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Translation Policy in a Linguistically Diverse World

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Abstract

In Europe, policy approaches toward old minority languages (i.e., 'regional' minority languages) and new minority languages (i.e., 'immigrant' languages) are different. This is seen in language policy throughout much of the continent. And yet this distinction between speakers who belong to old minorities and those who belong to new minorities can be questioned, or at least the existence of distinct policy approaches for both groups when dealing with their languages. This paper will argue that if the ultimate goal of social policies – such as language and translations policies – is to bring about a more inclusive state, it may be helpful to think about speakers of old minorities and new minorities not as being essentially different in terms inclusion, but as having specific contextual needs which may or may not be the same. To do so, the paper will focus on the United Kingdom as an example of how things are and how they might be different. In particular, the paper will consider policies regarding translation, which must of necessity arise whenever the state makes choices about language that affect a multilingual population.

Keywords: minority languages, language policy, translation policy, United Kingdom, old minorities, new minorities

In Europe, as elsewhere in the world, matters of language can stir passions. Issues pertaining to language usage in the public sphere can become very contested politically, both in post-communist societies such as those in Eastern Europe (see Daftary and Grin, 2003) and also in long-established states such as those in Western Europe (e.g. Cardinal *et al.*, 2007). In a way

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this is to be expected, given that language can and often is closely associated with identity (see Gubbins & Holt, 2002; cf. May, 2003). As has been pointed out by several commentators (e.g., Holt & Packer, 2001: 101), states have no option but to make choices about language use. One difficulty stemming from that reality is that if one or several groups feel those choices place them at a disadvantage, such group(s) will find those choices to be exclusionary. To be clear, this issue is not one of subjective impressions only. It has to do with the equitable distribution of resources. For examples, individuals whose language is not favoured by the government may find themselves disadvantaged economically in specific ways, as Grin has argued (2005: 455-456). As Mowbray (2012: 134-135) has convincingly argued, the construction of the state and its language policies is neither neutral nor innocent, as it is a process with "winners and losers" in terms of power and access to resources.

In theory, a truly participatory, democratic state would not seek to systematically place individuals at a disadvantage due to their culture, identity, or language. And yet, as stated above, any democratic state must adopt a language policy of some sort. This is not a new reality. During the 18th and 19th centuries, states adopted homogenization policies, including homogenizing language policies, aimed at allowing the state to interact effectively with its vast number of citizens (Hobsbawm, 2000: 94). These pragmatic, efficiency-driven language policies began to be questioned as time passed, especially toward the end of the 20th century, as many national minorities pushed back in efforts to maintain their own identity, often represented through language (Kymlicka, 2001: 242). That is not to say that the idea that language policies must be adopted has been challenged, but rather that the goals of language policies have been questioned. While efficiency remains a high priority for policy makers and a very important consideration for some commentators (e.g., Weinstock, 2003), other aims have been suggested as equally worthwhile, if not more so. These include greater equality among speakers of the hegemonic language and minority languages. This increased equality can be achieved by giving minorities an added measure of participation in the political process, as keenly explored in Kymlicka (2001) and Kymlicka and Norman (2003), among others.

In this context, language policy has rightly been explored from a number of angles, including economics (e.g., Ginsburgh & Weber, 2011), law (e.g., Dunbar, 2001), and political philosophy (e.g., De Schutter, 2007). In most of these studies, the key role that translation[1] plays in the implementation of language policies is often ignored or mentioned only in passing. This is somewhat striking since issues of translation are intractably bound up with

language policy. It should be mentioned that the Ginsburgh and Weber study is a major exception to this general trend, at least outside of the field of translation studies. Expectedly, the link between translation and language policy is very evident to translation scholars (e.g., Diaz Fouces, 2002; Meylaerts, 2011).

This paper not only recognizes the vital role that translation plays in language policy and planning but also works on the assumption that choices about translation can become *translation policy*. This is so because in multilingual societies, choices about language sooner or later result in communication networks which imply what Diaz Fouces has described as 'una pràctica continuada de traducció' [a continuous practice of translation] (2002: 85). These continuous choices and practice amount to policy in its own right. Thus translation policy inhabits a space by the side of language policy. Translation policy is like language policy in that it is a type of cultural policy aimed at managing the flow of communications among the masses, establishing certain types of relationships between groups and their surroundings, attributing a particular symbolic value to specific kinds of cultural products, and so forth (*ibid.*: 86). This implies that translation policy works in conjunction with language policy in different settings and at different levels. Exploring those workings with regards to speakers of minority languages can provide valuable insights into broader approaches that policy makers take when dealing with diversity, especially linguistic diversity.

This papers aims to provide a few such insights. To do so, it will build on a theoretical understanding that the situation of speakers of minority languages can be understood through a common theory that applies to speakers of both 'national minority' languages and 'immigrant' languages. It will focus on the United Kingdom (UK) as an example of actual translation policies as approaches to minority languages. In so doing, it will show that in terms of policy, as is often the case, speakers whose languages are considered allochthonous are treated differently than speakers whose languages are considered autochthonous to the UK. This will be contrasted with a model for translation policies based on the different interests of individual groups.

1. A common theory for minority languages

1.1 Policies for old minority languages and new minority languages

This study draws on the understanding that concerns regarding diversity and cohesion arise when dealing with both national or regional minorities ('old minorities') and immigrant

minorities ('new minorities'[2]). In terms of language, this means that the languages of old minorities ('old minority languages'[3]) and of new minorities ('new minority languages'[4]) can be included in a single theoretical framework. This idea is not new (e.g., Grin, 1994). As Williams puts it, '[t]he clearest difference between RM [regional minority] and IM [immigrant minority] languages is their history, but the needs of the speakers to be recognized and treated with dignity is exactly the same' (2013: 362).

To be clear, this paper does not argue that these two groups of languages are indistinguishable. It is not blind to the reality that policy approaches toward old minority languages and new minority languages tend to be different. This is the case, for example, under international law (González Núñez 2013a). Old minority languages benefit from a specific convention in states that belong to the Council of Europe (CoE), namely, the European Charter for Regional or Minority Languages (ECRML). Additionally, speakers of these languages also benefit from a number of clauses that impact language policy in treaties such as the CoE's Framework Convention for the Protection of National Minorities (FCNM). New minority languages, on the other hand, are explicitly excluded from the ECRML. While some of the protections found in the FCNM can extend to new minorities,[5] there are no international treaties dedicated *exclusively* to languages spoken by new minority groups. In general, linguistic protections afforded to migrants are the same as those afforded to anyone under any human rights instrument.

A difference in approach toward old minority languages and new minority languages is also observed in the UK as a whole and in its constituent regions, i.e., language policy differs depending on whether one is dealing with old minority languages or with new minority languages. Specifically, protection of old minority languages in the UK is handled by the devolved governments (Northern Ireland, Scotland, and Wales) plus a local government (Cornwall). The extent to which each government passes laws or adopts policies for promotion of their own old minority languages depends on several factors, including local politics (see e.g., González Núñez 2013b). On the other hand, matters relating to new minority languages generally lack either national or regional policies, at least if one speaks about policies designed specifically to deal with those languages. The extent to which new minority languages are used in official settings is the result of local efforts to comply with non-discrimination and human rights legislation that is not aimed at the protection of specific languages (González Núñez 2015: 72-73). In this sense, the UK follows the general trend found in international law where old minorities benefit from some sort of regime with specific

obligations toward minorities, while new minorities benefit from general international rules that are applicable to migrant workers and immigrant communities (see Letschert 2007, 46-47).

Such differential treatment for languages has implications for translation policy. This was observed in translation policy as analysed by this paper's author from 2011 to 2014. During this period, data was gathered regarding policy actions pertaining to translation that affect the UK generally and its regions (England, Northern Ireland, Scotland, and Wales) in particular. To this end, laws that applied to the whole of the UK or to specific regions were taken into account. Further, specific domains within the four regions were targeted, namely the judiciaries, the healthcare systems, and local governments. Overall, the following types of documents were gathered and analysed: legal enactments out of Westminster and the devolved legislatures (44); policy documents by devolved government departments (16); policy documents by local government councils (116), by health care trusts (60), and by judiciaries (4). In Northern Ireland, Scotland, and Wales, the whole population (100%) of local government councils and healthcare trusts was targeted for analysis, while in England, representative random sampling had to be employed due to the sheer amount of councils and trusts (the samples sizes were 30% of councils and 34% of acute trusts). The information found on these documents was complimented by targeted Freedom of Information Act (FOI) requests. Overall, 69 FOI responses were obtained.

Regarding the way translation is managed, the legal obligations by which such management takes place tend to be different for the two types of minority languages. A more or less single set of rules was observed for new minority languages and different sets of rules were observed for each old minority language. For example, the right to translation for limited-English-proficiency individuals is in essence the same throughout the UK. On the other hand, the extent to which local governments have to communicate through the medium of old minority languages, with all the translation that implies in a bilingual society, depends on the language and the region—an annual report by a local council in Wales will be published in both English and Welsh (i.e., translation will take place), but an Irish speaker wishing to apply for a liquor license in Northern Ireland must do so in English (i.e., no translation will take place).

Regarding how translation is practiced, translation involving old minority languages can take place in different ways for different languages in different places—thus bilingual staff in a local council in Scotland may handle requests to translate incoming correspondence in

Gaelic, while the local council in Cornwall will contract an outside translator for the translation of a report's foreword into Cornish. When it comes to translation involving new minority languages, translation practices were reported as considerably more uniform. For example, hospitals in all four regions reported that they can generally communicate with their limited-English-proficiency patients through telephonic or face-to-face interpreting. While the exact practice varies from hospital to hospital, translation is generally practiced in a reactive matter, and the type of tools available (e.g., telephone interpreters) for such reactive translation are not limited to specific regions.

Overall, a difference was observed in translation policy between old and new minority languages in the UK. The policy toward new minority languages is fairly similar throughout the state. This is so because translation policies are derived from the interaction of rather uniform human rights and non-discrimination legislation, such as the Human Rights Act 1998 and the Equality Act 2010. On the other hand, old minority languages are treated differently to new minority languages, as translation policy for old minority languages is mostly not derived from general human rights and non-discrimination legislation, but rather from decisions made mainly by the devolved governments regarding the use of specific minority languages. This results in a situation where, in terms of translation, old minority languages are also different one from another. Thus, translation policies for Welsh are not similar to those for Cornish. In essence, a major divide exists between translation for the two types of languages, where there is a bundling together of all new minority languages on the one hand and a differentiation between old minority languages on the other.

1.2 Old and new minority languages as part of 'a language continuum'

Despite this major policy divide, what this study argues is that translation policy for both types of languages can be analysed with a single theoretical understanding. This theoretical understanding draws heavily on Medda-Windischer's 2009 study that proposes a model for reconciling diversity and cohesion applicable to both old and new minorities. This study does not specifically deal with the broader question of how to reconcile diversity and cohesion in ethnically diverse societies, but rather focuses on the claim that old minorities and new minorities can be considered as one for purposes of analysis. Some elements in Medda-Windischer's approach are worth highlighting.

Medda-Windischer argues (2009: 62) that there is a common trait among old and new minorities, namely, the manifestation, explicit or implicit, of the desire to maintain a collective identity that is somehow different to that of the majority. This is a rather safe

assumption regarding groups that have an identity that differs from that of the majority. While there may be some minority groups that do not wish to remain collectively distinctive and instead actively seek assimilation, the most common situation is quite the contrary: groups in a minority position tend to value their identities and wish to maintain it to one degree or another. Because of this common trait, a common approach to both minorities groups can be theorized. Medda-Windischer does not claim that every minority group should be treated the same, because not every minority group is equally situated (*ibid.*: 64-65). However, their common desire for maintaining a collective yet differentiated identity would justify a common yet differentiated approach to the protection of minorities (*ibid.*: 94-95). Because of this common trait, she argues there are also common claims, and she identifies four broad claims shared by old and new minorities alike: 'right to existence', 'equal treatment and non-discrimination', 'right to identity and diversity', and 'effective participation in public life whilst maintaining one's identity' (*ibid.*: 95-98).

This common understanding of minorities does not mean that no distinctions should ever be made between minority groups, but rather that measures for the protection of minorities should be handled on a case-by-case basis. Her proposal runs along the same lines as Eide's, who proposes acknowledging that there are different types of minorities with varying needs and then moving on to 'focus on which rights should be held by which type of minority under particular circumstances' (2004: 379).

Of course, minority groups are not homogenous, and different individuals within the groups may have different needs. However, in terms of groups, generalizations can be made. These generalizations, in order to be helpful, should be based on patterns found in applicable data (such as a census), and due diligence should be made to safeguard individual rights through some sort of rights-based, lowest common denominator that applies to every individual. To be sure, this study does not assume that all minority individuals belonging to specific groups are exactly the same, but it does work with the assumption that if the concept of minority is to be valuable from a policy standpoint, some generalizations can and must be made for each group.

If one applies this understanding to the use of minority languages, one can also conclude that the measures of support afforded to speakers of minority languages in the use of those languages should not be based on a broad categorization of languages as 'regional or national minority' or 'immigrant' but rather on a case-by-case analysis for each group. This paper asserts that it is helpful to think of groups of speakers of old and new minorities as

‘elements within a language continuum which is dominated by hegemonic languages’ (Williams 2013, 362).

The linking of this concept to matters of translation is rather straightforward. The starting point is that some of these common claims are closely linked to issues of language. Inasmuch as language issues are handled through language policy, translation plays a role. This is so because in any multilingual society, the adoption of a language policy implies the adoption of translation policy (Meylaerts 2011: 744). A further observation is warranted: it is not the existence of a language policy in and of itself that results in translation policy but rather the interaction of that language policy with other policies, including policies that are related to notions of integration, recognition, and justice.

This last observation is based on data gathered from the UK, where the dominant language has been English for some time. That dominant position is the result of language policies implemented over centuries across the British Isles. Historically, these language policies worked in tandem with English policies of colonization and assimilation, which meant a general policy of non-translation—the state only interacted in English. As the British state gradually adopted policies that were more tolerant of diversity, the recognition arose that colonized/assimilated populations in Cornwall, Wales, Northern Ireland, and Scotland had suffered historical injustices in the repression of their languages. Thus, language policies in certain regions adopted somewhat compensatory stances and shifted to favouring different degrees of bilingualism between English and other autochthonous languages. This has resulted in different translation policies springing up to support those degrees of bilingualism. On the other hand, human rights and non-discrimination policies have highlighted the importance of equality of access and even increased participation for immigrant groups, and this has resulted in translation policies that affect new minority languages.

2. An inclusive model for translation policy?

In the introduction to this paper, it was observed that participatory democracies would seek to ensure equality by eliminating systematic exclusion. This is, of course, an ideal to strive for more so than a reality. One of the challenges in reaching such an ideal is that in most modern states, speakers of different languages are present, and the choice of a preferred language by the state places speakers of minority languages (i.e., the non-hegemonic languages) at a disadvantage. Thus, the state is faced with the difficulty of finding ways to process a

linguistically diverse reality so that everyone is included in public life. One key to achieving this is to be able to grant such speakers access to public institutions and the benefits they are intended to provide.

Granting access to services across a language divide is one way of helping people interact with public institutions, and consequently, of bringing closer together elements of society that would otherwise not interact, or at least, not very successfully. The interaction with these public institutions is important in terms of integration because such interaction provides access to opportunities for increased socio-economic well-being. Without language access, these individuals are excluded not only from the institutions but also from many of the benefits provided by such institutions, benefits that others in society can enjoy due to their language competences. This is more than an intellectual exercise: speakers of Polish and Chinese in Northern Ireland report that some in their communities do not seek out healthcare and other public services because they are not able to communicate properly in English (McDermott 2011, 127). When the inability to communicate in the dominant language keeps people from accessing services that others readily access, exclusion takes place.

For people who lack the language skills to use the official language(s), participation can happen through translation. From a normative standpoint, it becomes 'important to ensure that minority communities are provided with the necessary interpretation or translation services' in their interactions with the state (Advisory Committee 2012, 29). In the UK, for example, this means that a wide array of institutions, especially those offering essential services, should be able to accommodate individuals who lack English proficiency. Despite the Department for Communities and Local Government's instruction to 'think twice' before commissioning a new translation (2007: 10), there is a 'recognition at government level that a degree of commitment to language service provision is needed in the processes of cohesion' or integration (Tipton, 2012: 199).

In some policy documents adopted by local councils a link between translation and inclusion is established. All local council policy documents consulted for this study that deal with translation into new minority languages reflect a concern for making services accessible to members of the community who do not speak sufficient English. There are policy documents where the connection between translation and inclusion is quite explicit. For example, in England, Camden Council's Accessible Communications Guidance reads: 'Local people and communities in Camden have the right to accurate and timely information that is easy for them to understand. This will enable them to be included in, and to benefit on an

equal basis from, all the opportunities and services offered in their local communities' (2010: 2). For those lacking proficiency in English, this implies translation. In Wales, Caerphilly County Borough Council's Strategies Equalities Plan establishes that in order to 'continue to be an inclusive organisation that does not tolerate discrimination' (2012: 3), several strategies are in order, including 'written, face-to-face or over-the-phone translations in Welsh and other spoken languages' (ibid.: 12). In Northern Ireland, Strabane District Council's Linguistic Diversity Policy, Procedures and Code of Courtesy indicates that one of the principles informing the council's translation practices is 'inclusiveness', which is to be achieved through a 'commitment to the principles of equality and fostering good relations' as manifested in 'events, facilities and programmes [that] are accessible to all' (2011: 3-4). Granting such access may at times require translation. In Scotland, Fife Council's Access to Information Policy specifies that one of the Council's aims is to '[p]romote equality and social inclusion by removing barriers to communication and understanding', including through translation (2010: 3).

This understanding of translation as a tool for greater inclusion assumes that translation acts as a remedial measure for the short term, not a strategy for communicating in the long term (see Pym, 2012: 8). While specific individuals will move from interacting via translation to interacting in the dominant language, there will always be some individuals who will lack proficiency in the language of the state or who may be proficient in some situations but feel the need to interact through translation in other situations, especially high-risk ones like a legal deposition or a consultation with an oncologist. Thus, if society is not 100% proficient in the state's language for every situation, then translation services will remain a strategy to foster inclusion.

The discussion has so far focused on translation as a tool for the inclusion of individuals who lack proficiency in the language of the state. This concern applies mostly, but not exclusively, to individuals belonging to new minorities. In the UK, as stated earlier, such translation is rooted in instruments like the Human Rights Act and the Equality Act. There is a very low threshold to be met in terms of translating to satisfy these Acts—as long as communication is achieved, the law is satisfied. Reactive, ad hoc, need-based translation suffices.

But translation may play another role in terms of creating a more inclusive state, a role that is not really about enabling basic communication. This is a role that mostly affects speakers of minority languages who also speak the language favoured by the state. In the UK

this refers mostly to speakers of old minority languages but also to speakers of new minority languages who are proficient in English. Neither of these groups need to rely on translation to communicate. Even so, policies for bilingual speakers of old minority languages and bilingual speakers of new minority languages are not the same. While the latter are expected to communicate in English in their public dealings, some efforts are made to allow the former to communicate with public institutions (to some degree) in their own languages. The degree varies from language to language, but with every old minority language, translation is involved. In bilingual areas such as those found in the UK, where old minority languages co-exist in official spaces with English, the provision of services in more than one language cannot be carried out without some level of translation, whether by outside professionals, in-house employees, or others. The official use of some autochthonous languages in public institutions is meant to signal recognition of the value of said languages, and by extension, their speakers. This is another way of fostering inclusion in society. It allows those who wish to participate to do so in the language of their choice.

This link between translation and linguistic recognition through the provision of services is reflected in some of the policy documents dealing with old minority languages. In the case of Welsh, Denbighshire County Council's *Welsh Language Scheme* states: 'Our aim is to provide an inclusive and relevant Welsh language service that meets the needs of our residents whether they are fluent Welsh speakers or who are learning the language' (2009: n.p.). Here, services in Welsh are a means to bring about greater inclusion (and, again, to an extent, such services require translation efforts). Why exactly services in a minority language for a bilingual population bring about inclusion is not addressed. The link is more clearly explained for Gaelic, in Perth and Kinross Council's *Gaelic Language Plan*, which reads: 'The number of Gaelic speakers resident in our area form a small but important part of the social fabric of the communities which we serve. Our Gaelic Language Plan recognises their place in our communities and will seek to take Gaelic forward in a way that is both pro-active and proportionate' (2012: 2). In other words, the provision of services in a minority language is a way to recognize that speakers of that minority language are an important part of society. Consequently, efforts to provide services in languages like Gaelic, Irish, or Welsh (with all the translation that implies) signal inclusion of speakers of those languages into a more participatory state.

This suggests that translation can play a role in including linguistic minorities whether they speak the language of the state or not. To understand this, non-discrimination and

linguistic recognition are best seen not as two different things but rather as the ends of a spectrum. On one end there are basic non-discrimination measures as they pertain to language and on the other end there is full-scale recognition through minority language promotion. This spectrum exists against the backdrop of a dominant language. Where there is a dominant language, translation appears at both ends of the spectrum: to help achieve basic linguistic non-discrimination by providing access to services, and to help achieve full-fledged linguistic promotion by creating truly bilingual services. At one end of the spectrum, where translation is intended to create equality of access, translation will be found to be occasional and reactive. However, as translation increases and it becomes less occasional and more proactive, it eventually moves into the opposite end, namely language promotion. When exactly translation moves from one end of the spectrum to the other is hard to tell. There is no precise cut-off point where one ceases to exist and only the other is present. Even the most basic non-discrimination translation measures have a kernel of linguistic recognition because they allow, in a narrow context, the other language to be used where it would otherwise not be. Likewise, translations purely intended to promote a language have some element of non-discrimination because they signal to bilingual speakers of that minority language that their choice of language is as valid as the choice of the majority.

This view of a spectrum for minority languages against a backdrop of a dominant language, where on one end there is minimalist non-discrimination and on the other there is full linguistic recognition, is derived from the translation policies observed in the UK. The problem is that the UK offers nothing to put in the middle of the spectrum. Translation policies in said state are aimed at either side of the spectrum, based on whether the language in question is an old or new minority language. Thus, for the UK, this model can only theorize about a middle ground.

What would such a middle ground look like then? If we begin at the non-discrimination end and start moving to the other, translation is viewed not so much as simply a way to grant access but also a way to allow for the full participation of speakers. Further movement in that direction would lead to translation being offered in more or less equal measures to allow equal, full participation and to recognize the value of the group of speakers in that particular place. Further movements would finally lead to translation measures aimed mostly at recognition of a linguistic minority. This middle zone would most likely apply to a group of minority language speakers who are non-transient, highly concentrated in that particular area, who mostly speak the dominant language to one degree or another but also speak another

language with which they identify strongly, and who have some political clout. This would more than likely be a group that has been established in the state for a very long time but continues to receive newcomers through immigration. No such group exists in the UK, but the spectrum allows for such middle-ground translation policies.

Be that as it may, the overall picture that emerges for translation policy in the UK is messy, but some general contours become apparent. As stated above, two major approaches can be seen: a one-size-fits all approach for speakers of new minority languages, and a regional, custom-made approach for each of the UK's old minority languages. In a way, the treatment of new minority languages represents the minimum non-discrimination/human-rights standard that flows from legislation such as the Human Rights Act and the Equality Act as well as regional enactments to the same effect. The different treatments of old minority languages vary from practically non-existent translation to robust translation efforts in support of linguistic promotion. The distance between the minimum non-discrimination standards and robust language promotion can easily lead one to forget that linguistic non-discrimination for those who do not speak English has a kernel of language promotion, while robust minority language promotion includes an element of non-discrimination even for bilingual speakers. Seen in this light, the distinction between translation policies involving old minority languages and translation policies involving new minority languages becomes harder to justify.

With this in mind, and approaching the issue normatively, a more just system for dealing with translation can be proposed. Such a system would not be based so much upon broad old-versus-new categorizations but rather on the best interests of speakers and of society at large in the specific settings for which the translation policies are developed. This implies a bit of a balancing act. And of course, there would always be a need for a lowest common denominator based on human rights, including the right to non-discrimination. This lowest common denominator might as well be established at the national level, and institutions would benefit from a general policy direction allowing them to adopt tailor-made translation policies for specific languages without considering whether the language is spoken by autochthonous or allochthonous minorities. Criteria to consider in developing policies around specific languages could include the number of speakers, concentration of speakers, feasibility of translating, the need to correct current exclusion, etc.

Adopting such criteria would signify important changes to the way translation is handled by institutions such as local governments. For example, within the area of Scotland's

North Lanarkshire Council live speakers of different languages, including Gaelic and Polish. According to the latest census, of individuals aged three and over, 483 speak Gaelic at home and 2,715 speak Polish at home (Scotland's Census 2015). There is, then, this fact: there are more Polish speakers than Gaelic speakers in this area. There is also this presumption: Gaelic speakers are more likely to be proficient in English than Polish speakers. Consider then that the Council has a Gaelic Language Plan which aims 'to support the revitalisation of the language' (North Lanarkshire Council 2012, 4). The Council has no specific plan for Polish, but it has stated its commitment 'to equality of access to all our services for all residents' (Whitefield 2008, 131). The conclusion is that the current approach to the two languages is based upon different criteria.

Determining what the best interest of each group of speakers is and then tailoring a plan to meet those interests is no small task. It would require that the authorities closest to the population invest in assessing the language needs of all linguistic minorities in their jurisdictions. It would also mean some difficult political battles would have to be fought, especially in times of scarce resources. If achieved, the result would be translation policies that would vary from one place to another, always above a minimum threshold. The extent to which such policies would focus more on non-discrimination or on language promotion would depend on specific contextual factors. Some languages would have to be bundled together, but others would receive their own custom-made translation approach. While the thought of such an undertaking may give some planners a headache, the result would be a more just system where translation is provided in a tailor-made fashion according to the specific needs of each linguistic community. Ultimately, it is a question of how just a society one wishes to live in and whether investing time, money, and effort into a more linguistically just society is considered a worthwhile pursuit.

Conclusion

Seeing languages through a common-yet-differentiated lens allows for the analysis of the role of translation policies for speakers of minority languages, whether new or old. What this paper ultimately argues is that depending on the particular group's circumstances, translation can be a tool for greater inclusion and thus more justice either by 1) providing access to the state's institutions that would otherwise not be provided, 2) allowing for greater participation in the state's institutions in the case of those who lack the language skills to do it in the majority's language or 3) facilitating the use of a specific language in the public sphere in a

way that signals that the choice to speak in that language is a valid lifestyle choice. To what extent each of these uses of translation is desirable will depend on a number of contextual factors that need to be taken into account by the authorities closest to the ground. Thus, having accurate knowledge not only of the number of speakers of different languages, but also of their proficiency in the majority's language and of their specific needs becomes important in making wise policy decisions.[6]

Overall there seems to be a lack of hard data regarding some of these issues. Policymakers should be asking themselves questions such as these: How many speakers of language a, b, c, d, and e do we serve? In what concentration are they found and where? How many of them can access our services through the majority language? How many of them need to access our services in another language? Which languages? What specific services can be provided in what languages and for whom? What would be the benefits of providing these services in language a, b, c, d, and e? Are any of these groups particularly vulnerable? And so forth. The answers will vary depending on the location, the service provided, etc.

Why should public institutions be bothered with this type of analysis? They might be if they aim to bring about a more just society. With such an objective in mind, a one-size-fits all approach to multilingualism probably will not seem like the best option. Each group of linguistic minorities is positioned differently, which means that varying levels of access, participation, and even recognition have to be negotiated in an effort to achieve greater justice. As part of this on-going negotiation, translation policies will be adopted, and specific choices about translation will be made. In the end, these choices are more likely to be better choices, if they seek justice and are informed by reliable, context-specific data.

Notes

1. In this paper 'translation' is to be understood as the transmission of a message from one language to another, in both written and oral form. Professionals tend to refer to the written form as 'translation' and the oral form as 'interpretation', but such a distinction will generally not be made in this paper.

