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**Regionally non-dominant titular
peoples: the next phase in
minority rights?**

TIM POTIER

Intercollege, Cyprus

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Regionally non-dominant titular peoples: the next phase in minority rights?

By Dr Tim Potier.

“As in previous reports, we define ethnic minority as groups that are numerically in a minority in a given part of Kosovo as compared to their immediate neighbours. On this basis we have not covered Kosovo Serbs in those northern municipalities where they form a numerical majority but we have included reference to Kosovo Albanians in those same and other specific locations where they find themselves in a minority and find themselves facing problems akin to those faced by most minorities in Kosovo”.

UNHCR/OSCE Assessment of the Situation of Ethnic Minorities in Kosovo (period covering June through September 2000), 23rd October 2000, p.1, footnote 1.

Minority rights have matured. The change in emphasis, during the last decade and a half, is undeniable. Today they form an essential component in the work of all international/regional organisations, they provide the basis for the work of countless NGOs and, frequently, yield succour for peoples that have been subjected to years of discrimination/(sometimes) persecution. This has captured the imagination of many international lawyers and, as a result, provoked an extensive jurisprudence on the subject. Sometimes, however, ‘such’ jurisprudence can, unthinkingly, rely on misplaced givens, something that, I have increasingly come to feel, the ‘culture’ of minority rights has fallen prey to. The purpose of this article is to, at a crucial juncture in minority rights jurisprudence, just as other issues begin to dominate the international agenda in its ‘place’ (economic ‘refugees’, defining the war criminal, etc.), address what I regard to be one uncharted area where scholars have chosen to avoid treading: the rights/(at least) condition of what I prefer to term ‘regionally non-dominant titular peoples’.

OSCE High Commissioner on National Minorities, Mr Max van der Stoel famously speaks of his inability to describe what a ‘national’ minority is, but of being able to ‘spot’ one when he sees one[1]. As with so many terms in international law, finding a universally agreeable definition for the term ‘minority’ has proven to be near impossible. Even agreeing on the appropriate terminology has been hardly propitious[2]. Article 27 of the International Covenant on Civil and Political Rights refers to “... *those States in which ethnic, religious or linguistic minorities exist*”[3]. The Council of Europe Framework Convention for the Protection of National Minorities, instead, prefers the term “*national minorities*”[4], yet in neither, nor in the United Nations General Assembly Declaration[5], is any ‘attempt’ made to identify difference (even if only to conclude that there isn’t one), or, equally, to ‘attempt’ to provide a definition, however imperfect. In consequence, while we may feel that we are able to ‘identify’ a minority, we are left intellectually stranded when we come face to face with a whole host of ‘minorities’; for example at sessions of the United Nations Working Group; uncertain as to whether all/(how many), actually, have a claim to be a minority right holder.

The failure of recourse to a standard definition may not, in itself, determine weakness or failure (I do appreciate just how difficult drafting international, even regional, conventions can be), but surely (if nothing else) the failure to agree on a standard term does not enhance the ‘success rate’ of such an important area. Tired of attempting to conceptualise a ‘minority’ and lacking a definition upon which to chew, scholars have, in consequence, been left to rely, somewhat, on the ‘explanation’ of a ‘minority’ ventured by Francesco Capotorti. His definition speaks of minorities as groups:

“numerically inferior to the rest of the population of a State, in a non-dominant position, whose members – being nationals of the State – possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show if only implicitly a sense of solidarity, directed towards preserving their culture, traditions, religion or language”[6].

The minority rights fallacy.

The problem with so much writing on minorities is its assumption that, for a state, the conferment of a regime of rights for such groups, within itself, addresses the whole matter. Sadly it doesn’t. For while, in their totality, minorities may constitute a ‘group’ “numerically inferior to the rest of the population of a State”, *in many of those states* they are geographically concentrated and, not infrequently, within that region (not always easy to define nor, at least, agreed upon), the majority. Where this occurs, semblances of autonomy are usually not very far away. Naturally, these may not be territorial, but the condition of ‘numerical superiority’, coupled with the self-confidence that that can generate, irrespective of the degree of self-government/administration enjoyed, can be accompanied by feelings of possessiveness, which can adversely affect the rights of those persons forming a part of the (local) population who, while locally inferior, constitute, nationally, members of the ‘majority’ group.

