Towards a Consistent Approach in the Management of Linguistic Diversity: Reflections from Practice

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Une approche purement théorique n'est pas suffisante pour saisir une problématique linguistique dans toute sa complexité. Le respect des droits humains, mais surtout une bonne gouvernance, qui tient compte à la fois du caractère instrumental de la langue et de sa fonction culturelle, sont essentiels.

I. INTRODUCTION

Scholars typically employ analogies, metaphors and various analytical techniques to capture and convey ideas, thereby choosing and advancing certain paradigms of understanding. Almost inevitably, these are reductions and fail to grasp either the whole reality (especially of a specific situation) or the evolving nature of human relations. Language, too, is often approached in a reductionist way. For example, the distinction between language and dialect is rather false, *i.e.*, these apparently scientific categories are inaccurate in their simplicity insofar as they imply clear distinctions, static categories and even a hierarchy, which do not in fact exist. Among linguists, this reductionism is so well known as to have given rise to a similarly well-known joke — that the only difference between a "language" and a "dialect" is that a language has an army and a navy. This joke highlights the idea that power matters — and language is in many respects an instrument of power and also a powerful instrument. Good policy and effective law and practice must

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fully grasp this reality with the use of language for instrumental and non-instrumental purposes, including, importantly, identity purposes.

Robert Dunbar has given us a brief summary with some overview and an argument regarding three of the well-known paradigms which are invoked in international relations and in international law concerning language rights.[1] Those are peace and security, human dignity (which includes human rights), and the increasingly invoked paradigm of cultural and social diversity. Each of these alone is somewhat reductionist and false. In reading the *Helsinki Final Act*'s[2] preambular paragraphs or the Preamble of the *Charter of the United Nations*,[3] these three paradigms are seen to exist simultaneously and interdependently. For example, for its rationale, the Preamble of the *Charter of the United Nations* begins with a reference to peace and security, then invokes human rights and ultimately asserts development (*i.e.*, "social progress"). It begins, "We the peoples of the United Nations determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind," before compelling a basic order of "international co-operation." Specifically, according to the Charter, we are to value and respect human rights ("fundamental human rights") proceeding from the expressed principles of respect for human dignity and worth and of equality, and we are to do so for the purpose of achieving the aim of "economic and social advancement" on a global level — expressed in Article 1 of the *Charter of the United Nations* as among the organization's "purposes and principles."

I will now commit the fault of reductionism. In simple yet increasingly important terms, we face a singular challenge: "How do we live together?" More specifically, and in line with the *Charter of the United Nations*, the question is: "How do we live together for the purposes of mutually beneficial economic, social and cultural development?" In this regard, the rule of law is important, though often compromised, if not dismissed. Many policy-makers will seek to bring in the lawyers at the last minute for technical drafting or similar function. Yet law — insofar as it carries values, proposes ordering of society on a foreseeable basis, and presents options for settlement of disputes and conflicts — is fun-

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1 See Robert Dunbar, "Preserving and Promoting Linguistic Diversity: Perspectives from International and European Law," in this volume.

2 Adopted on 1 August 1975; see <http://wwwl.osce.org/documents/mcs/1975/08/4044_en.pdf>.

3 26 June 1945, U.N. T.S. 993, Can. T.S. 1945 No. 7.

damental to the development of public policies that answer exactly the question "How do we live together?", and so law should be present from the beginning of any process to that end.

In the context of broad and increasing linguistic diversity, a consistent and effective approach to its management must be rooted in principles of equality in recognition, respect, protection and facilitation. While the justifications may vary with the international instruments and contexts, a consistent approach must reconcile them in particular cases and yield an overall coherence which vindicates declared equality and inspires public confidence. This is best pursued through an approach which combines an evolving regime of human rights with a developed understanding of good and democratic governance. Especially since the end of the Cold War, the "New" Europe has been struggling with some success to follow such an approach to the management of linguistic diversity.

