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EXISTENCE AND RECOGNITION OF MINORITIES

(Working paper by Mr. José Bengoa)

EXISTENCE AND RECOGNITION OF MINORITIES

1.   Cultural diversity now appears as one of the major challenges of the forthcoming century. An increasingly intercommunicating world requires greater respect for the diversity of its inhabitants. People simultaneously enjoy globalized rights, as citizens of the world, and rights arising from the fact they belong to local communities, minorities or different social groups. At its annual session in 1998, the Working Group on Minorities began to discuss the thematic issue of the existence and recognition of minorities and Mr. José Bengoa, the Latin American member of the group, was asked to prepare a working paper.[1]

2.   It was stated in paragraph 44 of the 1998 report of the Working Group on Minorities that "observers representing minority groups raised many situations in which the existence and identity of the minority concerned were allegedly not adequately protected". A great deal of detailed information on the subject was given in the report at that session. In paragraph 45, it was stressed that "many cases of non-recognition of minorities had been brought to the attention of the Working Group. It was therefore essential to address the question of the recognition of the existence of a minority. There was a difference between the collective nature of the rights of persons belonging to minorities, in community with other members of their group, to profess and practise their own religion, speak their own language and enjoy their own culture as provided for in article 27 of the International Covenant on Civil and Political Rights, and the more individual nature of the rights contained in the Declaration. It was not sufficient for minorities to be 'allowed' to exercise their rights; they should also be able to 'assert' their rights". After that presentation, the Chairman of the Working Group, Mr. Eide, "argued that the existence of a minority must be determined by a set of objective and subjective facts which were independent of the recognition by the Government". And he added that it remained important "that States recognize minorities on their territory".[2]

3.   The debate about the existence and recognition of minorities is strategic. For some, that problem hinges on a fuller and more effective definition of the term minority. Others (and this is the view taken in this working paper) consider that the issue is extremely dynamic and changing and cannot be "contained" within a single definition. Yet others maintain that the existence of minorities depends on basically "objective" or "substantive" factors, or on a complex combination of "objective and subjective" factors, among which the minority's awareness of its own identity constitutes the key element. On the other hand, the debate about recognition is by no means simple either. Some point out that a minority cannot fully exist without recognition,

both by the society around it and by the State and its laws. Others suggest that there is a need for more effective mechanisms to ensure that minorities obtain recognition, both nationally and internationally. Lastly, a difficult issue under discussion is whether the recognition of minorities should apply to a social group with its own status or whether the recognition of rights should be granted exclusively to the individuals making up those minorities.

4.   Such distinctions are not purely academic, but have to be seen in clearly political terms. In view of the need for international peace and for the construction of a multicultural world where the rights of persons and peoples are fully exercised, the United Nations system has a duty to consider these issues freely and in-depth. The aim of this working paper is to continue the debate and to contribute a few preliminary ideas to this complex issue.

        1.   Introduction: the emergence of minority groups in the modern world

5.   The existence of minorities in today's world is one of the most complex and significant issues challenging the construction of a global society in the future and often even threatening world peace. Practically all the conflicts occurring nowadays in the world are related to the existence of minorities, to their demand for recognition and the exercise of their rights. From year to year, we also see new minority social groups appearing on the public scene, who are claiming special rights and recognition, both nationally and internationally. In 1997, the Minority Rights Group published the World Directory of Minorities in a voluminous 840-page tome. An index to the publication lists several thousands of minority groups. If a new edition is published in a few years time, no doubt the amount of information and the number of pages will have to increase still further. Minorities are one of the most explosive and dynamic social phenomena of the modern world.

6.   It would not seem possible, therefore, either to arrive at a conclusive definition of the concept of minority, or even less determine which minorities are in existence at present, or to establish a definitive list of minorities. Both in the United Nations system in general and in the Working Group on Minorities in particular, attempts at definition have constantly run up against the dynamic reality of social events. It seems that the contemporary world is being swept away in a growing flood of identities, which all maintain that they possess the necessary history, collective progress, traditions and motivations to be recognized as specific, individual, differentiated entities within the majority of society. In many parts of the world, the existence of minorities, especially indigenous or aboriginal minorities, gives rise to a certain fascination, so that quite a few people are keen to belong to one, claiming ancient lineages, names, memories

and nostalgia. Whatever definitions have attempted to circumscribe the phenomenon in a few lines have succumbed to this sociological and political reality, which is clear to the impartial observer.

7.   In this initial working paper, which should be seen as no more than a rough draft for discussion, we look at the problem of the existence of minorities from a dynamic point of view. We analyse the characteristics of the process in general terms, that is, seen from an international perspective, as a worldwide political phenomenon. We then conclude that any static approach to the minority phenomenon must be overtaken by events. Many people, including intellectuals, politicians and diplomats, are afraid of the proliferation of minority groups. In this paper, we analyse the trends occurring from a national and international perspective and we arrive at the conclusion that the strengthening of local identities is a corollary of the processes of globalization currently taking place in the world. Therefore, far from fearing the existence of minorities, we have an obligation to comprehend the phenomenon, to understand the processes and to seek peaceful ways of settling possible conflicts. It is likely that the societies of the future will have to live with complex internal and external diversity. The tasks of the Working Group on Minorities should be to provide a picture of this increasingly multicultural world arising before us, and to understand that the emergence of minorities is not a threat to world peace, but an opportunity for the cultural and social enrichment of globalization processes. We therefore take the view that diversity should be seen as a constructive factor and not as a threat to order, unity and authority.

8.   The emergence of new minority identities or the creative recovery of ancient cultural identities should not be confused with the occurrences of intolerance and xenophobia which are unfortunately reappearing in many parts of the world. There are individuals who make the exacerbation of racial, ethnic and religious differences and consequent intolerance into a life cause, often into a business and a goal concealing hidden interests and purposes. These people have been referred to as the "professionals of ethnic radicalism" or the "promoters of ethnic terrorism" or simply the "agents of racism" and we criticize them vigorously in this paper as such. The vision of a multicultural world is fundamentally opposed to attitudes of racial intolerance and the exacerbation of ethnic differences.[3]

9.   The question of the existence and recognition of minorities refers particularly to the civil and political rights of those social groups. Like any human group, minorities are entitled to exist

and to be recognized as such. Some highly complex processes are involved, however, which cannot be resolved in purely formal legal terms. One aim of this paper is to survey the various studies already made on this subject.[4] The intention is not to repeat the long list of contributions which have been produced in particular within the United Nations itself, but to consider issues arising from the current proliferation of minority groups in many parts of the world.

(a)   First generation minorities

10.   The present phenomenon of emerging minority groups is not the same as the case of national minorities, which led to the policy of "protecting minorities" so popular at the beginning of the twentieth century.[5] The break-up of the European empires before, during and after the First World War, together with the creation of new nationalities, brought the question of the protection of minorities to the forefront of international discussions at the time. The nations that were emerging, especially in Europe, were ethnically, religiously and in most cases linguistically diversified. They were communities of people constituted centuries ago and recognized on the basis of empirical evidence in their places of origin and settlement. The break-up of the empires of Central Europe chiefly led to the appearance of a mosaic of peoples, ethnic groups, local societies, minorities, etc., whatever the term used to describe them, all of which implied a complex problem to be resolved. It was not by accident that the concept of "Balkanization" became part of the international political vocabulary as a synonym of social dispersal, the break-up of larger political units and the division of States. One of the main issues dealt with by the League of Nations was the protection of minority groups emerging from these upheavals, which, although they had been occurring already in previous decades, really burgeoned in the first two decades of the twentieth century.[6] We could call this process the first generation minorities issue.[7]

11.   These first generation minorities cover a continuous spectrum ranging from ancient local communities with their own languages, religious practices and traditions, to national communities divided as a result of border shifts, and to pre-national societies, which for a long time were federated or simply subjected to the major multi-ethnic and multicultural empires of the end of the second half of the nineteenth century. The national issue was never finally resolved separately from the minority question. Towards the end of the First World War, what differentiated a minority from a nation was the political capacity to set up as an independent State. The absence of clarity on that issue, combined with the practical settlement of conflicts at

the time by the new powers and the international community, left a heavy legacy, which still today weighs on many of the more complex conflicts in the European, chiefly Central European area.[8]

12.   The first generation minorities are therefore defined chiefly in terms of objective or substantive features. They are social groups with obvious historical differences. The border shifts which occurred in the twentieth century led to a spread of the ethnic "mosaic". The international community understood that it had to "protect" these minorities, which were the product of the agreements reached by the major powers and which in many cases had been deliberately created by those agreements.

