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Linguistic Genocide

Linguistic rights of minorities as a blind spot in International law: A study on the potential for a convention on linguistic genocide

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Abstract

Genocide has been happening in societies through different methods throughout history and it has not been limited to modern Nation-State or pre-Westphalia era. However, it was after WWII and witnessing Nazi regime atrocities against the minorities, disabled people, queers and especially the Jews that the international community, specifically the Allies, payed attention to the phenomenon, in order to prevent it from happening in future. The UN founding States adopted the CPPCG in 1948 in accordance to Lemkin`s ideas. Although in the draft, the concept of cultural and linguistic genocide was referred to, in the final ratified version, the concept was restricted to solely physical genocide. This non-prohibition has paved the way for the States in committing linguistic genocide by adopting linguistic and educational policies, with no need to physical genocide. Nevertheless, considering language as a human right and part of cultural rights can contribute to recognizing these measurements as policies as a violation of human rights and prohibition of genocide in general. This recognition not only underlines States` responsibility in protection of minorities and indigenous peoples` cultural rights, but also provides the context for criminalizing such act and policies. However, one should have in mind the two facet function of language; one as a mean for States in order to overcome, overpower and control; and the other as a tool for minorities as potential Nation-States, in order to resist and exercise their autonomy. Establishing the limits of States policies in order to protect the minorities` cultural and linguistic rights can lead to safeguarding cultural and linguistic diversity, which is of the main principles championed by the international community.

Keywords: Genocide, Human Rights, Cultural Rights, Language, Linguistic and Cultural Diversity, Linguistic Genocide, States, Minority

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For the minorities all around the world.

Table of Abbreviations

UNESCO	United Nations Educational, Scientific and Cultural Organization
HRC	Human Rights Council
UN	United Nations
UNDRIPS	UN Declaration on the Rights of Indigenous Peoples
UDHR	Universal Declaration of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
LHR	Linguistic Human Rights
ECRML	European Charter for Regional or Minority Languages
WWI	First World War
UNGA	United Nations General Assembly
CPPCG	Convention on Prevention and Punishment of the Crime of Genocide
WWII	Second World War
UNSC	United Nation Security Council
ICTY	International Criminal Tribunal for the former Yugoslavia
ICTR	International Criminal Tribunal for Rwanda
ICJ	International Court of Justice
ICC	International Criminal Court

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1. Introduction

“In the beginning was the Word, and the Word was with God, and the Word was God.”¹

In the draft of the CPPCG, the purpose of the convention was to “prevent the destruction of racial, national, linguistic, religious or political groups of human beings.” Under the section defining the acts of Genocide”, prohibition of the use of the national language even in private intercourse; or systematic destruction of books printed in national language or of religious works or prohibition of new publications...” was considered to be under the scope of act of genocide. During the process of adopting the convention, this was put aside. I believe that alongside with physical genocide, linguistic genocide is also a means of destruction of a minority by violating their linguistic rights. In other words, a State can change a minority`s identity by changing their language and culture, using policies such as abandoning a language, adopting constitutional policies like appointing a certain language as an official language or labeling a language as dialect or accent, thus disregarding the language and culture of certain groups, which could lead to their elimination by eradicating a language. In other words, the group loses its own identity. Therefore, the State can commit genocide without killing the population or physical destruction, by changing the identity and preventing the population from culturally reproducing themselves.

This said, although using the term genocide in this matter seems to be too strong, one must keep in mind that it is very difficult, even in the case of physical genocide, to prove the intent of the State, or the majority group. In other words, as it has been indicated under Rome Statute, alongside all required elements in order to recognize specific acts as genocide, perhaps the most important element is to have the “special Intention”. It means that destruction must be done with a specific intent to destroy a certain group regarding their ethnicity. So if the intent is missing or it is not feasible to prove the existence of the intent, it cannot be considered as genocide.

There have been several cases where the intent could not be proved, e.g. Armenian genocide under Ottoman empire. On the other hand, there has been cases where the intent was proven through the context although there was no clear indication. E.g. The Rwanda case, where the used language by authorities (calling minorities useless and dogs and animals) was considered to be an indication of the intent. However, it seems to me that the elements described under the Rome Statute and the Genocide Convention are compatible with what can be defined as linguistic genocide. The only absent element is its physical dimension. In other words, while States are strongly prohibited from acts of genocide, with the intent of physical elimination, they are still able to change and shape the minorities and commit a form of genocide in a completely different paradigm which I call

¹ The bible, John 1:1

linguistic genocide. This means that there might be the same difficulties in finding a case as genocide and it is the same status for other forms of genocide, namely linguistic genocide. I will further explain this in the hypothesis section.

There have been several cases which could possibly be considered as linguistic genocide. E.g. In Singapore the campaign “Speak in Mandarin” was launched and funded by the government which was promoting the Mandarin Chinese as the only Chinese language and every other form was forbidden. As a result, one of the official languages in Singapore is Mandarin. Hawaiian language after the entrance of missionaries in 19th century, Ryukyuan language in Japan, Korean language under Japanese occupation of Korea during the world war, Unification process in Russia both during Tsar empire and later in Soviet Union, especially in Finland and Ukraine, The Occitan language and Catalan language in France after the third republic in France according to the unification code and Catalan language during the reign of Franco in Spain and Kurdish language in Turkey, Iran, Iraq and Syria.

It is important to notice that the definition of linguistic genocide derives from the concept of cultural genocide. Since language is part of the culture and both are interrelated and interconnected, ontologically, the concept of linguistic genocide could be defined within the definition of cultural genocide. However, linguistic genocide is a very specific notion.

1.1. Focus of the project

As mentioned above, on one hand, the main topic of the project is the matter of linguistic rights of minorities. In this regard, although there is sufficient literature concerning the rights of minorities, more specifically the General Comment N.23 of ICESCR, this literature is not focused on linguistic rights of minorities. To add to this insufficiency, it is worthy to remind that rights of minorities are considered to be a local/national issue, while their effects could influence the international community. For instance, the issue of Kurdistan, although it is not only a linguistic issue, is a matter of security, politics and economy for Turkey, Iraq, Iran and Syria.

Despite the insufficiency, I must add the existing literature in this field is increasing. For instance, the works of Skutnabb-Kangas, that I have referred to in bibliography section, are emphasizing on the linguistic rights of minorities and how culture, identity and language are interrelated.

1.2. Central Research Question and Sub-questions and Hypothesis

Question:

- Considering the definition of genocide and its elements indicated in 1948 Convention on Prevention of Genocide and the Rome statute, is it now the time to extend the definition of genocide to cover linguistic genocide in light of developments in international law and in light of the nature of contemporary identity politics?

Sub-questions:

- What protections are already in place under international law concerning the linguistic rights of minorities?
- What are the elements of linguistic genocide?
- What is the link between cultural and linguistic genocide?
- What can be done to prevent linguistic genocide?
- What is the relation between minorities and the right to Self-Determination?

I hypothesize that language and culture are two sides of the same coin. They are interconnected and they improve, develop, shape or change each other through time. Language and culture shape the identity of a person and form their perspective. Both language and culture are social and historical constraints that are produced in the context. However, historically this is the natural way of change. Nevertheless, I believe that States can change this identity by changing the language and thus changing the culture. It seems to me that every minority is a potential Nation-State in its Westphalian concept, until they can have sovereignty to be called an actual Nation-State. Imposing this new identity, not only ontologically changes the quintessential of the minority, but also prevents them from their basic and fundamental right to cultural reproduction through their assimilation and integration into the majority.

On one hand, when a State applies the monolingual policy what it actually does is that it implies that other languages are not as important. Usually this official language is the language used by the majority. This policy also affects the education system as students belonging to linguistic minorities are not allowed to officially learn their mother tongue. On the other hand, States usually label minority languages as dialects or accents, making them invisible. In other words, States might apply various policies to change the language or culture of a minority or impose a new identity on them.

Therefore, I assume this can be recognized as a form of genocide, without even harming a single person physically. This can be a start point for the minority, in case that the violations are severe, to trigger their right to self-determination in order to have cultural autonomy. For this, I take the case of Kosovo as an extreme case, where the severe violations of human rights convinced the international community to intervene and create the new concept of “measure of last resort”. Of

course this is an extreme case which could lead to either internal or external aspect of self-determination.

1.3. Significance of the research

There has been lot of research and work done on the concepts of language, culture, identity, genocide and minority rights. This research is significant because the existence of minorities, in practice, depends on recognition and support by the State. In case that these rights are not recognized or granted, and in severe cases, if the minority is not recognized as a minority, it could lead to the elimination of the minority. Thus there is an urgent need for conducting research and work on this matter. In this work, it is argued that based on numerous examples of States adopting policies against linguistic rights of minorities and their attempts to assimilate, the concept of linguistic genocide can be criminalized alongside with physical genocide. I personally expect that this project can go further than only academic sphere. It is an inter/multidisciplinary research that is trying to deconstruct the established definitions of different concepts, especially genocide, and could help the minorities in this regard to be more protected.

I have been working on this topic for the past four years as I have defined it as my life project. It is also a personal matter to me, because I am from a Turkish speaking minority in Iran and I have felt and experienced discrimination based on my language and have felt the violation of my rights, as I had to learn, speak and use the official language. Thus, this project for me is also a lifetime project to improve the situation for next generations belonging the minorities and pave the way towards a multicultural and multilingual society.

1.4. Research Methodology

There is not much historical analysis with regards to the concept of linguistic genocide, however I will try to use descriptive methods to define the basic concepts and draw the linkage between them in the first part. In the second part I will take into account cases in different countries, such as Iran, France, and analyze them in accordance with the existing definition of genocide in the Convention and Rome Statute. I will also use counter arguments to better prove the need of preventing linguistic genocide. In this regard, I take a multidisciplinary approach by using different human sciences such as linguistics, anthropology, sociology, philosophy and legal studies. In the process, I take critical approach towards the concepts in order to analyze and deconstruct the definitions.

1.5. Work Plan

I will approach to this matter in terms of non-discrimination principle. However, to get there, I was thinking of a more concrete work plan so the following index is what I have in my mind.

Part one: concepts and definitions

Section one: Language

In this section, I will elaborate on the concept of language, its relation to culture, the relation between linguistic diversity and multiculturalism and multilingualism and finally the main hypothesis of language as a human right. In the former, I will try to put forward language itself as a human right and differentiate it with linguistic rights.

Section two: Genocide

In this section I will try to elaborate on the concept of genocide by providing a brief history and then compare it and its elements with cultural genocide and introduce the concept of linguistic genocide. In this regard, I will examine the direct and indirect ways of discrimination based on language with regards to States` responsibility concerning culture.

Part two: States and linguistic human rights

Section one: Minorities, Indigenous people and language

In this section I will try to examine language and culture in the identity discourse and the right to self-determination (In terms of cultural autonomy) by considering the existing cases with regards to cultural and linguistic discriminations. In accordance to this, I have examined several cases in France, Turkey, Iran. Moreover, I will refer to 2016 ICJ interim measure in the Ukraine vs. Russia case and also 2012 ICJ case on Georgia vs. Russia.

Section two: States` policy towards languages and linguistic minorities

In the final section, I will elaborate on the policies and their contribution to discrimination or non-discriminatory results. How languages are categorized in the constitutions and what the arguments for and against linguistic diversity are. Moreover, I will explain how these policies can be used as a tool to control, shape and change minorities.

2. Concepts and Definitions

“Absolutely nothing is so important for a nation's culture as its language.”²

2.1.1. Language

Language is one of the most fundamental dimensions to human beings. It is perhaps one the first tools to connect humans. It is self-evident, self-manifested and it is a matter of “Dasein”. It is with us in each time and space.

For most of us, speaking a language is natural. It is an act that is happening in our subconscious and we do not even notice that we are speaking a language with complex rules and grammar. Therefore, to imagine that language could be used as a tool to take power or as a reason of a conflict is almost impossible.

Although nowadays we have so many information about languages, their structure and to some extent, their function, yet we do not know how to define Language. In other words, we are able to use, teach, learn and even update language, but when it comes to the question, we are not able to define it. Is language a combination of signs? “What is the relation of language to other signs? Are linguistic signs arbitrary or motivated? What is it that signs and words have when they have meaning?”³ This question is not only to understand language itself, but it is also to examine what is the link between language and other aspects of human being. This philosophical question “begins to take on greater importance in the seventeenth century, with Hobbes and Locke. And then in the twentieth century it has become close to obsessional. All major philosophers have their theories of language: Heidegger, Wittgenstein, Davidson, and all manner of deconstructionists have made language central to their philosophical reflection.”⁴

We cannot call every voice or sound that we hear from others a language. These voices and signs can only be considered as language, when they signify an already recognized and agreed-upon meaning. The implications of signs and voices are established by a group of people who speak that

² Edwards, J, “*Language and Identity: An Introduction*”, Cambridge, Cambridge University Press, 2009, ‘quote by Wilhelm von Humboldt’

³ Jourdan, Christine, Tuite, Kevin, “*Language, Culture and Society*”, article by Charles Taylor, “*An issue about Language*”, Cambridge university press, 2006, p. 16

⁴ ibid

language. In other words, language could be considered as all those signs and voices that are established and recognized with specific significations among a group of people, which is based on contract so that if that sign is used, others will understand it as well.

Thus, one can claim that language is a disciplined contractual system which is formed by verbal and written signs. These signs belong to a certain cultural or social group, who use it to communicate. It is a contractual system in which, the signs are used in a certain way, that we know it as grammar, to convey messages. So each sign comes after another in specific order. This system is developed through time and in accordance to its context, it will indicate a meaning. However, it is important to elaborate on “system”. Language system is a holistic entity in which, every sign and signifier is interconnected in a disciplined way and it is different from another language system. As Saussure puts it, words are not merely a combination of voice and concept. This definition requires us to extract the word from the system it belongs to. In other words, signs and meanings are only valid within a holistic-contractual-pre-defined system.⁵

However, this is only a superficial possible definition of language. It does not elaborate on whether language is a category of communication? Meaning that is it only used to communicate? Is it a social or cultural institution? So if the social, cultural and especially political context was different, the language as an institution would be different? Is it natural? So everyone knows a language because it is our nature or is it a mental process that is different in every person? And so on.

It seems that nobody would disagree that language is a unique human product, consistent of various signs which is used by humans to have, to process and to express feelings, thoughts or any sort of content in order to convey messages to others, who also receive, process and understand them and perhaps use them in a reciprocal transaction. However, this communicative function is only considered to be the secondary function of language and it is not limited to humans. In other words, animals communicate as well. So this function, the acoustic manifestation, could be an accidental feature of human languages.⁶ This is to say that we can communicate through other tools as well. Therefore, we should differentiate between “Language” and “Speech”.⁷

⁵ The importance of what Saussure says is not that he sees language as a system for the first time, rather he sees the interconnection and interrelation in the system. For more information, see:

Saussure, Ferdinand de. “*Course in General Linguistics*”, Eds. Charles Bally and Albert Sechehaye. Trans. Roy Harris. La Salle, Illinois: Open Court. 1983

⁶ I find it an accidental function, because like any other human invention, language has been invented to make the communication easier. As it is easier to say “I feel cold” than expressing this feeling by gestures. For more information, see:

Whitney, William Dwight, “*The Life and Growth of Language: An Outline of Linguistic Science-Scholars Choice Edition*”, Creative Media Partners, LLC, 2015

⁷ This distinction is inspired from Aristotle’s distinction between Speech and Voice. In his opinion, the difference between the two is the role of the Tongue in pronouncing words. For more information, see:
Wen. Qiu, “*Aristotle’s definition of language*”, Inter. J. Eng. Lit. Cult. 2014, 2(8): 194-202

The two have played different roles in human's development. Whereas "Language" is the source, "Speech" is its material realization. "Language" is behind every phenomenon as an epistemic system, while "Speech" is the manifestation of its interpretation. Despite the quintessential differences between the two, it is not possible to separate them as two different paradigms. To be more clear, human being is addressed by their surrounding environment and they react to it. This linguistic transaction requires material comprehensive signs. In other words, we need to have both "Language" and "Speech" to be able to learn. Thus, to define language, it is not enough to consider it as a merely communicative tool, but also as a tool to think and understand.⁸

Communication is a general concept for different acts that humans do by using language. We inform others with facts, we ask for things, promise or tell a story. Animals might communicate as well, but we still do not have enough data confirming their communication is the same as ours. However, one could claim human communication is a voluntary act.⁹ Thus, we are free to communicate. So when one considers language as a "communicative laud performance technic", we must add that it is also used in different ways.¹⁰ So the difference is not in how we pronounce words, or because of different voices, but it is the differences in words and cultures. In this regard, some would argue that the difference is beyond different cultures. In fact, different languages cause different ways of thinking and world-views which cause different cultures. This perspective has led to the birth of modern linguistics and philosophy of language.¹¹

So far, it seems that we are not able to determine what is language. This could be an advantage and disadvantage at the same time. The advantage is that it shows language has no borders and limits, therefore every acoustic manifestation in accordance to a prior holistic and systematic contract could theoretically be language. However, this could be a disadvantage. Since we cannot say what is language, we cannot say what is not language. Hence, in the case that a language has many different varieties in it, one cannot determine where a language ends and the other begins.

⁸ Trabant, Juergen, "*Was ist Sprache?*", C.H.Beck, 2006, S II, 1.2.1

⁹ I see it as a voluntary act as it opposes instinctive acts, since we still do not know for sure that whether animals are also able to name each other, promise to each other etc. In other words, animals might also communicate, but they might not have the ability to "think" in an independent and consciously process. Of course, in this sense I use Aristotle's distinction between human and animal.

¹⁰ Trabant, Juergen, Ward, Sean, "*Trends in linguistics, New essays on the origin of Language*", Walter de Gruyter GmbH & Co. KG, Berlin, 2001, p57, Article by Manfred Bierwisch

¹¹ Although this is not a new discovery and it is rather a general knowledge of language nowadays, some would still argue that language is a natural and generalized mechanism. Therefore, the difference in languages is not the consequence of different way of thinking. One must have in mind that both of these theories could potentially be harmful. Meaning that for instance, on the one hand, the idea that thinking is dependent on language could be used in any racist propaganda, claiming a certain group of people are less human because they cannot think properly. On the other hand, the theory of language as a natural phenomenon could also be an abusive way to denounce certain group of people based on their biological differences. For more information, see:

Trabant, Jurgen, "*Europaisches Sprachdenken: von Platon bis Wittgenstein*", C.H.Beck, 2006

In other words, a dialect could be a language but it is not. Thus, we do not know what specific kind of communication could be considered as language or a variety of a language.

Perhaps the problematic of variety of language itself could be one of the most important aspects of defining language. In the past, the variety was only considered to be dialect, and it was clear an accent is not a variety but only another form of pronouncing words from the original language. Thus the geographical differences might be the cause of existence of a dialect. However, this is not the case anymore. Variety of a language, since we cannot define it, could be the result of differences in social classes¹² or could be the result of difference in gender¹³ and so on.¹⁴ Moreover, sometimes a variety might be enforced by law to be considered as language, whether it might have the characteristics of language. For example, Serb-Croat was one language since 1919 until early 1990s. However, they are two different languages ever since.¹⁵

Some believe that no linguist “can differentiate between language and variety but it is possible to name the structural similarities or dissimilarity.”¹⁶ In other words, “it is only possible to say Chinese is not English and they are different.”¹⁷ However we must be able to make the distinction. Some argue that power, law and politics are the most important criteria in order to recognize a language. In this regard, Serb-Croat or Czech-Slovak languages can be good examples.

