the state. In the European context, this type of situation could be exacerbated by the numerous cases of minorities having a majority kin in a neighbouring state. In effect, the spectre before us is not far from the scenario of the years preceding the First World War.

THE SECOND TIER:

Only a few Atlantic and European countries are virtually homogenous and devoid of any significant minority problems (Denmark, Portugal). Yet, even in these rare cases, and in cases where national balances are traditionally well established and well

managed, political or economic immigrants or refugees are creating "new minorities" which can upset any previous arrangements or social balances (viz. Turks in Germany, Maghrebis in France, and Asians in Britain).

The emergence of this second tier of interests and aspirations not only collides with the interests and aspirations of native populations but could also conflict with the traditional cultural identities of ethno-territorial and ethno-national minorities already pitted against those of Western Europe's majority populations. For example, France, Germany, Belgium, Switzerland and Austria have foreign immigrant populations which are respectively 8.0, 6.4, 9.0, 14.6 and 6.4 percent of their total populations. Twenty per cent of the populations of Stuttgart and Munich are comprised of immigrants; in Berlin it is 15 percent, and in Vienna 13 percent. These 1990 figures must have increased with the migration (legal or illegal) coming from Eastern and Central Europe as well as from Yugoslavia[10].

In the 1970s and the early 1980s, an average of 100,000 people a year were emigrating from the former Warsaw Pact countries. However, a total of 1.2 million people left the same countries in 1989 alone. As economic conditions may worsen in the short run, particularly in the FSU, this could signal the beginning of more massive migrations, with attendant concerns for minority rights[11].

The strain has already started to show. The effects of these conflicts on the domestic politics of many Western European states are already visible. The Front National in France, as well as various manifestations of the extreme right in Germany and Britain, are just the beginning of what could become a long list of examples.

Traditional and new forms of ethnic conflict have many implications. They distract the attention of political leaders away from other pressing issues, challenge the concentration of authority in a central state, shift the middle ground of national politics further to the extreme right, and disturb or fragment the established pattern of representation, especially the party systems.

Paradoxically, the challenge posed to central authority by new and traditional ethnic conflicts seems to be fuelled by the process of European integration, which is reinforcing diversity, including regional as well as ethnic identity, at the expense of the authority of the nation-state. Even states which had once considered themselves homogeneous or relatively monolithic are increasingly becoming multi-ethnic and multicultural societies. The promise of continued economic integration--whether in the European Community or the North American Free Trade Agreement--partially removes the economic argument from the calculus of gain and loss when evaluating the price of diversity and its political consequences.

The consequences and the dynamic of inter-ethnic relations could be illustrated by the intricate constitutional politics of Canada. Already a multi-ethnic society, Canada has experienced important changes in the composition of its population since the Second World War. In contrast to the historic deal between the two " Founding Nations", a more complex and diverse regional and ethnic reality has emerged. If the population of Québec remains relatively homogenous (77.7 per cent of the population being of French origin), English-Canada can hardly be considered a purely Anglo-Saxon community. In 1867, when the Canadian Constitution came into effect, Canada was essentially composed of people of French and British background, with a significant number of aboriginal people. The census of 1986, in contrast, indicated that 37.5% of the Canadian population was of an origin other than French or British (for example, in Ontario, the most populous province, 44.6% of the population was of an origin other than English or French).[12]

This change in demographics has had a profound effect on the recent constitutional debate in Canada. In effect, the four Western provinces, whose populations are more than 50 per cent from other than French or British origins, are, with Québec, the main proponents of a new redistribution of powers from the central government to provinces, but have difficulties in coming to grips with the attribution of a "distinct society" status for Québec. Many Quebec francophones failed, on their part, to recognize that the "rest of Canada" is not a monolithic Anglo-Saxon bloc, and that newly arrived populations do not consider themselves part of the historical English-French duality built into the original Canadian Constitution.

