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I. Introduction

This period has been both a highly significant and somewhat uncertain one in regard to the human rights institutions and mechanisms of the United Nations, and has seen the abolition of the Commission on Human Rights and the establishment of the Human Rights Council. In regard to UN mechanisms on minority issues, a significant development was the creation of a new UN Special Procedures mandate, the UN Independent Expert on minority issues (hereinafter IEMI or “Independent Expert”), established to complement the work of the Sub-Commission Working Group on Minorities (hereinafter WGM or “Working Group”) and offer new possibilities to fill a widely perceived gap in the UN tools to promote and protect the rights of persons belonging to national, ethnic, religious and linguistic minority groups. ‘Review’ and ‘reform’ have been key features of this period, and the optimistic voices promoting new institutions for a new era of UN rights protection, have been matched by cautious voices foreseeing more modest outcome of reform efforts of UN political bodies.

As one of the latest new human rights mechanisms created by the Commission, the establishment of the mandate of an Independent Expert was timely and a result of long-standing advocacy efforts, including from the Working Group itself.¹ The first mandate-holder, Ms. Gay J. McDougall, was appointed on 29 July 2005 by the United Nations High Commissioner for Human Rights, Ms. Louise Arbour. At the core of her mandate, the Independent Expert is tasked to promote the implementation of the 1992

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UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (hereinafter “the Declaration on the Rights of Minorities”). This new mandate also offers a first unique opportunity for direct constructive engagement on minority issues in country situations. She can consult directly with governments regarding minority issues, a function that the Working Group has been lacking.

However, the establishment of the mandate of the Independent Expert came at a significant cost to the Working Group; the length of the annual Working Group session was cut from five to just three days, imposing new limitations on its consideration of conceptual issues and thematic papers. Changes to the timing of the sessions, requiring the Working Group to meet in-session during the Sub-Commission proceedings in August, was another change resulting from the compromise package of political negotiations that established the mandate of the Independent Expert. Indeed, at the time of writing, the effects of reform efforts remain uncertain with regard to the future of the Sub-Commission and the Working Group on Minorities.

In many respects this period has necessarily been a formative one for the new mandate of the Independent Expert, with Ms. McDougall quickly establishing the working practices and thematic priorities to guide her early work. Informed by the practices of other Special Procedures mandates, and guided by the founding Resolution of the Commission, Ms. McDougall established early on that she would receive information from a variety of sources, make communications directly to states on specific minority issues, and conduct country visits at the invitation of states. The first of these planned visits was to Hungary in June 2006 and, with the welcome cooperation of the government of Hungary, has begun to establish a constructive practice of country visits that bodes well for future engagement in Europe and beyond. Staffed and serviced by the Special Procedures Branch of the Office of the High Commissioner for Human Rights (OHCHR), the Independent Expert has also benefited greatly from the institutional experience and expertise of the OHCHR in the field of minority issues and anti-discrimination and is specifically called upon within her mandate to identify possibilities for technical cooperation by the OHCHR.

II. The Independent Expert on Minority Issues

Undoubtedly the establishment of the United Nations Independent Expert on minority issues has been the most significant new development on minorities within the UN system. The Independent Expert on minority issues is a special-procedures mandate established in 2005 by the United Nations Commission on Human Rights. An independent expert is one of a number of special-procedures mandates that also include thematic and country Special Rapporteurs, representatives of the Secretary-General, or representatives of the Human Rights Council (formerly the Commission on Human Rights). Despite some NGO concerns regarding the failure to establish a Special Rapporteur, the title of a special-procedures mandate does not necessarily reflect any hierarchy or indication of powers as witnessed over the first active months of the mandate. Of primary consideration are the actual terms of the mandate as formulated in the resolution establishing it (see below). In the case of the Independent Expert on minority issues, the mandate is provided in Commission on Human Rights Resolution