(b)   Second generation minorities

13.   The break-up of the colonial systems that followed the end of the Second World War constitutes a second landmark which has to be taken into account to understand the modern aspect of the minorities question. The colonial States had incorporated within them, in a subordinate and submissive condition, a variety of societies, minority groups and ethnically differentiated groups. Owing to the nature of the "decolonization" process, the colonial frontiers tended to be maintained, giving rise to national entities which in one way or another were a continuation of previously established divisions. The international system, and the United Nations in particular, supported decolonization on these terms, promoting the independence of the colonies but without querying the pre-established entities. Certainly, when colonial social entities and their frontiers came up for discussion, major conflicts often broke out, including wars, which in many cases are still being waged today.[9] We call this process the second generation minorities issue.

14.   In Latin America and in other countries with indigenous populations, whether in the minority or the majority, the process of colonial independence and the establishment of modern national States followed similar lines to those noted earlier. The emergence in the middle of the twentieth century of "popular national" States had the effect of "concealing" the existence of different social groups within societies. The population was seen in terms of a generic concept of a "people" in accordance with an undoubtedly praiseworthy aim of ensuring equality between all its members, regardless of their ethnic origins. The question of minorities, like the question of indigenous peoples, was viewed from this integrationist and assimilationist point of view for practically the whole of the twentieth century.

15.   For much of the twentieth century, the minorities issue was understood either in the version we may refer to as the "League of Nations" ("protection of minorities") or in the version which could be termed "United Nations" (i.e. related to the process of decolonization and the emergence of new nations previously subjected to a colonial power). The first version pointed to the international need to "protect" the minority groups which had been incorporated in national States constituted or reconstituted as part of the establishment of modern States. The second approach consisted in recognizing the rights of pre-national societies, that is, nations without a State. It was assumed that people who lived under the control of a colonial State, transposed to a remote region, possessed a national consciousness, and the legal capacity for independence and self-government, that is, the right to free determination. Very often these pre-national societies were a complex collection of ethnically differentiated societies, with different religious systems and following a different destiny. Their unity was derived from their ties with a common colonial entity. Many of the conflicts which arose at the end of the twentieth century and which moved and continue to move the conscience of the world originated in these political processes, which occurred in the second half of the century.

16.   The emergence of the minority question is a complex process, combining first generation minority situations, those related to the League of Nations, second generation minority situations, related to decolonization processes and the United Nations, and third generation situations, with the appearance of new and growing minority situations arising from the globalization process in the twenty-first century.

    2.   Political rights and economic, social and cultural rights

17.   Discrimination is a key aspect of the minorities issue. As has often been pointed out, when a minority is not in a state of dependence and subordination, it cannot be considered to be in a minority situation.[10] The minority issue appears to be inevitably bound up with a status of inferiority in relation to the majority. If that is not the case, then minorities find themselves in a situation of balance or equilibrium, which does not constitute an emerging social issue.

18.   The minorities issue includes both a political aspect and a social aspect. On the one hand, minorities demand recognition and rights, while on the other hand, a fact generally closely related with the former point, minorities suffer from discrimination, marginalization and poverty.

19.   Minorities often find themselves in situations of discrimination and disadvantage in relation to majorities. This leads several authors to assert that there is a link between poverty and minorities. In many parts of the world, minorities make up the poorest groups among the

poor. In view of this factor, which is not often recognized, it is easy to understand how the economic, social and cultural rights of minorities are harmed and violated in the absence of due recognition by the State. There is a close link between the conceptual political issues we consider in this paper and those related to economic, social and cultural development.

20.   The poverty to which many minority groups are reduced, particularly in the third world, also tends to strengthen and perpetuate their exclusion from global society. These groups see themselves as segregated from society and perceive the maintenance of their identities, traditions, lifestyles and culture as means of defending their chance of survival. The lack of economic integration also has the effect very often of exacerbating ethnic, racial and religious differences and xenophobia.

21.   The conflicts in Africa, Central Europe, Latin America and Asia involving minorities, which have occurred in the last decade, combine these two factors: political factors connected with the existence and recognition of minorities and economic and social factors, through which the minorities relate to the majorities. The relationship is a complex one and very often a problem which the press tends to interpret as being purely religious may conceal complex situations related to economic production, natural resources or land ownership. On other occasions, a situation interpreted simplistically in ethnic or racial terms hides a complex historical issue, in which colonial processes have played a key role.

22.   As a result, the question of minorities is situated at the focal point of many social issues of a historical nature, such as colonialism and the arbitrary occupation of territories by international powers in the past, the existence of national and international economic interests, the problems referred to earlier of poverty and extreme marginalization, and finally issues related to political rights, that is, to the existence and recognition of minorities. Adopting a simplistic attitude to these phenomena generally merely has the effect of raising the level of conflict, failing to perceive the causes of the processes and hence hampering progress towards peaceful solutions.

   3.   Globalization, national States and the question of minorities: the third generation mechanisms

23.   Globalization is one of the phenomena which - paradoxically - help to explain the recent aggravation, resurgence and reinterpretation of the question of minorities. These two features of the modern world and the new century are linked: on the one hand the expansion on a world scale of systems of production, distribution and consumption of goods, services and cultural

products, and on the other the need to give new meaning to local identities and to primary or primordial ties.[11] This would appear to be the key characteristic of the third generation minorities issue.

24.   This cultural aspect is reinforced by an increasingly significant demographic factor, which covers the displacement of populations, migration, the phenomenon of migrant workers, refugees and the many different processes causing persons belonging to one culture having to merge with different relations and identities.[12]

25.   Globalization is one of the features of the world that has emerged with the end of the Cold War. There are two aspects of globalization that go hand in hand: the appearance of communication technologies mainly by satellite allowing the creation of a worldwide communications system, and - closely related to those technological changes - the imposition of a capitalist market system in practically all countries of the world, the opening up of trade frontiers, the movement of capital, technologies, commodities and goods, and undoubtedly the circulation of persons, ideas and cultures, leading increasingly to the emergence of an economic, social and cultural system on a world scale.

26.   This process of globalization led in the decade of the nineties to a rate of growth of the capitalist economy rarely seen in modern economic history. Alongside clearly positive factors, which are welcomed by most people, situations of great vulnerability arise, which eventually threaten the system itself.[13] Many regions of the world remain marginalized as a result of the process and suffer its most harmful effects. Other sectors become integrated in a subordinate role, becoming sources of natural resources or providing cheap labour for the expansion of world capitalism. Others still, like in Asia, are shaken by multi-faceted financial crises, the causes of which are not immediately apparent. An enormous concentration of wealth takes place both internationally and nationally,[14] with serious consequences for the integration of societies.

