The Rights of Indigenous Peoples with a Focus on the National Performance and Foreign Policies of the Nordic Countries

*Gudmundur Alfredsson**

I. Introduction

This article describes briefly the situation of indigenous peoples in the Nordic States, with references to international standards and the existing literature. Questions brought up lead to the main argument of the article which calls for the extension of human rights and the rule of law to indigenous peoples as well as minorities. Their rights must be justiciable and applied on an objective and non-selective basis, preferably by judicial or quasi-judicial organs at both national and international levels. The rights of indigenous peoples and minorities are part and parcel of human rights and should be treated in the same manner. The Nordic countries can contribute to this process at home and abroad.

II. Indigenous Peoples and National Performance

When talking about indigenous peoples within the Nordic countries, the reference is to the Sami of northern Scandinavia and the Inuit of Greenland. All of them face an uphill struggle as to legal status and political or legislative influence. These situations have been comprehensively covered in recent legal literature and will only be summarized here.[1]

Legislation and administrative practices in the three countries result in different treatment of the Sami in Finland, Norway and Sweden as to land and resources rights, cultural rights, the delegation of functions to the Sami Parliaments, and influence at the level of the central governments. Representation of the Sami at the State level is minimal. While subordination is a common denominator, there are also internal distinctions between the Sami in the three countries which have brought about or can still result in different degrees of protection, with variables

---

* Cand. jur. (University of Iceland 1975), M.C.J. (New York University Law School 1976) and S.J.D. (Harvard Law School 1982). The author was a staff member with the UN Secretariat in New York and Geneva 1983–1995 and secretary of the UN working groups on minorities and indigenous peoples 1985–1990. He is now Professor at Lund University in Sweden and Director of the Raoul Wallenberg Institute for Human Rights and Humanitarian Law.

[1] For a very good analytical and comparative survey, see Lauri Hannikainen, The Status of Minorities, Indigenous Peoples and Immigrant and Refugee Groups in Four Nordic States, in: Nordic Journal of International Law 65, 1996, 1–71.

depending on place of residence, way of life, occupation or employment, and language groups.[2]

As to self-government, the Sami Parliaments are good examples of non-territorial or personal autonomies, but they do not fulfill the expectations generally attached to the term in international law[3] because of their advisory or consultative roles without real legislative and executive powers over internal affairs,[4] as is the case with the home rule governments in the Åland Islands, the Faroe Islands and Greenland.

The Lapp Codicil of 1751 has had a significant impact upon the traditional economic and other rights of the Sami, with advantages in terms of border crossings and traditional economies. Currently, the possible benefits and drawbacks of a new treaty under the working title of the Nordic Sami Convention are being debated with two efforts underway, that is by both the Sami and the Governments concerned.[5]

---

[2] In addition to Hannikainen (note 1), see H. Hyvärinen, Samernas språkliga rättigheter – en nordisk jämförelse (The Linguistic Rights of the Sami – A Nordic Comparison), in: Minoritetsspråk i Norden (Minority Languages in the Nordic Area), Ålands Högskola, 1995, 42–52; Jens Brösted, The Saami in the North, in: Indigenous Affairs, No. 2, 1995; Majority-Minority Relations. The Case of the Sami in Scandinavia, a report from a 1994 seminar with the World Commission on Culture and Development, Kautokeino 1994; Hugo Beach, The Saami of Lapland, in: Polar Peoples, London 1994, 147–203; and Eyassu Gayim/Kristian Myntti, Indigenous and Tribal Peoples' Rights – 1993 and after, 1994. See also the homepage of Sami Radio at "www.saamiweb.org".

[3] For literature on the subject, see Markku Suksi (ed.), Autonomy: Applications and Implications, The Hague 1998; Donald Clark/Robert Williamson (eds.), Self-Determination. International Perspectives, London, New York 1996; Hans-Joachim Heintze, Autonomie und Völkerrecht. Verwirklichung des Selbstbestimmungsrechts der Völker innerhalb bestehender Staaten, Interdependenz Nr. 19, Bonn 1995; Terje Brantenberg/Janne Hansen/Henry Minde (eds.), Becoming Visible. Indigenous Politics and Self-Government, University of Tromsö 1995; Markku Suksi, Frames of Autonomy and the Åland Islands, 1995; Christian Tomuschat (ed.) Modern Law of Self-Determination, Dordrecht 1993; Hurst Hannum (ed.), Documents on Autonomy and Minority Rights, 1993; Lars Adam Rehof, Human Rights and Self-Government for Indigenous Peoples, in: Nordic Journal of International Law 61, 1992, 19–42; Atle Grahl-Madsen, The People of the Twilight Zone, University of Bergen, Department of Public and International Law, 1988; and Louis B. Sohn, The Concept of Autonomy in International Law and the Practice of the United Nations, in: Israel Law Review 15, 1980, 180–190.