The aboriginal issue also added to the complexity of the equation. The Amerindians, Inuit and Metis peoples called for constitutional recognition of their right to self-government. For somewhat different reasons, the debate in Canada arrived subliminally at a principle of "subsidiarity" not unlike that of the European Community.

In Canada, the recognition of the pluri-ethnic reality of the country, through the multiculturalism policy and the Canadian Charter of Rights and Freedoms avoided ethnic tension between the majority and newly-arrived immigrants. On the other hand, it is extremely difficult for a state, whether federal, confederal or unitary, to force both ethno-territorial and new minority groups to accept passively the central state's hegemonic authority in areas such as education, communication, general resource allocation and the delivery of public services. Here it is important to emphasize that minorities cannot be legislated out of existence, nor made irrelevant by attempts to create an homogenized society to fit the ideal of a strong central state.

THE "STATIST" BIAS:

The existence and persistence of ethnic cleavages can be explained in large part by the triumph of the nation-state as a universal model and its domination of the international system. This has led to an extreme rigidity based on the homogenizing and integrating tendencies underlying the ideal of the mono-ethnic nation-state and an international system which in practice recognizes the supremacy of the concepts of sovereignty and territorial and political integrity, at the price of human rights and "peoples rights".

This "statist" approach to international relations is so well entrenched in the United Nations system that one scholar expressed the extreme view that " if the sovereign territorial state claims, as an integral part of its sovereignty, the right to commit genocide..., the United Nations, for all practical purposes, defends this right." This bias was particularly obvious during the years of the Khmer Rouge in Cambodia, although the logic of the Cold War was a convenient justification for doing nothing. It was also evident at the beginning of the Yugoslav conflict, when the international community seemed to express its support for the maintenance of the "territorial and political integrity of the Yugoslav Federation", a signal that the Yugoslav National Army may have understood as a green light for military intervention. (Admittedly, the other extreme of the spectrum, granting almost automatic recognition to break-away republics, did not lead towards a peaceful solution either, as it raised other expectations.)

Any minority which might have legitimate grievances or claims frequently finds itself squeezed between a state that wants to prevent further erosion of its traditional authority and an international system that recognizes only existing states as subjects of international law. The logic of the situation is relatively clear for any group that wants to be heard by international community: it has to claim sovereign status and adopt a strategy of armed struggle to strive for its political independence.

Nowhere is this more obvious than in the legal ambiguity pertaining to the right of self-determination, which applies only to the field of decolonization. The U.N. Declaration on the Granting of Independence to Colonial Countries and Peoples recognized that "all peoples have the right to self determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development". Although the same right is also recognized in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States, the latter states:

> "nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent states conducting themselves

> in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory- without distinction as to race, creed or colour".

This convoluted formulation amounts intentionally to a disqualification of "minority" as being a "people" and to the exclusion of minorities from the potential protective shield of international law.

The same policy bias exists in other international instruments related to the protection of human rights, in which rights pertinent to the protection of minorities are always defined as "the rights of persons belonging to a minority". This exclusion of collective or communal rights reflects the views and interests of the inter-state system which produced the current corpus of international law and practice, especially the values espoused by mono-ethnic states.

Moreover, to some extent, the protection of human rights by the international community is subject to the limitation imposed by the "doctrine" of non-intervention in the internal affairs of a sovereign state. The international community has defined high standards in the human rights area, but has systematically failed to implement them in a credible way. Consequently, it is not surprising to see cases where an existing state, unable to accommodate minority interests and aspirations, has to face a violent secessionist movement and chooses to deal with the issue in a manner inimical to existing standards of human rights.

The severity of this judgement needs, however, to be nuanced in light of humanitarian interventions which have taken place in northern Iraq to protect the Kurds, as well as the more "interventionist stance" that the international community appears to be taking in Yugoslavia and Somalia. Even though the principle of non-intervention is being slowly eroded, mostly with respect to humanitarian assistance, we are probably far from the day when current realities can be reflected and codified in international law.

