Introduction

A substantial part of the human rights violations that have come to the attention of the United Nations (UN) are related to some kind of group conflict, and yet the United Nations was for many years singularly ill equipped to deal with these issues. Only in recent years has the attention become more commensurate to the need. At the time of writing, however, it is uncertain how the new Human Rights Council (which replaced the Commission on Human Rights in 2006) will carry the issue forward.

During early years, the majority of UN members were hesitant to recognise and address minority rights. There are no references to minority rights in the Universal Declaration of Human Rights. A safety valve was created in 1947 through the establishment of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, but its initial efforts to fulfil its mandate met during many years a “cold shoulder” at the level of the Commission and the Economic and Social Council.\(^1\)

One rather weak provision on the subject, proposed by the Sub-Commission, was inserted in Article 27 of the International Covenant on Civil and Political Rights (ICCPR): “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.” This remains the main provision in conventional international law on the rights of minorities. It is individualistic in its orientation (“persons belonging to”) and passive in terms of State obligations (“shall not be denied the right”). In spite of

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this, it has been interpreted widely enough to establish a platform, however modest, for group claims. The Human Rights Committee has developed its jurisprudence regarding Article 27 in a number of cases under the Optional Protocol to the Covenant.

In 1971, the Sub-Commission appointed Francesco Capotorti as Special Rapporteur to undertake a study on the implications of Article 27 of the Covenant. The resulting study, which was completed in 1977, remains the most thorough UN report on the subject. His study had three main recommendations: to adopt more detailed standards to supplement Article 27; to develop new international methods for implementation; and to adopt bilateral or regional arrangements.

The Commission on Human Rights started in 1979 an effort to draft a declaration on the rights of minorities, but it only obtained momentum in 1990 as a result of the emerging ethnic conflicts in Central and Eastern Europe. The Minority Declaration was finally adopted in 1992 (see below).

In 1990, the Sub-Commission initiated a study on peaceful and constructive approaches to situations involving minorities entrusted to the present author. The final report was presented to the Sub-Commission in 1993. It explored good guidelines for constructive relationships between the different groups in society. Peaceful resolution of conflicts required an emphasis on at least three levels: ensuring more effectively the rights of the individual human being; recognising and protecting the existence and identity of minority groups; but also taking fully into account the concerns for public order in society as a whole. There may be conflicts between these different concerns; the task was, and is, to seek an appropriate balance between them.

The study proposed the establishment of a working group within the United Nations to promote the implementation of the 1992 Minority Declaration, which was endorsed by the Sub-Commission in 1994 and then adopted by the Commission on Human Rights in 1995.

The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

The Declaration, in its Article 1, calls on States to protect the existence and the identity of minorities and to encourage conditions for the enjoyment of that identity. The Declaration represents a clear trend towards greater recognition of the multi-cultural composition of national societies. Under its Article 2, persons belonging to minorities shall have the right to enjoy their own culture, profess and practice their own religion

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4 Ibid.