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Minority Rights in the Slipstream of Geopolitics

Abstract: The essay summarizes how geopolitical considerations affected the development of international protection of ethnic minority rights since the foundation of the UN until today. The obligation of states to protect ethnic minorities derives from the values of the Charter of the United Nations. Minority rights played important role in the rivalry and also in the cooperation of opposing parties in the cold war, but the end of communist dictatorships gave also moral impetus to the development of minority law. A significant recent outcome of the European level minority protection is that the European Court of Justice, in connection to a citizens' initiative, has acknowladged: it is an EU competence to legislate and implement laws concerning minority rights within its own jurisdiction.

The rights granted to autochthonous communities that for whatever reason find themselves in a minority position in their homeland basically depend on two factors. One is the conviction of the legislating state on what forms an appropriate relationship between their majority nation and the minority communities living within the nation's territory. The state's conclusion in this regard depends on its moral standards, political goals, and perception of security (minority rights legislation). The other determining factor is the relevant guidelines in international law [i.e., what minimum freedoms and support should be provided by states to minorities living within their territory in bilateral agreements and regional and international instruments so as to satisfy the moral standards of the international order and to maintain its stability (international minority protection)].

The foundations of the international order in which we live today were laid after World War II by the victorious powers. Although since then the world order itself has changed several times in line with the shifts in the balance of power between the great powers, in particular as a result of the outbreak of the Cold War, its detente, and its end and the risk of its recurrence, from an international law perspective, continuity has never been broken: the Charter of the United Nations (UN) has remained the most important source of international law throughout. We can call this world order the UN world order, or the

"third world order," which followed both the 19th century world order established by of the Congress of Vienna, and the subsequent world order of the League of Nations in the interwar period. It is expedient to analyze international minority law norms applicable in the current world order in a historical context inter alia from the perspective of the various changes that have occurred in this world order. When interpreting such norms, it is important to identify in response to what historical challenges and motives they were established, in what order they were born, how they interacted with and were built on each other, and how the current system of international minority law norms came to be established.

The beginnings of the present world order

The prevention of the outbreak of another world war was the primary guiding principle in laying the foundations for the UN world order, while it was also important to prevent a system based on the national socialist ideology from developing in the world ever again. The latter was the primary reason that human rights and freedoms became a focal point, culminating in the second most important UN document, the Universal Declaration of Human Rights, adopted in 1948. The goal was for the new world order to prove more successful in maintaining peace and containing national socialism than had been the case with its predecessor. In this sense, the UN world order defined itself in contrast to the world order of the League of Nations.

This is important for minorities because minority rights had earlier played an important, if not central, role in the League of Nations world order. Although the Covenant of the League of Nations did not refer to minorities (unless we consider the requirement in Article 23 to secure just treatment of the native inhabitants of territories under the control of the state parties to be such a reference), the Central European peace treaties contained a number of minority protection provisions, and overseeing their implementation was one of the organization's responsibilities. The protection of minority rights was thus not so much a universal moral commandment in the League of Nations world order but rather a pragmatic guarantee of stability. The Council of the League of Nations had to monitor the problems that arose, and a judicial mechanism also supported the resolution of disputes. Yet with the outbreak of World War II, Germany highlighted the situation of German minorities among its motives for its armed action against its neighbors.

After World War II, the conclusion could (and should) have been drawn from the events of the 1920s and the 1930s that minorities had not been protected effectively enough by the international system in the interwar period to make them have an interest in maintaining

stability. It was no coincidence that minorities, even in countries that were model democracies of the time, celebrated their return to their mother countries on the eve of World War II and later during the war. Instead, the creators of the new post-World War II world order arrived at the conclusion that minority protection had failed to prove to be an appropriate means of maintaining stability. This may have been the reason for why they did not see an urgent need to make minority protection a key component of the UN system. However, in 1947, the United Nations did establish a minority protection institution, the Sub-Commission on Prevention of Discrimination and Protection of Minorities although with much narrower powers than those enjoyed by the mechanisms of the League of Nations between the two wars.

The fact that several victorious countries acted brutally against particular minority communities that they held responsible for the damage suffered in the war may also have played a role in their caution. A significant proportion of autochthonous German minorities were exiled to Germany from several European countries, and intimidating countdown campaigns were launched in Yugoslavia against several ethnic groups. Even the Poles—formally a winning power after the war—were largely exiled from the Soviet-occupied territories of Interwar Poland. A smaller proportion was transported to other parts of the Soviet Union, and a larger number was "repatriated" to former German territories granted to Poland in compensation. Crimean Tatars were scattered in Central Asia and other regions of the Soviet Empire. In Czechoslovakia, Germans and Hungarians were deprived of their fundamental rights, followed by an attempt to expel them from their homeland. This was successfully completed in the case of the Germans (and approved by the great powers), and achieved only partially in the case of the Hungarians (in their case, the great powers approved only a single population exchange).

