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Introduction – 2015 Anniversary Issue of the Journal on Ethnopolitics and Minority Issues in Europe

Andreea Cârstocea*
European Centre for Minority Issues

2015 marked 15 years since the Journal on Ethnopolitics and Minority Issues in Europe (JEMIE) was established as the flagship academic publication of the European Centre for Minority Issues (ECMI). Coincidentally, 2016 also marks an important anniversary, namely 20 years since ECMI was founded on 4 December 1996, in Flensburg, on the German-Danish border.

As such, we thought it fitting that the closing 2015 Issue of our Journal should be an anniversary one, looking back at these 15 years of publication history and remembering some of the topics and articles published here, while at the same time reflecting on some of the subjects and topics that could potentially be tackled in the journal in the future.

Over the 15 years that passed since JEMIE was launched, the main focus of the journal remained constant: publishing articles, commentaries and book reviews addressing minority issues from a broad range of perspectives, such as ethnopolitics, democratization, conflict management, good governance, participation, minority rights, etc. Concretely, the topics approached in our Special Issues ranged from Europeanization and minority rights to minority language policies, non-territorial autonomy, minority participation in public life, new media, freedom of expression, and many others; these topics were discussed in connection to events and developments across Europe, understood in the broadest sense. Occasionally, JEMIE published special issues dedicated to specific minority groups (e.g. the Roma), or to particular institutions dealing with minority issues (e.g. the OSCE High Commissioner on National Minorities). The articles published in our General Issues covered additional ground in their selected subject matter, diverse approaches and geographical scope.

* Senior Research Associate, Editor of the Journal on Ethnopolitics and Minority Issues in Europe.

It must be said that pursuing these topics and publishing such a wide range of articles could not have been possible without the invaluable contribution of JEMIE's previous editors, and of course without the help of the Advisory and Editorial board. (Lists of previous editors and current Advisory and Editorial boards can be consulted here: http://www.ecmi.de/publications/jemie/).

As to the future of JEMIE, it will continue to pursue its focus on minority issues, reflecting – as it has been doing for the past 15 years – on academic, legal, socio-economic, or political developments in the field. Among other things, the impact of the refugee crisis on the situation of national minorities, as well as its potential impact on the definition of national minorities and the protections afforded to national minorities, migrants, and refugees will probably constitute important research topics in the near future. In addition to the commitment to publish high-quality articles in the field, we will also seek to improve our visibility and impact factor, by including JEMIE in the major research databases.

These being said, our readers are invited to enjoy in the following a selection of articles published over time in JEMIE. Selecting these articles from the almost 200 that were published over the last 15 years was no easy task; deciding on which articles and topics should be included here meant reflecting on what topics were of most interest to our readership, and which articles provided the most original and relevant analyses. In the end, we chose to use the number of quotations the articles generated – while being aware this is a far from perfect criterion – as a guide to our most popular articles. Obviously, using the number of quotations as a criterion brings with it its own problems: for one, articles published in the earlier years of JEMIE will have had more time to generate quotations and therefore appear higher on our impact-generating list of articles. It is however a good indicator of the interest they generated through their choice of topic and approach, and of course of the quality of the analysis they provided.

After arranging the articles according to the number of quotations received, it was particularly interesting to see that all addressed (directly or indirectly) the same issue, namely minority rights in the context of the European Union enlargement. This demonstrates on the one hand a high interest in the rights of national minorities in Eastern Europe, and, on the other, in the role of the European Union in the process of developing adequate systems of minority protection in these countries. It is important to emphasize that the articles re-published in this Anniversary Issue do not reflect current concerns, but the political situation

and the developments in the field at the time of writing; although one could say many of the arguments presented in these articles are still highly relevant today.

This Anniversary Issue will have as a starting point Will Kymlicka's article 'Multiculturalism and Minority Rights: West and East', first published in 2002. Kymlicka's discussion of western models of multiculturalism and minority rights and of the factors which might make their adoption difficult in Eastern Europe sets a fitting theoretical framework for the subsequent articles. The next article, 'Monitoring the Monitors: EU Enlargement Conditionality and Minority Protection in the CEECs', by James Hughes and Gwendolyn Sasse, also focuses on the difficulties of transferring western norms of minority protection by concentrating on the problematic linkage between EU membership conditionality and compliance by candidate countries on matters related to the protection of national minorities.

The next three articles are also concerned with the issue of EU enlargement and its impact on minority protection, by focusing on specific case studies. Thus Martin Brusis, in his 2003 article 'The European Union and Interethnic Power-sharing Arrangements in Accession Countries', concentrates on elements of consociational power-sharing in Bulgaria, Romania and Slovakia, and argues that the EU played an important role in the emergence of these power-sharing arrangements due to its adoption of a security approach to minority protection policy, and prioritizing consensual settlement of disputes over the enforcement of universalist norms. David J. Smith, in his article 'Minority Rights, Multiculturalism and EU Enlargement: the Case of Estonia', examines the process of EU enlargement and its impact upon ethnopolitics in contemporary Estonia, analysing how Estonia was able to reconcile its so-called 'ethnic democracy' with the EU Copenhagen criteria requiring the 'respect for and protection of minorities'. Finally, Peter Vermeersch, in his article 'EU Enlargement and Minority Rights Policies in Central Europe: Explaining Policy Shifts in the Czech Republic, Hungary and Poland', assesses the impact of both domestic and international factors on the development of policies towards national minorities in these three Central European countries.

That European enlargement and minority rights in the accession countries constituted such central interests for our readers is probably no surprise, given the political and socio-economic importance of the EU expansion in these years. Obviously, we cannot be certain of what topics will take centre stage in the following years; what we can however is promise to continue to publish high-quality articles reflecting current developments related to minority issues, thus continuing to offer a platform for academic debate in this field.

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Multiculturalism and Minority Rights: West and East*

Will Kymlicka**

Queen's University, Canada

Are Western models of multiculturalism and minority rights relevant for the post-Communist countries of Central and Eastern Europe? This article describes a range of Western models, and explores the social and political conditions that have led to their adoption in the West. It then considers various factors which might make the adoption of these models difficult in Eastern Europe, and considers the potential role of the international community in overcoming these obstacles.

Introduction

Countries in post-communist Europe have been pressured to adopt Western standards or models of multiculturalism and minority rights. Indeed, respect for minority rights is one of the accession criteria that candidate countries must meet to enter the European Union (EU) and NATO. Candidate countries are evaluated and ranked in terms of how well they are living up to these standards (see EU Accession Monitoring Program OSI 2001).

There are two interlinked processes at work here. First, we see the 'internationalizing' of minority rights issues. How states treat their minorities is now seen as a matter of legitimate international concern, monitoring and intervention. Second, this international framework is deployed to export Western models to newly-democratizing countries in Eastern Europe.

This trend implicitly rests on four premises: (i) that there are certain common standards or models in the Western democracies; (ii) that they are working well in the West; (iii) that they are applicable to Eastern and Central Europe (hereafter ECE), and would work

*Canada Research Chair in Political Philosophy in the Philosophy Department at Queen's University in Kingston, Canada.
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well there if adopted; (iv) that there is a legitimate role for the international community to play in promoting or imposing these standards.

All four of these assumptions are controversial. Western countries differ amongst themselves in their approach to ethnic relations, and attempts to codify a common set of minimum standards or best practices have proven difficult. Moreover, the success of these approaches is often deeply contested within Western countries. Many citizens of Western democracies view their domestic policies towards ethnic relations as ineffective, if not actually harmful. The wisdom of 'exporting' these policies to ECE countries is even more controversial, both in the West and the East. Countries in post-Communist Europe differ significantly from Western countries (and from each other) in terms of history, demography, geopolitical stability, economic development and democratic consolidation. Given these differences, Western approaches may simply not be relevant or helpful, and attempts to impose them against the wishes or traditions of the local population can be counter-productive in terms of ethnic relations. So the decision to make minority rights one of the criteria for 'rejoining Europe' rests on a number of controversial assumptions. This decision was taken by Western leaders in the early 1990s, almost in panic, as a response to fears that ethnic conflict would spiral out of control across the post-Communist world. There was relatively little public debate or scholarly analysis about the wisdom of this decision, and it seems clear in retrospect that it was taken without a full consideration of its implications, or of the difficulties it raised.

In my view, the time has come to have a vigorous and public debate about these four assumptions. Now that the initial panic about ethnic violence has subsided, and with relative peace throughout the region, we can afford to sit back and think more carefully about the potential and pitfalls of 'exporting' and 'internationalizing' minority rights.

In a recent volume (Kymlicka and Opalski 2001), I attempted to explore these four basic assumptions in some depth. In this short article, I can only give a brief sketch of my conclusions.

I. Western Trends Regarding Ethnocultural Diversity

First, then, what do we mean by Western standards or models of multiculturalism and minority rights? Efforts have been made by various international organizations to formally codify a set of minority rights or multicultural practices, including the 1992 Declaration of the United Nations, the 1992 European Charter for Regional or Minority Languages Charter and

the 1995 Framework Convention of the Council of Europe, and various Recommendations of the OSCE's High Commissioner on National Minorities (1996, 1998, 1999). In theory, these embody the standards that ECE countries are expected to meet.

These documents are important, but are potentially misleading as a guide to Western understandings of minority rights (and hence to Western expectations about how ECE countries should behave). For one thing, these declarations are often quite vague. They typically assert broad principles of respect and recognition for minority groups, but then hedge them with multiple qualifiers about 'where appropriate' and 'within the framework of national law'. Also, these formal declarations are continually evolving, most recently in efforts to include minority rights in proposals for a new Constitution of the European Union.

In my view, these formal declarations are the surface manifestation of deeper trends that are occurring throughout the Western democracies regarding ethnic relations. In order to fully understand the forces at work in current processes of internationalizing and exporting minority rights, we need to look below these formal documents to the underlying social trends.

There have in fact been dramatic changes in the way Western democracies deal with ethnocultural diversity in the last thirty to forty years. In the volume, I highlight five such trends, but for the purposes of this paper let me focus on two.

The first concerns the treatment of substate/minority nationalisms, such as the Québécois in Canada, the Scots and Welsh in Britain, the Catalans and Basques in Spain, the Flemish in Belgium, the German-speaking minority in South Tyrol in Italy, and Puerto Rico in the United States.[1] In all of these cases, we find a regionally-concentrated group that conceives of itself has a nation within a larger state, and mobilizes behind nationalist political parties to achieve recognition of its nationhood, either in the form of an independent state or through territorial autonomy within the larger state. In the past, all of these countries have attempted to suppress these forms of substate nationalism. To have a regional group with a sense of distinct nationhood was seen as a threat to the state. Various efforts were made to erode this sense of distinct nationhood, including restricting minority language rights, abolishing traditional forms of regional self-government, and encouraging members of the dominant group to settle in the minority group's traditional territory so that the minority becomes outnumbered even in its traditional territory.

However, there has been a dramatic reversal in the way Western countries deal with substate nationalisms. Today, all of the countries I have just mentioned have accepted the principle that these substate national identities will endure into the indefinite future, and that their sense of nationhood and nationalist aspirations must be accommodated in some way or

other. This accommodation has typically taken the form of what we can call 'multination federalism': that is, creating a federal or quasi-federal subunit in which the minority group forms a local majority, and so can exercise meaningful forms of self-government. Moreover, the group's language is typically recognized as an official state language, at least within their federal subunit, and perhaps throughout the country as a whole.

At the beginning of the twentieth-century, only Switzerland and Canada had adopted this combination of territorial autonomy and official language status for substate national groups. Since then, however, virtually all Western democracies that contain sizeable substate nationalist movements have moved in this direction. The list includes the adoption of autonomy for the Swedish-speaking Åland Islands in Finland after the First World War, autonomy for South Tyrol and Puerto Rico after the Second World War, federal autonomy for Catalonia and the Basque Country in Spain in the 1970s, for Flanders in the 1980s, and most recently for Scotland and Wales in the 1990s.

This, then, is the first major trend: a shift from suppressing substate nationalisms to accommodating them through regional autonomy and official language rights. Amongst the Western democracies with a sizeable national minority, only France is an exception to this trend, in its refusal to grant autonomy to its main substate nationalist group in Corsica. However, legislation was recently adopted to accord autonomy to Corsica, and it was only a ruling of the Constitutional Court that prevented its implementation. So France too, I think, will soon join the bandwagon.

The second trend concerns the treatment of indigenous peoples, such as the Indians and Inuit in Canada, the Aboriginal peoples of Australia, the Maori of New Zealand, the Sami of Scandinavia, the Inuit of Greenland, and Indian tribes in the United States. In the past, all of these countries had the same goal and expectation that indigenous peoples would eventually disappear as distinct communities, as a result of dying out, or intermarriage, or assimilation. Various policies were adopted to speed up this process, such as stripping indigenous peoples of their lands, restricting the practice of their traditional culture, language and religion, and undermining their institutions of self-government.

However, there has been a dramatic reversal in these policies, starting in the early 1970s. Today, all of the countries I just mentioned accept, at least in principle, the idea that indigenous peoples will exist into the indefinite future as distinct societies within the larger country, and that they must have the land claims, cultural rights (including recognition of customary law) and self-government rights needed to sustain themselves as distinct societies.

We see this pattern in all of the Western democracies. Consider the constitutional affirmation of Aboriginal rights in the 1982 Canadian constitution, along with the land claims commission and the signing of new treaties; the revival of treaty rights through the Treaty of Waitangi in New Zealand; the recognition of land rights for Aboriginal Australians in the Mabo decision; the creation of the Sami Parliament in Scandinavia, the evolution of 'Home Rule' for the Inuit of Greenland; and the laws and court cases upholding self-determination rights for American Indian tribes (not to mention the flood of legal and constitutional changes recognizing indigenous rights in Latin America). In all of these countries there is a gradual but real process of decolonization taking place, as indigenous peoples regain their lands, customary law and self- government. This is the second main shift in ethnocultural relations throughout the Western democracies.

In the volume, I also discuss important shifts regarding other types of groups, including immigrants, guest-workers, refugees and African-Americans. In all of these contexts as well, we see shifts away from historic policies of assimilation or exclusion towards a more 'multicultural' approach that recognizes and accommodates diversity.

However, for the purposes of this paper, the cases of national minorities and indigenous peoples are particularly relevant. They help illustrate the extent to which Western democracies have moved away from older models of unitary, centralized nation-states, and repudiated older ideologies of 'one state, one nation, one language'. Today, virtually all Western states that contain indigenous peoples and substate national groups have become 'multination' states, recognizing the existence of 'peoples' and 'nations' within the boundaries of the state. This recognition is manifested in a range of minority rights that includes regional autonomy and official language status for national minorities, and customary law, land claims, and self- government for indigenous peoples.

These, then, are some of the deep trends that are shaping domestic practices and opinions in the Western democracies. The extent to which these two trends have been 'internationalized' differs. In the case of indigenous peoples, serious efforts have been made to codify these emerging practices at the level of international law. Land claims, customary law and self- government for indigenous peoples are all clearly affirmed in recent international documents, such as the draft declarations at the United Nations and the Organization of American States. In this case, emerging international law reflects the most advanced practices of Western countries in terms of accommodating indigenous peoples.

By contrast, only very modest minority rights, such as mother-tongue primary education, have been recognized in the case of substate national groups. No international

document has affirmed any principle of territorial autonomy or official language status for substate national groups.[2] In this case, international law lags far behind the emerging practices of Western democracies in terms of the rights accorded to substate national groups. To oversimplify, we might say that while international law is attempting to codify 'best practices' in the case of indigenous peoples, it is only codifying the most 'minimal standards' or 'lowest common denominator' in the case of substate national groups.

These variations in the formal content of international documents are important, but they should not blind us to the underlying trends. An increasing number of citizens in the West have grown accustomed to the idea of living in a 'multination' state that accords substate nations and indigenous peoples the rights and powers needed to sustain themselves as distinct and self- governing societies into the indefinite future. Substate national groups do not have a *right* to multination federalism under international law, but many people in the West view this as the 'best' response to substate nationalisms. It is in any event viewed as a fully legitimate option. It is seen as natural and acceptable for substate groups to desire this sort of arrangement, and normal and appropriate for a free and democratic state to move in this direction.

II. Explaining and Evaluating the Western Models

So we see emerging trends in the West towards various forms of multiculturalism and minority rights. This raises two important questions. First, why have so many Western countries moved in this direction? And second, how should we evaluate this trend? Should we view these models as a 'success' or a 'best practice' to be celebrated, and perhaps even to be exported to other regions, such as the ECE?

Let me start with the first question. In my view, there are three central factors that have made these trends possible, and perhaps even inevitable in the Western democracies:

(a) *Demographics*: The first factor is simply demographics. In the past, many governments had the hope or expectation that ethnic minorities would simply disappear, through dying out or assimilation or intermarriage. It is now clear that this is not going to happen. Indigenous peoples are the fastest-growing segment of the population in the countries where they are found, with very high birth rates. The percentage of immigrants in the population is growing steadily in most Western countries, and most commentators agree that even more immigrants will be needed in the future to offset declining birth rates and an

ageing population. And substate national groups in the West are also growing in absolute numbers, even if they are staying the same or marginally declining as a percentage of the population. No one anymore can have the dream or delusion that minorities will disappear. The numbers count, particularly in a democracy, and the numbers are shifting in the direction of non-dominant groups.

(b) *Rights-Consciousness*: The second factor is the human rights revolution, and the resulting development of a 'rights consciousness'. Since 1948, we have an international order that is premised on the idea of the inherent equality of human beings, both as individuals and as peoples. The international order has decisively repudiated older ideas of a racial or ethnic hierarchy, according to which some peoples were superior to others, and thereby had the right to rule over them.

It is important to remember how radical these ideas of human equality are. Assumptions about a hierarchy of peoples were widely accepted throughout the West up until World War II, when Hitler's fanatical and murderous policies discredited them. Indeed, the whole system of European colonialism was premised on the assumption of a hierarchy of peoples, and was the explicit basis of both domestic policies and international law throughout the nineteenth century and first half of the twentieth century.

Today, however, we live in a world where the idea of human equality is unquestioned, at least officially. What matters here is not the change in international law *per se*, which has little impact on most people's everyday lives. The real change has been in people's consciousness. Members of historically subordinated groups today demand equality, and demand it as a *right*. They believe they are entitled to equality, and entitled to it *now*, not in some indefinite or millenarian future.

This sort of rights-consciousness has become such a pervasive feature of modernity that we have trouble imagining that it did not always exist. But if we examine the historical records, we find that minorities in the past typically justified their claims, not by appeal to human rights or equality, but by appealing to the generosity of rulers in according 'privileges', often in return for past loyalty and services. Today, by contrast, groups have a powerful sense of entitlement to equality as a basic human right, not as a favour or charity, and are angrily impatient with what they perceive as lingering manifestations of older hierarchies.

Of course, there is no consensus on what 'equality' means (and, conversely, no agreement on what sorts of actions or practices are evidence of 'hierarchy'). People who agree on the general principle of the equality of peoples may disagree about whether or when this requires official bilingualism, for example, or consociational power sharing. But there can be

no doubt that Western democracies historically privileged a particular national group over other groups who were subject to assimilation or exclusion. This historic hierarchy was reflected in a wide range of policies and institutions, from the schools and state symbols to policies regarding language, immigration, media, citizenship, the division of powers, and electoral systems. So long as minority nationalist leaders can identify (or conjure up) manifestations of these historic hierarchies, they will be able to draw upon the powerful rights-consciousness of their members.

(c) *Democracy*: The third key factor, I believe, is democracy. Put simply, the consolidation of democracy limits the ability of elites to crush dissenting movements. In many countries around the world, elites ban political movements of minority groups, or pay thugs or paramilitaries to beat up or kill minority leaders, or bribe police and judges to lock them up. The fear of this sort of repression often keeps minority groups from voicing even the most moderate claims. Keeping quiet is the safest option for minorities in many countries.

In consolidated democracies, however, where democracy is the only game in town, there is no option but to allow minority groups to mobilize politically and advance their claims in public. As a result, members of minority groups are increasingly unafraid to speak out. They may not win the political debate, but they are not afraid of being killed, jailed or fired for trying. It is this loss of fear, combined with rights-consciousness, that explains the remarkably vocal nature of ethnic politics in contemporary Western democracies.

Moreover, democracy involves the availability of multiple access points to decision-making. If a group is blocked at one level by an unsympathetic government, they can pursue their claims at another level. Even if an unsympathetic right-wing political party were to win power at the central level, and attempted to cut back on the rights of minorities, these groups could shift their focus to the regional level, or to the municipal level. And even if all of these levels are blocked, they could pursue their claims through the courts, or even through international pressure. This is what democracy is all about: multiple and shifting points of access to power.

Where these three conditions are in place – increasing numbers, increasing rights-consciousness, and multiple points of access for safe political mobilization – I believe that the trend towards greater accommodation of ethnic diversity is likely to arise. Indeed, I think it is virtually inevitable. This is the lesson I draw from the experience of all the Western democracies. These trends have not depended on the presence or absence of particular personalities, or particular political parties, or particular electoral systems. We see enormous variation across the Western democracies in terms of leadership personalities, party platforms

and electoral systems. Yet the basic trends regarding ethnic diversity are the same. And the explanation, I believe, rests in these three deep sociological facts about numbers, rights-consciousness, and opportunity-structures.

There may of course be disruptions in this general trend. Economic crises or considerations of state security can quickly override debates on minority rights. September 11th, for example, has reconfigured debates about the accommodation of Arab and Muslim immigrants in many Western countries. (I will return to the relationship between minority rights and state security later, since it is particularly important in the ECE context.) But in the West, such economic or geopolitical crises have been relatively rare, and led only to temporary deviations in the underlying trend towards accommodation.

So there are a variety of sociological factors that underlie the trend towards multiculturalism and minority rights in the West. But how should we evaluate this trend? Should it be judged a 'success'? Are the emerging Western models of immigrant multiculturalism, indigenous self-government and multination federalism something to celebrate, and perhaps to export?

Let me focus on the evaluation of multination federations, since they are probably the most relevant and also the most controversial for ECE countries. Are multination federations in the West working well? In some cases, it is simply too early to tell to judge their success. For example, the federalization of Spain and Belgium is comparatively recent, and devolution in the United Kingdom is only a few years old.

However, if we look across the broad range of cases, I think we can make some fairly firm judgements about their strengths and weaknesses. Multination federalism in the West has clearly been 'successful' along some dimensions, and equally clearly been a 'failure' along other dimensions.

Let's start with the successes. I would argue that multination federalism has been successful along at least five dimensions:

(i) *peace and individual security* – these multination federations are managing to deal with their competing national identities and nationalist projects with an almost complete absence of violence or terrorism by either the state or the minority.[3]

(ii) *democracy* – ethnic politics is now a matter of 'ballots not bullets', operating under normal democratic procedures, with no threat of military coups or authoritarian regimes which take power in the name of national security.

(iii) *individual rights* – these reforms have been achieved within the framework of liberal constitutions, with firm respect for individual civil and political rights.

(iv) *economic prosperity* – the move to multination federalism has also been achieved without jeopardizing the economic well-being of citizens. Indeed, the countries that have adopted multination federalism are amongst the wealthiest in the world.

(v) *inter-group equality* – last but not least, multination federalism has promoted equality between majority and minority groups. By equality here I mean non-domination, such that one group is not systematically vulnerable to the domination of another group. Multination federalism has helped create greater economic equality between majority and minority; greater equality of political influence, so that minorities are not continually outvoted on all issues; and greater equality in the social and cultural fields, as reflected for example in reduced levels of prejudice and discrimination between groups.

On all these criteria, multination federalism in the West must surely be judged as a success. These multination federations have not only managed the conflicts arising from their competing national identities in a peaceful and democratic way, but have also secured a high degree of economic prosperity and individual freedom for their citizens. This is truly remarkable when one considers the immense power of nationalism in the past hundred years. Nationalism has torn apart colonial empires and Communist dictatorships, and redefined boundaries all over the world. Yet democratic multination federations have succeeded in taming the force of nationalism. Democratic federalism has domesticated and pacified nationalism, while respecting individual rights and freedoms. It is difficult to imagine any other political system that can make the same claim.

However, there are two important respects in which multination federations have not succeeded. First, the lived experience of inter-group relations is hardly a model of robust or constructive intercultural exchange. At best, most citizens in the dominant group are ignorant of, and indifferent to, the internal life of minority groups, and vice versa. At worst, the relations between different groups are tinged with feelings of resentment and annoyance. Despite the significant reforms of state institutions in the direction of multination federalism, substate national groups still typically feel that the older ideology of the homogenous nation-state has not been fully renounced, and that members of the dominant group have not fully accepted the principle of a multination state (or have not fully accepted all of its implications). By contrast, the members of the dominant group typically feel that members of minority groups are ungrateful for the changes that have been made, unreasonable in their expectations, and are impossible to satisfy. As a result, inter-group relations are often highly

politicized, as members of both sides are (over?)-sensitive to perceived slights, indignities and misunderstandings. As a result, many people avoid inter-group contact, where possible, or at least do not go out of their way to increase their contact with members of the other group. When contact does take place, it tends to reduce quickly to rather crude forms of bargaining and negotiation, rather than any deeper level of cultural sharing or common deliberation.

The result is sometimes described as the phenomenon of 'parallel societies', or even of 'two solitudes'. Consider the Flemish in Belgium or Québécois in Canada. Multination federalism has enabled these national groups to live more completely within their own institutions operating in their own language. In the past, these groups often faced extensive economic, political and social pressure to participate in institutions run in the dominant language. For example, all of the courts, or universities, or legislatures, were only conducted in the majority language. Yet today, as a result of adopting the ideal of a multination federation, these groups have been able to build up an extensive array of public institutions in their own language, so that they can access the full range of educational, economic, legal and political opportunities without having to learn the dominant language, or without having to participate in institutions that are primarily run by members of the dominant group. In effect, these sorts of multination federations allow groups to create 'parallel societies', co-existing alongside the dominant society, without necessarily much interaction between them.

The interactions between these parallel societies can be very minimal indeed. The French- speaking and English-speaking societies in Canada have often been described as 'two solitudes', which I believe is an accurate description. Francophones and Anglophones in Canada read different newspapers, listen to different radio programs, watch different TV shows, read different literatures. Moreover, they are generally quite uninterested in each other's culture. Few English-speaking Canadians have any desire to learn about internal cultural developments within French-speaking Canada, and vice versa. Anglophones are not interested in reading francophone authors (even in translation), or in learning about who are the hot new media stars or public intellectuals or entertainers within Quebec (and vice-versa).

This sort of parallel societies/two solitudes also exists in Belgium between the Flemish- and French-speaking groups. And also in Switzerland between the German, French and Italian-speaking groups. Switzerland has been described as composed of three groups that "stand with their backs to each other" (Steiner 2001: 145). The French-Swiss stand facing towards France; the Italian-Swiss facing towards Italy; and the German-Swiss facing towards Germany, each focused on their own internal cultural life and the media and culture of the neighbouring country whose language they share. Most members of all three groups accept the principle that

Switzerland must be a multilingual state that recognizes and shares power amongst its constituent groups. But few people have much interest in learning about or interacting with the other groups.

In short, increased fairness at the level of state institutions has not been matched by improvements at the level of the lived experience of inter-group relations. The *state* has made itself accessible to all citizens, and affirms the important contribution that each group makes to the larger society. But from the point of view of individuals, the presence of other groups is rarely experienced as enriching. On the contrary, the level of mutual indifference in these countries (and hence the reduction of interethnic relations to mere bargaining) has been described as "nauseous" by one critic of multiculturalism (Barry 2001: 312). The state has become more just, inclusive and accommodating, but inter-group relations remain divided and strained.

Second, and perhaps more importantly, multination federations have not removed secession from the political agenda. On the contrary secessionist ideas and secessionist mobilization is part of everyday life in many Western multination federations. Secessionist parties compete for political office, and electors may even be given the choice of voting for secession in a referendum (as in Puerto Rico and Quebec). To date, no such referendum on secession has succeeded in the West. This suggests that the adoption of federalism has reduced the actual likelihood of secession, since it is almost certain that one or more of these countries would have broken up long ago without federalism. Had Canada, Belgium and Spain not been able to federalize, they might not exist as countries today.

But even if federalism reduces the likelihood of secession, it does not remove secession from the political agenda. Secessionists are on TV, in newspapers, and compete freely for elected office. And secessionist political parties often get substantial support in elections: e.g. 40 per cent in Quebec; 30 per cent in Scotland; 15 per cent in Belgium or the Basque country; 10 per cent in Catalonia; 5 per cent in Puerto Rico. This means that secessionists are present in parliament and on government commissions, and they use these platforms to articulate their views. So, while multination federalism may have reduced the actual likelihood of secession, it has not removed it from everyday political life, or taken it off the political agenda. It has not 'solved the problem of secession'.

So we have a mixed balance sheet, with both successes and failures. What then should be our overall judgement? In some eyes, the failures outweigh the successes. For some people – let's call them 'statists' – the key issue is secession. They believe that eliminating any threat of secession is the first and foremost criterion for evaluating state institutions. The first task of

any state is to ensure the integrity of its borders, and so states must first remove secession from the political agenda, and only then think about how best to improve individual rights or democracy or equality. Viewed from a statist perspective, multination federalism fails.

For other people – let's call them 'communitarians' – the key issue is interpersonal relations between citizens. They believe that a political community should be precisely a *community*, united by strong feelings of fraternity and common identity. Viewed from this communitarian perspective, multination federalism abandons the goal of a united community. It accepts the existence of more or less permanent divisions within the polity, and indeed institutionalizes these divisions within state structures. Unwilling to accept this sort of division, communitarians reject multination federalism.

Many citizens in the West, however, have concluded that the successes of multination federalism outweigh the failures. From their point of view – let's call it the 'liberal-democratic' perspective – the fundamental criterion is neither the sanctity of state boundaries nor the strength of community feelings. Rather, political institutions should be judged by their impact on the lives of individuals, as measured by the basic liberal criteria of personal freedom and security, democratic rights, and economic security and prosperity. And on these criteria, multination federalism in the West does quite well. It enables citizens in both majority and minority groups to live freely and peacefully, to participate actively in government, and to enjoy comparatively high levels of economic security and prosperity.

From this liberal-democratic point of view, it may be a source of disappointment that the members of different groups stand with their back to each other. But they stand as free and equal citizens, leading lives of peace and prosperity, under a state that upholds their rights and operates even-handedly between the different groups. And that surely is the main task of a liberal-democratic state. It may also be a source of frustration that state boundaries are contested by secessionists. But so long as the secessionist mobilization occurs in a peaceful and democratic way, with respect for liberal rights and freedoms, then it must be tolerated. The only way to eliminate secessionist mobilization and communal divisions would be to eliminate substate nationalisms, and that in turn could only be achieved by restricting individual rights and democratic freedoms. As I have just noted, there are powerful sociological forces that underlie ethnic mobilization, and wherever the members of substate national groups and indigenous peoples are given the individual freedom and democratic space to mobilize against (what they perceive as) inherited hierarchies, they are likely to do so. And so the choice is between finding liberal-democratic means of institutionalizing that ethnic mobilization, or of

adopting illiberal and undemocratic means of suppressing it. For liberal-democrats, the choice is obvious.

In any event, it is far from clear that attempts to suppress minority nationalism would actually work. They are likely to drive nationalist mobilization underground, and perhaps even into violent resistance. While statists and communitarians might be willing in principle to adopt illiberal or undemocratic means to suppress substate nationalism, they increasingly recognize that such efforts are likely to be futile, given the growing numbers and powerful rights-consciousness of the members of minority groups. Statists and communitarians in the West are, slowly and grudgingly, giving up on the dream that they can create political communities unblemished by secessionist sentiments or communal divisions.

In short, we see a growing consensus on the appropriateness of multination federalism in the West, but this support is hedged with ambivalence and reservations. Members of the majority group are disappointed and resentful that moving to multination federalism has not succeeded in eliminating secessionist mobilization and communal divisions. Members of the minority group typically feel that aspects of the old hierarchies remain in the habits and practices of the dominant group and in the institutions of the state, and resent the fact that the dominant group has not fully embraced the spirit of partnership. These feelings of resentment and misunderstanding wax and wane, but they are always close enough to the surface to make all sides wonder whether the whole effort was worthwhile, or whether the country will stay together.

Under these circumstances, it is potentially misleading to describe multination federalism as a 'success', let alone as something to 'celebrate'. Celebration is hardly the spirit with which most Western citizens view the institutions of multination federalism. And yet, beneath the reservations and ambivalence, there is also the sense that this is the best, and perhaps the only, way for liberal democracies to deal with substate nationalisms.

III. Relevance to Eastern Central Europe

Much more could be said about the strengths and weaknesses of multination federalism in the West, or about other forms of multiculturalism and minority rights. But let me turn now to ECE countries, and ask whether is feasible or desirable to 'export' these models to post-Communist Europe.

Both the practice and the discourse of minority rights in ECE is very different. There is enormous resistance in virtually every ECE country to the idea of federalism or other forms of territorial autonomy for national minorities.

In some cases, pre-existing forms of minority autonomy were scrapped: Serbia revoked the autonomy of Kosovo/Vojvodina; Georgia revoked the autonomy of Abkhazia and Ossetia; Azerbaijan revoked the autonomy of Ngorno-Karabakh. Indeed, the revoking of minority autonomy was often one of the first things that these countries chose to do with their new- found freedom after the collapse of communism. In other cases, requests to restore historic forms of autonomy were rejected (e.g. Romania refused to restore the autonomy to Transylvania which had been revoked in 1968). In yet other cases, requests to create new forms of autonomy were dismissed (e.g. Estonia rejected a referendum supporting autonomy for Russian-dominated Narva; Kazakhstan rejected autonomy for ethnic Russians in the north; Ukraine rejected a referendum supporting autonomy for ethnic Romanian areas; Lithuania rejected requests for autonomy by ethnic Poles; Macedonia rejected a referendum for autonomy for Albanian-dominated Western Macedonia in 1992). And in yet other cases, countries have redrawn boundaries to make it impossible for autonomy to be adopted in the future (e.g. Slovakia redrew its internal boundaries so that ethnic Hungarians would not form a majority within any of the internal administrative districts, and hence would have no platform to claim autonomy; Croatia redrew internal boundaries in Krajina and West Slavonia to dilute Serbian-populated areas).

The only cases in ECE where territorial autonomy has been accepted are cases where the national minority simply grabbed political power extra-constitutionally, and established *de facto* autonomy without the consent of the central government. In these situations, the only alternative to recognizing *de facto* autonomy was military intervention and potential civil war. This was the situation in TransDneister in Moldova; Abkhazia in Georgia; Krajina in Croatia; Crimea in Ukraine; and Ngorno-Karabakh in Armenia. Even here, most countries preferred civil war to negotiating autonomy, and only accepted autonomy if and when they were not able to win militarily. (Russia and Ukraine are the two exceptions.)

We see a similar trend with respect to official language rights. Despite the striking levels of linguistic diversity in many ECE countries, Belarus is the only one that has adopted a policy of official bilingualism. Taras discusses the 'paradox' that formerly monolingual countries in the West are moving towards greater respect for linguistic diversity, whereas formerly multilingual countries of the Soviet Union are "pressing ahead with unilingualism" (Taras 1998: 79).

In short, we see a dramatic difference between East and West in the basic approaches to substate nationalism and multination federalism. What explains this difference? In the volume, I explore a range of possible explanations that I can only briefly touch on here. Two

common explanations can be quickly dismissed. Some people argue that whereas ethnonational groups in the West reside in homogenous territories, in the East they are dispersed and inter-mingled, and so territorial solutions that work in the West will not work in the East. I think this is simply incorrect as a generalization. The ethnic Albanians in Macedonia, or ethnic Hungarians in Slovakia, are no more or less territorially concentrated than the French in Canada, Puerto Ricans in the US or Catalans in Spain. In all of these cases, there is a region in which the substate national group is particularly concentrated, but there are both 'internal minorities' (i.e. people living in that region who do not belong to the substate national group) and a 'minority diaspora' (i.e. members of the substate national group who live outside the region). The size of these internal minorities and minority diasporas in many ECE countries is no more or less than in comparable Western countries.

A second common explanation for opposition to bilingualism and federalism in ECE is that they cost a great deal of money, and while rich Western countries can afford these costs, poorer countries in ECE cannot. But this too is misleading. Federal countries can be just as efficient as unitary states, and studies suggest that bilingualism has negligible effects on overall state budgets. In fact, forcing public institutions in regions dominated by a linguistic minority to shift to the majority language is often a costly and inefficient process.

So what then is the real explanation for the resistance to multination federalism? Why have people in ECE countries come to such different conclusions about its relative potential and pitfalls than in the West?

One possible explanation is that there are more statists and communitarians in the East than West, and fewer liberals. As a result, ideas about the sanctity of the state and the unity of the nation are more powerful in the region, and are invoked to pre-empt the democratic freedoms and spaces needed for multiculturalism and minority rights to emerge.

But that is at best part of the story. For the fact is that *both* liberals and statist/communitarians in the ECE are more likely to oppose multination federalism than their counterparts in the West. Liberal-democrats in the West assume that substate national groups will exercise their territorial autonomy in accordance with the basic principles of liberal constitutionalism, so that devolving power from the central state to a self-governing region does not threaten the basic respect for individual rights and democratic freedoms. This indeed is what we see throughout the Western multination federations. In the ECE, by contrast, many liberal-democrats worry that such substate autonomies will become petty tyrannies that flout the rule of law, deny human rights, and oppress internal minorities.

Statists and communitarians in the West have grudgingly come to accept that their dreams of constructing a united community within uncontested borders are simply unrealistic. Attempts to preserve the ideology of 'one language, one nation, one state' through the assimilation or exclusion of minority groups have proven futile. Minorities are too numerous, and too politically conscious of their rights, to simply disappear. In the ECE, by contrast, many statists and communitarians cling to the hope that minority nationalism will fade away. They believe that substate nationalism is really a transient by-product of some other problem that will disappear over time through the processes of modernization or democratic transition. Some people assume that minority nationalism will fade as the economy improves, or as democracy is consolidated, or as communications and media become globalized. On this view, if ECE states have the strength to hold out against minority demagogues and ethnic entrepreneurs, then the problem will gradually solve itself. This, of course, is precisely the expectation that Westerners have gradually relinquished, since minority nationalisms have in fact strengthened rather than weakened as Western states have become more democratic, prosperous and globalized.

