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EXPANDING THE ROLE OF THE INTERNATIONAL COURT OF JUSTICE TO RESOLVE INTERETHNIC CONFLICT AND PROTECT MINORITY RIGHTS

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DESPITE the prevalence of interethnic conflict and its threat to world order, the global constitutive process offers no universal mechanism, such as an international tribunal, to adjudicate the claims advanced by non-state, ethnic minorities. This author advocates establishing such a mechanism. During our present century, the power of politicized ethnicity in international and intra-state affairs repeatedly manifests itself around the globe in countries old and new. Ethnopolitical movements involve the mobilization of people on the bases of cultural characteristics, such as language, tradition, religion, homeland, and selected physical traits. Ethnopolitics significantly affects the world order. In 1973, Walter Connor wrote:

> In a world consisting of thousands of distinct ethnic groups and only some one hundred and thirty-five states, the revolutionary potential inherent in self-determination is quite apparent. All but fourteen of today's states contain at least one significant minority and half of the fourteen exceptions are characterized by that so-called irredentist situation in which the dominant ethnic group extends beyond the state's borders.[1]

Connor added that about 40% of the world's states contain more than five sizable ethnic populations.[2] Today there may be as many as 5,000 discrete ethnic or national populations in the world as compared to about 176 independent states.[3] These demographic facts coupled with the existence of legitimized ideologies of national self-determination have created a world with ethnically-based coalitions and conflicts. Within the past two decades, about half the world's states have experienced some form of inter-ethnic strife, and it has often been more violent than class or doctrinal conflict.[4] By the early 1980s, most

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1. Walter Connor, *The Politics of Ethnonationalism*, 27 J. INT'L AFF. 1, 1 (1973).
2. *Id.* at 17.
3. S. James Anaya, *The Capacity of International Law to Advance Ethnic or Nationality Rights Claims*, 75 IOWA L. REV. 837, 840 (1990).
4. JOSEPH ROTHSCHILD, ETHNOPOLITICS: A CONCEPTUAL FRAMEWORK 20 (1981).

of the world's 12 to 15 million refugees had "fled their countries as a result of ethnic, tribal or religious persecution,"[5] as dominant ethnic groups attempted to maintain their political and economic power at the expense of weaker ones.[6] The interethnic strife in the former Yugoslavia during the present decade has created more refugees than Europe has witnessed since World War II. We can expect that future population growth, competition for scarce resources, and natural disasters will exacerbate interethnic strife and create even more refugees.

In our present era, ethnonationalism represents a major legitimator and delegitimator of regimes. The former Yugoslavia and the former Soviet Union both fragmented along ethnic lines, and some successor states of the Soviet Union are experiencing demands for even further ethnic fragmentation. In most states, a government's legitimacy rests, in significant degree, on its ability to convince the governed that it shares and represents their ethnic identity. Today, most people want to be ruled by their own kind. Ethnicity is a major organizing principle of the new world order.

While the truth of ethnonational self-determination now appears to be self-evident, scholars trace its origins back only to the late eighteenth and early nineteenth centuries.[7] Its intellectual seeds are found in the writings of John Locke (government's duty is to protect the inalienable rights of the individual) and of Jean Jacques Rousseau (the general will). The roots of these complementary doctrines took hold during the French Revolution. The famous 1791 Declaration of the Rights of Man declared "[t]he principle of all sovereignty rests essentially in the nation. No body and no individual may exercise authority which does not emanate from the nation expressly."[8] Despite the nationalistic appeals of Napoleon, the linkage between ethnicity and politics in Europe remained weak until the 1848 revolutions, which were largely unsuccessful. By the end of the First World War, nationalism had swept Europe transforming its political map in the process. It received further impetus from U.S. President Woodrow Wilson, who promoted the idea of "self-determination of nations" at the Paris Peace Conference.

Today, most countries are wrestling with two conflicting universal principles: (1) the right of self-determination of national peoples and (2) the inviolability and political integrity of sovereign territory. This

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5. Jason Clay, *Ethnicity: The Hidden Cause of the World's Refugees*, 6 CULTURAL SURVIVAL Q. 57 (1982).

6. *Id.*

7. *See generally* HANS KOHN, THE IDEA OF NATIONALISM (1944).

