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## GROUP RIGHTS DEFUSE TENSIONS

————— CSABA K. ZOLTANI and FRANK KOSZORUS, JR. —————

Interethnic relations throughout Central and Eastern Europe remain unresolved despite two world wars, ethnic cleansing, and repeated peacemaking efforts in this century. The United States has a vested interest in devising a new approach to nationalities issues, many of which are potentially explosive. An overriding objective of U.S. foreign policy is to promote democracy and pluralism—strongly entrenched American values—throughout Central and Eastern Europe. Moreover, the strong U.S. interest in a stable and peaceful Europe is contingent upon the resolution of minority disputes and the elimination of tensions that arise from such disputes. When European minority issues were ignored or improperly addressed in this century, the United States was called upon to intervene in two world wars. Today, American troops once again have embarked on a dangerous mission in Bosnia because of unresolved nationalities issues. This cycle will be broken only if the aspirations of minorities in the region are satisfied.

A salient characteristic of Central Europe is its ethnic heterogeneity—a result of a long historical process. In several areas, the indigenous populations have been relegated to minority status as a consequence of drastic revisions of borders. With the end of the Cold War and the emergence of democratic governments, these minorities have begun to demand the right to maintain their ethnic identities. All too often, the response to the legitimate aspirations of ethnic minorities has been myopic and counterproductive. National and religious minorities often become scapegoats and are portrayed as barriers to progress or “national greatness,” to be assimilated, ethnically cleansed, or at best bestowed second-class citizenship. Policies and practices aimed at erasing the historical identity of the minorities breed resentment and discord and increase the potential for conflict, particularly in countries that lack a tradition of democracy or respect for pluralism.

As recent events demonstrate, existing human rights standards and instruments to protect minorities are inadequate. Although the international com-

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munity traditionally has been reluctant to recognize group rights, group aspirations should no longer be brushed aside with reference to individual rights or state sovereignty. The recognition and enforcement of the rights of minorities fulfill the requirements of democracy, defuse potential conflicts, and promote positive interstate relations.

As we approach the third millennium, a new vision for Central Europe is needed—one which builds on existing structures but which also fundamentally differs from contemporary paradigms in that it focuses on the protection of groups. An important element of this approach is the recognition of non-territorially defined autonomy of conationals in one or more contiguous sovereign states. This concept is based on the idea of shared spaces and complementary and overlapping jurisdictions in the cultural sphere, with special emphasis on linguistic rights. Elements from numerous Western models can be incorporated into this approach to alleviate suffering and promote the stability of Central and Eastern Europe. Ignoring the fundamental issues, on the other hand, will merely exacerbate many real problems.

### Groups and Their Aspirations

Groups are comprised of individuals with common bonds who wish to partake in activities in concert with each other. There is wide latitude in the possible definition of group membership, but for the discussion at hand, culture is the predominant characteristic.

Although interethnic relations are complex and as varied as the groups themselves, an element common to most ethnic tensions is an attempt by an intolerant majority to diminish the presence of a minority culturally or, in extreme cases, to destroy them physically. Ethnic groups have and surely will continue to resist such attempts. In this struggle for self-preservation, they will likely demand recognition of group rights. As defined by Denise G. Réaume, group rights protect "collective interests."<sup>1</sup> In the Central European context, these rights would permit a national minority or historical community to preserve its unique characteristics and to express its cultural identity while at the same time shielding the group from discrimination. In other words, group rights facilitate equality and nondiscrimination. Examples of such rights include cultural development, use of the mother tongue in official functions, an education within one's own culture, and, in some instances, self-determination—either external or internal.<sup>2</sup>

With few exceptions, such as the Genocide Convention (1948) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), which gives any member nation the right to bring complaints on behalf of a minority for violation of its group rights, group rights are not anchored in international law unless they are expressed as rights of "persons belonging to" a minority. There is growing recognition, however, that groups can only enjoy certain rights, such as the right to cultural development, if they can be guaranteed by international law. Although international law would systematize such rights, interim solutions, such as regional arrangements or

domestic legislation that would permit individuals to communicate and function in their own communities, would constitute substantial progress toward satisfying the aspirations of minority groups.

