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## Post-Lecture Discussion

Asbjorn Eide

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## Post-Lecture Discussion

**SPEAKER:** ASBJØRN EIDE  
**MODERATOR:** GABRIËL MOENS  
**SPEECH:** "MINORITY SITUATIONS: IN SEARCH OF PEACEFUL  
AND CONSTRUCTIVE SOLUTIONS"  
**DATE:** MARCH 1, 1991

*Professor Moens:* Mr. Eide, thank you for an informative, intellectually stimulating, and, if I may say so, entertaining lecture. I had an opportunity late yesterday evening to read Mr. Eide's paper. After reading his paper, I started writing a comment. It was my intention to read the comment today, but I will not do so because that would substantially cut down the time allocated to questions and comments. After all, I would not like to deprive you of an opportunity to make comments and to ask questions of our distinguished speaker. Therefore, I will limit myself to some general comments which I would like to share with you by way of introducing or perhaps facilitating the discussion.

Mr. Eide, in my opinion, identified at least three important points or issues. First, he pointed out that the United Nations has been unable to define the concept of ethnic minorities. Second, he said that the United Nations has also been unable to agree on the rights or the contents of the rights of ethnic minorities. And finally, throughout his paper, Mr. Eide at least implicitly alerted us to the continuing tension in the international law of human rights between the rights of individuals belonging to ethnic minorities on the one hand and the group rights or collective rights on the other. Mr. Eide suggested that these three issues obviously have to be considered seriously whenever an attempt is made to analyze the applicable international legal provisions of the International Covenant on Civil and Political Rights, especially article 27.

Mr. Eide repeatedly suggested that it is necessary, from an intellectual point of view, to define the concept of an ethnic minority, or at least to develop guidelines which enable us to understand the nature of such groups and the basis for group membership. Indeed, a discussion on constructive ways to handle situations involving ethnic minorities obviously presupposes an ability to identify those groups that qualify as ethnic minorities. However, he correctly points out, using his language, that the definitional prob-

lem is substantial. Indeed, the United Nations has, since its inception, attempted to define this concept, but the rather vague and indeterminate language of the international provisions does not give us much assistance.

Another important issue, identified by Mr. Eide, deals with the tension between individual rights and group rights. I think that most legal commentators agree that the rights protected by article 27 are granted to persons belonging to minorities rather than to the minority groups themselves. Therefore, only individuals have standing to claim protection under that article. Nevertheless, the language of article 27 also indicates that persons belonging to ethnic minorities have the right, in community with other persons of their group, to practice their religion, to enjoy their culture, and to use their language. Article 27 then, in my opinion, envisages the possibility that positive or special measures may be needed in order to enable persons belonging to ethnic minorities to exercise, in community with the other members of their groups, the rights granted to them. Indeed, the right of persons to exercise their rights in community with others may not be meaningful in the absence of institutional support schemes. Mr. Eide provided numerous examples.

However, if positive or special measures are adopted, the majority may claim that the members of the ethnic minority are given preferential treatment. I think it is fair to say that it is controversial in international law whether, and if so to what extent, states may be obliged to adopt positive measures to advance the effective exercise by the members of ethnic minorities of their rights under article 27. As we all know, there is a big difference in law between prohibiting states from adopting laws which adversely affect the rights of persons on the one hand and imposing an affirmative obligation upon states to advance the rights of members of an ethnic minority on the other. Serious scholars in the world today argue that the imposition of a duty to take positive special measures forecloses the debate on how best to assist minorities in overcoming their disadvantages. Why? Because it commits nations to a particular ideological position, and it constitutes an interference in societies that seek solutions through other means (such as the operation of market forces). This is a point which, in my opinion, has been overlooked throughout the discussions today. These scholars would also argue that treating minorities as monolithic groups is likely to result in power being concentrated

in the hands of activists who may not represent the diversity of interests within the group.