8. GEORGES LEFEBVRE, THE COMING OF THE FRENCH REVOLUTION app. at 21 (R.R. Palmer trans., 1976).

dichotomy exists regardless of how territory may have been acquired or how ethnically diverse residential population may be. There is probably no state that does not feel the pressures of politicized ethnic assertion. Political entrepreneurs from different corners of the globe mobilize loyal followings by appealing to primordial ties. Successful national movements in one part of the world become the models and justifications for similar movements elsewhere. The ideology of ethnonationalism has validated itself with pragmatic results. Ethnonationalism's ubiquity and generality, in terms of its ideological, organizational, and symbolic dimensions, suggest that modern humankind has failed to find an equally satisfactory alternative.

I. ETHNIC FEDERATIONS AND AUTONOMOUS UNITS

Dominant ethnic populations have secured their cultural heritages and futures by organizing themselves into sovereign nation-states. Some other ethnic populations have established federations or autonomous units within larger states. Federations differ from unitary states in that the political units comprising a federation retain limited sovereignty and exclusive competence within specified governmental realms. A federation's central government provides the unifying force, while the separate regional governments provide for cultural diversity. The federation's central government generally has exclusive competence in foreign relations, defense, constitutional courts, national transportation, postal systems, and other communication services. Unless clearly provided for in its constitution, a federation's various units may not have the right of self-determination. For example, the Constitutional Court of Yugoslavia on January 14, 1991, annulled key articles of Slovenia's July 1990 sovereignty declaration on the grounds that they were unconstitutional.[9] Slovenia, however, refused to recognize the court's competence and stood by its December 1990 declaration of independence.[10] War between the Serbian-dominated federal army and Slovenia ensued.[11]

By contrast, Czech government officials recognized as legitimate the declaration of sovereignty issued by the parliament of the Slovak Republic on July 17, 1992. In their meeting on August 26, 1992, Czech Premier Vaclav Klaus and Slovak Premier Vladimir Meciar amicably

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9. *Challenge to Slovane Sovereignty — Macedonian Sovereignty Declaration*, 1991 KEESING'S RECORD OF WORLD EVENTS 37973, col. 3 (Jan. 1991).

10. *Slovenia Independence Referendum*, 1990 KEESING'S RECORD OF WORLD EVENTS 37924, col. 1 (Dec. 1990).

11. *See, e.g.*, Marc Weller, *The International Response to the Dissolution of the Socialist Federal Republic of Yugoslavia*, 86 AM. J. INT'L L. 569 (1992).

agreed that the Czechoslovak Federation would be dissolved as of January 1, 1993.[12]

In a state with one or more autonomous units, the central government delegates some degree of executive and legislative governmental powers to a local body. The local government, however, is not independent of the central legislature which can override many, but not all, local decisions. Italy, for example, has five special autonomous regions with extensive local powers defined by the constitution: Trentino-Alto Adige (containing the German-speaking people of the South Tyrol), Fruili-Venezia Giulia (containing Slovene and Friulian speakers), Val d'Aosta (containing French speakers), and the islands of Sardinia and Sicily. Each of these regions has unique, "non-Italian" cultural, linguistic, and historical characteristics. These ethnic determinants have justified extensive delegations of powers from Rome to the regional authorities to permit decision-making on local educational, economic, cultural, and budgetary issues.

Of these five, the Trentino-Alto Adige Region, with its German-speaking province of Brixen (Bolzano), is of special interest. The region, which had been part of Austria-Hungary, was acquired by Italy after World War I as a condition of Italy's participation in the war against the Central Powers. Subsequent attempts by the Fascist government of Benito Mussolini to Italianize the German-speaking population there created local resentment and international concern over possible human rights violations. After World War II, Austria took an active interest in the fate of the South Tyrolese — a people with close cultural and historic ties to the Tyrolese of Austria's Tyrol Province with its capital of Innsbruck. After Austria registered formal complaints with the United Nations, Italy began negotiating in earnest with both Austrian and South Tyrolese representatives. In 1969, the parties agreed on a "Package" of 137 points as well as an "Operational Calendar" that would grant cultural autonomy to the South Tyrolese. The Package, which would become Italy's new Autonomy Statute, granted the Province Brixen (Bolzano) primary and secondary legislative competence in a wide range of areas, including education, culture, transport, communications, tourism, housing, finance, and employment.[13]

As between Italy and its South Tyrolese citizens, the agreement became a series of state laws. One of those laws granted the concerned

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12. *Czechoslovakia to Divide at Beginning of 1993*, 52 FACTS ON FILE, Sept. 3, 1992, at 648.