[4] An expert meeting convened in Lund by the Foundation on Inter-Ethnic Relations and the Raoul Wallenberg Institute for Human Rights and Humanitarian Law, under the auspices of the OSCE High Commissioner on National Minorities, adopted in May 1999 the Lund Recommendations dealing with the political rights of minorities which, among other issues, address the functions of non-territorial and territorial self-governments. The Foundation on Inter-Ethnic Relations in The Hague will publish the Lund Recommendations with Explanatory Notes in summer 1999.

[5] Lappekodisillen. Den förste nordiske samekonvensjo (The Lapp Codicil. The First Nordic Sami Convention), Kautokeino 1998, based on a 1997 conference, chronicles in a number of articles the evolution of Sami rights, the Codicil and ideas about a new Nordic Sami Convention. In my contribution to that book, "Innholdet i en ny nordisk samekonvensjon og partene i konvensjonen: Minimumskrav" (The Standards in and Parties to a New Nordic Sami Convention: Minimum Requirements), pp. 231–243, the emphasis is on the minimum standards which such a convention would have to meet in light of existing human rights instruments. In a book full of ideas and proposals, Atle Grahl-Madsen suggests not only that the Sami be a party to a new convention but also that they

On the Inuit in Greenland,[6] it is a common assumption that the Greenlanders have come far in comparison with other indigenous peoples. Denmark likes to present the Greenlandic Home Rule as an exemplary showcase. The picture may, however, be quite different. The question arises whether the Greenlanders and several other indigenous groups are not peoples for the purposes of external self-determination rather than indigenous peoples within the respective countries.[7] After all, the term "peoples" has rights which go far beyond the rights usually attached to groups defined as "indigenous peoples".

Arguments underlining this type of a peoples' approach can be based on a number of serious shortcomings in the Danish 1953–1954 integration of Greenland. The less than accurate contents of official Danish reports to the United Nations about the conditions in Greenland as a non-self-governing territory under the UN Charter and on the less than democratic methods used for the constitutional incorporation of Greenland into the Danish State in 1953 are indications of the same.[8] Could autonomy in Greenland be a sophisticated attempt by the Danish authorities to avoid decolonization and the more far-reaching external self-determination questions?

Self-proclaimed Danish non-profit motives and financial assistance to the Greenlandic Home Rule need to be weighed against likely Danish benefits.[9] What about most of the two-way Greenlandic trade going through Danish channels, presumably leaving some profits with the merchants and tax money with the Government? What about the employment of Danes in Greenland, many of them in key positions? What about the direct and indirect benefits to Denmark as a rela-

---

do so as one nation rather than three national or ethnic groups, in: The People of the Twilight Zone with the subtitles Towards Sami Self-Government. A Sovereign Sapmi. An Autonomous Samieana, University of Bergen, Department of Public and International Law, 1988, 73. On treaties between States and indigenous peoples, see also the study for the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities by Special Rapporteur Miguel Alfonso Martinez which was distributed in 1998 as an informal, unedited document, with the completed version due in spring 1999 as mentioned in Sub-Commission decision 1998/107.

[6] Lise Lyck (ed.), Constitutional and Economic Space of the Small Nordic Jurisdictions, Stockholm 1997; Frederik Harhoff, Rigsfællesskabet (The Community of the Danish Realm), Århus 1993, with an english summary on pp. 501–515; and Isi Foighel, Home Rule in Greenland, in: Common Market Law Review 17, 1980, 91–108. See also the homepage of the Greenlandic Home Rule Government at "www.gh.gl".

[7] James Anaya, Indigenous Peoples in International Law, New York, Oxford 1996.

[8] For an explanation of these shortcomings and a listing of other arguments to the same effect, see Gudmundur Alfredsson, Greenland and the Law of Political Decolonization, in: German Yearbook of International Law 25, 1982, 290–308. See also Atle Grahl-Madsen, Kalaallit Nunaat, Grönland på vei til selystyre (Greenland on the Road to Self-Government), University of Bergen, Department of Public and International Law, 1986; and Gudmundur Alfredsson, Greenland, in: R. Bernhardt (ed.), Encyclopedia of Public International Law, Vol. 2, Amsterdam 1995, 623–625.

