LINGUISTIC MINORITIES AND THE RIGHT TO AN EFFECTIVE EDUCATION

A linguistic minority is a group of people whose everyday speech is a language different than that spoken by the majority of the population within their nation.\textsuperscript{1} Education's influence upon the development of an individual belonging to a linguistic minority is critically significant. People must be capable of communicating with each other to be conscious of the duties imposed by society. An individual must be aware of the rights afforded to him by his government before he can practice or protect them. Nations lack complete unity until a common medium of expression is provided or recognized for all citizens. Today, millions of people are denied the benefits of modern civilization because they remain in cultural and linguistic isolation.\textsuperscript{2} Yet, an education which fails to recognize the language barrier that must be surpassed by linguistic minorities will only perpetuate their isolation from society.

Numerous sources of international law indicate that linguistic minorities have the right to an effective education. This Comment addresses itself to the problem present in nations having linguistic minorities and a universal system of education for its inhabitants. Studies indicate that an education conducted solely in the language of the majority impedes the mental development of the non-native speakers, thereby establishing a basis for future discrimination.\textsuperscript{3} An education presented in the minority language assures the complete mental development of the non-native

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\item Oftedal, \textit{What are Minorities?}, in \textit{Linguial Minorities Europe} 16 (E. Holmestad and A. Lade ed. 1969).
\item \textit{Dep't State Bull.} LXV No. 1682, Sept. 20, 1971, at 304.
\item Several educational studies are discussed in this Comment. Each indicates that non-native speakers, educated solely in the majority language, tend to drop out of school, experience an acute sense of frustration and fail to acquire an effective ability to use the majority language. Without any appreciable degree of fluency in the majority language nor a significant educational experience these people are permanently deprived of many economic and social opportunities available to literate residents of a nation. For the beneficial effects produced by a bilingual education program, see generally T. Anderson & M. Boyer, \textit{Bilingual Schooling in the United States} (1970); Greenwood, \textit{Bilingual Education: It's Beginning to Pay Off}, Los Angeles Times, June 25, 1972, § B at 1 col. 5.
\end{enumerate}
speakers but deprives them of the benefits enjoyed by citizens fluent in the majority language. International agreements intended to promote and protect the right to an effective education necessitate the resolution of situations which tend to destroy that guarantee. The purpose of this Comment is to stress the necessity for resolving the problems experienced by linguistic minorities when educated solely in the majority language. Suggestions are proposed to end the discriminatory results produced by educating linguistic minorities in a non-native language.

I. LANGUAGE: IS IT A PERMISSIBLE CLASSIFICATION TO JUSTIFY DISCRIMINATION?

Numerous authorities indicate that language by itself is not a reasonable classification to justify discrimination or the deprivation of basic human rights. The Minorities Treaties represented a significant attempt by the League of Nations to insure the protection of minorities within several nations. The Permanent Court of International Justice indicated that one of the principal ideas underlying these treaties was to "secure for the linguistic minorities the possibility of living peacefully alongside, and cooperating amicably with the population that spoke the majority language, while preserving the characteristics which distinguish them from the majority." The Court indicated that two things are particularly necessary to attain this objective:

The first is to ensure that nationals belonging to . . . linguistic minorities shall be placed in every respect on a footing of perfect equality with the other nationals of the State. The second is to ensure for the minority elements suitable means for the preservation of their racial peculiarities, their traditions and their national characteristics.

The Court felt these requirements were inseparable since "there would be no true equality between a majority and minority if

4. This observation is generally valid unless the minority language is also recognized as an official language of the country as French is within Canada.
5. These Treaties were concluded between The Allied and Associated Powers (United States of America, The British Empire, France, Italy, and Japan) with Albania, Czechoslovakia, Greece, The Kingdom of the Serbs, Croats, and Slovanes (Yugoslavia), Rumania, and Poland prior to their admission into the League of Nations. See 1 INTERNATIONAL LEGISLATION 733, 298, 489, 312, 426, 283 (M. Hudson ed. 1931).
7. Id.
the latter were deprived of its own institutions and were consequently compelled to renounce that which constitutes the very essence of its being as a minority."  

