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Introduction

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The papers in this volume serve to establish the contours and scope of the concept of Linguistic Human Rights (LHRs) through theoretically oriented papers and descriptions of experience in a number of countries. The book brings together language and human rights, topics which are seldom merged, and politically sensitive and inextricably interwoven with power structures. The book represents an effort to create conceptual clarity and to map out an area which is hitherto relatively uncharted. LHRs are still not a coherently defined topic, despite work in international law, the social sciences and humanities, all of which are represented in this volume. The need for multidisciplinary clarification is urgent in view of the obvious importance of language as a means of social control, and abundant evidence that language is often a factor in the mediation of social injustice. As many of the papers show, it is common for people to be deprived of their linguistic human rights. The rapid growth of language professionals in applied linguistics, minority education, language planning, and the sociology of language means that much more attention is being paid in the contemporary world to devising structures which respect the multilingual reality in our midst. Human rights have become a major concern of the international community and governments worldwide. The role of language in ensuring a greater observance of human rights needs to be addressed. The challenge to lawyers, politicians and language professionals is to see how a human rights perspective can support efforts to promote linguistic justice.

What are linguistic human rights and why are they important? Why are linguistic human rights needed for all?

Linguistic rights should be considered basic human rights. Linguistic majorities, speakers of a dominant language, usually enjoy all those linguistic human rights which can be seen as fundamental, regardless of how they are defined. Most linguistic minorities in the world do not enjoy these rights. It is only a few hundred of the world's 6--7,000 languages that have any kind of official status, and it is only speakers of official languages who enjoy all linguistic human rights.

Observing LHRs implies at an individual level that everyone can identify positively with their mother tongue, and have that identification respected by others, irrespective of whether their mother tongue is a minority language or a majority language. It means the right to learn the mother tongue, including at least basic education through the medium of the mother tongue, and the right to use it in many of the (official) contexts exemplified above. It means the right to learn at least one of the official languages in one's country of residence. It should therefore be normal that teachers are bilingual. Restrictions on these rights may be considered an infringement of fundamental LHRs.

Observing LHRs implies at a collective level the right of minority groups to exist (i.e. the right to be "different"--- see Hettne 1987 and Miles 1989). It implies the right to enjoy and develop their language and the right for minorities to establish and maintain schools and other training and educational institutions, with control of curricula and teaching in their own languages. It also involves guarantees of representation in the political affairs of the state, and the granting of autonomy to administer matters internal to the groups, at least in the fields of culture, education, religion, information, and social affairs, with the financial means, through taxation or grants, to fulfil these functions (see UN Human Rights Fact Sheet 18, Minority Rights; Alfredsson 1991, and Leontiev, this volume). Restrictions on these rights may also be considered an infringement of fundamental LHRs.

The principle underlying the concept of universal human rights is that individuals and groups, irrespective of where they live, are entitled to norms which no state can be justified in restricting or violating. But not all human rights are a question of the death penalty, torture, or arbitrary imprisonment. Often individuals and groups are treated unjustly and suppressed by means of language. People who are deprived of LHRs may thereby be prevented from enjoying other human rights, including fair political representation, a fair trial, access to education, access to information and freedom of speech, and maintenance of their cultural heritage. There is therefore a need to formulate, codify and implement minimal standards for the enjoyment of LHRs. These should be an integral part of international and national law.

Applied linguists, teachers and other language professionals who are involved in the task of creating optimal conditions for the learning and use of languages have a special responsibility to see in what ways an awareness of the multiple dimensions of LHRs can be harnessed to this task. This may involve unmasking the false arguments used by educational administrators (Cummins, this volume), educational language planning for multilingual societies at the state and local authority levels (Leontiev, this volume) or at school level (Gibbons et al, this volume).

Who has and who does not have linguistic human rights? Why do minorities not have linguistic human rights?

Despite the good intentions of drafters of covenants, from the United Nations Charter onwards, and the ratification of them by member states, there are still major social inequalities where linguistic injustice appears to be a relevant factor. Many of the papers in this anthology document this.

Since the groups who do not enjoy full linguistic human rights today---regardless of how these are defined---are mostly minorities, minority rights overlap substantially with linguistic rights.