2. In this paper, the term 'old minority' will be applied specifically to the Cornish, Irish, Welsh, and Scots in the UK. The term 'new minority', in turn, will refer to minority groups that have arisen in the UK through immigration, such as the Chinese, Poles, and Russians.

3. For a listing of many terms that can be used to describe this type of languages, see Extra & Gorter 2008:10; see also Nic Craith 2007: 161.

4. For a listing of many terms that can be used to describe this type of languages, see Extra & Gorter 2008:10. The author of this paper borrows the term "new minority language" from Edwards 2008.

5. The application of provisions in the FCNM to new minorities is complex. This comes in part from the observation that the Convention itself does not define the term 'minority', which gives much margin to States in deciding which groups qualify for protection. On this point, Eide (2008: 125) indicates: 'Most states […] restrict the term to "traditional" groups, which means that they must have existed in the country for a considerable length of time. Many of them do not require, however, that the individual persons belonging to those groups need to be citizens'. Some notable exceptions to this trend include the UK, which rejects the concept of 'national minority' and applies the convention to 'racial groups' (Dunbar 2008: 165-166), and the Czech Republic, which has officially granted national minority status to the Vietnamese (Government of the Czech Republic 2014).

6. This paper does not advocate that governments should stop investing in the acquisition of the majority language. There is a wide consensus that language acquisition is an important tool for inclusion (Kluzer *et al.*, 2011: 22), and so governments would do well to spend on it. It is at times the case, however, that language acquisition is presented as being locked in a zero-sum game with translation in public services (see Tipton, 2012), especially when translation is provided for speakers of new minority languages.

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Russian Political Regime Change and Strategies of Diversity Management: From a Multinational Federation towards a Nation-State

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Abstract

This paper explores the impact of the political regime change in post-Soviet Russia on the country's strategy of diversity management. The paper will start with an overview of possible government responses to diversity. In this conceptual framework, the paper will follow the evolution of the place envisaged for diversity in the country's political identity and political institutions in the post-Soviet period. The study will propose a periodization based on contrasting responses of the state to the diversity challenge in the 1990s, 2000s and 2010s. The political regime change correlated with the shift in the political institutional model from a multinational federation towards a nation-state. The new vision of political identity was reflected in the strategies of diversity management.

Keywords: regime change, diversity management, ethnic federalism, nation building, state-building, Russian Federation

Introduction

One prediction of modernization theory is that economic development fosters democratization (Lipset 1959). Scholars in comparative politics also go beyond economic factors and emphasize the role of social and cultural factors in understanding democratization. The

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proliferation of ‘civic’ political culture was identified as the first among political factors (Almond & Verba 1965, Linz & Stepan 1996). Among other factors, modernizationists indicated national unity and effective state as necessary preconditions for democracy (Rustow 1970).

If in the West a strong state and a subsequently imposed sense of national identity typically preceded democratization, then in Russia economic reforms coincided with nation and state-building at the time of transition (see Gel’man 2015: 44-50). Nationalist mobilization in Russia’s republics complicated the construction of a new political identity and Soviet institutional legacies largely influenced the formation of new state institutions. Republics represented national liberation as the main road to democratization, while many policymakers in the Centre viewed the existence of ethnic regions as an obstacle to the democratic development that reinforced ethnic cleavages and became associated with regional authoritarianism, ethnic conflict and the threat of the state’s disintegration (see Drobizheva 2013: 88-89, 112-113). A weak state and an identity crisis contributed to the failure of democratization.

The simultaneity of these processes and the fact that democratic transition was followed by democratic breakdown makes the post-Soviet period interesting for study because it allows for lifting the level of the analysis and exploring the reversed impact of regime change on accompanying processes, inter alia, on the strategies of diversity management. Many studies have assessed diversity management devices in the Russian constitutional design and the evolution in the country’s nationalities policy. In his model of the ethno-political pendulum, Emil Pain contrasted the rise in minority nationalism in the early 1990s with the responsive majority nationalism since the mid-1990s (see Pain 2013). One can extend his pendulum metaphor back to the Soviet history and observe how the waves of liberalization and democratization after the state collapses in 1917 and 1991 were conjoined with minority-friendly policies, but were followed by periods of totalitarian and authoritarian rule and tightening control over the minority nationalities.

A negative correlation was found between building a strong state and building democracy (see Bunce 2013: 264-266). Indeed, the democratization and decentralization of the 1990s were followed by authoritarian tendencies and the recentralization of the 2000s, and the establishment of an authoritarian regime and its unificationist urge in the 2010s. However, a study is still missing that would assess how the regime simultaneously pursued both tasks of nation and state-building in relation to diversity management. As there is no generally

accepted causal theory of democratization, only probabilistic arguments can be made. Was there any correlation between the regime change and diversity management during the post-Soviet period?

The purpose of this study is to explore the impact of the political regime change on diversity management both in institutional and ideological terms. The study utilizes the historical institutionalist method. If the regime change amounts to a significant rearrangement in the set of political actors and institutions, then the analysis in this study is restricted to finding out how the replacement of political institutions influenced ideological justifications and institutional solutions for diversity management. The study is based on the existing research. The paper overviews only the key political outcomes and does not go into the debates about the possibilities around some controversial issues. Another unavoidable restriction of overviewing is that the paper has to present only very briefly some separable and well-researched issues, such as national-cultural autonomy or assimilation through education and language policies.

There is a considerable conceptual mismatch between international and Russian scholarly discourses about diversity. The analysis benefits from the conceptualization of the approaches to diversity management used in Russia in a comparative perspective. The possible responses of the state to diversity in nation and state-building will be briefly observed in the first part of the paper. To begin with, the choice of the envisaged political institutional model itself was at stake in constitutional identity building in Russia. The model then framed institutional choices to develop new political structures. Comparativists distinguish between certain strategies of diversity management that exist across countries. In particular, the taxonomy of such strategies of state-building in divided societies developed by John McGarry and Brendan O'Leary can serve as a framework for empirical research also in the Russian case (McGarry & O'Leary 1993, McGarry et al. 2008).

This analytical tool enables a diachronic study by mapping changes in applied strategies and contrasting their configuration into stages. This paper proposes to distinguish the periods of the 1990s, 2000s and 2010s as three stages in the development of the post-Soviet state nationalities policy and is structured accordingly. The paper will, in each of its three following parts on the stages, explore what the envisaged political institutional model was and how it was intended to be achieved in terms of diversity management. The paper will start with exploring Soviet legacies and novelties in Russia’s constitutional design established under the transitional period of the 1990s to better understand the ethnic specifics of the

Russian model of federalism. After that, the paper will study the erosion of federalism under the authoritarian tendencies of the 2000s and the impact of recentralization on diversity management. Finally, the paper will study the current political regime and its nation-building agenda.

The analysis demonstrates that the political regime change correlated with the envisaged transformation in the country's political identity from a constitutionally enshrined multinational federation towards a nation-state. Accordingly, the new vision of political identity demanded the change in approach from accommodation to integration. More recently, the assimilationist approach comes to the fore.

1. State responses to diversity in its nation and state-building

In order to assess the approaches chosen in Russia, it makes sense to place them in context and outline first what responses a state can choose in dealing with diversity. The responses range between the 'software' of ideologies and the 'hardware' of institutions pursued, respectively, under nation and state-building. The locus for both is the choice of political institutional model of the polity: a nation-state, a multinational state or, for example, even an empire. The building of political identity often takes the form of nation building, which is a process of developing a national identity for the nation-state. National identity is then such a pattern of orientations within a set of social identities where the allegiance to the state enhances support for its legitimacy. Alternatively, a common civic identity is conjoined with the recognition of several nations within a multinational state (Kersting 2011: 1645-1646).

The state-building is then directed at the establishment of political structure and policies that would assert the selected political identity. Historically, the emergence of the nation-state, often after national liberation, became associated with democratization. In this context, nation building was often presented as the universal remedy to democratic transition. Yet, nation building is complementary to democratization only if there is congruence between the *polis* and the *demos* (see Linz & Stepan 1996: 23-24). Otherwise, both democracies and non-democracies might pursue nation-building policies. Furthermore, nation building might be easier to achieve under authoritarian regimes because the latter is less scrupulous in the choice of the means and can employ bold measures to underplay alternative identities. In pursuing nation building, the state strives at achieving the congruence of political and cultural units, which often provokes conflict.

Thus, the state design can address the challenge of diversity and prevent or resolve conflicts. Democracies often rely on civic nation building, but mobilized groups and institutional legacies may hamper its effectiveness. Moreover, the pursuit of nation building in multinational settings would greatly diminish the chances of democratic consolidation. Instead, multinational democracies proved also to be a viable alternative, although they are more difficult to establish (see Linz & Stepan 1996: 24-28). In terms of state-building, the nation-state often strives to assert an overarching national identity by choosing the strategy directed at eliminating differences; a multinational state is typically thought to ensure social cohesion in a diverse society by maintaining differences (McGarry et al. 2008). Usually, the strategies of a nation-state include assimilation and/or integration, while a multinational state is associated with accommodation, but this distinction is not exact.

McGarry, O'Leary & Simeon note that the integrationist strategy aims at the diminution of ethnic differences in favor of an overarching identity, but refrains from using coercive means. They give the illegalization of ethnic parties as an overt marker of a coercive assimilationist state. In the view of its proponents, institutional solutions do not have to reflect ethnic differences but should transform identities in order to create a shared 'civic culture'. The use of the integrationist strategy differs from the assimilationist in that it imposes unification only in the public sphere and does not demand abandonment of one's ethnic identity in private. Republican integrationists stay closer to assimilationists, because they reject federalism and have a longer list of issues to be homogenized in the name of the common good. In the long run, integration might result in assimilation of weak and dispersed groups as a byproduct (McGarry et al. 2008: 42-48). The problem with the integrationist and assimilationist strategies is that in ethnically divided societies they in themselves might become the source of ethnic conflict (see Kymlicka 2007).

An accommodationist strategy for the prevention or resolution of ethnic conflicts is often used as a democratic alternative to integration. Integration might be successful in the case of migrants or territorially dispersed minorities, but the accommodation of territorially concentrated groups might become necessary. A failure to accommodate strong groups might result in the partition or exclusion of those who cannot be assimilated (McGarry et al. 2008: 87-88). Overlapping varieties of the accommodationist strategy include centripetalism, consociationalism, multiculturalism and territorial pluralism (McGarry et al. 2008: 51-67).

According to Arend Lijphart and his consociationalist approach, power sharing is one alternative of accommodation in which all major segments of society should enjoy

proportional representation or at least a share of power, if certain conditions are met. According to him, in order for power sharing to last, communities should enjoy segmental autonomy and their elites should realize the necessity of cooperation (Lijphart 2008: 33). The power-sharing approach was most famously criticized for entrenching ethnic differences by Donald Horowitz (Horowitz 1985). Both Lijphart and Horowitz shared the view that ethnic mobilization is a lasting and recurrent phenomenon. But Horowitz argued that, instead of deepening the ethnic divide through power sharing, the mechanisms that enhance centripetal tendencies should be promoted.

Multiculturalism and territorial pluralism develop, respectively, cultural and territorial versions of segmental autonomy (McGarry et al. 2008: 63-67). These strategies typically provide stronger guarantees for minority participation. Territorial pluralism implies territorial self-governance solutions, which, most notably, can take the form of federalism. Federalism was famously defined by Ronald Watts as a normative concept according to which 'multi-tiered government' should combine 'elements of shared-rule and regional self-rule' (Watts 1996: 6–7). In other words, in addition to regional self-rule, federal systems usually contain elements of shared rule between regional and central government.

Federation often has democratic origins and is not automatically used as a device directed at diversity management. Yet, democracy is not always a prerequisite for federalism and the elites in countries with authoritarian regimes can also choose it as a device of diversity management that ensures political stabilization (McGarry & O'Leary 2005). When federalism is used for this purpose, it can pursue any strategy. Valerie Bunce points out that ethnic federalism 'can function simultaneously as a supporter of both democracy and authoritarianism and both as a state-wrecker and a state-builder' (Bunce 2013: 267-268).

Scholars distinguish between integrated and pluralist federations that aim, accordingly, at integration or accommodation of minorities (McGarry & O'Leary 2015: 22). They have singled out a number of criteria to distinguish between the two. For example, in an integrated federation, the 'Staatsvolk' or 'state-founding nation' numerically dominates in all regions, and in a pluralist federation, whether identified as a multiethnic or multinational federation, the major nationalities control their 'homelands'. An indicator of the situation that predetermines regional regime variety is whether a minority community is in a numerical majority or minority in its homeland. Will Kymlicka noted that 'federalism can only serve as a mechanism for self-government if the national minority forms a majority in one of the federal sub-units' (Kymlicka 1995: 29).

Therefore, federalism *per se* does not guarantee participation of territorially concentrated minorities, which often depends on demography. However, demographic makeup often is not the sole determinant of the strategy, in which case some other mechanisms are created to ensure minority political participation. In addition to the creation of self-ruling nationally or ethnically defined regions, a pluralist federation can accommodate ethnic diversity also as part of shared-rule arrangements between regional and central government both at the federal and regional levels.

2. Democratization and Decentralization of the 1990s

2.1 USSR Collapse and the 'Parade of Sovereignties'

The Union of the Soviet Socialist Republics, the USSR, was established as a de jure multinational federation. It consisted of the union republics that were titled after their 'titular nations', that is, indigenous communities that also were proclaimed the sole source of republican authority. In accordance with the principle of national self-determination, the union republics were created by exercising the right to self-determination of their titular Socialist nations (see Burgess 2009: 28). The recognition of many nations and nationalities made for a multinational character of the state. In Soviet terminology, the terms 'nation' and 'national' referred not to the state as a whole but were reserved specifically to sub-state federation units. Hence, the policy towards 'nations' is often specified in English as 'nationalities policy'.

In the Soviet hierarchy, the status of the union republics was higher than the status of the autonomous republics or districts or regions within the union republics. At the same time, the upper layer of union republics sustained the lower layer of autonomous republics. Since the 1936 Soviet constitution, the titular nationalities of the autonomous republics inside the union republics were also recognized as Socialist nations but not those of autonomous districts and regions. Accordingly, autonomous republics were established as 'national-state formations' and autonomous districts as 'national-territorial formations' of their titular nationalities (see Codagnone & Filippov 2000: 265-266).

The existence of the union republics, and the need to compromise with their national elites, balanced the multinational structure of the biggest and most diverse union republic, the Russian Soviet Federative Socialist Republic (RSFSR), which was supposed to be the titular republic of ethnic Russians however its title 'Russian' referred to a civic [*rossiiskii*] and not

ethnic [*russkii*] category. So did the ascription of personal nationality, although the state pursued assimilationist policies especially in the later decades. The share of ethnic Russians in relation to other nationalities in the RSFSR remained relatively stable, because the intensity of assimilation processes varied across groups (see Brubaker 1996: 30-32).

Despite its huge federal façade, in reality the USSR functioned as a unitary state, behind which inter-ethnic tensions and the nationalist sentiment were accumulating. The Soviet institutionalization of ethnicity in the form of republics provided their elites with ready-made vehicles for popular mobilization. With the weakening of the Soviet political regime, ethnic mobilization in the union republics in the late 1980s led to the emergence of national movements that emphasized the equal right of peoples to national self-determination and demanded what they were promised according to the Soviet constitution. With the progression of democratization, some national organizations were created to express on behalf of the titular peoples the demand for a greater self-governance in the name of their national revival (see Brubaker 1996).

A chain effect also made sovereignization possible in the autonomous republics of Russia. In 1990, most autonomies unilaterally upgraded their political status in the declarations of state sovereignty to that of the republics as sovereign states in the USSR based on the right of their titular peoples to self-determination. The union authorities led by the secretary general of the communist party, Mikhail Gorbachev, were slow in their reaction but started to accommodate some demands. In a tactical move, Gorbachev encouraged the autonomous republics to join a new union treaty directly and to elect their own presidents. This way Gorbachev hoped to undermine the authority of another party functionary, Boris Yeltsin, who in summer 1990 became the chair of the RSFSR Supreme Council, a Soviet style quasi-parliament, and in June 1991 was elected the Russian president.

The authorities of the RSFSR also needed the support of the autonomies and recognized sovereignization. In 1990, a bicameral structure of the RSFSR Supreme Council was established, where the other chamber, the Council of Nationalities, had to be formed of the representatives of the nationally/ethnically defined territorial units with number depending on their political status in the Soviet hierarchy. In practice, the chamber soon started to be filled also by the deputies from the regular territorial units so that their total number was equivalent with the number of the deputies in the other chamber, the Council of the Republic (Ivanchenko & Liubarev 2006: 9-10).

After the collapse of the USSR in 1991 and the departure of union republics, the demographic makeup of Russia started to matter for the nationalities policy. Ethnic Russians composed about an 80% majority in the country's population. Among more than a hundred other nationalities, Tatars were the second largest group of more than five million or 3.8% of the country's population, while several groups were larger than one million. The situations of different groups varied dramatically in terms of demographic trends, territorial concentration and ethnic cleavage structures. Moreover, only up to ten million individuals of titular nationalities resided in their titular territories while almost eight million resided outside their borders. Up to ten million non-Russians had no titular territories altogether and a similar amount of ethnic Russians resided in national territories. In addition, many ethnic Russians remained in the former union republics (see Codagnone & Filippov 2000: 266).

Despite the drive for democratization, Soviet legacies in post-Soviet Russia's state-building were remarkable. Ethnic federalism was maintained, inter alia, due to the position of the democrats organized in the pro-reform movement *Democratic Russia* and the elites in the former autonomous republics who at the time were their allies (Drobizheva 2013: 91-92). The titular elites in the republics presented national self-determination as the historic method of democratization and advocated for a 'treaty-based' multinational federation. The treaty component stemmed from the sovereignty declarations. Yeltsin's government endorsed their demands and, with the authorities of the republics and regions, signed the 1992 Federation Treaty that was incorporated into the 1978 RSFSR Constitution still in force (see Codagnone & Filippov 2000: 268, 272-273).

2.2 Constitutional Design and Semi-presidentialism

In the early 1990s, a conflict burst out between, on the one hand, president Boris Yeltsin backed by democrats and reformists that controlled executive authorities and, on the other hand, the majority in the Supreme Council dissatisfied with the course of reforms, among whom were many members of the communist party and Soviet bureaucracy. The conflict also had a regional dimension expressed in the confrontation over the fiscal issues dubbed as the 'war of budgets', when republics tried to keep their fiscal autonomy (see Oversloot 2013: 90-91). The conflict peaked in the constitutional crisis and ended with the dissolution of the parliament in October 1993, thus, having an outcome based on the principle of 'winner takes all' (Gel′man 2015: 56).

After that, Yeltsin was able to insist on his version of the constitution that established Russia as a semi-presidential republic (Constitution, 12 December 1993). According to this executive regime type, the presidential office was made the strongest institution in the constitutionally framed political system and was tailored to one individual, Yeltsin himself. The semi-presidential system functioned in the form of president-parliamentarism where the government headed by a politically weak prime minister was dually accountable to president and parliament. Yet, the president received the right to do virtually anything not explicitly prohibited by law, and the only constraint on his power was the two consecutive terms limit on holding the presidency, which laid down major authoritarian potential (Gel′man 2015: 54-56).

The constitution created a two-chamber Russian parliament. Deputies of the State Duma, a lower chamber, were to be elected according to the mixed principle in two unlinked electoral arenas, where each voter casts two ballots: for an individual candidate and for a party. One half of the deputies were elected in 225 single mandate districts according to a plurality rule. The other half were elected in proportional representation through the lists of political party and electoral blocs (of several usually smaller parties) in a nationwide electoral district (Moser 2001: 5). In order to hinder the establishment of ethnic and region-based electoral blocs and, thus, to discourage ethnic mobilisation, the election law established that no more than 15% of signatures for registration of a bloc in federal elections can come from any single region. While effectively preventing the creation of federal ethnic parties, this rule also led to disengagement of regional elites and electorates in ethnic regions from party politics in federal elections (Moser 1995: 384-386).

The mixed electoral system was fashioned in order to encourage party formation and to benefit the reformist parties. *Democratic Russia* joined the electoral bloc *Russia's Choice*, the 'party of power'. However, the population was disenchanted with the pace of economic reforms that caused a fall in living standards. In the December 1993 parliamentary elections, the people gave a plurality of votes to anti-reformist parties in the fractionalized first State Duma. Moreover, rather unexpectedly the nationalist Liberal Democratic Party of Russia (LDPR) headed by Vladimir Zhirinovsky actually won plurality in the nationwide district, while *Russia's Choice* came only second, even though it won more seats in single-mandate districts and the overall election. In December 1995, *Our Home is Russia*, a new 'party of power' came only third in the nationwide district and second in the overall elections, losing to the Communist Party (Moser 2001: 1). These outcomes were not a game changer, given the

secondary role of parliament in the political system. However, since December 1993 the democrats started losing their positions in the corridors of power, which was a blow to the democratization agenda.

Due to a lack of legal-institutional guarantees, political representation of minorities was to be attained through mainstream parties in popular elections. Nevertheless, researchers report that a relatively adequate and substantial ethnic representation was achieved in federal elections in 1995 and 1999, because political parties were often willing to include the names of candidates with a minority ethnic background at the top of their lists to present an ethnically pluralist platform (see Chaisty 2013). Members of culturally assimilated minorities, especially those with the Russian names, were relatively numerous in party lists. Titular representatives typically won in single mandate districts in their regions, not only through ethnic voting but also gaining the support of Russian voters, who seemed to be interested in personalities and regional issues rather than in ideologies, be it liberalism, communism or nationalism. The presence of the large portions of the Russian populations tended to favour titular candidates with more centrist views (Moser 2001: 147).

In a bicameral parliament, the upper chamber is typically created to ensure the representation of regional, ethnic and corporative interests. According to the constitution, members of the Federation Council, an upper chamber, were elected from the regions and represented the regional interests in the center. If during its first term in 1994-1996, the Federation Council was a rather weak body, then the strengthened position of regional chief executives, both heads of the republics and governors of the regions, vis-à-vis the federal centre has found its reflection, inter alia, in the changed principle of formation of the Federation Council. Since 1996 the heads of regional legislative and executive authorities *ex officio* became its members (see Ross & Turovsky 2013: 62-63).

Given Yeltsin's low popularity, his re-election became possible only through a narrow win against Russia's Communist Party leader Gennadii Ziuganov in the second round of the 1996 presidential elections. Up to this day the question about the extent of electoral fraud remains unresolved, but elections are believed to be unfair (Gel′man 2015: 59-61). The support for Yeltsin from regional chief executives through 'regional electoral machines' especially in the ethnic regions was found to be among the decisive factors for his victory. The new principle of formation of the Federation Council was one of the concessions to the regional leaders but simultaneously an element of division of power that strengthened the federation (see Ross & Turovsky 2013: 63-64).

Overall, the representation of regions by their top officials in the Federation Council and the representation of deputies to the State Duma elected in single mandate districts in the regions became the only institutionalized elements that could indirectly ensure ethnic political participation in the federal authorities. In addition, the federal government had a ministry for nationalities and federation affairs. In other words, the constitution has not envisaged shared-rule arrangements at the federal level. Furthermore, Yeltsin not only spent significant efforts consolidating power in the center but also overcoming centrifugal tendencies in relations with the republics.

2.3 Ethnic Federalism and National-Cultural Autonomy

It was a Soviet legacy that federalism by default became an instrument of decentralization in Russia, but now regions enjoyed genuine self-rule. It was the former autonomous republics that unilaterally upgraded their political status, demanded greater self-governance and were the drivers of federalization. Under the threat of the country's disintegration, the federal center and the republics reached a compromise (see Burgess 2009: 31-32). In balancing centrifugal and centripetal tendencies, the system of ethnic federalism remained the main device directed at managing diversity, but the scope of its ethnic component was significantly reduced, because only some regions were ethnically based and no shared rule at the federal government level was established. Furthermore, the titular nationalities were in the numerical majority in less than half among twenty one republics, and in none among ten autonomous districts and an autonomous region at the time.

Was Russia a multinational or multiethnic federation? The public debate about political identity held in the situation of the constitutional crisis had not resulted in an explicit formula. Partly this was because at the time there was no clear-cut distinction between 'ethnic' and 'national' in the Russian-language scientific discourse. The Soviet legacy of institutionalized ethnicity was criticized for its essentialist assumptions, although it was arguably not ethnic federalism *per se* but its dismantlement in the late Soviet period that led to the accumulation of tensions and provoked conflicts. The need for the depoliticization of ethnicity and its removal from the public sphere was justified by the change of paradigm in social sciences towards the constructivist understanding of social identity. But this paradigmatic change was not reflected in constitutional identity building.

According to the constitution, Russia's 'multinational people' was proclaimed to be the sole bearer of sovereignty, which was another Soviet legacy. Thus, Russia could still be categorized as a *de facto* multinational federation, although it avoided explicitly referring to

republics as ‘national republics’. The peculiarity of democratic multinational federations is that, besides individual rights, they might also recognize some group rights in national sub-units. Group rights typically become, then, one source of asymmetry between sub-units of multinational federations (McGarry & O’Leary 2005). However, the Russian constitution has not directly specified the groups. Further, it avoided the use of the ethnic categorizations and the discourse of indigeneity and titularity, recognizing only the status of indigenous small-numbered peoples. The debate was not over, and the lack of explicit link to ethnicity except in the titles of sub-units left the possibility for a later reinterpretation of Russia’s political identity.

The constitution listed, among the federation units, republics and autonomies that were titled after their titular nationalities and were implicitly supposed to ensure their self-governance (see Bowring 2010: 49-50). At the same time, the constitution established an equal status for the Russian regions, although the republics received two additional rights in comparison to other regions: the right to have their own constitution and the right to designate their state languages. All the republican constitutions repeated the formula of the ‘multinational people’ of the republic as the source of their authority, but attempted to continue their state-building on the nation-state model. However the constitutions of the republics had to be passed by a constitutional assembly and not by the referendum. In effect, the republics could not claim the popular legitimization for their pursuit of nationalizing policies. In practice, the asymmetry in powers remained not only between the republics and other types of regions but also between different republics. Therefore, the Russian constitution laid down the foundations of the federal system but had not solved all contradictory issues regarding diversity management, and much was left for the future interpretation of constitutional provisions (see Bowring 2010: 51-52).

The legitimation of federalism remained an important issue of controversy. William Riker described the formation of the federation as the process of polities ‘coming-together’ under such incentives as the existence of an external threat and the promise of territorial expansion (Riker 1975: 114). Alfred Stepan suggested conceptualizing the cases when a federal system emerged as a result of constitutional devolution of powers, as a ‘holding together’ model and the cases of forming federation by an utterly coercive centralizing power as a ‘putting together’ model, of which he named the USSR as an exemplary case (Stepan 1999: 22–23). Reflecting partly this distinction of ‘holding together’ versus ‘coming-together’, two approaches to federalism were conceptualized in Russia as ‘constitution-based’

federation and ‘treaty-based’ federation, depending on whether the center is said to have delegated its powers to regions or vice versa. The internal threat of possible state disintegration provided incentive for federalization through political bargaining (see Burgess 2009: 36-37). The Russian constitution has not incorporated the 1992 Federation Treaty and itself delineated the powers between the federal center and the regions, thus, creating a constitutional federation.

This was a break from previous arrangements and a step away from the democratic path, but not yet the point in the full-scale confrontation. The politically and economically strong republics continued to bargain for an asymmetrical status in the federation. The referendum on the constitution failed in Tatarstan and Chechnya. In the case of Chechnya the confrontation led to the first Chechen war that excluded partition as a possible outcome. Tatarstan entered negotiations and was able to strike a power-sharing deal with the federal authorities, fixed in the bilateral treaty on the delimitation of areas of authority and power. This created the precedent, and many other republics and regions also signed similar treaties between 1994 and 1998 that recognized decentralization and diversification of regional politics, even though most treaties were in contradiction with the new federal constitution (Bowring 2010: 57-59).