In comparing East and West then, we see a curious set of contrasts. In the ECE, many intellectuals and politicians are deeply pessimistic about the prospect that substate national groups can exercise territorial autonomy in accordance with liberal-democratic norms, yet are surprisingly optimistic about the possibility that substate nationalism will simply disappear. By contrast, Western public opinion is optimistic about the capacity of substate national groups to govern within liberal-democratic constraints, but pessimistic about the likelihood that substate nationalism will disappear as a result of processes of modernization, democratization, development or globalization.

These differing forms of optimism and pessimism account for some of the differences between the West and East. But there is one other very important factor. As I mentioned earlier, the trend towards greater accommodation of diversity can be blocked or deflected by considerations of security. Whether in the East or West, states will not accord greater powers or resources to groups that are perceived as disloyal, and therefore a threat to the security of the state. In particular, states will not accommodate groups which are seen as likely to collaborate with foreign enemies. Most Western democracies are fortunate that this is rarely an issue. For example, if Quebec gains increased powers, or even independence, no one in the rest of Canada worries that Quebec will start collaborating with Iraq or the Taliban or China to overthrow the Canadian state. Québécois nationalists may want to secede, but an independent Quebec would be an ally of Canada, not an enemy, and would cooperate together

with Canada in NATO and other Western defence and security arrangements. So too with Catalonia: if Catalonia becomes more autonomous, or even independent, it will still be an ally, not an enemy of Spain. So too with Scotland *vis-à-vis* the rest of Britain, Flanders *vis-à-vis* the rest of Belgium, or Puerto Rico *vis-à-vis* the rest of the United States.

In most parts of the world, however, minority groups are often seen as a kind of 'fifth column', likely to be working for a neighbouring enemy. This is particularly a concern where the minority is related to a neighbouring state by ethnicity or religion, so that the neighbouring state claims the right to intervene to protect 'its' minority.

Under these conditions, we are likely to witness what political scientists call the 'securitization' of ethnic relations (Wæver 1995). Relations between states and minorities are seen, not as a matter of normal democratic politics to be negotiated and debated, but as a matter of state security, in which the state has to limit the normal democratic process in order to protect the state. Under conditions of securitization, minority self-organization may be legally limited (e.g. minority political parties banned), minority leaders may be subject to secret police surveillance, the raising of particular sorts of demands may be illegal (e.g. laws against promoting secession), and so on. Even if minority demands can be voiced, they will be flatly rejected by the larger society and the state. After all, how can groups that are disloyal have any legitimate claims against the state? So securitization of ethnic relations erodes both the democratic space to voice minority demands, and the likelihood that those demands will be accepted.

This, I think, is precisely the situation we find throughout most of the ECE. State-minority relations have been 'securitized'. Dominant groups throughout the region feel they have been victimized by their minorities acting in collaboration with foreign enemies. We see this in the Czech Republic regarding the German minority; in Slovakia *re* the Hungarian minority; in the Baltics *re* the Russian minority; in Croatia *re* the Serbian minority; in Bulgaria *re* the Turkish minority, to name a few.

In all of these cases, minorities are seen (rightly or wrongly) as allies or collaborators with external powers that have historically oppressed the majority group. Hungarians in Romania and Slovakia may be a relatively small minority (10-15 per cent of the population in each country), but Slovakians and Romanians perceive them as the allies of their former Habsburg oppressors, and indeed as the physical residue of that unjust imperialism. The Russians who settled in Estonia and Latvia after World War II are seen by the state, not as a weak and disenfranchised minority group, but as a tool of their former Soviet oppressors. The

Muslim Albanians in Serbia and Macedonia, or the Muslim Turks in Bulgaria, are seen as a reminder of, and collaborator with, centuries of oppression under the Ottomans.

This history of imperialism, collaboration and border changes have encouraged three inter- related assumptions which are now widely accepted by ECE countries: (a) that minorities are disloyal, not just in the sense that they lack loyalty to the state (that is equally true of secessionists in Quebec or Scotland), but in the stronger sense that they collaborated withformer oppressors, and continue to collaborate with current enemies or potential enemies; therefore, (b) a strong and stable state requires weak and disempowered minorities. Put another way, ethnic relations are seen as a zero-sum game: anything that benefits the minority is seen as a threat to the majority; and therefore (c) the treatment of minorities is above all a question of national security.

In the West, by contrast, ethnic politics have been almost entirely 'desecuritized'. The politics of substate nationalism in the West is just that – normal day-to-day politics. Relations between the state and national minorities have been taken out of the 'security' box, and put in the 'democratic politics' box. Under these circumstances, the three factors I discussed earlier – demographics, rights-consciousness, multiple access points – to operate freely, and the almost inevitable result is the trend towards accommodation of diversity.

It is worth noting that this desecuritization of ethnic politics in the West even applies to the issue of secession. Even though secessionist political parties wish to break up the state, citizens in the West assume that secessionists must be treated under the same democratic rules as everyone else, with the same democratic rights to mobilize, advocate and run for office. The reason for this remarkable tolerance of secessionist mobilization, I believe, is precisely the assumption that even if substate national groups do secede, they will become our allies, not our enemies (and also govern their seceding state in accordance with human rights and liberal-democratic values).

IV. The Role of the International Community

So far, I have focused on three obstacles to multination federalism in ECE: (a) scepticism about the likelihood that substate autonomies will be liberal-democratic; (b) the belief that ethnic mobilization, including substate nationalism, will disappear over time as a result of modernization and development; and (c) the fear that minorities will collaborate with enemies of the state. By contrast, in the West most citizens are (a) optimistic about the liberal-democratic credentials of substate autonomies; (b) resigned to the long-term existence of

ethnic politics and minority nationalist mobilization; and (c) confident that minorities will be allies not enemies in any larger regional or international security conflicts.

There are of course other obstacles to the exporting of Western models of multination federalism to the ECE, not least the unhappy experience of the failed Communist federations. But enough has been said, I think, to make clear the major challenges facing the international community in its efforts to promote minority rights in the region.

It is clear that the West has the power to impose any number of conditions on ECE countries, including minority rights conditions. Most ECE countries are sufficiently desperate to get into the EU and NATO that they would accept virtually anything the West demanded in this area. But these legal and political reforms will only be successful and enduring if they are accompanied by changes in people's underlying hopes, fears and expectations about state-minority relations. And the crucial change here, I believe, involves the acceptance that nationalist mobilization by substate national groups is a normal and legitimate part of everyday politics in a free and democratic society. So long as this central idea continues to be resisted, there is little hope for genuine progress in state-minority relations.

To my mind, this really involves two separate changes. First, it requires challenging the naive hope that minority nationalism will fade away with economic development and democratic consolidation. There is not a shred of evidence to support this hope, yet it remains remarkably widespread throughout the ECE, and so discourages people from recognizing the durability of the issue. Second, it requires challenging the 'securitization' of ethnic politics that arises from the fear that minorities will collaborate with neighbouring enemies. This is a more complicated issue, and probably can only be fully resolved by constructing viable regional structures of geo-political security, whether through the inclusion of ECE countries in NATO, or the construction of an alternate regional security body. But the successful negotiation and implementation of minority rights can only take place within democratic spaces that have been 'desecuritized'.

The central question, then, is whether the current activities of the international community are helping to 'normalize' and 'desecuritize' the democratic expression and mobilization of minority nationalism in Eastern Europe. In the volume, I attempt a provisional assessment of the activities of various Western organizations, including the OSCE, in this regard. My tentative answer, perhaps rather unsurprising, is that the record is mixed, and that much more could be done. While supporting the democratic rights of minorities in many respects, Western organizations are also, at times, feeding into myths and misperceptions about the nature and durability of substate nationalisms. They have had

some success at pushing various ECE countries to live up to certain very minimal standards regarding minority rights, but have not effectively challenged dominant ideologies about the illegitimate nature of substate nationalist claims for territorial autonomy and official language status, and have not pushed to create meaningful democratic spaces to deliberate about these claims in a free and informed way.

However, my main aim is not to pass judgement on any particular international organization, but rather to stimulate greater reflection on the goals such organizations should be pursuing. As I said at the beginning of this paper, the original agenda behind the internationalizing of minority rights was driven by short-term concerns about avoiding violence and civil war. Today, we need to think more clearly about long-term goals. We need to think about the enduring conflicts that arise in multination states, about the institutions that can manage those conflicts in a peaceful manner, and about the underlying assumptions and beliefs that allow citizens to debate them in a free and democratic way.

REFERENCES

Documents:

United Nations
Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992)

Organization for Security and Cooperation in Europe
The Lund Recommendations on the Effective Participation of National Minorities in Public Life (1999)

The Oslo Recommendations Regarding the Linguistic Rights of National Minorities (1998)

The Hague Recommendations Regarding the Education Rights of National Minorities (1996)

Articles:

Barry, B. (2001). *Culture and Equality: An Egalitarian Critique of Multiculturalism*. Cambridge: Polity.

EU Accession Monitoring Program (2001). *Monitoring the EU Accession Process: Minority Protection*. Budapest: Open Society Institute.

Kymlicka, W. and Opalski, M. (2001). *Can Liberal Pluralism be Exported?* Oxford: Oxford University Press.

Steiner, J. (2001). "Switzerland and the European Union: A Puzzle". In M. Keating and J. McGarry (eds). *Minority Nationalism and the Changing International Order*. Oxford: Oxford University Press.

Taras, R. (1998). “Nations and Language-Building: Old Theories, Contemporary Cases”. *Nationalism and Ethnic Politics*. 4/3: 79–101.

Wæver, O. (1995). “Securitization and Desecuritization”. In R. Lipschutz (ed.) *On Security*. New York: Columbia University Press.

NOTES

[1] We could also include the French and Italian minorities in Switzerland, although some people dispute whether they manifest a ‘national’ consciousness.

[2] This idea was floated in Recommendation 1201 of the Parliamentary Assembly of the Council of Europe, in 1993, but was quickly dropped in subsequent European declarations, not least due to the vehement opposition of France and Greece.

[3] The Basque Country is the main exception, although of course the ETA campaign of violence began in the 1960s and 1970s as a response to the highly-centralized Fascist regime, and is unlikely to have emerged had Spain been a democratic multination federation.

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Monitoring the Monitors: EU Enlargement Conditionality and Minority Protection in the CEECs*

James Hughes & Gwendolyn Sasse**
London School of Economics and Political Science & University of Oxford

The issue of minority protection is an extreme case for analyzing the problem of linkage between EU membership conditionality and compliance by candidate countries. While EU law is virtually non-existent, EU practice is divergent, and international standards are ambiguous, the issue has been given high rhetorical prominence by the EU during enlargement. The analysis in this article follows a process tracking approach to study the relationship of EU conditionality to changes in minority rights protection in the CEECs. The authors examine how the EU's monitoring process has operated, what its benchmarks have been, how the EU process has interacted with those of other international organizations, such as the Council of Europe and OSCE, and evaluate what its impact has been on the candidate countries. In conclusion, the authors find that EU conditionality is not closely temporally correlated with the emergence of new strategies and laws on minority protection in the CEECs. Instead, the EU's main instrument for accession and convergence, the Regular Reports, have been characterized by ad hocism, inconsistency, and a stress on formal measures rather than substantive evaluation of implementation.

I. Introduction

The 'Copenhagen criteria' have been widely viewed as constituting a successful incentive structure and sanctioning mechanism for the European Union (EU) in the promotion of human rights and the protection of minorities. The EU's 'conditionality' on the accession of the Central and Eastern European candidate countries (CEECs) is one that potentially embodies a power asymmetry whereby the EU can use conditionality as an instrument to exert political leverage on candidates to ensure the requisite outcomes in policy or legislation.

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** James Hughes is Professor, Chair in Comparative Politics at the London School of Economics and Political Science; Gwendolyn Sasse is Professor in Comparative Politics at the University of Oxford.

The leverage of conditionality is understood as one of the primary means of 'democracy promotion' and the creation of 'foreign made democracy' by the EU in the CEECs.[1] There are, however, few studies that have systematically analyzed the application and impact of conditionality, in particular political conditionality**,** towards the CEECs in specific policy areas or its evolution over time.[2] This is a serious deficit in our understanding of how EU conditionality operates in practice. The analysis presented here takes a process tracking approach to study the relationship of EU conditionality to changes in minority rights protection in the CEECs. The issue of minority protection is, we believe, the most extreme case for analyzing the problem of linkage between EU membership conditionality and compliance by candidate countries. The standard measure of compliance employed in studies of EU enlargement, the degree and pace of transposition of the *acquis de l'union*, is not useful since EU law is virtually non- existent, and EU practice is so divergent, in the policy area of minority protection. We examine how the EU's monitoring process operated, what its benchmarks were, how the EU process interacted with those of other international organizations, and evaluate what its impact was on the candidate countries.

We can best evaluate the methods employed by the EU to monitor minority protection in the CEECs by focusing on the role of the Commission. Enlargement was a policy task that was allocated to the Commission by the Copenhagen Council of 1993, requiring it to handle the negotiations and to monitor and report on the fulfilment of the accession conditions. We analyze the structure and content of the Commission's main instrument for monitoring progress on accession, the Regular Reports on the candidate countries. Then, we examine whether there is a plausible correlation between the Regular Reports and policy-making in the field of minority rights protection by CEECs.

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[1] Karen Smith, "Western Actors and the Promotion of Democracy" in Jan Zielonka and Alex Pravda (eds.), *Democratic Consolidation in Eastern Eu rope, Volume 2, International and Transnational Factors* (Oxford: Oxford University Press, 2001): 31; Jan Zielonka, "Conclusions: Foreign Made Democracy" (ibid.): 511. For a survey of EU policy toward the CEECs in the 1990s see Karen Smith, *The Making of EU Foreign Policy: the Case of Eastern Europe* (New York: St. Martin's Press, 1998).

[2] For a discussion of EU conditionality generally, see Heather Grabbe, "How does Europeanisation affect CEE governance? Conditionality, diffusion and diversity", *Journal of European Public Policy*, 8, 6: 1013-1031. For a study of the inconsistencies of EU conditionality towards non-CEEC third countries see Karen Smith, "The EU: Human Rights and Relations with Third Countries" in Karen Smith and Margot Light (eds.), *Ethics and Foreign Policy* (Cambridge: Cambridge University Press, 2001): 185-203.

II. Minorities in Transition

The most widely employed paradigm for understanding the process of post- communist change is that of 'transition to democracy'. This approach to democratization stresses two key determinants. Firstly, long-term structural development through modernization.[3] Secondly, contingent actor-related strategies and elite bargaining.[4] The effect of other types of cleavages, such as ethnicity and religion, are not prominent factors of analysis in the conventional transition paradigm, if they are considered at all. When transitology does address the issue of minorities, their presence in a transition state is viewed as a major obstacle to democratization.[5] Some studies argue that minorities represent a challenge to democratizing nation- states that has serious potential for political instability and, consequently, are best managed by centralization and assimilatory policies.[6]

Multiculturalism and multi-ethnicity are also viewed, more generally, as a significant issue for the political stability of nation-states. The potential for instability, perhaps leading to the worst possible outcome of violent secession, is particularly associated with the presence of territorialized minorities. Much of the research on national and ethnic conflict suggests that such deeply divided societies can be stabilized by institutional designs which accommodate diversity. Rights derived from belonging to a distinct minority group can be protected by a range of institutional legal and political mechanisms, for example, by federal, consociational or some hybrid form of institutionalized power-sharing.[7] The acceptance of 'group-specific' cultural and linguistic rights, power-sharing arrangements, and socio-economic rights is seen as central to the accommodation between minorities and majorities in democratic states, but

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[3] Seymour Martin Lipset, *Political Man: The Social Bases of Politics* (Baltimore: Johns Hopkins University Press 1983, revised edn) and "Social Requisites for Democracy Revisited", *American Sociological Review*, February 1994: 1-22.

[4] John Higley et al, "Introduction: Elite Change and Democratic Regimes in Eastern Europe" in John Higley et al. (eds.), *Postcommunist Elites and Democracy in Eastern Europe* (London: Macmillan Press, 1998): 1-33; Adam Przeworski, "The Games of Transition" in Scott Mainwaring et al. (eds.) *Issues in Democratic Consolidation. The New South American Democracies in Comparative Perspective* (Notre Dame, Ind.: University of Notre Dame Press, 1992): 105-52.

[5] Juan Linz and Alfred Stepan, *Problems of Democratic Transition and Consolidation: Southern Europe, South America, and Post-Communist Europe* (Baltimore: John Hopkins University Press, 1996): 16-37.

[6] David Laitin, *Identity in Formation. The Russian-speaking Populations in the Near Abroad* (Ithaca: Cornell University Press, 1998).

[7] Arend Lijphart, *The Politics of Accommodation* (Berkeley and Los Angeles: University of California Press, 1968).

such policies are often highly contested and controversial.[8]

Much depends on whether minority groups are territorialized or non-territorialized, are fully located within borders or straddle the borders of more than one state, and are politically mobilized or passive. Minority protection has a significant historical resonance for many CEECs. Minority management, whether by genocide, expulsion, coercion or accommodation is intrinsic to the historical emergence and development of many of these states, whose foundation was Wilsonian selective self-determination in the period after the peace treaties ending World War One in 1919-20.[9] In fact, policy practice after 1989 in the CEECs varied, depending on the size of the minority, its location and resources, the history of relations between majority and minority groups, the constitutional design of the new regime and the nature of its transition path. In most states, minority protection was a second-order issue at the outset of transition in the CEECs as these states prioritized the strengthening of central state capacity and the position of the majority nation. What factors, then, drove the development of new minority protection regimes in the CEECs during the 1990s?

III. The Indefinite Minority in International Norms

The resurgence of a rights agenda for minority protection in Europe is largely the result of two interconnected historical processes of the late 1980s and early 1990s. Firstly, the collapse of communism in 1989-91 reactivated and significantly empowered the pan-European institutions for regulating inter-state relations and monitoring the normative agenda defined by the Helsinki Final Accords. The Conference for Security and Cooperation in Europe (CSCE) established at Helsinki had been largely ineffective in the pursuit of the 'rights' agenda defined by the Final Accords due to opposition from the states of the Soviet bloc to its interference in their internal affairs. In any event the

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[8] See Donald Horowitz, *Ethnic Groups in Conflict* (Berkeley, LA: University of California Press, 1985): 563-652; John McGarry and Brendan O'Leary, "Introduction: The macro-political regulation of ethnic conflict" in John McGarry and Brendan O'Leary (eds.), *The Politics of Ethnic Conflict Regulation. Case Studies of Protracted Ethnic Conflicts* (London: Routledge, 1993): 1-40; Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Clarendon Press, 1995); Will Kymlicka and Magda Opalski (eds.), *Can Liberal Pluralism be Exported? Western Political Theory and Ethnic Relations in Eastern Europe* (Oxford: Oxford University Press, 2001).

[9] For a general history that is sensitive to the issue of minorities in Eastern Europe see R. J. Crampton, *Eastern Europe in the Twentieth Century – and After* (London: Routledge, 1994). For a discussion of the role of minority issues in the international relations of Europe in the twentieth century see J. Jackson-Preece, *National Minorities and the European Nation-State System* (Oxford: Oxford University Press, 1998): 17.

concept of 'minority' rights had been discredited by the politics of the inter-war era and the failure of the League of Nations, and was abandoned in favour of a new 'universalism' to promote individual human rights after 1945. The Helsinki process had affirmed the formulation of preceding European and international standards relating to human rights by attaching them to 'persons' rather than 'groups'. The end of communism created a new opportunity for the enforcement of a transnational rights regime in Europe. The reinvigoration of the CSCE process after 1989 legitimated it as a powerful monitoring mechanism in the regulation of state conformity with declared core European norms of democracy, human rights and minority protection.[10]

The new European norms on minority protection that emerged in the aftermath of the collapse of communism reflected a continuity with international precedents on minority protection. The concept of 'minority' (and its antonym 'majority') in international relations is as poorly defined today as when its use was first legitimated at Versailles in 1919. There is no agreed legal, or indeed conceptual, definition of what constitutes a national 'minority'.[11] There is a 'babble of international instruments' the ambiguities and contradictions of which reflect the underlying tension in them between universal individual rights (i.e. human rights) and 'group- specific' or differentiated rights for minorities.[12]

Despite the lack of international consensus on what constitutes a national minority and how minority rights should be safeguarded, the principle or 'norm' of minority protection was rhetorically prominent in how external and internal actors evaluated state-building and democracy in the CEECs after the fall of communism. Indeed, the salience of 'minority' rights was accentuated sharply in the international agreements after 1989. The tension between advocates of a traditional concept of sovereignty, embodied in the rights of states, and those countries that favoured a reformulation of

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[10] Helsinki Final Act, Principle VII, par. 4: http://www.osce.org/docs/english/1990-1999/summits/helfa75e.htm and chapter 4 of the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, 5-29 June 1990: http://www.osce.org/docs/english/1990-1999/hd/cope90e.htm.

[11] See Jackson-Preece: 9-17, 21, 27-9.

[12] See Patrick Thornberry, "An Unfinished Story of Minority Rights" in Anna Mária Bíró and Petra Kovács (eds.), *Diversity in Action: Local Public Management of Multi-Ethnic Communities in Central and Eastern Europe* (Budapest: LGI Books, 2001): 47-73 at 48, and his *International Law and the Rights of Minorities* (Oxford: Clarendon Press, 1991). The international minimum standards for minority protection of UN agreements are vague. For example, Article 27 of the International Covenant on Civil and Political Rights (1966), assigns rights to "*persons* (authors' emphasis) belonging to … ethnic, religious or linguistic minorities" and states that they shall not be denied the right "in community with the other members of their group, to enjoy their own culture, … practise their own religion, or to

sovereignty that included an obligation of minority protection, first surfaced at the CSCE Copenhagen meeting in 1990.[13]

The second development was that the EU (then EC) was redefining itself as a more political union. Subsequently, the newly restated pan-European normative commitment to these core norms was entrenched by the EU in its road map for EU enlargement to the east. The basic conditions for new members established by the declaration of the June 1993 Copenhagen Council (the 'Copenhagen criteria') borrowed from the existing OSCE norms on the need for democratic states to guarantee human rights and protect minorities. The EU drew from the OSCE and the Council of Europe norms because it considered them to be the best practice of 'international standards'. Yet, even by this stage, prior experience had demonstrated that the power of both organizations to ensure compliance was relatively weak. In very exceptional circumstances, the Committee of Ministers of the Council of Europe, in consultation with the Parliamentary Assembly (PACE), can suspend member states for infringements of its statutes.[14] The norms of behaviour for member states are disseminated through the detailed and regular exchanges between the Advisory Committee and the national governments. Moreover, internationally binding agreements made in the aftermath of the collapse of communism in Europe, including the Council of Europe's Framework Convention for the Protection of National Minorities (1995) (FCNM**),** restated the pre-existing fudge in international relations. The FCNM provided no definition of 'national minority' and tied rights and

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use their own language". In contrast, the Deschenes definition, used in a non-binding UN declaration of the UN Sub-Commission on the Prevention of Discrimination and the Protection of Minorities (1985), referred to those who are "a group of citizens of a state", being "a numerical minority", and have "ethnic, religious or linguistic characteristics which differ from those of the majority", exhibit "a sense of solidarity" and have the aim "to achieve equality with the majority in fact and in law": UN Doc. E/CN.4/Sub.2/1985/31 (1985). The UN Declaration on the Rights of Persons Belonging to the National, Ethnic, Religious or Linguistic Minorities (1992) stipulates the right "to participate effectively in cultural, religious, social, economic and public life" (Art.2.2) at the national and, where appropriate, at the regional level (Art.2.3).

[13] The discussions on minority protection saw the breakdown of the 'east-west' divide of the Cold War era as Hungary joined countries such as Germany, Austria, Italy, Netherlands and Canada in arguing for recognition of collective minority rights to autonomy, while Slovakia, Romania, and Bulgaria supported the traditional statist positions of France and Greece.

[14] So far, no state has been suspended. The threat of suspension has only ever been applied seriously against Greece, Turkey and Russia. In December 1969, the military dictatorship in Greece withdrew from Council of Europe membership when threatened with suspension. Turkey has been regularly threatened with suspension for human rights violations. In response to Russia's flagrant violations of Council Of Europe obligations during the war in Chechnya its voting rights were suspended by the Parliamentary Assembly in April 2000 but the Committee of Ministers rejected the suspension of membership. Russia's voting rights were restored in January 2001. Also, membership of the Council of Europe was refused to the Former Republic of Yugoslavia during the Milosevic regime, and the special 'guest status' of Belarus was suspended in January 1997.

protection to 'persons' belonging to minority groups.[15] The ambiguities were replicated in the key OSCE General Recommendations issued in the 1990s, thus reflecting the multiple compromises necessary to achieve the establishment of a baseline of international minimum standards.[16] The strength of both the FCNM and the General Recommendations, however, is that they are pan-European instruments specifically designed to address the issue of minority protection.

Similarly, the effectiveness of the OSCE lies in its capacity to ensure the compliance of states through, in particular, the activities of the office of the High Commissioner on National Minorities (HCNM), established in 1992 as an 'early warning' and 'early action' mechanism to manage minority issues and prevent conflict. Much depends on the skills and influence of the person who holds the office of HCNM and the extent to which their activities are proactive or passive. The effectiveness of the HCNM in promoting the protection of minorities during the 1990s has largely been attributed to the dynamism and persistence of the 'quiet diplomacy' of its then head Max van der Stoel. In the absence of legal enforcement power, the HCNM must rely on proactive quiet diplomacy, and when necessary be prepared to 'name and shame' those countries which do not comply with the agreed standards.

IV. EU Norms and Minority Protection: Liberal Aims and Collective Goals

The end of communism in Central and Eastern Europe was a catalyst for the contemporaneous processes of the deepening of the EU as a political union based on common values beyond the regulation of an internal market, and its eastward enlargement. The formulation by the EU of the conditions for membership for the former communist states of Central and Eastern Europe, as set out by the Copenhagen Council of 1993, marked a significant disjuncture from its previous approach to political norms in one key respect – that relating to minority protection. The first Copenhagen criterion

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[15] For example, the preamble states that a "pluralist and genuinely democratic society should not only respect the ethnic, cultural, linguistic and religious identity of each person belonging to a national minority, but also create appropriate conditions enabling them to express, preserve and develop this identity". There is a potential contradiction in Art. 1 which refers to the "protection of national minorities" as opposed to "persons" belonging to them. The ambiguity in the text has led to many signatories adding their reservations and declarations in which they provide their own definitions of a national minority. For the document see http://conventions.coe.int/Treaty/en/Treaties/Html/157.htm.

[16] Specifically, the Hague Recommendations on the Education Rights of National Minorities (1996), the Oslo Recommendations on the Linguistic Rights of National Minorities (1998), and the Lund Recommendations on the Effective Participation of National Minorities in Public Life (1999): http://www.osce.org/hcnm/documents/recommendations/index.php3

stated that: "Membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, human rights, the rule of law and respect for and protection of minorities".[17] The Copenhagen criteria reformulated principles that had been persistently advocated by the democracies of Western Europe during the Cold War as international standards to which the Communist states should be held to account. This norm-oriented tension in the international relations between the two parts of a divided Europe can be traced from the Helsinki Final Act (1975) through to the agreement on a pan-European system of political norms set out by the Copenhagen Meeting of June 1990 and the Paris Charter. The latter dropped the 'persons' formulation and instead referred to minority protection in the following terms: "peace, justice, stability and democracy, require that the ethnic, cultural, linguistic and religious identity of national minorities be protected and conditions for the promotion of that identity be created."[18] The shift to a 'group rights' formula was also apparent in the Opinions of the Badinter Arbitration Committee, which was established by the EU in August 1991 to provide a legal view on how the dissolution of Yugoslavia should be managed. Its emphasis on the rights of 'peoples and minorities' was affirmed by the EU Foreign Ministers' Declaration on the Guidelines on Recognition of New States in Eastern Europe and the Soviet Union and the Declaration on Yugoslavia of 16 December 1991, which made recognition conditional upon, amongst other things: "guarantees for the rights of ethnic and national groups and minorities in accordance with the commitments subscribed to in the framework of the CSCE".[19]

The shift in legal terminology reflected a much more profound conceptual shift in European and Western policy thinking in response to nationalist mobilization and the dissolution of multi-ethnic communist states. Consequently, when the Copenhagen criteria of 1993 also dropped the conventional 'persons' formulation of international agreements in preference for a 'group' rights approach for minority protection, it was a

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[17] See http://europa.eu.int/comm/enlargement/intro/criteria.htm

[18] Conference for Security and Co-operation in Europe, 1990 Summit, Paris 19-21 November 1990 Charter of Paris for a New Europe. The text cited is in the 'Human Dimension' section. http://www.osce.org/docs/english/1990-1999/summits/paris90e.htm#Anchor-Huma-3228

[19] In its first opinion, the Badinter Committee advised that the successor states to Yugoslavia must abide by "the principles and rules of international law, with particular regard for human rights and the rights of peoples and minorities". For the full text see Alain Pellet, 'The Opinions of the Badinter Arbitration Committee: A Second Breadth for the Self-Determination of Peoples; and ibid., Appendix: Opinions No. 1, 2 and 3 of the Arbitration Committee of the International Conference on Yugoslavia', *European Journal of International Law*, 3, 1, 1992, 178-185.

further confirmation by the EU of its support for the policy paradigm developed by the Paris Charter and the Badinter Commission for dealing with the post-communist states. It was, moreover, of great symbolical significance in that the 'group' rights of minorities were now included as part of the menu of preconditions for EU membership. Thus, a much higher standard of norm compliance was set for the new candidates than the EU had ever been able to agree on internally for its own member states. It was a peculiar combination of claims from two standpoints. Firstly, it attempted to reconcile two competing views of liberal democracy: one emphasizing the procedural essence and commitment to equal respect and neutrality (democracy, the rule of law, human rights), the other encapsulating a collective goal of recognition of group differences and rights (respect for and protection of minorities).[20] Secondly, given that there was no standard for the recognition of the 'group' rights of minorities within the EU, and the practice of member states is highly asymmetric, the legal foundation for such political norms was very thin.

The bulk of the approximately 80,000 pages of what is now the *acquis de l'union* concern economic and administrative regulation and law. Prior to the Treaty of Maastricht (1992), the EU had an internationalized indirect conditionality of certain minimum standards of human rights and treatment of minorities for new members. The tripartite Council-Commission-European Parliament Declaration on Human Rights of 1977 had required all EU candidate states to be parties to the European Convention on Human Rights (ECHR) of 1950 and to accept the right of individual petition under it. Since the ECHR was open only to members of the Council of Europe, an indirect link was established between EU membership and membership of the Council of Europe. Since the Council of Europe verified its members' constitutions, laws on human rights and record on minorities, it performed a prior screening for EU candidates.[21] Thus, the principle for the EU to borrow and draw on other international organizations for standard-setting, evaluating and benchmarking the candidates was in place prior to the enlargement process.

The Treaty of Maastricht entrenched, for the first time in the history of the EU, specific provisions on fundamental rights, but its only provision relating loosely to

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[20] The Copenhagen criteria emerged at a time when the traditional understanding of the core common values of western liberal democracies was being challenged by proponents of multiculturalism. We have no direct evidence that the academic debates shaped the policy making behind the Copenhagen criteria, but it is a plausible assumption. For the debates see Amy Gutmann (ed.), *Multiculturalism: Examining the Politics of Recognition* (Princeton: Princeton University Press, 1994).

[21] Jackson-Preece: 51.

minorities amounted to a vague recognition of the requirement that member states respect "national and regional diversity" (Article 151).[22] Other EU and European institutions also had an impact on the development of policy on minorities during the 1990s. The European Parliament tended to perform a 'showcasing' role for the EU during the early 1990s, by passing numerous resolutions on human rights and minority protection. This was a kind of declaratory politics, however, that was rarely translated into 'mainstream' policy. There is also a trend for 'burgeoning jurisprudence' on the issue of minority rights protection in the European Court of Human Rights (ECHR).[23] The court, however, has limited powers to ensure compliance by signatory states and while it may award compensation to plaintiffs it has no power to change law within the states concerned. Its case law, nevertheless, is increasingly being interwoven with the legal and political fabric of the advanced democracies in Europe. A more important dimension is whether the process of judicial review and judicial activism in the EU's Court of Justice will also gradually develop a body of legal precedents on human rights. After all, human and minority rights do not represent mutually exclusive categories. Minority rights are best conceived of as human rights plus specific rights targeted at national minorities. Some aspects of human rights protection, for example laws against discrimination and guaranteeing equal opportunities, are entrenched in chapters of the *acquis*, and may be utilized to provide minority rights protection also. So far, however, the member states and the Commission appear to be opposed to any codification of minority protection into EU law.

The tension between the liberal individualist norms (and the 'persons' formula) and communitarian norms (and the denominator 'groups') in relation to minority protection is confirmed in the development of EU treaty law in the Treaty of Amsterdam (1997) (TEU) and the Treaty on the European Communities (1997) (TEC). Where the TEU expressed the 'common values' of member states, it incorporated all of the values set out by the EU in the first Copenhagen criterion, which are defined in Article 6 (1) as "liberty, democracy, respect for human rights and fundamental freedoms and the rule of law", but expressly excluded "respect for and protection of minorities". That Article 6 (1) draws on the Copenhagen criteria is specifically alluded to in Article 49, which

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[22] The Treaty of Maastricht (1992), Article 151: http://europa.eu.int/abc/obj/treaties/en/entoc01.htm.

[23] See Geoff Gilbert, "The Burgeoning Minority Rights Jurisprudence of the European Court of Human Rights", *Human Rights Quarterly*, 24, 3, 2002: 736-780. For example, see the case Gorzelik and Others vs. Poland, 44158/98, Eur. Ct. Hum. Rts. (Fourth Section), 17 May 2001. In the case of Chapman vs. United Kingdom, 33 Eur. Hum.Rts. Rep. 18, 129 (2001), the Court recognized that the traditional lifestyle of the Roma should be protected.

specifies that the principles laid out in Article 6 (1) are preconditions for any state applying for EU membership.[24] There is a clear contradiction between the TEU and the first Copenhagen criterion, but the TEU is legally binding and, therefore, clarifies that the EU has abandoned the minority protection provision of the conditionality for membership. The TEC also includes a new Article 13 which enables the European Council to "take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation". This provision could become the basis for minority protection, though indirectly, and depending on constructive interpretation by the Court of Justice. The anti-discrimination provisions in the TEC and a Council directive of June 2000, once it is transposed into domestic legislation, will legally embed the norm of "equal treatment between persons irrespective of racial or ethnic origin".[25] We should note, however, that once again the protections are to be enjoyed by 'persons' not 'groups' and there is no mention of 'nationality' or 'national minority'. The use of the much broader term 'ethnic origin', however, means that there is some scope for minority protection even if the directive was not conceived for this purpose, but only if so interpreted by the judges of the Court of Justice. The EU legal terminology suggests that at the very least a shifting standard, if not a double standard, is at work. The protection of minorities as 'groups' appears to be understood by the EU in 1993 as Central a norm that should be implemented by candidates for membership, overwhelmingly at this time from the ex-communist CEECs, but not by member states.[26] By the time of the TEU in 1997, however, this norm had been abandoned in law for future candidates, though it retained its rhetorical prominence in the enlargement process. Confusion of norms is also evident in the EU's Charter of Fundamental Rights (2000), which includes "membership of a national minority" in its non-discrimination clause, but also prohibits "any discrimination on grounds of *nationality*" (our italics), and affirms that the Union "shall respect cultural,

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[24] Consolidated Version of the Treaty on European Union (1997), Art. 6 (1), Art. 49: http://europa.eu.int/eur-lex/en/treaties/dat/eu_cons_treaty_en.pdf.

[25] Treaty on the European Communities (1997), Art. 13: http://europa.eu.int/eur-lex/en/treaties/dat/ec_cons_treaty_en.pdf; Council Directive 2000/43/EC of 29 June 2000: OJ L 180, 19.07.2000.

[26] As Bruno de Witte put it, for the EU the concept of minority protection appears to be "primarily an export article and not one for domestic consumption", Bruno de Witte, "Politics versus Law in the EU's Approach to Ethnic Minorities" in Jan Zielonka (ed.), *Europe Unbound: Enlarging and Reshaping the Boundaries of the European Union* (London: Routledge, 2002), 464-500 at 467.

religious and linguistic diversity".[27] The experience of the accession of the CEECs and the development of the Charter demonstrate that the discourse swell on minority rights that enveloped the EU in the middle of the 1990s dissipated the closer the reality of accession loomed. On the whole, the Charter embraces the liberal individualist norms that permeate the *acquis*, and consequently, the development of a codified group- specific approach to rights within the EU seems highly unlikely in the near future.

As we have seen, the EU conditionality as set out in the 'Copenhagen criteria' is inherently strong on the normative intent and drive for compliance and convergence but substantively it is weakly defined and poorly elaborated. This creates dilemmas for both the EU and the candidates in determining how and when conditions have been satisfied. The baseline conditionality for the candidates is represented by the adoption of the *acquis de l'union* into domestic law, a condition that can be monitored and evaluated in a relatively straightforward manner by examining whether a requisite law exists, and whether it conforms to EU stipulations. Some of the Copenhagen criteria are more easily correlated with EU legal requirements than others. For example, the condition that they have "fully functioning market economies" may be straightforwardly correlated with the adoption of certain chapters of the *acquis*. The political concepts and standards prescribed by the other conditions that require aspiring members to be democracies and operate according to the rule of law and respect human and minority rights are not so readily translatable into specific chapters of the *acquis*. There is also, however, a higher order dilemma of 'implementation'. A law can exist formally but may not be implemented in part or in whole because of deliberate non-compliance, or because of 'capacity' weakness in candidate states that are resource stretched, if not poor, and lack experience of the kind of jurisprudence that characterizes democratic states with market economies. In fact, the EU has shifted its emphasis over time during the accession process from the adoption of the *acquis* to implementation and capacity issues.

