

RUSSIAN MINORITIES IN THE NEWLY INDEPENDENT STATES

*John Quigley **

I. INTRODUCTION	455
II. PRECEDENT.....	456
III. RUSSIANS AS A MINORITY POPULATION	458
IV. THE LAW OF MINORITY PROTECTION	459
V. MINORITIES AND SELF-DETERMINATION	461
VI. CONCLUSION	464

I. INTRODUCTION

One of the legal issues left by recent territorial change in eastern Europe is the status of persons of a former majority group who become a minority. This issue has presented particular difficulties where the remaining population is of an ethnic group that formerly held a predominant role vis-à-vis an ethnic group that, as a result of the territorial change, has become a majority. Thus, Serbs find themselves a minority in the new states of Bosnia-Herzegovina and Croatia, while Russians find themselves a minority in the new states formed out of the Soviet Union on Russia's periphery.

The situation of these populations raises issues of appropriate treatment of minorities, and that of the status they should appropriately enjoy in the new states. In particular, does the fact that these populations are of an ethnic group that may have suppressed the national aspirations of the now majority ethnic group justify negative action towards them, or deprive them of rights they would otherwise enjoy as a minority group?

In addition, the situation of these populations raises questions regarding the status of territories because of potential claims to independence by the Serbs or Russians, and because of the potentiality that Yugoslavia or Russia might intervene militarily to protect their

* Professor of Law, Ohio State University. LL.B., M.A. 1966, Harvard Law School. The author is grateful to the United States Information Agency for an opportunity to lecture in Moldova on minority rights in 1993. The author served in 1994-1995 as an expert for the Organization on Security and Cooperation in Europe to make recommendations on the status of Crimea.

compatriots. This article focuses on these issues as they have played themselves out in certain of the new states on Russia's periphery.

II. PRECEDENT

The twentieth century has witnessed two previous situations in which loss of territory by states has left populations of their nationals in a minority position. The first is the breakup of the Austro-Hungarian empire in central Europe at the end of World War I, and the second is the breakup of the European colonial empires in Asia and Africa in the years following World War II. In each instance, nationals of the formerly dominant state found themselves in a territory in whose political system the leading role was played by groups that had formerly been in a subordinate situation.

When the Austro-Hungarian empire fell many Germans and Hungarians became minorities in states carved out of the empire.¹ The borders drawn up for a new, truncated Hungary, for example, were so tight that fifteen million Hungarians found themselves outside Hungary, primarily in Slovakia, Romania, and Serbia.² The situation of the minority populations resulting from the border-drawing at Versailles was deemed to require international attention. A body of law was created, backed up by a League of Nations enforcement mechanism to protect these minorities.³ The states conferring at Versailles drafted a separate treaty to protect the minorities in each state where they had come to exist. The new states undertook not to discriminate against the minorities and, in addition, to facilitate the perpetuation of their ethnic identity.⁴

This minority protection system was, in motivation, less humanitarian than it was strategically oriented. The Versailles conferees

1. Danilo Türk, *Le droit des minorités en Europe*, in LES MINORITÉS EN EUROPE: DROITS LINGUISTIQUES ET DROITS DE L'HOMME 447 (Henri Giordan ed., 1992).

2. GIDON GOTTLIEB, NATION AGAINST STATE: A NEW APPROACH TO ETHNIC CONFLICTS AND THE DECLINE OF SOVEREIGNTY 29-30 (1993).

3. See Nathaniel Berman, *A Perilous Ambivalence: Nationalist Desire, Legal Autonomy, and the Limits of the Interwar Framework*, 33 HARV. INT'L L.J. 353 (1992); Nathaniel Berman, "But the Alternative Is Despair:" *Nationalism and the Modernist Renewal of International Law*, 106 HARV. L. REV. 1792 (1993).

4. Treaty of Versailles (Poland), 1919, reg'd no. 36 League of Nations; Treaty of Saint Germain-en-Laye (Austria), 1919, reg'd no. 37 League of Nations; Treaty of Saint Germain-en-Laye (Czechoslovakia), 1919, reg'd no. 38 League of Nations; Treaty of Saint Germain-en-Laye (Kingdom of the Serbs, Croats, and Slovenes), 1919, reprinted in 1 INT'L LEGIS. 312 (M.O. Hudson ed., 1931); Treaty of Neuilly-sur-Seine (Bulgaria), 1919, reg'd no. 40 League of Nations; Treaty of Paris (Romania), 1919, 5 L.N.T.S. 335; Treaty of Trianon (Hungary), 1920, reg'd no. 152 League of Nations; Treaty of Sèvres (Greece), 1920, 28 L.N.T.S. 225; Treaty of Lausanne (Turkey), 1923, 28 L.N.T.S. 12.

feared that suppression of Germans and Hungarians might prompt these minorities to seek assistance from Germany or Hungary, and that international tension could ensue. Unfortunately, the League did not follow through sufficiently to prevent precisely such a problem from becoming a precipitating factor in World War II, namely, the marginalization of Germans in the Sudetenland in Czechoslovakia, which provided a rationale for Germany's occupation of the Sudetenland in 1938.