Republics had to relinquish their aspiration of a treaty-based federation but acquired better treaty conditions in comparison to other regions. Some republics retained significant political autonomy and established strong presidential regimes that were sometimes characterized as ‘ethnocracies’ because of their preferential treatment of the titular nationalities. The upgrade in the political status of some other republics, especially of those with the titular minority, had not significantly empowered their titular elites. With the decline in ethnic mobilization in the republics by the mid-1990s, the new configuration of power relations emerged that allowed the federal authorities to challenge the position of the titular elites. Social constructivism was applied as a theoretical ground for the proliferation of the integrationist approach in Russia.

At the time of the 1996 presidential election campaign, Yeltsin signed the Concept of the State Nationalities Policy (Presidential Decree, 15 June 1996). According to the Concept, the aim of the nationalities policy was to ensure ‘the conditions for the rightful social and national-cultural development for all peoples of Russia, and for the consolidation of an all-Russia civic and spiritual-ethical community on the basis of the rights and freedoms on the individual and the citizen’. Thus, the Concept prioritized cultural over political development,

individual rights over group rights and the civic unity. This was a policy document, thus, indicative of the approaches to diversity management, but its significance was restricted because it was not translated automatically into institutional changes (see Rutland 2010).

Since the early 1990s the idea of national-cultural autonomy was initially introduced as an alternative to ethnic federalism and group rights, but the opposition of the elites in the republics resulted in a compromise on the issue (see Drobizheva 2013: 112, Codagnone & Filippov 2000: 274-280). The Concept proposed national-cultural autonomy as a new form of non-territorial self-determination of ethnic groups which became complementary to ethnic federalism. National-cultural autonomies targeted individuals of the ethnic groups without national territories or residing outside the borders of their titular territories. The Federal Law (17 June 1996) provided citizens with the right to create national-cultural autonomy as a form of public associations and receive state support for their activity. In practice, this form has not become a breakthrough and its implementation was assessed as a failure (Osipov 2013, Prina 2015, chapter 8).

Was Russia an integrated or a pluralist federation? The Russian federal system included mostly elements of an integrated federation. These were supremacy of the federal laws, fiscal centralization and exclusive federal jurisdiction over law enforcement and courts. But territorial self-government of some ethnic groups, who usually were in the numerical majority in their 'homelands' and under the control of their elites, was an element of a pluralist federation. Ethnic federalism was the backbone of the accommodationist strategy that targeted territorially concentrated groups. The policy towards indigenous small-numbered peoples combined accommodationist and integrationist elements. National-cultural autonomy was intended to integrate territorially dispersed groups. To the extent the latter form remained ineffective, the *laissez faire* policy amounted to a *de facto* assimilationist approach towards the smaller groups. Therefore, the mixture of strategies addressed different situations of regions and groups.

3. Authoritarian Tendencies and Recentralization of the 2000s

3.1 'Managed Democracy' and 'Power Vertical'

As, according to a two-term limit, Yeltsin could not run for the third presidency term, the political establishment was looking for a successor. After several short-term prime ministers,

in August 1999 Vladimir Putin was appointed prime minister. In September the Kremlin initiated the creation of a newly pro-government electoral bloc *Unity*. Quite unexpectedly, in December 1999 in the parliamentary elections *Unity* came second after the communists. This was a humiliation for the region-based coalition *Fatherland—All Russia*, which represented regional elites and hoped to become another 'party of power' but came only third in the elections. The year 2000 brought the change of the leader in the Kremlin, when Yeltsin resigned and named Putin as his successor and elevated to be acting president. In March 2000 Putin was elected president.

The turn of the millennium signified the start of recentralization and evolution of the political regime towards a hybrid regime that combined democratic procedures and authoritarian practices, dubbed 'managed democracy'. As his first step towards the consolidation of power, Putin established state control over mass media by destroying the media empires of Oligarchs. Further, he ensured control over the federal parliament, paving the way to presidentialism and later to super-presidentialism. His next targets were regional elites. Regional separatism was among the threats that Putin envisaged when justifying his move towards recentralization and undermining of the autonomy of regions. During the first years of his presidency Vladimir Putin spent systemic efforts at establishing a 'vertical of power' (Gel′man 2015: 76-81).

Adding a layer above the regions, seven federal districts were created to provide the coordination of federal agencies in the regions and headed by an appointed plenipotentiary representative of the Russian president. The federal authorities abrogated the bilateral treaties and initiated the campaign of bringing the regional legislations into concordance with the federal legislation, including the removal of the provisions on sovereignty from the republican constitutions. Since 2002 two appointed regional representatives working fulltime started to be members of the Federation Council instead of heads of regional executives and legislations, which diminished the political weight of this body. It turned rather into a body representing corporative interests of vertically integrated clienteles (see Bowring 2010: 60-62). In many cases, non-titular Moscow-based representatives were appointed which reduced the role of this body as a channel of ethnic representation (Ross & Turovsky 2013: 64-67, 71-73).

A new party politics was installed as another mechanism of control over the regions (Federal Laws, 14 June 2001 and 12 June 2002). Only federal parties organized on a statewide basis were made eligible to participate. The creation of political parties on the grounds of

ethnic or religious affiliation and regional parties was explicitly prohibited. Further, obligatory party membership was increased and the number of parties decreased in a few years from 46 to 7. In 2001, *United Russia* was established through a merger of *Unity* and *Fatherland—All Russia*, deputy groups *Regions of Russia* and *People's Deputy*, which actually amounted to a takeover. In the 2003 elections *United Russia*'s list received 37.6% of votes and the party candidates celebrated victories in 45% of single mandate districts. Due to the conversion of votes into seats at the expense of those parties which did not pass the threshold of 5% and by attracting independence in a few days after the election, the party obtained the constitutional majority in the State Duma (Gel′man 2015: 84-88).

An effect of the prohibition of regional parties was that in the early 2000s the federal parties were sidelined from the regional politics. The regional legislatures lost their last source of autonomy in the regional political landscapes. The heads of the regions consolidated their power even further without needing to belong to a party, being supported by regional electoral blocs. In 2003-2004 elections *United Russia* had not won in many regional legislatures. To stimulate penetration of federal parties into regional party politics, the formation of electoral blocs was prohibited in 2005. Furthermore, at least half of the seats of regional parliaments were made to be elected proportionally by the list. This provided an incentive for the heads of the regions to join *United Russia* (Golosov 2011: 626-628).

The 2003 and the following 2007 Duma elections brought a relative decline in ethnic representation, attributed to a tighter control and the dominance of *United Russia* (Chaisty 2013: 257). At the same time, membership in the party of power opened new channels of participation. The federal government included members of minority ethnic background, such as Rashid Nurgaliev – an ethnic Tatar - as minister of interior, or Sergei Shoigu as a long-time minister of emergency situations and *United Russia* leader, whose father is an ethnic Tuvin.

In March 2004 Putin was re-elected president in the first round and continues to keep this position until this day with the break of Medvedev's presidency in 2008-2012. The pivotal measure that amounted to establishing an authoritarian rule was the abolishing of the elections of presidents of the republics and governors of the regions in 2004. A new procedure was established, according to which the Kremlin nominated a candidate who was then to be appointed by the regional legislature. In practice, presidential representatives in the federal districts had a central role in the selection of candidates. In the short term, many influential regional chief executives retained their positions, inter alia, because their 'electoral machines' were able to deliver the electoral results demanded in the Kremlin (see Hale 2003).

3.2 Defederalization and Depoliticization of Ethnicity

The abolishment of elections of regional chief executives undermined the principle of the vertical division of power between the federal centre and the regions. Thus, the Kremlin's 'federal reforms' resulted in a decline of federalism in Russia, although formally it was maintained. Criticism now targeted ethnic federalism, which was portrayed as a threat to the country's unity. Voiced previously by Zhirinovsky, the idea of *gubernization* was present in public discourse, which implied the removal of the link to ethnicity in the title of some regions and the unification of the types of regions, making all regions equal in form of, for examples, 'provinces' (see Oversloot 2013: 103-105).

Some steps in this direction were implemented. The creation of federal districts was one such step. Between 2005 and 2008, the merger of six out of ten autonomous districts with their host regions might not only have been a step towards *gubernization*, but also the intentional change of Russia's political map in such a way that ethnic regions cover now much less than about half of the territory they covered hitherto. Dominance of the party of power since 2007 and incremental authoritarianism would have also allowed more radical structural changes. However, the federal districts have not become the primary federation units. Republics and autonomous districts as separate region types were maintained. As an exception, the federal center and the Republic of Tatarstan renewed their power-sharing treaty in 2007 (see Oversloot 2013: 92-93, 98-101). To be sure, the symbolic reconfiguration of the republics' political status effectively blocked efforts at their own nation and state-building.

Instead of a conflict-prone removal of the republics, the Kremlin turned to nation building. The nation-building agenda included a reshaping of the conceptual framework. The term 'national' was now exclusively reserved for the federal state level and the term 'ethnic' for the sub-state level. For example, instead of the concepts 'nationalities policy', 'national republics' and 'national school', the terms 'ethnic policy', 'ethnic republics' and 'schools with an ethnocultural component' were introduced in public discourse. This amounted to a representation of the state not as multinational but as a multiethnic federation. However, the only remaining ethnic characteristic of republics and autonomies was their title, which symbolically marked them as homelands of their titular peoples but ceased to have any constitutional-legal meaning. This was an element of a broader policy of 'de-ethnicization of politics', which aimed at the removal of ethnicity from the political domain and its restriction to a cultural sphere (see Codagnone & Filippov 2000: 282).

The first official document that introduced the term 'Russian nation' building was the Concept of the State Nationalities Educational Policy that emerged as part of the education reform. This document intended to 'consolidate the multinational people of the Russian Federation into a single Russian political nation' (Ministry of Education Order, 3 August 2006). The official introduction of the term in this document is emblematic, because education had to become the principal tool of identity building directed at the homogenization of citizenry. The education reform significantly curtailed the possibility of regional authorities to promote regional identities and languages. Even different policy patterns were applied to different regions and groups, the supply of public services in non-Russian languages in education was cut everywhere (see Prina 2015, Chapters 5 and 6, Zamyatin 2014: 105-110).

The central question of what nation should be built remained; whether it should be a civic or ethnic nation. Policymakers leaned towards the model of the civic 'Russian nation' as a territorial community of citizens sharing common values, which is also complementary to democracy. However the contraposition of the civic vs ethnic nation did not quite work (see Shevel 2011). De-ethnicization was opposed not only in republics, where it reminded many of the plan to merge Soviet nations into the 'Soviet people'. Ethnic Russian nationalists also opposed it and demanded, instead, the recognition of Russia as the state of an ethnic Russian nation based on the statistics that ethnic Russians composed a 'vast majority' in the total population. Nationalist discourse was implicitly present throughout the post-Soviet period but became publicly visible especially since the-mid 2000s. In a sense, the rise of ethnic Russian nationalism was a reaction to the USSR collapse and nationalism in its former republics and minority nationalisms in Russia. Proliferation of the Russian nationalist organizations contributed to a steady deterioration of inter-ethnic relations in the country (see Pain 2013).

The ministry for regional development took over some of the functions of the abolished ministry for nationalities affairs and developed a new policy document in nationalities policy, but this was rejected due to mentioning the status of ethnic Russians as a 'state-founding nation' (Rutland 2010: 130). The Kremlin ignored this and similar demands to avoid tensions with leadership of the republics until the ethnic categorization entered the official domain for the first time at the turn of the millennium for external use in the context of 'compatriots' living abroad. An ethnic reading of the concept of 'compatriots' fixed in the Law on Compatriots Abroad (Federal Law, 24 May 1999) was an exception to civic terminology used officially hitherto. A reason for this move might have been the failure to address 'the problem

of Russians abroad' in the 1990s on the civic platform through introduction of dual citizenship for Russians living in post-Soviet countries (Zevelev 2008).

In sum, in the early 2000s, the state moved towards a more integrated federation, although the pluralist element was nominally maintained. Since the mid-2000s, Russia *de facto* stopped functioning as federation because neither democracy, nor autonomy of regions was left. As a result, Russia repeated the path of the Soviet Union in becoming not only a 'pseudo-federation' but also a 'pseudo-pluralist federation' (see McGarry & O'Leary 2005: 34-35). The exclusion of ethnicity from the public sphere is the essential feature of the integrationist approach. Furthermore, elements of the assimilationist strategy started to be noticeable in education. At the same time, the symbolic link between ethnicity and territories maintained the significance of ethnic regions as an accommodation device even without effective self-rule.

4. Authoritarianism and Unification of the 2010s

4.1 'Electoral Authoritarianism' and Unification

The sole proportional principle and elevation of the entry threshold from 5 to 7% were introduced for the 2007 State Duma elections. After the conversion of voices into seats in the State Duma the party of power obtained 70% of seats. *United Russia* became the dominant party both in the State Duma and most of the regional legislatures. Changes in electoral rules signposted the shift towards the regime that scholars label 'electoral authoritarianism'. On the scale between democracy and authoritarianism, scholars posit this regime closely to the latter. Although elections were preserved, they ceased to be the mechanism of political change (Gel′man 2015: 6-8, 99-100).

In the 2011 Duma elections, *United Russia* obtained only slightly more than half of the seats in the State Duma even after massive electoral fraud. This time the conversion of seats was insignificant, as there were virtually no small parties left beneath the entry threshold to provide the margin. In response to mass rallies in December 2011, the electoral legislation was reformed to improve legitimacy without meaningful liberalization. The mixed principle was reintroduced and the entry threshold lowered back to 5% starting from the 2016 Duma elections. As a result, the number of parties jumped to almost the previous level, but the intention was to split the support for opposition parties (Golosov 2012: 10-11). Since 2011,

the procedure for the formation of the Federation Council was also somewhat changed so that only a deputy of a regional assembly or municipal council could become its member (Turovsky 2010: 29).

The promotion of Putin's appointees to the positions of regional chief executives often resulted in the appointment of outsiders who lacked experience and local contacts and often became unpopular among the populations. In 2009, the procedure was changed to address this drawback, in such a way that the party that won regional elections could propose the candidate for the post of the regional highest official. In 2012, the procedure was changed again, creating the possibility for regions to introduce elections of chief executives to boost their legitimacy.

The regions could now decide themselves whether the regional chief executives should be elected by the local population or appointed. In the appointment procedure, the parties represented in the federal and/or regional parliament could propose up to three candidates for the post of the chief executive. From this pool, the Russian president nominates three candidates and presents them to the regional parliament, which then appoints the candidate who collects the most voices. Typically the term of the chief executive in office finishes before the elections and the Russian president identifies his favourite by appointing him as a temporarily acting chief executive. In effect, the Kremlin retained control over chief executives (Golosov 2012: 11-12).

In practice, in 2010 the last heavy-weight regional leaders of Yeltsin's era, such as the presidents of Tatarstan and Bashkortostan, were forced to leave. Even more dramatic was the turnover among the heads of regional departments of law-enforcement agencies. In the same year, the number of deputies in regional legislatures was standardized and the campaign initiated to rename the republics' chief executive office from 'president' to 'head of republic'. This was a symbolic gesture meant to restrict 'delegative' legitimation of presidential power exclusively to the all-Russian level (see Heinemann-Grüder 2009: 67, Petrov 2013: 112). Thus, after further unification of the institutional framework, the political landscape reminds one nowadays more of a unitary state (see Petrov 2013).

Despite the successful enforcement of the 'vertical of power', the recent economic troubles demonstrated the continued weakness of non-democratic state institutions. The main criterion for keeping individuals in the chief executive's position became not effectiveness and accountability to the population but loyalty to Putin and the ability to safeguard regional support for *United Russia* (Golosov 2011: 631-633). In these circumstances, informal

networks gain more and more importance behind the façade of formal institutions (see Ledeneva 2013). Participation in clientelistic networks became inevitable for successful careers of politicians. Appointed regional chief executives became clients to their Moscow patron.

"Electoral authoritarianism, rather than simply suppressing the autonomy of most powerful subnational actors, incorporates them by expanding their effective control over the regional political arenas" (Demchenko & Golosov 2016: 61). Informal networks and practices benefitted titular elites in some republics but not in others (see Prina 2015, chapter 4). Despite the decline of federalism, titular elites in the republics like Tatarstan or Chechnya maintained their dominant position among their regional elites. Alternatively, the dominant 'Russian' regional elite used the co-optation of minority elite members as an element of ethnic control in some other republics (see Zamyatin 2016).

4.2 Nation Building and Ethnic Diversity

The third term of Vladimir Putin in the office of Russia's President indicated a shift to a more assertive Russian foreign and domestic policy. The Russian leadership sought to find popular support for its political ambitions, which was difficult to achieve in the conditions of the people's mistrust of ideologies after the bankruptcy of Soviet communism (see, e.g., March 2012: 404-405). In the search for a political identity as 'we' against 'them', the most attainable appeared to be the ideology of official nationalism, which is served in public discourse as 'patriotism' that 'is the only possible national idea in Russia', in Putin's recent words. At the policy level, the Russian authorities officially declared nation building their strategic goal, although there is still no consensus on which nation should be built (see, e.g., Gorenburg 2014).

Nation building officially became the policy goal with the approval of a new policy document in the field – Russia's Strategy of the State Nationalities Policy (Presidential Decree, 19 December 2012). This policy document has the format of 'strategy' probably to stick out in a row of 'concepts'. Thus, after years in search of the 'national idea', the centralizing state took upon itself the task of identity-building. In other words, the central role of the state predetermined a top-down nation-building project (see, e.g., Zvereva 2010: 87). Realizing the mobilizing potential of the nationalist ideology, the Kremlin pragmatically decided to control and utilize nationalism in the interest of the regime (March 2012: 402).

The civic model of the nation became the basis for official nation building. The Strategy indicated as the first policy aim 'the strengthening the unity of the (civic) Russian nation', which had to be achieved, inter alia, through the promotion of civic patriotism and civic identity. The other policy aims occupy a secondary place. The maintenance of ethno-cultural diversity was retained as a policy aim but ethnic identities are clearly presented as subordinate to an overarching national identity. In practice, many implementation measures directed at diversity maintenance of the Federal Programme 'Strengthening the Unity of the Russian Nation and the Ethno-Cultural Development of the Peoples of Russia' (Government Decree, 25 August 2013) are there for showing off, while considerably less funds are assigned for diversity maintenance than for unity promotion (Government Order, 22 March 2014).

The other two aims are a novelty, namely the assistance to migrants in their adaptation and the harmonization of inter-ethnic relations. Finally, one more aim, added to the document at the last moment, is securing citizens' rights. In the view of one of the drafters, 'there is the need to recognize the right to voluntary assimilation, the right of a citizen to choose language and culture, the right to be in several cultures'. At the same time, 'in 1990 the policy goal had been securing rights and requests of citizens. … in the 2000s the president … formulated more topical aims…' (Tishkov 2013: 14-15).

The official attention to an increase in the share of those Russian citizens who consider the all-Russian civic identity as their first identity and the most important in the possible hierarchy of identities is indicative. The strategy draft mentioned this ratio as the main indicator for the policy effectiveness evaluation, although it was left out of the final version. Nevertheless, this newly created system of monitoring included the indicator. Authorities are eager to produce sociological data that shows that more than half of Russian citizens hold the primary civic identity. In fact, the researchers point out that there is a certain contradiction in official rhetoric on national identity: while publicly the nation is reported to have been already created, intellectuals are urged to make their contribution in its creation (Zvereva 2010: 87). For the time being, 'efforts to define Russian polity and society primarily in civic terms do not appear, to date, to be very successful' (see Protsyk & Harzl 2012: 10).

The problem of the project is that a strong civil society and democratic institutions are lacking in Russia, which makes the formation of a civic nation virtually impossible (Pain 2009). Despite the rhetoric, the top-down strategy gives reason to categorize the project not as one of civic nationalism but as that of state nationalism or official nationalism. The continued existence of ethnic regions that entrench ethno-national identities is an obstacle to the nation-

state agenda. The presence of complementary ethnic, religious and regional cleavages produce a divided society. If the political salience of ethnic identities is fluid, then one should not underestimate the recurrent character of ethnic mobilization (see Pildes 2008). A possible weakening of the regime is likely to result in a new wave of ethnic mobilization.

In the last years, the problem of identity building came to the fore of everyday politics in Russia on the rise of anti-immigration popular sentiment, xenophobia and the ongoing aggravation of inter-ethnic tensions in the country. Attempts by authorities to capitalize on popular fears, caused by the spread of nationalist rhetoric in mass media, deepened ethnic cleavages and, thus, undermined the goal of civic unity. Yet, playing with nationalism might be a dangerous game, as it might escape control (Verkhovskii 2014: 29). If until recently there was a clear official preference for civic nation building, then nowadays the picture is more complicated due to a gradual spread of ethnic Russian nationalism, which advances the vision of an ethnic Russian nation. Practically all major political parties had to adapt their programs accordingly. The nationalist agenda changed political discourse in Russia and urged authorities to add ethnic Russian color to their nation-building project. Nowadays, official civic nationalism falls back on ethnic Russian attributes (see Prina 2015).

Lately authorities renewed their search for an ideology and made moves towards the re-ideologization of political discourse. Despite the official adherence to civic nationalism in internal policy, 'Eurasianist', 'civilisational' and neo-imperialist ideas have penetrated public debate. While the projects have significant differences, their authors belong to a common discursive space (see, e.g., Malinova 2010: 68). The 'compatriots' policy was adjusted to the new trends widening its target in a very broad manner from 'ethnic Russians to former Soviet citizens' (see Shevel 2011: 192-193; Federal Law, 23 July 2010). The Russophone and ethnic visions of the nation continue to dominate in Russia's foreign policy. The projects of a nation based on ethnic, religious and linguistic ties are in demand especially on the background of the events in Ukraine.

Observers point out that inconsistency continued to be a feature of Russia's nationalities policy throughout the period. 'But theoretical inconsistency of concepts does not signify their inconsistency in the framework of the political strategy' (Verkhovskii 2014: 21). A variety of discursive resources are at the disposal of policymakers in their building of the Russian nation. The pragmatism of the Kremlin allows a measure of flexibility, when 'the concept of the 'Russian nation' covers and absorbs all possible identities' (Zvereva 2010: 82-85). According to some scholars, parallel nation-building projects could coexist because in their

purposeful ambiguity they serve various political ends, resulting in a wide range of seemingly inconsistent policies (see Shevel 2011: 195-199). For example, the civic project used to foster national identity in domestic policy; the project, based on a nation defined in ethnic terms, served to impose pressure on the neighboring countries through 'compatriots'.

For the time being, it is still not entirely clear whether the policymakers would decide to present at some point a coherent vision of the nation-to-be-built. In this context, the change in diversity management is informative. Unification of regional political landscapes narrowed the scope of accommodation. The burden of diversity maintenance went to the regions, which continued to pursue varying policies, from power sharing to domination. It is notable that integration is not listed among the means of the promotion of the overarching national identity. The Nationalities Policy Strategy does not use the term 'integration' with regards to the traditional groups but only strives at 'a successful cultural and social adaptation and integration of immigrants' (p. 17). Rather, national identity is asserted through routine activities of authorities pursuing the symbolic policy of the hierarchization of identities with the civic identity on top. At the same time, the hegemony of the dominant group, ethnic Russians, becomes more visible in public discourse and blurs the line between national identity and ethnic Russian identity, because they share symbols such as the Russian language.

Conclusion

When operationalized in the conceptual framework for state-building, Russia's constitutional design and practice of diversity management does not fit easily into categories of either integrationist or accommodationist approaches (Protsyk & Harzl 2013: 10). This is not an exception, because in reality the states often pursue a mixture of strategies. The analysis of strategic features reveals how the combination of strategies employed in Russia evolved during the post-Soviet period. The predominant strategy depended on the regime transition and the corresponding goal of identity building.

Liberalization resulted in the partition of the former union republics. In Russia, the democratic transition correlated with the prevalence of the accommodationist approach based on the model of multinational federation. It has to be noted that the *de facto* multinational federation became both a device that symbolically recognized the 'multinationality' of the state in constitutional identity building and a political institution introduced in the state-

building. Federalization was part of the democratization agenda but decentralization of the state also became the means to avoid the country's disintegration.

As a result, ethnic federalism became associated in the public attitudes with a weak state but also with democracy (see Drobizheva 2013: 168). The first institutional step away from democracy was taken at the time of 'critical juncture' in October 1993. This consisted not only in that a zero-sum end of the conflict allowed the winner to establish semi-presidentialism in the constitution, thus, implanting the seed for super-presidentialism and authoritarian tendencies (Gelman 2015), but also annulling the outcomes of the federal bargaining fixed in the Federation Treaty, which had not become part of the constitution.

The constitutional setting served as the frame for a multinational federation that combined elements of an integrated and pluralist federation for integration and accommodation of larger territorially concentrated groups and national-cultural autonomy for integration of territorially dispersed groups. The attempt to substitute a territorial pluralist solution with a non-territorial one failed. The continued existence of ethnically-based federation units with their own constitutions and state languages was the primary element of accommodation. At the same time, super-presidentialism, state-wide political parties and undivided sovereignty became the marks of republican integrationism.

Under the authoritarian tendencies, ethnic federalism was formally maintained but has been undermined, especially since 2005. The curtailment of the democratization agenda correlated with the shift in the model from a multinational federation towards a nation-state. The adoption of the nation-state model was justified by the demand for democratization, but actually nation building was viewed as the remedy to prevent separatism and guarantee the country's territorial integrity. Expectedly, new identity politics were accompanied by the shift in the predominant strategy from accommodation to integration. The vision of a civic nation was being developed during the 1990s and 2000s. The process culminated in the approval of the 2012 Nationalities Policy Strategy. After that, in a swing of the pendulum, the vision turned towards a mixed civic-ethnic and ethnic nation, in particular, due to the popular rise of Russian nationalism.

Under the current regime of electoral authoritarianism, a radical solution would have been the complete removal of ethnic regions by their merger with larger regions. But the major reshaping of political institutions has not happened. The Kremlin saw both troubles of such a project and benefits in keeping existing arrangements, because these provided political control and delivered desired outcomes in elections. At the same time, nation-building efforts

have intensified significantly in recent years, and are increasingly acquiring an ethnic dimension. Despite the pledge to maintain ethnic diversity, the building of an ethnic nation presumes the use of assimilationist devices especially in education policy and language policy. At that, the persistent and reinforcing ethno-religious and regional cleavages is one of the major obstacles countervailing the nation-building project. Even if only symbolic, the retained federal structure of the state adds to the complexity of the task, because identity building is very much about symbolic politics (see Malinova 2012).

Therefore, during the post-Soviet period the political regime change from democratization to the establishment of an authoritarian rule correlated with the model shift from a multinational federation towards a nation-state. The evolution in Russia's strategies of diversity management from the emphasis on accommodation to that on integration and assimilation also correlated with the regime change. Their negative correlation with decentralization and recentralization as the stages of state-building supports the argument that not so much normative considerations but estimations of power were behind the strategy choice (see McGarry et al. 2008: 87-88).

State-building typically includes as one of its aspects identify building, which is used as another tool of strengthening the state, although it might be also presented as a step towards democratization. The representation of the pursuit of nation building as democratic in the multinational settings of plural societies is problematic and might be justified only in the form of civic nation building. Perhaps, the main lesson of the Russian case is that, when the democratization agenda is scrapped, the corresponding curtailment of the civic project leaves diversity management without firm normative foundation.

A new wave of democratization might be expected at some point in Russia, which has some necessary structural preconditions for this, if assessed in terms of modernization theory (see Gel'man 2015: 27-28). At the same time, democratization will again face difficulties, because the tasks of nation and state-building were not solved and the associated challenges will inevitably re-emerge at the time of the next 'critical juncture'. Under a new situation, the probable rise of minority ethnic mobilization would again raise the issue of diversity management to the political agenda. The project of a 'Russian nation' might fail, especially in its ethnic incarnation, becoming associated with Putin's authoritarian regime in the same way as the project of building the 'Soviet people' became associated with the Brezhnev stagnation era. If one projects the ethno-political pendulum metaphor into the future, one might expect that democratization would be accompanied by a more minority-friendly policy. The situation

will be different from that of the time of the USSR dissolution. Will Russia be sufficiently diverse and are ethnic divisions still deep to justify accommodation?

