

ENHANCING SECURITY THROUGH REGULATING MINORITY ISSUES: CHALLENGES TO POLICY-MAKING

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INTRODUCTION

In a world facing grave global challenges, the accommodation of ethnic minorities' claims is an intrinsic part of the strife for security. The article is based on the assumption that minorities are both a security-building as well as a security-threatening factor. Hence, they critically affect policy-making at all levels, and in return, policy-making should comprehend and reflect minority issues. The experience of Europe after the end of the Cold War certainly demonstrated that whenever policy-makers disregarded minority issues, grave consequences followed. It is unnecessary to mention the events in former Yugoslavia and former Soviet Union that took place in the 1990s, which are all persuasive arguments for the case. These events were sufficiently disturbing to convince policy-makers to prioritise the search for mechanisms to regulate majority-minority relations.

Some analysts maintain that only a liberal individualistic conception of the polity is legitimate. The mistake is to give groups any political recognition at all. People should look on themselves as individuals, simply human beings, and should look on others this way as well.

I. M. Young argues that the degree of attachment that people have to group identities makes such a response utopian. He proposes that only heterogeneous publics can guarantee respect for the cultural specificity and

needs of different groups, and which compensate disadvantaged groups, institutionalising means of ensuring that their voice and perspective will be heard. Despite the attempts to create such a heterogeneously federated polity in Bosnia-Herzegovina under the Dayton peace accords, Young states that since such a polity is “premised on the separate identities of groups in separate territories, ... it is unlikely to bring a stable peace.”¹

In this article, I shall consider minorities as both subject and object to policy-making. I assert the term policy-making here as a mode of sustaining the security of state and society. Such a mode is supposed to be based on principles and mechanisms, which shall be referred hereafter in this article as *regime*. I shall argue that in order to provide for the supremacy of such a regime for regulating majority-minority relations it is recommended that it should be supranational in character. Therefore, I will resort to the experience of the Council of Europe, the OSCE and the EU in striving for laying down the foundations of such a regime.

The article will employ some established theoretical concepts related to minorities’ rights, claims, representation and participation. This comparative theoretical review will be merged with some critical assessment of the contribution to the minority protection policies of some European intergovernmental and supranational organisations.

Embarking on this article I was examining some of the following questions: Is there an optimal amount of minority rights to be enacted so that both the minority and the majority group could be sufficiently satisfied? How do the individual and collective rights of minorities translate into policy-making terms and how do policy-makers reflect individual and collective rights? How should these rights be institutionalized and guaranteed? Could the process of European integration act as a catalyst for applying a set of standards for dealing with minorities? How will the trend of thinking politics in ethnic terms be counterweighted by thinking ethnicity in political terms? How do malfunctioning and well-functioning polities affect the status and claims of minorities? How will minorities be properly represented and effectively participate in policy-making and decision-making?

Though this article will not focus on case-and-country studies, addressing the questions and issues mentioned above will take into special consideration the experience of reconstructing divided (plural) societies in the aftermath of the Yugoslav crises in the 1990s. Bosnia, Kosovo, Macedonia - they all represent a crucial test case - whether a vital European

model for regulating interethnic (or majority-minority) relations is feasible. But there are also a number of pressing issues related to other European countries as well - the Roma minorities, the new immigrant minorities. They all require regulation, and the aim of the present article is to provide some incentives on how this could be achieved and sustained.

The challenges stemming from minority issues are grave and meeting them with both inclusive and exclusive contemplation is indispensable. These challenges relate to the proper functioning of polity and society, mechanisms for representation and including minorities in policy and decision making, and the appropriate level of policy-making that best suits to handle minority issues. In this article I specially emphasise that the competence of local authorities should be extended in order to provide for the sustainable balance/ homeostasis of minority-majority relations at the basic level - the community, local democracy, or "low" politics. It is these "low" politics that are instrumental for ascending stability of minority-majority relations from the local to the central level, from the "low" to the "high" politics. The domains of "low" and "high" politics however need to be clearly defined in advance in terms of powers, mechanisms and procedures to manage effectively multicultural, divided societies.

All the questions raised above are pertinent not only to the ethnically diverse and volatile countries of Central and Eastern Europe, but also to other war-torn regions and societies. The lessons learnt in Europe, and particularly the experience of accommodating inter-ethnic disputes and regulating majority-minority relations, might be replicated in reconstructing other divided societies beyond Europe. One of the examples worth mentioning is the post-war civic build-up of Iraq and the regulation of its heterogeneous and deeply divided society.

Prior to deliberating on minorities and decision-making, the article provides an overview of some established contending concepts in theory related to minorities and their participation in public life. The primordial contest of these is the one on the essence of minorities' rights. Without giving due concern to the debate on individual vs. collective rights of minorities, and the basic approaches for regulating minority issues, one cannot comprehend and research the relation between minorities and policy-making.

WHEN INDIVIDUAL RIGHTS DO NOT SUFFICE AND COLLECTIVE RIGHTS ARE CONTESTED: THE NEED FOR COMPLEMENTARITY

The established liberal democratic tradition assumes individual rights are sufficient regulation of the relations between the individual and the state. Being far from an obsolete paradigm, this tradition however does not reflect the ever-growing claims of minorities for collective rights. The idea of granting collective rights to any particular segment of society inflicts a substantial debate in political philosophy. There are two opposing positions. The first one is that liberal democracy, as a political system, suffices to ensure and guarantee the basic freedoms and rights of the citizens. Hence, citizenship is considered the basic instrument that mediates the relationship between the individual and the state.