The collapse of the Soviet-dominated east has, until now, fed us with needs (the Hungarians of central Europe, to cite just one example) that have not had to address this matter. Today, however, a defined circle of ‘test cases’; particularly in the south Caucasus and Kosovo; threaten to impose consideration of this important matter upon us.

The conflicts in the south Caucasus remain unresolved. Both the Georgian and Azerbaijani presidents recognise that, as part of any settlement, elements of [con]federalism (particularly in Georgia’s view)/substantial autonomy(/common statehood?) would have to be provided for Abkhazia, South Ossetia and Nagorno-Karabakh. Time may yet prove that, after all, the constitutional mechanics were the easier to ‘resolve’, because, following any settlement, the question of returning Georgians/Azeris would have to be addressed. What would their rights be? A diplomat working on these conflicts might intervene and say that this need not be discussed at this stage (Bosnia revisited?). Besides, any (even) liberal Armenian would tell you, let the displaced Azeris re-settle in the ‘occupied’ districts[7], let us evaluate how this develops and then let us be concerned with returning Azeris to Karabakh. This cannot be satisfactory and where would it leave Georgians displaced from Abkhazia and South Ossetia with no ‘buffer’(?).

I fear that the consequences of the wars in the Balkans will occupy us for many decades to come: welcome to the late 19th century! Increasingly, we will rue our impetuousness, following the rush of energy(/excitement) that took hold of so many, following the collapse of the USSR. A garden may look ugly, but do we have any idea of what we want to create in ‘its’ place before we dig it up. The

international community may, ultimately, be frustrated in its attempt to ‘guarantee’ the return of displaced persons to their former homes (often in the other entity, but not always: sic. the Federation) in Bosnia[8]. Perhaps this doesn’t matter in Bosnia, for ethnic cleansing has been frighteningly ‘purifying’, but in Kosovo, despite constant washing, ‘stains’ remain. Whatever the rights and wrongs of the respective sides before the war/air campaign of 1999, it would appear that Kosovo will continue to contain ‘pockets’ (enclaves/exclaves?) of Serbs and, fearful of an uncontrollable Balkan (viz., possibly, regional) war, the international community appears compelled to retain Kosovo within a federal Yugoslavia (whatever that now means?). Whither minority rights.

Minorities, a parenthesis.

Mr van der Stoel’s remark relies on subjectivity, rather than objective factors (although I would admit that all objectivity begins from a subjective source). Minorities are not always uniform or agreed, among themselves, as to their identity. Are the Cornish in England, the Swabians in Germany and the Mingrelians in Georgia separate ethnic groups deserving of protection and promotion by the state, if not also the international community? This is a serious question, for the restoration/creation of these new (not infrequently multiple) identities (when suitable), coupled with ‘separatist’ fears from other groups (Basques, Welsh, Ajarians etc) tends to provoke a certain paranoia towards minority groups among states that only, in the end, contribute, in the eyes of the latter, to the discrediting(/patronising) of the whole minority rights edifice.

Objectivity is not assisted by indigenous people(s) discourse: after all, aren’t the French indigenous to France? To my mind, the term ‘indigenous people(s)’ suggests a desire or sensibility to maintain an existing (but often endangered) way of life, which does not bear on their historical basis or longevity in a particular region (which is, ultimately, impossible to trace anyway), but on account of its ‘non-modern’ condition. ‘In retrospect’, the term ‘indigenous people(s)’ is not, with hindsight, the most helpful (somehow ‘non-moderns’ seems untidy): not that some ‘indigenous people(s)’ do not, where ‘necessary’, plead minority status.

We have some way to go.

Regionally non-dominant titular peoples explained.

Minority groups do not need to be nestled within territorial structures of autonomy in order to be concentrated. The provision of territorial autonomy has often been the product of state planning or ‘national’ struggle (sometimes not always concluded). Even where this has not actually displaced those forming part of the ‘titular’ group, it has not been free of tension: the events (actually) in Kosovo, in 1989, are a perfect illustration of this. However, wider state protection for minorities, *particularly* those geographically concentrated, should not be at the expense of those from the titular group. It is this latter group, from, for example, the (‘remaining’) Russians of Chechnya to the Croats of eastern Slavonia, whose rights, also, need to be addressed and protected.