However, in the late 1940s, in a seemingly paradoxical manner, two countries having committed genuinely bloody genocides after the World War II, the Soviet Union and Yugoslavia, recognized minority rights and advocated their inclusion in the Universal Declaration of Human Rights, although without success. The Soviets probably assumed that their model, in which territories (named "autonomies") were governed in minority languages, could make communism an attractive alternative for Western minorities as well. On the other hand, the Yugoslavs wanted to create an international legal basis for the legal protection of the South Slavic minorities living outside the borders of Yugoslavia. Together with Denmark, which because of its own minorities and for moral reasons considered the issue important, they managed to achieve so much momentum that instead of addressing the issue in the Universal Declaration of Human Rights, in 1948 the General Assembly adopted a short resolution specifically devoted to the issue of

minorities (A / RES / 3/217 C).[1] This document stated the need for a study on the issue of racial, national, religious and linguistic minorities. The norm should have served as a starting point for future UN measures to protect minorities. In addition to the brief terms of reference, the short resolution also set out important principles; it stated that the fate of minorities was not indifferent to the United Nations, but that it was difficult to develop a universal settlement in this area, given that the situation and problems of minorities vary from country to country. The General Assembly resolution was the culmination of the background debates in the heroic age of the UN concerning the place of minority law in the new world order.

There was another starting point for the discussions on international minority protection in the late 1940s that seemed to be much more important than Danish, Soviet, and Yugoslav lobbying: the UN system of values. One of the most significant innovations of the new world organization compared to its predecessor was that, at least in principle, it was based on a firm global set of values. While the world order of the League of Nations had not been entirely devoid of this perspective, it was arguably much less elaborate and much less characteristic. Throughout the text of the League of Nations Covenant, the pursuit of peace as a unique core value can be identified, and the aforementioned Article 23 (out of 26) also imposed two further obligations on member states, which can be seen as value components: ensuring humane working conditions of labor regardless of gender, age, and nationality, and fair treatment of native inhabitants. In contrast, the UN Charter lists the "objectives and principles" of the organization in a transparent manner no later than in its first article:

- peace and security,
- friendly international cooperation,
- global economic, social, cultural, and humanitarian public goods, and
- human rights and fundamental freedoms.

There is no doubt that the minority issue is linked to all four core values. The connection with peace has already been mentioned. The connection with international cooperation relies mainly on the relationship between minorities and their mother countries. The link with public goods is that a significant proportion of minorities are disadvantaged not only culturally but also socially. The most obvious link with human rights is that the disadvantages inherent in belonging to a minority community prevent minorities from enjoying their human rights to the same extent as those who make up the majority. It is safe to say that, in a way going beyond the interests of some member states, all of this played a key role in the deliberations of the experts conducted within the UN framework on minority rights from the outset.

1 http://www.un-documents.net/a3r217c.htm

It is important to accurately recall all these factors for several reasons. One is that the interpretation of the UN's core values in terms of what they mean for minority rights and how this should be expressed was addressed from the very outset. The other important aspect is that the core values officially upheld by the international community have not changed in the last 75 years. All of the steps taken as part of international minority protection have been taken with reference to, and as a result of, these values ever since the United Nations was established (and not only the steps taken under the auspices of the UN, but the development of the legal institutions of the Council of Europe, the Organization for Security and Cooperation in Europe or the European Union, for example, also took place with reference to these same values). Respect for international standards on minority rights is therefore not simply an option for members of the international community, but one of the basic indicators of their bona fide attitude to the international order. While there are norms from which some state parties may select á la carte according to what they consider realistically feasible at any given moment, it follows from the values of the UN world order that, in principle, states are obliged to make continuous progress not only in fulfilling their commitments but also in broadening their range.

It should also be mentioned, however, that in the second half of the 1940s, in addition to the victors, others were also proactively shaping minority rights. An important moment in the development of European minority law was the agreement in 1946 between multiple-power-occupied Italy and Austria, two losing powers, concerning the German community in South Tyrol, the "De Gasperi-Gruber Pact," in which Italy recognized its northern neighbor as a partner in shaping the fate of a community with a mother tongue and identity the same as the latter's majority nation. Later, with the accession of the two countries to Western European structures, this agreement played a role in recognizing in international standards the right of minorities to maintain contact with their mother countries.

The classical Cold War period

When the final text of the Universal Declaration of Human Rights was voted on in the UN, the victorious powers of World War II had long started their confrontations outside the walls of the session hall. The world had already heard Churchill's Fulton speech; even the public began to understand that a "Cold War" had begun. Under Soviet pressure, the countries of Central Europe were increasingly dominated by communist dictatorships. The world was divided, and the most important frontline of this division was in Europe.

The establishment of the Council of Europe in 1949 was an important step in the "codification" of the situation in international law, whose founding treaty called for European countries like-minded in the field of human rights and democracy to gather together, making it clear that some European countries followed other values. According to the foundation document, the organization aims to "safeguard and realize" human rights and fundamental freedoms. Safeguarding indicated that the establishment of the organization was of fundamental security policy importance, though—as the document emphasized—this did not affect the military component of security (i.e., it was not intended to offer a European alternative to NATO). The values to be safeguarded by the Council of Europe are almost identical to those of the United Nations: economic and social development, human rights, fundamental freedoms, and democracy. Among the core values of the United Nations, democracy alone is not included.

