The United Nations Working Group on Minorities

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1. Introduction

Minority protection has always been the poor relation in the human rights family. Rights for minorities were excluded from the Universal Declaration of Human Rights and were recognised in the European Convention on Human Rights only as a prohibited ground for discrimination. Some limited rights were included in Article 27 of the International Covenant on Civil and Political Rights. Then, in the 1990s, a new set of more positive provisions were developed in the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities and the European Framework Convention on the Protection of National Minorities. But most of these are heavily qualified and not subject to formal adjudication. The United Nations Working Group on Minorities established to monitor the Declaration is one of the weakest of the thematic mechanisms in that it is not authorised to make direct recommendations to any particular State. It was not until 2005 that the Independent Expert on Minorities was established with a mandate more or less on par with other special rapporteurs. Now, even these monitoring mechanisms are under threat in the fundamental review of United Nations mechanisms initiated by the Human Rights Council in 2006. So what is to be done to maintain or perhaps even improve the way in which minority rights are to be protected?

This is not the place for a detailed explanation of this relatively low priority for the human rights of minorities. But there are a few general features that may assist in identifying the most productive and practical way forward. The main problem is not the simplistic view that human rights can only be granted to or

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enjoyed by individuals. Humans are defined by and live their lives in communal as well as individual identities and relationships. Nor is it just the reluctance of many States to open the door to claims for self-determination. The potential legitimacy of group claims of that kind has been formally recognised since the inclusion of the right of peoples to self-determination in the International Bill of Rights in 1966. It is already being asserted as the basis for a number of serious internal conflicts. An equally significant underlying problem is that minorities can be identified in such a wide range of categories and circumstances. It is correspondingly difficult to formulate or secure agreement on any list of substantive or enforceable rights. But that does not mean that nothing should be done. Failure to deal effectively with minority issues is one of the major causes of tensions and conflicts throughout the world.

There is currently a window of opportunity for minority activists to raise the profile of their work and to put the case for what might deal most effectively with these issues and thus avoid the potential for continuing or future conflict. The Human Rights Council has wisely, or perhaps by default, decided to renew the mandates of all the human rights mechanisms until 2007. The Working Group on Minorities is to meet again in August 2007 during the ‘last’ meeting of the Sub-Commission on the Promotion and Protection of Human Rights. The mandate of the Independent Expert is due to expire at around the same time.

The starting point for any campaign on future structures and mechanisms within the United Nations must be an honest assessment of the strengths and weaknesses of the current system. This should lead to some greater clarity on what are the most significant tasks and functions that need to be carried forward and how they might be built into any new human rights regime.

2. The Origin of the Working Group

The Working Group on Minorities was established in 1995, three years after the adoption of the Declaration. The underlying objective, promoted by Asbjorn Eide, who became its first chairperson, was to provide a regular formal structure within which the provisions of the Declaration could be promoted and implemented. It is constituted as a continuing working group of the Sub-Commission on the Promotion and Protection of Human Rights (previously the ‘Sub-Commission on the Prevention of Discrimination and the Protection of Minorities’), with five members drawn from the current members of the Sub-Commission. The members of the Working Group then elect the chairperson. All the other participants at its annual sessions are either invited or permitted on application to attend, and comprise representatives of Member States who wish to take part, representatives of minority and indigenous communities who are able to secure funding and interested academics and individuals who may apply to be accepted by the Secretariat.