The international recognition of group rights could also alleviate the problem of the "tyranny of the majority." This term refers to the tendency of democratic majorities to ignore or stifle the aspirations of minorities, especially in countries that do not have a tradition of pluralism or tolerance.<sup>3</sup>

Language is one of the essential components of a minority's ability to preserve its culture in Central Europe. For example, neither Slovakia, where 10 percent of the population is Hungarian, nor Romania, where close to 2 million Hungarians live, has allowed the establishment or continued functioning of minority language universities. In Romania, the Hungarian, Saxon, and Roma communities constitute distinct ethnic groups and make up over 23 percent of the population. Nevertheless, an education bill recently passed by the Romanian parliament contains provisions that essentially curtail, in most instances, the education of minorities in their native languages. For instance, after the Bolyai University of Cluj (Kolozsvár) in Romania was consolidated with a Romanian language university, Hungarian instruction was severely curtailed. Also, a language law recently enacted in Slovakia in effect establishes a mechanism to curtail the education of ethnic Hungarians in their native tongue. States in Western Europe such as France do not recognize the concept of a "minority," even though the Basques and Bretons constitute distinct territorial, linguistic, and cultural subdivisions within France.

The experience of other states suggests that the recognition of group rights promotes interethnic peace. In postapartheid South Africa, for instance, the state recognizes and supports 11 official languages.<sup>4</sup> The United States, in concert with Western Europe, should encourage the Central and East European states to facilitate the ability of minorities to preserve their cultural and historical identities and thereby defuse tensions caused by the assimilationist policies and practices that predominate today.

### Historical Background

Central and Eastern Europe have long been at the fault line of empires. The ethnic heterogeneity of the region is a reflection of centuries-old historical developments. After major upheavals, such as the Mongol invasion in the thirteenth century and the Turkish conquest in 1526, Hungary invited non-Magyars from the south and the west to fill territories depopulated by the invaders. In some cases, the new arrivals were granted special privileges in their charters, including the right to autonomy. In the case of the Saxons in Transylvania, these privileges lasted until 1920. Towns thus became ethnic enclaves, whose inhabitants spoke a language and represented a culture different from that of the rest of the population. These differences only became an issue centuries later with the rise of ethno-nationalism.

The legal origin of group rights can be traced to the sixteenth and seventeenth centuries, when religious freedom was recognized in the peace that

followed the religious wars in Europe. The peace agreements of Augsburg (1555), Vienna (1606), and Linz (1645) all guaranteed various groups the right to freedom of religion.

The Congress of Vienna in 1815, despite rejecting the notion of popular will, made exceptions for ethnicity and language. It was there that the question of a national minority was raised for the first time. A British memorandum to the congress declared that Poles, regardless of whose subjects they might be, must be treated as Poles. This idea was incorporated into Article I of the Final Act of the congress, which states that "[t]he Poles, subjects of Russia, Austria and Prussia, will have institutions which guarantee the preservation of their nationality."

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Until the rise of the modern nation-state, the ethnicity of the population of a territory played only a subsidiary role in fixing administrative boundaries or in its governance. Generally, national consciousness was not a major factor in the relationships among ethnic groups.

As education became more widely available, the nineteenth century witnessed the "awakening" of nationalism and the genesis of national consciousness among ethnic groups. Some countries responded by making concessions to nationality groups. For example, the Nationalities Law of Hungary of 1868 was an attempt to mollify ethnic groups by granting them the right to use their mother tongue in official transactions and to be educated in their own language.

European powers exploited this rising nationalism for their own purposes. For instance, the Allies in the First World War sought to weaken their adversary internally by catering to the simmering national aspirations of minorities in the Austro-Hungarian monarchy. Of the newly created states following the war, none were the result of a plebiscite. Moreover, ethnic groups were transferred to new or enlarged states that were as heterogeneous as the entities from which they devolved.<sup>5</sup> For instance, approximately one-third of the population of the newly independent Poland consisted of non-Poles, including a large contingent of Jews and Ukrainians. Forty percent of Czechoslovakia was non-Slav. Romania acquired sizeable Hungarian and Saxon populations, and not a single major Transylvanian town transferred to Romania had a Romanian majority.

Although limited formal guarantees of minority rights were granted to several of the autonomous territories, for example in Poland, many minority groups felt seriously aggrieved. The situation was aggravated as the rights of the minorities were gradually and systematically curtailed by the new states, which, although multiethnic, were organized on the nation-state model.