ETHNICIZATION OF INTERNATIONAL RELATIONS:

Over time, the diversification of the ethnic composition of states, and especially the pattern of internal conflicts between a majority population and a minority, will put greater and greater demands on mono-ethnic states. The reluctance or incapability of existing states to satisfy minority demands, and recourse to coercive measures or repression to preserve the integrity of the state, might increase the tensions already abundantly in evidence in inter-state relations.

The ethnicization of international relations might occur at a point when a country, having a seizable group of its nationals living on the territory of another state, comes under pressure from its own population to intervene on behalf of their ethnic kin. This risk is nowhere greater than in the republics of the ex-Soviet Union, where the presence of a Russian minority, if inadequately protected, might eventually trigger conflict with Moscow.

As Europe re-discovers its ethnic diversity, particularly the mosaic of populations in Central in East-European states, the inability of states to deal adequately with minorities could create a dynamic of inter-state relations similar to the one that existed between the two World Wars, where protection of ethnic kin became a pretext for annexation. While such a scenario might seem to be out of keeping with the realities of the 1990s, it is not impossible. The emerging solidarity of the Islamic world with the situation of Muslims in Bosnia-Hercegovina is an example of how affinity, in this case religious, could have an impact on inter-state relations.

Increased diversity of populations in the industrialized states, together with unabated migration pressure from the poorer ones, plus emergent anti-immigrant illiberalism among the most developed countries, might create a chemistry conducive to inter-state conflict along ethnic or religious lines. The migration pressure will not diminish. Ninety-five per cent of world population growth is currently taking place in developing countries, at 2.1 % a year, exacerbating already serious problems of poverty and environmental degradation.[13] The North will have to adapt its policies and political structures to respond to these challenges and new realities.

THE CHALLENGE:

The nature of the challenge facing the international community in the field of minority rights is clear:

> **to break the deadlock in which minorities find themselves, squeezed between nation-states trying to preserve the integrity of their authority and an international system that does not recognize collective or communal rights and cannot effectively protect the rights of the persons belonging to a minority.**

As suggested in the introduction, one approach could be the development of credible international guarantees for the protection of human and minority rights. We should also look at possible ways to regulate, through constitutional means and/or international covenants, the possible multiplication of secessionist movements. In practice, this could mean the establishment of a balance of rights between states and "peoples", including minorities and individuals, in the international legal system.

We assume that the international system is inherently rigid and has a limited capacity for self-correction. But we also assume that the end of the Cold War offers a window of opportunity to undertake bold reforms. At the same time, instead of creating new organizations or new obligations, one should try to improve existing multilateral organizations and instruments, most of which have yet to fulfil their promises.

A CASE FOR INTERNATIONALIZATION:

Given that our overall approach implies eventually a high degree of internationalization, it is important to anticipate the possible consequence of such an approach and the arguments which can be adduced pro and con. In existing studies on this subject, it is possible to distinguish five different patterns:

(1) the exacerbation of the conflict through foreign intervention;

(2) the prolongation of the conflict as the result of the intervention of outside interests;

(3) the moderation of the conflict because of the international concern and pressures;

(4) conciliation of the parties to a conflict due to the mediation or intervention of an outside party; and

(5) supersession of the conflict, in other words, the ethnic conflict may be superseded by a conflict among non-ethnic and particular interests, in which outside parties turn the conflict into something different.[14]

These categories are not mutually exclusive. They might even represent the various phases through which some conflicts pass. Past experience tends to demonstrate, however, that the consequences of outside intervention largely depend on the timing of such an intervention:

- early intervention, before escalation, and later intervention, after the exhaustion of warring parties, are the stages where a resolution is most likely to be achieved.

- mid-point escalation is unlikely to lead to a resolution, as the parties have gone too far to turn back (and animosities have been kindled past the point

of no return), but they continue to perceive strategic or tactical advantages in continuing a conflict.[15]

For the purposes of this paper, and in anticipation of a priori arguments, we argue that:

- there is a good case for accepting the early intervention of the international community in ethnic conflicts as a principle, despite the current bias of international law and practice;

- there is a good practical and moral case to be made for strong preventive measures and early intervention on the part of the international community; and

- there is a need to examine the possibility of isolating and de-politicizing as much as possible the management of a conflict by relying on specialized international agencies or organizations, expert advice and new or existing legal instruments.