The opponents to this position state that individual rights are not enough to protect the rights of specific groups in the society, which differ in some way from the majority of the population. Granting such special group rights is perceived as the only proper guarantee for just treatment of the minority group.

WHAT IS THE SCOPE OF GROUP RIGHTS?

Vernon Van Dyke is among the theorists who argue that individual rights do not suffice to protect minorities' rights and interests. Alongside the principle that individuals are right-and-duty-bearing units, he also advances a similar principle for collective identities, such as minority or ethnic communities. Van Dyke further argues that the "stress on the individual and on the principle of equal treatment tends to promote the view that it is improper even to think about differences of race, sex, language, and religion unless it be to combat discrimination based on these characteristics. It tends to promote blindness to group differences and a kind of unspoken assumption either that societies are homogeneous or that right-thinking persons will treat them as if they were."²

Van Dyke proposes that a doctrine accepting both individuals and communities as right-and-duty-bearing units is susceptible to universal application, whereas a doctrine focusing on individuals is not.³

To have a doctrine that responds to the heterogeneity of the world it is

necessary to provide a place for (that is, to permit the grant of status and rights to) groups that are intermediate between the individual and the state. Choices can then be deliberately made concerning the relative emphasis on the two principles. Sometimes the emphasis will properly be on individual rights and therefore on equal treatment regardless of ethnic differences. Sometimes the emphasis will properly be on the rights of ethnic communities and therefore on the differential treatment of members and nonmembers. The implication is that the state should not be conceived as a monolithic unity but as an agency for recognizing groups, determining what legal status and rights they shall have, supervising and coordinating their interrelationships, and itself conducting certain kinds of functions in which all have a common interest.⁴

The criteria for deciding whether a community should be recognized and what status and rights it should have are left virtually unexplored. It is obviously not the argument that just any combination of persons is entitled to call itself a group and to have whatever status and rights it wants. Present practices over the world are suggestive of what might be desirable, but much examining and appraising needs to occur before generally applicable standards of judgement can be worked out.⁵

Van Dyke further argues that, "It is quite illogical to take the view that only states, nations, and 'peoples' are entitled to be treated as entities and that lesser groups are not. It is illogical to jump from the state, nation, or 'people' on the one side, to the individual on the other, and to say that the ethnic communities that exist in-between do not deserve consideration.... It is unjust to accept or assume status and rights for states, nations, and 'peoples', but to reject them for ethnic communities that are also historically constituted. And it is even unjust to individuals to say that those who belong to dominant groups can enjoy the attendant advantages and satisfactions, whereas those who belong to non-dominant and minority groups must either abandon their culture or accept second-class status. It is not enough for political theorists to contemplate simply the individual and society, or relationships between man and the state. It is time for them to contemplate mankind in its great variety."⁶

However, I contend here with the assumption of Van Dyke that ethnic communities are entities, in the sense of individuals, nations, and states. Ethnic communities are intermediaries - they might even be interest groups, pressure groups, anything but entities comparable to the status and rights

of the individual and the state. I agree that a variety of agents exist in the relationships between the individual and the state but they simply cannot be entitled to the same status and rights. Otherwise, it might create over-complicated interactions in terms of representation of interests, since any group of associated interests may claim the status of a right-and-duty-bearing unit. If we were to decompose the interacting interests within a given system of relationship, we would observe that the single decomposed interest is the individual interest. On the other hand, the only legitimate regulator and guarantor for the realization of individual interests is the State.

MINORITIES IN POLICY-MAKING

Regardless of whether or not they have or have not been asserted as right-and-duty-bearing units, minorities (or more precisely, persons belonging to minorities) are supposed to have proper representation and participation in policy-and-decision making. Here I tend to assume minorities as subjects rather than objects of policy-making and will focus particularly on policies that accommodate the grievances of minority groups within the political institutions of the existing states and not seeking changes of borders and territorial arrangements. Considering minorities as subjects of policy making directly relates to the issue of the empowerment of minorities.

This article will explore two modes of empowerment - the self-rule and the shared-rule. The first one implies autonomy models, whilst the second one stems from the theory of consociational democracy. Special consideration will be given to the concept of personal autonomy. Both consociationalism and personal autonomy are feasible approaches to regulating minority issues.

Some social scientists like John Stuart Mill, Alvin Rabushka and Kenneth A. Shepsle assume that democracy is doomed to failure in culturally divided (plural) societies. On the contrary, Arend Lijphart argues that democracy is possible “in even the most deeply divided societies, provided that, instead of majority rule, consociational democracy is used.”⁷

Lijphart defines consociational democracy in terms of four basic principles: two primary principles (grand coalition and segmental autonomy) and two supplementary or secondary principles (proportionality and minority veto)⁸. Lijphart uses the terms consociational democracy and power-sharing democracy synonymously.