At the same time, theories and practical approaches for the preservation of

unrest. Following the Second World War, the issue was reevaluated, culminating in the Gaspari-Gruber Accord of 1946. The accord granted the German-speaking population "complete equality of rights with the Italian-speaking inhabitants." It also protected the identity of and granted autonomy to the German-speaking population.

In this case, the group rights were not tied to territorial autonomy and the agreement avoided fracturing the state. The arrangement has been very successful. Austria has retained the right to bring grievances of the German-speaking minority before the International Court of Justice. Use of the German language for official discourse as well as in instruction has minimized ethnic discord.

The Swiss consociational form of government has been successful in meeting the aspirations of four different ethnic groups in Switzerland. Anti-majoritarian in spirit, the Swiss model involves the political representatives of all ethnic groups in the decision-making process and is most effective when there is a willingness for accommodation on the part of all participants. The burden of concessions falls most heavily on the majority under consociationalism, but it provides the means for preserving a multiethnic state by ensuring that all have a stake in its future.

There are instances where multilateral standards are incorporated into bilateral treaties such as the recently ratified Hungarian-Slovak treaty (1995), which specifically incorporates Resolution 1201 of the Council of Europe regarding the right to autonomy.

The interpretation of the principle of self-determination continues to evolve, including Halperin's proposal of trans-state self-determination and self-determination of a group within a state.<sup>8</sup> The right to self-determination needs to be expanded beyond conventional interpretations to ensure the rights of groups while at the same time protecting the prerogatives of states.

These models are relevant to current ethnic disputes. An excellent case in point is the draft bill on national minorities submitted to the Romanian Parliament by the Democratic Alliance of Hungarians in Romania, which seeks to secure group rights within existing state boundaries for the estimated 2 million ethnic Hungarians living in Romania, one of the largest ethnic minorities in Europe.

### **Groups Rights Complement Individual Rights**

Group rights flow naturally from individual rights because certain individual rights, such as the use of a mother tongue, education, or even religion, can only be exercised collectively. Thus, if a group, or individuals within a group, is to be assured of its rights against the will of the majority, international recognition and domestic implementation of group rights must be realized. Even as individual human rights have gained wide international recognition, however, group rights are in a nascent stage and face vigorous opposition from many quarters.

Since the end of the Second World War, and especially since the 1970s,

ethnic groups and their identities emerged. For instance, in 1918 Karl Renner proposed the idea of functional autonomy to allow ethnic communities to exercise rights specific to their ethnicity, such as language and association.<sup>6</sup> This, he believed, would obviate the need for territorial subdivision of existing multiethnic empires. Along these lines, schools for ethnic minorities were established in Latvia in 1919, and an Estonian law of 1925 granted cultural autonomy to ethnic minorities. The provisions of the latter were not based on territory but conferred the right to establish cultural institutions and schools.

The majority of ethnic problems, however, remained unresolved in the post-World War I era and greatly contributed to the outbreak of World War II. The controversy involving the large German minority in Czechoslovakia is one example. The end of the war did not lead to improvements in minority rights. For instance, the Allied powers sanctioned the transfer of large ethnic populations to allievate potential future conflicts, despite what would today be considered the gross violation of human rights that this practice entailed. The Soviets deported entire ethnic communities deemed "unreliable," including Tatars, Chechens, and Germans. President Benes did the same with the sizeable German population and segments of the Hungarian population in Czechoslovakia. After the 1948-1949 communist takeover of Central and Eastern Europe, however, socialist internationalism suppressed the expression of ethnic discontent.

As Hurst Hannum has pointed out, the "reality of minorities and largely heterogeneous states in the contemporary world is also at odds with the theory of the nation state as it developed in the nineteenth century, and the rhetoric of one people/one-state has carried over into the concept of self-determination in the post-1945 period."<sup>7</sup> The great powers applied the benefits of self-determination selectively. Hegemony of the great powers took precedence over philosophical theories of statecraft. The conflict between the right to self-determination and *uti-possidetis*—the idea that a group is entitled to a territory by the mere fact that it occupies it—was never satisfactorily resolved.

With the demise of communism, ethnic aspirations have resurfaced. Many Tatars are returning to their former homeland in the Crimea, and the Chechens are fighting Russia for the right to independence. Yugoslavia has split apart violently, Czechoslovakia peacefully. Many of the new states are oriented around a single ethnic nationalism, however, and the demand for rights for ethnic minorities is being stifled. Nevertheless, there are successful models and legal mechanisms to balance group interests that could be applied in the states of Central and Eastern Europe.