When one has to identify and expound any category of persons, the ascribing of an appropriate term is perhaps the hardest. One can envision, in one’s mind’s eye, the exact ‘definition’ of the intended group but language, not for the first time, fails one. Yet categories of persons, in international law, cannot remain unprocessed, they require a title if the conceptualized objective is, at least in some part, to be fulfilled. Thus, after much thought, during my doctoral studies, I arrived at the term ‘regionally non-dominant titular peoples’.

In order to explain the term ‘regionally non-dominant titular peoples’ one should begin at the end and work oneself back.

An entire library of writing has debated and discussed the term ‘peoples’. What a ‘peoples’ is, whether they should enjoy ‘their’ own separate system of rights and whether there is any difference between ‘peoples’ and a ‘people’[9]. I do not intend to make this article unnecessarily long, and/or allow myself to be sidetracked, by a debate which, ultimately, I regard to be non-sequitous. I have explained in “Conflict...”, while attempting to demystify the law on self-determination, that the terms people and peoples are essentially the same:

“To my mind any ethnic group can be both a ‘peoples’ and a ‘people’ (despite the ‘separate’ Article 27 in the UN Covenant on Civil and Political Rights); any State will, of course, be made up of the same; the terms should be able to be used interchangeably, but, at the end of the day, it should not be ‘peoples’/‘people’ that determine the essence of the right to self-determination”[10].

Regrettably, the international community’s fear of ‘encouraging’ any ‘external’ claim to self-determination continue to spoil discussion on this term. [often this would never arise if States, from the ‘outset’, were a little more sensitive to the upset that groups within their society harboured, irrespective of its basis, and whether, in some way, contributory or not.] The current stage in the drafting of the United Nations Declaration on Indigenous People provides sad testimony of this[11]. Instead, any state should be regarded as being made up of different people, who, collectively, can be combined into a people, who, in their totality, should constitute peoples and, finally, come together as the peoples of the state. Hence, reference to ‘regionally non-dominant titular peoples’ (plural of a people).

I would admit that the word ‘titular’ is little used in international law. It is, I sense, associated with negative constructs; the entitlement/disentitlement dichotomy; it appears superior/exclusivist. This is a pity, for if minority rights are ever to ‘extend’ (by natural means) beyond the (mainly) western liberal democratic world, there should be recognized some degree of popular humility among minorities. The international community is still attempting to construct a post-colonial world. More than five centuries of colonialism (not to mention world war, and its effects also) cannot be erased within a couple of generations. While, as I always maintain, one cannot build permanent structures, we ought to be, in the 21st century, entering a new period of calm, after the human storm that was the 20th. States which, even perhaps a decade ago, might have appeared to be but temporary aberrations, are beginning to develop their own histories, loyalties and confidences. While, however, an important component in this process is the enshrining and solidification of minority rights, those specialising in this area of law should not lose sight of the importance of maintaining the rights of ‘majorities’. After all, it is surely undeniable that those countries that have the best record in protecting their minorities are also, nearly always, the same countries that have a very strong national identity (if not necessarily always history) and, crucially, confidence in that identity. Certainly, minority rights aims to assist in the conceptualisation of the identity of minority groups, but this is not going to have much effect if the dominant group(s), within that society, feel that these identities are being promoted at their expense. So, if Capotorti can, without challenge, identify minorities as being in a “*non-dominant position*”, so equally, albeit with due care and sensitivity, we should not be chary to discuss the condition of ‘titular peoples’.

Before I outline what I understand a titular people (notice the singular) to be, I think one thing ought to be made clear. I would accept that not every country in the world has yet reached the stage where

it is possible to identify any group(s) (it need not necessarily be in the singular, Bosnia/United Kingdom for instance) as being ‘titular’. One should accept that in much of sub-Saharan Africa, for example, it would be inappropriate to identify any group(s) as being titular. However, this should not be problematic. One of the deficiencies in international law is its seeming unwillingness to evolve in parallel with the state of nature with which it shares. Terms should not be imposed upon societies who do not feel, as yet, comfortable with them. Nor need this, in any way, weaken their utility in the wider world beyond. Besides, as will be seen below, there are always more digestible alternatives for those who require time to consider.

Arising from this, I would define ‘titular peoples’ as:

“persons who identify themselves as being members of the ethnic group(s) with whom a country is normally associated”.