II. Combining Human Rights and Good Governance

If we take a general public policy approach at a global level, a couple of elements of policy- and law-making, together with administrative practice, stand out. One is the rights-based approach now being mainstreamed at the international level with a view to the incorporation (and control) of human rights compliance at all stages and against all outcomes. This is important, but not enough, as rights are typically articulated in minimalist terms. In addition, diversity issues do not lend themselves to wholly justiciable forms which would satisfy all disputes. Rather, rights should better be conceived as a minimum guarantee and a foundation to build upon, *i.e.*, as necessary but not sufficient.

The second element that I suggest as being increasingly important is the notion of good and democratic governance. The example of higher education can be used to demonstrate where rights are not enough and governance is important. One of the key issues in dispute in a number of situations well known in Europe — such as in Kosovo, Transylvania and Macedonia — arose from initially peaceful demands brought by communities, significant in numbers, requesting higher education in their own language together with their own control and administration of that education. Education, including the extent to which an education system allows the use and development of minority languages, is crucial for minorities, both in its implications for cultural continuity and for

access to employment and other opportunities within the State. Issues arise *in* both public and private spheres as regards the teaching *of* and teaching in the medium of the minority language at all levels, as well as the content of the curriculum, the training of teachers, the monitoring of performance, and the recognition and provision of qualifications in the minority language. In particular, the question of State obligations regarding the funding of private educational systems set up by minorities in an effort to meet their own linguistic and educational needs has been a source of contention in many States.

But a right to higher education of any kind, never mind of a particular kind, does not exist in international law or in most constitutional orders or domestic law. It would be problematical, moreover, to imagine a system which would have strictly equal bases of such rights. That would imply the provision of often costly goods to whole populations, irrespective of any other merit, in order to satisfy such an entitlement. Not only would this challenge feasibility in most societies, but it is contestable that respect for "human dignity" (the foundation for human rights) would compel it — especially a particular kind or language of higher education.

To be sure, there are aspects of rights that would bear upon such matters, for example, the right to non-discrimination with respect to access to public goods, including education, however it is provided. But that is not enough because there are communities who will bring, legitimately and peacefully, demands that will exceed what can be satisfied in that context. Simply, they want more — and why shouldn't they? Here the notion of good and democratic governance is useful. In particular, it helps answer the question "why not?" and so directs fairness in policy- and law-making to the maximum benefit of the whole population. In effect, the government is challenged to satisfy legitimate demands which may vary among groups and which may compete for public resources. In principle, the State should act to the maximum of its capacities taking account of varying needs, interests and general welfare.

So good governance goes beyond minimal rights to examine what is possible and best in the circumstances of a given case, taking into account the resources available for the purposes of satisfying, on a mutually beneficial basis, the legitimate demands of the population as a whole, including its various parts. The necessity of addressing the contentious issue of funding of minority-language education at the tertiary level is exemplified in the case of the former Yugoslav Republic of

Macedonia ("fYROM"). Here, the question of official State recognition and funding of the "underground" Albanian language University in Tetovo/a (created without prior consultation with, or consent of, the State authorities) constituted one of the key demands of the minority Albanian-speaking population and is inextricably linked to the very process of State-building in the fYROM. Indeed, while it is certainly not the only issue of concern to them, the Albanian community has mobilized around the question of a minority-language university, so much so that it has strained majority-minority relations to breaking point. In addressing demands for separate State-funded minority-language institutions in the fYROM (as is now becoming the case there) and elsewhere, the High Commissioner on National Minorities ("HCNM") of the Organisation for Security and Co-operation in Europe (hereinafter "OSCE") encouraged the parties to explore different options for promoting minority-language education, including the possibility of enhancing existing institutions to accommodate the linguistic needs of minority groups.[4]