While the point has been expressed that internationalization draws undue attention to national minorities and inhibits the search for quiet domestic solutions, this kind of reasoning has a ring of ex post facto justification. The plain fact is that most conflicts are internationalized because of the failure to find national solutions. The more rapidly the international community can respond, the more effectively serious and long-term conflicts can be averted.

STANDARDS AND INSTRUMENTS:

One of the best possibilities for preventing the escalation of ethnic conflict is to offer stronger guarantees for the respect of basic human rights and the rights of "persons belonging to a minority" in particular. In this area, the international community does not lack standards but is lamentably weak in summoning the political will to ensure their effective implementation.

In terms of human rights standards, the United Nations, the Council of Europe and the Conference on Security and Cooperation in Europe are providing, through existing covenants, declarations or commitments, enough material to define the obligations of states. Other regional organizations such as the OAS and the OAU have also developed comparable standards. As for minority rights, most of these organizations are lagging behind the CSCE. The adoption by the 1992 UN General Assembly of the

Declaration on the Rights of Persons belonging to Minorities partly closes this gap, although it contains nothing with respect to "implementation".

The CSCE is clearly ahead of the UN in the development of effective mechanisms to ensure that commitments undertaken are implemented and that adequate review mechanisms are in place. Participating states, in the Geneva, Moscow and Helsinki FUM documents, have reinforced the CDH's mechanism and the CSO's emergency mechanism and created a High Commissioner on National Minorities. These mechanisms could ensure the early detection of actual or potential violations of commitments to human and minority rights, assuming that they are equipped with an adequate "early warning" function.

The UN has some potential means of exerting pressure on states to abide by their commitments. Article 41 and the Optional Protocol of the International Covenant on Civil and Political Rights provide means to states (art.41) and individuals (Protocol) to petition or inform the Human Rights Committee about the non-fulfilment of obligations under the Covenant. From that point, a process of clarification and conciliation is triggered. Unfortunately, Article 41 has never been used, and only 56% of the UN members have become party to the ICCPR, while only 33 states have made a declaration recognizing the competence of the Human Rights Committee under article 41. Even fewer, only 23% of states, have ratified the Optional Protocol. Clearly, universality is a prerequisite for greater effectiveness.

The ICCPR contains only a very general reference to minority rights in article 27, which states that:

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

Although the Declaration on Minority Rights will add moral legitimacy to concerns about minority rights, and complement the ICCPR, it will not provide credible guarantees which will assuage the fears of minority groups. Nor will the resulting implementation machinery be any more effective.

The Council of Europe is the regional organization which offers the most advanced example in setting legal standards for the protection of human rights. Moreover, the Commission's Steering Committee for Human Rights has recently produced a report recommending the adoption by the Committee of Ministers of "specific legal standards relating to the protection of national minorities, in the spirit of the European Convention on Human Rights". This could involve setting a legal "machinery" for the peaceful solution

of problems of minorities. Last April, the Committee suspended its work on this "machinery" in view of the fact that the CSCE was already studying similar proposals. The report of the Committee also envisages confidence-building measures to enhance dialogue between minorities and the majorities.

The American Convention on Human Rights, developed by the OAS, also set high standards for member states. But as in other cases, implementation remains the difficult issue. The Inter-American Commission on Human Rights, as well as the Inter-American Court of Human Rights, if they were used, have the necessary tools to overview implementation and to remedy violations on the part of member states. In Africa, the OAU adopted in 1981 the African Charter on Human and Peoples Rights. Since its entry into force in 1986, a Commission has been set up to enforce its application. Here again, the tendency is in the right direction but the record is not encouraging.

