

Minority Groups and Autonomy from an International Political Perspective³¹

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1. INTRODUCTION

The present paper focuses on minority groups, especially politically organized ones, and seeks to provide a general overview of the political position of minorities on the international scene, with special emphasis on the legal institution of autonomy. However, the observations below can be chiefly interpreted in a European context. Today it would be impossible to provide a global and universally acceptable analysis of this issue as the different political and legal approaches to the 'question of minorities' show an immense variety even in Europe, not to mention the rest of the world. Thus, exceptions can always be found and will always be present.³²

Furthermore, the problems discussed below are more closely related to the present realities of Central and Eastern Europe than to minority questions emerging in other parts of the continent. The reason for this lies primarily in the different European regional international legal instruments on minority protection, which emerged over the past decade partly as international reactions to the problematic situations in Central and Eastern Europe, while Western European minority issues seem to be less present on the international agenda.

It also has to be stressed that the acknowledgement of the political character of minority groups or the establishment of legally institutionalized autonomous bodies for minority groups cannot solely be regarded as a general solution for the problems associated with minorities. Other legal structures and political solutions may be equally appropriate for guaranteeing minority rights, according to the position of the minority concerned.

Nevertheless, acknowledgement of minority groups as political entities and the establishment of adequate self-governing institutions can, in many cases, represent a pragmatic and appropriate solution for the problems existing between minority groups and their states.

After briefly analysing various features of the political mobilization of minorities, an overview of the political position of minorities in international relations theory and practice will be presented. The third issue that will be discussed is the international legal environment of minority rights, especially regarding the question of collective rights. A fourth point considered deals with the problem of self-determination and a potential right to autonomy under international law: two of the most important legal institutions with regards to the political rights of minorities. Before proceeding, however, some important terminological comments shall be made.

2. TERMINOLOGICAL REMARKS

Most attempts to discuss national minorities in an international context are faced with the terminological problems that exist in this field. The term 'minority' is widely used in political science and in international relations to describe different phenomena on a relational basis. This term, without any complementary qualifications, describes merely a numerical disproportion between two or more groups of people. However, such a disproportional relation does not necessarily reflect a political issue on the international scene. As Biró underlines:

The question of minorities generally becomes an issue when groups, numerically inferior within a state, claim rights that are politically sensitive to grant. In practice, sensitive means prone to real or perceived offences to representations whose characterization is overloaded with symbols, like national dignity, honour, or national feelings. The stakes in debates becomes more tangible when minority claims give rise to the devolution of power, or to power-sharing schemes and the process involves actors from the international arena, thereby affecting the foreign relations of the concerned state.³³

The minority groups referred to here are organized along these lines; political organization along their ethnic or national identity generally raises the concern of their state on politically sensitive arguments. These include issues related to "the rights of persons belonging to national, or ethnic, religious and linguistic minorities".³⁴

So far, there is no universally accepted definition of 'minority', and in international documents other terms such as 'people' and 'nation' are widely used interchangeably, without being clearly defined.³⁵ Nevertheless, similar views are emerging in the relevant literature (explicitly) and in international documents (implicitly) as well.

From the various existing interpretations of national, ethnic, religious and linguistic minorities, a few general statements can be derived: minority groups generally have a sense of community (organized around a well definable group identity), a common will to preserve that group cohesion and usually, but not always, a territorial concentration.³⁶

In this paper, three main aspects of group identity that play a central role in politically manifested group cohesion are taken into account. These are ethnic, national and cultural identities, which refer to the perception—often mythical—of a common ancestry (ethnic identity), to the loyalty or disloyalty to a nation-state (national identity) and to a language, religion, or a cultural tradition in the broad sense of the word (cultural identity).

Nevertheless, even within this limited concept of minorities, their political mobilization is often described with further contentious terms such as nationalism, national revival, ethno-nationalism, or ethnocentrism, etc. Until now these terms have neither in theory nor in practice reached a universally accepted definition. The reasons for such political mobilization, especially from an ideological point of view, are widely discussed in the vast literature on nationalism,³⁷ but, again, no universally accepted definition of the phenomenon exists.

As this brief overview of terminological problems shows, no general agreement on even the most basic terms has been reached yet. In this paper I prefer to accept the existing great variety of often contentious terms, without attempting to introduce further definitions or new terminology.

3. POLITICAL MOBILIZATION AND GROUP COHESION

Turning to the political aspects of minorities it has to be stated that minorities have to possess specific features in order to be political subjects or actors in general. The mere difference in ethnicity, language or religion of one group from another does not necessarily constitute a political issue. These differences may not raise political questions in the related groups or remain unnoticed by the majority population. Furthermore, it should be underlined that not all minorities want or are willing to articulate themselves in political terms.³⁸ Self-awareness of a common need to preserve, maintain and articulate group identity is thus of outstanding importance if minority status and rights are desired.³⁹

This paper focuses on those minorities which articulate their political goals along the lines of their religion, ethnicity, culture or language. In group-identity formation, such distinctive features have an outstanding role. Religion, ethnicity or any other factors which may concern the group identity are deeply rooted components of individual identity as well. It is also often disputed whether the feeling of belonging to a national or ethnic group is the result of social development or whether it represents a natural tendency of human nature. Both constructivism and primordialism are widely accepted and significant approaches in nationalism studies.⁴⁰