Special provisions of these treaties illustrate the scope of protection given to linguistic minorities. The Minority Treaty concluded with Poland is an appropriate reference since it became the model for subsequent treaties as well as for the declarations made by several nations at the time of their admission into the League of Nations. Article 7 states that "All Polish nationals shall be equal before the law and shall enjoy the same civil and political rights without distinction as to . . . language. . . ." Article 8 provides that "Polish nationals who belong to . . . linguistic minorities shall enjoy the same treatment in law and in fact as the other Polish nationals." In an attempt to provide for the enforcement of these provisions, it was stipulated that the articles which affected these minorities would constitute obligations of international concern that would be placed under the province of the League of Nations. If a dispute arose as to questions of law or fact under this treaty, it was deemed to be of an international character to be referred to the Permanent Court of International Justice.

Although the League of Nations proved to be incapable of preserving the rights of the minorities within these nations, the treaties and the advisory opinions delivered by the Permanent Court of International Justice provide generally accepted principles for our present consideration. These Treaties recognized the problems which would confront linguistic minorities in the exercise of their basic political rights. The necessity for international protection of minorities within several nations acquired some validity. Perhaps their most important contribution was the condemnation of language as a basis for discrimination since

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8. *Id.*


12. *Id.*

the purpose of the Minorities Treaties was to "assure respect for the rights of the minorities and to prevent discrimination against them by any act whatsoever of the local State."14

The United Nations has played an important part in reviving international protection for basic human rights. Each member State is aware of the obligations it assumes to protect and promote certain fundamental human rights by the provisions contained in the Charter of the United Nations. The legal extent of these obligations is in dispute15 but there is authority that the Charter establishes basic guidelines of international ethics to which all member States have committed themselves.16 Therefore, this writer shall assume that this commitment is the proper effect to be given the Charter. The references to human rights contained in the preamble, articles 1, 55 and 56 infer that the denial of these guarantees because of one's language is not a legitimate principle to guide the actions of the member States.17

Further support for the principle that language is an impermissible classification to justify discrimination is contained in the Universal Declaration of Human Rights.18 Intended to be a com-

17. The pertinent provisions of the preamble and articles 1, 55 and 56 read as follows:

Preamble

We the peoples of the United Nations determined
to reaffirm faith in fundamental human rights, in the dignity and
worth of the human person. . . .
And for these ends . . . have resolved to combine our efforts to accomplish these aims. . . .

Article 1.
The Purposes of the United Nations are: . . .
3. To achieve international cooperation in solving international problems . . . and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to . . . language. . . .

Article 55.
[The United Nations shall promote: . . .
c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to . . . language. . . .

Article 56.

All members pledge themselves to take joint and separate action in cooperation with the organization for the achievement of purposes set forth in Article 55.

mon standard of achievement for nations, it explicitly states that "[e]veryone is entitled to all the rights set forth in this declaration, without discrimination of any kind such as . . . language." although not a legally binding agreement as such, the Declaration has had a substantial political impact in making all nations conscious of their duty to promote and protect human rights. "[T]he Declaration has established the principle that the denial of human rights is a matter of international concern, and has gone far to remove Article 2(7) of the United Nations Charter as an obstacle to United Nations action. . . ." the significant influence of this document is evidenced by the fact that several nations have incorporated human rights provisions in their national constitutions, while others directly refer to the Declaration in their constitutions. Such general recognition tends to indicate its acceptance as part of customary international law.

The United Nations Charter and the Universal Declaration of Human Rights established the basic principles upon which the protection of minorities should be founded. However, enforcement of their guarantees by the United Nations seems remote. The establishment of separate human rights commissions within a community of several nations provides a realistic opportunity for international protection of minorities. The European Convention for the Protection of Human Rights and Fundamental Freedoms was the first international agreement to give specific legal content to human rights while establishing a tribunal to insure the supervision and enforcement of its provisions. The law is enunciated in the Convention. The judicial tribunal consists of the European Commission of Human Rights and its higher branches, the European Court of Human Rights and the Committee of


   Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present charter. . . .

23. A. Brownlie, supra note 18, at 339.
Ministers of the Council of Europe. Article 14 states "that the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as . . . language. . . ." The European Convention is legally binding on signatories,24 and specifically enforceable in the Commission and the European Court of Human Rights. Therefore all members25 are obliged to implement in their legal systems the guarantees prescribed without discrimination based on language.26

These pertinent documents on human rights establish a standard to be followed by a majority of nations. In each the guarantee of non-discrimination due to an individual's language is explicitly stated. Language, therefore, is an impermissible basis for invidious discrimination.