### Successful Models of Group Rights

Perhaps the most successful solution to the grievances of an ethnic minority involves South Tyrol—an area with a predominantly German-speaking population that was part of the Austro-Hungarian monarchy. The Peace Treaty of Saint Germain in 1919 transferred South Tyrol to Italy. Mussolini's policy of assimilation was strongly resented by the population and led to ethnic

minority rights have been discussed with increasing frequency in international legal circles, and mention of them is appearing in various declarations and recommendations. For instance, the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities of the U.N. General Assembly (1992) states that "[p]ersons belonging to minorities may exercise their rights, including those set forth in this Declaration, individually as well as in community with other members of their group, without any discrimination." Further, Recommendation 1201 of the Council of Europe, under Article 10, states that "[e]very person belonging to a national minority, while duly respecting the territorial integrity of the state, shall have the right to have free and unimpeded contacts with the citizens of another country with whom this minority shares ethnic, religious or linguistic features or a cultural identity." Article 6 states that "all persons belonging to a national minority shall have the right to set up their organizations, including political parties." Political parties are not individual but group and collective activities. Thus, group rights are clearly indicated here.

To Americans, the concept of group rights has a negative ring, since from the day of the Federalists, the American "nation" has been perceived as a body whose basic unit was not a clan or ethnic group but the individual. With the exception of African Americans, immigrants came here willingly and, over time, relinquished their former group identities to join the conglomeration that became America.

Nonetheless, American jurisprudence recognizes group rights in certain discrete instances. The existence of parallel school systems, public and parochial, is a prime example. The Wagner Act (1935), guaranteeing collective bargaining rights to labor unions, is another. Based on tribal association, Native Americans have been granted certain privileges not accorded to other groups. The Amish religious community has been accommodated locally to enable its members to live within their religious beliefs. Thus, even under the individual-oriented American political system, there is room for satisfaction of diverse group needs.

Some argue that group rights could lead to limiting individual rights and thus should not be adopted. This argument is severely weakened when the granting of group rights is done not in place of but in addition to, and in enhancement of, individual rights. Rights such as the freedom of assembly, freedom of speech, and freedom of religion, as well as respect for pluralism, are critical components of Western democracies. Group rights would guarantee the ability of ethnic minorities to enjoy and exercise these fundamental principles. Although group rights could conceivably hinder individual rights

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in certain limited instances, adherence to democratic principles eliminates this potential. In the Central European context, the concrete rights sought by ethnic minorities would enhance the totality of rights. For instance, the individual right to be educated would be complemented by the right to be educated in one's mother tongue. This, in turn, would facilitate the group right to cultural identity without impinging on the rights of the majority.

Principle 19 of the Concluding Document of the Conference on Security and Cooperation in Europe (CSCE) Vienna Meeting of January 15, 1989 parallels such an approach in that it adds group protection of the ethnic, cultural, linguistic, and religious identity of national minorities to the individual rights of persons belonging to minorities.

Critics of group rights maintain that the preferred approach to abuses is to insist that governments respect individual rights. This approach has not worked in the past and there is no reason to believe that it will work in the future. Human rights standards alone will not guarantee or secure all of the rights being sought by minorities.

### International Legal Standards and Nonbinding Norms

Several treaties that came into force in Europe following World War I embraced the concept of minority rights within the framework of human rights. Although these treaties bound only a few small states and were adopted as a result of the reconfiguration of Central Europe, the rights of minorities were "internationalized" by the treaties placed under the guarantee of the League of Nations. International recognition of the special needs of minorities was evident from the Opinion of the Permanent Court of International Justice concerning Minority Schools in Albania.<sup>9</sup> The court stated that there would be no true equality between a majority and a minority "if the latter is deprived of its own institutions and consequently is compelled to renounce that which constitutes the very essence of its being a minority."

The precedent created by the League of Nations was discarded after the Second World War. Indeed, the United Nations has largely ignored the issue of minority rights, despite the prefatory language of Resolution 217(c), adopted by the General Assembly in 1948, which states that the organization "cannot remain indifferent to the fate of minorities." Neither the U.N. Charter nor the Universal Declaration of Human Rights (1948) mentions minority rights. Even the Subcommission on the Prevention of Discrimination and the Protection of Minorities, created by the U.N. Economic and Social Council in 1947, has focused on the prevention of discrimination—an individual human rights concern.<sup>10</sup>

Articles 1 and 55 of the U.N. Charter refer to the self-determination of peoples but treat it as a vague principle, not necessarily as a right, and apply it to territories rather than to ethnic groups. Moreover, the United Nations defines self-determination as freedom from colonial rule. With the disappearance of colonial empires, the international community has reluctantly begun to con-



sider "internal" self-determination and whether and how it might be applied in noncolonial multiethnic settings.