The paradox of the EU attempting to enforce minority rights protection on states outside the EU, while foregoing it for its member states raises commitment and compliance dilemmas of three main types. Firstly, of all the 'Copenhagen criteria',

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[27] Charter of Fundamental Rights of the European Union, Art. 21(1) and (2), and Article 22. The preamble is also potentially contradictory in its claim that the Union respects the "diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States…": http://ue.eu.int/df/default.asp?lang=en. For a discussion of the legal and political norms that inform the Charter see Guido Schwellnus, "'Much Ado About Nothing': Minority Protection and the EU Charter of Fundamental Rights", ConWEB No 5/2001: http://www.les1.man.ac.uk/conweb/papers/conweb5-2001.pdf

minority rights protection is the most weakly defined by the EU as it lacks a clear foundation in law, and there are no established EU benchmarks. This absence ofcontent is the essence of the EU's policy commitment problem. Secondly, the EU's priorities are evident from the fact that its own mechanisms for enforcing and monitoring compliance on minority protection in the candidate countries are very weakly developed compared with other areas of the *acquis*. Consequently, the EU tends to rely on proxies (primarily external bodies such as the Council of Europe, OSCE, and NGOs) to perform the monitoring functions. Thirdly, commitment to minority rights is weakened by the fact that it is a concept that is deeply disputed in international politics, with few generally accepted standards, and even, as noted earlier, confusion over the very definition of the term 'minority'. Within the EU itself, the practices of member states vary widely, ranging from elaborate constitutional and legal means for minority protection and political participation, such as language rights, autonomy or consociational quota arrangements, to constitutional unitarism and denial that national minorities exist.[28] Policy on minority protection is wholly within the remit of the national governments and outside the influence of the Commission and the Court of Justice. The combined effect of vague and contested international standards, the diverse approaches of member states, and the weak influence of the Commission and the Court in this policy area, strengthen the perception on the part of the candidates that the Copenhagen criteria were a grand EU double standard. This perception weakened their commitment and compliance. In the absence of clear benchmarks on minority protection, how did the EU proceed with the monitoring and reporting in this area?

V. EU Regular Reports and the Formulae for Minority Protection

When the EU began to systematically monitor the accession process of each candidate from 1997 through bilateral negotiations (and the closing of chapters), and the regular 'progress' Reports on the candidate countries, two main methods were employed to monitor the compliance with the 'Copenhagen criteria': firstly, the candidate's domestic process of legislative engineering was evaluated to test for the adoption of the requisite laws; secondly, systemic adaptation was monitored by assessing implementation and the

[28] France, as an 'indivisible' republic, does not recognize the existence of national minorities, though it has permitted linguistic autonomy in Corsica, nor does Greece. Nevertheless, the trend is for their positions to be referred within the EU as 'the French and Greek exceptions', itself an indication of a deeper convergence on ideas about best practice in the management of minorities. Many EU member states have complex constitutional systems for regulating relations between national groups and minorities, including: Belgium, Spain, Italy, Finland, and the UK (N. Ireland).

'capacity' of the candidates to meet the obligations of membership. The Commission's annual Regular Reports, following on from the Opinions of 1997 and the Accession Partnerships, have been the EU's key instrument to monitor and evaluate the candidate countries' progress towards accession. While the Reports are one of several channels of interaction between the Commission and the CEECs, they are the key instrument by which the Commission has both identified the EU's own priorities and concerns, and disseminated them to the CEECs. The Reports also indicate the main trends and results in the field of minority protection within the CEECs. The Reports have a formulaic structure, which broadly applies the Copenhagen criteria, and their common structure permits cross-country comparisons. When dealing with policies of minority protection the structure of the Reports has four main elements.

Firstly, although eight of the ten CEECs have significant minority populations (Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Romania and Slovakia), the conditions of only two minority groups are consistently stressed in the Regular Reports. These two minority groups are: the Russophone minority in Estonia and Latvia, and the Roma minorities of Bulgaria, the Czech Republic, Hungary, Romania and Slovakia. Two other sizeable minority groups (the Hungarians of Romania and Slovakia, and the Turks of Bulgaria) are mentioned in the Reports, though considerably less attention is paid to them than to the previous two groups. Secondly, the Reports are organized in such a way as to review each candidate country according to "the rate at which it is adopting the *acquis*", a stipulation laid down by the Luxembourg Council of December 1997.[29] Since, as we noted earlier, the political aspects of the Copenhagen criteria are not translatable into particular sections of the *acquis*, this suggests that the main objective of the Reports was to accelerate the economic integration of the candidates by their speedy adoption of the *acquis*, rather than to seriously monitor their progress on the broadly stated normative conditions of the Copenhagen criteria. Thirdly, the introduction to the first Reports states that it is the EU's priority "to maintain the enlargement process for the countries covered in the Luxembourg European Council conclusions". This wording suggests that harsh criticism of the 'Luxembourg six' was to be avoided and progress along the 'road map' sustained. Fourthly, the Reports are, in essence, a compendium of results compiled from a variety of EU sources and drawing on information provided directly by the candidate countries, the Council of Europe, the OSCE, International

[29] European Council, Luxembourg, 12-13 December 1997, Presidency Conclusions. http://ue.eu.int/Newsroom/LoadDoc.asp?BID=76&DID=43659&from=&LANG=1

Financial Institutions and NGOs, as well as "assessments made by Member States", especially in the political sphere. The lack of transparency in the process of compilation by the EU makes it impossible to measure the relative weight of each of these inputs.

The Reports illustrate that the EU lacks clear benchmarks to measure progress in the field of minority rights protection. The emphasis is on acknowledging the existence of formal measures rather than the evaluation of implementation. For example, the Reports track and note the adoption and change of laws critical for minority protection (principally on citizenship, naturalization procedures, language rights, and electoral laws), the establishment of institutions that manage minority issues (whether within government ministries, in parliaments or at the local government level), and the launch of government programmes to address minority needs. Trends are evaluated by numerical benchmarks, such as the number of a minority granted citizenship, number of requests for naturalization, the pass rate for language or citizenship tests, the number of school or classes taught in the state and minority languages, the number of teachers trained to teach in the state and minority languages, the extent of media and broadcasting in minority languages, and so on. In essence, the Reports are a patchwork of formulaic expressions and bureaucratic codes to encapsulate 'progress' by the CEECs on the 'road map' to membership. For example, the general commitment of the CEECs to improve minority protection is often taken at face value and described in positive terms, including formulations such as: "continuing commitment to the protection of minority rights", "a number of positive developments", "significant progress", "considerable efforts", "considerable progress", "consolidating and deepening ... the respect for and protection of minorities".[30] Some candidate countries merit sweeping generic statements, such as that minorities are "well integrated into Hungarian society" that Hungary has a "well-developed institutional framework protecting the interests of its minorities and promoting their cultural and educational autonomy".[31]

The structure and content of the Regular Reports are designed in a way that renders them a cumulative success story for each candidate country, and in particular for the 'Luxembourg six'. Positive developments in many areas of public policy that relate to minorities are recorded, yet often the previous Reports had not specified any problems in

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[30] Report on Romania, 1998: 12; Report on Romania, 2001: 29; Report on Slovakia, 1999: 16; Report on Slovakia, 2002: 33; Report on Estonia, 2000: 20; Report on Estonia, 2001: 23. The Reports are available at http://europa.eu.int/comm/enlargement/index_en.html.

[31] Report on Hungary, 2001: 22; Report on Hungary, 2002: 30.

these areas. Examples of this practice include the reference to the improvement of the "conditions for the use of minority languages, in particular Hungarian" in Romania's 1999 Report, and the positive mention of media programmes in Turkish singled out in Bulgaria's 2001 Report.[32] Thus, there is an absence of continuity and coherence in the EU's monitoring mechanism as the Reports are characterized by ad hocism. The Reports do not systematically assess the structure and operation of institutional frameworks or policies for dealing with minority groups. In Romania's 2002 Report we are told that the legislation on the use of minority languages in public administration is being "successfully applied despite the reticence of some prefectures and local authorities."[33] No evidence is provided to substantiate the claim to success. Problems in the implementation of minority protection policy are generally tied to lack of funding, weak administrative capacity, understaffing and the low levels of public awareness in the CEECs.

An obvious issue of concern in assessing the Reports is how they privilege certain minority groups over others, and what explains the creation of this hierarchy of minorities by the EU. The emphasis on the Russophone and Roma minorities suggest that the EU is more concerned with its external relations with its most powerful neighbour and main energy supplier, and own narrow soft security migration problems, than with minority protection as a norm *per se*. This may explain the EU's prioritization of stabilization and improvement of conditions for these minorities prior to accession taking place. Moreover, another striking feature of the Reports is the emphasis on the integration of minorities, to such an extent that it is plausible to argue that they indicate a preference for assimilation. Two types of integration are emphasized. Firstly, there is an emphasis on linguistic integration, which the Reports interpret as the need to make minorities proficient in the official state language. Secondly, the Reports emphasize the social and, to a lesser extent, the political integration of the Roma.

The "gap between policy formulation and implementation" is most explicitly and harshly criticized by the EU with reference to the Roma. In the first Reports on Bulgaria, Hungary, Romania and Slovakia, the Roma are the only minority issue commented on at all, despite the fact that there are numerically greater minority groups in these

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[32] Report on Romania, 1999: 18; Report on Bulgaria, 2001: 24.
[33] Report on Romania, 2002: 35.

countries.[34] The fact that the treatment of the Roma is harshly criticized even in these candidate countries which are recognized as continuing "to fulfil the political Copenhagen criteria" indicates that minority protection in general is not the EU's main concern. Furthermore, the Roma, as a non-territorialized and politically marginalized minority, is a politically less sensitive group to focus on by comparison with territorialized and politically mobilized minorities, such as the Hungarians in Slovakia and Romania. The Roma face severe problems of systematic discrimination, political and social exclusion, segregation, and poverty, not only in the CEECs but also in member states. Policy remedies to these problems are generally deeply unpopular among majority and other minority groups.[35] EU and candidate countries sometimes appear to be jointly acting out a charade on Roma policy. For example, the 1999 Report on Bulgaria states that: "Significant progress was achieved concerning further integration of Roma through the adoption of a Framework Programme for 'Full Integration of the Roma Population into the Bulgarian Society' and establishment of relevant institutions at central and regional level".[36] By what measure this formal adoption of a programme marks "significant progress" is not clear. Two years later, little of this programme had been implemented.[37] More lip- service can, therefore, be paid to the Roma issue by the CEECs without it raising political tensions about minority challenges to the territorial integrity of the state.

Rather than set out EU benchmarks on minority protection, the Reports resort to ambiguous references to 'international standards' or 'European standards', in particular in connection with the adoption of laws or their implementation. These 'standards' are never specified. Moreover, the use of the term 'standards' in the Reports is itself misleading, for as we observed earlier, there are no internationally recognized standards. The Reports routinely cross-reference the 'recommendations', activities, principles and documents of other international organizations, in particular, the Council of Europe and the OSCE. Again, this suggests that the EU is itself groping for international benchmarks that do not exist. At the same time, the particulars of the

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[34] Other minority groups are only referred to in later Reports, for example: Report on Bulgaria, 1998; Report on Romania, 1999; Report on Hungary, 2001.

[35] See, for example, The OSCE *Report on the Situation of Roma and Sinti in the OSCE Area* (2000). The 'Properties of Gypsy Marginality' are discussed in Zoltan Bárány, *The East European Gypsies: Regime Change, Marginality and Ethnopolitics*. (Cambridge: Cambridge University Press, 2002) 62-64.

[36] Report on Bulgaria, 1999: 75.[37] For an analysis of the EU's position on policy toward the Roma in Bulgaria see Iavor Rangelov, "Bulgaria's Struggle to Make Sense of EU Human Rights Criteria", EU Monitoring Accession Program, 1 October 2001, http://www.eumap.org/articles/content/10

'recommendations' are not specified. The use of international standards external to the EU in specific Reports on candidate countries is most evident in the case of Latvia and Estonia, where the Europe Agreements included requirements that they comply "*inter alia* with the undertakings made within the context of ... the Organization for Security and Cooperation in Europe (OSCE) – the rule of law and human rights, including the rights of persons belonging to minorities".[38] The 1998 Report on Latvia, for example, states a specific acknowledgement that the Commission based its evaluations of Latvia's citizenship and naturalization policies on the extent to which they complied with OSCE Recommendations.[39] The 1999 Report on Latvia asserts that: "Latvia now fulfils all recommendations expressed by the OSCE in the area of naturalization and citizenship".[40] Yet, fresh concerns over the linguistic rights of the Russophone minority are expressed in the 2001 Report on Latvia which states that the EU is making "joint efforts" with the OSCE and the Council of Europe to establish guidelines for the new language law.[41] Not only do the Reports fail to explain the details of international benchmarking, they also fail, at a more fundamental level, to distinguish between the different bodies of the OSCE, in particular between the country Missions and the High Commissioner on National Minorities. The contents of the Reports also suggest that the EU relies on the OSCE for some basic information and data gathering activities that are essential to professional monitoring. For example, the 1998 Report on Estonia quotes OSCE data on the number of minority members who gained citizenship. Where OSCE data does not exist, the Reports simply report the unavailability of data, as for example with regard to the implementation of language legislation in Slovakia mentioned in its 2000-2002 Reports.[42] Apart from such bland and sparse statements, the Reports do not inform us about the nature of the EU's collaboration with other international organizations. For example, how frequent are the contacts and are they systematized, and, if so, by what mechanisms?

The Reports suggest that the EU takes a flexible approach to the adoption of the FCNM and OSCE Recommendations and foster a perception that the EU seeks to shift responsibility from its own monitoring process by internationalizing the benchmarking of the CEECs with respect to minority protection. This is most clearly

[38] OJ L68 of 9.3.98: 3-4 and OJ L26 of 2.2.98: 3-4.
[39] Report on Latvia, 1998: 11.
[40] Report on Latvia, 1999: 17.
[41] Report on Latvia, 2001: 26.
[42] Report on Estonia, 1999: 13; ibid, 2000: 18; Report on Slovakia, 2000: 20; ibid., 2001: 23.

shift responsibility from its own monitoring process by internationalizing the benchmarking of the CEECs with respect to minority protection. This is most clearly evident in the explicit encouragement to sign up to documents such as the FCNM – despite the fact that several EU member states have not done so. When Commission officials have been asked to explain how the monitoring process actually embodies the Copenhagen criteria with respect to minority protection, they replied by stressing the need for the candidates to ratify the FCNM as the main instrument for putting the criteria into practice.[43] In contrast, the adoption of the more controversial European Charter of Regional and Minority Languages is rarely mentioned.

While the EU appears to be content to stress the cases of compliance by the CEECs with international 'standards', incidences of weak or non-compliance are glossed over. Thus, for example, the 2002 Reports on Estonia and Latvia include the glaring contradiction that, on the one hand, the OSCE mission in these states closed in late 2001, including the official OSCE reasons for this decision, whereas on the other hand, the section of the Reports on minorities further highlights the EU's continued concern. The Report on Latvia, for example, "urged" it to ratify the FCNM and noted EU and OSCE concerns over naturalization and effective political participation by minorities due to restrictive language laws, including the fact that Latvia had been found in breach of the ECHR during 2001, yet still concluded that "the country has made considerable progress in further consolidating and deepening … respect for and protection of minorities".[44]

Finally, there is the question of the targeting of the EU's technical and financial assistance in the policy area of minority rights. It would be reasonable to assume that financial flows are an indication of prioritization. The main instrument for the design and delivery of the EU's policy on technical and financial assistance to the CEECs is the PHARE programme, established in 1989 and reoriented to address the accession

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[43] EU Monitoring Accession Program, Open Society Institute, 2002: 18. The EU Accession Monitoring Program (EUMAP), an independent body monitoring the accession process, was set up in 2000 within the Open Society Institute. Its aim is to monitor governmental compliance with the political criteria for EU membership, as defined in the first Copenhagen criterion. Detailed reports on minority protection and judicial capacity in the ten CEECs were published in 2001 and 2002. The 2002 reports included reports on the five largest EU member states, thereby explicitly moving towards a monitoring framework for the post-enlargement period. The reports were prepared by independent experts in the countries monitored, reviewed by an international advisory board and by national roundtables including government officials, civil society organizations, minority representatives and intergovernmental organizations. EUMAP stands for both the protection from discrimination and the positive promotion of minority identity. See http://www.eumap.org/reports/2002/content/07

[44] Report on Latvia, 2002: 30-35.

priorities set by the EU for the CEECs in 1997. The official report on PHARE duringthe critical decade of the 1990s reveals that assistance in the policy area of minority rights was not a priority for the EU. Indeed, PHARE did not even have a separate budget line for assistance in the policy area of minority protection. We may assume that PHARE's activities to promote best practice in minority protection is subsumed under its activity heading 'civil society and democratization'. An indication of the priority attached to this policy area by the EU is that it accounted for just approximately 1 per cent of the total PHARE funds distributed in the CEECs. There is no information available as to how much of that minimal amount was targeted on minority protection.[45]

VI. Following the EU Script? Policy Outcomes in the CEECs

Four core attributes generally frame the analysis of minority issues in the CEECs. Firstly, the definition of a national minority is hinged on ethnicity and a range of cultural markers (for example, language, religion, custom). In particular, in the CEECs it is the issue of minority language use that has been most widely contested. This involves a complex web of usage rights, for example in public administration, official contacts, the registering of names in minority language form, toponyms, education (at primary, secondary and tertiary levels), access to the media, and political participation more broadly. Many of these issues are covered in the FCNM. It is important to note, however, that this issue is not a problem of transition, but has deep historical roots in the region. The debates in Slovakia (and Romania) over the use of minority languages in public administration can be traced to Habsburg policy debates and practice over 'official languages' (*Amtssprachen*). Secondly, one can distinguish between territorialized and non-territorialized minorities. In the CEECs, the main territorialized minorities are the Russophone minority of Estonia and Latvia, and the Hungarian minority in Slovakia and Romania, while the main non-territorialized minority is the Roma. Thirdly, historical legacies mean that the question of minority protection in the CEECs is a policy issue that has a significant transnational dimension not only *vis-à-vis* relations with the EU, but also because these minorities often straddle borders, have proactive homeland states to articulate and defend their interests, or, as in the case of the Roma, are active in migration and thus constitute a serious soft security issue for the CEECs and the EU itself. The issue of minority protection, consequently, cross-cuts

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[45] PHARE Review, October 2000: http://europa.eu.int/comm/enlargement/pas/phare/statistics/commit_sector.pdf

several critical political dimensions: it is often a salient intra-state issue in the domestic politics of transition, it often involves inter- state bargaining, it is central to the inter-regional bargaining for accession to the EU, and it is a policy arena that is conducive to cross-border and international cooperation. Fourthly, there is no clear-cut international or European standard on the means for minority protection.

The decision calculus of the ruling elites in the CEECs over whether to comply with EU conditionality is shaped not only by their perceptions of how a particular decision to comply or not to comply may affect the accession process of their country, but is also shaped by the extent of any domestic mobilization by majority or minority groups. A major consideration for political elites in the CEECs is whether a decision or policy to protect minorities negatively impacts on their domestic standing. Thus policy decisions in the CEECs are constrained by EU top-down and domestic bottom- up pressures. The impact of the Regular Reports on the adoption of minority rights protection in the CEECs is very uneven. In some countries there is a direct correlation with EU pressures, in others there is little or no correlation, and in others still there is more of a correlation with pressures from other international bodies such as the OSCE, which may be interpreted as an indirect effect of EU pressure. Most important of all, it is difficult to gauge whether the EU had a script for the CEECs, in the sense of a regime or strategy of measures to be introduced to secure minority protection. The ad hocism of the Reports suggests that there was no EU script. Consequently, the political will and domestic resistance levels to the adoption of new norms vary across the CEEC region.

Several countries legislated for minority protection, or were in the final stages of so doing, *prior* to the Copenhagen criteria. Some of these were inclusive measures, providing for autonomy arrangements and privileged quotas of representation in national parliaments. For example, Hungary passed a law on 'The Rights of National and Ethnic Minorities' in 1993 that granted collective rights and cultural autonomy to thirteen recognized minorities.[46] In Hungary, in particular, the historical resonance of the Treaty of Trianon (1920) which left large Hungarian territorialized minorities in other states (Slovakia, Romania, Serbia), meant that there has been immense political will in favour of minority protection. In Slovenia the law of October 1994 on 'Self- Governing National Communities' created territorial autonomies and a guaranteed seat in the national parliament for its 'autochthonous' Italian and Hungarian minorities.[47] Others were exclusive in their design. For example, Estonia's law of October 1993 on 'Cultural Autonomy for National Minorities' was limited to Estonian citizens, thus excluding the

vast majority of its national minorities in the Russophone communities who were denied citizenship.[48]

Matching the pattern of behaviour in EU member states, the CEECs have drawn selectively from European and international standards for minority protection. All ten CEECs have signed the FCNM. Almost all signed up shortly after the document was opened for signature on 1 February 1995, though the process of ratification and implementation has taken longer. Of the CEECs only Latvia has still not ratified the document. This early commitment to the implementation of the FCNM contrasts with some of the EU member states (Belgium, France, Greece, Luxembourg and the Netherlands) that have still not ratified it.[49] Many countries, however, that have signed and ratified the document have added special declarations and reservations to their ratification. This practice has been fairly evenly spread among EU member states and candidate countries. Among the CEECs, Bulgaria, Estonia, Poland and Slovenia have added special declarations. The Bulgarian declaration, for example, cautiously refers to "the policy of protection of human rights and tolerance to persons belonging to minorities" and stipulates that the ratification and implementation of the Framework Convention do not imply "any right to engage in any activity violating the territorial integrity and sovereignty of the unitary Bulgarian state, its internal and international security".[50] Estonia's declaration is concerned with specifying its own legal definition of 'national minorities', who are stated to be "citizens of Estonia who reside on the territory of Estonia; maintain longstanding, firm and lasting ties with Estonia; are distinct from Estonians on the basis of their ethnic, cultural, religious or linguistic characteristics; and are motivated by a concern to preserve together their cultural traditions, their religion or

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[46] See http://www.riga.lv/minelres/NationalLegislation/Hungary/Hungary_Minorities_English.htm

[47] Seehttp://www.riga.lv/minelres/NationalLegislation/Slovenia/Slovenia_EthnicCommun_Slovene.htm For a discussion of these and other cases of constitutional and legislative protections for minorities in the CEECs see Kinga Gál, "The Council of Europe's Framework Convention for the Protection of National Minorities and its Impact on Central and Eastern Europe", *Journal on Ethnopolitics and Minority Issues in Europe*, winter 2000: 1-14. In 2002 amendments to Slovenia's local government act ensured that the Roma will have representatives in twenty local councils.

[48] http://www.riga.lv/minelres/NationalLegislation/Estonia/Estonia_KultAut_English.htm. By excluding non-citizens, this definition excludes 25.7 per cent of the population of Estonia, the overwhelming majority of which is composed by minority groups. According to population data for 2000, Russians amounted to 29.61 per cent of the total population, of which only 16.8 per cent had Estonian citizenship. See Vadim Poleshchuk, "Accession to the European Union and National Integration in Estonia and Latvia", ECMI Report No. 8, February 2001: http://www.ecmi.de/doc/download/report_8.pdf

[49] Nine of the ten CEE candidate states signed the Framework Convention in 1995; Bulgaria followed in 1997. Belgium, Greece, Luxembourg and Netherlands have signed, but not ratified the Framework Convention. France has not even signed it. http://conventions.coe.int/Treaty/EN/CadreListeTraites.htm

[50] Bulgaria, Declaration of 7 May 1999.

their language which constitute the basis of their common identity".[51] Similarly, Poland's declaration affirms that it recognizes as national minorities only those residing in the Republic of Poland who are Polish citizens. It also includes a reference to international agreements protecting "national minorities in Poland and minorities or groups of Poles in other States".[52] Slovenia's declaration limits its definition of national minorities to "the autochthonous Italian and Hungarian national minorities", but also states that the provisions also apply to "the members of the Roma community, who live in the Republic of Slovenia", while excluding its numerically largest minority group, the Croatians.[53]

A much more controversial and less widely adopted instrument for minority protection is the Council of Europe's European Charter for Regional and Minority Languages (ECRML). Although it was opened for signature in November 1992, several years prior to the FCNM, by 2002 only three of the ten CEE candidates (Hungary, Slovakia and Slovenia) had ratified it. All three countries ratified in the latter stages of the enlargement process, between 1998 and 2002, but they added specific, and rather complex declarations to it. The poor take-up of the ECRML among the CEECs demonstrates that the dynamics of EU enlargement have done little to speed up its adoption. Only one other candidate country (Romania) has signed, though not yet ratified it. The ECRML offers a menu of options that each signatory can choose from in making their declarations. This makes for a great deal of ambiguity in defining the differences between a regional and a national language.

The Czech declaration, for example, lists the Croatian, German, Romanian, Serbian, Slovak and Slovene languages.[54] Slovenia's Declaration states that only the Hungarian and Italian languages "are considered as regional or minority languages".[55]

Both the Czech and the Slovenian Declarations limit the number of provisions applied to the above-mentioned languages. Slovakia's Declaration confers the status of regional or minority language to Bulgarian, Croatian, Czech, German, Hungarian, Polish, Roma, Ruthenian and Ukrainian. However, it also establishes a hierarchy of languages according to which Hungarian, followed by Ukrainian and Ruthenian, enjoy more far-reaching rights, for example the availability of pre-school education in a particular

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[51] Estonia, Declaration of 6 January 1997.
[52] Poland, Declaration of 20 December 2000.
[53] Slovenia, Declaration of 25 March 1998. According to the 1991 census, there were 81,220 Serbo-Croat speakers, and 52,110 Croat speakers, but only 9,240 Hungarian speakers, 4,009 Italian speakers, and only 2,847 Romani speakers. See http://www.ecmi.de/emap/slo_stat.html
[54] Czech Republic, Declaration of 26 April 1995.
[55] Slovenia, Declaration of 4 October 2000.

language as opposed to the right to apply for this type of education. The Slovakian Declaration also stipulates that it defines the ECRML's term "territory in which the regional or minority language is used" as that provided for by Slovak law (see below) as those "municipalities in which the citizens of the Slovak Republic belonging to national minorities form at least 20% of the population".[56]

Nevertheless, after the introduction of the Regular Reports, the other CEECs have formally adopted government programmes to protect or integrate minority groups. Thus, in the first instance, we should distinguish between *protection* and *assimilation*, for the two processes are not synonymous. According to EUMAP's 2002 monitoring reports, Bulgaria, the Czech Republic, Hungary and Romania are committed to a comprehensive approach to minority protection, by policies to eliminate discrimination and actively promote minority identities.[57] In Estonia and Latvia minorities are perceived as threats to the dominant national culture and the political elites have generally preferred strategies that are designed to encourage the assimilation of minorities to the majority culture by institutionalizing a framework of incentives and sanctions to promote the use of the state language over minority languages.[58] Similarly, in Slovakia and Romania minority protection, and autonomy in particular, is associated with a challenge to national sovereignty, thus, creating immense pressures from the majority ethnic communities against the implementation of measures of minority protection.

EU influence on the adoption of 'race equality' norms in legislation has been traced in Bulgaria, the Czech Republic, Romania and Slovakia.[59] The process of transposing the *acquis* in this area into domestic law in the CEECs is, however, slow, and implementation of government enabling programmes is even slower. Delays are often attributed to the weak capacity of these states to deal with the issues (whether it be underfunding or lack of experienced staff). There is also, however, a normative content to capacity issues. As newly democratizing states, the CEECs have weak legal systems and judicial cultures that are unfamiliar with many of the norms being promoted by the EU and other international organizations. Moreover, there is often an absence of political will both within the CEECs and from the EU to go beyond the rhetorical or

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[56] Slovakia, Declaration of 5 September 2001. See note 50 above.
[57] EUMAP, 2002: 18, 23.
[58] See Laitin (footnote 6 above) and Aina Antane and Boris Tsilevich, "Nation-Building and Ethnic Integration in Latvia" in Pål Kolstø (ed.), *Nation-Building and Ethnic Integration in Post-Soviet Societies: An Investigation of Latvia and Kazakhstan* (Boulder, Col.: Westview Press, 1999): 63-152.
[59] EUMAP, 2002: 24.

formal legal and institutional change when dealing with the issue of minority protection. Often the bodies responsible for the monitoring and implementation of minority protections, such as Ombudsmen, are themselves politically marginalized within many CEECs.[60]

At best EU conditionality made minority protection a salient issue in the political agenda of the CEECs, but the fact that the EU had little to offer in terms of clarifying the issue, substantive measures and policy practice, allowed historical domestic precedents to resurface. Two cases are particularly illustrative of the impact of the Reports as an instrument of conditionality. An example of the strong impact of the Reports is the adoption of Slovakia's language law of July 1999, which is closely correlated with the pressures from the EU accession process. The language law (and Romania's 'Law on Public Administration' of April 2001) allows the use of minority languages in local public administration subject to a minority population threshold of 20 per cent in a given area.[61] This practice, and indeed threshold level, is derived not from recent European or international 'standards' but is derived from the Habsburg and post-World War I minority rights regimes in Europe. The threshold was first entrenched as a general standard in the founding principles and the enabling laws of adoption of a new language law in advance of the Commission meeting of July 1999 to review accession. The new law placed Slovakia back into the first wave of the candidate countries and its 1999 Report declared that the requisite "significant progress" had been delivered, despite the fact that there were definitional ambiguities in the new law and a problem of legal precedence in the more restrictive provisions of the constitution of Slovakia of 1992.[63]

The position of the Roma is a striking illustration of how domestic pressures can override EU conditionality. Despite the EU's self-interested and sustained concentration on the Roma issue in the Regular Reports, none of the strategies or state bodies set up to deal with this minority effected any substantive change in their political, social or

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[60] EUMAP, 2002: 25.

[61] See Art. 2(1) Law on the Use of Minority Languages, 11 July 1999 (Slovakia): http://www.riga.lv/minelres/NationalLegislation/Slovakia/Slovakia_MinorLang_English.htm; Art. 51 Law No. 215 on Local Public Administration 23 April 2001 (Romania): http://www.riga.lv/minelres/NationalLegislation/Romania/Romania_LocAdm2001_excerpts_English.h tm

[62] Under the Habsburg system of local government, schools had to be provided for any linguistic group that constituted 20 per cent of the local population. The Framework Convention does not specify a threshold as Article 10.1 only stipulates that: "In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if those persons so request and where such a request corresponds to a real need, the Parties shall endeavour to ensure, as far as possible, the conditions which would make it possible to use the minority language in relations between those persons and the administrative authorities."

economic marginalization over time. The policy failures and the weakness of the implementation of minority protection for the Roma is noted in several Reports. Slovakia was strongly criticized for the "gap between policy formulation and implementation" on the Roma issue in its 2000 Report, and again in its 2001 Report.[64] The implications of weak policy implementation is referred to only in the 2002 Report on Bulgaria, which obliquely notes that there are "signs of increased tension between the Roma and ethnic Bulgarians".[65] The Roma issue is the most indicative of the limitations of the EU's monitoring mechanism and the lack of a correlation between the Reports and an improvement in minority protection or their integration.

VII. Conclusion

By 2004, the EU will enlarge to include eight of the ten CEECs. Will this process lead to a redefinition of European structures and norms for the management of minority protection? The TEU clarifies that, currently, minority protection is not one of the EU's core political norms. The conditionality of minority protection imposed on the CEECs by the Copenhagen criteria has been superseded by law (the TEU) and, as we have seen from our analysis of the Reports, it has been largely rhetorical on the part of the EU. Rhetoric matters in politics, but the question is to what extent the frameworks set up during accession will be implemented. Will the entry of new member states, which have developed their legal frameworks for minority protection over several years, provide the EU with a new momentum to further elaborate the legal and political standards of minority protection? Some powerful member states, such as France, can be expected to oppose the strengthening of minority protection. Opposition is also likely to come from new member states, such as Estonia and Latvia, who have been reluctant to comply with OSCE Recommendations on minority protection during the past decade and regard their national minority problems as solved.

Moreover, the OSCE, the key European organization that was in the vanguard of the efforts to expand minority rights in the 1990s is less active now. The prospects for a kind of 'reverse conditionality', where international organizations such as the OSCE

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[63] For a discussion of the interaction of Slovakia's laws and EU pressures, see Farimah Daftary and Kinga Gál, "The New Slovak Language Law: Internal or External Politics", ECMI Working Paper No. 8, September 2000: 1-71: http://www.ecmi.de/doc/download/working_paper_8.pdf

[64] Report on Slovakia, 2000: 22; ibid, 2000: 31.

[65] Report on Bulgaria, 2002: 33.

and Council of Europe, together with the CEECs, infuse the EU with a new commitment to minority rights is, consequently, unlikely. This is not to say, however, that there will not be incremental changes in favour of minority protection. The FCNM offers one route for this. Another route could be the Court of Justice through a process of judicial review of human rights and anti-discrimination provisions, as opposed to a codification of minority rights.

What are the main scenarios for the post-enlargement period with respect to minority rights? Generally, the choice may be seen in terms of a contrast between the status quo and the institutionalization of multiculturalism, between policies which will further embed individual rights or policies which will develop group-specific rights.[66]

We term these policy options as *liberal consolidation* and *expanded multiculturalism*. To some extent, these alternate scenarios are related to the prospects for further enlargement of the EU. Should the EU enter a period of stabilization and integration as a union of twenty-five member states, a contraction of political norms into a form of consolidated liberalism, with an emphasis on individual rights, seems likely. If the EU continues to enlarge to the East, to the Balkans, Ukraine, and to Turkey, then a scenario of expanded multiculturalism, with an emphasis on minority group rights seems more likely as part of this process. Thus, if the EU continues to expand, then we can expect its role in minority protection to expand also, and this would refocus attention on the issue of minority protection within the EU itself. Indeed, the next states in the membership queue, the states in the Balkans, then perhaps Turkey and in an even more distant prospect, Ukraine, have serious failings in their records on human rights and minority protection. Enlargement to these states is likely to be an even more drawn out process than it has been for the CEECs, and consequently, there will be a renewed focus on all of the Copenhagen criteria as the entry conditionality.

Two further sets of consequences follow from the scenarios identified above. If the EU lapses into a phase of contraction in its minority protection agenda, the position of minorities in the new member states may deteriorate and destabilize some of these states. The potential for conflict involving the Roma minority has already been identified. Many of the CEECs lack the political and financial capacity to fully implement the legal frameworks put in place during the accession process. In the absence of a proactive EU and OSCE, even at the rhetorical minimum level, the new members lack the external

[66] See also the brief discussion in de Witte, 490-91.

incentives and sanctions to continue with the implementation of minority protection policies, never mind further develop them. As the enlargement process terminates, moreover, the EU is likely to substantially decommission many of the mechanisms it has established to monitor minority protection. A new tacit policy consensus on inaction in the area of minority protection may emerge between the old member states and the new member states.

The achievement of enlargement, however, also brings a number of positive developments for minorities at the European level and at the level of the nation-state. At the EU level, there is currently a process underway to redefine the character of the EU's institutions, norms and values, a process that will see the EU equip itself with a constitution. This constitution will almost certainly further develop the legal foundation for human rights in the EU, though it is not likely to directly contribute to a new minority rights regime.[67] Concurrently, the peer pressure generated by the Council of Europe in connection with the FCNM will intensify as the number of non- ratifying countries within the EU has fallen to a few recalcitrant cases. In the absence of a proactive EU or OSCE, the Council of Europe, and its Parliamentary Assembly, could assume a leading role in the field of minority protection. The existing legal rights, the regular monitoring mechanisms of the FCNM and the ECRML, the legal and political practice of accommodation of national groups and minorities in several old and new member states, ombudspeople's institutions, independent monitoring mechanisms like EUMAP and other NGO activities, and the potential for judicial activism, means that there is an array of possibilities for minority protection. These factors will keep the issue of minority rights high on the political agenda.

At the level of the nation state, the EU will shortly inject massive amounts of financial transfers, most of it in the form of regional funds, to the CEECs. These states are projected to enjoy high growth rates for years to come. The prospects are that socio-economic conditions will steadily improve and that democratic 'institution-building' will continue to develop. The new member states have accumulated much experience over the last decade with designing institutions and legislation to accommodate minorities. One of the major problems with their capacity to implement these designs is lack of resources. EU transfers and socio-economic development will

[67] The Convention for the Future of Europe, in which the candidate countries participate, does not go beyond the existing provisions of the TEU and the Charter in articulating minority protection. See the draft Constitution at http://europa.eu.int/futurum/documents/offtext/const051202_en.pdf, especially Art. 1 (2), Art. 7, Art. 26 (1b).

provide resources that will help to close the 'capacity' gap between formal measures and implementation. Given that member states have wide decisional autonomy over regional funding from the EU, and most of the CEECs are fiscally highly centralized states, there is a major question over whether EU transfers will be accumulated by central elites or be conveyed down the administrative hierarchy to assist with, amongst other things, improvements in the position of minorities. Thus, there is a danger that EU transfers will contribute to greater socio-economic differentiation along territorial and minority cleavage lines in the CEECs.

What is required is an effective EU-wide system for the evaluation of the implementation of the existing frameworks. An EU-wide monitoring mechanism is the first step towards such a system. NGOs such as the Open Society Institute are essential non-official watchdogs, but ideally monitoring mechanisms should be based on peer review and peer pressure, policy communication, learning and exchange, perhaps along the lines of the Open Method of Coordination practised in the EU's economic policy-making.[68] The interaction between different European models of minority rights protection is an interesting axis for future policy developments.

EU conditionality on respect for and protection of minorities is not clearly temporally correlated with the emergence of new political strategies and laws on minority protection in the CEECs. The timeframe for adoption of measures on minority protection often preceded the accession process as in Hungary and Slovenia. While the pressure on the CEECs to comply with European and international standards intensified after the enlargement process accelerated, the leverage power of the EU in minority protection, appears to have been anchored elsewhere, principally in the Recommendations of the Council of Europe and the OSCE. The ad hocism of the EU's Reports on the CEECs suggests that this instrument was employed less to promote EU norms and evaluate their implementation, but rather was more of a process-oriented process, that emphasized 'progress' at all costs. Nevertheless, perhaps one of the main achievements of the EU in the area of minority protection was that it successfully implanted the objective of 'minority protection' as an integral part of the political rhetoric of 'EU speak' in the CEECs. It may be that learning 'EU speak' is a step in the transmission of values that will be internalized and reflected, given time, in institutional change and modified political behaviour. Alternatively, the language of 'European' norms could be seen by some countries as the end in itself.