Nobody hesitates when minorities are referred to (often in the national context) as being ‘non-dominant’ – not that they always are. So, there should equally be little hesitation in admitting that ‘non-minority’ (often titular) groups are, to varying degrees, in some countries, in a ‘regionally [deliberate emphasis] non-dominant position’. While the broad condition of minorities, in most countries, is one of ‘non-dominance’, this does not address the (equally important) rights of those persons belonging to the titular group who, while constituting, often, the majority of the population in the country as a whole (though not necessarily), ‘regionally’, on account of their participation in local government/administration, on account of the ‘presence’ of their language or, more generally, on account of their involvement(‘contribution’) to the wider local, but active, society, are rendered non-dominant.

Minorities and majorities.

International minority rights law has got itself into a tangle. The term ‘minority’ is becoming increasingly confused by what are, in essence, opposites. When we refer to the ethnic Hungarians in Slovakia (to return to the Hungarians), we confidently proclaim them a minority (in that country). The same would be true for the Danes in Germany. When, however, we refer to Russians in Tatarstan[12] the answer is not so clear. Are they a minority? And what of the Russians in Dagestan[13] (‘besides’ Chechnya)? Naturally, these ‘regions’ are reflected territorially as defined elements (as republics) within the Russian Federation, but where does that leave ethnic Azeris in the far north-eastern districts of Azerbaijan[14] and (to give but one other example) ethnic Georgians in Georgia’s (in some districts) Armenian concentrated south[15]? Are they minorities also, or the Lezgins/Armenians respectively? One thing ought to be clear, they can’t all be minorities.

Can a ‘minority’ be both minority and majority? While, of course, there is nothing to, necessarily, prevent such an ‘outcome’, it cannot be preferable. Rights should not be referred to disjunctively: there will, not infrequently, be situations where rights are sought by different groups, living in the same parts of a country (from rural to urban). Equally, those demands, within the group, will not always be the same, but will depend on the condition (matter of state, if you prefer) at issue. Yet, this should not demand a confusing shift in terminology. To illustrate this point, allow me to refer to the Azeris living in southern and eastern Georgia. On the micro level they will seek to advance their participation in local administration/promote the local (but public) use of their language (to cite just two examples). However, in wider Georgia they will, almost in reverse, seek to ensure that they do not suffer discrimination in employment/more general exclusion in central administration. No doubt they will also seek to secure some public recognition, if only at the tertiary education level, of their

language, literature and historical presence (and contribution to) in the country. I am not sure, though, that it could be appropriate to label the Azeris of southern Georgia as, in any sense, a ‘majority’. By contrast, ethnic Georgians living in southern and eastern Georgia, who enjoy a condition of ‘dominance’ (quite correctly) in the country as a whole, would, equally correctly, demand that in those districts where they constituted a ‘minority’ (or, even, not a significant majority), that their rights to participate locally were not inhibited, the Georgian language not restricted in its use, nor experience, once again, discrimination in (local) employment. However, would this render them a minority?

Classifying minorities.

If one accepts current jurisprudence on minority rights, there is nothing inherently objectionable in Francesco Capotorti’s definition: but should existing terminology unthinkingly remain when it appears, in essence, to be susceptible to contradiction, only, thus, contributing to a general disdain towards it among States (who after all construct international law)? While the last thing I want to be is a human rights iconoclast, when one reflects on the leading issues that will have to be addressed in the coming decade (in the Caucasus and the Balkans particularly, as already ventured), one is captured by a lingering taste, which, while it may be more comfortable(/comforting) to place in the ‘Recycle Bin’, one is reluctant to trash. I therefore feel that the notion of a minority needs to be reappraised.

I would define a national minority (note, ‘at last’, my deliberate introduction of the word ‘national’) in the following way:

“a category of persons (each individually) identifying themselves as a member of a specific ethnic group which constitutes a numerically lesser group in the state, taken as a whole, even though they may form a larger group in a region, territorially/constitutionally defined or not, populated substantially by members of that ethnic group.”

I would define ethnic group as follows:

“persons who share among them certain common linguistic, cultural or religious attachments different from those of the rest of the population and whom, by the expression of those attachments, in public or private, individually or collectively, with other members of the same group or in the presence of others belonging to different ethnic groups, demonstrate a willingness, consciously or not, to maintain their separate identity”.