[9] For recent literature relating to sustainable development and the economic situation in the region, see Lise Lyck (ed.), Valg og politik i Grönland med fokus på bæredygtighet (Elections and Politics in Greenland with a Focus on Sustainability), Copenhagen 1998; and Lise Lyck (ed.), Socio-Economic Developments in Greenland and in other Small Nordic Jurisdictions, 1997.

tive superpower with bargaining powers in NATO, Washington and Ottawa as a result of not one but two territorial possessions in the North Atlantic[10] as compared with a tiny metropolitan Denmark without these possessions?

When ratifying ILO Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries,[11] Denmark and Norway have tried to introduce certain limitations. Denmark understands land rights as benefitting the permanent population of Greenland, presumably including non-Inuit, which is difficult to reconcile with article 14 of the Convention as well as the object and purpose of the Convention as a whole. In the official Norwegian translation of article 14, it would seem that the conditions for land rights have been made more difficult to achieve.[12] With land rights again being the stumbling block, this ILO Convention has not yet been ratified by Finland and Sweden.[13]

The shortcomings are unfortunate because the Nordic countries deservedly enjoy high profiles for strong human rights records for which the countries are known and respected abroad. Democracy at home, respect for the rule of law, high degrees of tolerance, social welfare, social justice and the ombudsman institutions shape these images. The good reputations are reinforced by solid support for human rights causes in international organizations as well as generous financial contributions beyond allocated institutional budgets.

Furthermore, the Nordic States have ratified most of the international human rights instruments with applicable standards, with the exception of ILO Convention No. 169 as explained above. While specific references to indigenous peoples in the instruments are missing, except for a handful of texts originating with the ILO and the World Bank and the UN Convention on the Rights of the Child, indigenous peoples qualify for minority rights when they also constitute minorities in their respective countries, like the Sami in metropolitan Scandinavia.

III. The Applicable International Standards

It is interesting to note that the sum total of international standard-setting, monitoring and conciliatory efforts for indigenous and minority rights surpasses

---

[10] The second territorial possession is the Faroe Islands. In connection with the debate about indigenous peoples, Denmark has excluded the Faroe Islanders. Why? Are they merely a minority in Denmark? Or are they a people entitled to full-fledged external self-determination, as is currently on their political agenda? Is the constitutional history of the two territories sufficiently different to justify the distinction? Certainly, in this age of equal rights and non-discrimination, it cannot be race or "primitiveness"?

[11] Manuela Tomei/Lee Swepston, A Guide to ILO Convention No. 169, Geneva 1996. Compare the text of the ILO Convention in Annex, I., in this issue.

[12] Hannikainen (note 1), 53–54. See also an official expert report on Urfolks landrettigheter etter folkerett og utenlandsk rett (The Land Rights of Indigenous Peoples in International Law and Foreign Law), NOU 1997:5, 36.

[13] On Sweden's hesitation towards ratification, see a new official report entitled Samerna – ett ursprungsfolk i Sverige. Frågan om Sveriges anslutning till ILO:s konvention nr 169 (The Sami – An Indigenous People in Sweden. The Question of Sweden's Acceptance of ILO Convention No. 169), SOU 1999:25, Stockholm, March 1999.

that of most national legal systems. States are reluctant partners in this line of work. Concerns relating to sovereignty, national unity and territorial integrity continue to dominate government policies. An outdated "nation-state" concept almost by definition reduces indigenous peoples to second class citizens.

Indigenous and minority rights are part of human rights. Dozens of international human rights and human dimension instruments set forth a solid body of indigenous and minority-specific standards and policies.[14] The production line extends to the United Nations, the ILO, UNESCO, the World Bank, the Council of Europe, the OSCE, and the OAS. The treaties enjoy wide ratifications and the declaratory texts have by and large been adopted by consensus, practically all the time with Nordic support.

The equal enjoyment of all human rights by everyone extends to civil, cultural, economic, political, and social rights. Some clauses to this effect are of a general nature, like article 1 of the Universal Declaration of Human Rights (UDHR). Equality before the law, equal protection of the law, equality before the courts and equal access to public service are further examples. Other instruments aim at particular situations, such as racial discrimination and discrimination in employment and education.

