Linguistic Human Rights

Linguistic Human Rights
Overcoming Linguistic Discrimination

Edited by
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in collaboration with
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Mouton de Gruyter
Berlin · New York 1995

Mouton de Gruyter (formerly Mouton, The Hague)
is a Division of Walter de Gruyter & Co., Berlin.

This work originally appeared as volume 67 of the series
Contributions to the Sociology of Language.

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the ANSI to ensure permanence and durability

Library of Congress Cataloging-in-Publication Data

Linguistic human rights : overcoming linguistic discrimination / edited by Tove Skutnabb-Kangas, Robert Phillipson, in collaboration with Mart Rannut.
p. cm.
An appendix includes extracts from selected UN and regional documents covering linguistic human rights, proposals for such, and resolutions on language rights.
Includes bibliographical references and index.
ISBN 3-11-014878-1
1. Linguistic minorities—Government policy. 2. Language policy. 3. Human rights. 4. Language and education. I. Skutnabb-Kangas, Tove. II. Phillipson, Robert. III. Rannut, Mart, 1959—
P119.315.L55 1995
306.4'49—dc20 95-11298
CIP

Die Deutsche Bibliothek — Cataloging-in-Publication Data

Linguistic human rights : overcoming linguistic discrimination / ed. by Tove Skutnabb-Kangas ; Robert Phillipson in collab. with Mart Rannut. — Berlin ; New York : Mouton de Gruyter, 1995
ISBN 3-11-014878-1
NE: Skutnabb-Kangas, Tove [Hrsg.]

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Disk conversion and Printing: Arthur Collignon GmbH, Berlin. — Binding: Lüderitz & Bauer, Berlin. Printed in Germany.

Contents

Introduction

Robert Phillipson – Mart Rannut – Tove Skutnabb-Kangas[1]

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 below. 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 repro-

ducing 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 a 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 can*not* 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.

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 (eth-*

nic) 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; Andrýsek 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 territorial reorganisation).
- Both individuals and groups (as well as states) must have access to the complaints procedure, and must have the right to give evidence; the grounds for court decisions must be made public.

We would *not* wish to suggest that *linguistic rights* are anything *new*. They have long been explicitly legislated for in national constitutions and international covenants, and struggled for in political fora on all continents (as is clear from the historical account in our own article in this volume). Several principles in international law (including the right to identity, to a name – see Jernudd's article – and nationality) already dovetail with language rights and have been given expression in various covenants.

What *is* relatively new is the attempt to clarify *what should be regarded as inalienable, fundamental linguistic human rights*, to codify them and seek to promote them as a means to achieve greater social justice. Now

is the time to include positive linguistic human rights fully in international law. Hopefully the contributions to this book can further this and assist in the struggle against the violation of linguistic human rights worldwide.

The section introductions summarize each paper and highlight key matters raised in them.

Notes

1. Many of the contributions to this book were initially papers given at the 9th AILA World Congress of Applied Linguistics held in Thessaloniki in April 1990. Others were given at a symposium on linguistic human rights in Tallinn, Estonia in October 1991, organized by Mart Rannut on behalf of the Estonian Language Board, the purpose of which was to collate worldwide experience in this area (see the Tallinn Declaration in the Appendix). The book has been edited in collaboration with Mart Rannut in that he has been involved in many of its phases, as well as having written the introduction with the two editors. Others whom we should like to record our thanks to are two anonymous reviewers and Mike Long.

Serhat and Gulda are Kurds from the Turkish part of Kurdistan who live in Denmark. They have just had their first child, Mizgin (which means "good tidings") and want to visit Turkey to show the grandchild to their parents. They need Mizgin's name to be added to their passports. The Turkish Embassy refuses to record the Kurdish name. Mizgin is over 3 years old before the Embassy agrees to do this, as a result of pressure from the Danish Helsinki Committee – and the grandparents have missed the first three years of the grandson's life, because Kurdish names are not allowed in Turkey. This is a question of linguistic human rights.

Johan Mathis Mikkelsen Gávppi, a Sámi from the Norwegian part of Sámiland, starts school as the only Sámi child in the school, at the age of seven. He only speaks and understands Sámi, and the teacher only speaks and understands Norwegian. The first Norwegian sentences his classmates teach him (when he is supposed to say the Lord's Prayer) are a crude obscenity about Our Father. *He* gets punished. He left school illiterate (see Skutnabb-Kangas–Phillipson 1989, chapter 10). This is a question of linguistic human rights.

A young Finnish immigrant in Sweden is hospitalized in Stockholm. He is in acute pain at night, despite being heavily drugged. He tries, tired and desperate, to explain his pain to the nurses but nobody understands Finnish. He jumps from a fifth floor window and dies. This is a question of linguistic human rights.

A school class in Guovdageaidnu/Kautokeino, a municipality with 90 percent Sámi speakers, wanted to organise a bazaar and wrote in Sámi to the police for permission. Their letter was returned with a note that it should be written in Norwegian, and their teacher was accused of using the pupils for her/his own political purposes. When the decision was questioned in Parliament, the Minister of Justice said that the police had followed the rules correctly (reported by Magga in the Danish daily paper *Information* on 12 October 1992). This is a question of linguistic human rights.