On the side of "standards", there are still problems of incompleteness. In the Final Activity Report on the Protection of Minorities to the Committee of Ministers of the Council of Europe in April 1992, some members of the Steering Committee for Human Rights (CCDH) were of the opinion that existing standards do not properly cover: the right to education in a minority language; the use of the minority language in relations with public authorities; the institutional arrangements for dealing with the specific interests of minorities; the use of the minority language during worship or assembly in connection with religion or belief; and the protection and promotion of the cultural identity of minorities. The Report also pointed out that "...the problems of national minorities often stemmed not so much from discrimination as from the lack of positive measures by the State on their behalf."

On the "machinery" side, the difficulty for minorities is that they do not enjoy legal recognition in the international system and that no instrument establishes the obligation for states to afford them legal recognition. Therefore their grievances can only be aired through the limited access individuals have to the existing instruments or through an existing state which might be willing to act on their behalf. In both instances, the current record is appalling. No state has ever taken the risk of using article 41 of the ICCPR, and only a few countries have opened themselves to scrutiny by way of the Optional Protocol.

The only historic precedent in international law where strong international and regional guarantees of minority rights were afforded was under the aegis of the League of Nations. But the protection of minorities by the League was limited to states bound by express undertakings, i.e. treaties. At one point, the Council was the guarantor for 16 such treaties. Individuals, groups and states not members of the Council were allowed to petition the Council, which might decide to create an ad hoc Minority Committee to look into the case. In terms of defining the collective rights of a minority, the treaties were very specific. For example, The Geneva Convention of May 15th, 1922, relating to Upper Silesia,

established in its articles 106, 116 and 118 numerical thresholds for the creation of elementary, secondary and higher education classes or schools employing the minority language. The creation of a higher education State school in a locality was required "if an application to that effect is made and is supported by the persons legally responsible for the education of at least 300 pupils" (article 118). Religious practices, communications with authorities, legal proceedings, civil and political rights and the right of petition were also covered.

The multiplication of ethnic conflicts is now producing a certain evolution of attitudes which might compensate for the failure of the League experiment. "Minority rights" are coming to the fore. In the Helsinki Document of 1992, the High Commissioner on National Minorities is entitled to:

(1) "collect and receive information regarding the situation of national minorities and the role of parties therein from any source, including the media and non-governmental organizations...

(2) receive reports from parties directly involved regarding developments concerning national minority issues. This may include reports on violations of CSCE commitments with respect to national minorities as well as other violations in the context of national minority issues."

In the execution of its mandate, he/she can communicate with:

(1) "governments of participating States, including, if appropriate, regional and local authorities in areas in which national minorities reside;

(2) representatives of associations, non-governmental organization, religious and other groups of national minorities directly concerned and in the area of tension, which are authorized by the persons belonging to national minorities to represent them."

These provisions grant to minorities a "de facto" practical recognition and open a way for them to air their grievances in an international arena. This recognition is limited, however, to individual rather than collective rights, since CSCE texts still refer to the "rights of persons belonging to a minority". But this mechanism nevertheless sets a precedent on which it is possible to build.

TIPPING THE BALANCE:

Cases such as the Yugoslav crisis could make possible the development of stronger international mechanisms for protecting human rights and "minority rights" in particular. Moving in that direction, in order to establish a better balance between standards and machinery, and between traditional actors (the State) and other, new and legitimate actors on the international stage (peoples, minorities) does not necessarily require radical changes. It means:

- using the mechanisms already in place by injecting a badly-needed infusion of political will;

- improving and expanding some mechanisms, for which there is precedent, ensuring the principle of "universality" of treatment;

- making recourse to such mechanisms less dramatic and less politically charged, in order to enable them to be used more often or even routinely;

- introducing confidence-building measures in this area, as has been done in other areas far more forcefully;

- making the peaceful settlement of these disputes more objective and neutral; and

- introducing the concept of "automaticity", in which machinery is invoked not for political reasons but by automatic or impartial triggering mechanisms.

