

9-1-1994

Need for an Independent International Mechanism to Protect Group Rights: A Case Study of the Kurds, The

Olivia Q. Goldman

Follow this and additional works at: <http://digitalcommons.law.utulsa.edu/tjci1>



Part of the [Law Commons](#)

Recommended Citation

Olivia Q. Goldman, *Need for an Independent International Mechanism to Protect Group Rights: A Case Study of the Kurds, The*, 2 Tulsa J. Comp. & Int'l L. 45 (1994).

Available at: <http://digitalcommons.law.utulsa.edu/tjci1/vol2/iss1/5>

This Article is brought to you for free and open access by TU Law Digital Commons. It has been accepted for inclusion in Tulsa Journal of Comparative and International Law by an authorized administrator of TU Law Digital Commons. For more information, please contact daniel-bell@utulsa.edu.



THE NEED FOR AN INDEPENDENT INTERNATIONAL MECHANISM TO PROTECT GROUP RIGHTS: A CASE STUDY OF THE KURDS

*Olivia Q. Goldman**

Democracy within nations requires respect for human rights and fundamental freedoms, as set forth in the [United Nations] Charter. It requires as well a deeper understanding and respect for the rights of minorities and respect for the needs of the more vulnerable groups of society, This is not only a political matter. The social stability needed for productive growth is nurtured by conditions in which people can readily express their will.¹

I. INTRODUCTION

The responsibility of states toward groups within their territory has come under increased debate within members of the international community. Despite the adoption by the United Nations of the most definitive statement to date on group rights, the repression of groups remains unabated. As events in the Balkans illustrate, the situation of minorities has in fact deteriorated with the decline of totalitarian regimes around the world. The removal of oppressive government forces has allowed group hostilities to rage unhindered. The violation of minority rights often results in violence, as governments pursue their repressive policies and groups struggle to protect themselves and gain international attention for their plight. The outcome of these conflicts has extensive repercussions in terms of human suffering and political upheaval. Current procedures for the protection of groups and the implementation of their rights are

* B.A., J.D., Candidate for LL.M. at the University of Amsterdam. This paper was written with the support of the Ford Foundation.

1. Boutros Boutros-Ghali, *An Agenda for Peace, Preventative Diplomacy, Peacemaking and Peacekeeping*, Report of the Secretary-General pursuant to the Statement Adopted by the Summit Meeting of the Security Council on Jan. 31, 1992, 46, U.N. Doc. S/24111 (1992), 31 I.L.M. 956 (1992).

inadequate. They fail to allow for group participation and their application is often mired by political maneuvering.

Given the potential for conflicts among groups, states have a vested interest in finding innovative solutions which address groups' concerns within the context of the state-based system. Only an independent, non-political body can avoid the political maneuvering which has plagued the current enforcement mechanisms. As a result of the end of the Cold War and the increased attention to ethnic conflicts, the political opportunity now exists to create the kind of mechanism which can effectively enforce the rights to which groups, not just individuals, are entitled.

This paper will assess the possibilities for effective resolution of conflicting group rights. First, it will begin with an exploration of what constitutes a "group" for the purposes of entitlement to rights and protections under international law. Second, it will examine the development of group rights, including an analysis of current rights. Third, traditional procedures for implementation of these rights will be discussed and their deficiencies illustrated by a case study of the Kurds. Additionally, this paper will address the need for the international community to take advantage of current political shifts to develop alternative procedures for enforcement. Finally, this paper will examine recommendations for a mechanism within an independent non-political organization, such as the Unrepresented Nations and Peoples Organization.

II. MINORITIES AND OTHER GROUPS

Groups are collective entities that exist as units and not simply as aggregates of individuals. A group right, as distinguished from an individual right, is granted to an individual to exercise in combination with others, and is concerned with collective experience.² Collective experience is distinct from individual experience, and a violation of an individual's right is not necessarily a violation of a group right.

There are numerous groups in any society, but not all of them enjoy internationally protected rights. In fact, "no state ... has a population so homogeneous that it cannot be subdivided into smaller groups of greater homogeneity simply by altering the standards of what constitutes a 'distinct group.'"³ In order to qualify for international rights and protections, an association must be deemed a "group." Scholars and legal practitioners have developed a system of criteria for group qualification that is comprised of two factors, one subjective and the other objective.

The first criterion is the subjective self-perception of the group as distinct from others, and the desire of the individual members of the group to identify themselves as a group. This self-perception, while critical, is not sufficient to

2. For example, an individual belonging to a group may have her freedom of speech suppressed without implicating a group right if the group as a whole is able to communicate. Vernon Van Dyke, *Collective Entities and Moral Rights: Problems in Liberal-Democratic Thought*, 44 J. POL. 21, 23 (1982).

3. LEE C. BUCHEIT, *SUCCESSION: THE LEGITIMACY OF SELF-DETERMINATION* 28 (1978).

constitute a group.⁴ The group must fulfill the second criterion, which is the existence of objective characteristics which distinguish the group from the remainder of the population. Examples of such characteristics include history, geography, ethnicity, economics, language and religion. It is important to keep in mind that though this criteria is basically objective, there is a subjective element to it as well: it is the group's belief in a shared history, religion, etc., rather than an empirically provable relationship, which is most important for the purposes of group definition.⁵

Several studies have attempted to define what constitutes a group for purposes of international law, and they have utilized various terms. The most prevalent term is "minority," although other possibilities include "community,"⁶ "communality,"⁷ and "social group."⁸ Unfortunately, there is no uniformly accepted definition for a "minority,"⁹ despite the dominance of its use. The most widely accepted definition is provided by Francesco Capotorti, a Special Rapporteur of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities. He defines a minority group as:

A group which is numerically inferior to the rest of the population of a state and in a non-dominant position, whose members possess ethnic, religious or linguistic characteristics which differ from those of the rest of the population and who, if only implicitly, maintain a sense of solidarity, directed towards preserving their culture, traditions, religion or language.¹⁰

In addition to the above listed subjective and objective criteria, "minority" also has the political implication that the group is in a nondominant position in the state in which it exists.

A related concept is that of "peoplehood." The following definition of "people" was provided by a group of experts which convened in 1990 under the auspices of the United Nations Education, Scientific and Cultural Organization (UNESCO):¹¹

4. NATAN LERNER, *GROUP RIGHTS AND DISCRIMINATION IN INTERNATIONAL LAW* 34 (1991); *but see* Walker Connor, *Nationalism and Political Illegitimacy*, in *CANADIAN REVIEW OF STUDIES IN NATIONALISM* 201, 207 (1978) (arguing that self-perception is the defining characteristic for groups).

5. *See* Walker Connor, *The Politics on Ethnonationalism*, 27 *J. INT'L AFF.* 1, 3-4 (1973).

6. U.N. Secretary-General, *Definition and Classification of Minorities*, U.N. Doc. E/CN.4/Sub.2/85 (1949) at 4; Greek-Bulgarian Communities, P.C.I.J. 1930 (defining "community").

7. Ronald R. Garet, *Communality and Existence: The Rights of Groups*, 56 *S. CAL. L. REV.* 1001, 1002 (1983).

8. Owen M. Fiss, *Groups and the Equal Protection Clause*, 5 *PHIL. & PUB. AFF.* 107, 148 (1978).

9. United Nations Special Rapporteur Francesco Capotorti noted that the most prevalent obstacles to a general agreement on a definition of "minority" are the issues of the numerical ratio between the minority and the population as a whole, the need for a minimum size of the group, the interaction between the objective and subjective criteria, and the inclusion or exclusion of aliens. FRANCESCO CAPORTORTI, *STUDY ON THE RIGHTS OF PERSONS BELONGING TO ETHNIC, RELIGIOUS, AND LINGUISTIC MINORITIES* 5, U.N. Doc. E/CN.4/Sub.2/384/Rev. 1, U.N. Sales No. E.78.XIV.1 (1979).

10. *Id.* at 7. The scholarly work on minorities and their histories is enormous. *See Definition and Classification of Minorities*, *supra* note 6; Oldrich Andrysek, *Report on the Definition of Minorities*, 14 (Netherlands Institute of Human Rights, SIM Special No. 8); Francesco Capotorti, *Minorities*, in 8 *ENCYCLOPEDIA OF PUB. INT'L L.* 385 (R. Bernhardt ed., 1985); Louis B. Sohn, *The Rights of Minorities*, in *THE INTERNATIONAL BILL OF RIGHTS* 27 (Louis Henkin ed., 1981).

11. UNESCO Meeting of Experts on Further Study of the Rights of Peoples (Paris, Feb. 1990) (on file with author).

A people for the rights of peoples in international law, including the right to self-determination, has the following characteristics:

1. A group of individual human beings who enjoy some or all of the following common features:
 - (a) a common historical tradition;
 - (b) racial or ethnic identity;
 - (c) cultural homogeneity;
 - (d) linguistic unity;
 - (e) religious or ideological affinity;
 - (f) territorial connection;
 - (g) common economic life.
2. The group must be of a certain number who need not be large (e.g., the people of micro states), but must be more than a mere association of individuals within a state.
3. The group as a whole must have the will to be identified as a people or the consciousness of being a people—allowing that groups or some members of such group, though sharing the foregoing characteristics, may not have the will or consciousness.
4. Possibly, the group must have institutions or other means of expressing its common characteristics and will for identity.¹²

Although the terms "people" and "minority" are closely related, "minority" is broader. It refers to a political situation in which a group, which may or may not constitute a "people," is in a non-dominant position within its state.

Another related term is "indigenous peoples." Although typically an indigenous population will also constitute a minority, and is therefore entitled to the same rights as other groups, it is nevertheless treated separately within the United Nations system. Thus it will only be considered tangentially in this paper. Therefore, for the purposes of this paper, the term "group" will be used interchangeably with "minority."

The term "group" has the advantage of not implying numerical inferiority, since a group that is numerically superior may nevertheless be in a non-dominant position. While a group in common parlance refers to a collection of individuals sharing common characteristics, in international law the notion requires the presence of the above-mentioned unifying, spontaneous and permanent factors, both subjective and objective. These groups usually fall into three general categories: 1) groups based on ethnic or racial associations, which include associations based on color, descent, and nationality; 2) religious groups; and 3) groups organized around linguistic or cultural associations.¹³

III. THE DEVELOPMENT OF GROUP RIGHTS

The development of group rights has traditionally been divided into three periods. These periods include:

- a) the early era of non-systematic protection of minorities in international treaties,
- b) the organized period of minority protection between the two world wars embodied in the League of Nations System, and
- c) the developments following World War II.

12. *Id.*

13. See LERNER, *supra* note 4, at 30-31 (detailing organizational division).

A. *The Early Period*¹⁴

International human rights law began as an attempt to protect groups, primarily religious groups, from discrimination through emphasis on tolerance rather than rights.¹⁵ The origin of the international protection of groups can be traced to the 1648 Treaty of Westphalia, concluded between France, the Holy Roman Empire, and their respective allies.¹⁶ The terms of this treaty granted religious freedom to the German Protestant minority. Throughout the seventeenth and eighteenth centuries, several other treaties included clauses providing protections for individuals or groups with religious beliefs that differed from those of the governing majority.¹⁷

In the nineteenth century, as a result of the emerging ideology of egalitarianism, the protection of minority groups expanded beyond religious groups to include protections for other minorities. These protections, appearing for the first time in multilateral treaties, provided for equality in civil and political rights, as well as for freedom of worship.¹⁸ This expanded protection was evident in the Congress of Vienna of 1815, which considered the fate of ethnic Poles living within the former Napoleonic Empire. The Final Act of the Congress pledges that the contracting parties provide institutions which guarantee the preservation of the Polish nationality.¹⁹ Other treaties that included group protections during this era include the Treaty of Berlin (1878), which contained provisions prohibiting ethnic or religious discrimination against Turks, Greeks, and Romanians under Bulgarian rule, and the International Covenant of Constantinople (1881), which contained stipulations relating to the equality of Muslims in territories governed by the Greeks.²⁰

The protections afforded groups in this early era were far from complete. Nevertheless, they laid the foundation for subsequent mandates by the international community concerning what had previously been considered solely within a state's domestic jurisdiction: the treatment by a state of its citizens.

14. For an excellent survey of the early treatment of minorities, see Muldoon, *The Development of Group Rights*, in J. SIGLER, *MINORITY RIGHTS: A COMPARATIVE ANALYSIS* 31 (1983).

15. Capotorti asserts that the priority given to religious minorities results from the contrasts between the tenets of tolerance and non-discrimination within religious ideologies, and the reality of persecution. CAPOTORTI, *supra* note 9, at 1. However, Hurst Hannum asserts that given the historical congruence of religious and secular authority during this period, a recognition of a religious group's rights amounted to a recognition of the power of certain political groups. HURST HANNUM, *SOVEREIGNTY, SELF DETERMINATION AND AUTONOMY: ACCOMMODATING CONFLICTING GROUP RIGHTS* 50 (1990).

16. Treaty of Westphalia, Jan. 11, 1649, Fr.-Holy Roman Empire, 1 Consol. T.S. 383.

17. See Treaty of Paris, Feb. 10, 1763, Fr.-Spain-Gr. Brit., 42 Consol. T.S. 279 (protecting Roman Catholics living in Canadian territories); Treaty of Nimeguen, Sept. 11, 1678, 14 Consol. T.S. 437 (guaranteeing freedom of worship to the Roman Catholic minority living in territories ceded by France to Holland); Treaty of Oliva, Apr. 23-May 2, 1660, 6 Consol. T.S. 9 (protecting Roman Catholics in Livonia).

18. See CAPOTORTI, *supra* note 9, at 2.

19. 2 BRITISH AND FOREIGN STATE PAPERS, 1814-1815, at 7-55 (James Ridgway ed., 1839).

20. For an analysis of the development of the recognition of the rights of ethnic and linguistic minorities in domestic legislation, see INIS L. CLAUDE, JR., *NATIONAL MINORITIES, AN INTERNATIONAL PROBLEM* 31-33 (1955).

B. *Minority Treaties and the League of Nations*

In 1919, following World War I, "the most conscious and comprehensive attempt to protect ethnic and other minorities through international legal means"²¹ was developed under the auspices of the League of Nations in the form of minority treaties, which incorporated protections from earlier treaty provisions. They attempted to establish a systematic and comprehensive method of guaranteeing human rights. Despite this, the minority treaties were not intended to have universal application. Rather, they addressed concerns specific to Europe, and not every European state was subject to their mandate. The states developing the system tended to exclude themselves from application of these minority protection provisions.

The minority treaties can be divided into three categories, although the substantive protections included in each were relatively similar. The first group of treaties applied to the defeated states of Austria, Hungary, Bulgaria, and Turkey. The second category of treaties applied to newly created states, and to those states whose borders were fundamentally altered to accommodate particular minority problems. Examples within this category include Czechoslovakia, Greece, Poland, Romania, and Yugoslavia. Finally, treaties applying to certain states, such as Albania, Estonia, Latvia, Lithuania, and Iraq, were required to provide for minority protections as a condition to their admission to the League of Nations.²²

The minority treaties sought to achieve the twin aims of granting legal equality to individuals and preserving the groups' characteristics and traditions.²³ Among the protections frequently guaranteed were:

the right to equality of treatment and nondiscrimination; the right to citizenship, although a minority group member could opt to retain another citizenship if desired;

21. Hurst Hannum, *Contemporary Developments in the International Protection of the Rights of Minorities*, 66 NOTRE DAME L. REV. 1431, 1432 (1992).