The electrical company Philips has officially forbidden employees at their factory in Denmark to speak anything but Danish on the premises (1990). Turkish women who do not know much Danish cannot talk to each other at all. When asked on TV about whether Philips guests from other countries were also asked to speak Danish on the premises, the director said that English of course was a completely different matter. This is a question of linguistic human rights.

A Sámi woman working on an oil tanker writes a letter to her mother in Norwegian – she has never learned how to write in her native language. The mother who does not know much Norwegian has to ask a neighbour to translate the letter, and her reply. They can communicate orally in Sámi, but transatlantic phone calls are expensive (see Magga's article in *Information* 12 October 1992). In one of the richest countries in the world, with officially a 100 per cent literacy rate, neither the mother nor the daughter have learned how to write their own language. This is a question of linguistic human rights.

A Kurdish mother in Diyarbakir visits her son in prison. The guard says that they have to speak Turkish to each other. The mother does not know any Turkish. This is a question of linguistic human rights.

"In Kenya, English became much more than a language: it was *the* language, and all the others had to bow before it in deference. Thus one of the most humiliating experiences was to be caught speaking Gikuyu in the vicinity of the school. The culprit was given corporal punishment – three to five strokes of the cane on bare buttocks – or was made to carry a metal plate around the neck with the inscription: I AM STUPID or I AM A DONKEY." (Ngũgĩ 1985: 112). This is a question of linguistic human rights.

Refugees in Denmark (and many other countries) with university degrees who read and write Arabic/Farsi/Tamil etc, are considered "illiterate" and have to be "alphabetized". This is a question of linguistic human rights.

According to a survey of medical doctors practising in Tallinn, Estonia in 1991/1992 undertaken by EMOR Ltd., doctors failed to understand the complaint in Estonian "I have a singing feeling in my ears" 50% of the time, and "a stinging, smarting pain" 45% of the time. When an Estonian patient referred to the "navel", 10% of the doctors thought it was the forehead, a shoulder blade or hip. 59% were unable to instruct the patient in Estonian how to take medicine on an empty stomach. This is a question of linguistic human rights.

In Kozmodemyansk, in the republic of Mari, Russia, there is a secondary school where all the schoolgoers are Maris except for just two Russians and one Bashkir. The language of instruction after the first five grades of primary school is Russian exclusively, and not Mari, the official language. This is a question of linguistic human rights.

In the Komi-Permian district of Russia, where the indigenous people make up more than 60% of the population, the language of education and administration is Russian. No translation is provided. This is a question of linguistic human rights.

Have you, dear reader, always been able to do the following in your mother tongue:
- address your teachers in school?
- deal with the tax office?
- answer a query from a police constable on the street?
- explain a medical problem to a nurse or doctor?
- write to a national newspaper?
- watch the local and national news on television?
- ask a question at a political meeting?

All these listed points and the boxed examples are a question of linguistic human rights.

I THE SCOPE OF LINGUISTIC HUMAN RIGHTS

Section introduction

FRANÇOIS GRIN's paper **Combining immigrant and autochthonous language rights: a territorial approach to multilingualism** probes into the criteria which should guide the allocation of language rights in a polity. His basic premises are that diversity is desirable, that all language groups should be accorded language rights, and that the allocation of rights to minority groups is in fact in the interest of all groups. (These are beliefs that are probably shared by all the contributors to this volume.) Grin's theoretical model addresses the question of rights for immigrant as well as all autochthonous groups, the need to take into account the relative power and status of languages (*"symmetry"*), the complicated issue of minorities being geographically interwoven (*"inclusion"*), and the dynamics of migration in the contemporary world. He discusses the relative merits of rights based on individuality and rights based on territoriality.

He also addresses the political reality of the antagonism of dominant groups to minorities, the reluctance to grant them rights. He wants to put in guarantees which make the granting of rights to minorities "tolerable" to majorities. The *"tolerability"* of minority rights is achieved by guaranteeing that people who form the linguistic majority in a state always get service in their own language, regardless of whether they "qualify" for it numerically in a certain area or not. His principles of territorial multilingualism (which demonstrate that it is false to equate territorialism with unilingualism) operate with a three-tier system of political power, at the state, provincial and local/municipal level.

While representing an explicit and innovative attempt to theorize so that all possible trilingual realities are envisaged, his paper draws on detailed familiarity with the Swiss and Canadian contexts (and warns against seeing these in too simplistic and rosy terms). It is an important contribution towards clarification of how threatened languages can be supported without this being perceived as undermining the position of the majority group or the integrity of the state.

However, as Grin himself points out, his concerns are theoretical (which does not mean that they are not eminently practical) and his model has not been empirically verified. It has to be expanded, in order to cope with more than 3 languages. In many local areas in most metropoles in the world there is not only one immigrant language that

would qualify but several, unless the numbers needed for *"qualifying" for language rights* are set extremely high. In Stockholm, Sweden, for instance, 9 languages (as of December 1993) would "qualify" as official languages according to Grin's model, if the "qualifications" were, for instance, to follow the model from Finland referred to by Grin. This decrees that if the Swedish- or Finnish-speaking minority represents 8% of the population, or consists of at least 3,000 people in a given local authority, the authority is officially bilingual.