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[68] See *White Paper on European Governance* (2001).

References

Antane, A. and Tsilevich, B., "Nation-Building and Ethnic Integration in Latvia". In Pål Kolstø (ed.) *Nation-Building and Ethnic Integration in Post-Soviet Societies: An Investigation of Latvia and Kazakhstan* (Boulder, Col.: Westview Press, 1999).

Bárány, Z., *The East European Gypsies: Regime Change, Marginality and Ethnopolitics* (Cambridge: Cambridge University Press, 2002).

Commission of the European Communities. *2001 Regular Report on Bulgaria's Progress towards Accession*. (Brussels: CEC).

Commission of the European Communities. *Enlargement 99: Commission Report – Bulgaria*. (Brussels: CEC).

Commission of the European Communities. *Enlargement 98: Commission Report – Bulgaria*. (Brussels: CEC).

Commission of the European Communities. *2001 Regular Report on Estonia's Progress towards Accession*. (Brussels: CEC).

Commission of the European Communities. *2000 Regular Report on Estonia's Progress towards Accession*. (Brussels: CEC).

Commission of the European Communities. *Enlargement 99: Commission Report – Estonia*. (Brussels: CEC).

Commission of the European Communities. *2002 Regular Report on Hungary's Progress towards Accession*. (Brussels: CEC).

Commission of the European Communities. *2001 Regular Report on Hungary's Progress towards Accession*. (Brussels: CEC).

Commission of the European Communities. *2002 Regular Report on Latvia's Progress towards Accession*. (Brussels: CEC).

Commission of the European Communities. *2001 Regular Report on Latvia's Progress towards Accession*. (Brussels: CEC).

Commission of the European Communities. *Enlargement 99: Commission Report – Latvia*. (Brussels: CEC).

Commission of the European Communities. *Enlargement 98: Commission Report – Latvia*. (Brussels: CEC).

Commission of the European Communities. *2002 Regular Report on Romania's Progress towards Accession*. (Brussels: CEC).

Commission of the European Communities. *2001 Regular Report on Romania's Progress towards Accession*. (Brussels: CEC).

Commission of the European Communities. *Enlargement 99: Commission Report – Romania*. (Brussels: CEC).

Commission of the European Communities. *Enlargement 98: Commission Report – Romania*. (Brussels: CEC).

Commission of the European Communities. *2002 Regular Report on Slovakia's Progress towards Accession*. (Brussels: CEC).

Commission of the European Communities. *2001 Regular Report on Slovakia's Progress towards Accession*. (Brussels: CEC).

Commission of the European Communities. *2000 Regular Report on Slovakia's Progress towards Accession*. (Brussels: CEC).

Commission of the European Communities. *Enlargement 99: Commission Report – Slovakia*. (Brussels: CEC).

Commission of the European Communities. *White Paper on European Governance*, Com (2001) 428. (Brussels: CEC).

Crampton, R. J., *Eastern Europe in the Twentieth Century – and After* (London: Routledge, 1994).

Daftary, F. and Gál, K., "The New Slovak Language Law: Internal or External Politics". ECMI Working Paper No. 8. September 2000. Available at http://www.ecmi.de/doc/download/working_paper_8.pdf

de Witte, B., "Politics versus Law in the EU's Approach to Ethnic Minorities". In Jan Zielonka (ed.), *Europe Unbound: Enlarging and Reshaping the Boundaries of the European Union* (London: Routledge, 2002).

EU Accession Monitoring Program (2002). *Monitoring the EU Accession Process: Minority Protection*. (Budapest: Open Society Institute).

EU Accession Monitoring Program (2001). *Monitoring the EU Accession Process: Minority Protection*. (Budapest: Open Society Institute).

Gál, K., "The Council of Europe's Framework Convention for the Protection of National Minorities and its Impact on Central and Eastern Europe". *Journal on Ethnopolitics and Minority Issues in Europe*. Winter 2000.

Grabbe, H., "How does Europeanization affect CEE governance? Conditionality, diffusion and diversity". *Journal of European Public Policy*. 8 (6) 2001.

Gilbert, G., "The Burgeoning Minority Rights Jurisprudence of the European Court of Human Rights". *Human Rights Quarterly*. 24 (3) 2002.

Gutmann, A. (ed.), *Multiculturalism: Examining the Politics of Recognition* (Princeton: Princeton University Press, 1994).

Higley, J., et al, "Introduction: Elite Change and Democratic Regimes in Eastern Europe". In John Higley et al. (eds.) *Postcommunist Elites and Democracy in Eastern Europe* (London: Macmillan Press, 1998).

Horowitz, D., *Ethnic Groups in Conflict* (Berkeley, LA: University of California Press, 1985)

Jackson-Preece, J. *National Minorities and the European Nation-State System* (Oxford: Oxford University Press, 1998).

Kymlicka, W. and Opalski, M. (eds.) *Can Liberal Pluralism be Exported? Western Political Theory and Ethnic Relations in Eastern Europe* (Oxford: Oxford University Press, 2001).

Kymlicka, W., *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Clarendon Press, 1995).

Laitin, D., *Identity in Formation. The Russian-speaking Populations in the Near Abroad* (Ithaca: Cornell University Press, 1998).

Lijphart, A. *The Politics of Accommodation* (Berkeley and Los Angeles: University of California Press, 1968).

Linz, J. and Stepan, A., *Problems of Democratic Transition and Consolidation: Southern Europe, South America, and Post-Communist Europe* (Baltimore: John Hopkins University Press, 1996).

Lipset, S. M., "Social Requisites for Democracy Revisited". *American Sociological Review*. February 1994.

--- *Political Man: The Social Bases of Politics* (Baltimore: Johns Hopkins University Press 1983, revised edition).

McGarry, J. and O'Leary, B., "Introduction: The macro-political regulation of ethnic conflict". In John McGarry and Brendan O'Leary (eds.) *The Politics of Ethnic Conflict Regulation. Case Studies of Protracted Ethnic Conflicts* (London: Routledge, 1993).

Poleshchuk, V., "Accession to the European Union and National Integration in Estonia and Latvia". ECMI Report No. 8. February 2001. Available at http://www.ecmi.de/doc/download/report_8.pdf

Przeworski, A., "The Games of Transition". In Scott Mainwaring, et al. (eds.) *Issues in Democratic Consolidation. The New South American Democracies in Comparative Perspective* (Notre Dame, Ind.: University of Notre Dame Press, 1992).

Rangelov, I., "Bulgaria's Struggle to Make Sense of EU Human Rights Criteria". EU Monitoring Accession Program. 1 October 2001. Available at http://www.eumap.org/articles/content/10.

Schwellnus, G., "'Much Ado About Nothing': Minority Protection and the EU Charter of Fundamental Rights". ConWEB No 5/2001. Available at http://www.les1.man.ac.uk/conweb/papers/conweb5-2001.pdf

Smith, K., "The EU: Human Rights and Relations with Third Countries". In Karen Smith and Margot Light (eds.) *Ethics and Foreign Policy*.(Cambridge: Cambridge University Press, 2001).

Smith, K., "Western Actors and the Promotion of Democracy". In Jan Zielonka and Alex Pravda (eds.) *Democratic Consolidation in Eastern Europe, Volume 2: International and Transnational Factors* (Oxford: Oxford University Press).

Smith, K., *The Making of EU Foreign Policy: the Case of Eastern Europe.* (New York: St. Martin's Press, 1998).

Thornberry, P., "An Unfinished Story of Minority Rights". In Anna Mária Bíró and Petra Kovács (eds.) *Diversity in Action: Local Public Management of Multi-Ethnic Communities in Central and Eastern Europe* (Budapest: LGI Books, 2001).

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

Zielonka, J. "Conclusions: Foreign Made Democracy". In Jan Zielonka and Alex Pravda (eds.), *Democratic Consolidation in Eastern Europe, Volume 2: International and Transnational Factors* (Oxford: Oxford University Press, 2001).

Documents:

United Nations
Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992)

International Covenant on Civil and Political Rights (1966).

Non-binding UN declaration of the UN Sub-Commission on the Prevention of Discrimination and the Protection of Minorities. (1985). E/CN.4/Sub.2/1985/31.

The Organization for Security and Cooperation in Europe
Helsinki Final Act (1975):

Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE. (1990). 5-29 June 1990.

Charter of Paris for a New Europe (1990). Summit, Paris 19-21 November.

Hague Recommendations on the Education Rights of National Minorities (1996).

Oslo Recommendations on the Linguistic Rights of National Minorities (1998).

Lund Recommendations on the Effective Participation of National Minorities in Public Life (1999).

Report on the Situation of Roma and Sinti in the OSCE Area (2000).

The Council of Europe:
Convention for the Protection of National Minorities. (1995).

The European Union:
The Treaty of Maastricht (1992).

Treaty on the European Communities (1997).

Consolidated Version of the Treaty on European Union (1997).

Charter of Fundamental Rights of the European Union (2000).

PHARE Review (2000). October.
http://europa.eu.int/comm/enlargement/pas/phare/statistics/commit_sector.pdf

The Convention for the Future of Europe. (Feasibility Study). (2002).
http://europa.eu.int/futurum/documents/offtext/const051202_en.pdf

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The European Union and Interethnic Power-sharing Arrangements in Accession Countries*

Martin Brusis

University of Munich, Germany

The article focuses on the impact exerted by the EU on domestic interethnic politics in accession countries. It argues that the EU has contributed to the emergence of power-sharing arrangements in accession countries, since its minority protection policy has been guided by a security approach that prioritizes the consensual settlement of disputes over the enforcement of universalist norms. The article analyzes the minority protection policy of the EU and highlights elements of consociational power-sharing observable in Bulgaria, Romania and Slovakia. On this basis, it is claimed that consociational power-sharing arrangements are more compatible with liberal democratic principles than territorial autonomy arrangements. Ideas and norms supporting these arrangements could thus permeate into the minority protection policy of an enlarged EU, although the principal obstacles to communitarizing minority rights will persist.

I. Introduction

The re-occurrence of wars on the European continent has led the European Union (EU) to put particular emphasis on protecting national minorities in Central and Eastern Europe. The enlargement process endows the EU with far-reaching power in those countries that have applied for EU membership. This paper is less interested in how this power facilitates the implementation of minority protection standards in accession countries. It rather focuses on the impact exerted by the EU on the arrangements of domestic interethnic politics, i.e. on the institutionalized relations between political actors representing ethnic minorities and majorities. Adopting this perspective is motivated by the assumption that 'politics matters'

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for the situation of national minorities because international norms of minority protection continue to be only weakly developed and specified. Faced with normative uncertainty, even weak political actors, such as the accession countries in relation to the EU, have a wide margin of discretion and can tailor normative reasoning to the needs of the political game.

The paper starts by explaining how the EU's policy on the protection and rights of minorities in accession countries is composed in the absence of an EU minority rights *acquis*. Despite its incoherence, this policy has been very effective, due to the 'loose coupling' of advice and accession conditionality. The following section investigates the impact of the accession constellation on interethnic power relations in three exemplary EU accession countries: Bulgaria, Romania and Slovakia. In all three countries, parties of ethnic minorities participate in governments, albeit in different forms and degrees. The paper argues that the EU has contributed to the emergence of these models of consociational power-sharing. The final section draws conclusions for interethnic relations in the future new member states of an enlarged EU, thereby reflecting upon the 'liberal pluralism' debate. Consociational power-sharing, it is argued, should be preferred over a territorialization of interethnic relations, and sectoral policies relevant for minorities may be coordinated among EU member states.

II. What Minority Protection Policy Does the EU Have in the Accession Process?

This section analyzes the policy of the EU with respect to the protection of national minorities in accession countries. Whereas the other accession criteria defined by the 1993 European Council of Copenhagen have been integrated into the Treaty and are reflected in secondary legislation, the meaning of "respect for and protection of minorities" has not been further developed in EU law (De Witte 2000). As a consequence, EU institutions such as the Commission, the Council of Ministers and the European Parliament have used five main 'reference points' to define their policy and to assess whether accession countries fulfil the 'minority criterion' or protect national minorities effectively.

First, insofar as minority protection can be viewed as the outcome of anti-discrimination policies, a legal framework of reference has now been created with the extension of anti-discrimination provisions in the Treaty on the European Communities (Art. 13 TEC) and the adoption of a Directive implementing the "principle of equal treatment between persons irrespective of racial or ethnic origin".[1] This so-called Race Equality Directive uses a

[1] Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ L 180, 19.07.2000.

comprehensive notion of ethnic and racial discrimination and is not limited to employees discriminated by public authorities. The Directive applies also to legal persons, to discrimination in the fields of education, social protection and the provision of public goods, and it includes also discriminatory rules created in the private sector (Schwellnus 2001; Toggenburg 2000). Since 2000, the EU has expected the accession countries to transpose and implement the Directive in their domestic legislation and practice (Open Society Institute 2001). The Directive provides a comprehensive legal basis to address negative discrimination and facilitates positive discrimination as it states that the principle of equal treatment "shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to positive actions on the national level" (Art. 5). But it does not define norms as to how states should organize positive discrimination to protect or support their minorities.

Second, EU institutions have been able to specify the minority criterion if a general policy consensus existed among EU member states. Such a broad political agreement concerned, for example, the need to grant full citizenship status to Russian-speaking non-citizens in Estonia and Latvia. While the EU has not rejected the basic position of the Estonian and Latvian gov- ernments according to which international minority protection standards do not apply to their non-citizens, it has continued to pressure the two countries for a quicker naturalization of this group. Similar shared EU policy aims are the social integration of the Roma minority and good-neighbourly relations between states with national minorities and the ethnic kin states of these minorities. The latter aim, for example, provided one of the reference points for the Commission's critique of the way Hungary prepared its Status Law supporting ethnic Hungarians in neighbouring countries.[2] The scope of the policy consensus in the EU is rarely delineated clearly, may be changed and largely depends on unanimity among the member states. Third, the EU institutions have referred to legal standards of minority protection that have been established by the Council of Europe, most importantly the Framework Convention on the Protection of National Minorities (FCNM) and the European Charter of Regional and Minority Languages (ECRML). This legal framework of reference does, however, not provide universally valid and clear standards because, on the one hand, the FCNM has not been ratified by all member states of the Council of Europe, among them five EU member states,[3] and the ECRML has found even less support among the member states of the Council of Europe. On the other hand, the

[2] 2001 *Regular Report on Hungary's Progress towards Accession*: 91. This Report and the Commission Reports quoted below are available at http://europa.eu.int/comm/enlargement/index_en.html.

[3] Belgium, France, Greece, Luxemburg and the Netherlands, cf. http://conventions.coe.int/Treaty/EN/CadreListeTraites.htm, accessed on 15.11.02.

FCNM contains few concrete prescriptions to be monitored or enforced, and it mainly defines minority protection as a task states should fulfil, not as a set of subjective rights national minorities or individuals belonging to national minorities could claim.

In its regular reports monitoring the progress made by the candidate countries in meeting the criteria of EU accession (Progress Reports), the Commission apparently expects the candidates to ratify the FCNM prior to EU accession, although it has neither explicitly declared this a general requirement nor has the FCNM become part of the accession negotiations. For example, the 2002 Progress Report stated that "Latvia is urged to ratify the [FCNM]".[4] The Report on Turkey noted that it had not even signed the FCNM.[5] The Progress Reports also refer to how the Committee of Ministers of the Council of Europe and the Advisory Committee to the FCNM assess the implementation of this Convention in accession countries. Contrary to the FCNM, the implementation of the ECRML has not been expected by the Commission, as it neither monitors its ratification systematically for all candidates nor criticizes its non-implementation. The European Parliament has referred to the FCNM in its resolutions on the enlargement negotiations, and the Council has mentioned "international standards" as a general point of reference in its "Accession Partnerships" i.e. the Council decisions setting priorities for the candidate countries' accession preparation.[6]

Fourth, the EU institutions have reflected norms developed by the Organization for Security and Cooperation in Europe (OSCE) and its High Commissioner on National Minorities (HCNM) in their assessments.[7] The EU has "in effect delegated to the HCNM the task of judging whether [Central and East European] countries have 'done enough' in terms of minority rights." (Kymlicka 2001: 375) In the case of Estonia and Latvia for example, the EU and its member states have concluded Europe Agreements that contain "the commitment to ... further development of Estonia's [Latvia's] new economic and political system which respects – in accordance *inter alia* with the undertakings made within the context of ... the Organization for Security and Cooperation in Europe (OSCE) – the rule of law and human rights, including the rights of persons belonging to minorities".[8] The subsequent Accession Partnerships for these two countries have referred to these clauses,

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[4] *2002 Regular Report on Latvia's Progress towards Accession*: 42. Except Latvia and Turkey, all other candidate countries have already ratified the FCNM.

[5] *2002 Regular Report on Turkey's Progress towards Accession*: 42, respectively.

[6] Cf. the European Parliament Resolution on the State of enlargement negotiations, adopted on 13.6.02 (P5_TAPROV(2002)0317), and the Council Decisions on the 13 Accession Partnerships of 28.1.02, OJ L 44 of 14.2.02.

[7] Cf. the 2002 Regular Report on Latvia (31) or the Parliament's 2002 Resolution on Latvia and Estonia.

[8] OJ L68 of 9.3.98, p. 3-4 and OJ L26 of 2.2.98, p. 3-4.

which assign a more enhanced role to the OSCE than the Europe Agreements with other accession countries. Despite this legal basis in the mentioned Europe Agreements, OSCE documents and the Recommendations of the High Commissioner do not provide firm standards for the accession process as they are not legally binding and primarily reflect concerns of security, not the aim of setting universal standards of justice.

Fifth, the Commission and the Parliament have taken domestic constitutional provisions and legislation as points of reference. They have interpreted these domestic rules as self-commitments of an accession country and addressed implementation deficits or called for compliance with these rules. An example is the 2002 Progress Report on Romania, which stated that the Law on Local Public Administration, which regulated the official use of minority languages, had been "successfully applied despite the reticence of some prefectures and local authorities." (35) Relying on domestic rules and agreements is advantageous as it enables the EU institutions to focus their policy on the specific local situation, but it risks that the parameters of the situation determine the standards (normative assumptions) underlying EU policies. To take the above-mentioned Romanian example, where the use of the minority language as an official language is permitted in municipalities with more than 20 per cent of the residents belonging to the relevant minority, the FCNM and other international standards do not specify this threshold share, allowing to assess whether a domestic regulation eventually sets too high a threshold.

Hence, the EU institutions lack a point of reference to orient their policy in an accession country like Bulgaria where there is neither a legal regulation on the share of minority residents required for using the minority language as an official language nor a major political controversy on this issue between minority and government representatives. By linking their evaluation to the domestic context, EU institutions tend to replace a justice-based assessment with a security-based approach aiming at a consensual conflict settlement.[9] Whereas domestic political conflicts over the use of the minority language, minority education or culture are noted with concern, the absence or resolution of major disputes is evaluated positively and represents an indicator of compliance with the accession criterion. These five points of reference and the political positions derived from them make sense individually, but do not add up to a coherent policy. The EU is perceived as promoting both anti-discrimination and minority protection objectives, but the extent to which anti-discrimination policies may achieve or replace sufficient minority protection is not clear. The EU does not

[9] Cf. Kymlicka (2001) for a thorough discussion of the differences between the contextual, security-based minority rights track and the universal, justice-based minority rights track.

expressly support group rights as an approach to minority protection, but does not show a clear preference for individual rights either.[10] Security-based interests in a consensual conflict settlement take priority over the interests in fair and just standards. Except from Slovakia in 1997 and Turkey, candidate countries that did not take into account EU critiques of their minority policy were not sanctioned in any way. However, the absence of sanctioning reactions may also be taken as an indicator of behavioural compliance and thus an effective EU policy. In other words, the EU has been able to allow itself diffuse and ambiguous minority rights norms because its accession conditionality has effectively induced governments of accession countries to align the fundamental orientations of their policies with EU expectations irrespective of their incoherence.

It is inappropriate to read and conceive EU statements on minority protection as 'normative judgments', inferences drawn from a coherent set of norms and linked to certain necessary consequences.[11] Rather, they represent 'moral suasion', advice that is only loosely coupled to the decision on whether or not an accession country can be accepted as a member state. Statements from the Progress Reports, Accession Partnerships or Resolutions of the European Parliament indicate the way an accession country should go but do not limit the discretion of the EU and its member states about whether the political criterion has been met or whether an accession country can enter. The loose coupling between (bad) evaluations and (negative) enlargement decisions has worked as a strong incentive for accession countries to approximate EU expectations and it has provided maximum flexibility for the EU.

III. Bulgaria, Romania, Slovakia: EU-induced Consociationalism?

This section studies how the EU has influenced interethnic power relations in accession countries. It is confined to Bulgaria, Romania and Slovakia – three accession countries with significant ethnic minorities, which were mainly selected to illustrate the main line of argumentation, as they have developed features of a consociational arrangement of power-sharing. Consociationalism has been identified by Arend Lijphart as a model of democracy and government in societies with ethnic, religious or cultural cleavages (1977: 25-52). Characteristics of the consociational model are a government by a grand coalition of the political leaders of all significant segments of a plural society, veto rights of all partners

[10] Riedel's assertion (2002) that the EU tends to advocate collective rights through its accession requirements cannot be substantiated on the basis of official EU statements.

[11] Brunner's critique of the voluntarism (*Beliebigkeit*) manifested in the Commission's Reports (2002) tends to take a coherent set of norms as the framework of reference.

involved in the governing coalition, a high degree of autonomy for each segment to run its own internal affairs, and proportionality as the principal standard of political participation, civil service appointments and allocation of public funds.[12] The following paragraphs briefly describe these elements of consociationalism in the three countries.

1) In *Bulgaria*, the parliamentary elections of 2001 resulted in a coalition between the National Movement Simeon II (NDSV) and the party seeking to represent Bulgaria's 9.4 per cent ethnic Turkish citizens, the Movement for Rights and Freedoms (DPS).[13] DPS is in a veto position, as the NDSV requires the support of DPS deputies to achieve a majority in Parliament. The DPS participates in the cabinet of Prime Minister Simeon Sakscoburgotski with a Minister of Agriculture, a Minister without Portfolio and a Deputy Minister of Defence. DPS politicians have received posts as regional governors and heads of executive agencies.

The DPS used to play a pivotal role for the survival of several previous governments. It supported the first and the second government led by the United Democratic Forces in 1991-92 and 1997, respectively. In addition, the DPS was mandated to form the government of Lyuben Berov in 1992 and supported his government until its resignation in 1994 (Johnson 2002; Vassilev 2001).

The Bulgarian Constitution does not mention the existence of national minorities and for- bids the creation of political parties on ethnic grounds. This constitutional provision caused several political initiatives to ban the DPS as a party organized on ethnic grounds, but the failure of these attempts has led to a certain *modus vivendi* where the major Bulgarian parties accept the DPS in exchange for its self-restraint with regard to radical ethnopolitical demands. While the majority of DPS voters are ethnic Turks, the party has neither fully mobilized the entire ethnic Turkish community nor has it established a monopoly of representation. Its vote share in parliamentary elections increased from 5.7 per cent in 1990 to 7.55 per cent in 1991, but declined to 5.44 per cent in the 1994 elections, reflecting internal power struggles and scandals (Ilchev 2000).

Electoral support rose again to 7.6 per cent in 1997, when DPS participated as part of an electoral coalition, and reached 7.45 per cent in the 2001 elections. The DPS does not consider itself an ethnic party and intends to promote minority concerns by strengthening the civic elements of the Bulgarian state and nation.[14] Its 2001 electoral

[12] For a discussion of the consociationalist model with respect to the prevention of ethnopolitical conflicts, cf. Sisk (1996) and Snyder (2000).

[13] The minor coalition partner, DPS, is an alliance of three parties led by the party naming itself DPS.

[14] Cf. the statements of DPS leaders reported by the US-sponsored NGO "Project on Ethnic Relations" (2002).

programme emphasized liberal values such as individual rights and freedoms and non-discrimination, supporting in particular the decentralization of government and rural economic development.[15] The party was successful in achieving some improvements for national minorities in Bulgaria. For example, the Parliament simplified the procedure for re-establishing Turkish names, and the government declared to set up an agency for national minorities supporting the National Council for Ethnic and Demographic Issues.[16]

The ethnic Turkish community enjoys segmental autonomy in Bulgarian society, though its autonomy in terms of ethnic self-consciousness, cultural self-assertion, education and self-government is much weaker than that of the ethnic Hungarian communities in Romania and Slovakia. There is a discernible social distance between the ethnic Turkish and ethnic Bulgarian communities expressed in a low share of people willing to marry a member of the other community (Ilchev 2000, 247). Most ethnic Turks are also Muslims, live in rural areas in the Kurdzhali and Razgrad regions of South- and North-Eastern Bulgaria, and form a local majority in Kurdzhali. Schools in the ethnic Turkish settlement areas offer Turkish as a subject of instruction, and cultural institutions as well as media operate in the Turkish language. Mayors affiliated with DPS run 28 municipalities (*obshtini*) with a high share of ethnic Turkish residents, amounting to approximately 11 per cent of all municipalities (262). In general, however, ethnic Turks are underrepresented in public administration.

2) In *Romania*, the Democratic Alliance of Magyars in Romania (UDMR) participated in government between 1996 and 2000, and has enabled the social democrat minority government since 2000 (Csergő 2002; CEDIME-SE 2001). The fact that the UDMR ceased to participate in the governing coalition in 2000 did not entail the end of consociational power-sharing (cf., however, Kostecki 2002: 39). Subsequent agreements between the Social Democratic Party of Romania (PSD) and the UDMR have set out an obligatory consultation of the UDMR in important political issues and numerous policy concessions in exchange for UDMR abstention from non-confidence motions or votes in Parliament. These agreements have ensured a *de facto* involvement of the UDMR in governance, have endowed the UDMR with a veto position and envisage a 'civic multicultural model' for interethnic relations in Romania, comprising strong elements of consociationalism.[17]

As a coalition partner to the various cabinets led by prime ministers from the liberal-conservative Democratic Convention of Romania (CDR), the UDMR nominated two

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[15] Bûlgariia – Evropa. Nestandarten pût na razvitie, www.dps.bg.

[16] Upravlenska programa na pravitelstvoto na Republika Bûlgariia, www.government.bg, and Petkova (2002).

[17] Egyezmény a Romániai Magyar Demokrata Szövetség és a Szociális Demokrácia Romániai Pártja között, www.rmdsz.ro.

ministers, ten state secretaries, two prefects and eight deputy prefects (Kostecki 2002: 27; Medianu2002). A UDMR minister headed the Department for the Protection of National Minorities that was established in 1997 and subordinated to the prime minister. The social democrat government assigned the Department for the Protection of National Minorities to the Ministry of Public Information, thereby excluding the head of the department from the participation in Cabinet meetings. However, the minority departments in the Ministries of Education and Culture were retained, and the UDMR also kept the posts of deputy prefects. The UDMR's involvement in the government has been institutionalized in two other executive bodies, an Interministerial Committee for National Minorities (created in 1998) and a consultative Council for National Minorities (2001). Based upon the idea of a state nation, the Romanian Constitution does not assign a special status to the ethnic Hungarian or other minorities. It envisages the state to guarantee the development of the ethnic identity of persons belonging to national minorities, but restricts a positive discrimination of these individuals.

The UDMR's veto position is, however, weak insofar as the PSD might rely on the deputies of other parties to organize a parliamentary majority and that ethnic Romanian parties (ethnic at least with regard to their ethnic Romanian constituencies) are likely to support the government on ethnopolitical issues. Constant vote shares in subsequent parliamentary, regional and local elections, roughly matching the share of ethnic Hungarian population in Romania (7 per cent), indicate that UDMR has been able to mobilize and integrate the ethnic Hungarian electorate. The UDMR considers itself as the party representing the interests of the ethnic Hungarian community in Romania. It has sought to integrate all political and social milieus in this community, and its political strategy aims at increasing the segmental autonomy of the ethnic Hungarian minority. During the CDR-led governments, the UDMR was able to achieve major amendments to the education and self-government laws. In municipalities with more than 20 per cent of the residents belonging to a national minority, the use of the minority language in public administration was legalized, bilingual signs were introduced, and the minority language became a language of instruction.

The 2001 agreement with the PDS-led government facilitated, *inter alia*, a Law on Local Public Administration that permitted the use of the minority language as an official language in municipalities with more than 20 per cent of minority language speakers.[18] In the agreement of January 2002, the government committed itself to expanding school and university education and broadcasting in the Hungarian language, ratifying the European

[18] Heti Világgazdaság, 6.1.2001.

Charter of Regional and Minority Languages, returning real estate confiscated by the socialist state, and to recruiting ethnic Hungarian police officers in municipalities with more than 20 per cent ethnic Hungarians.[19] Particularly the last-mentioned objective indicates that ethnic proportionality has gained importance as an organizing principle in Romanian public administration, although the Romanian government does not explicitly promote it.

The ethnic Hungarian community has traditionally been more organized and articulate than the ethnic Turkish community in Bulgaria. Ethnic Hungarians constitute approximately 20 per cent of the population in the Transylvania region of Western Romania, and they form local majorities in the counties of Harghita and Covasna (*Székelyföld*). In the ethnic Hungarian settlement area, local self-governments are managed by ethnic Hungarian mayors, and schools with Hungarian as a language of instruction, a private Hungarian-language university, cultural institutions and media provide segmental autonomy. Comparative sociological research on social relations between ethnic Hungarians and ethnic Romanians has shown that conflict perceptions are more intense in Transylvania than between ethnic Hungarians and ethnic Slovaks in Southern Slovakia (Csepeli, Örkény and Székelyi 1999: 104).

3) In *Slovakia*, the Slovak Magyar Coalition Party (SMK) has been involved in the governing coalitions since 1998. From 1998 until 2002, SMK nominated the Deputy Prime Minister responsible, *inter alia*, for minority protection, two ministers and a state secretary in the Ministry of Education. In the government established in October 2002, the SMK again got the posts of the Deputy Prime Minister responsible for minority protection and the Minister of Environmental Protection. In addition, SMK politicians act as a Deputy Chairman of Parliament, Minister of Agriculture, and Minister of Regional Development and as State Secretaries in the Ministries of Economics, Finance, Education, Culture, Foreign Affairs, and Regional Development.[20] Both governments have required the support of SMK deputies to ensure a majority in Parliament. While the Slovak Constitution does not assign special group rights to national minorities, it does stipulate subjective rights of persons belonging to national minorities with respect to, *inter alia*, establishing associations, using the minority language, education and culture.

The continued governmental involvement of the SMK has significantly improved the institutional environment for a segmental autonomy of the ethnic Hungarian community in Slovakia. The governing majority adopted a new law regulating the use of the minority

[19] Egyezmény; Heti Világgazdaság, 16.2.2002. In addition, Art. 81 of the Law No. 188/1999 on the Status of the Public Servant stipulates that some public servants shall know the minority language in areas with a share of more than 20 per cent of the citizens belonging to a national minority.

[20] Koaličná dohoda medzi SDKÚ, SMK, KDH a ANO, 8.10.2002, www.smk.sk.

language and enhanced the status of the consultative Government Council for National Minorities and Ethnic Groups in 1999. In contrast to Bulgaria and Romania, Slovakia has ratified the European Charter of Regional and Minority Languages, and adopted legislation to decentralize administrative competences and establish regional self-government in 2001. In addition, the new government's programme declaration envisaged the adoption of a new law on minorities regulating, *inter alia*, the funding of minority cultures.[21]

The SMK considers itself as a party aggregating the interests of the ethnic Hungarian community in Slovakia (9.7 per cent of the population) and tries to represent the entire spectrum of political positions articulated among ethnic Hungarians. Stable electoral results equalling the size of the ethnic Hungarian electorate and opinion poll data confirm that most ethnic Hungarians consider themselves represented by the SMK (Gyárfašová and Velšic 2002). As in Romania, a network of schools with Hungarian as a language of instruction, media and cultural institutions reflect the segmental autonomy of the ethnic Hungarian community in Slovak society. While the share of ethnic Hungarian or SMK-affiliated mayors roughly corresponds to the share of the ethnic Hungarian community, no concrete figures are known that could prove proportionality in the civil service or public expenditure. Similar to the Romanian and Bulgarian cases, governments have not aimed at institutionalizing the principle of ethnic proportionality but acknowledge the importance of minority representation in the administration of ethnically heterogeneous areas.

Obviously, some further qualifications need to be made with regard to the reality of the consociational model in the three country cases: this paper uses a wide definition of consociationalism not presupposing that more than two ethnic groups exist or that none of the ethnic groups is in a dominant position. While many Bulgarian, Romanian or Slovak parties might not consider themselves as representing the dominant ethnic group and in this sense do not support a consociational model (Medianu 2002: 30), they do represent the ethnic majorities in terms of voter alignments. The same applies to the DPS in Bulgaria, which does not consider itself an ethnic party. In a formal sense, none of the three countries is governed by a grand coalition including all segments of society, and the Roma community has not been represented in any of the governing coalitions. But the volatility of party systems and the changing social structure in the three countries result in shifting non-ethnic alignments of voters and, consequently, in broad representational strategies of the larger governing parties. Despite these necessary qualifications, numerous elements of the minority veto,

[21] Programové vyhlásenie vlády Slovenskej republiky, 4.11.2002: 31, www.vlada.sk.

interethnic coalition, proportionality and segmental autonomy – components of the consociational model of power- sharing – could be documented by this overview.

The overview has also shown that domestic circumstances can account for the emergence of this model. The Bulgarian movement for Simeon II, the Romanian social democrats and the liberal and centre-right parties in Slovakia did not attain an absolute majority in Parliament and thus required the support of parties representing mainly the most numerous ethnic minorities. These coalitions have been facilitated by proportional electoral systems in all three countries. Yet, this paper claims that these domestic factors do not sufficiently explain the creation and stabilization of consociational models in the three countries. There are three reasons to assume that the EU and the accession constellation have made an important contribution.

First, since the great majority of the citizens in the three countries support European integration and the EU membership of their country, citizens expect political parties to reflect European values and to meet the normative expectations of the EU. Parties representing ethnic minorities and majorities thus both have an incentive to demonstrate their European value orientation to their constituencies by taking moderate political positions and building compromises around European norms of interethnic reconciliation and co-existence. Despite the rise of eurosceptic parties or movements, pro-European parties have so far competed more successfully for electoral support both in majority and minority communities.

Second, both parties advocating minority and majority issues share an intrinsic interest in EU membership (Kymlicka 2001). Representatives of ethnic minorities can suppose that minority communities will benefit from more permeable borders, multi-level contacts with neighbouring ethnic kin states and through the limitation and scrutiny of state sovereignty in the EU framework. Advocates of ethnic majority concerns, who often claim to represent general interests of the state or nation, have reasons to believe that after accession EU institutions will be in a much weaker position *vis-à-vis* a member state and, given the lack of a minority rights *acquis*, will not continue interfering in a state's treatment of its minorities as deeply as before. In the pre-accession phase, these interests of ethnopolitical actors converge and thus facilitate arrangements of joint governance.

Third, the previous section has argued that EU policy tends to favour a security-based approach aiming at consensual settlements over the enforcement of universal norms. This policy approach has been particularly conducive to interethnic coalitions since it has caused political leaders of ethnic groups to abandon principled positions unlikely to be appreciated by the EU. Political representatives of ethnic majorities know that concessions to ethnic

minorities are appreciated by EU institutions, and minority representatives know that moderate positions will find more support in Brussels. In contrast, the normative ambiguity and vagueness of EU statements leaves both sides uncertain as to whether a rights-based policy, even if it appears convincing and legitimate, will be backed by the EU.

These three rationales for an EU impact can be complemented with some empirical evidence of an EU interest in keeping interethnic power-sharing arrangements. In Slovakia, the EU intervened directly to sustain the governing coalition during the crisis over the adoption of the territorial-administrative reform laws in August 2001: the SMK threatened to leave the government after deputies of the governing coalition parties had voted together with opposition deputies to reject a government proposal dividing the country into 12 instead of eight regional self-governments. The political representatives of the ethnic Hungarian community had favoured smaller regions as a better institutional safeguard of local-level autonomy. Some days prior to the meeting of the SMK Republican Council that should decide on leaving or remaining in the governing coalition, Commissioner for Enlargement Verheugen highlighted the importance a stable government including the representatives of the ethnic Hungarian minority would have for the country's accession to the EU (Mesežnikov 2002: 52). His warning prompted the SMK to accept the law on regional self-government in its adopted meaning, and induced the coalition partners to accept the conditions set by the SMK for its participation in government.

In Bulgaria and Romania, political interventions of the EU have less directly targeted the continuation of interethnic cooperation but EU policy has shaped a milieu fostering consociational power-sharing arrangements.

IV. Implications for an Enlarged EU and its New Member States

This section asks how interethnic relations in Central and Eastern European (CEE) states will develop after they have joined the EU. If the accession constellation has contributed to the emergence of consociational power-sharing in Bulgaria, Romania and Slovakia, will these arrangements be less stable once the EU relinquishes its power position? If the EU has been able to successfully pursue a diffuse and ambiguous minority rights policy because of functioning accession conditionality, will its policy fail when conditionality ceases to be effective? Does the EU then need to develop and clarify its own normative standards?

Whether there is a basis for the development of common norms on interethnic relations in an enlarged EU, shall be addressed by scrutinizing Will Kymlicka's attempt to develop a liberal theory of group rights (Kymlicka 1995; Kymlicka and Opalski 2001). A central tenet of this theory is that ethnocultural justice requires states, which are *per se* nation building in that they embody the majority culture, to accept nation-building activities of ethnic minorities. States may restrict minority nation building only by ensuring individual liberties. The norm of justice between minority and majority cultures leads Kymlicka to consider territorial autonomy as a possible and legitimate arrangement to protect a national minority. He supports territorial autonomy for CEE also by giving empirical and functional reasons: "the trend in the West is in fact towards *greater* territorialization of minority rights regimes for national minorities" (2001: 365, emphasis in original). "[Territorial autonomy] has worked well in the West and is worthy of serious consideration in [Eastern and Central Europe] ..." (2001: 362).

