



The Interrelationship between Individual Human Rights, Minority Rights and the Right to Self-Determination and Its Importance for the Adequate Protection of Linguistic Minorities

Kristin Henrard, University of Groningen, The Netherlands

Introduction

Since tensions involving language, language use and language rights are often a source of problems in multinational states, it seems appropriate to focus on language rights against the background of a theory regarding an adequate system of minority protection.

In order to do this, first of all in this article, the concept minority is elaborated upon, including its potential relevance for multinational societies. Subsequently, the link between an adequate system of minority protection on the one hand and conflict prevention and/or resolution in multinational societies on the other hand is clarified. Prior to the assessment of the respective contribution of individual human rights and the current minority rights standards in relation to the protection of language rights, the two basic principles of minority protection are highlighted as well as typical concerns of linguistic minorities pertaining to language rights. The assessment will reveal that both individual human rights and the current minority rights standards are important for the protection of language rights of population groups in a multinational society, while the latter take up the *acquis* of the former and further the right to identity of minorities. Nevertheless, the degree of protection at the level of these two categories of rights remains in many ways deficient. Therefore, it is finally argued that a qualified recognition of a right to internal self-determination for minorities might very well increase that protection in ways that improve opportunities for integration without assimilation of the population groups concerned.

Definition of the Concept Minority and Application in a Multinational Setting

When focusing on minority protection, it seems important to clarify (to some extent) the meaning of the concept minority. Although up until now there is no generally accepted definition (see inter alia Schulte-Tenckhoff and Ansbach 1995: 17; Thornberry 1991: 164), a review of several proposals of definition does reveal that there are certain elements that recur, some of which are objective, others subjective. These elements thus seem to be essential components of a definition of the concept minority.¹

Among the objective elements, having ethnic, religious and linguistic characteristics differing from the rest of the population of the state is self-evident.² Secondly, a numerical minority position is required; more specifically, the population group concerned should be less numerous than the rest of the population of the state. This numerical factor raises a couple of interesting questions, such as whether or not a numerical threshold should be formulated, in the sense that for groups that consist of two persons it would not be reasonable to grant them minority status (and the concomitant rights). Nevertheless, it is quasi impossible to identify a strict numerical threshold or even a minimum percentage vis-à-vis the rest of the population. Each specific situation should indeed be judged on all its concrete characteristics, and it is

¹ For an explicit enumeration of the so-called 'essential components' of a definition of the concept 'minority', see inter alia Deschênes (1986: 289); Shaw (1992: 23-28); also Capotorti (1991: 5-15).

² According to Capotorti (1991: 12), the objectively recognisable fact of having ethnic, religious and linguistic characteristics should be the starting point of every effort to formulate a definition of the concept 'minority'. See also Ramaga (1992: 104-105).



thus preferable to adopt a pragmatic approach in this respect (inter alia Capotorti 1991: 12; Deschênes 1986: 269; Shaw 1992: 25). While it seems advisable not to include a numerical threshold in a definition of the concept minority, the size of the population groups arguably has implications for the respective degree of state obligations, in line with considerations of proportionality or a so-called sliding scale approach (inter alia De Varennes 1997b: 140; Gilbert 1992: 89; Ramaga 1993: 577).

Another interesting question is whether or not minorities can also be identified at a sub-state level, and thus in reference to the population of that sub-state unit, instead of the population of the state. The United Nations Human Rights Committee has adopted a rather restrictive attitude in this respect in that following its opinion in *Ballantyne et al v Canada* it is not possible to consider a population group which constitutes the majority nation-wide, a minority in a province (UN Human Rights Committee 1993). However, it seems more appropriate to take into account which level of government has the competence to make decisions of relevance to the population group concerned. To the extent that a lower level of government has such competence, it makes sense to define minorities at that level as well (inter alia Ramaga 1992: 109; Varady 1997: 13-14).

Although the most authoritative definitions do include a citizenship requirement (Capotorti 1991: 12; Deschênes 1986: 262-264; Thornberry 1991: 171), recently this requirement has to face mounting criticism (see Shaw 1992: 26; Tomuschat 1983: 960-962; Wolfrum 1993: 160-163). It is indeed all too easy for states to manipulate their citizenship legislation so as to exclude certain population groups that would otherwise qualify as minority (inter alia Thornberry 1993: 28-30). Furthermore is this requirement problematic for the Roma (Gilbert 1992: 72), as well as when the borders of existing states change due to secessions or associations. The Human Rights Committee has in any event adopted a rather liberal stance in its General Comment on article 27 ICCPR and in its General Comment on the position of Aliens under the Covenant in that it does not require members of a minority group to be citizens of the state of residence. The related requirement of having lasting ties with the country of residence is also increasingly questioned. Not only is it very difficult to give a concrete content to this requirement but it seems also unfair to *ipso facto* deny immigrant groups the status of minority (Ramaga 1993: 580). The Human Rights Committee clearly considers lasting ties irrelevant for the identification of a minority.

The final objective requirement is the one of non-dominance, excluding dominant minority groups from the definition of minority. Obviously such dominant minorities would not need minority rights (Capotorti 1991: 12, 96; also Ramaga 1992: 104), while dominated majorities need much more than minority rights, more specifically self-determination and the right to rule themselves (Capotorti 1991: 12, 96; Thornberry 1993: 9).

On the subjective side, it is required that the population groups concerned should have the wish to hold on to that separate identity, in community with the other members of the group (Ermacora 1983: 300; Thornberry 1991: 165). Although population groups that chose to assimilate should clearly not be considered minorities, this subjective requirement should not be too demanding. Indeed, many reasons can explain a silence on the part of a population group, including suppression by the authorities (Shaw 1992: 27-28; Ramaga 1992: 115). It can therefore be argued that the mere continued existence of a population group should be sufficient in itself.

In view of the preceding analysis the following working definition of the concept minority can be suggested:

A minority is a population group with ethnic, religious and linguistic characteristics differing from the rest of the population, which is non-dominant, numerically smaller than the rest of the population and has the wish to hold on to its separate identity (Henrard 2000: 48).

Since the reference to 'the rest of the population of the state' does not need to be a monolithic bloc, but can consist of several population groups, the concept minority can also be applied in a multinational state without clear majority population (also Shaw 1992: 25). In that case, all the distinctive population groups in the state are minorities in so far as they are non-dominant and have the wish to hold on to their separate identity (even implicitly) (Capotorti 1991: 96).

The Link between an Adequate Minority Protection and Conflict Prevention/Resolution in Multinational Societies

An adequate system of minority protection in multinational states actually amounts to the most appropriate accommodation of population diversity in these societies. This in turn requires a neat balancing process so that all population groups consider themselves to be reasonably accommodated. This can be achieved when policy makers acknowledge the interrelation between individual human rights, minority rights and the right to self-determination.

Whereas I have set out this overall argument at length in my book, *Devising an Adequate System of Minority Protection: Individual Human Rights, Minority Rights and the Right to Self-Determination* (Henrard 2000), here language rights and the appropriate accommodation of linguistic population diversity in a multinational state are focused upon.

Considering the link between an appropriate system of minority protection and the accommodation of population diversity in multinational settings, minority protection measures tend to contribute to the prevention of ethnic conflict and can also be used in mechanisms of conflict resolution.

In this respect, the example of Macedonia comes to mind, in that the key elements of the Macedonian peace agreement contained several minority protection provisions aimed at integrating the Albanian minority, without assimilating it. Of specific relevance for the focus of this paper on language rights were the agreements pertaining to the greater official use of the Albanian language and the recognition of higher education in Albanian in communities where ethnic Albanians comprise more than 20 percent of the population.