22. *Id.*

23. These goals were clearly enunciated in an Advisory Opinion concerning Minority Schools in Albania by the Permanent Court of International Justice. Regarding an attempt by the Albanian government to close all private schools, and the likely effect of that decision on the material equality of Albania's Greek minority, the Court stated:

The idea underlying the treaties for the protection of minorities is to secure for certain elements incorporated in a State, the population of which differs from them in race, language or religion, the possibility of living peacefully alongside the 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 are regarded as particularly necessary, and have formed the subject of provisions in these treaties. 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 other nationals of the State. The second is to ensure for the minority element 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 its own institutions, and were consequently compelled to renounce that which constitutes the very essence of its being a minority. Advisory Opinion No. 64, *Minority Schools in Albania*, 1935 P.C.I.J. (ser. A/B), at 17.

the right to use one's own language; the right of minorities to establish and control their own charitable, religious, and social institutions; a state obligation to provide "equitable" financial support to minority schools ...and other institutions; and recognition of the supremacy of laws protecting minority rights over other statutes.²⁴

Various mechanisms were created to enforce treaty provisions. Minorities Committees supervised the implementation of these rights and minorities themselves had the right of petition to bring an alleged infraction to the attention of the League. Also established by the members of the League was the Permanent Court of International Justice, which had jurisdiction to intervene in cases where there was a difference of opinion concerning the interpretation or application of minority provisions. This introduction of judicial supervision is considered one of the most important innovations of the League system for the protection of minorities.²⁵

Although this system ultimately collapsed along with the League of Nations, it did provide some tangible results. These included the establishment of minority schools in several countries, the rehabilitation of neglected groups, the resistance to forced assimilation, the inclusion of minority groups in the political processes of several countries, the success of various methods of mediation and conciliation, and the decisions concerning minorities pronounced by the Permanent Court of International Justice.²⁶ Many of these decisions retain their relevance today. This last development, the international court system, was of crucial importance. The ultimate benefit was the general recognition by states that the treatment of their citizens is an international concern.

C. *The Treatment of Groups Following World War II*

1. Group Rights within the United Nations

The machinery established for the protection of minorities by the League of Nations collapsed along with the League in 1946. The events of World War II fundamentally altered the situation of minorities,²⁷ and with the establishment of the United Nations a new approach to the issue of group rights and protections developed. When the international community gathered in San Francisco to create a new mechanism for international cooperation, there was great hostility to the League system. This affected the member states' opinions concerning minority protection. There was a strong belief that "[m]inorities in individual states must never again be given the character of internationally recognized political and legal units, with the possibility of again becoming the source of disturbances."²⁸ In an effort to limit this explosive impact, the focus in the protection of human rights shifted from groups to individual rights and

24. Hannum, *supra* note 21, at 1432. For a thorough discussion of these provisions, see CLAUDE, *supra* note 20, at 17-20.

25. CAPOTORTI, *supra* note 9, at 24.

26. See JACOB ROBINSON ET AL., WERE THE MINORITY TREATIES A FAILURE? 261 (1943).

27. See Jacob Robinson, *International Protection of Minorities, A Global View*, 1 ISR. Y.B. ON HUM. RTS. 61, 80-82 (1971).

28. *Id.* at 77 (statement of Eduard Benes, Chairman, Czechoslovak National Council-in-Exile).

freedoms. The prevailing understanding was that if individual human rights were properly guaranteed, special provisions for minority rights were unnecessary.²⁹

The individualist bent of this early stage is evident in the U.N. Charter and the Universal Declaration of Human Rights (Universal Declaration),³⁰ neither of which refers to groups.³¹ The Charter proclaims the principles of universal respect for human rights and fundamental freedom, equality, and nondiscrimination.³² The Preamble states, the Participating States "reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small."³³ These statements are all made in the context of individual rights.

The international community attempted indirectly to protect minorities through the principle of nondiscrimination. Prohibitions against discrimination are included in the Charter, the Universal Declaration, the International Covenant on Civil and Political Rights (Political Rights Covenant), and the International Covenant on Economic, Social and Cultural Rights.³⁴ Nondiscrimination is also featured in a number of specialized international agreements and declarations.³⁵ The principle of nondiscrimination prohibits distinctions based on group characteristics such as race, religion, language, or nationality. Nevertheless, its focus remains on the individual rather than the group. With reference to nondiscrimination Capotorti concluded, "since 1945 this principle has been included in the context of the protection of the human rights and fundamental freedoms of all human beings, and not the context of measures designed

29. Minority Rights, U.N. Fact Sheet No. 18, at 3. Adeno Addis asserts that there are two causes for the shift toward an individualistic perspective in the years following World War II. Firstly, the shift was in response to the atrocities committed by the Nazis, which many attributed to "group thinking." Secondly, the shift reflected the individualistic ideology of the United States. Adeno Addis, *Individualism, Communitarianism, and the Rights of Ethnic Minorities*, 67 NOTRE DAME L. REV. 615, 638 (1992).

30. U.N. CHARTER pmbl.; *Universal Declaration of Human Rights*, G.A. Res. 217A, U.N. GAOR, 3rd Sess., Part I, at 71, U.N. Doc. A/810 (1948) [hereinafter *Universal Declaration*].

31. U.N. CHARTER pmbl.; *Universal Declaration*, *supra* note 30.

32. See, e.g., U.N. CHARTER pmbl., art. 1, ¶ 3, arts. 13, 55, 56, 62, 76.

33. *Id.* at pmbl.

34. U.N. CHARTER; *Universal Declaration*, *supra* note 30; International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 174 (entered into force Mar. 23, 1976) [hereinafter *Political Rights Covenant*]; International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1976, 999 U.N.T.S. 3 (entered into force Jan. 3, 1976).

35. Examples of specialized international instruments addressing the principle of non-discrimination include: International Convention on the Elimination of All Forms of Racial Discrimination, Mar. 7, 1966, 660 U.N.T.S. 195 (entered into force Jan. 4, 1969) [hereinafter *Convention on Racial Discrimination*]; Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13 (entered into force Sept. 3, 1981); *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, U.N. GAOR, 36th Sess., Supp. No. 51, at 171, U.N. Doc. A/36/684 (1981) [hereinafter *Declaration on Religious Intolerance*]; *Convention on the Rights of the Child*, U.N. GAOR, 44th Sess., Supp. No. 49, at 166, U.N. Doc. A/44/49 (1990); ILO Convention Concerning Discrimination in Respect to Employment and Occupation, June 25, 1958, 362 U.N.T.S. 31 (entered into force June 15, 1960); Convention Against Discrimination in Education, Dec. 14, 1960, 429 U.N.T.S. 93 (entered into force May 22, 1962); DECLARATION ON RACE AND RACIAL PREJUDICE, Nov. 27, 1978, H.R. Compilation 135, U.N. Sales No. E.88.XIV.1 (1988).

especially to protect minorities.”³⁶ Thus, the principle of equal treatment for individual members of minority groups became entrenched in the international legal order.³⁷

Progress toward the recognition of group rights was slow. Nevertheless, the United Nations included the issue of minorities in various instruments. One of the earliest recognitions of the vulnerability of minorities was the adoption in 1948 of the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention).³⁸ The Genocide Convention prohibits any act committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group. It is directed specifically against the destruction of groups *per se* (excluding political groups that were not thought to have sufficient permanency), rather than targeting violations of individual rights. Under the Genocide Convention, claims may be brought before an international criminal court.³⁹ This court, however, has yet to be established.

Other important developments related to the protection of groups include the establishment of the U.N. Human Rights Commission (Commission) under the auspices of the Economic and Social Council (ECOSOC). The Commission's purpose was to develop and implement provisions of the Charter relating to human rights and fundamental freedoms. To this end, the Commission established a Sub-Commission on Prevention of Discrimination and Protection of Minorities (Sub-Commission), which focused specifically on minorities from 1947 to 1954. From 1954 until 1971 the Sub-Commission focused almost exclusively on discrimination. In 1971, the issue of minorities regained attention with a decision to undertake a study on the Rights of Persons belonging to Ethnic, Religious and Linguistic Minorities.⁴⁰ Several additional studies concerning the protection of minorities were commissioned by the U.N., and the Secretary-General prepared several documents on this issue at the request of the Commission and Sub-Commission.

The most important work of the U.N. in this era was the drafting and adoption of Article 27 of the Political Rights Covenant.⁴¹ Article 27 provides:

36. CAPOTORTI, *supra* note 9, at 27. *But see* Henry J. Steiner, *Ideals and Counter-Ideals in the Struggle over Autonomy Regimes for Minorities*, 66 NOTRE DAME L. REV. 1535, 1543 (1991) (contending that the rights of minority members to use their own language, to practice their religion, or to associate are necessarily exercised jointly by individuals, and therefore such individual rights are inherently collective).

37. Note that the equality sought was “formal” equality, that is equal treatment, rather than “material” equality, which refers to economic, social and cultural equality. *See* E.W. VIERDAG, *THE CONCEPT OF DISCRIMINATION IN INTERNATIONAL LAW WITH SPECIAL REFERENCE TO HUMAN RIGHTS* 32-47 (1973).

38. Convention on the Prevention and Punishment of the Crime of Genocide, concluded Dec. 9, 1945, 78 U.N.T.S. 277 (entered into force Jan. 12, 1951) [hereinafter Genocide Convention]. Article II lists acts which constitute genocide, including: “(a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group.” *Id.* at art. II.

39. For critiques of the Genocide Convention, *see* Richard W. Edwards, Jr., *Contributions of the Genocide Convention to the Development of Contemporary International Law*, 8 OHIO N.U. L. REV. 300 (1981); Marian Nash Leich, *Contemporary Practice of the United States Relating to International Law*, 79 AM. J. INT'L L. 116 (1985); Burton M. Leiser, *Victims of Genocide*, 8 OHIO N.U. L. REV. 315 (1981).

40. CAPOTORTI, *supra* note 9, at 28.

41. Political Rights Covenant, *supra* note 34, at art. 27.

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.⁴²

Several difficulties arose in the interpretation of Article 27. The primary area of contention revolved around the use of the words "persons belonging to such minorities," and whether this was intended to grant group as well as individual rights. While some assert that the wording avoids giving groups an international personality, it nevertheless has important practical ramifications for groups.⁴³ Capotorti notes that although Article 27 accords rights only to individuals, this should be interpreted liberally in order to avoid superfluity. Otherwise it would only grant liberties deducible from other provisions in the Covenant.⁴⁴ The argument for a broad interpretation of Article 27 is supported by the adoption of the Declaration on the Rights of Persons Belonging to the National, Ethnic, Religious and Linguistic Minorities by the U.N. General Assembly which recognizes groups as such.⁴⁵

Another concern associated with Article 27 is that the statement "[i]n those states in which ethnic, religious or linguistic minorities exist" implies an intent to recognize only well established minorities.⁴⁶ This would prevent recognition of more recent groups. In addition, Article 27 refers only to ethnic, religious or linguistic minorities, omitting "national minorities." There have been some developments aimed at broadening the scope of protections offered under Article 27 to include national minorities, with the caveat that the promotion of group rights will not affect the territorial and political status of the state in which the group lives.⁴⁷ A final concern is with the lack of explicit reference to positive measures to which the groups might be entitled. The emphasis of the article is on preventing unequal treatment, rather than attempting to achieve social, economic, or cultural equality, which in certain cases would require active steps in favor of groups suffering the effects of long-standing discrimination.

The international community gradually realized that the focus on the individual and the use of the principle of nondiscrimination had failed to adequately protect the rights of individuals as members of groups, let alone protect groups themselves.⁴⁸ After the wave of decolonization in the 1960s,

42. *Id.*

43. See Addis, *supra* note 29, at 638 (arguing that Article 27 protects individual's right to freedom of association rather than the rights of groups); see also Sohn, *supra* note 10, at 274.

44. CAPORTORTI, *supra* note 9, at 4.

45. *Declaration of the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, Dec. 18, 1992, G.A. Res. 135, U.N. GAOR, U.N. Doc. A/RES/47/135 (1992) [hereinafter *Declaration of the Rights of Persons*]. For example, Article 1 calls on States to protect and promote the national or ethnic, cultural, religious and linguistic identity of minorities within their territories. Also, Article 4 instructs States to create favorable conditions for the expression of minority characteristics and the development of their culture, language, religion, traditions and customs.

46. See LERNER, *supra* note 4, at 16.

47. See U.N. Doc. E/CN.4/NGO/231 (1979).

48. See Natan Lerner, *The Evolution of Minority Rights in International Law*, in PEOPLES AND MINORITIES IN INTERNATIONAL LAW 77, 81 (C. Brölmann et al., eds., 1993) (exploring violations of individual and group rights despite rule of non-discrimination).

emphasis shifted to the last ten provisions of the Universal Declaration of Human Rights, which have a collective nature.⁴⁹ A transition occurred from the idea of protection to a more general notion of inherent rights. Thus the shift from the earlier approach was two-fold: from protections to rights and from individuals to groups.

The beginning of this shift from protections to rights is evident in the 1960 UNESCO Convention against Discrimination in Education.⁵⁰ In this Convention signatories agreed to allow minority populations control over their own educational activities, including the maintenance of schools and the use or education of their own language.⁵¹ Although the Convention provided for educational instruction in the group's own language, this was "dependent on the education policy of each State;" the Convention recommended that this "should not be allowed if it prevented the minority population from understanding the culture and language of the community as a whole, interfered with their participation in the state's activities, or harmed national sovereignty."⁵²

Other examples of the shift toward group rights include the 1957 ILO Convention Concerning Indigenous and Tribal Populations,⁵³ and the 1978 UNESCO Declaration on Race and Racial Prejudice.⁵⁴ The Convention recognizes the rights of indigenous populations and asserts that special measures should be adopted for the preservation of their institutions, persons, property, and labor. These special measures must be adopted as long as the population's social, economic, and cultural conditions prevent them from enjoying the benefits of the general laws of the country to which they belong. The Convention warns, however, that these special measures must not be used to create or continue a state of segregation.⁵⁵ Twenty years later, the UNESCO Declaration on Race and Racial Prejudice emphasized the need to protect the identity and development of groups aside from indigenous populations, and stressed the need for affirmative action for groups which had been disadvantaged or were the object of discrimination.⁵⁶

Arguably the most ambitious instrument in the area of group rights is the U.N. Convention on the Elimination of All Forms of Racial Discrimination.⁵⁷ The Convention imposes on States the obligation to put an end to all forms of racial discrimination. States are required to work within their own constitutional framework to declare racist organizations illegal if they are likely to incite

49. *Universal Declaration*, *supra* note 30. Included in the last ten articles are freedom of association and assembly (Art. 20), economic, social, and cultural rights (Art. 22), the right to form trade unions (Art. 23), and the right to education (Art. 26).

50. *Convention Against Discrimination in Education*, *supra* note 35, at art. 5.

51. *Id.*

52. *Id.*

53. *International Labor Organization Convention Concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries*, June 26, 1957, 328 U.N.T.S. 247 (entered into force June 2, 1959) [hereinafter *ILO Convention*]. The Convention was revised in 1989 to encourage greater participation in decision-making by indigenous groups themselves.

54. *DECLARATION ON RACE AND RACIAL PREJUDICE*, *supra* note 35.

55. *ILO Convention*, *supra* note 53, at art. 3, para. 2a.

56. *DECLARATION ON RACE AND RACIAL PREJUDICE*, *supra* note 35.

57. *Convention on Racial Discrimination*, *supra* note 35.

discrimination. It also authorizes, but does not mandate, special active measures necessary to secure adequate advancement of certain racial or ethnic groups, such as preferential treatment for those groups that have traditionally suffered discrimination.⁵⁸ In Article 5, members of "ethnic minorities" are guaranteed equal treatment in the enjoyment of civil, political, economic, social, and cultural rights.⁵⁹

Another important document is the U.N. Declaration Against Intolerance and Discrimination Based on Religion or Belief, adopted in 1981.⁶⁰ Particularly relevant is Article 6 which enunciates rights of a collective nature that can only be exercised by a group.⁶¹ Although only a declaration and not a binding treaty, it is nevertheless an important breakthrough for religious groups in their struggle to achieve some of the protection currently granted to racial minorities.