Nonetheless, the League of Nations made significant efforts at protecting the minority populations. It reviewed petitions from those who alleged their rights had been infringed.⁵ Under the minority protection treaties, the Permanent Court of International Justice was given compulsory jurisdiction to resolve disputes, and the court heard a number of such cases. The court gave advisory opinions as well on minority issues. In one advisory opinion, it found Albania to have violated the rights of Albania's Greek minority when Albania ordered the closing of all private schools.⁶

A similar situation might have developed again after World War II, when the borders of Germany were constricted on the east under the post-war settlement. A substantial portion of Germany, inhabited primarily by Germans, was ceded to Poland. However, the Germans were expelled and thus did not become a minority population of Poland. Their expulsion was rationalized on the basis that Poland needed land compensation for having lost its own eastern territory to the Soviet Union. Expulsion of resident Germans was also carried out from states that Germany had occupied, particularly from Poland, Hungary, and Czechoslovakia. One rationale for that expulsion was that resident Germans had collaborated with Germany's army. In any event, the expulsion reduced the minority populations that had existed between the wars. In all, some fifteen million Germans were expelled after World War II, many in conditions of severe deprivation. An estimated two million died in the process.⁷

When colonialism ended in Asia and Africa in the 1950s and 1960s, a comparable issue emerged. In many, though not all, of the colonies, nationals of the colonial power had settled in substantial numbers, and while many of these voluntarily departed, others sought to

5. Natan Lerner, *The Evolution of Minority Rights in International Law*, in *PEOPLES AND MINORITIES IN INTERNATIONAL LAW* 77, 85 (C. Brölmann et al., eds., 1993).

6. Advisory Opinion, *Minority Schools in Albania*, 1935 P.C.I.J. (ser. A/B) No. 64, at 19-20, 23.

7. See generally ALFRED DE ZAYAS, *NEMESIS AT POTSDAM: THE EXPULSION OF THE GERMANS FROM THE EAST* (1989).

remain. No international mechanism comparable to the post-World War I system was established to protect these Europeans. On occasion, the former colonial powers intervened during times of disturbances. In the Congo, Belgium intervened in 1964 at Stanleyville, and again in 1978 in Shaba province, on a rationale of protecting endangered Belgians and other foreigners.

This method of protection of the settler populations raised a suspicion that the former colonial power was seeking to foster its own interests. In both instances of Belgian intervention in the Congo, Belgium was suspected of trying to influence the outcome of events to its favor.⁸

III. RUSSIANS AS A MINORITY POPULATION

The breakup of the Soviet Union left twenty-five million Russians as ethnic minorities in newly independent states in the Caucasus, the Baltics, Central Asia, and on Russia's southwest frontier.⁹ Like the Germans after the two world wars, and the Europeans upon the demise of colonialism, these Russians were a suspect group. Resentment was directed against them for two centuries of Russian political domination. Some Russians settled during the Soviet period, many dispatched as technicians or specialists. Others are the descendants of Russians who pre-dated the Soviet period in these territories having settled as the Russian empire expanded southward in the nineteenth century.

Russians have been replaced in many jobs by members of the newly predominant ethnic group. Some of the states have required knowledge of the newly dominant language as a condition for holding certain jobs. Some have made it difficult for Russians to acquire citizenship.

Individual Russians have adapted to the new circumstances in varying ways. Some are more ready than others to learn the local language. Many feel themselves to be at too advanced an age to learn the language but want their children to do so, rather than to have them educated in a solely Russian-language environment.

8. JOHN QUIGLEY, *THE RUSES FOR WAR: AMERICAN INTERVENTIONISM SINCE WORLD WAR II* 119-24 (Stanleyville intervention 1964), 165-70 (Shaba intervention 1978).