It is doubtful whether territorial autonomy for national minorities can be derived from principles of liberal democracy, since liberal democratic norms of justice and freedom apply to individuals and include their right to determine which culture they belong to. Liberal democracy has to ensure the individual right of cultural self-determination and an adequate decentralization of power guaranteeing a balance of powers and local or regional self-government rights. But granting territorial autonomy to a national minority means transferring functionally unspecified, territorially defined state power to a group because of its ethnic distinctiveness. The cultural self-determination right of individuals belonging to this group justifies a functionally specified autonomy to protect their cultural self-determination, but does not legitimize territorial self-government rights that go beyond the self-government rights exercised by other citizens.

Beyond these normative doubts, functional and empirical arguments militate against territorial autonomy. Fragile statehood traditions and recent wars support a pattern of perception in CEE that frames minority issues as questions of loyalty and secession, not of fairness and justice (Kymlicka and Opalski 2001: 67, 366). Territorializing minority rights regimes or conceding the possibility of secession reinforces this predominant security risk perception of majorities and is likely to exacerbate conflicts. Kymlicka neither takes this effect serious enough nor does he realize the presence of neighbouring ethnic kin states in CEE when he argues for territorial autonomy as a long-term guarantee against the assimilation of minority diasporas outside the autonomous territory (2001: 364-365). A kin state like Hungary performs the same functions for ethnic Hungarian minorities in the

neighbouring countries of Hungary as Quebec does for francophone Canadians outside Quebec.

Contrary to the territorialization of minority issues, this paper has found a trend toward consociational power-sharing in three accession countries. Both for normative and functional reasons, this paper argues that consociationalism is better suited as a long-term arrangement of interethnic relations in CEE. The non-territorial, cultural, personal and functional autonomy regulations facilitated by consociationalism are more compatible with the principles of liberal democracy. One could even argue that consociational arrangements are a functional equivalent to regimes of personal autonomy (*Personalautonomie*) in the narrower legal sense of a minority self-government endowed with certain public functions and prerogatives in minority-relevant areas. To date, only Estonia, Hungary and Slovenia have institutionalized such bodies in CEE (Brunner 2002: 227-228). A functionally specified autonomy protects the individual right of cultural self-determination, a right that is more acceptable on the basis of liberal democracy than a group right of nation building. Since consociational arrangements institutionalize the participation of minority representatives in the joint governance of public affairs, they do not frame minority issues as questions of loyalty and secession. In contrast with territorial autonomy, consociational arrangements support a perception of minority issues as problems of justice among groups or citizens across policy sectors. They can thus contribute to the consolidation of democracy in CEE societies with ethnic cleavages.

Consociational power-sharing has been criticized as an ineffective strategy of conflict prevention, when compared with Donald Horowitz' ideas about institutions facilitating cross-ethnic alignments (Horowitz 1985; Sisk 1996; Snyder 2000). However, this juxtaposition does not reflect the reality in the CEE cases studied here. First, as the party systems in Romania, Slovakia and, to a minor extent, Bulgaria, have frozen the ethnic cleavages of these societies, any conflict prevention strategy has to take this into account. Institutional designs that aim to eliminate the ethnic cleavage tend to underestimate the resilience of actors. Second, the concepts of Horowitz and Lijphart do not represent mutually exclusive conflict prevention strategies: existing consociational elements can well be combined with institutions facilitating cross-ethnic alignment and they are often linked to such institutions in the three countries.

Taken together, the recourse to the debates on liberal pluralism and conflict prevention suggests normative and functional considerations that militate for consociational power-sharing arrangements. The remainder of this section analyzes, in a somewhat speculative

fashion, whether an enlarged EU might pay attention to such considerations. After enlargement, the EU institutions will no longer be in an authoritative position to monitor the protection of minorities and to expect consensual conflict settlements. As a consequence, domestic political actors will have fewer incentives to develop consociational arrangements, and resuscitating conflictual politics may become a more likely option for them. Yet, the future of consensual arrangements will also depend on whether, *inter alia*, majority relations in parliament necessitate broad political coalitions. Parties representing nationalist voters within the ethnic majority will probably be interested in escalating conflicts with ethnic minorities. Nationalist minority politicians, however, will be less successful in rallying support for a more confrontational policy, if power-sharing arrangements yield tangible benefits. In any case, one has to take into account that current power-sharing arrangements in the three countries differ from Western examples of consociationalism (Belgium, Switzerland) in that they lack a strong and positively commemorated tradition of power-sharing on which political actors could build.

With the Treaty of Nice and in view of the experience with Austria, the EU now has a legal instrument of intervention in the EU Treaty (Art. 7), if member states violate principles of liberty, democracy, human rights, fundamental freedoms, or the rule of law. The EU has not created a minority rights *acquis* beyond the anti-discrimination rules and an enlarged EU seems unlikely to codify its own specific common standards of minority protection, given the persistent diversity of national approaches and the sensitivity of minority issues in old and new member states. EU institutions will certainly not actively promote coalition governments bridging ethnic cleavages in the member states. However, functionally legitimized and specified arrangements supporting the development of minority culture appear to be a viable option for a common EU policy as they can be derived from the individual right of cultural self-determination and the EU's commitment "to respect and to promote the diversity of its cultures" (Art. 151(4) TEC) (Schwellnus 2001; Toggenburg 2000). The EU could use the Open Method of Coordination (OMC) to develop cultural diversity, since this new procedure respects the variety of member states' political practices. OMC aims at encouraging cooperation, the exchange of best practice and agreeing common targets and guidelines for member states. It relies on regular monitoring of progress to meet those targets, allowing member states to compare their efforts and learn from the experience of others. The method was first applied in the 'Lisbon process' on the modernization of social and employment policies and was extended to migration policies in 2001. An OMC for cultural diversity could set common targets for improving education in the minority language, bilingualism of minorities and majorities, interethnic dialogue mechanisms, the man-

agement of multi-ethnic local communities, or the advancement of minorities on the labour market. The soft pressure exerted by peer reviews and the good examples of other member states could induce governments to increase their efforts to promote cultural diversity. While OMC would preserve the discretion of governments, it could shape a milieu supportive of interethnic power-sharing.

V. Conclusion

The key argument of this paper is that the EU has supported the emergence of consociational power-sharing arrangements between political actors that accommodate ethnic cleavages in accession countries. The EU has effected this somewhat unintentionally in the accession constellation, since its minority protection policy has been guided by a security approach that prioritizes the consensual settlement of disputes over the enforcement of universalist norms. Enlargement will put out of work the accession conditionality that has effectively underpinned this particular minority protection policy. While this will remove an important incentive for domestic political actors to engage in power-sharing, the future of consociational arrangements will also depend on other domestic factors, such as electoral outcomes. Since consociational power-sharing arrangements are more compatible with liberal democratic principles than territorial autonomy arrangements and seem to function better in a CEE environment, ideas and norms supporting these arrangements could diffuse into EU policies. Although the principal obstacles to communitarizing minority rights will persist in an enlarged EU, the promotion of cultural diversity could become a point of departure for an EU policy that aims at supportive framework conditions of interethnic power-sharing.

References

Brunner, G. (2002). “EU-Minderheitenpolitik und kollektive Minderheitenrechte. Eine Replik auf Sabine Riedel”. Osteuropa 52 (2): 220-228.

CEDIME-SE. (2001). Hungarians of Romania. Center for Documentation and Information on Minorities in Europe – Southeast Europe.

Csepeli, G. Örkény, A. and Székelyi M., (1999). “Konfliktusok Erdélyben és Dél-Szlovákiában”. Szociológiai Szemle (4): 100-113.

Csergő, Z. (2002). “Beyond Ethnic Division: Majority-Minority Debate About the Postcommunist State in Romania and Slovakia”. East European Politics and Societies 16 (1): 1-29.

De Witte, B. (2000). “Politics versus Law in the EU's Approach to Ethnic Minorities”. Working Paper. Florence: EUI RSC.

Gyárfašová, O. and Velšic, M. (2002). “Verejná mienka”. In Slovensko 2001. Súhrnná správa o stave spolocnosti. M. Kollár and G. Mesežnikov (ed.) Bratislava: IVO: 241-284.

Horowitz, D. (1985). Ethnic Groups in Conflict. Berkeley: University of California Press.

Ilchev, I. (2000). “Emigration and the Politics of Identity: the Turkish Minority in Bulgaria”. In The Politics of National Minority Participation in Post-Communist Europe: State-Building, Democracy, and Ethnic Mobilization. J. P. Stein (ed.) Armonk NY: M.E. Sharpe, 237-68.

Johnson, C. (2002). “Democratic Transition in the Balkans: Romania’s Hungarian and Bulgaria’s Turkish Minority (1989-99)”. Nationalism and Ethnic Politics 8 (1): 1-28.

Kostecki, W. (2002). Prevention of Ethnic Conflict. Lessons from Romania. Occasional Paper. Berlin: Berghof Research Center for Constructive Conflict Management.

Kymlicka, W. (2001). “Reply and Conclusion”. In Can Liberal Pluralism be Exported? Western Political Theory and Ethnic Relations in Eastern Europe. W. Kymlicka and M. Opalski (eds.) Oxford: Oxford University Press: 347-413.

--- (1995). Multicultural Citizenship. Oxford: Oxford University Press.

Kymlicka, W. and Opalski, M. (eds.) (2001). Can Liberal Pluralism be Exported? Western Political Theory and Ethnic Relations in Eastern Europe. Oxford: Oxford University Press.

Lijphart, A. (1977). Democracy in Plural Societies: a Comparative Exploration. New Haven; London: Yale University Press.

Medianu, N. (2002). "Analysing Political Exchanges between Minority and Majority Leaders in Romania". The Global Review of Ethnopolitics 1 (4): 28-41.

Mesežnikov, G. (2002). "Vnútropoliticky vyvoj a systém politickych strán". In Slovensko 2001. Súhrnná správa o stave spolocnosti, M. Kollár and G. Mesežnikov (eds.) Bratislava: Institut pre verejné otázky: 21-112. Open Society Institute. (2001). Monitoring the EU Accession Process: Minority Protection. Budapest: Open Society Institute.

Project on Ethnic Relations. (2002). The Bulgarian Ethnic Experience. Princeton NJ: Project on Ethnic Relations.

Riedel, S. (2001). "Minderheitenpolitik im Prozeß der EU-Erweiterung". Osteuropa 51 (11-12): 1262-1285.

Schwellnus, G. (2001). "'Much Ado about Nothing?' Minority Protection and the EU Charter of Fundamental Rights". Constitutionalism Web-Papers (5). http://les1.man.ac.uk/conweb/.

Sisk, T.D. (1996). Power Sharing and International Mediation in Ethnic Conflicts. Washington: United States Institute of Peace Research.

Snyder, J. (2000). "Managing Ethnopolitics in Eastern Europe: an Assessment of Institutional Approaches". In The Politics of National Minority Participation in Post-Communist Europe: State-Building, Democracy, and Ethnic Mobilization. J. P. Stein (ed.) Armonk NY: M.E. Sharpe. 269-286.

Toggenburg, G. (2000). "A Rough Orientation through a Delicate Relationship: The European Union's Endeavours for (its) Minorities". European Integration Online Papers 4 (16).

Vassilev, R. V. (2001). "Post-Communist Bulgaria's Ethnopolitics". The Global Review of Ethnopolitics 1 (2): 37-53.

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Minority Rights, Multiculturalism and EU Enlargement: the Case of Estonia*

David J Smith**

University of Glasgow, UK University of Glasgow, UK

This article examines the process of EU enlargement and its impact upon ethnopolitics in contemporary Estonia. After discussing the construction of the post-communist state order within the context of emerging CSCE and CoE norms on minority rights, the author looks at how Estonia was able to reconcile its so-called 'ethnic democracy' with the EU Copenhagen criteria requiring the 'respect for and protection of minorities'. The author draws attention to the subsequent shift away from 'nationalizing statehood' in Estonia towards a new strategy of 'multicultural integration' (where 'multicultural democracy' is portrayed as the ideal end-point of the integrative processes currently underway). In conclusion, the author discusses some of the ambiguities surrounding the concept of 'multicultural integration'. Whilst deemed consistent with EU norms, it is argued that the meaning of this term remains vague and contested within an Estonian context. As a consequence, its relationship to existing Western models – and its applicability to post-Soviet Estonia – is still not entirely clear.

I. Introduction

The nationality question in contemporary Estonia has formed the object of considerable attention – both academic and political – over the past decade.[1] In the course of 1940 to 1991, Soviet policies of industrialization led to large-scale settlement by Russians and representatives of other Soviet nationalities. Consequently, the share of 'non-titular' nationalities in Estonia's population grew from its pre-war figure of 12 per cent to 39 per cent by 1989. When Estonia restored its independence in 1991, Soviet-era settlers and their descendants (around 30 per cent of the total population) were denied any

[1] A recent study has identified over two hundred books and articles devoted to this topic. See R. Ruutsoo, "Discursive Conflict and Estonian Post-Communist Nation-Building", in M. Lauristin and M. Heidmets (eds.) *The Challenge of the Russian Minority. Emerging Multicultural Democracy in Estonia* (Tartu: Tartu University Press, 2002): 35.

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**Professor of Baltic History and Politics (Central and East European Studies).

automatic right to Estonian citizenship. The citizenship law of February 1992 granted this right only to citizens of the inter-war Estonian Republic and their descendants. Other residents wishing to obtain citizenship have had to undergo naturalization, a process which requires applicants to fulfil a three (subsequently five) year residence qualification, swear an oath of loyalty to the state and demonstrate a working knowledge of the Estonian language. As a result of Soviet nationalities policy, only 13 per cent of the Russian-speaking minority professed itself fluent in Estonian at the time of independence. In the period since 1989, the state has adopted a number of measures intended to re-establish the primacy of the Estonian language in all spheres of society following the *de facto* 'asymmetrical bilingualism' of the Soviet era. Using the terminology developed by Rogers Brubaker, a number of commentators have identified these measures as 'nationalizing policies' – i.e. policies designed to restore the primacy of a titular nation defined in ethno- cultural terms and distinguished from the citizenry as a whole. According to Brubaker, 'nationalizing statehood' has been the dominant mode of nation-building in all of the states that have emerged or re-emerged from the collapse of Yugoslavia and the USSR.[2] In Estonia and Latvia in particular the nation-state and democracy were presented as 'conflicting logics' in the aftermath of independence.[3] This remained the case to a large extent in 2001, insofar as 20 per cent of the population still lacked Estonian citizenship at this time.[4]

In the same period, Estonia has been notable for its dedicated pursuit of integration with European and Euro-Atlantic international organizations. Progress has been swift. A member of the Conference (later Organization) for Security and Co-operation in Europe (OSCE) since October 1991, Estonia joined the Council of Europe (CoE) in May 1993, and in 1998 became the first of the three Baltic States to be admitted to negotiations on European Union (EU) membership. It is now scheduled to join the EU in May 2004

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[2] R. Brubaker, *Nationalism Reframed* (Cambridge: Cambridge University Press, 1996): 4-5; for a depiction of Estonia in these terms, see especially the more recent works by Graham Smith e.g. *The Post-Soviet States* (London: Arnold, 1999): 80-83.

[3] On 'conflicting logics', see: J. Linz and A. Stepan, *Problems of Democratic Transition and Consolidation: Southern Europe, South America and Post-communist Europe* (Baltimore and London: Johns Hopkins University Press, 1996): 401-433.

[4] European Commission, *Progress Report Estonia* (Brussels: European Commission, 2002): 30. The report notes that 117,000 non-Estonians have been granted Estonian citizenship since the citizenship law came into force in 1992, with the rate of naturalization appearing to have stabiliszed at a low level of around 2 per cetn (3000 to 4000 persons) of resident non-citizens per year.

following the recent Copenhagen European Council. This pursuit of integration, however, has necessarily entailed the acceptance of external constraints over the state-building process. In what follows, I examine the nexus linking EU conditionality to domestic debates on national minorities. First, I consider how Estonia has been able to reconcile its controversial nationalities policy with the EU 'Copenhagen criteria' relating to guarantees of democracy and respect for and protection of minorities. Most authors would assert that the quest for EU membership and – most notably – the receipt of a positive *avis* from the European Commission in 1997 have brought about a fundamental change in approach. In this regard, the hitherto prevalent 'nationalizing' (and exclusionary) ideology has given way to a new discourse of 'emerging multicultural democracy', which is in turn deemed consistent with EU norms.[5] Having examined this shift, I conclude by discussing the extent to which current prescriptions for minority rights in Estonia can be deemed appropriate to the situation which currently obtains there.

II. The European Context

The current process of EU enlargement has taken shape within the context of what has been termed the western 'project' towards the post-socialist East.[6] This project is founded on the contention that the only viable course open to the former communist countries is to adopt the political values and economic system of the West. Or, as Graham Smith perhaps more accurately terms it, on the maxim that "what is good for Europe and the West is good for the world".[7] The proven track record of the EU in terms of inculcating stability and greater prosperity in post-war Western Europe has meant that it has exerted considerable 'pull' towards the peoples of Central and Eastern Europe (CEE). Whilst the 'New' Europe is ostensibly an 'economic, political and philosophical

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[5] Lauristin and Heidmets (eds.), *The Challenge of the Russian Minority;* see also V. Pettai, "Estonia and Latvia: International Influences on Citizenship and Minority Integration", in J. Zielonka and A. Pravda (eds.) *Democratic Consolidation in Eastern Europe. Vol. 2 International and Transnational Factors* (Oxford: Oxford University Press, 2001): 257-280.

[6] K. E. Smith, "Western Actors and the Promotion of Democracy", in Zielonka and Pravda (eds.) *Democratic Consolidation in Eastern Europe*: 31-57. On EU enlargement as an 'order-building project', see also P. Aalto, "Post-soviet Geopolitics in the North of Europe", in M. Lehti and D. J. Smith (eds.), *Post-Cold War Identity Politics. Northern and Baltic Experiences* (London: Frank Cass, 2003)

[7] G. Smith, "Transnational Politics and the Politics of the Russian Diaspora", *Ethnic and Racial Studies*, 22 (3). May 1999: 515; see also G. Smith, *The Post-Soviet States*: 2 for a discussion of the nature of Western influence.

programme' rather than a geographical concept, the eastward projection of EU influence has in practice involved the drawing of new boundaries between, on the one hand, CEE 'insiders' and, on the other, the 'outsiders' of the Commonwealth of Independent States (CIS). This division has in turn done much to condition the nature and degree of international influence upon the former communist states.[8] In this regard, the three Baltic States have of course been classed as Central European states rather than 'Former Soviet Republics' following the restoration of their independence, and have thereby been included amongst the ranks of the prospective EU member states. Whilst all are in practical terms former Soviet republics, the forcible nature of their incorporation into the USSR during 1940 meant that they had never been legally recognized as such by the democratic states of the West. Having condemned the events of 1939-40 as an illegal annexation, Western European governments never gave *de jure* recognition to Soviet rule over the three Baltic states. Rather, they continued to regard them as independent countries under occupation by the USSR. Indeed, back in 1979, the European Parliament voiced support for demands – voiced by dissident and émigré circles – that the Baltic case be examined within the committee for decolonization of the United Nations.[9] In accordance with this doctrine of legal continuity, the parliament of the Estonian Republic simply called upon longer-established states to restore diplomatic ties when it declared immediate separation from the USSR in August 1991. International recognition was duly obtained upon this basis.

The political and economic conditionality laid down within the Copenhagen criteria and the terms of the *acquis communautaire* has provided the EU with a powerful instrument for shaping the process of transition in the prospective member states of CEE. However, the degree of engagement has shown considerable variation according to country and issue area. In the latter regard, the political facets of 'Europeanization' have been far less clearly defined than the economic.[10] This is perhaps nowhere more apparent than in the sphere of minority rights. Here, the EU has relied on mechanisms developed under the auspices of the OSCE and the CoE. In 1995, the latter adopted the Framework Convention for the Protection of National Minorities (FCNM) – perhaps the most relevant

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[8] Lehti and Smith (eds.), *Post-Cold War Identity Politics*

[9] J. Prikulis, "The European Policies of the Baltic Countries", in P. Joenniemi and J. Prikulis (eds.), *The Foreign Policies of the Baltic Countries: Basic Issues* (Riga: Centre of Baltic-Nordic History and Political Studies, 1994): 92.

[10] See, for instance, J. Batt, "Introduction: Region, State and Identity in Central and Eastern Europe" in J. Batt and K. Wolczuk (eds.), *Region, State and Identity in Central and Eastern Europe* (London: Frank Cass and Co., 2002): 1-14.

standard pertaining to minority rights in Europe.[11]

The consistency of monitoring within this framework, however, has been undermined by the absence of any single agreed definition of the term 'minority', which, within the intergovernmental framework of the OSCE and CoE, remains subject to definition by individual states. In practical terms, moreover, both organizations have exhibited double standards as regards their approach to minority issues in the west and east of Europe.

The current European minority rights regime has institutionalized a state of inequality between existing Euro-Atlantic states and the post-communist states of CEE, a state of affairs which recalls the League of Nations' approach to the minority question after World War One.[12] Initial proposals for minority protection, discussed under the auspices of the Conference on the Human Dimension of the OSCE sought to establish a system which would be both universalist and far-reaching in scope. This approach argued for the promotion of positive rights rather than merely the prevention of discrimination. It also provided for the dispatch of missions of experts to designated states at the behest of other OSCE members and – under certain circumstances – without the consent of the state concerned. A similar challenge to state sovereignty was implicit in the creation, at the July 1992 Helsinki Summit, of an OSCE High Commissioner on National Minorities (HCNM), who can become involved in the affairs of a particular state at his own discretion and without the permission of the government concerned.[13] Pretensions to universalism were, however, undermined by the reluctance of Western OSCE states to consent to any dilution of their own sovereignty.[14] In the course of 1990-92, states such as France, Greece and the United States declared that there were no representatives of 'national minorities' amongst their populations, despite the existence of groups that could legitimately carry this label. Britain and Turkey, supported by Spain, subsequently insisted that the HCNM could not intervene where terrorism was involved,

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[11] Maria Fernanda Perez-Solla, "What's Wrong with Minority Rights in Europe", EUMAP, 6 November 2002. http://www.eumap.org/articles/content/91/916/index_html

[12] A. Burgess, "Critical Reflections on the Return of National Minority Rights Regulation to East/West European Affairs" in K. Cordell (ed.), *Ethnicity and Democratisation in the New Europe* (London: Routledge, 1999): 52; D. Chandler, "The OSCE and the Internationalisation of National Minority Rights" in K. Cordell (ed), *Ethnicity and Democratisation*, p.64.

[13] Chandler, op cit: 64

[14] Ibid: 61-76

thus taking the Irish, Kurdish and Basque questions off the international agenda.[15]

As part of their determination to avoid any far-reaching minority rights obligations, Western actors also managed to establish a clear conceptual distinction between, on the one hand, historically rooted 'indigenous' minority groups residing within their borders and on the other, communities of recent immigrants such as Turks, Kurds, North Africans and Asians. These latter groups have been designated under the label of 'ethnic'/'new'/'immigrant' rather than 'national' minority – which is to say that they are not deemed to have any "valid claim to language rights and self-government powers necessary to maintain [themselves] as a distinct societal culture."[16] As Will Kymlicka has observed, this distinction is valid insofar as most groups of recent immigrants to Western societies have not regarded it as desirable or feasible to pursue their own nation-building project. Typically, small and dispersed, they have traditionally "accepted the expectation that they will integrate into the larger societal culture. Few have objected to the requirement that they should learn the official language as a requirement for citizenship or that their children should learn it at school".[17] Kymlicka also reminds us that Western states have adopted a variety of practices towards their immigrant populations. In this regard, it is necessary to distinguish between 'immigrant minorities' – immigrants who have the right to become citizens – and 'metics' – immigrants, such as Turkish *Gastarbeiter* in Germany, who are not given the opportunity to become citizens. In a number of cases, such groups have settled more or less permanently in considerable numbers, yet remain excluded from the polis.[18] Kymlicka also discerns a significant change in policy towards settled 'immigrant minorities' in a number of Western states over the past 30 to 40 years. Whereas previously, the expectation – generally accepted – was that immigrants should assimilate themselves completely into the dominant societal culture, in recent times, immigrant minorities have sought to 'renegotiate' the terms of integration by calling for a more tolerant and multicultural approach. Many states, in

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[15] Ibid: 64

[16] W. Kymlicka, "Estonia's Integration Policies in a Comparative Perspective", contribution to A. Laius, I. Proos and I. Pettai (eds.), *Estonia's Integration Landscape: From Apathy to Harmony* (Tallinn: Avatud Eesti Fond and Jaan Tõnissoni Instituut, 2000). Accessed via web at http://www.jti.ee/et/hr/integratsioon/kymlicka_eng.html: 6; Chandler, op cit: 61-76. On the distinction between 'national' and 'ethnic' minority see also: W. Kymlicka, *Multicultural Citizenship* (Oxford: Oxford University Press, 1995): 10-14.

[17] Kymlicka, "Estonia's Integration Policies", op cit: 7; in a similar vein, Rogers Brubaker, op cit: 60; describes the term 'national minority' as "a dynamic political stance, or, more precisely, a family of related yet mutually competing political stances, not a static ethno-demographic condition".

[18] Ibid: 7-13

turn, have seen advantages in abandoning assimilation in favour of a model of 'immigrant multiculturalism'. Whilst this does not extend as far as measures designed to promote a separate societal culture, it nevertheless encourages immigrant groups to maintain their customs, and may incorporate some measure of language rights. A key tenet of this approach is that integration is a two-way process involving society as a whole. Just as immigrants are expected to adapt themselves to the dominant societal culture, so the larger society must adapt its own attitudes, institutions and practices in order to accommodate the identities of its immigrant citizens.[19]

States which adopt the latter approach can be termed 'polyethnic' rather than 'multinational'.[20] It was precisely the latter designation which many western OSCE member states were anxious to avoid at the start of the 1990s. Consequently, although OSCE norms have retained the principle that national minority issues are an international – rather than a purely domestic – concern, the discussions held by the organization in Helsinki during 1992 'made the OSCE claims to universal commitment ring hollow'. In practice, it became clear that the regulative power of the OSCE would be directed towards Eastern, rather than Western Europe. By 1992, the initial optimism underpinning the Western 'project' had been dispelled by the emergence of violent ethno-national conflicts within the territory of the former Yugoslavia and the USSR. These never turned into the epidemic that many anticipated, and have proved to be the exception rather than the rule where political transformation of multiethnic societies is concerned. Nonetheless, they did much to reinforce long-standing stereotypes of the East as a backward locus of tribal hatreds in need of education from the West. [21] It is this perception that does much to explain the preoccupation with minority rights in post-communist Europe. As David Chandler notes, this area has been treated primarily as a security, rather a humanitarian or cultural issue.[22]

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[19] Ibid: 7-10

[20] Kymlicka, *Multicultural Citizenship*, op cit: 10.

[21] Chandler, loc cit; Burgess, op cit: 54; A. Lieven, *The Baltic Revolution: Estonia, Latvia and Lithuania and the Path to Independence* (London: Yale University Press, 1993): 381. For further discussion of these attitudes, see H. Miall, O. Ramsbotham and T. Woodhouse, *Contemporary Conflict Resolution* (Cambridge: Polity Press, 1999): 90; D. Laitin, *Identity in Formation: The Russian - Speaking Populations in the Near Abroad* , (Ithaca and London: Cornell University Press, 1998): 19; J. Batt, "Dilemmas of Self-Determination in Central and Eastern Europe: Historical Perspectives on the Nation-State and Federalism", draft chapter for forthcoming work *'Fuzzy Statehood' and European Integration in Central and Eastern Europe* as part of the ESRC "One Europe or Several?" Programme (University of Birmingham, 2000): 2.

[22] Chandler, loc cit

By extension, the premium has been placed on stability, consolidation of state sovereignty and preservation of existing borders rather than the promotion of minority rights *per se*. One reason why existing OSCE member states were so reluctant to sanction a far-reaching policy based on positive rights was the fear that this might have a destabilizing effect on their own societies as well as those of the post-communist East. Thus far, for instance, the policies of European international organizations have eschewed the multinational paradigm of statehood in favour of a more limited conception of minority rights. As Graham Smith noted in 1999, the rights of minorities are "to be protected through the promotion of individual (as opposed to collective or group) rights. … There has been no call by the OSCE for the protection of multicultural rights based upon affirmative action policies, consociational political structures, recognition of local diasporic group rights or dual language policy".[23]

Similarly, with regard to EU enlargement, Karen Smith argues that signals put out by the West are confused. Issues of democratization and minority rights have not always been the priority as far as making decisions on enlargement is concerned – indeed, they have generally been secondary to stability, progress in economic reform and the degree of external support that a particular state can command.[24] In this respect, Estonia's progress towards the EU has rested upon its impressive track record in the field of economic transformation, which in turn has been an important factor in the preservation ethnopolitical stability. Although the ability to initiate radical economic 'shock therapy' during the early 1990s rested partly upon the political marginalization of the Russian-speaking settler population – widely, although perhaps mistakenly, tipped to be the biggest losers from the collapse of the soviet economy – it has been possible to discern an overarching consensus within society as far as the direction of economic development is concerned.[25] In terms of international support, Graham Smith observes that "the position of the Baltic States has been bolstered thanks not only to their Scandinavian 'friends at court', but also to their privileged place in the West's geopolitical imagination as culturally and politically nearer to Western Europe than the other post-Soviet states".[26]

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[23] G. Smith, "Transnational Politics", op cit: 515-516. This is in spite of an 'unusual' resolution of the OSCE Copenhagen Summit which stated that the use of appropriate local administrations corresponding to specific territorial circumstances is a legitimate means of protecting or promoting minority identity.

[24] K. E. Smith, loc cit; A. Pravda, "Introduction", in Zielonka and Pravda (eds.) *Democratic Consolidation in Eastern Europe*: 13-15

[25] See D. J. Smith, *Estonia. Independence and European Integration* (London: Routledge, 2001): 113-146.

[26] G. Smith, "Transnational Politics": 514

III. The Domestic Context

Above all, perhaps, the degree of receptivity to international influence is contingent upon the domestic political context and the nature of the pathway from authoritarian rule.[27] Similarly, in order to understand fully the relations between a state and its minorities it is necessary to pay attention to the historical context governing the particular case.[28] This said, it is still possible to draw general conclusions regarding the social and political conditions underlying the national question, and to draw them together into a general explanatory framework. In his own analytical framework, Rogers Brubaker asserts the primacy of 'nationalizing statehood': a civic or binational definition of the state, he claims, is unlikely to prevail, so pervasively institutionalized are understandings of the nation as ethnocultural rather than political.[29] This assertion would seem unduly categorical. A better starting point would be "to acknowledge the possibility that differing and overlapping forms of identities are in the making, which refuse to follow the totalizing contours of … essentialist theorizing".[30] As Judy Batt and Kataryna Wolczuk have suggested, post-communist debates on state and nation- building in Central and Eastern Europe have been permeated by the two themes of 'national self assertion' on the one hand and 'Europeanization' on the other. These, they see as analogous to the two themes of 'essentialism' and 'epochalism' which Clifford Geertz has used to frame the politics of national identity in post-colonial states.[31] An analysis of post-communist CEE suggests that ruling elites have been required to strike a balance between the two, both discursively and in terms of constitutional practice.[32]

In the case of Estonia, the experience of independent statehood between the wars – coupled with the special status accorded to the Estonian Republic within the USSR – meant that the concept of a 'Return to Europe' figured prominently in the discourse of the national movement from its very beginnings in the late 1980s. This was one element (albeit the most essential) of a broader discourse of Westernisation connoting claims to

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[27] Pravda, op cit: 15; Pettai, op cit: 257
[28] Brubaker, op cit: 103
[29] Ibid: 105
[30] G. Smith, *The Post-Soviet States*: 3
[31] J. Batt, "Introduction", loc cit; C. Geertz *The Interpretation of Cultures* (1973): 240-241
[32] On the place of Europe within nation-building debates in CEE/CIS states, see for instance: K Wolczuk, "History, Europe and the 'national idea': the 'official' narrative of national identity in Ukraine", *Nationalities Papers*, 28 (4) 2000; I. Pavlovaite, "Paradise Regained. The Conceptualisation of Europe in the Lithuanian Debate", in Lehti and Smith (eds.), *Post-Cold War Identity Politics*; see also O. Wæver, "Explaining Europe by Decoding Discourses" in A. Wivel (ed.), *Explaining European Integration* (Copenhagen: Copenhagen Political Studies Press, 1998).

membership of what could be termed the 'Euro-Atlantic Space'. There thus appeared to be a clear prospect that the West would be able to exert significant influence over Estonia and its neighbours.[33] Indeed, even Rogers Brubaker was forced to admit that in the case of the Baltic states, "external incentives … may favor transethnic state- and nation-building strategies, oriented to the citizenry as a whole rather than to one ethnonationally qualified segment of that citizenry".[34] At the same time, as Brubaker observes, 'nationalizing' programmes and policies enjoyed a strong appeal in Estonia and Latvia in the immediate aftermath of independence. In this regard, one could argue that the circumstances under which independence was recognized served to strengthen trends towards ethnonationalism. Although the status of the 'Russian-speaking population' had already begun to elicit international attention in the course of Estonia's campaign for independence, this issue did not prove to be an obstacle to gaining recognition in 1991. Recognition according to the doctrine of legal continuity, moreover, reinforced exclusionary discourses towards Soviet-era settlers. Post-communist debates on state and nation-building in Estonia have been heavily marked by the experience of Soviet nationalities policy over the preceding half century. As Brubaker demonstrates, the Soviet system institutionalized both the territorial/political and ethnocultural/personal modes of nationhood and nationality as well as the tensions between them.[35] Mass settlement by Russians and representatives of other 'non-Estonian' nationalities in Estonia during 1944 to 1989 became the focus of growing resentment amongst representatives of the 'titular' nation. Since Russian-speaking settlers and their descendants born in Estonia were under little or no compulsion to learn Estonian, the shifting ethno-demographic profile of the republic's population was deemed by many to raise the prospect of ultimate russification. From the early 1970s onwards, dissident tracts became increasingly ethno-nationalist in tone. Russian-speaking settlers were variously depicted as "colonists", "civil occupants", a "civil garrison of the empire" and "an ominous tumour in the body of the Estonian … nation".[36]

Concern at growing immigration was a factor which fuelled nationalism amongst all sections of 'titular' society. In 1988-89 the movement for independence was initially

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[33] L. Meri, *'ôiguste ja kohutuste tasakaal'*, speech on the occasion of Estonia's acceptance as a member of the Council of Europe, 13 May 1993, in Lennart Meri, *Presidendikõned*: 335; Pettai, op cit: 266

[34] Brubaker, op cit: 47

[35] Brubaker, op cit: 23-54; see also Laitin, *Identity in Formation*: 66-74.

[36] From the Baltic dissident journal Lituanus (vol. 22, no. 1, 1976): 65-71. Quoted in T. Parming, "Population Processes and the Nationality Issue in the Soviet Baltic", *Soviet Studies*, 32 (3). July 1980:403.

spearheaded by the more moderate Popular Front of Estonia (PFE), headed by nationalists drawn from the ranks of the soviet 'establishment'. Unlike the more radical dissidents, the PFE leadership viewed the size of the non-Estonian minority as a factor dictating caution. First in opposition and, from 1990 to 1992 in government, the PFE under its leader Edgar Savisaar pursued a moderate and pragmatic strategy predicated on mobilizing all residents of the Estonian SSR – regardless of ethno- cultural nationality – behind the campaign for independence. Pressure from the PFE was instrumental in the adoption of a new language law in January 1989. This established Estonian as the sole official language of the ESSR. However, it also incorporated extensive guarantees for the continued use of Russian in public life, and its implementation was preceded by widespread consultations with Russian-speaking work collectives. The caution exercised by the PFE and its nationally-minded fellow travellers within the Communist Party of Estonia reflected the emergence of opposition to the independence drive not only in Moscow but also locally in the form of the Internationalist Movement of the Working People of the ESSR and the United Council of Work Collectives. Having failed to mobilize the non-Estonian population through recourse to Marxist-Leninist ideology, these upholders of Soviet power sought to play the national card by warning of the dangers which independence would pose to the interests of what was termed the republic's 'Russian-speaking population'. As such, they denounced the language law as discriminatory and demanded the establishment of a new consociational-style system of government which would effectively have allowed Russian political representatives to veto any move towards independence.[37] The predominantly Russian-speaking cities of Narva and Sillamäe in north-east Estonia constituted a particular locus of opposition at this time. Here local authorities refused to implement legislation passed by the Supreme Council and later put forward demands for territorial autonomy within the Estonian republic.[38]

Most accounts of the period suggest that pro-Soviet elements never commanded the loyalties of more than a third of non-titulars. Contrary to the impression put out by the all-union Soviet media, Estonia's putative 'Russian-speaking population' was in fact deeply heterogeneous in terms of ethnic origin, political outlook and degree of integration

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[37] D. J. Smith, "Legal Continuity and Post-Soviet Reality: Ethnic Relations in Estonia 1991-95" unpublished PhD dissertation, University of Bradford, 1997: 69.

[38] For a more detailed discussion of developments in Narva, see D. J. Smith, "Narva Region within the Estonian Republic. From Autonomism to Accommodation?", in Batt and Wolczuk (eds.), *Region, State and Identity in Central and Eastern Europe*.

into Estonian society. From 1988, the Estonian national movement sought to accentuate this diversity by promoting the development of distinct identities on the part of Ukrainians, Belorussians, Jews and other smaller nationalities.[39] Even so, from the point of view of the PFE it was important to avoid any undue provocation which might be seized upon by the '*Intrid*' and their allies in Moscow. Throughout 1988 to 1991, Savisaar and his supporters therefore argued for a 'zero option' approach whereby citizenship of a future independent Estonia would be made available to all residents of the existing ESSR.[40] In the course of 1991, the PFE-led government also expressed a readiness to grant a form of territorial autonomy to north-east Estonia along the lines proposed by local leaders there. Whilst Savisaar's prescriptions for the state order in a future independent Estonia were seemingly rather vague, it seems certain that had citizenship been granted to all residents – and the PF government remained in power, some form of multi-nation state, structured along territorial federal/consociational/bilingual lines would probably have ensued.