In addition to declarations and conventions, the United Nations has been active in commissioning various initiatives related to group rights. Special Rapporteur Capotorti's Study on the Rights of Persons Belonging to Ethnic, Religious, and Linguistic Minorities was only the first of such activities.⁶² Other initiatives include the appointment of Special Rapporteurs by the Commission and Sub-Commission to consider specific aspects of racial intolerance and discrimination,⁶³ and the appointment by the Sub-Commission in 1988 of one of its members to consider means of facilitating effective solutions to minority problems.⁶⁴

In 1992 the General Assembly of the United Nations adopted the Declaration of the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (Declaration).⁶⁵ The Preamble recognizes that protecting minority rights will "contribute to the political and social stability of States in which they live."⁶⁶ Despite the individualistic framing of the title, the Declaration asserts that persons belonging to minorities may exercise their rights collectively as well as individually.⁶⁷ It also calls for positive state action to promote and protect the development of minority languages, cultures, religions, and traditions, as well as to encourage full minority participation in the economic progress of their country.⁶⁸ In addition, states are instructed to consider the interests of minorities when planning and implementing national policies.⁶⁹ The Declaration specifies however, that it does not affect the international obligations

58. *Id.*

59. *Id.* at art. 5.

60. *Declaration on Religious Intolerance, supra* note 35.

61. *Id.* at art. 6.

62. CAPORTORTI, *supra* note 9.

63. *See Implementation of the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief*, Commission on Human Rights, E.S.C. Res. 1986/20, U.N. ESCOR Supp. No. 2 at 67, U.N. Doc. E/1986/22 (1986); *Elimination of All Forms of Racial Intolerance*, Sub-Comm'n Res. 1983/31, U.N. Doc. E/Cn.4/1984/3 (1984) at 98.

64. *See* Asbjorn Eide, *Second Progress Report on Possible Ways and Means of Facilitating the Peaceful and Constructive Solution of Problems Involving Minorities*, E/CN.4/Sub.2/1992/37 (submitted July 1, 1992).

65. *Declaration of the Rights of Persons, supra* note 45.

66. *Id.* at pmb1.

67. *Id.* at art. 3.

68. *Id.* at art. 4.

69. *Id.* at art. 5.

of states concerning persons belonging to minorities; Nor does it prejudice the enjoyment of all persons of universally recognized human rights; or condone activities which run counter to the sovereignty, territorial integrity, and political independence of states.⁷⁰

The Declaration, in combination with the U.N. documents noted above, categorizes group rights as follows:

(1) *The Right to Physical Existence*: This right was initially guaranteed in the Genocide Convention.⁷¹ It has subsequently been recognized as customary international law, which is therefore binding on non-signers. In addition, the prevention and punishment of genocide is considered *jus cogens*, a peremptory norm of international law from which no derogation is possible.⁷²

(2) *The Right to Nondiscrimination*: This right is well established in several U.N. documents as a customary norm of international law.⁷³ In addition, it is effectively argued that the prohibition against racial, and possibly religious, discrimination is *jus cogens*.⁷⁴ There is also an argument that the principle of nondiscrimination prohibits material as well as formal discrimination.

(3) *The Right to Self-Determination*: This right, as guaranteed in the Charter and several Covenants,⁷⁵ is reserved for minorities that also constitute "peoples."⁷⁶ Self-determination is the right to the free determination of internal and external political status, and encompasses political, economic, social, and cultural aspects. The exercise of the principle of self-determination includes integration, association, and independence.⁷⁷ The right of self-determination must be balanced with other principles of international law, such as the principle of territorial integrity.⁷⁸

(4) *The Right to Maintain a Distinct Identity* (the right to be different): The right to be different has been included in several international instruments, notably the Declaration of the Rights of Persons.⁷⁹ This general entitlement, sometimes labeled a cultural right, includes the right to maintain separate institutions,

70. *Id.* at art. 8.

71. Genocide Convention, *supra* note 38.

72. The idea that a general rule can develop from a treaty and achieve a binding character independent of its treaty obligation was recognized by the International Court of Justice in the North Sea Continental Shelf Cases (F.R.G. v. Den.; F.R.G. v. Neth.) 1969 I.C.J. 4, 41-45 (Feb. 20, 1969). In regard to the Genocide Convention, the Court noted that the principles underlying the Convention are principles which are recognized by civilized nations as binding, even without treaty obligations. Furthermore, these obligations are *jus cogens* and are therefore non-derogable. Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, 1951 I.C.J. 4, 12 (May 28, 1951).

73. See *supra* note 35 and accompanying text describing principle of non-discrimination.

74. See IAN BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 513 (3rd ed., 1979).

75. U.N. CHARTER, *supra* note 30, at art. 1, ¶ 2; Political Rights Covenant, *supra* note 34, at Common Article 1; International Covenant on Economic, Social and Cultural Rights, *supra* note 34.

76. Article 1 of the U.N. Charter includes in the purposes of the United Nations "to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples." U.N. CHARTER, *supra* note 30, at art. 1.

77. "[T]he establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitutes modes of implementing the right of self-determination by that people." Declaration on Friendly Relations, art. 5.

78. There are numerous articles considering the issue of self-determination, however, a complete discussion of the topic is beyond the scope of this paper. See Thomas M. Franck, *Postmodern Tribalism and the Right to Succession*, in *PEOPLES AND MINORITIES IN INTERNATIONAL LAW* 3 (Brölmann et al., eds., 1993); Igor Grazin, *The International Recognition of National Rights: The Baltic States' Case*, 66 *NOTRE DAME L. REV.* 1385 (1991); Rita E. Hauser, *International Protection of Minorities and the Right of Self-Determination*, 1 *ISR. Y.B. ON HUM. RTS.* 92 (1971).

79. Declaration of the Rights of Persons, *supra* note 45, at art. 1.

particularly in regard to education, culture, religion, and language.⁸⁰ It is a fundamental group right that can only be exercised in conjunction with others.

(5) *The Right to Communicate*: The right to communicate with other members of the group, both domestically and internationally, is recognized in the Declaration⁸¹ as well as the Declaration on Religious Intolerance.⁸²

(6) *The Right to Political Participation*: There is a growing recognition of the right to political participation. This right is premised on the Universal Declaration of Human Rights,⁸³ the Political Rights Covenant,⁸⁴ and the Declaration of the Rights of Persons.⁸⁵ The right of representation at different levels of government depends on the structure of the government, although it has been effectively proposed as a fundamental right.⁸⁶

(7) *The Right to Positive Measures*: The right to temporary special measures to protect and promote the welfare of a group previously discriminated against has been included in the Declaration of the Rights of Persons⁸⁷ and the Convention on Racial Discrimination.⁸⁸ Other international documents addressing discrimination in specific areas contain provisions authorizing preferential treatment measures.⁸⁹

It has been argued that Article 27 of the Covenant implicitly calls for active participation by the state in its implementation, particularly at the cultural level. Enormous resources are necessary to ensure full cultural development, and without governmental assistance these rights would effectively disappear.

2. Group Rights within the Conference on Security and Cooperation in Europe

The individualistic perspective of the United Nations influenced the approach of regional organizations with respect to human rights.⁹⁰ Nevertheless, group rights have been advanced: and the elaboration of group rights within

80. *Id.* at art. 2.

81. *Id.*

82. *Declaration on Religious Intolerance*, *supra* note 35, at art. 6.

83. *Universal Declaration*, *supra* note 30, at 71.

84. *Political Rights Covenant*, *supra* note 34, at art. 25.

85. *Declaration of the Rights of Persons*, *supra* note 45, at art. 2.

86. See Gregory Fox, *The Right to Political Participation in International Law*, 17 *YALE J. INT'L L.* 539 (1992); Thomas M. Franck, *The Emerging Right to Democratic Governance*, 86 *AM. J. INT'L L.* 46 (1992); Henry J. Steiner, *Political Participation as a Human Right*, 1 *HARV. HUM. RTS. Y.B.* 77 (1988). For an examination of the importance of political participation to groups see Hauser, *supra* note 78. Hauser states:

When a separate ethnic or racial group demands broader participation in the life of the country, this poses a problem not of individual rights, although each individual within the group may be unjustly imposed upon, but of protection of the separate group *qua* group. Failure to recognize or grant to the group its demand for greater participation in the government or economy of the state may ultimately give rise to a movement for an independent state.

Id. at 93-94.

87. *Declaration of the Rights of Persons*, *supra* note 45, at art. 4.

88. *Convention on Racial Discrimination*, *supra* note 35, at arts. 1, 2.

89. See ILO Convention Concerning Discrimination in Respect to Employment and Occupation, *supra* note 35, at art. 5; Convention Against Discrimination in Education, *supra* note 35, at art. 3, para. c; DECLARATION ON RACE AND RACIAL PREJUDICE, *supra* note 35.

90. Many of the regional human rights documents have provisions similar to the U.N. Charter and the Universal Declaration on Human Rights. See, e.g., European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, art. 14, 213 U.N.T.S. 221 (entered into force Sept. 3, 1953) [hereinafter European Convention for the Protection of Human Rights]; American Declaration on the Rights and Duties of Man, pmbi., art. II, 9th Int'l Conference of American States (1953); African Charter on Human and Peoples' Rights, arts. 2, 3, 19, 9 I.L.M. 58 (1981).

the European context has proved the most advanced. Concern with group rights is evident in the documents promulgated by the Conference on Security and Cooperation in Europe (CSCE).⁹¹ The CSCE does not promulgate treaties, but establishes principles of behavior for states toward each other and toward their own citizens. The first CSCE document, the Final Acts of Helsinki, included several minority provisions, although the emphasis was on individual members of the group rather than the group *per se*.⁹² The rights addressed in the Final Act were relatively general and broadly stated. For example, one provision states:

The Participating States on whose territory national minorities exist will respect the right of persons belonging to such minorities to equality before the law, will afford them the full opportunity for the actual enjoyment of human rights and fundamental freedoms and will, in this manner, protect their legitimate interests in this sphere.⁹³

Minority provisions in the Final Act have been criticized for vagueness as well as for their failure to refer to any minorities other than "national minorities."⁹⁴ Another criticism concerns the wording "on whose territory national minorities exist," as it is believed to provide an escape mechanism for states which refuse to acknowledge the existence of minorities in their territory. These states could avoid all obligations by simply asserting that they have no minorities.

A follow-up meeting was held in Vienna from November 1986 until January 1989. One of the objectives of this meeting was to elaborate further on minority issues. The Concluding Document from the Vienna Follow-Up Meeting established far-reaching minority rights, both negative and positive rights, through the establishment of the Conference on the Human Dimension of the CSCE.⁹⁵

Two provisions of the Vienna Concluding Document are particularly relevant to group rights and deserve closer examination. Paragraph 18 pledges the participating States to implement the minority provisions of the previous CSCE documents, as well as other internationally binding instruments.⁹⁶

91. For an excellent analysis of the group rights guaranteed by the CSCE see Felix Ermacora, *Rights of Minorities and Self-Determination in the Framework of the CSCE*, in *THE HUMAN DIMENSION OF THE HELSINKI PROCESS: THE VIENNA FOLLOW-UP MEETING AND ITS AFTERMATH 197-206* (A. Bloed & P. Van Dyke eds., 1991).

92. Final Act of the Conference on Security and Cooperation in Europe, Aug. 1, 1975, 14 I.L.M. 1292 (1975) [hereinafter *The Helsinki Final Act*]. The Helsinki Final Act established four "baskets." These baskets covered principles of interstate behavior, including human rights, provisions for improved cooperation in the fields of economics and technology, and scientific and cultural cooperation.

93. *Id.* at Basket I, princ. VII. Other examples of provisions in the Final Act addressing minorities include:

The Participating States, recognizing the contribution that national minorities or regional cultures can make to cooperation among them in various fields of culture, intend, when such minorities or cultures exist within their territory, to facilitate this contribution, taking into account the legitimate interests of their members.

Id. at Basket III.

94. See, Ermacora, *supra* note 91, at 204.

95. Human Rights in the Concluding Document of the Vienna CSCE Follow-up Meeting, Jan. 15, 1989, reprinted in 10 HUM. RTS. L.J. 270, 277 (1989) [hereinafter *Vienna Concluding Document*].

96. *Id.*

Specifically, participating States promise to refrain from discrimination against persons belonging to minorities and to contribute to the realization of their legitimate interests in the field of human rights and fundamental freedoms.⁹⁷ Paragraph 19 pledges the participating States to ensure conditions for the promotion of the ethnic, cultural, linguistic, and religious identity of national minorities in their territories, and to ensure their full equality.⁹⁸ The right to self-determination for peoples is confirmed in Paragraph 4.⁹⁹

Perhaps the most important aspect of the Vienna Concluding Document is the supervisory process of the Human Dimension Mechanism. This allows a participating state to raise the issue of another state's noncompliance with CSCE provisions at any time.¹⁰⁰ The Vienna Concluding Document is important not only for the specific rights it provides, but also because it represents a significant development regarding the protection and rights of minority groups. Paragraphs 18 and 19 stress the protection of national minorities and explicitly emphasizes the protection of group identification.¹⁰¹ In comparison with the Helsinki Final Act, the Vienna Concluding Document significantly extended the recognition of group rights.

The commitment to the Conference on the Human Dimension enunciated in the Vienna Concluding Document was reaffirmed during the CSCE Copenhagen Meeting held in 1990.¹⁰² Paragraphs 30 to 40 of the Copenhagen Document contain strong and explicit commitments to minority protection, which include fostering conditions necessary for the preservation and development of minorities' ethnic, cultural, linguistic, and religious identity, and the resistance of assimilation.¹⁰³ Also included was a pledge by the states to respect the rights of minority members to effective participation in public affairs.¹⁰⁴ The most recent innovations of the CSCE regarding the Conference on the Human Dimension are related to implementation and are therefore discussed below.

3. Group Rights within the Council of Europe

The European Convention for the Protection of Human Rights¹⁰⁵ was drafted within the framework of the Council of Europe, an institution "which for decades has promoted respect for human rights in the West."¹⁰⁶ Although concerned with many fundamental human rights, minority rights were notably neglected. Recently, however, the Council of Europe has been active in attempting to formulate an approach to minority rights. In May 1990, the European Commission of Democracy through Law, an unofficial body of the

97. *Id.*

98. *Id.*

99. *Id.* at 273.

100. *Id.* at 268-69.

101. *Id.* at 277.

102. Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Conference on Security and Cooperation in Europe, June 29, 1990, *reprinted in* 11 HUM. RTS. L.J. 232 (1990) [hereinafter Copenhagen Document].

103. *Id.* 242-43.

104. *Id.*

105. European Convention for the Protection of Human Rights, *supra* note 90.

106. Jonathan Eyal, *Bordering on Chaos*, INDEPENDENT, Nov. 16, 1992, at 19.

Council of Europe, compiled a list of minority rights. In 1991 they submitted a proposal for a European Convention for the Protection of Minorities.¹⁰⁷ The convention is based on the CSCE's Copenhagen Document and the Charter of Paris, and limits its scope to what is referred to as negative solutions or "internal self-determination."¹⁰⁸

The Parliamentary Assembly of the Council of Europe decided not to follow the example of the European Commission of Democracy through Law in opting for a separate convention to protect minorities. Instead, on February 1, 1993, the Parliamentary Assembly adopted the draft of an Additional Protocol to the European Convention of Human Rights on the rights of minorities.¹⁰⁹ The adoption of Draft Protocol by the Parliamentary Assembly constitutes only a recommendation. This Protocol will not enter into force and become legally binding until it is adopted by at least a two-thirds majority of the Committee of Ministers, is opened for signature, and is ratified by at least five states.

Furthermore, even if the Draft Protocol were to become legally binding, it is not as beneficial to groups as it might first appear. Article 3 of the draft provides that "every person belonging to a national minority may exercise his/her rights and enjoy them individually or in association with others."¹¹⁰ It has been noted that "[t]his wording is important as it indicates that the Protocol would not guarantee group rights."¹¹¹ Therefore, the benefit derived by groups from the Protocol, if in fact it does come into force, is tenuous.