27.   National States come under strong pressure to redefine their functions. With the advent of globalization, for some observers, they lose the sovereign power which they previously held over their territories and their populations. In economic terms, States become increasingly interdependent, and in the case of third world countries, dependent on what happens in the world market. Very often the most important policy decisions are taken outside their borders by either international agents or agents of other countries. The presence of major transnational corporations, and especially major financial conglomerates, has often removed decision-making from the national sphere and from State control. While in economic terms this situation is clear

to see, it is also increasingly apparent in the areas of cultural control, information, teaching and education, consumption standards, the goods used by people in their everyday lives, in other words, in all spheres of life. There has been a clear loss of sovereignty on the part of States and a greater globalization of the decisions affecting the world's population. The demonstrations that took place in the final days of the last century in Seattle, in the United States, on the occasion of the World Trade Conference will probably give rise to a new international debate in the new period of globalization that is just starting.

28.   The decline in State power affects the integration of citizens. It appears that the period of building "nation States", which began in the nineteenth century in Europe and was transmitted as a "model" to third world countries, especially in the twentieth century, has arrived at a turning point. Those nation States were based on the principle of a common citizenship for the whole population. All the inhabitants of the territory covered by the State were considered to be legally equal and full citizens before the law. State citizenship tended to override traditional and individual cultural ties in legal terms and very often in real terms. Regardless of religion, national tradition, linguistic or cultural ties, a country's inhabitants were related to the State as citizens. With few exceptions, State constitutions, following the European model, gave clear expression to this basic concept of how modern societies should be organized.

29.   Globalization, insofar as it is a multidimensional phenomenon, has raised doubts, at least in part, about this approach to social phenomena and in particular the integration of societies around the nation State. The inhabitants discover that the national dimension is just one amongst many that give rise to ties of allegiance. A connection with local, community or primordial identities emerges alongside the identities built up around nation States and the growing and increasingly strong transnational or globalized identities. With regard to this latter aspect, it is worth noting that young people, particularly those belonging to the new "urban tribes", in both the developed and the developing worlds, often share more cultural features with each other than with their parents or with earlier generations.

30.   In this new context of multiple cultural ties arising from globalization, the minorities issue appears in a fresh light. An individual may aspire to be a citizen of the country he was born in, enjoy the rights this nation State allows him, share globalized cultural and material benefits and exercise his rights as a part of the modern world, yet simultaneously claim ties with a minority, an indigenous people or a group sharing some specific cultural, ideological, sexual or

other features. This proliferation of attachments did not exist at a time when the system of the nation State led to greater uniformity of the population under the legal, cultural and national rules which the State endeavoured to impose. Differences and diversities, especially ethnic, remained hidden or unresolved, giving way before the political will to build the nation State.[15]

31.   The transformation of the State in the new context of globalization is a highly complex process. Many States are opposed to changing and reforming their structures in the new situation facing the world. In some parts, such as Africa, the effects of these processes have been devastating for what are very precarious and weak nation States, often built on highly complex and internally diversified social realities. This has led in more than one country to the complete destruction of the State, which is taken over after fractional and ethnic conflict by a particular group in society united by ties that pre-date the modern State and also pre-date the frontiers established in the processes of colonization and decolonization. In Latin America, some major countries which have borne the brunt of globalization have suffered profound State upheavals, which have obliged them to reconsider the very foundations of political cohabitation.[16]

32.   All these changes which occur differently in each region of the world have one element in common, which is the appearance of new ties for individuals. This has led to a redefinition of old community, local, minority, indigenous, linguistic, religious, national and other ties, alongside the new ties of a cultural, sexual, ideological and other nature. Migrant and displaced groups gather together into communities claiming common ties and identities <u>in situ</u>. The existence of minorities is a fact of human history. Since the times of the ancient empires, the issue has been on the political agenda, with majority societies and States on the one side and minority groups, dominated, accepted or not accepted by the majorities on the other. Many parts of the world have been highly complex cultural and ethnic mosaics. The important factor to remember in order to understand the phenomenon is that those old ties are not interpreted in the modern world as they used to be.

33.   The chief characteristic of the redefinition of minorities in the modern world is the acceptance of and search for multiple ties or identities. This reflects a combination of affirmations: the affirmation that one belongs to the minority group, the affirmation that one belongs to the nation State and the affirmation that one belongs to an increasingly globalized system.[17]

4.   Assimilationism and fundamentalism

34.   Until well into the twentieth century the problem of minorities was understood in terms of assimilation. According to that view, the solution to the problem of the existence of minorities in the short, medium or long term entailed the assimilation of the minority into the majority. Cultural merging or ethnic and social integration were the ultimate goal of most policies on the subject. For many States, ethnic and cultural diversity was seen as a weakness. It was considered either as entailing a latent danger of conflict or as a weakness in comparison with more homogeneous social systems. State policies on immigration and the treatment of minority groups were governed by the desire to merge all the different groups into the majority.[18] Assimilationist policies have, however, been confronted with a new reality that nullifies any act of political will namely the existence of an increasingly multicultural world.

35.   The old minorities redefine themselves in this new context in different ways. Some opt for a multicultural solution, that is, accepting multiple ties. A few certainly take a fundamentalist approach by affirming, sometimes hysterically, an identity they view as unique and immutable. The age of globalization also brings with it the danger of the resurgence of fundamentalism. These movements in general reject multiple ties and try to impose their "constructed" identity as the traditional and only one acceptable.[19] They generally reject the multirelational aspect of modernity and globalization, which we have defined as characteristic of the contemporary multicultural world.

36.   Assimilationism and fundamentalism are often related phenomena. The causes of fundamentalism are generally to be found in the implementation of tough assimilationist policies, whereby the State refuses to recognize the existence of minority groups within itself or simply prevents the build-up of a multicultural society. What is more, fundamentalism once started takes on a life of its own, spiralling into situations of widespread violence, as we have seen in several parts of the world.   By shutting itself up within its own immutable truths, fundamentalism breeds violence and an inability to find peaceful solutions to ethnic conflicts.

37.   There is also a link between globalization and the reaffirmation of the cultural identities of minorities and local cultures. When globalization is understood as assimilation, it becomes a threat to local communities. This is a situation that can be seen in many parts of the world, where there has recently been a radical opening up of trade, a total liberalization of employment and open access to natural resources, the unrestricted invasion by globalized cultural practices and generally speaking an expansion of the "global culture" in its most perverse, degrading and

destructive aspects. In such cases minority and local cultures usually react very strongly and often become movements for the reaffirmation of their identity or sources of cultural, religious or national fundamentalism.

38.   Highly assimilationist policies are gradually giving way in the face of reality. Globalization is a phenomenon that produces new identities and reshapes minorities in modern guise.

39.   In summary, the proper context for an analysis of the existence and recognition of minorities should be the present process of economic, political and cultural interconnection which has been going on in the world since the end of the Cold War and which we call "globalization". In this context it is possible to redefine old conflicts between majorities and minorities. It is also in this context that new minorities emerge, the products of globalization itself, or that minority groups that had remained quiescent for long periods rebuild their identities, like the indigenous peoples of Latin America and elsewhere or ethno-tribal groups in Africa. The constitution and reconstitution of minority groups entail positive aspects to the extent that the new social and cultural reality of the century that is beginning allows for the existence of multiple ties and varied identities in each society. The societies of the future will tend to be multicultural and there are many who see this blending of traditions as enriching society, as a major step towards a life of greater freedom and more varied social ties of allegiance. At the same time, globalization also affects groups adversely, especially the most vulnerable, often by creating threats to which there are varied reactions, among them that of fundamentalism. The new forms and expressions of xenophobia are also a reflection of the complexity of the phenomenon being experienced in today's increasingly globalized world.