Generally, in the eyes of minority representatives, the individual is seen as having been born into a given group which they later consciously accept, reaffirm and strengthen. The important factor is how the persons within a group perceive of their group identity. When political mobilization is made along these lines, provided that such components of personal and group-identity are perceived as unchangeable, given features, the political mobilization is made on absolute terms. The representatives of the minority group can hardly put these issues up for negotiation. If a person's belongingness—to an ethnic group, for example—is viewed as an unalterable reality, then such a person can never refuse their affiliation. This concept can be applied also at a group-level. These minority groups sometimes formulate politically irreducible claims on their expressed will to preserve, maintain and develop their ethnic, national or cultural identity. In such cases, religion, ethnicity and language are politically non-negotiable. On these issues no compromise can be made with the other political actors or with the state. In democratic structures it also implies that political mobilization on these grounds can never achieve the primary political goal of most actors: to obtain power. "Groups politically organized along these lines, soon find themselves in the role of structural minority on the political scene, whatever the extent to which the members of the group regard their claims to be irreducible. They can participate in various power-sharing schemes, but never become a political majority through democratic elections".⁴¹ As a result, their role is more the reinforcement of consciousness in their group identity than obtaining actual political power in a country.

When identity becomes a political issue, its importance and role in group cohesion will likely increase and tend to emphasize the existing differences between the group and others. Consequently, this process may result in serious political or even violent conflict.

Studies of nationalism often express a deep concern regarding the idea of the national state, particularly with respect to interethnic relations within a state. When the term 'national identity' or 'national minorities' is applied, it expresses a certain relation of that minority group to a state in terms of their loyalty or disloyalty to this state. States have usually been established as the nation-states of the ethnic majority or dominant ethnic group. In recent times, the overlapping interpretation

of ethnic nation and state has been widely criticized in literature. However, governmental practices in most countries still show that an ethnically homogeneous state is considered to be preferable to a multinational one.⁴² In this perspective minorities are often seen as a possible danger by undermining state sovereignty, claiming rights which could limit the central government and, above all, representing a threat to the territorial integrity of the state. This is especially true if they live in a compact community or have a neighbouring kin-state. As a result states usually emphasize the importance for minority groups to be loyal to the state. Without exploring the delicate and complex question of loyalty in detail, it shall be noted that in legal terms loyalty exclusively refers to the respect of laws and the accomplishment of civic duties by all citizens. That said, many states require something more of their minorities. Expanding upon the definition of loyalty, they seek a certain additional 'loyalty' (or self-identification with) the majority nation not only in legal but also in political or in cultural terms. In this case, the state is usually identified with the ethnic majority. Such a vague interpretation of loyalty usually 'justifies' governments' labelling of minority groups' behaviour offensive and ultimately serves as an excuse to restrict or oppress minority claims. However, it would be very difficult to find, either in internal legal regulations or in political terms, any definition for such a broadly defined use of the word 'loyalty'. In this vague sense of the word, minorities usually cannot declare an exclusive 'loyalty' to their state, as they possess a different identity not necessarily represented by that state, and possibly represented by another kin-state. On the other hand, almost all politically organized minorities, except those claiming secession, accept and declare their loyalty to the state in which they live, in the generally accepted legal sense of the word.

Until political actors accept the distinction between state and nation, the competing and contradictory claims of minorities and states always presents a potential source of conflict.

The strengthening of group cohesion as a response to increasing threats from the state may lead to drastic means and claims being adopted during the process of political mobilization of minority groups (e.g. the use of violence or pronouncements of secession).

Certainly—taking into consideration the dissolution of the former Federal Republic of Yugoslavia in the past decade—such threatening sentiments may also be manipulated by politicians or groups in their competition for power (e.g. persons participating in 'ethnobusiness', the so-called 'ethnic entrepreneurs'). However, it may be difficult to identify hidden political interests beyond the actual ethnic conflict. Manipulations may appear both in the minority and majority realms of society. But while the manipulators of the majority usually can be identified among those in power, the situation is often not so clear in minority groups. When we talk of the political mobilization of minorities, this also raises the question of the legitimacy of political leaders of the minority group and whether they represent the entire community or just specific political groups within it.

Considering that the question of leadership within the minority group is an important element for increasing group cohesion, a further brief comment shall be made here on this point. In the process of political mobilization of minorities there is a normal need for certain forms of 'formal' leadership, which can manifest and represent the group-identity both towards the outside world and within the community. This role can be played by:

- traditional institutions, which are based on their own autonomous hierarchy (e.g. a church or a 'council of elders', etc.);
- formal, legally established institutions as the representative bodies of any level of self-government or the representatives of political organizations functioning on the legal

- basis accessible within the legal system of the state (i.e. elected MPs, local authority councillors, etc.);
- charismatic individuals who are highly regarded in the community and are accepted by an overwhelming majority of the group, without a formal electoral process.

As a result of a growing political mobilization of minorities, the representatives and decision-makers of the group will have a more influential political role. When minority groups enter in the political field—at a national or international level—the role of its leaders will change. Decisions taken by them will directly affect the everyday life of the group and that of the individuals who belong to the group. Nevertheless, representation and decision-making will not always coincide. According to Kellas, three important elites can represent national groups: the representative role of cultural, political and economic elites can be equally important.⁴³

When the leadership becomes more contested politically—if, for example, self-appointed leaders emerge—inherent dangers may arise. The political rule within the group may become authoritarian if there are no agreed mechanisms to select its political leadership. However, if there are legally regulated measures and mechanisms to control the group's internal political structure, then such an outcome is less probable.

When appropriate legal channels are not available for selecting political elites within the minority group, competing elites may emerge, articulating a large scale of different, possibly contradictory, political goals as claims of the minority group. Such a situation can further complicate the representation of the group and the possibilities to accommodate their real needs in the future.

