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Protection without definition – notes on the concept of "minority rights" in Europe[1]

1. States and minorities

In the European context, the evolution of the modern nation-state system was followed by endeavours for national and linguistic unification as well. The first attempt to create a unified, linguistically and culturally homogeneous state started with the French Revolution in 1789 (Cf.: Ó Riagáin 2001 and Preece Jackson 1998). The new French state was built on the common rights and duties of the citizens, but without the cultural indifference which characterised the monarchic state that preceded it. The new model of national state was clearly based on national unity and a centralized government. All new nation-states which appeared in Europe in the 19th century (take Germany or Italy as examples) followed this pattern. In this context the unity of the state was meant to reflect the unity of the nation and also the unity of the language and culture. ("One nation, one state… and one language.") Unity in this context correlates with exclusiveness and the necessity to regulate some of its consequences. The rise of this nation-state model implied the development of normative government policies on identity, language use, the recognition of an official language, cultural tradition and national symbols.

After the First World War this model was followed by the newly created states as well, which came into being following the dissolution of the two multiethnic monarchies, Austria-Hungary and the Ottoman Empire. But at the same time these developments strongly frightened the survival of smaller, minority communities. At first sight the problem was recognised as a threat to the fundamental linguistic and cultural identity of minorities (which used to belong to the national majority before the territorial changes), without direct political, and territorial implications.

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The protection of linguistic rights of minorities appeared on the European political agenda when following the Paris peace conference, new states emerged (like Czechoslovakia, Yugoslavia, or Greater-Romania) on the basis of the principle of self-determination (promoted by American President Woodrow Wilson), though which had sizeable minority populations as well.[2] To compensate these minority communities, a number of different so-called minorities treaties were stipulated between European states under the aegis of the League of Nations. These treaties covered various minority rights, including the principle of non-discrimination, the right to education in minority languages, etc. The main problem with the minorities treaties regime was that state obligations varied greatly and only a few European states were subjected to these treaties, which could them claim that the international community discriminates against them. These international treaty obligations were often perceived as hindering the creation of modern unitary nations in these states. On the other hand kin-states in the interwar period have never given up their claims for territorial reivision.This led quite soon to the neglect of minorities treaties and later, after World War II with replacement by the universal recognition of basic human rights. Terms, the whole system minorities treaties was considered to have become irrelevant.[3] After World War II, however, minority issues received less attention in the ideological contest of the bipolar world of the Cold War era. Nevertheless, the expansion in activity of international organisations of all kinds since 1945 has produced the result that a range of standards and mechanisms on human rights operate contemporaneously in Europe affecting the minorities. First of all, the Charter of the United Nations sets out a fundamental standard that human rights shall be safeguarded for every human individual irrespective of "race, sex, *language*, or religion" (emphasis added). This commit-

[2] Despite the recent interest of the international community in addressing minority rights, several historical treaties may be recalled which some hundreds of years ago contained provisions aimed at providing benefits for individuals of a specific language group. In 1516 a bilateral treaty between France and the Helvetic State provided also some benefits for those Swiss "who speak no language other than German". A later example could be the Congress of Vienna in 1815, which introduced measures in favour of the use of the Polish language. For more on the history of minority language rights see *de Varennes* (1996: 4-32).

[3] See also *Thornberry* (1991: 25-52).

ment was reinforced later in a number of different documents, among others not only in the Universal Declaration of Human Rights, but also in the UN Convention on the Elimination of All Forms of Racial Discrimination, or the International Covenant on Civil and Political Rights (ICCPR) (Art. 26.), just like under the European Convention on Human Rights (Art. 14).

But the need to provide positive statements on minority rights, besides the prohibition of indirect and direct discrimination, was formulated already by the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities (later known as the Sub-Commission on the Promotion and Protection of Human Rights)[4] when it made a distinction between the concepts of "prevention of discrimination" and "protection of minorities". Furthermore both within the Council of Europe and CSCE/OSCE there were attempts to recognize the specific rights of minorities.