     5.   The substantive aspect of minorities

40.   The term "minorities" designates a very diverse and motley range of human groups. According to the working definition drafted in the Sub-Commission on Prevention of Discrimination and Protection of Minorities, now called the Sub-Commission on the Promotion and Protection of Human Rights,[20] which has been gaining ground in international politics, a minority is primarily a "non-dominant" group in society and, secondly, one that possesses some distinguishing feature of an "ethnic, linguistic or religious" nature or pertaining to national origin, which differentiates it in one or several ways from the rest of the population, that is assumed to be in the majority or dominant. To study the existence of minorities, one needs to

take account of the complexity of the subject. The earliest definitions and descriptions, which we have called those of the "first generation", chiefly highlighted the substantive aspects of the existence of minorities.

41.   According to practical, working definitions, a minority is a demographically smaller segment of the population which has some distinctive feature. Traditionally this feature has been linguistic, religious or ethnic. In the first debates in the Sub-Commission, starting in 1950, it was suggested that what should define a minority should be a set of characteristics "markedly different" from those of the rest of the population. That was at the time an attempt to define minorities in a principally "objective" manner. In subsequent debates on the subject, the "substantive" argument grew weaker and a combination of objective and subjective factors gained ground.

42.   Among the factors which have always been taken into account in determining "marked differences", language and religion have without doubt been the most "objective".

43.   In many societies there are human groups that differentiate themselves from the rest of the population chiefly by the language they speak. In many parts of the world, the local dialect or language used every day in private and family life is a distinctive feature, which may be said to be objective. In many places, it does not give rise to any degree of overt discrimination, though in others it does. These groups are considered to be linguistic minorities. The right to speak one's own language is clearly established throughout virtually the whole world and, except in very special, objectionable cases, is not disputed. But the exercise of that right in schools, the principle of bilingual and intercultural education and the development in practice of these linguistic rights are another matter altogether.[21]

44.   The second objective factor is mainly centred on worship: a group whose collective religious conduct is different from that of the majority would be considered a religious minority and there is an international consensus to the effect that such groups have the right to practise their beliefs. The right to religious freedom, both individual and collective, is nowadays not in dispute, despite the fact that in many parts of the world it is contested in practice and violated.[22] In all the cases where religious freedom is curtailed or simply violated, political and factual arguments are put forward to explain the repression of a given cult or religious group. Generally such arguments point to the cult as being a danger to State security or a threat to the morals of

society or maintain that the banned practices are in conflict with local custom. The international community has a long tradition of upholding the freedom of religion and the rights of religious minorities are clearly established, though not always implemented.

45.   The third element, that of ethnicity, is much more awkward to handle. Except in extreme cases, it is often not easy to make ethnic differentiations between human groups, which may in addition have lived together for a long time and in some cases have a lengthy shared history. In anthropology, ethnic values come somewhere between purely racial and entirely cultural values, between the physical, genetic features of human populations and characteristics derived from cultural activity, history and the imaginative and constructive behaviour of human beings. Ethnic values, then, comprise a set of customs, traditions, cultural expressions and collective history that forms a network of links conferring a special identity on a particular human group. Usually those values are accompanied by a specific language and religion. Not infrequently there are also physical features, even if these are not merely racial. That is why this supposedly "objective" element is extremely variable and only workable when linked with subjective aspects.

46.   In many parts of the world ethnic differences are dealt with peacefully and there are traditional systems of coexistence among interrelated groups separated by different customs and traditions. The "re-ethnification" that can be observed in many places is a process whereby distinguishing traits are emphasized to the detriment of those that are shared. Although there are "objective" elements that can typify ethnic differences, most often this "objectivity" also requires a subjective process by which the new identity can be "constructed".

47.   The most important aspect of these working definitions is, therefore, the subjective aspect which gives rise to the existence of a minority. As Capotorti says, the group must show, even if only implicitly, a certain sense of solidarity with a view to preserving its culture, tradition, religion or language. This is what nowadays is referred to as the awareness of its own identity.

      6.   The subjective aspects of minorities

48.   Traditionally it has been accepted that the existence of a minority depends on a combination of one or more objective elements with one subjective element, namely the members' awareness of belonging to a minority. However, the subjective aspect is increasingly seen as complex and independent. The existence of a minority is not "static", since it always depends on the will of its members, on their will to continue to form a group distinct from the

majority, and on their capacity to recreate their own identity. There are many minorities where the so-called "objective" aspects are insignificant and where subjective aspects, such as the awareness of belonging, are the determining factors.

49.   The awareness of belonging derives fundamentally from the type of relationship that the human group established historically or aims to establish in the present and future with the rest of society. Its view of "the others" and the view that "the others" have of it are crucial for the minority's awareness of itself. The fact that there may have been discrimination or persecution at some time in ancient or recent history will undoubtedly be crucial, regardless of the distinctive features of the different communities.

50.   This means that the existence of minorities depends almost entirely on the minorities themselves and the relations they have established with the majority or with other groups of the population. There may be groups of people with many "objective" characteristics which, because they had no desire to preserve their minority status, have been integrated or even assimilated into the majority without any problem. That is the case with many European migrant populations in both North and South America, which differ nowadays only in minor aspects from the local population and obviously suffer no sort of discrimination.[23] On the other hand there are groups with very few distinct "objective" traits, indigenous groups for example that are indistinguishable from the peasant population among whom they live, but that are highly conscious of forming a distinct group.

51.   This mainly subjective aspect of the definition of minorities and their existence sheds light on the dynamic of minorities. The disappearance, affirmation, constitution or reorganization of a minority is always a sociocultural process: a process by which a group of people differentiates itself from the rest, maintains and perpetuates that difference and gives it cultural, organizational and political expression.

52.   In order to exist, minorities must constantly redefine their relations. If they do not do so, they cease to exist and become assimilated. They may retain distinctive features, the so-called "objective" traits, but they lose their awareness of otherness, of separateness and difference. That is why we consider that the existence of modern minorities depends on the presence of intellectuals, cultural leaders, creative people and artists, whose main purpose is to continue redefining the characteristics of the group in accordance with the relations it has and the situations it meets with. Cultural redefinition is an essential activity of minorities.

53.   On the other hand, human groups can reconstruct lost or partially lost ties. This is the process of ethnogenesis, which is occurring in many parts of the world nowadays and which amazes observers. The forceful presence of the nation State, for example, had transformed many ethnic, indigenous or other minority groups into ordinary, common citizens. In many cases they had lost their language and even their ancient customs had been forgotten or been reduced to mere folklore. It is a surprising fact, of which there are countless examples, that when such groups reconstitute themselves, they reinterpret their past and recreate the distinctive features that make them a minority group. Often to the surprise of the political authorities and the rest of the citizenry, they gather their members and proclaim themselves different from the rest of the population.[24]

54.   The processes of ethnogenesis today challenge our understanding of the phenomenon of the existence of minorities.[25] This is true of the relationship between assimilated or apparently assimilated populations and the processes of ethnogenesis. There has been much discussion as to whether "voluntary assimilation" is a valid concept or whether there is not invariably an element of "forced assimilation". It may be pointed out that very many groups of Europeans who emigrated to America became assimilated voluntarily into the new social and cultural environment, to which they had come precisely in order to escape discrimination. The idea of "making America" and "the New World" was doubtless so potent that it caused them to leave the "motherland" behind as a mere nostalgic memory. A case-by-case study would be needed to see whether voluntary assimilation is possible in situations where there is discrimination. And great care should be taken with cases where the relationship of power and dependency has been extreme and assimilation has taken place under compulsion, with a prohibition on the teaching of the language, obstacles to worship, etc. Such cases give rise, we believe, to concealment, resistance and clandestinity or, simply, with the passage of time, to the process of syncretism, but not to loss and simple acceptance of the new culture.[26]

55.   In the last decade, as new identities have emerged, cultures that seemed totally destroyed, lost and assimilated have appeared miraculously reborn. Of course, the new culture is the result of cultural recreation, often based on single surviving elements or simply recreating what is thought to have been the ancient culture. These processes of cultural appropriation are what are known as processes of ethnogenesis.