In those states which do not recognize their minorities or refuse them the needed means for political mobilization—for example by prohibiting organizing parties on an ethnic basis—minorities will probably become more radicalized and increase the chances of authoritarian rule coming to power

4. MINORITIES IN INTERNATIONAL RELATIONS—AN OVERVIEW

As referred to above, minorities formulating sensitive claims on national issues may face the suspicion and reluctance of the state in which they live to acknowledge and meet their wishes. As these political goals may include power-sharing schemes or decentralization of political power, the issue becomes even more delicate. The potential involvement of third actors in the dispute, namely international organizations or another state, can also seriously affect the foreign relations of the concerned state. In this case minority groups can strongly influence their political, international environment, even without having any appropriate international formal or legal channels to do so.

It has been impossible to develop a generally acknowledged and universal paradigm for the political mobilization of minorities and how that affects international relations. Each case is unique and many complementary or even contradictory observations can be made.⁴⁴ In the following, some core questions in relation to formulating a general model of the position of minorities in international relations will be presented.

4.1 Historical Theoretical Remarks

For most of the Cold War period the question of minorities was a predominate issue in international politics. The League of Nations system, which had provided a certain level of protection for minority groups in Europe (only in Europe and only in the defeated and new states) had collapsed and the experiences of the Second World War almost erased minority issues from the international agenda. In the *travaux préparatoires* of the United Nations Charter the problem of minorities was thought to be resolved by the general prohibition of discrimination on ethnic, national or racial grounds and by the reaffirmation of peoples' right to self-determination. In the bipolar world of the Cold War period, minority issues were considered to be almost exclusively a matter of domestic concern. In the fragile balance between the two great powers, the inviolability of state sovereignty and respect for the territorial integrity of states superseded minority considerations. However, from 1966, following the reappearance of the protection of persons belonging to ethnic, religious or linguistic minorities (as referred to in Article 27 of the United Nations International Covenant on Civil and Political Rights, or ICCPR), the idea of individual rights to preserve minority identity was generally accepted. But for a long time this assertion was not more thoroughly elaborated. The question of minorities clearly started to receive more attention from international organizations only after 1989.

Within the United Nations, serious concerns lead to the approval of the Declaration on the Rights of Persons belonging to National or Ethnic, Religious, and Linguistic Minorities in 1992. Although the Declaration is an international legal instrument which does not prescribe any specific obligations under international law, it was an important development in the universal acknowledgement of the rights of minorities.

In Europe serious attempts have been made to establish a consistent and detailed framework of minority protection in the past decade by such international organizations as the Council of Europe (CoE) and the Organization for Security and Cooperation in Europe (OSCE).⁴⁵ But state practices regarding their implementation have been varied.

Considering these recent developments in Europe, it can be stated that a dual approach emerged in relation to the international protection of minorities: firstly, the accommodation of minorities is regarded as relevant to international security; and secondly, the protection of minorities is derived from the universal protection of basic individual human rights and freedoms. However, this individualistic approach does not reflect the community character of minority groups.

Similar approaches are reflected in international legal or political theories as well. Until 1989, the main contentious issue in academic debate was how the rights of minorities (usually formulated as rights of persons belonging to minorities) can be implemented in the general framework of human rights.⁴⁶

In another mainstream theoretical approach the question of ethnic-based conflicts was widely analyzed.⁴⁷ The protection of minorities as an issue of international security first emerged in international documents within the CSCE/OSCE in 1975. Dispersed ethnic conflicts in Africa, Asia and the Middle East also drove scholars to investigate why ethnic-based conflicts emerge and how they can be managed or settled. Besides different theoretical considerations on the correlation between ethnic identity and security, Ted Gurr and Barbara Harff recently tried to set up a quantifiable assessment of different criteria which can lead to open conflicts in ethno-political mobilization, from permanent interethnic cleavages to the rise of exclusionary ideologies.⁴⁸

Existing realities usually follow a similar trajectory described by Gurr and Harff. But persisting cleavages between ethnic groups, or the rise of exclusionary ideologies in a society, can be noticed

well before a conflict erupts, which could make ethnic-based conflicts quite foreseeable and could enable the international community to find different measures to prevent their escalation. From early warning to military intervention at different phases there is a wide scale of possible actions at the disposal of the international community. However, the success of these actions cannot be assured from the outset, and in most cases the main international actors are reluctant to take appropriate actions immediately.

Liberal approaches failed to foresee the difficulties associated with the supposed universal victory of human rights and democracy after the collapse of the communist world. Humanitarian interventions have not always been successful in terms of stopping human rights abuses (e.g. in Somalia) and usually do not take place at all. The peaceful cooperation of nations to protect human rights and minorities is not a worldwide reality, and minority issues usually deepen, rather than bridge, existing gaps and conflicts between states.

Realist theories of international relations, which focus on the pre-eminence of the state, maintain that the question of minorities is strictly a matter of domestic concern. However, in recent times a number of states were split along their ethnic cleavages as they failed to establish a democratic and stable, political community on a multiethnic basis. This implies that formal international recognition and respect of a state does not in itself secure the survival of that state.

World-system theories focusing on the questions of central and peripheral areas cannot provide a universal explanation for the political mobilization of minorities either, as it turns out that economic development or uneven distribution of resources is not the general (but a possible) cause for rising ethnic tensions.

Despite some achievements in Europe regarding the international legal protection of minorities, a coherent international regime (including, for example, also sanctions or a judicial forum to settle disputed cases) is not likely to be established in the short term. In a more global perspective, such issues have not even been raised so far by the international community.

