

INTERNATIONAL LEGAL GUARANTEES FOR THE PROTECTION OF NATIONAL MINORITIES AND PROBLEMS IN THEIR IMPLEMENTATION

WITH SPECIAL FOCUS ON MINORITY EDUCATION

Summary of discussions made by Mr Patrick Thornberry,
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I thank the Presidency of the Committee of Ministers of the Council of Europe for this invitation to summarise the proceedings. I think it is going to be more of an impression than a summary. We have had a very rich diet, a *pâté de foie gras*, of issues and interventions raised today. I trust it is a rich diet but not too rich. All of the points were extremely interesting, and I also note the extraordinary range of initiatives undertaken in the Russian Federation which in my opinion is very impressive: they have given us great food for thought in terms of concepts and development of legislation and institutions. It is some time since I have been to Strasbourg. The last time was in order to recall the 5th anniversary of the Framework Convention, whereas recently I have been more concerned with UN standards as a member of the Committee on the Elimination of Racial Discrimination. A broad spectrum of issues has been raised today and I will try and run through as much as I can within the limited space available for this summary.

I am pleased that the discussion on national minorities has not completely closed down the discussion of questions such as migrant populations of various kinds. And I noted the statement of the speaker from the Russian Federation on keeping such 'group' issues open and flexible rather than narrowing them down through strict application of categories.

For example, we have had references during the day to the rights of indigenous peoples from our Russian speakers and I noticed in particular the reference to ILO Convention 169 on Indigenous and Tribal Peoples. Of course, some of those peoples may choose to identify as national minorities and others may choose not to do so. The categories of international law in such respects remain open and flexible.

Mr Jansson mentioned the ongoing reflection of the Advisory Committee on the Framework Convention for the Protection of National Minorities on different types of minorities and it is welcome to hear again these notes of openness, flexibility, and not of rigidity and closing down of categories.

The variety of situations has led speakers to reflect on a variety of texts; the Framework Convention is a natural focus but we have also heard statements on the wider frame of the Council of Europe, the OSCE High Commissioner for National minorities and others. This is, as recalled by Mr Ekeus this morning, the 10th anniversary of the Hague Recommendations on Minority Education, which, I remember with considerable affection.

Minority rights are very important to the Council of Europe, to European states, and globally, in terms of social harmony and cohesion. I noted points made on the effective implementation of minority rights as a contribution to conflict-prevention. There is no doubt that perceived unjust treatment of groups will produce negative reactions, and the international community has gradually gained some understanding of potential negative consequences.. There was a period in the life of the international community when we did not have an adequate grasp of appropriate standards in the field of minority rights.

Education is a key issue among all the many questions concerning national minorities and it is no surprise that the Advisory Committee has chosen education as the subject of its first commentary. The Committee on the Elimination of Racial Discrimination might also follow suit, but although I cannot speak for the Committee it I would be interested in promoting a general recommendation on education and discrimination and would certainly use the work of the Advisory Committee as a key reference point.

It has also been remarked by a number of speakers that education in the field of minority rights is, and always was, controversial. It is a right in itself, but is also a basis for the enjoyment of other rights: handicaps in education can have a knock-on, systemic affect and produce insufficiencies in connected areas of human rights.

There may be something deep and inter-generational about arguments on education: as to why it arouses so much passion. We have talked in a very positive manner about education as drawing out of possibilities latent in human beings. We should however recall that education can also be misused, and can be a vehicle in certain circumstances of social engineering, towards the elimination of minority communities, as well as uplifting communities. History provides negative as well as positive examples.

A few questions have been raised about responses to the challenge of diversity. We note the proposition advanced by a number of speakers - a very reasonable proposition - that in terms of minority rights and education policy, there is no "one size fits all approach". We should, it is said, be flexible with regard to circumstances. The flexible approach and the application of norms according to circumstances should not however lead to an abandonment of norms in favour of a wilderness of *ad hoc* responses. There must be principle and system.. There is a difference between getting from A to B on pragmatic grounds and getting there on a principled basis. International instruments provide the substratum of key principles.

We have talked about fairness, about equity, about proportionality. A number of speakers recalled the tremendous importance of the principle of non-discrimination. As a member of the Committee on the Elimination of Racial Discrimination, I might highlight that. It is also true to say that non-discrimination does not require uniform treatment irrespective of circumstances. That point cannot be made too strongly. We have begun to understand the requirements of equality in a more nuanced way, and to understand that to treat people in materially dissimilar situations on a uniform basis can violate the principle of equality and is not a confirmation of that principle.. Context and circumstances, needs and

demands - all of these issues do count in the calculation of what is discriminatory and what is not discriminatory.