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Evaluating the Structure of Nationalistic Inclinations: Confirmatory Factor Analysis

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Abstract

Starting from the notion that nationalism can be presented and interpreted as nationalistic inclinations composed of various components or dimensions of ethnic views and sentiments, the aim of this paper is to research whether national emotional attachment, xenophobia, anti-Semitism, the perception of threat posed by some ethnic minority groups, and national siege mentality are correlated to such a degree that they form a latent homogeneous and internally coherent construct of nationalistic inclinations. In this research, the nationalistic inclinations are defined as a system of mutually associated ethnic orientations and sentiments constructed from the threat perception (cognitive component), ethnic exclusionism (potentially behavioural component) and strong national affection (affective component). The study was carried out on a random sample of students at the University of Zagreb (N=368). In order to establish the factor and construct validity of the created Nationalistic Inclination Scale (NIS-1) consisting of 15 items, confirmatory factor analysis (CFA) was performed. The first order CFA yielded a three-factor model ('xenophobia and anti-Semitism', 'perception of threat to national security', and 'national emotional attachment') which on the level of second-order CFA resulted in plausible model of nationalistic inclinations with acceptable goodness-of-fit measures (SRMR=0.06; RMSEA=0.09; CFI=0.95; NFI=0.95). The results imply that the theoretical model of nationalistic inclinations is confirmed, and high reliability of the NIS-1 (alpha=0.89) proves it is a parsimonious, useful and efficient tool for assessing nationalistic inclination, and thus one aspect of nationalism in sociological and political sciences.

Keywords: nationalistic inclinations, nationalism, threat perception, confirmatory factor analysis, NSS-1

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Introduction

This article represents a somewhat extended version of an already published article in the Croatian language in the journal *Political Perspective*, 4 (1), 2014. Namely, distribution of results are explained in more detail, the section "Influence of gender on the internalization of the nationalistic inclination" is added, graphical presentations of results are made, and in this paper we used the term "nationalistic inclinations" instead of "nationalistic syndrome".

The concept of nationalism can be studied on various levels of analysis and from different aspects, so it is hard to define it in a way that would be generally accepted in the social sciences. For example, nationalism can be studied as a particular political ideology (Conversi 2012; Freeden 1998; Zaslove 2009), as a process of creating a nation or establishing a national state (Wimmer and Feinstein, 2010), as an individual political orientation (Dekker, Malova and Hoogendoorn 2003; Reeskens and Wright 2013), a socio-anthropological construct (Gingrich 2006; Jaspal and Cinnirella 2012), or as a space of particular ethnic attitudes that indicate the existence of a nationalistic sentiment (Breuilly 1996; Fenton 2012; Hjerm and Schnabel 2010; Ting 2008). In other words, studying the phenomenon of nationalism can be approached from the aspect of political science, sociology, anthropology, history, and political psychology. It is the different disciplinarian starting points in studying nationalism, as well as the application of different methodological procedures in measuring it, that lead to ambiguity in terms of conceptualization and operationalization of the phenomenon of nationalism. Additional blurring of the concept and measuring of nationalism comes from the authors who identify the 'nationalistic' with the perception of national superiority and orientation towards national dominance (e.g. Kemmelmeier and Winter 2008; Kosterman and Feshbach 1989); who make insufficient distinction between the political-psychological meaning and the sources of ethnocentrism and nationalism (e.g. Kangrga 2002; Sekulić and Šporer 2006; Todosijević 1995); who define nationalism in terms of strong national attachment and strong awareness of being affiliated to one's own nation (Cottam et al. 2010; Kissane and Sitter 2013; Križanec and Čorkalo Biruški 2009; Sidanius et al. 1997), or who define nationalism by using various other concepts, like chauvinism, collection narcissism or blind patriotism (Coenders and Scheepers 2003; Golec de Zavala, Cichocka and Bilewicz 2013; Lieven 2004; Schatz, Staub and Levine 1999). It can be noted that the political ideology or world view of certain authors often greatly influences the measuring methods, and interpretation of nationalism as attitude inclinations composed of various components or dimensions of ethnic views and sentiments. This imbalance in

defining and measuring the nationalistic inclinations makes it difficult to predict the political, social and economic behaviour of individuals and particular social and national groups in a potentially conflictive historical-political context. The importance of conceptualization, operationalization and construction of instruments for measuring nationalistic inclinations is certainly important in the area of studying the migration processes (Ariely 2012), national security (Griffith 2010; Melander 2009), globalization processes (Olzak 2011) and economic relations (Chorafas 2010; Solt 2011). The confusion in conceptualization and operationalization of nationalistic inclinations as a political-psychological construct contributes to its weak explanatory power, and also both makes it difficult to construct an integral theory of nationalism, and makes it impossible on the empirical level to make a valid interpretation of findings obtained from research in various historical and political contexts. Unlike the historical-developmental and political approach in studying nationalism, on the level of individual political orientation it is much more complex to define nationalism that actually presents a set of different individual ethnical viewpoints and sentiments, i.e. the structure of the nationalistic inclinations. Hence, in an ideal-typical sense, we could treat the 'phenomenology' of nationalism as historical-political processes that result in the creation of a particular nationalistic ideology on one hand, as well as the inter- and intra-psychical processes that result in the appearance of nationalistic inclinations in the form of particular internalized ethnic viewpoints and sentiments. Although in this study we primarily deal with the nationalistic inclinations construct, this does not mean that it will not provide us with the possibility to make implicit conclusions about the political-psychological background of the structure and dynamics of a possible nationalistic ideology and its social and political consequences.

Since this paper treats the concept of nationalistic inclinations as an attitudinal construct, i.e. a compound of various opinions, beliefs, evaluative judgments and emotional involvement, a question arises of what exactly is the core of the attitude we hold to have nationalistic inclinations in a political-psychological sense. In this research, we defined the nationalistic inclinations as the system of mutually connected ethnic orientations and sentiments that (1) on the affective level indicate a strong national identification (*national emotional attachment*); (2) on the cognitive level indicate the presence of perception of threat (*perception of threat posed by some ethnic minority groups – threat from minorities; perception of threat coming from hostile nations and countries – national siege mentality*) and prejudice (*anti-Semitism*);[1] (3) on a potential behavioural level indicates ethnic exclusionism

(*xenophobia*). We see that, apart from the concepts like the national affective attachment, xenophobia and anti-Semitism, we used the concept of the perception of threat in the conceptualization and operationalization of the nationalistic inclinations construct. We strived to implicitly include the theoretical concept in the very structure of the nationalistic inclinations construct, which, among other things, may lie in its political-psychological background.

Namely, perception of threat as a concept is considered in literature as one of the best individual predictors or the explanatory variable of different forms of ethnic *exclusionism and intolerance* (Canetti-Nisim, Ariely and Halperin 2008; Quillian 1995; Stephan and Stephan 2001), *national identification* (Cameron et al. 2005; Falomir-Pichastor and Frederic 2013; Verkuyten 2009) *authority* (Canetti et al. 2009; Cohrs 2013; Feldman and Stenner 1997), *prejudice* (Legault and Green-Demers 2012; McLaren 2003; Stephan and Stephan 2000) and *ideological orientations* (Duckitt and Fisher 2003; Jost et al. 2007; Lahav and Courtemanche 2012). Therefore, the perception of threat lies in the social and political-psychological background of various patterns of exclusionism in ethnic and other social interactions, in the strong national identification and non-critical affective relation to one's own nation, various forms of authority, and the type of prejudice and ideologies that can present perceptive distortion. In that case, the combination of various patterns of ethnic exclusionism and perception of threat can lie in the background of authoritative political ideology. It is the perceptive distortion of reality that can in certain cases generate not only forms of social and political isolation of particular ethnic and social groups and discrimination against their members, but it can sometimes also lead to their destruction in a particular political-historical context (Hetherington and Suhay 2011; Huddy, Feldman and Weber 2007; Oxman-Martinez et al. 2012).

Therefore, in this study, we tried to investigate whether the national emotional attachment, xenophobia, anti-Semitism, perception of threat posed by some ethnic minority groups and the national siege mentality are correlated in such a way that on the higher order latent level they form a homogenous and internally coherent attitude, i.e. whether the Nationalistic Inclination Scale (NIS-1) is a reliable instrument that can be used in various studies in political science, sociology and psychology. The relationship between these concepts basically represents the theoretical background of nationalistic inclinations. On the level of first-order factors, we assumed that the nationalistic inclinations will represent a multidimensional construct. Keeping in mind the research that found intercorrelations of

various dimensions of *ethnic exclusionism,* intercorrelations among various dimensions of threat perception, and *national emotional attachment* (implying the existence of a strong national identification), we assumed a three-factor model of nationalistic inclinations. The research namely shows that there is a positive correlation between anti-Semitism and xenophobia (Bergman 1997; Fertig and Schmidt 2011; Krumpai 2012) which is particularly established in a psychodynamic set and under the influence of authoritative socialization (Bohm 2010; Raden 1999). Other research found a substantial correlation between the perception of the inside and outside threat (Šram 2010), and the perception of a threat posed by some ethnic minority groups and national siege mentality (Canetti-Nisim, Ariely and Halperin 2008; Golec de Zavala and Cichocka 2012; Šram 2009) under the strong influence of collective memory of physical violence in interethnic conflicts (Bar-Tal 2003). Also, without the strong emotional saturation, i.e. strong national identification, it is difficult to grasp the nationalistic inclinations or sentiments (David and Bar-Tal 2009; Davidov 2011; Druckman 1994; Šram 2010; Weiss 2003). In order to verify the theoretical model of nationalistic inclinations that we defined as an internally coherent system of threat perception (cognitive component), ethnic exclusionism (potentially behavioural component) and strong national affection (affective component), we conducted the confirmatory factor analysis. Also, the reliability analysis of the final scale, including the test of the gender differences, was performed and the results are presented in this paper.

Method

Survey participants

A random sample of students from the University of Zagreb (N=368; 63% female) participated in the study. Out of this number, 62% of the students studied humanities and/or social sciences (Faculty of Humanities and Social Sciences, Centre for Croatian Studies), 30% technical sciences (Faculty of Architecture, Faculty of Electrical Engineering and Computing) and 8% at the Faculty of Science. A significant majority of respondents studied humanities and social sciences because professors from the Faculty of Humanities and Social Sciences were more willing to enable the students to take part in this research. The average age of participants was 21. All participants were Croatian. Participants filled in the questionnaire in groups, during their regular classes at the University. The research was carried out in 2009 as a part of a larger research of ethnic attitudes and political orientations of students in Zagreb.

Instruments

Nationalistic Inclinations Scale (NIS-1) was developed by selecting items of ethnic attitudes and sentiments which define five sub-dimensions (Table 1): (1) *national emotional attachment* - the existence of a strong feeling of national identification, where the individual's nation is his 'alter ego' (Šram 2008) (codes: ns1, ns2, ns3); (2) *xenophobia* - an anti-immigration sentiment or a strong social distance towards migrant workers (codes: ns7, ns8, ns9) (Halperin, Canetti-Nisim and Pedahzur 2007); (3) *anti-Semitism* - the existence of prejudice towards Jewish people in terms of their honesty and the power of Jewish people in the business world (Selznick and Steinberg 1969) (codes: ns10, ns11, ns12); (4) *perception of threat posed by some ethnic minority groups* - a threat to national security (Canetti-Nisim et al. 2009) (codes: ns4, ns5, ns6); and (5) *national siege mentality* - a feeling of a threat to the nation, i.e. the mental state in which members of a particular nation maintain a central belief that other nations and countries have strong hostile intentions toward them (Bar-Tal and Antebi 1992) (codes: ns13, ns14, ns15). To answer each of the items the respondents used a 5-point scale defined from 1 = 'Strongly disagree' to 5 = 'Strongly agree'.

Table 1

Nationalistic Inclination Scale (NIS-1)

Code	*Variable*	*N*	*M*	*SD*
ns1	Love towards your nation is one of the most beautiful feelings a person can have	368	2.96	1.28
ns2	I always get mad when someone speaks badly about my nation	368	3.16	1.16
ns3	I perceive every insult to my nation as an attack on myself	368	2.46	1.20
ns4	There are national political parties of ethnic minority groups that should not be allowed into our national parliament	368	2.37	1.18
ns5	Certain ethnic minority groups are a threat to our country's safety	368	2.10	1.10
ns6	Certain ethnic minority groups are trying to politically destabilize our country	367	2.17	1.04
ns7	I wouldn't like to live in a neighbourhood with migrant workers	368	1.98	1.02
ns8	I would never approve of someone in my family marrying a migrant worker	367	1.69	0.99
ns9	A higher number of migrant workers would be a threat to the Croatian nation, because they could not be prevented from marrying our girls	368	1.89	1.03
ns10	Jewish people are not as honest in business as other business people	367	2.08	1.03
ns11	Jewish people have too much power in the business world	367	2.74	1.25

ns12	Jewish people use dishonesty in order to get ahead	367	2.17	1.06
ns13	My nation has many enemies	368	2.31	1.07
ns14	Our nation is under threat from all sides	367	2.04	1.12
ns15	There is always a threat from neighbouring nations	367	2.83	1.21

Results

Confirmatory factor analysis of the Nationalistic Inclination Scale

To test the factor and construct validity of the Nationalistic Inclination Scale, we conducted the confirmatory factor analysis by using structural modelling software (Prelis and Lisrel, version 8.54). Simply put, the confirmatory factor analysis is a statistically stronger procedure than the explorative analysis, because it is impartial in testing how well a theoretically-based model (or hypothetical latent structure) fits the empirical data. It is desirable for the model (conceptualized as a set of interrelated covariance matrices) to fit as well as possible (i.e. to have the best possible '*fit*') to the covariance matrix of the actual data. The absence of a good fit (or insufficient '*fit*') usually means that the model is not well supported by actual data, and that the model needs to be modified or completely abandoned. There are various criteria for a model's suitability, i.e. the goodness-of-fit indices linking empirical data with the theoretical model. Among them, the most used ones are the chi-square test and the corrected chi-square test (relative to the degrees of freedom, i.e. χ^2/df, relative χ^2), and various indices of comparative fit. Usually, several complementary indices are used simultaneously. In this study, we list the following: comparative fit index (CFI), normed index of fit (NFI), standardized root mean-square residual (SRMR), and the root mean-square error of approximation (RMSEA). CFI and NFI values should be greater than 0.90 (Bentler 1992, Bentler and Bonett 1980), and SRMR values (Hu and Bentler 1999) and RMSEA values (Browne and Cudeck 1993) should be less than 0.10. In other words, greater CFI and NFI values, as well as lower SRMR and RMSEA values, indicate a better fit of the suggested model. The value of relative chi-square less than 3.00 is usually accepted as a good fit, although some researchers accept value 5.00 (Mueller 1996). The fit of results with the theoretical postulates of the model was compared with comparative indices CFI and NFI, and the deviation from the model with indices of relative chi-square, SRMR and RMSEA.

Confirmatory factor analysis of the Nationalistic Inclinations Scale on the level of first-order factors extracted a three-factor structure, or the nationalistic inclination model (Figure 1). The first factor is defined by variables indicating prejudice towards Jewish people, concerning their honesty and influence in the business world. The Jewish people are perceived as dishonest and too influential. This factor is also defined by variables that indicate a strong social distance towards migrant workers. We named this first factor *Xenophobia and anti-Semitism* (defined by items: I wouldn't like to live in a neighbourhood with migrant workers; I would never approve of someone in my family marrying a migrant worker; A higher number of migrant workers would be a threat to the Croatian nation, because they could not be prevented from marrying our girls; Jewish people are not as honest in business as other business people; Jewish people have too much power in the business world; Jewish people use dishonesty in order to get ahead).

The second factor is defined by variables that indicate a national siege mentality and perception of threat posed by some ethnic minority groups. In other words, the perception of threat to national security posed by some ethnic minority groups living in Croatia, and the perception of threat to national security coming from other nations and countries define the factor we called *Perception of threat to the country's and nation's safety* (defined by items: There are national political parties of ethnic minority groups that should not be allowed into our national parliament; Certain ethnic minority groups are a threat to our country's safety; Certain ethnic minority groups are trying to politically destabilize our country; My nation has many enemies; Our nation is under threat from all sides; There is always a threat from neighbouring nations).

The third factor indicates national identification of the type where the border between one's own ego and national collectiveness disappears. In other words, the national belonging receives psychological characteristics of an alter ego. We named this factor *National emotional attachment* (defined by items: Love towards your nation is one of the most beautiful feelings a person can have; I always get mad when someone speaks badly about my nation; I perceive every insult to my nation as an attack on myself).

It can be seen in Table 2 that the suggested nationalistic inclinations model is not completely satisfactory on the level of primary factors, i.e. the empirical data somewhat deviates from the hypothetical model. However, we can see that the comparative goodness-of-fit indices are marginally acceptable (CFI=0.90; NFI=0.89), which means that the suggested three-dimensional model of nationalistic inclinations should not be completely rejected.

Table 2
*Goodness-of-fit indices for the **nationalistic inclinations** model on the level of first-order factors and on the level of second-order factor*

	Nationalistic inclinations	
	First-order factor	Second-order factor
df	90	87
χ^2	614.68	326.19
χ^2/ss	6.8	3.7
SRMR	0.26	0.06
RMSEA	0.13	0.09
CFI	0.90	0.95
NFI	0.89	0.95

df – degrees of freedom
χ2 – chi-square
SRMR – standardized root mean-square residual
RMSEA – root mean-square error of approximation
CFI – comparative goodness-of-fit normed
NFI – normed goodness-of-fit index

On the level of the second-order factor, the confirmatory factor analysis extracted a more general nationalistic inclinations factor (Figure 2). Table 2 shows that the nationalistic inclinations model on the level of second-order factor has a satisfying goodness-of-fit within the allowed levels of standard error. We can see therefore that the nationalistic inclinations measured with the NIS-1 represents a theoretically based model as a second-order factor. In other words, the hypothetical latent structure of nationalistic inclinations on the level of second-order factor has a satisfactory fit with the empirical data.

Figure 1

Confirmatory factor analysis of the Nationalistic Inclinations Scale on the first-order factor level

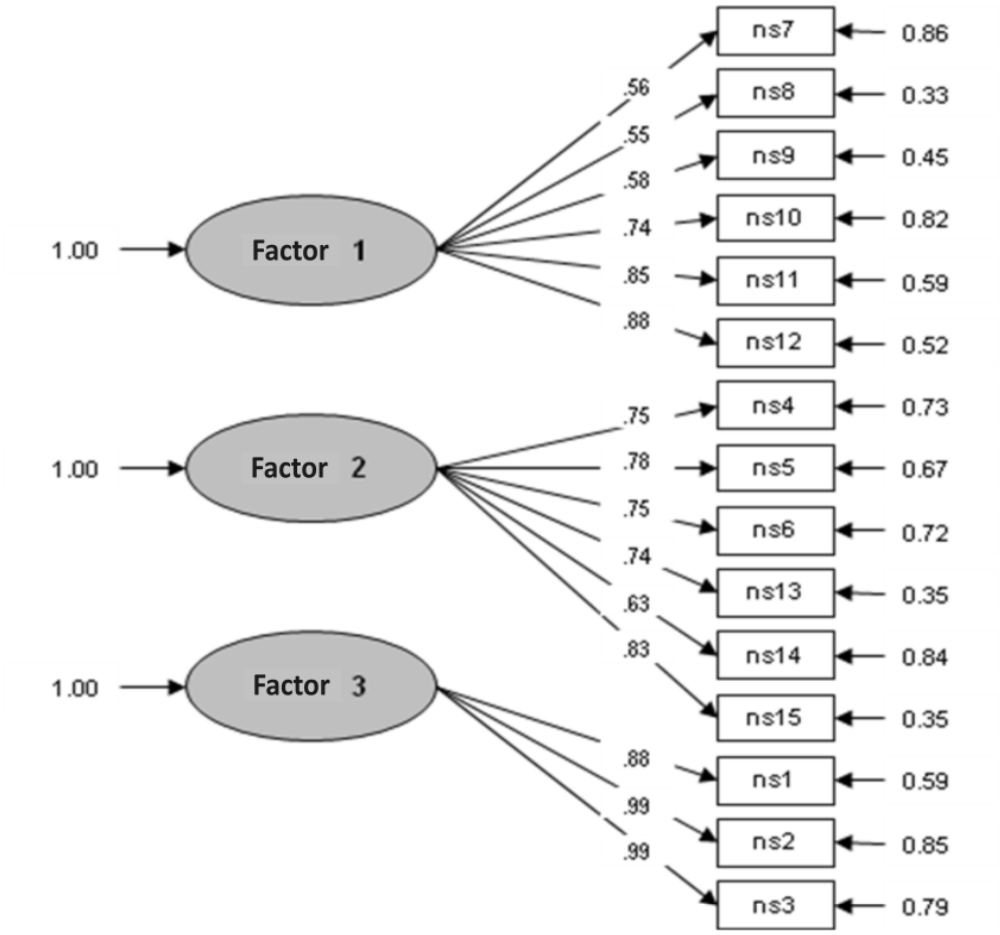
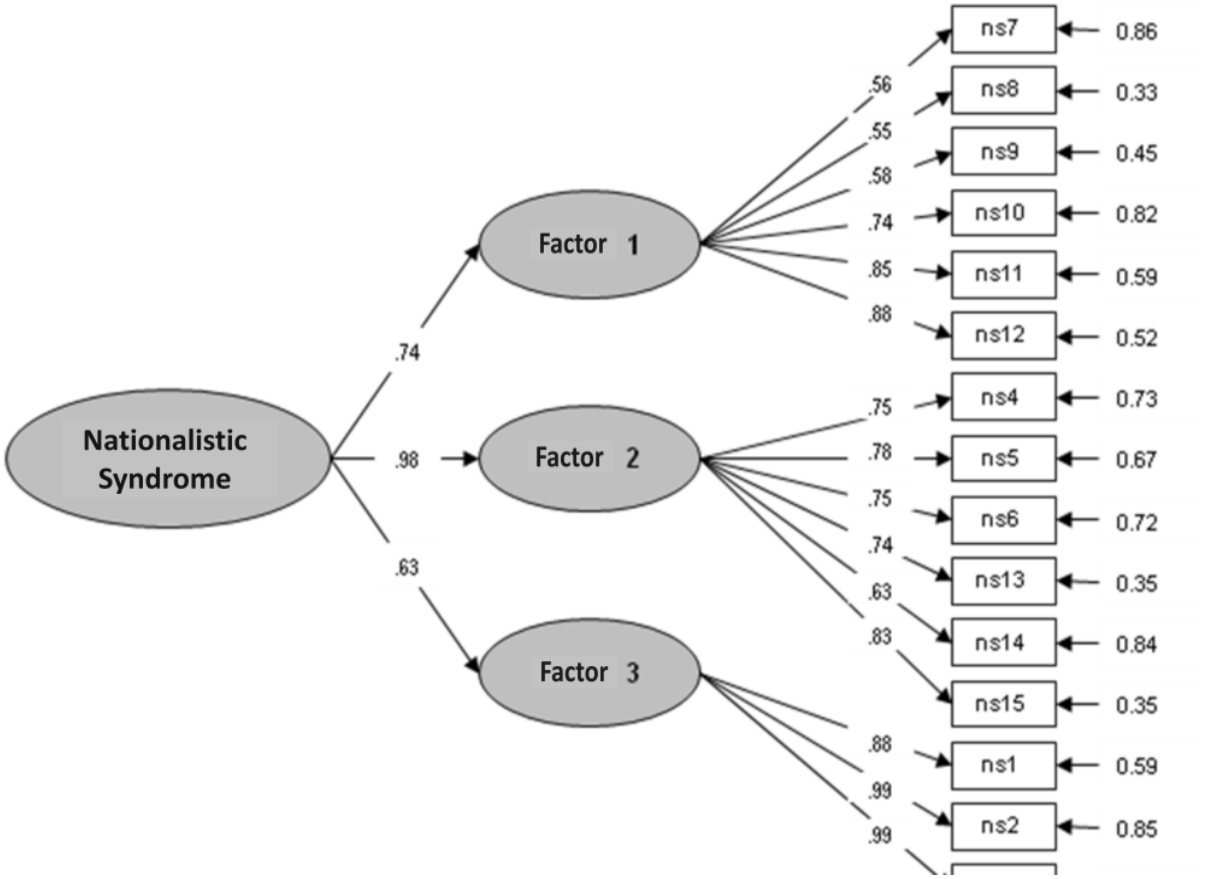


Figure 2
Second-order confirmatory factor analysis of the Nationalistic Inclinations Scale



Reliability of the Nationalistic Inclinations Scale

Based on the correlation matrix of 15 items of the Nationalistic Inclinations Scale, we also conducted the exploratory factor analysis (EFA), by using principal components analysis and promax rotation. We extracted three identical factors with significant eigenvalues of 6.17, 1.58 and 1.18, explaining 59.63% of the total variance. The inter-factor correlations (0.45, 0.50, 0.58) indicated that there is a common origin of the extracted dimensions of the nationalistic inclinations, i.e. that the individual differences have a very similar source. Second-order factor analysis confirmed the presumption about the existence of a more general dimension of nationalistic inclinations. Having also in mind the eigenvalue of the first principal component (6.17), the percentage of the variance it explains (41.14), and the range of factor saturation of its constituent items being between 0.78 and 0.85, we can consider the nationalistic inclinations scale to be an internally homogenous measure of an attitude.

Cronbach's alpha coefficient for the 15-item scale is 0.896, indicating a high reliability of the NSS-1. The high reliability of the scale is also indicated by other indicators in the item analysis, such as the discriminative validity coefficient or the item-total correlation, and the size of Cronbach's alpha without a particular item (Table 3).

The value in the column 'item-total correlations' represents correlations between each item and the total result achieved on the scale. Table 3 shows that all the items have substantial correlation with the total of the **NIS-1** (all the item-total correlations are between 0.49 and 0.63). The values in column 'Cronbach's alpha without the item' are total alpha values if a particular item was not taken into account in calculating the Cronbach's coefficient. Total alpha value is 0.89, meaning that all alpha values should be somewhere around this value. Table 3 shows that none of the items would significantly affect the scale's reliability if we would leave it out of the calculation of Cronbach's coefficient.

Table 3
Item-total correlation of NSS-1 and Cronbach's alpha without the items

Item	*Item-total correlation*	*Cronbach's alpha without the item*
ns1	0.52	0.89
ns2	0.54	0.89
ns3	0.58	0.88
ns4	0.55	0.89
ns5	0.63	0.88
ns6	0.63	0.88
ns7	0.51	0.89
ns8	0.54	0.89
ns9	0.62	0.88
ns10	0.59	0.88
ns11	0.52	0.89
ns12	0.60	0.88
ns13	0.60	0.88
ns14	0.49	0.89
ns15	0.60	0.88

Distribution of results on the Nationalistic Inclinations Scale

Based on the established homogeneity and reliability of the NIS-1, we can treat the nationalistic inclination construct as a composite variable obtained by summing up numerical values of the 15 items which constitute Nationalistic Inclination Scale. Even though the theoretical range of the NIS-1 is from 15 to 75, the obtained range of results is 15 to 65, while the mean is 35 (SD=10.71; Table 4). The skewness coefficient is 0.19, with the standard error of 0.13. This value indicates that the distribution of results on the NIS-1 does not show a significant skewness (values are near zero). The kurtosis coefficient is -0.56, with a standard error of 0.25, indicating that there is a certain tendency towards kurtosis of the distributions of results (Table 5). The Kolmogorov-Smirnov test showed that the distribution of results on the NIS-1 is not significantly different from normal (K-S z= 0.87; p= 0.436). Figure 3 shows the categorized version of NIS-1 from which can be seen that none of the respondents scored on the highest category of the scale (namely, none of them fully agreed with all 15 statements) implying that there is no record of the respondents with expressed nationalistic inclinations in its full extent. We can speak only in terms of tendencies in expressing nationalistic inclinations.