“Mutual intelligibility has also been used as a criterion. So if you understand language A, without being taught that language, it is a dialect (or another variety) of your own language, B. Or your own language B is a dialect of the one you can understand. Or what both of you speak (A and B)

¹² In socio-linguistics, a dialect that is based on differences in pronouncing words and sometimes different grammars, could directly be related to social classes. This is called social dialect or sociolect. It is mostly visible in the societies in which, a strong hierarchic structure exists. For more information, see:

Biber, Douglas, “*Dimensions of Register Variation: A cross-linguistic comparison*”, Cambridge University Press, 1995

¹³ This theory was coined by Deborah Tannen for the first time. In her opinion, the process of receiving and processing information from the environment is different in males and females. Therefore, their communication is also different and causes genderlect. For more information, see:

Tannen, Deborah, “*You just don’t understand*”, New York: Ballantine, 1990

Kramarae, Cheris, “*Women and men speaking*”, Newberry House, 1991

Harding, S, “*whose science? Whose knowledge? Thinking from women’s lives.*” New York, Cornell University Press, 1991

¹⁴ There are other types of identified dialects in socio-linguistics. For example, the variety based on differences in ethnicity is called ethnolect. Acrolect is the most prestigious dialect of a language and Hyperlect is associated with the upper class of a society and so on. For more information, visit:

<https://www.thoughtco.com/dialect-language-term-1690446>

¹⁵ Jaksic, Bozidar, “*Interculturality*” Beograd, Savo Bjelajac, 1995, p 17

¹⁶ Skutnabb-Kangas, Tove, “*Linguistic Genocide in Education-or Worldwide Diversity and Human Rights?*” Routledge, 2000, p 7

¹⁷ ibid

are dialects of some third entity, C, which is then called a language. If you don't understand A, it is a different language."¹⁸

However, as the author herself analyses it, "let us say that speaker A understands B, and speaker B understands C, who in her turn understands D. On the other hand, speaker A does not understand C, and speaker B does not understand D. Where is the boundary then between language and dialect? Or if A understands B but B does not understand A (non-reciprocal intelligibility), are A and B dialects of the same language for speaker A who understands both, but two different languages for speaker B who does not understand both?"¹⁹ So the question is, to what extent is this criteria acceptable? and how does it precisely set the distinction? Thus, one could claim that apart from politics and power discourses, there is not a realistic criterion. In other words, to name a language, it requires a political process.²⁰

Despite the difficulties, there has been various endeavors to estimate the actual number of languages in the world. According to some of these researches, there are currently 7099 languages in the world. Among these languages, Chinese Mandarin, Indian-Urdu, English, Arabic and Spanish are the most spoken languages. Moreover, 4.2 billion of Earth population speak in 23 most spoken languages.²¹ This means that only 0.3% of languages are most spoken languages.²² According to a UNESCO report²³, half of world languages will be extinct by the end of this century. This linguistic extinction will be more severe in certain countries.²⁴

¹⁸ Ibid, p 9

¹⁹ Idem

²⁰ To add to this, there is also the question whether this intelligibility is only required in oral understanding or written understanding is also included? Even in big Language Families, non-linguistic decisions have had more effect in recognizing languages. In other words, geo-political, racial, ethnical and cultural factors have been more decisive in this process. For more information, see:

Harmon, David, "*The Status of the world's languages as reported in Ethnologue southwest journal of Linguistics*", 1995, pp 1-28, and: *Maurud review* 1976

²¹ Chinese: 1.39 billion, Indian-Urdu: 588 million, English 527 million, Spanish 467 million
English: 101 countries, Arabic: 60 countries, French: 51 countries, Chinese: 33 countries, Spanish: 31 countries
For more information, see the report by Ulrich Ammon, University of Dusseldorf, Population Reference Bureau
<http://www.scmp.com/infographics/article/1810040/infographic-world-languages>

²² It should also be mentioned that these statistics are based on information from languages with written grammar so there are most probably languages that have not been identified. For more information, visit:

<http://home.t-online.de/home/lincom.europa>

<http://www.unescoeh.org>

International Clearing House for Endangered Languages <http://www.tooyoo.l.u-tokyo.ac.jp>

www.ethnologue.com

²³ <http://www.unesco.org/new/en/culture/themes/cultural-diversity/cultural-expressions/programmes/global-alliance-for-cultural-diversity/>

²⁴ For extinct languages see:

<http://www.unesco.org/languages-atlas/index.php>

For endangered languages see:

<http://www.unesco.org/languages-atlas/>

In this regard, languages can be categorized in three groups. First, the moribund languages. These are the languages that are not being learned by next generations.²⁵ In this case, the reason may vary. It might be the people themselves who do not want to learn the language, or parents would not teach the language to their children, or the political power prohibits it. In this work, I only consider the third possibility. In other words, if the speakers themselves are actively or inactively participating in the process of terminating the language, supporting a language by a government, initially could not preserve the language. Moreover, there might be cases that the political power does support the language but its speakers do not want to preserve it.²⁶ Second, the endangered languages which are being taught to next generations, but there is a problem either with the quality of education or the number of speakers is decreasing. In UNESCO 2005 report, “A language is endangered when its speakers cease to use it, use it in an increasingly reduced number of communicative domains, and cease to pass it on from one generation to the next.”²⁷ Last, safe languages are the ones that are neither endangered nor moribund.

When a language is not taught, that language is logically deemed to die²⁸ as the speakers decrease in number. As it has been indicated in UNESCO report, half of languages are expected to be extinct by the end of century. One must also keep in mind that genocide itself is also a way to kill the speakers physically and systematically and therefore decrease the number of speakers.

2.1.2. Culture

Cultural anthropologists Alfred Kroeber and Clyde Kluckhohn tried to define culture in their 1952 book.²⁹ Not only were they unable to define culture, but they also concluded that culture is a very vague, ambiguous and simultaneously polysemy concept which marks it as undefinable. However, it is the center of the epistemological structure of social anthropology and it is crucial for understanding any modern social science.³⁰ In general, defining any polysemy multidimensional concept is extremely difficult if not impossible. However, one can attempt to define it in, as much

²⁵ Krauss, Michael, “*The world’s languages in crisis*”, Language Volume 68 number 1, University of Alaska, Fairbanks, 1992

²⁶ Of course this is still debatable. I assume that this is the simple situation in order to set the framework. We must keep in mind that if the first two possibilities are the result of political power pressure, then it is not the responsibility of victims as it is not their choice. In other words, if victims are not learning and teaching their language because of certain policies such as assimilation and extreme integration policies which directly or indirectly, like traditions or costumes, target the minority so that they give up on their language.

²⁷ UNESCO Ad Hoc Expert Group on Endangered Languages, “*Language Vitality and Endangerment*” at p.3. Cited in Blake, J. “*report for UNESCO Doc 179/EX/INF 10 (2008) in compliance with 176 EX/Decision*” p.4.

²⁸ I will try to explain in coming sections how death of language is different from what I call linguistic genocide.

²⁹ Kroeber, Alfred. L, Kluckhohn, Clyde, “*Culture: A critical review of concept and definitions*”, fb & c Limited, 2016

³⁰ Riley, Philip, “*Language, Culture and Identity: An ethnolinguistic perspective*”, Continuum, 2007, p 21

as possible, inclusive way. It is better to take this approach in order to avoid preference of any definition without preponderance.

The paradox of defining culture seems to be even more problematic, when we realize how we refer to it in any kind of discourse in our daily lives. What makes it more complex is that historically, the concept of culture is a western notion. In other words, for the first time, it was used by western anthropologists and orientalists in order to distinguish between ‘them’ and the ‘others’ that they were getting to know. Thus, it implies that non-western societies never have really thought about defining themselves and their culture, as never have they before confronted the ‘other’ in a definition-needing paradigm, and they have been observing their own culture as something obvious, self-evident and needless of any distinction.³¹

Culture in human sciences, is considered to be the characteristic of human beings. It distinguishes us from animals as our living method. Because animal behavior is mostly inherited through biological heritage and usually education does not have an essential role. On the contrary, for humans, culture plays a significant role in shaping one’s personality. The notion of education seems to be the most important aspect of culture.

In this regard, it appears that the concept of culture has two major implications to be distinguished from education itself. First, culture is a borrowed word from ‘cultivation’ which is the conceptual binary opposition of ‘nature’ itself. In other words, everything grows and is created naturally in nature while in human occupied lands, things are grown as a product in an artificial and allegedly most efficient way. As Edward Taylor puts it, culture is a complex holistic paradigm including knowledge, beliefs, art, law, moralities, traditions and any sort of ability that members of society acquire through living in a certain social context.³² In his opinion, culture is a learned sample that includes different elements and experiences. These elements vary from linguistic elements such as writing, accents and dialects, to absurd elements such as myths and legends, beliefs, ideals, worldviews, and from normative elements, such as moralities, laws and costumes, to emotional and aesthetics, such as art and literature etc. Second, in humanist orientalist context, culture refers to progress, wisdom and remaining optimistic towards human future.³³ Therefore, through education, humans can seek redemption. This is the point where culture, education and civilization

³¹ ibid

³² Edward, B. Taylor, “*The Origins of Culture*”, Peter Smith publications, The University of Michigan, 1970, p. 14

³³ Scholars like Taylor, wrongfully in my opinion, assume that culture and civilization are the same because they are apparently under the influence of these notions since they were introduced in French revolution. In this view, culture had a very strong status as the indicator of how one should be treated. Of course this is a claim that I make based on the early humanist movements in Europe which I find completely necessary in order to set limit on the power of the Church as an institution. However, the fact that it is still continuing is problematic.

overlap. Confluence of education of art, language, knowledge etc. can be a source to unity when there is nothing else left.³⁴

However, one must keep in mind that culture is realized among a certain group of people while civilization is rather a global matter concerning everyone. In fact, civilizations belong to species while culture is how certain group of people interpret the world around them and it is expressed through language. Humans think because they have the ability to use language and this is shaping their perspective as well. As thinkers like Herder put it, “Germans think like Germans because they think in German.”

These definitions are rather descriptive. Some scholars identify culture as a normative matter. Lynd defines culture as everything that the habitants of a certain common geographical territory do. This includes how they do things, how they think, how they feel about things and what tools and values and symbols they have.³⁵ Others identify culture as a psychological element. In other words, culture consists of costumes and traditions of thoughts, actions and reactions which are a certain group`s expressive way to confront and handle their issues in a certain time and space. So culture is a tool of adaptation.³⁶

Farida Shaheed, the special rapporteur in the field of cultural rights, in her report pursuant to resolution 10/23 of the HRC states: “It is not the intention of the independent expert to attempt to define culture. This is not necessary, and may be inappropriate. Instead, a better understanding of the scope of her mandate can emerge by identifying cultural rights, understood as “rights in the field of culture”, by building upon and advancing available working definitions of culture. Such working definitions may be found, in particular, in the preamble of the Universal Declaration on Cultural Diversity³⁷, and general comment No. 21 (2009) on the right to take part in cultural life,

³⁴ *ibid*, pp 23-26

³⁵ Lynd, R. Staughton, “*Knowledge for what: The Place of Social Science in American Culture*”, Princeton University Press, 2015, p18

³⁶ Various definitions show how difficult it is to find an inclusive definition. In other words, in each of these endeavors, the domain of emphasis is different. However, they are all leaning on what culture is consisted of. Thus some scholars claim that culture, more or less, refers to similar phenomenon that exists in different aspects of human interactions. So it is merely an absurd concept and our language is not able to determine what it is. This means that culture does not exist except for in minds. So it is only a conceptual demonstration of a holistic context including social, economic and political constructs and that is why no one is able to define it. Although I agree with this theory, however I believe that our minds also need categorization so that we can understand ideas and read situations. In Other words, maybe there is no physical demonstration of culture as a determining factor in our behavior, since every behavior could be a product of social, historical, traditional, political and economic situation. But this could be the definition of culture. Everything that is being demonstrated as a result of other aspects of society. This means that culture is always dependent on other aspects in time and space and that is why culture is fluid and changes through time and space.

³⁷ “Reaffirming that culture should be regarded as the set of distinctive spiritual, material, intellectual and emotional features of society or a social group, and that it encompasses, in addition to art and literature, lifestyles, ways of living together, value systems, traditions and beliefs.” Available at:

adopted by the Committee on Economic, Social and Cultural Rights.³⁸ These definitions correspond to what a number of experts have stressed, i.e. that culture can be understood as a product, as a process and as a way of life,³⁹ and imply that culture includes references beyond ethnicity, language and religion.”⁴⁰

Although in different human sciences such as philosophy, anthropology, sociology, psychology etc. culture has been more or less defined, in this study, I take the descriptive cultural anthropology approach. Especially with regards to its connection to language and how culture is expressed through it. The reason to choose this approach is, because it studies culture as a scientific term. Moreover, cultural anthropology studies are usually very complicated and they examine the relation between culture and mind, culture and behavior, culture and biology and even how metaphysics and materialism influence certain cultures. So in order to avoid misunderstandings, one must neither reduce culture to its elements nor deem it as a substantial phenomenon. In other words, not having a holistic approach to culture and its aspects and therefore neglect its diversity or to see it as a stagnant and substantial matter without complexities and transformations is a huge mistake in order to define culture. So it is better to consider culture as what it is consisted of. These elements are any factor such as language, art, etc. which are taught through generations. So it is important to remind that first, language is the primary tool to express culture. In other words, almost every existential experience of the members of the group, at least in their early stages of their lives, is expressed through their language. Thus language and culture are interdependent and correlated. Every culture creates its own language and every language is preserved and reproduced in that culture. Therefore, in social-cultural systems, language can actually be a source of unity. Second, culture as a matter that can be learned and taught, is important not because culture itself can be taught but because education is the mean of reproduction and preservation of culture.

<https://unesdoc.unesco.org/ark:/48223/pf0000127162>

³⁸ “The Committee considers that culture, for the purpose of implementing article 15 (1) (a), encompasses, inter alia, ways of life, language, oral and written literature, music and song, non-verbal communication, religion or belief systems, rites and ceremonies, sport and games, methods of production or technology, natural and man-made environments, food, clothing and shelter and the arts, customs and traditions through which individuals, groups of individuals and communities express their humanity and the meaning they give to their existence, and build their world view representing their encounter with the external forces affecting their lives.” For more information, visit: Fribourg Declaration on Cultural Rights (2007), art. 2 (a), available from www.unifr.ch/iiedh/assets/files/declarations/eng-declaration.pdf

³⁹ Rodolpho Stavenhagen, “*Cultural rights: a social science perspective*”, in A. Eide, C. Krause, A. Rosas (eds.), *Economic, Social and Cultural rights: A Textbook* (Boston, Martinus Nijhoff Publishers, 2001), pp. 85–109; E/C.12/40/9, pp. 4–5; E/C.12/40/15, pp. 3–4. See also International Commission of Jurists, submission to the Committee on Economic, Social and Cultural Rights, day of general discussion on the right to take part in cultural life (E/C.12/40/7), para. 6.

⁴⁰ Report of the independent expert in the field of cultural rights, Ms. Farida Shaheed, submitted pursuant to resolution 10/23 of the Human Rights Council available at: http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.36_en.pdf, para 5, p 4.

Several human rights mechanisms have also referred to the correlation between language and culture, however it is mostly considered to be nonbinding soft norms. For instance, Boutros Boutros Ghali in his speech in the UN's 50th anniversary states: "The right to live one's culture is among most basic rights of life. This, then, is the most fundamental approach to culture as found in basic documents of United Nations: every person has a fundamental right to his or her culture."⁴¹

In UNESCO declaration on 4th November 1966, it is stated that:

"Article 1

- 1- Each culture has a dignity and value which must be respected and preserved;
- 2- Every people has the right and the duty to develop its culture;
- 3- In their rich variety and diversity, and in the reciprocal influences they exert on one another, all cultures form part of the common heritage belonging to all mankind."⁴²

Third paragraph in UNESCO constitution states that: "...with view to preserving the independence, integrity and fruitful diversity of the cultures and educational systems of the States Members of the organization, the organization is prohibited from intervening in matters which are essentially within their domestic jurisdiction."⁴³ "In the 1950s and 1960s, the main focus was on the promotion of African languages in the nation-building process, noting the central role of languages as a vehicle of ideas and culture."⁴⁴ "By the 1970s, in Africa and Latin America there was an intellectual shift towards the notion of 'endogenous development' in which local and ethnic cultures (and languages) were given value."⁴⁵

Most of culture and language related reports or documents are created by UNESCO. For instance, the report⁴⁶ by World Commission on Culture and Development affirms the importance of culture and its relation to language. Also, UNESCO's Masterpieces of Oral and Intangible Heritage Program which started operating in 1997, focused on the relation between culture and language and tradition as one of their periodic focuses. This program could be deemed as an implicit attempt to reaffirm the relation between the two.⁴⁷

⁴¹ Ghali, Boutros Boutros, "Unity and Diversity: The Contemporary Challenge", 1995

⁴² UNESCO Declaration of the Principles of the International Cultural Co-operation

http://portal.unesco.org/en/ev.php-URL_ID=13147&URL_DO=DO_TOPIC&URL_SECTION=201.html

⁴³ http://portal.unesco.org/en/ev.php-URL_ID=15244&URL_DO=DO_TOPIC&URL_SECTION=201.html

⁴⁴ Doc. 17C/73 (1968) at para.12 makes the point that "African languages ... are the sole natural support for African thought and culture." Cited in Blake, op cited, para. 1.