The Two Basic Principles of Minority Protection

A 'full blown' system of minority protection consists of a conglomerate of rules and mechanisms enabling an effective integration of the relevant population groups, while allowing them to retain their separate characteristics, or in other words 'integration without forced assimilation'. Such a system is based on two pillars or basic principles, namely the prohibition of discrimination on the one hand, and measures designed to protect and promote the separate identity of the minority groups on the other. Minority protection *sensu lato* thus encompasses not only non-discrimination measures but also all kinds of 'special' measures designed to protect and promote the separate identity of minorities, the latter being minority protection *sensu strictu* (Capotorti 1991: 40).



The first pillar deals with rules that are expressions and further elaborations of the prohibition of discrimination. Such rules guarantee formal equality and are at the same time conducive to achieve substantive equality. They are, consequently, considered to be a necessary prerequisite for the second pillar and its rules, which are actively geared towards realising substantive equality. The second pillar thus assumes the existence of the first one and builds on its *acquis* without contradicting it. Substantive or real equality can indeed require differential treatment for people in different circumstances. For (members of) minorities these rules would be focused on devising appropriate means to retain and promote their distinctive characteristics, thus protecting them against forced assimilation (Benoît-Rohmer 1996: 16; Thornberry 1993: 10).

The double track of minority protection (*sensu lato*) was expounded first by the Permanent Court of International Justice in its advisory opinion regarding the minority schools of Albania. The Court formulates the aim of the minority protection system of the League of Nations as follows:

'Secure for certain elements incorporated in a State, the population of which differs from them in race, language or religion, the possibility of living peaceably alongside that population and co-operating amicably with it, while at the same time preserving the characteristics which distinguish them from the majority, and satisfying the ensuing special needs.

In order to attain this object, two things were regarded as particularly necessary ... The first is to ensure that nationals belonging to racial, religious or linguistic minorities shall be placed in every respect on a footing of perfect equality with the other nationals of the State. The second is to ensure for the minority elements suitable means for the preservation of their racial peculiarities, their traditions and their national characteristics.

These two requirements are indeed closely interlocked, for there would be no true equality between a majority and a minority if the latter were deprived of their own institutions, and were consequently compelled to renounce that which constitutes the very essence of its being a minority.' (Permanent Court of International Justice 1935: 17)

This double track has also been taken up by the United Nations, already during the first session (1947) of the UN Sub-Commission on the Prevention of Discrimination and the Protection of Minorities.

Although 'special' measures for minorities are not entirely uncontroversial,³ it is currently generally accepted that each system of minority protection should follow this double approach. It is furthermore important to emphasise that both pillars, the non-discrimination principle in all its manifestations and the measures of minority protection *sensu strictu*, can be considered to be implementations of the equality principle. Both aspects of minority protection (*sensu lato*) are indeed closely connected and intertwined because of their focus on equality (Alfredsson 1993: 62; Capotorti 1991: 40-41; Humphrey 1986: 24-25; Rodley 1995: 50-51).

At the same time, it should be emphasised that these special measures for members of minorities have as their goal and limitation substantive or real equality so that they should not amount to privileges, going beyond the requirements of substantive equality (UN Secretary-General 1995). Furthermore, minority rights are not absolute and as the UN

³ The book edited by Raikka (1996) is construed around the critical question 'Do We Need Minority Rights?'

Human Rights Committee (1981) has clarified in *Lovelace v Canada*, restrictions to minority rights are acceptable in so far as they have a reasonable and objective justification. The latter criterion implies a balancing process and allows for the specific circumstances to be taken into account. Indeed, the precise combination of measures and techniques used for minority protection purposes should each time be as much as possible tailored to the concrete circumstances and the concrete case (Capotorti 1986: 247-248; Sohn 1981: 271). The evaluation and weighing process of the respective interests do require a sufficient critical attitude vis-à-vis the arguments and interests of the state.

Specific Concerns of Minorities Regarding Language Use

The point of departure regarding 'languages' is that the linguistic value of languages and their relative political strength and importance are different matters. Whereas all languages are linguistically equivalent, the speakers of the different languages are not equal in terms of political power relations (Skutnabb-Kangas 1988: 12). These relations are manifested in national policies regarding the official languages of a country. The need to have one specific *lingua franca* for purposes of administrative efficiency plays in any event an important role. This perception could indeed result in the *de facto* preponderance in a state's public life of a language, which is not the mother tongue of the largest population group(s) (De Varennes 1997b: 167).

It can be argued that the pressure emanating from a linguistically dominant group is considerable and that this would oblige states to take positive measures to protect the other linguistic groups so as to abide by the requirements of substantive equality (Blair 1994: 7-9; Skutnabb-Kangas and Phillipson 1995: 89). This analysis can furthermore be extended beyond the area of pure linguistics in that language promotion is directly related to the realisation of socio-economic equality and to equitable political influence for the groups concerned (Williams 1984: 215; De Varennes 1997b: 116).

Language is generally considered an important factor to evaluate the chances of survival of minorities and their separate identity because of the symbolic investment in a language by the group speaking and wanting to maintain it (Beloff 1987: 140). Language is an important identity feature, which is intrinsic to or at least closely related to culture and ethnicity (Reaume 1994: 127; Tabory 1980: 173; Vandyke 1985: 32). However, language and culture are not completely co-existent in that members of an ethnic group can stop speaking the language without necessarily losing their ethnic identity (Edwards 1984: 283-284).

Typical demands of linguistic minorities⁴ concern the institutional foundations of cultural reproduction and more specifically the use of minority languages in the (public) media, the public education system and communications with public authorities and courts (Williams 1992: 112; also Tabory 1980: 212-214). The issue of names in the minority language and the language of street names and other topographical indications are also quite emotionally charged, and often constitute sensitive topics for both minorities and states, as the latter are rather reluctant to make concessions in this regard (De Varennes 1997b: 152).⁵ The

⁴ Compare this enumeration with the issues dealt with in the Oslo Recommendations Regarding the Linguistic Rights of National Minorities, made by a group of internationally recognised experts commissioned by the Foundation on Inter-Ethnic Relations, which works for the High Commissioner on National Minorities of the OSCE (*The Oslo Recommendations*, 1998), namely: names (including topographic indications), religion, community life and NGOs, media, economic life, administrative authorities and public services, independent national institutions, the judicial authorities and deprivation of liberty.

⁵ The only international document dealing explicitly with these issues is article 11 of the European Framework Convention for the Protection of National Minorities which contains numerous internal qualifications and loopholes (see also Benoît-Rohmer 1998: 46).



expression 'cultural reproduction' reflects a connection between these issues and the right to identity and more specifically the preservation of the minority identity since the former would support or even guarantee the latter.

It seems useful to refer here also to the Oslo Recommendations regarding the Linguistic Rights of National Minorities. These recommendations have been formulated by a group of experts, which were consulted by the Foundation of Inter-Ethnic Relations at the request of the High Commissioner on National Minorities (HCNM) of the OSCE. In the latter's work as 'instrument of conflict prevention at the earliest possible stage' in the OSCE member states (The Oslo Recommendations 1998: 1-3), the HCNM had noticed that the linguistic rights of national minorities were a recurrent issue. It should be pointed out that whereas the recommendations are framed in terms of linguistic rights of national minorities, it is acknowledged that they 'could potentially apply to other types of minorities (The Oslo Recommendations 1998: 4). In any event, and as I argued elsewhere, the concepts 'national minorities' and 'ethnic, religious and linguistic minorities' cover more or less the same load (Henrard 2000: 53-55).

The Oslo Recommendations (1998: 3-4) 'attempt to clarify ... the content of minority language rights generally applicable in the situations in which the HCNM is involved' and presume compliance with all other human rights obligations. It should be emphasized though, that these recommendations go beyond the list of explicit minority rights standards and also draw progressive inferences from equality considerations and individual human rights like the freedom of expression, as is clarified in the Explanatory Note to these Recommendations. It is in any event clear that the Oslo Recommendations are meant to deal with all the language rights of relevance to minorities. Nonetheless, it should be acknowledged that in the formulation of the standards and especially in the Explanatory Note a highly progressive stance is taken, which rather seems to reflect *de lege ferenda* considerations than *de lege lata* standards.