The Council of Europe has also been active in the area of minority languages. On November 5, 1992, a European Charter for Regional or Minority Languages was opened for signature by the Member States of the Council of Europe.¹¹² This charter contains far-reaching measures of positive state action for promoting the use of regional and minority languages in the fields of education and culture, in legal proceedings involving courts and administrative authorities, by the media, and in economic and social life.

Most recently, the Heads of State of the Member States of the Council of Europe issued a declaration concerning national minorities.¹¹³ This declaration pledged the leaders to implement the CSCE commitments regarding national minorities, and to try and transform these political commitments into legal obligations. It also instructed the Committee of Ministers to draft a framework convention for the protection of national minorities, which would be open for signature by non-member states, as well as begin work on a draft protocol to the

107. European Commission for Democracy through Law, Proposal for a European Convention for the Protection of Minorities, Feb. 8, 1991, *reprinted in* 12 HUM. RTS. L.J. 269 (1991) [hereinafter Proposal for European Convention for the Protection of Minorities].

108. Giorgio Malinverni, *The Draft Convention for the Protection of Minorities: The Proposal of the European Commission for Democracy through Law*, 12 HUM. RTS. L.J. 265, 266 (1991).

109. Draft Protocol on Minority Rights to the European Convention on Human Rights, Feb. 1, 1993, *reprinted in* 14 HUM. RTS. L.J. 140 (1993) [hereinafter Draft Protocol].

110. *Id.* at 145.

111. *Id.* at 143 (Heinrich Klebes, *Introduction*).

112. European Charter for Regional or Minority Languages, Nov. 5, 1992, *reprinted in* 14 HUM. RTS. L.J. 148 (1993).

113. Summit Meeting of the Heads of State and Government of the 32 Member States of the Council of Europe, Nov. 30, 1993, *reprinted in* 14 HUM. RTS. L.J. 375 (1993).

ECHR for persons belonging to national minorities. It seems apparent that the Heads of State want to combine the approach of the Proposal by the Commission on Democracy through Law (a separate convention)¹¹⁴ with the approach of the Parliamentary Assembly (Draft Protocol).¹¹⁵

IV. IMPLEMENTATION PROCEDURES

International human rights law is based on consent. Therefore, the largest problem regarding human rights in general, and group rights in particular, is implementing and enforcing agreed-upon norms. It is one thing to have a right in theory, but it is quite another to have methods to ensure that the right is protected in practice. The evolution of human rights law begins with the solidification of a normative basis, and eventually arrives at methods of enforcement.¹¹⁶ This section will examine the established mechanisms for implementing and enforcing group rights.

A. *The United Nations*

The United Nations system does not provide for the judicial enforcement of group rights. The International Court of Justice (ICJ) is the only world court, and only states can be parties to the ICJ.¹¹⁷ Under the International Covenant on Civil and Political Rights, the only mandatory method of implementation is the examination of state reports by the Human Rights Committee.¹¹⁸ There are two optional implementation mechanisms. One of these is an inter-state complaint procedure. The other is included in the Convention's First Optional Protocol, which grants the Committee the authority to hear petitions submitted by individuals who have exhausted local remedies, provided they can effectively demonstrate a consistent pattern of gross violations of human rights.¹¹⁹ However, this procedure, like the inter-state complaint mechanism, is limited to those states which are signatories to the Optional Protocol. The Committee's mandate under this Protocol is to reach a decision on the merits, but not to issue a judgment. In the one Optional Protocol case arising under Article 27, *Lovelace v. Canada*, the Committee found that certain provisions of the Indian Act of Canada violated Article 27, as they interfered with the complainant's cultural rights by denying her the right to reside on an Indian reservation after marrying a non-Indian.¹²⁰ Because of this violation, the Act had to be repealed.

114. Proposal for European Convention for the Protection of Minorities, *supra* note 107.

115. Draft Protocol, *supra* note 109.

116. Thomas Bergenthal, *Taking Human Rights Seriously: New Customary International Law*, Proceedings of the Annual Meeting of the American Society of International Law (1993).

117. See Statute of the International Court of Justice, U.N. CHARTER ANNEX, art. 34. The ICJ, however, left open the issue of whether groups could have standing. Advisory Opinion on Western Sahara, 1975 I.C.J. 12, 22 (Oct. 16, 1975).

118. Political Rights Covenant, *supra* note 34, at art. 40.

119. *Id.* at art. 5.

120. *Report of the Human Rights Committee*, Views of the Human Rights Committee, *Lovelace v. Canada*, Comm. No. 24/1977, U.N. GAOR, 36th Sess., Supp. No. 40, at 166, U.N. Doc. A/36/40 (1981). The Indian Act of Canada codified the Indian custom that a woman loses her tribal status upon marriage to an outsider,

Lovelace illustrates that the protection offered by Article 27 and implemented through the Optional Protocol is relatively strong. However, this individual petition procedure is not available for petitions concerning the violation of collective rights.¹²¹ A development which may be quite useful in protecting group rights within the United Nations system is the establishment of a UN High Commissioner for Human Rights. The effectiveness of this office waits to be seen.

B. *The CSCE*

The implementation procedure within the CSCE is currently the most advanced of any state-based system. The Vienna Concluding Document established a four-stage process by which the states could be held accountable for violations of CSCE provisions relating to the human dimension: (1) mandatory exchange of information requested by another Participating State; (2) the holding of bilateral meetings with a participating State that so requests; (3) bringing the matter to the attention of other participating States; and (4) discussing the matter, including specific cases, at meetings of the Conference on the Human Dimension as well as the main CSCE Follow-Up Meetings.¹²²

The Vienna Concluding Document provided for a thorough implementation procedure, but this mechanism was hampered by unlimited application of the principle of consensus, a central tenet of the CSCE. A meeting of the Conference on the Human Dimension was held in Moscow during September and October, 1991 to discuss the implementation procedures. During the meeting, delegates noted that previously-addressed human rights violations persisted while new violations were erupting across Europe as a result of ethnic and racial hatred.¹²³ Delegates sensed little interest or willingness by states to address these conflicts despite the increase in ethnic tension. Many felt a new approach was necessary.¹²⁴

The new implementation procedure formulated during the Moscow Meeting, termed the Moscow Mechanism, creates two paradigms. The first provides for the invitation by a state of a CSCE mission, comprised of independent experts, to address or contribute to the resolution of questions relating to the Human

and thus her right to live on the reservation.

121. See *Lubicon Lake Band v. Canada*, Comm. No. 167/1984, U.N. Doc. A/45/40 vol. II, at 1 (1990). The Committee refused to decide the case on its merits. Although individuals could join to claim violations of their individual rights, they could not do so for collective rights.

122. Vienna Concluding Document, *supra* note 95, at 290.

123. See COMMISSION ON SECURITY AND COOPERATION IN EUROPE, THE MOSCOW MEETING OF THE CONFERENCE ON THE HUMAN DIMENSION OF THE CONFERENCE ON SECURITY AND COOPERATION IN EUROPE 5 (1991).

124. See Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, Oct. 3, 1991, reprinted in 12 HUM. RTS. L.J. 471, 472 (1991) [hereinafter Moscow Document]. The document stated that the participating States particularly "deplored acts of discrimination, hostility and violence against persons or groups on national, ethnic, or religious grounds." *Id.* Also, the participating States expressed that "for the full realization of their commitments relating to the human dimension, continued efforts are still required which should benefit substantially from the profound political changes that have occurred." *Id.*

Dimension.¹²⁵ The second paradigm, as documented in Paragraph 12, is an emergency mechanism.¹²⁶ It authorizes a state, if it believes that "a particularly serious threat to the fulfillment of the provisions of the CSCE Human Dimension has arisen,"¹²⁷ to send a CSCE mission to another state. It may do this even over that state's objection, as long as it has the support of at least nine other states. This is an unprecedented deviation from the principle of consensus and offers great possibilities for the protection of human rights. In fact, Paragraph 37 states that the emergency mechanism is of particular relevance for the prevention and resolution of minority conflicts.¹²⁸

While in all probability the Moscow Mechanism will be of great benefit to minorities, it must be remembered that the CSCE provisions are not binding legal obligations. Nevertheless, many of the rights provided in CSCE documents are also listed in United Nations documents, and are thus binding obligations on states. However, it is the supervisory procedures which create innovative solutions to group problems, and it is just these implementation procedures which would not be enforceable.

An additional mechanism created by the CSCE was the establishment of a High Commissioner on National Minorities at the Helsinki Follow-Up meeting in 1992.¹²⁹ The purpose of the High Commissioner is to provide early warning and, where appropriate, to take "early action" to defuse minority issues that threaten to develop into conflict.¹³⁰ The first High Commissioner, Max van der Stoep, has been active since he took office on January 1, 1993. He has sent missions to examine the positions of minorities in Estonia, Latvia, Lithuania, Romania, the Former Yugoslav Republic of Macedonia, Albania, Slovakia, Hungary, the Ukraine, and the Central Asian states of Kazakhstan and Kyrgyzstan.¹³¹ Although the general approach is innovative, the effectiveness of the High Commissioner's position is stymied by the fact that his mandate excludes consideration of any existing dispute. Additionally, the mandate explicitly prevents the High Commissioner from communicating with any person or organization which practices or publicly condones terrorism or violence.¹³² Therefore, those groups that have felt compelled to resort to violence as a result of governmental repressions are not even qualified to communicate with the High

125. *Id.* at 472.

126. *Id.* at 473.

127. *Id.*

128. *Id.* at 476.

129. Document of the Helsinki Meeting of the Conference on Security and Cooperation in Europe, July 10, 1992, reprinted in 13 HUMAN RIGHTS L.J. 284, 289 (1992) [hereinafter Helsinki Document].

130. Edward Mortimer, *Alternative to Violence*, FIN. TIMES, June 24, 1992, at 19.

131. For descriptions of these missions, see CSCE Office for Democratic Institutions and Human Rights Bulletin, Autumn 1993 - Spring/Summer 1994.

132. Helsinki Document, *supra* note 129, at 291.

Commissioner. This severely limits his access to important sources of information.

C. *The Council of Europe*

Within the European arena there are two primary implementation and enforcement mechanisms for the European Convention of Human Rights.¹³³ The first is the European Commission of Human Rights which, along with the Committee of Ministers of the Council of Europe, supervises the enforcement of rights guaranteed by the Convention.¹³⁴ There is a mandatory inter-state complaint mechanism and an Optional Protocol for individual complaints, which all signatories have accepted.¹³⁵ These mechanisms are similar to those within the United Nations for the International Covenant on Civil and Political Rights, and thus share many of the same deficiencies.

The second mechanism is the European Court of Human Rights. Under the Convention, only states and the Commission can refer complaints to this court. Neither individuals or groups have standing.¹³⁶ This was remedied somewhat in the case of individuals by entry into force of the Ninth Additional Protocol in November 1994, which empowers the individual to refer a case to the Court if the Commission rules it admissible.¹³⁷ An ancillary implementation procedure provided under the Convention is the authorization of the Secretary-General of the Council of Europe to request an explanation concerning a particular issue from any state, including information concerning a specific case.¹³⁸

Implementation of the European Charter for Regional or Minority Languages involves the examination of state reports by an independent committee of experts, similar to the International Covenant on Civil and Political Rights.¹³⁹ The Proposal for a European Convention for the Protection of Minorities authorizes the establishment of a European Committee for the Protection of Minorities.¹⁴⁰ This Committee would supervise the Convention's mandatory reporting system as well as the optional state and individual petition procedures. This proposed Convention, like the draft convention noted above, relies on the same kind of enforcement mechanisms included in the International Covenant on Civil and Political Rights. Thus, it also suffers from the same inherent deficiencies.

V. VIOLATIONS OF MINORITY RIGHTS: A CASE STUDY

Although minorities are guaranteed numerous rights, these rights are rarely provided. Governments often fear that respecting these rights will encourage

133. European Convention for the Protection of Human Rights, *supra* note 90.

134. *Id.* at art. 19.

135. *Id.* at art. 25.

136. *Id.* at art. 19.

137. Protocol No. 9 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 6, 1990, *reprinted in* 12 HUMAN RIGHTS. L.J. 51 (1991) [hereinafter Protocol No. 9].

138. European Convention for the Protection of Human Rights, *supra* note 90.

139. European Charter for Regional or Minority Languages, *supra* note 112; Political Rights Covenant, *supra* note 34.

140. Proposal for European Convention for the Protection of Minorities, *supra* note 107.

separatist movements and lead to the dissolution of the states. Thus, they often violate the rights of these groups.

Current implementation and enforcement procedures are ineffective in protecting the rights of groups. The primary problem is that only states, and not minority groups themselves, can call attention to violations of minority rights. Thus, the political maneuvering that surrounds the protection of minorities overwhelms and obstructs effective enforcement at the state level. This lack of effective enforcement in turn leads to increased violence and political instability. The need for new mechanisms to protect group rights and provide for early warning of conflicts is illustrated by the experience of the Kurdish People.

A. *The Kurdish People*

The Kurds are homeless even at home, and stateless abroad. Their ancient woes are locked inside an obscure language. They have powerful, impatient enemies and a few rather easily bored friends. Their traditional society is considered a nuisance at worst and a curiosity at best. For them the act of survival, even identity itself, is a kind of victory.¹⁴¹

The area inhabited by the Kurds, known as Kurdistan since the thirteenth century, is rich in natural resources. It has been called the "heart of the region," because almost the entire water supply for the Middle East passes through this area. Oil, the principle commodity, is found in commercial quantities in Kirkuk and Khanaqin in Iraq, Batman and Silvan in Turkey, and at Rumeylan in Syria.¹⁴² These areas are part of historical Kurdistan.

The Kurdish population is estimated between 20 and 25 million people, which makes them one of the largest nations in the world today to have been denied an independent state.¹⁴³ The majority of Kurds live in their traditional homeland in the mountainous region connecting Iran, Iraq and Turkey, although smaller Kurdish communities exist in Syria, Armenia and Azerbaijan. A rough estimate places 10 to 11 million Kurds in Turkey (19% of the population); 5 to 6 million in Iran (10% of the population); 4 to 4.5 million in Iraq (23% of the population); 1 million in Syria; and 70,000 to 80,000 in Armenia and Azerbaijan.¹⁴⁴

The origin of the Kurdish people is uncertain. They believe themselves to be descended from the Medes, although modern scholarship disputes this theory.¹⁴⁵ It is unlikely that the Kurds are aboriginal or derive from a single source. Furthermore, religion plays no role in the Kurdish identity since there is no single religion. Most Kurds are Sunni Muslim, although some practice the rival Shi'i faith, and others practice one of several indigenous religions.¹⁴⁶ Despite the different faiths, loyalty to religious leaders remains a tenet of

141. Christopher Hitchens, *The Struggle of the Kurds*, 182 NAT'L GEOGRAPHIC 32, 60 (Aug. 1992).

142. David McDowall, *The Kurds*, in MINORITY RIGHTS GROUP REPORT 8 (1991).

143. *Id.* at 9.

144. Numbers and population breakdowns are comprised from Robert Olson, *The Kurdish Question in the Aftermath of the Gulf War: Geopolitical and Geostategic Changes in the Middle East*, 13 THIRD WORLD Q. 475 (1992); DAVID MCDOWALL, *THE KURDS: A NATION DENIED* 12 (Minority Rights Group ed., 1992).

145. MCDOWALL, *supra* note 144, at 11.

146. *Id.* at 13.