A grand coalition is an executive in which the political leaders of all significant segments participate. It may take various institutional forms. The most straightforward form is that of a grand coalition cabinet in a parliamentary system. In presidential systems, it may be achieved by distributing the presidency and other high offices among the different segments.⁹

Segmental autonomy means the delegation of as much decision-making as possible to the separate segments. It complements the grand coalition principle: on all issues of common interest, the decisions should be made jointly by the segments; on all other issues, decision-making should be left to each segment. A special form of segmental autonomy that is particularly suitable for divided societies with geographically concentrated segments is federalism. If the segments are geographically intermixed, segmental autonomy will have to take a mainly non-territorial form.

Proportionality is the basic standard of political representation, civil service appointments, and allocation of public funds. The minority veto is the ultimate weapon that minorities need to protect their vital interests.¹⁰

I would like to elaborate further on a specific type of segmental autonomy, which might be especially effective and reliable in diverse, plural societies with no distinct concentration of minority groups. The type I refer to is the so-called personal autonomy. It has been discussed at length by Laponce in his book *The Protection of Minorities* (1960). The concept of *personal national autonomy* was first considered by Karl Renner and Otto Bauer, the idea, however, originates from Lajos Kossuth and his Constitutional plan (1851). Kossuth proposed to solve the nationality problem according to the “principle of personality”. The basic idea of his plan was that nationality, like religion, is no concern of the state, and that when citizens enjoy the freedom of association, they may establish nationality organisations as they would establish churches. National organisations would play no role in civic administration, but they would have complete authority over all matters of national and cultural interest. The weakness of this concept however is that nationalities are likely to want more power (to participate in governments). Kossuth had confined nationalities to

the domain of private law. The Austrians then proposed to integrate them into the domain of public law; to put minority and dominant group on equal terms. Between Renner and Bauer the difference was translated into communal terms, between federalism and autonomy.¹¹

Different models of autonomy or self-government are applied and allow for a different degree of independence of minority communities in regulating their affairs. Prof. J. A. Frowein and Dr. Roland Bank of the Max-Planck-Institute for Comparative Public Law and International Law in their study on the participation of minorities in decision-making processes grouped these different approaches under the terms territorial autonomy, personal autonomy and functional autonomy.¹²

Unlike territorial and personal autonomy, the functional autonomy pertains to the devolution of certain powers with a view to culture, education, religious issues or media to minority organisations constituted as juristic persons of private law. In contrast to personal autonomy, not all members of the minority are subjected to the empowered body but only those who are members of the respective minority organisation. Functional autonomy provides a very flexible means for minorities to regulate their own affairs.

The 'integrative approach' was developed as an alternative to 'consociationalism'. It seeks to create incentives for moderation by political leaders on divisive ethnic themes and to enhance minority influence in majority decision-making. While consociationalism relies on elite cooperation and guarantees to groups to protect their interests (such as mutual or minority veto), the integrative approach relies on incentives for inter-group cooperation such as electoral systems that encourage the formation of pre-election pacts among candidates or political parties across ethnic lines. The key to the inter-group cooperation is to foster political organization that crosscuts ethnic loyalties. The integrative approach sees as desirable the creation of pre-election coalitions between ethnic parties based on interests that transcend ethnic interests. Integration also relies on forces of economic interaction to help create social cleavages that crosscut ascriptive identity.

Critics of the integrative approach argue that it is essentially majoritarian and that integrative mechanisms encourage majority representatives to behave moderately and with sensitivity toward minorities, which are still excluded from exercising real political power.

Both consociational and integrative approaches to regulating minority policies seek to promote government coalitions that are broadly inclusive of all minority groups in a plural society, but advocates of these approaches disagree over when and how such coalitions should be formed and which specific institutions better manage minority issues. Power sharing is considered to encompass both approaches. The different institutions and mechanisms to manage and regulate minority-majority relations and policies can be assembled and implemented in many ways.

Self-governance could be considered vital as a way to prevent minority claims expanding to broader secessionist trends. Two authors - Avishai Margalit and Joseph Raz - provide some arguments for the intrinsic value of self-government. Their argument is based on an extension of individual autonomy or of self-expression. The argument develops in stages: (1) people's membership of encompassing groups is an important aspect of their personality, and their well-being depends on giving it full expression; (2) expression of membership essentially includes the manifestation of membership in the open, public life of the community; (3) this requires expressing one's membership in political activities within the community. The political is an essential arena of community life, and consequently of individual well-being; (4) therefore, self-government is inherently valuable, it is required to provide the group with a political dimension.¹³

To the extent that a person's well-being is bound up with his identity as a member of an encompassing group it has an important public dimension. However, that dimension is not necessarily political in the conventional narrow sense of the term. Even where it is, its political expression does not require a political organisation whose boundaries coincide with those of the group. One may be politically active in a multinational, multicultural polity.¹⁴

Many pending questions remain however, i.e. how will minorities defend their groups interests in the political arena; how will minorities feel in the given environment? Do they feel respected or humiliated, included or excluded, at home or alienated?

INSTITUTIONAL SETTINGS FOR DEVISING MINORITY POLICIES

LEVELS OF POLICY-MAKING FOR PROPER ADDRESSING OF MINORITY ISSUES: SOME LESSONS LEARNT FROM CENTRAL AND EASTERN EUROPE

When the self-government approach fails to deliver, to adequately respond to minorities' claims and interests, these claims usually become wider and deeper and escalate into irredentism, secessionist and separatist trends. Therefore, local authorities and especially self-government autonomy is worth being considered critical for the proper functioning of the polity as well as for the stability and integrity of the state.