The creation of the Council of Europe made human rights, freedoms, and democracy the official, common identity of Western Europe. One and a half years after the establishment of the organization, at the end of 1950, a separate convention was adopted as its real (and much better known than the founding treaty) foundation document, which is commonly referred to as the European Convention on Human Rights, but officially titled the "Convention for the Protection of Human Rights and Fundamental Freedoms." This document is closely linked to the UN Declaration of Human Rights adopted a year earlier. One of the differences, however, is that in the field of minority policy, the Council of Europe took the step that the United Nations had failed to take: Article 14 prohibits discrimination on the grounds of belonging to a minority. In addition, the fact that under Article 34 of the Convention, citizens of state parties may petition the European Court of Human Rights in a group if they jointly suffer a violation of the rights guaranteed by the Convention gave a favorable legal position to minorities in Western Europe. The Convention therefore obliged member states to ensure individual equality before the law for minorities (which did not preclude that minorities be granted collective rights as well). However, the fact that they could go to court as a community in the event of jointly suffering a violation of the law can be considered a step towards the possibility of exercising individual rights in a community.

The Western European identity that emerged during the Cold War was thus born as an organized alternative to communism at the Eastern end of the continent and also to the then right-wing authoritarian regimes at its Western end (Spain and Portugal), in such a way that this alternative also included the recognition of equality before the law for members of minorities, granted as part of human rights and fundamental freedoms.

At the same time, at the turn of the 1940s and 1950s, the communist half of the world was also not characterized by complete inaction in the field of minority policies. With the

exception of the Soviet Union, almost every country in the communist bloc implemented some positive change in its institutional system for minorities. In most countries, institutions of greater or lesser importance were established for minority communities, including those persecuted only a few years prior; media products, schools, and cultural organizations using their mother tongue were established. In some communist countries (e.g., in Yugoslavia, Romania, China, and the Soviet Union) ethnic language regions (so-called "autonomous territories") were also organized. The minority policy measures taking place on the eastern side of the Iron Curtain at the time could only be called legal development with some qualifications, because the communist system, which called itself a proletarian dictatorship, had never functioned as a system governed by the rule of law. In many cases, substantive decisions were made not in the form of legal norms but in the form of party decisions, although as the party was much less separated from the state than in a democracy, in communism, party decisions can also be considered as quasi-legislative actions by the state. In terms of content, these developments can be interpreted as state measures rather than rights conferred on individuals or communities. The state gave these institutions to minorities, and the state could take them away if it saw fit. In the communist world, however, this was called a minority right, based on the philosophy that if the state gives something to a minority community according to the party's regulations, the community concerned has a right to it.

Almost none of the minority institutions established in Central and Eastern Europe in the second half of the 1940s and the first half of the 1950s have survived up to the present day, or at least not in their original form. However, it has become deeply engrained in the identity of Central-European minorities that they are entitled to state institutions maintained specifically for them. This is an important quasi-right in Central European countries simply because communism deprived people and communities of the assets and sources of income necessary to finance the preservation of their identity. Therefore, to this day, they are still dependent on state or municipal institutions for enforcing their rights. Following the subsequent reunification of Europe, in the 1990s the experiences of Central Europeans, now members of Western institutions, played an important role in the development of European minority law.

The fact that the minority institutions established in the early 1950s, despite their communist nature, represented value to minority communities became especially evident a few years later, when the abolition of these institutions began. Judging from the chronological order of events, it is probable that the Soviets' experiences of the 1956 Hungarian

Revolution[2] played a role in the changes introduced from the end of the 1950s and onwards, hallmarked by the fact that the institutions operating in the mother tongues of nationalities were no longer considered "minority rights." Instead, minority rights came to be interpreted as the elimination of their "separation" (i.e., minorities were to be "involved" in the unification of the socialist state). A particularly sensitive area of this change was the bilingualization of educational institutions that had previously used minority languages for instruction (e.g., in Hungary or East Germany), as well as their merging with majority institutions (e.g., in Romania). To a greater or lesser extent—with the exception of Yugoslavia—this approach became common in all countries of the communist world. The new policy provoked resentment from those belonging to minorities almost everywhere.

The process also raised the issue of minorities at the international level, which was reflected in the 1960 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Prevention of Discrimination in Education. The document explicitly left states free to determine whether minority rights are provided by schools with a national language of instruction, or by teaching a national language only as a subject. At the same time, the document explained that the exercise of minority rights should not prevent minorities from learning the culture and language of "the whole community" (as it is commonly interpreted, "the majority") and from participating in the country's life.