The prohibition of discrimination is also set forth in a series of conventions and declarations, beginning with articles 1 and 55 of the UN Charter and article 2 of the UDHR. The grounds for non-discrimination differ from one instrument to another, but all the references to race, national and ethnic origins, language and religion clearly cover indigenous peoples and minorities. The non-discrimination clauses, and the equal enjoyment rule on which they rest, extend across the board to all human rights, as stated above, including obviously the protection of culture and language, education, economic and political rights, the administration of justice, and so on.

The rules on equal enjoyment and non-discrimination are fundamental to international human rights law. All States are bound by these rules, including of course the Nordic countries, requiring them to protect the right to equal enjoyment and to eliminate discrimination against indigenous peoples and minorities and their members.

Indigenous and minority-specific rights and measures set forth in international instruments are intended to make sure that persons belonging to minorities enjoy the same rights as everyone else. History teaches us that equal enjoyment under the law and the prohibition of discrimination by law are not enough; equal enjoyment in fact must be achieved as well by way of preferential treatment so that the groups and their members enjoy a position comparable with the majority. Special

[14] For a collection of relevant texts, see Patrick Thornberry, Basic Documents on Minorities and Indigenous Peoples, in: World Directory of Minorities, London 1997, 706–801; and Gudmundur Alfredsson/Göran Melander, A Compilation of Minority Rights Standards. A Selection of Texts from International and Regional Human Rights Instruments and Other Documents, Lund: The Raoul Wallenberg Institute, Report No. 24, 1997.

rights and measures do not constitute privileges; they are rooted in the rule of equal enjoyment just as is non-discrimination.

Indigenous and minority-specific measures aiming at equal enjoyment in fact are contained in several human rights instruments. They apply mainly to education, language and religion which are particularly relevant to the identity and physical existence of a group, but they extend to economic, political and social rights as evidenced by international case-law and the practice of many States, like with regard to autonomy and other delegations of powers to groups. In ILO Convention No. 169, the protection of land and resources rights also clearly foresees a degree of self-management.[15]

In its interpretation and application of article 27 of the Covenant on Civil and Political Rights, the Human Rights Committee as the treaty monitoring body has produced important case-law involving both Finland and Sweden and General Comment No. 23 of 1994 whereby culture in article 27 has been given very broad contents.[16] These encompass the material base necessary for maintaining and developing indigenous ways of life as a prerequisite for cultural survival, including such activities as reindeer herding, fishing, and hunting. These rights will often require positive legal measures of protection for ensuring the effective enjoyment by the groups and their members.

The emphasis in many of the instruments is on the rights of the individual "in community with other members of their group". In other instances, straightforward rights for the group itself are recognized, for example in the Convention on the Elimination of Racial Discrimination, ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, and the UNESCO Declaration on Race and Racial Prejudice with its stipulation in article 1 on the right of both individuals and groups to be different.

The communal enjoyment of human rights is necessary not only to allow for the right to be different but also to otherwise approximate circumstances which the majority population takes for granted. If group rights are rejected and preferential treatment for groups denied, the equal enjoyment of human rights by indigenous peoples and minorities will not be realized. Furthermore, the individual and group rights must be detailed, absolute and immediate enough to be considered and treated as justiciable.

Individual and group rights with individual and group access to dialogue forums and petitions are essential for the satisfaction of indigenous and minority needs and, by extension, for the prevention of violent ethnic conflicts. International law is made by States and will take care of their interests, but group con-

---

[15] Gudmundur Alfredsson, Autonomy and Indigenous Peoples, in: Markku Suksi (ed.), Autonomy: Applications and Implications, The Hague 1998, 125–137; see also NOU, note 12 above.

[16] See, for example, communication No. 197/1985 (*Kitok* v. *Sweden*), views adopted on 27 July 1988; communication No. 167/1984 (*Bernard Ominayak, Chief of the Lubicon Lake Band* v. *Canada*), views adopted on 26 March, 1990; and *Ilmari Länsman et al.* v. *Finland*, in: UN document CCPR/C/52/511/1992. For the General Comment, see Official Records of the General Assembly, Forty-Ninth Session, Supplement No. 40 (A/49/40), Annex V.

cerns must not be left out. Dislikable as the word loyalty is in a human rights context, one could refer to it, if at all, as a two-way street in State-group relations. With the State as the stronger party, it must demonstrate that loyalty by scrupulously respecting indigenous and minority rights. When historical, geographic and demographic circumstances are taken into account, the standards must be applied objectively and consistently.