⁴⁵ McGonigal, J. and Arizpe, E. "*Learning to read a new culture: how immigrant and asylum seeking children experience Scottish identity through classroom books*". Edinburgh: Scottish Government, 2007, cited in ibid

⁴⁶ "*Our Creative Diversity*", UNESCO publishing, 1996 available at:

<https://unesdoc.unesco.org/ark:/48223/pf0000105586>

⁴⁷ In the final submitted report to UNESCO, during the negotiations concerning the Convention for the Safeguarding of the Intangible Cultural Heritage (2003), there has been some debates with regards to direct reference to language in order to include it as an intangible heritage in the second paragraph of the second article. Spain, Finland, Mali and Lithuania were for this idea. For more information, see:

Preserving languages means and includes; “First, the cultural and social significance of a language for the speaker community and their identity; second, the role of language as a vehicle for traditional knowledge and other forms of intangible cultural heritage; third, the role of language in development and ensuring achievement of the Millennial Development Goals (especially Education for All); fourth, the importance of mother language education for building local capacities; fifth, the intimate relationship between language and cultural diversity; sixth, language as a tool for intra- and inter-cultural dialogue; and seventh, the role of language in fostering creativity.”⁴⁸ These are suggestions in order to recognize the linkage between Language and Culture and to preserve moribund and/or endangered languages. “Two basic principles can also be identified that might underpin any future instrument; Linguistic diversity should be viewed as a common heritage of humanity and All languages are, in principle, equal and should enjoy equivalent legal status.”⁴⁹

At the same time that we use language to think, it shapes our thoughts and we also use it for transforming and expressing knowledge. Thus, there is a reciprocal interdependence between Language and Culture. A worldview within a language is a characteristic of that language.⁵⁰ In other words, the meaning of a sign in a certain language, could only be properly understood and interpreted if it is determined within that worldview. This means that every language has understood and interpreted the world based on the thought as a product of that certain language and this understanding and interpretation is only accessible through the native speakers.⁵¹ On the one hand, an important aspect of this idea is that it is based on identity in an extreme way. The rise of nationalism in Germany was influenced by this idea.⁵² On the other hand, scholars such as Chomsky, believe that every child is born with the ability to learn Language.⁵³ Therefore, such theories are logically and scientifically void. In fact, the basis for Sapir-Whorf theory is that structural differences of languages are indications of non-linguistic differences. For instance, the

Doc, CLT-2002/CONF,203,3 Rev, (compilation of amendments suggested by member states to the preliminary draft text presented to the intergovernmental committee), p. 3

⁴⁸ idem

⁴⁹ idem

The estimate that 97% of the world’s population speak 4% of all languages and 96% of languages are spoken by 3% of the world’s population would support this. Visit:

Ammon, Ulrich, University of Dusseldorf, Population Reference Bureau

<http://www.scmp.com/infographics/article/1810040/infographic-world-languages>

⁵⁰ Benjamin L. Whorf and Edward Sapir were the founders of “Sapir-Whorf Theory”. This theory suggests that the language is not only a tool to report experiences, but it is a guideline for them. Each language has different system and therefore a different understanding of its surroundings.

⁵¹ Riley, Philip, *ibid*, p 9

⁵² For more information, see:

Hogan-Burn, Gabrielle, “*Discourses on Language and Integration: Critical Perspectives on Language testing Regimes in Europe*”, Article by: Averamt, Piet, “*Fortress Europe? Language Policy Regimes for Immigration and Citizenship*”, John Benjamins Publishing Company, 2009, pp 15-44

⁵³ Universal Grammar, Language Acquisition Theory

number of different words and their variety for colors will determine how the speaker sees rainbow.⁵⁴ This theory has been criticized and even rejected however, the binary theory that language has no relation to worldview has been rejected as well.⁵⁵

Whorf believed that “we cannot see what we cannot name”. But it seems that a mixture of these two opposite extreme theories could be “we cannot say what we cannot name.” In other words, language is not a holistic platform for worldview and culture, as they both can change and be shaped, but it has a significant role in expressing and demonstrating them.⁵⁶

2.1.3. Linguistic human rights

On one hand, Human Rights is deemed to be the rights of individuals. In other words, humans are entitled to rights, not because they belong to a group or community, but because they are humans regardless of their affiliations. The right to life, right to fair trial and right to vote. These rights usually fall in the civil and political rights spectrum. On the other hand, some rights can only be implemented if they are demonstrated within a group or community. The right to assemble, right to environment and the right to development⁵⁷ are such rights which fall in the category of social, economic and cultural rights. Here the question would be whether there is the right to language in any of these categories? In other words, is there a right to language so that when it is violated, the victim can trigger the legal process? And if there is such right, is it collective or individual?

In human rights discourse, there is not such a right as right to language. Therefore, language is not a self-standing right. However, it is possible to talk about linguistic rights. Many of UN and other international organizations` documents refer to linguistic rights in the context of minority rights and indigenous peoples` rights. UN Declaration on the Rights of Indigenous Peoples⁵⁸, UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities⁵⁹, International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families⁶⁰, etc. are such documents.

⁵⁴ Oezgen, Emre, Davies, Ian, “*Acquisition of categorical color perception: A perceptual learning approach to the linguistic relativity hypothesis*”, *Experimental Psychology*, 2000, p 477-483

⁵⁵ Kay, Paul, Kempton, Willet, “*what is Sapir-Whorf hypothesis?*”, *American Anthropologists*, 1984, p 65-79

⁵⁶ Nunan, David, Choie, Julie, “*Language and Culture: Reflective Narratives and the Emergence of Identity*”, New York, Routledge, 2010, pp 5-6

⁵⁷ Some scholars believe that the “third generation” rights are inherently collective rights. However, it seems that in general, even the collective rights are quintessentially individual rights but they can only be expressed in a collective method. In other words, the right to assemble is an individual right but it is only demonstrated within individuals who want to use their right and they cannot trigger it outside of a group context.

⁵⁸ Available at:

https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

⁵⁹ Available at:

<https://www.ohchr.org/en/professionalinterest/pages/minorities.aspx>

⁶⁰ Available at:

It is important to note the difference between Language Rights and Linguistic Human Rights. Human Rights is concerned with Language Rights. In other words, in fact minority rights are one of the first recognized rights in human rights discourse. However, despite this, there is no specific article in UDHR regarding minorities` rights.⁶¹

Some scholars might argue that in almost all conventions and declarations, there is a provision concerning non-discrimination principle. Complying with this principle, Articles 26 and 27 of ICCPR refer to the Right to Education and participation in cultural life.⁶² Moreover, Article 29 of the Convention on the Rights of the Child⁶³, as well as articles 13-15 in ICESCR⁶⁴, put the emphasis on education in mother language and cultural identity. In this regard, Capotorti states that: “it is generally recognized that the effective implementation of the right of persons belonging to... linguistic minorities to... use their own language requires, as an absolute precondition, that the principle of equality and non-discrimination be firmly established...”⁶⁵. Article 2 of UDHR, Article 2 of ICESCR and first section of Article 2 of ICCPR are all emphasizing on non-discrimination principle.⁶⁶

The emphasis on language in these documents is in relation to the role of language in education. Thus language per se is not protected but rather it is protected as a mean of cultural expression. In other words, language is only protected because it is inevitable to preserve culture therefore, it is not a self-standing right. So even though the linguistic rights are recognized, but there is a distinction between linguistic rights and linguistic human rights. While the former is concerned with language as merely a mean of expression, the latter is a mixture of linguistic rights of the speakers. In other words, both are two sides of the same coin. The significance of this distinction is that when linguistic rights are also human rights, as they are directly related to humans and their existence, in fact it is also possible to demand the right from the States.

<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CMW.aspx>

⁶¹ Blake, Janet, *ibid*

⁶² Article 27: “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.” Available at:

<https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

⁶³ Article 29 (c): “The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own” Available at:

<https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

⁶⁴ Available at: <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>

⁶⁵ F. Capotorti, “*Study on the Rights of persons belonging to Ethnic, Religious and Linguistic Minorities*”, United Nations, 1976, at p.127 cited in Blake, Janet, *ibid*, p.9

⁶⁶ However, non-discrimination principle per se is not enough. In fact, the governments can easily interpret these principles and possibly try to assimilate minorities by public policies and other tools. As an example of broad interpretation, in the draft of ICCPR in Article 25 (Article 27 in ICCPR), some European, Latin American and African States were against including any provision concerning minorities` rights.

Linguistic rights in the human rights framework, is a combination of human rights conventions and international guidelines for protecting minorities` and indigenous peoples` rights. These rights are included in non-discrimination principles, freedom of expression, the right to private life, the right to education and minorities` linguistic rights in order to communicate with the other members.⁶⁷

LHR cover a wider scope. In other words, not all linguistic rights are LHR while all LHR are also linguistic rights.⁶⁸ For instance, right to learn mother language and right to education in mother tongue could be LHR. However, learning Russian language for an Iranian, learning a new language rather than one`s mother tongue, is linguistic rights.⁶⁹ In other words, the distinction is about distinguishing between necessary rights and enrichment-oriented rights.⁷⁰ “Necessary rights, as in human rights, are those needed for basic needs and for living a dignified life, e.g. language-related identity, access to mother tongue(s), right of access to an official language, no enforced language shift, access to formal primary education based on language, and the right for minority groups to perpetuate as a distinct group, with own languages. Enrichment rights are above basic needs, e.g. right to learn foreign languages.”⁷¹

It is extremely difficult to define and determine what is necessary right and what is enrichment-oriented right. It might also seem to a lawyer that there is no difference between “mother tongue”, “learning a language” and “language”, or the difference does not seem to be important, but it is of high significance for minorities.⁷² In order to solve the problem, some international instruments have tried to define these concepts in the introductory articles. The ECRML has defined regional or minority language in its first article.⁷³ On the contrary, The Universal Declaration of Linguistic Rights have defined the concepts in its preamble rather than articles and the scope of definitions are broad.⁷⁴

⁶⁷ UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, UNESCO principles regarding language and education, recommendations and general comments, etc. are other non-agreement mechanisms concerning fundamental suggestions on linguistic rights. For more information, see: Izsak, Rita, “*Language Rights of Linguistic Minorities Handbook*”, UN Special Rapporteur on Minority Issues, 2015

⁶⁸ Absolute Generality and Peculiarity

⁶⁹ For more information, visit:

<http://www.ohchr.org/EN/Issues/Minorities/SRMinorities/Pages/LanguageRights.aspx>

⁷⁰ Skutnabb-Kangas, Tove, *ibid*, pp 497-499

⁷¹ *idem*

⁷² Also the difference between “first language”, “official language”, “bilingualism” and “national language”. Moreover, while using a language could be an issue for a minority, it might be using the language in publication for another minority.

⁷³ European Charter for Regional or Minority Languages, available at:

<https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/0900001680695175>

⁷⁴ Also known as Barcelona Declaration (1996) developed by PEN Club and several NGOs. This declaration has been submitted to the UNESCO in 1995 but was not legally recognized. For more information, visit:

<http://www.linguistic-declaration.org/main-gb.htm>

<http://www.linguistic-declaration.org/versions/angles.pdf>

2.1.4. Minorities and Indigenous People

It is extremely important to define such concepts in International Law. However, despite decades of attempting, there is still lack of consensus. Therefore, it is very significant to understand who are minorities and who are peoples and to whom LHR belong.

Alfredsson uses the ‘Inhabitation of land since time immemorial’ criterion.⁷⁵ On the contrary, Ekern believes that this criterion is of least importance. The reason is that first, there has been colonialism by Europeans, especially in Africa; second, many Asian countries claim that their people are all indigenous peoples, and third, in order to gain more rights, many groups such as Basques and Kurds reject the status of being indigenous.⁷⁶ Therefore, the significant elements are ‘a disadvantageous relation with a national community’ and ‘readiness to adopt the status of indigenous or tribal’ to be distinguished.⁷⁷ The importance of this criterion is in the empowerment it provides for groups. In other words, it is groups themselves who decide and choose to be indigenous, if it is politically convenient for them. So if they choose to be indigenous, it is because they find it more benefitting and if not, it might be better to be recognized as minorities or colonized nations.⁷⁸

Cobo, the UN Special Rapporteur to the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities, defines indigenous peoples in his 1987 report to the commission. “Indigenous communities, peoples and nations are those which, in having a historical continuity with pre-invasion and precolonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of the society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis

⁷⁵ For more information, see:

Alfredsson, Gudmundur. *The United Nations and the Rights of Indigenous Peoples*. “*Current Anthropology*”, Stockholm, 1989; and Alfredsson, Gudmundur, “*Report on Equality and Non-Discrimination: Minority Rights*”, Strasbourg: Council of Europe, 1990

⁷⁶ Skutnabb-Kangas, Tove, op cited, 2000, p. 487

⁷⁷ Ekern, Stener, “*Development Aid to Indigenous Peoples is an Exercise in Crossing Boundaries*”. Cited in Stokke, Hugo, Suhrke, Astri & Tostensen, Arne (eds). “*Human Rights in Developing Countries. Yearbook 1997*”, The Hague/London/Boston: Kluwer Law International & Oslo: Nordic Human Rights Publications, 1998, pp. 3-34.

⁷⁸ Regarding this, the world Council of Indigenous Peoples has adopted as one of the five principles that “The right to define what is an indigenous person be reserved for the indigenous people themselves. Under no Circumstances should we let artificial definitions such as the Indian Act in Canada, The Queensland Aboriginal Act 1971 in Australia, etc. tell us who we are.”

For instance, Arabs in Iran prefer to be recognized as indigenous peoples, because according to international law, they will be able to claim their right to self-determination. On the contrary, Kurds prefer to be recognized as minority rather than indigenous because they will have more protected rights. Moreover, not only groups as a whole should be able to choose their status themselves, but also the members of the groups should also be able to choose whether they recognize themselves as a member of that group. So it is an Endo-Indo decision made by groups themselves.

of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.”⁷⁹

Despite these definitions, it seems that the only legal definition is provided by the International Labor Organization in its C169⁸⁰. According to Article 1(b), “peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited in the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.”

Unfortunately, in the 2007 UNDRIPS⁸¹, there is no definition. However, in its preamble, it states “recognizing and reaffirming that indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples; ...”. Although there is no clear indication in this statement, it seems that their linguistic rights and their LHR are collective rights. In its Article 1 it continues “Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all 8 human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.” In any case, almost all indigenous peoples are, to some extent, also minorities and they can also enjoy the recognized rights for minorities. But they never lose their characteristic as ‘Peoples’.⁸²

Minorities on the other hand, under international law, enjoy a wider scope of rights compared to migrants, workers and even refugees. However, there is the same issue with regards to definition. There are various definitions⁸³ which are based on the population of the group, the power relation and domination status between groups and/or religious, ethnic and linguistic characteristics, citizenship and nationality etc.⁸⁴

⁷⁹ Martinez Cobo, Jose R, “*Study of the Problem of Discrimination against Indigenous Populations*”, Final report submitted by the Special Rapporteur, New York, United States, 1987

⁸⁰ ILO Convention Concerning Indigenous and Tribal Peoples in Independent Countries, Convention no. 169, 1989 available at:

https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169

⁸¹ Available at:

https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

⁸² Skuttnab, K, Tove, op cited, pp.485-489

⁸³ For more information, see:

Commission on Human Rights (1986) *Compilation of Proposals Concerning the Definition of the Term “Minority”* UN Doc. E/CN.4/1987/WG.5/WP.1.

⁸⁴ For more information, visit:

Para, 121–125 European Commission for Democracy through Law (2007) *Report on Non-Citizens and Minority Rights* CoE Doc. CDL-AD (2007)001.

Although these definitions might be helpful, but they usually only consider few aspects of minorities. In any case, apart from lack of definitions,⁸⁵ it is solely the right of the group and its members to decide whether they are minority.

“According to a definition offered in 1977 by Francesco Capotorti, the Special Rapporteur of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities, a minority is: A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members - being nationals of the State - possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language.”⁸⁶ Although it is the most widely accepted one, however it is still not legally binding.

This definition is based on racial, linguistic and religious elements. In other words, there is nothing about national minorities. The difference is that “one of the characteristics of national minorities is that they have a national awareness alongside their linguistic and cultural differences.”⁸⁷ However, even in such case, the linguistic, religious or racial difference is still there. In other words, national minority has all or some religious, ethnic or linguistic elements.⁸⁸ So it appears that there must not be any distinction between national minorities and the others. In other words, one might be able to distinguish linguistic difference but it is very vague and unclear to understand the national minorities, especially in areas such as Middle East where the territory of minorities was arbitrarily established after WWI. Moreover, any minority can be national minority and national minority can be any minority. The only difference is that the word ‘national’ has specific geopolitical indications, which is a double edged sword. On the one hand, it could provide more protection under the sovereignty of a certain State. However, on the other hand, first, it is possible that the State does not recognize the group as their national minority; Second, it is possible that the State suppresses a certain group exactly because they are considered as national minority. Moreover, the word ‘national’ has connotations such as nationalism and patriotism which might lead to the termination of the group as a cultural entity.

⁸⁵In the 1990s, the Parliamentary Assembly of the CoE proposed a definition for ‘national minorities’ but it was rejected. For more information, see:

Parliamentary Assembly of the Council of Europe (1993) Recommendation 1201 (1993) on an Additional Protocol on the Rights of Minorities to the European Convention on Human Rights CoE Doc. PACE Rec. 1201 (1993).

⁸⁶ E/CN.4/Sub.2/384/Rev.1, para. 568. Available at:

https://www.ohchr.org/Documents/Publications/MinorityRights_en.pdf

<https://www.ohchr.org/EN/Issues/Minorities/Pages/internationalaw.aspx>

⁸⁷ De, Azca´rate P, “*League of Nations and national minorities – an experiment*”. Carnegie Endowment for International Peace, Washington, 1945, p. 4.

⁸⁸ Jules Descheˆnes, “*Proposal Concerning a Definition of the Term Minority*” UN Doc.E/CN.4/Sub.2/1985/31. 1985, For a short reproduction of the comments Descheˆnes received see paras. 19–28 Commission on Human Rights, “*Compilation of Proposals Concerning the Definition of the Term Minority*” UN Doc. E/CN.4/1987/WG.5/WP.1. 1986

On the one hand, the most basic criterion is the population of the group. Whenever there is majority, there must be a minority.⁸⁹ So the number of members play a crucial role in order to determine which group is minority or majority. On the other hand, nationality, citizenship and power relation also play a significant role. Some of groups reject minority status, since being a minority means that they are under the authority of a Nation-State. In other words, they have to accept the hierarchic relations⁹⁰. Therefore, first, they are nationals of a certain Nation-State and then they are minority. So being a minority, quintessentially means to accept being different from a majority.⁹¹

There are three fundamental issues for defining minorities. First, what is the criterion to compare minority and majority? For instance, ten Arab students in a class of 15 in an Iranian school might be considered as majority, while they are in fact minority in Iran; Second, minority and majority are interdependent and interconnected. In other words, without the other, there is no distinction at all; and third, the role of power in the expo/endo-definition is extremely significant.

With regards to these issues, minority is a group who are demographically fewer than the rest of the population. A group with distinguishing ethnic, religious or linguistic characteristic, who are systematically and purposely pursuing their identity and try to preserve their culture, traditions, religion or their language. Every group with these features could be minority.⁹² There are two fundamental aspects in this definition. First, belonging to a group must be the choice of the members so that should they find it more convenient to claim their rights out of minority paradigm, they have the right to choose; Second, nationality is not included in this definition. The reason is that if being minority is dependent on nationality, then the authority will initially decide whether a group is minority. Therefore, their rights are also dependent on this recognition and acceptance. So if the authority does not recognize them as (national) minority or claim that there is no minority in their territory, then they will not protect and fulfill their rights neither.⁹³ So recognition has a practical impact in protection and fulfilling minorities` rights.

With regards to this definition, it seems that LHR, specifically, belongs to minorities and indigenous peoples as it is highly connected to their identity. Therefore, it is a priority based on four principles. First, Human Dignity; Article 1 of UDHR states that “All human beings are born

⁸⁹ It seems that this is a very superficial and inaccurate criterion. There are cases where the ‘minority’, is actually majority but because of power relation, they are considered as minority. For instance, Turkish population in Iran are considered to be one of minorities in Iran, where the Fars population is considered as the majority. However, in fact, Turks form more than 40% of the population.