University textbooks also mostly ignore the issue, usually referring to minorities as non-formal, non-state actors of international relations and failing to explain their role or their activities at an international level.⁴⁹

Sovereign nation-states are still the most important actors of international relations. International legal regulations are almost exclusively designed and implemented by nation-states and they are the most influential in setting the international agenda. In this context, minority groups have a very firm interest in presenting their claims to the international community to receive attention and possibly support from another state, group of states or international organization. External actors can apply serious pressure on a government which cannot always be achieved by a minority alone. This was certainly the case in Kosovo and East Timor.

Minority groups can become political actors at the international level and may be able to influence the international environment without being formally recognized by states or other potent actors. But the preponderance of the state still seems to be solid and strong despite the strong challenges coming from non-state actors, of which minorities are but one group.

It can be concluded that although minorities play a considerable role on the international scene as political actors (politically organized groups), the influence and possible results of their political mobilization are still unexplored in theory. This incomplete overview on some current ideas on minorities in international relations is intended to show that the emergence of minority issues (or rather the re-emergence) over the past decade has not yet received a generally accepted response.

4.2 International Law and Collective Rights of Minorities

If minorities can and do articulate their will to preserve their identity in the political field, what kind of legal measures can be applied for realizing their collective will?

Will Kymlicka's self-proclaimed "liberal theory of minority rights"⁵⁰ remarks that liberal fears of collective rights as threatening the primacy of individual rights are practically without foundation. He argues that collective rights in inter-group relations of minorities belong to the "external protection" of minority rights and serve to resolve the otherwise existing unfairness in minority-majority relations.⁵¹ Accordingly, minorities with access to collective rights would come to enjoy widely assured and accepted individual rights of persons belonging to minorities. Asbjorn Eide expresses a similar idea in a deductive analysis of non-minority specific individual human rights that is relevant to minority groups as well:

Human rights are essentially individualistic. They deal with the rights of the human person as an individual. Many persons belonging to ethnic, religious or linguistic groups feel, however, that they need a protection of their group identity. The core elements of that identity is the right to organize themselves as a group, to use their own language, to be able to preserve, to reproduce, and to develop their own culture, and therefore to control or have a significant impact on the content of the education of their new generations. A part of this concern is to be able effectively to influence political decisions affecting themselves.⁵²

However, among international organizations this approach is not universally recognized. Rather—as was briefly mentioned above—the individual character of minority rights is emphasized in the interpretation of legal instruments. On the other hand, by the mid-nineties the rights of minorities became universally acknowledged as forming an integral part of the human rights regime. Although Ragazzi notes that nowadays respect for human rights can be regarded as a part of the general international obligations *erga omnes*,⁵³ it evidently does not mean that their universal obligatory status is guaranteed, as many state practices and governmental approaches show.

The actual protection of minorities regime is a relatively recent development in international law. The first basic documents on human rights, like the UN Charter, the Universal Declaration of Human Rights (1948) and the European Convention on Human Rights (1950) did not contain any reference to minority rights. Until the late 1960s, the anti-discrimination provision⁵⁴ was the only existing measure which was specifically relevant to minority populations. States were often reluctant to confer these human rights such a broad interpretation. (It is noteworthy that the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, without mentioning minority groups, implicitly reaffirmed their right to existence.⁵⁵) The first explicit step towards the international legal protection of minorities was made with the introduction of a minority Article in the UN International Covenant of Civil and Political Rights (1966). Article 27 of the Covenant states:

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

This section clearly distinguishes the special status of the rights of minorities among other human rights. The free enjoyment of one's own culture, faith and language describes the living

identity of a minority group. The expression “in community with other members of their group” refers to the fact that the individual who constitute such groups cannot avail of these rights as individuals. However, the expression that “persons belonging to such minorities shall not be denied the right...” signals that only individuals shall be entitled to this right; the community itself is not intended to be the right-holder. This duality characterizes most of the documents in international legislation concerning minorities. The individual approach refers to the members of an undefined community (as there is no universally accepted legal definition of ‘minority’ in international law). This ambiguity opens up wide possibilities to states not to recognize their minorities as minority groups.

At the international level, as states have strong fears of minorities claiming secession (and in their internal conflicts political cleavages are often constituted along ethnic divisions), besides the recognition of minority rights, stable norms limit the extent of minority mobilization. For example, the UN General Assembly Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities formulates in Article 8: “Nothing in this declaration may be construed as permitting any activity contrary to the purposes and principles of the United Nations, including sovereign equality, territorial integrity and political independence of States”.

This and other similar vague formulations leave ample room for state interpretation when defining, for example, what kind of action is regarded as contrary to the territorial integrity of a state. The implementation of these international documents is the responsibility of the signatory states, and—as there are no agreed mechanisms to clear discordance on interpretation—each government is free to interpret such regulations as it desires. Regarding the violation of the rights of minorities, no formal, institutionalized international forum has yet been established.

Different instruments adopted by European regional organizations, though, contain the first steps towards introducing a coherent protection of minorities. These legal instruments also handle minority rights on an individualistic basis, by making reference to “persons belonging to national minorities”. Most of the rights encompass linguistic and cultural aspects but only few explicit references are made to explicitly collective or political rights of minority communities, if any are made at all. Within the frameworks of the CoE and OSCE, influential developments have taken place over the past ten years. New measures of international protection of minorities were approved such as the Articles 30–47 of the CSCE Copenhagen Document on Minority Rights (1990) and the CoE Framework Convention for the Protection of National Minorities (1995). Another important action of the CSCE/OSCE was the establishment of the monitoring institution of the CSCE High Commissioner on National Minorities by the 1992 Helsinki Document *The Challenges of Change*. To date, this is the only international institution which is entitled to monitor the situation of minorities in the field; it maintains contacts with both representatives of minorities and of governments in an effort to warn of any possible conflicts at the earliest possible stage. The High Commissioner’s mandate includes providing an “early warning”, being able to take “early action” when needed.⁵⁶ “He thus has a two-fold mission: first, to try to contain and de-escalate tensions and, second, to act as a ‘tripwire’, meaning that he is responsible for alerting the OSCE chief organs whenever such tensions threaten to develop to a level at which he cannot contain them with the means at his disposal.”⁵⁷ It is crucial that the High Commissioner has free movement in the field, the ability to visit countries at will and the capacity to receive information from different sources, including various minority and civil organizations. It should be underlined that this is the first international institution with a mandate that gives it direct contact with the representatives of minorities, hence implicitly recognizing the political character of minority groups. Over the past years the High Commissioner, widely broadening