JOSHUA FISHMAN's paper **On the limits of ethnolinguistic democracy** probes into the reality behind official endorsements of multilingualism, exemplified by European Community (since November 1993 the European Union) pronouncements, to see what constraints there are on the use of languages in intra-state, sub-state and inter-state communication. Just as political democracy restricts individual rights, ethnolinguistic democracy can be constrained by factors of complexity and cost, and by "proportionality" or the results of functional differentiation (e.g. de facto "working languages" in international organizations). There are inconsistencies ("double standards") in government policy: the same state can frequently show a resistance to according linguistic rights to minorities within the state ("small" languages are not granted the same rights as the dominant official, "big" languages), whereas the same states, if they represent internationally "small" languages (such as Dutch or Danish) in an organization such as the EC, demand for themselves the same rights as the "big" languages, English and French. Hitherto such parity between languages has largely been granted in the EC. What policies will emerge, when the EC is expanded, is an open question, but limitations on language use are likely to be in conflict with officially declared approval of multilingualism and to constrain democratic participation.

Fishman shows that *ethnolinguistic democracy* is a far cry from *ethnolinguistic equality*. It is the smallest languages which are obliged to protest most vociferously about their lack of linguistic rights. A top-down democratic structure effectively marginalizes ethnolinguistic minority groups and forces them to re-linguify and re-ethnify. Fishman makes a passionate plea for members of the dominant group to understand and feel what language death involves (echoing Smolicz, this volume) and to oppose abuse of power as effectively domestically as they apparently do at the inter-state level.

ALEXEI LEONTIEV's paper **Linguistic human rights and educational policy in Russia** contains a concise presentation of the linguistic complexity of

Russia and current efforts to implement and plan an educational policy which respects linguistic human rights. Leontiev contributes to the clarification of the nature of LHRs, and specifically how they are the province of the *person*, the *ethnos* (and how these two interact), and the *state*. The latter has executive, regulative and stimulatory functions, and should aim to provide genuine support for each language and culture. In education this means creating conditions where several languages can be learned, the number and choice of these depending on whether the mother tongue is the state official language, a minority language, the sole language of inter-ethnic communication or one of several of these, and whether a choice of foreign languages is offered. With Russia in a phase of transition, and Russian playing a different role (cf Rannut's paper), the problems of implementing a policy which is essentially equitable are considerable.

Leontiev also stresses that *linguistic rights and linguistic duties presuppose each other*. The *state* has the *duty* to make the learning of three or more languages feasible, and must follow a principle of "parity" in curriculum organization for each language. The *individual* also has the linguistic *duty* to learn the mother tongue, an official or inter-ethnic language, and a foreign language within the educational system. Leontiev's solution is provocatively simple – and addresses several of the key questions discussed in the book. Instead of it being the state or the local authority that decides which languages are to function as media for teaching (the preferred solution in, e.g., the European Charter on Regional and Minority Languages – see Appendix), each ethnos has the right to organize schools or classes, through the medium of its own language, within the state educational system, in regions where this ethnos can guarantee the necessary numbers of students. It is the minority, not the state, which has the right to determine how such modifying terms as "sufficient numbers" should be interpreted (see Skutnabb-Kangas – Phillipson, this volume). Thus ethnolinguistic vitality can over-rule a reluctant state power.

TOVE SKUTNABB-KANGAS and ROBERT PHILLIPSON's paper on **Linguistic human rights, past and present** begins with a short historical review of linguistic rights over the past two centuries. The "universal" and major regional human rights covenants elaborated in recent decades are then assessed, to see how far their provisions ensure the promotion of minority languages in education. It transpires that they do not in fact do so, and that litigation to ensure equality of treatment for speakers of minority

languages in the education system so far has been unlikely to succeed. This is the position in international law, and under most national legal systems, despite many constitutional clauses which are supposed to guarantee enjoyment of cultural rights and to counteract discrimination.

Covenants which have been recently passed or are in draft form are analysed, and current work on devising a *Universal Declaration of Linguistic Human Rights* is described. The problem of specifying and defining what *is* a linguistic human right is exemplified with reference to a proposal that the learning of foreign languages should be considered a human right. Various types of language right are identified, and considered in relation to various types of language learning need for the individual and the group. The article closes with brief consideration of the reasons why dominant groups seem to be so insensitive to the hierarchisation of languages that is a feature of contemporary society, and what structures and ideologies contribute to the operation of *linguicism*, which to some extent has taken over from racism as a way of maintaining and legitimating structures of inequality.

JOSEPH TURI's paper **Typology of language legislation** comes from the field of comparative linguistic law. It describes the contribution of the *legal* profession to the *regulation of linguistic conflicts*, and draws particularly on the extensive Canadian experience (primarily that of Québec). Legislation is put into a broader context, as it has a *historical* dimension – rights have been acquired as a result of struggle for their recognition. It also has what Turi refers to as a *"futuristic"* dimension, in that the law regulates how society is to be ordered from the date on which laws take effect.

The comparative dimension involves the study, by lawyers, sociologists, linguists and others, of how different legal systems enshrine language rights. The article has interesting examples of how freedom of speech has been understood in courts in Canada and France. In passing, Turi also makes a challenging comparison between norms in law and norms in language.