Although the United Nations has failed to develop a comprehensive system for the protection of minorities, it has adopted a few weak initiatives, such as Article 27 of the 1966 International Covenant on Civil and Political Rights. Article 27 provides that:

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

This is the only legally binding international agreement that guarantees the rights of persons who belong to ethnic, religious, or linguistic minorities.<sup>11</sup> Some have argued that by making state-sponsored assimilation or expulsion illegal, Article 27 established group rights.<sup>12</sup> This, however, is not the prevailing interpretation.

Nonbinding declarations have also been adopted by the U.N. General Assembly, such as the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities.

The Helsinki Conference on Security and Cooperation (CSCE) process has played an ever-increasing role in placing the protection of minorities on the agenda. Principle VII of the Helsinki Final Act of 1975 cautiously addressed the issue by asserting that:

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

Principle VII was expanded and strengthened by the Vienna Concluding Document, which not only commits the participating states to refrain from discriminating against national minorities but also obligates them to "create conditions for the promotion of ethnic, cultural, linguistic, and religious identity of national minorities on their territories." The 1990 Copenhagen Document of the Conference on the Human Dimension advanced this concept and became the first document since 1945 to elaborate the rights of persons belonging to national minorities, including the right to establish and maintain their own educational institutions.

The Charter of Paris for a New Europe, signed by the CSCE heads of state in 1991, affirms that the "ethnic, cultural, linguistic and religious identity of national minorities will be protected." Similar pronouncements can be found

in other nonbinding instruments such as the Vienna Declaration and Programme of Action (June 1993) of the World Conference on Human Rights.

Since the Helsinki documents and declarations are not treaties, they are not legally binding. However, over time the nontreaty standards and other similar declarations may gain acceptance and become incorporated into international treaties.

The most far-reaching effort to grapple with minority rights issues to date occurred in early 1995, when the Council of Europe opened for signature the Framework Convention for the Protection of National Minorities. This convention recognizes that the protection of national minorities is essential to stability, democratic security, and peace in Europe. Article 5 specifically obligates the parties "to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve

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the essential elements of their identity, namely their religion, language, traditions and cultural heritage." Other articles establish the right to display signs in the minority language, to use surnames in the minority language, and to receive schooling, at all levels, in the minority language.

Although this multilateral instrument goes a long way toward addressing the protection of minority rights, it still has several deficiencies. The emphasis is on the individual who belongs to a minority group, who may exercise his or her rights individually or in concert with others. It does not give explicit recognition to group rights. There is also a failure to define key terms, such as what constitutes a "minority." Enforcement provisions and remedies have not been included, aside from the provision requiring the signatories to file written reports on compliance. Finally, the tyranny of the majority and possible discrimination arising from it have not been addressed.

In addition to multilateral initiatives, there have been a number of successful unilateral and bilateral measures to promote the welfare of groups. For instance, the 1951 Autonomy Act, as extended in 1991, grants the small Swedish population in Finland political and cultural autonomy. Catalanian autonomy is another successful example.

In sum, there is considerable activity in international and domestic forums to establish legal norms for minority protection. Missing from the conventions and treaties, however, are unequivocal standards of group rights, binding obligations of compliance, and mechanisms to adjudicate differences before they degenerate into violence.

Finally, groups seek instruments that will enable them to air their grievances. Today, there are no means by which individuals or groups can raise human rights grievances because generally only states, not individuals, are recognized as subjects of international law. Therefore, since states decide the

merits of grievances, the majority ethnic group can veto the airing of a minority's grievance. Although an individual may complain to an agency of the United Nations, the United Nations can investigate the complaint only with the affected state's consent. In effect, despite the hopes raised by the conventions and resolutions or even the U.N. Charter regarding human rights, they are not enforceable in practice.