It is important to note that considerations of "good governance" employ a wholly different discourse than rights-talk. It imposes upon the authorities a completely different set of considerations, and leads to different responses and outcomes. Fundamentally, it is not a question of what people are entitled to have. Instead, it asks what should be done to the benefit of each and all to the maximum extent of available public resources and capacities. The aim of good governance is to find a suitable balance between competing interests and desires. While resources will always be limited, an important aspect of good governance is that available resources be used in an equitable fashion and to maximum effect — that is to the benefit of the largest number of persons and groups. Moreover, the value of equity implies that disadvantaged groups may merit public support in proportion greater than their relative numbers would imply; indeed, small groups could well merit special attention and support. No doubt, cost-effectiveness and transparency are key elements in ensuring acceptance among majority opinion for minority-language policies. It is worth noting, in addition, that relatively simple

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[4] For more on this situation, see Walter Kemp, *Quiet Diplomacy in Action: The OSCE High Commissioner on National Minorities* (The Hague: Kluwer Law International, 2001), at 183-96.

and inexpensive ways can often be found to facilitate minority language use in, for example, communication with the State.

The field of radio and television broadcasting provides a good example of how good governance is required to address the varying needs of linguistic minorities and give practical effect to their rights. Access to the media in one's own language is important both for the maintenance of cultural identity and for exercising one's right to freedom of expression, including to impart and receive information and ideas of general interest, regardless of frontiers.[5] Obviously, this is only possible where the language of broadcasting is understood. Thus, not only the substance of the ideas and information expressed, but also the medium of choice — including both the chosen form and the language of transmission or reception — are protected since "any restriction imposed on the means necessarily interferes with the right to receive and impart information."[6] In our complex and pluralist societies, the broadcast media constitute an important source of both information and cultural transmissions, and are a potentially powerful instrument in keeping persons belonging to minorities fully informed and in keeping minority languages alive and developing across a broad spectrum of interest areas. As such, the perception by persons belonging to minorities that they do not enjoy adequate opportunities to access broadcast media in their own language(s) has the potential to generate tensions — as has indeed been the case in a number of States.

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[5] As guaranteed by Article 19 of the 1966 *International Covenant on Civil and Political Rights*, 19 December 1966, 999 U.N.T.S. 171, Can. T.S. 1976 No. 47, 6 I.L.M. 368 (entered into force 23 March 1976, accession by Canada 19 May 1976) ("ICCPR") and Article 10 of the 1950 *European Convention on Human Rights and Fundamental Freedoms*, 4 November 1950, Eur. T.S. No. 5, as am. ("ECHR"). See also *Case of Informationsverein Lentia and Others v. Austria* (24 November 1993), Eur. Ct. H.R. (Ser. A) No. 276, 17 E.H.R.R. 93, [1993] IIHRL 101, at para. 38, stressing the role of freedom of expression in imparting information and ideas "of general interest, which the public is moreover entitled to receive."

[6] *Autronic (A.G.) v. Switzerland*, 22 May 1990, Eur. Ct. H.R. (Ser. A) No. 178, at para. 47. See also *Oberschlick v. Austria*, 22 May 1991, Eur. Ct. H.R. (Ser. A) No. 204, at para. 57; and UN Human Rights Committee General Comment No. 10, UN Doc. HRI/GEN/1/Rev. 6, at 132 (2003) at para. 2. The relationship between language and freedom of expression has been articulated by the Supreme Court of Canada in the case of *Ford v. Québec (Attorney General)*, [1988] S.C.J. No. 88, [1988] 2 S.C.R. 712 as follows at 716: "Language is so intimately related to the form and content of expression that there cannot be true freedom of expression by means of language if one is prohibited from using the language of one's choice;" quoted in Leonid Raihman, *Media Legislation, Minority Issues, and Implications for Latvia*, <http://www.policy.hu/raihman/PolicyPaper.htm at 8>.