On the other side of the coin, indigenous peoples and minorities must respect human rights in line with the principle of universality, to the degree they possess autonomous or customary jurisdiction or control over their own members and others affected. Rules concerning the administration of justice, representative leadership and sex equality should be respected by groups whenever they exercise such control.

Group rights must of course also be exercised in a manner consistent with international law, for example with regard to territorial integrity and national unity, the maintenance of international peace and security, and the peaceful settlement of disputes.[17] There is also reason to increasingly introduce human rights into security debates, including the Security Council.

For correcting widespread discrimination, the responsibility for implementation of human rights rests with States. Constitutional and legislative guarantees, access to independent and impartial courts and the availability of other remedies are as crucial for indigenous rights as for other human rights, also in the Nordic countries where the courts are hesitant to act without legislative authority notwithstanding general principles and provisions on equal rights and nondiscrimination. National bodies for dealing with racial discrimination foreseen in article 14, paragraph 2, of the Convention on the Elimination of Racial Discrimination are missing in many countries, but Sweden notably has its Ombudsman on Ethnic Discrimination. If or rather when the State mechanisms fail, international methods of human rights protection and promotion, including dialogue and monitoring functions, should be available.

Another domestic step needs highlighting. Indigenous peoples and minorities always learn about the majority culture and language, but a two-way street is required. Education about the minority must reach the majority, and human rights education must reach everybody. Both these steps deserve increased attention and support in the Nordic countries. At the university level, for example at most law faculties, it is possible to graduate without learning much or anything about Sami needs and Sami rights.

[17] It must be noted that collective rights under international human rights law come in two types, group rights and peoples' rights, with the right of external self-determination attached only to the latter category.

IV. Foreign Policy

An emphasis will now be placed on the roles which respect for indigenous and minority rights and judicial resolution should play in the prevention of violent conflicts, together with other international monitoring and dialogue procedures. In this respect, the Nordic countries are in a position to give good examples by improving their own performances and consistently living up to the expectations set forth in international standards.

If the readers of these lines are in doubt about the situations faced by the indigenous peoples of the North, please ask yourselves whether you would be satisfied if you were Sami members of the Finnish and Swedish societies? Or Sami or Kveni[18] in Norway? Or Inuit in Denmark? Would you consider that all your human rights are well taken care of, like identity and cultural, educational and linguistic rights? The right to be different? Would you say that equal opportunities extended to all spheres of society? In the case of the Sami, would you want additional recognition of and role for your groups or would you accept being largely reduced to individuals in large nation-States, benevolent as they may be? Considering the small size of the Sami groups, it could be relatively easy to accommodate their aspirations and needs.

Indigenous and minority rights have in recent years been moving higher on regional and international agendas. National, ethnic and religious situations of a violent nature have multiplied. Even genocide and ethnic cleansing are occurring in this modern age. International peace and security are threatened as internal conflicts tend to spill across borders. The expectations and claims of group are growing with better knowledge of rights and possibilities. We are talking significant numbers with 5000–7000 minorities and indigenous groups on this planet of ours, with about one and a half billion individual members.

The prevailing reason for violent ethnic conflicts remains rampant discrimination against indigenous peoples and minorities. Discriminatory patterns in the educational, economic and political fields, combined with indignities and threats to identities and cultures, will continue to cause violent conflicts. There is plenty of evidence in US State Department, UN and NGO reports. The accumulation of these observations strongly indicates that many States in Europe and every other part of the world stand in violation of human rights commitments.

Much of the new attention to indigenous and minority rights is security oriented.[19] The linkage between prevention of rights violations and the prevention of violent ethnic conflicts is obvious. Respect for human rights is one method of

---

[18] For more information, see a recent conference report edited by Anne Torekoven Ström, Kvenene – en glemt minoritet? (The Kveni – A Forgotten Minority?), University of Tromsö, 1995, as reviewed in the Nordic Journal of International Law 65, 1996, 149–150.

[19] A former Secretary-General has underlined respect for minority rights in this context in the Agenda for Peace, UN document A/47/277 S/24111, para. 18. See also Arie Bloed [et al.] (eds.), Monitoring Human Rights in Europe, Comparing International Procedures and Mechanisms, Dordrecht 1993.

prevention, and it is a lot less costly than peace-keeping, humanitarian assistance and restoration of peace after man-made disasters have struck (millions versus billions). This approach requires respect for the rights of both groups and their members.