Above all, the task is to give existing instruments the credibility they lack, so that they might play a useful role in the management of ethnic conflicts. We need to look at machinery and mechanisms which might play two distinct roles: first, those which might apply to the beginnings of a crisis, when problems have been identified but prior to the outbreak of violence; and, second, those which can facilitate solutions following conflict.

In the United Nations context, the following are measures or steps which build on existing international law and practice, but which could lend themselves to work over the next months and years:

(1) All states should be encouraged to ratify the ICCPR and the Optional protocol and to make appropriate declarations under article 41 in addition to ratifying other useful and relevant instruments (CERD,CEDAW); ratification and acceptance of these steps should be prerequisites for entry into the club of democratic nations, and

should be pre-conditions for the establishment of diplomatic relations and for accession/cooperation with international financial institutions.

(2) Having adopted the Declaration on Minority Rights, the UN should now turn its attention to ensuring a tight linkage between the Declaration and the implementation machinery of the ICCPR, which would open the way to complaint or remedial actions as specified in article 41 and in the Optional Protocol to the Covenant; over the longer term, this could be best achieved by adding a Protocol on Minority Rights to the ICCPR.

(3) The Commission on Human Rights should consider the creation of a "Permanent Special Rapporteur on Minorities", who would be mandated to investigate violations of minority rights under the Declaration and who would report to the Commission and the Secretary General or, in cases involving violations that could threaten peace and security, to the Security Council. This linkage is crucial, since it ensures publicity and attention in the right UN forum.

(4) Adopt a "routine inspection" or "challenge inspection" doctrine in the human rights field, based upon article 20 of the Convention Against Torture and the practice of the Working Group on Disappearances. Work should also be concluded on the Optional Protocol to the Convention against Torture, which has important visit and inspection provisions. Human rights instruments should begin to be used in a routine, non-confrontational and cooperative fashion, thus de-politicizing their impact and increasing their possible investigative role at the earliest stages of conflict.

(5) The Convention on Genocide should be re-visited. Its provisions are outmoded and its machinery so weighty that it cannot be used. But it is precisely the type of instrument now needed to cope with "ethnic cleansing" and similar types of atrocities based on minority situations.

(6) The Security Council and the General Assembly should build on the recent Security Council resolution (771-780) on War Crimes in the former Yugoslavia by speeding up the creation of an International Criminal Court, for those situations declared to be threats to international peace and security. In the short term, we should focus on ad hoc tribunals under the UN or the CSCE; these are not only potentially important legal instrument; they are agents of international political pressure.

(7) The United Nations General Assembly should authorize the preparation of a register of minorities, which would serve as a demographic base-line for the work of protective institutions.

In the CSCE context:

(1) Participating states should support the development of a court of conciliation and arbitration and consider the extension of its mandate to cover ethnic disputes.

(2) We should look to strengthening the role of the CSCE High Commissioner on National Minorities by adding a new position of "Assistant to the High Commissioner", in order to develop and maintain a liaison and information program with representatives of minorities. This might play a useful "early-warning" role.

(3) We might create, as an adjunct to the Office for Democratic Institutions and Human Rights, and under the authority of the High Commissioner, a "Roving Commission of constitutional experts" which will have the mandate of establishing and maintaining contacts with minorities and participating States. These experts can perform an important task of de-fusing tensions by recalling precedents and discussing practical solutions drawn from other legal or constitutional corpus.

(4) We should give greater emphasis to publicizing the path-breaking work of the CSCE in the area of minority rights, through better linkages to professional and educational institutions, the initiation of training courses, holding seminars in this area, and adopting a media strategy.

(5) The adoption of a CSCE Code of Conduct containing dispositions concerning the democratic and political control of Armed Forces should help prevent violent escalation in internal conflicts, and would be of particular relevance to the measures concerning the neutrality of the armed forces in national life, and the commitment from the CSCE to take appropriate action in cases where armed forces usurp political control.

In the NATO context:

(1) We should, through the NACC Work Plan and NATO outreach activities, develop and organize seminars or other appropriate activities to strengthen and anchor the constitutional role of military forces in the new democracies and inhibit their use in repressive activities.