Kurdish society. The Kurdish language is divided into multiple dialects, the most predominant of which are Kurmanji, spoken in northern Iraq, eastern Turkey, and Azerbaijan; and Zaza, spoken in western Turkey.¹⁴⁷ Despite these internal differences, Kurdish society developed a distinctive culture which has survived over 2,000 years. The Kurds believe themselves to be a distinct people and have established their own sense of identity.¹⁴⁸

Kurds are historically a nomadic and semi-nomadic people, and their society reflects this lifestyle. Loyalty belongs first to the family and then to the tribe.¹⁴⁹ Despite the modern decline of the tribe, tribal values are still very much ingrained. Historically, tribes formed confederations, although individual loyalty was determined predominantly by blood ties and territorial association.¹⁵⁰ Despite the fostering of tribal confederations by states, which encouraged confederations as a means of border protection, political power tended to reside in the *agahs*, or local chiefs. The power of confederate chiefs was dependent both on governmental recognition and on the willingness of local chiefs to obey their commands.¹⁵¹

Mountain Kurds vary greatly from those living on the plains and in the foothills. The plains society is much more sedentary, and the rural peasantry developed ties to the landlords rather than *agahs*. A shift in land registration, however, soon aligned the interests of the *agahs* with the landlords, and encouraged both in participation with the state.¹⁵² The state began a process of detribalizing land, so that land which had previously belonged to the entire tribe suddenly became the absolute property of a single individual. As such, tribal members became a landless cultivator class.¹⁵³ This process was accelerated by the solidification of international boundaries following 1920, which destroyed the nomadic pattern of many tribes.¹⁵⁴ The decline of traditional Kurdish tribalism was exacerbated by the advent of mechanized farming, which increased the migration of young Kurds to urban centers and resulted in the creation of an urban proletariat.¹⁵⁵

B. *The History of the Kurds*

Early relations between the Kurds and governmental authorities were based on trade. Successive governments in the medieval period recognized the semi-autonomous state of the Kurdish *agahs*.¹⁵⁶ As a result of conflicts between the Ottoman and Persian Safavid Empires in the fifteenth century, the Kurds were

147. Hitchens, *supra* note 141, at 58.

148. McDowall, *supra* note 142, at 9.

149. *Id.* at 11.

150. *Id.*

151. *Id.* at 12.

152. *Id.*

153. *Id.*

154. *Id.*

155. *Id.* at 13.

156. See MCDOWALL, *supra* note 144, at 26.

promised their own fiefdoms and principalities in exchange for guarding their mutual border.¹⁵⁷

The independent principalities remained in place until the early nineteenth century when direct Ottoman administration was extended into Kurdistan. The destruction of the Kurdish principalities resulted in increased rivalry among *agahs*, which allowed the religious leaders, known as *shaikhs*, to gain considerable power. The Kurds revolted against Ottoman control periodically throughout the nineteenth century, and although these revolts had wide support, they were unsuccessful.¹⁵⁸

Despite their displeasure with Ottoman authority, Kurdish *agahs* nevertheless recognized certain shared interests with the Ottomans. The Kurds, in comparison with other minorities living within the Ottoman empire, were in a privileged position because of their shared religious beliefs. As such, they were willing to participate in the persecution of others in an attempt to protect their own privileged status.¹⁵⁹ An extreme example of this is the assistance of Kurdish leaders in the Armenian massacres of 1895-96. These massacres continued throughout World War I, when many Kurds served as Ottoman soldiers. Despite their complicity, the Ottoman authorities soon began to persecute the Kurds for fear that they would collaborate with their Russian enemies.¹⁶⁰

The decline of the Ottoman Empire was accompanied by the growth of nationalist sentiment in many minority populations living within its borders, including the Kurds. When the Ottoman Empire surrendered at the end of World War I, this burgeoning nationalism found Allied support during negotiations on the distribution of the conquered territory.¹⁶¹ Point Twelve of President Woodrow Wilson's Fourteen Point Program for World Peace stated that non-Turkish minorities of the former Ottoman Empire should be "assured of an absolute unmolested opportunity of autonomous development."¹⁶² The result of the Allies' deliberations was the 1920 Treaty of Sèvres, which provided for interim autonomy for the predominantly Kurdish area of Turkey and, ultimately, full independence.¹⁶³

157. *Id.* at 27.

158. *Id.* at 27-29.

159. *Id.* at 30.

160. *Id.* at 30-31.

161. *Id.* at 32.

162. *Id.*

163. *Id.* at 33. The relevant portions of the Treaty of Sèvres state:

Article 62: [A commission composed of Allied appointees would] prepare for local autonomy in those regions where the Kurdish element is preponderant lying east of the Euphrates, to the south of the still-to-be established Armenian frontier and to the north of the frontier between Turkey, Syria and Mesopotamia.

Article 64: If, after one year has elapsed since the implementation of the present treaty, the Kurdish population of the areas designated in Article 62 calls on the Council of the League of Nations and demonstrates that a majority of the population in these areas wishes to become independent of Turkey, and if the Council then estimates that the population in question is capable of such independence and recommends that it be granted, then Turkey agrees, as of now, to comply with this recommendation and to renounce all rights and titles to the area If and when the said renunciation is made, no objection shall be raised by the main Allied powers should the Kurds living in the part of Kurdistan at present included in the vilayet of Mosul seek to become citizens of the

There were several geopolitical reasons for the Allies' desire for an independent Kurdish state. The primary reason was to place a buffer between the Turks of Anatolia and the Turkish-speaking people of Central Asia, especially those in the Caucasus. A second reason was to create a buffer state between Turkey, with its emergent nationalism, and the autonomous republic of Azerbaijan in the USSR. A third reason was to create a similar buffer between Turkey and the Azeri population in Iran. The Sunnism of the Kurdish state would distinguish it from the Shi'ism of both Azerbaijan. Finally, from the Allies' perspective, an independent Kurdish state would reduce the potential power of Turkey, Iran, Iraq, and allow them to utilize the Kurdish state and the Kurdish population against these governments whenever they deemed it in their best interest.¹⁶⁴

Unfortunately for the Kurds, the Treaty of Sèvres was never implemented. The Turkish government which had signed the treaty was replaced by one led by Mustafa Kemal (Ataturk), who repudiated the Treaty after his victory against Christian forces.¹⁶⁵ The Allies found themselves in the position of having to renegotiate the settlement of the remnants of a vanquished empire with a new ruler. For the most part, the Allies' essential interests had not been effected, and they were not prepared to renegotiate on behalf of the Armenians or the Kurds. They realized that it would require military action to implement the relevant aspects of the Treaty of Sèvres, and this was more than they were willing to undertake.¹⁶⁶ In addition, the geopolitical advantages of an independent Kurdish state were no longer as appealing, as a strong Turkish state could stymie the spread of Bolshevism.¹⁶⁷

The Lausanne Treaty in 1923 reestablished Turkish sovereignty over eastern Thrace and Anatolia.¹⁶⁸ The Lausanne Treaty did provide some protection for "non-Muslim minorities;"¹⁶⁹ however, the Turkish government subsequently denied the applicability of these provisions to the Kurds.¹⁷⁰ Kurdish and Armenian rights recognized in the Treaty of Sèvres were ignored, and the remaining Kurdish territory was divided between Iran and Iraq. The Allies had abandoned the Kurdish cause. The Kurds had ultimately fallen victim to the great power politics of the United Kingdom and the USSR, both of which thought it was in their interests to cooperate with the increasingly strong states of Turkey and Iran. Thus, they acquiesced in Turkey's and Iran's suppression of Kurdish nationalist movements.¹⁷¹

newly independent Kurdish state.

Id. (quoting Treaty of Sèvres, arts. 62, 64 (signed Aug. 20, 1920)).

164. See Olson, *supra* note 144, at 479.

165. MCDOWALL, *supra* note 144, at 34-35.

166. *Id.* at 35.

167. *Id.* at 35-36.

168. Treaty of Peace, July 24, 1923, 28 L.N.T.S. 11 (1924).

169. McDowall, *supra* note 142, at 16.

170. *Id.* at 17.

171. Olson, *supra* note 144, at 475.

C. *The Kurds in Turkey*

Ataturk's interest following the defeat of the Christian Armenians was the creation of a secular, Turkish nation-state. Despite official statements of recognition of the "national and social rights of the Kurds,"¹⁷² Ataturk abolished the Sultanate in 1922 and the Caliphate in 1924; along with them crumbled the traditional order of the *agahs* and *shaikhs*.¹⁷³ With the abolishment of the Caliphate, the government crushed all public vestiges of separate Kurdish identity. Kurdish schools, associations, publications, religious fraternities and teaching foundations were all banned.¹⁷⁴ The threat to traditional Kurdish society and identity served to unify different segments of the population, including urban intellectuals, *agahs* and *shaikhs*.

The first widespread revolt occurred in 1925 under the leadership of Naqshbandi, Sheikh Said of Prian, although it was quickly suppressed by Turkish forces.¹⁷⁵ Almost immediately another revolt was initiated, coordinated by a new Kurdish liberation organization which arranged the support of leading Kurdish groups and was financed by the Shah of Iran. The Kurds gained a considerable amount of territory, but with the withdrawal of Iranian support the revolt faltered.¹⁷⁶

The persecution of the Kurds continued. Law No. 1850 legalized "[m]urders and other actions committed individually or collectively, from the 20th of June 1930 to the 10th of December 1930, ... during the pursuit and extermination of the revolts" in the Kurdish areas.¹⁷⁷ The government also used mass deportations and population transfers to quell Kurdish unrest; over one million Kurds were forcibly relocated between 1925 and 1938.¹⁷⁸ Kurdish villages were closely policed, use of the Kurdish language, dress, and names were prohibited, and martial law was imposed on Kurdish areas, remaining in place until 1946.¹⁷⁹

In 1950, the first free elections in Turkey were held and the Democratic Party gained power. In return for strong Kurdish electoral support, the Democratic Party eased Kurdish repression. Some exiled *agahs* and *shaikhs* were allowed to return and had their property reinstated, some Kurds were elected to Parliament, and schools, roads, and hospitals were built in Kurdish regions.¹⁸⁰ In 1961 a new constitution was adopted, which allowed for freedom of expression, press, and association.¹⁸¹ These liberalizations allowed for the expression of Kurdish dissent; Kurds scattered throughout the state began to organize. In 1965, the separatist Kurdistan Democratic Party (KDP) was

172. McDowall, *supra* note 142, at 16 (quoting Kendal in Chaliand, C., *People Without A Country*).

173. *Id.* at 16.

174. MCDOWALL, *supra* note 144, at 36.

175. *Id.*

176. *Id.* at 37.

177. *Id.* at 38.

178. *Id.*

179. *Id.*

180. *Id.* at 39.

181. *Id.*

established, and worked in conjunction with Kurdish resistance movements in Iraq.¹⁸²

As Kurdish and leftist groups gained popularity, the government increased its efforts to silence "objectionable" cultural and political activity. Many of the bilingual Kurdish-Turkish journals that had appeared in the mid 1960s were banned, and in 1967 special commando forces were organized to patrol Kurdish villages and intimidate the local population. In 1971, the army overthrew the Demirel government and Kurdish political parties were banned.¹⁸³ Throughout the 1970s there was sporadic oppression of the Kurds and martial law was again imposed on Kurdish areas in 1979. Another coup occurred in 1980, and tens of thousands of leftists and Kurds were arrested, interrogated, and tortured.¹⁸⁴ In 1982, France, Denmark, the Netherlands, Norway, and Sweden filed a complaint with the European Commission of Human Rights alleging widespread human rights violations in Turkey, although without explicit reference to the Kurds.¹⁸⁵

Much of the Kurdish region effectively became a militarized zone. The government justified the military's presence by citing the proximity to the Soviet Union, but the actual purpose was to suppress growing Kurdish nationalism. As the Turkish President declared, "there is no room for liberated regions and activities aimed at language, race, class or sectarian differences in our homeland. The government will defeat the disease and heads will be crushed."¹⁸⁶

The restoration of civilian authority in 1984 did little to alleviate the tension between Turkish authorities and the Kurds. The civilian government upheld the 1982 Constitution which prohibits activities which violate "the indivisible integrity of the State with its territory and nation," and specifically prohibits parliament from pardoning prisoners charged with this offense.¹⁸⁷ In addition, it was illegal for political parties to concern themselves with the diffusion of any non-Turkish language or culture, or seek to foster minorities. In fact, until recently, the government refused to acknowledge the existence of the Kurds, calling them instead "mountain Turks."

In response to this continual repression, Kurdish resistance took on a militant quality. In the late 1970's the radical Kurdistan Worker's Party (PKK) was formed by Abdullah Ocalan.¹⁸⁸ The goal of the PKK was the creation of an independent socialist Kurdish state, and it used guerilla tactics to accomplish this aim. The PKK found its greatest support in the south-eastern provinces of Turkey, that stretch along its 200 mile border with Iraq.¹⁸⁹

Currently, the PKK is headquartered in Damascus, Syria, and receives aid from Kurdish organizations and the Syrian government. Syrian support for the PKK seems to stem mainly from Turkey's reduction of water flowing from the

182. *Id.* at 40.

183. *Id.*

184. *Id.* at 43.

185. Applications No. 9940-9944/82. The applications were declared admissible by the Commission on Dec. 6, 1983, but a "friendly settlement" was reached so only a pro forma report was adopted by the Commission.

186. MCDOWALL, *supra* note 144, at 43.

187. HANNUM, *supra* note 15, at 188-89.

188. MCDOWALL, *supra* note 144, at 44.

189. *Id.*

Euphrates river, a major source of water, running through both Syria and Turkey. Syria hoped to use its support for the PKK as leverage against Turkey's reduction of water released into the Euphrates by up-river dams.¹⁹⁰

From 1983 until Iraq's invasion of Kuwait in August 1990, Turkey and Iraq cooperated closely to contain their respective Kurdish populations and Kurdish nationalism. In 1984, Turkey and Iraq agreed to establish a joint six-mile-wide security zone along their border, and Turkish forces made repeated incursions into Iraq to attack Kurdish guerilla bases.¹⁹¹ During the 1980s, in addition to its traditional concerns about Kurdish nationalism, Turkey sought to reduce Kurdish threats to its \$50 billion Southern Anatolia Project (GAP), the hydroelectric dam and irrigation scheme for southeastern Turkey, which is located in the heart of Turkish Kurdistan. Turkey and Iraq were also concerned about Kurdish threats to the oil pipelines running from Iraq to the Mediterranean, through Kurdish territory. Iraq's interest in protecting the oil pipeline stemmed from its dependence on oil exportation through Turkey after the outbreak of its war with Iran.¹⁹²

One ramification of these nationalist and geopolitical concerns was that the Turkish campaign against the PKK and the Kurdish identity intensified. Turkey is not a party to any of the major human rights conventions, except the European Convention on Human Rights; thus there has been little opportunity for the international community to comment on Turkey's treatment of its Kurds. Nevertheless, the international community is aware of the violation of the Turkish Kurds human rights.

This campaign against the Kurdish identity has resulted in a systematic denial of their ethnicity and the violation of their group rights. The United States, a political ally of Turkey and thus not apt to criticize the government, noted in 1986:

the [Turkish] Government remains adamantly opposed to any assertion of a Kurdish ethnic identity and has taken a number of steps to suppress it. Publication of books, newspapers, and any other materials in Kurdish is forbidden, as are books or any other materials in Turkish dealing with Kurdish history, culture or ethnic identity. Use of the Kurdish language is not permitted for any official purposes, e.g., in the courts, nor is it allowed in certain private situations, such as receiving visitors in prison.¹⁹³

In 1990, the government passed decree No. 413, which gave the regional governor of ten southeastern provinces broad powers to censor the press and to exile from the region people who present a danger to law and order.¹⁹⁴

The Turkish government has continually denied the existence of the Kurdish identity. A high government official reportedly stated, "We have no ethnic minorities," and in May 1990, the head of the Human Rights Department of the Foreign Ministry asserted that Kurds are not a minority because only religious

190. See Olson, *supra* note 144, at 477.

191. *Id.*

192. *Id.* at 478.