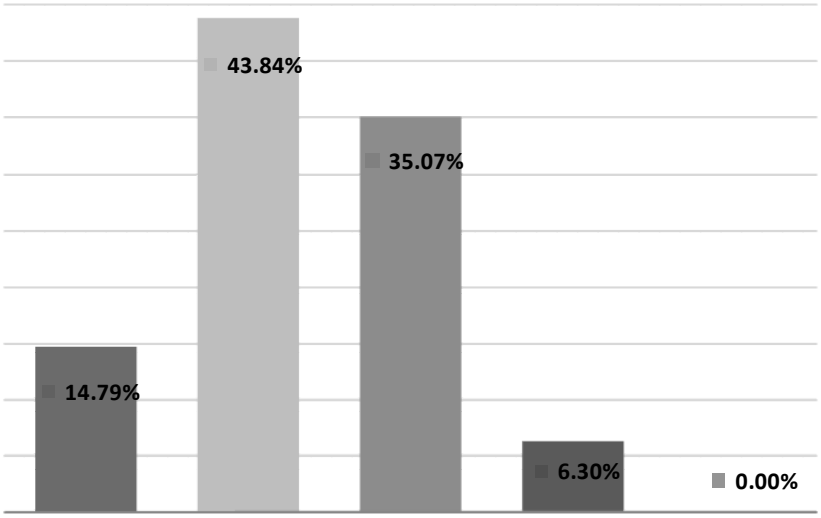
Table 4
*Descriptive statistics of total scores on the composite variable of the **nationalistic inclinations** measured by the **NIS-1***

	N	Min	Max	M	SD	Variance
Nationalistic inclinations	365	15	65	34.937	10.709	114.69

Table 5
*Descriptive statistics of skewness and kurtosis of results on the **NIS-1***

	N	Skewness coefficient	Standard error (skewness)	Kurtosis coefficient	Standard error (kurtosis)
Nationalistic inclinations	365	0.193	0.128	-0.560	0.255

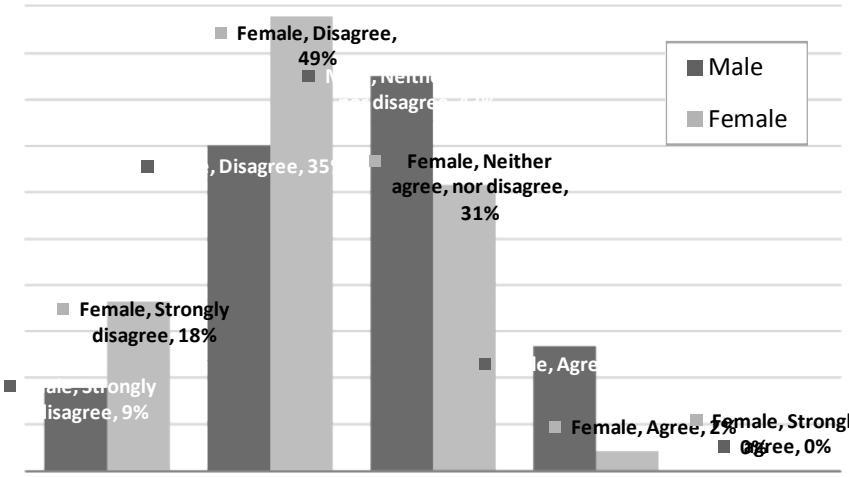
Figure 3
*Frequency distribution of the categorized version of **NIS-1***



Influence of gender on the internalization of the nationalistic inclinations

Examining the statistically significant gender differences, in terms of the level of internalization of the nationalistic inclinations, is also one of the aspects of nationalistic inclinations investigated in this study. For this purpose, we conducted a t-test on the composite variable of the nationalistic inclinations of male and female participants. We found that, statistically speaking, there is a significant difference in the sense of expressing the nationalistic inclinations between male and female participants ($t=5.54$, $p<0.001$, $df=363$). This can also be seen in Figure 4 presenting the gender-specific distributions of the categorized version of NIS-1. Although we found that the male participants have largely internalized nationalistic inclinations, and that this difference is statistically significant, we still do not know the true effect size that participants' gender has on the presence of nationalistic inclinations. To compute the effect size, we had to convert the statistics of the t-test into Pearson's correlation (see Field 2009: 332). We found that the correlation is $r=0.28$, i.e. that the coefficient of determination is 0.078. This means that around 7.8% of the variance can be attributed to gender differences in terms of internalization of the nationalistic inclinations.

Figure 4
Frequency distribution of the categorized version of NIS-1 by gender



Discussion

The results of the confirmatory factor analysis (CFA) have shown that on the level of first-order factors, the nationalistic inclinations represent a multidimensional construct defined by three factors: *Xenophobia and anti-Semitism*, *Perception of threat to state and national security*, and *National emotional attachment*. The structure of the first factor not only confirmed some earlier findings about the relation of xenophobia and anti-Semitism (Bergman 1997; Fertig and Schmidt 2011; Krumpai 2012), but it also indicated that these two concepts have a very similar socio-psychological meaning and political-psychological background in social interethnic relations. Keeping in mind that the concept of xenophobia can be treated as an indicator of ethnic exclusionism (Raijman 2012; Scheepers, Gijsberts and Coenders 2002), and that the concept of anti-Semitism can be treated as a prejudice indicator (Golec de Zavala and Cichocka 2012; Kovacs 2010), we can conclude that the structural relation between anti-Semitic prejudice and ethnic exclusionism indicates a certain *cognitive-behavioural* component of nationalistic inclinations.

The structure of the second factor is defined by the perception of threat posed by some ethnic minority groups and the national siege mentality, that is, the presence of the perception of threat posed by some ethnic minority groups on the one hand, and the perception of threat

posed by other nations and countries on the other. The content and political-psychological meaning of the second factor indicate the presence of threat perception to the national security coming from the internal and external enemies, i.e. signify the *cognitive component* of nationalistic inclinations. This confirms the findings of the studies that found the relation between different types of threat perception, regardless if these are realistic or symbolic threats (Canetti-Nisim, Ariely and Halperin 2008; Golec de Zavala and Cichocka 2012; Šram 2010).

The third factor indicates the presence of a strong national identification in which the line between national collectiveness and own ego is erased, i.e. where national belonging and identification assume 'alter ego' characteristics. The isolation of the *National emotional attachment* on the level of first-order factors indicates the specific nature of the affective component within the composite variable of nationalistic inclinations and ethnocentrism, which is something that the findings of other studies also indicated (Bizumic et al. 2009; Šram 2008, 2010). In other words, this means that the affective component of ethnocentrism or of nationalistic inclinations do not necessarily have to form the internally homogenous single dimensional construct. Perhaps in some future version of the measurement scale for nationalistic inclinations we should exclude the affective component, and focus only on the dimensions of ethnic exclusionism and the perception of threat to national security. In that case, we would probably have a more reliable cognitive-behavioural model of nationalistic inclinations.

Although the model of nationalistic inclinations on the level of first-order factors failed to completely satisfy the set of goodness-of-fit indices, it still should not be completely rejected. In other words, this means that the construct of nationalistic inclinations can be located on two levels of conceptual width: (a) on the lower, three-dimensional level of expressing nationalistic inclinations, and (b) on the higher level of generalization, i.e. on the one-dimensional second order factor level. Namely, we have seen that on the level of second-order factor, the CFA yielded one-dimensional nationalistic inclination construct which had satisfactory goodness-of-fit. This confirms the theoretical model of nationalistic inclinations as an internally coherent system of ethnic exclusionism (potential behavioural component), threat perception (cognitive component) and national emotional attachment (affective component). Accordingly, nationalistic inclinations, like many other constructs in the social and political psychology, have a hierarchical structure that enables the prediction of results on a lower level by individual sub-dimensions, and on a more general level. Depending on the

problem and research goals, a multidimensional or one-factor concept can both be used. Apart from the confirmed model of the nationalistic inclinations as a higher order factor, measurement NIS-1 has proved to be a highly reliable measurement instrument that can be used in various political, sociological and psychological studies.

Taking into account the results obtained by confirmatory factor analysis and the high reliability of the NIS-1, nationalistic inclinations can be treated as a one-dimensional construct on a higher conceptual level. The political-psychological determinants of the nationalistic inclinations measured by the NSS-1 are: (a) national identification in whose affective background the border between 'we' and 'me' is lost, i.e. where the nation and national belonging have become an integral part of a person's individual identification (alter ego); (b) existence of prejudice towards Jewish people in the sense of their moral and financial power in the business world, and the existence of stereotypes as a justification of these prejudices (Crandall et al. 2011); (c) potential exclusion of foreigners, i.e. migrant workers from the immediate social transactions; (d) lack of trust in certain ethnic minority groups that are perceived as a threat to national security; and (e) the feeling of a threat to the nation from other nations and countries that are perceived as a threat to national security. Therefore, this confirms the general theoretical notion that the perception of threat lies in the political-psychological background of a strong national identification and ethnic exclusionism (Cameron et al. 2005; Canetti-Nisim, Ariely and Halperin 2008; Falmoir-Pichastor and Frederic 2013; Stephan and Stephan 2001; Quillian 1995; Verkuyten 2009). In our actual case, the perception of threat to the security of the country and the nation lies in the political-psychological background of ethnic exclusionism and strong national identification, i.e. attachment.

The structural relation between the strong feeling of national identification with the concept of the threat perception does not always have to point to their cause-and-effect relation, although the perception of threat is most often placed in the position of 'causal', independent or explanatory, variable in defining structural models (Canetti-Nisim, Ariely and Halperin 2008; Halperin, Canetti-Nisim and Pedahzur 2008). However, a strong national identification can, in a given political and historical context, be a 'consequence' of perception of a realistic threat or conflict, but it can also be a 'cause' of threat perception, i.e. contribute in perceiving certain ethnic minority groups, Jewish people, immigrants and other states and nations as a threat to state and national security (Šram 2010). Accordingly, the strong national identification can be an antecedent of a perceived threat coming from external groups, but

also a consequence of the threat perception (Verkuyten 2009). In any case, we are inclined to accept the theoretical model within which it is postulated that the perception of threat, especially the type of threat that concerns state and national security, significantly contributes to the development and expression of the national identification, i.e. which implies the existence of a strong national emotional attachment (Falomir-Pichastor and Frederic 2013; Li and Brewer 2004). Expressing a strong national emotional attachment in the context of anticipated state and national threat indicates a national cohesion that is characteristic for the personal self-transcendence (Roccas, Schwartz and Amit 2010). Accordingly, apart from the usual agents of socialization, collective memory and historical traumas, the perception of threat that comes from the internal and external enemy can largely transcend the individual identity into national collective and bring conflictive potential to its actualization.

The established structural relation between the ethnic exclusionism (xenophobia and anti-Semitism) and the perception of threat to state and national security is in accordance with the findings of studies in which the concept of the perception of threat is treated as a key explanatory variable in forming and expressing anti-immigrant attitudes, xenophobia and anti-Semitism (Raijman 2012; Scheepers, Gijsberts and Coenders 2002; Golec de Zavala and Cichocka 2012; Schneider 2008; Watts 1996). We can therefore conclude that the concept of threat perception, especially the threat to state and national security, is the theoretical concept which largely contributes to the understanding of political and psychological dynamics of nationalistic inclinations. Although the nationalistic inclinations construct is defined in terms of ethnic attitudes and sentiments, this does not mean that it cannot, to a certain degree, indicate the presence of a particular nationalistic ideology, political conservatism, extremism, authoritarian political culture (Duckitt and Fisher 2003; Jost et al. 2007; Perrin 2005; Raden 1999) or the presence of psychopathic personality traits (Šram, 2015).

Testing of gender differences gave the expected results. Even though neither males nor females scored on highest level of NIS-1, males expressed significantly higher tendencies towards nationalistic inclinations. These results mirror the results obtained in many studies indicating that male respondents are more prone to express aggressiveness than female respondents (Bettencourt and Miller 1996; Burton, Hafetz and Henninger 2007, Šram, 2015).

In order to further investigate the ideological, political-cultural and psychological background of nationalistic inclinations, and verify the theoretical sustainability of the structural model, and the reliability of the NIS-1 as a measure, it is necessary to conduct a study on a more representative sample. In its design, the dimensions of political orientations,

social capital, authority and conative personality characteristics would be placed in the position of the predictor set of variables. In spite of the possible criticism that the research was carried out on a student population, we have constructed a reliable and efficient measure of nationalistic inclinations that is theoretically based on the threat perception concept. Since the distribution of results on the Nationalistic Inclination Scale is not significantly different from the normal distribution, we can conclude that nationalistic inclinations, measured with NIS-1, do not represent the sociological or political pathological phenomenon significant for the sample of Zagreb university students who participated in this research, especially taking into account that the highest level of the NIS-1 was not recorded. However, this could mean that the student population might have significant conflict potential, not directly connected to nationalistic inclinations, which, due to actual or imagined perception of a national threat, could lead to interethnic conflicts, xenophobia, political paranoia, collective narcissism and conspiracy.

Notes

[1] The construct of anti-Semitism as a sort of prejudice is primarily used for the sake of the fact that a great majority of respondents have no direct experience with the Jews as an ethnic group.

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Sami land rights: the Anaya Report and the Nordic Sami Convention

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Abstract

This essay explores land and self-determination rights of the Sami people in Norway, Sweden and Finland in light of Anaya´s UN Report, because this report offers a guideline to advance the difficult legal and political debate on land and self-determination rights in the Nordic states. The article will discuss these developments concerning the legal position of the Sami People(s) according to national and international law. Special focus is given to how national law and public administrations are able to sustain a balance between Sami land and self-determination rights and the interests of the majority population.
A Sami Convention, as proposed by the Nordic states, could be a model for other countries with indigenous peoples living across borders. Therefore, the essay will also examine the rationale underlying land and self-determination rights in the Draft Sami Convention. With a view to using international instruments like the ILO Convention No. 169 as a basis for a Sami Convention, the focus is on how far land and self-determination rights of the Sami Convention secure the Sami an equivalent position against state institutions and non-Sami people.

Keywords: Sami people; Sami land rights; Sami self-determination; Sami Parliament; Anaya Report; Sami Convention; Nordic countries; resource rights; environmental rights.

Introduction

About 90,000 Sami (Saami) live in an area in the north of Norway (Finnmark), in Sweden (Lapland) and Finland, and on the Russian Kola peninsula (cf. Koivurova, 2008: 280). Today, the recognition of the Sami as an indigenous people living across several borders is non-

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controversial. Reindeer husbandry has been a central part of their social and cultural life since the 17th century. Sami are currently active in all business areas, with about 10% working in the field of reindeer husbandry (Anaya, 2011: 4-5). Sami land- and self-determination rights, especially as composed in the intended Sami Convention,[1] are highly discussed and of special importance for the livelihood and cultural survival of the Sami people(s).

Part 1 of this article will analyse developments in regional land and self-determination rights with regard to the legal position of the Sami People of Norway, Sweden and Finland according to national and international law. It will demonstrate how the three states respond to Sami claims to land and self-determination and where certain rights should be promoted, with reference to the UN Report of a former Special Rapporteur on the rights of indigenous people (Anaya, 2011). The article will achieve this by providing an understanding of the functions of the different legal concepts concerning land and self-determination rights, and by evaluating significant parallels and differences in those rights among the Nordic states in search of possible adequate national solutions. The developments will be assessed with specific reference to ILO Convention No. 169 (ILO 169, ILM 28: 1383) and the new UN Declaration on the Rights of Indigenous Peoples (2007).[2] Notwithstanding its shortcomings, ILO Convention No. 169 still has a far-reaching influence on the position of indigenous peoples, which extends beyond the ratifying States (cf. Fitzmaurice, 2009: 71); the 'UN Indigenous Declaration' is the most far-reaching comprehensive instrument concerning indigenous peoples. The main question is how capable national law and public administrations are of sustaining a balance between Sami land and self-determination rights and interests of the majority in Norway, Sweden and Finland.

In part 2, the article examines the rationale underlying land and self-determination rights in the Draft Nordic Sami Convention from 2005. This important, intended 'social contract' between the three states and the Sami will shape the future of the Sami and might even influence indigenous rights in other countries with indigenous peoples living across boundaries, as it will recognize the self-determination rights of the Sami as a people and the authority of indigenous (Sami) parliaments. This article will clarify whether the scope of relevant Sami rights – as composed in the Draft Sami Convention – is sufficient. Of particular interest is to what extent the land and self-determination rights of the intended Sami Convention would secure the Sami an equivalent position to state institutions and non-Sami people. The Draft Sami Convention will be analysed by studying its underlying ideas, particularly through investigation of international instruments like ILO Convention No. 169 –

which the Draft Sami Convention is based on – and in light of the mentioned UN Indigenous Declaration. Even though the analysis is focused only on a Draft of the Sami Convention, as Koivurova (2008: 281) explains it establishes an example of how states and trans-national indigenous peoples could negotiate their legal relations in a constructive way.

1. Land and self-determination rights and the Anaya Report

This chapter deals with the domestic regulation of Sami rights in three Nordic states, and asks the following questions:

- How do the states respond to Sami claims related to land (or water), resources, and self-determination?
- To what extent is the law and especially public administration able to balance claims by the Sami minority to land and self-determination and the interests of the majority population?

The findings of the 2011 UN Report on the situation of the Sami people will be taken into particular consideration. The Special Rapporteur's country report evaluates the situation of the indigenous Sami people in three countries – Norway, Sweden and Finland – where the Sami live. The report offers valuable recommendations to governments and other actors (e.g. Sami Parliaments) on how to address – amongst others – land, resource and self-determination issues within the framework of applicable international standards.[3] Former Special Rapporteur Anaya (2011: 1-2)[4] acknowledges the exemplary work that the three countries and their Sami Parliaments have achieved, and emphasises the importance of a Sami Convention.[5] The adoption of this prospective, mutual Convention, which leans on ILO Convention No. 169 (currently only ratified by Norway) should be striven for. However, many rights outlined in the Draft Sami Convention are still controversial, especially land, water, resource, and self-determination rights, and for this reason it has not yet been ratified. Here the Anaya Report, composed by an indigenous lawyer, is of special importance as a guideline to help finally end the difficult legal and political debate concerning land and self-determination rights in the Nordic states, especially with regard to a Sami Convention.

1.1. Analysis of Sami self-determination

The Anaya Report (2011: paras 32-45) investigates cross-border self-determination of the Sami people and national self-determination (Sami Parliaments). Barriers to self-determination still exist on both levels. The Sami have no intention of separating from the

states in which they live to form a separate Sami state; this is consistent with relevant determinations in international law (ibid.: para. 33).[6] The Sami people have undertaken remarkable attempts to advance their collective self-determination through the development of cross-border institutions and initiatives, although obstacles still exist. The Sami Convention reflects mutual objectives and is a central part of Sami self-determination. However, this Convention is not applicable to Russian Sami, and the adoption of the Convention has been delayed. Nevertheless, representatives of the three participating governments and the presidents of the Sami Parliaments agreed on a negotiation model whereupon three delegations of the aforementioned countries have remained in negotiations with each other since 2011 (ibid.: paras 34-36).

At present, Sami self-government and participation in decision-making processes in Norway, Sweden and Finland are primarily exercised by the Sami Parliaments. According to Anaya, the autonomy and self-government powers of these parliaments have to be strengthened. The potential of the Sami Parliaments needs to be expanded to take part in decision-making related to Sami issues and to actually influence these decisions. Especially in Finland, Sami Parliaments are only regarded as bodies by which the Sami could interact with governmental authorities without having substantial influence or decision powers. Sami Parliaments do not have a special decision power concerning land, waters and natural resources, apart from exceptions as they exist in e.g. Norway (ibid.: para. 37-38).

Although there are consultation procedures which promote Sami participation in decision-making to a certain degree, as in Norway,[7] mutually negotiated and duly conducted consultation procedures could advance Sami rights towards a position in which they have greater influence on governmental politics, and would enhance the relations between the parties. But experiences are often different, as is evident in relation to the conflict between the traditional way of life of Norwegian Sami people and Norwegian industrial development (Norway Report, 2010: para. 24) or government decisions without consultations of the Sami Parliament (Anaya 2011: para. 39).

By contrast, Sweden and Finland have no consultation agreements. However, pursuant to Anaya, even where there are statutory rules – like those in Finland, where the government is obliged to consult with the Sami Parliament – proposals and comments of this Parliament have not been answered by the government.

In Sweden, at least the contentious Sami Bill (Ds, 2009: 40) includes a proposal for a consultation procedure, although it was not debated with the Sami people and does not encompass Sami land and resource rights (Anaya, 2011: paras. 22, 40).

Self-determination implies the exercising of autonomy or self-government in internal and local matters. Anaya (2011: para. 41) therefore assumes that because of statutory requirements related to power and functions of the Sami Parliament there is only a limited possibility for these parliaments to act independently and to autonomously decide for the Sami people on relevant matters. To increase the independent national decision powers of these parliaments, some essential legal and political changes should happen: in consultation and agreement with the Sami Parliaments they could agree on stronger or even exclusive decision-making power for issues which particularly affect the Sami, together with a stronger recognition of the traditional decision power of local Sami institutions like the 'Siidas'.[8]

Of particular interest is the Finnmark Act (Norway), which respects both Sami and non-Sami interests and supports Sami self-determination and the control over land and natural resources on the national level. However, according to the Sami, the composition of the Finnmark Estate (cf. Ulfstein, 2004: 32; Finnmark Act Guide, 2005: 2)[9] concerning the implementation of Sami self-determination is not an ideal one, as the law would not adequately consider the East Sami. That is why Anaya (2011: paras. 44-45) advises special and precise measures for appropriate development and for the protection of endangered indigenous groups (e.g. East Sami).

The Swedish Sami Parliament, which is both a generally elected body and a national administrative authority, would be forced to administrate even those decisions of the Swedish Parliament or of government facilities which do not comply with its politics.

Furthermore, in Sweden and in Norway, restricted financial resources for its own projects and initiatives would limit the ability of a Sami self-government (ibid.: paras. 42-43).

1.2. Investigation of the Sami land rights situation

Anaya addresses both the (limited) recognition of land and resource rights and the ongoing threat to Sami lands and their way of life (ibid.: paras. 46-61). He emphasizes that in the northern regions of Norway, Sweden and Finland, Sami history is shaped by an ongoing loss of lands and natural resources. This especially applies to land that is essential for reindeer husbandry. In the past, nomadic Sami land use over large regions, which vary according to the

climate and to ecological conditions, have come into conflict with the recognition of land and resource rights (ibid.: 46).

The existing protection of Sami lands for reindeer herding was only developed by the Nordic states incrementally. At present, considerable areas are continuously used for reindeer herding. According to the relevant legislations of the three states, the Sami should enjoy rights concerning land and resource use for reindeer activities, although in Finland reindeer husbandry is not exclusively reserved for the Sami. Even if the Sami's *usufruct* rights on land are legally recognized, these rights would often be subjugated to competing interests.

Indeed, Norway, Sweden and Finland have, in principle, acknowledged that Sami land use results in ownership rights related to the land; nevertheless, Sami people often would not succeed in the implementation of their rights (ibid.: para. 47).

Anaya (2011: paras. 48-49, 53-54) closely responds to land and resource rights, starting with Norway, where the Finnmark Act offers a "possible basis and mechanisms to identify and effectively protect land and resource rights of the Sami people in Finnmark". The act tasked the Finnmark Commission with the mandate to precisely determine land and resource rights which have yet to be recognized, and with an obligation to report on recognized rights.[10] Although the identification process pertaining to existing land rights in accordance with the Finnmark Act is currently underway, pursuant to Anaya the adequacy of the established procedures is by no means evident. However, the Finnmark Act is an important development and possibly a good practical approach to securing indigenous land rights. Although decisions that assume ownership and user rights, individually or as a group, come into effect occasionally in the regular Norwegian court system, the issue remains that outside of the Finnmark areas there are no special procedures for the identification of Sami land and resource rights.

There are specific doubts concerning the land rights situation as it pertains to Sweden (ibid.: paras. 50-51): Even though the Swedish Supreme Court acknowledged in principle that "traditional land use and occupation through the Sami could lead to ownership rights" ("Skatefjäll decision", 1981), special reindeer herding areas have not yet been subject to official demarcation. Despite the fact that the National Border Commission has identified traditionally used Sami lands and submitted its 2006 report, the government is hesitant to implement the Committee's demands (SOU: 14). The "Committee on the Elimination of Racial Discrimination" criticizes the marginal progress towards the solution of central legal Sami issues, and states that Sweden should undertake effective measures to secure concrete

action for Sami rights, for example in the adoption of new legislation (CERD/C/SWE/CO18: para. 19).

A particular difficulty in securing land rights is the burden of proof laid upon Sami claimants with regards to land ownership and pasture rights (Anaya, 2011: para. 51):[11] In spite of the lack of traditional physical attributes on the land, at least 90 consecutive years of traditional use have to be documented. In cases when other parties have relevant information, the legal regulation of a flexible distribution of the burden of proof would be preferable (CCPR/C/SWE/CO/6: para. 21). Cost-intensive procedures could be avoided, particularly because Sami often would not have the necessary financial means and because the Swedish legal aid system does not yet offer appropriate support (CERD/C/SWE/CO18: para. 20).

On the other hand, in Finland, where 90% of the Sami homelands are state lands, a national study was composed between 2003 and 2006 to clarify the rights of Sami land use in Lapland (Anaya, 2011: para. 52). In this regard, effective and concrete measures like new Finnish laws should be introduced and affected communities should be consulted (CERD/C/FIN/CO/19: para. 14). Despite negotiations between the state and the Finnish Sami Parliament, the legal status of the traditional lands used and occupied by the Sami remains unsettled.

The reindeer industry, which mainly in northern regions is still the primary means of Sami living, is especially endangered through competing land use (Anaya, 2011: para. 55).[12] In all three Nordic states the exploitation of natural resources by the state or other development projects decreases grazing areas significantly.

However, some of the laws of these states would – to various extents – encompass a special consideration of the Sami people and their way of life or of their land. Anaya (2011: para. 55) makes note of the relevant forestry laws.

Nevertheless, he criticises the laws and politics concerning the exploration of natural resources and development in Norway, Sweden and Finland, which offer inadequate protection of Sami rights and their way of life. The Sami people and its parliaments would not be sufficiently included in the development process, and there are only rare opportunities to participate in financial and other advantages that result from mining, oil or gas extraction (Anaya, 2013: 3). With the exception of the Norwegian Reindeer Herding Act, almost no compensation is given for the loss of pasture areas when natural resources are exploited or development projects are realized (Anaya, 2011: para. 55).

In Northern Norway Anaya (2011: para. 56) sees the herding of reindeer as especially threatened by oil and gas extraction. Although cultural life is protected in the Norwegian Mineral Act of 2009, and although the Finnmark Act provides rules for the Sami Parliament and for land owners to have the opportunity for comment during an approval process, the Norwegian Sami Parliament has expressed concerns: it criticises the inadequate consultation of the Sami Parliament in cases of applications for a licence under the Mineral Act for areas within the Finnmark, and total lack of consultation on applications in traditional lands that fall outside of the Finnmark.

According to Anaya (2011: paras. 57, 60), in Sweden the main issues are mining and wind power stations. There would be no Sami rights in the present Mining Act; mining politics would not protect Sami rights and interests in a sufficient way.

Finally, the reindeer husbandry activities of the Finnish Sami have been impaired by logging for decades. Pursuant to the state-owned Finnish company Metsähallitus the amount of logging in reindeer herding areas has decreased considerably, due to agreements with reindeer herders. In 2010, the company and the reindeer herders' association decided on a forest use agreement, but logging still continues and endangers the areas used for reindeer husbandry. Therefore, Finnish legal protection of Sami land and resource use is still insufficient (ibid.: para. 58).

1.3. Evaluation and critique - Meaning of investigation and proposals

How can Anaya´s investigations and proposals regarding land and self-determination rights be assessed?

1.3.1 Investigation

Cross-border institutions and agreements related to the Sami, like the Sami Convention, are legitimately described as important examples to secure indigenous peoples' rights worldwide. However, the hesitation towards adopting the Sami Convention is considerable, as Anaya and other experts correctly observe (e.g. Fitzmaurice, 2009: 127). Nevertheless, the continuing negotiations between governments and Sami Parliaments are evidence of serious intent to adopt the Convention.