(2) We should study and develop models for the management of multi-ethnic armed forces, particularly as a vehicle for promoting harmonious inter-ethnic relations and understanding.

(3) We should look to the development of operational models for cooperative management of border zones in regions where minorities are located in areas contiguous to countries where they are a majority.

(4) We should encourage mutual and balanced force reductions bilaterally and regionally, and especially in border areas where majority/minority or minority/minority relations are especially sensitive.

(5) We should offer instruction on standards for military assistance to the civil power in emergency situations, to ensure that any such assistance is carried out professionally and under clear and generally-recognized principles.

CONCLUSION:

The main purpose of "internationalizing" human rights, and the protection of minorities in particular, is to establish the principle of "routine inspection", as it has been developed in the area of arms control. In this way, the political sensitivity of using a challenge mechanism could be partially eliminated, and the instruments could play a preventive and confidence-building role.

Similarly, the idea of a "Roving Commission" is essentially a way of promoting a permanent and constructive dialogue on these issues in situations which otherwise might deteriorate into conflict situations. Over time, such a Commission might even be called upon to play a mediating role.

The broad acceptance of new "machinery" could reinforce the credibility of existing instruments for protecting minority rights, while partly avoiding the difficult and divisive debate on collective rights and " de jure" recognition of minorities. It also avoids the equally thorny question of the right to self-determination. While these types of issues will have to wait further evolution in international law, our approach is advocacy of incremental but relatively radical changes in practices, procedures and attitudes, largely through a case-by-case approach, which might over time produce the necessary evolution.

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ANNEX

LIST OF INTERNATIONAL INSTRUMENTS OF RELEVANCE TO THE PROTECTION OF NATIONAL MINORITIES

A. United Nations texts

1. Universal Declaration of Human Rights (1948)
2. International Covenant on Civil and Political Rights (1966)
3. Convention on the Prevention and Punishment of the Crime of Genocide (1948)
4. International Covenant on Economic Social and Cultural Rights (1966)
5. International Convention on the Elimination of All Forms of Racial Discrimination (1966)
6. Convention on the Elimination of All forms of Discrimination against Women (1979)
7. Convention on the Rights of the Child (1989)
8. Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981)
9. Declaration on the rights of persons belonging to national or ethnic, religious and linguistic minorities adopted by the UN General Assembly (December 1992)

B. ILO Texts

10. Convention No. 111 concerning discrimination in respect of employment and occupation (1958)
11. Convention No. 169 concerning indigenous and tribal peoples in independent countries (1989)

C. UNESCO Texts

12. Convention against Discrimination in Education (1960)

13. Declaration on Race and Racial Prejudice (1978)

D. Council of Europe

14. European Convention for the Protection of Human Rights and Fundamental Freedoms (1950)

15. Protocols to he Convention for the Protection of Human Rights and Fundamental Freedoms

E. Provisions and commitments of the participating States of the CSCE

16. Final Act Helsinki (1975)

17. Concluding Document of the Vienna Meeting on the follow-up to the Conference (1989)

18. Document on the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (1990)

19. Charter of Paris for a New Europe (1990)

20. Report of the CSCE meeting of experts on national minorities (Geneva 1991)

21. Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE (1991)

22. Concluding document of the Helsinki Meeting on the follow-up to the Conference (1992)

F. OAS

23. American Convention on Human Rights (1978)

G. OAU

24. African Charter on Human and Peoples' Rights (1981)

ENDNOTES

1.Using the notion of "national groups" which similar to our definition of minority group, G.P. Nielsson in, "From Ethnic Category to Nation: Patterns of political Modernization", (paper presented at the annual meeting of the International Studies Association, St.Louis, April 1988, p.12., has identified these 1300 groups and from the information available on 547 these groups, he established that 404 were confined to a single state while 143 were found in two or more states. Half of the 547 were considered to be "mobilized nations" (i.e., self-conscious and active political collectivities), 21 percent were "mobilizing communities" (i.e., in the process of becoming self-conscious and active as political actors), and 28 percent were "unmobilized communities" (persons identified as having common objective attributes, but not sharing political consciousness).