According to Alfredsson, of the UN Center for Human Rights in Geneva (1991, in a survey article on minority rights, their formulation and implementation), it is governments who should be blamed for their reluctance to set standards for the treatment of minorities or to guarantee them the kind of special protection that the position of minorities requires. Because of the structure of international organisations, which represent states, the predicament of many groups, such as the Armenians, Basques, Berbers, Kurds, Roma, Tamils and West-Irians, has gone largely unnoticed (Alfredsson 1991: 34), and to some extent been excluded from access to the human rights system. It is a serious weakness that the complaints procedures under international law, for instance to various UN bodies, do not apply collectively, but are restricted to submissions from individuals.

When we affirm categorically that all individuals and groups should enjoy universal LHRs, this claim needs to be seen in the light of the political reality of unequal access to power. Most linguistic majorities seem reluctant to grant "their" minorities rights, especially linguistic and cultural rights, because they would rather see their minorities assimilated (see Grin, this volume, on the "tolerability" of the majority group). But this antagonism towards linguistic minorities is based on false premises, and in particular on two myths, that monolingualism is desirable for economic growth, and that minority rights are a threat to the nation state.

The myth that monolingualism is desirable for economic growth

In many nation states the (uneven) distribution of power and resources is partly along linguistic and ethnic lines, with majority groups taking a larger share than their numbers would justify. A comparison between states with different linguistic policies shows a certain correlation between poverty and multilingualism: "monolingual" (Western) states tend to be richer than multilingual non-Western states. This has been interpreted, by those who think that the correlation represents a causal relationship, as meaning that multilingual states should strive towards monolingualism if they want to improve their economies---monolingualism makes operations (industry, education, information, etc) more efficient. This inevitably involves the assimilation of minorities, i.e. no rights for minority languages, and support for activities and education in the majority language for minorities. In fact the relationship between multilingualism and poverty is not a causal one, as Joshua Fishman has shown in a thorough study of some 120 states (1989). Besides, monolingualism in a multilingual state is uneconomical and violates LHRs (see e.g. Pattanayak 1988).

National unity and territorial integrity---the myth that minority rights are a threat to the nation state

Linguistic and cultural rights are central for maintaining and reproducing a minority group as a distinct group. Thus the exercise of linguistic and cultural rights by minorities is often seen by majorities as preventing the minorities from assimilating into what majorities call the "mainstream" society. Many dominant groups see the mere existence of (unassimilated) minorities as a threat to the (nation) state. According to the conventional nation state ideology, the ideal state is homogenous, consists of one nation/ethnic group only, and has one language. Fostering diversity is necessarily seen as a threat to the political unity and territorial integrity of a state: at some point, so the argument goes, the minorities will themselves start striving towards this "natural", ideal political organisation, a nation state of their own. Granting linguistic and cultural rights will lead to quests for autonomy and independence (first culturally, then economically and politically), and in the end to the disintegration of the nation state. It is also in this light that we need to see the fairly absolute refusal to grant im/migrants any linguistic and cultural rights which might support them in developing into new national minorities.

The disintegration of Yugoslavia is attributable to many factors, but one significant element in the build-up to the wars of 1990--92 was the refusal of Belgrade/Serbia/centralising forces to accept the cultural demands of minorities such as the Slovenes and the Kosova Albanians (Klopčič 1992). The same pattern occurred vis-à-vis the Serbian minority in Croatia.

The Yugoslav catastrophe confirms that "internal suppression of minority issues does not work; assimilation has been attempted and it inevitably fails. Minorities do not simply disappear; they may appear dormant for a while, but history tells us that they stay on the map. Nationalism and the drive to preserve identities are strong forces and they apply in equal measure to nation-states and to minorities" (Alfredsson 1991: 39).

"National experience teaches us that the recognition of and respect for special minority rights are viable alternatives to oppression and neglect", Alfredsson continues. Some states have of course accepted the validity of demands for LHRs from (some) ethnic minority groups, mostly in cases where this step is not regarded as posing a threat to the integrity of the state (small groups, non-territorial groups, groups which have not voiced secessionist demands, etc, see for instance Kāretu on the Māori in New Zealand and Magga on the Sámi in Norway, in this volume), or where NOT granting rights might lead to secession (e.g. rights to French in Canada). Some traditional national minorities also have or are starting to acquire linguistic rights. But the overall impression is still one of many states wanting to be seen as doing something rather than in fact committing themselves fully. This is reflected in how the rights have been formulated in universal or European covenants, with a combination of on the one hand "legitimate" flexibility and on the other many escape clauses which often substantially undermine the rights.