The recommendations are divided in sections which correspond to the language related issues which arise in practice and are even more extensive than the enumeration above (The Oslo Recommendations 1998: 4). The themes pertaining to language use elaborated upon by the recommendations are the following: names, religion, community life and NGOs, the media, economic life, administrative authorities and public services, independent national institutions, the judicial authorities and finally, deprivation of liberty (The Oslo Recommendations 1998: 5-9).

As the struggles surrounding the Macedonian peace agreement demonstrated, the recognition of a minority language as official language can have important symbolic repercussions for the integration of the minority concerned and the larger project of nation-building. However, it should be emphasized that the status of an official language is neither the only possible way of granting minority languages some kind of official recognition,⁶ nor a *panacea* for all the demands of linguistic minorities, since 'official language status does not signal that the use of such language in a state is provided by law, ... the exact scope of a right to use an official language can always be subjected to various limitations and considerations' (De Varennes 1997b: 166). This statement applies inter alia to states where many of the languages spoken are given official status due to political considerations, of which South Africa is a case in point.⁷

⁶ '... even where a minority language is not sufficiently important to the country as a whole to merit special constitutional recognition, statutory or administrative provisions for the use of minority languages in certain circumstances may be essential to the smooth functioning of government' (Hannum 1991: 459).

⁷ Section 6 of the 1996 Constitution of South Africa recognizes 11 official languages: Afrikaans, English and 9 of the indigenous African languages.

The demands of linguistic minorities should be evaluated against the principle of substantive equality as that arguably requires a differential approach to linguistic regulation depending on the circumstances. Language is undeniably a necessary component of almost every service provided by public authorities. Consequently, members of linguistic minorities are systematically put in an unequal and disadvantaged position regarding the enjoyment of public services, when these are exclusively provided in the dominant language (De Varennes 1997c: 1, 53; Hannum 1991: 459; also Vilfan 1993: 303-304; De Witte 1992: 58).

Considering that certain minority language rights are required by the principle of substantive equality on the one hand, and the concern of states regarding 'exaggerated' demands on public funds on the other, a possible solution to the dilemma could be found in the application of a sliding-scale approach (De Varennes 1997b: 169, 173).⁸ In view of its proportionality considerations and its focus on the specific circumstances of each case, such an approach would further the goals of substantive equality. Arguably, this approach would not only be helpful regarding language use in communications with public authorities, but also regarding language use in public media, education, topographical indications and names, etc. Furthermore, since the specific circumstances should be taken into account in the proposed approach to linguistic rights for minorities, the goal of substantive equality would be pursued in a more effective way.

As is reflected in the Oslo Recommendations, the proportionality principle is generally accepted as being crucial in the matter (The Oslo Recommendations 1998: 26-27, 29) and can also be related to the dichotomy of considerations that are relevant for the determination of language rights and more specifically the balance⁹ that should be pursued in this regard. It would be commendable if states would guarantee certain language rights for linguistic minorities as a token of tolerance and respect for their separate identity. There is, however, a need for mutual co-operation between citizens, irrespective of their belonging to linguistic minorities (cf. Tabory 1980: 222-223). This co-operation depends in turn on open communication channels based on knowledge of a common language.

In general, the determination of language rights for (members of) minorities can be compared to the search of a just *equilibrium* between national unity on the one hand and the accommodation of linguistic diversity on the other (De Varennes 1997a: 86).¹⁰ Although the goal to have a *lingua franca* is *in se* legitimate, that process should nevertheless not wipe out linguistic differences (De Varennes 1997a: 87).¹¹

The following factors (De Varennes 1997b: 87, 89, 93, 95, 99, 121; Blair 1994: 11), none of which should be given absolute precedence, are potentially important for decisions concerning the regulation of language use in communication with public authorities:

⁸ '... normally there is a compromise between rigid application of the equality principle and considerations of practicality. What is sought is not parity with the majority language but such facilities for the use of the minority language as are reasonable possible in the circumstances' (Blair 1994: 11). Fishman (1995: 50) relies in this respect on the principle of an ethnolinguistic democracy, which also turns around proportionality considerations.

⁹ See inter alia the following authors who point out the need to look for the right balance between the pursuit of unity and the accommodation of diversity: Eide (1995: 99); Hannum (1991: 460); Vandernoot (1997: 336).

¹⁰ See also De Varennes (1997: 91) who points out that 'tied in with the issue of relative number of individuals is geographic concentration, especially when one deals with progressively lower percentages of individuals', which seems to imply that it would not be unreasonable to use a minority language in public services even when it is the language spoken by only very small linguistic groups as long as they are strongly concentrated in a certain area.

¹¹ See also The Oslo Recommendations (1998: 14), which clarify that the Recommendations propose an approach 'which encourages a balance between the right of persons belonging to national minorities to maintain and develop their own identity, culture and language and the necessity of ensuring that they are able to integrate into the wider society as full and equal members'.



demographic importance in combination with territorial concentration of the linguistic groups, the limited human and financial resources of the state, the level and type of government services or advantages (as this determines the degree of the disadvantage concomitant to a certain language preference by the state for those speaking a different mother tongue), the desirability of a common national language for the state, related social, cultural and religious considerations, the desire to correct oppressive state practices in the past, and the overarching demand that there should be a proportional relation between the goals of a certain language policy and the means used to achieve them. Arguably, several of these factors are equally relevant to the determination of other language issues of importance to linguistic minorities. However, it is advisable to be cautious regarding the factor of financial capacity of states, 'since 'affordability' will often be a matter of interpretation, that is, of political will and priorities' (Blair 1994: 11).

Furthermore, it is appropriate to note that territorial decentralisation, forms of territorial devolution of competencies, and especially forms of territorial autonomy, can amount to an important form of minority protection, including for linguistic minorities. These techniques would be especially relevant for minorities that are territorially concentrated because members of such minorities could form a majority at a sub-level or, at least, have more influence on government decisions. Bringing 'government closer to the people' could also have positive repercussions for minority protection in general, albeit more indirectly (inter alia De Varennes 1997a: 88; Mar-Molinero 1994: 324; Vilfan 1993: 312). Problems are arguably more easily solved at lower levels of government because these are closer to the population concerned and will be more inclined to accommodate the different religious, linguistic and cultural traditions present at that level (inter alia Watts 1994: 3). The devolution of cultural competencies to the sub-state level would then facilitate a firmer bond between the local population and the concomitant level of society. Such a bond would have positive repercussions for the interaction between the distinctive population groups at that level and would protect the separate identities of the groups concerned in a rather indirect but not less significant way.

Protection of Language Rights at the Level of Individual Human Rights?

Concerning individual human rights, I will focus my analysis on the European Convention on Human Rights (ECHR) considering its standing as one of the most successful and far-reaching protection systems for human rights. Regarding language rights in general, it needs to be underlined that neither the ECHR nor the several additional protocols contain many language rights.

The few articles which do include explicit provisions on language and language rights deal with procedural and police related matters, namely articles 5 and 6 ECHR. Articles 5, § 2 and 6, § 3 (a) end (e), dealing respectively with the right to be informed of the reason for one's arrest and of the nature and cause of charges and with the right to an interpreter in court, refer only to a language understandable for the person concerned.

Consequently, these articles do not enshrine any right to be informed of these matters in the mother tongue, let alone the language of choice (inter alia European Commission on Human Rights [ECHR] 1986 and 1983).

Article 14 does imply a prohibition of discrimination on language grounds but the Court (as the Commission) has seldom concluded to its violation in this respect. The Commission has nevertheless explicitly acknowledged that the only more or less specific protection the Convention affords members of minorities would be provided by the prohibition of discrimination in article 14 (inter alia ECHR 1979: 92-93).