193. U.S. Dep't of State, *Country Reports on Human Rights Practice for 1986*, at 1051.

194. See HELSINKI WATCH, DESTROYING ETHNIC IDENTITY: THE KURDS OF TURKEY, AN UPDATE 13 (1990).

minorities are recognized by the Lausanne Treaty.¹⁹⁵ She also stated there was no discrimination against the Kurds, but that such discrimination would develop if Kurds insisted upon a separate language and a separate culture.¹⁹⁶ The Minister of Finance supported his colleague, agreeing that there was no discrimination against the Kurds, and asserting that special Kurdish schools would create segregation and give rise to ethnic conflicts.¹⁹⁷

The Kurds are outraged by the denial of their ethnic identity. Repeatedly, they have expressed their desire to "speak Kurdish officially, to read Kurdish books, to sing Kurdish songs, to dance Kurdish dances, to celebrate Kurdish holidays, and to give their children Kurdish names."¹⁹⁸ "We want the government to accept us as Kurds," one citizen said, "and to leave us alone. We just want to be Kurds."¹⁹⁹

In 1993, a shift seemed to have occurred when Prime Minister Demirel stated, "I do recognize the Kurdish reality [A]ny citizen who calls himself a Kurd cannot be forced to call himself a Turk, ... the pressure previously applied has been wrong A citizen who calls himself a Kurd is equal to a citizen who calls himself a Turk and has equal rights."²⁰⁰ He expressly granted the Kurds the right to use the Kurdish language in public.

This apparent shift, however, seems to be predominantly rhetorical. Beginning with the inauguration of Demirel as Prime Minister in November 1991, the campaign against the PKK intensified. This conflict with the PKK has resulted in the loss of 2,000 lives in 1992, for an estimated total of 7,400.²⁰¹ Many were civilian casualties. The Helsinki Watch noted that the attacks on civilians were part of a systematic pattern of violence: "PKK guerrillas attack military forces in a town ... [and] security forces then retaliate against the civilian population with such ferocity that homes and shops are destroyed and inhabitants forced to flee."²⁰² There was also reportedly a plan to instigate forced birth control in southeastern Turkey, in violation of the Genocide Convention.²⁰³

Initially, Kurdish support for the PKK within Turkey was divided, but it was consolidated, however, as a result of the killings, harassment, and abuse of Kurds by the security forces. Tactics used by the Turkish government appear to have been counterproductive, driving more and more civilians into the arms of the PKK.²⁰⁴ With the growth of domestic PKK support came a decline in international assistance. Iraqi Kurds, dependent on Turkey for their survival, helped Turkey drive the PKK from its territory. Syria shut PKK bases in

195. *Id.*

196. *Id.*

197. *Id.* at 2.

198. *Id.*

199. *Id.*

200. Alistair Lyon, *War-Wearry Turks, Kurds See Change for Peace*, Reuters, Mar. 23, 1993.

201. *Turkey: Human Rights Group Says Abuses Against Kurds Have Risen*, Inter Press Services, Mar. 18, 1993. See also, Alan Cowell, *For Turkey and Kurds, 'Total Warfare,'* INT'L HERALD. TRIB., Oct. 19, 1993, at 1.

202. *Id.*

203. KURDISTAN NEWS, (International Association for Human Rights in Kurdistan) No. 4, Mar. 19, 1993.

204. HELSINKI WATCH, *supra* note 194, at 1.

Lebanon. Turkey's Western allies denounced the PKK, while quietly urging Ankara to end human rights abuses against Kurds.²⁰⁵ In response, Ocalan set the PKK on a new course. In March 1993, he called for an end to the fighting, denounced intentions to secede, and called for greater political and cultural freedoms.

Many Kurds fear that the Turkish government would not keep its promises of progress towards democracy and respect for human rights once the guerilla struggle ceases. This sentiment was voiced by one Kurdish leader: "Since the 1830s, all Kurdish revolts were followed by promises which were not kept The Kurdish people have been jailed, abused and cheated. There is distrust but there is also hope."²⁰⁶ As it turns out, the skepticism of Turkish Kurds proved warranted. Due to continued governmental repression in the form of air strikes and infantry advances, the PKK cease-fire was called-off in May 1993 with an attack in which 33 Turkish soldiers were killed. The government responded with a policy of "total warfare" in which 1,600 people died within five months, in what the parties concede is an "accelerating spiral of violence."²⁰⁷

In an attempt to call attention to the renewed conflict and harm Turkey's lucrative tourist industry, which the Kurds assert helps to fund military operations in the Southeast, the PKK kidnapped and released 26 foreigners traveling in Turkey and engaged in attacks on Turkish properties in Europe in June and November 1993.²⁰⁸ After the second such attack Turkish Prime Minister Tansu Ciller stated her determination to crush a Kurdish "terrorist plague" by sending specially trained commandos to the southeast region of the country to "fight the militants with their own methods."²⁰⁹ Since then, there have been systematic attacks on alleged PKK strongholds, including the razing of villages believed to harbor PKK activists.²¹⁰ In addition, Mrs. Ciller's government jailed seven parliamentary representatives of the legal Kurdish party for "advocating and promoting terrorism," thereby effectively suppressing the main outlet for Kurdish aspirations, short of terror.²¹¹

Protests have continued across Europe, particularly in Germany where an estimated 400,000 Kurds live,²¹² resulting in repeated violent clashes between German police and Kurdish demonstrators²¹³, including death by self-immolation of two Kurdish women to protest "Bonn's support for Turkish suppression of [their] people."²¹⁴

205. Lyon, *supra* note 200.

206. *Id.* Statement of Mehdi Zana, a former mayor of Diyarbakir, capital of the southeastern province, who spent many years in jail for his nationalist views.

207. Cowell, *supra* note 201 at 1.

208. *Id.* at 5; *see also*, *Terrorist Target: Tourists Off Beaten Path*, INT'L HERALD TRIB., Nov. 2, 1994, at 1.

209. Barry James, *Turkish Targets in Europe Are Hit Again*, INT'L HERALD TRIB., Nov. 5, 1993, at 1.

210. *Turkey Bombs Kurdish Stronghold*, INT'L HERALD TRIB., Sept. 24-25, 1994, at 2.

211. *Turks, Kurds and Allies*, INT'L HERALD TRIB., Mar. 28, 1994, at 1.

212. James, *supra* note 209, at 4.

213. *Militant Kurds Stage Violent German Protests*, FIN. TIMES, Mar. 21, 1994.

214. *2d Kurdish Woman Dies in Germany*, INT'L HERALD TRIB., Mar. 25, 1994, at 2.

Although the U.S. and other Western allies assert in private that political concessions must be made, they do not insist on this point with the Turkish government, which they arm.²¹⁵ A primary reason for this lack of insistance is that Turkey is a member of NATO and plays a crucial role in Western efforts to maintain economic and military pressure on President Saddam Hussein of Iraq. That is "a higher priority for the United States than the Kurdish insurgency."²¹⁶ As such, despite the increasing escalation of the conflict and the continued denial of Kurdish identity, the international community is not prepared to jepordize relations with Turkey in order to protect Kurdish rights.

As it turns out, Turkish Kurds were correct in doubting the sincerity of the government's promises to protect Kurdish rights: in 1994, the government once again stepped up the campaign against Turkish Kurds, targeting those villages which they believe to be PKK strongholds.²¹⁷

D. *The Kurds in Iraq*

Modern Iraq emerged from the Ottoman province of Mesopotamia as a result of British conquest, and in 1920 Iraq fell under British control. Great Britain intended to create an Arab state with one or more semi-autonomous Kurdish provinces. Although the League of Nations Commission concluded that "if the ethnic argument alone had to be taken into account, the necessary conclusion would be that an independent Kurdish State should be created, since the Kurds form five-eighths of the population," the British wanted a unified state in order to ensure the state's economic viability and their access to the oil fields in Mosul.²¹⁸

Acting in a supervisory capacity, Great Britain instigated a policy of direct administration through Kurdish officials, and recognized Kurdish culture, language and customs. In fact, the only exception to the general suppression of the Kurds between World War I and World War II was in Iraq, and occurred as a result of these British policies. These policies are the reasons why the Iraqi Kurds today have greater cultural autonomy than those in either Turkey or Iran.²¹⁹

British policy was to encourage Kurdish nationalism, but not independence. The British resisted an independent Kurdish state for several reasons. Economically, it was important to keep the area unified to ensure its viability, and politically, the British wanted the capability to use the Kurdish population as a balance against the Sunni Arabs. The intent was to use the threat of Kurdish nationalism to force the governments of Iraq, Turkey, and Iran to accept British policies throughout the Middle East.²²⁰ In addition, the British believed the Kurds to be well-cared-for, as the Iraqi Government had promised to respect the League of Nations' recommendations that the Kurds be allowed to use their

215. Cowell, *supra* note 201, at 5.

216. *Id.*

217. *See Turkey Bombs Kurdish Stronghold, supra* note 210, at 2.

218. MCDOWALL, *supra* note 144, at 81 (quoting the League Commission Report, at p. 57).

219. Olson, *supra* note 144, at 476.

220. *Id.*

own language, and that Kurds should comprise the administration of the region.²²¹ Despite the exclusion of these provisions in the 1930 Anglo-Iraqi Treaty, the British felt confident in this arrangement, and thus Iraq effectively became an independent state in 1932.²²²

Almost immediately, the Kurds initiated a revolt demanding an independent Kurdish state. The separatist revolt was eventually led by Mulla Mustafa Barzani, a secular and religious leader whose name was "destined to become almost synonymous with Kurdish revolt until his death in 1979."²²³ By 1945, Barzani was active in the illegal Kurdish Democratic Party (KDP), and was the effective ruler of a wide area. However, after repelling repeated government attacks, he was pushed across the border into Iran. He remained in exile until the 1958 revolution led by General Qasim.²²⁴

The Iraqi Republic was established in 1958. It recognized the rights of both Arabs and Kurds and legalized the KDP.²²⁵ Barzani tried to fulfill Kurdish expectations generated by the new Constitution by demanding a substantial degree of autonomy for the Kurdish region. Although Qasim had gone further than any other regime in recognizing Kurdish rights, he was not prepared to acquiesce to Barzani's demands, and armed struggle resumed.²²⁶ Meanwhile, Iraq's neighbors used the war to their own advantage. Turkey, long hostile to Qasim, allowed Iraqi Kurds to move through Turkish territory, and Iran provided active support. However, both states conditioned their support on Barzani's agreement not to export separatism to their own Kurdish populations.²²⁷ Barzani and the Iraqi government eventually drafted a twelve-point program in 1966 which met many of the Kurd's demands, but the government fell before the agreement could be implemented.²²⁸

In 1968 the Ba'ath regime led a successful coup. Settlement of the Kurdish question was a priority; despite mutual antagonism, a ceasefire and peace agreement between Barzani and the Ba'ath regime was arranged in 1970.²²⁹ The agreement provided for:

- (1) Participation of Kurds in government ... ; (2) Recognition of Kurdish in those areas where Kurds constitute the majority ... ; (3) Furtherance of Kurdish education and culture; (4) Requirement that officials in the Kurdish areas speak Kurdish; (5) Right to establish Kurdish student, youth, womens' and teachers' organizations; (6) Economic development of the Kurdish area; (7) Return of Kurds to their villages or financial compensation; (8) Agrarian reform; (9) Amendment of the Constitution to read: 'the Iraqi people consist of two main nationalities'; ... (11) Appointment of a Kurdish vice-president; ... (13) Formation of a Kurdish area with self-government.²³⁰

221. MCDOWALL, *supra* note 144, at 83.

222. *Id.*

223. *Id.* at 84.

224. *Id.* at 85.

225. *Id.* at 86.

226. *Id.*

227. *Id.* at 87.

228. *Id.* at 88.

229. *Id.* at 91.

230. *Id.* at 91. For full text see INTERNATIONAL HUMAN RIGHTS LAW GROUP, *BALLOTS WITHOUT BORDERS*, app. 3 (July 1992).

Although a number of clauses were actually implemented, including the amendment to the Constitution, the agreement eventually disintegrated. Conflicts soon developed over the boundaries of the Kurdish Autonomous Region and on the issue of nationalization of the Kirkuk oil fields. Additionally, the Kurds were once again manipulated by the interests of the global powers: Iran, the United States, and Israel encouraged Barzani in an attempt to revive the conflict and weaken the Iraqi government, and simultaneously, the Soviet Union made an agreement with the Iraqi government to decrease support for Barzani.²³¹

The Iraqi government promulgated Act No. 33 without the consent of the Barzani leadership, in March 1974.²³² The Act provided for Kurdish autonomy, but limited it by the "legal, political, and economic unity of the Republic of Iraq."²³³ It also provided that while Kurdish was the official language of the region along with Arabic, Arabic was the official language of correspondence between the government of the Kurdish region and central authorities.²³⁴ The rights of non-Kurdish minorities in the region were also guaranteed, including proportional representation in all local autonomous institutions.²³⁵

The most contentious part of the Act established the boundaries of the Kurdish Autonomous Region to include only those areas with a majority Kurdish population according to the 1957 census, which excluded the oil-rich city of Kirkuk.²³⁶ The other troublesome provision established what the Kurdish leadership considered a "puppet" Legislative Assembly and Council with limited powers for the region.²³⁷ The Barzani-led leadership of the KDP denounced the Act and charged the central government with renegeing on the 1970 Agreement. Armed conflict soon erupted.²³⁸

The Kurds, with assistance from the Iranian government, were initially quite successful. With the conclusion of the Algiers Agreement between Iran and Iraq, in which Iran agreed to end support for the Iraqi Kurds in exchange for territorial concessions, the Kurdish resistance collapsed.²³⁹ Within a few months, the Iraqi government controlled more Kurdish areas than at any time since 1961. Barzani fled to the United States where he died in 1979, and the KDP split into various factions. A new Kurdish party, the Patriotic Union of Kurdistan (PUK) came into existence and began a guerilla campaign against the Iraqi government.²⁴⁰

In the years that followed, the Ba'ath regime began aggressively Arabizing the Kurdish region through mass "relocations" of entire Kurdish villages and severe repression of the Kurdish leadership. An estimated 800 Kurdish villages along Iraq's borders with Turkey and Iran were razed to create a "security belt"

231. McDOWALL, *supra* note 144, at 92-95.

232. HELSINKI WATCH, *supra* note 194.

233. McDOWALL, *supra* note 144, at 95.

234. *Id.*

235. *Id.* at 97.

236. *Id.*

237. *Id.*

238. *Id.*

239. *Id.* at 98.