It has also been said this morning, that there is something of a rapprochement between the principles of positive minority rights and those of non-discrimination. I certainly know that in the practice of my Committee in the United Nations we have increasingly looked out towards developments in the field of minority rights and indigenous rights.

Education is a human right whatever broader national objectives may be delineated for education, and its description as a human right prevents it collapsing into an economic notion where it would be regarded merely as a vehicle to bolster national wealth. Concerning the aims of education, another topic of discussion, we heard a great deal about multiculturalism, interculturalism, integration, etc. Many such terms remain unclear and could certainly do with further unpacking, further delineation, not necessarily in the form of definitions, but certainly in terms of trying to move towards some kind of reflective position. Integration is generally regarded as a good thing, but if one takes a slightly different example and looks to the history of ILO Convention 107 (before Convention 169) on the protection and integration of indigenous populations, this turned out to be a vehicle for assimilation policies contrary to the wishes of the populations concerned. We need to keep our concepts as sharp as possible and try to move towards more intelligent understandings. Such matters have become controversial in many European countries, not simply in terms of the ethnic or the linguistic minorities we have mostly been talking about today, but also in terms of religious groups.

We have also heard a great deal about the content of education, languages in education, and so on. This distinction referred to between primordial and instrumental uses of language in education is important. It means that a State has a double responsibility which is difficult, namely to deliver on the conditions for maintenance of identity but, at the same time, equipping minority populations within the country with the means to participate effectively in that society. It is sometimes said at the United Nations that European standards - on language rights perhaps - cannot be copied. I used to argue that, well no, that is not the case, they are nuanced, they are flexible, and so on. But perhaps after listening to what some of the speakers have said today: that in order to really address the question of minority languages it does require sustained commitment on the part of the State and in terms of resources, there may be some grain of truth in the views of those who question whether global diffusion of such standards is practicable. This would be a regrettable conclusion but is not a necessary one provided we think carefully about how norms may be usefully adapted to suit a variety of circumstances.

We have also heard a good deal about structures of education and again there are some hard questions to be asked in the context of integration and separation, the contribution that the separation of structures, the institutional context to education, makes to the social fabric. We need more study on the effects of different systems on the education process and on social cohesion and harmony.

Briefly, on access to education, a number of colleagues have commented on this in relation to various groups, including the Roma. I suppose, as a side issue, it has always struck me as being difficult and a challenge for the State as a settled territorial institution pre-supposing a settled community, to actually deal with groups that move around: the question of nomadism. It is not the only issue in access to education and I note in particular, Tom Hadden's reflection on the ambiguity of the notion of access – access to what exactly?

We have heard a little on specific groups. In the case of the Roma many issues intersect, including discrimination, access, language, educational structures in some areas and the cultural assumptions underlying any education system. Besides technical points on the interpretation and application of standards we have listened to speakers stressing the importance of dialogue and participation. Indeed, we could have heard more on participation, including on the participation of minority groups in the formulation of educational policies - another key consideration.

We have focussed to a considerable degree on education *of* minorities. The stress on minority education should not lead us to neglect education of *majority populations*, which is of overwhelming importance in for example the promotion of education to combat racism, prejudice and stereotyping of minorities.

In terms of principle, it is fairly clear that merely having a set of laws on paper is never sufficient. All international bodies look for a pro-active approach, not a passive approach, and search for the implementation of principles in practice and not simply principles as written.

A number of references have been made to the question of data in the field of minorities. This echoes a discussion we recently had at the United Nations in the Committee on Racial Discrimination with the UN the independent expert on minorities. On one hand, it is very difficult to conceive of a targeted social policy without an adequate statistical base, though we also know that the lack of statistics may be tied to conceptual issues of citizenship or of privacy. The data problem does not, as it were, float free from conceptual questions.

There are many things we did not discuss: for example gaps in the standards, in particular in the terms of higher education. We could have said more about faith schools. We have paid some, but relatively little attention to migrant groups.

We could certainly use more 'unpacking' of concepts like integration so that it does not become a vehicle for demagogues attacking those 'others' who will not integrate. It seems to be difficult for human beings to accept that people can be equal but different. We may or may not need more international standards. We certainly need more refinements of existing standards and models of good practice.

In conclusion, it is sometimes said that minority rights have passed their peak and that more attention is being paid these days to issues such as religious or 'civilizational'

divisions. That could however present opportunities to move forward in the field of minority rights in a professional manner without recourse to megaphone diplomacy. Issues of minority rights are generally better addressed in a calm, professional and low-key environment. It remains true that whatever the argument about any 'peaking' of concern for minority rights is concerned, many groups continue to experience injustice, and their expectations remain unsatisfied. The difficult challenge of building an order of fairness and justice for minorities will and must continue to engage people of goodwill for the foreseeable future.

Thank you Mr. Chairman