II. Is There a Right to an Effective Education?

A human right has been defined as a "universal moral right, something which all men, everywhere, at all times, ought to have, something of which no one may be deprived without a grave affront to justice."27 No attempt to classify education as a basic human right is made in this Comment. However, it is submitted that linguistic minorities need some use of their native language during their primary education in order to prevent future discrimination. Therefore, an effective education for these people shall be called a linguistic right rather than a classical human right.28 It is necessary to understand this distinction since different educational programs must be implemented by a government only in those areas where a group of non-native

24. C. Rhyne, supra note 21, at 405.
25. Sixteen nations have ratified the Convention: Austria, Belgium, Cyprus, Denmark, Greece, Federal Republic of Germany, Iceland, Ireland, Italy, Luxembourg, Malta, Netherlands, Norway, Sweden, Turkey and the United Kingdom. Greece denounced the pact in 1969 with effect from June 1970 but the Committee of Ministers ruled that the action had come too late to invalidate charges previously filed against the military dictatorship by the Scandinavian countries and the Netherlands.
28. See McRae, The Constitutional Protection of Linguistic Rights in Bilin- gual and Multilingual States, in HUMAN RIGHTS, FEDERALISM AND MINORITIES 211 (1971), where the author indicates that the right to have two years of elementary schooling in a given language is a narrow and specific linguistic right.
speakers reside. An examination of pertinent human rights documents indicates some corrective action must be taken when a nation’s universal system of education proves ineffective for a particular group of citizens.  

The Universal Declaration of Human Rights directs attention to the significant role education plays in the promotion and protection of human rights. The preamble urges all nations to promote in their educational system the enunciated guarantees considered to be protected by the rule of law. Article 26 declares that the right to an education, directed to the full development of the individual, is to be provided to all people. One of the covenants drafted to implement the Declaration, The Covenant on Economic, Social and Cultural Rights, recognized the right of everyone to an education directed to the full development of the human personality. Recalling the Declaration’s pronouncement that every individual has the right to education, the United Nations Educational, Scientific and Cultural Organization adopted the Convention Against Discrimination in Education. Ratified or accepted by 53 states, it proclaims not only the duty to “proscribe any form of discrimination in education but also to promote equality of opportunity and treatment for all in education. . . .”  

The European Convention on Human Rights did not contain a specific article protecting the right to an education. The first protocol to the Convention added four articles to ensure the enforcement of rights not in the original Convention. Article 2 states:

29. Governmental action to establish special schools for linguistic minorities is not a new proposition. Article 9 of the Minority Treaty with Poland required the government to provide adequate primary school facilities wherein the language of instruction would be the minority language. Recently, Canada's Royal Commission on Bilingualism and Biculturalism recommended that the federal government, rather than the provincial government, should be responsible for providing the funds necessary to teach English or French to children who enter school without an ability to speak either language. REPORT OF THE ROYAL COMMISSION ON BILINGUALISM AND BICULTURALISM, THE CULTURAL CONTRIBUTION OF THE OTHER ETHNIC GROUPS (1970).


33. Convention Against Discrimination in Education preamble.

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching the State shall respect the right of parents to ensure such education and teaching is in conformity with their own religious and philosophical convictions. Therefore, the right to education is not only legally guaranteed, but is also protected from governmental controls which violate the religious or philosophical beliefs of the parents.

The American Convention on Human Rights does not contain a specific article protecting the right to education. However, it obligates all State Parties to "achieve progressively, by legislation . . . the full realization of the rights implicit in the . . . educational . . . standards set forth in the Charter of the Organization of American States" as amended by the Protocol of Buenos Aires. A member of the Organization of American States agrees through its charter to promote the right to compulsory elementary education in accordance with their constitutional provisions and economic resources. The Protocol of Buenos Aires imposes an even more stringent duty upon signatory nations. Member states are individually and jointly bound to dedicate every effort to achieve the rapid eradication of illiteracy and the expansion of educational opportunities for all. Primary importance is to be given to the encouragement of education oriented toward the overall improvement of the individual. Member states also agree to "exert the greatest efforts in accordance with their constitutional processes to insure the effective exercise of the right to education. . . ."

These international agreements enunciate the right to an education and directly infer that the education afforded an individual must assure his normal development. When the education provided to all inhabitants of a nation proves to be ineffective for a particular group some action must be taken to resolve the

38. CHARTER OF THE ORGANIZATION OF AMERICAN STATES art. 30.
40. PROTOCOL OF AMENDMENT TO THE CHARTER OF THE O.A.S. arts. 31, 45, 47.
41. *Id.* art. 47.
dilemma if these international agreements are to be given any credibility.