Articles 5 and 6 do not really deal with full-blown language rights since their requirements do not go beyond what is strictly necessary for the right of defence and the concomitant requirement of procedural fairness. Consequently, the language provisions at issue do not correspond to all the demands and desires of linguistic minorities. For example, someone who understands the language of the court has no right to use his/her mother tongue or language of choice in court proceedings, and this also applies to members of linguistic minorities.

The jurisprudence of the Court and the Commission has furthermore underlined that article 14 cannot be used in combination with these articles to obtain recognition of such a right. The linguistic prescriptions of articles 5 and 6 are considered as *leges speciales* of article 14 in that the former would determine the limit of the requirements of the non-discrimination principle regarding language rights in procedural and police related matters (ECHR 1986; also Council of Europe 1995: 4).

Article 6, § 1 guarantees a fair trial, and arguably also has a linguistic component for civil trials but this would also be confined to ensuring that the person concerned can understand the trial. The Commission (ECHR 1962) clarified this in *Isop v Austria* in which the applicant, a member of the Slovene minority in Austria, argued that the state violates article 6 in combination with article 14 because he is not allowed to use the Slovene language in a civil court procedure. The Commission remarked that these two articles do not guarantee the right to linguistic freedom for individuals in their relation with public authorities, including the courts. The Commission's attitude *in casu* can possibly be explained by the fact that the group of people speaking Slovene in Austria is relatively small, making the exclusive use of German in the court system objectively justifiable and thus not discriminatory (De Varennes 1997b: 178). However, such analysis does not take into account the implications of possible relative concentrations of speakers of a minority language in certain areas of the state, which could justify a more balanced approach.

Kamasinski v Austria (ECHR 1989) further underscores that the language rights in article 6 are merely designed to secure the right of defence and procedural equality. Despite the fact that the applicant neither receives certain information nor the judgement itself in a language which he understands, the Court concludes that article 6, § 3 (e) is not violated. The Court deems it sufficient that a translation is given of documents in so far as that is required to understand the case and to be able to defend oneself. The latter would be achieved as the state assigns a lawyer who understands and masters both the language used in court and the language of the person concerned (De Varennes 1997b: 179; Gomien et al 1996: 168).

These two articles with explicit linguistic provisions have induced the Court and the Commission to develop a steady line of jurisprudence that, a contrario, the Convention would not guarantee a right to use a certain language in dealings with the authorities. This is the case for the right to education (see below), the freedom of thought, conscience and religion, and the freedom of expression (De Varennes 1997b: 73). There is also no right to linguistic freedom in general administrative procedures vis-à-vis municipal authorities (ECHR 1965), nor regarding language use in municipal councils and the so-called 'Openbare Centra Voor Maatschappelijke Welzijn' (Public Centres For Societal Well Being in Belgium, which form part of the Belgian social security system, where people can apply for various allowances (ECHR 1986), nor regarding registration for elections.¹²

¹² ECHR 1985 See also De Varennes (1997: 41) who concludes that these cases underscore that the Court and the Commission underline that the right to freedom of expression would not include the right to linguistic freedom as regards administrative matters.



The Court has furthermore explicitly stated that article 3 of the first additional protocol to the ECHR (election rights) does not have a linguistic component. Article 3 does not guarantee an absolute right either so that certain limitations can legitimately be imposed (ECHR 1987), such as the requirement that elected persons would take their oath in a certain language (ECHR 1987). Furthermore, in *Fryske nasjonale partij and others v Netherlands*, an obligation to register in a certain language was said to be legitimate in that it would not amount to an interference with the rights enshrined in article 3 of the first additional protocol (ECHR 1985). The Commission repeated in this decision that articles 9 and 10 do not guarantee linguistic freedom as such. In particular, these articles would not guarantee the right to use the language of one's choice in administrative matters (ECHR 1985).

This line of jurisprudence clarifies and emphasises that the other articles of the Convention cannot be relied upon to ensure certain language rights. According to the Commission in *Inhabitants of Alesberg and Beersel v Belgium*, no right to linguistic and cultural identity can be inferred from articles 9 and 10. Consequently, the Commission found that the parents' wish to have their linguistic culture predominate in the education of their children is not part of the field of application of these two articles (ECHR 1963).

Furthermore, the Commission underlined in *X v Austria* that the Convention does not include a right for linguistic minorities and that consequently the protection of their members is limited to non-discrimination on the ground of association with a national minority. The case concerns a linguistic census in Austria in which a member of the Slovene minority is not able to express her association to a minority because her mother tongue is German (ECHR 1979). According to the applicant, this situation would amount to a degrading treatment prohibited by article 3, but the Commission dismissed the application since the situation complained of would 'fall outside the scope of the provisions of the Convention and in particular article 3' (ECHR 1979).

The preceding overview of the jurisprudence of the Court and the Commission regarding language rights (with special attention to cases concerning members of linguistic minorities) reveals that the degree to which the ECHR accommodates the wishes and needs of (members of) linguistic minorities is minimal. The protection is indeed explicitly limited to the implications of the non-discrimination principle, which is only one of the pillars of a full-blown system of minority protection. As the following analysis will demonstrate, a similar point can be made regarding the right to education.

The right to education and especially the way in which it is conceptualised is very important for (members of) minorities. Education has not only an obvious qualification function but also an important socialisation function, which refers to the passing on of certain values, a certain culture etc.¹³ to the next generation. Several aspects of education have the potential to contribute to the protection and promotion of the separate identity of minorities. One of the most important of these aspects is the choice of the language(s) of instruction.

Although article 2 of the first additional protocol to the ECHR does not contain explicit stances on this issue, the jurisprudence of the Court and the Commission provide quite a number of clarifications.

¹³ The European Court on Human Rights has made the double function of education explicit in its definition of the concepts 'teaching' and 'education' in article 2 of the first additional protocol to the ECHR: 'the education of children is the whole process whereby, in any society, adults endeavour to transmit their beliefs, culture and other values to the young, whereas teaching or instruction refers in particular to the transmission of knowledge and to intellectual development' (ECHR 1982).

The well-known *Belgian Linguistics case* was until recently the case most in point regarding the possible linguistic aspects of the right to education and is consequently highly relevant for linguistic minorities. The case concerns French-speaking persons living in the Dutch linguistic region who contested the Belgian regulation regarding language in education, which is based on the division of the country in four linguistic regions. The regulation entails that public education in the linguistic region of the applicants can only be given in Dutch. The diploma's of schools in that region which would provide education in another language would not be officially recognised.¹⁴

The application is based on article 8, article 2 of the first additional protocol and article 14 in combination with the former two. The judgement includes quite a few interesting statements regarding the right to education, but in the following analysis only those of relevance for language rights will be discussed.

The Court underlines first of all that the first sentence of article 2 of the first additional protocol ('[n]o person shall be denied the right to education') does not give any indication about the language in which education should be provided for in order to comply with the requirements of the right to education (ECHR 1968). The Court postulates nevertheless that the right to education would not mean anything if it would not imply the right to receive education in the or one of the official languages (ECHR 1968). The Court thus focuses on the need for the rights guaranteed by the Convention to be effective and interprets article 2 broadly by reading in conditions which are not explicitly there.

The Court also remarks that the right to education does not in itself imply the right to establish or receive subsidisation for schools offering education in the language of choice (ECHR 1968; also De Varennes 1997a: 73; Dupuy 1995: 1008; Hillgruber and Jestaedt 1994: 25). The contracting states would have in general no obligation to finance private educational institutions.