Finally, I would like to make one additional point. Mr. Eide unfortunately has not been able, due to time constraints, to discuss the many procedures available to accommodate the rights of ethnic minorities. No doubt he will do so in his written communication. It may not be within the scope of human genius to maintain and protect minorities, which exist within and across borders, without incurring fear and hatred.

I believe that the best way to protect ethnic minorities is to create super-national legal systems like the legal system of the European Economic Community. This belief is based on the expectation that the problems faced by ethnic minorities in a state are certainly decreased if that state is subsumed or absorbed by a larger entity which makes national borders either obsolete or non-existent. In a larger entity, an ethnic minority may become a majority. Even if the minority remains a minority, though, the presence of a number of ethnic groups in an enlarged state may effectively alleviate the stigma otherwise attached to members of the specific ethnic minority. These problems tend to diminish when a state is subsumed by a larger entity. I do not think that this is a controversial proposition at all; in fact, history supports this proposition. Countries such as India, Sri Lanka, and Malaysia, for example, had very few ethnic problems while they were a part of the British empire. Independence brought to the fore many of the ethnic problems which exist today.

Of course, the idea that ethnic minorities may be effectively protected in super-national states is not a new one. I could expand on that, but I won't. After all, we are not involved in history lessons. But my suspicion is that the creation of super-national states may overcome the long history of hostilities between majorities and minorities. However, in making this admission, I do nothing more than express an expectation or hope that the incidence of ethnic tensions would decrease in the super-national state. Indeed, the extent to which ethnic minorities are protected will always depend upon the policies pursued by the government of such an enlarged state. If history is an indication, the majority may well insist on increased centralism in order to favor the majority, and increased centralism may be forced upon ethnic minorities in order to create a homogeneous society. If so, ethnic conflicts may be regarded as a measured response to the inevitable demand for homogeneity.

In my opinion, Mr. Eide beautifully and comprehensively discussed the ethnic conflicts around the world. His presentation was a tour de force. However, in your discussion, you may wish to concentrate on those arguments and conclusions with which you disagree. I would now like to invite you to engage in a debate with Mr. Eide, to ask questions of Mr. Eide, and to make any comments that you may have.

*Professor Steiner:* It is interesting to think of how this country would have gone, since everyone tends to distinguish the United States from Europe, if our minorities had been concentrated territorially as minorities have been in Slovenia and in Georgia—indeed, in virtually every area of the world that we are discussing. Many groups have been concentrated territorially for at least 100 years, and some for as long as a thousand or more years. We lose that sense here. Although in the United States we have certain black concentrations, Hispanic concentrations, urban Jewish, urban Polish, etcetera, it is very different from the experience elsewhere.

Moreover, in the United States, we seem to be moving, at least in the academic world, toward a new kind of multiculturalism which casts a very different light on things. Even the metaphor of the salad bowl to describe our different ethnicities succumbs to one of each group presenting its own distinctive culture and contribution. Where this trend will lead, not simply in terms of university studies and conceptions of Western or other cultures, but in terms of demands for some kind of political realignment, is very unclear.

*Participant:* I have a problem with the arbitrariness with which we are trying to define "nation," and "peoples," and "minorities." A good example of this arbitrariness is the way in which the South African government uses the concept of a nation. The South African government divided all the black peoples into eight ethnic nations, put all the white people together, and then assigned them to certain areas and created certain states by using international concepts and by relying on the principles of self-determination.

You mentioned in your paper, or in your presentation, the people of Estonia and the nation of Estonia. I do not think that the nation of Estonia could be composed of only those people with historical territorial claims in Estonia. We should break down those arbitrary barriers and create a free world where people have the right to choose whether they want to be part of a certain

nation. You are making an arbitrary definition by using territorial boundaries or by using a specific culture or a specific language. As soon as you start using those concepts, you are breaking the whole world into compartments as South Africa did. My point is that we must move toward a free world where people can choose. For example, in Estonia, there are not only Estonian people; there are Russian and German people—people who also want secession, who want Estonia to be independent. Those people form part of the Estonian nation.