7. Territory, race, indigenous peoples and minorities

56. The concept of "minorities" is extremely diversified. It ranges from minorities with clearly "objective" traits, which are therefore easily recognizable by the majorities among whom they live, to minorities that have appeared recently or have recently reconstituted themselves (by ethnogenesis) and are much less readily recognized by the rest of the population. National minorities or minorities of migrants, refugees or displaced persons of whatever type are usually resisted by the majority, which attacks them as strange or foreign and does not accept them as a minority part of society.

57. It seems that a great distinction is made between those minorities that have had or still have stable territorial settlements and those that do not. Groups that have a sense of belonging to a "motherland", the land of their ancestors, stand out clearly from minorities or groups of a minority type that have no such sense.

58. This territorial consciousness is a spacial determinant of the group's culture. Traditions and customs are related to the nature of the territory: for example, whether the climate is cold or warm influences the type of meals that are prepared and the rites and ceremonies practised. Language itself is adapted to a particular physical context which governs and defines it and is often what gives it its meaning.

59. Minorities that possess or have possessed a territory have characteristics that give them a greater degree of "objectivity" in the eyes of the majority population, especially when they are "aboriginal", that is, the first inhabitants of the area. In such cases, while the size of the group is a factor, the distinction between "minority" and "nation" is merely a matter of history, of the relations between the State and the minority, of political power, negotiating capacity or the will to achieve self-determination.

60. These are the cases where in recent decades situations of relative autonomy have emerged, with growing participation in local government and specifications regarding other regions or different territories occupied by other minorities or directly by the country's majority population. A substantive aspect applies when such minorities share the territory, either in a major or in a minor role, whereupon their relations tend to become more complex, as do the solutions to their problems.

61. Minorities that do not possess an ancestral territory or that are simply not settled homogeneously within a given physical area derive their unity from characteristics that clearly distinguish them, as for example their religion, their language or the national origin of their

members. There are no doubt some minorities, like the Roma, which, without possessing a territory, can claim a set of distinctive features, such as language, traditions or customs, though not always necessarily religion, which give them a very marked "objective" character, like their sense of belonging. Here the range extends from minority groups such as those described earlier, that have a developed sense of belonging and of being separate from the rest of the population with which they coexist, to minority groups that are only very partially differentiated from the mass of the population.

62.   So far it has been a question of what we have called first-generation minorities, which in general have served and serve as models for the study of minorities. In recent decades, however, particularly in the third world, this approach has failed to take account of all the events and processes that are occurring there. A less Eurocentric view of the minority phenomenon is needed to embrace the complex processes that are taking place in Africa, Latin America and Asia.

63.   Race appears with increasing force as a constituent element of minorities that has not always been included in the definitions. The "Balkan" model for an understanding of minorities cannot include this dimension for the simple reason that most of the minorities there are not racially different from one another. The term "ethnic minorities" usually covers various elements linked to the culture and to the physical, racial characteristics of the persons concerned. However, the many processes such as the slave-trade, colonization, workforce transfers, forced migrations and later economic and political migrations, or the displacement of refugees, which have taken on such large-scale proportions in the world, have given rise to racially differentiated groups within societies. So it is not simply a matter of modern societies being multicultural; they are often multiracial as well. Is the element of race sufficient, then, to constitute a minority? Is it a kind of reverse racism to take racial identity as the primary feature of a minority? What is sure is that in many cases it is the factor that produces the consciousness of "otherness", of difference.

64.   The appearance of new forms of xenophobia in many countries of the world has brought this aspect back to the fore. The civil rights struggle begun in many parts of the world, especially the Anglo-Saxon countries, in the 1960s had racial integration as its aim. It was held that all the inhabitants of a country have the same rights and duties and that there is no reason to discriminate by skin colour. The struggle against the apartheid regime (in South Africa chiefly but also in other parts of the world where, under a different name, the same methods were used

with the same consequences) was aimed at building an egalitarian, multicultural and multiracial society. Those who defended civil rights intended not to set themselves up as a group distinct from the rest of society, but to abolish the differentiation that was seen as mere discrimination and segregation.

65.   It would seem that this attitude is changing. Minority groupings based on ethnic or ethno-racial differences now seek not mere equality with the majority population, but equality plus difference. They seek in the group and its identity the strength to make that equality real. The emergence of Afro-American groups, in North and South America, is something new insofar as their demands and aspirations are concerned. The Chinese minorities in Asia, America and other parts of the world are also an expression of new and complex forms of cultural relations.[27] These are new problems which arise in third-generation minority issues.

66.   There is also a subtle continuum between minority groups and indigenous peoples. Especially in view of the complexity of the concept of ethnic minorities which we have highlighted, it must be agreed that indigenous peoples constitute at the least a special type of ethnic minority.

67.   According to the working definition of indigenous peoples given by Special Rapporteur Martinez Cobo in his report to the then Sub-Commission on Prevention of Discrimination and Protection of Minorities, which led to the creation of the Working Group on Indigenous Populations, these are peoples that are native to the place in which they live but have lost their independent character as a result of colonial invasion. He added that such colonization usually originates from overseas, citing the European colonization of America and Oceania. In this way that author reduced the existence of indigenous peoples or populations to areas of colonization where precolonial societies, such as the pre-Hispanic, were decimated or destroyed. It excluded communities that were dominated by neighbouring groups but were not radically destroyed or where the ethnocultural superimposition was not so absolute.[28]

68.   However, it is not easy to distinguish between a group that calls itself an "indigenous people" and a group or minority that recognizes itself as being native to a given territory and that invokes that characteristic in order to obtain its rights. That is a matter open to debate. Doubtless, the existence of two working groups in the United Nations, and the possible strengthening of both, may resolve the question in terms of formal policy. But it is not possible to define precise limits in a situation marked by the interplay of relations that have been built up over time.

8.   The new minorities: migrations, displaced persons, refugees and migrant
        workers

69.   One of the principal aspects of the question of minorities today is the high level of
socio-cultural value attached to membership of a minority. For reasons which are outside the
scope of this working document, but which have been analysed in academic studies,
contemporary, globalized society attaches a high value to diversity. Unlike a State, civil society
sees a source of social riches in diversity of identities. In every continent the young are leading
the way in this regard. They perceive that possession of something more than ordinary
citizenship of society offers a different quality of outlook on life and on the relationships which
come into being. It is no coincidence that in the greater part of the continents young people are
enthusiastically taking up causes relating to minors, indigenous peoples, urban tribes, sexual
minorities, groups of conscientious objectors and other identity-strengthening structures; among
these, there is no lack of esoteric or similar bodies.

70.   We are looking here at a change at the cultural level, set off by the crisis of nation States
as sources of cultural hegemony, formal ties and homogenization. The major movements of the
twentieth century unquestionably sought to produce those mass mega-identities, the most
outstanding expressions of which have been National Socialism, third-world nationalisms,
populisms and the different variants of Marxist socialism. Little by little, the change of
mentality has been gaining ground, and trends during the last 10 years indicate that cultural
dispersal, support for diversity of cultures and the search for new identities are becoming
characteristic features of the world today. Although there is an awareness that on the cultural
and social planes reality is as described here, there is not the same awareness of the implications
of these changes with regard to political systems, the rights of minorities and the construction of
multicultural societies.

(a)   Citizens and non-citizens

71.   Historical minorities generally enjoy a continued and relatively stable existence. There
are some minority groups which have a long history of conflict with the majority societies with
which they have had to co-exist. This is the history of Central Europe and many other parts of
the world. However, there are also "new minorities", that is, minority groups which have
gradually constituted themselves as such during a relatively recent period. It would seem that
the "minority dynamic" has gained momentum in recent years and may well accelerate in the
near future.