13. *See generally* ANTHONY E. ALCOCK, THE HISTORY OF THE SOUTH TYROL QUESTION, 433-454 (1970) (discussion and complete list of the 137 "points").

provincial governments standing to contest state laws and to bring conflicts of powers arising out of administrative measures of the State before the constitutional court.[14] As between Italy and Austria, the agreement was an international treaty registered with the United Nations Secretary General. In the event of a disagreement or an alleged failure by the Italian government to abide by the Operational Calendar, Austria had standing to bring a complaint before the International Court of Justice.[15] In essence, Austria became the international guarantor of the autonomy plan and the international protector of the South Tyrolese. Hence, to secure and preserve their cultural autonomy, the South Tyrolese had recourse both to the Italian constitutional court and, through Austria, to the International Court of Justice. As a consequence of several factors — repeated South Tyrolese demands, sporadic acts of terrorism by small South Tyrolese radical groups, Italy's good intentions, and Austria's international pressure — the Italian government finally completed the implementation of the Package in 1992 to the satisfaction of all parties.[16]

Consequently, the Italian-Austrian-South Tyrolese arrangement proved to be an effective, albeit uncommon method for an ethnic minority to protect its human rights and achieve a form of self-determination. However, the vast majority of ethnic minorities[17] do not have kindred nation-states next door that are willing to interfere in the internal affairs of their sovereign neighbors at the risk of jeopardizing their own national interests. A more general international mechanism is needed to protect cultural minority rights. Although the words, "all peoples have the right to self-determination" appear in the texts of major international covenants, international law has yet to unequivocally support the self-determination claims of subjected national populations beyond the context of classical colonialism.[18]

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14. *Id.* at 440, point 62.

15. *Id.* at 451.

16. Michael Z. Wise, *Minority in Tirol Reassured; Austria and Italy see Pact as Model*, WASH. POST, June 6, 1992, at A17.

17. One concept important to this discussion is "minority." According to the Special Rapporteur, for purposes of the International Covenant on Civil and Political Rights, 'minority' may be taken to refer to:

> A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members — being nationals of State — possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed toward preserving their culture, traditions, religion or language.

Francesco Capotorti (Special Rapporteur), *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities*, U.N. Doc. E/CN.4/Sub.2/384/Rev.1 at 96 (1979).

18. Anaya, *supra* note 3, at 838.

II. International Law and the Plight of the Kurds

Certain recent international events are of special interest here. Iraq's 1990 invasion and occupation of Kuwait prompted the UN Security Council to invoke Chapter VII of the UN Charter and pass Resolution 678 authorizing member states to use all means necessary to liberate Kuwait and restore peace and security in the region.[19] The Security Council later reacted to the Iraqi army's subsequent attacks on Kurds and Shiite Muslims in Iraq by passing Resolution 688 authorizing member states to take measures inside Iraq to protect cultural minorities — themselves Iraqi citizens — from grave human rights violations, including genocide.[20] Thus, the Security Council voted to allow member states to interfere in the internal affairs of another sovereign member state to protect the human rights of discrete cultural minorities.

Both resolutions, however, hinged on fortuitous circumstances. Resolution 678 was made possible only because of the collapse of the Soviet Union and the new conciliatory relations between the United States and Russia, the successor to the Soviet Union's permanent Security Council seat. The execution of Resolution 688, creating a militarily protected security zone in northern Iraq for the Kurds, would not have occurred, but for the fact that American, French, and British military units were already in the immediate area. Those troops had already been mobilized to drive the Iraqi army out of Kuwait. Because Resolution 688 and the humanitarian interventions pursuant to it are precedents contingent on a unique nexus of political circumstances and logistics, they offer little hope of future application to other endangered cultural minorities. In his recent article, Jost Delbrück questions

> whether the UN Charter can *generally* justify such interventions or whether this particular instance of intervention by the United Nations must be seen as a follow-up measure unique to the police action against Iraq, which, outside the Gulf crisis context, would constitute a violation of the principle of nonintervention enshrined in Article 2(7) of the Charter.[21]

Imagine the following scenario: in 1994, international security forces leave northern Iraq and return to their home countries, after

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19. S.C. Res. 678, U.N. SCOR, 45th Sess., 2963d mtg. at 27, U.N. Doc. S/INF/46 (1990).