The gulf between the good intentions expressed in preambles of international or regional documents and the de facto dearth of LHRs can thus be understood as symptomatic of the tension between on the one hand a genuine wish on the part of the (nation) state to secure (or give the impression of securing) human rights to minorities, and on the other hand the (nation) state believing that granting human rights, especially linguistic and cultural human rights, to minorities, is decisive for reproducing these minorities as minorities, which may lead to the disintegration of the state. It is not very likely that any state would voluntarily work towards its own fragmentation.

Since many states "have problems" with their own minorities, i.e. do not treat them in a way consistent with all minority and general rights in human rights treaties, they are often reluctant to criticize other states' treatment of their minorities. It is possible, Hettne claims (1987: 85), that many nation states, with motives connected to both domestic and foreign policies in fact support an escalation of ethnic conflict up to a certain level---and this includes violation of the basic LHRs of minorities.

Minorities cannot, on the other hand, "take" rights themselves, just by proclaiming them. The rights need validation from the state where the minorities live. This can only be achieved in a negotiation process, where minorities are almost inevitably the weaker party. The alternative, when negotiation fails, is for a minority community to hope that other states will recognize their viability. Slovenia achieved this, as did Croatia and later Bosnia, but without war being prevented. The Yugoslav fragmentation process showed clearly that the international community is extremely unsure how such disputes should be handled. Language is of course only one dimension in such conflict, but not one that can be ignored. It is imperative to take into account the relative power and status of speakers of languages ("symmetry", as Grin calls it, this volume). There is an urgent need for a clarification of how (speakers of) threatened languages can be supported (see Annamalai 1993) without this being perceived as undermining the position of the majority group or the integrity of the state.

What happens if people do not get linguistic human rights? Language and ethnic conflict

"Interethnic cooperation and solidarity" between groups with different languages, "peaceful coexistence", is "at least as common and persistent as interethnic conflicts", according to Rodolfo Stavenhagen (1990: 39). But when conflict occurs, language is in many situations one of several factors separating the parties. In other conflicts, the parties share a language but differ on other counts. Bosnians shared a language with Serbs and Croats, but this did not prevent war. Thus there is no necessary correlational relationship between conflict and differences of language. But when difference of language coincides with conflict, does language play a causal role?

In the first place, differences of language cannot in most contexts be said to "cause" war or even inter-ethnic conflict. "If and when ethnic hostility or rivalry occurs, there is generally a specific historical reason for it that relates to political struggles over resources and power" is Stavenhagen's assessment (1990: 39). However, even if

... the economic factor is seldom absent in ethnic conflict, it does not usually constitute any kind of triggering factor. Existential problems in a deeper sense are involved. The hatred that an ethnic group can develop against another group probably has less to do with competition per se and more with the risk of having to give up something of oneself, one's identity, in the struggle... It is therefore more a question of survival in a cultural rather than a material sense ... The horror of ethnocide is a more basic impulse than the struggle to reap economic benefits at the expense of another group, ...

Björn Hettne claims (1987: 66--67). "To sum up, the problem is not that ethnic groups are different, but rather the problem arises when they are no longer allowed to be different, i.e. when they subjectively experience a threat to their own identity, a risk of ethnocide. This is a fundamental cause behind the politicising of ethnic identity" (Hettne 1987: 67).

Without supporting crude forms of primordialism or instrumentalism (see below), we see lack of linguistic rights as one of the causal factors in certain conflicts, and linguistic affiliation as a rightful mobilizing factor in conflicts with multiple causes where power and resources are unevenly distributed along linguistic and ethnic lines.

Language is for most ethnic groups one of the most important cultural core values (Smolicz 1979, and this volume). A threat to an ethnic group's language is thus a threat to the cultural and linguistic survival of the group. Lack of linguistic

rights often prevents a group from achieving educational, economic and political equality with other groups. Injustice caused by failure to respect linguistic human rights is thus in several ways one of the important factors which can contribute to inter-ethnic conflict---and often does.

This means that we see language-related issues as potential causes of conflict only in situations where groups lack linguistic rights and/or political/economic rights, and where the unequal distribution of political and/or economic power follows linguistic and ethnic lines. Granting linguistic rights to minorities reduces conflict potential, rather than creating it.

In the ongoing work for LHRs a number of conceptual issues need clarification. The papers in the first section of the book pursue central issues in LHRs, but some of the key concepts and distinctions which are to a large extent problematic in most work on human rights will be presented here.