III. EDUCATION, LINGUISTIC MINORITIES AND DISCRIMINATION

A few facts are necessary to understand the extent of the problem with which we are concerned. Linguistic minorities reside in nearly every nation in the world. There were only five nations which did not have a linguistic minority equal to 1% of their total population in 1966. Eighty-four nations had a group of non-native speakers within their borders that equaled or exceeded 10% of their entire population.42 The fact that nearly every nation has a substantial number of non-native speakers discloses the need to recognize the discrimination experienced by linguistic minorities in their education.

As defined by the Convention Against Discrimination in Education, discrimination based on language is:

Any distinction, exclusion, limitation or preference . . . being based on language . . . [which] has the purpose or effect of nullifying or impairing equality of treatment in education and in particular, of depriving any person or group of persons of access to education of any type or at any level of limiting any person or group of persons to education of an inferior standard. . . .43

When a primary education impedes a particular group in the exercise of rights enjoyed by other citizens, it fails to meet the requirements of this Convention and the educational obligations assumed by most nations. Primary education should be an opportunity to acquire the knowledge that can be immediately used to improve one's living standards, increase productivity, allow participation in everyday affairs and ultimately open the way to basic human culture.44 Future opportunities for higher education, and for resultant economic advancement, are lost when a child is denied the foundation of an effective primary education.

The discriminatory effects experienced by non-native speakers when educated in the majority language have been doc-

42. Rustow, Language, Modernization and Nationhood—An Attempt at Typology, in LANGUAGE PROBLEMS OF DEVELOPING NATIONS 94-6 (Fishman et al. ed. 1968).

43. CONVENTION AGAINST DISCRIMINATION IN EDUCATION, supra note 32, art. 1.

44. Bowers, Language Problems and Literacy, in LANGUAGE PROBLEMS OF DEVELOPING NATIONS 381 (Fishman et al. ed. 1968).
umented. The plight of the non-English speaking child in the United States illustrates the typical results. A study conducted in the Lindsay Unified School District of Lindsay, California, based on results of the California Achievement Test, showed that Mexican-Americans were far behind their Anglo-American counterparts in reading, arithmetic and language skills. It stated that the major cause for this disparity in achievement was the failure to recognize the existing language barrier. Additionally it stated:

[T]hese children start school with a decided handicap [unable to speak English, and] fall behind their classmates in the first grade. They are conditioned to failure in the early years of their schooling and each passing year only serves to reinforce their feelings of failure and frustration.

A United States Government survey shows that the median score received on standard achievement tests by Black, Puerto Rican, Indian, and Mexican-American students was significantly lower than that of the Anglo-American student. The proportion of dropouts among Spanish speaking children is far greater in comparison to that of English speaking children in the United States. A California study indicated nearly 50% of the Spanish speakers, in contrast to approximately 26% of the entire population had not gone beyond the 8th grade. This excessive dropout rate prevents

46. Id.
47. Since the concept of "separate and therefore unequal" was first espoused in Brown v. Board of Education, 347 U.S. 483 (1954), United States education officials have been attempting to devise means to ensure an equal education for Black Americans. Busing is their most recent innovation. It would seem obvious that busing non-native speakers into classrooms where the number of English speakers would be greater, would accentuate their inability to speak English, rather than alleviate the problem. De facto segregation in bilingual schools until fluency in English is acquired is the only method that will permit an "equal education." See generally Conine, Busing Isn't Necessarily the Best Way to a Better Education, Los Angeles Times, Feb. 24, 1972, at 26, col. 1.
49. DEPARTMENT OF RURAL EDUCATION, supra note 45, at 7. A similar trend exists in Canada wherein only 30.6% of the male non-agricultural labor force of British origin have not continued past elementary education but 53.5% of the French, 40.1% of the German, 71.0% of the Italian and 46.7% of the Ukrainian men in the same class failed to continue their education beyond elementary school. REPORT OF THE ROYAL COMMISSION ON BILINGUALISM AND BICULTURALISM, THE WORK WORLD 26 (1970).
any realization of benefits the afforded education might produce. An educational study conducted in Paraguay illustrates this point.\(^5\) Guarani, the native Indian language, is considered an important second language of Paraguay. Approximately 88% of the population considered Guarani as their native tongue while only 6% think of Spanish as their natural language. Guarani is the means of communication between the cultured and uneducated because a majority of the population is bilingual. Spanish, because of its substantial literary tradition, is considered the language of the educated and eventual assimilation to Spanish appears likely.\(^6\) However, this process of assimilation is hindered by educational policies which require that all children be educated in Spanish. This is the only exposure to Spanish for children who live in rural areas predominated by monolingual Guarani speakers. Under these conditions, it was noted that the number of grades completed in school would directly reflect a child's ability to speak Spanish.\(^7\) Faced with the sense of frustration common to students educated in non-native language, these children are practically forced to drop out of school. Therefore, the only available method to learn Spanish is lost, along with the benefits which flow from the ability to speak that language.