International detente

In the mid-1960s, the Communist party elite and the leadership of the state were partially replaced in the Soviet Union (1964) and in several communist countries. This brought about more or less substantial changes both in international relations and in the domestic policies of individual countries, including the treatment of the issue of national minorities. The adoption by the UN General Assembly in 1966 of the International Covenant on Civil and Political Rights, for example, pointed to the easing of the dividing line between the two world systems. Its Article 27—in a spirit directly contrary to the spirit of the above-mentioned UNESCO Convention, but at a much higher level—stated that minorities should not be denied the practice of their culture and religion or the use of their mother tongue. This marked a breakthrough in the process launched—in principle—by the 1948 UN resolution on minorities which was stalled, however, by the Cold War immediately after the adoption of the declaration. However, respect for minority identity clearly

2 For example, in Romania, which was still under Soviet occupation at the time, several expressions of solidarity with the Hungarian War of Independence took place, and movements for the democratization of Romania were launched in which Hungarians and Romanians took part together.

became part of the universal value system underlying the UN world order in 1966, at least on paper. Considering its higher level (a decision of the General Assembly is essentially the highest level—albeit overridable by the Security Council—of international standard-setting in the UN world order) and its later date, the Convention may also be considered as an interpretation of the part of the UNESCO Convention on minority education. In disputes over the interpretation of the law, it is very important to bear in mind that the application of the UNESCO Convention must be in line with the Covenant and not the other way around.

In 1970, it was supplemented by United Nations Economic and Social Council Resolution 1503, allowing individuals and NGOs to lodge a complaint with the UN in the event of a massive human rights violation. Although minorities are not mentioned in the name of this legal instrument, it is nevertheless very important for minorities, as it can also be used in cases of mass human rights violations committed against minorities. With its introduction, the UN moved institutionally closest to the institutional mechanism for protecting minorities in the League of Nations system, although its powers remained narrower.

In addition to the replacement of some of the elite in the Soviet Union, the demarcation line between the two world systems was gradually eased also because the Hungarian Revolution of 1956 proved that Western societies were not substantially threatened by the Soviet communist model ever becoming attractive and, as a result, by the threat that a spontaneous European communist revolution would break out. At the same time, the impunity of the Soviet Union for the suppression of the Hungarian Revolution of 1956 also demonstrated that the Western world harbored no credible intention to liberate European territories subjugated by the Soviets (or at least did not consider itself capable of doing so). These experiences were reaffirmed in the mid-1960s by the Prague Spring and its suppression (1968).

The Soviets therefore thought in the early 1970s that the time had come to achieve what they had long intended (i.e., to have the Western powers also officially recognize their conquests in World War II), which despite the genocides that had accompanied them led to the emergence of national minorities in the western parts of the Soviet Union. In the first half of the 1970s, they succeeded in achieving this in a couple of years through a series of negotiations [the Conference on Security and Cooperation in Europe (CSCE)] but—as is usually the case with the balance of power—not completely free. The West asked for and received the likewise official recording of part of their own norms (the already mentioned "Western European identity") as the common European norm. The Helsinki Final Act, adopted as the outcome of a series of negotiations, made the inviolability of borders and territorial integrity a key element of the European security architecture, in line with Soviet needs, and for the West, enshrined respect for the sovereignty of the other states on the one

hand (pinpointing limitations on this sovereignty, as had been revealed by the suppression of the Prague Spring), and human rights and fundamental freedoms, with a special focus on freedom of conscience, on the other. There was also a strong emphasis on cooperation between the state parties, a goal derived from the UN Charter and serving the interests of both parties. Through this, the Soviets presumably hoped for beneficial relations with Western economies, which were gaining increasing development benefits, while Westerners wanted social and cultural contacts through which the basic values of the Western world were to seep into Soviet-dominated societies, changing living conditions there.

Minority rights also appeared in the wording of the principle of human rights and fundamental freedoms in a relatively prominent place: the fourth section dedicated to the theme. In terms of content, these passages were very similar to the provisions of the European Convention on Human Rights, established by the Council of Europe a quarter of a century earlier. However, the Helsinki document also returned to minorities on another point: a clause on "national minorities and regional cultures" was added to the chapter on areas and standards of cooperation between the state parties. In this, state parties recognize the contribution of these communities to cultural cooperation between states and express their intention to support such contribution while taking into account the legitimate needs of members of minorities.

The Helsinki Final Act thus not only geographically extended the philosophy of minority rights in Western Europe (at least on paper), but also further developed it as compared to the European Convention on Human Rights. The title of the human rights chapter and the sections preceding the minority rights text highlighted freedom of thought, conscience and religion. Thus, by mentioning minority rights in this context, the parties have emphatically made a political commitment to ensure that minorities living in their territories have the freedom to think about their own destinies. This is important because the system of minority rights in socialist countries was based on the respective state's prerogative to tell minorities what was good for them (e.g., in the 1950s, institutions in their mother tongue but of a communist nature, and in the 1960s, the abolishment of the same institutions), and this had to be accepted by minorities, although their consent might have been extracted by force. The exclusion of such a practice could also be inferred indirectly from the European Convention on Human Rights. However, as the authors had taken it for granted that freedom of conscience is part of the fundamental freedoms, this aspect had not been included as strongly in the Convention as in the Helsinki Final Act. In Helsinki, where the goal for Westerners was to influence communist countries, it was seen as necessary to record such an interpretation of rights in writing.