We all seek an identity that suits. There can be little doubt that identity claimants are far more numerous and disparate than they have ever been. Identification with a minority forms an important aspect of this trend. Yet, while the publicity afforded to human rights (as a concept, if not also as a need) may have contributed to this, if minority rights *as a concept* are to retain their credibility, at some stage, international lawyers (may/will) finally have to sit down and identify just who is to be classified as being a member of a minority, ‘national’ or otherwise (we ought not to forget that there are other categories of minority: of sexual orientation, for example).

Currently, documents publicising the human rights situation in Kosovo note that, for the purposes of the ‘report’, Serbs living in Kosovo will be classified (for the main part, ?), along with other ethnic groups, as minorities. This cannot be correct. While I would (be the first to) admit that a ‘refusal’(?) to ‘identify’ Serbs in Kosovo as minorities is a highly charged and politically sensitive matter at the

moment, in the context of determining the region's future status, candidness cannot be avoided. Besides, there is a world beyond Kosovo. As I have indicated above, there are other regions which, in time, will prove equally sensitive to classification. It would, surely, not be credible to define a displaced Georgian from Abkhazia, in the future, (upon return) as a minority, even if only for that region (South Ossetia?, whither the essence of the Georgian state: Georgians as the titular people, but minority). Sooner or later, our contortion will snap or be found out: we might all, just as well, sooner, save ourselves from future humiliation/embarrassment.

(Thus) I hope that my new definitions for national minority and ethnic group have at last, at least, released minorities from a formerly imprecise straitjacket. First, what does minority mean? In order to answer this, one has to 'find' a benchmark: within what realm are minorities being compared? One can only conclude, 'majorities', as reflected within the nation state: at some stage, minority rights specialists do have to admit that the latter do exist. [(And) Like them or loathe them, states ought to, for the foreseeable future, continue to provide the focal point for our attentions, discourse and loyalties.] Upon accepting this, one, next, has to draw up the point of measurement for a (national, etc.) minority: the state as a whole or a part of it or, perhaps, both. I would maintain that it is safest to choose the former. Thus, a minority should be molded by the numerical factor: after all, this is what the word means in everyday use, and is it necessary(/imperative) for international lawyers to (always be) invent(ing) new 'paradigms'? For ethnic groups constituting a 'majority' of the population in a given region(s) within the country, the point at issue should not be their own local dominance but their national entitlements. States cannot provide the benchmark in one breath, only to be supplanted by non-state consciousnesses in the next: this has, often, been the fatal error of minority rights. Emphasis, therefore, ought to be placed on the protection and promotion of national minorities as ethnic groups.

The essence of the ethnic group is/are their "*common... attachments*" and their "*willingness... to maintain their separate identity*". However, conscious as I am of earlier attempts at 'describing' 'people'(/s)[16], it ought not to matter what those common attachments are, (if/where their point of emphasis lies, or how their "*willingness...*" is reflected. Equally, the manner/intensity with which those attachments are conveyed, should not be conditioning either: international law should leave 'them' free to develop their own personality.

One of the fundamental weaknesses of the Capotorti definition is the reference to 'non-dominance'. If Kosovo *should* remain part of a wider federal Yugoslavia, one would be hard pressed to recognise the Kosovan Albanians as being, in Kosovo, "*in a non-dominant position*". Similarly, if there were a constitutional settlement in Abkhazia (Georgia), the ethnic Abkhaz population (perhaps not singularly, but largely) would 'again', one must surmise, assume a 'dominant position' even while constituting a (relatively-speaking) numerically small group in the, to be 'constitutionally/territorially' defined, region[17]. Yet, I don't think anybody would wish to, even partially, declassify the Abkhazians in Georgia (whether living in Abkhazia or not), or the Albanians *even living in* Kosovo come to that, as (constituting) a national minority(?)

To be fair to Francesco Capotorti, perhaps when he referred to minorities as being "*in a non-dominant position*", he had in mind the wider, national context. While this may have been conceptually acceptable in the extant-Wall world, the fall of the former Soviet east and the (partly) consequent re-evaluation of international dynamics, surely condemns the retention of this terminology as being one of a former age.

Regionally non-dominant titular peoples and ‘non-dominance’.

I don’t believe that a ‘regionally non-dominant titular people’ should be classified as a national minority. However, to ‘identify’ them in this (former) way, should not remove them from entitlement to certain minimum rights, as enjoyed by national minorities.