20. S.C. Res. 688, U.N. SCOR, 45th Sess., 2962d mtg., U.N. Doc. S/RES/688 (1991), *reprinted in* 30 I.L.M. 858 (1991).

21. Jost Delbrück, *A Fresh Look at Humanitarian Intervention Under the Authority of the United Nations*, 67 Ind. L.J. 887, 888 (1992).

the Iraqi Kurds and the Iraqi government enter into a new agreement. Under that agreement, the central government recognizes a Kurdish autonomous zone in northern Iraq. The hypothetical agreement calls for democratic elections and grants the democratically-elected regional Kurdish government the rights to control public education, safety, security, communications, and travel. Additional stipulations grant Kurdish control over municipal and rural government in the autonomous region. The parties further agree that while the central government will control oil facilities and production in the autonomous region, the Kurdish regional government will be entitled to use 35% of the revenue realized from the region's oil production to finance regional government and public works.

Within a year after the agreement, the parties conflict over the meaning of the terms of the autonomy plan. The Kurdish government complains that the presence and activities of federal military forces in the North infringe on its right to maintain intra-regional safety and security. The Kurdish government also charges that the central government's methods of calculating the region's share of oil revenue are grossly unfair. It maintains that the Kurdish region receives so little revenue that it finds it impossible to build sufficient schools or to properly staff existing ones. The Kurdish government can neither adequately staff local police forces nor maintain city streets and rural roads under the present revenue structure.

After two years of bitter squabbling and ineffective negotiations, Kurdish groups begin protesting in front of federal government buildings. They soon meet with violent repression by federal troops. Before long, a full scale civil war is underway with Iraqi armor and air force units inflicting heavy casualties on the civilian population. Outgunned and outnumbered, the Kurdish resistance takes to the hills, and tens of thousands of Kurdish refugees flee into Turkey and Iran. The UN Security Council condemns the Iraqi actions, but no country is willing to intervene militarily to re-establish a security zone in northern Iraq for the Kurds.

Given Iraq's current situation, this scenario is highly likely. How can its probability be diminished?

III. International Law and the Rights of Cultural Minorities

Let us begin by noting that one of the United Nations' most important organs for the peaceful settlement of disputes is the International Court of Justice (ICJ). As one President of the ICJ stated, "third party adjudication in international disputes is not only the civilized way to settle those disputes, but is also more economical and less trau-

matical than the other means to that end."[22] Unfortunately, at present, Article 2(7) of the United Nations Charter (prohibiting UN interference in intra-state matters) and Article 34(1) of the Statute of the International Court of Justice (limiting standing in contentious cases to state parties) effectively preclude the UN and the ICJ from playing a continuously active and positive role in the peaceful resolution of intra-state disputes between major ethnic populations. Expanding the role of the ICJ could resolve intra-state conflict among ethnic groups such as the Kurds and Arabs of Iraq, the Greeks and Turks on Cyprus, the Serbs and Croats of Yugoslavia, Basques and Spanish of Spain, and so on.

Although the nation-state concept does not accurately reflect the actual multi-ethnic compositions of most states, it continues to have a major influence on the world's legal and political order. Only states may be parties in contentious cases before the ICJ. This rule originated in the antiquated idea that only states possess international personality. Criticism of this limitation gained momentum in 1949 when the Court held in an advisory opinion that the UN had international personality and could advance claims on the diplomatic plane against states responsible for the death or injury of UN agents.[23] Today, many international organizations have international personality in that they have the capacity to act independently of any single state. Among such organizations are the International Committee of the Red Cross, the European Court of Justice, and the European Court of Human Rights.