The article presents a wide range of useful definitions and distinctions (e.g. between *official* and *non-official* uses of language). These are not drawn from some idealized notion of how LHRs might best be formulated but rather from the actual experience of the formulation of language law in Quebec (Turi has also personally made a study of constitutional stipulations on language worldwide, involving the analysis of how different legal systems enunciate linguistic rights). He distinguishes the right

to "*a*" language from the right to "*the*" language. The right to "a" language means the use of *a specific designated language* in particular (official or non-official) domains. An example could be the right of a French-speaking child in Ottawa ("non-French" area) to be educated through the medium of French but not, e.g., through the medium of Ukrainian, because French has been designated, specifically selected, while Ukrainian has not. The right to *"the"* language relates to the right to use *any language*, e.g. the right of any child, including both the French-speaking child and the Ukrainian-speaking child, to use her/his *mother tongue* (whatever it may be) as the medium of education, as opposed to a foreign or second language.

One key issue in formulating linguistic human rights is what rights should be rights that everybody has, i. e. rights to "the" language, rights that speakers of *any* language have; and which rights should be granted only to speakers of designated languages, i. e. what should be the rights of "a" language. The tendency so far seems to have been that majority language speakers have seen their languages as "designated" for all rights, and have been reluctant to accord minorities rights to "the" language.

The first type of language rights are such "fundamental" human rights that the state cannot be justified in constraining them, whereas the second type can be so constrained.

BJÖRN JERNUDD's paper **Personal names and human rights** takes up one particular aspect of linguistic rights, namely what freedom or rights individuals have to name themselves and their offspring as they wish. Names are a key marker of the social identity of an individual (*unique personal identity*) and ethnic allegiance (*group identity*). Does the state though have the right to restrict personal naming freedom? Jernudd presents a wide range of evidence from Asia and Europe which demonstrates the significance and universality of the issues.

Throughout history many aboriginal and colonized people have been forced to adopt the names of the invader. Some still bear these names. Jernudd also refers to the practice of *women* adopting their *husband*'s name when they marry. (In so doing it is of course not their "own" name they are dropping, but their father's).

Jernudd's paper shows that even if there is broad social support for a given naming policy (Singapore, Hong Kong, Sweden), one which evolves to meet changing societal needs, the issues are not straightforward. He draws parallels between the constraints that characterize interactive conversational behaviour and those that may legitimately impell a state to

engage in such language engineering. Naming practices which imply a departure from dialectal forms need sensitive implementation, but no violation of human rights may be involved in the relevant limitations on individual freedom. By contrast, repressive laws aimed at depriving an ethnic group of their distinctiveness (Indonesia, Romania, Turkey) are clearly a human rights violation, and Jernudd suggests that human rights declarations should refer to naming practices (which many of them do, see the Appendix) and specifically guard against the state curbing *the individual expression of group identity* in this way (which such declarations seldom do).

Combining immigrant and autochthonous language rights: a territorial approach to multilingualism

François Grin[1]

Immigrant and autochthonous language rights: making the necessary link

Much of the literature dealing with language rights consists of case studies, with more or less emphasis on the rights granted (or denied) to a dominated speech community under some language policy. This is illustrated by countless articles and books on autochthonous minorities, and evidenced by recent edited volumes on language planning such as Maurais (1987) or Weinstein (1990). Of a growing number of publications on immigrant communities in Western countries, few focus on language rights (see for example Steiner-Khamsi 1989; Marta 1991), and fewer still consider autochthonous and immigrant language rights simultaneously, except in settings where the distinction between "immigrant" and "autochthonous" is not as sharp as in Europe (Marshall 1986).

The same holds true, by and large, of contributions that aim at developing a general, theoretical perspective on language rights (see for example Verdoodt 1985). Ever since Kloss (1971) brought up the question of immigrant language rights in a pioneering paper, the relationship between those and autochthonous minority language rights has not been examined in detail, even in international charters, covenants and declarations in favour of extended language rights. In recent papers, both types of rights are considered, but the focus is alternately put on immigrant and autochthonous language rights (Guy 1989; Skutnabb-Kangas – Phillipson 1989). The well-documented case of Quebec includes some theoretical contributions in which the balancing of conflicting language rights is mentioned, but politics have tended to blur the issue (see for example Plourde 1988). More technical considerations on language legislation (Turi 1989 and this volume; De Witte 1989) provide tools for a rigorous characterization of language rights, but do not discuss the relationship between autochthonous minority and immigrant language rights.

Nevertheless, the relationship between language rights that are usually considered separately is bound to require considerable attention from language planners in years to come, because the objective occurrence of multilingualism within national borders, as well as general awareness of the fact, have recently increased and will probably continue to do so. There are two main reasons for this evolution.

First, there has been a resurgence in the sense of pride of a number of traditional minority communities (Foster 1980; Fishman 1989). In the Western capitalist world, this interest can be traced back to cultural changes in the sixties: the relevance of the dominant societal model was questioned in North America and in Western Europe, arousing interest for "alternative" lifestyles in various ways. Among the alternatives, traditional cultures, which appeared by and large to be removed from capitalist mass-consumption society, reappeared at the forefront in spite of the reactionary traits often associated with some of them (for a discussion of somewhat different interpretations of the alternative character of ethnicity in Western Europe, see Williams 1980). The sixties' concern with alternative lifestyles did not create the renewed vitality of traditional cultures; however, it gave them a new seal of legitimacy in the perceptions of broad segments of majority opinion. Some of the central tenets made popular in the sixties gradually acquired a widely accepted theoretical background; for example, the monolithic homogeneity of societies has by and large ceased to be taken as a proof of "modernity": human societies are increasingly perceived as deeply complex organizations, in which a variety of values and codes – which includes languages – may complement each other.