9. Russia considers sanctions to protect kin in "near abroad;" AGENCE FRANCE PRESSE, June 7, 1995, available in NEXIS, News Library. Highly approximate Russian population percentages are: Azerbaijan 7%, Uzbekistan 8%, Turkmenistan 10%, Kazakhstan 38%, Tajikistan 8%, Kirghizia 22%, Moldova 13%, Latvia 33%, Lithuania 9%, Estonia 33%, Belarus 12%, Ukraine 21%, Georgia 7%, Armenia 2%. See *Russians feel alone in Estonia*, WASH. TIMES, June 1, 1992, at A1. On the situation in the Baltics, see Marc Holzapfel, Note, *The Implications of Human Rights Abuses Currently Occurring in the Baltic States Against the Ethnic Russian National Minority*, 2 BUFF. J. INT'L L. 329 (1995-1996).

The governments of the states in question have shown some restraint in pressing the use of the local language, not only because of pressure from the Organization on Security and Cooperation in Europe (OSCE), but as well from practical considerations. Russian remains the language of the region, and the small new states risk the danger of isolating themselves from economic, cultural, and scientific life if the population is unable to operate in Russian. Further, many of the Russian speakers in their territory possess skills important for the state's economic development. As the first flush of nationalism has been replaced by the reality of stagnant economies, this consideration has assumed prominence. In post-independence Africa, the colonial languages have retained an important role, providing a *lingua franca* for Africans speaking many different languages. Russian can be expected to play a similar role in the territories of the former Russian Empire, as it allows communications across ethnic lines within each of the new states, as well as among them.

For the Russians, the motivation for maintaining the status of the Russian language is in part related to their identity and sense of belonging, but as well, and primarily, to a concern that they will be unable to make a living if they are required to achieve fluency in the local language. In a recent article, Hurst Hannum makes the important point that a desire for self-determination frequently springs from a defensive motivation.¹⁰ It serves as a protection for populations that are endangered because of pressure from some other population.

IV. THE LAW OF MINORITY PROTECTION

The minority Russians have received support from international organizations. The Organization on Security and Cooperation in Europe¹¹ has assumed the role of defusing ethnic tensions through the practice of preventive diplomacy.¹² It has viewed the status of minority Russians as an issue that could threaten the peace of the region. It created the post of High Commissioner on National Minorities, whose incumbent has urged governments in the newly independent states to ease requirements related

10. Hurst Hannum, *Rethinking Self-Determination*, 34 VA. J. INT'L L. 1, 63-64 (1993).

11. As of Jan. 1, 1995, the name Conference on Security and Cooperation in Europe was changed to Organization on Security and Cooperation in Europe.

12. ROB ZAAGMAN & HANNIE ZAAL, THE CSCE HIGH COMMISSIONER ON NATIONAL MINORITIES: PREHISTORY AND NEGOTIATIONS, IN THE CHALLENGES OF CHANGE: THE HELSINKI SUMMIT OF THE CSCE AND ITS AFTERMATH 95, 104 (Arie Bloed ed., 1994) (stating that the idea was to provide an impartial intermediary to mediate between the parties to reduce tension before it might lead to armed conflict).

to language use and to acquisition of citizenship.¹³ The OSCE has leverage in this endeavor because these new states seek admission to Europe's political and economic institutions.¹⁴

In assuming this stance of support for the Russians, the OSCE is being guided by, and is building upon, existing law protecting ethnic minorities. Ethnic minorities are, of course, entitled to be treated in a non-discriminatory fashion, but beyond that they are entitled to protection against efforts to limit the development of their culture. In perhaps the most important legal proposition on this issue, the International Covenant on Civil and Political Rights provides, "[I]n those States in which ethnic, religious or linguistic 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."¹⁵

Ethnic conflict in eastern Europe has brought a proliferation of new documents from both the United Nations and European institutions to address minority rights, and to expand protection. In 1992, the United Nations General Assembly adopted a Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities¹⁶ which recognized for minority groups a right to enjoy their culture, to practice their religion, to use their language, to maintain their associations, and to participate in the public life of the state they inhabit.¹⁷ The OSCE adopted something akin to a bill of rights for national minorities¹⁸ and the Committee of Ministers of the Council of Europe opened for signature a Framework Convention for the Protection of National Minorities.¹⁹

13. *Helsinki Decisions*, July 10, 1992, pt. 2, reprinted in 13 HUM. RGTS. L.J. 288, 289 (1992). On the origin and creation of this post, see ZAAGMAN & ZAAL, *supra* note 12, at 95-111. On the nature of the post, see ZAAGMAN, & ZALL, *supra* note 12, at 113-75.

14. See, e.g., *Russia*, 23 JANE'S DEFENCE WKLY. 19 (Mar. 25, 1995), available in NEXIS, News Library (stating that President Eltsin agreed to the stationing of OSCE observers in Chechnia in hope of gaining trade concessions from the European Union).

15. International Covenant on Civil and Political Rights, art. 27, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976).

16. Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, art. 1, G.A. Res. 47/135, U.N. Doc. A/RES/47/135 (1992), reprinted in 14 HUM. RGTS. L.J. 55 (1993).

17. *Id.* at art. 2.

18. Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, ch. IV, in THE CONFERENCE ON SECURITY AND CO-OPERATION IN EUROPE: ANALYSIS AND BASIC DOCUMENTS, 1972-1993 456-60 (Arie Bloed ed., 1993).

19. *Framework Convention for the Protection of National Minorities*, 16 HUM. RGTS. L.J. 98 (1995).

The Council of Europe's 1992 European Charter for Regional or Minority Languages obliges states to promote minority languages in legal proceedings, education, culture, and the media.²⁰ The Charter seeks the "facilitation and/or encouragement of the use of . . . minority languages, in speech and writing, in public and private life."²¹ The Charter requires states to make education available in minority languages.²²

The Parliamentary Assembly of the Council of Europe has reported on human rights in eastern Europe with particular attention to the status of minorities.²³ The Parliamentary Assembly drafted an Eleventh Protocol to the European human rights treaty to deal with minority rights.²⁴ However, differences over the coverage led to the shelving of work on a final text.²⁵

The instruments embodying principles of the law on protection of minorities suggest no exception where the minority group is made up of nationals of a state that formerly held sovereignty in the territory in question. Indeed, the history of minority protection from the League days suggests that one of the primary purposes of this body of law is to protect precisely such persons. The proliferation of legal instruments on point in the wake of the recent developments in eastern Europe confirms this conclusion and strongly suggests that it is not permissible to suppress an ethnic group because of perceived unfair treatment in the past by the state in which that ethnic group is a majority.

V. MINORITIES AND SELF-DETERMINATION

For the new states, one factor in their policy towards their Russian minorities is a fear that Russia might intervene, perhaps even militarily, in support of these Russians. These fears were heightened in April 1995 when Russian foreign minister Andrei Kozyrev, speaking of ill treatment

20. European Charter for Regional or Minority Languages, Eur. T.S., No. 148, *opened for signature* Oct. 2, 1992, *reprinted in* Hannum, *supra* note 10, at 86.

21. *Id.* at art. 7.

22. *Id.* at art. 9.

23. See, e.g., *Report on the legislation of the Republic of Slovenia*, 14 HUM. RTS. L.J. 437 (1993); *Report on the legislation in the Czech Republic*, 14 HUM. RTS. L.J. 442 (1993); *Report on Human Rights in Slovakia*, 14 HUM. RTS. L.J. 446 (1993).

24. *Council of Europe, Commission for Democracy through Law, Draft Convention for the Protection of Minorities*, 12 HUM. RTS. L.J. 265 (1991); see also András B. Bake, *The European Convention on Human Rights and the Protection of Minorities under International Law*, 8 CONN. J. INT'L L. 227, 236-37 (1993) (arguing that a minority rights protocol to the European convention is advisable).

25. *Council of Europe Assembly asks for EU membership to be examined*, Agence Europe, Reuter Textline, Jan. 28, 1994, available in LEXIS, World Library, Europe File.

of Russians in these states, said "There may be cases when the use of direct military force will be needed to defend our compatriots abroad."²⁶ Deputy Defense Minister Vladimir Churanov backed up Kozyrev's view, stating that Russian speakers were being humiliated in some of the new states, and that diplomatic measures might not always be sufficiently persuasive to correct the situation.²⁷ By 1996, however, Russia's debacle in Chechnia brought greater caution on Russia's part and seemed to reduce the likelihood of military intervention in support of Russian speakers.

Minority protection, as it has come to be practiced in Europe, is not aimed at any right to political separation for a minority group. The OSCE viewed infringement of the status of minorities as a prime factor in hostilities, particularly in eastern Europe.²⁸ Like the League of Nations before it, the OSCE European institutions viewed preservation of the peace as the primary reason for protecting minority rights. In a policy proclamation on minority rights, the Heads of State and Government of the Council of Europe stated "[w]e express our awareness that the protection of national minorities is an essential element of stability and democratic security in our continent."²⁹ The Framework Convention for the Protection of National Minorities recited in its preamble that the protection of minorities was to be accomplished "within the rule of law, respecting the territorial integrity and national sovereignty of states."³⁰

National minorities were to eschew separation from the states whose territory they inhabited. This position was at odds with the classical idea of self-determination, which yields several options, one of which is political independence. Thus, the OSCE undertook the rather delicate task of promoting the rights of minorities, but only if the minorities remained with the political *status quo*.

For Russians in states on the periphery of the Russian Federation, the issue of possible political separation arose most sharply in Moldova.