Consider section III of the Report of the CSCE Meeting of Experts on National Minorities (1991). It provides:

“The participating States consider that respect for human rights and fundamental freedoms must be accorded on a non-discriminatory basis throughout society. In areas inhabited mainly by persons belonging to a national minority, the human rights and fundamental freedoms of persons belonging to that minority, of persons belonging to the majority population of the respective State, and of persons belonging to other national minorities residing in these areas will be equally protected”[18].

This section fits perfectly with my classification of ethnic groups into (titular peoples,) national minorities and regionally non-dominant titular peoples. *“In areas inhabited mainly by persons belonging to a national minority...”*: Kosovo; *“the human rights and fundamental freedoms of persons belonging to that minority”*: Albanians living in Kosovo; *“of persons belonging to the majority population of the respective State”*: Serbs living in Kosovo; *“and of persons belonging to other national minorities residing in these areas”*: Roma, Bosniacs, Egyptians etc.; *“will be equally protected”*. Meanwhile, for example, Albanians living in Serbia, Montenegrins living in Montenegro and Hungarians living in Vojvodina would continue to be classified as national minorities[19].

Non-titular societies.

One of the most common accusations levelled against international law, particularly from the developing world, is its tendency towards Eurocentrism (if not also, on occasions, ethnocentrism). Unfortunately, minority rights can be accused of falling prey to this ‘pressure’. Even to this day, minority rights have a peculiarly European history and development. First propounded, indeed as one of the first formalised human rights constructs, under the League of Nations system, for the ‘defeated’ European ‘powers’ (or, at least, those nations that had supported them/been under their domination), the minority rights concept was distinctly muted during the era of decolonisation, following the establishment of the League’s successor, the United Nations. This situation remained until the close of the 1980s and the attendant collapse of the Soviet east (of Europe). Since then, minority rights have never been far from the international community’s/(even the) media’s gaze: from an entire catalogue of meetings and declarations, of various ‘hardnesses’, to the wars in the Balkans, the Caucasus and the challenges, for example, created by the ‘displacement’ of a part of central Europe’s ethnic Hungarian population (again).

Even today, I feel that minority rights experts are most comfortable when they are discussing the concept from the perspective of Europe and least assured when referring to the historically colonised world. For in the Americas, Africa, Asia, Australasia and the Pacific, the spectre(/canard) of settlement, loyal but cheap imported labour (slavery?) and indigenous peoples lurk. Thus, instead of being fearful of new terminology, we should perhaps pause and reflect for a moment upon the extent to which existing terminology adequately reflects the needs of very diverse and diffuse groups. Still, I would not suggest that finding an alternative, identity-based, dichotomy is necessarily any easier. In parts of Latin America, particularly Brazil, inter-marriage among the respective native, Spanish and

black populations has, in a similar way to the English-speaking New World, contributed to the formulation of new, perhaps typically New World, identities[20]. Hence, in these societies, the word titular can often only be best understood when the dominant group identity (but frequently, as we have just seen, by no means always unique/identical) is compared with the ‘remaining’ either indigenous people(s), self-separated (other) groups or, albeit much less of a factor here, national minorities. In much of sub-Saharan Africa (in countries such as Tanzania and Nigeria), a person’s primary identity with their ‘tribe’ (ethnic group?) and the multiplicity of these, certainly in the larger countries, render it nearly impossible (but also, ultimately, unhelpful) to identify a titular people[21]. Yet, as I have indicated above, all of this should not be sufficient to weaken the utility of the ‘regionally non-dominant’ thesis: the same applies in parts of southern Asia (eg. the Philippines and Indonesia).

Bearing in mind the demands of the New World and the un-newly-‘settled’ but remaining, at least in part, indigenous world, it may, in certain environments, be better to refer to the rights of ‘regionally non-dominant peoples’. Consider (again) the Federal Republic of Nigeria. Nigeria is surely a perfect example of a country where it would be hard to separate majority from minority. Many ethnic groups (notice the pressing change in terminology) in Nigeria, while (to varying degrees) excluded from national political life and while concentrated (demographically) in a defined (usually historically) region of the country, may play a dominant role in at least one of the states[22]. Here the position of the regionally non-dominant people(s) may acquire even greater ‘urgency’ as often tribal but non-‘national’ societies seek to reserve (if only local) influence for themselves.

Identifying ‘dominance’.

