

## Intervention by Asbjørn Eide at the Fifth Session of the Forum on Minority Issues

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In this presentation I will focus on three issues:

**First**, some words about the origin, context and process underlying the adoption of the Declaration and the commentary. Next, I will briefly mention the main points that were highlighted in the Commentary. Finally, I will focus on the priorities that I consider most important at the present stage in history.

We all agree that the foundation of contemporary human rights was laid by the adoption of the Universal Declaration of Human Rights in 1948. I consider the UDHR to be the greatest step taken in the **advancement of global civilization**. The rights listed in the UDHR were the product of **three hundred years** of reflection on the ideal content of the social contract. **Civil** rights had been the product of the 18<sup>th</sup> century, **political** rights the product of the 19<sup>th</sup> century, and **economic and social rights** the product of the 20<sup>th</sup> century.

The UDHR is based on the notion that everyone is born **free and equal in dignity and rights**, and that there shall be **no discrimination** in the enjoyment of these rights on grounds of race, colour, gender, national or social origin or any other grounds.

But there was one **weakness** in the UDHR – it did not address the rights of persons belonging to **minorities**. This was not simply an oversight, because it had been extensively discussed during the preparation of the UDHR. In an appendix to resolution 217 A(III) by which the General Assembly adopted in 1948 the UDHR, it was stated that while the General Assembly could not remain indifferent to the fate of minorities, it had been found to be difficult to find a uniform solution for this complex and delicate question, which has special aspects in each State in which it arises. While the General Assembly therefore decided not to include in the UDHR any specific provisions on minorities, it requested the Commission on Human Rights its Sub-Commission on Prevention of Discrimination and Protection of Minorities to make a thorough study of the problem of minorities, in order that the United Nations may be able to take effective measures for the protection of racial, religious or linguistic minorities.

That was in 1948. Not much happened until 1966 when it was decided to include in the Covenant on Civil and Political Rights its Article 27, stating that in states where ethnic, religious or linguistic minorities existed they should not be denied the right, in community with the other members of the group, to enjoy their own culture, to profess and practice their own religion, or use their own language.

As you can see it was a rather weak provision. Many considered it insufficient, and drafts were presented for a more comprehensive regulation of minority protection, but it was left lingering in a working group of the Commission on Human Rights.

Thirty years ago I was elected a member of the above-mentioned Sub-Commission. As you can see from the name, it had two tasks: To prevent discrimination and to protect minorities. I was always fascinated with the need to find the adequate balancing of those two concerns: Prevention of discrimination requires equal treatment, while protection of minorities requires respect for the right

to be different. I recognized that in order to achieve this, we have to promote what I call pluralistic integration, which I shall soon explain.

The year 1989 was a very special year in European history – it was the end of the Cold War. But there were signals of danger everywhere. In that same year I was requested by the Sub-Commission to prepare a study exploring **peaceful and constructive solutions to situations involving minorities**. **My work coincided with an ethnic explosion of violence** in several parts of the Balkans, the former Soviet Union, in Africa (Rwanda) and in Asia (Sri Lanka).

When I examined these situations I noticed that many of the conflicts were driven by what I called ethnic **conflict entrepreneurs**, persons who exploited for their own political gains the insecurity and bewilderment of people during political and economic transitions. On the other side I also recognized that there were many **human rights defenders** at work, people of the civil society who sought to function as **bridge builders** between the different ethnic groups. But it was clear that standards had to be developed that could clarify the rights of minorities in relation to the dominant majorities.

What has been dominant in my concern has been the need to **reconcile equality and diversity**. In my conclusions to the study on peaceful solutions to situations involving minorities, I argued that the solutions should consist of **three elements**: Firstly to promote **equality in the common domain** – that is in all areas of social, economic and political life; secondly, to ensure space for **pluralism in togetherness**, which meant a need to recognize the diversity of the different components of society and their languages and cultures within the overall framework of universal human rights; and **thirdly, to allow where necessary some territorial decentralization** when that could facilitate effective participation by minorities, provided that the different territories were all governed on the basis of **demos** (equal participation), not by **ethnos** (giving priorities to one ethnic group over others).

The major steps forward were taken within what was then called the Conference on Security and Co-operation in Europe, during its meeting on the **human dimension** of security, in Copenhagen in 1990. This was the first time the rights of national minorities were formulated. It was followed by the adoption by the **United Nations of its Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic minorities**, in 1992; in that year also the OSCE established the Office of the High Commissioner on National Minorities, and in 1995 the **Council of Europe adopted its framework convention on the rights of national minorities**.

In 1995 the Sub-Commission established its working **group on minorities**, and I was elected its chairman, a function I had for ten years. It was during those years I worked on the Commentary, presenting revised drafts at each session and benefitting from intensive discussion by representative of governments, nongovernmental organisations, and a whole range of interested scholars which prepared incisive analytical discussion papers for the working group.