As asserted by Henriksen (2001: 6-21) and Fitzmaurice (2009: 146), the existence of the Sami Parliaments is a good example of autonomy. Anaya affirms that the requirements for consultation with existing Sami Parliaments on indigenous issues can be seen as an important institutional progress within the scope of indigenous self-government. This kind of

cooperation is by no means self-evident in other states where indigenous populations live. A critical point is indeed that Sami Parliaments are also governmental authorities. Therefore the Sami Parliament should not be forced to administrate decisions of the state parliament or of governmental institutions if these decisions are not in accordance with Sami Parliament politics. A legal situation such as the one in Sweden is contrary to the idea of self-determination. Even if the Sami Parliaments in Norway and Finland dispose of consultation rights in a similar manner to their examples, the Australian Land Councils (cf. Carstens, 2000: 170, 340, 347), Sami Parliaments can only be called an extenuated version of indigenous self-determination. The absence of jurisdiction over traditional land is particularly relevant.[13]

Anaya's demand for jointly negotiated and correctly realized consultation procedures would certainly be a good start for the participation of the Sami Parliaments in decision making and to further expand the autonomy and self-government powers of the parliaments. However, in all relevant Sami matters, independent actions and autonomous decisions need appropriate legal and political changes on the national level, according to consultation and agreements with Sami Parliaments. The granting of increased or even exclusive decision power in all Sami issues, together with a higher recognition of traditional decision power of local Sami institutions, could achieve adequate internal self-determination, especially – as Koivurova (2008: 289) correctly underlines – in light of Articles 3 and 4 of the UN Indigenous Declaration.

In agreement with Sara (2009) and Josefsen (2007: 26), to secure Sami self-determination and to enhance mutual goals among all Sami, the respective governments and the Sami themselves should not remain with indigenous self-administration simply because it is often easier to realize (as the Norwegian reindeer institution 'Siida' shows).

In order to prevent discrimination against the Sami, legal security and special concrete measures for the adequate development of indigenous groups such as the Norwegian East Sami seem to be urgently necessary.

Finally, the expansion of financial resources for indigenous projects and initiatives might support the capacity for self-government in all three countries.

It is common practice for the land-based *usufruct* rights of the Sami to be legally recognized and yet in Nordic countries these rights have been often sacrificed to competing interests. This is demonstrated by the comment of the Human Rights Committee to the periodical report of the Norwegian Government (cf. Henrikson/ Scheinin/ Åhrén, 2007: 92).[14] The Committee emphasized the Sami's right to use their natural assets and to not be hindered

in their livelihood. Although legislative reforms pertaining to Sami land and resource rights are advancing, the traditional means of Sami livelihood secured in Article 27 do not enjoy complete protection if competing public or private land use occurs (ibid, 92).[15] The regulations of ILO Convention No. 169 – only ratified by Norway – are more far-reaching than the protection offered by Article 27 ICCPR. Norwegian rules include a distinct right of indigenous peoples to exercise control over their traditional land (ibid.: 92-93). In this context Article 7 I ILO Convention No. 169 is of special significance, as it applies to the right of indigenous peoples to determine their own priorities for the development process as far as it has an impact on their occupied or used land, and furthermore encompasses, as far as possible, the right to exercise control over economic development, and to participate in development plans and programs.[16]

Altogether, due to its early ratification of ILO Convention No. 169, Norway is a positive example worldwide with regards to the entitlement of the Sami Parliament, legal developments and not least the consultation agreement. However, the Norwegian implementation of ILO Convention No. 169 is in need of improvement. There is an apparent lack of legal remedies against official procedures dealing with the controversial use of uncultivated land and insufficient participation in relation to profits from mining activities on traditionally used land. Neither the protection offered by Article 27 ICCPR nor by Articles 14 I, 7 I ILO 169 are useful where legal remedies, like rights to object, are missing (cf. Fitzmaurice, 2009: 96-97, 98-99; Josefsen, 2003: 26-27).[17]

By signing ILO Convention No. 169, the Swedish and the Finish legislators would also be forced to cope with Article 14 of ILO Convention No. 169 to ensure possession and ownership rights, since there is often only a right to participation in management (Joona, 2012).[18] This could further balance Sami land and self-determination rights and the interests of the majority in the Nordic states concerning possession and ownership rights to land.

A positive fact is that Norway, Sweden and Finland have acknowledged in principle that Sami land use results in land ownership rights; e.g. in ‘Svartskogen’ the Norwegian Supreme Court affirmed an ownership right of the Sami community concerning their traditional areas (cf. Permanent Forum, 2007: 2).

Nevertheless, as noted by Anaya (2011: para. 81), Sami people often miss out on the implementation of rights. His demand for further demarcation of indigenous land is justified in light of Art. 14 II of ILO Convention 169 (“Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee

effective protection of their rights of ownership and possession"; cf. Fitzmaurice, 2009: 74). Identification procedures related to land rights in the Norwegian Finnmark Act are not appropriate. Agreeing with Fitzmaurice (2009: 109 referring to Graver and Ulfstein, 115), one can challenge the compatibility of the Finnmark Act with ILO Convention No. 169 (especially Art. 14 I as it regards ownership and rights of use, as there are no special rights for Sami exploitation of resources in the Finnmark Act) and the UN Indigenous Declaration. The law replaces the acknowledged rights of possession and ownership in ILO Convention No. 169 with a lower classified right to participation in management. This is in line with Joona (2006, 178), who argues that this could be a violation of Article 14 II of ILO Convention No. 169. Nevertheless, the Act is a model for a practical approach to securing indigenous land rights. Certainly, it is a disadvantage that no special procedures related to the identification of Sami land rights exist outside of the Finnmark. Sami land ownership rights have to be revised, and land use management rights have to be extended.

Furthermore, information and consultation rights of the Sami should be enhanced. Though in 2007/2008, both the Sami Reindeer Herder's Association of Norway and the Sami Parliament were consulted by the government concerning the intended Mineral Act, unfortunately the Anaya report does not refer to the fact that the act was adopted without the approval of the Sami Parliament. Anaya's statement that information and consultation rights have been "sufficiently acknowledged" in the Norwegian Mineral Act must be contradicted, because Sami interests outside of the Finnmark have not been included in the act. As a consequence the Sami Parliament will not be informed if companies outside the Finnmark are awarded rights to exploit minerals (Andersen, 2010: 32-33). Later in his report, Anaya also considers the demand of the Norwegian Sami Parliament for adequate consultation as legitimate if applications for licences on matters inside the Finnmark according to the Mineral Act occur,[19] and finally demands that the consultation rights concerning applications that affect traditional land outside of the Finnmark be regulated and implemented.

In addition, the consultation agreement reached by the Norwegian Sami Parliament and the national government could be a model for Sweden and Finland as well (HRC WG, 2009: 14-15), although in practice there often are disagreements regarding compliance with procedures (CEACR, 2010), which is a matter that has to be solved to ensure a better management of consultation agreements for all parties.

Moreover, the 2009 agreement on cross-border grazing rights in Norway and Sweden descriptively demonstrates how conflicts of interests can be solved (IWGIA, 2008). Finally,

the 2007 agreement by the Norwegian Sami Parliament and the Environmental Ministry on conservation principles in Sami areas should also be positively mentioned (cf. Andersen, 2010: 32).

The approach of the Swedish government has to be criticized, as despite the Skatefjäll ruling (1981) special reindeer herding areas have not yet been officially demarcated. The Swedish government has unfortunately delayed the implementation of the demands by the Border Committee; only slight advances have been made towards the solution of central legal questions concerning Sami rights. However later in 2011, after the Anaya report was completed, the High Court of Sweden recognized Sami winter grazing rights as common law, clarified the conditions under which winter grazing rights exist, and developed concepts on the examination of the legality of reindeer husbandry.

The Swedish Mining Act must include Sami rights, combined with a mining policy that takes Sami issues seriously. This is essential for the swift resolution of mining issues where Sami rights are affected. The participation rights of the Swedish Sami have to be revised, especially concerning wind craft constructions. As long ago as 2002, the Human Rights Committee determined in its fifth report on Sweden that the right to self-determination includes a Sami right to participate in decisions that pertain to Sami areas and living conditions. But in reference to Article 1 ICCPR the Committee expressed its legitimate concerns related to "the narrow extent in which the Sami Parliament can play a considerable role in the decision finding processes on questions concerning traditional land and economic actions of the Sami people" (cf. Henrikson/ Scheinin/ Åhrén, 2007: 92-93).[20]

In addition, the burden of proof currently imposed on the Sami, as far as the proof of land ownership and pasture rights is concerned, has to be reversed in Swedish court procedures to secure Sami land rights. In cases in which other parties have relevant information it makes sense to at least establish a flexible distribution of the burden of proof.

Moreover, the limited financial support of the Sami in court cases often prevents a claim through legal means. The Swedish legal aid system must be changed accordingly. Actions are too time consuming (e.g. the Skätelfjäll case, the proceedings of which lasted 15 years).[21] Hence, in future, effective, less time intensive legal means would be desirable.

Today, the Swedish Sami are increasingly able to successfully claim their (reindeer herding) rights. Compensation is paid in some cases, there have been instances of judicial determination of possession in case of indigenous long term use, and a bilateral user agreement has even been reached. This trans-border agreement between the Swedish and the

Norwegian government on pasture use not only influences the management systems in Sweden (and Norway), but in future might prevent some of the conflicts between Sami and non-Sami people in the region. Although it establishes meaningful rules regarding reindeer hunting, issues concerning the distribution of reindeer grazing lands remain unresolved in the border area of Sweden and Norway (Strömgren, 2010: 30).

Finnish national rules on traditional reindeer herder rights offer a certain protection. In agreement with Anaya, new laws on Sami land use rights in Finnish Lapland enacted subsequent to consultation of the affected Sami communities and other effective, concrete measures taken after such consultations are justified. Considering Åhrén and Fitzmaurice (2009: 85), the fact that in Finland reindeer herding is not a specific Sami right should be questioned, because only exclusive rights on traditional Sami land would be consistent with customary Sami rights. With a look back to Helander-Renvall (2005: 21), the Anaya Report should have criticized the merging of the Finnish administration of agriculture and reindeer husbandry due to conflicting interests. Finally, the legal status of traditional land used and occupied by the Sami should be clarified. Important agreements to solve logging issues – such as the Metsahallittus Agreement – are mentioned in the report (cf. Korhonen, 2010).[22] User agreements like this have an important impact, provided that finalizing an agreement does not take years.

Existing Sami rights agreements are the "North European way" of reaching agreements, and to some extent follow (e.g.) the model of Australian land rights agreements which exist in various forms. Similar to Norway and Sweden, agreements between the Sami and the state were reached in Finland as well, partly in order to prevent long and cost-intensive court procedures regarding conflicting uses of traditional areas. To avoid judicial disputes of this kind, new agreements between the Sami and the state or between the Sami and third parties (non-indigenous people, firms, environmental groups) and, if necessary, between different Sami groups (border conflicts) should be negotiated.

For all three countries it can be assessed that in cases where previously court procedures were sought in order to reach state recognition of traditional land rights, there is now a better chance of achieving the practical implementation of rights. This is especially noticeable in the implementation of reindeer grazing rights in Sweden and Finland.

Additionally, in Sweden and in Norway, the time-consuming process of determining land affected by the objections of state authorities should be optimised.

In summary, the Sami Parliaments can be characterized as a new modern model of indigenous self-government and participation in decision-making processes, however there is still room for improvement.

Mutual Sami initiatives and institutions across borders are extensive and remarkable, even though there are still deviations with regards to the contents of the Sami-Convention.

Legal protection of land rights, in particular the protection of Finnish Sami land rights, must be revised. As the situation stands today, the land and the way of life of the Sami people are under constant threat. The reindeer economy is especially endangered by competing land use. All three Nordic states have to be held responsible for the fact that they have reduced the grazing lands of the Sami reindeer herds through national exploitation of natural resources and through development projects.

Some of the laws, e.g. forest laws, imply (a different) special regard of the Sami, of the indigenous way of life or indigenous land. However, laws and politics in Norway, Sweden and Finland currently offer inadequate protection of Sami rights concerning the exploitation of natural resources. There has long been a demand for fair distribution of profits from the economic use of resources in states with a Sami population.[23]

Conflicts of interests such as those in Finland, where the responsible government authority is also the approving authority and consequently receives advantages from resource extraction, are no longer supportable.

There is an increasing demand that the Sami and their parliaments be involved in the development process and share in the advantages. Moreover, compensation for loss of pasture rights due to natural resource exploitation or realisation of development projects must be provided. Norway can be seen as a model due to its compensation efforts for lost grazing areas regulated in the Reindeer Herding Act, for the protection of cultural life in the Mineral Act (2009) and for granting the Sami Parliament and land owners the opportunity to express themselves during an approving process in the Finnmark Act.

Logging issues are still prevailing and up to this point have only partly been resolved in a satisfactory way, such as in Finland between the reindeer herders and the national Finnish forest corporation, where negotiated agreements on forest use prevented lawsuits as early as 2010. Today, agreements often occur as a practical, flexible solution between the state, indigenous groups and/or environmental organisations to clarify conflicting claims of Sami people with the non-indigenous population or the state.

1.3.2. Recommendations[24]

As stated by Eide (2009: 281), only a slow and moderate expansion of self-management can be expected. Therefore, agreeing with Anaya (2011: paras. 73-77), generally much more has to be done for the Sami to be able to exercise self-determination in the sense of internal self-government, and to develop common goals as a cross-border people. In each country extensive rights must be guaranteed, oriented on the respective international instruments of indigenous peoples. Indigenous rights involve not only equal rights and non-discrimination but special features as well, such as the possession of land and benefits from natural resources (Fitzmaurice, 2009: 132, citing Alfredsson).

According to Fitzmaurice (2009: 127) the ratification of ILO Convention No. 169 by Sweden and Finland would be an especially important step to leverage Sami politics based on the principle of non-discrimination, the respect of human rights and the rule-of-law principle. To ratify the Convention, Sweden must determine such issues as the land areas referred to, which rights follow and whom the rights shall include (Sametinget: 2015). Securing rights over their land and natural resources is fundamental to the Sami self-determination (OHCHR, 2015).

Indeed, the Sami could not directly complain at the International Labour Organisation (ILO) or directly report to the ILO, unless the state in which they live has ratified ILO Convention No. 169. In contrast, surprisingly practicable solutions exist in Norway. Here, the Sami deliver an annotation pertaining to the respective government report with a later transfer of the official answer to the ILO (Yupsanis, 2010: 449).[25] This procedure is unusual and also dependant on the respective government. Nevertheless, it is effective.

With regards to self-determination rights Sami people have undertaken enormous efforts to obtain and to strengthen their relationships, and to assert their claims as a people. Next to the considerable cross-border initiative of a common Sami Convention this also distinguishes the “Parliamentary Council of the Sami” as their representative institution and as an institution of joint action since 2000. Cross-border institutions founded to represent Sami interests are remarkable and play an important role in Sami politics beyond borders, as Koivurova (2008:169-192) has correctly found. The approach of the Nordic governments not to interfere with cross-border Sami relations but rather to provide (even minimal) support is unfortunately not common in countries with an indigenous population.

According to the latest international rights related to indigenous peoples (Article 6 II, Article 16 II ILO 169; Article 30 UN Indigenous Declaration) the free and prior, informed[26]

consent (PIC) of the Sami has to be obtained in all issues relevant to them.[27] The provision of effective indigenous rights to consent would be desirable for an ideal arrangement of Sami rights. Often the only procedural requirements are consultation and participation, without the obligation for consent. If this is the current status, at least the consultation procedures should be generally enhanced. Particularly, adequate consultation procedures should be facilitated to include the Sami Parliaments. Even if it is – with view to non-indigenous peoples rights – not easy, it is conceivable to confine certain areas (e.g. land rights) in agreement with the Sami Parliaments, so that the Sami Parliaments can make a prior or exclusive decision. They should be able to decide independently from national institutions to sufficiently execute their right to self-determination. It makes sense to advise the Swedish government to undertake legislative changes. In future, the autonomy and self-government powers of the Sami Parliaments should be strengthened.

Finally, an adequate financial basis of the indigenous parliaments to effectively administrate the Sami self-government functions is necessary.

The safety of their rights to land, waters, and natural resources is essential for the indigenous self-determination and the further existence of the Sami. Consequently, Sami rights to their traditionally used lands and natural resources have to be improved in the future to guarantee a sustainable and resource-conservative Sami economy as well as adequate social and cultural development.

Especially in Norway the process of clarification and security of land and resource rights inside and outside of the Finnmark has to be finalized. In consultation with the Sami Parliament, the Mineral Act must be revised and clarified with respect to Sami rights (UN News Centre: 2015). Moreover, the results of the Coastal Fisheries Committee have to be included more precisely, which may also clarify sea resource rights, e.g. salmon fishing.[28] This is in line with Ravna (2013: 1589; cf. ibid., 2014 on Norway's international legal obligations), who emphasizes that the debate on the right to fish in the coastal areas of Sápmi will continue into the future and that questions about Sami self-determination and the extent of rights to both non-renewable and renewable natural resources on land have not yet been resolved in Norway.

In Sweden, the proposal to strengthen the demarcation of traditional Sami areas and to adopt laws which reverse the burden of proof to verify traditional land rights in legal actions (or at least to adapt them if other than the claiming Sami have information) must be endorsed. Moreover, affected Sami should receive legal aid to be able to fight for their rights in

necessary lawsuits. Anaya and other experts correctly demand the adoption of required laws for the Swedish Sami, of course with inclusion of their Parliament. Only through future clarification and further protection of Sami land and resource rights, especially the protection of reindeer husbandry and salmon fishing, can the livelihood and the Sami culture be secured (cf. Hughes, 2014, Schertow, 2011). In my opinion, Anaya should have demanded the overdue separation of the administration of agriculture and of reindeer husbandry in Finland. In addition, a reference to the Finnish Vihervuori Report would have been useful since – according to indigenous demands in Finland – it suggests the introduction of land councils and a land fund (Hannikainen, 2002: 193)[29].

For all three countries, Anaya's suggestion is to adapt laws and administrative regulations concerning the exploitation of natural resources in Sami areas according to international standards related to the rights of indigenous peoples. In order to achieve this, sufficient arrangements and consultation with the affected indigenous communities are essential; their free, prior and informed consent has to be obtained, and negotiations must include mitigation measures, compensation and benefit sharing. The recent commitment of the Swedish Government to revisit its Mineral Act and the increased safeguards for Sami rights and livelihoods in the Finnish Mining Act (UN News Centre: 2015) are current positive developments.

Certainly, the protection against interferences in customary rights[30] is still unclear. Given the multiplicity of land use conflicts in reindeer areas and the currently unsatisfying "case to case solution", strict requirements to realize customary Sami rights would be reasonable. In order to support the sustainable use of reindeer herding areas, a precise understanding of Sami customary rights is particularly essential.

Fortunately, today many Nordic authorities no longer limit Sami usufructary rights, such as reindeer husbandry, and even accept Sami ownership of land instead of a minor land rights title based on traditional use.[31]

Furthermore, in Norway, Sweden and Finland, very often there is a lack of adequate action concerning the implementation of Sami rights: measures for the attenuation, for compensation and the sharing of the advantages are fundamental for cultural and environmental protection. Although there are often only compensation payments and special measures instead of a restitution of land, it can be stated that the three states increasingly act to prevent violations of Sami land and water rights. There is an increasing tendency to act in accordance with international human rights standards.

Legal remedies within the scope of land use administration need to be extended to enable the Sami to defend themselves against harm to the Sami economy and the Sami way of life.

Examples of different agreements in Norway itself and between the states of Sweden and Norway demonstrate how forward-looking agreements can be. In practice they are more helpful than long-lasting court suits. Anaya should have elaborated on this topic in much more detail.

In future, stronger powers of the Sami Parliaments and an independent status of these indigenous bodies would be necessary (Hannikainen, 2002: 196) in order to optimize their effectiveness as institutions.

The disagreement on the compliance of procedures must be resolved to ensure better management of consultation agreements.

Moreover, in future, the three Nordic states must also extend their measures related to the adverse consequences of climate change on the Sami, of cause after consultation of the Sami Parliaments. Grazing areas are currently shifting southwards due to the effects of climate change. Sustainable land management with preventative measures for climate change should be advanced in conjunction with the Sami. In addition, in times of increasing alternative energy production it has to be guaranteed that measures to support renewable energy resources do not negatively influence the Sami way of life.

Finally, the need to combine environmental law and especially nature resource rights of Nordic states even more with indigenous rights law of these countries must be emphasised in future[32] - something Anaya unfortunately did not discuss in his 2011 report.

It has to be acknowledged that there is a mutual alliance of environmental law and the relevant aspects of indigenous rights law in Swedish law (Allard, 2006: 3). Moreover, it should be positively noted that Norway, Sweden and Finland increasingly implement the Biodiversity Convention by inclusion of indigenous rights,[33] although Sami inclusion in environmental concerns is still insufficient. With regard to the environmental demands of those engaged in reindeer husbandry, one should not rely on the general rules, as special norms might be even more effective to support sustainable goals and specific Sami interests through reasonable inclusion of regional or local circumstances.

2. The Sami Rights Convention

In 2005, an expert group established by the governments of Norway, Sweden and Finland and the three Sami Parliaments agreed on a Draft Nordic Sami Convention (Fitzmaurice, 2009: 117-124, 127; Koivurova, 2008)[34] to consistently regulate the interests of indigenous people in these countries.[35] This Convention on the rights of the Sami people would be a new international instrument, a human rights contract, with the objective (Article 1) to "affirm and strengthen such rights of the Saami people that are necessary to secure and develop its language, its culture, its livelihoods and society, with the smallest possible interference of the national borders." A Sami Convention will regulate the rights of the Sami people and the members of this people in a way that complies with indigenous rights developments that have taken (and are taking) place in international law (Scheinin, 2007: 41; cf. Åhrén, 2007: 12). The Sami Convention´s status will be one of a legal binding treaty between states under public international law.[36] The condition that the Sami Convention cannot enter into force or be amended without consent of the Sami Parliaments reflects the nature of this Convention as a 'social contract' between the Sami people and the Norwegian, Swedish and Finnish governments (Scheinin, 2007: 51; cf. Åhrén, 2007: 12; cf. Koivirova, 2008: 288: no parties).

After the Nordic governments and Sami Parliaments have agreed upon the final contents of the 'Sami Convention', it has to be signed by the three Nordic governments and forwarded to the Sami Parliaments for acceptance, as well as to the respective federal parliaments for parliamentary procedures under consideration of the Constitutions (Scheinin, 2007: 50).

Prior to these procedures, Finland has to overcome its prejudices concerning the regulations on ownership, self-determination and land use; in Sweden these issues exist to a lower degree (Arctic Centre, 2009-2011). The fact that a central part of the Convention text deals with the recognition of Sami land and resource rights and that the understanding of indigenous peoples' property rights (cf. Bankes/ Koivurova, 2013)[37] has to be clarified in the Sami Convention prevents its adoption.[38]

By means of international instruments, Part 2 of this article analyses and assesses the extent and meaning of the central issues of land, resource and self-determination rights. How far do the land and self-determination rights of this Convention secure the Sami an equivalent position against state institutions and non-Sami people?

2.1. Emergence and status of the Draft Convention[39]

In 1986, the concept of a Nordic Sami Convention was raised by a conference of the Sami Council. The Sami conference repeated its proposals in 1992. The concern was later reported again at a mutual meeting of the Norwegian, Swedish and Finnish Sami Rights Committees.

During the 1995 meeting of the Nordic Council, a common board of the mentioned Nordic states, the ministers responsible for Sami matters in Finland, Norway and Sweden decided to start with the actual work on a Nordic Sami Convention. Finally, in 2002, the responsible ministers and the presidents of the Sami Parliaments (Samediggis) of the three countries established an expert group which prepared the Sami Convention (Eide, 2009: 257-258). In 2005, the experts reported their proposal at the annual Helsinki conference to the ministers responsible for Sami matters and to the presidents of the Sami Parliaments. The expert group suggested that the Convention should be ratified by Finland, Norway and Sweden, but this ratification should not take place before the Sami Parliaments have given their consent. In general, the Sami Convention is supported by all members, despite difficulties caused by the Finnish representative with accepting parts of the Convention (e.g. Article 3 on self-determination, chapter 4 on Sami land and water rights and Article 42, which applies to reindeer husbandry as a central content of Sami livelihood). The proposal had to undergo a consultation process and was considered by the respective governments (Josefsen, 2003: 12). In 2008, the Draft was advanced and checked against existing national legislations.

Since March 2011, further negotiations between government delegates and Sami Parliaments have taken place. Central questions to be agreed upon include land rights and reindeer herding. A common Sami position has been worked out in the "Parliamentary Council of the Sami", which coordinates the work of the Sami Council and of the Sami Parliaments. A representative of the Finnish Sami Parliament expressed that they are "quite satisfied" with the draft and that the final Convention hopefully "will be close to the 2005 draft" (IPS, 2011).

However, whether the draft stays fairly unchanged is very much in doubt. In 2009, Fitzmaurice even commented that the fate of the Convention is undecided, precisely because in Finland Sami self-determination issues and constitutional rights issues have been articulated (Fitzmaurice, 2009: 127, Koivurova, 2008: 18).[40] Nevertheless, matters are more optimistic in light of the rendition of the goals to accept and to ratify the final convention by all three countries in 2016 (UN News Centre: 2015), although it is still necessary to solve new practical challenges, such as the change of reindeer husbandry areas because of climate change, to secure the Sami an equivalent position against non-Sami people and state authorities.

2.2. Extent and critique of self-determination rights

The preamble of the Sami Convention makes clear that the governments of Norway, Sweden and Finland recognize a right to self-determination of the Sami people (sentence 5).

Moreover, the preamble emphasizes in sentence 13 that the mentioned governments include as a basis for the debate that "the Sami Parliaments of the three states underline the importance that the right to self-determination that the Sami as a people enjoy is respected".

Article 3 of the Convention then responds to the Sami right to self-determination.

The expert group to the Sami Convention concluded that the right to self-determination of the Sami people neither contains a right of secession from the existing states in which they live, nor does such a right belong to them according to international law. This view of the expert group, combined with Article 3 of the Sami Convention, determines that the right to self-determination will be implemented according to international law and that the explanation of the Sami Parliaments in the preamble of the Sami Convention – that the Sami people strives to live as "one people" – considers the issue of territorial integrity (Fitzmaurice, 2009: 124-125; Åhrén, 2007: 8-40, esp. 15-18).[41] Koivurova (2008: 285) refers to the "limited self-determination without the (present) possibility to constitute an own state." Eide (2009: 259) explains convincingly that the interpretation of the Sami Convention according to the 'UN Declaration on Friendly Relations and on Cooperation among States in Compliance with the UN Charter' implies that the exertion of self-determination respects the territorial integrity of the states. To advance the functional Sami autonomy, including participation functions concerning land, there is intent to transfer increasing autonomy from the central parliaments to the respective Sami Parliaments and to increase cooperation between the Sami Parliaments and their emerging and executing authorities.

Moreover, Åhrén (2007: 16) argues, the right to self-determination pursuant to Article 3 sentence 2 of the Sami Convention explicitly contains a Sami right "to dispose, to their own benefit, over its own natural resources".

Thereafter the Articles 14-22 of the Sami Convention deal with the issue of how the Sami right to self-determination shall be implemented. Today, there is a mixed population in an essential part of the traditional Sami areas. Sami people use certain areas exclusively, and sometimes they hold the majority in traditional areas, however they are more often a minority. Consequently, the Sami rights to self-determination are in competition with the self-determination rights of non-Sami. In these cases, according to the Draft Sami Convention, the solution is a diversified degree of influence on decision-making processes according to the

following principle: the more important a matter is for the Sami, the more influence they can exert.[42] Hence, the position of the Sami is as equitable as possible.

Pursuant to Article 14 sentence 1, the respective Sami Parliaments represent "their" Sami people in each of the states that sign the Sami Convention. They will hold decision and participation rights to effectively implement the right to self-determination (Art. 14 sentence 4). Sami Parliaments have a right to independent decisions in all matters in which they are entitled to an independent decision according to national or international law (Art. 15 sentence 1).