New impetus for considering the extension of minority rights protection at the international level has emerged only after the deep political changes resulting in the dissolution of communist regimes in Europe after 1989. This period was characterised by the adoption of the OSCE Copenhagen Document (1990), the CoE (Council of Europe) Framework Convention for the Protection of National Minorities (1995) and the CoE European Charter for Regional or Minority Languages (1992).

What seems to be clear is that the idea of minority rights protection has gained a wider recognition at the international level only after 1945. And the need for a definition of the term "minority" did not emerge before it was used in the universalist human rights terminology. In this broader context the question is whether we believe there is a need for a universal definition of the term "minority" or that such definition should remain within the domestic realm of individual states.

Nevertheless, it shall be noted that besides 'minorities' in international documents, other terms such as 'people' and 'nation' are also used interchangeably, without any clear definition. Existing practice in international relations does not always help in identifying

[4] This UN body ceased to exist in 2006, its functions were taken over by the Human Rights Council Advisory Committee.

clear-cut boundaries of these terms and especially the rights and right-holders associated with them.[5] The case with the definition of 'minority' is very similar, inasmuch as the lack of a legal definition offers in many cases a relatively large margin of discretion to governments in selecting those minorities to which they want to provide legal protection.

2. Defining the terms

The discussion on the legal protection of minority rights at an international level, primarily regards minorities, which distinguish themselves from the majority on the basis of their "national or ethnic, religious and linguistic" identity (as most UN documents list minorities) requires a basic definition.[6]

It is not the intention here to consider in depth the legal and theoretical problems of defining minorities in general.[7] However, as the brief overview of terminological problems will show below, it is not theoretical or legal considerations which impede the emergence of universal agreement on the definition of fundamental terms in minority protection, especially that of 'minority,' but rather political considerations. Noting that the definition of "minority" is surely not a *sine qua non* of the effective protection of minorities OSCE High Commissioner on National Minorities Max van der Stoel underlined at a conference in Warsaw in 1993: *"[t]he existence of a minority is a question of fact and not of definition. [...] I may not have a definition of what constitutes a minority, I would dare to say that I know a minority when I see one."*(Van der Stoel 1999: 45).

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[5] When we consider a peoples' right to self-determination it depends mostly on political circumstances whether one community can appeal to it successfully or not, in fact its application is outside the jurisdiction of international law (cf. *Musgrave* 1997: 258).

[6] See for example UN General Assembly Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 18 December 1992, GA A/RES/47/135

[7] For an in-depth analysis of the definition of "minority" see *Packer* 1993; *Pentassuglia* 2000.

In more general terms, the lack of definitions is much more the rule and not the exception in international minority protection (cf.: Pentassuglia 2002: 55-75).

The definition of "minority" is a highly sensitive issue: the inclusion or exclusion of specific groups or individuals from the definition is a crucial point, as it necessarily delimits the addressees of specific policy and legislative instruments (Packer 1996: 123-124). First, one has to face the conundrum of liberal democratic regimes built on the respect for individual human rights and fundamental freedoms, guaranteed to all citizens without any distinction. Second, there is a natural expectation in every legal order to define in objective terms the addressees of specific legal regulations, and it is a truism that minority protection *ipso facto* affects only a part of the population. To meet both pre-requisites has always been a great challenge.

2.1. What is a minority? Normative definitions

As it will be seen below, most attempts to define minorities and the membership criteria of belonging to a minority in legal terms are determined to grasp objective conditions, however the limits of subjective justification of belonging to a group are rather contentious.

Reflecting a broader view a remarkable definition was proposed by John Packer (1996: 123) when he argued that, consistent with human rights philosophy, including the democratic principle, a minority is: "*A group of people who freely associate for an established purpose where their shared desire differs from that expressed by majority rule.*"

The most important aspect of the definition offered by Packer is its departure from the attempts at 'objective' definitions based on ascribed immutable features or characteristic of human beings. Similar views are expressed by Wiessner, when he finds that "*Individuals feel as part of a community, their upbringing in a certain social configuration as well as their conscious choice make them members of certain groups. All groups are extensions of the ego. They allow for inter-affiliation and inter-identification*" (Wiessner 1996: 218). Based on this observation he continues "*[o]ne of the most fundamental rights is the right to associate with others in the pursuit of a common though limited interest that is not necessarily shared by everyone else in the community*" (ibid: 220). Where the majority determination is

opposite to the object of that interest, then the minority is defined in relation to that determination of the majority.