Compared to all previous multilateral minority instruments of the UN world order, the Helsinki Final Act was also innovative in the sense that it mentioned the role that

minorities can play in interstate cooperation. This clearly refers to the relationship between minorities and their motherland, creating a source of law for subsequent minority law norms applicable to motherlands. It was here that the much earlier philosophical idea of the "bridge role" of minorities was first reflected in multilateral norm-making. Whereas the Helsinki Final Act clearly deals with the cooperation between states in the context of security policy, mentioning the relations of minorities with their motherland as a positive also means that the Final Act sees minority rights as an instrument of international peace and security. With this, the diplomats involved in the process—albeit not globally, only at the regional level—made up for the omission of the founders of the United Nations, and minority rights thus became a part of the global security architecture. Helsinki's third major innovation is that both mentions of minority rights reflect the need to take into account the legitimate interests of minorities. In the spirit of Helsinki, national minorities and regional cultures are communities that have specific, common interests, both in ensuring equality before the law and in international relations.

However, it is important to add that the Helsinki Final Act imposes only a political obligation on the Parties (i.e., it has a weaker binding force than the European Convention on Human Rights). From a minority point of view, the Helsinki political "deal" was composed of the recognition of territorial integrity in exchange for minorities in the state parties having the freedom to express their views on their own interests as well as the right to cultural contacts with their motherland. The latter was also to be explicitly supported. However, there was more here than the "ordinary" political commitment in that the Final Act also set up a follow-up mechanism, extending the meeting in the form of confidence-building, follow-up meetings.

Regarding the territorial scope of the document, in general with regard to human rights, the parties agreed to act at a universal level in order to enforce them, while the sections on minorities always refer explicitly to the state parties in whose territories such communities live. Nevertheless, the adoption of the Helsinki Final Act has breathed life into the exchange of ideas about minority rights at a global level. The UN set up a working group in 1978 to draft a declaration detailing Article 27 on minority rights of the Covenant on Civil and Political Rights. The group was formed, but due to protracted debates, the adoption of the Declaration took nearly a decade and a half.

In Europe, the Concluding Document of the CSCE Follow-up Meeting in Madrid between 1980 and 1983 called the "continued progress" of state parties in respecting and ensuring the rights of national minorities important. This was probably an expression of dissatisfaction among Western states with the impact of the Helsinki Final Act on minority policy in communist countries. However, from the point of view of the development of minority rights, the significance of this wording is the introduction of the objective of

continuous improvement, which on a theoretical level was opposed to the "solution" of the minority issue by one or two measures. The "resolved minority issue" was a characteristic turn of the narrative of minority policy in communist countries.

End of the Cold War, the beginning of local conflicts

At the time of the Helsinki talks, the Soviet Union and the Communist Bloc were in the heyday of their history, with relative prosperity and internal stability. In this situation, the communist regimes did not feel an elemental compulsion to fully fulfil the concessions made to the West in the Helsinki Final Act. Those who drew attention to these obligations, such as the Russian Helsinki Movement, the Czechoslovak Charter '77, or especially in the field of minority policy, the members of the Hungarian Minority Rights Movement in Czechoslovakia, were subjected to official pressure in their own countries, and some were forced to emigrate. However, in the early 1980s, under the leadership of President Ronald Reagan, a new American policy was launched that went beyond the policy of detente and intended to defeat the Soviet Union and liberate the societies under its rule. Although the classical period of the Cold War, fraught with the danger of eruption on any day, did not return, the American–Soviet arms race accelerated, leading to a critical decline in the economic reserves of the Soviet imperial system by the middle of the decade. In order to stop this, in 1985 the Soviets began a process of political and economic reform called *perestroika* (reconstruction), which also fundamentally affected the national issue. The identities of the member states, the autonomous territories and ethnic groups throughout the Soviet Union were awakened, and by this time the leadership of the communist empire was more supportive than opposed.

In this situation, the attitudes of both the Soviets and the Western powers were on a platform relatively similar to the minority policy aspects of the Helsinki Final Act. The CSCE Follow-up Meeting in Vienna in the second half of the decade was already attended by the Soviet Union that had announced *perestroika* along with the other communist states, with a formally united commitment to the new policy, yet actually with very different attitudes to the same. By that time, the conference was already a field of competition as to issues of significance, and the minority issue was no exception. In the Concluding Document of the Meeting issued in early 1989, the state parties pledged to "create and protect" conditions conducive to the ethnic, cultural, and linguistic identity of minorities. With this, the proactive role of the state in the protection of minorities also appeared among the international norms: state parties had now made a political commitment not only to respect the right of minorities to preserve their identity, but also to support the process.