the limits of his mandate, was also able to exercise a certain 'control' over the accommodation of minority rights. The institutionalized position of the High Commissioner⁵⁸ is an important contribution to the management of ethnic non-violent conflicts in Central and Eastern Europe.

The integration of minority rights in the system of individualistic human rights does not solve, but rather reaffirms, the problems emerging from the consistent, collective group character of minorities. There are, though, some attempts to codify at an international level a wider range of collective rights of persons belonging to minorities. The CoE Parliamentary Assembly Recommendation 1201/1993 (referred to hereafter as the Recommendation) needs to be mentioned here. This document raised serious debates between Hungary, Romania and Slovakia in the mid-nineties on the right of autonomy for the respective minorities in these states. The realities today, and Romania's and Slovakia's final interpretation of this document, clearly show that states (especially in Central and Eastern Europe) are still far from being open to such notions, even though Article 11 of the Recommendation makes clear reference to the possibility of establishing territorial autonomy for minorities.⁵⁹

The Recommendation is not a legally binding document under international law. However, it received considerable international attention, emerging as a key issue during the Hungarian–Slovakian and Hungarian–Romanian bilateral negotiations on the treaties on good-neighbourly relations and friendly cooperation (also called Basic Treaties) in the mid-nineties.⁶⁰ In both cases, one of the most delicate issues was the minorities' right to autonomy, proposed by the Hungarian party to be included in both documents in the form of a reference to the Recommendation. In the treaty with Slovakia, the Recommendation was included in a list of international documents under Article 15, paragraph 4(b) of the Treaty. It declared that the "norms and political commitments laid down" in these documents are accepted by the parties as "legal obligations". However, the Slovak delegation, just before signing the document, presented a unilateral restrictive interpretation denying any collective minority rights and also any right to autonomy⁶¹—an interpretation which was reinforced by the Slovak National Council before it ratified the document. Similarly, in the Basic Treaty stipulated between Hungary and Romania almost the same international documents were applied as "legal obligations".⁶² However, in this case the list of documents appeared in a separate Annex to the Treaty, including a restrictive endnote on the Recommendation, declaring that "the Contracting Parties agree that Recommendation 1201 does not refer to collective rights nor does it impose upon them the obligation to grant to the concerned persons any right to a special status of territorial autonomy based on ethnic criteria". Furthermore, even the article on the rights of minorities is legally not as strong as in the Hungarian–Slovakian Basic Treaty, it can be also noted that the implementation of the article has neither been completed yet in Romania. The outstanding importance in the negotiations of any possible reference to the minorities' right to autonomy and the following governmental interpretations, however, show a deep concern of states on the collective rights of minorities. Both Romania and Slovakia clearly wanted to avoid even the idea of ethnic-based self-government.

These two examples of attempts to include, in general terms, the rights of minorities to autonomy in international legal documents may well illustrate the delicacy of the question not only in the wider international community but also with bilateral relations. It underscores the inevitable necessity of introducing adequate regulations in internal legislation in order to provide a concrete legal framework for the implementation of similar international obligations.

Noting that under universal and regional international law there are no agreed upon institutions for the collective political rights of minorities, it will be interesting to see how different and far-reaching

autonomy regimes are developed in the internal legislation of many European states. Considering the diversity of the case studies presented in this volume, it is obvious that no universal formula will be possible. The existence of well-functioning autonomy models show that it is not *a priori* impossible to grant collective political rights to minority groups, while at the same time respecting the principle of state-sovereignty and territorial integrity. Nevertheless, for the introduction of such political institutions a strong and deeply rooted political will is needed on all sides. As the great variety of existing arrangements show, appropriate legal solutions can generally be found, if indeed the political will exists.

4.3 Self-Determination and Minorities

Most minority rights are derived from individual human rights. Cultural or personal autonomy is also explained from this perspective. However, the relevance of the delicate question of peoples' right to self-determination cannot be neglected. Territorial autonomy is generally perceived as a certain level of self-determination.⁶³ States often see territorial autonomy as the cradle of future secession. As a result, most of them ignore or refuse to grant autonomy rights to minorities. The existing examples of territorial autonomy have usually been the result of long negotiations and are often enforced by international agreements.

Since the end of the First World War, the right of peoples to self-determination has been among the cornerstone arguments in international politics. Today, the right to self-determination is embedded in international documents as one of the most basic human rights. It appears in the UN Charter and explicit reference is made to it in both of the 1966 UN Covenants on human rights. Article 1 of the International Covenant on Civil and Political Rights is identical to Article 1 of the International Covenant on Economic, Social and Cultural Rights: paragraph 1 in both texts reads as follows: "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development".

Self-determination, first and foremost, describes the process whereby a people freely determines its own political status. In a broad sense it may extend to the definition of the political system, in which people want to live, or to the creation of an independent state.