The Sami Parliaments have an early right to negotiate in matters of major concern to the Sami before official decisions on such matters are reached (Art. 16 sentence 1 and 2). Without the consent of the concerned Sami Parliament, the fundaments of the Sami culture, Sami livelihood or the Sami society may not be affected (Art. 16 sentence 3). In other words: the states shall not adopt or permit measures that may significantly damage these basic conditions. Consequently, the Sami people have the key voice in cases where an activity or legislation could cause considerable damage.

Furthermore, financial support of the Sami Parliament, for example for expertises, leads to real equality (Anaya, 2001: 20, para. 77). Sami Parliaments have the right to represent the Sami in national committees and similar bodies if these are concerned with matters relevant to the Sami. As stipulated by Åhrén (2007: 17), the Sami Parliaments have to be duly informed in matters of relevance (Art. 17 sentence 1 and 2). Anaya (ibid.) even demands "appropriate procedures to consult with Sami Parliaments towards this end".

In addition, Sami Parliaments have a right to participate in national assemblies (Art. 18) and represent the Sami on the international level (Article 19). Åhrén (2007: 17-18) and Koivurova (2008: 285) emphasize that the Sami-Parliament exercises external self-determination (as the Saami Parliamentarian Council/SPC does).

Sami Parliaments can establish joint organisations (Art. 20 sentence 1) like the SPC. It is worth noting that the state can transfer jurisdiction to these joint organisations (Article 20 sentence 2). Other Sami organizations such as civil society institutions must also be respected by the state and, if necessary, must be consulted (Art. 21). This secures the traditional structures and decisions of the Sami communities ("Siidas"). Finally, areas where Sami exercise their rights have to be identified and have to be developed (Art. 22).

Pursuant to Åhrén (2007: 18) and Koivurova (2008: 284-285), it can be asserted that the Sami Convention reflects a modern position on self-determination by taking recent developments in international law into account. The Sami Convention emphasizes that the Sami – as a people equal among other peoples – enjoy the same right to self-determination as other peoples do. This includes internal and external aspects of self-determination. The right to self-determination in the Sami Convention comprises a right that is based on ethnicity, rather than on territoriality. This makes the implementation of this right much easier. The Sami Convention responds to this issue by submitting a concrete and detailed proposal of how the right to self-determination can be implemented if an indigenous people today shares a large part of its traditional areas with other peoples who have an equal right to self-determination. Nevertheless, as Anaya states (2011: 20, para. 75), implementation procedures with governments and authorities in Norway, Sweden and Finland should be enhanced and monitored, particularly because history has shown that these non-indigenous institutions have difficulties respecting indigenous self-determination.

Unfortunately, even the Sami Convention does not demand that non-Sami courts, management authorities and the legislator respect the customary Sami law.[43]

2.3. Contents and critique of land and resource rights

In the preamble, the participating governments to the Sami Convention confirm that lands and waters are the basis of Sami culture, the Sami must have admission to them (sentence 8). It highlights that the governments of the signatory states view a new Sami Convention as a renewal and a development of Sami rights established through historical use of land, which were codified in the Lapp Codicil of 1751 (sentence 12).[44]

The Sami right to land and waters is regulated in-depth in Article 34 to 40 (cf. Åhrén, 2007: 26-30).[45] Rules on land rights are defined with reference to the respective regulations in ILO Convention No. 169, adapted to the special situation of the Sami people. They regulate traditional land and water use, the protection of Sami rights to land and waters, fjords and coastal waters, the use of natural resources, compensation and the distribution of benefits, land and resource management as well as environmental protection and management.

Article 34 I states that a "protracted traditional use of land or water areas constitutes the basis for individual or collective ownership rights to these areas for the Sami", but only "in accordance with national or international norms concerning protracted usage." Thereby, the Convention does not clarify the relation of collective rights to land to individual rights. Furthermore, the Convention does not declare anything on how land and natural resources

should be distributed in the Sami society, nor is it evident in the Sami Convention that certain Sami have privileges (Åhrén, 2007: 27, fn. 75). Anaya especially emphasises, that - amongst others - issues concerning the distribution of reindeer grazing lands stay unresolved, despite (border area) agreements. In my view, in addition to the agreements and existing guidelines of the Sami Convention, customary Sami law and institutions could be used to find proper solutions concerning the distribution of Sami land and natural resources in Sami society.

Article 34 II (corresponding to Art. 14 I of ILO Convention No. 169)[46] states that: "If the Saami, without being deemed to be the owners, occupy and have traditionally used certain land or water areas for reindeer husbandry, hunting, fishing or in other ways, they shall have the right to continue to occupy and use these areas to the same extent as before."[47] "If these areas are used by the Sami in association with other users, the exercise of their rights by the Sami and the other users shall be subject to due regard to each other and to the nature of the competing rights." A balancing of these rights must take into account that Sami rights are human rights, but competing rights of non-indigenous people often are not. Article 34 II clarifies that particular regard has to be paid to the interests of reindeer-herding Sami.

Since the territorial basis of indigenous peoples is constantly decreasing (Stavenhagen, 2007: 2), the question arises of whether the scope of Sami territories is protected sufficiently in Article 34 II of the Draft Sami Convention (corresponding with Art. 14 I ILO Convention No. 169) to allow (extensive and/or traditional) indigenous economic activities.[48]

Pursuant to Article 34 II Sami Convention, the Sami "occupy and have traditionally used certain land or water areas for reindeer husbandry, (…) or in other ways (…), and (…) shall have the right to continue to occupy and use these areas to the same extent as before". Although the scope of Sami land is not *directly* addressed, this norm provides a certain informative basis on the scope of Sami territory (traditionally used land or water areas) and directly addresses (traditional) economic activities with the wording "continue to occupy and use these areas to the same extent as before". Article 34 further affirms the right of the Sami people to restitution: Article 34 IV "shall not be construed as to imply any limitation in the right to restitution of property that the Saami might have under national or international law."

The Sami Convention does not define the traditional Sami area - Sápmi - but Åhrén (2007: 30) argues convincingly that at least Article 34 I, II, IV determines this indirectly.

Consequently, it is the sum of land and water areas the Sami have traditionally owned or used and continue to use, whether alone or together with the non-Sami population.[49]

However, the restitution of traditional lands and waters taken without their consent ("lost lands", see Art. 28 UN Indigenous Declaration) is not fully addressed in the Sami Convention (Fitzmaurice, 2009: 126). Further negotiations in this regard are required. There is at least some chance of positive results, as the Anaya Report shows that the Nordic states increasingly react respectfully to prevent violations of Sami land and water rights, with an increasing tendency to comply with international human rights standards.

Although in ILO Convention No. 169 the scope of indigenous lands is not directly protected (see Articles 7, 13, 14, 16, 19 of ILO Convention No. 169), Article 14 I – the basis of Article 34 of the Sami Convention – could provide evidence of the scope of indigenous lands (and waters) as well as of local (traditional) economic activities. This norm intends to protect indigenous rights to traditionally occupied or used lands ("lands which they traditionally occupy", right (…) to use lands not exclusively occupied"). The wording can be interpreted to also protect the scope of land (and water) concerning traditionally occupied land, with reference to the present to include recent expulsion or loss of land that occurred within the recent past. However, there is no prerequisite that the land was traditionally occupied, thus indigenous people are free to determine their lifestyle. Moreover, measures shall be taken to protect the indigenous right to use the "land", not exclusively occupied by them, for their livelihood and for traditional activities (I sentence 3 even includes nomadic peoples). Accordingly, the scope of indigenous land and water areas for (even extensive and/or traditional) economic activities could be protected by Articles 34 II Sami Convention and 14 I ILO Convention No. 169. Both norms provide an informative basis relating a certain, though not sufficient, protection of the scope of indigenous lands (and waters).

In addition, there is a 'soft law' argument:[50] The draft of Article 26 Indigenous Declaration (not adopted by the Human Rights Council) included the phrase in relation to the land "which they traditionally owned or otherwise occupied or used", but the revised Article 26 added the stipulation that "they possess [land] by reason of traditional ownership". This even limits the scope of the lands to currently owned (Fitzmaurice, 2009: 75 citing Gilbert).[51]

Moreover, Article 34 II of the Draft Sami Convention determines that the Sami lose no rights to continued use of land and water simply because they adapt to necessary technical and economic developments.[52] According to Article 34 III of the Draft Sami Convention, the "assessment of whether traditional use exists pursuant to this provision shall be made on the basis of what constitutes traditional Saami use of land and water" and "bear in mind that Saami land and water usage often does not leave permanent traces in the environment." This

statement of the Sami Convention is of enormous practical meaning for court procedures if competing non-Sami interests exist. Anaya (2011: para. 51) argues that the difficulty in the protection of land rights would lie in the burden of proof Sami claimants have concerning the proof of land ownership and pasture rights. However, with sentence III Article 34 obliges the courts to accept the burden of proof of the Sami analogous to the traditional land and water use, when it has to clarify whether the Sami are entitled to the traditional use of a certain area (Åhrén, 2007: 28; cf. Ravna, 2013: 177-205).

According to Article 35 of the Draft Sami Convention, states shall take adequate measures to effectively protect the traditional Sami land and water (user) rights of Article 34. To that end, states shall especially identify those land and water areas the Sami traditionally use. Furthermore, adequate procedures shall be available under national law to examine questions concerning Sami rights in land and water. In particular, Sami shall have access to necessary financial support to be able to initiate legal proceedings pertaining to their land and water rights. Article 35 could, if implemented, be called one of the central provisions of this Convention. The Sami would have stronger rights to their traditional areas than the states acknowledge in their respective legislations. Until now, in the absence of sufficient financial resources, they often do not have the option to claim or defend these rights (Åhrén, 2007: 28).

Pursuant to Article 36, Sami rights to natural resources were particularly protected within (those) land or water areas that fall within the scope of Article 34. The necessity of continued access to such natural resources as a prerequisite for the preservation of traditional Sami knowledge and their cultural expressions shall be respected. Before national authorities grant – on a legal basis – a permit for prospecting or extraction of minerals or other sub-surface resources, or make decisions concerning the utilisation of other natural resources within the land or water areas owned or used by the Sami, they shall negotiate with the affected Sami and the responsible Sami Parliament. Article 16 stipulates the prerequisite for the right of the Sami Parliament to negotiate.[53] Permission for the exploration or the extraction of natural resources shall not be granted if this activity makes it impossible or essentially complicated for the Sami to continue using the affected areas. There is an exception to this, however, if the Sami Parliament and the concerned Sami have agreed on it. The provisions of Article 36 are also applicable to the utilization of other forms of natural resources, as well as to other interferences in nature within the geographical areas covered by Article 34. This includes activities such as logging, hydroelectric and wind power plants.[54] It is worth noting that Article 36 Draft Sami Convention (2005) orientates itself on ILO

Convention No. 169. Article 36 II-IV corresponds to the interpretation of Article 27 ICCPR by the UN Human Rights Committee concerning indigenous peoples' rights, in light of Article 1 ICCPR (self-determination right): consequently, in matters of special meaning in terms of Article 16, there must be negotiations with the Sami Parliament. In practice, the interdiction of exploitation mentioned in Article 36 III and IV would be of a special meaning. This was demonstrated in 2006, in a conflict situation pertaining to the extension of a military drill ground in reindeer herding areas.[55]

Thereafter, Article 37 deals with compensation and sharing of profits: for all damages suffered by the Sami through activities referred to Article 36 II and IV, affected Sami shall have the right to compensation. In cases where national law obliges persons granted a permit to extract natural resources to pay a fee or share of the profit from such activities to the landowner, the permit holder shall be similarly obliged concerning the Sami that have traditionally used and continue to use the area concerned. The provisions of Article 37 shall not be interpreted in a way that they imply any limitation in the right to share the profits from natural resources extraction that may follow according to international law. Although this is an improvement in terms of the ILO Convention No. 169, the expert group on the Sami Convention has rightly pointed out, instead of Article 37 I it is time for a general solution concerning division of profits resulting from the exploitation of natural resources in Sami areas. The compromise that has been reached on profits is very similar to the one on compensation. The Anaya Report emphasised the need for improvement of the Norwegian implementation of ILO Convention No. 169, as there is an apparent lack of legal remedies against official procedures due to insufficient participation in profits from mining activities on traditionally used land.

Moreover, the lack of time the expert group to the Sami Convention has had to clarify controversial Sami rights to lost areas and non-traditional resources in Sami areas concerning sharing of profits and compensation should be criticized.[56] Although initial talks are in progress, the Sami Convention offers no solutions pertaining to lost areas, territories and non-traditional resources (Åhrén, 2007: 29). Agreements could be a solution here.

In addition, due to the massive ignorance of indigenous rights in coastal regions, Article 38 responds to Sami rights in fjords and coastal seas.[57] This highlights the great importance of sea and water rights for the Sami culture.

The central issue of land and resource management is addressed in Article 39. In addition to the ownership and usage rights the Sami enjoy, Sami Parliaments shall have the

right of co-determination in the public management of areas referred to in Articles 34 and 38.[58]

Finally, Article 40 addresses environmental protection and management. In cooperation with the Sami Parliaments, states are obliged to actively protect the environment to ensure sustainable development of the Sami land and water areas referred to (Articles 34 and 38).

2.4. Implementation and development of the Convention

Article 44 applies to the Council for Cooperation, which is to be composed of the three ministers responsible for Sami matters and the respective presidents of the Sami Parliaments. The norm defines a regular meeting to support the goals of Article 1, during which relevant Sami issues of a common interest shall be discussed. A Nordic Convention Committee shall be introduced to observe the implementation of the Convention (Art. 45). But the Expert Committee did not allow the Convention Committee to be an official complaint body, since the experts chose to focus on having the Convention incorporated into the national legal systems to seek a uniform application of this Convention (cf. Koivuriva, 2008: 286). In Article 46 participating states are assigned with the task of implementing the norms of the Convention and making them directly applicable as national law. Moreover, Article 47 rules that these states should allocate financial resources proportionate to the extent of the indigenous population of the respective country, pertaining to the implementation of the norms of the Convention.[59] Determinations in this Convention related to the implementation and development are quite successful as they are oriented by ILO Convention No. 169[60], the special Sami Parliaments are included with equal value, and financial aspects are considered. In this way the clarification of fundamental issues does not fail – as happened in the past in some states – due to lack of financial means. Common interests are emphasized. A meaningful adjustment of legal standards in favour of cross-border living Sami is sought through the determination of national implementation.

2.5. Meaning of land and self-determination rights in the Sami Convention

The work on a Nordic Sami Convention shows that indigenous institutions can act very productively in a trans-national manner (Strömgren, 2008: 29), but the Sami Parliaments must be considered as equal parties. Still, the concept of self-determination must be defined more precisely: the concept of minimal standards surrenders considerable administrative discretion to the member states, particularly as concerns the determination of political autonomy of indigenous communities, self-government powers and certain economic rights (ibid.). Nevertheless, this Convention would give the Sami people a substantial right to have a say in

matters regarding their economic, social and cultural development and might constitute an enormous step onward in the implementation of rights determined in ILO Convention No. 169 (Grote, 2006/2007: 443). It provides innovative regulatory arrangements (Koivurova, 2008: 292). Because Sami culture and communities are closely linked to their traditional land and water areas and to their natural resources, the indigenous peoples' right to self-determination concerning land and natural resources is of central importance (Henriksen/ Scheinin/ Åhrén, 2007: 89-95, 89). It is logical for the resource dimension to be included; indigenous peoples' cultural autonomy only has an impact if there is a right to control land and natural resources (Ibid.). The Sami Convention grants far reaching Sami land and resource rights (Grote, 2006/2007: 436-442). It will provide the foundation for Sami land rights because it has not only tried to implement the controversial Articles 14 and 15 ILO Convention No. 169 on resource rights but is also predominantly in accordance with the contents of land and resources in the UN Indigenous Declaration (Fitzmaurice, 2009: 126).

Conclusion and prospects

What conclusion can be drawn on Sami land and self-determination rights in light of the Anaya Report and the Draft Sami Convention? What are the primary challenges for the future?

Independence is neither an option nor a vision of the Sami people. In comparison to the non-indigenous population in the countries in which they live, the Sami are occupationally, culturally and otherwise integrated to a much higher degree than, for example, the Inuit in Nunavut, Canada (cf. Carstens, 2000: 255), or Greenland.

Several topics are of special importance to the Sami, particularly for their cultural survival: the protection of Sami land rights and their indigenous subsistence strategy, sustainable development of land and sea areas, and a decision-making procedure that includes the Sami effectively where their matters are concerned. For this reason, in Norway, Sweden and Finland the Sami increasingly claim institutional rights and extensive land and water rights in jurisdiction, legislation and in agreements; they seek profit participation if resource extraction occurs and for environmental rights to promote the sustainable use of nature (cf. Allard, 2006).[61]

Similar to other indigenous peoples, the Sami discuss whether they, as an indigenous people, hold land and resource rights on the basis of traditional use due to models of possession and ownership rights, and to what extent these indigenous rights are protected in light of a partial national refusal to observe traditional rights approved by international law.

Anaya's (2011: 1-2, 10) results on Sami land and self-determination rights underline the fact that in comparison to other states (cf. Carstens, 2009: 399-424)[62], Norway, Sweden and Finland consider issues of their indigenous population to a high degree. An interrelation of developments on indigenous rights exists on the international, national and regional level, especially in Norway, but also in Sweden and in Finland (Eide (2009: 280). In many aspects the Nordic states' initiatives are an important example of how to secure indigenous peoples' rights. This especially applies to the cross-border approach to developing a Sami Convention.

The Anaya Report (2011: 20-21) correctly observes that in the future more has to be done to secure Sami practice of self-determination**,** especially by solving issues of the Sami Parliaments as governmental authorities and by granting them jurisdiction over traditional land. Self-determination has to be secured by greater independence from state institutions and authorities (review of statutory status and functions of the Sami Parliament). Sami self-determination and constitutional rights issues should be solved by finally answering the question of how rights relating to the Sami as a people comply with rights already granted by the constitution.

Moreover, sufficient answers concerning proposals and comments of the Sami Parliament are needed (ibid.: 11, para. 40). The Nordic states should continue with the existing approaches of a Sami rights reform; self-determination on the national level (e.g. stronger powers and independent status of the Sami Parliament), especially internal self-government practiced by the Sami Parliaments, and Sami rights to their lands, areas and resources are important.

As Anaya states convincingly (ibid.), particularly when it comes to activities that interfere with their land rights, obtaining the (free, prior and informed) consent of the indigenous land owners should be required. This applies to direct and indirect interferences.[63] Corresponding to Article 30 of the UN Indigenous Declaration, consultation and participation as procedural requirements of the Draft Sami Convention are not sufficient. Nevertheless, jointly negotiated consultation procedures and the granting of increased or exclusive decision power in all Sami issues together with a higher recognition of traditional decision power of local

Sami institutions would lead to adequate internal self-determination, as is intended in the Sami Convention.

Accordingly, the expansion of financial resources for Sami projects and initiatives and support in claiming and defending their rights are crucial goals in achieving adequate Sami self-government and equality in court procedures.

Anaya´s demand for further official demarcation of indigenous areas, particularly reindeer herding areas, is still relevant in order to comply with (yet to be ratified) Art. 14 II of ILO Convention No. 169 and Art. 35 I 2 of the Sami Convention. As Joona correctly demands (2009-2011), the acknowledgment of indigenous property systems in the Arctic states should be clarified. It is time to solve the above mentioned issues of the Sami Convention such as the relation between collective rights to land and individual rights, the distribution of land and natural resources in the Sami society, and the restitution of traditional lands and waters taken without consent.

Besides these tasks, extended measures to reduce the negative consequences of climate change on the Sami are necessary (Anaya, 2011: 21, para. 85), due to the challenge of shifting pastures. A new Sami Convention must also regulate this issue, which is as yet unresolved. In addition, increasing alternative energy production needs measures to support renewable energy while respecting the Sami way of life (ibid.). In my view, in the near future, natural resource rights and environmental rights of the Nordic states must be combined with Sami rights in a meaningful way. This is an exceptional task, and not an easy one. Increased Sami participation in local natural resources management, together with the surrounding societies of the respective states, is foreseeable (Eide, 2009: 281) in order to realize the sustainable development of Sami land.

Finally, the current negotiations surrounding the Sami Convention should consider that the Convention does not demand that non-Sami courts, management authorities and the legislator respect the customary Sami law.

In the long run, a Sami Convention might be of interest for indigenous peoples worldwide, especially where an indigenous people lives scattered across several countries, like for instance the Maya (living in Mexico, Guatemala and in Belize). Already now, as mentioned by Koivurova (2008: 292-293), the special and permanent influence of the Draft Sami Convention as a social contract is apparent, as it shows “an innovative possibility to grow beyond the state-centred paradigm in international relations in a realistic way”.

Even if the Sami Convention is not a perfect document, as pointed out by Åhréns (2007: chapter 7) and Fitzmaurice (2009: 127), in future it will nevertheless open a new chapter of the relationship between Sami people and non-Sami people. The Convention advances the status and rights of the Sami as a people within the complex institutional framework in which they are presently located (Koivurova, 2008: 291) and marks a new partnership between the Sami and the colonizing peoples of Northern Europe (Åhrén, 2007: 12).[64] The process of how the Draft was made can be seen as an attempt to establish an equal relation between the Nordic states and the Sami (Koivurova, 2008: 291). The proposed Convention considers the Sami as a people living separated by international borders. Hence, both national and international dimensions of the Draft are of concern. This especially applies to indigenous ownership (property) rights. Here existing issues have to be solved quickly and according to international law.[65] In each of the three Nordic states, aspects of the recognition of ownership interests articulated by the Sami must be specifically investigated further.[66]

At present, the intended Sami Convention contains a minimum of Sami rights under special consideration of Sami interests, orientated on ILO Convention No. 169. For this reason, Anaya (2011: 20, para. 72) demands that Finland complete steps to ratify the instrument, and that Sweden also consider ratification, in consultation with Sami people.

The Sami Convention shall lead to a consolidation of decisive international law, of national Sami rights and to an obligation of the respective states (Strömgren, 2008: 29). With regards to land, resources and environmental rights the Nordic states should orientate on this future convention and even more on the far reaching UN Indigenous Declaration, which took up the main critical points of ILO Convention No. 169 and has carried out numerous improvements to acknowledge land rights (Eide, 2009: 255).[67] That is why Anaya's demand for further ratification of ILO Convention No. 169 does not go far enough to ensure that the Sami can pursue self-determination and sufficiently realize land, resources and environmental rights.

Nevertheless, a future Sami Convention, based on ILO Convention No. 169, will be an already extensive 'modern contract' between the Nordic states and the Sami people, even if admittedly the Sami will not be classified as a formal party next to states (Anaya Report, 2011: para. 35; Koivurova, 2008: 292-293). As Koivurova asserts (2008: 279) the Draft Sami Convention "tries to ensure a position that is as equitable as possible for the Sami in relation to the Nordic states". This altogether remarkable new international instrument would also be within the meaning of Article 36 of the UN Indigenous Declaration.[68]

Finally, in accordance with Grote (2006/2007: 442), a Sami Convention could serve as a successful model for facilitating an international monitoring board; control mechanisms stipulated in this Convention could even lead to an individual petition system.

This cross-border contract still constitutes an enormous challenge. Its acceptance is now expected in 2016 (UN News Centre: 2015; Sami Parliamentary Conference, 2014).[69]

Notes

[1] Published e.g. in Åhrén, 2007: appendix.

[2] Cited as: UN Indigenous Declaration (a non-binding document, but upcoming customary international law). The Declaration is a reference frame (in detail see e.g. Stavenhagen 2009: 8).

[3] This report is based on information gathered during the Rapporteur's visit to Norway, Sweden and Finland.

[4] Cf. UN News Centre: 2015: conclusions and recommendations by the new Special Rapporteur Tauli-Corpuz.

[5] Rights of Russian Sami are not mentioned in the Anaya Report of 2011. For details Josefsen, 2007: 12-13 (3.7 Russia: Article 27 ICCPR, constitution, Indigenous Peoples Act 2002, etc.)

[6] Cf. Art. 46 UN Indigenous Declaration.

[7] As pursuant to the Norwegian Consultation Agreement.

[8] (Reindeer) organisation with historical roots and principles (Reindeer Herding Act, 1978 (changed in 2007)).

[9] This legal entity is partly seen as a corporation of land owners, partly as an administration unit.

[10] Moreover, the Uncultivated Land Tribunal was established, a special land rights court of the Finnmark.

[11] Pursuant to Swedish courts.

[12] Cf. Anaya, 2011: paras. 59, 61 on loss and limitation of pasture land, climate change and beast attacks.

[13] In the legislative procedure the Sami were only represented in politics that affect their cultural survival.

[14] Citing the comment of the Human Rights Committee (HRC) to the fourth periodical report of the Norwegian Government which applies to the resource dimension (Article 1 II ICCPR), 2007.

[15] According to the HRC and the General Comment, Art. 27 ICCPR is applicable to land and resource use (cf. Carstens, 2000: 69-70). The individual rights to be able to enjoy a special culture can be interpreted as a protection of a way of life that is closely linked to an area and to the use of the resources in it (Kitok v Sweden). Since the Nordic states ratified the UN Human Rights Conventions, Art. 27 ICCPR is exercised everywhere.

[16] It is difficult to precisely decide between expressed collective land rights of indigenous peoples and the aspect of self-determination in ILO Convention No. 169 (ILO 169 includes the right to make decisions regarding land and water areas and natural resources. On the resource dimension of self-determination rights see Articles 7 b, 21, 26 UN Indigenous Declaration and its implications. Pursuant to Article 31, land and resource management are part of the self-determination right of indigenous peoples.

[17] 'Svartskogen Case': no formal right to object to the local land use plan. At least, pursuant to the 'Cultural Monuments Act', the Sami Parliament has a right to object during the planning process. 'Selbu-Case': reindeer herders are not parties to the land use plan in grazing areas, land owners do not have a right to object to local development plans. Instead, only organs of the reindeer authorities are allowed to act for them.

[18] Cf. on the possible ratification of ILO Convention No. 169 and potential effects on traditionally living people.

[19] The Finnmark Act already regulates that Sami Parliament and land owners have the opportunity to make comments during a permission process.

[20] See in addition UN Doc. CC PR/CO/74/SWE, April 24, 2002, point 15.

[21] When it comes to sovereign derogations of user rights, reference to the Administration Court is feasible.

[22] In 2009, the conflict of logging in winter grazing areas of indigenous reindeer herders by the state owned company Metsahallittus was resolved through a negotiated agreement in favour of the Sami.

[23] E.g. by the Norwegian Sami, who demand financial participation in the revenues resulting from exploitation of oil by the state in Sami waters (cf. Comment of the Norwegian Sami).

[24] Self-determination: for conclusions and recommendations see Anaya, 2011 (V., B.): paras. 73-77; for recommendations (rights on land, waters, natural resources) see ibid., part V., C: paras. 78-79 and 80-86.

[25] With further references to the `International Workshop on Free, Prior and Informed Consent (...)´, 2005.

[26] E.g. granted in full knowledge of all circumstances.

[27] Articles 6 and 7 of the ILO Convention No. 169 are central norms and must be included when it comes to indigenous land, resource and self-determination rights (Tomei/ Swepston, 1996: 12).

[28] Effective safety measures on fishing rights of Sami living in coastal areas to secure the traditional livelihood.

[29] With reference to Australian models.

[30] For details of customary rights in Sweden see Allard, 2006: 3 and 519-521.

[31] Until 1997, this was the frequently expressed official opinion (see Sillanpää, 1997: 208).

[32] Regarding the issue of linking environmental damages and the living situation of indigenous peoples, the different understanding of a sustainable use of nature, the adjusted way of life of indigenous peoples and the decisiveness of national and international environmental standards see Carstens, 2000: 122 at seqq. (A. III.).

[33] E.g. Article 8 j.

[34] 4.2. The 2005 Draft Saami Convention: The General Framework; for a summary see Fitzmaurice, 2009: 127.