Furthermore, the duty on states to respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions '[i]n the exercise of any functions which it assumes in relation to education', would not imply that the states have an obligation to accommodate the linguistic preferences of the parents (ECHR 1968). Although this attitude is supported by the *travaux préparatoires*, the jurisprudence of the Court does open the door for a more generous approach. In *Campbell and Cosans v UK* (ECHR 1982), the Court has indeed defined 'philosophical convictions' as 'such convictions as are worthy of respect in a democratic society ... and are not incompatible with human dignity' (ECHR 1982). In view of this definition, it would not be too far fetched to argue that 'the desire of parents, based on cultural and linguistic association with an ethnic group, to have their children educated in their mother tongue' should be accepted as such a conviction.¹⁵

The Court also holds that the Belgian regulation does (in general - one minor exception) not amount to a violation of article 14 in combination with article 2 of the first additional protocol.¹⁶ The regulation on language in education and the concomitant differential treatment have indeed, according to the Court, an objective and reasonable justification. The challenged distinction is 'in accordance with the law' and also has a legitimate aim namely 'having all school institutions that are dependent on the State and are located in a unilingual region provide their instruction in the primary language of that region' (ECHR

¹⁴ For an overview and explanation of the legal and constitutional regulations which were then applicable to the applicants, see ECHR (1968).

¹⁵ See also footnote 64 in Hillgruber and Jestaedt (1994: 26).

¹⁶ For an aspect of the Belgian regulation which is held to amount to a violation of the prohibition of discrimination, see ECHR (1968).



1968, Hillgruber and Jestaedt 1994: 26-27). Finally, the Court deems the means used to reach this legitimate aim not disproportionate (ECHR 1968).

The Commission, however, had come to a different solution, and its attitude can be used when formulating a critical remark concerning the Court's approach. Although the Court's attitude underscores that the history and development of a national regulation should also be taken into account when evaluating a difference in treatment, some criticism is arguably justifiable. The Commission contended that the Belgian regulation has as its goal 'to prevent the spread, if not the maintenance even, in one region, of the language and culture of the other region' and also 'to assimilate minorities against their will into the language of their surroundings' (ECHR 1968).¹⁷ Measures of forced assimilation of (members of) minorities are, however, prohibited by international law¹⁸ and contradict the basic values of tolerance, pluralism and broadmindedness, which are inherent in a democratic society. The question is then whether and to what extent the Belgian regulation at issue, considered in the light of all the circumstances of the case, effectively amounts to forced assimilation.¹⁹

Importantly, the Court seems to be moving away from its rigid stance with respect to the protection of mother tongue education in its *Cyprus v Turkey* judgement of 10 May 2001 (European Court on Human Rights 2001). In that case the Court notes that 'children of Greek-Cypriot parents in northern Cyprus wishing to pursue a secondary education through the medium of the Greek language are obliged to transfer to schools in the south, this facility being unavailable in the TRNC ever since the decision of the Turkish-Cypriot authorities to abolish it' (European Court on Human Rights 2001). Although the Court at first seems to repeat its stance that the provision on the right to education 'does not specify the language in which education must be conducted in order that the right to education be respected' (European Court on Human Rights 2001), it does conclude that 'the failure of the TRNC authorities to make continuing provision for [Greek-language schooling] at the secondary-school level must be considered in effect to be a denial of the substance of the right at issue' (European Court on Human Rights 2001). Indeed, it argues that because the children had already received their primary schooling through the Greek medium of instruction, '[t]he authorities must no doubt be aware that it is the wish of Greek-Cypriot parents that the schooling of their children be completed through the medium of the Greek language' (European Court on Human Rights 2001). Consequently, it seems that because the authorities assumed responsibility for the provision of Greek-language primary schooling, they have the obligation to do the same for the secondary school level.

Even though this reasoning does not rely explicitly on the importance of mother tongue education for the cognitive development of the students and related substantive equality considerations, and although it does not read into the article on the right to education a right to mother tongue education, it clearly attaches more weight to the parents' convictions about the benefits of a certain medium of instruction and should thus be welcomed. It is to be hoped that in subsequent jurisprudence the European Court on Human Rights will further elaborate and enhance the protection of mother tongue education for minorities.

¹⁷ For more criticisms on the judgement in the Belgian Linguistics Case, see Hillgruber and Jestaedt (1994: 28-31).

¹⁸ Article 27 ICCPR is said to enshrine the right to identity for minorities and a strict prohibition of forced assimilation. Although it is still contested whether or not article 27 would reflect customary international law, it cannot be denied that it forms part of a treaty which is ratified by a lot of states. See also Thornberry (1991: 241-247).

¹⁹ For a discussion of the impact of article 27 ICCPR on the Belgian state structure and the territoriality principle in light of the *Carrefour* judgement of the Court of Arbitration (no 54/96), see Henrard (1997: 782-786).

Interim Conclusion

Despite the positive development in the jurisprudence of the European Court on Human Rights pertaining to mother tongue education, it can still be argued that individual human rights accommodate only to a very limited extent language rights adapted to the special situation of minorities. Consequently, it is necessary to investigate to what extent the current minority rights standards contribute to a protection of language rights.

Protection of Language Rights at the Level of Current Minority Rights Standards?

Article 27 of the International Covenant on Civil and Political Rights (ICCPR)

The most basic international law provision on minority rights, Art 27 ICCPR, is very vague in that the only explicit language right it contains reads as follows:

‘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 use their own language’.

On the basis of this provision itself it is not clear whether states would have positive obligations to protect or promote languages or merely a negative obligation to abstain from interfering with language use in the private sphere. Issues of relevance for minorities concerning languages, like language use in courts, in education, in communication with public authorities etc are not explicitly dealt with either.

The Human Rights Committee (HRC), the supervisory body to the ICCPR, in its General Comment on article 27 only clarifies in a negative way the implications of article 27 (in comparison to other articles of this Covenant). In paragraph 5.3 of this General Comment the HRC sets out that:

‘the right of individuals belonging to a linguistic minority to use their language among themselves, in private or in public, is distinct from other language rights protected under the Covenant. In particular, it should be distinguished from the general right to freedom of expression protected under article 19. The latter right is available to all persons, irrespective of whether they belong to minorities or not. Further, the right protected under article 27 should be distinguished from the particular right which article 14, 3, f of the covenant confers on accused persons to interpretation where they cannot understand or speak the language used in the courts. Article 14, 3, f does not, in any circumstances, confer on accused persons the right to use or speak the language of their choice in court proceedings.’

Consequently, article 27 does not seem to provide much extra protection related to the individual human rights provisions regarding language use.

The 1992 UN Declaration on Minorities

The 1992 UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities is the first international instrument exclusively devoted to the protection of minority rights. It contains a further specification of article 27 ICCPR, while not being burdened by the restrictions inherent in this article (Thornberry 1993: 37; Spiliopoulou-Akermark 1997: 181). Although a Declaration is *in se* not legally



binding for UN member states, it does have a certain value as it is solemnly adopted by resolutions in the General Assembly (Schulte-Tenckhoff and Ansbach 1995: 66).

However, it should be acknowledged that although the Declaration contains some more elaborated standards in comparison to article 27, these are still rather vague and furthermore formulated in such a cautious way that states can easily argue that they comply (Benoît-Rohmer 1996: 23; Eide 1996: 7; Symonides 1995: 200). The use of formulations like 'wherever possible', 'when appropriate', 'adequate opportunities' inevitably concedes a wide margin of appreciation to states (inter alia De Varennes 1997c: 4).

Nevertheless, the fact that explicit provisions are included on language and education and that states are encouraged to adopt appropriate legislative and other measures to protect the linguistic identity of minorities and to encourage the conditions for the promotion of that identity²⁰ are improvements vis-à-vis the individual human rights regarding language (inter alia Duffar 1995: 1507; Packer 1996: 157). Still, although it is indeed laudable that the Declaration acknowledges that state obligations go beyond mere non-interference, its importance should not be overstated either since article 1 arguably mainly functions as a programmatic provision, giving a broad sense of direction without indicating concrete requirements (De Varennes 1997c: 4). The other articles of the Declaration do give some more guidance but, as already indicated, they remain too vague and weak to be truly meaningful.