Dominance is one of those words which can be freely imparted and exchanged in international academic legal writing, but, when having to specifically identify those in such a condition, scholars such as myself can be inclined to recoil from the use of it. However, even if the word ‘dominance’ is avoided and another word used, minority(?), the meaning remains unaltered. Perhaps human rights discourse is partly to blame for this. In attempting to construct ideal individuals/ideal authorities and ideal States we have sterilised our vocabulary from the use of any word/term which could be associated, in any way, with natural or innate superiority: although the notion of inferiority (minority?) does not trouble us. While dominant genes/personalities can be spoken about calmly, because they form but part of a wider whole(/state), ‘dominance’ in the context of groups always seems distinctly jarring. However, should human rights be the preserve of the vocally and (often) collectively-organised, but self-proclaimed, ‘vulnerable’?

To date, international law has, with its emphasis on minority, avoided the need for stress being placed on the notion of dominance. Yet, by doing this, one could maintain that the (to date) presumption of minority-ness, however ‘partial’, has been avoided: or were we always speaking of numbers? International law does not need to define dominance, its ordinary meaning will suffice, but it does need to accept its existence and be willing to speak of it, *even if* only for the sake of those persons in a non-dominant position.

Discrimination and minority rights as international law regimes.

The purpose of distinguishing between a national minority and a ‘regionally non-dominant titular people’ is not to advance a new regime of rights for the latter (anyway this is not necessary, see section III above, from the 1991 Meeting of Experts), which could only, potentially, provide the focal point for new conflicts. The aim is to ensure that one’s membership of a particular ethnic group, in

any region where that person does not belong to the dominant group, does not impact upon their equal rights. No one would deny that ethnic Russians in Tatarstan fear the Tatarisation of the republic. While, admittedly, on occasions fears expressed by ('wider') titular groups are sometimes exaggerated, in order to avoid the emergence of new Kosovos, the international community should, in addition, become increasingly sensitive to the needs of these groups to ensure that the issues predominating between the sides (Tatar/Russian, to give just one example) *do not* become politicised, potentially lead to conflict and thereby, in some part, discredit the concept of minority rights. One might argue that this is the function of non-discrimination law, which has little bearing on minority rights. While this may be true, the increasing separation(/compartmentalisation) of rights under not only different categories, but also monitoring mechanisms, introduces real danger that the minority rights edifice, unless partly reined in, will be used to protect/promote the rights of minorities, at the expense of 'non-minority' groups. Ironically, the international law concerning non-discrimination has, also, been captured by the minority.

Conclusion.

The doors to the human rights ark should not be locked. Potential victims are separated and not pre-ordained. The now fed and clothed others, while still beholden to the seasons, should not remain stuck in darkness when there is at least some light to be had. However, that light must be shared. Human rights, no less minority rights, have a pluralistic constituency, but this is not always apparent. With minority rights now matured, increased recognition should be given to persons belonging to ethnic groups whose condition, within (in theory) any given state, one would not normally associate with 'minority-ness'. In the end, such recognition will not dilute the edifice, but strengthen it, for by forming a more complete system, states will at last begin to realise that human rights, instead of merely being a challenge to their authority, can actually help to complement it.

So, to the 'regionally non-dominant titular peoples', let us offer a hand of welcome and friendship.

Endnotes.

[1] “Even though I may not have a definition of what constitutes a minority, I would dare to say that I know a minority when I see one”, address given by Mr van der Stoel at the CSCE Human Dimension Seminar on “Case Studies on National Minority Issues: Positive Results”, Warsaw, 24th May 1993. For text of speech, see: <http://www.osce.org/hcnm/speeches/1993/24may93.html>

[2] see Professor Asbjorn Eide’s, Commentary to the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, E/CN.4/Sub.2/AC.5/2000/WP.1, p.2.

[3] H. Hannum (ed.), *Documents on Autonomy and Minority Rights*, Dordrecht, Martinus Nijhoff, 1993 at p.35.

[4] Of the 1st February 1995. *International Legal Materials*, 34 (1995) pp.351-359.

[5] (United Nations) General Assembly Resolution and Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (18th December 1992), *International Legal Materials*, 32 (1993), pp.911-916.

[6] F. Capotorti, *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities* (Geneva, United Nations Center for Human Rights, 1991), UN Doc E/CN.4/Sub.2/384/Add.1-7.