### An Alternative Path

Given the cultural and ethnic diversity of the preponderance of states in Central and Eastern Europe and the threat to collective security posed by ethnic discord, it is important to consider how the international legal system can best respond to these challenges. In heterogeneous and pluralistic societies with proportional representation and winner-take-all majoritarianism, minorities are condemned to perpetual disadvantage. There is little that they can do, under the current system, to legally resist covert or mandated assimilation. Thus, a new approach to securing individual as well as group rights of minorities needs to be devised.

Three instances should be considered: first, when there are transborder ethnicities or communities, such as Hungarians in Slovakia; second, when the minority lives in compact communities at a distance from the state border and from its conationals, such as the Szeklers of Transylvania and the Csango of Moldavia; third, when the minority is scattered throughout a region, such as the Roma in Central and Eastern Europe.

In these instances, we argue for a solution to self-determination of minority groups based on the idea of shared spaces, with complementary and overlapping jurisdictions in the cultural and linguistic spheres.<sup>13</sup> With certain modifications, this idea would be applicable to all three instances and therefore address the concerns of minorities whether they live in compact communities or are scattered widely throughout a region. The proposed solution would also de-emphasize territorial autonomy and all of the rhetoric associated with that term.

The implementation of the principle of group rights can take various forms. The minimum requirement is the establishment of an environment conducive to the viability of the minority's language. This includes the possibility of minority-language school systems operating parallel to dominant-language schools. Secondly, the use of the minority language must be sanctioned for official transactions. Bilingualism is already a fact of life for many Europeans, and its official acceptance would be a mere formality. This approach is a small concession on the part of the majority to further interethnic peace.

Group rights in shared spaces allow the development of ethnic communities without the need to separate people who have intermingled over time. Cross-border arrangements would include the right to free and unimpeded movement for all ethnic minority groups. It could include schools available to ethnic groups from both sides of an international demarcation line. Another possibility would be the elimination of passport controls for people living

within a certain distance from state borders. Such arrangements have worked well in parts of Europe. There is no justifiable reason why people should have to wait up to 10 hours, as happens now at Romanian border check points, to visit a relative in a village visible on the other side of the border.

Since the emphasis is on cultural values, state sovereignty should not be an issue. There are historical precedents to this approach: in Transylvania, Saxons were granted far-reaching local autonomy in running their own affairs. This did not detract from the principality's viability or governability. Although united by the basic elements of language, preunified nineteenth-century Germany also consisted of numerous autonomous regions.

A precondition for the existence and viability of such cultural living spaces is the acceptance, tolerance, and protection of group rights in areas where minorities exist. It requires a democratic approach to government with division of power and the rule of law as well as the acceptance of pluralism.

### Toward Collective Security

Collective security envisages a commitment to the status quo and is based on the premise that there is agreement among the parties on some societal norms. It includes a definition of behavior that constitutes aggression and, should it occur, the commitment to a mutual response. A corollary condition of good relations among states with cross-border nationalities is ethnic tolerance.

In circumstances such as those in Central Europe, where conationals live in contiguous states, the granting of cross-border group rights would go a long way toward easing existing ethnic tensions, and is the *sine qua non* for collective security. As the South Tyrol agreement illustrates, the granting of autonomy does not threaten existing border arrangements or majoritarian rule. In fact, it can be regarded as a heightened level of expression of tolerance and democratic rule.

In an age when the number of countries is near 200, the number of nations is estimated to be around 6,000, and 7,000 languages are spoken, the traditional jurisdictional subdivisions of the globe need to be reevaluated. The very definition of sovereignty is being reexamined. It is quite conceivable that in areas where ethnic communities intermingle in the cultural and educational fields, complementary and overlapping social and cultural ethnic-based jurisdictions could be created and made to function seamlessly. The matrix of jurisdictions would be complementary and noninterfering. Such jurisdictions could exist within present state borders or reflect cross-border arrangements.

As an extension of, and adjunct to, existing international norms, the time is ripe for a European conference with participation by the United States to explore how group rights can be defined and secured. A start could be the codification of Recommendation 1201 of the Council of Europe to assure the right to autonomy. Simultaneous to the establishment of binding standards, remedies

should be made available to groups. For example, the Civil and Political Covenant of the United Nations declares in Article 2(3)(a) that one whose rights are violated shall have an "effective remedy." Once these rights are anchored in international law with the requisite enforcement clauses, the importance of international borders will diminish. A good example is the European Economic Community. In such an environment, the idea of nonterritorial arrangements could be extended to multiethnic areas. Analogous arrangements already exist in the commercial area and where resources are shared by several subdivisions or states.