Whereas article 4, paragraph 3 of the Declaration on the right to education in and or of the mother tongue for members of minorities seemingly takes up the *acquis* of the right to education as individual human right and further tailors it to the specific needs of minorities in that it deals explicitly with questions of language in education, this provision is characterised by several weaknesses of formulation and qualifications. Paragraph 3 includes the expression 'wherever possible', a qualification which may look very reasonable but which can easily be abused by a government with a negative predisposition towards minorities and their protection. It is in any event easy for states to argue that they comply in that doing more would not be possible. Secondly, the following weak construction is used to describe the states' obligations: states are to 'take appropriate measures so that ... persons belonging to minorities have adequate opportunities to ...'. Furthermore, states are given the choice to take appropriate measures to provide adequate possibilities of education either IN the mother tongue or OF the mother tongue, entailing an even greater margin of appreciation for states.

UNESCO Convention on the Elimination of Discrimination in Education

Another international convention of relevance is the UNESCO Convention on the Elimination of Discrimination in Education.²¹ Once again specific concerns of linguistic minorities are taken up and brought beyond the *acquis* of the individual human right to education, but not in a sufficiently satisfactory way.

Article 2 (b) states for example that the establishment or maintenance of separate educational institutions because of linguistic reasons does not amount to discrimination in education as prohibited by the Convention (Thornberry 1991: 289). This provision implies merely that states CAN allow separate educational institutions in certain circumstances but does not oblige them.

²⁰ See articles 1 and 4 of the UN Declaration on Minorities.

²¹ It should be emphasised that this is indeed the 'first international convention adopted after 1945 which contains provisions *expressis verbis* relating to the rights of persons belonging to minorities' (Symonides 1995: 201).

In article 1(5) c, the contracting states do agree to allow members of national minorities to establish and maintain – in certain circumstances – and under certain conditions, their own educational institutions. However, this right of members of national minorities is inter alia made dependent on the national educational policy and it is furthermore explicitly stated that national sovereignty should not be prejudiced by the exercise of this right. All in all, the numerous restrictions hedge rather heavily in the recognition of the right in that in practice they enable the state to frustrate the operation of the clauses referred to (Capotorti 1976: 8-9; Thornberry 1991: 290).

The 1990 Copenhagen Document of the OSCE

At the European level certain documents of the OSCE and of the Council of Europe should be discussed in this respect.

Paragraph 34 of the 1990 Copenhagen Document of the OSCE is undoubtedly important as it addresses two linguistic issues of special relevance for linguistic minorities, namely language in education and language use in communication with public authorities. However, this provision is a prime example of a provision with many escape clauses (Hannum 1991: 1442), leaving a huge margin of discretion to states, and is formulated as follows:

'the participating states will endeavour to ensure that persons belonging to national minorities, notwithstanding the need to learn the official language or languages of the State concerned, have adequate opportunities for instruction OF their mother tongue or IN their mother tongue, as well as, wherever possible and necessary, for its use before public authorities, in conformity with applicable national legislation.'

The Council of Europe Framework Convention for the Protection of National Minorities

At the level of the Council of Europe, two documents should be considered: the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages.

The Council of Europe's Framework Convention for the Protection of National Minorities clearly demonstrates in what way individual human rights and minority rights are interrelated for an adequate protection of human rights in general and also more specifically for linguistic rights. Indeed, several articles of the Framework Convention take up individual human rights of the ECHR which are of special relevance for minorities (e.g., articles 7, 8, 9 and 12, § 3), while adding at times extra requirements because they are essential for the purpose of safeguarding specific rights for minorities (e.g., article 9, §§ 2,3 and 4). The Convention also enshrines several minority rights, but each time suitably circumscribed. The Framework Convention is undoubtedly very important for minority protection purposes since it is the first international treaty with a multilateral, general protection regime for minorities (Benoît-Rohmer 1998: 145). Nevertheless, it consists of vague programme declarations and includes several escape clauses, thus granting states a wide margin of appreciation (Benoît-Rohmer 1996: 42, 50; Klebes 1995: 93-94).

Article 10 guarantees the right to use the minority language but its second paragraph, concerning the right to use this language in communication with the public authorities is very heavily qualified (Klebes 1995: 95; Benoît-Rohmer 1998: 139). Not only is the right contingent on finding a high geographical concentration of members of the linguistic



minority required but it is also weakened by discretionary phrases like 'where such a request corresponds to a real need' and 'as far as possible'. The effective application of this provision can thus be seriously questioned (Benoît-Rohmer 1998: 139).

Article 14 regarding the right to learn the minority language and being taught or receiving instruction in a minority language, is equally cautiously formulated. Moreover, the states appear not to have an obligation to take positive measures regarding the right to learn the minority language. Particularly the right to instruction in a minority language is very tentatively phrased in that states are not obliged but merely encouraged to provide this service (inter alia Benoît-Rohmer 1996: 48-49). Together with the requirement of territorial concentration, article 14, paragraph 2 also contains vague conditions like 'as far as possible' and 'within the framework of their education system'.

The European Charter for Regional or Minority Languages of the Council of Europe

Finally, the European Charter for Regional or Minority Languages of the Council of Europe has to be analysed. First of all, certain typical features of the Charter are to be highlighted. It is first and foremost remarkable that the Charter does not grant any rights to speakers of certain minority languages or to certain linguistic groups but is focused on the languages themselves and thus on a recognition, protection and promotion of multi-lingualism.²² Secondly, certain general principles in article 7 aside, the contracting states can under certain minimum requirements choose their obligations *à la carte*.²³ For each subject matter the Charter contains several alternative state obligations ranging from very weak to rather strong ones. Each state can even determine for itself to what languages spoken in its territory the Charter will apply, thus taking the state discretion very far (Benoît-Rohmer 1998: 146).

The states ratifying the Charter then commit themselves (to a greater or lesser extent) to protect and promote the use of regional or minority languages in the domains of education (article 8), Judicial authorities (article 9), Administrative authorities and public services (article 10), Access to media (article 11) and also in the domains of cultural, economic and social activities (articles 12 and 13).

It should in any event be pointed out that the Charter clearly aims in article 7 paragraph 2 at substantive equality since it underlines that 'positive measures aimed at bringing about greater equality between the users of regional or minority languages and the rest of the population are not to be considered as discriminatory against the majority' (Blair 1994: 58). The Charter does not only allow for such special measures but it also recognises that non-discrimination in itself does not tend to be sufficient to protect the languages focused upon.

The actual contribution of the Charter to minority protection is moderated and balanced in view of its high flexibility as regards the content of state obligations. The Explanatory Report on the Charter reveals, however, that the states may not choose arbitrarily between these options but have to do so 'according to the situation of each language'. Arguably this would tend to entail that 'the larger the number of speakers of a certain

²² The Definitions of article 1 clarify that the field of application of the Charter is limited to indigenous languages and thus excludes the languages of immigrants. Blair remarks in this regard that: 'the decision to exclude such languages is clearly open to objections, especially as in some Western European Countries ... they are perceived as the greater problem' (Blair 1994: 57).

²³ For a strong criticism as regards this flexible approach of the European Charter in that it leaves so much choice to the states, see De Varennes (1997a: 156).

language and the more homogenous the regional population, the stronger the option which should be adopted' (Blair 1994: 59-60).

Interim Conclusion

The preceding analysis has revealed that minority rights undoubtedly contribute to minority protection in that they take up the essence and achievements of the individual human rights, while tailoring the ones of special relevance for minorities further to the specific position of minorities and their ensuing needs. In this way, minority rights in general and also those specifically dealing with language rights give further shape to the right to identity of minorities and interrelate with the category of individual human rights for the elaboration of an adequate system of minority protection. However, in several respects the current standards on minority rights are deficient and disappointing, which is mainly due to the extensive use of escape clauses and weak formulations, leaving too much discretion to states.