Another key element of the Vienna Concluding Document was to describe the extent to which the preservation of minority identities can be restricted in state parties. Restrictions may only be the exception, provided for by law and in accordance with the international obligations of the state party, in particular the Convention on Civil and Political Rights and the Universal Declaration of Human Rights. Comparing this to the debate of the 1960s as to whether minority law should focus primarily on the acquisition of the culture and language of the state (as reflected in the 1960 UNESCO Resolution) or on the preservation of the identity of minorities (in the spirit of the 1966 Convention), it is clear that the Vienna conclusions also favored the latter interpretation.

In order to fulfil the minority norm-setting in the era of international detente, the Document of the Human Dimension Conference of the CSCE Session in 1989–1990 dedicated a special part (Chapter IV) to minority rights and summarized in formerly unseen detail the rights of persons belonging to minorities to equality and the preservation of the identity of their minority communities. The document makes it clear that "persons belonging to a national minority can enjoy their rights individually and in community with other members of their group." In doing so, the conference expressed its firm belief that minority rights mean both individual and collective rights. Like all CSCE documents, this was a political commitment on the part of state parties, but their binding force was enhanced by the launch by the Office for Democratic Institutions and Human Rights (ODIHR) of a regular series of human dimension conferences to monitor the implementation of the commitments enshrined in the document.

When the liberation of the Central European countries from Soviet rule and the communist system seemed accomplished, in 1990 it became time to dream up and plan a new Europe. One of the spectacular moments of this process was the CSCE Paris Conference in November 1990, which adopted the Paris Charter for a New Europe. The Charter stated, inter alia, that in the new Europe, the right of minorities to protect their identities will be guaranteed and the situation of minorities will be improved, and that this is also a precondition for friendship between nations and for democracy. In other words, where minority rights are violated, stability and democracy are also violated. The Charter does not detail exactly what is meant by minority rights, but it is clear that freedom to protect a minority identity is a basic and existing right. Nor can we doubt that, as CSCE documents, the Helsinki Final Act, the Concluding Documents of the Follow-up Meetings and the Human Dimension Conference Document provide decisive guidance in this regard. The mention of minority rights as an essential element of democracy is a particularly important element of the Paris Charter for international minority law-making. At this point in the international norm-setting, the issue had arisen only in the context of human rights and fundamental freedoms (i.e., not explicitly in that of democracy). (It is a different question

whether human rights and fundamental freedoms can prevail without democracy at all, but one that is not the subject of this paper.)

Also in 1990, the Parliamentary Assembly of the Council of Europe adopted a decision whereby it offered its role as mediator and conciliator in the event of an outbreak of ethnic conflict. The topicality of the proposal was dramatically signaled by the ethnic clashes that erupted during the break-up of the Soviet Union and Yugoslavia. Ethnic conflicts in Eastern and Southeastern Europe have become a key issue for the stability of the world order. The process took place more peacefully in the Baltic states, but there the question arose as to what extent communities (predominantly Russian speaking) settled during the Soviet occupation from other parts of the Soviet Union could be considered as having the same status as autochthonous minorities. It raised concerns that the protection of minorities formed by forcing migration may perhaps become a means of foreign influence in states that had recently regained their sovereignty. All of this brought the issue of minorities even more to the forefront in international life.

At the UN, the preparation of the Declaration on Minority Rights—then going on for a decade and a half—accelerated, and on December 18, 1992, the General Assembly adopted the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. The Declaration states, in accordance with the UN Charter and a number of its instruments, including in particular Article 27 of the Convention on Civil and Political Rights, that the member states of the international community must protect the survival and identity of minority communities and that minorities "have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination." The Declaration reaffirmed the position of minority rights in the universal value system of the world order and provided a detailed interpretation of Article 27 of the Covenant in a way that is clearly favorable to minorities. However, it did not establish a new mechanism for the protection of minority rights; in the institutional field, it merely entrusted all UN organizations in general with the implementation of the principles set out in the Declaration. However, in 1995, a five-member Minority Working Group was set up within the Subcommittee on the Prevention of Discrimination and Protection of Minorities to promote the implementation of the Declaration. Although the existence of the Working Group in itself enhanced the credibility of the Declaration, the disadvantage of its creation from a minority point of view is that, in 1999, the Sub-Commission was renamed the Sub-Commission on the Promotion and Protection of Human Rights, placing minority rights one level lower in UN organizational terminology.