An inferior education, the reinforced conditioning to failure, and excessive dropout rates are not the only detrimental results produced by an education presented solely in a non-native tongue. A British educator considered the continual inability of immigrants from India, Pakistan and the West Indies to speak English was the surest route to de facto segregation.\(^8\) In his view, the principal practical difficulty in eliminating racial discrimination was that of language.

If all outsiders meet obstacles in the path to full acceptance in British society, those cut off behind a language barrier cannot even begin to share the life of the community at all. . . language is the key to the problem of the integration in the educational system. . . \(^9\)

Describing an obvious problem facing the 110,000 German speaking immigrants of Australia, it was observed that the "material

52. J. Rubin, supra note 50.
54. Id. at 15.
advancement of the migrant and his family will depend largely on his ability to speak the language of the rest of the community. . . ."55 A Los Angeles clothing manufacturer, faced with the necessity to pay low wages in order to compete with imported products solves the problem by training people "untrainable for any other occupation, such as those locked in by an inability to speak English."56

In summary, linguistic minorities suffer all the problems common to deprived minority groups throughout the world: poverty, prejudice and economic exploitation.57 Such results produced and reinforced by an ineffective education amount to denials of other basic rights due solely to the language of these people.

IV. JUDICIAL ANALYSIS OF LINGUISTIC RIGHTS

Cases involving the right to education for linguistic minorities were decided by the Permanent Court of International Justice to enforce the principles of the Minorities Treaties. These cases will not be discussed for two reasons: First, they are based solely on an interpretation of language contained in the Treaties. Second, the Treaties espouse the principle that an education conducted in the minority language would guarantee their equal protection. This thinking is unsound since such an education would perpetuate the existence of the linguistic minority thereby establishing a permanent basis for discrimination.58

The Case Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium was decided on its

58. This may not be true in nations having more than one official language such as Canada where English and French are the official languages. Francophones are numerically a minority but due to the status of the French language in Canada, they will not in general be deprived of any rights enjoyed by Anglophones. Therefore, in order to preserve the French language, customs and culture within Canada, separate French language schools are necessary. See Report on the Ministerial Commission of Inquiry on French Language Secondary Education in the Province of Ontario 15 (Toronto, 1972), which states that bilingual schools are "... a one-way street to assimilation to the English language for the French-speaking student," thus contrary to the preservation of the French culture.
merits July 23, 1968, by the European Court of Human Rights. It originated from several individual applications of French-speaking Belgian nationals who alleged that provisions of Belgium's linguistic legislation violated articles 8 and 14 of the Convention and article 2 of the First Protocol to the Convention. There are four linguistic areas established in Belgium. In three of the areas Flemish, French or German are required in the public and private, primary and intermediate schools. All instruction is presented in one of these languages depending on the percentage of people who speak each language within the district. Brussels, the fourth linguistic area, is a recognized bilingual district in which children are sent to a school where instruction is presented in their natural or mother tongue. State funds are withheld from schools which fail to comply with these requirements.

Six questions were referred to the Court but only one was found to violate the Convention. This question involved the right of parents, residing in the six communities surrounding Brussels, to send their children to schools where the medium of instruction is the natural or mother language of the child.


61. They read as follows:

Article 8. (1) Everyone has the right to respect for his private and family life, his home and his correspondence.

(2) There shall be no interference by public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 14. The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Article 2 of the First Protocol. No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

Dutch speaking children, living in the French monolingual region of Brussels had access to Dutch language schools but French speaking children, residing in the Dutch monolingual region, were refused access to French language schools in the same area. In essence, the Court held that there was no rational basis to justify this discriminatory treatment of the French-speaking children founded upon their language. The Court is awaiting compliance by the Belgian authorities to amend the legislation in question so that uniform application of the linguistic laws is assured.