Among the different interpretations of self-determination in Western political culture, it could generally mean the process by which people regularly elect a representative government. In many ethnic communities throughout the world self-determination is thought to exist whenever an ethnic group can form its own nation-state. In most parts of post-colonial Africa and Asia, the concept has been officially equated with the process of decolonization. However, the first or second interpretation would be unacceptable to many Third World countries, and an ethnic-based self-determination would be refused by most of them. As such interpretations exist simultaneously, states tend to selectively define how such norms apply to it. Decolonization has been the only generally accepted formula for interpreting peoples' right to self-determination. The extent to which self-determination has become a legal right can still not be established, as the crucially important term 'people' has never been defined in a precise legal manner and international practice has been inconsistent regarding the implementation of the right to self-determination. At present, states are not likely to accept ethnic groups as the holders of the right to self-determination. Today, it is generally understood that the ultimate goal in achieving any level of self-determination or self-government is secession, and the creation of a nation-state on their own.

However, in political and legal theory, attempts have been made to extend this legal right to ethnic groups as well and to separate the concept of self-determination from that of secession. Thomas Musgrave, at the end of his investigation of the present position of self-determination in international law, concluded that "international law neither sanctions nor prohibits secession within a particular state. Ethnic self-determination is simply a political act which occurs outside the jurisdiction of international law and is not governed by its principles".⁶⁴ It is also problematic to escape the exclusive exposition of self-determination as a full, indivisible right. As Antonio Cassese emphasized:

If the concept of self-determination comes to represent a range of choices and options rather than solely the 'ultimate goal' of independence, the gap between legal right and political reality could be considerably narrowed. Self-determination, divisive by its very nature, would still mean a contest for power, control, and authority. However, envisioned as a concept permitting a range of solutions, it would render the gulf between States and the groups asserting their rights easier to bridge. If a right to self-determination also meant something less than a right to sovereignty, the concept would generally quell nationalism, which, if carried to the extreme, can cause immense suffering.⁶⁵

The previously quoted paragraphs of the UN international human rights covenants on the right to self-determination do not exclude such a limited, divisive interpretation. Self-determination does not have to necessarily connote the right to establish an independent state.

In this perspective, the relation between the right of minority groups to maintain their identity and peoples' right of self-determination could be reexamined. The right to maintain one's identity can also be extended to other derived, practical rights. Eide offers some examples of the possible extensive interpretation of the UN Declaration of Human Rights:

Relevant to minorities and group accommodation are for instance, the provisions which oblige states to respect freedom of thought, conscience, and religion (Universal Declaration Article 18). Members of any religious groups are entitled to manifest, in public as well as in private, their religion or belief in teaching, practice, worship and observance. Equally relevant is the right to freedom of opinion and expression (Universal Declaration Article 19), which includes the right also to seek, receive, and impart information and ideas through any media and regardless of frontiers. This right clearly includes the right to use one's own mother tongue and to receive and give information in that language; on this basis minority groups can assert their right to protect their own language. Also of relevance is the right to freedom of peaceful assembly and association (Universal Declaration Article 20): minority groups are entitled to organize for the promotion of their interests and values by forming their own associations. Furthermore everyone has the right to participate in the cultural life of the community (Universal Declaration Article 27). This implies, also, that members of minority groups can carry on their particular group culture.⁶⁶

In a similar way the peoples' right to self-determination could be reversely interpreted: instead of denying ethnic groups this right, they can limit it. This would reaffirm the territorial integrity of states at the same time.

If the group-character of minorities as well as their right to preserve their own identity is accepted—as it appears in different international legal measures—then they shall have the right to have their own institutions to promote and control the preservation (transmission from one

generation to another) of such identity. Appropriate technical, legal and institutional schemes have already been developed, and applied and implemented in some countries.

The continuous existence of group identity includes its transmission between generations. To express such continuity and to assure the development and transmission of identity, minority groups have to be in a position to make decisions and create and maintain institutions in the relevant areas. A coherent structure of different levels of self-government can be established where the exercise of the right to (external) self-determination of the majority does not exclude the same right of minority groups within the state. "Self-determination does not give the resulting majority the right to impose its will in such a way that the rights of others are violated..."⁶⁷

The different regimes of autonomy merely reflect some possible solutions. Personal, cultural and territorial autonomies may cover such in-between accommodations of self-determination and minority rights. Territorial autonomy, which stands the closest to the classical meaning of self-determination, is usually referred to as a form of internal self-determination. It denotes an autonomous legal-political alternative institution of the right to self-determination. According to Hannum, the basic issues, of which some or all shall be under the exclusive jurisdiction of the (territorial) autonomous bodies, are the following: language, education, social and personnel affairs (access to police, governmental services, etc.), land and natural resources, and representative local government structures.⁶⁸

However, at the present stage of international law, it would be hard to claim a right to autonomy on the basis of customary international law. As actual cases show, usually the option of autonomy is offered by states on a unilateral basis as a self-limitation of their sovereignty and there is no international instrument which could force states to establish autonomous bodies for their minorities. At times the legal foundations of autonomies may be rooted in bilateral international agreements. The existence of an international legal background is very positive, as such contractual undertakings cannot be unilaterally abolished. Moreover, an international organization or the kin-state of a minority will hardly give its consent to a similar amendment. In the absence of international legislation, the autonomy should be inscribed in the constitution or in another legal act that takes precedence over the ordinary laws of the state. As Hannikainen points out, the formal consensus of minorities (e.g. in the form of a referendum) is not a necessary requirement in establishing autonomy; therefore the minorities have no possibility to veto any attempts to abolish the autonomy. As even constitutions can be amended by certain procedures, the danger of abolishment of such a regime can never be excluded.