The movement towards democracy has also contributed to the new attention, especially where the groups are sizable enough to influence the outcome of elections. While democracy is good for human rights, the indigenous and minority rights parts must nevertheless be enshrined in constitutional and legislative guarantees with available and accessible remedies, in line with international standards, because majority rule is not necessarily friendly to or understanding of group concerns.

Unfortunately, to the present day, political solutions to indigenous and minority situations on an uneven, case-by-case basis characterize national and international responses, as evidenced by the varied regulation of indigenous affairs in Nordic jurisdictions. The differences in treatment are even more dramatic elsewhere. Widely varied approaches of this kind are likely to result in continuing discrimination for other groups who may then choose the conflict avenue. Groups should not have to see violence as a tool for solving their problems.

At the international level, a new emphasis is placed on dialogue between groups and governments. Combining human rights and security concerns for good reasons, such conciliation or confidence-building measures appear in many OSCE and UN instruments and mechanisms. The OSCE High Commissioner on National Minorities is a success story, but his is a prevention mandate limited to non-violent disputes. The Committee on Elimination of Racial Discrimination (CERD) has emphasized prevention and undertaken field visits. This type of UN competence should be built up with the necessary political and financial support.

A number of reports on constructive national arrangements by Asbjörn Eide[20] led in 1995 to the establishment of the UN Working Group on Minorities which, in addition to monitoring compliance with the 1992 Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities, is authorized to carry out dialogue functions which are not limited to non-conflict situations.[21] In its early years, the UN Working Group on Indigenous Populations initiated a number of dialogues; both working groups need and deserve continued encouragement and support in this regard.

When reviewing State reports under human rights treaties, the expert committees often ask questions of governments and make comments about the rights of indigenous peoples and minorities. The Nordic countries have deservedly received

---

[20] As Special Rapporteur of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities. The reports are available in documents E/CN.4/Sub.2/1993/34 and Addenda 1–4, E/CN.4/Sub.2/ 1994/36, and E/CN.4/Sub.2/1996/30.

[21] For suggestions concerning future work, see report by Gudmundur Alfredsson, Encouraging and Monitoring Compliance with Minority Rights, submitted to WGM, in document E/CN.4/Sub.2/AC.5/1997/WP.8.

such criticism.[22] All the committees are thus in a position to wield influence, but only the Human Rights Committee, CERD and the Committee on the Rights of the Child are active players. In particular, the Committee on Economic, Social and Cultural Rights could do better. In addition, indigenous peoples and minorities should increasingly be allowed and encouraged to contribute to report preparations and committee debates.

Complaints procedures are particularly relevant as judicial or quasi-judicial organs are required for obtaining consistent decisions, thus underlining both justiciability and a sense of justice. In addition to individuals, groups can file complaints under some of them. Legal aid agencies should be available to assist petitioners in what has emerged as a jungle of standards and procedures. Significant case-law has only emerged from the Human Rights Committee, based for the most part on article 27 of the Covenant on Civil and Political Rights, as outlined above. Under the 1503 procedure, patterns of violations, irrespective of treaty ratifications, may be verified.

On the other hand, few States have accepted the complaints avenue of article 14 of the Convention on the Elimination of Racial Discrimination; it is also underutilized and under-publicized in States which have made the necessary declaration, like the Nordic countries where the procedure is simply unknown. The ILO, UNESCO and regional avenues could also see more use. Unfortunately, the Council of Europe has not succeeded in preparing a protocol to the European Convention on Human Rights which would have given a minority-specific role to the Strasbourg Court; the Framework Convention and the Charter for Regional and Minority Languages are seriously lacking in substance and monitoring abilities and do not provide access to the Court.[23] An EU part in minority rights should be examined, not least with regard to access to the Luxembourg Court.[24]

As to fact-finding and investigative procedures, country-oriented and thematic special rapporteurs and experts of the UN Commission on Human Rights have on several occasions addressed minority concerns in their reports, including those on religious intolerance and racism. Groups have easy access to the rapporteurs and there have been excellent suggestions in some of their reports to which more attention should be paid. The OSCE and especially the Council of Europe could assume greater fact-finding and exposure roles.

Public debates and the embarrassment factor are important when indigenous and minority questions are discussed in the UN Commission and its Sub-Commission. It has been observed that minority and indigenous rights account for the

---

[22] Hannikainen (note 1) refers to several such instances in his article.

[23] Gudmundur Alfredsson, Memorandum on the Advisory Committee under Article 26 of the Framework Convention for the Protection of National Minorities prepared for the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly, in: Council of Europe document 7572, 5 June 1996, 22–28.