2.See Nielsson, P.G., "States and "Nation-Groups": A Global Taxonomy', in Tiryakan and Rogowski, "New Nationalism of the Developed West", (1985), Allen & Unwin, pp. 30-32.

3. Laponce, J.A., " Language and Communication: "The Rise of the Monolingual State", in Claudio Cioffi-Revilla, Richard L. Merritt, Dina A. Zinnes, "Communication and Interaction in Global Politics", (1987), Sage, pp. 185-186.

4. Oxford Research Group, "New Conflict in Europe: Prevention and Resolution", (1992), London, pp.21 et sq..

5. Wallensteen, P., "States in Armed Conflict 1988", (1989), Uppsala University, Department of Peace and Conflict Research, Report No. 30.

6. According to our own compilation the following ethnic conflicts have emerged since 1988: Somalia, Burundi massacre & revolt, Bougainville rebellion, Armenians vs Azerbajdanis, Uzbekhs vs Mezcheti Turks, Mauritius vs Senegal, Aceh rebels in Indonesia, Indian religious feuding, Khasmir, Georgians vs Ossetians, Moldova, Liberia, Shi'ia revolt in Iraq, feuding in Nigéria, Yugoslavia, unrest in Cameroun.

7. Barbara Harff, Ted Robert Gurr, "Genocides and Politicides since 1945", in "Internet on the Holocaust and Genocide", (1987), Jerusalem, Institute of the International Conference on the Holocaust and Genocide, Special Issue No 13. See also, R. Leger ed., "World Military and Social Expenditure 1991", (1991), World Priorities, pp.22-25. Compilation from the latter publication indicated a total number of 11,275,000 deaths from 1945 to 1990 in conflicts involving states and a segment of their population - an average of 2,500,000 a year.

8. For a compilation of international and internal conflicts, see, Brecher, M., Wilkenfield, J., Moser, S., Crises in the Twentieth Century: Handbook of International Crises", 2 vol., Oxford, (1988), Pergamon Press . Brecher, M., Wilkenfield, J., "Crisis, Conflict and Instability", Oxford, (1989), Pergamon Press.

9. Stavenhagen Rodolfo, "Ethnic Conflicts and their Impact on International Society", (1991), International Social Science Journal, No. 127, UNESCO, Basil Blackwell, pp.118-119. For a similar tipology, see also, Rufin, J.C., "Minorités, Nationalité, États", (1991), Politique Étrangère, No.3, Automne 1991.

10. For an in depth analysis of this phenomena, see, Messina, A.M., "The Two Tiers of Ethnic Conflict In Western Europe", (1992), 'The Fletcher Forum of World Affairs', vol. 16, No.2, Summer 1992, p.57.

11. Larrabee, F.B., "Down and Out in Warsaw and Budapest: Eastern Europe and East-West Migration", (1992), 'International Security', Vol. 16, No.4, Spring 1992, pp.5-6.

12. These figures from the 1986 Census could be found in, "Multicultural Canada: 1986 Graphic Overview", (1989), Policy and Research, Multiculturalism and Citizenship Canada, pp.6-7.

13. Shenstone, Michael, "World Population Growth and Populations Movements: Policy Implications for Canada", (1992), Policy Planning Staff Paper, No. 92/7, External Affairs and International Trade Canada, pp.1-2.

14. For a discussion of the pro and con of internationalization, see, Premdas, R.R., Internationalization of Ethnic Conflict: Theoritical Explorations", (1989), paper presented to the ICES International Workshop on Internationalization of Ethnic Conflict, August 1989, Colombo, Sri Lanka.

15. This conclusion is supported by Miall's research on the disputes which have been settled peacefully since 1945. Miall,H., "The Peacemakers", (1992), Macmillan.