240. *Id.* at 101.

between Iraqi Kurds and the Kurds in those states.²⁴¹ Approximately 250,000 Kurds were "resettled" in southern and central Iraq, where they were distributed among Arab villages in groups of up to five families.²⁴²

In 1980, the Kurds and the Iraqi government reached a new accord, providing for the Autonomous Region to be governed according to the terms of the 1970 Autonomy Agreement and the Autonomy Act No. 33.²⁴³ A twelve-member Executive Council and a fifty-member Legislative Assembly were convened to govern the region. Although the Legislative Assembly was popularly elected, potential candidates had to be approved by the Iraqi government. It had limited authority to enact legislation relating to the development of "culture and nationalist customs of the Kurds," as well as other local matters.²⁴⁴ Two elections were held, but despite the "institutional facade ... real authority was tightly controlled by the central government, particularly in the area of security affairs."²⁴⁵

In early 1988, the Iraqi government embarked on the Anfal campaign to eliminate the Kurds after Kurdish guerillas (*Peshmegra*) provided military support for Iran during the Iran-Iraq war. The government began a series of brutal reprisals against the Kurdish population. Thousands of Kurdish villages were razed, and Iraqi forces engaged in the mass murder of civilians.²⁴⁶ It is estimated that one-third of the population of Iraqi Kurdistan was depopulated.²⁴⁷

The most horrendous aspect of the reprisal campaign was the use of chemical weapons against Kurdish civilians, most notably the 1988 chemical attacks against Halabja, in which 5,000 civilians died.²⁴⁸ A Western journalist who reached Halabja soon after the attack reported that "[b]odies lay heaped up, ready for mass burial. Others lay where they had fallen when the bombs fell. Halabja stank of death and of one of the nastier forms of destruction. Saddam Hussein had responded in characteristic fashion to the Kurdish demand for an acknowledged political identity."²⁴⁹ In 1991, the United Nations appointed a Special Rapporteur on Iraq, who concluded that people with oppositional views and minorities were persecuted with "cruel severity," including "genocide-like activities," and that the atrocities committed by Saddam's regime were "so grave and ... of such a massive nature that since the Second World War few parallels can be found."²⁵⁰

After examining documents provided by the Iraqi government and accounts given by refugees, the Special Rapporteur concluded that the Anfal campaign

241. Olson, *supra* note 144, at 476.

242. *Id.*

243. HELEN METZ, *IRAQ: A COUNTRY STUDY* 186 (1990).

244. *Id.*

245. INTERNATIONAL HUMAN RIGHTS LAW GROUP, *supra* note 230, at 9.

246. See Max van der Stoep, *Report on the Situation of Human Rights in Iraq, A Study Prepared by the Special Rapporteur of the Commission on Human Rights*, UN Doc. E/CN/1992/31, at 13 (1992).

247. Olson, *supra* note 144, at 477.

248. See Peter Gailbraith, *Kurdistan in the Time of Saddam Hussein*, A Staff Report to the Committee of Foreign Relations of the United States Senate 15 (Nov. 1991).

249. John Simpson, *Foreword to MCDOWALL*, *supra* note 144, at vii.

250. van der Stoep, *supra* note 246, at 17.

was, "like most actions of the Government of Iraq, very well planned, implemented and documented."²⁵¹ He determined that the immediate effects of the Anfal campaign were to cause:

- (a) the death of thousands of men, women and children by arbitrary execution or indiscriminate killing; (b) the disappearance of tens of thousands of more men, women and children; (c) the arbitrary arrest, detention, and forced relocation of hundreds of thousands of men women and children; (d) the destruction of thousands of villages including essential economic resources and important cultural properties; and (e) the essential destruction of the rurally based Kurdish way of life.²⁵²

He concludes that these effects were accomplished in a systematic fashion through "the intentional use of obviously excessive force."²⁵³

It is important to note that these actions were aimed against all Kurds with the object of eliminating real or presumed opposition.²⁵⁴ Since the events of the Anfal campaign effected virtually every Iraqi Kurd, "genuine reconciliation will be difficult as long as the issues and effects of the Anfal campaign remain unresolved."²⁵⁵ In addition, although the Anfal officially ended in September of 1988, many of the individual decrees and instructions issued in order to implement the campaign remained in force for years to come, and some may still be in force today.²⁵⁶

The events following the Gulf War clearly illustrate the international community's ambivalence toward minority protections and the political maneuvering that accompanies their enforcement. When Iraq invaded Kuwait in the spring of 1991, the U.S. government encouraged a Kurdish revolt in northern Iraq. In an appeal broadcast into Iraq, President Bush declared, "there's another way for the bloodshed to stop, and that is for the Iraqi military and the Iraqi people to take matters into their own hands to force Saddam Hussein, the dictator, to step aside."²⁵⁷

The Kurds, believing they had the support of the international community, began a rebellion. The revolt was enormously popular, and many Kurds attributed their support to past persecution by the Iraqi government.²⁵⁸ Thus, the violation of their rights led many Kurds to support an armed rebellion that threatened the territorial integrity of the state of Iraq. Within days the Kurds controlled nearly every city in the north. Once the uprising began, however, the Bush Administration began to fear the disintegration of Iraq, and therefore distanced itself from the Kurdish rebels. Without international support, the uprising quickly collapsed.²⁵⁹

251. Max van der Stoel, *Report on the Situation of Human Rights in Iraq, A Study Prepared by the Special Rapporteur of the Commission on Human Rights*, UN Doc. E/CN.4/1994/58, para. 19 (1994).

252. *Id.*

253. *Id.*

254. *Id.* at para. 122.

255. *Id.* at para. 109.

256. *Id.* at para. 125.

257. N.Y. TIMES, Aug. 12, 1991 (statements by President Bush on Iraq's proposal for ending conflict).

258. See ERIC GOLDSTEIN, *ENDLESS TORMENT: THE 1991 UPRISING IN IRAQ AND ITS AFTERMATH* 30 (Andrew Whitley ed., Helsinki Watch 1992).

259. *Id.*

Iraqi forces killed thousands of unarmed civilians as they regained control of the Kurdish area, and the international community refused to intervene on the civilians' behalf. A U.S. soldier reported that "[Iraqi forces] fired at the hospital twice. We were watching them shell the train station and other small houses. This was simply designed to kill civilians or terrorize them, which it did. It did not have a military purpose, just artillery impacts on large concentrations of civilians."²⁶⁰ Thousands fled the Ba'ath persecution, reportedly over ten percent of the country's population. Iran received 1.4 million Iraqis, Turkey 450,000, Saudi Arabia and Kuwait together received 35,000, and smaller numbers went to Syria and Jordan.²⁶¹

In response to this massive flow of refugees, the U.N. Security Council passed Resolution 688 which criticized Iraq for creating a threat to international peace and security through its treatment of its citizens, and provided the basis for humanitarian relief efforts.²⁶² This resolution is unique. It declares that a state may be subject to intervention for the repression of its citizens if the repression causes a massive refugee problem and political instability in neighboring states.²⁶³ To provide aid and prevent a further refugee crisis, the Allies began flying humanitarian relief missions to aid the Kurds in northern Iraq. In June, the U.S. House of Representatives, recognizing that the repression of the Kurds continued, passed Resolution 299, which created a safe haven north of the 36th parallel in an attempt to induce Kurdish refugees to return to Iraq.²⁶⁴

The establishment of a Kurdish-controlled zone in northeast Iraq under some measure of Allied supervision has helped to deter Iraqi attacks, and temporarily place the Iraqi Kurds beyond the reach of the Ba'ath regime. However, many Kurds are convinced that if the international presence is removed, a major offensive to retake the Kurdish-held zone will be launched, which would undoubtedly prompt another Kurdish exodus.²⁶⁵

In May 1992, the Iraqi Kurds took advantage of their protected autonomy and held elections for a Kurdistan National Assembly and a leader of the Kurdistan Liberation Movement. The elections were organized by the Kurdistan Front, a coalition of eight Kurdish parties, without the approval of the Ba'ath regime and with almost no international support.²⁶⁶ The elections resulted in a tie between the KDP, led by Massoud Barzani, and the PUK, led by Jalal Talabani.²⁶⁷ The main issue distinguishing the two parties was whether to negotiate with Saddam Hussein, in hopes of winning autonomy within Iraq (KDP), or to refrain from negotiating with him and to seek instead a federal arrangement with a subsequent government in Baghdad (PUK).²⁶⁸ Each party

260. *Id.* at 40.

261. *Id.* at 9.

262. Resolution concerning the Iraqi Civilian Population, U.N. S.C. Res. 688, 30 I.L.M. 858 (1991).

263. *Id.*

264. H.R. Con. Res. 299, 102nd Cong., 2d Sess. (1992).

265. GOLDSTEIN, *supra* note 258, at 30.

266. *Id.*

267. *Id.*

268. *Id.*

gained fifty seats in the 105-seat National Assembly, and two leaders now govern together in a coalition format seeking a federated status within Iraq.²⁶⁹

Despite international protection, the Iraqi government is nevertheless continuing its siege on the Kurds on several fronts. Economically, the Kurdish region is suffering from a "double embargo": one imposed by the international community on Iraq on the basis of Security Council Resolution 661,²⁷⁰ and one imposed by the Iraqi government on the Kurdish region from which the government withdrew its administration in the autumn of 1991 after the uprising and creation of a safe haven.²⁷¹ The internal blockade on Kurdish areas imposed by the Iraqi regime, has had a disastrous effect on the region's economy.²⁷² Specifically, the Government has withdrawn its administrative services, including social security and welfare support, on the grounds that it was forced out by the foreign occupation, yet on the other hand it argues that it is justified in restricting economic flows to the region as a matter of sovereignty over the territory, thus leaving almost 4 million inhabitants in a most disadvantaged and precarious position.²⁷³ They are dependent on \$145 million in annual emergency aid through the United Nations, and their lives are secured by U.S., British and French planes that fly daily over the protected zone north of the 36th parallel to keep Iraqi troops at bay.²⁷⁴

The Kurds are being deprived of food and fuel in an attempt to collectively punish those in the region for the relative success of the 1991 uprising and undermine the locally elected government. For example, the food rations available to those in the region have been reduced to approximately seven to ten percent of need. In addition, continued armed attacks on agricultural fields and settlements have kept farmers from growing their own food.²⁷⁵ Other means of governmental sabotage include deadly attacks on humanitarian organizations providing food and medical assistance, planting bombs in relief convoys which explode upon reaching the Kurdish region, cutting the electricity supply, planting of land mines in non-combat zones to make large areas of Kurdish territory uninhabitable, and poisoning relief aid.²⁷⁶ "The dictatorial regime in Iraq does not hesitate over perpetuating the ugliest crimes against human rights in the Kurdish region."²⁷⁷ There is, as the Special Rapporteur described it, a "reign of terror" by the regime of Saddam Hussein against the people of Iraq.²⁷⁸

In summary, the position of the Iraqi Kurds is paradoxical: although they possess greater *de jure* rights than Kurds in any other state, the *de facto*

269. *Id.*

270. U.N. S.C. Res. 661, 29 I.L.M. 1325 (1990).

271. Max van der Stoel, *Report on the Situation of Human Rights in Iraq, A Study Prepared by the Special Rapporteur of the Commission on Human Rights*, U.N. Doc. A/48/600, paras. 69-79 (1993).

272. Thijs van Vlijmen et al., *Report of the Delegation of Dutch Parliamentarians to Iraqi Kurdistan*, Mar. 1993, at 6.

273. van der Stoel, *supra* note 271, at para. 69.

274. John Darnton, *In 'Kurdistan,' a Dream Takes Shape*, INT'L HERALD TRIB., Jan. 22-23 1994, at 1.

275. van der Stoel, *supra* note 271, at para. 74.

276. van der Stoel, *supra* note 271, at paras. 98-125.

277. *Iraqi PUK Leader Talabani in Kuwait; Interview on Opposition Policy* (BBC Summary of World Broadcasts, Mar. 12, 1993).

278. *UN Is Told of Iraqi 'Reign of Terror,'* INT'L HERALD TRIB., Mar. 1, 1994 at 2.

repression of these rights has been monumental. Genocide, the attempt to eradicate the group itself, constitutes the ultimate violation of group rights. As one scholar noted,

[d]espite the theoretical cultural autonomy which Iraq's three million Kurds enjoy, and which is unknown in neighboring Turkey or Iran, the massacres of Kurdish guerilla ... and civilians which followed the end of the Iran-Iraq war are perhaps a more significant indicator of Iraqi policies towards the Kurds.²⁷⁹

E. *The Kurds in Iran*

Kurdish relations with the government of Iran have generally been as contentious as their relations with the Turkish government, although this hostility has been expressed less brutally. The lack of brutality results in large part from the presence of other minorities in Iranian territory, which therefore makes the creation of a homogenous nation-state unrealistic.²⁸⁰

When Reza Khan gained power following World War I, his initial concern was ensuring the integrity of the state.²⁸¹ Because the state included various group within its territory, Reza Khan feared that if one group separated, other groups would follow and the state would disintegrate. Several groups engaged in separatist uprisings in the years following World War I, the most serious of which was the 1921 Kurdish revolt led by Chief Isma'il Shakkak Simko. This revolt, as well as others throughout Iran in the 1920s and 1930s, was successfully suppressed by the Iranian government.²⁸²

During World War II, both the British and the Soviets opposed Reza Khan because they feared he would transform his pro-German sympathies into a military alliance. Thus, they invaded Iran: the Soviets occupying northern Iran and the British occupying the south. A power vacuum developed in the Kurdish region between the two zones, and there the Kurds gained some autonomy over local affairs.²⁸³

At the time of their invasion, the Allies had promised to withdraw from Iran by March 1946. As the deadline approached, both the Kurds and Azerbaijanis attempted to take advantage of the power shift and form their own independent states. The Kurds established the Republic of Mahabad in December 1945, and within a few days the Kurdish Democratic Party (KDPI) formed a government under the leadership of Qasi Muhammad.²⁸⁴ Despite its small size, the Mahbad Republic was full of division which led to its demise within a year of its founding. In 1946, Iranian troops regained control of the region. Soon after Qasi Muhammad was executed and the expression of Kurdish identity was banned.²⁸⁵

Kurdish resistance went underground. It remained there until the 1958 rehabilitation of Barzani in Iraq. Barzani worked closely with the leadership of

279. HANNUM, *supra* note 15, at 194.

280. MCDOWALL, *supra* note 144, at 65.

281. *Id.* at 66.

282. *Id.*

283. *Id.* at 67.

284. *Id.*

285. *Id.* at 69.

the KDPI, which instigated the use of guerilla tactics against the Iranian regime. Soon, however, Barzani started receiving support from the Shah of Iran, and he terminated his cooperation with those Kurds operating inside of Iran. Without Barzani's support, the movement inside Iran collapsed and the Iranian army led a successful campaign against the Kurds in 1967-68.²⁸⁶ The Iranian government thus maintained the dual policy of supporting Kurds in Iraq but suppressing those in Iran. In response, the Iraqi government provided support for Iranian Kurds until the signing of the Algiers Agreement in 1975.²⁸⁷

The Islamic Revolution of 1979 presented the Kurds with an unprecedented opportunity to gain autonomy, as the state structure collapsed and no foreign power intervened. The KDPI became the predominant political force in Iranian Kurdistan, and through the KDPI the Kurds demanded autonomy.²⁸⁸ The revolutionary government that came to power, however, did not look favorably on Kurdish separatism. The foundation of its power was the unity of the Islamic community, a central tenet of its religious beliefs. Kurdish separatist demands were rejected and the government refused to acknowledge the Kurds as a minority. In fact, the only minorities recognized in the new constitution were religious minorities.²⁸⁹ In addition to its religious objections to the splintering of the Islamic community, the Khomeini regime also feared the domino effect of granting autonomy to the Kurds who were just one of several minorities. From early 1979 until the beginning of the Iran-Iraq war eighteen months later, Kurdish relations with the government involved successive hostilities and negotiations.²⁹⁰

In 1980, Iraq reneged on the Algiers Agreement and invaded Iran, allowing the first opportunity for Iranian and Iraqi Kurds to work in tandem for autonomy. Unfortunately, not only were the Kurds unable to coordinate their efforts, but they were also used as pawns by both governments. Kurds on both sides of the border experienced tremendous losses. Following the end of the war in 1988, the Kurds again entered into a series of hostilities and negotiations with the Khomeini regime. Presently the Kurdish region, unlike the rest of Iran, is effectively under military control, and violations of human rights are common. Prohibitions against cultural manifestations of the Kurdish identity have relaxed to some degree; for instance, it is no longer illegal to publish materials in the Kurdish language. Religious discrimination against Kurds, however, persists.²⁹¹

F. *The Kurds in Syria*

The Kurds form a small proportion of Syrian society, comprising only eight percent of the total population.²⁹² This population is concentrated along the Syrian-Turkish border. While some Kurds came to Syria following the collapse

286. *Id.* at 70.

287. *Id.* at 70-71.

288. *Id.* at 73.

289. *Id.* at 74.

290. *Id.*

291. *Id.* at 77-79.