⁹⁰ Alfredsson, Gudmundur. Op cited, 1989, pp10-12

⁹¹ One of the rights that minorities do not enjoy is the right to self-determination. In other words, although ‘Peoples’ are also nationals, but they have the political and legal possibility to claim their right to self-determination while minorities can only, possibly, claim cultural autonomy.

⁹² Fishman, Joshua A, “*On the limits of ethnolinguistic democracy*”, cited in Skutnab-Kangas & Philpson (eds), 1994, p. 49

⁹³ For decades, Turkish central government has not recognized Kurds as a minority. In 1990s Kurds were simply put as ‘Mountain Turks’ in government’s propaganda. Also the finn population in Sweden were not considered as a minority until 1998 and therefore they were not able (allowed) to enjoy their rights as minorities.

free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”⁹⁴; second, Freedom; which is extremely important in using one`s language in freedom of speech and freedom from discrimination⁹⁵; third, Equality and Non-Discrimination; the principle of non-discrimination prohibits authorities from unfairness and intolerance; and fourth, Identity; which in its linguistic discourse, is of an extreme significance for minorities and indigenous peoples in order to re-recognition of differences and prevention of discrimination.⁹⁶

2.2.1. Genocide

“Our strength consists in our speed and in our brutality. Who, after all, speaks today of the annihilation of the Armenians?”⁹⁷

The word Genocide comes from the Greek word ‘Genos’ which means ‘race’, ‘kin’ or ‘stock’⁹⁸ and it is taken from the word ‘Gaedere’ which means ‘to kill’.⁹⁹ Raphael Lemkin used the word Genocide for the first time in 1944.¹⁰⁰ However, some believe that this word was used in 1933 for the first time.¹⁰¹ In Lemkin`s ideas, the crime of genocide, compared to other crimes, is the most terrifying crime that not only shocks human conscious, but also it deeply affects humans common good.¹⁰²

⁹⁴ Available at:

<https://www.un.org/en/universal-declaration-human-rights/>

⁹⁵ Article 2 of UDHR: “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty”

⁹⁶ Iszak, Rita, *ibid*, pp. 4-5

⁹⁷ Kevork, B, Bardakian, “*Hitler and the Armenian Genocide*”, Cambridge, Massachusetts, The Zoryan Institute, 1985

This quote is from Adolf Hitler. I firmly believe, that unfortunately, such view still exists. Not only regarding the Armenian genocide, but towards the concept in general. The same approach is being used by many governments concerning cultural and linguistic genocide, in the protective umbrella of non-criminalization of such concepts.

⁹⁸ For more information, see:

<http://www.perseus.tufts.edu/hopper/text?doc=Perseus%3Atext%3A1999.04.0057%3Aentry%3Dge%2Fnos>

⁹⁹ “By “genocide” we mean the destruction of a nation or of an ethnic group.”

¹⁰⁰ Lemkin, Raphael, “*Genocide as a crime under International Law*”, American Journal Law, 1944, Vol. 41

¹⁰¹ For more information, see:

Amnesty International, “*The International Criminal Court: Making the right choices*” United Kingdom, January 1997, p. 20, Par 1

¹⁰² Lemkin, R., & Carnegie Endowment for International Peace. “*Axis rule in occupied Europe: Laws of occupation, analysis of government, proposals for redress*”. Washington [D.C.: Carnegie Endowment for International Peace, Division of International Law. 1944, p. 14

Eventually, on 9th December 1948, one day before ratification of UDHR, UNGA ratified the Convention on Prevention and Punishment of the Crime of Genocide without any objection as UNGA Resolution 260. It entered into force on 12th January, according to its Article 13, after 20 Member-States ratified it.¹⁰³ More than hundred Member-States ratified it by 1985.¹⁰⁴

Atrocities of WWII, especially the Holocaust, led the international community to be forced to contend with international criminals and to punish them and try to reinforce justice. This is what the Allies stated in Moscow Declaration on 1st November 1943.¹⁰⁵ As a result, on 8th August 1945, by London Agreement and Charter¹⁰⁶, the first international military tribunal, the Nuremberg Tribunal was established in order to prosecute the heads of Nazi regime. In addition, Tokyo Tribunal was also established in Asia in 1946. Moreover, according to Allied Control Council Law no. 10, on 20th December 1945, tribunals were established in occupied territories¹⁰⁷ to try officials as well.

However, the process of establishing both tribunals show that unfortunately, the principle of neutrality and legitimacy have not been fulfilled. In other words, only allies formed the tribunals and each of them appointed a judge. The judges were appointed so that first, it is the allies, the winners of the great war, who decide; and second, judges will not be able to disobey and potentially endanger the interests of the allies.¹⁰⁸

Anyhow, neither in Nuremberg nor in Tokyo Charter, there is no direct reference to Genocide. According to Article 6 of the Nuremberg Charter, only three crimes were within the jurisdiction of the Tribunal.¹⁰⁹ Also according to Article 5 of the Tokyo Charter, same crimes were within its

¹⁰³ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CrimeOfGenocide.aspx>

¹⁰⁴ Report of the Committee on Foreign Relation, US senate, on The Genocide Convention, sen exec Rpt 99-2, 99th Cong. July 18, 1984, pp 18-9 and 26-7

¹⁰⁵ Moscow Declaration on Atrocities (1st November 1943) para.2, available at:

https://www.cvce.eu/content/publication/2004/2/12/699fc03f-19a1-47f0-aec0_73220489efcd/publishable_en.pdf

¹⁰⁶ For more information, visit:

<https://www.roberthjackson.org/article/london-agreement-charter-august-8-1945/>

¹⁰⁷ “In order to give effect to the terms of the Moscow Declaration of 30 October 1943 and the London Agreement of 8 August 1945, and the Charter issued pursuant thereto and in order to establish a uniform legal basis in Germany for the prosecution of war criminals and other similar offenders, other than those dealt with by the International Military Tribunal, the Control Council enacts as follows”; available at:

<https://www.legal-tools.org/doc/ffda62/pdf/>

¹⁰⁸ Munice, John, Talbot, Deborah (Eds), “*Crime: Local and Global*”, Cullhampton, Willan Publishing, Open University Press, 2009, pp. 24-25

¹⁰⁹ Article 6: “The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility:

- (a) Crimes against peace: namely, planning, preparation, initiation or waging war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing;
- (b) War crimes; namely, violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labor or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of

jurisdiction.¹¹⁰ Therefore, what we call Genocide today, regarding to the Nuremberg Tribunal, has different status in different contexts. If such acts, namely murder, extermination etc. have been committed in an occupied territory, it would be under the category of War Crimes; and if it has been committed based on racial, political or religious backgrounds, it is under the category of Crimes Against Humanity.

So, even though there is no direct indication of the Crime of Genocide, these crimes were categorized into two groups. First, crimes which were committed against a specific group; and second, the crimes against individuals regardless of their affiliations to any groups. The former was defined as genocide and the latter were recognized as crimes against humanity. For instance, in the case United States of America vs. Alstotter¹¹¹, the Nuremberg Tribunal refers to the UNGA resolution which was defining Genocide at that time and recognizes this resolution as an intention and indication of the prohibition of the crime of Genocide in international community. However, at that time, genocide was still under the category of crimes against humanity.

Even though the prosecutors used the term during the trials at Nuremberg Tribunal, however, despite referring to the term genocide, it is not used in its final judgment at September/October 1946.¹¹² Moreover, it was only possible to commit crimes against humanity and genocide in the war context. In other words, it was defined in a way to protect militants and civilians of the parties

hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity;

- (c) Crimes against humanity; namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecution on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.”

For more information, visit:

https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.2_Charter%20of%20IMT%201945.pdf

https://www.loc.gov/rr/frd/Military_Law/Nuremberg_trials.html

¹¹⁰ Article 5:

- (a) Crimes against peace; namely, the planning, preparation, initiation or waging of a declared or undeclared war of aggression, or a war in violation of international law, treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the forgoing;
- (b) Conventional war crimes; namely, violations of the laws or costumes of war,
- (c) Crimes against humanity; namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecution on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated. Leaders, organizers, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any the forgoing crimes are responsible for all acts performed by any person in execution of such plan.”

For more information, visit:

https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.3_1946%20Tokyo%20Charter.pdf

¹¹¹ United States of America vs. Alstotter et la, 1948, 6LRTWC1, 3TWC, 1. P.983

¹¹² Schabas, A. William, “*An introduction to the International Criminal Court*”, Cambridge University Press, 4th Ed, 2011, p 99

to the war. However, States such as India, Panama and Cuba, drafted a declaration with two major goals. First, genocide should be recognized both in war time and peace time; second, it should be a matter of universal jurisdiction, regardless of national or personal affiliation in order to prosecute the perpetrator.¹¹³ In fact, the difference between crimes against humanity and genocide on one hand and war crimes on the other hand was that the former was against the nationals of the State sovereign over the perpetrator. Also, according to the Allied Control Council Law no. 10, crimes against humanity, which has been committed before or during the WWII, are punishable. Therefore, the relation between crimes against humanity and armed conflict was terminated.

After UNSC's 808 resolution regarding the situation in Bosnia, October 1992, a commission was formed for considering gross human rights and international humanitarian law violations. According to this commission on February 22nd 1993, a tribunal was in order to prosecute and try the criminals.¹¹⁴ UNSC confirmed ICTY's statute based on its obligations in seventh chapter of the UN charter. ICTY is the first tribunal to try the crime of Genocide. Moreover, in 1994, according to UNSC's 995 resolution,¹¹⁵ ICTR was formed. The importance of ICTR is that first, the ground for its formation was to prosecute the crime of Genocide; and second, it is the first tribunal ever to convict someone for committing genocide.¹¹⁶

50 years after the CPPCG, the Rome Statute was ratified on 15th June 1998 in order to form an international court based on its 6th Article. In the end, despite disagreements from States such as the United States of America and China, two permanent members of the UNSC, Rome Statute was ratified on 17th July 1998 with 120 votes for it, and it entered into force on 1st July 2002 after reaching the minimum required amount of States.

Rome Statute is a little different in defining Genocide from its draft. The initial definition was a combination of CPPCG articles 2 and 3. In Article 5(a) of the draft, there are two parts. First, acts of genocide, which were in the article 2 of the Convention; and second, acts that were punishable which were defined in article 3 of the Convention.¹¹⁷ However, regarding the disagreement concerning the second part, in Rome Conference, they decided to omit the second part and adapt Article 3 of the Convention. Therefore, Article 6 of Rome Statute states:

"For the purpose of this Statute, "genocide" means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;

¹¹³ For more information, visit:

<http://legal.un.org/avl/ha/cppcg/cppcg.html#> by William. Schabas

¹¹⁴ http://www.icty.org/x/file/Legal%20Library/Statute/statute_808_1993_en.pdf

¹¹⁵ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N95/140/97/PDF/N9514097.pdf?OpenElement>

¹¹⁶ *The Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Judgment of 2 September, 1998

¹¹⁷ A/CONF. 183/2/Add 1, 14 April 1998, p. 12

- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.”¹¹⁸

According to this article, three conditions should be met in order to call an act, an act of genocide. First, terminating a group in whole or in part. In other words, it is not important how many are terminated, however, on the one hand, it should be systematic because otherwise, it might have viscous consequences, since it could be interpreted wrongly and on the other hand, being systematic does not imply that all members of the group must be terminated to meet this condition; and second, there must be a special intention. This is perhaps the most important condition. So the acts in article 6, must be done consciously, with special intention to destroy a certain group; and third, one of these acts mentioned in article 6 must have been committed. In other words, these are not examples of possible actions but specific acts.¹¹⁹

Moreover, these acts could be divided into three categories. First, physical crimes, namely murder, serious bodily harm; second, biological crimes such as preventing birth etc. and third, cultural genocide. The concept of cultural genocide is derived from the concept of genocide itself. “It is often said that what distinguishes genocide from all other crimes is its mental element, described as ‘*dolus specialis*’. In effect, all three crimes that are defined by the Rome Statute provide for prosecution for killing or murder. What sets genocide apart from crimes against humanity and war crimes is that the act, whether killing or one of the other four acts defined in article 6, must be committed with the intent to destroy in whole or in part a national, ethnic, racial or religious group as such.”¹²⁰ However, according to article 6, it should not matter whether the termination as the ultimate goal of the perpetrator is achieved and accomplished, rather it is only important that one or some of these acts have been committed with special intention.

¹¹⁸ Available at:

http://legal.un.org/icc/statute/99_corr/cstatute.htm

¹¹⁹ for more information, see:

Hieramente, Mayuel, “*The myth of International Crimes: Dialects and international criminal law*”, Geottingen Journal of International Law, 2011, Vol. 3, No. 2,

¹²⁰ Schabas, A. William, “*An introduction to the International Criminal Court*”, Cambridge University Press, 4th Ed, 2011, p. 102

2.2.2. Cultural Genocide

Drafting the CPPCG had three major phases. First, UN Secretary provided a draft¹²¹ by the assistance of Raphael Lemkin, Vespasian Pella and Henri Donnedieu de Vabres. The goal was to only present new concepts to make it easier for the UNGA; second, this draft was reviewed by an ad hoc committee which was formed by United Nations Economic and Social Council¹²²; and third, the reviewed text was a ground text for negotiations in sixth committee which agreed upon the text to be ratified in the UNGA.¹²³

To Lemkin, genocide was committing systematic and organized acts in order to destroy fundamental aspects of the lives of national groups; to destroy the group itself. Mass murder, preventing life, such as preventing birth, putting lives in danger or enslavement etc.¹²⁴ However, after ratification, the concept of Genocide was not the same as in the draft. In other words, some specific aspects were different from what the first committee had in mind. The concerns were about the domain of the definition and concept.¹²⁵

As mentioned before, the first definition in the draft was a broad definition covering physical, biological and cultural genocide. The final decision in the sixth committee was to exclude cultural genocide. “Cultural genocide was the most troublesome of the three, because it could well be interpreted in such a way as to include the suppression of national languages and similar measures. The drafters of the Convention considered that such matters were better left to human rights declarations on the rights of minorities.”¹²⁶ However, the committee accepted, as an exception, that “forcibly transferring children of the group to another group” remain in the Convention¹²⁷ and to be punishable.

¹²¹ Available at:

http://www.un.org/ga/search/view_doc.asp?symbol=E/447

¹²² ECOSOC

¹²³ For more information, see:

<http://legal.un.org/avl/ha/cppcg/cppcg.html#>

¹²⁴ Fawcett, Brian, “*Some Questions and Issues about the new Nationalism*”, *Journal of Canadian Studies*, 31, Nov 1996, pp. 189-92

¹²⁵ These concerns were also visible in ICTR and ICTY where they intended to prevent decreasing the effect of the concept by interpreting it in a wide scope, in order to most effectively protect groups from systematic and gross violations of their rights and lives. For more information, see:

Schabas, A. William, “*An introduction to the International Criminal Court*”, Cambridge University Press, 4th Ed, 2011

¹²⁶ Schabas, A. William, *idem*

¹²⁷ This is more of a cultural act rather than physical. In other words, although there must be a physical act to forcibly transfer children from one group to another, however, it is more of a cultural act to change the identity of the children as one of the most obvious aspects of their lives as members of certain groups. For more information, visit:

In UNGA session in 1946, when discussing about the concept of Genocide and the possibility of the Convention, it was said that most damages are done in cultural forms.¹²⁸ Therefore, in the 3rd section of the first Article of the draft of the Convention, any act with intent to destroy the language, religion or culture of a national, ethnic, religious or racial group was prohibited. According to this provision:

“3. Destroying the specific characteristics of the group by:

- a. Forced transfer of children to another human group;
- b. Forced and systematic exile of individuals representing the culture of group; or
- c. Prohibition of the use of the national language even in private intercourse; or
- d. Systematic destruction of books printed in the national language or of religious works or prohibition of new publications; or
- e. Systematic destruction of historical or religious monuments or their diversion to alien uses, destruction of documents and objects of historical, artistic, or religious value and of objects used in religious worship”¹²⁹, these acts are prohibited.

The prohibition in this provision is because of the relation between these acts and culture. Hence, if culture as an element of unity, is destroyed among a human group, it is highly possible to destroy the physical aspects of that group as well, since the uniting dimension is exterminated. In other words, physical destruction is not the only possible way of committing genocide.¹³⁰ This is exactly

<http://legal.un.org/avl/ha/cppcg/cppcg.html#>

¹²⁸ Robinson, Nehemiah, “*The Genocide Convention: A Commentary*”, New York: Institute of Jewish Affairs, 1960

¹²⁹ https://www.un.org/ga/search/view_doc.asp?symbol=E/447

¹³⁰ It is possible to name some of cultural human rights which are directly or indirectly affecting the lives of the minorities and any State can violate these rights or pressure the right-holders and without any sort of physical destruction, destroy the cultural connection. These rights are:

1. Everyone`s right to take part in their cultural life (Article 15(1) ICESCR)
2. Everyone`s right to Freedom of expression (alongside with the right to religion and the right to assemble in Articles 19 and 29 ICCPR)
3. The right to Education (Article 13(1) ICESCR)
4. The liberty of parents, or legal guardians to choose their children`s education (Article 13(3) ICESCR)
5. The right to protect and preserve scientific, literary or artistic production (Article 15(1) ICESCR)
6. The right to economic, social and cultural development (Article 1(2) UNESCO Declaration and Article 22(1) African Charter on Human and Peoples` Rights)
7. The right to respect for identity, traditions, language and cultural heritage (Article 19 Algiers Universal Declaration of the Rights of Peoples 1976)
8. The right not to impose culture (Article 19 Algiers UDPR 1976)
9. Everyone`s right to artistic, historical and cultural wealth (Article 14 Algiers UDPR 1976)
10. The right to equally enjoy humankind common heritage (Article 22(2) ACHPR)

Cited in Blake, Janet, “*Taking a Human Rights Approach to Cultural Heritage Protection*”, Heritage and Society Journal, Vol.4, pp.199-238, 2001, p. 223

Available at:

<https://www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf>

<http://www.achpr.org/instruments/achpr/#a22>

the reason why States like USA were against such provision. According to them, these rights should be included in UDHR.¹³¹ When the draft was being reviewed in the sixth committee, Britain argued that the concept of cultural genocide is so vague that turns the whole concept to something completely meaningless. On the contrary, Eastern bloc and Middle Eastern States were arguing that both cultural and physical genocide were two sides of the same coin, when it comes to destruction of the groups. In this regard, Pakistan deputy considered physical genocide to be part of cultural genocide. In his opinion, killing members of a group is one of the methods of exterminating a cultural, linguistic or religious group.