[24] An interesting research and conference project by the European Academy in Bolzano entitled "Package for Europe. Measures for Human Rights, Minority Protection, Cultural Diversity and Economic and Social Cohesion in the European Union" is under way.

majority of human rights violations considered in the Sub-Commission. Critical debates leading to possible condemnations serve to draw attention to problems facing groups and to put public and political pressure on governments to mend their ways. Governments are concerned about such debates and will try to avoid the embarrassment.

The UN Secretary-General, the High Commissioner for Human Rights, the directors of specialized agencies and regional organizations and other high officials can undertake good offices action or quiet diplomacy for the sake of groups in distress. In two recent instances of which this author is aware, such UN approaches have resulted in at least partial improvements of the respective situations. It is in the nature of such efforts that they are not made public, but they are only occasionally used for indigenous peoples and minorities and could be employed more effectively, as evidenced by the successful work of the OSCE High Commissioner.

Considerations concerning indigenous and minority rights should increasingly enter international and bilateral technical cooperation programmes. Expert advice can be useful for the translation into local languages of instruments, their inclusion in bills of rights and relevant legislation, and the setting up of national infrastructures for their safeguarding. Assistance should be made available not only to States, but also to groups in cooperation with the governments concerned. If technical assistance is to be used for prevention and even resolution of violent conflicts, and these are likely aims of such efforts, it is essential that the actors involved will talk to all the parties. Technical cooperation can also involve an informal early warning function.

Other promotional activities also require attention. The standards with the accompanying dialogue and monitoring procedures are fine, but people must know about them in order to use them. Teaching the rights to both majorities and minorities is therefore of utmost importance. It is required in article 26 of the UDHR, article 13 of the Covenant on Economic, Social and Cultural Rights and several other instruments that education in general and human rights education in particular shall promote understanding, tolerance and friendship among nations and groups and that it shall further UN activities for the maintenance of peace.[25] This line is confirmed by the current Decade of Human Rights Education and its action plan.[26] Other international texts call for wide dissemination of human rights information. More concrete work along these lines is essential, in every country, as the lack of knowledge and understanding is often at the roots of intercommunal distrust and tensions.

---

[25] Gudmundur Alfredsson, The Right to Human Rights Education, in: Asbjörn Eide/Catarina Krause/Allan Rosas (eds.), Economic, Social and Cultural Rights. A Textbook, Dordrecht 1995, 213–227.

[26] Reproduced with other useful documentation on the homepage of the UN High Commissioner for Human Rights at "www.unhchr.ch".

The Nordic countries have incorporated indigenous and minority rights as well as human rights education in their bilateral technical cooperation activities for human rights. That is indeed praiseworthy, but these efforts would be more credible if the domestic records were more in line with the international standards.

Mainstreaming should also obtain a high priority in the promotion and protection of minority rights, as is now in fashion for human rights in general. The 1992 minority rights declaration stipulates in article 9 that UN system organizations have a role to play in "the full realization of the rights and principles" set forth in the Declaration. Indigenous peoples and minorities would stand to benefit from a stronger systemwide involvement of the United Nations, not least the security and financial entities, and of other intergovernmental and bilateral actors.

It is important that development agencies deal directly with the groups, in cooperation with the State concerned, in order to level the playing field. It is an indication of something being fundamentally wrong when a receiving State does not allow that; it is in everybody's interest to bring indigenous peoples and minorities to the level of equal enjoyment of all human rights and thus bring about stability and harmony.

The work of non-governmental organizations is important in all areas of human rights, also indigenous and minority rights. Groups have achieved only limited access to IGOs, but NGOs can and do contribute when national and international actors lack the willingness to perform. NGOs thus have a crucial role to play in public education and the generation of public support, policy-making and legislative debates at local, national and international levels, speaking up on violations and abuses when governments and IGOs are ineffective or silent, feeding alternative information to treaty bodies committees examining State reports, bringing group issues to the attention of international complaints, fact-finding and investigative procedures, and assisting the groups in gaining access and obtaining representation.

Many NGOs are actively engaged in minority and indigenous rights, either as part of general human rights work or with specialization in this field. Among the effective international NGOs involved, one can mention Amnesty International, the Helsinki Committees, Human Rights Watch, the International Work Group for Indigenous Affairs, and the Minority Rights Group. All of them and many others deserve moral, diplomatic, political and sometimes financial support.