From a subjective approach, in defining minorities, there may be said to be two fundamental types: 'positive' minorities which are constituted as associates for the purposes of pursuing a shared ideal or life plan which differs from those of the majority, and 'negative' minorities, which are constituted as associates for the purposes of defending themselves against discriminatory treatment or other violations of human rights and, as such, seek to achieve only the fundamental equality they have unjustly been denied. The cohesion of 'negative' minorities typically dissipates once equality has been achieved because no other 'positive' basis of association functions to bind the group (Packer 1996: 124). This difference is reflected also in international instruments, inasmuch the prohibition of discrimination is the primary element of minority rights protection (Pentassuglia 2002: Chapter 4) and positive measures or specific rights for minorities are always seen as additional instruments closely related to the basic principle of non-discrimination.

The diversity of different identities (ethnic or national, cultural, linguistic, etc.) around which the self-awareness of group-belonging may emerge on one side may lead to the conclusion that there is no need for any delimitation of the term "minority", as it was mentioned above (see the position of OSCE High Commissioner on National Minorities as quoted above). Nonetheless – and despite the recurrent failures in establishing a legally binding definition in international organisations – the conviction prevails that "*minority protection is only possible if the notion of minority is clarified*" (Ermacora 1983: 271) remained.

After 1945 the first endeavours for a clarification of the term "minority" appeared in the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities on the basis of a memorandum prepared by the Secretary General in 1949 on the Definition and Classification of Minorities. Without reaching a consensus, within the Sub-Commission various working definitions were formulated, with the best still reflecting the classic approaches. According to the definition provided by Capotorti as a special rapporteur, in 1978 (with regard to Article 27 of the ICCPR), 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 cultures, traditions, religion or language.[8]

Such initiatives, in sight of the important context in which they have been taken and discussed, highlight their significance in identifying the basic elements of the definitions that can be embraced by international law. Pentassuglia argues that the same approach is reflected in the wide use of the term 'national minority' in Europe, first of all the CoE and OSCE documents as well (Pentassuglia 2002: 58). The concept applied in this context designates 'historical' minorities, i.e. those groups which have a long-standing relation with the state concerned, and as a rule are citizens of that state.

A similar definition was proposed in the Council of Europe Parliamentary Assembly in 1993. The draft additional protocol on the rights of minorities to the European Convention on Human Rights, adopted by the Parliamentary Assembly of the Council of Europe on 1 February 1993 by Recommendation 1201, declared under Article 1:

> For the purposes of this convention the expression 'national minority' refers to a group of persons in a state who a. reside on the territory of that state and are citizens thereof, b. maintain long standing, firm and lasting ties with that state, c. display distinctive ethnic, cultural, religious or linguistic characteristics, d. are sufficiently representative, although smaller in number than the rest of the population of that state or of a region of that state, e. are motivated by a concern to preserve together that which constitutes their common identity, including their culture, their traditions, their religion or their language.

Since the proposal was not approved by the Committee of Ministers of the Council of Europe, it did not have any binding effect on states (Benoit-Rohmer 1996: 13). The new element in this proposal was the subjective factor, namely the will to preserve and maintain the specific identity of the group. It seems logical that only those groups that affirm their differences should benefit from special treatment, unlike those who have voluntarily become assimilated to the majority population (Benoit-Rohmer 1996: 14).

It is important to note that definitions proposed in the international domain have only scarcely been incorporated in domestic legislation. In a European context the example of France or Turkey is

[8] UN Doc E/CN.4/Sub.2/384/Rev.1. 1979. 5-12.

illustrative of the complexity of interpreting minority rights, as both countries deny the existence of minorities on their territory. Both France and Turkey made reservations to Article 27 of ICCPR to the effect that this article was not applicable. On the other side many countries limit the applicability of minority rights to specific groups which are deliberately recognised.[9]