In formerly Eastern block countries, the revival of minority languages and cultures can also be seen as a backlash. In this case, however, the dominant model against which minority languages and cultures have been vying is political more than socio-economic (Grin 1991a). The demise of communist regimes in Eastern Europe and in the USSR afforded the possibility for numerous groups to reassert their cultural identity. This evolution is taking place precisely at a time when some relevant theoretical counterparts of the sixties' revolution in the West are coming to fruition. While adjusting to a free-market system, Eastern Europe can accommodate some of the needs of minority communities by drawing on new perceptions in the West, namely the idea that the coexistence of a number of different languages and cultural values, far from denoting backwardness, appropriately reflects the objective complexity of human society.

Second, the spread, extent and direction of migration flows is one of the striking characteristics of the latter part of the 20th century (Massey 1981; Salt 1989).[2] Consider for example migrants in North America. 19th century settlers were, for the most part, seeking refuge from material (or sometimes political and religious) hardship in their country of origin; they were prepared not only to adapt to their new surroundings, but also to relinquish most cultural and linguistic ties with the country they had left. The causal links involved are complex and still hotly debated. Kloss (1977: 283), notes that

> the non-English ethnic groups in the United States were anglicized not because of nationality laws which were unfavourable to their languages but in spite of nationality laws relatively favourable to them [...] the manifold opportunities which [American] society offered were so attractive that the descendants of the 'aliens' sooner or later voluntarily integrated themselves into this society.

Marshall (1986: 14), however, writes that "the period from 1850 to 1920 saw many states [in the U. S.] institute statutes that effectively blocked the non-English speaker from participation in public education, voting and other civic activities" (see also Hernández-Chávez 1988 and this volume).

Though also driven from the country of origin by hardship, as well as hopes of brighter prospects elsewhere, modern migration flows appear less likely to result in the fading of allophone communities. In the case of the Spanish-origin population in the United States, this may be heavily dependant on a steady inflow of immigrants (Veltman 1983, 1988), and be enhanced by unprecedented demographic concentrations which maintain functioning language communities (Solé 1990). We may also venture the hypothesis that quicker travel, as well as cheaper and more efficient telecommunications, make it easier to maintain direct or indirect ties with the country of origin and the associated cultures and languages. Technological change helps to resist assimilation, whether deliberately or not. It follows that present-day migrants are more likely, on average, to claim a right to maintain the language and culture of their native country in their new surroundings. This gives rise to a new category of minorities, who ground their legitimacy not in a historical connection with the piece of land on which they happen to live, but in a non-territorial right to the maintenance of cultural and linguistic identity.

The combination of these factors generates new patterns of multilingualism, and increases their incidence: instead of being separated by

political boundaries, autochthonous and immigrant languages will increasingly be united by them. This, in turn, increases the need for a perspective on the simultaneous allocation of autochthonous and immigrant language rights.

From policy to implementation choices

Prior to devising a system that would generate an appropriate allocation of language rights, as well as ensure an efficient and equitable link between the geographical spread of languages on the one hand, and of language rights on the other hand, some priorities of a political nature must be set. Assuming some measure of agreement is reached in favour of extending language rights, it is still not indifferent to know why planners make this choice.

The case for granting language rights to relatively powerless immigrant and autochthonous minorities usually rests on one of two arguments, namely, fairness or variety. This paper is concerned with variety. The hypothesis made here is that language rights may be granted not because it is presumably more fair or generous to the speech communities that would benefit from them, but because linguistic diversity sustained by a broad range of language rights will benefit all of society, including the majority language group. Proving this point is not the subject matter of this paper, and there is no use for yet another restatement of the case for diversity (see for example Fishman 1989: 568–576 for an overview), but it is always worth recalling that all languages, no matter how few their speakers, can equally well contribute to variety (Camartin 1989). In addition, stressing variety rather than fairness as the main rationale for extending language rights can prove useful for three main reasons: first, this skirts thorny moral and political issues of legitimacy; second, we will see that what would be a dilemma if fairness were the main goal ceases to be one when variety is the guiding principle; third, it is presumably easier to win over reluctant members of majority opinion to the cause of linguistic human rights by stressing increases in their own welfare rather than in the welfare of other speech communities.

Once motivations are by and large agreed upon, serious problems of implementation remain. The extent and nature of language rights given to speakers of different languages is one of the most important problems faced when designing language policy (Abou 1989). When addressing the issue, language planners usually draw on two well-known concepts,

namely, the personality principle and the territorial principle. The former states that language rights attach to individuals, irrespective of their geographical position, much in the same way as more traditional human rights. The latter traditionally means that each language should correspond to a specific area, in order to ensure the latter's linguistic homogeneity; the language rights enjoyed by individuals are then conditional on their geographical position. The two principles are frequently contrasted, either because they appear to rest on conflicting priorities, or because they may result in diverging, or even opposing, policy recommendations. However, they can also be viewed as the natural counterpart of each other. Essentially, the territorial principle rationalizes limits to personal language rights, because it provides criteria by which to decide where certain language rights will be granted, and where they will not; the personality principle helps to link language rights to other human rights, and to define the extent and nature of language rights granted in a given territory. The personality principle is generally regarded as offering better safeguards to individuals, whose language rights are not subject to geographical restrictions, while the territorial principle is usually seen as a better protection for collective rights, because it is considered more conducive to the maintenance of linguistically homogeneous settings in which a group's language and culture can thrive (see Turi 1990, for a detailed discussion).