The CCPR in its General Comment no. 23, in accordance to Art. 27 on the rights of minorities, states that “the right of individuals belonging to a linguistic minority to use their language among themselves, in private or in public, is distinct from other language rights protected under the Covenant. In particular, it should be distinguished from the general right to freedom of expression protected under article 19.”¹³² So the committee observes the logic of this article in preserving and protecting the group. In other words, the existence of the group is necessary as the rights of the individuals are embodied by being a member in such racial, religious or linguistic groups. Therefore, it is highly significant that State-Parties protect the ‘identity of the group’.¹³³

Lemkin himself was supportive of the existence of the concept of cultural genocide as a punishable crime. In his opinion, the groups with cultural similarities need their unique identity in order to perpetuate their existence. Therefore, the right of the group to their cultural continuation has a moral justification as well as the value they add up to human kind through the diversity they bring

https://www.algerie-tpp.org/tpp/en/declaration_algiers.htm

<https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>

¹³¹ Articles 2, 16 and 18 of UDHR

Article 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 16: (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. (2) Marriage shall be entered into only with the free and full consent of the intending spouses. (3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 18: Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Available at:

http://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf

¹³² Available at:

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f21%2fRev.1%2fAdd.5&Lang=en

¹³³ Blake, Janet, *ibid*, p.232

to the world.¹³⁴ Hence, the destruction of the cultural diversity is as dangerous as physical destruction of the groups.¹³⁵ The Nuremberg Tribunal, to some extent, confirms Lemkin's belief on this. In 'Greifelt case', the Tribunal states¹³⁶: "the systematic plan of genocide in order to destroy ethnical groups was a plan committed through murder and extermination and suppression of groups' characteristics."¹³⁷

In order to reach to an agreement, the drafters in the sixth committee decided to define Genocide as acts of necessarily physical and omit the cultural genocide.¹³⁸ Hence, article 2 was repeated in ICTY and ICTR Statute, as well as Rome Statute and the Draft Code of Crimes against the Peace and Security of Mankind¹³⁹, without adding cultural genocide to international crimes. However, it is important to note that such conventions and codes are affected by the rivalry ideological disagreements and conservative negotiations and it was expected that cultural genocide and universal jurisdiction should have been omitted.

Despite excluding cultural aspect of genocide, there have been several cases in different levels, where the courts have referred to this concept. Therefore, "it can be argued that a contemporary interpreter of the definition of genocide should not be bound by the intent of the drafters back in 1948. The words 'to destroy' can readily bear the concept of cultural as well as physical and biological genocide, and bold judges might be tempted to adopt such progressive construction. Recent decisions of the ICTY¹⁴⁰ and of the German Constitutional Court¹⁴¹ suggest that the law may be evolving in this direction. Other Judgments including the February 2007 ruling of the

¹³⁴ idem

¹³⁵ For more information, see:

Lemkin, Raphael, "*Genocide as a crime under International Law*", 1944, American Journal Law, Vol. 41

¹³⁶ This also asserts that the concept of genocide should not be limited to the time of armed conflict.

¹³⁷ United States of America V. Greifelt et al, 13 LRTWC (1948). 1, at pp 36-42

¹³⁸ In this regard, the sixth committee rejected Art.3 of the draft arguing the physical genocide, historically, is different from cultural genocide. The prohibition of cultural genocide could be interpreted to prohibition of assimilation which means that Member-States might not ratify this Convention. Additionally, the prohibition of cultural genocide could lead to rise of false accusations and therefore undermine the goal of this convention in preventing the destruction of groups. The representatives of Sweden and Canada were among those who were worried about false accusations. For more information, see:

http://www.un.org/ga/search/view_doc.asp?symbol=A/760

¹³⁹ Article 17. Crime of genocide A crime of genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group. Available at: http://legal.un.org/ilc/texts/instruments/english/commentaries/7_4_1996.pdf

¹⁴⁰ *Krstić* (IT-98-33-T), Judgment, 2 August 2001, para. 580; *Krstić* (IT-98-33-A), Judgment, 19 April 2004. See particularly the Partially Dissenting Opinion of Judge Shahabuddeen, which was followed in *Blagojević et al.* (IT-02-60-T), Judgment, 17 January 2005. Cited in Schabas, A. William, *ibid.*

¹⁴¹ *Nikolai Jorgic, Bundesverfassungsgericht* (Federal Constitutional Court), Fourth Chamber, Second Senate, 12 December 2000, 2 BvR 1290/99, para. (III)(4)(a) (aa). Cited in Schabas, A. William, *ibid.*

ICJ¹⁴² adopt a more restrictive interpretation.¹⁴³ In any event, evidence of ‘cultural genocide; has already proven to be an important indicator of the intent to perpetrate physical genocide.^{144,145} Supreme National Tribunal of Poland used the term cultural genocide for the first time in Greiser case and convicted the perpetrators to “invasion to the right to life of groups and attack on their right to culture and identity”.¹⁴⁶ In addition, the Court stated in another case that “regarding the systematic extermination of the Jews in Poland, Polish people have witnessed all characteristics of Genocide in its biological aspect as well as their cultural life destruction.”¹⁴⁷

ICTY in Krstic case, raised the question whether the committed crimes on cultural aspects, could be considered as genocide. The Tribunal believes that “physical destruction of a group is the most obvious method of genocide. However, by deliberately targeting their culture and identity, in order to exterminate the group as a separate part of the society is another method.”¹⁴⁸ However, despite all these progressive and revolutionary ideas, the ICJ in Bosnia case against former Yugoslavia in 1993, in a more or less similar judgment to ICTY, refers to Krstic case and states: “even in International Customary Law, despite the recent improvements, acts of Genocide are limited to those, which aim to physical and biological destruction of the members of the group.”¹⁴⁹

The most substantial obstacle in the way of recognition and acceptance of cultural genocide in international law and its criminalization is the States` policies toward minorities. For example, policies such as assimilation or integration are applied, especially after the WWII, in order to control minorities and attract them to the majority. Unfortunately, there is no known pattern in States` approach and their political model. In other words, on the one hand, France, as a democratic State, applied assimilation policies in its third republic under the unification code. On the other hand, China, as a communist State, also applied the same policy. States such as USA, Canada,

¹⁴² *Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, 26 February 2007, para. 187. Cited in Schabas, A. William, *ibid*

¹⁴³ *Brdjanin* (IT-99-36-T), Judgment, 1 September 2004. Cited in Schabas, A. William, *ibid*

¹⁴⁴ *Karadžić and Mladić* (IT-95-5-R61, IT-95-18-R61), Consideration of the Indictment within the Framework of Rule 61 of the Rules of Procedure and Evidence, 11 July 1996, para. 94. Cited in Schabas, A. William, *ibid*

¹⁴⁵ Schabas, A. William, *ibid*, p.102

¹⁴⁶ *Poland vs. Greiser*, 13, LRTWC, (1949), Vo at 71-4 and 105 (Supreme national tribunal of Poland)

¹⁴⁷ *Poland vs. Goeth*, 7, LRTWC, (1946), Vo at 61-4 and 87 (Supreme national tribunal of Poland)

¹⁴⁸ *Krstic Trial Judgment*, Para 576

This is where, as mentioned before, the Tribunal`s statement implies that cultural genocide could be an indicator of the intent. In this regard, Judge Shahabuddeen, in his dissenting judgment, states that the “Genocide Convention protects the group, which is formed by some intangible characteristics that unite a group of people as an interdependent social unit. Therefore, if these characteristics are destroyed, it is not right to say since it is not a physical genocide, hence it is not feasible to consider it as genocide.”

Available at: *Krstic, Appeals judgment*, dissenting judgment of Judge Muhammad Shahabuddeen, at Para. 51

¹⁴⁹ *Judgment of 26th February 2007*, <http://www.icj-cij.org/files/case-related/91/091-20070226-JUD-01-00-EN.pdf>, p.143 at para. 334 and p.83 at para. 190 also visit *Judgment of 26th February 2007*, <http://www.icj-cij.org/files/case-related/91/091-20070226-JUD-01-00-EN.pdf>, p.124 at para. 292 and <http://www.icj-cij.org/files/case-related/91/13273.pdf> and <http://www.icj-cij.org/files/case-related/91/7199.pdf>

Iran, Germany, Soviet Union, Former Yugoslavia and Turkey are among those States who have suppressed minorities under justifications such as national security. However, all these States claim that they are aiming for integration and not cultural genocide, although, in the end, the result of both could be same and it will lead to destruction of cultures and diversity in societies.

2.2.3. Linguistic Genocide

*“There`s nowhere left to hide
In no one to confide
The truth runs deep inside
And will never die
Sing for absolution
I will be singing
Falling from your grace
Our wrong remain unrectified
And our souls won`t exhumed”¹⁵⁰*

As mentioned before, there are three different ways to destroy the language of a group, as their existential prerequisite. The reason for emphasizing on the existence of the group is because any group with distinguishing characteristics such as culture, identity, language etc. can potentially be a Nation-State.¹⁵¹ First, physical genocide; second, linguistic genocide; and third, making a language invisible. The latter is applicable when the power labels a language as accent or dialect of another language, in most of cases, the official language. Therefore, if a minority group or

¹⁵⁰ Muse, *“Sing for absolution”*, From the album “Absolution”, 2003

¹⁵¹ It is not the intention of this work to go further in this direction. However, in this paradigm, any minority or indigenous peoples can become, potentially, a Nation-State. In other words, according to classic definition of Nation-State, since the minorities and especially the indigenous people, have population and territory, if in any case, they can gain their autonomy and be able to apply sovereignty legitimately over the population and territory, there should not be any obstacle in order to call them Nation-State. However, first, it might have consequences such as false claims. Second, this idea can only be considered within the Self-Determination discourse, which is currently only for indigenous peoples and it requires another work to elaborate on the possibility of this right for minorities. Anyhow, in theory, which is still highly debatable, as groups can acquire cultural autonomy within internal self-determination discourse, these groups have the potential to be called Nation-State. A very recent, and of course an exception in international law, is the State of Kosovo.

indigenous people, have the possibility of transferring their language and culture, in fact, they have the possibility to reproduce themselves as that group and who they are. One of the main reasons that States commit linguistic genocide is exactly because of this aspect of their existence. In other words, by destroying a language, as the quintessential of culture, the reduction of speakers may lead to the reduction of the population of that group, as they have lost their identity.¹⁵²

The concept of linguistic genocide, comes within the cultural genocide discourse. The concept was introduced in Art 1(3) of the draft of the CPPCG.

- a. “Prohibition of the use of the national language even in private intercourse; or
- b. Systematic destruction of books printed in the national language or of religious works or prohibition of new publications; or
- c. Systematic destruction of historical or religious monuments or their diversion to alien uses, destruction of documents and objects of historical, artistic, or religious value and of objects used in religious worship”¹⁵³, these acts are prohibited.”¹⁵⁴

There are several interesting points in this provision. First, unlike physical genocide, committing linguistic genocide does not necessarily require physical destruction of the speakers; second, the special intent,¹⁵⁵ according to the holistic perspective of the Convention, is required; and third, the usage of the word ‘or’ indicates that committing even one of these acts, like act of genocide, is enough to consider the act as a crime regardless of whether the perpetrator has been successful in committing all or just one.

In any case, as we already know, this provision was not ratified and was not included in the Convention. However, it presents a definition of linguistic genocide which is also used to some extent, in UNDRIPS.¹⁵⁶ Moreover, as unfortunately there is no consensus in this regard, it could be a solution to provide an optional protocol in order to pave the way for improvements in the light of contemporary developments in international law and international criminal law.

Now the question rises that how do States perpetrate linguistic genocide? As we know, the States, as the owners of power and authority, can control economic, cultural, political and social waves through public and general policies in the society. In other words, the States can create a social

¹⁵² Skutnabb-Kangas, Tove, op cited, p. 218

¹⁵³ https://www.un.org/ga/search/view_doc.asp?symbol=E/447

¹⁵⁴ Official Records of the General Assembly, Third Session, Part I, Sixth Committee, 83rd meeting

¹⁵⁵ We know that it is quite difficult to prove *dolus specialis* even in physical genocide. However, considering the ICTY judgment, “Indications of such intent are rarely overt, however, and thus it is permissible to infer the existence of genocidal intent based on ‘all of the evidence taken together’, as long as this inference is ‘the only reasonable [one] available on the evidence’.” (Tolimir, IT-05-88/2-T, Trial Chamber, Judgment of 12 December 2012, para. 745.)” cited in Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia), Judgment, I.C.J. Reports 2015 para. 146

¹⁵⁶ Articles 13, 14 and 16 of DRIPS available at: https://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

wave or prevent a cultural wave by adopting certain policies. For example, it is possible to make a minority change their costumes or culture by applying assimilation policies through public education.¹⁵⁷ Thus, the States can adopt such policies directly and indirectly in individual or group level.

2.2.3.1. *Direct Methods of preventing minorities from using their language*

a. Physical Punishment

The best example of this policy, is the situation of Kurds in Turkey. Since the modernization in Turkey, the central government has always tried to integrate Kurds. In this regard, especially in the 90s, the government has suppressed the Kurds by ratifying laws, imprisonment, torture and fees in order to assimilate the ‘mountain Turks’.¹⁵⁸ This situation, despite the government’s denial, is still going on to some extent.¹⁵⁹

In the fifth French Republic, based on Art. 75(1), French citizens in Europe and overseas must speak in French.¹⁶⁰ Regarding this law, the Corsican, Occitan, Gallo and Catalan minorities were extremely under pressure.¹⁶¹ The situation of French Catalans is comparable to Catalans in Spain during Franco’s regime.

b. Separation

This method was especially used before the WWII. Scandinavian States, as well as Australia and northern American States were making the minorities sending their children to governmental

¹⁵⁷ Settling nomads in Iran after thousands of years in the past 50 years has been one of the policies with regards to security because the central governments could not control them. Nowadays, the population of nomads have decreased dramatically and the culture of nomads have significantly changed in this regard as they had to adapt themselves with the new lifestyle. Another example is choosing an official language in the Constitution and setting that language also for the education.

¹⁵⁸ Skutnabb- Kangas, Tove, Bucak, Sertac, “*Killing a mother tongue*”, New York, 1996, p.10

¹⁵⁹ According to the report by IDH, a Turkish Human Rights NGO, which was published in April 1999, 3141 cases of torture, 528 cases of forced disappearance, 20974 cases of arresting, 1526 murdered civilians, 733 cases of detainees have been murdered and 315 people have been executed. For more information on this, visit:

<http://ihd.org.tr/en/index.php/category/c38-reports/c17-special-reports/>

<http://ihd.org.tr/en/index.php/2008/03/17/summary-tables/>

¹⁶⁰ Article 75-1: (a new article): "Les langues régionales appartiennent au patrimoine de la France" ("Regional languages belong to the patrimony of France"). Also see: Loi constitutionnelle du 23 juillet 2008 (Constitution of 23rd July 2008)

¹⁶¹ For more information, visit:

<http://www.culturecommunication.gouv.fr/Thematiques/Langue-francaise-et-langues-de-France>

The French government has recognized 75 languages in France which have the potential to be a language. This report was provided by experts in 2008 in order to enable the central government to ratify the ECRML. France has only signed the Charter but has not ratified it yet. For more information, visit:

https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/148/signatures?p_auth=NsUUecW9

schools so that they can have better education and less expenses. In such schools, children had to speak in the official language.¹⁶²

Although this method is not being used frequently anymore, however, States such as Iran and Syria are still using this in provinces with minorities.

2.2.3.2. Indirect Methods of preventing minorities from using their language

a. Through the structure

One of the most obvious methods is choosing a monolingual education system. In this method, students have to read and study books, which are provided by the ministry of education in the official language. In other words, students do not have time to practice and learn their own language as they spend most of their time in school and studying what they have learned after the school time.¹⁶³ This method is being used for refugees and immigrants in the camps nowadays for integration purposes. It is not difficult to agree that the immigrants need to communicate via the new language. However, one must also note that this policy is being used to integrate the newcomers into the society. In other words, it can also be abused by power in the name of security and integration. It is still understandable unless this integration leads to non-diverse, homogenous society.

b. By disappearing the language

This method is also related to monolingual systems. As mentioned before, the power can label a language as dialect or accent and meanwhile, declare a language, which is usually the language of the majority, as the official language which must be used in official environments, including in education.

It is important to mention that these methods are only examples. They are usually interconnected and being applied simultaneously in the society. However, we should differentiate between linguistic genocide and death of language. In other words, whenever a language disappears, it does not necessarily indicate that there is linguistic genocide case. Hence, we should first examine the case and consider the contexts. To elaborate further on this, there are three different situations where a language is disappeared. First, when the power, directly or indirectly, destroys a language; second, when the speakers themselves decide to not speak and use their language anymore. Of course the context will help to understand whether this decision has been made under the structural discrimination of governmental policies. If it is not related to such policies and it is solely the decision of the speaker regardless of such imposed situation, then it is the death of language; and third, when the speaker is trying to speak and learn their language, but the rest of the group,

¹⁶² Skutnabb- Kangas, Tove, op cited, 2000, p. 312

¹⁶³ Skutnabb- Kangas, Tove, ibid, p. 353

including the family, do not want to teach and transfer the knowledge. In this case, like the second one, if the power has nothing to do with such decision, then it is not considered as linguistic genocide. In other words, when the process of disappearance of a language is the result of a volunteer transaction, it is the death of language and not linguistic genocide.¹⁶⁴ In the table¹⁶⁵ below, it is explained how these two paradigms are different.

¹⁶⁴ However, most of the time, such decisions are made due to structural discriminations towards minorities.

¹⁶⁵ Skutnabb- Kangas, Tove, *ibid*, p. 371, table 5.3

Linguistic genocide and linguistic imperialism versus language death and liberalist modernization paradigms/ theories	
Linguistic genocide and linguistic imperialism	Language death and liberalist modernization
Analyses power relations between the language communities	Does not analyze power relations between the language communities and objects to others doing so
Sees languages as created by and therefore influenced by people	Sees languages as organism with natural life-span
Discusses presence of, support for, and consequences in relation to both languages	Discusses either the dominant language or the dominated languages (archivist endangered languages tradition)
Wants to change the unequal relations between languages	Wants to document the languages and make records of them before they die
Discusses the relationship between languages including mutual influence	Does not discuss the relationship between languages, or does it only in linguistic, descriptive terms
Description in theory-driven and not sufficient in itself but basis for analysis	Descriptions technical and atheoretical; or theories come only from (socio)linguistics
More multidisciplinary; analysis impossible without using at least social and political analysis in addition to (socio)linguistics	Less multidisciplinary
More primordially oriented vis-à-vis the roles of languages	More instrumentally oriented
Sees a qualitative difference between the roles of the mother tongue and later languages	Sees a quantitative only between the mother tongue and later languages
Emphasizes the difference between additive and subtractive learning of later languages	Does not differentiate between additive and subtractive learning
Supports additive second and foreign language learning and multilingualism	Sees subtractive second and foreign language learning as instrumentally necessary for modernization, and as beneficial for learners
Sees in most case language shift as enforced	Sees language shift as voluntary, based on cost-benefit analysis by speaker

2.2.4. The responsibility of the States to protect Culture

The concept of ‘responsibility’ is divided into two categories of civil and criminal responsibility. According to the definition of international responsibility, provided by International Law Commission, every relation in international law that is entailed from an internationally wrongful act, regardless if this relation is between two States or between a State and another subjects of international law.¹⁶⁶

The logic of responsibility is based on the public belief that with power comes the responsibility. Nowadays, despite the existence of ICC, criminal responsibility in international law is still an exception. In other words, whenever there is a question of responsibility, the principle is that it is a question of civil responsibility, unless it is explicitly about criminal responsibility.