THE ROLE OF LOCAL GOVERNMENT IN ETHNIC RELATIONS

Most subnational governments are given restricted responsibility for delivering services but are subject to different degrees of central government control and therefore remain deconcentrated branches of the central government.

In practice, most regulations governing minority rights are to be implemented through the local authorities. These regulations, however, are rarely implemented because of a combination of inadequate resources, insufficient technical experience, and a lack of political will. Due to the fact that some of the countries in the region (Central and Eastern Europe) are still in the process of nation-building, the idea of decentralization may be conflicting with fears generating from accelerating centrifugal forces at the subnational level, especially in the case of regions with a relatively high proportion of politically active minorities.

The renewal of the idea of the nation-state automatically created external and internal conflicts in which ethnic groups demanded greater autonomy, individual and collective rights, and increased participation. In this respect, local financial, administrative, and political autonomy may be regarded as crucial to national cohesion. In the case of most countries in the region, arrangements for education in the mother tongue alongside political and economic participation, all of which play a key role in the development of

interethnic relations, remain under central control, leaving little room for designing local policies. Also, regionally diverse countries may require some degree of decentralization to survive politically - but deciding just how much, and how, to decentralize is always a matter of difficult political and economic calculation (Bird, Ebel and Wallcih 1996, 5).

At present, local governments have a limited ability to develop the necessary skills to prevent ethnic tensions and promote the participation of minorities. Sometimes policies aimed at improving the situation of particular minorities can meet with hostility from the central power.¹⁵

The establishment of new political institutions and the reform of public administration are key events in the process of transition in the post-communist countries of Central and Eastern Europe (CEE). In this process, the effective management of multi-ethnic communities has become relevant at both the central and local levels of government.

Post-communist countries have established various forms of legal and institutional frameworks for the protection of minorities, but it has become increasingly clear that an exclusively rights-based approach in the spirit of effective protection defined by international minimum standards may not necessarily provide for a broader inclusion of minorities at all levels of government. Thus, the development of participatory systems of governance responsive to the special needs of diverse minorities has become key to stable and functioning democracies of this multi-ethnic region. The establishment of inclusive systems of local governance in general and from an ethnic perspective in particular, is an important first step towards building participatory systems overall.

The bulk of minority rights and multi-ethnic policies are implemented by local authorities. In addition, special measures and services are truly effective only if designed and carried out at the closest level to those affected. In many countries, as a result of public administration reforms and decentralization, local authorities gained competencies to design policies responsive to ethnic diversity through the representation or direct involvement of minorities. In some countries, autonomous arrangements in the field of culture were set. Yet the effective implementation of these policies is often hindered by central government control, skewed administration of law, insufficient technical expertise and inadequate resources. There is, therefore, an urgent need to develop methods to overcome these barriers and to enhance local government capacity to meet the specific needs of diverse communities.

Experience shows that, on the one hand, effective decentralization can often be delayed by central government fears of secession by territorially compact ethnic groups. On the other hand, even if the centre is cooperative on ethnic issues, nationalist local authorities may block the implementation of decentralized minority policies. Whilst decentralization and the principle of subsidiarity can be very effective, domestic supervision and international monitoring are also needed to improve minority protection in the region. In addition, the building of a political culture acceptant of a multi-ethnic public administration should supplement the legal and institutional reforms.¹⁶

What is of utmost importance is the elaboration of a type of institutionalized relationship between the individual, the minority groups and their members and the state. The primary issue is that this relationship needs to be in homeostasis, i.e. a constant balance within the system should be maintained. This requires certain distribution of powers and competence of who is doing what in terms of formulating and pursuing policies towards minorities. These policies however should not be one-way oriented, i.e. from authorities to minority groups. “Bottom-up” approaches are equally needed.

It is also worth discussing institutional approaches to minority policy, explored by Nordlinger (1972), Esman (1973), and Horowitz (1985). The main thrust of these authors’ argument has been that the elites of states that are faced with cross-cutting ethnic conflicts are able to maintain the stability of the system by using institutional arrangements as instruments.¹⁷

In order to confront these challenges, local authorities devise strategies of management of ethnic and minority relations (Esman 1973: 52) understood as the regulatory processes and practices that the local elected governments of cities use to minimize this challenge. The strategies of management depends on the institutional framework (a set of formal rules, compliance procedures, and standard operating practices that structure the relationship between individuals and various units of the polity and economy, the relations between central and local government, the organisation of political parties and of the party systems, and the organisation of local government). There are a number of scholars that apply similar institutional approaches to the study of the politics of ethnic minorities, such as Hall 1986; Kastoryano 1996; Brubaker 1992; Favell 1998; Guiraudon 1998, and Ireland 1994).¹⁸