Further legal solutions that could be implemented by states to realize internal self-determination are described by Hannikainen in regard to the concrete experiences of the autonomy of the Åland Islands:

If the language of the autonomous region is different from the dominant language of the State, it should have official status in the region, perhaps together with the dominant official language of the State. ...

It is inevitable in practice that there arise disagreements over the powers of the autonomous region. It would be preferable that such disagreements were not solved simply by the decision of State organs. There should exist a special organ, composed of the representatives of the State and of the autonomous region, to settle disagreements.

...

The autonomous region should have the possibility to be party to the decision-making process at a national level in those matters which affect its interests. ...

The local courts should preferably be a part of the autonomous machinery but should naturally enjoy in their work the independence from the executive and legislative power.⁶⁹

This list would certainly include further elements. But as this selected assessment shows, minority desires can be secured in an international legal perspective: in the absence of a consistent international legal background, states are free to make decisions in this field as they see fit.

On the other hand, a raft of various state practices has resulted in a variety of possible legal settlements of autonomy which could be examined and adapted, with some modification, by other states as well, for the crucial legal elements of autonomy already exist in one country or another; they just need to be adapted to other country's specific circumstances. Although models exist and references can be made to them, the existing self-governmental and autonomous bodies are so different that despite their quite frequent occurrence in different European countries autonomy cannot be regarded as forming a coherent legal point of reference under customary international law.⁷⁰

5. CONCLUSIONS

What political and legal choices do minorities have at an international level in their quest for preserving their group identity and 'living their own lives'? As was briefly presented above, their position in international relations is still uncertain, and the international legal instruments available at the threshold of the twenty-first century leave a considerable space for different governmental interpretation, which usually try to exclude group rights or the right to autonomy. (The international community has not yet established any forum for controlling and sanctioning violations of minority rights.)

On the other hand we are witnessing a deep concern of the international community for the political mobilization of minority groups. The rise of minority claims to preserve their identity, articulated as well-defined political and legal goals and as requests presented to the state in which they live, raises governmental as well as international attention.

The claims formulated certainly depend largely on the position (population, settlement, the degree of political mobilization within minority society, etc.) of the minority within the state. Possible choices can vary from claiming secession by violent means to participating in democratic structures to negotiating with state authorities. These choices and the claims formulated by minorities may change over time. Governmental attitudes often determine the reactions of minorities.

In this perspective some minority groups appear to have a strong interest in presenting their claims at an international level as well, in order to increase foreign pressure on their governments. Appeals can be made to the international community in general or to the kin-state in particular, and foreign reactions may influence governmental policies toward minorities.

If a state recognizes its minorities as distinct communities, wider possibilities may be opened up for the accommodation of contradictory ideas and aims between the state and its minorities. State sovereignty and the respect of territorial integrity may be well compatible with a minority's claim to have appropriate political institutions for preserving its identity. The legal institutions of different forms of autonomy can be considered as a suitable and appropriately adjustable normative framework for the different situations. Among the existing political agreements, a large number of institutionalized compromises can be found in the different state practices and the different international legal measures applied.

NOTES

- ³¹ A special thanks is due to Dr Gáspár Biró who read the first draft of this article and provided valuable comments on it. Many arguments reproduced here—especially with regard to international relations—are based on his observations. Naturally all the shortcomings of this paper are of my exclusive responsibility. In the academic year 2000/2001, I followed my PhD studies at K. U. Leuven with the help provided by the joint scholarship of the Katholieke Universiteit Leuven (Belgium) and the Soros Foundation (Hungary).
- ³² Cf. Gáspár Biró, “Minorities in International Relations”, in Klaus Segbers and Kerstin Imbusch, eds. *The Globalization of Eastern Europe: Teaching International Relations without Borders* (Hamburg: LIT, 2000), p.297.
- ³³ Biró, *op.cit.*, p.298.
- ³⁴ As recent United Nations documents usually refer to them. (See, among others, the UN General Assembly Declaration on the Rights of Persons belonging to National or Ethnic, Religious, and Linguistic Minorities, 1992).
- ³⁵ For the legal problems regarding the definition of ‘minority’, see the chapter by Brunner and Küpper in this book.
- ³⁶ As the Council of Europe Parliamentary Assembly Recommendation 1201/1993 defines under Article 1:
For the purposes of this convention the expression “national minority” refers to a group of persons in a state who a) reside on the territory of that state and are citizens thereof; b) maintain long standing, firm and lasting ties with that state; c) display distinctive ethnic, cultural, religious or linguistic characteristics; d) are sufficiently representative, although smaller in number than the rest of the population of that state or of a region of that state; e) are motivated by a concern to preserve together that which constitutes their common identity, including their culture, their traditions, their religion or their language.
- ³⁷ As nationalism is not only an ideology, but also a form of behaviour and a programme of action, this political character was also underlined in the classic works on nationalism. A condensed and critical overview on these theories is given by James G. Kellas, *The Politics of Nationalism and Ethnicity* (London: Macmillan, 1998), pp.43–65.
- ³⁸ Cf. Brunner and Küpper in this volume.
- ³⁹ Cf. *Ibid.*
- ⁴⁰ See, for example, John Hutchinson and Anthony D. Smith, eds., *Nationalism—A Reader* (Oxford: Oxford University Press, 1994); Tom Nairn, *Faces of Nationalism* (London: Verso, 1997) or Craig Cahoun, *Nationalism* (Buckingham: Open University Press, 1997).
- ⁴¹ Biró, *op.cit.*, p.299.
- ⁴² See among others, Josep R. Llobera, “The Future of Ethnonations in a United Europe”, in Hans-Rudolf Wicker, ed. *Rethinking Nationalism and Ethnicity* (Oxford and New York: Berg, 1997), pp.43–57.
- ⁴³ Kellas, *op. cit.*, pp.92–97.
- ⁴⁴ Cf. Biró, *op.cit.*, 297 and John T. Ishiyama and Marijke Breuning, *Ethnopolitics in the New Europe* (Boulder Co.: Lynne Rienner, 1998), Preface, pp.viii–x. See also Janusz Bugajski, *Ethnic Politics in Eastern Europe: A Guide to Nationality Policies, Organizations, and Parties* (New York: Sharpe Armonk, 1993).
- ⁴⁵ Before 1994 it was known as the Conference for Security and Co-operation in Europe.
- ⁴⁶ See Patrick Thornberry, *The Rights of Minorities and International Law* (Oxford: Clarendon, 1991), pp.385–395.
- ⁴⁷ Already in the 1980s, considerations on ethnic-based conflicts emerged in theory, first of all from a sociological perspective, see Donald L. Horowitz, *Ethnic Groups in Conflict* (Berkeley: University of California Press, 1985).
- ⁴⁸ These include: “1) Persisting cleavages exist among ethnic groups, 2) elites have a history relying on repression to maintain power, 3) elites use their power to reward groups differentially for their loyalty, 4) the society has recently experienced a political upheaval, for example a revolution or a defeat in war, and 5) exclusionary ideologies arise that define target groups as expandable. When all these five factors are present, ethnopolitical concept is likely to have genocidal consequences”, in Tedd Robert Gurr and Barbara Harff, *Ethnic Conflict in World Politics* (Boulder: Westview Press, 1994), p.79.