With regards to genocide, the UN has been criticized in several cases for its inactivity and inability of preventing or punishing the perpetrators. In this regard, the Resolution adopted by UNGA on 16th September 2005, the heads of States announced in paragraph 138, “each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means.”¹⁶⁷ The “responsibility to protect” approach against gross violations of human rights, especially genocide, has been approved by international community as a strategic principle, which is based on obligations regarding the sovereignty of the States, the responsibility and function of the UNSC to preserve peace and to protect international security. In this regard, obligations arising from human rights oriented convention, the Genocide Convention, Geneva Conventions and international humanitarian law principles, the Rome Statute, national laws and regulations and jurisprudence of States, regional organizations are framing the limits of responsibility.

According to this, the States must protect, fulfil and guarantee human rights, otherwise, they have responsibility. One of these rights is the right to culture, which has been recognized in several human rights documents, such as ICCPR and ICESCR. Regarding this, in 2005 UNESCO pushed

¹⁶⁶ For more information, see: Articles 1-3 of UNGA Resolution 56/83 available at: <https://undocs.org/A/RES/56/83> and: http://legal.un.org/ilc/texts/instruments/english/draft_articles/9_11_2011.pdf and <https://www.un.org/law/cod/sixth/56/docs.htm>

¹⁶⁷ Available at: https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_60_1.pdf <https://research.un.org/en/docs/ga/quick/regular/60>

a convention on the Protection and Promotion of the Diversity of Cultural Expressions¹⁶⁸ to be ratified in the UN. Concerning the preamble of this convention, “being convinced that cultural activities, goods and services have both an economic and a cultural nature, because they convey identities, values and meanings, and must therefore not be treated as solely having commercial value”, cultural activities express human identity. Moreover, “being aware of UNESCO’s specific mandate to ensure respect for the diversity of cultures and to recommend such international agreements as may be necessary to promote the free flow of ideas by word and image” and “referring to the provisions of the international instruments adopted by UNESCO relating to cultural diversity and the exercise of cultural rights, and in particular the Universal Declaration on Cultural Diversity of 2001”, the convention refers to the dangers that might affect a multicultural society. However, the theory of responsibility within UN organizations have had a very narrow concept. In fact, in the framework of UNSC 1674 resolution of 28th April 2006, the responsibility has been limited to crimes of genocide, war crimes, ethnic cleansing and crimes against humanity.¹⁶⁹ Thus, these restricted definitions can actually affect the cultural diversity.¹⁷⁰ Therefore, the question rises whether there is a possibility to consider the responsibility to protect the culture as Jus Cogen in international law.

To answer this question, we must first know what Jus Cogen is. According to Art. 53 of the Vienna Convention on the law of treaties, Jus Cogen is “a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.” And it continues in Art. 64 that “If a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and terminates.”¹⁷¹

It appears that UNESCO’s convention on the Protection and Promotion of the Diversity of Cultural Expressions has considered such characteristic for protection of culture by the States. Of course this is not even close to what we know from Jus Cogen. However, we can ask the question in a negative way. In other words, since in almost all human rights conventions and declarations, ‘Culture’ has been considered as the “human essential characteristic”, does it not threaten the human security if culture is threatened? If the culture is under attack and groups want to defend

¹⁶⁸ Available at:

http://portal.unesco.org/en/ev.php URL_ID=31038&URL_DO=DO_TOPIC&URL_SECTION=201.html

¹⁶⁹ For more information, visit:

<https://www.un.org/ruleoflaw/blog/document/security-council-resolution-1674-2006-on-protection-of-civilians-in-armed-conflict/>

¹⁷⁰ It is worthy to mention that such endeavors by UNESCO or other UN organizations, regarding the importance of culture and cultural heritage, have tried to create a secure space for different cultures especially after incidents such as the explosion of Buddha Statue by Taliban in Afghanistan.

¹⁷¹ Available at:

<https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf>

themselves and their culture, the sovereignty of that State in defending its citizens and protecting them is not threatened? However, it is obvious that in the light of contemporary international law, prevention of genocide is within the spectrum of Jus Cogen. As culture is related to identity, and destruction of culture leads to destruction of identity, it seems that responsibility to protect the culture falls within this paradigm as well.

So far, the civil responsibility has been explained. However, it is extremely difficult to explain the concept of criminal responsibility. Anyhow, although the international community has been more or less successful in defining civil responsibility, it has not been even close to define criminal responsibility of the State. In other words, so far, the criminal responsibility is only directed towards individuals and the States only are bound to reparation and restitution. But it does not mean that they do not have civil responsibility.¹⁷² It seems that currently the biggest obstacle in the way of responsibility of the States, is their 'sovereignty'. As a consequence, on the one hand, there is no jurisprudence in international level with regards to criminal responsibility of the States. And on the other hand, no convention, neither in international nor in regional level, has referred to criminal responsibility. Therefore, maybe it is feasible to say that regarding cultural and linguistic genocide, we can refer to the same provisions in Rome Statute. In other words, criminal responsibility is directed towards the individuals and States have civil responsibility.

¹⁷² Art. 25(4) of Rome Statute: "No provision in this Statute relating to individual criminal responsibility shall affect the responsibility of States under international law."

3. Minorities and Language

"It does not take a majority to prevail... but rather an irate, tireless minority, keen on setting brushfires of freedom in the minds of men."¹⁷³

3.1.1. Mother tongue as Identity

To be able to enlighten someone with existential conditions, conflicts and problems against factual structures is very significant mean in order to fight power and acquire freedom. Language, according to its definition and its direct relation with culture, cannot remain neutral in this process. In other words, language is always a subjective-interpretive tool that has a dual facet function. It can be used to control and it can be used to resist.

Two major groups argue about language and the role of mother tongue. The instrumentalists believe that language is merely a tool for communication and there is no difference between mother tongue and any second language. In their view, any language could have the function of mother tongue, since it is based on education in the society, which can be different in various context. On the contrary, Primordial theorist believe that language is like the skin for humans, therefore, it is determined before the person is born in a group. In other words, just like when we cannot determine our gender, appearance or intelligence, we cannot determine our language as well. many of primordialists support the Sapir-Whorf theory. However, few also believe that language does not completely determine the world-view of individuals, but it has an undeniable impact on the way individuals understand and interpret their surrounding environment.¹⁷⁴

Mother tongue is the first manifestation of anyone`s culture. In other words, every newborn understands, learns and interprets the concepts through their mother tongue. In fact, all cultural aspects of a group are transferred through mother tongue. Thus, alongside the language, the membership of the group is also transferred. Therefore, mother tongue and identity are two sides of the same coin. The individual is born in a group and inevitably learns the language and the culture of that group. Of course, such process is fluid and is subject to change depending on the economic, political, social and cultural context that they will face in their lives. Such conditions,

¹⁷³ Samuel Adams, one of the four Founding Fathers of the United States, available at: <https://www.americanhistorycentral.com/entries/samuel-adams/view/quotes/>

¹⁷⁴ Skutnabb- Kangas, Tove, *ibid*, pp.133-136

as well as individual's awareness of the significance of mother tongue, affects the identity and the relation between the two.

3.1.2. Creation of 'self' and the 'other'

The first prerequisite of establishment of such paradigm, is that there is a difference and recognition of that difference. In other words, without the existence of 'I' there is no 'you'. Hence, the human relations start from 'I-you' discourse and transforms into 'we-you' relations in higher levels. So, the society is formed through inter-human¹⁷⁵ relations and everyone sees the other through themselves.¹⁷⁶ So accepting the factual existence of individual is dependent upon social relations and the structure of 'alterity' which is logically the same structure as 'selfness'. This means that, while we are 'we' for ourselves, we are 'other' for the others. Moreover, individual identity, I, and collective identity, we, are not characterizing but signifiers of a relation. In other words, for 'I' to exist, not only it is necessary that there is 'you', but also 'I' and 'you' should become 'we'. "As well as every society that is formed and reproduced through the dual multiplication of I and you in internal level, global community as a whole, is also formed and reproduced through the dual multiplication of us and you in international level."¹⁷⁷

On one hand, the requirement for the existence and continuation of such relation is the language. On the other hand, destruction of one of these dual binaries, would lead to the destruction of the relationship. In other words, the inter-human relation will be limited to individual 'I-You' relationship. Of course, the pre-assumption of such idea is that the power is equally distributed among the two groups. However, in reality, the power discourse between the majority and the minority, is a top-down paradigm. In other words, within the ideological discourses, there is a hierarchic structure. This means that, while we create a positive image of ourselves, we create a negative image from the other. So, as the image of us is self-evidentially positive, the other must try to either become us or prove to be positive.¹⁷⁸ Therefore, as long as the other is 'different', the discourse is not equal. In this process, language has a significant role in order to make it psychologically, mentally and morally justiciable and legitimate.¹⁷⁹

¹⁷⁵ The German word "zwischenmenschlich" addresses best the concept.

¹⁷⁶ For more information, see:

Buber, Martin, "*I and Thou*", Volume 15 of Scribner Library, 2nd Edition, 1958, California

¹⁷⁷ Dascal, Marcelo, "*Endangered Languages*", Tel Aviv: Lester & Sally Entin Faculty of Humanities, Tel Aviv University, manuscript, 1996, pp.26-38

¹⁷⁸ Said, Edward. W, "*Orientalism*", Phanteon Books, 1978, The University of Michigan, p. 276

¹⁷⁹ Such ideological discourses are also visible in other paradigms. For instance, in race or gender discourse, being a white heterosexual male is the representative of "us", the civilized and progressive while the colored and females or anyone who is not "us", is the "other" uncivilized.

3.1.3. Identity and the right to self-recognition

Every individual, regardless of the changes they have through time, has an individual identity by which they define themselves. Our identity, which is the linkage between us and the others, is both horizontal (contemporary and in-moment) and vertical (through time). Our identity is horizontal towards those who have common characteristics, such as mutual language, with us and is vertical towards ourselves in the time and changes. In other words, the identity is fluid and continuously changing. Moreover, everyone also has a collective identity which is also fluid based on how we define the group and how the other members define it through time. This means that the content of the cultural identity of a group might go back to 50 to 200 years ago. In fact, identity is continuously shaping and reshaping the boundaries by which we differentiate ourselves from the others. However, despite such persistent and ongoing change, we do not consider ourselves different from our past selves. This phenomenon is derived from the fact that we preserve and pertain to our historical relations and the structure of selfness. Also in collective level, even if the cultural content of the group is changed, the group is still the same group. The connecting loops of past identity and the transformed identity are safeguarded through language and kept connected by it.

Moreover, identity is a multi-dimensional aspect. In other words, one can be a woman, a social activist, colored-skin, lawyer, mother, Italian etc. simultaneously. Every one, in every time, is a member of a society, group, nation, generation etc. Also, every one might be a member of several groups. Most of such individual identities coexist without conflict. There might be different emphasis on different identities and it is also possible that one or several identities be denied or rejected.¹⁸⁰ However, ethnic and racial identity, is an adventitious aspect that cannot be voluntarily changed. For example, the name of the group is the symbol of the group and the individual members of the group and an attempt to change that name, because of its historical connotations, is an attempt to build a new identity. But if it is a result of an imposed situation and condition, then it indicates that the individual is unable to define themselves due to power issues.

On the one hand, everyone should be able and should have the freedom to choose their own identity, but on the other hand, the power relation is a determining factor in that process. In other

¹⁸⁰ When someone is aware of the identities they have and their contextual consequences, they might choose which identity they want to have and which one they do not. In other words, for instance, when someone knows that their religious identity might have negative consequences in terms of enjoying social advantages, they might want to reject that identity or try to change the so-called negative aspects of that identity to gain more social acceptance through redefinition of that identity. However, it is highly significant to remember that such interpretation of identities is always affected by the power discourse between the majority and minority and in general, it is dependent upon the in/equal distribution of power relation.

words, the individual should have the opportunity and the ability to negotiate with the power. For example, as mentioned before, the central government in Turkey, identifies the Kurds as the 'Mountain Turks' while the Kurds never intend to identify themselves as such. Or when a government or an international organization calls a groups as 'population', 'group' or 'minority', this identification has legal consequences and it might entitle a group to self-determination or deny them another right. Therefore, the process of identification is not merely a symbolic act but an act with legal consequences. Thus, our collective identity is a product of a relative relationship between us and the power. Therefore, it is not an equal relation and it changes through the power relations.¹⁸¹

3.1.3.1. Identity in the linguistic context

Language has become a very important tool in order to resist against the power hegemony in different dimensions, such as political, educational and mental. Language is a very significant aspect in recognition process, regardless of this recognition for minorities and indigenous people or if it is to redefine the newborn States in former Soviet Union. It is desirable for the groups to be able to use and instrumentalize their language to its maximum potential. It does not matter if this self-determination and maximization of language use and cultural autonomy is within or during colonization or not. It does not matter if a group is seeking independence and is trying to trigger their right to self-determination, internally or externally.

Concerning the fact that, power and control ideologies are announced, applied and reproduced through language, it is clear that nowadays, physical aspects of power are not a requirement anymore. In other words, it is easier to apply power towards minorities or other groups through linguistic structures. This could be a reason that major languages are expanding in the cost of termination of minorities` languages. In a liberal-imperial discourse, the ideas of the majority cannot be conveyed to the minority unless they can also understand the language of the majority, while it is not a reciprocal process. In such modern cultural identity based discourse, the dialogues and intercourses concerning tolerance, preserving, protecting, promoting and developing linguistic and cultural diversity is indispensable and crucial for peace in internal and international level.¹⁸²

¹⁸¹ For instance, Nelson Mandela, was arrested and convicted as a terrorist. However, after the demolishment of the Apartheid, he was considered as a freedom fighter and even became a Nobel prize recipient. In the collective level, SWAPO was also a terrorist group who were later recognized as freedom fighters.

¹⁸² For interesting discussions with regards to power, see:

Foucault, Michel, "*The Eye of Power*" in Alex Farquharson (ed.), *The Impossible Prison. A Foucault Reader* Nottingham Contemporary, 2008

3.1.4. Internal and External Self-determination

The most important aspect of the right to self-determination is its external manifestation in colonial context. In other words, it was first introduced as the most problematic issue of the era. Therefore, such aspect needs the practical support from the State.¹⁸³ Moreover, even its external aspect, initially, has an internal manifestation. In other words, people should be able to pursue their progress and improvement in economic, cultural, social and political aspects. Some also consider another element to its internal dimension. In fact, people have the right to be immune from foreign interfere. In this regard, internal self-determination means that the State should not intervene in the minorities` affairs.¹⁸⁴ In any case, the significance of understanding the right to self-determination is that regardless of its external or internal realization, both are two sides of the same coin.

3.1.4.1. Self-determination and minority rights

Minority rights and the right to self-determination have many things in common. Some believe that in many cases, the rights of minorities is a reward to groups who have been denied from their right to self-determination.¹⁸⁵ This could be seen in ‘Aland Case’.¹⁸⁶ According to the Rapporteurs, the suppression was so gross that it could lead to triggering the right to self-determination.¹⁸⁷ This method meant that external solution would only be used if internal solution was not applicable. Such method is also mentioned in ‘Friendly Relations Declaration’. However, in Aland, it was about the minorities who wanted to join Sweden. In this regard, some States have accepted the “measure of last resort” as a method.¹⁸⁸

Kosovo newborn State declared its independence from Serbia in 18th February 2008. While many States supported them, some were against, such as Russia. In Russia`s view, the right to self-determination is specially for indigenous people in the colonization or foreign occupation context.

¹⁸³ Brownlie, Ian. “*Principles of Public International Law*”. Oxford: Oxford University Press, 6th ed. 2003, p.555.

¹⁸⁴ Alfredsson G, “*Minorities, indigenous and tribal peoples: definitions of terms as a matter of international law*”. In: Ghanea N, Xanthaki A (Ed) “*Minorities, peoples and self-determination – essays in Honor of Patrick Thornberry*”. Martinus Nijhoff, Leiden, 2005, pp 163–172, p. 170

¹⁸⁵ Hannum H, “*Autonomy, sovereignty, and self-determination*”, rev. ed. University of Pennsylvania Press, Philadelphia, 1996, p.6

¹⁸⁶ Commission of Rapporteurs (1921) The Aland Islands Question – Report Submitted to the Council of the League of Nations by the Commission of Rapporteurs LoN Doc. B7 21/68/ 106, p. 28.

¹⁸⁷ Ibid, p. 34

¹⁸⁸ WS Albania, para.81; WS Estonia, p.4; WS Finland, paras.7-8; WS Germany, pp.34-35; WS Ireland, paras.29-30; WS Netherlands, paras.3.6-3.7; WS Poland, para.6.5; WS Slovenia, p.2; WS Swiss, paras.62-63; WS Authors, para.8.40 (note: WS: Written Statement)

Nonetheless, Russia, after the conflict with Georgia, in 26th August 2008, recognized Southern Ossetia and Abkhazia arguing that if the State suppresses the group in a way that their existence is questioned, that any solution is not applicable anymore, that group has the right to self-determination.¹⁸⁹

Therefore, it seems that gross violations of human rights, instability of a State towards minorities and threats will make it feasible for a group to seek their right to self-determination.¹⁹⁰ In ‘Katangese Case’ the right to self-determination was denied by the African Commission, as there was no sign and reliable evidence of gross human rights violations to undermine the integrity of Zaire as a State.¹⁹¹

Having these two cases in mind, on the one hand, if the right to self-determination was not applicable to minorities, then gross violations of human rights as a pre-condition was illogical and unnecessary. It appears that the interrelation between the two is inevitable. Although such interrelation in classic international law seems to be weak, however, the right to self-determination is not limited to decolonization anymore.¹⁹² On the other hand, minorities have collective rights as well as individual rights. The right to self-determination is a collective right. Moreover, many UN resolutions, including UNGA 1541 Resolution, have asserted on the ‘free will of the people’.¹⁹³ On the other hand, self-determination is about participation. In other words, both minority rights and self-determination are individual rights that only have meaning in collective way.¹⁹⁴ However, the relation is in the internal self-determination context.¹⁹⁵

¹⁸⁹ For more information, see:

https://www.rferl.org/a/Russia_Recognizes_Abkhazia_South_Ossetia/1193932.html

<https://www.nytimes.com/2008/08/27/world/europe/27medvedev.html>

¹⁹⁰ Kirgis FL, “*The degrees of self-determination in the United Nations Era*”. Am J Int. Law, 1994, 88:304–310

¹⁹¹ African Commission on Human and Peoples’ Rights (1995) *Katangese People’s Congress v. Zaire* ACHPR Doc. Communication 75/92 1995, para. 6

¹⁹² Castellino J, Gilbert J, “*Self-determination, indigenous peoples and minorities*”. Macquarie Law J 3:155–178, 2003, p.169

¹⁹³ For more information, see:

G.A. Res.1541 U.N. G AOR 15th Sess no.162, UN Doc A/4684 (1960).

G.A. Res.1514, 15 UN. G AOR 15th Sess no.20. 18. at 66 UN Doc. A/4884(1960)

G.A.Res 648.U.N.GAOR 7Sess.Supp.No. 20, at 33, U.N Doc.A/2361(1952)

Opc.No28.at 121, UN Doc.A/2517(1970).