Local authorities are supposed to devise and employ a set of strategies for managing interethnic or minority-majority relations. It is local authori-

ties that are usually confronted with claims by minority groups, consisting of policy demands for increased representation understood as an increase of the number of ethnic minorities individuals serving as local councillors. On the one hand, local authorities wish to accede to these demands in order to maintain public order and satisfy the ethnic electorate; but on the other hand, they feel that the extent to which they can do this is limited because of the potential negative reactions from the wider electorate. Thus, there occurs a permanently renegotiated *modus vivendi* between the local power and ethnic interests.¹⁹

In political terms, this *modus vivendi* could be arranged and handled by a means of relative inclusion of ethnic/minority groups in the political process (even as members of mainstream political parties, including local chapters and factions), and significant concessions to their interests, in exchange for electoral support, or absence of electoral challenge, and co-operation in maintaining law and order. On the contrary to the inclusion of minority groups in the political process is keeping them out of electoral politics and divide and weaken, or fund and control, ethnic/minority groups, in order to neutralize potential electoral competition from them.²⁰

Minority issues have been politicized in a different way at local and central level. They might be either a conventional political issue, which runs along the mainstream political parties' cleavage or a crosscutting issue, depending mostly on the institutional context in which the issue is raised. Political parties may help shaping the issue by acting as a gateway into the system for minorities, and thus forcing the local authorities to be responsive to their demands. It is an example of an institutional context that facilitates the emergence of a strong minorities lobby and the involvement of minorities in politics. On the contrary, the institutional context may play against the mobilisation of minorities, thus keeping them out of politics.

The importance of local authorities in defining and conducting minority politics is greater in those countries where local authorities are traditionally seen as service deliverers as well as institutions of local democracy. Usually local authorities are in charge of public (council) housing, social services, which include many health services, and the education system. These policy sectors are precisely the ones in which the issue of ethnic minorities is salient.²¹

On the contrary, there are numerous examples of local (municipal) authorities, which are less service deliverers to the local community than a

means of representation of the local community in front of the central government.

Thus, local authorities (municipalities) play an important role for certain issues, but more as brokers between individuals and administrations than as policy-makers. Local elected officials can play an important role as intermediaries between their constituents and administrations in the resolution of individual pleas and conflicts.

The elements mentioned above make it very easy for national elites to get rid of an issue by ‘sending it down to the local level in order to protect the national level from its destabilizing effects’, that is, by making it a policy issue for local authorities, who will have to deal with it. This has had two consequences. First, the issue has become even more salient at the local level, while it became much less so at the national level, with however, some variations in time. Second, this shift of level has precipitated a shift from a formulation in terms of minorities to a formulation in terms of discrimination, and relations between communities.

A major aspect of these policies has been the devolution of responsibility for the development of the ‘harmonious relations between communities’ to local un-elected bodies, e.g. Community Relations Councils.²²

Garbaye concludes that the “policy of liberal consensus coupled with the devolution of the issue to the local level has had another far-reaching consequence: it has proved to be very efficient in wiping out extreme anti-immigrant votes, both nationally and electorally.”²³

THE ROLE OF CENTRAL GOVERNMENT IN MINORITY ISSUES

In theoretical terms, the debate on minority issues at central and local level is perceived in two ways. On the one hand, minorities might be considered as objects of policy, while on the other - they might be perceived as citizens/ consumers of policy.

The two levels of debate, local and central/national, have clearly been inter-locked, and the formulation of the issue at the local level has followed the formulation of the issue in the national polity. It is essential to depoliticize minority issues in the sense that national and local policy-makers perpetuate a tacit agreement over what policy should be implemented.

However, it is not always plausible to depoliticize minority issues in the sense to remove them from the electoral debate. First, the central elite never really manages to avoid the issue, and thus do not try to send it down to another level of government. Second, because of the inter-relatedness of the two levels of government, the continued politicization of the issue at the national level entails a continued politicization at local level. Third, the issue at the local level has been formulated in the same way that it has been formulated at the national level.²⁴

ATTEMPTS FOR INTERNATIONAL STANDARD-SETTING FOR MINORITY ISSUES

Jonathan Eyal observes that even leading Western democracies like Britain and France in the post World War Two period used to be unwilling to pay specific attention to minorities. Eyal asserts that “they feared that an international system of minorities protection would apply to the West as well as to the East, and they were determined to prevent this from happening.”²⁵

Nonetheless, on the international scale there is indisputable advancement towards improving the protection of minorities. The greatest progress has been achieved in Europe within the Council of Europe and the European Union. Both organisations promoted the development and evolution of regulatory framework and codifying principles for handling minority issues. The contribution of both organisations is aimed at outlining a specific regime for minority protection in Europe. The regime setting is also pertinent to the institutional approaches to the regulation of minority politics. Thus, some general consistency between concepts and implementation is devised.

Some of the achievements worth considering in this paper are the Framework Convention for the Protection of National Minorities, the OSCE High Commissioner on National Minorities, the Lund Recommendations on the effective participation of national minorities in public life, and the minorities issues as aspects of the EU policies.