To assist States in addressing the broadcast needs of linguistic minorities, the HCNM brought together a group of independent experts who elaborated a set of guidelines reflecting international standards on the limits of acceptable regulation of the use of languages in the broadcast media, and indicating some parameters within which any regulation of language use in the broadcast media should take place. The *Guidelines on the Use of Minority Languages in the Broadcast Media*[7] are firmly rooted in principles of international law, including minority rights, especially cultural and linguistic expression and the right to maintain and develop one's identity in conditions of equality and without discrimination. The Guidelines follow a logical structure which serves, first, to highlight the need for States to develop and adopt policies and laws relating to the use of minority languages in the broadcast media and, second, to provide guidance on the process of such policy- and law-making. The question of the limits of acceptable regulation is then addressed and some parameters to help guide States in this regard are identified. A number of methods and practical tools to help States fulfil their obligations and overcome resource limitations in promoting minority language use in the broadcast media are then presented.

Access to minority-language broadcasting quite clearly reveals the problem of resource limitations. Whether by virtue of their size, past discrimination or for other reasons, minorities often lack the financial resources and/or capacity to establish and maintain their own broadcast media. State support may therefore be required in order to ensure that linguistic minorities may enjoy access to the broadcast media on an equal basis (or at all). The Guidelines provide a number of examples of ways that States can support minority-language broadcasting, drawing in part on existing best practices. For example, licensing, as a common form of regulation of both Public Service Broadcasting and private enterprises, is one effective tool through which further plurality and diversity, including minority-language broadcasting, may be promoted. Favourable consideration may be given to those broadcasters whose programming and schedule would contribute to these aims.

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[7] For the text of the Guidelines, see <http://www.osce.org/documents/hcnm/2003/10/2242_en.pdf.>. For the proceedings of an international conference organized jointly by the HCNM and the OSCE Representative on Freedom of the Media to promote domestic use of the Guidelines, see Sally Holt & John Packer, eds., "Proceedings of the Conference on the Use of Minority Languages in the Broadcast Media, Baden bei Wein, 24-25 October 2003" (2005) 8 Mercator Media Forum (special issue).

The approach of linking human rights and good governance has been employed in Europe through the last decade in addressing various situations, especially in the work of the OSCE HCNM. This was partly an effort to be coherent and consistent, thereby inspiring confidence and co-operation. Of course, in each situation, it is first of all important to grasp the full reality of the case. No two situations are the same, and every situation constantly evolves. This is another problem that must be confronted, not only in terms of the facts, but in terms of positions, demands and possibilities. Situations are generally more complex than external observers perceive. That is to say, we face in almost every situation an increasing number of factors, especially in open societies, with movement of people in and out and more and more communications. There is, therefore, in every situation the risk not only of misdiagnosis but also of poorly made choices which increase both opportunity costs and negotiation or transaction costs in seeking to resolve problems. So, it is important to maintain close contacts with all actors, to observe and understand the politics of a situation, to focus on the preparedness of people to accept and to conform their behaviour to alternatives that are sustainable, and to do so over time taking account of changing realities.

III. Language Use as Instrumental or Essential

It is well known to socio-linguists that language has two quite different functions. Language may be used for instrumental purposes, notably as a vehicle for communication and social organization — indeed, it is difficult to imagine much social, political or economic activity in the absence of the use of language. Choices in this respect may theoretically (if rarely in practice) be made according to purely instrumental and even utilitarian calculations. Of course, such choices will have consequences, whether positive or negative for different persons (notably advantaging the existing speakers of the chosen language and disadvantaging the non-speakers).

An entirely different aspect and function of language is its cultural importance as a repository and conveyor of ideas, symbols, histories, myths and values, with the purpose of maintaining, developing and transmitting between generations the identities of whole linguistic communities. The primordial nature of language in this sense does not admit easily (or willingly on the part of speakers) to utilitarian calcula-

tion, negotiation or choice. Rather, it is intrinsic to and *essential* for communities *per se* and so requires to be recognized, respected, protected and facilitated.