G.A.Res.545 U.N. GAOR, 6 Sess. Supp. No. 20, at 36. UN Doc.A/2219(1952)

¹⁹⁴ Article 28 of UDHR:

“Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.”

¹⁹⁵ Klabbbers J, “*The right to be taken seriously: self-determination in international law*”. Human Rights Q, 2006, 28:186–206, pp. 204-205

3.1.4.2. *The right to language and self-determination*

Common language was one of the most important ways in order to recognize a nation. However, this tool had so many exceptions that it was disregarded soon. Moreover, since this tool was not necessarily protecting their interests, it was also rejected by nations themselves.¹⁹⁶ However, linguistic difference is still one of the most important ways in order to recognize a minority.¹⁹⁷

Regarding the right to self-determination, the emphasis should be on its elements. In other words, it does not necessarily indicate independence in its separation context, but to be free. If a State does not allow a minority to enjoy and express their culture and language, or prevent them from transferring the knowledge and reproduce their language and culture and use them, it might be a reason for the minority to trigger their right to self-determination, if the violations are to an extent that internal solutions are not applicable anymore. Concerning this, it was mentioned before how States can terminate a group in order to destroy them as a potential nation-state. In other words, sometimes the States might commit physical genocide, which is prevented by the CPPCG. However, it is only limited to its physical demonstration and States are basically free to apply integration and assimilation policies, in order to destroy a group without any physical damage. Hence, education policies are extremely significant in terms of preserving and reproducing the identity and the culture of the group.¹⁹⁸ In other words, linguistic rights are not merely about individuals' language skills, but it is about their ability and freedom in choosing their identity, their name and using their language in publications, streets and any other daily routine in private and public.¹⁹⁹

Considering these points, first, the right to self-determination does not solely mean external independence, but it means internal freedom; second, freedom is not necessarily political and it can have cultural, economic and social realization. Of course this also does not mean that if a

¹⁹⁶ Cobban A, “*National self-determination and the peace treaties of 1919*”. In: Augustinos G (Ed) “*The national idea in Eastern Europe – the politics of ethnic and civic community*”. D. C. Heath and Company, Lexington, 1996, pp 36–44. P. 39

¹⁹⁷ Nowadays, in almost every document regarding the language and linguistic rights of minorities, different aspects such as education and general policies are also taken into account. Also, most of linguistic minorities, are recognized through their linguistic difference with the majority. For instance, German minority in Denmark and vice versa. For more information, see:

High Commissioner on National Minorities, “*Hague Recommendations Regarding the Education Rights of National Minorities*”, 1996 and Explanatory Note available at:

http://www.osce.org/documents/hcnm/1996/10/2700_en.pdf

¹⁹⁸ For more information, see:

Para. 63 Language Charter (2010) As published in National Minority Standards – A Compilation of OSCE and Council of Europe Texts, Council of Europe-OSCE, Strasbourg, 2007, pp. 241–293.

¹⁹⁹ Article 27 of CCPR states:

“In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.”

minority is seeking its political freedom, they are not allowed to do so; and third, minorities should be able to be autonomous in using their language and their other cultural aspects.

3.1.5. Cultural and linguistic genocide committed by the States²⁰⁰

Since the concept of linguistic genocide is not accepted and therefore, it is not criminalized, it is not easy to talk about how it has been perpetrated by the States. However, regarding the policies by the States in the past two centuries, demonstrate how it has negatively affected culture and language of minorities.

3.1.5.1. Singapore

The government of Singapore launched a campaign ‘speak Mandarin’ in 1979²⁰¹ in order to encourage Singaporean Chinese to speak standard Mandarin. The problem with this campaign was that most of Chinese did not speak Mandarin as their mother tongue and therefore they had to give up on their mother tongue because it was ‘dialect’ of Chinese. Moreover, all dialects were forbidden in local and national media. Mandarin is one of the four official languages in Singapore today.²⁰²

3.1.5.2. United States of America

In Hawaii, after a coup to overthrow the monarchy, which was supported by the USA troops in order to annex the islands in 1893, the Hawaiian language was banned in schools and it was forbidden to be taught. The law, Act 57, sec. 30 of the 1896 Laws of the Republic of Hawaii states that “the English Language shall be the medium and basis of instruction in all public and private schools, provided that where it is desired that another language shall be taught in addition to the English language, such instruction may be authorized by the Department, either by its rules, the curriculum of the school, or by direct order in any particular instance. Any schools that shall not

²⁰⁰ To present this section, since there is no archive and documentation regarding linguistic genocide, generally I have used three main sources.

<http://evolutionofgenocide118.blogspot.sg/2012/11/killing-language-killing-culture.html>

<http://www.linguistic-rights.org/en/>

and the documentary, “The Linguist” (2008), by Seth Kramer, Daniel A. Miller and Jeremy Newberger

<https://www.rottentomatoes.com/m/linguists>

<https://www.imdb.com/title/tt1172995/>

²⁰¹ For more information, see:

<https://www.mandarin.org.sg/en>

²⁰² Lee Kuan Yew himself, the Prime Minister of Singapore who launched the campaign, admitted that the teaching of Mandarin Chinese in schools went the "wrong way" and that due to his insistence on bilingualism, "successive generations of students paid a heavy price". In June 2010, Lee also said that "Mandarin is important but it remains a second language in Singapore". Channel News Asia, 17 November 2009, Channel News Asia, 26 June 2010

conform to the provisions of this section shall not be recognized by the Department.”²⁰³ As a consequence, in 2001, Hawaiian native speakers were less than 0.1% of the population. It is still a question whether this language will survive.²⁰⁴

3.1.5.3. Japan

The same policy was directed towards Ryukyuan Language in Ryukyu after its annexation to Japan in 1879. The Japanese government adopted assimilation policies especially towards the language. Therefore, students caught speaking Ryukyuan were forced to wear ‘dialect card’ as a method of public humiliation. During the WWII it was officially illegal to speak Ryukyuan.²⁰⁵

Japanese government did the same in Korea before and during WWII. Japanese language was the official language between 1910 and 1945. The Japanese administrative policy shifted more aggressively towards cultural assimilation in 1938 with a new government report advising reform to strengthen the war effort. This left less room for Korean language studies and by 1943 all Korean language courses had been phased out. Teaching and speaking of Korean was prohibited.²⁰⁶ Moreover, Japan’s focus shifted towards cultural assimilation of the Korean people. An Imperial Decree 19 on Korean Civil Affairs entered into force, by which, ethnic Koreans were forced to give up their Korean names and adopt Japanese names.²⁰⁷

3.1.5.4. France

Regarding the policy that was launched in third republic in France, all minority languages were eliminated from French education system. The term ‘La Vergonha’ meaning ‘shame’, is what Occitans call the effects of various policies of the French government on its citizens whose

²⁰³ The Laws of Hawaii, Chapter 10, Section 123, Congress, 1898, United States, U.S Government Printing Office, p. 1-PA23, Retrieved 2017-07-20 available at:

<https://books.google.com/books?id=VSxHAQAIAAJ&pg=RA1-PA23#v=onepage&q&f=false>

²⁰⁴ For more information, see:

Silva, Noenoe, K, “*Aloha Betrayed, Native Hawaiian Resistance to American Colonialism*”, Durham: Duke University Press, 2004, pp. 123-163

<https://www.archives.gov/education/lessons/hawaii-petition>

²⁰⁵ For more information, see:

<http://www.unesco.org/languages-atlas/en/atlasmap/language-id-1975.html>

https://en.wikipedia.org/wiki/Ryukyuan_languages

Takara, Ben, “On Reclaiming a Ryukyuan Culture”, February 2007, Retrieved August 21, 2012. Available at:

<https://web.archive.org/web/20110520141217/http://www.imadr.org/en/pdf/TakaraBen.pdf>

²⁰⁶ Hopfner, Jonathan, “*Moon Living Abroad in South Korea*”, Berkley, CA, Moon Publications, 2009, p.25

²⁰⁷ Ibid

For more information, see:

https://web.archive.org/web/20070928015412/http://www.kstudy.com/japan/html/hwangkook_3.htm

https://en.wikipedia.org/wiki/Korea_under_Japanese_rule

language was other than French.²⁰⁸ *Vergonha* is being made to reject and feel ashamed of one's (or one's parents') mother tongue through official exclusion, humiliation at school and rejection from the media, as organized and sanctioned by French political leaders.²⁰⁹ Such policies still continue to exist in France. It is still a constitutional debate in France. Moreover, France has signed the ECRML, however the government has not ratified it yet.²¹⁰

3.1.5.6. Spain

For Francoist regime, nationalism was the most fundamental basis of the dictatorship. The Spanish language was the key to pave the way for unity in the country. Therefore, the Spanish language was declared as the official language. Except from certain languages, such as Catalan or Basque, using other minority languages in public were either banned or discouraged. Even the Catalan language was forbidden in governmental offices during 1940s. Moreover, use of non-Castilian names for newborns was forbidden in 1938, except for foreigners. In the regime's discourse, languages other than Spanish, except for Basque which was so different that it could not be recognized as a dialect, were not 'developed' enough to be 'real languages'. However, even the Basque language was reduced to rural language, unfit for modern discourse.²¹¹

3.1.5.7. Kurdish language

Although Kurdish language is one of the official languages in Iraq, however, it still faces many discrimination and suppression in Syria, Turkey and Iran. In Syria, publishing in Kurdish is forbidden.²¹² In Turkey, since 1990s when the central government launched its assimilation policies, it placed severe limitations on the language, including prohibition of Kurdish in education and media. Meanwhile, Kurds were known as 'mountain Turks' and any kind of cultural expression except for Turkish general culture was criminalized.

²⁰⁸ for more information, see:

Joubert, Aurelie, "A *Comparative Study of the Evolution of Prestige Formations and of Speakers*" Attitudes in Occitan and Catalan", 2010

²⁰⁹ Barbour, Stephen, Carmichael, Cathie, eds, "*Language and Nationalism in Europe*", Oxford, Oxford University Press, 2000, p.75

https://en.wikipedia.org/wiki/Language_policy_in_France

²¹⁰ The famous quote from Georges Pompidou in 1972, who was ironically a native of Occitan-speaking region, stated that "there is no place for minority languages in a France destined to make its mark on Europe." Moreover, Sarkozy in one of his pre-election speeches, explicitly stated "I don't want a judge with a historical experience of the issue of minorities different from ours deciding tomorrow that a regional language must be considered as a language of the Republic just like French."

²¹¹ For more information, see:

Balfour, Sebastian, "*Spain from 1931 to the Present*", edited by Carr, Raymond, Oxford, Oxford University Press, 2000 and Baker, Colin, Jones, Sylvia, P, "*Encyclopedia of Bilingualism and Bilingual Education*", Multilingual Matters, 1998, pp.285-286 and visit https://en.wikipedia.org/wiki/Language_policies_of_Francoist_Spain

²¹² <https://web.archive.org/web/20071015034722/http://web.amnesty.org/wire/March2005/Syria>

<https://www.al-monitor.com/pulse/originals/2015/11/syria-kurdistan-self-governance-teach-kurdish-language.html>

In Iran, the use of Kurdish language was forbidden in Reza Shah time, as a policy towards the unity of the country and sign of nationalism. These policies were changed a little after the revolution even though the official language remained Farsi. The Kurdish language is used in local media and rarely in newspapers but it is not used in public schools and public education in general. Moreover, not only Kurdish, but other minority languages such as Turkish, Baluchi, Lori etc. are under pressure and it is forbidden to teach these languages in schools.²¹³

In general, in every country with linguistic minorities, such policies have been implemented in order to assimilate and integrate the minorities. Most of the time, the justifications have been done under nationalism, security and unity. In Britain, suppression of Welsh and Scottish language by ‘Welsh Stick’ in order to stigmatize the speakers, ‘Dog tag’ in Taiwan for non-Mandarin speakers and even ‘forced oralism’ in order to suppress sign languages in the US are various methods and policies in order to suppress minority languages.

3.1.6. Case Law: Cultural genocide

As mentioned before, there is several references to this concept in various human rights documents, although at first glance, such references are not directly. Moreover, in several conventions, it is explicitly prohibited to discriminate based on race, religion, language or culture. In this regards, Georgia and Ukraine have requested for provisional measures from the ICJ, concerning Russia’s activities, in accordance to the Convention on Elimination of All Forms of Racial Discrimination.

3.1.6.1. Georgia vs. Russia²¹⁴

In accordance to Georgia’s request on 12th August 2008 concerning the situation in Abkhazia and Southern Ossetia, the ICJ examined the case. The Summary of request is “that the Russian Federation, “through its State organs, State agents, and other persons and entities exercising governmental authority, and through the South Ossetian and Abkhaz separatist forces and other agents acting on the instructions of, and under the direction and control of the Russian Federation, is responsible for serious violations of its fundamental obligations under CERD, including Articles 2, 3, 4, 5 and 6; ... Whereas Georgia further claims that these violations include, but are not limited to: ... (a) widespread and systematic discrimination against South Ossetia’s and Abkhazia’s ethnic Georgian population and other groups during the conflicts of 1991-1994, 1998, 2004 and 2008,

²¹³<https://web.archive.org/web/20090609144508/http://www.cogsci.ed.ac.uk/~siamakr/Kurdish/KURDICA/1999/APR/Iran-policy.html>

²¹⁴ It seems that, even though this request has been made in accordance to physical damages, however, it is also made under CERD. In other words, it is based on the fact that these people belong to minorities. Therefore, it is possible to consider this case in cultural persecution paradigm.

reflected in acts including murder, unlawful attacks against civilians and civilian objects, torture, rape, deportation and forcible transfer, imprisonment and hostage-taking, enforced disappearance, wanton destruction and unlawful appropriation of property not justified by military necessity, and plunder; ... (g) the launching of a war of aggression against Georgia with the aims of (i) securing ethnically homogeneous allies in South Ossetia and Abkhazia free from Georgian political, social and cultural influence; (ii) permanently denying the right of displaced ethnic Georgians to return to their homes in South Ossetia and Abkhazia; and (iii) permanently denying all the people of Georgia their right to self-determination in accordance with CERD”; ... Whereas, on 14 August 2008, Georgia, referring to Article 41 of the Statute of the Court and to Articles 73, 74 and 75 of the Rules of Court, submitted a Request for the indication of provisional measures, pending the Court’s judgment in the proceedings instituted by Georgia against the Russian Federation, in order to preserve its rights under CERD “to protect its citizens against violent discriminatory acts by Russian armed forces, acting in concert with separatist militia and foreign mercenaries”.²¹⁵

Therefore, Georgia requests an indication of provisional measure based on articles 2-6 of CERD “as a matter of utmost emergency” “in order to prevent irreparable prejudice to the rights of Georgia and its citizens under CERD”.²¹⁶ In accordance to Georgia’s request, the court “Indicates the following provisional measures: A. By eight votes to seven, Both Parties, within South Ossetia and Abkhazia and adjacent areas in Georgia, shall (1) refrain from any act of racial discrimination against persons, groups of persons or institutions; (2) abstain from sponsoring, defending or supporting racial discrimination by any persons or organizations; ...”²¹⁷

3.1.6.2. *Ukraine vs. Russia*²¹⁸

The summary of request by Ukraine is “...Ukraine respectfully requests the Court to adjudge and declare that the Russian Federation, through its State organs, State agents, and other persons and entities exercising governmental authority, including the de facto authorities administering the illegal Russian occupation of Crimea, and through other agents acting on its instructions or under its direction and control, has violated its obligations under the CERD by: (a) systematically discriminating against and mistreating the Crimean Tatar and ethnic Ukrainian communities in

²¹⁵ Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation) order of 15th October 2008, request for the Indication of Provisional Measures, paras, 20-25 available at: <https://www.icj-cij.org/files/case-related/140/140-20081015-ORD-01-00-EN.pdf>

²¹⁶ Ibid, para. 31-34

²¹⁷ Ibid, para. 149

²¹⁸ Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation), Provisional Measures, Order of 19 April 2017, I.C.J. Reports 2017, p. 104 (official citation)

Crimea, in furtherance of a state policy of cultural erasure of disfavored groups perceived to be opponents of the occupation régime;... (c) suppressing the political and cultural expression of Crimean Tatar identity, including through the persecution of Crimean Tatar leaders and the ban on the Mejlis of the Crimean Tatar People; (d) preventing Crimean Tatars from gathering to celebrate and commemorate important cultural events; (e) perpetrating and tolerating a campaign of disappearances and murders of Crimean Tatars;... (h) suppressing Crimean Tatar language education and the community's educational institutions;... (i) suppressing Ukrainian language education relied on by ethnic Ukrainians; (j) preventing ethnic Ukrainians from gathering to celebrate and commemorate important cultural events; and (k) silencing ethnic Ukrainian media.”²¹⁹

Ukraine also refers to Georgia's application and Court's 15th October 2008 provisional order and Court's 1st July 2000 order in Congo vs. Uganda case.²²⁰ In this regard, “The Court, Indicates the following provisional measures: (1) With regard to the situation in Crimea, the Russian Federation must, in accordance with its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination, (a) By thirteen votes to three, Refrain from maintaining or imposing limitations on the ability of the Crimean Tatar community to conserve its representative institutions, including the Mejlis; (b) Unanimously, Ensure the availability of education in the Ukrainian language;...”²²¹

These two cases have been brought up to ICJ. However, there are other cases that have not been requested in the Court, either for historical reasons, or political reasons.²²² The situation of indigenous people in USA and in Australia are good examples of such cases.

After the discovery of the Americas, while northerners had to learn English, because of missionaries, in the south Spanish language was dominant. Therefore, in order to be ‘human’, they had to speak in foreign language, wear their clothes and become Christians.²²³ Moreover, schools

²¹⁹ Ibid, para. 4

²²⁰ Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Provisional Measures, Order of 15 October 2008, I.C.J. Reports 2008, p. 396, para. 143; Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Uganda), Provisional Measures, Order of 1 July 2000, I.C.J. Reports 2000, p. 128, para. 43.

²²¹ Ibid, para. 106

²²² The very recent case with regards to discrimination is “APPLICATION OF THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION (QATAR v. UNITED ARAB EMIRATES) REQUEST FOR THE INDICATION OF PROVISIONAL MEASURES. However, this case is more of a political request and discrimination based on nationality.