Some important problems and distinctions in analysing, formulating and implementing linguistic human rights

Are there hierarchies of languages, language rights, and implementation?

In international law, human rights are regarded as indivisible and presupposing each other, so that in principle there can be no hierarchy of human rights: they are implicitly equal. The only "absolute" right which the state ought not to constrain in any way is the right to life (though use of the death penalty in the majority of the countries in the world shows that not even this right is inalienable---see Shelton 1987 for a short history of current moves to make it so). In practice it seems that a three-tier system has emerged in the UN Human Rights Committee's work on clarifying the scope of rights: there is a top layer of "hard core" rights which do not admit any derogation (the right to life, prohibition of torture and slavery, and freedom of religion), the bottom layer permits restrictions in the enjoyment of certain rights in specific cases (e.g. in relation to the rights of freedom of movement, of association and to peaceful assembly). The rest presumably fall into an intermediate category (see Centre for Human Rights publication HR/PUB/91/6, 20). But where do language rights come in? Are there also hierarchies of languages, language rights, and of beneficiaries of language rights?

Hierarchies of languages: primordialism or instrumentalism?

While we acknowledge the great importance of languages to their speakers, especially the importance of a mother tongue, we want to distance ourselves from uncritical primordialism and anthropomorphism in our conceptualisation of (the importance of) languages, and from harsh instrumentalism. Primordialists in general see the mother tongue as something that one "inherits" with one's mother's milk (in the sense of not having chosen to learn it). It is ascribed not acquired, almost in the same sense as skin colour. A crude form of primordialism would also conceptualise language in an anthropomorphic, "biologized" way, as an organism with a life of its own, more or less despite the speakers. Some languages can then be labelled as more logical, rich, beautiful or developed than others, and then hierarchized on the basis of "their" presumed characteristics. Views of this kind do not have any basis in reality: all natural languages are complex, logical systems, capable of developing and expressing everything, provided that enough resources can be used for their cultivation. There is thus no basis for the hierarchization of languages (except in terms of the more "technical" results of unequal resources accorded to them earlier). In an overstated version this view can be (and has been) used to support hierarchizations of people under the cover of hierarchization of languages, ethnoses (ethnic groups) and cultures, which can lead to genocide.

In contrast to primordialism, instrumentalists see language as acquired and manipulable, something that an individual or group can take on and off more or less at will. According to instrumentalists, emphasis on language by an ethnic group serves to mobilise the group for the purpose of economic/political or other benefits. In this mobilisation the (elites in the) group use all the characteristics of the group which are effective as mobilising factors, including language. In this view of things, language in itself is of no special importance, it only has an instrumental value. It can also be used to divert people's attention away from the "real" problems (which are seen as economic and political).

The importance of these distinctions for LHRs relates to hierarchies of languages (the idea of which can be supported with a crude form of primordialism and anthropomorphism) and the role of language in ethnic conflict (where harsh instrumentalism does not recognise the genuine feelings of deep attachment to mother tongues but sees the expression of these feelings as proof of successful manipulation by elites). We regard the sources of linguistic identification as primordial, but the manifestations as contextual. Identification with a mother tongue, the need to develop the language, and related concerns are equally important for speakers of all languages, regardless of number of speakers, citizenship, etc. Thus languages cannot be hierarchized for purposes of assessing their speakers' need of LHRs.

Hierarchies of language rights: rights to mother tongues, second languages, foreign languages

Language learning generally follows a chronological sequence. The language of the close community and primary ethnolinguistic identity, the **mother tongue**, is learned first. Next comes a language of national integration, a **second language** for linguistic minorities, a **second variety** (in the sociolinguistic sense of particular registers) for linguistic majorities, and finally languages of "wider communication" beyond the confines of the state, i.e. **foreign languages** (Ngalasso 1990: 17). In the case of those whose mother tongue happens to be a standard variety of an internationally dominant language, these three types will be conflated to a single language, so that the learner adds different registers rather than different languages. Granted that languages are often learned sequentially, one might postulate that rights in relation to these languages represent a hierarchy from most important to least important. As a result, being prevented from enjoying LHRs can be seen as graver in relation to languages learned earlier in one's socialisation, and might have more serious consequences for the individual's development, access to education and access to other human rights. This hierarchization of rights might implicitly serve to hierarchize the languages too, the mother tongue being the most important.