292. *Id.* at 121.

of the Ottoman Empire, the majority were fleeing the increased Turkish repression of the 1920s.²⁹³

Initially, there was little tension in the relationship between Syrians and Kurds. Persecution of minorities was rare, and there was no vocal Kurdish desire for autonomy. This relationship changed in 1958, when Syria and Egypt established the United Arab Republic. The focus on Arab culture led to increased pressure on the Kurds. The Kurds protested by demanding a more democratic form of government and recognition as an ethnic group. Their government responded by increasing their oppression and harassment.²⁹⁴

The United Arab Republic fell in 1961, and a new regime came to power two years later with an anti-Kurdish policy. An "Arab Belt" plan was formulated, which involved the aggressive settlement of Arabs in Kurdish areas and the withdrawal of Syrian citizenship from 100,000 Kurds.²⁹⁵ Beginning in 1973, Syria's Kurdish policy reflected its policy toward Iran, Iraq, and Turkey. Syria cooperated to some degree with the Kurdish movement in Iraq, maintained a mildly positive stance toward Turkish Kurds, and after 1979 was hostile to Iranian Kurds.²⁹⁶ Regarding its own Kurds, persecution eased and the government officially renounced the "Arab Belt" plan in 1976. The Kurds are not, however, recognized as a separate ethnic group.

VI. STRATEGIC IMPLICATIONS FOR THE INTERNATIONAL COMMUNITY OF THE VIOLATION OF GROUP RIGHTS

The case study of the Kurds clearly illustrates that the violation of group rights often leads to violence. As one scholar noted in reference to the right of self-determination, "the violence we see around us is not generated by the drive for self-determination, but by its negation. The denial of self-determination, not its pursuit, is what leads to upheavals and conflicts."²⁹⁷ This sentiment is just as applicable to other minority rights as well.

Aside from moral concerns, the treatment of groups and their subsequent reactions, are of concern to the international community for both domestic and international reasons. Domestically, this issue affects nearly all states. Complete homogeneity in a state is the exception rather than the rule, and oppression of minority groups is not limited by either ideology or geography. It has been argued that one of the major causes of violence and political strife is the assertion by minority groups of rights to self-government and political autonomy and the repression by governments of such groups.²⁹⁸

The treatment of groups is important in the international context because of the role groups can play in the maintenance of international peace and security.

293. *Id.*

294. *Id.* at 122.

295. *Kurdistan: Information on the Area and People of Kurdistan*, Extracts from KURDISTAN TIMES (1992).

296. *Id.*

297. Nihal Jayawickrama, *The Right of Self-Determination*, in *The Report of the Martin Ennals Symposium on Self Determination at The University of Saskatchewan*, Mar. 3-6, 1993, at 3 (quoting Professor Rodolfo Stavenhagen).

298. Hurst Hannum, *From Independence to Statehood: Managing Ethnic Conflict in Five African and Asian States*, 18 N.Y.U. J. INT'L L. & POL. 1003 (1986) (book review).

One reason that governments' treatment of groups can have international ramifications is that a minority in one state is often a majority in another.²⁹⁹ Thus, group conflicts can easily embroil an entire region. It has been noted that "[m]inority tensions as they have in the past and as they will continue to be in the present will jeopardize international peace and stability which in today's world of evermore destructive weapons takes on a completely new dimension."³⁰⁰ An example of the political ramifications of these group conflicts was the stalled removal of Russian troops from the Baltic states to protect the treatment of ethnic Russians. Group conflicts also have international repercussions because of the refugee flows which often result, such as the flow of Rwandans out of their ethnically war-torn country.³⁰¹ Thus, the position of groups within states is of strategic importance to the entire international community.

VII. PROPOSALS FOR THE PROTECTION OF GROUP RIGHTS

A. *The Inadequacy of Current Mechanisms*

Current implementation procedures are incapable of providing the early-warning, preventive diplomacy necessary to control group hostilities. This is clearly illustrated by the case of the Kurds. The dominant pattern in the behavior of the states of Turkey, Syria, Iraq, and Iran in relation to the Kurds can be described as follows:

[i]n normal times a policy of assimilation, a forced integration and a policy of denying Kurdish identity. In times of conflicts a ruthless policy of destruction and near genocidal measures and methods; in times of strong Kurdish resistance, especially in times of weakness in the political foundations of those states, they cede some rights and some form of recognition.³⁰²

Nevertheless, the international community failed to address the Kurds' plight until both the portrayal of Saddam Hussein as a ruthless dictator, and the security threat caused by their mass exodus, made it politically expedient to do so.

Traditionally, states have limited the role of the international community to crisis management once group conflicts have escalated. The eruption of violent group conflicts around the globe has, however, awakened states to the need for crisis prevention. As U.N. Secretary-General Boutros Boutros-Ghali stated in his

299. The current tension between Greece and Albania concerning the Greek minority in Albania is just one example.

300. Andrysek, *supra* note 10, at 14.

301. For a discussion of how internal ethnic conflicts are internationalized, see Myron Weiner, *Peoples and States in a New Ethnic Order*, 13 *THIRD WORLD Q.* 317, 320-22 (1992). Weiner states that there are two primary ways in which ethnic conflicts are internationalized. The first is that groups with secessionist claims invariably seek support from outside the state in which they are located. This support may come from allies that are in diaspora: kinfolk that live across international boundaries; neighboring states whose governing class belongs to the same ethnic community; or states with whom there are no ethnic ties but who have an adversarial relationship with their own government. The second cause of an international effect is from refugee flows.

302. Statement by Kurdish Representative to the Unrepresented Nations and Peoples Organization (1991) (on file with the author).

Agenda for Peace, "[t]he time of absolute and exclusive sovereignty ... has passed; its theory was never matched by reality."³⁰³

The various mechanisms for implementation and enforcement of group rights within the United Nations, the CSCE,³⁰⁴ and the Council of Europe all include one inherent deficiency: they exclude the groups themselves from the processes which are meant to guarantee their rights. All of these mechanisms are limited to state actors, and although in certain circumstances individuals have standing, groups are uniformly excluded. The fear of giving minorities an internationally recognized presence has resulted in denying them access to the mechanisms meant to protect them. States are thus the only actors capable of initiating procedures to protect group rights. States are by nature, however, political bodies, and political factors weigh heavily in the decisions of states to criticize one another on their treatment of groups. This reliance on state initiation results in the inability of the international community to adequately address the concerns of groups. This in turn leads many groups to conclude that they must resort to violence in order to gain global attention and plead their cause.

To ensure the preservation of the current state system, a mechanism must be developed that alerts the international community and alleviates group tension before it escalates. In order to accomplish this goal, both parties to the conflict, groups and states, must have an opportunity to utilize the mechanisms.

B. The Need for Independence

The essential requirement for a new mechanism to effectively enforce group rights is independent administration. There are several reasons why independence from the state system is required. The first is that a state's primary concerns revolve around their political agenda, and thus the treatment of groups is often dependent on political expedience. This is aptly illustrated by the experience of the Kurds. As the current escalation of group conflicts across the globe indicates, states are not diligent in alerting the international community to domestic problems with their minority groups. The onus of protecting group rights should be removed from state control.

A related reason supporting independence from the state-based system is the need for expediency. Action must be initiated at the first indication of a crisis in order to adequately respond to the violation and prevent group conflicts. If included in a state-based system, there is great potential for states to obstruct action with which they disagree.

Another fundamental reason for independence is to ensure that states and groups receive equal treatment with the procedural mechanism. Organs within the state-based system are notoriously political, and even these organs, theoretically comprised of independent experts, have political aspects. Thus, even if a new organ is created with additional safeguards against political

303. Boutros-Ghali, *supra* note 1, at 9.

304. While the creation of the High Commissioner on National Minorities alleviated this deficiency somewhat in the CSCE system, the limits on the High Commissioner's mandate regarding sources of information and escalation of conflicts limits his/her effectiveness. See *supra* IV.B.

maneuvering, it is unlikely that groups will trust such an organ if it is administered within a renowned political institution. Only if groups trust the independence of the mechanism will they rely on it to address their grievances, therefore alleviating their need to resort to violence and contributing to the preservation of the state system as it currently exists.

C. *The Current "Window of Opportunity"*

Innovation in the protection of human rights requires the presence of two interrelated factors: normative standards and social forces committed to their implementation.³⁰⁵ As one scholar has postulated, the law should be used to create a normative framework which makes it easier for politicians to do what they have to do.³⁰⁶ The development of group rights thus far has resulted in the establishment of a firm normative basis. The presence of the second requirement, the commitment to implementation, is already evident in the movement away from a deferential view of sovereignty, both in relations among states and in the expansion of permissible areas of inquiry into the affairs of individual states. One example is the use of Security Council Resolution 688 as the legal basis for entry into Iraq to provide assistance and protection of the Kurdish refugees.³⁰⁷

The international community currently has an extraordinary opportunity to provide for the protection of group rights by creating an independently-administered mechanism, and by allowing minority groups access to such a mechanism. States' fears of giving groups international legal standing should no longer prevent the development of effective enforcement techniques, and as evident in the statements of the U.N. Secretary-General, even states recognize that the current system falls far short of what is required. Similar fears were voiced in regard to expanding the subject of international law to include individuals during the genesis of human rights law, and it took the horrors of World War II to provide the political impetus to provide international standing to individuals and the creation of mechanisms for their protection. A similar political impetus for the granting of international standing for groups has occurred in the wake of conflicts underway in Bosnia-Herzegovina, Rwanda, and elsewhere. The decline of the Cold War also removed an impediment to international cooperation.

D. *One Possibility: The Unrepresented Nations and Peoples Organization*

The conclusion seems clear that to effectively protect group rights, and thus prevent conflict, groups must be given access to a protective mechanism within the auspices of an independent, non-state-based organization. One such organization already exists: The Unrepresented Nations and Peoples Organization (UNPO). Before it was even three years old, this organization was nominated for one of the international community's greatest honors, the Nobel Peace Prize.

305. RICHARD FALK, HUMAN RIGHTS AND STATE SOVEREIGNTY 34 (1983).

306. Richard Falk, Statement at the Working Group on Indigenous Peoples, Proceedings of the Annual Meeting of the American Society of International Law (1993).

307. U.N. S.C. Res. 688, *supra* note 262.

Founded in February 1991, UNPO is an organization comprised of "nations" that do not have their own states, and thus are inadequately represented in the state-based system.³⁰⁸ The organization was created by the groups themselves to promote their aspirations through peaceful means. As its Covenant states, "the non-recognition of a majority of Nations and Peoples by intergovernmental organizations and the absence of meaningful venues for the expression and enforcement of their aspirations and rights often leads to violence."³⁰⁹ UNPO was therefore created to fill this void by providing an international forum for groups.

The term "unrepresented nations and peoples" covers a broad spectrum, including occupied countries and colonies, cultural or ethnic minorities, and in certain cases majorities, indigenous peoples and federated states. A nation or people is defined, for purposes of membership in UNPO, as "a group of human beings which possesses the will to be identified as a nation or people and to determine its common destiny as a nation or people."³¹⁰ Thus, the definition focuses on self-perception. This subjective criterion, however, must be based on an objectively ascertainable "common heritage" which binds the group. This common heritage "can be historical, racial, ethnic, linguistic, cultural, religious, or territorial."³¹¹ In addition, for purposes of membership, "a section of People constituting a minority, living on a portion of its ancestral territory, incorporated into a State other than a State representing that People" is included in the definition.³¹²

UNPO currently has forty-three members and four supporting states, representing over 130 million people, and applications for membership are received continuously.³¹³ In addition to meeting the definitional requirements of a people, those requesting membership must also establish that they are recognized by a substantial section of the people as their representative.³¹⁴ They must also pledge adherence to the principle of an equal right to self-determination of all nations and peoples, internationally accepted human rights standards, the principle of democracy, and rejection of totalitarianism and religious intolerance. Finally, "[i]n accordance with the fundamental objectives of UNPO, to create an effective alternative to violence in advancing the interests and aspirations of peoples," members must agree to use peaceful means to

308. Covenant of the Unrepresented Nations and Peoples Organization, Feb. 11, 1991 (available from UNPO General Secretariat, Javastraat 40A, 2585 AP, The Hague, The Netherlands) [hereinafter UNPO Covenant].

309. *Id.* at pmb1.

310. *Id.* at art. 6.

311. *Id.*

312. *Id.*

313. *Id.* See also UNPO Membership List. As of August 24, 1994, the UNPO has the following members: Abkhazia, Aborigines of Australia, Aceh/Sumatra, Albanians in Macedonia, Assyria, Batwa (Rwanda), Belau, Bougainville, Chechen Republic Ichkeria, Chittagong Hill Tracts, Circassians, Cordillera (Philippines), Chuvash, Crimea (Crimean Tatars), East Timor, East Turkestan, Gagauzia, Greek Minority in Albania, Hungarian Minority in Romania, Inkeri, Ingushetia, Iraqi Turkoman, Kahlui Hawaii, Karenni State, Komi, Kosova, Kurdistan (Iraq), Lakota Nation, Mapuche, Mari, Nagaland, Ogoni (Nigeria), Sanjak, Scania, Republic of South Moluccas, Maohi People of French Polynesia, Taiwan, Tatarstan, Tibet, Udmurt, West Papua, Sakha Republic (Yakutia), and Zanzibar. The four supporting members are: Armenia, Estonia, Georgia, and Latvia.

314. UNPO Covenant, *supra* note 308, arts. 6, 7.

achieve their goals.³¹⁵ Thus, a group is not excluded because it has used violence in the past as long as it is willing to forego violence in the future.

To achieve its purpose of promoting the views of its members before the need for violence arises, UNPO provides various services. It offers advice on legal issues and on the utilization of various mechanisms within the United Nations and other international organizations. UNPO created the Urgent Action Council (UAC) to effectively respond to violations. This emergency mechanism is comprised of an equal number of UNPO members and prominent individuals. The UAC's mandate provides for the performance of three interrelated functions: fact-finding, election monitoring, and mediation.³¹⁶ A request for action may be submitted by an UNPO Member, or another group sponsored by a member. UNPO's Steering Committee and General Assembly are also authorized to initiate an action.

The UAC is similar in principle to the Moscow Mechanism of the CSCE, although it has the distinct advantage of direct access to the groups involved. Through its contact with the groups, UNPO becomes apprised of the violations of their rights at an early stage. This allows the groups to gain international attention and diminishes the need to resort to violence. Access to the groups gives UNPO the information necessary to take an active stance in conflicts before they escalate, therefore providing an opportunity for effective conflict resolution and preventative diplomacy. It provides for the resolution of group conflicts and the preservation of the state-based system.

Currently, financial support for UNPO comes from governments, non-governmental organizations (NGOs), foundations, corporations, or individual donors. The international community should recognize the valuable role that an independent, non-political organization such as UNPO can play in the protection of group rights and the resolution of group conflicts. Without mechanisms such as the UAC, the resolution of group conflicts will be hampered by political maneuvering. The international community should provide the financial support necessary for the continuation of UNPO projects such as the UAC. One possibility would be to allocate a portion of the United Nations' budget for UNPO activities.

It is time for the international community to take an active role in preventing the violation of group rights and the escalation of group conflicts. Given the momentum created by demonstrations of unbridled group hostility in Bosnia-Herzegovina and Rwanda, and the recognition that current mechanisms are ineffective in enforcing group rights, it is an ideal opportunity to make the leap from normative goals to effective implementation. An organization such as UNPO provides a prototype for the kind of independent, non-political body which has the access to the groups involved which is necessary to protect their rights.

315. M.C. van Walt van Praag, *The Position of UNPO in the International Legal Order, in PEOPLES & MINORITIES IN INTERNATIONAL LAW* 313, 321 (Brölmann et al., eds., 1993).

316. UNPO Office of the General Secretary, *Draft Outline of the Structures and Procedures of the Urgent Action Council*, 2-3 (1992).