This case is one of three ever found by the Court to contain a violation of the European Convention on Human Rights. It establishes the validity of claims to certain linguistic rights in the exercise of the right to an education. However, the decision does not affect the plight of linguistic minorities. Dutch and French are both recognized as the official languages of Belgium. Belgians who speak French or Dutch are not linguistic minorities since the number of people who speak each language are nearly equal. Individuals who speak either of these languages will not suffer the discriminatory effects previously discussed because of their language.

A recent case decided by the European Commission on Human Rights reflects the plight of an individual who is a member of a true linguistic minority in Belgium. It was an individual application which again alleged that Belgium’s linguistic legislation violated articles 8 and 14 of the Convention and article 2 of the First Protocol to the Convention. The applicant, the father of a young girl whose maternal language was Greek, asserted that there was no objective justification between the means employed by the questioned legislation and the desired linguistic homogeneity within the diverse linguistic regions of Belgium.

Chapter 5, of the Act of July 30, 1963, instituted linguistic control throughout Belgium. In unilingual areas, children are admitted to schools which teach in the language of the region. In certain bilingual areas, the child’s maternal or usual language determines the linguistic system applicable (i.e.—French or

63. In this Comment, the "Dutch" language represents a literal translation of "Nellandais."

64. Belgian Linguistics Cases, supra note 59, at 845.

65. Case No. 4372/70 against Belgium, Decisions, European Commission on Human Rights, No. 37, at 101 (1971). A translation was provided by Anthony Menke, Staff Member, CALIF. W. INT’L L.J.

66. These articles are set forth at note 59, supra.
Dutch). In these areas, a child is enrolled in a special school on production of one of the following: a certificate by the child's last school principal declaring that prior schooling had been presented in a certain language, an approved language declaration by the head of the family, or a decision made by an established language commission.67

The applicant, who resided in the bilingual region surrounding Brussels, had made a language declaration expressing his desire to have his daughter educated in Dutch. Nevertheless, after a year of instruction in this language he wanted his daughter to be enrolled in a French speaking school. French, in his estimation, would be more useful to his daughter if they returned to Greece. The contention asserted was that his daughter had a right to be educated in the language preferred by her parents in accordance with article 2 of the First Protocol to the Convention. Additionally, he stated that the prior language declaration was mistakenly made and should not be binding since the Belgian legislation of July 30, 1963, did not affect an infant whose mother language was neither French nor Dutch. The Belgian government contended that absent a natural preference for either of the two official languages, the child should continue her studies in Dutch, having already completed a year of instruction in that language. Referring to the Belgian Linguistic Cases, the father countered this argument, asserting that article 2 of the First Protocol states there shall be no language impositions and guarantees the accessibility to existing schools without discrimination based on language.

A language inspection,68 the prior declaration of the father and the fact that the child had been educated in Dutch for one year were considered decisive factors by the Commission. Distinguishing a previous case which had allowed a Greek child to enroll in a French school, the Commission concluded that the applicant did not seem to have, by virtue of the objective Belgian laws, the right to enroll his child in a French school. The Belgian laws as applied in this case did not violate the Convention.69

No argument was raised concerning the discriminatory ef-

68. The child could count up to 10 in Dutch but only up to 6 or 7 in French.
fects the Dutch or French education might produce on this Greek child. However, existing Belgian law would tend to make this argument irrelevant unless 20% of the population within the applicant's district used Greek as their everyday language.70 Recognizing the nature of the problem which this child and millions like her face in the exercise of their right to education, a solution must be sought that will insure linguistic homogeneity within a nation without impairing educational effectiveness.

V. A Solution: Bilingual Education

Bilingual education uses the official language of a nation as well as the language of the non-native as mediums of instruction in school, using both languages to teach the total substantive material to be presented in a curriculum. Segments of instruction are presented in the official language for a specified amount of time, then another subject is presented in the native tongue. In the next session a subject previously presented in the official language will be reviewed in the native tongue and new material is then presented in the native language. By alternating between the two languages in this manner, dependency on one language is precluded, proficiency in both languages is attained and the progressive mental development of the child is realized.

A respected authority on bilingual education in the United States71 lists the following special objectives of a bilingual education program:

1) To plan and conduct the program in such a way that either language, or both, is used for most effective learning in any part of the curriculum.

2) To encourage all children, each at his own best rate, to cultivate their first language fully: to develop skills in all the language arts—listening, comprehension, speaking, memorizing, reading and writing.

3) To encourage all children to develop fully their second language each at his own best rate of learning.