### **Second, some words on the points highlighted in the Commentary.**

The commentary observes that the Declaration has a wider scope than the standards established under the Council of Europe or the Organisation on Conference and Security in Europe. These documents refer solely to *national* minorities, whereas the United Nations minority declaration in

draws on Article 27 of the UN Covenant on Civil and Political Rights which apply to ethnic, religious and linguistic minorities. The declaration also adds the term *national* minorities.

The commentary points out that there is hardly any national minority which is not also an ethnic, religious and/or linguistic minority, but that not all ethnic, religious and linguistic minorities are national minorities and might therefore not be covered by the European instruments.

A relevant point in this regard is that the UN declaration will in some circumstances also apply to non-citizens of the states where the minority exist. No absolute distinction can legitimately be made between the “old” and the “new” minorities, but in its application the “old” minorities may have stronger rights than the “new”.

A second, important point made in the Commentary is that the Declaration deals with the rights of **persons** belonging to minorities, but not with rights of minorities as collectivities. In this regard it is quite different from the UN Declaration on the Rights of Indigenous Peoples. The commentary underlines in its para. 15 that the rights of persons belonging to minorities differ from the rights of peoples to self-determination. This follows also from Article 8 paragraph 4 of the Declaration stating that nothing in the Declaration can be construed as permitting any activity contrary to the purposes and principles of the United Nations, including sovereign equality, territorial integrity and political independence of states.

While the Declaration uses the expression “rights of *persons* belonging to minorities, the Commentary emphasized that many of these rights can only be enjoyed if they are exercised in community with other persons belonging to the same minority.

And if you examine more closely the text, you will see that the duties of states set out in the Declaration are at least in part formulated as duties towards minorities as collective groups.

### **Third: Some comments on the significance of the Declaration and on education for multiculturalism and interculturalism.**

The overarching focus of the minority declaration is to give space for pluralism in the process of integration of society. Integration is a necessary task for any society in order to make it possible to develop a cohesive society where everyone can enjoy their full range of human rights, civil and political as well as economic, social and cultural rights. This comes clearly through in the preamble of the Declaration. But the important role of the Declaration is to ensure that there is sufficient space, during the process of integration and as an outcome of integration, to enjoy pluralism and diversity.

First and foremost, the Declaration in its Article 1 imposes a duty on all states to protect the existence of their minorities and their national or ethnic, religious and linguistic identity, and to encourage conditions for the promotion of that identity.

As previously noted, in 1948 the General Assembly had concluded that it had been found to be too difficult to find a uniform solution for situations involving minorities, which have special aspects in each State in which it arises. The declaration had therefore to be very flexible. You will see that the

rights of persons belonging to minorities are set out in Article 2, while the duties of states to respect, protect and fulfil those rights are set out in Articles 4 and 5. The purpose of the commentary was to clarify the modalities of this flexibility while emphasizing that some basic principles had to be applied under all circumstances.

A major purpose of the Declaration is to establish a defence against assimilation. At the same time it is also intended to prevent any patterns that resemble apartheid by enforcing separation.

When dominant groups seek to prevent minorities from benefitting equally in society, it approaches apartheid. This can be in the form of denial of political rights, as it was in South Africa until the fall of apartheid, but it can also take the form of economically imposed ghettos where some minorities live in substandard housing and under weaker conditions than others. Patterns of social and economic apartheid need to be resisted: this has to be ensured through active anti-discrimination measures. . This is probably spelled out better in the Council of Europe's Framework Convention on National Minorities, but we find it also in the UN Minority Declaration article 4.5 –calling for integration in the overall economic life in society

In sum, the Declaration requires both acceptance of multiculturalism – the coexistence within states of separate cultures – and inter-culturalism: a close interaction between the different cultures based on reciprocal respect and joint promotion of equality in the common domain.

For this to function, government policy alone is not enough. Principles of multi-culturalism and inter-culturalism have to permeate the political system.

Our best source for this is the Convention on the Rights of the Child's Article 29, which sets out the purposes of education. I would like to strongly emphasize the importance of this Article.

The primary purpose of education obviously is to develop the child's personality, talents and mental and physical abilities to their fullest potential, but the convention places equal importance of the purpose to develop respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations; the development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own; and finally the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin.

Nearly all states of the world have ratified the CRC. It can therefore be safely argued that states have generally agreed that education should not be solely focussing on one's own identity or religion , but should ensure a process of intercultural education overcoming the boundaries of the separate religions, nations and cultures occurring within states and in the world at large, and yet to recognise and respect the right to be different.

The preamble of the constitution of UNESCO reminds us that since wars begin in the minds of men (and women), it is in the minds of men and women that the defences of peace must be constructed. As we move ahead with our efforts to create peaceful and cohesive societies in respect for pluralism and diversity, the role of education is crucial and there is in my mind no better guidance to be found than Article 29 of the Convention on the Rights of the Child