2.2. Problems in defining minorities

2.2.1. Citizenship as a pre-condition for protection

It needs to be underlined that, similarly to the definitions formulated in international documents (cited above), most national legal orders and governmental interpretations in Europe see citizenship as a pre-condition for obtaining a minority status in a country.[10] But this approach leaves the situation of immigrants and other non-citizen residents outside the framework of minority protection, i.e. they cannot be entitled to enjoy the same level of protection of their language, ethnic identity or culture. In many European countries the number of non-citizen residents displaying the basic attributes of belonging to an ethnic or cultural minority in the sense of the definitions quoted above, is steadily increasing and their social integration is often highly problematic. While immigrants increase cultural diversity in the society, their accommodation is often unresolved (cf. Favell 2000). Obviously, on the other hand, 'traditional' minorities may well require a differentiated treatment as they usually claim specific rights to their homeland, consequently while states acknowledge their duties towards their citizens belonging to minorities; in general they maintain their exclusive discretion both on offering citizenship to immigrants and on choosing appropriate policies for their social integration (cf. also Bauböck 1994).

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[9] See for example the definition applied by the Hungarian Act on the Rights of Nationalities (2011) Art. 1.

[10] See the declarations made with respect to the FCNM (Framework Convention for the Protection of National Minorities): among EU member states and candidate states which are party to the treaty many limited in separate declarations the application of the FCNM either to long-settled, traditional minorities (Denmark, Germany, Slovenia, and Sweden) or to their citizens (Austria, Estonia, Luxembourg, Poland). CoE Treaty Office List of Declarations made with respect to Treaty no. 157 < *http://conventions.coe.int/Treaty/Commun/ListeDeclarations.asp?NT=157&CM=1&DF=7/27/04&CL=ENG&VL=1*> (Last accessed on 11 May 2010).

Besides the social and political problems, from a legal point of view the expressive limitation of minority rights protection to members of minorities holding the citizenship of the country is problematic, because minority rights are in principle formulated under the broad umbrella of human rights protection, which are seen in the Preamble of the Universal Declaration of Human Rights (1948) "*the equal and inalienable rights of all members of the human family*."[11] Accordingly, UN documents on minority rights do not prescribe citizenship for the enjoyment of these rights either. It is indeed all too easy for states to manipulate their citizenship legislation so as to exclude certain population groups that would otherwise qualify as a minority (inter alia Thornberry 1993: 28-30). Furthermore this requirement is problematic for the Roma (Gilbert 1992: 72), as well as when the borders of existing states change due to secessions or associations (see from the past years the cases of Kosovo, Abkhazia or South-Ossetia). The UN Human Rights Committee has in any event adopted a rather liberal stance in its General Comment on Article 27 ICCPR[12] in that it does not require members of a minority group to be citizens of the state of residence. The related requirement of having lasting ties with the country of residence is also increasingly questioned. Even so, the prevailing views in Europe clearly link minority rights to citizenship.

For instance even the EU formulated its concerns on Baltic States' discriminatory citizenship policies towards their Russian populations living on their territory, within the framework of assessing these states' compliance with minority protection criteria.[13]

2.2.2. National minorities…

Another difference is linked with the fact that, while United Nations normative texts list four categories of minorities: national, ethnic,

[11] Proclaimed by the United Nations General Assembly in Paris on 10 December 1948 General Assembly resolution 217 A (III)

[12] General Comment No. 23: The rights of minorities (Art. 27): 08/04/94. CCPR/C/21/Rev.1/Add.5, (General Comments) adopted at the Fiftieth Session in 1994.

[13] See for example European Commission Progress Reports from the Commission on Progress towards Accession by Latvia 1998: 11 p., 1999: 17 p., and 2001: 27 p.

religious and linguistic,[14] the texts adopted by the OSCE and the Council of Europe mention only "national minorities". The use of only one category in the European context, however does not imply a limitation of the rights assigned to national minorities: for example as the CSCE Charter of Paris for a New Europe formulated that!"*[…] the ethnic, cultural, linguistic and religious identity of national minorities will be protected […]*" and such a broader interpretation of the national minorities was adopted by the OSCE High Commissioner as well (see above).