72.   The most commonly used definitions of minorities can be divided into two groups. First, there are those according to which minorities are exclusively citizens of the country but in a minority situation; and secondly, there are those which assert that citizenship is not a prerequisite for the constitution of a minority in a given country.[29]

73.   The difference is of considerable significance. The principal cause of the emergence of minorities today is the major population movements currently taking place. These movements can be divided into two groups: enforced and voluntary.

74.   The first group is made up of enforced migrations, displacements caused by wars, persecutions which give rise to the setting up of refugee camps and, generally speaking, all the types of situations which are well known in the world of today; nobody can predict whether migrations of this type will stop or, conversely, increase in future years. In most cases the reversal of the situations which gave rise to the enforced displacements does not offer the populations concerned adequate grounds for returning to their places of origin; they have established themselves in a new host territory and are not prepared to return to their earlier allegiances, with the risks attendant on such a return. New groups of individuals, different from the majority groups in the country concerned, emerge, and interethnic and intercultural conflicts frequently erupt.

75.   Economic migrations, which are generally voluntary inasmuch as decisions to migrate are taken by the individuals or the families concerned, constitute another of the large-scale sources of new minorities in the world today. The pressure on the populations of underdeveloped areas to seek residence in developed areas is a consequence of the unequal globalization which was analysed earlier. As the years pass by, the huge populations of "migrant workers" become workers within the host country, ordinary immigrants and, eventually, citizens. Depending on the legislation in force, at least the children born in the host country are granted citizenship, except where the law stipulates that nationality is only granted to persons who previously enjoyed it. In the course of time stable colonies of "foreigners" form; they are often discriminated against and are now beginning to demand special treatment as if they constituted an established national minority. The first demand is often for multilingual and multicultural schools. This is a first step towards a cultural reflowering in the form of a "diaspora" culture, which frequently produces works containing strong expressions of identity. It has not been easy

to establish a line of instruction between themes, relating respectively to "migrant workers" and "national minorities"; but unquestionably this subject will increase in importance during the coming years and decades.

(b)   Reinvention and cultural creation: the creation of new identities

76.   The reinvention of identities is one of the most visible of contemporary phenomena and is of major social and political interest. The globalization of communications entails the reinvention of cultures.

77.   Most of the old minorities (including in this group indigenous peoples) maintained their cultural roots in a situation of isolation and marginality, as a consequence of segregation and discrimination. These cultures were absorbed in themselves, inward-looking, repeating their ceremonies without a watching public, and speaking their languages without either hindrance or interest on the part of the major languages and universities. The three concepts of discrimination, segregation and isolation were closely linked, until the process of large-scale globalization began in recent decades. With the opening up of communications, isolated cultures had to define themselves openly in relation to others, in response to visits, television channels, anthropologists and above all, in recent years, tourists interested in cultural tourism. These minority cultures were not prepared for self-presentation in front of foreigners. They did not reflect overmuch on their own tasks and problems. A need suddenly developed for articulate leaders who were able to explain to persons of other cultures what the community was doing. The term used to describe them was "performance cultures", a name emerging in particular from studies on the impact of tourism on minority and isolated indigenous cultures.

78.   A substantial restoration of the minority culture occurs, creating an obvious need to explain it to outsiders, who, in good faith and often with the intention of cooperating with and supporting the minority cause, ask for explanations. The differentiating cultural traits - which may be very few in number - have to be highlighted and explained. In that process of cultural transcription, identities change and certainly become modernized. Video, film and music are often used as modern elements for the reconstruction of an identity. In those processes new cultural identities develop, and the old minority cultures are re-examined in the light of present-day globalized modernity. This phenomenon of cultural reinvention is of the utmost importance and demonstrates that the question of minorities is not a matter for the past but a central aspect of globalization.[30]

9.   Recognition and self-determination

79.   As stated earlier, the existence of minorities in the world of today is invariably a process of reformulation of identities on the basis of objective and substantive situations or specific historical circumstances. The subjective aspect is thus fundamental to the existence of minorities, particularly the third-generation minorities under discussion here.

80.   From this standpoint existence goes together with recognition. The existence of a minority which is not recognized by the majority or by some other entity is almost unthinkable. Worldwide globalization and increasingly comprehensive intercommunication is leading to a situation where the process of recognition is now of considerable importance for the very existence of a minority.[31] Non-recognition, for example, in response to an attempt to recover an identity, to reunite the members of a minority or to constitute a minority in any way will lead to a worsening of the conflictual relationships between a group of humans which proclaims itself to be different and the majority, often represented by the State, which refuses to recognize it as such. In contrast, legal recognition, and the recognition of related rights generally allow the establishment of peaceful relations and less conflictual subjective ties.

81.   Recognition of a minority is a process comprising degrees and features which differ according to the nature of the majority society. Mention may be made of a number of levels of recognition.

(a)   Recognition by the majority of the minority's cultural traditions. In such cases the practices and customs of minorities enjoy an adequate level of acceptance by the majority; the use of the language is accepted as part of social custom, as well as religious customs. Relations of this type between majorities and minorities are often seen as a natural feature of society. In some cases the State allows teaching of the minority language and traditions in schools together with the official language. Frequently, however, there is no very detailed legislation, since custom has established in practice a multicultural and multiethnic society. Relations of this kind are found in many countries. It must be pointed out that the prevalence of this situation of peaceful and multiethnic coexistence shows that the problem of minorities is rather an opportunity for diversity than a threat to national unity.[32]

(b)   Legal recognition at national level. In many States relations between minorities and majorities are governed by legislation. In a significant number of countries that reality is recognized in the constitution in the form of recognition of the multiethnic, multilinguistic and even multinational character of the State. The legislation on minorities takes a great variety of

forms, and the communications of States to the first four sessions of the Working Group on Minorities illustrated the quality and value of much of that legislation. During the last few years minority rights recognized in the constitutions in independent States have progressively been brought into line with international standards. There are two instruments which in our view have had the greatest impact at national level, namely the European Framework Convention for the Protection of National Minorities and the United Nations Declaration of 1992 on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.[33]

(c)   Recognition of autonomous forms of governments for minorities. In some countries the State has granted minorities systems of self-government in line either with their traditions or with negotiated agreements. During the last few years the "autonomous status" approach has been explored as a practical method of finding peaceful solutions to conflicts between majorities and minorities. The question of autonomy has been explored mainly in connection with indigenous peoples, but is also starting to be discussed in connection with minorities. Another approach, recently discussed in some parts of the world, is that of "federalism" as a means of finding constructive solutions in the context of the structure of the State.[34]

(d)   The question of non-recognition is a subject on which there are no national or international instruments; nor is there any satisfactory case-law. In some cases the de facto existence of a minority is admitted, but that admission does not imply de jure recognition. If an independent State does not accept the existence of a minority group, there is no machinery for settling the dispute at international level, even though sectors of the international community, the press and the general public recognize that the group in question should enjoy explicit and legal recognition. This is a major lacuna both in international legislation and in conflict-resolution mechanisms.