In this paper, I have chosen to focus on the territorial principle, and to evaluate its ability to mesh with the requirements of new and more complex patterns of multilingualism. This emphasis in no way implies that other principles are not equally worthy of attention; however, my choice has been guided by a number of reasons.

First, let us remember that, in so far as language policy is designed and implemented by an authority that has power over a given polity, all language policies have a geographical extent, leading to a *de facto* territorialization of all language rights. The territorial principle will therefore remain a necessary concept and, at least, a general frame within which other principles can be applied.

Second, calls for the introduction of the territorial principle in countries that have hitherto applied the personality principle are much more frequently heard than appeals for moves in the opposite direction. For example, lingering constitutional problems connected with specifically linguistic issues are slowly altering Canada's approach to language questions; voices are now often heard suggesting that Canada adopt the

"Swiss principle", or "model", by which authors usually mean the territorial principle (Hilton 1990; see Trent 1991, for a discussion).[3]

Finally, this paper reflects the conviction that, contrary to standard interpretations (from Kloss 1971, to Mar-Molinero – Stevenson 1991), the territorial principle does not necessarily promote unilingualism or produce what some have branded as "linguistic apartheid". Hence the title of this paper: I believe that the territorial principle can be turned into a modern and flexible instrument, accommodating multilingualism just as well as unilingualism. In order to demonstrate this point, the following sections propose alterations to the classical version of the territorial principle, and develop the concept of *territorial multilingualism*.

Before we move on to a presentation of territorial multilingualism, it is necessary to clarify the substance of the territorial principle itself. Indeed, it is open to a wide range of interpretations, and its legal effects can be more or less precise, binding, homogeneous, and extensive. Language legislations based on the territorial principle have extremely varying implications for the school system, the judiciary, or the provision of services by administrations; they may or may not regulate the use of language in business, and may do so in more or less detail. For our purposes, we shall assume that the territorial principle serves (as it frequently, but not always does) to decide which language(s) will be made official, and in which language(s) residents will be able to receive service from, and communicate with authorities.

Shortcomings of the territorial principle

Switzerland is often described as having successfully dealt with its multilingualism precisely because it has applied the territorial principle; however, the latter cannot be seen as a panacea.[4] Traditional implementations of the territorial principle do not embody a ready answer to three important questions, which can be summarized by the words asymmetry, inclusion and dynamics.

Asymmetry

Within nation-states, the territorial principle often rests on a purely arithmetic approach to the respective positions of the languages in contact. The basic pattern is one where each area is strictly monolingual (the "area" can actually be an entire nation-state). Typically, a limited number

of districts are designated as bilingual (or multilingual, if more than two languages are used). The main problem then is the choice of criteria for assigning a given geographical area to one language (or set of languages) or another. The standard solution is to grant language rights to minorities if they represent a sufficient percentage of the resident population, or if they reach a certain absolute number of speakers. In short, language rights are granted exclusively on the basis of demographic data, as if *other* characteristics were either not relevant, or present to an equivalent or *symmetrical* degree in the two speech communities.

The provision of language rights to the Swedish-speaking community in Finland offers a classical example of this type of arrangement, and apparently meets with remarkable success and approval (Jansson 1985). However, this probably reflects the fact that both languages are in fairly symmetrical positions of power and influence, in spite of the numerical difference between the two groups. The assumption of symmetry is simply not tenable in other situations, such as Canada and Switzerland.

Rossinelli (1989) considers the latter case in his thorough discussion of the legal status, interpretation and implementation of the territoriality principle in Switzerland in general, and in the particular case of the eastern Canton of Grischun (Graubünden), where the languages in contact are German, Romansch and Italian. When population numbers are low, a local Romansch majority can quickly become a local minority, in addition to being a minority at the national level, with serious consequences.[5] This situation arises when a few German-speaking couples retire in the municipality, and a few young Romansch-speaking families leave in order to seek more rewarding employment in a major town or city (all of which are located outside of Romansch-speaking areas).[6] The same also applies, with a time-lag of a few decades, in the case of cross-cultural marriages: children are, as a rule, much more likely to be educated in German rather than Romansch, even if the family goes on living in a Romansch community, just because the Romansch-speaking spouse is always bilingual, whereas the German-speaking one is not. Given the disparity in numbers, small-scale demolinguistic changes have a powerful effect in undermining the position of Romansch, while similar changes in the opposite direction would have no effect whatsoever on the dominant position of German (Cathomas 1988; Rossinelli 1989; Furer 1991).

In several rulings, the Swiss Supreme Court has progressively clarified its stand regarding officially bilingual communities, or communities where a degree of *de facto* bilingualism is present (Switzerland 1989).[7] One jurisprudential principle that has emerged as a result is the 30% level

required for members of a minority language group to be entitled to education and services in their language (compare this to Finland, where 13 minority children in a local authority is enough to entitle to education in the minority language). Although this would, at first glance, look like a provision favouring minorities, it may well backfire – and usually does in the case of the Romansch-speaking community – precisely because it makes the formalistic (and inaccurate) assumption of symmetry between language groups. Romansch is not just a *minority* language (in static terms); it is also a *threatened* language (in dynamic terms) because German is gaining influence. As a result, the rule put forth by the Supreme Court works against the declining group, and in favour of the expanding one.