The consolidation of the standards of "New Europe"

Prior to the UN, the Council of Europe went even further in minority standard-setting in early 1992, albeit only at the regional level. Recommendation No. 1177, adopted by the Parliamentary Assembly on February 4, 1992, explained that the purpose of minority protection is to prevent people from minority backgrounds from becoming second-class citizens in their country. In the spirit of the decision, the discussion of the draft basic document on language rights was accelerated, which led to the adoption by the Committee of Ministers of the organization on June 25, 1992, of the European Charter for Regional or Minority Languages. The Charter applies only to the acceding states and only part of it is binding on all acceding states. Of the minority protection measures included in the remainder, state parties shall select at least 35 on an á la carte basis. The state parties shall, on the basis of the definition contained in the Charter, determine for themselves in respect of which languages spoken in their territory they intend to apply the Charter. Among the mandatory sections, one of the most important innovations is the statement that state parties should refrain from administrative reforms that make it difficult to use minority or regional languages. Moreover, it is clear from the text that they should strive for public administration divisions as favorable as possible in terms of language use. Another historic innovation of the Language Charter is the mechanism set up to monitor the fulfilment of the obligations it sets out, which requires states to report regularly to the Committee of Ministers of the Council of Europe on the fulfilment of these commitments. Ministers are assisted in formulating their position by a special Advisory Board. Although the control mechanism is weakened by the fact that compliance with legal obligations is ultimately judged by a political body, it has nevertheless created the most serious feedback legal institution for the protection of international minorities to date. At the same time, the Charter has become the most detailed and advanced normative text in the history of international minority protection—and the protection of identity in it. Although it imposed a legal obligation only on the signatory states, it also indirectly contributed greatly to raising general standards for the protection of minorities.

The CSCE became an organization in 1992, but this fact was only reflected in its name two years later, when it was renamed the Organization for Security and Cooperation in Europe (OSCE). The most important minority policy aspect of this transformation was the establishment of the institution of the OSCE High Commissioner on National Minorities with a mission to prevent ethnic conflicts. Contrary to the steps taken at the UN and the Council of Europe at the same time, which, albeit motivated by security policy considerations, were fundamentally intended to enforce the moral standards of the international

order on the minority issue, the High Commissioner has a distinctly pragmatic security policy function. Its task is not to ensure the survival of minorities, but to prevent conflicts. In doing so, however, it must act in accordance with international law, including minority protection standards, and in particular in the spirit of the Helsinki Final Act, which is certainly beneficial for the enforcement of minority rights. In the time since the establishment of the legal institution, the High Commissioners, in addition to their background diplomacy in specific situations threatening with conflict, formulated general thematic recommendations in fields such as minority education, minority language use, and minority participation in political life. Although their recommendations can be considered as documents of a political nature, they still contribute to the development and interpretation of international standards of minority rights as so-called soft law.

It is no exaggeration to say that 1992 can be considered the golden age of minority rights development. While weapons were roaring in the former Yugoslav member states, and civilians, especially those belonging to minorities, fell victim to acts of violence meeting the criteria for genocide, in international and European organizations minority rights standard-setting was moving at a faster pace than ever before. The world clearly responded to the outbreak of conflict by reinforcing international expectations in support of minority identities, perhaps providing partial moral satisfaction to the victims, in addition to underlying security policy considerations. However, legal developments have largely been limited to Europe. The UN Declaration did not even have time to make a significant impact on the way the world thought about minority policy, before the next terrible (far surpassing the Balkans in terms of casualties) ethnic massacre in world history, the 1994 Rwandan genocide, took place.

In response to the decades-long debate on the need for an additional protocol to the European Convention on Human Rights, the Parliamentary Assembly of the Council of Europe adopted Recommendation 1201 on February 1, 1993, which not only summarized the principles previously scattered in international minority protection instruments, but the draft protocol it presented also mentioned, as a historic innovation, the establishment of autonomous governance or some other special status for areas inhabited by minorities. The draft protocol also specified the right of collective petitioning.

It did not go that far, but at the same time the Framework Convention for the Protection of National Minorities, adopted by the Committee of Ministers of the Council of Europe on November 10, 1994, became the most prominent text of norms for international minority protection. An interesting and important duality of the document is that throughout, the text talks about the rights of persons belonging to minorities, while its title is about the protection of national minorities (i.e., communities). The discrepancy reflects the decades-long professional-political debate over whether the collective rights of minority communities

can be interpreted in practice or if it is the individual rights of persons belonging to minorities that must be spoken of, as the democratic institutional system must, in principle, be able to enforce them. A clearly collective title and a clearly individual content link these two in a sense: the aim is to protect communities, at least in the Framework Convention, by enforcing individual rights. To some extent, this duality has been reflected—only the other way around—in the UN Declaration adopted three years earlier, which, as a higher, universal norm, must be taken into account in the interpretation of the Framework Convention. The title of the UN Declaration adopts an individual, while its first article adopts a collective perspective (the rest is more individual), showing that the exercise of individual rights is inseparable from the consideration of the community goals of minorities. Like the UN Declaration, the Framework Convention imposes a legal obligation on its signatories, but compliance with the Framework Convention is monitored by a mechanism similar to that of the Language Charter. Candidates for membership of the Council of Europe are expected to accede to the Framework Convention. One of the most important innovations of the Framework Convention for the development of international minority rights is the introduction of a minimum standard: that accession to the Convention should not erode the minority rights previously guaranteed in the state parties or the international obligations of a state party in this regard, and that the fulfilment of obligations under the Framework Convention cannot be waived by reference to national law.