By limiting access to the ICJ's contentious jurisdiction to states and thereby denying access to peoples, the UN contradicts some of its own, and its principal organ's, stated principles and purposes:

- A major objective of the UN is: "[t]o achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion . . . ."[24]
- Article 55 of the UN Charter calls for international economic and social cooperation based on "respect for the principle of equal rights and self-determination of peoples . . . ."[25]

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22. Jose M. Ruda, *Preface to* SHABTAI ROSENNE, THE WORLD COURT: WHAT IT IS AND HOW IT WORKS, at ix, x (4th ed. 1989).

23. Reparation for Injuries Suffered in the Service of the United Nations, 1949 I.C.J. 173 (Apr. 11).

24. U.N. CHARTER, art. 1, para. 3.

25. U.N. CHARTER, art. 55, para. c.

- The Convention against Genocide defines genocide as "acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such . . . ."[26]
- UNESCO's Declaration of the Principles of International Cultural Cooperation states that "[e]ach culture has a dignity and value which must be respected and preserved,"[27] and "[e]very people has the right and the duty to develop its culture."[28] The principle of non-discrimination against minorities was reaffirmed in the International Convention on the Elimination of All Forms of Racial Discrimination, adopted by the UN General Assembly in 1965.[29] This was followed in 1981 by the UN General Assembly's Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief.[30]
- Article 27 of the International Covenant on Civil and Political Rights states: "[i]n those States in which ethnic, linguistic, or religious minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language."[31]
- In its *Namibia* opinion, the ICJ stated that "[t]o enforce distinctions, exclusions, restrictions and limitations exclusively based on grounds of race, colour, descent or national or ethnic origin which constitute a denial of fundamental human rights is a flagrant violation of the purposes and principles of the Charter."[32]
- The UN General Assembly in its 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples declared that:

  1. The subjection of peoples to alien subjugation, domination, and exploitation constitutes a denial of fundamental human

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26. *Convention on the Prevention and Punishment of the Crime of Genocide*, G.A. Res. 260A, U.N. GAOR at 174, U.N. Doc. A/810 (1948). The international agreements referred to *infra* are collected in HUMAN RIGHTS SOURCEBOOK *passim* (Albert P. Blaustein et al. eds., 1987).

27. *Declaration of the Principles of International Cultural Cooperation*, art. 1(1) (proclaimed by the General Conference of the United Nations Educational, Scientific and Cultural Organization), UNESCO 14th Sess., U.N. Doc. 14/C Res. at 86 (1967).

28. *Id.* at (art. 1(2)).

29. *International Convention on the Elimination of All Forms of Racial Discrimination*, G.A. Res. 2106A, 20 U.N. GAOR, Supp. No. 14, at 47, U.N. Doc. A/6014 (1965).

30. *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, G.A. Res. 36/55, U.N. GAOR, Supp. No. 51, at 171, U.N. Doc. A/36/51 (1981).

31. *International Covenant on Civil and Political Rights*, Art. 27, G.A. Res. 2200, 21 U.N. GAOR, Supp. No. 16, at 52, U.N. Doc. A/6316 (1966).

32. Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970), 1971 I.C.J. 16, 57, para. 131 (Mar.).

> rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation.
> 2. All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.[33]

The recognition of group rights in international law is closely related to the principles of non-discrimination and equality proclaimed in Article 1 of the Universal Declaration of Human Rights: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."[34] Similar provisions are contained in the International Covenant on Civil and Political rights,[35] the European Convention for the Protection of Human Rights and Fundamental Freedoms (Art. 14),[36] the American Declaration of the Rights and Duties of Man (Preamble, Art. II),[37] the American Convention on Human Rights (Articles 1 & 24),[38] the African Charter on Human and People's Rights (Art. 2, 3, & 19),[39] and the Declaration of the Basic Duties of ASEAN Peoples and Governments (Art. I).[40]

Although these international agreements and declarations can be regarded as providing a substantive legal basis for minority cultural rights, international law currently lacks a well-established mechanism for adjudicating violations and enforcing judgments.[41] Representatives of ethnic minorities presently do not have the right to act before international bodies and organizations in representation of their members. A large proportion of states contain one or more significantly sized ethnic minorities, and in many states (e.g., Cyprus, India, Great Britain, Ethiopia, Greece, Turkey, Spain, the former Yugoslavia, etc.) the denials against and the claims of these minorities have led to inter-

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33. *Declaration on the Granting of Independence to Colonial Countries and Peoples*, G.A. Res. 1514, 15 U.N. GAOR, Supp. No. 16 at 66, U.N. Doc. A/4684 (1960).