26. *Kozyrev fuels fears of harder line in Kremlin: remarks on use of force alarm ex-soviet states*, FIN. TIMES, Apr. 21, 1995, at 2.

27. *Deputy defence minister supports use of force to protect Russians abroa*, (BBC Summary of World Broadcasts, Apr. 25, 1995), available in NEXIS, News Library.

28. ZAAGMAN & ZAAL, *supra* note 12, at 95 (stating that "it is ethnic conflicts which are currently the single most important cause of violent conflicts in Europe").

29. *Summit Meeting of the Heads of State and Government of the 32 Member States of the Council of Europe*, Oct. 8-9, 1993; *Vienna Declaration of the Heads of State and Government of the member States of the Council of Europe on the Reform of the Control Mechanism of the ECHR, on National Minorities; and on a Plan of Action against Racism*, preamble, para. reprinted in 4, 14 HUM. RGTS. L.J. 373 (1993).

30. *Framework Convention for the Protection of National Minorities*, *supra* note 19, at pmbl.

In most of these states, Russians found themselves dispersed through the state's territory, but in Moldova's eastern sector, Russians and Ukrainians formed a slight majority over ethnic Romanians, who constitute overall the majority population of Moldova. In 1990 a government formed claiming to represent this territory and succeeded in establishing control there.³¹ Other states refused to recognize the Transdnestr Republic as a state, and the OSCE worked to keep it within Moldova.

A similar situation arose in the Crimean peninsula, which was transferred from Russia to Ukraine in 1954. The majority population is Russian, and many desire separation from Ukraine. However, these Russians, unlike those in Moldova, have not sought an independent state, but rather an affiliation with Russia. Russia, however, has manifested little interest in incorporating Crimea, leading the Russians to demand republic status within Ukraine that, the Russians hope, might be organized as a federation. In addition, they sought a special relationship with Russia that would allow trade advantage and access to Russian higher educational institutions. In both Moldova and Ukraine, potential confrontation has been averted for the present. Negotiations are ongoing, leading in the direction of an anticipated arrangement whereby the minority entity would enjoy certain protections, and a measure of self-rule.³² In Moldova, the greatest fear of the Russians and Ukrainians is that Moldova might one day merge with Romania, leaving them a quite small minority. There is an understanding that if such a union should come about, the status of Transdnestr would be revisited.

One potential innovation in self-determination practice has been proposals, made with respect both to Transdnestr and Crimea, for an autonomy or self-rule arrangement for the minority territory, but with international oversight. Russians in Crimea sought an agreement between Crimea and Ukraine. The Ukraine government resisted such an agreement, fearing that it would be taken as implicit recognition by it of an international status for Crimea. Transdnestr Foreign Minister Valerii Litskay has said that proposals from the Moldovan side for a solution entirely within the framework of the Moldova constitution do not provide adequate guarantees that Moldova will not override whatever rights are written into an agreement between Moldova and Transdnestr, or into the

31. V. NEDELCHUK, RESPUBLIKA MOLDOVA [Republic of Moldova] 71 (1992) (text of proclamation of Sept. 2, 1990 in Tiraspol of Transdnestr Moldavian Soviet Socialist Republic).

32. *Signing of memorandum on Dnestr settlement postponed* (BBC Summary of World Broadcasts, July 1, 1996), available in NEXIS, News Library.

Moldova constitution.³³ The OSCE seems a likely candidate for such an oversight role.³⁴

International oversight, of course, is not a new concept for protection of minorities, but the specific modality proposed here would differ from past arrangements. An agreement would be drawn up between the central government and the minority entity, and a specific international actor would be empowered to entertain complaints by either side that the other was failing to observe the agreement.

VI. CONCLUSION

The striving of a population for self-determination, with an aim either of political independence or of an improved status within a state, is not necessarily a manifestation of chauvinism and xenophobia, or an inability to get along with others. In many instances, it reveals rather an effort at survival. Indeed, the nationalism reflected in the ruling circles of the new states on Russia's periphery is largely based on a striving for self-assertion in response to longtime domination by Russia.

An important aspect of the situation of the Russian minorities is that international institutions have intervened and have played an active role. The state practice suggests that rights of minorities are recognized as international norms, and that these rights apply to protect a minority population associated with a formerly dominant state. The newly independent states have manifested a willingness to accommodate the needs of the minority Russians. An initial striving to promote the local ethnic group at the expense of the Russian minority has given way to a policy of accommodating the interests of the Russian minority.

33. *Dnestr minister says Moldovan crisis proves need for international guarantees* (BBC Summary of World Broadcasts, Mar. 19, 1996), available in NEXIS, News Library.