The distinction between "minority language" and "threatened language" must be built into the territorial principle – or, for that matter, into *any* theoretical or practical consideration about language planning – if it is to protect minorities efficiently. Treating on an equal footing languages in unequal positions is tantamount to giving the stronger language an edge to increase its influence and spread. Except in rare cases where some degree of symmetry may realistically be assumed (presumably, Swedish and Finnish in Finland), the respective positions of languages in contact are different. This raises a complex issue, namely, how to measure the extent to which a language is threatened, whether in absolute or in relative terms. I have elsewhere (Grin 1992) suggested using the existence of *asymmetric diglossia* as an indicator.[8] Whether this or another criterion is applied, minority language survival requires an asymmetric policy that will help reduce the power of the larger language group – or groups. The excuse of promoting multilingualism is not acceptable, because the latter is likely to be of a subtractive type, detrimental to the survival of the threatened language. In other words, the protection and promotion of threatened languages would lead us to grant unequal language rights to different speech communities; more precisely, the preservation of linguistic diversity may imply that the language rights of some groups, whether autochthonous or immigrant, have to be curtailed.[9]

Inclusion

Let us for a moment put aside the problem of the unequal weight of language groups, and focus on their spatial distribution. Language groups are often interlocked in patterns that are topographically discernable only by using highly detailed maps (see Williams – Ambrose 1988), and one

frequently encounters minorities within minorities. This can often be observed in cases of serious conflict, as crises in Yugoslavia or Georgia amply illustrate. For analytical purposes, let us make a distinction between two types of situations: (i) the minority-within-the-minority speaks the national majority language (as with Quebec anglophones or Serbs in Croatia – when it was part of Yugoslavia); and (ii) the minority-within-the-minority speaks another language altogether (for example the Montagnais in Northeastern Quebec, or the Ossetians in Northern Georgia – in the days of the Soviet Union). The second case is similar to that of first-level minorities, whose particular needs have been discussed in the preceding paragraph. We shall therefore focus on the first case, which will be referred to as that of an *included* minority, who will be assumed to speak a non-threatened language.[10]

Let us consider the case of anglophones in the Montreal metropolitan area. Under the present system, the protection of French as a minority *and* a threatened language in Canada (or, perhaps more to the point, in North America) results in restrictions on the use of English in the province of Quebec, including in local communities where speakers of English are a majority. This has created much outrage, and loud demands for the repealing of all or part of the language act, in particular section 58 pertaining to the language of commercial signs (see Quebec 1977). French in North America certainly faces an uphill battle for survival, because of the generally dominant position of English. It follows that the Québécois can hardly afford to relax existing regulations. However, the protection of French as a minority language could probably be achieved at a lower psychological cost to the anglophone community, by granting the latter territorially limited rights to a broader use of English.

In more general terms, granting adequate linguistic rights to included minorities calls for territorialization and a high degree of decentralization along with the devolution of significant law-making and spending power to local authorities. Ideally, several tiers of government should be created, each with its clearly defined set of attributions. The (essentially) three-tier Swiss system, for example, is made up of communes, cantons and the Confederation, each having its own set of tasks.[11] Selecting official languages independently at every tier – possibly allowing for bi-or multilingualism at each of them – will generate an overall distribution of language rights more closely matching the geographical distribution of language groups.

Of course, relatively significant included minorities can always be found by considering ever smaller geographical units. However, few

countries have really exhausted the flexibility potential of decentralization combined with territoriality. The conclusion reached at the end of the preceding section was that in many cases, the territorial principle should be implemented in an asymmetric fashion (which implies a centralized perspective on territoriality); the conclusion reached now is that there are also situations in which a decentralized implementation is necessary. This confirms that general rules of language policy must often be qualified prior to implementation in a real-world context.

Dynamics

The preceding paragraphs have shown that assigning a geographical area to one or the other language (or set of languages) is complex enough when demolinguistic data are fairly stable, and when the languages in contact can be considered autochthonous. However, migration flows will make such situations less frequent. Newcomers may have citizenship of the same nation-state, but yet speak a different language; they may also come from another continent, and have no deep-rooted historical, cultural, linguistic or other connections with any part of the host country. A different degree of legitimacy would probably attach to different categories of migrants, in their own eyes or in those of the people among which they settle. As pointed out earlier, I do not intend to discuss the issue of legitimacy. However, experience suggests that the emotional link between language and territory is a strong one, and that autochthonous populations are not inclined to consider non-national languages and cultures as having a legitimate claim to recognition anywhere but in the latter's area of historical distribution. Racism towards non-European immigrants in Western European countries, or incidents associated with "ethnic boundary contacts" (Calvet 1987; Dormon 1981) are ample testimony to the fact that multiculturalism is not a matter of course. This suggests that the granting of language rights to immigrant communities requires careful planning.

Our starting point (the value of variety) warrants the provision of language rights to immigrants who wish to retain their language and culture, not to mention the fact that forcing adaptation upon them is arguably neither practically feasible, nor financially sensible. The territorial allocation of official languages must adapt accordingly, and adaptability must be built into the territorial arrangement. At the same time, care must be taken to avoid a racist backlash in majority opinion. Members of the autochthonous majority are more likely to be scared if

the influx of outsiders is suddenly reflected in nation-wide language rights for speakers of foreign languages. Such fears will probably be assuaged if geographical limitations are built into the system. There again, territorialization along with the establishment of a multi-tier system can be used as a means to smooth the passage from a linguistically homogeneous to a multilingual society.