Additional Benefit of a Qualified Recognition of a Right to Internal Self-determination for Minorities

A qualified recognition of a right to internal self-determination for minorities could further improve the accommodation of the population diversity in a state, could enhance the integration without assimilation of the distinctive minorities and could thus contribute to conflict prevention and/or conflict resolution. In this regard it should be pointed out that arguments based on the fundamental principle of international law regarding territorial integrity of states, does not have any force regarding forms of internal self-determination for population groups within existing states in that internal self-determination – unlike external self-determination – does not have any impact on territorial integrity of existing states as it is merely concerned with internal state structures and institutions (inter alia Nowak 1992: 103).

There is an ongoing controversy about the exact meaning of the concept of 'people', especially as it concerns the right to external self-determination. There is arguably a tendency, however, to recognise a certain right to internal self-determination for minorities. The findings of the Arbitration Commission for Yugoslavia established by EU in 1991, more specifically in its second opinion of 11 January 1992 on the situation of the Serbian minorities in Croatia and Bosnia, confirms this. Although that minority would not have the right to secede and join Serbia, the Commission's reasoning reveals that the right to self-determination is not non-existent for the population group concerned. The Commission underscores that self-determination is not exclusively a principle of state-creation, but that it is also a fundamental and basic principle of the state and its organisation and structure as such, and is more specifically designed to protect the separate (including linguistic) identities of the various population groups in a state through granting them a certain (legal) status (see also Musgrave 1997: 170-171).

Forms of internal self-determination that have been granted to minorities include forms of territorial autonomy, like decentralisation, federalism, and personal autonomy.

Conclusion

The relative contribution of individual human rights and minority rights to an adequate protection of language rights of minorities has been evaluated against the background of the two basic principles of minority protection and the typical concerns of linguistic



minorities pertaining to language rights. The assessment reveals that both individual human rights and the current minority rights standards are important for the protection of language rights of minorities, while the latter take up the *acquis* of the former and further the right to identity of minorities. Nevertheless, the degree of protection at the level of these two categories of rights remains in many ways deficient. Therefore, a qualified recognition of a right to internal self-determination for minorities might very well increase the level of protection in a way that improves integration without assimilation of the population groups concerned.

References

- Alfredsson, G., 1993, 'Minority Rights: A Summary of Existing Practice' Phillips and Rosas, eds., 1993
- Beloff, M., 1984, 'Minority Languages and the Law', *Current Legal Problems* 1984, 139-157
- Benoît-Rohmer, F., 1996, *The Minority Question in Europe: Towards a Coherent System of Protection of National Minorities*, Strasbourg, International Institute for Democracy
- Benoît-Rohmer, F., 1998, 'Le Conseil de l'Europe et les Minorités Nationales', in Malfiet, K. and Laenen, R., eds., *Minority Policy in Central and Eastern Europe: The Link between Domestic Policy, Foreign Policy and European Integration*, Leuven, KU Leuven
- Blair, P., 1994, *The Protection of Regional or Minority Languages in Europe*, Fribourg, Institut du Fédéralisme
- Capotorti, F., 1976, 'The Protection of Minorities under Multinational Agreements on Human Rights', *Italian YB. I.L.* 1976
- Capotorti, F., 1986, 'Les Développements Possibles de la Protection Internationale des Minorités', *Cahiers de Droit* 1986, 239-254
- Capotorti, F., 1991, *Study of the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities*, New York, United Nations
- Council of Europe, 1995, *European Court and Commission of Human Rights. Case Law on Cultural Rights*, H (95) 12, Strasbourg, 29 March 1995
- De Coning, C. and Liebenberg, I., 1993, 'Regional Demarcation: A South African Perspective', in De Villiers, B., ed., 1993, *Regionalism: Problems and Prospects*, Pretoria, HSRC
- De Varennes, F., 1997a, 'Ethnic Conflicts and Language in Eastern European and Central Asian States: Can Human Rights Help to Prevent Them?', *International Journal on Group and Minority Rights* 1997
- De Varennes, F., 1997b, *Language, Minorities and Human Rights*, The Hague, Kluwer
- De Varennes, F., 1997c, *To Speak or not to Speak: The Rights of Persons Belonging to Linguistic Minorities - Working Paper for the UN Working Group on Minorities*, UN Doc. E/CN.4/Sub.2/Ac.5/1997/WP.6
- De Witte, B., 1992, 'Le Principe d'Egalité et la Pluralité Linguistique', in Giordan, H., ed., 1992, *Les Minorités en Europe: Droits Linguistiques et Droits de l'Homme*, Paris, Kimé
- Deschênes, J., 1986, 'Qu'est-ce qu'une minorité?', *Les Cahiers de Droit* 1986, 255-291
- Duffar, J., 1995, 'La Protection Internationale des Droits des Minorités Religieuses', *Revue de Droit Public et de Science Politique en France et à l'Etranger*, 1995, 1495-1530
- Dupuy, P. M., 1995, 'Premier Protocol Additionel: Article 2', in Pettiti, L. E. et al., eds., 1995, *La Convention Européenne des Droits de l'Homme: Commentaire Article par Article*, Paris, Economica
- Edwards, J., 1984, 'Language, Diversity and Identity' in Edwards, J., ed., 1984, *Linguistic Minorities, Politics and Pluralism*, London, Academic Press
- Eide, A., 1995, 'Minority Protection and World Order: Towards a Framework for Law and Policy', in Phillips, A. and Rosas, A., eds., 1995, *Universal Minority Rights*, Abo, Abo Akademis Tryckeri

- Eide, A., 1996, *Comprehensive Examination of the Thematic Issues Relating to Racism, Xenophobia, Minorities and Migrant Workers - Working Paper for the UN Working Group on Minorities*, UN Doc. E/CN.4/Sub.2/1996/30
- Ermacora, F., 1983, 'The Protection of Minorities before the United Nations', *Recueil des Cours* 1983, 247-270
- European Commission on Human Rights, 1962, *Isop v Austria*, Application No. 808/60
- European Commission on Human Rights, 1963, *Inhabitants of Alsemberg and Beersel v Belgium*, Application No. 1474/62
- European Commission on Human Rights, 1965, *Inhabitants of Leeuw-St.Pierre v Belgium*, Application No. 2333/64
- European Commission on Human Rights, 1968, *Belgian Linguistics Case*, Series A no. 6
- European Commission on Human Rights, 1979, *X v Austria*, Application No. 8142/78
- European Commission on Human Rights, 1982, *Campbell and Cosans v UK*, Series A no. 48
- European Commission on Human Rights, 1982, *K. v France*, Application No. 10210/82
- European Commission on Human Rights, 1985, *Fryske Nasjonale Partij and others v Netherlands*, Application No. 11100/84
- European Commission on Human Rights, 1986, *Bideault v France*, Application No. 11261/84
- European Commission on Human Rights, 1986, *Clerfayt, Legros and others v Belgium*, Application No. 10650/83
- European Commission on Human Rights, 1987, *Mathieu-Mohin and Clerfayt v Belgium*, Series A no. 113
- European Commission on Human Rights, 1989, *Kamasinski v Austria*, Series A no. 168
- European Court on Human Rights, 2001, *Cyprus v Turkey*
- Fishman, J. A., 1995, 'On the Limits of Ethnolinguistic Democracy', in Skutnabb-Kangas, T. and Phillipson, R., eds., 1995, *Linguistic Human Rights: Overcoming Linguistic Discrimination*, Berlin, de Gruyter
- Gilbert, G., 1992, 'The Legal Protection Accorded to Minority Groups in Europe', *Netherlands Yearbook of International Law* 1992, 67-104
- Gomien, D. et al., 1996, *Law and Practice of the European Convention on Human Rights and the European Social Charter*, Strasbourg, Council of Europe
- Hannum, H., 1991, 'Contemporary Developments in the International Protection of the Rights of Minorities', *Notre Dame Law Review* 1991, 1431-1448
- Henrard, K., 1997, 'Veel Vliegen in één Klap met als Kopstukken het Territorialiteitsbeginsel en de Dimensies van Minderheidsbescherming onder Artikel 27 IVBPR', *Tijdschrift voor Belgisch Publiek Recht* 1997, 782-786
- Henrard, K., 2000, *Devising an Adequate System of Minority Protection: Individual Human Rights, Minority Rights and the Right to Self-Determination*, The Hague, Kluwer
- Hillgruber, C. and Jestaedt, M., 1994, *The European Convention on Human Rights and the Protection of National Minorities*, Cologne, Verlag Wissenschaft und Politik
- Human Rights Committee, 1981, *Lovelace v Canada*, UN Doc. Supplement 40 (A/36/40)
- Human Rights Committee, 1993, 'Ballantyne et al v Canada', Communication Nos 359/1989 and 385/1989; UN Doc. CCPR/C/47/D/359/1989 and 385/1989/Rev.1 (1993), 31 March 1993
- Humphrey, J. P., 1986, 'Preventing Discrimination and Positive Protection for Minorities: Aspects of International Law', *Les Cahiers de Droit* 1986, 23-29
- Klebes, H., 1995, 'The Council of Europe's Framework Convention for the Protection of National Minorities-Introduction', *Human Rights Law Journal* 1995
- Mar-Moliner, C., 1994, 'Linguistic Nationalism and Minority Language Groups in the 'new' Europe', *Journal of Multilingual and Multicultural Development* 1994, 319-328
- Musgrave, T. D., 1997, *Self-Determination and National Minorities*, Oxford, Clarendon Press
- Nowak, M., 1992, 'Protection of Minorities and the Right of Self-Determination', in