34. *Universal Declaration of Human Rights*, G.A. Res. 217A, U.N. GAOR Res. 71, U.N. Doc. A/810 (1948).

35. G.A. Res. 2200, *supra* note 31, at art. 38.

36. *European Convention on Human Rights*, Collected Texts, Sec. 1, Doc. 1 (7th ed., Strasbourg, 1971).

37. *American Declaration of the Rights and Duties of Man*, (Pan American Union, Final Act of the Ninth Conference) (1948).

38. *American Convention on Human Rights*, (Organization of American States) Treaty Series No. 36, at 1-21, OAS/Ser. A/16 (1969).

39. *Banjul Charter on Human and Peoples' Rights* (Adopted by the Organization of African Unity on June 27, 1981, at Nairobi, Kenya).

40. *Declaration of the Basic Duties of ASEAN Peoples and Governments* (ASEAN stands for the Association of Southeast Asian Nations) (1983).

41. *See* John B. Attanasio, *The Rights of Ethnic Minorities: The Emerging Mosaic*, 66 NOTRE DAME L. REV. 1195 (1991) (discussion of procedural and enforceability problems).

nal violence. Given these facts, it is imperative to the cause of intrastate and international peace that the concept of international personality be expanded so that such culturally distinct populations may have recourse to international tribunals to peacefully resolve their disputes with state authorities.

IV. The Present Roles of the International Court of Justice

Article 36(2) of the ICJ's Statute permits any UN member State to declare unilaterally at any time that it recognizes as compulsory *ipso facto*, and without special agreement in relation to any other state accepting the same obligation, the jurisdiction of the court in all legal disputes. These legal disputes may concern: "(a) the interpretation of a treaty; (b) any question of international law; (c) the existence of any fact that, if established, would constitute a breach of an international obligation; (d) the nature or extent of the reparation to be made for the breach of an international obligation."[42]

Two or more States may agree by treaty to refer certain issues to the ICJ in the event that they themselves are unable to resolve such issues. States that are not members of the UN may become parties to the Statute of the Court on an equal footing with UN member States. Switzerland, Liechtenstein, and San Marino have done so.

Three tasks of the ICJ are: (1) to settle disputes between States in accordance with the provisions of its statutes; (2) to perform extrajudicial activities, including nominating neutral arbitrators or members of conciliation commissions, at the Parties' request; and (3) to provide judicial guidance and support for the work of other United Nations organs and for the autonomous specialized agencies (e.g., International Labor Organization, Food and Agricultural Organization, UN Educational, Scientific and Cultural Organization, International Monetary Fund, International Finance Corporation, etc.). Many constitutions of the specialized agencies contain a provision stating that disputes between members arising out of the application or interpretations of their constitutions may be referred to the ICJ. Article 96(2) of the Charter empowers the General Assembly to authorize the specialized agencies to request advisory opinions on legal questions arising within the scope of their activities.[43]

Article 51 of the Statute holds that judgments of the ICJ in contentious cases are final and without appeal. Such judgments are binding only on the parties to the case. Article 94 of the UN Charter obligates

42. Statute of the International Court of Justice, art. 36, para. 2.

43. Rosenne, *supra* note 22, at 35-40.

each member of the UN to comply with the decision of the ICJ in any case to which it is a party: "[e]ach member of the UN undertakes to comply with the decision of the ICJ in any case to which it is a party."[44] In a case of noncompliance by a party, the other party has recourse to the Security Council, which may make recommendations or select measures it might take to enforce the judgment.[45] To date, the Security Council has not undertaken such enforcement action because States generally comply with the ICJ's decisions.[46]

Pursuant to Article 96, the General Assembly and the Security Council may request the ICJ to give an advisory opinion on any legal question. With the authorization of the General Assembly, other UN organs and specialized agencies may also request advisory opinions of the ICJ on legal questions arising within the scope of their activities. Such decisions are binding only to the extent that the organ requesting the opinion decides that it will be bound.