Principles of territorial multilingualism

Let us now see how territoriality can be amended in order to meet the concerns expressed earlier. In this section, I will only outline the territorial multilingualism model; a detailed presentation can be found in Grin (1991b). The reader should bear in mind that what follows is not a readily implementable system (in particular, it assumes more readiness from majority opinion to grant immigrant language rights than can usually be observed), and that a number of related issues, such as costs, are not discussed here. Rather, this section provides a theoretical exploration into a class of solutions to the complex status planning problems described in the preceding sections.

Let us consider a polity where a balance of rights must be granted to speakers of three languages. Three main assumptions are made:

Assumption 1. There are three language groups: A (autochthonous majority language); B (minority language spoken by immigrants; B is a majority language in the immigrants' country of origin); C (autochthonous, threatened minority language, whose geographical spread has been declining for several decades).
Assumption 2. There are three levels of government, or *tiers*: national, provincial, and local (or municipal), each with clearly defined tasks, or *areas of jurisdiction*. Typical tasks or areas of jurisdiction are the social security system, education, roads, defence, justice, etc.
Assumption 3. Each level of government has control over the language used in its areas of jurisdiction. Jurisdictions are allocated between government tiers in such a way that each tier has roughly equivalent influence on language use in the overall provision of services to the public.

The polity being split up in a number p of *provinces*, each subdivided in a number m of *municipalities*, a considerable number of cases could be observed. For example, municipalities may have a majority of residents

speaking language A, B or C. Let us suppose that minorities may qualify for services in their language. As a result, each community may harbour one or two *qualifying minorities*.[12] Each municipality may belong to one of twelve demolinguistic categories. Let each of them be denoted by one, two or three letters, the first representing the local majority language, and the others representing the languages of qualifying minorities, if any:

A	B	C
A, B	B, A	C, A
A, C	B, C	C, B
A, B, C	B, A, C	C, A, B

The *p* provinces may also encompass similar demolinguistic variety. Since each municipality belongs to a province, we may well find a municipality where a majority of residents speaks A, with a qualifying minority of speakers of B, even though this municipality belongs to a province where the threatened minority language C has survived well enough to represent a majority, although there may be a qualifying A-speaking minority at the provincial level. In principle, no less than 144 (12^2) demolinguistic situations are possible. These demolinguistic situations will be called *configurations*, and each municipality belongs to one configuration. Not all of them are of equal relevance. For example, immigration into European countries may have resulted in the emergence of "A,B", "B,A" or even "B" municipalities; however, the existence of "B,A" or "B" provinces is probably a much rarer occurrence, with the possible exception of Baltic states that have experienced massive Russian-speaking immigration over the last fifty years (see Magga, this volume, for different configurations featuring language C).

Our earlier discussion points to the need for highly diversified arrangements, in order for the geographical distribution of language rights to match that of speech communities as closely as possible. We have seen that keeping a close correspondence may provide ways to deal with two of the three problems discussed above, under the headings *inclusion* and *dynamics*. Let us, however, start out with a perfectly *symmetrical* approach to language rights. Each configuration will therefore have its own combination of official languages, which is expressed as a set of three elements. These combinations are generated by very simple rules. The first element in the set is the official language(s) of the local authorities: it is the language of the local linguistic majority, plus the language of the local qualifying minority, if any; the second element in the set is the official language of the provincial authorities: it is the language of the provincial

majority, plus the language of the qualifying minority at the provincial level, if any. The third element in the set is the language used, in a specific configuration, by services under national jurisdiction. We shall assume that national authorities provide services in any of the languages otherwise used in the configuration, whether by local or by provincial authorities.

Under this system, official j-unilingualism can occur only in configurations that have a j-language majority with no qualifying minority either at the municipal or at the provincial level. With three languages present, only three out of the 144 configurations would provide monolingual surroundings. All other configurations (almost 98%) would be officially bi-or trilingual. Consider for example a municipality where a majority of residents speaks A, but where there is a qualifying B-language minority. The languages of local authorities will then be A and B. Suppose this municipality belongs to a province where the majority of the population speaks A, but there is a C-language qualifying minority at the provincial level. The languages used by provincial authorities will then be A and C. In the basic version of territorial multilingualism, this configuration will be characterized by the set of official languages {A,B (local); A,C (provincial); A,B,C (national)}. This amply demonstrates that a territorial allocation of language rights is not synonymous with unilingualism or linguistic apartheid; it also shows how a very simple set of rules can generate a complicated arrangement. The latter, however, is simpler than it seems. First, only a few of the 144 configurations would occur in a real-world situation: assuming a three-tier government structure in Western European countries, most of the population would be found in provinces where the majority of the population speaks A – with or without B-or C-language qualifying minorities. Second, under the hypothesis that a qualifying minority enjoys the same language rights as the majority, many configurations have identical sets of official languages.[13]

This system, however, requires some amendments, because (i) it does not provide adequate protection for the threatened language C, and (ii) some sections of the A-speaking majority opinion may be antagonized by it. It is therefore necessary to depart from the symmetrical distribution of language rights.

Minority language protection

As shown in the preceding section, an asymmetry must be introduced in order to ensure the survival of language C. The creation of unilingual C-language areas may be indispensable to overall diversity. In such areas,