(e)   The national question and self-determination. The distinction between ethnic group and nation, which arose and was accepted for several decades during the twentieth century, was based on the premise that the ethnic character of a minority social group did not imply the right to self-determination. In contrast, national character conveyed the idea of the construction of a system of self-government and, in the long term, of a State. The right of peoples to self-determination was affirmed in the United Nations Charter and in all instruments of international law. The extent of that right might be open to discussion, but not the right itself, which was considered an inherent right of any people. On the basis of those considerations of a

theoretical, political and juridical character, the United Nations system built up decolonization machinery, which consisted of a search for suitable peaceful methods of enabling peoples and nations that were not yet independent to exercise their right of self-determination. The committee in charge functioned for several decades and conducted decolonization processes, mainly in Africa but also in other parts of the world, which were certainly highly successful. Year after year the names of new countries emerging thanks to the decolonization process were added to the list of members of the United Nations General Assembly. In recent years the line of demarcation between groups which have declared themselves national and other groups, referred to as ethnic groups, which are not entitled to self-determination has become blurred to such an extent that it is difficult to distinguish clearly between the two. The distinction between an ethnic or national minority and a nation for a group of humans wishing to create a nation is certainly highly complex. Theoretical, academic and political debate on the subject has been even further complicated by international political events, in particular in the Balkans, during the 1990s. The United Nations system and the principal world powers have helped to give validity to the processes of ethnogenesis, as, for example, in the case of the "Albano-Kosovar" province of the former Yugoslavia. The construction of Kosovo as an autonomous - one might say protonational - entity is yet another event which brings into question or further complicates the distinction between a national minority and planned nationhood. There are many situations in the world in respect of which the same rights as those asserted in the conflicts referred to could be applicable. What is the fine point which permits separation of the question of minorities from the national question? Further progress towards an understanding of these phenomena in theoretical, political and juridical terms would seem an absolute necessity to safeguard world peace.

> 10.   Recognition and rights: a challenge for the international community

82.   The first step towards securing the rights of a minority group is to obtain its recognition. Recognition by the State in which the minority finds itself, is living or has lived historically is a political matter of fundamental importance. Non-recognition is consequently a form of aggression which generally leads to violence. The unrecognized group or minority will decide to commit acts of violence to make itself "known", at least to the press and among the general public, and frequently to make itself "feared" by the population. As has often been said, one knows how ethnic conflicts start, but one never knows how they end. A spiral of irrationality generally develops in conflicts in which the "primordial bonds" of human coexistence are

brought into question. Failure to take preventive measures and to adopt policies of rapprochement, dialogue and "early warning" often leads to situations in which ultimately there are neither winners nor losers.

83.   The search for peaceful and constructive mechanisms for the solution of the problems of minorities - which is the central task of the United Nations Working Group on Minorities - requires taking a bold look at what is actually happening in this sphere of international politics. As is affirmed in this working paper, minorities constitute a volatile reality. Minorities of the first, second and third generations need political and legal instruments better suited to the settlement of conflicts and based on more sophisticated analysis. There are at present no international instruments, arbitration mechanisms or laws with regard to the recognition of minorities that can restrain ethnic conflicts. This is one of the pending tasks and a goal which the United Nations system will inevitably have to address. That is the conclusion which we have reached and the only recommendation which we can formulate in this preliminary document.

Santiago de Chile, March 2000

<div align="center">Notes</div>

[1] The paper was to have been issued as E/CN.4/Sub.2/AC.5/1999/WP.7. For various reasons it was postponed until 2000.

[2] Document E/CN.4/Sub.2/1998, paras. 44-46.

[3] The case of the Thousand Hills radio station in Rwanda and its racist and ethnocide campaign has been extensively analysed by the Sub-Committee and condemned by several speakers.

[4] This work follows a broad range of studies carried out within the United Nations system on the subject of minorities. One contribution the document may claim is perhaps its time frame, that is, it takes up the subject of minorities after the start of the twenty-first century. See: Francesco Capotorti. Study on the rights of persons belonging to ethnic, religious and linguistic minorities. United Nations. New York. 1991. Asbjørn Eide. New approaches to minority protection. Minority Rights Group International. 1993. Reprinted 1995. Isse Omanga Bokatola. The United Nations Organization and the protection of minorities. Brussels. 1992. Definition and classification of minorities (memorandum submitted by the Secretary-General). United Nations. 1950. Patrick Thornberry. The UN declaration on the rights of persons belonging to national or ethnic, religious and linguistic minorities: background, analysis and observations. Minority Rights Group. 1993. Gudmundur Alfredsson, Goran Melander and Per Erik Nilsson. A compilation of Minority Rights standards.

Raoul Wallenberg Institute of Human Rights and Humanitarian Law. Lund 1993; and the aforementioned <u>World Directory of Minorities,</u> edited by Minority Rights Group International. London. 1997.

[5] The concept of "national minorities" has already been discussed in the Working Group on Minorities. It was suggested that "a national minority was a minority in one country but which formed the majority in the mother country". It was added that "a national minority might mean a particular group which had always been part of a nation but, owing to changing borders, had found themselves in a minority situation. Such national minorities were present in Europe, Africa and Asia where borders had been redrawn either as a result of peace treaties or of colonialism". An account of the discussion is given in the Report of the Working Group on Minorities at its 1999 session (para. 19).

[6] We feel these distinctions must be drawn if we are to understand the various origins of minority conflicts. In this case we shall see that there were conflicts which appeared in the last decades of the nineteenth century, exploded in the period of the First World War and then became in a way "frozen" during many decades of the twentieth century. In the decade of the 1990s, they re-emerged as "unfinished" political situations. One such case is Northern Ireland, pointed out by the English historian Eric Hobsbawm in his lectures at Belfast University. The Irish rebellions in the first decades of the century and the separation agreements between the Republic of Ireland and Northern Ireland constituted, for that famous historian, a typical case of a "pending matter". The case of the Balkans could be interpreted in the same way, as well as other situations in the world. Once the Cold War was over, the reasons disappeared which had kept the minority political situation and the relationships between culturally different groups and national, religious and ethnic minorities and majorities in "hibernation". See: Eric Hobsbawm. <u>Nations and Nationalism Since 1980</u>. Cambridge University Press. Cambridge. 1990. London.

[7] The Capotorti study refers basically to this type of minority, which we could call traditional. The author finds that the work of the League of Nations is of considerable legal significance in the debate about the rights of minorities, mainly in Europe. Francesco Capotorti. <u>Study on the rights of persons belonging to ethnic, religious and linguistic minorities</u>. United Nations. New York. 1991.

[8] The problems of the former Yugoslavia often originate in this way, like the Kurd question and problems in other regions, where the same situations did not meet with the same solutions.

[9] These historic causes lie at the root of many of the national conflicts in Africa and especially in Asia, for instance, between India and Pakistan. As in the previous footnote, it is very useful to take a historical perspective in order to understand the nature of the minorities issue, recognizing that there are conflicts that originate in earlier historical circumstances.

[10] All the United Nations studies considered cases of "majorities in a minority situation" and "minorities in a position of power". The case of South Africa, where the "White European" minority dominated the "Black African majority" was extensively analysed in that respect.

[11] According to "primordialism", a notion developed by the American anthropologist Clifford Geertz, there are "primordial ties" linking human societies, which at times may be hidden or dormant, but at other times take on different meanings. See Glifford Geertz, Local knowledge. Further essays in interpretative anthropology. Basic Books, New York, 1994. For this part of the paper, we refer the reader to the following books, which we found very useful. John Hutchinson and Anthony Smith, Ethnicity. Oxford Readers, Oxford University Press, 1997. Etienne Balibar et Immanuelle Wallerstein, Race, nation et classe. Editions Découverte, Paris, 1995. Michael Banton, "Modelling Ethnic and National Relations" in: Ethnic and National Studies, No. 17, Vol. 1. Routledge, London. 1994. Eric Hobsbawm. Nations and Nationalism since 1780. Cambridge University Press, Cambridge. 1990. London. 1994. We have referred in particular to the theories of Alberto Melucci, Nomads of the present, Hutchinson, Ramdom House, London, 1989. We have also used an issue of Esprit, Le choc des cultures à l'heure de la mondialisation, Paris, April 1996. The bibliography on this subject is undoubtedly extensive, but the works we have quoted here have been particularly helpful to us in understanding the phenomenon we are dealing with.