The reason for the dominant usage of "national minorities" in a European context lies in the above-mentioned fears attached to minority issues in Europe, which clearly suggest a link between "national" identity and the concept of nation-state.[15] This cautious approach is reflected in international documents, in separate provisions emphasizing that the rights of (national) minorities shall not be interpreted "*as implying any right to engage in any activity or perform any act contrary to the fundamental principles of international law and in particular of the sovereign equality, territorial integrity and political independence of States.*"[16]

The primacy of national identity in political mobilisation was specifically noticeable in the CEE (Central and Eastern European) transition countries in the 1990s.

After 1989 the process of democratisation developed parallel with the strong nation-building endeavours of many CEE states (see

[14] See Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, G.A. res. 47/135, 47 U.N. GAOR Supp. (No. 49) at 210, U.N. Doc. A/47/49 (1992). Art. 27 of the ICCPR also refers to "*[e]thnic, religious or linguistic minorities*" reflecting a similarly wider approach.

[15] The misleading identification of "nation" with "state" was recently reflected in a minority-related context in the CoE Parliamentary Assembly Res.1335 (2003) on the *"Preferential treatment of national minorities by the kin-state: the case of the Hungarian Law on Hungarians Living in Neighbouring Countries ("Magyars") of 19 June 2001"* para. 10. "*[t]here is a feeling that in these neighbouring countries the definition of the concept of "nation" in the preamble to the law could under certain circumstances be interpreted – though this interpretation is not correct – as non-acceptance of the state borders which divide the members of the 'nation' (...)*", However, the Resolution also underlined that "*[t]he Assembly notes that up until now there is no common European legal definition of the concept of 'nation'.*" *Ibid*. See also Brass 1991: 19-23.

[16] As Art. 21 of the FCNM is formulated.

Cordell 1999). Many expected that democracy, the 'rule of people' could mean nothing else than the 'rule of the nation' in a sense that, crudely speaking, 'majority takes all'. Civic homogeneity was often required without regard of ethnic heterogeneity (cf. Richards 1999: 16-17). As all ethnic or national minorities are by definition in a structural minority position in their country, i.e. they could never obtain power through democratic elections, the rule of the majority may indeed be utilised also against minorities. As Eide noted one danger is the "*exclusion from the circle of citizens, through ethnically based citizenship legislation, of members of some resident minorities who therefore are not made partners in the exercise of democracy. The other is the danger that majorities use their democratic power to give their own members privileges*" (Eide 1996: 158). Fears that in the new CEE democracies, the ethnic majority might use democratic power and institutions against minorities, potentially leading to ethnic conflict, were not baseless. While the introduction of democratic pluralism has been closely linked to the international support of human rights protection in general, it is rather obvious that such support for CEE states included the rights of national or ethnic minorities in particular (Eide 1996).

In the context of the FCNM (Framework Convention for the Protection of National Minorities), at the drafting of the Convention there have been debates on the need for a definition of the term "minority" but due to lack of consensus no such definition was included in the document. Nevertheless many signatory states adhere to the concept of minority as it was defined in the CoE PA Res. 1201 (1993) and the FCNM Advisory Committee also endorsed the view that a broad understanding of "national minorities" (i.e. including cultural, linguistic, religious identities as well) can be assumed as a part of regional customary international law. The rulings of international treaty bodies also demonstrate the irrelevance of detailed definitions. Concerning the implementation of Article 27 of the ICCPR, the Human Rights Committee has held that it applies not only to persons belonging to ethnic, religious or linguistic minorities but also to indigenous peoples. The FCNM Advisory Committee (AC) has followed the same approach. It has stressed that the state parties must determine the scope of application of the FCNM on their territory in the absence of a definition in the FCNM itself. „In the opinion

of the AC on the one hand, parties are granted a certain margin of discretion in adapting the normative regulations to the specific circumstances in their countries. On the other hand this must be exercised in accordance with the general principles of international law and the fundamental principles set out in Article 3 of the FCNM". (Weller 2005: 111)

The embarrassment around who is entitled to minority rights emerged eloquently in the context of the European Union as well. Since the adoption of the Lisbon Treaty, the term "minority" appeared in the primary EU law without any further qualifications. Quite surprisingly the Fundamental Rights Agency of the European Union adopted an extremely broad approach in its report on minorities in the EU. It reads as follows: "Depending on the context, it refers to persons belonging to ethnic minorities as well as those belonging to linguistic or national minorities. In certain instances the report also touches upon the wider question of how to manage the ethnic diversity of our societies, including issues faced by EU citizens moving from one Member State to another Member State and therefore into another social and cultural context." [17]