International attention is considerably devoted to issues like minority education, language use and political participation in an effort to create

integrated societies where minority-majority relations are harmonious rather than explosive. When it comes to respect for and protection of minorities, the standards have been established in a collection of instruments elaborated in non-EU fora in which EU Member States actively participate. Such instruments include the CSCE's Copenhagen Document on the Human Dimension, the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, and the Council of Europe's Framework Convention for the Protection of National Minorities. These build upon and assume the full implementation of basic human rights instruments beginning with the International Bill of Rights and the European Convention on Human Rights. Together, these instruments set particular standards, which are not yet thoroughly developed though they might be considered an offset of a specific international regime prescribing how states are to provide an adequate legal framework and practical mechanisms for the protection of minorities. They are also the basis for interpreting the EU accession criteria as regards minority protection. Besides, they are explicitly referred to in the Association Agreements concluded with EU applicant states.

The incentive of living up to the Copenhagen criteria has been an important impetus for the governments of applicant states to adopt and improve policies and laws to protect and promote the rights of persons belonging to minorities. There needs to be a more precise understanding of minority-related standards, which apply to all EU Member States. Such an understanding must be wholly consistent with existing international standards, which could then inform and direct EU policy and programs in this field.

The EU Race Directive of June 2000 is a good example of a common EU commitment to address a root cause of inter-ethnic friction. It prohibits discrimination on the basis of race or ethnicity and obliges effective redress for violation. Its provisions had to be transposed into domestic law in all EU Member States by July 2003 and, as part of the *acquis communautaire*, candidate States are required to modify their own laws and institutions in accordance with its terms.

EU enlargement most likely will not mean the end of the Council of Europe or the OSCE. Furthermore, both organizations will continue their minority-related activities both within and beyond the EU. Though willing, the EU enlargement will not magically solve all inter-ethnic issues. The EU must address this fact internally and cannot ignore minority-related issues

on its own turf. Not only now, but more so in the future, integrating diversity is and will remain one of the greatest challenges for the EU.

The Lund Recommendations on the Effective Participation of Minorities in Public Life specially refer to participation of minorities in decision-making. The purpose of the Lund Recommendations, like The Hague and Oslo Recommendations before them, is to encourage and facilitate the adoption by States of specific measures to alleviate tensions related to national minorities. The Lund Recommendations comprise special sections on Participation in Decision-Making (Part II) and Self-Governance (Part III). Part II contains: A. Arrangements at the Level of the Central Government; B. Elections; C. Arrangements at the Regional and Local Levels; and D. Advisory and Consultative Bodies.

Article 6 of the Lund Recommendations explicitly states that “States should ensure that opportunities exist for minorities to have an effective voice at the level of the central government, including through special arrangements as necessary.” These special arrangements may include:

- Special representation of national minorities, e.g. through a reserved number of seats in parliament or in parliamentary committees, and other forms of guaranteed participation in the legislative process.
- Formal or informal understandings for allocating to members of national minorities cabinet positions, seats on the supreme or constitutional courts, and positions on nominated advisory bodies or other high-level organs;
- Mechanisms to ensure that minority interests are considered within relevant ministries, through, e.g., personnel addressing minority concerns or issuance of standing directives;
- Special measures for minority participation in the civil service as well as the provision of public services in the language of the national minority.

The Lund Recommendations also stipulate for the right of persons belonging to national minorities to take part in the conduct of public affairs, including through the rights to vote and stand for office without discrimination. Building on the principle of freedom of association, the establishment of political parties based on communal identities is envisaged.

Article 9 states that the electoral system should facilitate minority representation and influence by single electoral districts; proportional representation systems; some forms of preference voting; or lower thresholds for representation of minorities in the legislature.

As noted above, the Lund Recommendations contain explicit provisions for participation of minorities in decision-making processes and structures. They are prescribed as applicable at both the level of the central government and the level of regional and local government. Article 11 stipulates that structures and decision-making processes of regional and local authorities should be transparent and accessible in order to encourage the participation of minorities.

The Lund Recommendations, like other international instruments, contain provisions particularly relevant to self-governance of minorities. These provisions encompass the territorial and non-territorial arrangements examined already above.

Another international instrument is the Framework Convention for the Protection of National Minorities (FCNM), which was designed to create a legally-binding, multilateral Convention to protect national minorities, and to promote tolerance throughout society. Though it is a crucial attempt for codifying the minority issues in Europe, the Framework Convention marks only the gist of a minority regime that is expected to further evolve and expand, especially in the course of the European integration and EU enlargement. What is still lacking is a uniform definition of the term “national minority” or “minority group”. There is a plethora of “self-made” definitions, but none of them is universally accepted. If a regime is to be established, the definition and general concepts should be previously agreed upon. Besides, there are many countries expressing declarations to some of the provisions of the Framework Convention, which makes its overall implementation problematic. Though the existence of all the international instruments is positive, further efforts for their consolidation into an international regime is recommended in order to devise a comprehensive mechanism for regulating minority issues and providing for both the international and domestic protection of minorities.

MINORITIES AND POLICY-MAKING: REPERCUSSIONS

The regulation of minority issues poses a dual challenge to policy-makers. On the one hand it is necessary to comprehend minority issues in their entirety. On the other hand, what is needed is proper inclusion of minorities in decision-making. It is particularly important for countries and societies in the process of transition and democratization, which is by itself a grave challenge. The multitude of changes and reforms that transition to democracy requires are compounded by the difficulties of rebuilding and regulating interethnic or minority-majority relations in divided societies.