[35] Sami living in Russia are not included in the Convention, although there live some thousands of Sami close to the border. Russian officials state “no interest” (Josefsen, 2007: 12). Russian Sami have an observer status.

[36] Only states are parties to the Sami Convention. But the entry into force and amendments of the instrument will require appropriate parliamentary proceedings and approval by the Sami Parliaments (Art. 51).

[37] In depth on indigenous property rights.

[38] The controversial question of whether it will be a convention containing concrete rights or only a framework convention that will provide general principles for the states and contains only a few concrete rights has been solved in favour of an advanced “rights convention” (Fitzmaurice, 2009: 117).

[39] Cf. on the background of the Sami Convention Bankes/ Koivurova, 2013: part II.

[40] The question is how the rights of the Sami as a people comply with rights already granted by the constitution.

[41] There are no collective rights norms in the Sami Convention (Åhrén, 2007: chapter 6.2).

[42] The range goes from an exclusive right to decide to being informed on a decision-making process by the respective deciding non-Sami body (Åhrén, 2007: 16).

[43] Cf. Henriksen, and Scheinin, Åhrén, 2007: 52-97.

[44] Sentences 14, 15: The Sami have rights to land and waters areas which contain the historical Sami homeland and rights to natural resources in these areas. Traditional knowledge and the traditional expression of Sami culture, incorporated in the use of natural resources were identified as part of the Sami culture.

[45] Cf. Fitzmaurice, 2009: 120-122, Eide, 2009: 257-259, Koivurova, 2008: 279-293.

[46] Art. 14 I ILO 169 deals with ownership and possession rights to traditional land.

[47] Art. 42 (V) indicates that Norway and Sweden shall preserve and develop the Sami reindeer herding right as the only right in reindeer areas; Finland shall strengthen the position of the reindeer herding Sami.

[48] Challenged in general by Réne Kuppe, University of Vienna (2009, discussion with author).

[49] Included are those areas which were claimed respectively as occupied and/or used and which were lost during colonisation or due to other reasons that require compensation according to international law. Norway and Sweden are now about to define Sami areas. This has led to critique. Although Finland has defined Sami areas, this did not happen within the obligations of the ILO Convention 169 and Art. 35 I of the Sami Convention.

[50] Here from the history of origins. From Article 28 II ("lands, territories (…) equal in quality, size and legal status") of the UN Indigenous Declaration further arguments could be derived concerning the scope of Sami land, from Art. 32 I, II (ibid.) concerning their traditional economic activities.

[51] Though it is not clear what the "rights to lands, territories and resources" are, nor is the definition of traditionally owned as referred to in Art. 26 I, if Art. 26 II specifies these rights as ownership, use, development and control.

[52] E.g. by the use of snowmobiles or motor cycles for reindeer herding.

[53] Article 16: duly right to negotiate of the Sami Parliament concerning official decisions in important matters; no state acceptance or admission of especially damaging measures to Sami culture, environment or society without consent of the affected Sami.

[54] Moreover the construction of roads, recreational facilities, military exercise activities and permanent exercise ranges.

[55] The result is a Norwegian agreement (2006) with an impact on Swedish reindeer herders (Åhrén, 2007: 29).

[56] Resources underneath the surface: oil, gas, minerals (predominantly); wood.

[57] It regulates that Articles 34 -37 (rights to water areas and use of water areas) shall apply correspondingly to Sami fishing and other use of fjords and coastal seas. In connection with the allocation of catch quotas for fish and other marine resources, and if other regulations of such resources exist, indigenous use of these resources and their meaning for local Sami communities shall be duly considered.

[58] According to Art. 16: the right of co-determination in the environmental management affecting these areas.

[59] The Sami receive necessary financial support to be able to judicially clarify important basic questions related to their rights as per the Convention.

[60] Consultation requirement, reports.

[61] In detail on environmental law and Sami rights (customary law).

[62] On Latin American developments.

[63] This corresponds to the highest standard on the inclusion of indigenous peoples in resource development decisions (Art. 30 of the UN Indigenous Declaration), more than "consultation" in Art. 15 II of the ILO Convention No. 169.

[64] Åhrén correctly indicates that the Draft Sami Convention was presented prior to the UN General Assembly proclaiming the UN Indigenous Declaration. Its adoption is likely to impact the legal status of treaties entered into between states and indigenous peoples under international law. Especially Art. 37 stipulates that indigenous peoples have the right to the recognition of treaties concluded with states.

[65] E.g. Articles 14 and 15 ILO 169; in detail 2.3. and 2.5.; cf. Bankes/ Koivurova, 2013: part II, Joona, 2012.

[66] Cf. continuative Bankes/ Koivurova, 2013: part III.

[67] On Articles 26, 28 of the UN Indigenous Declaration. Referred to Fitzmaurice (2009: 74-75), the critique concerning this Declaration (vaguely formulated limitation of the contents of present land use, missing obligations on land demarcation) should be kept in mind.

[68] Co-operation rights of indigenous peoples, separated by international borders.

[69] The Sami Parliamentary Conference demands that the negotiations are completed at the latest during 2016.

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Book Review: Grzegorz Rossolinski-Liebe, *Stepan Bandera: The Life and Afterlife of a Ukrainian Nationalist. Fascism, Genocide, and Cult*. Stuttgart: *ibidem*-Verlag, 2014.

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As the title suggests, Grzegorz Rossoliński-Liebe's monograph is a vast and comprehensive biography of Stepan Bandera, spanning more than a century and providing a much-needed *longue durée* perspective that not only reconstructs Bandera's life and political activity in painstaking detail, but also illuminates the reasons for the resurgence of his cult in the late 1980s and especially after the collapse of the Soviet Union and the achievement of Ukrainian independence. However, the book is also much more than that, covering some of the most sensitive aspects of modern Ukrainian history. It provides detailed accounts of the history of the two organisations with which Bandera was associated during his lifetime – the Organisation of Ukrainian Nationalists (OUN) and the Ukrainian Insurgent Army (UPA) – as well as of their legacies in contemporary Ukraine. These histories are placed in the wider context of the connections and entanglements of Ukrainian nationalists not only with neighbouring countries, but also with similar movements and the two fascist regimes in Europe. It is also a very timely book considering the contested nature of these aspects of modern Ukrainian history and their central role in the debates concerning historical memory in the country, brought to the fore in 2015 by the adoption of a package of four laws collectively known as 'decommunisation laws'. These laws have been widely contested by

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scholars, as well as by international organisations ranging from the United States Holocaust Memorial Museum (USHMM) to the Organisation for Security and Cooperation in Europe (OSCE) and the Council of Europe (CoE).[1] In addition to concerns about the limits to freedom of expression and of the media that the laws introduced, one of them explicitly includes within the scope of its protection the OUN and UPA,[2] two organisations responsible for collaboration with the Nazis, anti-Jewish pogroms and assistance in the perpetration of the Holocaust in Ukraine, and the mass murder of Poles in Volhynia and eastern Galicia between 1943 and 1945. In turn, these aspects of Ukrainian history acquire special significance for contemporary politics in the context of the ongoing conflict in Ukraine, as well as of the so-called 'information war' waged by the Russian Federation, where the association of the post-Maidan Ukrainian state with 'fascism' is a central component. For understanding the intricate dynamics of the resurgence of the 'Bandera cult', of its mixed reception in different parts of Ukraine and among different segments of the population, as well as the complex historical background prompting such associations and their contestation today, Rossoliński-Liebe's book represents an essential contribution.

The Introduction sets out the main objectives of the study, as well as acknowledging its limitations. The latter are very important to note in view of the contemporary significance of the book, as they explain the detailed treatment of the OUN and UPA at the expense of "other nationalist, democratic, conservative, and communist organisations and parties" in interwar Ukraine (p. 48), and allow the reader to carefully consider and place due weight upon this particular focus. Perhaps providing more contextual information concerning these 'other' Ukrainian parties would however have been useful for the reader unfamiliar with the intricacies of the history of the Ukrainians during the interwar period. This is especially so with regard to the UNDO (Ukrainian National Democratic Alliance), about which we learn that it was "the largest party in the Second Republic, which aimed to achieve a Ukrainian state by legal means" and that "there was informal cooperation between the OUN and the right-wing faction of the UNDO" (p. 67), yet not what this cooperation entailed. The author also introduces the theoretical framework associated with some of the main concepts around which the book is structured (such as those of 'fascism', 'genocide', and 'cult' making up the book's subtitle, as well as related ones), situates this first scholarly biography of Stepan Bandera in the context of the existing literature on related subjects, and explores the extensive documentary sources on which the study is based. Ranging from documents located in numerous archives the author consulted in Poland, Ukraine, Germany, and the Russian

Federation, as well as in the archives of the USHMM and Yad Vashem, through eyewitness testimonies of Holocaust survivors, to hagiographic and apologetic accounts of the activities of Bandera published by members of Ukrainian nationalist organisations or sympathetic historians, the presentation of the sources shows not only their variety and impressive scope, but also the author's skilfulness in combining victim and perpetrator accounts, while carefully considering the relative validity of different categories of sources and the inherent biases associated with each category (e.g. records of interrogations involving various degrees of coercion). The same careful consideration of the sources and the existing literature is visible throughout the different sections of the book – dealing respectively with the interwar period, World War II, the activities of Bandera and OUN members in exile during the Cold War, or the 'return to Ukraine' after the collapse of communism – with the author consistently providing valuable commentary on the relevant historiography (as, for example, in the section entitled 'The Bandera Cult in Historiography', pp. 469-480).

The first chapter introduces a *longue durée* perspective that allows a suitable contextualisation of interwar Ukrainian nationalism, including a brief account of the failed struggle to achieve statehood at the end of World War I and an exploration of the ideological roots of the extreme version of nationalism that would become characteristic of the OUN. The analysis of the particular policies affecting the Ukrainians living in four different states (the Ukrainian Soviet Socialist Republic, Poland, Romania, and Czechoslovakia) during the interwar period is very important for understanding the particularities of Ukrainian nationalism, as well as its development in conjunction with and as a response to the assimilationist tendencies of the Second Polish Republic. Poland's treatment of the significant number of national minorities living on its territory as second-class citizens and its flouting of the international obligations adopted as part of the Little Treaty of Versailles, consistently resented and eventually unilaterally renounced by the Polish authorities in 1934, appear as root causes of the antagonism felt by many Ukrainians towards the Polish state, and consequently of their orientation towards a revisionist Nazi Germany (pp. 61-67). As with other cases of ethnic groups dissatisfied with their status in the interwar period and with aspirations for statehood (e.g. Croats in Yugoslavia, Slovaks in Czechoslovakia), a combination of ideological affinities with pragmatic self-interest in the undermining of the post-Versailles order in the hope of achieving independence appears to account for the development of significant far right or fascist organisations and for their collaboration with Fascist Italy and / or Nazi Germany (see p. 197).

In this respect, the chapters that deal with Bandera's 'formative years' and interwar political activity, including the detailed accounts of the OUN trials in Warsaw and Lviv following the most high-profile assassination carried out by the OUN, that of Polish Interior Minister Bronisław Pieracki, represent excellent examples of the author's stepping beyond nationally-focused narratives. He examines not only the complex cross-border functioning of the OUN between the homeland executive – for which Bandera acted first as propaganda director (1931-1933) and then leader (1933-1934) – and its leadership in exile, but also the multiple interactions and entanglements of the Ukrainian nationalists with other fascist and far right groups in Europe, as well as with the two established fascist regimes in Italy and Germany. After tracing the formative influences that other Ukrainian nationalists, including his father, had on Bandera, Rossoliński-Liebe shows how his leadership contributed in turn to an escalation of the violence and acts of terror committed by the OUN, although, as the author claims, this might have been also a case of "reciprocal radicalisation" because other "zealous nationalists as Shukhevych, Lenkavs'kyi, Lebed', and Stets'ko [...] all came into the homeland executive at about the same time as Bandera" (p. 101). In any case, the trials following Pieracki's assassination are examined in much more detail than any of the numerous instances of violence, from robberies to assassinations, carried out by the OUN during the period in question. This is partly due to limitations of documentary evidence indicating Bandera's direct involvement in some of these cases, acknowledged by the author and related to the underground, conspiratorial functioning of the OUN in Poland; and partly to the importance of the trials in establishing Bandera's reputation as a leader of the OUN, not only within the Ukrainian community but also internationally.

The two chapters dealing with the history of World War II in Ukraine are perhaps the best in the entire book and the point at which the narrative truly comes into its own. With the attention to detail that characterises the entire study, Rossoliński-Liebe, primarily a historian of the Holocaust in Eastern and Central Europe, meticulously documents the plans of the OUN for a "Ukrainian National Revolution", its preparation, as well as its abortive yet murderous implementation following the Nazi invasion of the Soviet Union. For a movement that believed its most important objective, the achievement of Ukrainian statehood, could only occur in the course of a revolution (p. 167), the catastrophe of World War II and the demise of the Second Polish Republic as a result of the double invasion by German and Soviet forces, as well as the establishment of the puppet states of 'independent' Slovakia and Croatia with German and Italian support, seemed to provide the opportunity to accomplish its goals. The

latter, as elaborated in a document entitled "The Struggle and Activities of the OUN in Wartime", entailed the establishment of the "totalitarian power of the Ukrainian nation in the Ukrainian territories" (p. 181). With regards to the important question of non-Ukrainian 'minorities', the latter were divided according to a simple dichotomy of friends (other ethnic groups opposed to the Soviet Union) and enemies: "Muscovites [Russians], Poles, and Jews", where the latter would be "destroyed in the struggle" (p. 181).

Following the split of the OUN into a faction led by Andrii Mel'nyk (OUN-M) and a faction led by Bandera (OUN-B), partly "the result of a disagreement between generations" (p. 173), it was the latter that had a more established presence in Western Ukraine and therefore the one that took the initiative in June 1941, adding another chapter to the growing Bandera myth. In the confusion that followed the invasion of the Soviet Union and in the context of the German refusal to acknowledge the proclamation of Ukrainian independence, it was the destruction of its 'enemies' that seems to have been the OUN-B's main activity, the result of an ideology that had been predicated throughout the interwar period on its radical opposition to the Soviet Union and ethnic Russians, to Poland and ethnic Poles, and to Jews as allegedly associated with both. From anti-Jewish pogroms starting days after the attack on the Soviet Union, first in Lviv and later in numerous other localities in Western Ukraine, to the hunting and murder of Jews throughout the period of 1941-1945, and to the mass murder by the OUN and UPA of between 70,000 and 100,000 ethnic Poles in Volhynia and Eastern Galicia in 1943-1945 (p. 271), the narrative provides considerable evidence pertaining to the war crimes committed by Ukrainian nationalists. As Rossoliński-Liebe asserts, Bandera's "personal, as opposed to moral, responsibility for those murders was either very limited or non-existent" (p. 281), since the leader of the OUN-B was not in Ukraine during the war, being detained in Germany together with other Eastern European fascist leaders (such as the remaining leadership of the legionary movement in Romania) as a 'reserve' of potential collaborators until the end of the war. As was the case with other native fascist movements in Central and Eastern Europe, the OUN's intransigent radical nationalism and commitment to their own cause rendered them unlikely allies for the Nazis, who preferred to cooperate with more moderate nationalists, conservatives who both were more predictable and more susceptible to German influence. Similar to the legionary movement in Romania or the Arrow Cross in Hungary, Germany's links to the OUN were re-activated only in 1944, when the course of the war led the Nazis to seek out the only partners for cooperation still available, among the fanatical ultra-nationalists, anti-communists and anti-Semites they had previously shunned.

Despite the author's insistence on acknowledging his quasi-exclusive focus on the crimes committed by the OUN and UPA, as the two organisations associated with Bandera, at the expense of those perpetrated either by Nazi Germany or the Ukrainian police, by the Red Army, or by the Polish Home Army in its retaliation against the mass murder of Poles by the UPA, and in the absence of limited information beyond some dry figures related to the number of victims, the narrative necessarily appears rather one-sided and requires considerable knowledge on the part of the reader about the Holocaust in Ukraine to fill in the missing pieces of information. While it is difficult to imagine how this could have been avoided given the purpose of the book, which is to provide a biography of Bandera and the organisations he led in the course of his lifetime, the picture of Ukrainians as "both victims and perpetrators" in the course of World War II is significantly inclined towards the latter. Moreover, despite the acknowledgment of several factors other than "the nationalist and racist ideology of the OUN-B" that help explain the transformation of "ordinary men and women into murderers" (p. 279), some of these, such as the absence of a "strong administration in these territories at a time when the front was changing" (p. 280) are insufficiently explored, despite their proven significance in the history of the Holocaust (Snyder, 2012).

The chapters dealing with the activities of Bandera, the OUN, and the UPA during the Cold War paint a familiar picture to historians of far right and fascist movements in Central and Eastern Europe, one of armed resistance to the Soviet authorities in Western Ukraine and of collaboration with Western (in the case of Bandera, American, British, and later West German) intelligence services in exile. In the framework of organisations such as the Anti-Bolshevik Bloc of Nations (ABN), established by OUN members in exile and including fascists and former Nazi collaborators from across Central and Eastern Europe (Rossoliński-Liebe mentions Slovak, Croatian and Romanian fascists among its ranks), numerous persons guilty of war crimes found protection and vital financial support from Western governments and intelligence services as potential assets that could be used against the Soviet Union. However, an interesting difference between Ukrainian nationalists and their counterparts in other countries in Central and Eastern Europe (the case of Romanian legionaries, for example), concerns their very early attempts at whitewashing their reputation and minimising their role in the mass murder of Jews and other civilians, complete with the OUN's leadership denial of "its engagement in fascist politics before and during the Second World War" as early as May 1945 (p. 317). Despite such statements, the author's analysis of Bandera's post-war writings indicate a continuity with his pre-war far-right views, moderated only partly by

his precarious position as an émigré and target of the Soviet Union and his interest in cooperating with Western governments.

At the same time, Soviet propaganda, to which Rossoliński-Liebe dedicates a comprehensive chapter, contributed significantly, despite its intentions, to the propagation and strengthening of the Bandera cult. According to a pattern familiar also in other countries of the Soviet bloc, the exaggerations, simplifications, and distortions involved in the propagandistic presentation of the crimes committed by the OUN and UPA, coupled with the complete denial of Soviet violence against Ukrainian civilians – many of whom "neither belonged to the nationalist underground, nor supported it" (p. 316) – eventually undermined their intended function. The depictions of Ukrainian nationalists as instruments of Nazi policy (according to the trope of 'Ukrainian-German nationalists') prevailing in the course of the war and in the immediate post-war period, followed by the subsequent identification of the OUN and UPA as "Ukrainian bourgeois nationalists" (p. 383) not only flew in the face of considerable evidence to the contrary, but distorted historical facts according to ideological dogma and contributed to obscuring the native roots of the Ukrainian far right. Together with an emphasis on the cooperation of Ukrainian nationalists in exile with Western governments and agencies – as well as more implausible descriptions of the Greek Catholic Church in Ukraine "as an agent of the Vatican, the German Empire, and Nazi Germany" (p. 379) – and the straightforward association of the term 'fascist' with the democratic capitalist states in the Western bloc, these features not only made historical memory into an explicitly political and crude propaganda tool, but also contributed to a dilution of the concrete connotation of terms such as 'fascism', whose indiscriminate application eventually rendered it almost meaningless within the Soviet bloc (and perhaps beyond). In the context of a regime resented by a significant part of the population and of a one-sided version of history that did not allow any alternative readings, most of all with regards to the crimes committed by the Soviet regime, it is less surprising that in Ukraine, as in other countries of Central and Eastern Europe, this contributed to a rehabilitation of the members of far right and fascist movements in the eyes of the public, turning them "into martyrs and anti-Soviet heroes" (p. 405). Bandera's assassination by the KGB in 1959, and the numerous commemorations organised by the Ukrainian diaspora in Western Europe and North America also contributed to his representation as an anti-communist 'martyr' for the independence of Ukraine.

The different elements contributing to the Bandera cult mentioned in the course of the book, many of them having little to do with his actual activity and much more with his image or

perception within the Ukrainian nationalist organisations, at home and in exile, as well as with Soviet propaganda, lay the basis for a better understanding of the final chapter, which deals with the public resurgence of the cult towards the end of the 1980s and especially after the collapse of the Soviet Union. While some features are yet again common across the countries of the former Soviet bloc – with many of the interwar fascists and extreme nationalists being recuperated in the context of an anti-communist agenda, not only by newly emerging far-right organisations but also by the political mainstream – it is the sheer magnitude of the Bandera cult and its legitimation in the public domain that appear striking in post-Soviet Ukraine. While certain (mostly marginal) individuals and organisations have occasionally attempted to rehabilitate interwar and wartime characters such as Codreanu, Szálasi, or Pavelić, Horthy, Tiso, or Antonescu, nowhere in Eastern Europe was this phenomenon so widespread or so mainstream as in contemporary Ukraine, nor were such cults so closely linked to state institutions, culminating in Bandera's designation as 'Hero of Ukraine' in 2010 by the Ukrainian President Viktor Iushchenko (p. 506). At the same time, the variety of forms taken by the Bandera cult – in "politics, historiography, museums, novels, movies, monuments, street names, political events, music festivals, pubs, food, stamps, talk shows" (p. 459) – is also unparalleled anywhere in the Soviet bloc.

Rossoliński-Liebe's excellent account of the resurgence of the Bandera cult in post-Soviet Ukraine does not, however, slide into the common misperception, instrumentalised also by Russian media, that sees it as a fundamental component of contemporary Ukrainian identity as such. Instead, his attention to detail allows for a much more nuanced picture to emerge, one that is sensitive to the differences in its geographical spread – while carefully avoiding a too-straightforward distinction between 'Western' and 'Eastern' Ukraine, and pointing instead to resistance of local authorities to the Bandera cult even in parts of Western Ukraine (p. 493) – as well as to its changing fortunes under different administrations in the period since 1991. As such, this well-argued chapter, as well as the entire book, contributes significantly to dispelling some of the frequently-invoked readings of such variations as indicative of some 'inherent' differences between Eastern and Western Ukraine linked to ethnicity or language, showing instead how the different historical evolutions of the provinces making up present-day Ukraine have concrete and considerable effects on the contemporary political attitudes of the public towards such sensitive issues as Ukrainian nationalism, Stepan Bandera, the OUN and the UPA. These are properly contextualised by the attention devoted also to the monuments and commemorations of the victims of these organisations, as well as followed

across the border into neighbouring Poland, where a particular type of Polish martyrology has developed with regards to the memory of the crimes committed against Poles by Ukrainian nationalists during World War II, against the background of the policy of reconciliation between Poland and Ukraine after 1991 (pp. 516-519).

The picture that emerges from the last chapter, rather than of a monolithic Bandera cult, is that of the polarisation of Ukrainian society with regards to his legacy. This leads the author to the rather bleak conclusion that "up to the time of writing, an approach to the Ukrainian past that would not extol either the OUN-UPA or Soviet totalitarianism but would mourn the victims of both sides has not asserted itself" (p. 514). Unfortunately, in the almost two years since, following the Russian annexation of Crimea and the conflict in Eastern Ukraine, the Bandera cult has transformed from a symbol of anti-Soviet resistance into an anti-Russian mobilisation factor while the propaganda of the Russian authorities seeks to depict the entire Ukrainian people as enthusiastic supporters of extreme Ukrainian nationalism or even 'fascism', making the prospects for the emergence of such an approach appear even less probable. The further institutionalisation of historical memory in legislation regarding both the OUN-UPA and the Soviet legacy in 2015, accompanied by the state-sanctioned embedding of a particular version of Ukrainian history in institutes of 'national memory', led by historians such as Volodymyr V'iatrovych who act as apologists of Ukrainian nationalism, offer even less hope that the mourning of the historical traumas Rossoliński-Liebe invokes in the conclusion to his study will materialise in the foreseeable future.

Perhaps the one concept that still remains problematic in Rossoliński-Liebe's biography of Stepan Bandera is that of 'fascism'. This is not surprising, considering the widely-acknowledged difficulties inherent in providing a consistent definition of the generic term, as well as its contested applicability to various cases, sometimes involving qualifications such as 'clerical fascism' or 'Austro-fascism'. The issue is compounded by the fact that self-identifications of members of far right and fascist movements, historical and contemporary, typically avoid using the term; by its specificities in the Central and Eastern European context (the different role played by religion in the ideologies of interwar nationalisms being but one of them); and by the special case presented by interwar Ukrainian nationalism with respect to its lack of statehood and the subsequent functioning of the OUN as an underground organisation. Such limitations are indeed acknowledged by the author, not only in this book but also in a subsequent study, significantly entitled 'The Fascist Kernel of Ukrainian Genocidal Nationalism' (Rossoliński-Liebe, 2015). Yet, despite a comprehensive overview

demonstrating his thorough familiarity with the main theoretical approaches to the concept associated with the so-called 'new consensus' in fascist studies, the definition adopted by the author (p. 33) appears at once too broad and extensive and in some respects ill-suited for the case study under consideration. Some of its components do not fit some of the established cases of fascist movements and regimes (such as anti-Semitism for the case of the Italian regime until 1938; or racism for the Romanian 'Legion of the Archangel Michael'); others, such as populism, appear tenuous when applied to a movement that until World War II was forced to function as an underground, conspiratorial organisation. The case for the palingenetic element of fascist ideology is difficult to make in the absence of a state whose glory is sought to be restored and regenerated, while the *Führerprinzip*, often taking centre stage (and understandably so for a study that aims to be biographical before everything else), was undoubtedly characteristic of regimes such as Antonescu's or Franco's, which the author correctly identifies as conservative rather than fascist. The frequent association of the concept of fascism with anti-Semitism or ethnic violence in general is also a problematic one, as considerable evidence (such as the aforementioned regime of Ion Antonescu) points to numerous parties, movements, or regimes that displayed the latter without necessarily being fascist. Given the importance of the concept of 'fascism' not only for the history of Ukrainian nationalism, but also in the context of contemporary Ukraine, further studies aimed at clarifying this aspect appear necessary, and the author's demonstrated familiarity with the topic recommends him for such endeavours. Moreover, in its constant attempts to position the question of Ukrainian nationalism or fascism in an international context, through frequent, extensive and informed analyses encompassing a comparative approach, as well as the transfers and entanglements affecting the evolution of the OUN, the study represents a very useful contribution to the recently-developing transnational approach to the history of fascism and the interwar extreme right, particularly valuable given its under-development in the area of Central and Eastern Europe (Iordachi, 2010; Bauerkämper, 2010). An essential biography of one of the most controversial figures in modern Eastern European history, Grzegorz Rossoliński-Liebe's book is also a book for a wide readership: historians of the Holocaust; scholars interested in minority issues and the history of inter-ethnic interactions in an area that was (and is today unfortunately much less so) profoundly multi-ethnic, multi-cultural and multi-confessional; social scientists working on contemporary Ukraine but less familiar with the intricate details of its modern history and their lasting impact on the contemporary situation; researchers of fascism and anti-Semitism, both historical and contemporary; as well as historians generally interested in integrating the history of Central and Eastern Europe, for

far too long confined to the domain of 'area studies', into a genuinely European historiography.

Notes

[1] Jared McBride, 'How Ukraine's New Memory Commissar Is Controlling the Nation's Past', *The Nation*, 13 August 2015, available at: http://www.thenation.com/article/how-ukraines-new-memory-commissar-is-controlling-the-nations-past/ (accessed 12 April 2016); 'New laws in Ukraine potential threat to free expression and free media, OSCE Representative says', 18 May 2015, available at: http://www.osce.org/fom/158581 (accessed 12 April 2016); 'Ukraine's law on "decommunisation" does not comply with EU standards – Venice Commission, OSCE / ODIHR', *Interfax-Ukraine*, 19 December 2015, available at: http://en.interfax.com.ua/news/general/312592.html (accessed 12 April 2016).

[2] 'On the Legal Status and Honoring the Memory of Fighters for Ukraine's Independence in the Twentieth Century', *Ukrainian Institute of National Memory*, available at: http://www.memory.gov.ua/laws/law-ukraine-legal-status-and-honoring-memory-fighters-ukraines-independence-twentieth-century (accessed 12 April 2016).

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