Instrumental and essential purposes of language use do not exist in isolation, nor may it be said that one is more important than the other. For example, language is often invoked on cultural grounds when in fact the demand is about equality of opportunity in access to public goods, economic well-being, prestige and so forth, *i.e.*, instrumental purposes and their effects. Disputes may arise over access to, *inter alia*, public services and facilities, employment or other economic opportunities, and positions within the State. Fundamentally in some States, language is also a key factor affecting access to citizenship (in particular through language requirements in the naturalization process) which in itself is key to full participation and integration within the State. In these contexts, language functions essentially to mediate access to opportunity. It is a means of exclusion and can be viewed through the paradigm of "outsider/ insider." This may be the essence of a dispute in relation to which power is mobilized with language only part of its articulation and instrumental in that regard.

At the same time, instrumental uses of language may also be vital to the maintenance of robust linguistic communities. This is true for so-called "fragile" or threatened languages which in the face of competitive free markets may find themselves, *i.e.*, their speakers, without sufficient whole-environment to regenerate and so face cultural loss and undesired change of identity. Any threat (real or perceived) to the use of language, such as inadequate opportunities to learn or use one's language in public or in private, is often interpreted as tantamount to a threat to the very identity and cultural existence of those involved, thus provoking understandably strong and defensive reactions. Of course, such situations are context-specific and require careful and ongoing attention.

Certainly, choices made by States in the use of language — especially in the public sphere of governance — have a bearing on access to important public goods, and constitute either a means to or an obstacle in the way of social integration. Problems arise when persons or groups feel that they are being excluded from certain processes or opportunities in the public sphere, including access to an equitable share of the State's resources, derived from their lack of knowledge of the State language(s). Good policy would be to reduce as far as possible such situations and to create other accessible solutions where such effects cannot be avoided.

When examining a situation where language is a factor in dispute, we must clarify whether language is invoked because it is essential to one's identity or invoked because it is instrumental to achieving access to some good or opportunity. These are quite different questions and their answer(s) in each case may lead to different courses and outcomes. To some, identity is equivalent to a "good," but not negotiable. Identity is truly inalienable — which is not to say it cannot be ignored, denied, ridiculed, suppressed, stolen or otherwise abused. It certainly can and has been so attacked, and not surprisingly those attacked have responded (or tried to respond) in defence ... or harboured grievances which have stewed only to explode in other ways and times.

As a practical matter, some of the questions that are important to ask in looking into any situation are "Who is asking?", "Are they asking?", and "What are they asking for?" One can employ useful analyses around needs, interests and aspirations. In any kind of a public setting, it is also important to ask "Who is responsible?" and "What are the consequences of action or inaction?" In my view, all of this can be reduced to two questions: "What is just?" and "What works?" — in that order. It is not sufficient if a policy is just in theory but does not work in practice. And it is not good or sustainable if something "works" (for some) but is not just; it must work essentially for everyone (which largely makes it just). That is a fairly large challenge if one looks at all the facts of such situations. For example, to take a case here in Canada, we are told that Manitoba is a bilingual province, though many residents may not know it. As a matter of fact, Manitoba is a plurilingual society, far more than bilingual, especially if one looks at the existing composition of its population and considers the evolving nature of that society. Even officially, Manitoba is not only bilingual at the provincial level, but it is actually plurilingual at the municipal level. If one examines issues such as education, health care, workers' compensation and other domains, there are a lot of languages that are used at a lot of different levels, even if not by official entitlement. Injured workers are not barred from bringing a claim because they do not speak English or French; if they do not, translators and interpreters are called to assist. Public education and health care are provided in a variety of languages according to people's needs. And in municipal councils and administrations, languages other than English and French are used, reflecting the composition of local communities.

So, our societies are far more plural in their actual make-up and affairs than is often acknowledged, and the challenge is to accommodate that diversity in a just and workable manner to achieve both instrumen-

tal and essential aims. These aims fundamentally seek to assure equality of opportunity both to public goods and to maintenance and development of identity.