- ⁴⁹ Robert Jackson and Georg Sorensen, *Introduction to International Relations* (Oxford: Oxford University Press, 1999); Daniel S. Papp, *Contemporary International Relations* (New York: Macmillan, 1992); or P. A. Reynolds, *An Introduction to International Relations* (London: Longman, 1994) to just mention a few of the widely used textbooks.
- ⁵⁰ Will Kymlicka, "Introduction", in *Multicultural Citizenship* (Oxford: Clarendon, 1995), pp.4–9.
- ⁵¹ *Ibid.*, pp.34–37 or see Will Kymlicka, ed., *The Rights of Minority Cultures* (Oxford: Clarendon, 1996).
- ⁵² Asbjørn Eide, "Minorities in a Decentralized Environment," paper presented at the International Conference on Human Rights "All Human Rights for All" in Yalta, 2–4 September 1998—available at: http://www.riga.lv/minelres/publicat/Eide_Yalta98.htm.
- ⁵³ Maurizio Ragazzi, *The Concept of International Obligations Erga Omnes* (Oxford: Clarendon, 2000), pp.135–145.
- ⁵⁴ Art. 2 of the Universal Declaration of Human Rights states: "Everyone is entitled to the rights and freedoms set forth in this Declaration without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."
- ⁵⁵ See Thornberry, *op. cit.*, Chapter 6.
- ⁵⁶ OSCE Copenhagen Document (1992) Section II Paragraph (3).
- ⁵⁷ Cited from the brief introduction to the mandate of the High Commissioner on the official homepage of the HCNM at <http://www.osce.org/hcnm/mandate.htm>.
- ⁵⁸ The first High Commissioner was the Dutch diplomat Max van der Stoep. His mandate ended in June 2001.
- ⁵⁹ "In the regions where they are in majority the persons belonging to a national minority shall have the right to have at their disposal appropriate local or autonomous authorities or to have a special status, matching the specific historical and territorial situation and in accordance with the domestic legislation of the state."
- ⁶⁰ On the bargaining on the 'territorial clause' (on inviolable territorial integrity, which was strongly emphasized by the Slovak and Romanian governments) and on the rights of minorities (of outstanding importance for the Hungarian governments) as well as on the political environment of the negotiations, see Gáspár Bíró, "Bilateral Treaties between Hungary and its Neighbors after 1989," in Béla Király and Ignác Romsics, eds., *Geopolitics in the Danube Region* (Budapest: CEU Press, 1999), pp.357–373.
- ⁶¹ "The Government of the Slovak Republic emphasizes that it has never accepted and has not enshrined in the Treaty any formulation that would be based on the recognition of the principle of collective rights for minorities and that would admit the creation of autonomous structures on ethnic principle..." cited in Bíró, "Bilateral Treaties..." *op. cit.*, p.376.
- ⁶² Art. 15, paragraph (b).
- ⁶³ For more details, see the study by Brunner and Küpper in this book.
- ⁶⁴ Thomas Musgrave, *Self-Determination and National Minorities* (Oxford: Clarendon, 1997), p.258.
- ⁶⁵ Antonio Cassese, *Self-Determination of Peoples—A Legal Reappraisal* (Cambridge: Cambridge University Press, 1995), p.351.
- ⁶⁶ Eide, *op. cit.*
- ⁶⁷ Hurst Hannum, *Autonomy, Sovereignty, and Self-Determination—The Accommodation of Conflicting Rights* (Philadelphia: University of Pennsylvania Press, 1990), p.455.
- ⁶⁸ For more detail, see Hannum, *op. cit.*, pp.458–468.
- ⁶⁹ Lauri Hannikainen, "Self-Determination and Autonomy in International Law", in Markku Suksi, ed. *Autonomy: Applications and Implications* (The Hague: Kluwer Law International, 1998), p.92.
- ⁷⁰ See Hans-Joachim Heintze, "On the Legal Understanding of Autonomy", in Markku Suksi, ed. *op. cit.*, pp.7–33.