V. Concluding Observations

In this article, it has been emphasized that equal rights, the prohibition of discrimination and preferential treatment, based on objectivity and impartiality, offer the best chances of bringing relief and justice to indigenous peoples and minorities. The Nordic countries could make major contributions in this field, beginning with justice and statesmanship at home.

A fixation by Nordic officialdom on civil and political rights and on individual rights has manifested itself in lukewarm support for indigenous causes and led to

limited influence in ongoing debates on indigenous and minority rights. Education about indigenous peoples is a low priority and national action plans for human rights education are missing. These attitudes are at times out of tune with democracy and social welfare at home and development cooperation abroad. In the end, human rights export relies on credibility.

The credibility issue comes up because, if the Nordic countries want to pursue indigenous and minority rights in foreign policies and development assistance programs, their domestic records will inevitably surface for discussion and comparison as has happened in the Baltic States. Balance must be maintained by subjecting all countries, including one's own, to identical scrutiny.

Governments tend to be preoccupied with ethnic aspirations as threats to national unity and territorial integrity, while ignoring or downplaying the role of their own performance in respecting the dignity, identity and other rights of the groups concerned. These assumptions must be replaced with appreciation for the benefits to all parties of tolerance, pluralism and participation which, along with respect for indigenous and minority rights, should be viewed as tools of keeping the groups content and happy within a State.

After all, it is the whole idea of indigenous and minority rights, as they are pursued by the intergovernmental community, that the sovereignty and territorial integrity of States are preserved. Read together, international law and indigenous and minority rights place an emphasis on State unity on the one hand and the protection of group existence and identities within the State on the other hand.

Instead of viewing the groups as adversaries risking internal and external violence, positive experiences teach us that recognition of and respect for indigenous and minority rights are indeed viable alternatives to oppression or neglect. Special minority regimes, be it the Swiss Confederation, home rule in the Åland Islands, national border groups of Denmark and Germany or regional autonomies for South Tyrolians, Basques and Catalans, have helped in keeping the peace. Double standards which pop up all over the place, like with different attitudes and demands by Greece and Turkey about kin groups at home and abroad, must be resisted.

The realization of minority and indigenous rights is intended to benefit all parties: States in terms of political and social stability, economic prosperity and cultural diversity; the groups in terms of the preservation of identities and improved quality of life for individual members; and the international community in terms of the maintenance of peace and stability which after all is a major reason for its organizational existence.

By way of conclusion, a few specific recommendations are made concerning the active use of indigenous and minority rights in Nordic foreign policy and development cooperation. Drawing on the points raised above, a few suggestions will be highlighted below, as appropriate in national, bilateral and IGO contexts. Some of them are repetitions of good old stories, meaning more of the same is needed:

– support the rule of law and judicial or quasi-judicial avenues for resolving indigenous and minority rights problems at home and abroad, preferably by group access to courts of law, including the Strasbourg and Luxembourg courts;

– always keep in mind the question whether the essential components of equal enjoyment of all human rights, non-discrimination in that enjoyment and preferential treatment have been taken into account in foreign policy and bilateral development cooperation considerations;
– introduce and demand the incorporation of indigenous and minority rights into international technical cooperation projects and encourage group participation in them, with a focus on national infrastructures, human rights education and training, and public awareness of standards and procedures;
– make sure in law and action that democracy incorporates respect for indigenous- and minority-specific standards, including special measures when needed and democratic control by groups over local affairs when possible;
– abandon or better still outlaw the use of the "nation-State" concept;
– facilitate increased access for indigenous peoples and minorities to national and international policy-making and implementation bodies;
– allow indigenous peoples and minorities to contribute to State reports under human rights treaties and participate in treaty body debates, as part of government delegations if necessary for access;
– recognize and support that both groups and individuals have rights and procedural standing;
– make it possible for legal aid entities to assist indigenous peoples and minorities with the filing of complaints under international procedures;
– use the embarrassment factor which of course requires respectable domestic performance;
– systematically mainstream indigenous and minority rights into the appropriate policy-making, monitoring and technical assistance programs in the UN system;
– support NGOs in their contributions across the board of activities in monitoring respect for indigenous and minority rights and in assisting groups;
– emphasize prevention of violent conflicts through respect for human rights, support existing and new mechanisms for this purpose, including good offices and bodies with dialogue and confidence-building functions, underline the self-interest for all parties, and calculate the benefits of the prevention of violent conflicts through respect for indigenous and minority rights; and
– increasingly introduce indigenous and minority rights into security debates, including the Security Council, just as security issues have entered the human rights debates.