IV. Some European Experiences

In the context of Europe, inter-governmental organizations (notably the Council of Europe, the OSCE and the European Union, to mention the three best known) and their institutions have progressively pursued an approach that may be described as essentially one of problem-solving. In the first place, it is important to identify the real issues in dispute, not just the issues articulated by parties. Indeed, in scratching the surface of many demands, we in the Office of the OSCE HCNM often found that other more subtle issues lay beneath. Language disputes were typical of this. To begin with the European Union ("EU") — which is not usually so notable in these matters — there has been a lot of discussion over how the process of enlargement has made it difficult for the use of some languages. This is typically with reference to "State" or "official languages," in particular less spoken ones. As a matter of fact, Europe now has approximately 75 what they call "lesser-used languages" indigenous to or historically used on the continent, with about 50 million speakers of those languages.[8] Some of these languages, such as Catalan, are more widely spoken than some State or official languages, such as Estonian, Slovenian, Latvian, Danish or others. This is to leave aside the languages spoken by immigrants and their descendants (many if not most of whom are presumably equal citizens) which are not considered by most Europeans to be "historical" languages. Of course, here is another fiction born of the reductionist notion of Europe as composed of discrete and pure "nations" when in truth there has been a constant evolution with social mixing and linguistic borrowing accompanying movements of people, goods and ideas. Certainly, the Arabic and Turkish languages have been used in Europe for centuries during which they have contributed to Europe's rich linguistic culture. It seems difficult to call them or their speakers "new." There is also the fiction of the "immigrant." This notion lacks clarity or even valid legal (or moral) distinction. Notably, a person who arrived as little as three

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8 See the European Bureau for Lesser Used Languages at <http://www.eblul.orgl>.

years ago but became a citizen not only has duties to respect the law (like anyone else) but also has entitlements as an equal citizen and may not be discriminated against on the basis of language. In Europe, this includes large numbers of persons who are Arabic-, Turkish-, Urdu- or Pashtoon-speaking (just to mention some "non-European" languages). Even in the absence of shared and presumably equal citizenship, is a person born and raised in the country of previously arrived parents or grandparents still to be considered an "immigrant," and to what good purpose or effect? Within the EU, and at least among EU citizens (if not generally as a matter of non-discrimination), such distinctions are unjustified and unlawful.

Within the context of the Council of Europe and its 46 Member States spanning from Ireland across the continent through the Caucasus, the situation is somewhat different ... on the one hand more liberal and on the other hand less so. From a strictly human rights perspective, the *European Convention on Human Rights and Fundamental Freedoms* ("ECHR")[9] prohibits discrimination on the basis of language both vis-à-vis other substantive provisions of the ECHR and, for States parties to Additional Protocol 12, also generally with regard to any State policy, law or practice. Added to this protection of the individual is protection for linguistic minorities pursuant to the *Framework Convention for the Protection of National Minorities*;[10] in this regard, distinctions are made between minority-language speakers in general and, in the case of three provisions, communities who either have lived "traditionally" in a particular area or comprise "substantial numbers" (neither qualification being defined). The idea of "traditionally used" languages is the focus also of the *European Charter for Minority or Regional Languages*[11] which specifies, in a "smorgasbord-type" menu, a wide range of options from which States may select in their ratification process (and so secure by treaty). The aforementioned treaties are each supervised by dedicated bodies, with the ECHR also accessible to individuals who may proceed in judicial proceedings against States alleged to have violated their

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9 For the text of the Convention and all Additional Protocols thereto, see the Council of Europe's Website for human rights at <http://www.coe.int/T/E/Human_rights/> or its treaty series Website at <http://conventions.coe.int/>.

10 (1 February 1995), Eur. T.S. No. 157; online <http://conventions.coe.int/Treaty/en/Treaties/Html/157.htm>.