[12] The Working Group has also begun to analyse this complex subject. At its last session, in 1999, the group Chairman Mr. Eide submitted a paper entitled: "Citizenship and the minority rights of non-citizens" (E/CN.4/Sub.2/AC.5/1999/WP.3). The discussion appears in paragraphs 34 to 39 of the Working Group's report. There is no doubt that the subject is increasingly controversial and should be kept under review.

[13] On this subject see the United Nations Conference on Trade and Development (UNCTAD) Trade and Development Report, 1998. United Nations.

[14] See the reports we have prepared on Income Distribution and Human Rights.

[15] We feel this is the basis of the international policy of "protection for minorities". The international community felt compelled to protect minorities against the uniforming nation State, which aimed to convert individuals of different cultures into State citizens, with no particular distinction.

[16] In Latin America, the Viña del Mar Pact was signed in 1990, asserting that the democratic regime was the system that all countries in the region should adopt and undertaking to react with mutual solidarity against any threat thereto. There was at the time no way of foreseeing the series of upheavals which were to occur at the end of the decade on the continent and which forced many countries to redefine the very content of that democracy. Mexico has been implementing the most important reforms in its political system since the first decade of the twentieth century. Venezuela is also carrying out reforms which will completely change the system by which the country was governed in the second half of the century. Ecuador has been buffeted by the gales of international trade and is doing its best to reshape its political system. The same has happened in many other countries, which have recognized the inescapable need to reformulate the function of the State in society. An analysis of these processes throughout the world was given in the seminar organized by UNRISD in Thailand in May 1999.

[17] This trilogy is very clearly expressed in the claims of migrants known in France as the "sans papiers" (undocumented). They do not reject and quite on the contrary affirm their ties with their country of origin, generally African; but they also affirm the right to belong to the host country, basing these rights on the fact of being citizens of the world and therefore having the right to move about wherever they please, and to enter and leave countries and to choose their place of residence at will. This would seem to be the case at present of displaced persons, which is not the same as the situation of the former transatlantic or transpacific migrants, as in the United States of America, where the ties with the host country tended to override former identities.

[18] In many Latin American countries migration policy was guided by racial considerations. During the second half of the nineteenth century and in the twentieth century, immigration by Europeans was preferred and that from Asia and other parts of the world strictly limited. The ban on the migration of people from other Latin American countries, particularly indigenous people, was total. While European immigrants were seen, and still are seen, as a positive, "civilizing" and progressive factor, not constituting necessarily a threat to national cultural integration.

[19] It has been said that many forms of fundamentalism which appear very "traditional" are really modern reinterpretations of a traditional identity or allegiance. It may be a paradox, but it should be understood that each group rewrites its history according to its position in the world in which it lives. There is no culture that is fundamentalist per se; what we have a fundamentalist interpretations or rereadings of the culture itself. This distinction, which may appear abstract, is crucial for mutual respect among cultures.

[20] See Capotorti, op. cit.

[21] In the case of indigenous peoples, in many parts of the world a start has been made on developing bilingual plans. A review of the subject can be found in our working document, Education and minorities, presented to the Working Group on Minorities of the Sub-Commission on Prevention of Discrimination and Protection of Minorities at its second session in 1996 (E/CN.4/Sub.2/AC.5/1996/WP.3).

[22] In the latest sessions of the Working Group on Minorities, much evidence has been given of the non-recognition of the rights of religious, linguistic and other minorities. Although we can affirm that in theory no one openly disputes the right to religious or linguistic freedom, in practice the situation is quite different.

[23] It seems appropriate to use the term "colony" to describe such groups, which are fewer in terms of numbers, but which do not suffer discrimination and are perfectly well integrated into the majority. We speak of the "Italian colony", the "German colony", the "Swiss colony" or the "Spanish colony". They have their clubs, often very rich ones, and their schools and colleges where bilingual education is provided in the language of the country and that of the "colony of origin". They keep up their culinary traditions and some elements of their folklore. These groups should not be confused with the notion of "minorities".

[24] Undoubtedly, self-identification is a necessary condition. Self-proclamation as a distinct group is a necessary condition, but not sufficient. What is a sufficient condition for the existence of a minority is awareness on the part of "the others" that the minority is real and does exist. A group of bold youngsters might proclaim themselves members of some ancient, extinct civilization, but so long as their claim does not win even minimum recognition as something more than an eccentric gesture, the minority will not be able to exist de facto and will not enjoy the least credibility, either internally among its members or externally. So a purely subjective criterion is not sufficient ground for creating a minority.

[25] The debate on whether there really are primordial ties that bind people and that emerge at specific times is complex and unresolved. The objectivist and the subjectivist schools of thought confront one another and no agreement has been reached. In this study we adopt a pragmatic approach. See the articles by Geertz, "Primordial ties"; Eller and Cughlan, "The poverty of primordialism"; Grosby, "The inexpungeable tie of primordialism"; and Brass, "Ethnic groups and ethnic identity formation", in Ethnicity, op. cit., pp. 35-98.

[26] In Latin America, the concept of "hybridization" has recently been introduced. "Hybrid societies" are taken to be those in which traditional forms of culture are preserved, combined but not integrated with others deriving from the many waves of colonization or globalization. The result is a "hybrid culture", a combination of many elements that are not fully assimilated. See Néstor García Canclini, Culturas híbridas, Fondo de Cultura Económica, Mexico, 1993.

[27] The growth of "Asian American" consciousness in the United States is a new phenomenon, as is the awareness of a "Latin" identity among Spanish-speaking migrants. There is a kind of quest for belonging that runs concurrently with the quest - also shared by Afro-American groups - for an increasing degree of equality and citizens' rights.

[28] Miguel Alfonso Martínez, Special Rapporteur on the question of treaties, reaches similar conclusions in his final report when he says that the term indigenous peoples only applies in the case of the Americas and Oceania, and that for the other continents where colonization also took place one should refer simply to the existence of minorities. This would be true principally for Europe, Asia and Africa. The debate is indeed complex. The expert distinguishes operationally between the sphere of the Working Group on Minorities and that of the Working Group on Indigenous Populations. See E/CN.4/Sub.2/1999/20.

[29] In 1985 the Canadian expert Jules Deschesnes defined a minority as a group of citizens of a State … ." In contrast, the Capotorti report simply refers to "a group inferior in numbers to the rest of the population of a given country"; the question of citizenship or non-citizenship is irrelevant. See earlier bibliographic note.

[30] The use of the Internet made by indigenous and minority peoples of all kinds is evidence of the topical nature of the problem of minorities. The Internet has become an instrument serving the cause of these groups - a fact which is certainly of considerable theoretical and political interest.

[31] The practical disappearance of isolated social groups is a clearly established anthropological fact at the end of the twentieth century. Communities of the Shangri-La type are mythical and romantic memories of the past.

[32] The study produced by the Minority Rights Group shows that in an absolute majority of cases where minorities are present there are no serious conflicts with the majorities. The list in the index mentions over 3,200 names of minorities, most of which enjoy peaceful relations with their neighbours and the majority populations among whom they live.

[33] On this subject see the works of A. Eide referred to earlier and the working documents of the Working Group on Minorities. A compendium of legislation will also be found in the appendix to the Minority Rights Group book mentioned earlier, prepared by the specialist Patrick Thornberry.

[34] See the background paper by the expert Augusto Willemsen Diaz on the subject of "Scope for effective exercise of internal autonomy and self-government"prepared for the meeting of experts convened by the United Nations to examine the experience of countries in the operation of schemes of internal self-government for indigenous peoples, Nuuk, Greenland, 28 September 1991. Document HR/NUUK/1991/SEM.1/BP.3.