In the course of 1989 to 1991, however, the pragmatic stance of the PF leadership was supplanted by a growing emphasis on legal restorationism. Since 1987, radical nationalist groups drawn from former dissident circles had been demanding an immediate and unconditional end to Soviet occupation and the legal restoration of Estonian independence. These radical groups, not least the unofficial 'Citizens' Committee' movement founded in 1989, came to command considerable moral authority amongst the titular population. The growing popularity of legal restorationism lay partly in the fact that it offered the most persuasive argument for independence in the face of the evident truculence of the Soviet central leadership. By the same token, it provided a rationale for denying political influence to the putative 'fifth column' of Soviet-era settlers. From the start of 1989, radical nationalist groups insisted that so-called 'colonists' had no right to a say in determining Estonia's future. Their political vision was predicated on the goal of restoring the Estonian nation-state which had existed between the two World Wars. In

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[39] D. J. Smith, "Legal Continuity", op cit.: 174. This is a strategy which has met with a fair degree of success. By 1993, the Union of National Minorities established by the Popular Front already incorporated 30 cultural societies representing 21 different minorities.

[40] Again, just prior to the August 1991 coup and declaration of independence, the Popular Front came out in favour of an 'option' variant whereby all citizens of the ESSR would be given a choice between taking Estonian or Soviet citizenship. Those opting for Estonian citizenship were to be granted it unconditionally. I. Rotov, "Kodakonsusest: Optsioon voi Naturalisasioon?", *Rahva Hääl*, 8 September 1991. In the wake of independence, the PFE proposed an ostensibly stricter draft based on naturalization, yet this contained a series of waivers which would have allowed virtually all settlers to obtain citizenship automatically.

this regard, they understood only too well that if Soviet-era settlers and their descendants obtained automatic citizenship and political rights, they would be well placed to press for a multinational 'third Estonian Republic' conceived as a successor state to the USSR.[41]

The 'philosophy of restorationism' espoused by the radicals gained even greater currency once international recognition was accorded on the basis of legal continuity of the first republic. For many members of the PFE, it seems, the commitment to zero option citizenship during 1988 to 1991 had owed less to conviction than it had to fear of a Russian backlash and/or ostracism by the West. When neither of these fears materialized, a number of prominent moderates simply defected to the restorationist camp in the months after August 1991. What emerged amongst Estonian political actors in the course of this nationalist 'bidding war' was a new consensus based on the need to secure the political hegemony of the titular nation within the restored state. This ensured the destruction of an inclusive draft law on citizenship tabled in November 1991 and heralded a shift towards the more restrictive legislation adopted in February 1992. Once the bottom line of excluding settlers from immediate political influence had been achieved, however, there was no consensus on a long-term policy towards the nationality issue. For the most radical wing of the national movement (what might be termed the 'decolonization' caucus), The naturalization of all, or even a considerable part of the settler population was deemed unacceptable, since it would inevitably prevent the restoration of an Estonian nation state. As such, settlers should be encouraged to leave Estonia and 'repatriate' themselves to their putative 'ethnic homeland' of Russia. The citizenship law of 1992 was conceived as the first step towards that end.[42] Other, more moderate /pragmatic voices, however, insisted that it was unrealistic to expect settlers to leave Estonia in large numbers, and that it was therefore necessary to find a way of accommodating them within the framework of the restored republic. This was all the more so given that the West was not about to acquiesce in radical – and potentially highly destabilizing – demands for a formal programme of decolonization, Cold War era adherence to legal continuity notwithstanding. As one of the key architects of the post-independence state order has argued, if Estonia

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[41] M. Laar, U. Ots and S. Endre, *Teine Eesti* (Tallinn, 1996): 175.

[42] Basing their argument upon Article 49 of the Geneva Convention, the most radical advocates of decolonization saw no reason why the civil representatives of Soviet colonial rule should expect treatment any more lenient than that which had been meted out at the end of the Second World War to German civilians who had settled in territories annexed by the Third Reich. CSCE Mission to Estonia, "Attitudes of the Political Forces in Estonia towards the Question of the Russophone Population (an outline)", 23 September 1994; V. Saarikoski, "Russian Minorities in the Baltic States", in P. Joenniemi and P. Vares (eds.), *New Actors on the International Arena: The Foreign Policies of the Baltic Countries*, Tampere Peace Research Institute Research Report, No.50, (Tampere, 1993), op cit: 135.

was to secure its 'return to Europe', it was necessary to find a 'third way' which would guarantee the legal continuity of statehood yet allow for a radical renewal of the constitutional order according to the principles of the late twentieth century.[43]

If one looks at the constitutional order established during 1991-92, it can indeed be regarded as a hard-fought political compromise which guaranteed the supremacy of the titular nation yet also incorporated a number of mechanisms for ensuring ethno- political stability and conformed – in strictly legal terms, at least – to European standards concerning the treatment of minorities. As Graham Smith noted back in 1994, the system that emerged bore all the hallmarks of a hegemonic control regime.[44]

More specifically, Smith described it as an 'ethnic democracy' – a system which "in combining some elements of civil and political democracy with explicit ethnic dominance, … attempts to preserve ethno-political stability based on the contradictions and tensions inherent in such a system."[45] There are three main facets to an ethnic democracy: first, it ensures that the titular nation possesses a superior institutional status beyond its numerical proportion within the state; secondly, it makes certain civil and political rights available to all; and finally, it accords certain collective rights to ethnic/national minorities.[46]

The system established in 1992 did bear a striking resemblance to this model. The status of Estonian as the sole official language of national and local government, first established under the 1989 language law, was enshrined in the constitution of 1992. The citizenship law of the same year established knowledge of Estonian as a criterion for naturalization as a citizen, whilst the parallel residency requirement ensured that settlers and their descendants would be unable to obtain citizenship in time to vote in the first post-independence elections of September 1992. With an electorate that was now 90 per cent ethnically Estonian – as opposed to 65 per cent two years earlier – it was hardly surprising that the new 101 member parliament (*Riigikogu*) consisted entirely of

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[43] M. Lauristin, "Kommentarid", in *Kaks Otsustavat Päeva Toompeal (19-20 August 1991)* (Tallinn, 1996): 81

[44] 'Hegemonic control' has been defined as a system of "coercive and/or co-optive rule which successfully manages to make unworkable an ethnic challenge to the state order" J. McGarry and B. O'Leary, "Introduction: The Macro-Political Regulation of Ethnic Conflict", in McGarry, J. and O'Leary, B. (eds.), *The Politics of Ethnic Conflict Regulation* (London, 1993): 23

[45] G. Smith, A. Aasland and R. Mole, "Ethnic Relations and Citizenship"', in Graham Smith (ed.), *The Baltic States: The National Self Determination of Estonia, Latvia and Lithuania* (Basingstoke: Macmillan, 1994): 189-90; for a more recent account of Estonia as a control regime, see V. Pettai and K. Hallik, "Understanding processes of ethnic control: segmentation, dependency and co-optation in post-communist Estonia", *Nations and Nationalism*, 8 (4). 2002: 505-529.

[46] Smith, Aasland & Mole, loc cit.

Estonian representatives. By far the largest number of seats (29) fell to the radical nationalist *Isamaa* (Fatherland) bloc. In October 1992 this formed a government with the National Independence Party (*ESRP* – by far the most restorationist in outlook of the main political parties) and the Moderate bloc drawn from former members of the Popular Front

Provision for minority rights under the 1992 constitution is centred on the paradigm of non-territorial cultural autonomy, which was pioneered with some success in the inter-war Estonian Republic. Article 50 of the 1992 constitution thus states that "national minorities have the right, in the interests of national culture, to establish self-governing agencies under conditions and pursuant to procedure provided by the national minority cultural autonomy act". Restored to existence in 1993, this law allows representatives of national minority groups numbering more than 3,000 the right to form themselves into public corporations and establish cultural autonomy. Provided the initiators of the corporation can register at least half of the adult members of the relevant group onto a national register (*nimekirja*), they can hold elections to a Cultural Council. If elected, this Council can – with a two thirds majority vote – proceed to implement an autonomy scheme giving it full administrative and supervisory powers over minority schools and other cultural institutions. Cultural Councils enjoy the power to raise taxes from the registered members of the minority group. This income supplements funding from central and local government previously allocated to minority schools within the state sector. Unlike existing local authorities, the Cultural Councils envisaged under the law are not territorially based.

In territorial terms, inhabitants of localities where "at least half of the permanent residents belong to a national minority" have the right to receive responses from state agencies, local governments and their officials in the relevant minority language.[47]

However, under the terms of the cultural autonomy law the designation 'minority' is deemed to apply only to "citizens of Estonia who maintain longstanding, firm and lasting ties with Estonia … [and] … are distinct from Estonians on the basis of their ethnic, cultural, religious or linguistic characteristics'.[48] An analysis of the debates surrounding this law shows that the term 'national minority' was most emphatically *not* taken to refer to the large population of non-Estonians without citizenship. In keeping with the legal

[47] The Constitution of the Republic of Estonia. Translation into English prepared by the Estonian Translation and Legislative Support Centre, 1996. http://www.rk.ee/rkogu/eng/epseng.html#1p

[48] Law on Cultural Autonomy for National Minorities (Article 1), unofficial translation prepared by the Estonian Ministry of Foreign Affairs November 16 1993.

continuity principle, the Estonian authorities insisted that settlers were immigrants – citizens of the USSR who had settled in Estonia during the period of occupation. Prior to the adoption of legislative amendments in 1998 (see below) the *jus sanguinis* principle of nationhood underpinning the Estonian law on citizenship dictated that children born to non-citizens living in Estonia had no automatic entitlement to Estonian citizenship. Many titular contributors to the minorities debate argued that even those settlers who obtained citizenship by naturalization could not be classed as representatives of a 'national' – as opposed to an 'ethnic' minority. In legal terms, Estonian minorities policy is entirely consistent with the CoE FCNM. In their approach to the settler issue, Estonian state-builders thus consciously sought to exploit the absence of any universal framework for minority rights, employing the very arguments that a number of EU member states had used in order to avoid any far-reaching minority rights obligations to their own immigrant populations.

Although Western states and international organizations could not dispute the legal bases of Estonia's nationalities policy, they were nevertheless deeply concerned by its possible social and political implications. Comparisons between immigrant minorities in Western Europe and Russian settlers in Estonia, of course, disregard the difference in historical context. Whereas in existing EU member states, immigrants constitute a small fraction of the population, Estonia's Soviet-era settler population makes up one third. More importantly, Russians who settled in the Baltic after the war (and their descendants who were born there) could for the most part barely have conceived of the fact that Estonia was a different country from the one that they had left behind. As soviet citizens of Russian nationality, they not only enjoyed the same rights – however limited – as 'titular' inhabitants of the ESSR, but also access to a full system of education (primary–secondary–tertiary) and guaranteed employment in their native tongue. In short, at the time of independence they bore all the hallmarks of a national minority as defined by Kymlicka and Brubaker. Against this background, it is hardly surprising that the state order established during 1992 – and especially the naturalization provisions of the law on citizenship – became the focus of near universal opposition amongst the non-Estonian population. Whilst primarily concerned with overturning existing legislation and obtaining citizenship for all residents, Russian organizations and parties have nevertheless tried to mobilize all people whose first language is Russian, regardless of ethnicity or citizenship status. The aim has been none other than to create a new Russian-speaking (as opposed to purely Russian) *nationality* with claims to distinct status within Estonia. According to Estonian scholar Raivo Vetik, the Estonian 'modernist' project of merging culturally and linguistically different social groups

into a congruent whole has been countered by a 'post-modernist' discourse stressing ideals of difference, plurality, equal rights and multiculturalism.[49]

A widespread sense of alienation on the part of the Russian-speaking population has thus far not proved a sufficient condition to produce a mass politics of collective action.[50] The failure to achieve more effective and sustained political mobilization in opposition to the existing state order has had much to do with the continued heterogeneity demonstrated by a 'Russian-speaking population' now further sub- divided along lines of citizenship and socio-economic status. However, in spite of the entirely bloodless transition to independence during 1988-91, many Western observers remained fearful that the radically-changed socio-political status of the

Russian population might lead to the emergence of open unrest and perhaps even violent conflict. Certainly, most authors would assert that 'ethnic democracy' is not a reliable long-term prescription for ethnopolitical stability. Whilst Western states and international organizations have never questioned the underlying basis of Estonia's citizenship policy – and, thus, by implication, the immigrant status accorded to Soviet-era settlers – their perspective on the issue differed significantly from the dominant conception held by the Estonian authorities in the early years of independence. It seems certain that for most representatives of *ESRP* and the *Isamaa* bloc, settlers and their descendants were viewed as metics who should be encouraged to 'voluntarily repatriate' as soon as possible. In keeping with this view, once the Russian Federation assumed the mantle of legal successor to the USSR at the start of 1992, settlers and their descendants were deemed to have become citizens of Russia for whom the Estonian state bore no legal responsibility. The authorities thus denied that non-citizens could be termed 'stateless persons'. Rather, the term 'persons of undetermined citizenship' was used.

From a Western point of view, however, settlers constituted an immigrant minority rather than a metic group. OSCE HCNM Max van der Stoël, for instance, insisted that, *de facto*, Estonia was responsible for its non-citizens, even if, legally, they could not be classed as stateless persons.[51] In common with other observers, he was anxious that the naturalization of the settler population should proceed as quickly as possible, lest the

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[49] R. Vetik, *Inter-Ethnic Relations in Estonia 1988-1998* (Tampere, Acta Universitatis Tamperensis 655, 1999): 10-11.

[50] G. Smith, V. Law, A. Wilson, A. Bohr, E. Allworth, *Nation-building in the Post-Soviet Borderlands. The Politics of National Identities* (Cambridge: Cambridge University Press, 1998): 110

[51] R. Kionka, "Estonia: A Difficult Transition", *RFE/RL Research Report*, vol. 2, no.1, January 1993: 90.

citizen/non-citizen divide crystallize into an enduring division and settlers be consigned to the status of a permanent underclass.[52] The Western position was neatly summarized in 1995 by a leading British diplomat, who stated that although the UK government of the day regarded the citizenship law as a legitimate response to a peculiar set of historical circumstances, it had nonetheless consistently underlined its desire to see the issue of citizenship resolved as quickly as possible.[53] The Western stance on minority rights has, however, been somewhat ambiguous and open to differing interpretations. Broadly speaking, it could be regarded as lending support to a policy of liberal nationalism involving the promotion of Estonian as the sole official state language and basis for the common societal culture. At the same time, however, Western actors have favoured a "'multicultural' approach to integration which would allow and indeed encourage … [post-war Russian settlers] … to maintain various aspects of their ethnic heritage even as they integrate".[54] As I argue below, however, the factual situation which obtains in post-Soviet Estonia has meant that Western prescriptions for minority rights have shown a growing tendency to go beyond the limited 'immigrant multiculturalism' practised in Western societies towards a paradigm more consistent with the needs of an institutionally complete 'national' minority.

In practical terms, the distinction between *national* minority and *ethnic* minority in post-Soviet Estonia has been far less clear cut than one might suppose. Both the citizenship law and the draft constitution were submitted to scrutiny by experts from the Council of Europe and the CSCE during 1992, and this interaction doubtless helped to reinforce trends towards pragmatism. Thus, in spite of the strong emphasis on legal continuity, the new state order established in 1992 necessarily took at least some account of the realities arising from fifty years of Soviet rule. The Estonian constitution grants both citizens and non-citizens the same access to fundamental freedoms and social and economic rights.[55] This includes freedom of association, although non-citizens are not allowed to join political parties. Non-citizen residents also have the right to vote in local elections. The constitution also states that in localities where the language of the majority of permanent *residents* (not citizens - DS) is not Estonian, local governments may use the majority language as an internal working language. Whilst it transpires that no local authority has

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[52] M. van der Stoël, quoted in a letter addressed to Trivimi Velliste, Minister for Foreign Affairs of the Republic of Estonia, 6 April 1993: 1-2; see also Pettai, op cit.: 276.
[53] Discussion with the present author, Chatham House rules, October 1995.
[54] Kymlicka, "Estonia's Integration Policies", op cit.: 8
[55] The third component of an ethnic democracy listed by Smith.

actually applied formally for permission to implement this provision, Russian has in practice continued to serve as an internal working language in predominantly Russian- speaking cities of the north-east such as Narva and Sillamäe. Moreover, whilst the law on non-territorial cultural autonomy is open only to non-titular residents with citizenship, a separate law on non-commercial unions and organizations has given non-citizens the possibility to form their own cultural organizations. State and local government have also extended fairly extensive support to such organizations operating outside the framework of the cultural autonomy law, ensuring that a thriving network of cultural societies and minority schools has continued to develop during the post-independence era.[56]

IV. "Dancing on a Rope" – Europeanization and National Self Assertion, 1992-97

In spite of these concessions, however, representatives of Western states and international organizations remained concerned by the political exclusion of the settler community. As such, international observers such as Max van der Stoël impressed upon the Estonian government the need to engage in dialogue with representatives of the Russian-speaking population. Western fears were stoked by Russia's vigorous internationalization of minority issues in Estonia and Latvia from 1992 onwards, which employed wildly emotive terms such as 'apartheid' and 'velvet ethnic cleansing'. While these interventions did not succeed in their aim of reversing citizenship policy, they certainly placed Estonia and Latvia even more squarely under the international spotlight. Russia's allegations appeared briefly to cast doubt on Estonia's entry to the Council of Europe in 1992, whilst the European Parliament delayed ratification of trade and cooperation agreements for several months until it was sure that minority policies met international standards. Continued pressure from Russia also helped to ensure that Estonia and Latvia became early 'test cases' for the new conflict prevention approach of the OSCE.[57] Russia's strategy of internationalization ultimately proved counter-productive, however. By inviting a number of international delegations – and, most significantly, by consenting to the long-term presence of an the OSCE Monitoring Mission (1993-2001) – Estonia was able to demonstrate that allegations of mass systematic human rights abuses had no basis in reality.[58]

In response to Western fears over the political exclusion of settlers, the Estonian

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[56] D. J. Smith, "Legal Continuity", op cit, chapter 6; D. J. Smith, "Narva Region", loc cit.

[57] See: A. Ozolins, "The Policies of the Baltic Countries *vis-à-vis* the CSCE, NATO and WEU", in Joenniemi, P. and Prikulis, J. (eds.), The Foreign Policies of the Baltic Countries: Basic Issues, (Riga, 1994): 49-74.

[58] Pettai, op cit.: 268.

government was at pains to portray the situation arrived at in 1992 as a temporary state of affairs. Legislation on citizenship, it was insisted, should be seen as a mechanism for setting in train a developmental process of integration rather than a means of insitutionalizing an ethnopolitical divide.[59] Nevertheless, Western concerns did have some foundation, insofar as the 'decolonization' caucus remained influential within the *Isamaa* coalition government of 1992-95. That *Isamaa*'s nationalities policy rested on the dual tenets of 'integration and repatriation' points to an unresolved tension within the government during this time. In the course of 1992 to 1995, the ruling coalition was aptly characterized as "dancing on a rope", torn between the demands of its own radical nationalist wing on the one hand, and the requirements of securing westward integration on the other.[60]

In his inaugural speech to the *Riigikogu* in October 1992, prime minister Mart Laar listed membership of the Council of Europe and an association agreement with the EU amongst his government's priorities.[61] In keeping with this aspiration, the government was able to push through a series of amendments to citizenship legislation in line with recommendations put forward by international experts who had scrutinized the law. These amendments fixed the linguistic requirement for naturalization at a level corresponding to a basic working knowledge of the Estonian language (level C under the 1989 law on language) whilst also specifying that entitlement to citizenship would henceforth pass via the maternal as well as the paternal line.[62] These demonstrations of good faith did much to facilitate Estonia's entry into the Council of Europe in May 1993, a full two years ahead of neighbouring Latvia. At the same time – the amendments to the citizenship law, bringing as they did the prospect of a significant widened non-Estonian electorate by the time of the next parliamentary elections – caused consternation within radical nationalist circles. The final debate on Estonia's admission to the Council of Europe came at a time when Estonia was poised to adopt a new law on local elections. Whilst the constitutional provision allowing all permanent residents to vote in local elections had greatly strengthened the Estonian case for membership, CoE experts nevertheless felt that this concession would be

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[59] The term of the first *Riigikogu* was limited to two and a half years rather than the usual four so that those non-citizens who obtained naturalisation swiftly would have an early opportunity to exercise their vote.

[60] Author interview with Albert Maloverian, First Deputy Editor of Molodezh' Estonii, (Tallinn, 7 June 1994).

[61] 'Mart Laari Kõne Riigikogus 19 Oktoobril 1992', Rahva Hääl, 20 October 1992.

[62] R. Ruutsoo, "The Emergence of Civil Society in Estonia", unpublished draft document given to the author in January 1996. According to expert testimony, the low number of applications for naturalization during 1992-93 could be explained at least partly by the absence of any firm guidelines regarding the linguistic criteria for naturalization. See *The Baltic Independent* 12-18 February 1993.

undermined if non-citizens were not also granted the right to stand for office. In line with these recommendations, the Estonian government apparently gave assurances that this provision would be included in the law submitted to parliament.[63] Allowing non-citizens the right to stand for office, however, was clearly a concession too far as far as radical nationalist MPs were concerned, not least because former communist elites in the Russophone north-east had emerged as a prime locus of opposition to the new state order during 1991-93. When the law on local elections was presented to parliament, deputies from the Estonian National Independence Party broke with the government on the issue, thereby ensuring that this provision was deleted from the final law.[64]

Estonia gained admittance to the European 'club of democracies' with its controversial state order more or less intact. Yet the requisite amendments to citizenship legislation, however cosmetic, has aroused the wrath of radical nationalists. Addressing the nation on the occasion of the country's entry to the CoE, Estonia's President Lennart Meri felt obliged to reassure his compatriots that integrating into Europe was not the same as 'dissolving' into Europe, and as such would permit Estonians to retain their distinct language and culture.[65] With the crucial hurdle of CoE membership safely negotiated, the government clearly felt at liberty to answer its domestic critics by pursuing a more assertive line towards the non-citizen population. At the start of June 1993 it unveiled what has proved to be the most controversial piece of legislation of the post-Soviet period – the law on aliens. Whilst measures to formalize the legal status of the non-citizen population were both necessary and – arguably – long overdue, the 'aliens' legislation seemed calculated to cause the maximum uncertainty and anxiety amongst the representatives of this group. Under the law, all civilians residing in Estonia on Soviet or Russian passports were given a year in which to apply for new residence and work permits. Failure to do so would confer a formal status of illegal immigrant and the prospect of deportation. No distinction was drawn between immigrants who had arrived in Estonia the previous day and former Soviet citizens who had been born in the country or lived there for more than twenty years. The psychologically unsettling effect of the law was heightened by the fact that only temporary, five year permits were to be issued in the first instance. In order to qualify, applicants were

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[63] V. Pettai, "Contemporary International Influences on Post-Soviet Nationalism: the Cases of Estonia and Latvia", paper presented at the American Association for the Advancement of Slavic Studies 25th National Convention, Hawaii, 19-21 November 1993.

[64] K. Muuli, "Kohalilesse Volikogudesse pääsevad 17 Oktoobril üksnes Eesti kodanikud", *Postimees*, 20 May 1993.

[65] Meri, *'ôiguste ja kohutuste tasakaal'*,: 337-338.

required to possess a 'lawful source of income', a category only vaguely defined under the law. There seems little doubt that the law on aliens was conceived as a means of intensifying the pressure upon non-citizens to 'repatriate' themselves to Russia or other CIS countries. The same could be said of the new law on education passed during the same month. This obliged all Russian-language gymnasiums (upper secondary schools for pupils aged between 16 and 19) and higher education establishments to switch to teaching entirely in Estonian by the year 2000. Whilst local authorities were given the right to determine the language of instruction in basic secondary schools (grades 1-9), Russian-speaking pupils wishing to obtain access to state-funded education beyond the age of sixteen would be required to attain the requisite level of Estonian-language skills. The prospect of an end to the parity between Estonian and Russian-language education was in itself unsettling from the point of view of the Russian-speaking population. The dearth of qualified Estonian language teachers, moreover, meant that the deadline of 2000 appeared wildly unrealistic. The law thus appears to constitute a further example of an overly legalistic approach designed to increase pressure upon the non-citizen population.

These new laws aroused particular consternation in the predominantly Russophone north-east. Not least, the provision on 'legal income' and other ambiguities inherent in the aliens act were alarming to the large body of unemployed non-citizens residing there. For rebellious town council leaders in Narva and Sillamäe – who, as non- citizens were now barred from standing in the local elections scheduled for October 1993 – the law on aliens served as a suitable pretext for organizing a local referendum on whether the two towns should be given 'national-territorial autonomy within the Republic of Estonia'. In taking this step, the local elites were clearly seeking to capitalize upon the international controversy elicited by the aliens law, which had attracted criticism from, *inter alia*, the OSCE. Thanks partly to intervention by Max van der Stoël, a number of amendments were introduced to the law on aliens. These removed many of the ambiguities of the original draft, without really altering its substance. Meanwhile, the tense stand-off between central government and local authorities in Narva and Sillamäe during the summer/autumn of 1993 was ultimately resolved peacefully, with the former communist leadership relinquishing power at the October elections. These gave rise to councils which were more concerned with economic development than political autonomy and, as such, far more amenable to cooperation with central government.[66] In spite of some claims to the contrary, however, the

[66] D. J. Smith "Narva Region", loc cit; G. Smith et al, *Nation-building in the Post-Soviet Borderlands*: 114.

so-called 'Aliens Crisis' of 1993 did not mark a fundamental turning point in Estonia's policies towards its Russian-speaking population. In this regard, the international mediation of that year has been rightly described as 'fire-fighting', which alleviated but did not resolve the tension between state and minority.[67]

Intervention by the OSCE was important in terms of initiating a dialogue between the government and the main 'Russian-speaking' political organizations, not least through the creation of a Round Table of Nationalities under presidential auspices. The government, however, continued to exhibit a legalistic approach to the citizenship issue. The widespread dissatisfaction apparent amongst the non-citizen population was further heightened by the introduction of new, amended citizenship law in January 1995. Ostensibly designed to bring Estonia more closely into line with 'European standards' pertaining to naturalization, the new law increased the residence requirement for citizenship to five years, whilst introducing further tests which required applicants to demonstrate a detailed knowledge of the Estonian constitution and political system.[68]

Nor did the accession of a new, ostensibly 'left-of-centre' government after the February 1995 elections mark any major change to the underlying basis of the system. In line with international recommendations, non-citizens were given firmer guarantees of their continued right to reside in and travel to and from Estonia, most notably through the widespread issuing of so-called 'Alien's Passports' from 1996 onwards. At the same time, the period 1995 to 1997 also witnessed further 'nationalizing' measures intended to further undermine the position of the Russian-speaking minority within society.[69] Minority organizations, however, also began to display a much greater degree of organization and assertiveness during this period. One important factor in this regard was the election of six Russian-speaking deputies to the *Riigikogu* in the elections of 1995 (and again in 1999). Also, in spite of the increased 'loyalty' shown by local councils in the north-east after 1993, local elites there have continued to engage in 'rights-based politics'. In 1996, for instance, new proposals that candidates standing for office in national and local elections should be required to demonstrate a working knowledge of the Estonian language elicited significant opposition in Narva as well as concern on the part of international experts at the OSCE. These expressions of disquiet led president Lennart Meri to veto the law.

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[67] D. J. Smith, *Estonia. Independence and European Integration* , op cit.: 89

[68] K. Malmberg & R. Sikk, 'Muulased tahavad lastele Eesti kodakondsust', *Eesti Päevaleht*, 4 April 1997; Tartu University Market Research Team, The Attitude of Town Residents of North-Eastern Estonia towards Estonian Reforms and Social Policy: a Comparative Study of 1993, 1994 and 1995 (Tartu: University of Tartu, 1995): 8.

V. 1997-2002: Towards Multicultural Democracy?

If the two years after 1995 suggested a significant growth in ethnopolitical stability compared to the period 1992 to 1995, it was only in 1997-98 that Estonia took significant steps to revise its nationalities policy.[70] As already noted, the 1997 evaluation of Estonia's readiness by the European Commission indicated that the country fulfilled the rather vague 'Copenhagen criteria' relating to respect for and protection of minorities. Nevertheless, the Commission *avis* highlighted the need to speed up the integration of the non-citizen population. As one of the stipulations for entry to full membership negotiations, Estonia was required to enact a series of amendments to its citizenship legislation which grant automatic citizenship to all children born to non-citizen parents in Estonia after February 1992. This demand reflected recommendations by experts at the OSCE, who had expressed increasing concern at possible stagnation in the process of naturalizing the non-citizen population. With over a thousand children being born annually to non-citizen parents in Estonia and Latvia, there were fears that this would serve to perpetuate the citizen/non-citizen divide. Experts also noted that this amendment would bring Estonia in line with other OSCE members and with UN provisions relating to the rights of the child.[71] Although the proposed amendments elicited a fierce political debate lasting for the best part of a year, their adoption in December 1998 can be seen as indicative of a growing political consensus amongst titular actors that the integration of non-citizens is a necessary course of action. According to Vello Pettai, one of the most important reasons for this was the fact that Estonia's prospects for a rapid accession to the EU improved significantly during the period in question. "More than any other single mechanism of influence", he notes, "the EU made most Estonian and Latvian politicians realise that improving the citizenship issue was crucially important".[72]

A further significant step in this direction was the revival, in May 1997, of a ministerial post devoted entirely to ethnic affairs. This can be seen as symptomatic of a determination by new prime minister Mart Siimann to demonstrate responsiveness to EU

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[69] D. J. Smith "Legal Continuity", Chapter 8.

[70] In this respect, it was notable that the Council of Europe decided to end its monitoring of Estonia in January 1997. For a summary of developments during this period, see D. J. Smith, "Russia, Estonia and the Search for a Stable Ethno-Politics", *Journal of Baltic Studies*, 29 (1) 1998: 3-18.

[71] Pettai, "Estonia and Latvia: International Influences on Citizenship and Minority Integration', op cit: 275-276.

[72] Ibid. By the same token, one could add that NATO membership for the three Baltic states appeared to have slipped down the Western agenda following the Madrid Summit of 1997. This increased the importance of the EU as a source of security against the perceived threat of Russia.

concerns ahead of the impending verdict on Estonia's membership negotiations.[73] The new post of Minister for Population and Ethnic Affairs passed to Progressive Party leader Andra Veidemann, who devoted herself wholeheartedly to the role. Veidemann promptly established a commission charged with producing a draft integration policy concept by the end of the year. Following approval by government and parliament during the first half of 1998, the draft was circulated amongst representatives of parliament, government bodies and local authorities. A final approved text emerged in March 2000 as the State Programme "Integration in Estonian Society 2000-2007".[74] The drafting of the State Programme marked the first attempt to devise a coherent strategy for the integration of non-citizens. In this regard, it is notable that the programme describes Soviet era settlers and their descendants quite unequivocally as representatives of an 'ethnic minority' rather than 'foreigners' or 'aliens', as had previously been the case in many official documents.[75] The programme defines three main spheres for the integration of the Russian-speaking minority: linguistic-communicative, legal-political and socio-economic. The principal focus of the strategy is on the linguistic dimension, which received three quarters of the funding allocated to the programme during 2000-2002. However, another of the stated goals of the programme is to give ethnic minorities the opportunity to preserve their ethnic and cultural distinctiveness. The programme can thus be seen as marking the emergence of 'immigrant multiculturalism' into the official discourse on statehood and minorities. Whereas previously, 'integration' of the non-citizen population – insofar as this was accepted as a valid course of action at all – was deemed to connote a one-way process of assimilation into Estonian culture. The state integration strategy published in March 2000 makes it clear that this understanding has changed, and that the scope of the term has been widened to denote the integration of society as a whole.[76] The integration programme identifies 'common core' characteristics as democratic values, a shared information sphere and Estonian language environment and common government institutions, and calls upon both Estonians and non- Estonians to take part in the 'bilateral process' of integration.[77]

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[73] Smith, *Estonia. Independence and European Integration* , op cit: 101

[74] For full text, see: http://www.riik.ee/saks/ikomisjon/programme.htm. For a recent assessment of the programme, see Open Society Institute, *Minority Protection in Estonia. An Assessment of the Programme Integration in Estonian Society 2000 -2007* (Open Society Institute, 2002).

[75] The document lumps together the conceptually distinct categories of 'ethnic' minority and 'national' minority under a single generic heading ('ethnic minority').

[76] State Programme "Integration in Estonian Society 2000-2007": 3; interview between the present author and Stephan Heidenhain, First Secretary of the OSCE Mission to Estonia. Narva: 22 November 2000.

[77] Open Society Institute, op cit.: 200

This 'reciprocal vision' of integration was not present in the original draft, but emerged out the process of consultation with various interested parties during 1998 to 2000. The provisions relating to preservation of ethnic differences, for instance, were only added at the behest of the Presidential Roundtable of Nationalities.[78] Whilst EU experts were only indirectly involved in the process of elaboration, the final programme was clearly consistent with EU thinking on the nationalities question. In its progress report for 2002, for instance, the Commission notes that "the Estonian authorities should ensure that emphasis is placed on a multicultural model of integration as stated in the aims of the integration programme".[79] Whether the strategy constitutes a viable blueprint for a definitive resolution of the nationality question, however, remains to be seen. As a recent assessment of the programme makes clear, however, there remains "a clear divide between minority and majority perceptions of the goals and priorities of the integration process … which must [still] be addressed in order to achieve mutually satisfactory results".[80] Whilst representatives of the Russian-speaking population have welcomed the programme and hailed it as a major step towards achieving greater understanding between majority and minority, they have nevertheless criticized the programme for its emphasis upon the linguistic- communicative as opposed to the legal-political aspects of integration, and have highlighted the need to pay more attention to issues of discrimination and citizenship.[81] The continued emphasis on the latter question in particular indicates that there is still some way to go before Russian-speaking representatives will accept the status of an 'immigrant minority'. Under the terms of the existing law on citizenship, linguistic-communicative integration can be seen as entirely consistent with legal- political integration, since the acquisition of a working knowledge of Estonian is one of the criteria for naturalization as a citizen. Russian-speaking parties and organizations, however, continue to reject the current naturalization paradigm in favour of a discourse of 'equal rights', arguing that citizenship should be made available to all residents. The argument can be summed up in the following intervention by Russian-speaking parliamentary deputy Sergei Ivanov, who in 1997 noted that "our linguistic democracy is not yet a representative and participatory democracy".[82] In public, at least, the vast majority of Russian-speaking political actors does not question the contention that non-Estonians should become conversant with the majority language.

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[78] Ibid.: 196 and 227.
[79] European Commission, *Progress Report Estonia*, op cit.: 32.
[80] Open Society Institute, op cit.: 192
[81] Ibid.: 197-198
[82] VIII Riigikogu Stenogramm, VI Istungjärk, 19 November 1997. http://www.riigikogu.es/ems/index.html.

Nevertheless, in the course of the discussions surrounding the State Integration Programme, minority representatives questioned the contention that "within a multicultural Estonia, the Estonian language and culture should have a privileged status".[83] Such interventions signal that Russian leaders remain wedded to a multi-nation as opposed to a polyethnic variant of statehood. In the course of the discussions, proposals to curtail upper secondary and tertiary education in the Russian language emerged as a particular source of disquiet. Indeed, upon reading the initial draft of the state programme, two Russian-speaking members of the expert commission resigned, accusing the authors of striving for 'assimilation'.[84] The schools question has also been a particular bone of contention in north-east Estonia, where there remains considerable support for territorial autonomy[85]

The concerns of Russian-speaking actors have been addressed at least partly by a series of recent amendments to the law on education. Whereas the original law of 1993 had provided for a complete transition to Estonian-language instruction in upper secondary schools by 2000, the deadline was subsequently extended to 2007. Under a further amendment, it was then stipulated that 60 per cent of gymnasiums should make the switch by the specified date.[86] Finally, in March 2002, parliament passed a further amendment, according to which full-time Russian-language education can continue beyond 2007 in municipally-owned gymnasiums where the population so wishes. In its 2002 Report on Estonia, the EU Commission notes that "this development is to be welcomed and strengthens the rights of the Russian-speaking minority. However, in order to have equal access to the Estonian labour market, it is essential for Russian-speakers to have a good command of the Estonian language. It is therefore important to ensure that Estonia has a sufficient number of qualified bilingual teachers in schools".[87] As the above statement makes clear, EU support for continued upper secondary education in the Russian language should not be interpreted as calling into question the currently existing unitary model of statehood based upon a single official language. Recent changes to the law could indeed be viewed as merely taking due account of the social realities bequeathed by half a century of soviet rule; not least, they represent a belated recognition that the goal of a complete transfer by 2000 (or even 2007) was wildly unrealistic given the continued

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[83] Open Society Institute, op cit.: 198

[84] Ibid.: 197; criticism was also voiced by the Centre Party, which has in recent years again begun to challenge the hitherto dominant conception of nation-statehood. See D.J. Smith,"Narva Region", loc cit.

[85] D. J. Smith, loc cit.

[86] European Commission, *Progress Report Estonia* (Brussels: European Commission, 2000): 19.

[87] European Commission, *Progress Report Estonia* (2002), op cit.: 33

shortage of personnel qualified to teach in the state language. Nevertheless, one could argue that the decision to continue state-funded upper-secondary education in the Russian-language takes Estonia beyond immigrant multiculturalism/polyethnic statehood as conventionally understood in Western Europe. Advocates of a unitary, mono-lingual state order, at least, will doubtless regard the continued existence of Russian-language gymnasiums as a development which could strengthen demands for formally recognized territorial autonomy for the north-east and, perhaps ultimately, a bilingual form of statehood.