In conclusion one can observe, that international documents on minority rights protection neither provide a definition of minorities nor set up clear-cut preferences on which minorities would be entitled to international and domestic protection. In principle international documents tend to accept the variety of different minority identities and in legal terms they do not make distinctions between immigrant or 'traditional' minorities. Nonetheless in the implementation of these international documents European states often apply such limitations. And recent international political initiatives to tackle minority problems in the CEE have expressively focused on traditional, autochthonous national or ethnic minorities.

This supposed contradiction in international legal and political approaches to minority issues, besides positioning minority rights among fundamental human rights, reveal also a marked preventive

[17] *Report. Respect for and protection of persons belonging to minorities 2008-2010*. Vienna, Fundamental Rights Agency, 2011. 9. p.

content,[18] and shed light on the duality of theoretical justifications of minority rights protection.

2. The ambivalent approach of international organisations to minority issues

Under international law, international organisations are by rule formed by states, consequently the ambiguities characterising the treatment of minorities in general, and the conceptualisation of minority rights in particular, are necessarily reflected in the documents and actions of international organisations the will states of.

The fundamental principles of the present international system are normatively based upon the classic nation-state ideal, as unitary, politically independent and sovereign entities of international relations. Thus, while human rights norms had become fully internationalised, their implementation and enforcement remained almost completely national. The values identified in human rights protection are common, but their realisation primarily belongs to national competence. It implies that despite the strong internationalisation of human rights protection, in practice the centrality of states has not been questioned in this field. This is particularly relevant for the international protection of minority rights. First of all, the establishment of peoples' right to self-determination, as a universal human

[18] Security concerns are apparent in the mandate of international bodies, which have been purposely set up for dealing with minority issues. The position of the OSCE High Commissioner on National Minorities was created to be an institution of "preventive diplomacy" (Van der Stoel 1999). As the 1992 CSCE Helsinki Document on "The Challenges of Change" defined the mandate of the High Commissioner under II.(2): "*The High Commissioner will act under the aegis of the CSO* [Committee of Senior Officials] *and will thus be an instrument of conflict prevention at the earliest possible stage*." This approach is clearly not limited to European institutions: in a similar way the discussion forum provided by the UN Working Group on Minorities between governments and minorities has one of its primary goals to settle disputes and encourage dialogue (Meijknecht 2001: 201-203). The working group reviews the implementation of the 1992 UN Declaration on the rights of persons belonging to national or ethnic, religious and linguistic minorities, promotes dialogue between minorities and governments, and recommends measures which may serve to diffuse minority tensions. See also <*http://www.unhchr.ch/minorities/group.htm*> Last accessed on 10 April 2010.

right, often surfaces in debates over minority claims for any form of political control over a territory or a group of citizens (i.e. the minority community).

Historically such claims can go as far as claiming independent statehood for a particular territory, which strongly contradicts the interests of the existing club of nation-states. The existence of national minorities in a states system that purports to be based upon the universal human right of national self-determination evoked different international responses in different historical moments. In the post-WWII regime of human rights protection, one of the answers was the reinforcement of individual human rights at an international level. The problems of national minorities can be addressed in terms of individual discrimination and equality, thereby provoking international requirements for states to remove any legal or political barriers of individual membership in a minority group by guaranteeing equality of civil and political rights to all its citizens. Nevertheless, as it usually happens, the state cannot provide an identity neutral environment for its citizens in exercising their civil and political rights, thus substantial minority claims (for preserving minority identity) require more than formal equality. It also implies, that states, and international organisations face a challenge in defining identity-sensitive specific rights, without questioning the historical foundations of existing nation-states. Ideas on shared sovereignty, multi-level governance, and autonomy are only marginally present in international documents.