Hierarchies of implementation of language rights

Both the existence of LHRs and, especially, the degree to which they are implemented in practice, are inextricably interwoven with the question of the collective political status of each linguistic group---are they autochthonous or indigenous, national majorities or minorities, territorial or non-territorial, or (recent) immigrants? As the goal of human rights is to maintain and protect humane values, they recognize the right to identity as a cultural characteristic of both minorities and majorities. The right to self-determination is a basic principle in international law, aimed at recognizing the right of peoples (not only states) to determine their own political, economic and cultural destiny, possibly within their own sovereign state, and hence avoid being assimilated. There are no specific instruments of international law that specify how the right to self-determination should be implemented, but the principle has been recognized as universally valid since the nineteenth century and was widely used in the period of decolonization. States have been reluctant to apply the principle, as the experience of the Eritreans, Kurds, Namibians and Palestinians, among others, shows. The right of peoples to self-determination dovetails with the implementation of LHRs. In the contemporary world, several minority groups (like the Catalans and Basques) are involved in comprehensive linguistic normalization processes within a framework of autonomy, one of the forms that self-determination can take. For autonomy, whatever it is labelled (self-government, self-management, home rule, etc), the essential element is that a central government is willing to share and delegate power, so as to respect local wishes and needs. This is stipulated in the UN Declaration on Indigenous Rights (see Appendix), the model for which is the Danish home rule legislation for Greenland, by which responsibility for education, land and housing, economic affairs, etc is passed on, whereas foreign affairs, defence and monetary affairs remain the business of the central (Danish) government. The European Charter for Regional and Minority Languages extends the principle of autonomy to non-territorial minorities (see Skutnabb-Kangas---Phillipson, this volume), but leaves it up to the state to decide which minorities the rights should apply to. Another set of problems relates to the role of foreign powers in connection with the implementation of LHRs. As the relevant implementation principles are largely implicit, any accusation that a state is not observing LHRs principles can be construed as interference in the affairs of a sovereign state. Equally, because of the vagueness of LHRs criteria, a state may use or misuse them in order to pursue its own political goals. This happened when Russia accused the Baltic states of human rights abuses in the early 1990s, in particular of depriving Russian-speakers of LHRs (see Rannut's paper, this volume). The UN investigated these complaints and played a key role in attempting to prevent such inter-state confrontations from escalating. In such contexts, where LHRs have a high profile, action is needed at the highest international level.

Are linguistic human rights individual rights or collective rights or both? Is there a contradiction? Who are the beneficiaries of collective LHRs?

One of the long-standing unresolved human rights issues is whether they relate to the individual or to the group. Linguistic human rights can be regarded as having both dimensions, one primarily individual, another primarily collective. The first involves continuity from one generation to the next over time. It is therefore a linguistic human right to acquire the cultural heritage of preceding generations, initially in primary socialization in the family and close community. The second involves cooperation between individuals, binding together a group, a people, a population of a country, through sharing the languages and cultures of all.

The first element involves the right to a native language (or languages; there may be more than one), the right to learn it, the right to have it developed in formal schooling through being taught through the medium of it, and the right to use it. By its nature this right is personal and individual. It therefore is inherent in everyone, even those who leave their community of origin and migrate or flee to another country or community. The developmental, diachronic learning aspect of this right relates particularly (but not only) to the child, whereas the right to use a native language concerns everybody, regardless of age.

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The second element is contemporary, synchronic, and focusses more on humans as social beings. It grants everyone the right to participate in the riches provided by the social environment, through learning the official language(s) of the environment, locally, regionally and nationally. This part involves the right to be taught and to learn the official language(s) of the country. This also implies the right to learn those varieties of the language(s) of the environment that enable everyone to participate fully in the cultural, economic and political processes of the country. This right is a collective right (even if the learning itself still happens in individuals).

As Hamel's paper on the rights of Amerindian indigenous peoples shows, the evidence is that a system of individual rights has not proved adequate to provide support for such threatened peoples. Although autonomy can be both territorial (an area) and personal (for instance the Sámi in Norway can run for and vote in elections for the Sámi Parliament wherever they live), autonomy is also "by its very nature a collective right. It is the collective entity which claims the right, enjoys it and through its membership determines the form and structure of its administration. Similarly the group would lay claim to, and complain about violations of, the right to autonomy at the inter-governmental level." (Alfredsson 1991: 28). Many of the papers in this book probe into the collective/individual dichotomy. But broadly speaking, collective and individual LHRs presuppose and complement each other and are in no way alternatives to each other.