11 (5 November 1992), Eur. T.S. No. 148; online <http://conventions.coe.int/Treaty/en/Treaties/Html/148.htm>.

rights. Well beyond this, a range of languages are used in the conduct of censuses and for other statistical or public informational purposes (e.g., for reasons of public health administration), and their use is promoted and supported by specialized Council of Europe bodies which draw on good and best practices. This is true in the domains of education, language proficiency standards and regimes, and so forth, for which the Council of Europe offers technical assistance and advice.

In the Office of the OSCE HCNM, we conducted two studies in Europe in the late 1990s and commissioned a third one more recently in 2003, which addressed the use of languages across "the OSCE area," which encompasses the 55 States of the Northern hemisphere running East from Vancouver to Vladivostock.[12] The first study looked generally at linguistic minorities while the second looked at Roma (Gypsies) and the third focused on the use of minority languages in the broadcast media. It is clear from these studies that countries which claim to be "unilingual" are in practice remarkably plurilingual. For example, while France officially declines even to recognize the existence of a number of linguistic minorities, as a matter of law and practice, several languages, such as Alsatian, Bretagne and Corsican, are used at the local level. So, if you do not ask the French authorities whether these groups "exist," but instead ask how the State responds to varying needs and demands, in fact, there is a wide variety of languages used in educational fora, local governance, on street signs, personal names and so forth at the local level, officially under law in France. Simply, the European experience is one of considerable diversity with varying regulatory regimes and lots of opportunities (if not enough) for the use of minority languages.

While some States make no provision for languages other than the dominant State language, other States do make provisions for the use of minority languages to a greater or lesser degree in their Constitutions. For example, the Georgian Constitution provides for the additional official use of Abkhazian in the Abkhaz region. Similarly, Tajikistan has enshrined minority-language rights for Tajik, Russian and Uzbek speakers in its Constitution. Other Constitutions (for example, those of Uz-

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[12] In chronological order: "Report on the Rights of Linguistic Minorities in the OSCE Area" (March 1999); "Report on the Situation of Roma and Sinti in the OSCE Area" (April 2000); and a survey conducted jointly by the Programme in Comparative Media Law and Policy at Oxford University and the Institute of Information Law at the University of Amsterdam, entitled "Minority-Language Related Broadcasting and Legislation in the OSCE Area" (April 2003), online at <http://www.osce.org/hcnm/item_11_13547.html>.

bekistan and Ukraine) embody a wider, more liberal approach to language issues whereby the State guarantees to respect, protect and create conditions for the free development of all minority languages.

It was in order generally to assist policy- and law-makers in developing and implementing good policies and effective laws in the areas of minority education and language rights that the OSCE HCNM facilitated the elaboration of sets of general recommendations by groups of independent internationally recognized experts for use in all OSCE participating States. Where international standards for the protection of minority rights lack clarity, these guidelines provide user-friendly frameworks within which State authorities can develop policy and law tailored to their own specific cultural and linguistic contexts. These are the *Oslo Recommendations regarding the Linguistic Rights of National Minorities*[13] and (earlier) *The Hague Recommendations regarding the Education Rights of National Minorities*;[14] the term "national minorities" is inclusive of linguistic, cultural, ethnic, national and even religious identity. As discussed above, another set of Guidelines addresses the use of minority-languages in the broadcast media from the perspective of human rights, minority rights, linguistic diversity and good governance, and not so much as a commercial or industry matter as is sometimes the case. Not unimportantly in these connections, the OSCE HCNM also supported elaboration of the *Lund Recommendations on the Effective Participation of National Minorities in Public Life*[15] which seek to assist policy- and law-makers better to understand the range of forms of governance available to them in treating jurisdictionally a range of issues, including regulation of use of language. Coupled with reports on State practice and indicating good or best practices, these general recommendations and guidelines help responsible authorities to govern well in these not uncommon matters. To this end, the HCNM

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[13] *The Olso Recommendations of February 1998*, see <http://www.osce.org/documents/hcnm/1998/02/2699_en.pdf>. For some scholarly commentary and related considerations, see (1999) 6:3 International Journal on Minority and Group Rights (special issue).