In addition to the Language Charter, the Framework Convention and the recommendations on minority policy, the Council of Europe has made an important contribution to the development of minority rights by way of decisions on the minority issue, issued by the European Commission for Democracy through Law (Venice Commission), a scientific body set up in 1990 to support democratic transitions in Central Europe. A decision on the benefits granted to Hungarian minorities living abroad in 2001 dealt in detail with the relationship between minorities and their mother countries, which, as mentioned, had generally been the subject of international minority policy-making in the past. The specificity of the Venice Commission's decision is, on the one hand, its detail and, on the other, its focus on the law of the mother countries. Earlier documents basically focused on the right of minority communities to maintain contact with their motherland, although the relevant part of the Helsinki Final Act could even be interpreted as stating the rights of the motherland. The decision of the Venice Commission, like the Helsinki Final Act, considers the support of "kin-minorities"—who are citizens of other countries than their "kin-State"—to be a subjective right in essentially cultural or related fields. According to the resolution, the basis for exceeding the cultural framework may be negotiated with the state that includes the territory where the minority lives. The resolution issued in 2017 on the Ukrainian Education Law may also have a general impact on the development of

minority rights, in particular on the interpretation of the 1960 UNESCO Resolution on Educational Discrimination. The recommendation to Ukraine states in general terms the right and even the duty of states to assist in the acquisition of the state language. However, it makes it clear that this should not justify restricting the previously acquired rights of minorities, in particular their education in their mother tongue, but should focus primarily on the quality of education of the state language. Another important element of the report is the accentuation of the need to carry out meaningful consultations with minorities in the preparation of measures taken to strengthen the role of the state language, which should result in the planned measure's translation into a form acceptable to those it affects. The document also states that regulations can differentiate between minority languages, but only in a way that does not lead to discrimination against any community.

Another process of geopolitical significance in the post-Cold War era that also affected the protection of minorities was the establishment of the European Union in 1993, building on the previous achievements of European integration. After a long preparatory process, Central European countries under Soviet occupation before 1991 were also able to join the Union in 2004. In 1993, the Union's strategic conciliation forum, the European Council, adopted the political preconditions for accession to the Union, named the Copenhagen criteria for the city where the meeting took place. The criteria include the stability of institutions guaranteeing democracy, the rule of law, human rights, and the protection of minorities. The European Council called the French initiative, which expressed the need to state the link between stability and the inviolability of borders and the protection of minority rights, "timely and expedient" in the same document in which it established the Copenhagen criteria. The Copenhagen criterion for the protection of minorities is an element of European minority law that has had a relatively strong coercive force on candidate countries, because their accession to the EU depended on this criterion in theory. However, deliberating on whether or not the criterion had been met was in the hands of political bodies in this case as well. Another problem was that with the criteria, the EU set a standard for its candidate countries that the EU legal system at the time did not prescribe for states that were already members of the EU.

In order to overcome this contradiction, the Treaty of Lisbon (formally the Treaty on European Union), adopted in 2007 as the EU Basic Treaty, mentioned among the values of the Union respect for the rights of persons belonging to minorities and, among the objectives of the Union, respect for the linguistic and cultural diversity of the continent. As minority rights are among the core values of the EU, it is clear that their inclusion in the text of the Treaty imposes an obligation not only on the EU institutions but also on the internal legislation of its member states. The accountability mechanism for core values is theoretically laid down in Article 7 of the Treaty, but its practical application is still in its

infancy and is the subject of intense political debate completely independent of the minority issue. The minority element in the Treaty of Lisbon is by no means verbose. However, it must be taken into account in its interpretation that the EU is bound by UN standards and that, in the case of respect for minority rights, the above-mentioned relevant documents of the UN are an essential source of interpretation (in particular the resolution of the General Assembly adopted in 1949, Article 27 of the Covenant on Civil and Political Rights and the Declaration on Minorities adopted in 1992). More broadly, the legislation, which has accumulated since 1945 in the UN world order, including all the achievements of European regional minority law-making, provides the EU with grips on minority issues.

Although it is not specifically a development of minority rights, the fact that the Treaty of Lisbon introduced the institution of the European Citizens' Initiative turned out to have an impact on the minority issue. The Citizens' Initiative allows EU citizens to directly propose a legislative initiative to the European Commission. Building on this, in 2013 the Federal Union for the European Nationalities (FUEN) started to organize a citizens' initiative proposing an EU Minority SafePack. The European Commission refused to register the initiative, citing a lack of EU competence for the protection of minorities, but FUEN went to the EU Court of Justice and won a lawsuit against the Commission in 2017. In 2019, an NGO from Romania, the Szekler National Council, also won a lawsuit concerning a European Citizens' Initiative for "national regions" (i.e., regions in which a minority forms a majority). The significance of these two rulings goes beyond the initiatives themselves: it has been stated twice that the Treaty of Lisbon allows the EU to adopt legislation on minority policies in matters falling within its own sphere of competence. If EU bodies make use of this opportunity, it could not only open a new era in the protection of European minorities, but also have an impact on the development of general international standards for minority protection.