70. Section 22 of the Act of July 14, 1932 mandates instruction through another language only when the decennial census establishes that more than 20% of the region habitually speaks a language other than that of the region. The State of Massachusetts pursuant to the Bilingual Education Act of 1971, now requires a city to establish a transitional bilingual education program whenever there are 20 or more children who speak the same foreign language. Mass. Gen. Laws ch. 71A, § 2 (1971).

71. T. ANDERSSON & M. BOYER, supra note 3.
4) To enable all children to gain a sympathetic understanding of their own history and culture and of the history and culture of the other ethnic groups. In summary—to give all children the opportunity to become fully articulate and literate and broadly educated in two languages and sensitive to two cultures.72

From these objectives, it is apparent that a bilingual educational program is designed to allow assimilation of the non-native speakers while insureing an effective education and respect for a particular linguistic heritage.

Bilingual educational experiments have been conducted in several nations. In England, an attempt to solve some of the problems associated with the education of immigrants was instituted in the Spring Grove School of Huddersfield. Although not precisely a bilingual program, this educational plan recognized the language difficulties experienced by immigrant children when instructed solely in English. For three years special English classes were conducted in addition to the regular schedule of classes during a specific time each week. These classes continued until it was felt that the immigrant children could continue in the regular program without excessive difficulty. Due to this program more than 50% of the students receiving special instruction were fully integrated into ordinary schools.73

In August of 1964, the Ministry of Public Education of Peru conducted an experimental program in the Peruvian highland Quechua area of the Sierra States of Ayacucho, Huanca-velica and Apurimac. Living in this area were 296,000 children of primary school age, yet total enrollment in primary schools was only 36% of this figure. There were indications prior to this experiment that over 70% of the rural, Quechua-speaking population had never enrolled in primary schools. The program established to solve this inadequate education situation consisted of two years of special instruction in the native tongue, Quechua. This special instruction was designed to effect "the academic and sociological adaption of the child toward his incorporation in the first year of common primary schools that would be conducted entirely in Spanish."74 Common characteristics possessed by all

72. Id. at 69.
73. Hawkes, supra note 53, at 28, 29.
74. Burns, Bilingual Education in the Andes of Peru, in LANGUAGE PROBLEMS OF DEVELOPING NATIONS 403-05 (Fishman et al. ed. 1968).
the communities except one in this experiment were the following:

1) They never had a school in the history of the community prior to this experiment.

2) All students were illiterate, monolingual Quechua—speakers.\[^{75}\]

The government of Peru, through the National University of San Cristobal de Huamanga, trained bilingual teachers and wrote the basic texts in Quechua-Spanish needed for the program. The results of this experiment were most favorable. Average and slower students had little difficulty in completing the basic primers and oral Spanish course in the first year of training. The more intelligent students appeared capable of transition into the first year of primary school with one year of training. Absenteeism was considerably less than had previously been observed in similar agricultural areas.\[^{76}\] By the end of the second year of bilingual education it was established that,

in this period of time a very adequate level of achievement in reading, writing and arithmetic can be achieved, making the normal school-trained teacher's task of incorporating the child into the plans and programs of public primary education to be less arduous. . . .\[^{77}\]

The Bilingual Education Act\[^{78}\] was the legislation enacted to meet the needs of the numerous linguistic minorities in the United States. President Johnson's remarks following the signing of this legislation are indicative of the purpose of this act:

This law authorizes a new effort to prevent dropouts:

It also contains a special provision establishing bilingual education programs for children whose first language is not enough. Thousands of children of Latin descent, young Indians, and others will get a better start—a better chance in school. What this law means is that we are now giving every child in America a better chance to touch his outermost limits to reach the farthest edge of his talents and dreams. We have begun a campaign to unlock the full potential of every boy and girl regardless of his race or his religion or his father's income.\[^{79}\]

\[^{75}\] Id. at 407.

\[^{76}\] Id. at 409.

\[^{77}\] Id. at 409-10.


\[^{79}\] T. ANDERSSON & M. BOYER, supra note 3, at 22.
Pursuant to this act, many bilingual schools have been established. The results derived from previous bilingual programs illustrate its potential. In Dade County, Florida, two schools established bilingual schooling for the Cuban refugee children enrolled in the school district. At the fifth grade level the children were able to learn equally well through either Spanish or English. Another achievement credited to the bilingual schooling was the "complete integration both racially and culturally in which children of neighboring cultures have been enabled to share their separate backgrounds . . . and broaden their abilities and their understandings." The United Independent School District of Laredo, Texas had, during the 1960's, attempted to educate their large population of Spanish speaking children in English. The predictable results ensued: frustration, failure, excessive dropout rates and increased racial tension. Bilingual education was established in 1964 to solve these problems. The results of this program showed "a high degree of pride in both Mexican and American cultures and success in speaking and learning in both languages."