But if LHRs are seen as having collective beneficiaries too, these collectivities have to be defined. The question of the definition of concepts like nations, peoples, indigenous peoples/minorities, tribals, national (ethnic) minorities, (ethnic) groups, im/migrant minorities/groups has been one of the most tricky ones in the social sciences and international law. Despite many attempts (see e.g. Capotorti 1979; Andrysek 1989), there is, for instance, still no commonly accepted definition of a minority for human rights purposes (see Skutnabb-Kangas---Phillipson, this volume).

"Ethnic" is notoriously difficult to define too. During the fairly long period in the social sciences when many researchers proclaimed that ethnicity was dead or at least dying, ethnicity was often seen by these "evolutionists" as a characteristic that only minorities possessed. Majorities were devoid of ethnicity. Ethnicity was seen as a somewhat primitive, traditional category which would disappear with modernization or socialism, with more functional categories like class or occupational group or more overarching identities like de-ethnicized national identities replacing it. Primordialist claims about ethnicity fulfilling deeply felt needs which neither the state nor other forms of organisation could satisfy seem to have been more realistic, judging by the upsurge of revitalisation movements.

Most indigenous peoples do not accept a minority label, whereas many immigrant groups strive towards being accepted as minorities. Tribe is by many seen as a negatively loaded term ("nations are tribes with an army, languages are dialects with an army"; "why are several million Zulus a tribe while 240,000 Icelanders are a nation?") whereas India's "scheduled tribes" are mostly included among indigenous peoples. National minorities (and minority languages) are difficult to define too, and it seems more than likely that both the European Commission of Human Rights and the European Court of Human Rights will have to determine the scope of these notions in relation to new European instruments on minorities and regional or minority languages. This also includes several terms used in the definitions themselves. Is around 400 years of use of a language enough, for instance, for the language to deserve the epithet "traditionally used"? In that case both Romani and Yiddish should be treated as those non-territorial languages that the European Charter for Regional of Minority Languages should apply to, in most European countries---but we suspect that most countries have not included them when ratifying the Charter.

Usually nations and peoples enjoy many more LHRs than national (ethnic) minorities, who in turn often have more rights than indigenous peoples/minorities and tribals. Those who are only (ethnic) groups usually have few LHRs, and im/migrant minorities/groups (and refugees) have almost none. Of course tourists could be even worse off, but that is generally a temporary, self-imposed inconvenience.

Khubchandani (this volume) also demonstrates that the reality of shifting linguistic identities in plural societies means that the concept language is itself inherently problematical. As a result, legal measures to enact and implement linguistic human rights can also pose new problems. A Unesco report of an international symposium on language rights in Pécs (1992) therefore sees concept clarification as vital for work on LHRs.

Beneficiary---duty-holder

There can be no beneficiary of a right unless there is a duty-holder. Traditionally, it was individual citizens who were entitled to enjoy human rights. As the history of the evolution of human rights shows, early formulations in the American and French declarations of the 18th century were those of the citizen of a state. Modern human rights do not presuppose a given status in the society like the property qualification which political rights depended on in most Western societies in the 19th century, or like the rights which excluded individuals on the basis of their gender or marital status.

It is the state which has the duty to create conditions in which individuals can enjoy their rights and to ensure/guarantee their enjoyment. Legislation is normative in the sense that its task is to promote the development of communities and individuals, resolve conflicts and protect interests, including human rights.

But it is not only the state that has duties. Many paragraphs of language rights or minority rights include formulations stating that these rights "should not be to the detriment of the official languages and the need to learn them" (this example is from the Preamble of the European Charter for Regional or Minority Languages). If, for instance, citizenship

presupposes fulfilment of certain official language knowledge requirements, it is the duty of a citizen to know the official language (to some extent). The state then must make arrangements for this to be possible (which requires the allocation of resources to teacher training, curriculum development, etc), and its citizens are assumed to be willing to profit from such an arrangement, i.e. they have duties once the state shows evidence of performing its duties. If the citizen in a multilingual state (i.e. virtually all states, including those that make up the European Community) is accorded a right to learn three or more languages, she or he may also have a duty to learn them---a point made by Leontiev in his paper.

One of the weaknesses of most covenants is that the nature of the duties that the rights presuppose is left unclear, as well as the specific obligations of the duty-holder. These obligations may be clarified by litigation.