A similar point could be made regarding recent modifications to the laws on elections and language, as well as suggestions that Estonia should amend its legislation on state service and political parties in order to allow non-citizens greater participation in the political life of the country.[88] In late 1997, the then Estonian government – perhaps seeking to counterbalance the impending liberalization of the citizenship law – again attempted to introduce a provision that all candidates standing for election to local and national government must demonstrate proficiency in the Estonian language. At the same time, the *Riigikogu* also instructed the government to formulate new Estonian-language requirements for entrepreneurs and employees working in the private sector. The former proposal was eventually scrapped, and the latter substantially diluted, after both had elicited criticism from local Russian- speaking political actors as well as from representatives of the OSCE, the Council of Europe and the EU. Among other things, the often heated parliamentary debates on these provisions again exposed the ambiguous nature of international minority rights provision, with each side able to invoke differing conceptions of European norms in order to support its argument. Thus, Russian deputies challenged the presenters of the bill to cite a single European Union state in which candidates for parliamentary and local elections need to sit a language exam and entrepreneurs and personnel working in the service sector are required to demonstrate competence in the state language.[89]

The former stipulation in particular, it was argued, contravened not only the Estonian constitution, but also the European Charter on Local Government and the European Framework Convention for the Protection of National Minorities.[90] In response to these

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[88] The latter suggestion was made in November 2000 by outgoing Council of Baltic Sea States Commissioner on Human Rights Ole Espersen. In Espersen's view, such a move would conform to the corresponding convention of the Council of Europe. Cited in *Narvskaia Gazeta*, 10 November 2000.

[89] VIII Riigikogu Stenogramm, VI Istungjärk, 19 November 1997; http://www.riigikogu.ee/ems/stenograms/1998/11/t98112309-05.html.

[90] VIII Riigikogu Stenogramm, VI Istungjärk, loc cit.

claims, the head of the Estonian State Language Inspectorate Ilmar Tomusk cited a Council of Europe recommendation that individuals residing in a state where they have not always lived – in practice first and second generation immigrants – should develop a sufficient degree of competence in the language of that state to enable them to participate actively in professional, political and social life.[91] In this respect, it was asserted, Estonia had tried to follow the example of other CoE member states. Although European practice in this area varies greatly from state to state, 'in principle' the language examination system does exist in European states. "Each state defends its own language", maintained Tomusk, before going on to cite practices in Finland, Sweden, Germany, Austria and Greece.[92] If one looks at the systems of 'immigrant multiculturalism' that have emerged in the West, those groups acquiring minority rights have typically been well integrated into the dominant societal culture. In Estonia this is not the case – indeed, it is perhaps too early to speak of a single, dominant societal culture within the state. Whilst the EU and other European international organizations continue to voice support for the integration of the Soviet- era settler community and – beyond this – the emergence of a system of immigrant multiculturalism, recent interventions could be construed as prioritizing minority rights over integration. This in turn might fuel demands for a more fundamental revision of the existing state order.

VI. Conclusion

As Will Kymlicka has remarked, the current situation in Estonia defies easy categorization and does not lend itself easily to the importation of Western models. From the point of view of international actors seeking to guide these countries' post- communist transition, the main challenge at the start of the 1990s was to find the middle ground between the 'nationalizing' impulses of the titular elite and the one hand and the claims for national self-determination voiced by local Russian-speakers– and backed by Russia – on the other.[93] The optimal solution was deemed to lie in a variant of 'immigrant multiculturalism'

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[91] http://www.riigikogu.ee/ems/stenograms/1998/11/t98112309-05.html. What actually constitutes a "sufficient degree of competence" is left to the discretion of member states themselves.

[92] Ibid.

[93] As Graham Smith reminds us ("Transnational Politics", op cit.: 516), Western anxieties regarding Russian demands for national self-determination mainly related to the perceived danger that a secessionist movement might arise in the north-east. Writing in 1999, he noted that explicit calls for greater regional autonomy had "not appeared on the OSCE or HCNM agenda. No doubt this is because it is seen as compromising the territorial integrity and stability of Estonia. In other words, the assumption here is that the promotion of minority rights in the north-east would institutionalise a politics of difference, which could eventually fuel irredentist claims". Whilst the 1993 Narva referendum was widely perceived as a secessionist move, available

which would restore the position of Estonian language as the basis of the dominant societal culture, whilst offering the Russian- speaking population, newly reconfigured as a *minority*, some measure of language rights as well as the opportunity to practice its own culture. While the underlying tension – so visible in the early-mid 1990s – between 'nationalizing state' tendencies and 'Europeanization' has plainly not disappeared, the dominant discourse amongst titular actors has plainly shifted towards the EU-sponsored multiculturalist paradigm since 1997, as a number of studies have argued, and the current State Integration Programme perhaps most clearly demonstrates. This shift has even been apparent within the former 'decolonization' caucus of the nationalist right. Although the Fatherland League (*Isamaa*), back in office at the head of three-party right-of-centre coalition from March 1999-early 2002, expressed dissatisfaction with the multicultural approach of the integration programme – "according to the Constitution, Estonia is not a multicultural state but a nation-state, and legislators have never decided to accept multicultural ideology as a development model for Estonia" – the government (again headed by Mart Laar) nonetheless adopted the programme in March 2000. More recently, the Fatherland Union, by now returned to opposition, declared that it embraced all naturalized citizens who demonstrated loyalty to the Estonian state.[94]

The last few years have also witnessed encouraging progress on the 'Russian-speaking' side of the ethnopolitical divide. As often as not, it seems, the 'rights-based politics' of the Russian-speaking elite have been based on demands for greater resources to facilitate the integration of non-citizens into the polity.[95] This suggests that the two communities might indeed be starting to coalesce around the EU paradigm. However, as Kymlicka has rightly observed, many local Russians still find it hard to adapt to the idea that they are an 'immigrant minority'. Although the 'Russian-speaking population' is still far from being a coherent identity group, its leaders have identified their constituency

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evidence suggests that this was not in fact the case, and that local elites were simply seeking to re-draw the existing state order to their own advantage. See D. J. Smith, "Narva Region", loc cit. Moreover, as I argue here, the position of international organizations re: the north-east appears to be shifting.

[94] Quotation from a letter by Tiit Sinisaar, Chairman of the Fatherland League Parliamentary faction expressing the party's position on the State Programme. Cited in Open Society Institute, op cit.: 198; Also notable in this regard is the fact that when in August 2000 a state adviser called for more funds to aid the 'repatriation' of non-citizens holding Russian passports, he was immediately disowned by the *Isamaa*-led government, which insisted that its policy was predicated on the integration of all non- citizens. See discussion in *Postimees*, 23 and 24 August 2000.

[95] See, for instance: G. Smith and A. Wilson, "Rethinking Russia's Post-Soviet Diaspora: the Potential for Political Mobilisation in Eastern Ukraine and North-East Estonia", *Europe-Asia Studies*, 49 (5) 1997: 852; Smith et al, *Nation-building in the Post-Soviet Borderlands*, op cit.: 114; D. J. Smith, "Cultural Autonomy in Estonia: a Relevant Paradigm for the Post-Soviet Era?", One Europe or Several? Working Paper 1901. (Brighton: Economic and Social Research Council, 2001): 23-24.

framed their demands in avowedly *national* as opposed to *ethnic* terms. In light of this fact, Kymlicka has suggested that it might ultimately be necessary to augment the current system of immigrant multiculturalism with a form of rights more appropriate to the needs of anational minority – i.e. a model which "involves a certain degree of institutionalseparateness, self-administration and extensive mother tongue language rights".[96] In this regard, Kymlicka suggests that a system of non-territorial cultural autonomy might be the ideal paradigm for the needs of the Estonian Russians and the other communities of the Russian 'diaspora'. Whilst the current author can only concur with Kymlicka's recommendation of this paradigm, his suggestions overlook the fact that Estonia already has a law on non-territorial cultural autonomy and that this law has already been rejected out of hand by Russian-speaking leaders. Some of the more practical objections raised against cultural autonomy – e.g. a lack of funding possibilities within minority communities; the fact that, in its current wording, the law does not entitle most Russians the status of 'minority' – might yet be addressed by an ongoing review of the legislation.[97] There are more fundamental sticking points, however: a number of Russian commentators, for instance, have objected to the 'dual taxation' inherent in the cultural autonomy scheme. In keeping with the discourse of equal rights, they feel that as taxpayers, they should have automatic access to state-funded education in the Russian language. A second objection relates to the fact that cultural autonomy is not built on the territorial principle and thus – one supposes – is not viewed as relevant to the needs of the territorially compact Russian-speaking population of the north-east.[98] As already mentioned, the EU and other international actors appear to be moving towards support for enhanced territorial autonomy in north-east Estonia. This is in spite of their apparent reluctance during the initial stages to sanction any policy based on institutional separateness. As Graham Smith noted in 1999, "it may well be that in supporting democratisation, European organisations need also to recognise that such measures may necessitate multicultural guarantees in addition to extensive civil liberties and human rights".[99]

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[96] Kymlicka, "Estonia's Integration Policies", op cit.: 17

[97] See, for instance, D. J. Smith, "Cultural Autonomy", loc cit; and D. J. Smith, Kurchinskii and more recent working paper; "Retracing Estonia's Russians: Mikhail Kurchinskii and Interwar Cultural Autonomy", *Nationalities Papers*, 27 (3) 1999: 455-474. The current law on cultural autonomy has been in force since 1993, but none of the eligible minority groups have implemented it thus far. On the current review of the law, see Open Society Institute, op cit.: 228-229.

[98] VII Riigikogu Stenogramm, III Istungjärk, 30 September 1993: 221.

[99] G. Smith, loc cit.

However, as the recent high levels of 'Euroscepticism' amongst the titular nationality perhaps testifies, the EU must continue to strike a fine balance between minority interests and those of a titular nation still labouring under the burden of past injustices. Only in this way will the recent encouraging progress towards multicultural democracy be maintained.

References

Aalto, P. "Post-soviet Geopolitics in the North of Europe", in M. Lehti and D. J. Smith (eds.), *Post-Cold War Identity Politics. Northern and Baltic Experiences* (London: Frank Cass, 2003).

Batt, J., "Introduction: Region, State and Identity in Central and Eastern Europe", in J. Batt and K. Wolczuk (eds.), *Region, State and Identity in Central and Eastern Europe* (London: Frank Cass and Co., 2002).

"Dilemmas of Self-Determination in Central and Eastern Europe: Historical Perspectives on the Nation-State and Federalism", draft chapter for forthcoming work *'Fuzzy Statehood' and European Integration in Central and Eastern Europe* as part of the ESRC "One Europe or Several?" Programme (University of Birmingham, 2000).

Brubaker, R., *Nationalism Reframed* (Cambridge: Cambridge University Press, 1996).
Burgess, A., "Critical Reflections on the Return of National Minority Rights Regulation to East/West European Affairs", in K. Cordell (ed.), *Ethnicity and Democratisation in the New Europe* (London: Routledge, 1999).

Chandler, D., "The OSCE and the Internationalisation of National Minority Rights', in K. Cordell (ed.), *Ethnicity and Democratisation in the New Europe* (London: Routledge, 1998).

Commission of the European Communities. *2002 Regular Report on Estonia's Progress towards Accession*. (Brussels: CEC).

Commission of the European Communities. *2000 Regular Report on Estonia's Progress towards Accession*. (Brussels: CEC).

EU Accession Monitoring Program, *Minority Protection in Estonia. An Assessment of the Programme Integration in Estonian Society 2000-2002* (Open Society Institute, 2002).

Kionka, R., "Estonia: A Difficult Transition", *RFE/RL Research Report*, vol. 2, no.1, January 1993.

Kymlicka, W., *Multicultural Citizenship* (Oxford: Oxford University Press, 1995).
Kymlicka, W., "Estonia's Integration Policies in a Comparative Perspective', contribution to A. Laius, I. Proos and I. Pettai (eds.), *Estonia's Integration Landscape: From Apathy to Harmony* (Tallinn: Avatud Eesti Fond and Jaan Tõnissoni Instituut, 2000). Available at: http://www.jti.ee/et/hr/integratsioon/kymlicka_eng.html, p.6

Laar, M., U. Ots and S. Endre, *Teine Eesti* (Tallinn, 1996).

Laitin, D., *Identity in Formation: The Russian-Speaking Populations in the Near Abroad*, (Ithaca and London: Cornell University Press, 1998).

Lauristin, M., "Kommentarid", in *Kaks Otsustavat Päeva Toompeal (19-20 August 1991)* (Tallinn, 1996).

Lauristin, M. and M. Heidmets (eds.), *The Challenge of the Russian Minority. Emerging Multicultural Democracy in Estonia* (Tartu: Tartu University Press, 2002).

Lieven, A., *The Baltic Revolution: Estonia, Latvia and Lithuania and the Path to Independence* (London: Yale University Press, 1993).

Linz J. and A. Stepan, *Problems of Democratic Transition and Consolidation: Southern Europe, South America and Post-communist Europe* (Baltimore and London: Johns Hopkins University Press, 1996).

Malmberg K., and R. Sikk, "Muulased tahavad lastele Eesti kodakondsust", *Eesti Päevaleht*, 4 April 1997.

Maria Fernanda Perez-Solla, "What's Wrong with Minority Rights in Europe", EUMAP, 6 November 2002. http://www.eumap.org/articles/content/91/916/index_html

McGarry, J. and B. O'Leary, "Introduction: The Macro-Political Regulation of Ethnic Conflict", in McGarry, J. and O'Leary, B. (eds.), *The Politics of Ethnic Conflict Regulation*, (London: Routledge, 1993).

Meri, L., *'ôiguste ja kohutuste tasakaal'*, speech on the occasion of Estonia's acceptance as a member of the Council of Europe, 13 May 1993

Miall, H., O. Ramsbotham and T. Woodhouse, *Contemporary Conflict Resolution* (Cambridge: Polity Press, 1999).

Muuli, K., "Kohalilesse Volikogudesse pääsevad 17 Oktoobril üksnes Eesti kodanikud", *Postimees*, 20 May 1993.

Ozolins, A., "The Policies of the Baltic Countries vis-à-vis the CSCE, NATO and WEU", in Joenniemi, P. & Prikulis, J. (eds.), *The Foreign Policies of the Baltic Countries: Basic Issues* (Riga, 1994).

Parming, T. "Population Processes and the Nationality Issue in the Soviet Baltic", *Soviet Studies*, 32 (3). July 1980.

Pavlovaite, I., "Paradise Regained. The Conceptualisation of Europe in the Lithuanian Debate", in M. Lehti and D. J. Smith (eds.), *Post-Cold War Identity Politics. Northern and Baltic Experiences* (London: Frank Cass, 2003).

Pettai, V. "Estonia and Latvia: International Influences on Citizenship and Minority Integration", in J. Zielonka and A. Pravda (eds.) *Democratic Consolidation in Eastern Europe. Vol. 2 International and Transnational Factors* (Oxford: Oxford University Press, 2001).

Pettai, V., "Contemporary International Influences on Post-Soviet Nationalism: the Cases of Estonia and Latvia", paper presented at the American Association for the Advancement of Slavic Studies 25th National Convention, Hawaii, 19-21 November 1993.

Pettai V. and K. Hallik, "Understanding processes of ethnic control: segmentation, dependency and co-optation in post-communist Estonia", *Nations and Nationalism*, 8 (4) 2002.

Pravda, A. "Introduction", in J. Zielonka and A. Pravda (eds.) *Democratic Consolidation in Eastern Europe. Vol. 2 International and Transnational Factors* (Oxford: Oxford University Press, 2001).

Prikulis, J., "The European Policies of the Baltic Countries", in P. Joenniemi and J. Prikulis (eds.), *The Foreign Policies of the Baltic Countries: Basic Issues* (Riga: Centre of Baltic-Nordic History and Political Studies, 1994).

Rotov, I. "Kodakonsusest: Optsioon voi Naturalisasioon?", *Rahva Hääl*, 8 September 1991.

Ruutsoo, R. "Discursive Conflict and Estonian Post-Communist Nation-Building", in M. Lauristin and M. Heidmets (eds.), *The Challenge of the Russian Minority. Emerging Multicultural Democracy in Estonia* (Tartu: Tartu University Press, 2002).

--- "The Emergence of Civil Society in Estonia", unpublished draft document January 1996.

Saarikoski, V., "Russian Minorities in the Baltic States", in P. Joenniemi and P. Vares (eds.), *New Actors on the International Arena: The Foreign Policies of the Baltic Countries*, Tampere Peace Research Institute Research Report, No.50, (Tampere, 1993).

Smith, D. J., "Narva Region within the Estonian Republic. From Autonomism to Accommodation?", in J. Batt and K. Wolczuk (eds.), *Region, State and Identity in Central and Eastern Europe* (London: Frank Cass and Co., 2002).

Smith, D. J., *Estonia. Independence and European Integration* (London: Routledge, 2001).

Smith, D. J., "Russia, Estonia and the Search for a Stable Ethno-Politics", *Journal of Baltic Studies*, 29 (1) 1998.

Smith, D. J., “Legal Continuity and Post-Soviet Reality: Ethnic Relations in Estonia 1991-95” unpublished PhD dissertation, University of Bradford, 1997.

Smith G. and A. Wilson, “Rethinking Russia’s Post-Soviet Diaspora: the Potential for Political Mobilisation in Eastern Ukraine and North-East Estonia”, *Europe-Asia Studies*, 49 (5) 1997. Smith, D. J., “Cultural Autonomy in Estonia: a Relevant Paradigm for the Post-Soviet Era?”, One Europe or Several? Working Paper 1901. (Brighton: Economic and Social Research Council, 2001).

Smith, D. J., “Retracing Estonia’s Russians: Mikhail Kurchinskii and Interwar Cultural Autonomy”, *Nationalities Papers*, 27 (3) 1999. Smith, G., *The Post-Soviet States* (London: Arnold, 1999).

Smith, G., “Transnational Politics and the Politics of the Russian Diaspora”, *Ethnic and Racial Studies*. 22 (3). May 1999.

Smith, G., V. Law, A. Wilson, A. Bohr, E. Allworth, *Nation-building in the Post-Soviet Borderlands. The Politics of National Identities* (Cambridge: Cambridge University Press, 1998).

Smith, G., A. Aasland and R. Mole, “Ethnic Relations and Citizenship”, in Graham Smith (ed.), *The Baltic States: The National Self Determination of Estonia, Latvia and Lithuania* (Basingstoke: Macmillan, 1994).

Smith, K. E., “Western Actors and the Promotion of Democracy”, in J. Zielonka and A. Pravda (eds.) *Democratic Consolidation in Eastern Europe. Vol. 2 International and Transnational Factors* (Oxford: Oxford University Press, 2001).

Tartu University Market Research Team, *The Attitude of Town Residents of North-Eastern Estonia towards Estonian Reforms and Social Policy: a Comparative Study of 1993, 1994 and 1995* (Tartu: University of Tartu, 1995).

Vetik, R., *Inter-Ethnic Relations in Estonia 1988-1998* (Tampere, Acta Universitatis Tamperensis 655, 1999).

Wæver, O., “Explaining Europe by Decoding Discourses”, in A. Wivel (ed.), *Explaining European Integration* (Copenhagen: Copenhagen Political Studies Press, 1998).

Wolczuk, K., “History, Europe and the ‘national idea’: the ‘official’” narrative of national identity in Ukraine”, *Nationalities Papers*, 28 (4) 2000

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EU Enlargement and Minority Rights Policies in Central Europe: Explaining Policy Shifts in the Czech Republic, Hungary and Poland*

Peter Vermeersch**

University of Leuven (KU Leuven), Belgium

To what extent has the EU's growing concern for norms of minority protection influenced domestic policy-making in the candidate member states in Central Europe? In order to begin to explore this question, the present article assesses the impact of both domestic and international factors on the development of policies towards national minorities in three Central European countries: the Czech Republic, Hungary and Poland. Following an introduction, which places the subject in the context of the larger debates on minority rights, the first part of the article describes the ways in which regional organizations in Europe have attempted to persuade or induce the three countries under consideration to adopt minority rights policies. The second section then describes policy developments in Central Europe and considers the factors that have contributed to policy shifts. Finally, the third part reflects on the uneven impact of the EU's accession criteria on the development of minority rights policies in the candidate countries and concludes that the EU's impact on policy has crucially depended both on domestic interests and receptivity to international concerns for internal security.

Introduction

An important debate among a number of contemporary political theorists is about whether countries in post-communist Central and Eastern Europe (CEE) should grant group-specific rights to their national minorities (Kymlicka and Opalski 2001). This debate focuses in particular on the question whether Western minority rights policies serve as a useful guide to policy-makers in CEE. In other words – can such policies be 'exported'? The term 'minority rights policies' in this context does not refer to a specific and uniform policy programme, but to a wide range of policies which have in common that they all in one way or another recognize and

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** Professor of Political Science.

accommodate the demands of communities distinguishing themselves from majority populations by religious, linguistic, cultural and other characteristics that are considered 'ethnic'. Minority rights policies offer forms of protection that go beyond the basic civil and political rights guaranteed to all individuals in a liberal democracy. Examples are the introduction of minority self-governments; the granting of territorial or cultural autonomy to minority groups; the funding of activities and organizations of national minorities; the introduction of particular forms of affirmative action, guaranteed representation, or consultation of minorities in government institutions; and the funding of bilingual education or mother-tongue instruction.

A number of controversies have come to the fore as a result of this debate. For example, there has been no agreement among political theorists on whether the adoption of minority rights *in general* is morally justified. Some critics have argued that liberal- democratic states should maintain their neutrality with regard to ethnocultural diversity (e.g. Barry 2001; Joppke 2003). Others have contended that although minority rights are not illiberal *per se*, there is nevertheless a danger that the institutionalization of ethnic boundaries will erode overarching identities, undermine potential cross-ethnic solidarities and therefore produce ethnic conflict (e.g. Phillips 1999; Gitlin 1996). In contrast, such authors as Kymlicka (2001), who believe that classical liberal theory should be open to the accommodation of claims made by minority groups, have argued that minority rights are indeed needed to help protect minorities from injustices that might arise from the fact that states are *never* ethnoculturally neutral. In this way, it is argued that states invariably support a particular 'societal culture' that is not necessarily the societal culture of the minorities.

Parallel to this discussion, it remains a topic of a debate whether minority rights policies – if one accepts that such policies are in principle commendable – are applicable in the *specific* area of CEE. In his introductory essay to *Can Liberal Pluralism Be Exported? Western Political Theory and Ethnic Relations in Eastern Europe,* Kymlicka (2001) contends that countries in CEE have a specific historical experience with ethnic relations that is very different from that of many countries in the 'West'. Nevertheless, he argues, the introduction of Western-style minority rights regimes in CEE is appropriate for both normative reasons (creating ethnoculturally just societies) and pragmatic considerations (achieving peaceful ethnic relations). In his view, a transfer of minority rights policies to the East should be viewed as a legitimate response to actual or perceived injustices that have arisen in the course of nation-building in the region. Critics on the other hand have pointed out a number of problems with regard to such a policy transfer. Some of them have argued that introducing minority rights policies in CEE, an area that has known many instances of violent ethnic mobilization, may

unduly support the development of ethnically organized political communities that merely care for their 'own' ethnic-based interests. Wolff, for example, has argued in favour of the "de-ethnicization of everyday politics" (2002: 14) in CEE. Others have raised the issue of *intolerant* minority nationalism (Dimitras and Papanikolatos 2001). On this view, such policies may open the way to new oppressive regimes at the sub-national level. Still others have questioned whether the adoption of minority rights policies would not make it more difficult to achieve democratic consolidation in transition states (Doroszewska 2001).

The discussion is far from over and is attracting the attention of an increasing number of scholars both in Eastern and Western Europe. One wonders, however, if these debates should not be complemented by more sustained empirical research on the impact of Western benchmarking on policy-making on minorities in CEE. Especially in light of the impending enlargement of the European Union (EU) such research seems particularly essential. While many theorists have pondered over the question whether minority rights policies *should* be exported to CEE, relatively few scholars have sought to find out whether such a process of transfer has not already been ongoing for some time. On the basis of the existing literature on the ability of European actors to impact upon domestic institution-building and policy-making in the member states, one is compelled to think that EU enlargement has indeed fostered a process of adaptation in the candidate member states. In particular, one would expect that the process of EU enlargement has considerably affected the shape of minority policies in the candidate countries. Lack of empirical data and analysis, however, makes it difficult to assess the extent to which this has been the case. Moreover, even assuming that a form of policy transfer has already taken place, it remains unclear what mechanisms have been at the root of such a transfer. In sum, two questions stand out: (1) To what extent have states in CEE been under pressure from the EU to introduce minority rights regimes? (2) To what extent are domestic policy changes in the field of ethnic relations in CEE related to the EU's pressures for adaptation?

In order to explore these questions, this paper investigates the internal and external factors that have influenced policy-making on national minorities in three Central European candidate member states: the Czech Republic, Hungary and Poland. These countries have been prime candidates for EU membership ever since they applied for accession and display roughly similar properties with regard to their ethnic composition. They are all three considered to be relatively ethnically homogeneous, but host a number of important and politically active national minorities. Notwithstanding this similarity, one observes conspicuous differences in the policies these states have introduced to deal with their national minorities and in how such policies have

come about. The paper starts with a discussion of the ways in which European institutions have attempted to bring about a 'policy transfer' concerning minority interests in the three EU prospective member states under consideration. In the second part, I explore the various policy shifts that have occurred in these countries since the collapse of communism. In the third part of the paper, I ask whether domestic policy changes should be seen as responses to normative pressures exerted by the EU on these countries. Since it is difficult to measure the level of *direct* influence of the EU's conditionality policy on policy outcomes in Central Europe, I have chosen to examine the various domestic policy formulations and the references they contain to the EU's accession conditionality. In other words, my aim has not been to investigate domestic policy practice in Central Europe, but to explore the extent to which the three candidate member states under consideration have utilized the preconditions set by the EU in order to underpin, justify and legitimize crucial policy changes. To this end, I have collated the policy proposals and policy programmes that have been adopted in Poland, Hungary and the Czech Republic since the beginning of the 1990s and examined whether the EU was mentioned, and if so, how much importance was attached to the topic of EU accession in these documents.[1] In this way, I have not directly measured the impact of European demands on domestic policy practice, but have nevertheless been able to gain an idea of how policy-makers have interpreted, reported and utilized the factor of EU conditionality.

The conclusion is then drawn that, although the EU's conditionality policy seems to have led to limited forms of policy transfer, the effect of European pressure on policy changes in general must be considered uneven. The evidence in this article suggests that policy shifts have often not correlated with the increasing importance attached to moral norms about minority rights on EU level. Rather they are connected to short-term interests of individual states.

I. International Organizations and Minority Rights Policies in Central Europe

In what ways have international organizations in Europe pressured the EU candidate member states in Central Europe to change their minority policies? Since the beginning of the 1990s, talk about minority protection has become prominent in many European political platforms. International organizations have increasingly played a role in the promotion of particular policies on ethnic diversity. The literature on policy transfer offers some useful conceptual tools to explore this development. In order to gain a better understanding of how knowledge

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[1] A list of documents consulted is listed at the end of this article, pp. 29-30.

about policies, administrative arrangements, institutions and ideas in one political setting affects the development of policies, administrative arrangements, institutions and ideas in another political setting, Dolowitz and Marsh (2000) have devised a heuristic framework that proposes to locate types of policy transfer on a continuum from voluntary adoption (lesson-drawing) to coercive transfer (direct imposition). They argue that pure voluntary and pure coercive forms of policy transfer should be considered ideal-types; they are not expected to occur in reality. Lesson-drawing might at first sight appear to be a process of complete voluntary learning, but in practice it will very often be driven by perceived necessity. What appears to be a purely coercive transfer, on the other hand, is in reality very often the result of negotiation.

In order to effectuate a 'policy transfer' to Central Europe in the field of minority provisions, international organizations have counted on a number of mechanisms ranging from voluntary adaptation to direct imposition. Of the international organizations in Europe that have assigned importance to the issue of national minority protection, the Organization for Security and Cooperation (OSCE) and the Council of Europe have most clearly counted on voluntary adaptation. The EU has to a great extent relied on the strategies and instruments introduced by these two organizations. In the latter part of the 1990s, however, it complemented such strategies by attempts to impose more directly specific types of policy through the application of 'conditionality'. The strategies utilized by these international institutions will be examined more closely in the following paragraphs.

The diffusion of norms through the OSCE and the Council of Europe

International organizations such as the OSCE and the Council of Europe have tried to influence domestic policy-makers both directly and indirectly. The OSCE attempted to codify minority rights in a number of important texts, such as the 1990 Charter of Paris and the 1990 Copenhagen Document. The Council of Europe did so through its 1992 European Charter for Regional and Minority Languages and the 1995 Framework Convention for the Protection of National Minorities. In the case of the OSCE, the attempts of the early 1990s to develop a legally binding text on minority protection were soon given up; the alternative was the introduction of a *political* instrument. This was the High Commissioner on National Minorities, an institution that since 1993 has been responsible for early warning and preventive diplomacy in cases of impending conflict involving national minorities in OSCE member states. The High Commissioner's activities have to a great extent focused on disputes in CEE.

By contrast, the Council of Europe did manage to introduce a number of legally binding instruments on minority protection. However, as was the case in the OSCE context, it was difficult to find agreement among its member governments. Member states have known very divergent historical traditions with regard to minority protection. Unsurprisingly, the result was a rather weak instrument with only a 'thin' version of a minority rights code. Thus in 1993, Recommendation 1201, in which the Parliamentary Assembly of the Council of Europe asked the Committee of Ministers to draw up an additional protocol to the European Convention of Human rights, still contained a strong endorsement of autonomy for minority groups, whereas the final text adopted under the Framework Convention for the Protection of National Minorities no such endorsement was included. Moreover, although the Convention has been in force since February 1998 and constitutes the first effective legally binding multilateral instrument on the protection of national minorities in Europe, not all members of the Council of Europe have signed and ratified it, and no effective enforcement mechanism has been put into place.

In short, although there are important differences in terms of strategy and aim between the initiatives of the OSCE and that of the Council of Europe, they have been part of the same trend in international politics to increase awareness of the predicament of minority citizens in Europe. Both initiatives, however, have also been hampered by the reluctance of many states to set clear legal standards and subject themselves voluntarily to international monitoring. What they furthermore have in common is that their legal or political instruments have relied on their ability to commit member states to minority protection through the promotion of moral norms. This means that the type of policy transfer that these organizations have intended is not coercive, but builds on the rational interests of the members and the perceived necessity of policy change among them. They have also in common that within the activities of both organizations, special attention has been given to minority-majority relations in CEE.

The leverage that the OSCE and the Council of Europe has exerted on the countries under consideration in this article is characterized by a number of traits. Understanding these characteristics may offer us a better understanding of the power of these organizations to compel states to introduce minority rights policies or, as has more been the case, their lack of power to do so. First, the existing instruments are the result of a compromise on the way minorities should be protected and therefore do not reflect a clear embracement of group-specific policies. This has given the three states examined in this paper a large margin of freedom to interpret standards on minority protection. Signing and ratifying the Framework Convention has for many states in Central Europe been an ideal way of demonstrating their commitment to the idea of protecting minority citizens without needing to adopt an ambitious catalogue of minority rights policies.

The High Commissioner on National Minorities has often advised and pressed states to grant a certain form of autonomy to minority groups. However, as a result of the limited mandate of the High Commissioner, such pressure has only been possible in cases where such policies were seen as necessary to prevent violent conflict.

Secondly, the weakness of the OSCE and the Council of Europe to introduce minority rights protection as a norm in Central and Eastern European domestic politics is to a large extent related to the very uneven support for such a norm among their Western European members. It is clear that both the OSCE and the Council of Europe's increased interest in promoting new norms on minority rights protection is a direct result of a concern for the specificity of the situation in CEE. These organizations insisted on minority rights only after 1989 in response to potential conflict in the East. As one scholar argues, the return of the importance attached to minority rights in European international organizations after 1989 is largely based upon prior assumptions about both East and West in Europe. "'The East' is assumed to be culturally predisposed towards intolerance of all varieties – most seriously towards other ethnic and racial groups" (Burgess 1999: 54). In the context of such a biased understanding of the European reality, it seemed logical to both the Council of Europe and the OSCE to pressure more for minority rights policies in the area of CEE than in Western Europe. Minority rights protection in 'the West' has never been at the centre of international attention, and there has never been any strong pressure from European institutions on Western states to adopt new policies. As a result of this differential treatment, the OSCE and the Council of Europe have made the fulfilment of standards of minority protection susceptible to interpretation and discussion. Central and Eastern European states which have been criticized by these organizations have often countered censure by making simple reference to policy practice in those Western European countries that do not embrace minority rights policies.

More direct attempts at coercive policy transfer from West to East have occurred within the context of EU enlargement. Since 1990, the EU has demonstrated a growing concern for the protection of national minorities in Central Europe. It has attempted to promote minority rights policies in two ways. First, it has relied on other international organizations in Europe. The European Commission's 'Agenda 2000' (1997), for example, has referred to both the Framework Convention and the Council of Europe's Recommendation 1201 (1993) on minorities as guidelines for prospective members. Secondly, in 1993 a very direct precondition was set that related to the position of minorities in the EU candidate member states. Owing to the strong willingness of Central European countries to join the Union, the EU had much more power than the other international organizations to influence policy. It is precisely within the framework of the

EU enlargement process that the most distinctive suggestions were made for the adoption of particular types of minority policy in CEE. As with the initiatives of the OSCE and the Council of Europe, however, the pressure coming from the EU cannot be considered as a pure form of coercive policy transfer.

The EU and membership conditionality

The EU has applied the strategy of 'membership conditionality'. The term refers to the attempts the EU has made since 1993 to induce policy change and legislative reforms in the candidate states by making entry to the EU dependent on compliance with a number of political and economic demands. At the bottom of this conditionality policy lie the

'Copenhagen criteria' (1993), which provided the requirements candidates were expected to fulfil before they could become eligible for EU membership. These criteria included the rule of law and stable democratic institutions as well as human rights and respect for minorities. Especially after the outburst of violence in the Balkans the EU sharply accentuated the role of minority protection in the enlargement process hoping that by so doing it would be able to maintain political stability throughout the future territory of the Union.

In theory, the EU is much more powerful in this field than the Council of Europe and the OSCE. The Union has the political capacity and the financial resources to influence policies of other states, and it can offer support to citizens to challenge government initiatives (or protest the lack of them). However, there is no general agreement on whether the EU's conditionality policy has indeed been able to realize this potential impact. Various scholars have pointed out that the EU's conditionality policy on minority treatment has faced a number of inherent problems. First, there is the problem of double standards. Hughes and Sasse (2003), for example, have noted the discrepancy between the EU's lack of internal commitment to minority rights and the 'rhetorical prominence' of minority protection in its dealing with Central European candidates. Although the question of minority protection has figured prominently in debates about the EU's external relations, until recently the topic was largely neglected in the Union's internal affairs. Despite constant pressure by the European Parliament since the mid-1980s to adopt protective European legislation in the field of anti-discrimination and anti-racism, it took more than a decade before an important step in this direction was taken with the ratification of the Treaty of Amsterdam (European Parliament 1997).

Secondly, the EU's condition on minority protection has been open to various interpretations and has created uncertainty over which commitments Central European states

should make in order to safeguard their accession procedures (Vermeersch 2002:86). This vagueness has rendered the EU's monitoring mechanism extremely limited when it comes to the actual improvement in minority protection. Moreover, the EU's demands on the introduction of minority policies have not always been equally strict. The demands by the EU have changed over time in response to political sensitive issues. This is illustrated very well by the way the EU has dealt with the treatment of the Roma minority as a precondition for entry.

In the beginning of the 1990s the EU's attention to the Roma issue in Central Europe was fairly limited. At the time of the introduction of the Copenhagen criteria, the Roma were clearly not a topic of primary concern for the EU because they were, at that time, not perceived as a potential threat to European stability. Territorial national minorities which formulated ethnonationalist claims were identified as a much more serious danger. The strategy of using membership as an incentive to enforce better minority protection appeared to reflect the EU's worry about the possible emergence of *territorial* disputes, inter-state war, and conflict between centralized governments and national minorities. Since the Roma made no *territorial* claims, the risk of a large-scale violent conflict involving the Roma was deemed minimal.

In the latter half of the 1990s, however, the situation of the Roma gradually became a more distinctive element in the EU's conditionality policy (Vermeersch 2002: 85-88). This was no doubt related the growing coverage of the Roma's predicament by the international media and by international advocacy organizations such as Human Rights Watch, Amnesty International, the Project on Ethnic Relations, and the European Roma Rights Center. It had also to do with the growth of the number of Roma asylum seekers from Central European countries arriving in the EU. Political controversy within individual EU states (most importantly, Belgium, the UK, Finland, the Netherlands, and Sweden) about this migration and fears of a massive influx after enlargement stimulated the EU's inclination to promote better treatment of the Roma as a precondition for accession.

Especially after 1997, it became clear that the European Commission found that the situation of the Roma was to play a certain role in deciding whether a candidate member would be ready to join the EU. In 1997, the EU's *Agenda 2000* programme described the treatment of minorities in applicant countries as generally satisfactory, "except for the situation of the Roma minority in a number of applicants" (European Commission 1997). In the years following, the European Commission gave the impression that it was gradually taking a stricter approach on the issue of the Roma. To give just one example: during a visit to Košice (Slovakia) in February 2001, the European Commissioner responsible for enlargement, Günter Verheugen, called

"respect of minorities and in particular the Roma population" one of the three important issues that need further monitoring under the Copenhagen political criteria (Verheugen 2001).