In sum, international documents on minority rights regularly reinforce both aspects of minority protection: acknowledging that specific rights of minorities form an integral part of universal human rights, while on the other hand stressing that the exercise of minority rights shall contribute to political stability and peace, and shall not in any way infringe the sovereignty of states.[19] The duality of polit-

[19] As the CSCE Copenhagen Document (1990) stated under art. 30. that "[The participating states] *reaffirm that respect for the rights of persons belonging to national minorities as part of universally recognized human rights is an essential factor for peace, justice, stability and democracy in the participating States*." But the Document also reaffirms under art. 37 that "*None of these commitments may be interpreted as implying any right to engage in any activity or perform any action in contravention of the purposes and principles of the Charter of the United Nations, other obligations under international law or the provisions of the Final Act, including the principle of territorial integrity of States*."

ical (security) and normative-ideational (human rights) considerations necessarily poses a quandary in the accommodation of minority claims, and minority rights always trigger a combined approach. Indeed, the indefinite formulation of specific minority rights in international documents is also a reflection of the security concerns of states, in that states are not inclined to develop at the international level a consistent and effectively claimable set of rights for minorities, similar to the existing regime of international human rights protection. Thus states maintain a wide range of choices in defining their minority policies while still remaining in line with international principles of human rights protection.

Conclusions

But this dual (security and human rights) approach poses a conceptual dilemma: in principle if human rights are accepted as being universal and equal for all, and all specific minority rights are considered as being an integral part of universal human rights, no security interest could determine the extent to which they are protected. This means that in theory neither the denial, nor the extension of minority rights – from a human rights protectionist approach – could be justified by political considerations or security interests. Considering that in principle all human rights receive effective protection because they are rooted in the dignity of all human beings, a minimum consensus on a set of inviolable minority rights – which go beyond the right to existence and the mere prohibition of discrimination on the grounds of national or ethnic belonging – could be expected to develop at the international level. The rational, utilitarian approach standing behind most security instruments and mechanisms in international relations can hardly be transplanted to the area of human rights protection. As the authoritative limitation or extension of human rights of individual persons in proportion of the *presupposed* danger they may pose to the society is hardly acceptable, so governments and international organisations should not deny the same consistency in their approach to specific communities of individuals, i.e. to minorities.

An additional question in this regard: who is entitled to protect minority rights? Taking into account the great political sensitivity of

defining minority rights, the primary responsibility for the protection of minorities lies on the state, where they live. Nevertheless, as minority rights form a part of the international human rights regime, and as international organisations – independently from the ambiguities characterising their interests in doing so – increasingly participate in the promotion of minority rights, their involvement is also unquestionable. Moreover, defining minority rights as universal human rights may imply also that states interested in the amelioration of the situation of particular minorities (usually kin-states) can take actions to support them.

As a matter of fact, finding a general definition of "minorities" at international level remains unlikely for the future for two main reasons:

- first, the dual justification of minority rights protection leaves opportunities for States in their domestic regulations to take security and assimilatory (for achieving "national unity") considerations into account in implementing international obligations in this field, thus the control over the implementation of minority rights and over the delimitation of the addressees of such rights remains crucially important for individual states;
- secondly, as it is evident from the above, the differences between the needs of minorities and the differences between their social, historical, cultural background make rather difficult if not impossible the elaboration of a universally acceptable definition of the term "minority".

As a final conclusion, besides the theoretical interest in finding a definition, all political and legal endeavours for a universal codification of the term "minority" in international law seems to divert attention from the implementation of minority rights rather than attempting to create a foundation for them. Furthermore it seems to be clear that a normative definition of minorities at the international level may be only useful if it builds on the recognition of different treatments required by traditional minorities which have a long-standing relationship with their state and thereby help to avoid mixing such claims (formally acknowledged by international minority rights norms) from the problems of the social integration of immigrant communities.

BIBLIOGRAPHY

Bauböck, Rainer (1994) *Transnational Citizenship*. Aldershot: Edward Elgar.

Benoit-Rohmer, Florence (1996), *The Minority Question in Europe: towards a coherent system of protection for national minorities.* Strasbourg: Council of Europe.

Brass, Paul R. (1991) *Ethnicity and Nationalism: Theory and Comparison*. New Delhi: Sage.

Cordell, Karl (1999) (ed.) *Ethnicity and Democratisation in the New Europe*. New York: Routledge.