Some of the eminent examples that could be enlisted here are of crucial import for the stability and security of whole regions, i.e. Kosovo, South Serbia, Macedonia, Bosnia and Herzegovina - for the Balkans; the case of Iraq also requires an interethnic *modus vivendi* indispensable for the reconstruction of the country as well as for the stability of the Middle East region. Thus, ascending the security agenda, the regulation of minority issues and their adequate reflection by policy-making at any given level is a high-value investment with a long-term security effect. It goes without saying that each of the examples given above requires a unique set of measures, instruments and mechanisms, in short - a unique policy relevant to the particular country or society for effectively resolving minority issues.

Though willing, this paper is unable and could not provide a replicating remedy for minority problems. However, what it does do, is to prescribe some basic guiding principles that are worthy of being pursued. The paper advances the notion that an internationally-designed set of standard rules for the protection of minorities (under the form of a regime) is likely to potentiate the regulation of minority politics on subnational and national scale. The paper also explains that the debate on individual and collective rights is not the essence of minority politics regulation. The paper considers the combination (merging) of individual rights and institutional arrangements as the most appropriate "tool-kit" for managing plural/ multi-ethnic/ divided societies. Individual rights are asserted as substantial guarantees for representing even collective identities.

Yet, there is a plethora of pending cross-cutting issues that need to be

considered. Besides institutional arrangements, which have both domestic and international dimensions, profound societal reforms and changes should take place prior to any durable and self-sustainable regulation of dominant - non-dominant groups' interaction. These societal reforms might include social and behavioral changes within the non-dominant group itself (Roma minorities for instance). These intra-group (internal) reforms are aimed at better formulation and representation of non-dominant group's interests. There are many other instances where the peaceful coexistence of dominant and non-dominant groups requires transformation and reforms along institutional lines. It sometimes means promotion of a particular level of governance or policy-making that has been rudimentary or underdeveloped before.

In the case of Southeastern Europe, minority-majority relations need improvement in at least two dimensions. The first is establishing vivid civil society with solid guarantees for civil and citizens' rights. What stems from that is improved access of individuals to different levels of governance. The second dimension is fostering local government bodies and local self-governance. This emerges as a priority concern for all the countries and societies in SEE that were doomed to experience violent ethnic intrastate outbreaks in the last decade or so. Substantiating and potentiating local governance is part of the institutional approaches capable of regulating minority-majority relations to the extent that it provides access to policy-making. Amongst the multitude of modulations for ensuring access to policy-making for minorities, one of the most advocated liaisons between minorities and policy-making is power-sharing.

When contemplating power-sharing, it is worth considering the strengths and weaknesses of some of the emerging cases of power-sharing in SEE. Bosnia and Herzegovina, Kosovo and Macedonia have all experienced varying degrees of conflict during the past decade. Agreements aimed at ending the conflict in all three cases established power-sharing arrangements, which seek to transform inter-ethnic relations. Established through substantial external intervention, these systems are far from being self-sustainable. A comparative analysis of these systems, conducted in 2003 by the Minority Rights Group International (an international non-governmental organization) brings to the fore four issues that repeatedly emerge as being of key importance: decentralization; equitable representation and effective participation; the role of the international community; and de-ethnicization of the political systems.²⁶

The MRG report proposes that probably the most important issue with regard to systems of minority inclusion across the countries has been decentralization. Autonomy for ethnically homogeneous territories however was widely dismissed as an inadequate solution for Southeast Europe. The threat of “ethnic cleansing” to ensure total homogeneity and the threat of secession make this approach less desirable, although the experience elsewhere demonstrates the viability of such solutions, as long as minorities within autonomies enjoy adequate protection and a threat of secession can be excluded.

Decentralization can help bring decision-making closer to most citizens and make administration more responsive. Steps towards creating new layers of governance and reconsidering the division of competences between them have become increasingly relevant. However, decentralization in itself does not necessarily result in improved minority representation. Also, discrimination against minorities might be more difficult to combat at the local level where international pressure and European standards might be avoided.

The MRG points out that there is a need for country-wide standards coupled with international monitoring to prevent local abuse. In addition, there is a need to reflect on mechanisms of inter-ethnic co-decision-making at the local level: a local equivalent of power-sharing. Finally, the example of Bosnia and Herzegovina demonstrated that delimitation of competences between the layers that are not clearly defined can worsen the overall quality of governance.

Representation of all groups at all levels of public administration and government is at the core of any power-sharing arrangement and is an essential aspect of minority rights. The concept of equitable representation does not necessarily translate into proportional representation. Here it is important to distinguish between elected representatives, where the representation of the communities is important, unlike civil servants and other appointed officers, whose acceptability by the community and participation in the implementation of laws and decisions holds greatest significance. There is also a need to incorporate majorities in making public administration more responsive to minority concerns.

The MRG report reveals concerns that the power-sharing arrangements in SEE rest strongly on international intervention. Consequently, a crucial question for Bosnia and Herzegovina, Kosovo and Macedonia is how the power-sharing arrangements can achieve self-sustainability. Frequently, international

organisations act as arbiters when a dispute arises. To overcome this, instruments of domestic arbitration need to be strengthened. There is also a need to allow for evolution and development, moving away from “imposed” to domestically driven arrangements.