II. Policy Shifts in Central Europe

I will now turn to developments of minority policy on the domestic level. In order to find out whether countries in Central Europe have increasingly adopted minority rights policies, I have collected and analysed the policy plans and programmes that governments have adopted in the Czech Republic, Hungary and Poland. As outlined above, these countries have been selected on the basis that they find themselves in a comparable position. They are fairly similar with regard to ethnic composition (less than 10% minority citizens). According to the 2001 census in Hungary (Központi Statisztikai Hivatal 2002), 314,060 (approx. 3%) Hungarian citizens identify themselves as belonging to one of the 13 recognized minorities. That this figure is only a rough indication should be clear from expert reports that have estimated the number of people who identify themselves in daily life as minority citizens as substantially higher (up to 7%).[2] The Czech 2001 census results reveal that almost 10% of the citizens identify themselves as non-Czech (Český statistický úřad 2001).[3] Of these the Moravians constitute the largest part (380,474), but because they are not a linguistic group they are usually not considered as a national minority.[4] Without them the total portion of minority citizens in the Czech Republic is 5.8%. Poland held a census in 2002 that for the first time allowed Polish citizens to indicate their ethnic identity. Although, the results are not available at the time of writing, Poland has nevertheless asserted in its 2002 report submitted in the context of the Framework Convention on the Protection of National Minorities that approx. 1 million people belong to a national minority, which accounts for 2% to 3% of the total number of inhabitants (Polish Government 2002a). All three countries have received positive reports from the European Commission with regard to

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[2] Especially the official census figure for the total Roma population (192,046) is contested. Experts have argued that due to various reasons Roma are very often unwilling to identify themselves as Roma before an official administrator, independent of whether they identify as Roma in other circumstances. Independent research by Havas and Kemény (1999) has estimated the total number of Roma to be 482,000. Others have estimated the number of Roma even higher.

[3] Here, too, the figures should not be seen as simple reflections of reality. 1.6% of the population has remained unidentified in the census. Moreover, the figures for the Roma population need to be put into perspective. A 1999 government report cites a number of 200,000 Roma, substantially more than the 11,716 Roma as they appear in the census.

[4] They are not mentioned as a minority in the report the Czech Republic submitted in 1999 to the Council of Europe in response to its obligations in the context of the Framework Convention on the protection of national minorities (Government of the Czech Republic 1999). They are not represented in the Council for National Minorities, which gathers the six most important minorities in the Czech Republic (Slovaks, Roma, Poles, Germans, Hungarians and Ukrainians).

their democratization, and their candidacy for EU membership has, unlike that of Slovakia, never been subject to serious doubts (Vermeersch 2002). They are all three members of the OSCE. All three have furthermore signed and ratified the Framework Convention on the Protection of National Minorities in addition to a number of other international instruments.

It therefore remains to be asked how have policies on national minorities in these three fairly similar countries changed in the course of the 1990s, and what factors have generally been referred to as important triggers of policy change?

Hungary

Hungary is a clear example of a country that in the course of a couple of years has increasingly adopted minority rights policies. In fact, Hungary has gone much further in the codification of collective minority rights than any other country in the region. This is a remarkable development, which warrants a more detailed examination.

The formulation of group interests on the basis of ethnicity gained legal justification in Hungary in the latter half of the 1980s, at a time when the state was beginning to undergo a process of economic and political transformation. The first crucial change was the introduction of legislation in December 1988 and January 1989 establishing the rights of association and assembly. Furthermore, through an amendment of the Constitution in October 1989, minorities gained the right to their own culture, religion and the use of their mother tongue.[5] In 1990, Article 68 was added to the Constitution, which stated that ethnic and national minorities living in the Republic of Hungary represent "a constituent part of the State" (paragraph 1). More importantly, the article also stipulated that the political representation of national and ethnic minorities was to be ensured (paragraph 3), and that these minorities had the "right to form local and national bodies for self-government" (paragraph 4). The new Constitution also contained a provision enabling the introduction of a Parliamentary Commissioner for the Rights of Ethnic and National Minorities (Article 32/B, paragraph 2), also known as the 'minority ombudsman', who was given the task to assist minority citizens, whose rights are abused.

Although all this was, in strict terms, perhaps not yet a minority rights regime, the core of legal changes clearly illustrate Hungary's determination at the time to pursue a policy of what could be called 'cultural differentiation'. The aim was to offer special rights to groups that considered themselves to be different in terms of cultural characteristics. In this sense, the new

[5] The Act of Constitutional Amendment No. XXXI (1989).

emphasis on differentiation was the logical extension of a policy stance that had gained ground during the late 1980s and represented a complete reversal of the Marxist-Leninist-inspired position on ethnic difference. On the basis of the claim that ethnic identity was inherently cultural, it was argued in 1989 that the assimilation of national and ethnic minorities must not only be stopped but indeed be reversed. This meant, for example, not only halting the suppression of minority languages, but preserving, and indeed actively reviving them. In this context, the constitutional changes were only the first step in a process leading to comprehensive legislation regulating the cultural autonomy of ethnic minorities in Hungary, introduced in the 1993 'Minorities Act'.

What factors have influenced this development? One should certainly mention the international context. Within the Nationalities Board and Secretariat (*Nemzetiségi Kollégium és Titkárság*) at the end of the 1980s – which did the preparatory work on the Minorities Act – discussions were held on the question of minority accommodation in Hungary, explicitly linking it to a specific foreign policy concern. Hungary wanted to secure regional stability and peace, so it decided not to pursue border changes. But still it wanted to be able to protect the Magyar minorities in the neighbouring countries. A strong endorsement of minority rights therefore served as a moral justification for its stance towards the Magyar minorities in neighbouring Romania, Slovakia, Ukraine and Yugoslavia, whose fate it wanted to influence positively (Schöpflin 2000: 375). In the final version of the Minorities Act, an allusion to this motivation was included in the preamble:

> [T]he peaceful co-existence of national and ethnic minorities with the nation in majority is a component of *international* security. (Minorities Act, preamble, emphasis added)

The idea that gained ground was to work out a system that would aim at a maximal protection of cultural interests of minorities without linking this to territorial autonomy.[6]

This was a logical development, given the way policy-makers perceived the ethnic structure of Hungary at the end of the 1980s, that is to say, as an ethnically homogenous country containing only small minority groups that were territorially dispersed and had been strongly assimilated by the previous regime.

A core element of the Minorities Act was the regulation of the requirements set out in the

[6] By choosing this option Hungary is continuing a Central European tradition of thought on minorities. This tradition is well illustrated by the ideas of the Hungarian liberal sociologist Oszkár Jászi, who was Minister for Nationalities for a short time after the First World War in the government headed by Count Mihály Károlyi. Jászi formulated proposals that built on a model of personal cultural autonomy within a multinational state as propounded by the Austro-Marxists Karl Renner (*Staat und Nation*) and Otto Bauer (*Die Nationalitätenfrage und die Sozialdemokratie*) at the beginning of the century (Krizsán 2000: 250-251; Kołakowski 1988: 591-601). The Károlyi government attempted to make Hungary into a multinational republic after Austro-Hungary's defeat in 1918, but Jászi's idea of a Hungarian federation of nationalities fell on deaf ears and disappeared together with the dissolution of the republic and the Treaty of Trianon (1920).

Constitution, i.e. minority political representation and the formation of local and national bodies for self-government. National and ethnic minorities gained the constitutional right to establish local and national self-governments. The Minorities Act stipulated the details of the system of separately elected Local and National Minority Self-Governments.

The Minorities Act, however, did not entirely effectuate all rights established by the Constitution. One problem that remained was the question of how to secure representation in Parliament. The Hungarian concern for a minority protection system was strongly influenced by the idea that a permanent differentiation in the rights of minority groups was needed in order to protect them. Special representation rights for the national legislature were a part of this. Minority representatives believed that a self- government system did not meet the requirements for secured representation in parliament that were set forth in the Constitution. A demand thus arose for a law that would secure the representation of the recognized minorities in the Hungarian National Assembly. But until today the debate on this subject has been plagued by all kinds of practical difficulties. It has been far from easy to determine the degree of disproportionate representation a minority should receive, since there is one large minority (the Roma) and a series of smaller ones.[7] In addition, political leaders have feared that introducing secured seats in a unicameral legislature would affect the well- functioning of the parliament (PER 2001).

During the preparation of the Minorities Act, it was consequently decided to regulate the question of secured representation in the legislature through separate legislation (Article 20,Paragraph 1 of the Minorities Act). The topic remained subject to protracted discussion throughout the 1990s (Krizsán 2000: 258; Győri Szabó 1998).

There is a second factor apart from the Magyar minorities in neighbouring countries that affected the development of policy-making on minorities: the situation of Hungary's largest minority, the Roma. This became clear in the period between 1995 and 2001, when new policy initiatives related mostly to the Roma. Government report J/3670, prepared by the socialist-liberal Horn government (1994-1998), argued that the minority self-government system was primarily designed to foster the 'integration' of the Roma. At the same time, however, it noted that:

> The issue of the integration of the Gypsies into society is of great importance for the internal stability and economic well-being of the country and it is also one requiring the implementation of measures that are different from those of traditional minority policy. (Government of the Republic of Hungary 1997: 11).

In other words, the 'traditional minority policy', in which the preservation and stimulation

[7] To give just one example: According to the 1990 census on the basis of mother tongue, the Greek minority numbered only 1,640 Hungarian citizens.

of cultural difference was seen as a way to integrate the minority, now became regarded as insufficient for the Roma. As the deputy president of the Office for National and Ethnic Minorities (NEKH) described the issue in 1999:

> the situation of the Roma minority is in many respects quite different from other minorities. The problems they face are not only of linguistic or cultural character, therefore they cannot be solved within the framework of [the] minority law and need some other measures as well from the central, regional and local governments. (Heizer 1999: 4)

In 1995, some additional resolutions were adopted specifically aimed at ameliorating the situation of the Roma. Between 1996 and 1998, the Horn government's focus of the Roma as a 'disadvantaged sector of society' became increasingly apparent.

After the 1998 elections, which brought Orban's right-wing liberal government to power, the position of the previous government on minorities was maintained, at least in its general wording and conceptualization. On the one hand, the new government emphasized that the minority issue was to be regarded as a question of the protection of cultural diversity. On the other hand, "the social integration of the Roma" was seen as "both a question of minority policy and of social policy" (Hornung-Rauh & Fretyán 2000: 2). In the government programme, the Roma were not mentioned as a specific topic under the heading 'Ethnic minorities in Hungary' (where one would expect them to be mentioned). Instead, they were mentioned by name in the paragraph entitled, 'Those who need help'. Moreover, they were the *only* ethnic minority group mentioned under that heading. The continuation of the approach initiated by the Horn government showed that a broad coalition of political parties could agree with the way in which Hungary's Roma policy developed. Government officials argued that there was a "political consensus" (Doncsev 1999: 1).

Czech Republic

Policy development on minorities in the Czech Republic differed quite profoundly from that in Hungary. In the period between 1989 and 1992, the Czechoslovak policy on minorities was based on what was called in the Czechoslovak official documents the 'civic principle' (*občanský princip*). This means that the Czechoslovak state sought to maintain a common (undifferentiated) citizenship status for all its citizens, and that the expression of ethnic difference was regarded as a private matter.[8]

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[8] Interestingly, Czechoslovakia's post-1989 minority policy was not that far removed from the country's policy tradition in the inter-war period. In 1927, an article in *Foreign Affairs* quoted President Masaryk's concept of Czechoslovakia as a 'uniform' state with 'a recognition without ambiguity' for minorities. The article summarizes Masaryk's argument as follows: "The task of the Czechoslovak Government is to make the minorities feel

In contrast to Hungary's minority policy as it began taking shape in the beginning of the 1990s, Czechoslovakia in this period did not grant cultural autonomy to its ethnic minorities. This does not mean that these ethnic minorities were not officially recognized. Such recognition was, however, based on a model of citizenship in which all citizens share a common set of individual rights. In essence, this meant that the ethnic identity of individual people was deemed an inherent and valued element of their private lives. Recognition of ethnic diversity was not considered a basis for granting group-differentiated rights. The rights of minority citizens were protected on the basis of the Charter of Fundamental Rights and Liberties (*Listina základných práv a slobôd*), adopted by the Czechoslovak Federal Parliament on January 9, 1991, which through its articles 24 and 25 provided everyone the right to decide on his or her own ethnic identity ('nationality') and the right to form ethnic associations (Bugajski 1994: 299).[9]

According to this document, the protection of ethnic minorities was subsumed under the protection of the human, civil and political rights of all citizens in Czechoslovakia, and did nothave to be guaranteed by group-specific rights or measures of exemption.[10]

With regard to Czechoslovakia's most troubled minority, the Roma, the Federal Government on 3 October 1991, adopted the 'Principles of the government of the Czech and Slovak Federal Republic on policy towards the Roma minority' (Government of the Czech and Slovak Federative Republic 1991). This resolution did not reverse the general minority policy. The policy continued to aim at achieving socio-economic equality. It differed with the communist way of dealing with the Roma, however, in that the policy of undifferentiated citizenship was now *not* meant to lead to assimilation. Instead, Federal Resolution 619/1991 promoted the

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themselves at home in Czechoslovakia. They must not think of themselves as minorities. Czechoslovakia must become their state, as it is the state of the Czechs and Slovaks. The term "Czechoslovak" must denote not only the Czechs and Slovaks, but all the inhabitants of the Republic. There is only one way to achieve this end: the way of tolerance and of coöperation [sic]" (Broz 1927/1928: 160). It is characteristic of the time that the Roma are not mentioned in the article. Czechoslovak minority policy during the inter-war period focused on the Magyar and German minorities.

[9] Law No. 23/1991 Coll., which introduces the Charter of Fundamental Rights and Freedoms as a constitutional law of the Czech and Slovak Federative Republic.

[10] This is one of the reasons why the organisations defending the interests of the Magyar minority strongly opposed this new piece of legislation. One of the problems for the Magyars was that the Charter defined the state as a national state of Czechs and Slovaks, a definition which according to them would reduce the existing rights of minorities. When the Federal Assembly rejected the amendment proposed by the Magyars, the Magyar MPs walked out of the final vote on the Charter (see Bugajski 1994: 331).

development of Roma identity – and not its destruction – as a crucial element in equalizing the position of the Roma with the rest of society (Sulitka 1999: 226).

The new Czech Constitution, adopted in December 1992, reaffirmed the general acknowledgement of the rights and freedoms of individual citizens – including minority citizens – as stipulated by the Charter of Fundamental Rights and Freedoms. The Charter became a part of the constitutional order of the independent Czech Republic on 1 January 1993 (Government of the Czech Republic 1999a).[11] Precisely what this meant became clear when in 1994 a new institution was established in the newly independent Czech Republic that was meant to nurture the cultural life of the recognized national minorities: the Council for National Minorities (*Rada pro národnosti vlády České republiky*). In this governmental body, a selection of people from the different recognized national minorities (Magyar, German, Polish, Roma, Slovak and Ukrainian) who had been active in reputable minority organizations were brought together with delegates from the ministries, the Parliament, and the Office of the President. Together they acted as a consultative body for the government. The Council made summary reports about the state of affairs of the minorities' cultural situation and put forward suggestions for policy improvement.

As in Hungary, an important factor in the development of minority policy in the latter half of the 1990s was the position of the Roma minority. A crucial policy change took place in the latter half of the 1990s. In 1997, Pavel Bratinka, President of the Council for Nationalities and Minister without Portfolio in the center-right Klaus government, commissioned a group of experts to draw up a report on the situation of the Roma in the Czech Republic, taking into consideration the issues raised by the Roma members of the Council of Nationalities. An important role in the realization of this report was played by the head of Bratinka's office, Viktor Dobal, who had been a former MP for the Civic Forum (OF) and had worked with Roma communities in Prague's 5th district in the beginning of the 1990s. In 1997, Dobal considered it high time to make the government sensitive to the issue of the Roma and saw in the political controversy surrounding the wave of Czech asylum seekers a chance to rouse Bratinka's interest for the matter. The government's interest in a research report on this topic increased conspicuously after complaints had reached the Czech Republic from countries that were receiving a growing number of Czech asylum seekers (for example the United Kingdom, Canada).

[11] Law No. 2/1993 Coll., Resolution of the Czech National Council from December 16, 1992, on the declaration of the Charter of Fundamental Rights and Freedoms as a part of the constitutional order of the Czech Republic.

These new policy initiatives on the Roma did not affect the Czech government's general tendency to subsume the protection of national minorities under the broader umbrella of ensuring basic individual rights to all Czech citizens without reference to ethnicity. In accordance with the 'civic principle', members of national minorities were not granted special rights. However, it was asserted that, for the sake of social integration, it would be necessary to implement measures specifically designed to target the situation of *one* ethnically-defined group.

> [E]stimates and practical experience indicate that certain problems of the Romani community are distinct from the problems of other [minority] groups, and thus require a different approach. (Council for Nationalities of the Government of the Czech Republic 1997: Paragraph ii)

Towards the end of the decade a more 'multiculturalist' view on general minority policy gradually began to take shape. The general vision of the Czech government towards minorities was now that members of national minorities should be encouraged to develop their identity, and that in the fields of education, official language use, and the promotion of minority culture members of these minorities should be granted certain 'special' rights. In July 2001, the Czech parliament adopted Act 273 'on the rights of members of national minorities', which was to some extent a deviation from the earlier 'civic principle' approach and the modest beginning of an approach of active protection of minority culture in public life, without however granting minorities self-government rights or far-reaching cultural autonomy. Unlike Hungary and Slovakia, the Czech Republic did not ratify the European Charter for Regional and Minority Languages. In the case of the Roma, however, the government justified a group-specific treatment, arguing that their situation has an important socio-economic aspect that needs to be addressed separately.

Poland

As in the cases of the Czech Republic and Hungary, Polish policies towards minorities during the communist period were generally aimed at direct assimilation with limited possibilities for the preservation of some essential minority traditions through official and state-led minority associations. There was a historical factor that played an important role in the Polish attempts to minimize ethnic differences. As a result of Nazi exterminations during World War II and the border changes and relocation of population groups after the war, Poland had become more ethnically homogenous than before. Homogeneity was considered as one of the important achievements of the new state (Łodziński 1999: 2). The communist leaders did not want to question borders again. In their view, the best way to achieve territorial stability was to discourage all identifications with majority populations in neighbouring countries.

This view changed at the end of the 1980s. Already in 1989, the foundation of a new attitude towards minorities was laid. Both Lech Wałęsa and Prime Minister Tadeusz Mazowiecki asserted in the media that national minorities should feel 'at home' in Poland and that the development of their languages and cultures should be supported by the state.[12] This was an important reversal of the general government stance on minorities, but international and geopolitical considerations still played an important role in policy-making towards minorities. The sudden recognition of minority identity in Poland is explicable in the context of the changing international environment. Hoping that it would reduce or even prevent disputes about border changes politicians were more inclined to recognize minority groups than they were during communism.

The end of communism meant first and foremost a symbolic affirmation of minority rights that found resonance in a few new institutions and laws. In 1989, a standing Committee on Ethnic and National Minorities (*Komisja Mniejszości Narodowych i Etnicznych*) was established in the Polish lower house (*Sejm*). A new law on associations gave minority citizens the freedom to organize themselves on an ethnic basis. In the period between 1991 and 1993 a number of parliamentary election laws were adopted through which the political participation of minority organizations was made easier (exemption on threshold rules). Furthermore, the 1991 Education Act and a 1992 resolution by the minister of education provided the basis for the introduction of proactive measures to protect minority pupils by enabling under certain conditions the organization of additional classes in a minority language.[13]

Yet in the years following, no other major policy initiatives were taken. For most of the 1990s Poland's ruling politicians were not visibly interested in introducing new policies for dealing with the demands of national minorities. The low concern for minorities is perhaps reflected in the timing of Poland's adoption of international instruments. Of the three countries discussed in this paper, Poland was the last to ratify the Framework Convention on the Protection of National Minorities.[14]

For most of the 1990s Polish policy-makers believed that minorities were sufficiently protected. The Polish Constitution of 1997 together with the above-mentioned regulations was thought to provide a satisfactory legal basis for minority rights protection. In contrast to Hungary and the Czech Republic, Poland did not introduce, and has not done so until today, a

[12] 'Lech Wałęsa do wyborców w sprawie mniejszości', *Gazeta Wyborcza*, No. 6, May 15, 1989. Mazowiecki's speech is quoted by the Polish Government (2002a: 7).
[13] Dziennik Ustaw No. 95, 425; Dziennik Ustaw, No. 34, 150.
[14] Poland signed the Framework Convention in 1995, just as Hungary and the Czech Republic, but only ratified it in 2001. Hungary's ratification dates back from 1995 and the Czech Republic's from 1997.

single legislation to guide the way in which national minorities should be protected.

There are two indications, however, that towards the end of the 1990s pressure for new initiatives had a growing impact on domestic policy. First, in 1998, the Committee on Ethnic and National Minorities prepared a draft act – which is currently again under discussion. This draft act not only contains provisions to forbid discrimination and assimilation. It also makes specific forms of affirmative action possible; mandates the establishment of a Council for National Minority Affairs that would become responsible for the implementation of government policies towards minorities; and increases the possibilities for utilizing minority languages in the public sphere in areas inhabited by sizeable minority groups. In May 2002, the government refused to adopt the draft law in its then current form, even though it was admitted that the legal proposal was a legitimate response to a need resulting from the country's ratification of the Framework Convention. According to the government, the proposal contained a number of fundamental problems. For example, the proposal did not specify the criteria for membership of a national or an ethnic minority, nor did it state precisely what conditions should be present in a municipality in order to mandate the introduction of special protection measures for the use of minority languages.

Furthermore, the government feared that the organization of separate minority education as proposed in the draft law will lead to the isolation of minority pupils from mainstream education (Polish Government 2002b).

Secondly, in contrast to the general reluctance of the Polish government to introduce far-reaching minority rights policies on minorities, the government showed increased interest in designing a programme targeted specifically at the relatively small Roma minority. In February 2001, the government adopted a group-specific project developed by the Minister of the Interior, aimed at tackling the problems of the Roma minority in the Małopolska region. The programme was meant to promote the awareness of Roma identity and fund initiatives that are related to the public image of Roma culture. Furthermore, it aimed to support initiatives that seek to push back unemployment, enable increased participation of the Roma in mainstream education, and improve housing conditions, health and security. According to the government report, this initiative was only the beginning of a much larger policy strategy in order to deal with the marginal situation of the Roma. At the time of writing, the programme is still confined to one region and its implementation is still ongoing. The ambition, however, is to gather experiences from this one region in order to achieve better results in future programmes that will target other regions (Polish ministry of the interior 2001: 7).

III. Europeanization and Domestic Minority Rights Policies

To what extent are domestic policy changes in the field of ethnic relations in Central Europe related to the EU's pressures for adaptation? It is not easy to measure the influence of EU conditionality. As discussed, the requirements falling under the EU's strategy of accession conditionality are not quantitative measures. A large margin of freedom has been given to applicant member states in deciding how to meet the criteria and to what degree. Moreover, the EU has not been clear about how much adaptation of new policy is required in order to result in a positive evaluation. This problem of vagueness has been thrown into sharp relief by the decisions of the Helsinki summit of 1999 and the Laeken summit of 2001. By deciding to enlarge in an undifferentiated fashion to ten new members, these summits led the EU to shift away from a (more or less) strict application of the accession conditions to even greater vagueness.

Despite the difficulties of measuring such vague forms of influence, there are two conclusions that can be drawn from an analysis of policy documents. First, the EU's conditionality policy has clearly led to at least some limited forms of policy transfer. There is some evidence suggesting that the establishment of EU requirements on minority protection has indeed triggered the introduction of new documents and legislation. New documents have been inspired by the general international legal context to which the Commission has referred in its *Agenda 2000*. This is clear from references in the domestic policy documents as well as from additional comments made by ruling politicians in the three countries. It is also evident from the timing of the introduction of new policy initiatives. Most of the policy documents relating to minorities have been issued *after* the publication of the European Commission's Agenda 2000. This suggests that most of them have responded to the European Commission's monitoring activities, or perhaps have anticipated such monitoring.

The influence of European scrutiny is even clearer in the sudden increase in the latter half of the 1990s of policy documents relating to the Roma. Even in the first Regular Reports the Commission pointed to shortcomings in the Central European states' handling of the problems facing the Roma, while general minority policy in the three countries was considered satisfactory. In recent periods, all three countries have taken additional policy initiatives directly aimed at the Roma population. References in the available policy documents make clear that these were direct responses to monitoring by the Commission and by other monitoring agencies on which the EU has relied. For example, in the Czech resolution of 14 June 2000, outlining the Czech Republic's 'concept' of policy towards the Roma, the government called the situation of the Roma "one of the obstacles [hindering] entry into the EU" (Government of

the Czech Republic 2000: 6). Moreover, the government unambiguously stated that its decision to introduce a new programme was directly related to the concerns raised by the European Commission. That these policy initiatives towards the Roma were indeed responses to EU concerns is furthermore illustrated by a number of defensive comments that appear to be addressed at European institutions. In the document, the Czech government argued that because of the seriousness of the problem, the EU must not expect to see the problem resolved before the year 2020 (Government of the Czech Republic 2000: 6). Moreover, in various other documents, the Czech Republic as well as Poland and Hungary have emphasized that the issue of the Roma should be considered as a 'Europe-wide' problem, thereby pointing to the fact that domestic governments are not solely responsible for dealing with the matter. In 1999, the Czech government argued that the involvement of the international community "should not aim merely at monitoring the situation, but also at evaluating and preparing specific initiatives" (Government of the Czech Republic 1999b: 21). In 2001, Hungary's then Minister of Foreign Affairs, János Martonyi, argued that the Roma issue had a "European dimension".[15]

The second conclusion from my analysis of policy documents on minorities is that, although EU enlargement has been mentioned as an important factor of policy change, it has been a factor with very uneven effects. The EU has set preconditions as moral standards, but particular options for introducing minority rights policies in Central Europe are clearly *not* related to fundamental moral choices. From the timing and the choice of policy options in Central Europe it appears that policy change had less to do with moral intentions than with the domestic interests of the individual countries and with the domestic interests of individual EU member states. A clear example of policy change induced by the individual interests of a candidate member state is Hungary's introduction of cultural autonomy for its national minorities. Hungary had an extensive political debate on minority rights in the early 1990s; the sudden increase in interest for the topic at that time had nothing to do with demands from the EU, but much with the exemplary role Hungary has wanted to play in the Danube region and its concern for the Magyar minorities in the neighbouring countries. Hungary has repeatedly referred to its minority protection system, which is unique in Europe, for reasons of buttressing its bid for EU accession. Yet the five annual reports published by the European Commission between 1998 and 2002 do not consider cultural autonomy as a necessary condition. On other points the European Commission has repeatedly insisted on specific policy changes, but Hungary has never understood these encouragements for policy change as strict preconditions

[15] Speech delivered on the occasion of launching the books *A Roma's Life in Hungary – Report 2000* and *Caught in the Trap of Integration – Roma Problems and Prospects in Hungary*, Budapest, February 1, 2001.

for membership. In particular, all the annual reports about Hungary encourage the establishment of a regulation for the secured representation of minorities in parliament and the introduction of comprehensive anti-discrimination legislation. On both of these latter issues no progress has been made to date.

In the case of the Czech Republic, too, the connection between European censure and policy development is not always clear. Although the 1998 and 1999 annual reports by the European Commission do not mention the need to develop a new law on national and ethnic minorities, this is precisely what the Czech Republic did in the period between 1998 and 2001. Poland did not receive any strong censure on minority protection prior to 2000. In the 2000 report the predicament of the Roma is mentioned for the first time. As was mentioned above, the Polish policy programme for the Roma in Małopolska dates from February 2001 and can therefore clearly be seen as a response to the Commission's demands.

The conclusion here should be that there is not a very strong connection between European pressure and policy change on minorities in Central Europe *except* when it concerns issues that are important issues for the individual candidate state or when these are security priorities for individual EU member countries. The case of the Roma is an example of the latter. In short, the EU's general conditionality policy has been pushed in particular directions by concerns of individual member states. In the latter half of the 1990s, EU member states increasingly became countries of destination for Roma asylum seekers from Central Europe. Both in the Polish and Czech policy plans about the Roma there are direct indications that the candidate countries have realized very well that the demands of the EU are primarily connected to fear of further migration of Roma:

> The situation of Roma in Poland is a matter of interest to European institutions and the European Union countries, particularly those which are the destination for Polish Roma seeking to acquire the status of refugees (e.g. the United Kingdom and Finland). The Government of the Republic of Poland cooperates with specialized agencies of the Council of Europe and the European Union countries in solving Roma's problems. (Polish Ministry of the Interior and Administration 2001:4)

A Czech report by the government commissioner of human rights hints at what the real concerns of the international community are in stimulating new policy on Roma:

> It can be expected that the result of this social edification of the hitherto marginalized Romany community and the gradual formation of an emancipated Romany minority will lead to a perceptible fall in Romany migration to European Union countries. (Czech Government Commissioner 2000: 7)

IV. Conclusions

It was the aim of this article to begin to explore the possible linkage between normative pressures on the European level and domestic policy change in the field of ethnic relations in Central Europe. The material examined for this article suggests that to some extent there has been a correlation. Central European states have indeed adopted new policies on minority protection, and demands from the European Commission have been referred to as important factors of change. However, this paper also puts such a correlation into perspective and argues that there has been no real policy transfer from West to East. There are three main indications.

First, it is rather misleading to describe the spread of minority rights policies in Europe as a 'transfer' of Western policy models on minority protection to CEE. The reason is that there are simply no clear Western policy models. There is a lot of diversity with regard to minority policy among the current EU member states. EU requirements have often suggested that granting collective rights for ethnic groups in future member states is a desirable policy course, but has not demanded such a policy from its current members. This has made EU demands rather vague and open to interpretation.

Secondly, Central European states have not been concerned in the first place about minority protection because of European integration. The introduction of minority rights policies was much more connected to other short-term individual interests. The clearest example is Hungary. Hungary's system of minority protection has been important for regional strategic considerations, even though it has been portrayed by the Hungarian government as a crucial element in the country's 'return to Europe'.

Thirdly, there is no evidence to suggest that the EU has diffused *norms* of minority protection in CEE. Norms of minority protection remain contested among EU members as well as among candidate members. What has happened is that individual EU member states have pushed the EU conditionality agenda in particular directions, not depending on consensual norms, but on their own concerns and interests. For example, the shift from a focus on territorially concentrated ethnic minorities (at the time of the introduction of the Copenhagen criteria) to a focus on the predicament of the Roma over the course of a few years time seems to reflect increased concerns within the EU about the influx of asylum seekers and a decreasing concern about territorial conflicts in Central Europe.

This last conclusion brings us back to the debates mentioned at the outset of this article. These debates focused on the question whether Western political theory concerning minority

rights protection constitutes a legitimate basis for political practice in CEE. Although the normative context is interesting, many of the recent developments in the field of minority policy are clearly determined by interests more than by normative considerations. For this reason, it seems suitable to evaluate minority rights policies in CEE not solely from the perspective of norms and political theory. This article has revealed the usefulness of analysing minority rights policies from an approach that emphasizes the influence of pragmatic interests and security concerns. In other words, if our aim is to gain a better understanding of concrete policy options in CEE, it is important to analyse minority questions increasingly from the perspective of International Relations, taking into account the effects of transnational pressures, evolving international/regional regimes and the changing nature of the state.

References

Barry, B. (2001). *Culture and equality*, Cambridge: Polity Press.

Broz, A. (1927/1928). "Minority rights in the Czechoslovak State", *Foreign Affairs* 6(1/4): 158-160.

Bugajski, J. (1994). *Ethnic politics in Eastern Europe. A guide to nationality policies, organizations, and parties*, New York: M.E. Sharpe.

Burgess, A. (1999). "Critical reflections on the return of national minority rights regulation to East/West European affairs", in *Ethnicity and Democratisation in the New Europe*, Cordell, K (ed.) London and New York: Routledge.

Dimitras, P. and Papanikolatos, N. (2001). "Reflections on minority rights politics for East Central European countries", in *Can Liberal Pluralism Be Exported? Western political theory and ethnic relations in Eastern Europe*, Kymlicka, W., Opalski M. (eds.) Oxford: Oxford University Press.

Dolowitz, D.P. and Marsh, D. (2000). "Learning from abroad: the role of policy transfer in contemporary policy-making", *Governance: An International Journal of Policy and Administration* 13(1):5-24.

Doncsev, T. (1999). "Minorities: recent changes in the condition of national and ethnic minorities", Lecture at the conference of the Hungarian Academy of Sciences and the Office for National and Ethnic Minorities, April 8-9.

Doroszewska, U. (2001). "Rethinking the state, minorities and national security", in *Can liberal pluralism be exported? Western political theory and ethnic relations in Eastern Europe*, Kymlicka, W., Opalski, M. (eds.) Oxford: Oxford University Press.

Gitlin, T. (1996). *The Twilight of Common Dreams: why America is wracked by culture wars*, New York: Owlet Press.

Győri Szabó, R. (1998). *Kisebbségpolitikai rendszerváltás Magyarországon*, Budapest: Osiris Kiadó.

Havas, G. and Kemény, I. (1999). "The statistics of deprivation", in *Encounters. A Hungarian Quarterly Reader*, Zachár, Z. (ed.) Budapest: The Hungarian Quarterly Society, Balassi kiadó: 361-370.

Heizer, A. (1999). "State policies toward the Romani communities in Candidate Countries to the EU: Government and Romani participation in policy-making in Hungary", speech delivered at the European Commission, July 26.

Hornung-Rauh, E. and Fretyán, I. (2000). 'Summary of measures taken by the government affecting the Roma minority over the past two years". Budapest: Office for Ethnic and National Minorities. Hughes, J. and Sasse, G. (2003). "Monitoring the monitors: EU enlargement conditionality and minority protection in the CEECs", *Journal on Ethnopolitics and Minority Issues in Europe*, 2003(1): 1-38.

Joppke, C. (2003). "The retreat of multiculturalism in the liberal state", Russel Sage Foundation Working Paper no. 203.

Krizsán, A. (2000). "The Hungarian minority protection system: a flexible approach to the adjudication of ethnic claims", *Journal of Ethnic and Migration Studies* 26(2): 247-62.

Kymlicka, W. (2001). "Western political theory and ethnic relations in Eastern Europe", in *Can Liberal Pluralism Be Exported? Western political theory and ethnic relations in Eastern Europe*, Kymlicka, W., Opalski, M. (eds.) Oxford: Oxford University Press.

Kymlicka, W., Opalski, M. (eds.) (2001). *Can Liberal Pluralism Be Exported? Western political theory and ethnic relations in Eastern Europe*, Oxford: Oxford University Press.

Kołakowski, L. (1988). "Austromarksiści, kantyści w ruchu marksistowskim socjalizm Etyczny", in *Główne nurty marksizmu: Powstanie, rozwój, rozkład*, Kołakowski, L., London: Aneks.

Łodziński, S. (1999). *The Protection of National Minorities in Poland*, Warsaw: Helsinki Foundation for Human Rights.

PER (Project on Ethnic Relations) (2001). *Parliamentary Representation of Minorities in Hungary: legal and political issues*, Princeton: PER.

Phillips, A. (1999). *Which Equalities Matter*, Cambridge: Polity Press.

Schöpflin, G. (2000). *Nations, Identity, Power. The New Politics of Europe*. London: Hurst & Company.

Sulitka, A. (1999). "Vývoj a súčasný stav praktických riešení kompetencií vrcholných orgánov štátu po roku 1989", in *Romové v České republice*, Dluhošová, H., Gjuričová, J., Goral, L., (eds.) Prague: Socioklub.

Verheugen, G. (2001). “Slovakia on its path towards the European Union”, speech held at the Technical University of Košice, February 21.

Vermeersch, P. (2002). “Ethnic mobilization and the political conditionality of European Union accession: the case of the Roma in Slovakia”, *Journal of Ethnic and Migration Studies* 28 (1): 83-101.

Wolff, S. (2002). “Beyond ethnic politics in Central and Eastern Europe”, *Journal on Ethnopolitics and Minority Issues in Europe* 2002(4): 1-21.

List of primary sources and official documents

Council for Nationalities of the Government of the Czech Republic (1997), Report on the Situation of the Romani Community in the Czech Republic and Government Measures Assisting Its Integration in Society (Rada pro nárdodnosti vlády České republiky, *Zpráva o situaci romské komunity v České republice a opatření vlády napomáhající její integraci ve společnosti*).

Czech Government Commissioner (2000), A Report of the Government Commissioner for Human Rights on the Current Situation of Romany Communities, June 14, 2000.

Český statistický úřad (2001), *Sčítání lidu, domů a bytů*, http://www.czso.cz

European Commission (1997), For a Stronger and a Wider Union, Agenda 2000, DOC 97/6.

European Parliament (1997), European Union anti-discrimination policy: from equal opportunities between women and men to combating racism. Directorate-General for Research Working Paper, Public Liberties Services, LIBE 102 EN.

Government of the Czech and Slovak Federative Republic (1991), Resolution No. 619/1999 on the Principles of Government Policy of the Czech and Slovak Federative Republic towards the Romani minority. (*Zásady politiky vlády České a Slovenské Federativní Republiky k romské menšině, Usnesení vlády ČSFR č. 619/1991*).

Government of the Czech Republic (1999a), Report Submitted by the Czech Republic Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities.

Government of the Czech Republic (1999b), National Programmeme for the Preparation of the Czech Republic for Membership of the European Union.

Government of the Czech Republic (2000), Resolution No. 599/2000 on the Conception of Government Policy towards Members of the Roma Community, Facilitating their Integration in Society, Resolution No. 599/2000. (*Usnesení 599/2000 ke Koncepci politiky vlády vůči příslušníkům romské komunity, napomáhající jejich integraci do společnosti*).

Government of the Republic of Hungary (1997), Report No. J/3670 of the Government of the Republic of Hungary to the National Assembly on the Situation of the National and Ethnic Minorites Living in the Republic of Hungary. (*J/3670. számú Beszámoló a Magyar Köztársaságban élő nemzeti és etnikai kisebbségek helyzetéről*).

Hungarian Government (1999), Report of the Republic of Hungary. Implementation of the Council of Europe Framework Convention for the Protection of National Minorities.

Központi Statisztikai Hivatal (2002), *Népszámlálás 2001*, http://www.nepszamlalas2001.hu

Polish Government (2002a), Report to the Secretary General of the council of Europe on the Realisation by the Republic of Poland of the Provisions of the Framework Convention of the Council of Europe for the Protection of National Minorities.

Polish Government (2002b), Opinion of the Government towards the commission project on national and ethnic minorities in the Republic of Poland, May 13, 2002. (*Stanowisko Rządu do komisyjnego projektu o mniejszościach narodowych i etnicznych w Rzeczpospolitej Polskiej*, druk nr 223)

Polish ministry of the interior and administration (2001), Pilot Government Programme for the Roma Community in the Małopolska Province for the Years 2001-2003.