- Plichtova, J., ed., 1992, *Minorities and Politics: Cultural and Language Rights*, Bratislava, Czechoslovak Committee of the European Cultural Foundation
- Packer, J., 1996, 'On the Content of Minority Rights', in Raikka, J., ed., *Do we Need Minority Rights? Conceptual Issues*, The Hague, Martinus Nijhoff
- Permanent Court of International Justice, 1935, Advisory Opinion regarding Minority Schools in Albania, 6 April 1935, PCIJ Reports, Series A/B No 64
- Raikka, J., ed., 1996, *Do we Need Minority Rights? Conceptual Issues*, The Hague, Martinus Nijhoff
- Ramaga, P. V., 1992, 'Relativity of the Minority Concept', *Human Rights Quarterly* 1992, 104-119
- Ramaga, P. V., 1993, 'The Group Concept in Minority Protection', *Human Rights Quarterly* 1993, 575-588
- Réaume, D. G., 1994, 'The Group Right to Linguistic Security: Whose Right, What Duties?', in Baker, J., ed., 1994, *Group Rights*, Toronto, Toronto University Press
- Rodley, N. S., 1995, 'Conceptual Problems in the Protection of Minorities: International Legal Developments', *Human Rights Quarterly* 1995, 48-71
- Schulte-Tenckhoff, I. and Ansbach, T., 1995, 'Les Minorités en Droit International', in Fenet, A. and Koubi, G., eds., *Le Droit et les Minorités: Analyses et Textes*, Brussels, Bruylant
- Shaw, M. N., 1992, 'The Definition of Minorities in International Law', in Dinstein, Y. and Tabory, M., eds., *The Protection of Minorities and Human Rights*, Dordrecht, Martinus Nijhoff
- Skutnabb-Kangas, T. and Phillipson, R., 1995, 'Linguistic Human Rights, Past and Present', in Skutnabb-Kangas, T. and Phillipson, R., eds., 1995, *Linguistic Human Rights: Overcoming Linguistic Discrimination*, Berlin, de Gruyter
- Skutnabb-Kangas, T., 1988, 'Multilingualism and the Education of Minority Children', in Skutnabb-Kangas, T. and Cummins, J., eds., 1988, *Minority Education: From Shame to Struggle*, Clevedon, Multilingual Matters
- Sohn, L. B., 1981, 'The Rights of Minorities', in Henkin, L., ed., *The International Bill of Rights: The Covenant on Civil and Political Rights*, New York, Columbia University Press
- Spiliopoulou-Akermark, A., 1997, *Justifications of Minority Protection in International Law*, London, Kluwer
- Symonides, J., 1995, 'The Legal Nature of Commitments Related to the Question of Minorities', in Sicilianos, L. A., ed., 1995, *Nouvelles Formes de Discrimination - New Forms of Discrimination*, Paris, A. Pedone
- Tabory, M., 1980, 'Language Rights as Human Rights', *Israel Yearbook on Human Rights* 1980, 167-223
- The Oslo Recommendations Regarding the Linguistic Rights of National Minorities & Explanatory Note*, The Hague, Foundation on Inter-Ethnic Relations
- Thornberry, P., 1991, *International Law and the Rights of Minorities*, Oxford, Clarendon Press
- Thornberry, P., 1993, 'The UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities: Background, Analysis and Observations', in Phillips, A. and Rosas, A., eds., *UN Declaration on Minorities*, Turku, Institute for Human Rights
- Tomuschat, C., 1983, 'Protection of Minorities under Article 27 of the International Covenant on Civil and Political Rights', in Bernhardt, R., et al., eds., *Völkerrecht als Rechtsordnung, Internationale Gerichtsbarkeit und Menschenrechte. Festschrift für Hermann Mosler*, Berlin, Springer
- UN Secretary General, 1995, *Protection of Minorities: Possible Ways and Means of Facilitating the Peaceful and Constructive Solution of Problems Involving Minorities*, UN Doc. E/CN.4/Sub.2/1995/33
- UN Sub-Commission on the Prevention of Discrimination and the Protection of Minorities, UN Doc. E/CN.4/52

- United Nations Human Rights Committee, 1990, *Dominique Guesdon v France*, Communication No. 219/1986
- United Nations Human Rights Committee, C.L.D. v France, Communication No. 439/1990, UN Doc. CCPR/C/43/D/439/1990 (1991)
- Vandernoot, P., 1997, 'Les Aspect Linguistiques du Droit des Minorités', *Revue Trimestrielle de Droits de L'Homme* 1997, 309-369
- Vandyke, V., 1985, *Human Rights, Ethnicity and Discrimination*, Westport, Greenwood Press
- Varady, T., 1997, 'Minorities, Majorities, Law and Ethnicity: Reflections of the Yugoslav Case', *Human Rights Quarterly* 1997, 9-54
- Vilfan, S., 1993, 'Conclusion: A Legal Perspective', in Vilfan, S., ed., 1993, *Ethnic Groups and Language Rights: Comparative Studies on Governments and Non-Dominant Ethnic Groups in Europe 1850-1940*, New York, European Science Foundation, 1993
- Watts, R., 1994, 'Contemporary Views on Federalism', in De Villiers, B., ed., *Evaluating Federal Systems*, Kenwyn, Juta
- Williams, C. H., 1984, 'More than Tongues can Tell: Linguistic Factors in Ethnic Separatism', in Edwards, J., ed., 1984, *Linguistic Minorities, Politics and Pluralism*, London, Academic Press
- Williams, C. H., 1992, 'The Cultural Rights of Minorities: Recognition and Implementation', in Plichtova, J., ed., 1992, *Minorities in Politics. Cultural and Language Rights*, Bratislava, Czechoslovak Committee of the European Cultural Foundation
- Wolfrum, R., 1993, 'The Emergence of New Minorities as a Result of Migration', in Brolmann, C. et al., eds., *Peoples and Minorities in International Law*, The Hague, Kluwer