Bilingual education will solve the exigencies of linguistic minorities in their quest to remove themselves from cultural and linguistic isolation through education. It recognizes the necessity to use two languages in education, to ensure rapid acquisition of the majority language while normally developing the intellectual capacity of the students. Other favorable results will ensue. If educated bilingually, linguistic minorities will not be deprived of their particular heritage yet will be able to communicate and effectuate their ideas to all citizens of their nation. A general understanding will develop that the majority language and culture is not threatened by the presence of other languages. The variety of cultures present in a nation will reinforce the vitality of the majority culture while the common majority language will permit personal communication between all citizens. Bilingual schooling will promote acceptance of linguistic and cultural pluralism thereby removing conditions which cause social tensions. An effective education will permit minorities to achieve

80. Those school systems which fail to act responsively to the needs for bilingual education are subject to the purview of the U.S. Civil Rights Commission. See Los Angeles Times, Dec. 12, 1971, § 1, at 1, col. 1.
81. Department of Rural Education, supra note 45, at 16.
82. Id. at 17.
higher socioeconomic goals. The presence of multilingual citizens may afford a nation greater opportunities in international business affairs. Finally, bilingual education will produce individuals that will be able to maintain a personal foreign diplomacy due to their bilingual capability.  

Some nations have begun the task of providing an effective education to its linguistic minorities. These nations, however, have language groups which are a significant portion of their total population. The problem remains in those nations where the diverse language group consists of a small percentage of the population. Canada has shown other nations the type of governmental action needed to ensure the protection of linguistic rights. In 1968, Canada established the Royal Commission of Bilingualism and Biculturalism to study and recommend solutions for the problems experienced by French speaking Canadians. Following a recommendation contained in this Commission's final report, Canada enacted the Official Languages Act in 1969. This legislation established the equality of French and English as official languages and provided "for the establishment of a bilingual district whenever the official-language minority of a census division or other suitable area reaches 10% of the population."  

Agreements relating to the cooperative development of educational systems for linguistic minorities must be developed. Establishing an exchange program for teachers and student-teachers will provide those nations in need of bilingual educators with exchange teachers versed in minority languages while their own educators are being trained in nations where the minority language is spoken by a majority of the people.  

Whatever action is taken, something must be done if any credence is to be given to the various human rights agreements. The present situation affords no protection to true linguistic minorities in their quest for an effective education. Education is

83. T. ANDERSSON & M. BOYER, supra note 3, at 144.  
84. See McRae, supra note 28, at 216. The author presents the solutions developed by four nations having linguistic groups of substantial proportion: Switzerland, Belgium, Finland and South Africa. For a further analysis of the problems of minority-language education in these four countries see REPORT OF THE ROYAL COMMISSION ON BILINGUALISM AND BICULTURALISM, EDUCATION 336-55 (1968).  
86. McRae, supra note 28, at 225.
supposed to “enable a child, on a basis of equal opportunity, to develop his abilities, his individual judgement, and his sense of moral and social responsibility . . . to become a useful member of society.” Yet, the denial of this experience continues for millions who remain imprisoned in linguistic isolation.

**CONCLUSION**

Substantial authority exists in international law which supports the view that the right to an effective education is a right to be protected and promoted by all nations. The denial of the effective exercise of this right due to the language of an individual violates the obligations assumed by a majority of nations. Based on the judicial analysis provided in cases involving linguistic rights, an adequate remedy does not exist under present human rights agreements.

The need for re-evaluating the method of educating linguistic minorities is evidenced by the results produced in an education which fails to utilize their language as a medium of instruction. Disregard of the language barrier deprives millions of people from experiencing the benefits of their nation’s civilization.

Bilingual education has been used in some countries to eliminate the discriminations suffered by linguistic minorities. Allowing the minority language to be used as a medium of instruction has produced: satisfactory achievement in school for minority students, assimilation of the minority without social alienation, and bilingual ability. Whether or not such a program is implemented, a nation’s educational program must recognize the conflict experienced by non-native speakers in order to resolve the present inequities suffered by linguistic minorities. If a nation has a universal system of education, the absence of such governmental recognition contradicts the intent of the law contained in various human rights agreements.

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