Eide, Asbjørn (1995) 'Minority Protection and World Order: Towards a Framework for Law and Policy'. In: Phillips, A. and Rosas, A. (eds.) *Universal Minority Rights*. Turku/Åbo and London: Åbo Akademi – Minority Rights Group International. pp. 87-113.

---------- (1996) 'Equality, nationalism and the protection of minorities: a dilemma in democratization' in: Alfredsson, G. and Macalister-Smith, P. (eds.) *The Living Law of Nations – Essays on refugees, minorities, indigenous peoples and the human rights of other vulnerable groups*. Kehl/ Strasbourg: N.P. Engel. pp. 157-168.

---------- (1998) 'Minorities in a Decentralised Environment' paper presented at the International Conference on Human Rights "All Human Rights for All" in Yalta, 2-4 September 1998 – see at <*http://www.minelres.lv/ publicat/Eide_Yalta98.htm*> (Last accessed on 15 December 2009.)

Ermacora, Felix (1983) 'The protection of minorities before the United Nations' in: *Collected Courses of the Hague Academy of International Law*, IV. The Hague: Kluwer. pp. 257-370.

Favell, Adrian (2000), ‚L'Europeanisation ou l'emergence d'un nouveau «champ politique»: le cas de la politique de l'immigration', In: *Cultures et Conflits* Sociologie politique de l'international, published December 2000, special edition on „Sociologie de l'Europe: Mobilisations, elites et configurations institutionelles", edited by Virginie Guiraudon.

Gilbert, George (1992) 'The Legal Protection Accorded to Minority Groups in Europe' in: *Netherlands Yearbook of International Law 1992*, p. 67-104

Meijknecht, Anna (2001) *Towards International Personality: The Position of Minorities and Indigenous Peoples in International Law*. Antwerpen – Groningen – Oxford: Intersentia-Hart.

Musgrave, Thomas (1997) *Self-Determination and National Minorities*. Oxford: Clarendon.

Packer, John (1993) 'On the Definition of Minorities.' In: Myntti, K. and Packer, J. (eds.) *The Protection of Ethnic and Linguistic Minorities in Europe*. Åbo Akademi: Åbo/Turku. pp. 23-65.

---------- (1996) 'On the Content of Minority Rights.' In: Raïkka, Juha (ed.) *Do We Need Minority Rights? Conceptual Issues.* The Hague: Martinus Nijhoff Publishers. pp. 121-178.

Pentassuglia, Gaetano (2000) *Defining 'minority' in international law: a critical appraisal*. Rovaniemi: Lapland's University Press.

---------- (2002) *Minorities in International Law*. Strasbourg: Council of Europe Publications.

Preece Jackson, Jennifer (1998) *National Minorities and the European Nation-States System*. Oxford: Clarendon Press.

Richards, Jeff (1999) 'Ethnicity and democracy – complementary or incompatible concepts?' in Cordell, K. (ed.) *Ethnicity and Democratisation in the New Europe*. New York: Routledge. pp. 11-23.

Ó Riagáin, Dónall (2001) 'A look at the linguistic future of Europe'. In: S. Trifunovska (ed.) *Minority Rights in Europe – European Minorities and Languages*. The Hague: TMC-Asser Press. pp. 31-42.

Thornberry, Patrick (1991) *The Rights of Minorities and International Law*. Oxford: Clarendon Press.

Van der Stoel, Max (1999) *Peace and Stability through Human and Minority Rights* (Baden-Baden: Nomos Verlag.

De Varennes, Fernand (1996) *Language, Minorities and Human Rights*. The Hague: Kluwer Law International.

Weller, Marc (2005) (ed.): *The Rights of Minorities. A Commentary on the European Framework Convention for the Protection of National Minorities*. Oxford, Oxford University Press.

Wiessner, S. (1996) 'Faces of vulnerability: protecting individuals in organic and non-organic groups' in: Alfreddson, G. and Mecalister-Smith (eds.) *The Living Law of Nations: Essays on refugees, minorities, indigenous peoples and the human rights of other vulnerable groups*. Kehl am Rein: N.P. Engel Verlag. pp. 213-228.

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