²²³ Henderson, J.Y, “*Postcolonial Ghost Dancing: Diagnosing European Colonialism*”, in M. Battiste (Ed), “*Reclaiming Indigenous vision*”, University of British Columbia, Vancouver, UBC Press, 2004, p.58

were established during 18th and 19th century to ‘educate’ tribal children²²⁴ and they were punished if caught speaking in their mother tongue.²²⁵

In Australia, aboriginal children were separated from their family to be raised in ‘civilized white families’. In their opinion, by doing this, they could transform uncivilized population into generative civilized people. Moreover, interracial marriages were encouraged in order to mix the genes and identities. The same policies with regards to education was applied as well.²²⁶ Therefore, it shall be noted that alongside with cultural suppression, indigenous people also faced linguistic pressure as a method of assimilation into the ‘civilized’ population.²²⁷

3.2. States` policies towards language

“Then said they unto him; say now ‘Shibboleth’: and he said ‘Sibboleth’; for he could not frame to pronounce it right. Then they took him, and slew him at the passages of Jordan; and there fell at that time of the ‘Ephraimites’ forty and two thousand.”²²⁸

In principle, the States have 5 different approaches towards languages. They either try to destroy it, abandon it to be destroyed, not support it, support some limited functions of it or choose it as the official language. Apart from some exceptions, the first three policies usually destroy languages and only the two former policies might put a language in a safe position. Even choosing a language as the official one would not necessarily mean that the language is safe. For example, in South Africa, there are 11 official languages but there is not enough guarantees to enforce this policy.²²⁹

²²⁴ “...schools should be established which children should be required to attend; their barbarous dialects should be blotted out and the English language substituted...” And “Now, by educating the children of these tribes in the English language these differences would have disappeared and civilization would have followed at once. Nothing then would have been left but the antipathy of race, and that too is always softened in the beams of a higher civilization....” In *“Report to the President by the Indian Peace Commission”* January 7 1868, p.87 and p.82

²²⁵ Reyhner, Jon Allen, *“Contemporary Native American Issues: Education and Language Restoration”*, Chelsea House Publishers, 2006, p.2

²²⁶ Reyhner, Jon and Kumar Singh, Navin, *“Cultural Genocide in Australia, New Zealand and the United States: The destruction and transformation of indigenous cultures”*, Indigenous Policy Journal, Vol. XXI, No. 3, winter 2010, p.21

²²⁷ Rehner, Jon Allen, op cit, pp.83-84 and Crawford, James, *“Language Legislation in The USA”*, 2008, available at languagepolice.net

²²⁸ King James Bible, Judges, 12:6

²²⁹ Cobarrubias, J, *“Ethical issues in status planning”* in Cobarrubias, J & Fishman (eds.), *“Progress in language planning: International perspectives”*, Mouton Publishers, 1983, pp.41-43

Hierarchy of Languages in legal perspective: Official language, National language, Additional, Link, Part of Culture or National Heritage

Some make a distinction between the ‘de facto’ and ‘de jure’ use of language. This means that either a language is constitutionally an official language or the general use of language has made it public. For instance, English language is not a constitutionally official language in USA. On the contrary, it is an official language in the UN.²³⁰ Sometimes, the language is neither national nor official, but it is publicly used. English is not neither in many countries but it is widely used. These are ‘significant’ languages.

The difference between the national and official language is that the former is used in daily conversations but the latter is used in official writing and media. Moreover, the official language has a higher status. In other words, for instance, if there is constitution interpretation, it is the official language which is determining.²³¹ In some countries, in order to support a language, it is mentioned in the Constitution²³² or it is mentioned as national or cultural heritage.²³³ In some countries, there is an assertion on use of other languages without naming them.²³⁴

3.2.1. Linguistic diversity

When the term linguistic genocide is used, it has a negative connotation. So the question is, is linguistic diversity, concerning the power structure, desirable? Or is it a cause for political, social and cultural division? Nowadays, technology, international relations and many other communications are based on English. This also means that English has paved its way into education systems as a prerequisite. However, is it not easier to communicate? Is it not the reason why linguists tried to invent a universal language? On the other hand, diverse languages lead to diverse cultures. In this regard, it would be more difficult to reach to an agreement in international level due to high diversity. How can we justify diversity then?

²³⁰ For more information, see:

McArthur, Tom, “*The English Languages*”, Cambridge, Cambridge University Press, 1998

²³¹ Varennes, Fernand, “*Language, Minorities and Human Rights*”, Springer, Netherlands, 1996, P.54

²³² For instance, in South Africa, even sign languages are mentioned alongside the official languages. Constitution of South Africa 1996, Chapter 1, 6(5)(a) available at: <http://www.justice.gov.za/legislation/constitution/SACConstitution-web-eng.pdf>

²³³ Ecuador has declared ancestral languages as ‘symbols of nation’. Ecuador Constitution, Art. 2

Available at: <http://pdba.georgetown.edu/Constitutions/Ecuador/english08.html>

²³⁴ Turkmenistan Constitution, Article 21. Viet Nam Constitution, Article 5(3) and China Constitution, Article 4

3.2.1.1. Arguments for linguistic diversity

As Marcelo Dascal puts it, the arguments are in five categories.

1. Practical evidence
 - a. Linguistic communication is possible;
 - b. Translation, despite difficulties, is not impossible; and
 - c. There is no reason for non-intelligibility in communication era.

Human existence has shown that despite the initial distrust, there is always a possibility in reaching a common base. Of course this is a linguistic argument and it is quite acceptable that two people have political, cultural, economic or social disagreement. However, there is a possibility to reach to an agreement through language and tolerance.²³⁵

2. Ethical evidence
 - a. The precondition for linguistic and cultural agreement is to respect the differences. Moreover, it is morally desirable to value others;
 - b. Invidious comparison is not desirable;
 - c. No language is uncivilized and vice versa;
 - d. No human being is inferior to another;
 - e. No lifestyle is worthless.

We must, even temporarily, suspend our willing of superiority towards the others. We tend to believe that we are the only representatives of knowledge, logic and progress while the others are uncivilized savages. Therefore, we also believe that their language, culture and other aspects are also uncivilized. Only when we change such perspective, we can understand that every lifestyle and every culture is as worthy and legitimate as ours, if not better.²³⁶

3. Ontological evidence
 - a. The existence of individuals is dependent upon social relations;
 - b. “I” does not exist without “you”. “We” do not exist without “You”;
 - c. The structure of alterity is ontologically the same as the structure of vanity. In other words, we, are the other for the other vice versa.

Although such argument contributes to the reproduction of the “I-You” discourse, it is important to note that even within such paradigm, it is possible to accept the other and respect them and create a mutual understanding through dialogue and respect.

²³⁵ Dascal, Marcelo, *ibid*

²³⁶ *Ibid*, pp.30-31

4. Epistemological evidence
 - a. In linguistics, in order to know what is language, we need to know and understand different languages as much as possible;
 - b. Generally, in science the existence of alternative theory is necessary for progress. Therefore, existence of other languages is crucial to understand the difference critically.

Thus, when we understand a language and its structure, we can read how the speakers use it, how they think and how they learn. In Dascal's view, being human, is our consciousness in using language. Moreover, if languages are not used and expressed, science will not improve as there is no alternative.²³⁷

5. Cognitive evidence
 - a. Creativity and innovation requires a change of approach;
 - b. Bilingualism and multilingualism enables us to change approach;
 - c. The ability to see issues from the 'other's' perspective, positively affects one's cognitive abilities.

It is clear that language and culture are not the same. However, it is possible that two different groups which speak different languages, share the same culture. For instance, the Catalans in Spain and France have so many cultural similarities, while they speak two different languages due to different linguistic policies in the two countries. But does this mean that even if we change the balance of linguistic diversity, the cultural diversity will still remain? Unfortunately, there is not a correct answer to this question. On the one hand, the Catalan case asserts such conclusion. On the other hand, there are many examples where putting the language aside has contributed to leaving the culture as well. Indigenous people in Canada, USA and Australia are good examples concerning the question.

3.2.1.2. Arguments against linguistic diversity

Despite the benefits linguistic diversity might have, there are also arguments against it.

1. Cost-benefit

The most important argument is that the costs of language education is unnecessary and high. In other words, maybe preserving linguistic diversity is moral and desirable, but the expenses are too much. Teachers must be trained; education tools must be provided; books must be published etc. thus, a government in Africa with more than hundred languages cannot afford these costs. Moreover, there must be also interpreters and translators. In the EU, until 1995 there were 9 official

²³⁷ idem

languages. Therefore, there were 70 different possibilities in terms of translation for the members and with 21 languages, there would be 420 different possibilities. Hence, such costs are unnecessary and investment in this area is not efficient.²³⁸

However, it is worthy to mention that such costs are still less than costs for military reasons. Moreover, if a government spends money for four years in order to train a teacher, it will not need to spend more money in this regard, since that teacher will be able to work for at least 25-30 years. In addition, mono-linguism is fragile. The governments use this policy in order to reproduce power and domination.²³⁹

2. Choice

The point of this argument is that if someone decides to not learn their language, it is their choice. Therefore, as a consequence, linguistic diversity will also be affected.²⁴⁰

However, this is only an exceptional case. How can we precisely determine whether such choice is completely free? Was it the personal choice or was it a choice influenced by social, cultural, economic and political context? Moreover, how is it possible to determine whether such decision is made by the majority? And even in that case, how can we guarantee the rights of minorities?

3.2.2. Language as means of control

In the hegemonic discourse, inequality and exclusion policies are applied in a way that both parties perceive it logical and in their own interest.²⁴¹ In this regard, three major process are due in order to justify the reduction of linguistic and cultural diversity in hegemonic discourse.

3.2.2.1. Glorification, Stigmatization and Rationalization

In order to convince someone to replace another language with their mother tongue, it should be possible to devalue their mother tongue. This is only available within an ideological paradigm which is able to present that language as an imperfect and problematic one or make it invisible. Therefore, the process is glorifying the immaterial sources of the dominant (Ontological justification of superiority of a group over the other based on knowledge, history, language and

²³⁸ Skutnabb- Kangas, Tove, *ibid*, p. 293

²³⁹ An example is how colonialism and imperialism imposed their language. For instance, English language introduced human rights, democracy, free market etc. doctrine. Also, advertising Coca Cola, McDonalds and other chain companies have destroyed local works. This might sound romantic counter argument, but the fact is the language of technology is English, therefore it is easier for an English speaking company to dominate the market.

²⁴⁰ Skutnabb- Kangas, Tove, *ibid*, pp. 235-237

²⁴¹ Herschinger, Eva, “*Constructing Global Enemies: Hegemony and Identity in International Discourse on Terrorism and Drug Prohibition*”, Routledge, 2011, p. 28

culture); stigmatizing the immaterial sources of the dominated; and rationalizing and creating a logical relation between the two.²⁴²

In linguistic matters, glorification has historically done through presenting the language of the dominant as the God language. Arabic had this status in Islam and Latin was the same in Christianity. Moreover, it could be the language of logic or nowadays, the language of human rights. For instance, French, with regards to its history, was used in the third republic as the language of rights and democracy. Also it is possible to do the same through labeling a language as the language of the superior race as it was done in Nazi Germany.²⁴³

“Elite Closure” is one of the methods that reproduces the dominance. “Elite closure is a type of social mobilization strategy by which those persons in power establish or maintain their powers and privileges via linguistic choices. Put more concretely, elite closure is accomplished when the elite successfully employ official language policies and their own non-formalized language usage patterns to limit access of non-elite groups to political positions and socioeconomic advancement.”²⁴⁴

In this definition, elites are recognized with three characteristic. First, elite speaks different varieties of the language fluently; second, the patterns used by elite sets the framework to recognize other elites and the way they use the language is desirable; and third, the way that elite uses the language has positive psychological effect and it is exclusively for the elites.²⁴⁵ This concept is very close to “Shibboleth” in Hebrew. Of course shibboleth can be used in different contexts, however, it means that someone is a member of a group. It has linguistic origins and it perfectly shows how language can have exclusive/inclusive functions.²⁴⁶

Stigmatization and rationalization are done simultaneously. In other words, while the dominant introduces the dominated language and culture as inferior, unable to present abstract concept, illogical and imperfect, it also tries to justify a rational relation between them as the savior and the dominated as the victim who needs help. Therefore, the dominant teaches them how to be civilized, teaches the new concepts such as freedom, democracy, human rights etc. and shows them how they are actually helping them and how the dominated could have progress through the modern

²⁴² Skutnabb- Kangas, Tove, *ibid*, pp. 196-201

²⁴³ Skutnabb- Kangas, Tove, *ibid*, pp. 187-190

²⁴⁴ Myers-Scotton, Carol. “*Elite closure as a powerful language strategy: The African case*” *International Journal of the Sociology of Language*, 1993: 149-164. Retrieved 19 Aug. 2017, p. 149

²⁴⁵ *Ibid*, pp. 153-155

²⁴⁶ For more information, see:

McNamara, Tim, “*21st century shibboleth: Language tests, identity and intergroup conflict*”, in *Language Policy*, 2005, 4(4): 351-370

language and culture. Australian aboriginal languages were introduced primitive languages which are unable to present any moral concept.²⁴⁷

“Language has been an important means of control and domination and its importance is rapidly growing. It has been seen as an essential, homogenizing element in the nation-building of states since the age of Enlightenment.”²⁴⁸ “Language has played an important role in maintaining colonial structures and reproducing neocolonial structures. Education through the medium of majority languages or colonial languages has been the most powerful assimilating force for both indigenous children and immigrant/refugee minority children, thus likewise having a homogenizing function.”²⁴⁹

²⁴⁷ Skutnabb- Kangas, Tove, *ibid*, pp.198-201

²⁴⁸ Habsbawm, Eric, “*The Age of Extremes: The History of the World, 1914-1991*”, 1994, Little Brown & Company, p.17 in Skutnabb- Kangas, Tove, p. 201 for an interesting discussion in this regard, see:

Foucault, Michel, “*Power/Knowledge: Selected Interviews and Other Writings, 1972-1977*”, Ed. Colin Gordon, 1980, Pantheon Books

²⁴⁹ *idem*

4. Conclusion

"It is not the consciousness of men that determines their being, but, on the contrary, their social being that determines their consciousness."²⁵⁰

What I tried to elaborate on, primarily was the concept of Language. In fact, without referring to significance of language in forming identity, it is not possible to point out other related aspects. In this regard, I tried to find the linkage between language and culture. When the group is aware of their identity, in most cases, they try to preserve and protect that identity. In other words, groups are formed through differences and such duality transforms into multiplied society. However, one must also keep in mind that regardless of the amount of minorities in a society, the majority, the dominant group, might implement all their power to dominate other groups. This is how the power functions. In this regard, one of majority's methods, is assimilation of minority into majority.

When we talk about culture, it is not unchangeable. This means that culture is adaptable and it changes with the people and the environment. For example, a group's cultural behavior and understanding changes when they have cellphones for the first time. Of course, culture is a historical human product, so what a group does today, might affect the future of the group with regards to culture. Moreover, culture and language, simultaneously, form and shape the world-view of individuals to some extent. Perhaps, this is the most significant aspect of the interrelation between the two. It is quite true that language shapes our way of thinking because it shapes our understanding and frames our methods of interpretation. With regards to this, language, under the influence of culture, changes through time as well.

Now that language and culture play such important role in our existence, it is worthy to emphasize on the role of the States in protecting or destroying language. As we know, the international community attempted to prohibit and prevent genocide and to punish the perpetrators. However, despite the intention of the drafters, they decided to omit other aspects of genocide, such as cultural, linguistic and biological, and limit the concept to its physical aspect. In this work, I tried to elaborate on the concept of cultural and linguistic genocide. In this regard, it is important to understand that linguistic genocide falls within the cultural genocide paradigm. In any case, by putting these concepts aside, in fact States are still able to destroy minorities without necessarily harming them physically.

Now, considering the two subjects, first, it seems that the majority tries to eliminate the minority, within the identity and "You-I" discourse or to assimilate or integrate the minority into the

²⁵⁰ Marx, Karl, "*A Contribution to the Critique of Political Economy*", 1859, New York, International Publishers, 1970, Preface

majority; second, now that the majority, in principle, is prohibited from act of genocide, it still has the cultural and linguistic genocide as an option. Of course, this still is merely a theory within the international law, however, reviewing the case law, proves that such acts are not only possible, but also are being implemented throughout the world by changing and shaping the identity of the minorities in various ways. This might sound sentimental to some, but anyone has experienced some of these policies in their daily lives. However, unlike physical genocide, linguistic and cultural genocide is rather procedural. Therefore, it is quite understandable that it is not tangible when it is committed. For example, when a Turkish speaking group in Iran, decides to not transfer their culture and language to their children, because of the States` suppressive and discriminative policies, or the children themselves decide to not to learn it, or when the group is forced to not to use their culture and language, it affects and influences the next generations as well. In fact, the first generation would be unable or unwilling to transfer the knowledge and the second generation might only understand limited aspects of their culture and the third generation, and so on, would have no idea of their culture and language anymore. Therefore, the majority would be dominating the minority without harming them physically.

On the other side of this conflict, the minorities do not enjoy the right to self-determination in the light of classic international law. This means that the States can recognize a group as minority or not. And in case they do not recognize the group as minority, they will not have the international obligations. Moreover, if they want to also suppress the minority, the group will not have any chance of survival. Therefore, it appears that on the one hand, the existence of minorities is not dependent on recognition, but rather it is in accordance to their choice. On the other hand, the responsibility of the States to protect culture and language, as one of the most important characteristics of humans and quintessential aspect of existence, could be considered as Jus Cogen due to the significance of these notions to dignified being. Therefore, States cannot derogate from such responsibility.

In accordance to this, it seems that, as mentioned in the first part, we should consider linguistic human rights, as the combination of human rights and language rights, to the current human rights discourse. This would enable the groups to preserve, protect and reproduce their culture and identity as they can demand their linguistic human rights from the States in light of human rights principles. Moreover, even though many human rights documents have referred to language in accordance to non-discrimination principle, however, it is not the language itself that is considered. Therefore, its role and its significance is ignored. Thus, on the one hand, it has been difficult to accept a notion such as linguistic genocide and its criminalization. On the other hand, the States believe that minorities, in most of cases, are separationists and seek independence. This has been an obstacle in the way of granting their rights. However, it is worthy to consider that multiculturalism, as a product of diversity and tolerance, leads to cultural, economic, social and political enrichment and fruitfulness as each culture has its own unique world-view.

According to this understanding, linguistic genocide does not differ from physical genocide in its result. Therefore, recognition and acceptance and eventually criminalization of this crime is not

only logic, but also in terms of preserving and protecting the cultures, it is moral and justiciable as well. With regards to the elements of the crime, since the crime targets the same goal, apart from the physical elements, the characteristics physical genocide is applicable to cultural and linguistic genocide. Moreover, in terms of public policies, as an indication of the intent, alongside with *dolus specialis*, encouraging the States to adopt and implement protective and supportive policies, could be a preventive measure in this regard.

Eventually, although that minorities are not entitled to the right to self-determination, however, in the light of contemporary developments in International law, we can consider the internal aspect of this right for minorities. In other words, minority rights and the right to self-determination, overlap in its internal aspect. Therefore, minorities are entitled to cultural autonomy in internal self-determination paradigm. Of course, in case that internal solutions are not applicable anymore due to gross and systematic violations of human rights and the existence of the group is highly in danger, the group has the possibility to seek their external right to self-determination under the light of the theory of measure of last resort. Self-determination and minority rights are based on participation. This would give the individuals and the groups to be involved in decision-making process in various dimensions. Therefore, the protection of minorities could be balanced by the interest of the society as a whole, since every member of the society is involved.

In the end, I affirmatively believe that according to the contemporary developments in international law and in human rights law, it is not only possible, but also it is desired that we can have either a convention on cultural genocide, or at least, in worst case scenario, an optional protocol to the existing Convention, in order to protect the rights of minorities more efficiently.

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