[7] ‘Armenian’ forces control six Azerbaijani districts (rayons) outside the ‘boundaries’ of the former (Soviet) Nagorno-Karabakh Autonomous Oblast. They are (clockwise): Agdamskiy, Fizulinskiy, Dzhebraylskiy, Zangelanskiy, Kubatlinskiy, Lachinskiy and Kelbadzharskiy rayons.

[8] Bosnia’s Ministry for Human Rights and Refugees claims that, approximately, 850,000 of the country’s 4 million people remain displaced, see ‘Refugees Daily’, 22nd November 2000, UNHCR.

[9] See, for example: H. Kelsen, *Recent Trends in the Law of the United Nations, A Supplement to ‘The Law of the United Nations: A Critical Analysis of its Fundamental Problems’*, London, Stevens and Sons, 1951, pp.51-53; O. Kimminich, “A ‘Federal’ Right of Self-Determination”, in C. Tomuschat (ed.), *The Modern Law of Self-Determination*, The Hague, Martinus Nijhoff, 1993, pp.83-100 at 89, footnote 17; P. Thornberry, “The Democratic or Internal Aspect of Self-Determination with Some Remarks on Federalism”, *Ibid*, pp.101-138 at 127; A. Rosas, “Internal Self-Determination”, *Ibid*, pp.225-252 at 229; and, of course, J. Crawford, “The Rights of Peoples: ‘Peoples’ or ‘Governments’?”, in J. Crawford (ed.), *The Rights of Peoples*, Oxford, Clarendon, 1988, p.56.

[10] T. Potier, *Conflict in Nagorno-Karabakh, Abkhazia and South Ossetia: A Legal Appraisal* (The Hague, Kluwer Law International, 2000), p.33.

[11] See the recent written statement submitted by the Aboriginal and Torres Strait Islander Commission submitted to the United Nations Secretary-General and published on 23rd January 2001: E/CN.4/2001/NGO/54.

[12] According to the 1989 Soviet census, Tatars constituted 48.5% of the population in Tatarstan, compared with an ethnic Russian population of 43.3%.

[13] Ethnic Russians constituted a mere 9.2% of the population of Dagestan in 1989 (165,940 persons out of a total population of 1,802,188).

[14] Azerbaijan's estimated (at least according to official figures) 160,000 ethnic Lezgin population is overwhelmingly concentrated in Kuba Khachmas region in the north-east, bordering Dagestan, mainly the town of Qusar.

[15] Ethnic Armenians are particularly concentrated in Akhalkalaki and Ninotsminda districts.

[16] According to the UNESCO Experts on the Study of the Concept of the Rights of Peoples: *“inherent in a description (but not a definition) of a ‘people’... 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”*, International Meeting of Experts on Further Study of the Concept of the Rights of Peoples, UNESCO, Paris, 27th-30th November 1989, SHS-89/CONF.602/7, para.23.

[17] According (again) to the 1989 Soviet census, the ethnic Abkhaz population was a mere 17.8%, with Georgians 45.7% (also, Armenians 14.6%, Russians 14.2%).

[18] For text see: Report of the CSCE Meeting of Experts on National Minorities (19th July 1991), *International Legal Materials*, 30 (1991) pp.1692-1702 at 1696.

[19] Section IV of the report of the Meeting of Experts (similarly) ‘continues’:

“In accordance with paragraph 31 of the Copenhagen Document, the participating States will take the necessary measures to prevent discrimination against individuals, particularly in respect of employment, housing and education, on the grounds of belonging to a national minority. In that context, they will make provision, if they have not yet done so, for effective recourse to redress for individuals who have experienced discriminatory treatment on the grounds of their belonging or not belonging to a national minority, including by making available to individual victims of discrimination a broad array of administrative and judicial remedies”.

Ibid, at 1697.

[20] Brazil's population is ‘broken down’ as follows: 55% white, 38% mixed white and black, 6% black and 1% others (including Amerindian).

[21] The population of Tanzania, according to the CIA World Factbook, while 99% native African, is ‘subdivided’ into 130 different “tribes”. Nigeria, similarly, 250 “ethnic groups”. Notice the clumsy shift in terminology.

[22] Consider the ‘plight’ of the Ibos of south-eastern Nigeria (‘Biafra’), concentrated, today, in the Nigerian states of Rivers, Imo and Abia.

Biographical Note

The author is Assistant Professor and Head of Law at *Intercollege*, Nicosia, Cyprus.