Power-sharing systems run the risk of framing most political disputes in ethnic terms. Often political actors cast non-ethnic issues as ethnic ones in order to maximize their influence. The importance of ethnicity can be equally problematic in systems of minority representation, where minorities are only represented in relation to “ethnic concerns” while other social and economic concerns might affect the community much more. Power-sharing systems and minority representation can thus diminish the recognition of problems common to both the majority and the minority.

Power-sharing by itself is often insufficient to overcome the fears that spark ethnic conflict. It is important to consider bottom-up strategies, which build inter-communal trust and help overcome some of the post-conflict divisions between groups. Furthermore, limiting aspects of power-sharing to only some areas (e.g. veto rights) needs to be considered, to avoid a permeation of all political decisions by “ethnic” considerations.

Power-sharing institutions and the political representation of minorities are frequently elite-driven projects, which do not address the social context in which inter-ethnic relations take place. Without popular support, such arrangements are unlikely to be sustainable. Power-sharing can only be successful if inter-ethnic relations simultaneously improve and bring to the foreground cooperative elites.

Implementation is often lacking because of the opposition of some communities and the overall weakness of state institutions. Without (a) the full establishment of all aspects of power-sharing and (b) the implementation of decisions and laws related to power-sharing, power-sharing itself and other forms of consensual decision-making could be discredited.

CONCLUSION

Minorities as an issue of concern are likely to remain on both the national and international agenda in the foreseeable future, affecting considerably nearly every level of policy-making. The experience of Southeast

Europe in the last decade particularly demonstrated in a self-evident manner that minority issues make a tight knot that is hard to disentangle. It is even more complicated when it comes to terms of security. Figuratively, minority-related issues and security are two parts of an equation. But this equation has not been solved yet. What is for sure is that it is not a simple equation.

This paper has endeavored to contemplate the regulation of minority issues and the interaction between minorities and policy-making. Though presenting some opposing views as far as rights and protection of minorities is concerned, the paper assumes that minorities' protection is best guaranteed by safeguarding the individual rights of persons belonging to minorities, expanded with some complementary rights, e.g. "personal autonomy". The application of these rights should be conducted in a proper institutional setting, arranged on national and international level. Thus, the paper presents a merger of liberal individualism, complemented with the concept of personal autonomy, and the school of institutionalism.

The balance between extended/ expanded individual rights and an institutional approach for regulating minority-majority relations is not a panacea for conflict prevention or post-conflict reconstruction, but it is a utility, a tool-kit for managing diversity in heterogeneous societies. Managing diversity is intricately related to security and it is best perceived when one faces the challenge of maintaining peace and stability in heterogeneous societies that have previously experienced violent conflicts based on minority-majority confrontation. In this case international efforts are crucial and devising an international minorities regime will be a bold and positive step forward.

Notes

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² Van Dyke, V., *The Individual, the State, and Ethnic Communities in Political Theory*, in *The Rights of Minority Cultures*, ed. by Will Kymlicka, Oxford University Press, 1995, p. 48

³ *Ibid.*, p. 51

⁴ *Ibid.*, p. 52

⁵ *Ibid.*, p. 53

⁶ *Ibid.*, p. 54

⁷ Lijphart, A., *Self-Determination versus Pre-Determination of Ethnic Minorities in Power-Sharing Systems*, in *The Rights of Minority Cultures*, ed. by W. Kymlicka, Oxford University Press, 1995, p. 277

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ *Ibid.*, p. 278

¹¹ Laponce, J. A., *The Protection of Minorities*, Berkeley, University of California Press, 1960

¹² Frowein, J. A., R. Bank, *The Participation of Minorities in Decision-Making Processes*, Heidelberg, 2000, p. 16

¹³ Margalit, A., J. Raz, *National Self-Determination*, in *The Rights of Minority Cultures*, ed. by Will Kymlicka, Oxford University Press, 1995, p. 89

¹⁴ *Ibid.*, p. 89

¹⁵ Kovacs, Petra, *A Comparative Typology of Ethnic Relations in Central and Eastern Europe*, OSI, Budapest, 1998, pp. 20 - 21

¹⁶ Biro, Anna-Maria, Petra Kovacs, *Diversity in Action: Local Public Management of Multi-Ethnic Communities in Central and Eastern Europe*, LGI/ OSI Budapest, 2001

¹⁷ Garbaye, Romain, *Ethnic Minorities, Cities and Institutions: A Comparison of the Modes of Management of Ethnic Diversity of a French and a British City*, in: *Challenging Immigration and Ethnic Relations Politics: Comparative European Perspectives*, ed. by Ruud Koopmans and Paul Statham, Oxford, 2000, p. 283

¹⁸ *Ibid.*, pp. 284-285

¹⁹ *Ibid.*, p. 286

²⁰ *Ibid.*, p. 287-288

²¹ *Ibid.*, p. 290

²² *Ibid.*, p. 293

²³ *Ibid.*, pp. 293-294

²⁴ *Ibid.*, p. 294

²⁵ Eyal, J., "Eastern Europe: What about the minorities?," *World Today*, Vol. 45, December 1989, p. 206

²⁶ *Emerging Frameworks of Power-Sharing in South-East Europe: Strengths and Weaknesses*; Minority Rights Group International; Workshop Report, 2003