V. Recommended Changes in the ICJ Statute

It is time to consider the inclusion of quasi-states within the ICJ's jurisdiction. As defined here, "quasi-states" are either ethnic republics within a federal system (e.g., the former Yugoslavia) or autonomous ethnic regions within pluralistic states whose distinct political, legal, and ethnic status has been officially recognized by a central government (e.g., the Trentino-Alto Adige Region of Italy). Such inclusion would be especially useful in those cases where the central government and the representatives of the ethnic autonomous region have entered into a governance agreement that delineates the two parties' realms of authority, rights, duties, and obligations. The UN could encourage such parties to add provisions to such agreements that obligate the parties to resort to the ICJ for an advisory opinion whenever they cannot agree on the interpretation of their agreement, for arbitration whenever they cannot agree on the proper outcome of a dispute, and for a hearing on the merits (contentious litigation) whenever they cannot satisfactorily settle a contested claim. In this way, the ICJ would gain jurisdiction by the consent of both the central government and the government of the ethnic autonomous region.

Up to the present time, States have been adverse to granting their cultural minorities sufficient international legal personality to enjoy

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44. U.N. Charter art. 94, para. 1.

45. U.N. Charter art. 94, para. 2. "If any party to a case fails to perform the obligations incumbent upon it under a judgement rendered by the Court, the other party may have recourse to the Security Council, which may . . . make recommendations or decide upon measures to be taken to give effect to the judgement."

46. Rosenne, *supra* note 22, at 41-46.

standing before world bodies, such as the ICJ. According to Hannum, at least four sociopolitical considerations have rendered the question of minorities troublesome: (1) the existence of minorities does not fit easily within Western state paradigms based on either the social-contract theory, which stresses individual rights, or Marxist-based class theories; (2) the existence of minorities also conflicts with the theory of the nation-state, based on the principle of "one people, one state"; (3) the fear of central governments that the recognition of minority rights will lead to secessionist movements and State fragmentation; and (4) the frequent use of anti-minority rhetoric and policies by political demagogues to win the support of a discriminatory majority and thereby promote their own narrow political interests.[47] Owing to these factors, Article 2(7) of the UN Charter declares that "[n]othing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter . . . ."[48]

The time is ripe for change. Western European States now permit their citizens to have standing before the European Court of Human Rights to raise claims against their own governments. The European governments apparently believe that this arrangement will promote their long term interests of legitimacy and social stability. With the rising tide of politicized ethnicity around the world, other governments would find it in their interests to extend autonomy offers to their rebellious regional minorities. At the same time, these governments should assure such minorities of their sincerity by providing for ICJ jurisdiction to deal with any future disputes over the interpretation of autonomy terms and the adjudication of claims.

Achieving standing for such "quasi-states" would require an amendment to Article 34 of the ICJ's Statute. Any UN member State or the ICJ itself may propose such an amendment. Article 70 of the Statute empowers the ICJ to propose amendments to the Statute through written communications to the Secretary-General. To be successful, a motion must receive a favorable vote of two-thirds of the members of the General Assembly and ratification in accordance with their respective constitutional processes by two-thirds of the Members of the UN, including all the permanent members of the Security Council.[49]

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47. Hurst Hannum, *The Limits of Sovereignty and Majority Rule: Minorities, Indigenous Peoples, and the Right to Autonomy*, *in* NEW DIRECTIONS IN HUMAN RIGHTS 1, 13-14 (E.L. Lutz et al. eds., 1989).

48. U.N. CHARTER art. 2, para. 7.

49. U.N. CHARTER, art. 108.

Once such an amendment is passed, any State and internal autonomous government wishing to have the option of utilizing the ICJ to settle their future disputes would follow a simple procedure. They need only add a choice of forum clause to their agreement that declares their mutual recognition of ICJ jurisdiction and then register that agreement with the UN Secretariat in accordance with Article 102 of the UN Charter.

Though the changes advocated above will not eliminate all intrastate, interethnic strife, they will offer states and their ethnically-distinct federated or autonomous regional units a currently unavailable option: the opportunity to turn to a neutral, third-party judicial tribunal for a fair hearing and, possibly, a peaceful resolution to their disputes. This option not only offers troubled multi-ethnic states the talents of outstanding legal minds to address their problems, but also, through the enforcement clause of UN Charter Article 94(2), potentially involves the attention of the Security Council to ensure that the Court's judgments are honored.