*Professor Eide:* I think Estonia is a very interesting case because there are competing trends inside Estonia on that question. Suddenly, there was an initial flurry of activity, both in Estonia and in Latvia, among those who were descendants; I mean, those who consider themselves to be genuine Estonians or Latvians. Then, to somehow get control over the political situation, they formed their own representative associations, which then excluded those who were descendants of people who had come in later. Later developments, however, have been more inclusive in opening up for participation. There certainly was a feeling of nationhood which had an ethnic and linguistic component that was very strong for a while and is still strong, but practical and political realities have forced it to allow wider participation now.

Regarding South Africa, I agree with you that the South African exercise was an utter perversion. It was even a perversion of nationhood in the sense that it was not intended to create nations, but was intended to create some very artificial entities imposed on the basis of language and territory.

*Professor Grazin:* Thank you. Generally, I agree with what has been said about the Estonians, but I would add one point. This statement is often found in books written by Sovietologists, who state that one of the causes of ethnic problems in the Soviet Union has been Russification. In fact, Russification has never been the policy of the Soviet government because the first victim of Soviet or Communist rule was Russian culture and Russian nationality. So, we cannot say that Russification caused the ethnic problems. Sometimes it is even difficult to say that the language Gorbachev speaks is real Russian; rather, it is "communist Russian." You see, George Bush is fairly close to Shakespeare in some senses, but Gorbachev has nothing in common with Pushkin.

It is more accurate to say that the situation in the Soviet Union is a unique situation, as is the situation in South Africa. Sovietization, not Russification, is responsible for the ethnic problems in the Soviet Union today. Sovietization means the deprivation of all cultural, linguistic, and ethical values that were common to Russians. As an example, the person who is leading the fight for the independence of the Baltic states, outside of the Baltic states themselves, is Russian leader, Boris Yeltsin. So, Russian national interests are not contradictory to those of the Estonians and the other Baltic peoples. True, there are ethnic problems which must be solved. I think the best way to solve these problems is through political negotiations, finding compromises, talking as much as possible. What do you think? I do not know, and that is why I must ask, sincerely: Is there any international mechanism that can force a political leader to negotiate? Gorbachev, on his tourist trips all over the world, has boasted that he has started negotiations. There have never been such negotiations. Once, one hour and fifteen minutes after Estonia declared its independence, Gorbachev asked to start negotiations. This is not a unique case.

*Professor Eide:* Well, unfortunately, I think that at this date there is no official mechanism through which one can bring up matters in the United Nations in a really effective way and hope to have some response, and there is no official mechanism to force negotiations.

However, again with regard to the situation in the Baltics and Gorbachev, something is happening anyway because of the importance of international cooperation, including the importance of international aid and so on, that sets very important limits on the degree to which the Soviet leaders can pursue the policy. And now this is used skillfully by the European community in terms of giving or not giving aid to the Soviet Union. Thus, a kind of informal legislation is going on at this moment, but it is also important to understand that we cannot expect the negotiating platform to be as perfect as we might like. Let me put it this way: For the time being, I do not think Gorbachev can negotiate on the basis of giving independence, because if he starts negotiating on that, it has ramifications for a whole other Soviet Empire. However, he can negotiate on a number of practical aspects. He can negotiate on the question of the presence of Soviet armed forces, the question of whether the Baltics must continue to accept that retired

Soviet officers are going to reside in the Baltic countries, and a number of other practical things.

My personal advice in this situation is to let both parties stand on their basic platform for now, that is, let the Baltics claim that they are independent countries because of the invalidity of the Soviet annexation, and let Gorbachev claim the opposite, that they are a part of the Soviet Union. But, for the time being, let the parties debate, then go on dealing with the very practical problems. I think there is quite a bit of space for those negotiations. They can be pursued because they do not require one party to give up something that is too important to give up.<sup>1</sup>

*Professor Moens:* Thank you. Ladies and gentlemen, may I please ask you to join me in thanking Mr. Eide.

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<sup>1</sup> Following the abortive coup in Moscow in August 1991, the independence of the Baltic states was recognized by the Soviet Union, as well as the international community. Eds.