Can the courts clarify the scope and interpretation of linguistic human rights? From non-discrimination to affirmative action

As the Universal Declaration of Human Rights states: "It is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law." To ensure enforcement of the law, the citizen may need recourse to the courts. In some countries, international covenants that the state has ratified become part of national law, meaning that litigation is in principle possible in the same way as if a litigant is seeking enforcement of a national law (see Turi's paper for examples of court cases in France and Canada). Litigation may play a significant role in clarifying the scope of LHRs.

One of the important issues that needs clarification through litigation is how far a state can be forced to take positive action on behalf of a minority language speaker. Since most international legally-binding treaties and covenants which mention language (e.g. Article 27 of the UN International Covenant on Civil and Political Rights, 1966) are formulated in a negative way, as non-discrimination prescriptions, court interpretations on whether any kind of affirmative action is needed in order for the right to be effective are of extreme importance. The prohibition of discrimination is not achieved by according "equal" rights to all. The right to a fair trial, for instance, may require interpretation, i.e. a special right for the members of the minority group. What minorities in fact need is affirmative action, probably over a prolonged period. Such "special rights" do not represent a privilege but merely a means to ensure equality of treatment.

If a child belonging to a minority "shall not be denied the right, in community with other members of his or her group ... to use his or her own language" (The UN Convention on the Rights of the Child, 1989, Art. 30), it would be important to clarify by litigation whether the state has to ensure this by taking positive measures. The European Court of Human Rights has so decreed in a comparable case (the Marckx case of 1979, as reported in Alston 1991: 5). An affirmative obligation on the part of the state could thus mean, for instance, that the state has the obligation to organise day care, pre-schools and schools so that minority children are not denied the right to use their languages, i.e. their languages should be the media of instruction.

It is also important to mention the European Court of Human Rights, to which the individual (from one of the relevant European countries) can address a claim. The court has pronounced on a wide range of human rights issues and at least two cases on language rights issues have been referred to it recently. Appeal to the UN Human Rights Committee is restricted to submissions by governments.

Time to include linguistic human rights in international law

The history of human rights shows that the concept of human rights is not static. It is constantly evolving in response to changed perceptions of how humans have their fundamental freedoms restricted, and the challenge to the international community to counteract injustice. The more recent UN covenants (for instance the Universal Declaration of the Rights of the Child of 1989) include clauses which aim more at implementation, at affirmative action (e.g. governments pledge themselves to "respect and ensure" the observance of the designated rights---see Alston 1991).

In many international fora, the UN, the ILO, the Council of Europe and the CSCE (the Helsinki process), there is considerable activity aimed at granting more rights to minorities and their languages, through developing various new conventions and recommendations. In these endeavours the following aspects are of central relevance:

£WHICH GROUPS ARE SUCH RIGHTS TO APPLY TO£, i.e. how will minorities be defined? Will immigrant minorities be covered or not? Immigrant minorities are mostly excluded in the definitions of who the rights are applicable to, and the only opportunity provided for some of them to become included under definitions in existing or draft multilateral agreements clauses is the Council of Europe's Commission for Democracy through Law, in its latest draft European Convention for the Protection of Minorities, Art. 2 (see the Appendix).

£WHAT RIGHTS WILL BE COVERED£? In the light of discussions at seminars under the auspices of Unesco about a Universal Declaration of LHRs, it appears that the most difficult question is the right to learn the mother tongue fully, and the right to teaching through the medium of the mother tongue. This is something majorities take for granted for themselves, but most of them are not willing to grant this to minorities. By contrast, most majorities are only too willing to approve of measures which grant minorities the right to learn the majority language, because these rights are seen as

promoting the assimilation of minorities.

£TO WHAT EXTENT WILL THE BASIC REQUIREMENTS£ that one should expect of a covenant of LHRs £BE RESPECTED£? The following points may be relevant:

- The rights have to be formulated explicitly, in a sufficiently specific and detailed way, so that difficulties of interpretation are minimized (see e.g. the critique of the European Charter, which has not been formulated in this way, in Skutnabb-Kangas---Phillipson in this volume).
- The rights have to be legally binding, not merely recommendations, and they must be incorporated into national law.
- The convention must specify whose duty it is to guarantee observance of the rights.
- The convention must specify whose financial responsibility it is to ensure implementation of the rights (also in situations where political changes imply t