Americans generally have difficulty relating to ethnic conflicts. Our national experience, collective psyche, and faith in the melting pot convince us that ethnic identity is not, and should not be, a determining factor in political legitimacy. While immigrants to the United States until recently voluntarily relinquished their group identities to become Americans, in most places where ethnic discord is an issue, members of groups wish to retain their group associations. Indeed, assimilationist efforts are strongly resented and are the major contributing cause of many ethnic conflicts.

Thus, what may be true for the United States is not necessarily true elsewhere. The United States should take the lead in formulating the legal basis for group human rights and establishing international conventions to safeguard and guarantee these rights. The clamor for group rights is unlikely to subside and, with the breakup of multiethnic entities, is likely to intensify. This represents at once a challenge and a historical opportunity for the United States: it can lead and help define international standards, drawing on its rich experience of a multitude of different ethnic groups, and thereby avoid becoming entangled in future conflicts.

Such an entanglement remains possible because the United States is politically committed to Europe. Its continual involvement in European affairs is dictated by its perceived geopolitical and economic interests and its status as the sole superpower on the international scene. Considering the ethnic heterogeneity of Central and Eastern Europe, the United States will have to address minority issues in one of two ways, either by omission or by commission. The former would carry a higher price tag in view of the potential for disputes caused by the denial of minority rights.

Great Britain unsuccessfully sought to avoid the difficult questions posed by Central Europe in the late 1930s, as reflected in Neville Chamberlain's statement that characterized the threats against Czechoslovakia as "a quarrel in a faraway country between people of whom we know nothing." Shortly thereafter Britain was in a full-fledged war. Twenty years earlier President Woodrow Wilson displayed far greater vision when he observed at the Paris Peace Conference that "[n]othing . . . is more likely to disturb the peace of the world than the treatment which might in certain circumstances be meted out to minorities." Such recognition of the importance of group rights and support of the aspirations of historical communities will not only promote democratic values but will also help defuse seemingly intractable disputes.

## Notes

1. Denise G. Réaume, "The Group Right to Linguistic Security: Whose Right, What Duties?" in *Group Rights*, ed. Judith Baker (Toronto: University of Toronto Press, 1994).
2. Autonomy and internal self-determination refer to the right of a collective to self government with constraints within existing boundaries. Self-determination implies free choice of a people without the involvement of another sovereign.
3. Tocqueville, in *Democracy in America*, warned, "[if] ever freedom is lost in America, that will be due to the omnipotence of the majority driving the minorities to desperation and forcing them to physical force. We may then see anarchy, but it will have come as the result of despotism." A current example of the tyranny of the majority is the impotence of the Democratic Alliance of Hungarians in Romania—one of the largest parliamentary parties in Romania—which is consistently outvoted along ethnic lines.
4. *The New York Times*, June 28, 1995.
5. The Paris Peace Conference transformed or left approximately 25 to 30 million individuals as minorities. Inis L. Claude, Jr., *National Minorities: An International Problem* (New York: Greenwood Press, 1955).
6. Karl Renner, *Das Selbstbestimmungsrecht der Nationen in Besonderer Anwendung auf Oesterreich*, 2. Auflage, Leipzig und Wien, F. Deuticke, 1918.
7. Hurst Hannum, *Autonomy, Sovereignty, and Self-Determination* (Philadelphia: University of Pennsylvania Press, 1990), 71.
8. M. H. Halperin, D. H. Scheffer, and P. L. Small, *Self-determination in the New World Order* (Washington, DC: Carnegie Endowment for International Peace, 1992).
9. *Minority Schools in Albania*, PCIS Series A/B, No. 64 (April 6, 1935), 17.
10. Francesco Capotorti, *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities* (New York: United Nations, 1991).
11. For an elaborate discussion, see Christian Tomuschat, *Protection of Minorities under Article 27 of the International Covenant on Civil and Political Rights* (New York: Springer Verlag, 1987).
12. For a history of minority rights from the nineteenth century to the present, see Natan Lerner, "The Evolution of Minority Rights in International Law," in *Peoples and Minorities in International Law*, ed. C. Brolmann, R. Lefeber, and M. Zieck (Boston: Martinus Nijhoff, 1993).
13. For a comparable approach, see Gidon Gottlieb, "Nations Without States," *Foreign Affairs* 73, no. 3 (May-June, 1994).