[14] *The Hague Recommendations of October 1996*, see <http://www.osce.org/documents/hcnm/1996/10/2700_en.pdf>. For some scholarly commentary and related considerations, see (1996-1997) 4:2 International Journal on Minority and Group Rights (special issue).

[15] *The Lund Recommendations of September 1999*, see <http://www.osce.org/documents/hcnm/1999/09/2698_en.pdf>. For an explanation and analysis of the Lund Recommendations, see John Packer, "The Origin and Nature of the Lund Recommendations on the Effective Participation of National Minorities in Public Life" (2000) 11:4 Helsinki Monitor 29.

engaged with relevant domestic authorities and made specific recommendations and offered practical advice and assistance.[16]

V. CONCLUSIONS

If we are dealing with the reality of mixing and evolving diversity, what are the policy alternatives? Linguists, socio-linguists, educationalists and pedagogues observe some reason for optimism. First, the good news is that humans have a remarkable capacity for language acquisition and use. It is a fiction that humans cannot cope with more than one or two languages. Indeed, significant parts of the "developing world" do so as a matter of normal life — often using more than two languages routinely. So humans are clearly capable of it. Second, we have many options in terms of organizing our societies. We can divide responsibilities and socio-political space and structures territorially and non-territorially, including for quite small groups who may be geographically dispersed. Moreover, the options are increasing as a result of technological developments. So, we can imagine the use of languages in both official and non-official contexts, both in terms of rights and in terms of governance. Third, there is a tremendous variety of experiences, existing and evolving around the world, in the way that language use is managed successfully. So, we can learn and draw from such experience and shape policies, laws and practices appropriate to our own situations.

In relation to policy- and law-making, the effective participation of the public — especially those most affected — is vital. This is quite an important issue in terms of decision-making. Simply, it makes for good law-making, *i.e.*, combining what is just with what will work. In particular, we can structure our societies both territorially and non-territorially, with overlapping, asymmetrical and evolving regimes. We do not need a single and static template to be used in all situations. Instead, we can tailor inclusive and respectful regimes which respond to the varying

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16 For a summary of such work until mid-2001, see Sally Holt & John Packer, "OSCE Developments and Linguistic Minorities" (2002) 3:2 UNESCO MOST Journal on Multicultural Societies; online: <http://www.unesco.org/most/jmshome.htm>. See also John Packer, "The Protection of Minority Language Rights through the Work of the OSCE Institutions" in Snezana Trifunovska & Fernand de Varennes, eds., *Minority Rights in Europe; European Minorities and Languages* (The Hague: T.M.C. Asser Press, 2001), at 255.

needs, interests and aspirations of diverse populations and so inspire popular confidence and compliance. That is good and democratic governance.

Although often unrecognized by political theorists, jurists, educationalists, linguists and others, a broad framework of applicable international standards, both binding and not binding, is already in existence. The challenge is to have these standards respected, as many countries (including Canada) are subject to international standards but fail to fulfil all their obligations. In order to assist this process, a number of guidelines (noted above), wholly consistent with the panoply of existing international standards, have been elaborated over the past few years. If one examines and applies these guidelines in any specific situation, and seeks to do so in a consistent manner, one can work through to solutions that will be more inclusive and participatory, and respond to more of the demands, accommodate more of the needs and be more sustainable in the long term than most of the efforts we have seen so far. This is a matter of managing our real linguistic diversity and valuing it for its instrumental and essential purposes, not least as a common human resource and wealth. Thus, we may come nearer to wholly just and workable solutions appropriate to the actual complexity of our societies, and thereby we may achieve more peaceful, stable and prosperous societies.