The Influence of Western Powers on Central and Eastern European Minority Protection Policy: the League of Nations Minorities Treaties and the EU Copenhagen Criteria

THESIS

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Abstract

The guarantee of special protections to minority groups has long been viewed as a measure designed to ensure regional peace and stability by alleviating tensions and pre-empting conflicts. In 20th century Europe, the obligation of minority protection was twice imposed on the transitioning eastern states by the western powers. The Minorities Treaties under the League of Nations, which negotiated the end of World War I and established or enlarged new nation-states, bound the new states in Central and Eastern Europe to an obligation of minority protection to which the great powers themselves were not held. After the failure of the Minorities Treaties system and the disintegration of the League of Nations, European leaders abandoned the protection of minority groups in favor of a system of universal individual human rights. However, after the collapse of communism in Central and Eastern Europe in 1989-1991, the requirement of special protections for minority groups resurfaced in the Copenhagen Criteria for membership in the European Union despite the lack of a similar internal standard. This paper compares and examines the shortcomings of both systems, which were undermined by a number of weaknesses resulting from underlying political pressures and the imposition of a policy of minority protection that was not well-rooted in existing European standards.
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Table of Contents

Abstract ......................................................................................................................... ii

Vita................................................................................................................................. iii

Introduction ..................................................................................................................... 1

Historically Precedented Minority Management: the League of Nations Minorities

Treaties ......................................................................................................................... 8

Procedure of the Minorities Treaties ............................................................................ 11

Provisions of the Minorities Treaties .......................................................................... 14

Lack of Universality .................................................................................................... 16

Minority Protection in the European Union .................................................................. 23

The Creation of International “Norms” ....................................................................... 23

Non-Discrimination vs. Special Protection ................................................................... 27

The Framework Convention for the Protection of National Minorities ..................... 29

Inconsistent Application of the Minority Protection Condition .................................. 32

Minority Protection Post-Accession ............................................................................. 38

Conclusion .................................................................................................................... 44
Introduction

Minority issues have played a role in international relations in Europe for centuries. The guarantee of special protections to minority groups has long been viewed as a measure designed to ensure regional peace and stability by alleviating tensions and pre-empting conflicts. During the 17th and 18th centuries, it was religion that divided societies into majorities and minorities, rather than language or culture. At the Congress of Westphalia in 1644, considered as the transition to the modern era of European statehood, concessions to religious minorities were granted along with the territorial redistribution that marked the end of the Thirty Years War. Religious and ethnic diversity under the state was a generally accepted fact in Europe well into the 19th century. The Austro-Hungarian, Ottoman and Russian Empires were, by their nature, multi-ethnic and multi-confessional. However, as the standard of *cuius regio eius religio* was replaced with the nationalist claim to *cuius regio eius natio*, concerns about regional stability shifted from religious minorities to national minorities. The treaties of the Congress of Vienna in 1815 articulated for the first time special guarantees for a national minority, as the Great Powers granted Poles the right to use their own language and maintain their own institutions. While the Vienna Treaty offered civil and political rights

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2 Ibid, p.76-77.
3 Ibid, p. 79.
to certain minorities in order to ensure stability and peace, these provisions were not intended to grant any sovereignty whatsoever to minority groups, nor to hold states accountable to any other sovereign state.\(^5\)

Weitz asserts that the critical period in the development of minority protection came at the Congress of Berlin in 1878, when obligations to protect national minorities were for the first time in Europe undertaken as a result of international pressure, as the new states of Greece, Bulgaria, Serbia, Montenegro, and Romania were required to ratify treaties containing minority provisions as a condition of their international recognition.\(^6\)

In contrast to previous treaties, the Berlin treaty significantly addressed certain populations within the states and referred to them as a nation or race (e.g., Bulgarian, Serbs, etc.).\(^7\) For the first time, new states were required to submit to certain “standards of civilization” which included provisions for minority protection.\(^8\)

However, it was not until the Paris Peace Conference of 1919 that the Great Powers attempted to establish an international system of minority protection. The treaties that negotiated the end of World War I and established or enlarged new nation-states based on the principle of self-determination bound the new states in Central and Eastern Europe to the provision of minority protection. The Great Powers, concerned that conflicts arising from minority tensions could destabilize the region, devised a system wherein the protection of national minorities would be monitored and guaranteed by a

\(^6\) Weitz, p. 1318.
\(^7\) Ibid, p. 1320.
\(^8\) Jackson Preece (1997), p. 80.
new international organization: the League of Nations. However, as Mazower notes, while the League of Nation’s organization was “a radical departure from the past, in other ways it fitted squarely into an earlier Victorian tradition of Great Power paternalism.”

Unfortunately, the efficacy of the Minorities Treaties was undermined by this paternalism and the structural failures within the League of Nations system that resulted from it, including vaguely defined and inconsistently applied policies, and political formulations that limited minority provisions from being enjoyed universally. Plagued by these and other problems, the system was rendered ineffective by 1939, and this model of minority protection was ultimately abandoned with the breakdown of the League of Nations and the Versailles system during World War II.

After the Second World War, the focus of the international community shifted. When the United Nations was established in 1945, the great powers briefly considered a universal minority protection policy and collectively rejected it. The protection of group rights was now conversely seen as potentially dangerous to national sovereignty and stability. Czech President Edvard Beneš supported the abandonment of the minorities protection system. He wrote in 1942:

The protection of minorities in the future should consist in the defense of human democratic rights and not of national rights. Minorities in individual states must

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10 Ibid, p. 382.

11 Mazower provides a compelling argument that the Great Powers chose to abandon the idea of universal minority protection with the formation of the United Nations in view of the burdens such a responsibility would put on themselves. The United States, for example, still segregated at that time, was reluctant to submit itself to guaranteeing certain rights to certain groups. An emphasis on individual human rights “reflected the Great Powers’ keen interest in preserving their sovereignty intact.” (p. 394).

never again be given the character of internationally recognised political and legal units, with the possibility of again becoming sources of disturbance.\textsuperscript{13}

The new system did not altogether ignore minorities. The prevailing attitude among those drafting the UN Charter in 1945 and the subsequent Universal Declaration on Human Rights in 1948 was instead focused on individual rights rather than collective rights, and the protection of minorities was understood to be included within these broad protections.\textsuperscript{14} This new approach was based on a universal respect for fundamental rights and freedoms coupled with measures that prohibited discrimination. Thus, minorities would be protected by the same substantive measures of equality guaranteed to everyone. Until the breakdown of socialism in the Soviet Union and Central and Eastern Europe in the late 1980s, there was very little international attention to collective minority protection.\textsuperscript{15}

The fall of communism in Central and Eastern Europe in 1989-1991 marked the beginning of a new era of changing boundaries and transitioning minority populations. As the Soviet Union and the federations of Yugoslavia and Czechoslovakia disintegrated, concerns about potentially destabilizing minority conflicts reemerged, and, despite being discarded decades earlier in favor of a more ostensibly advanced system of universal human rights, the focus of minority protection shifted back to the collective rights of

\textsuperscript{13} Quoted in Mazower, p. 388.
\textsuperscript{15} The only international document that addressed minority protection during the Cold War was the Helsinki Final Act (CSCE) in 1975, \textit{infra} p. 20, note 69. For an assessment of internal minority protection policies during the Cold War, see Jennifer Jackson Preece. (1998) \textit{National Minorities and the European Nation-States System}. Oxford: Clarendon Press.
As the European Community took a decidedly more political direction in the early 1990s and evolved into the European Union, the emphasis on minority protection again played a major role in the regulation of international relations. Thus, as minority protection gained momentum in the sphere of international relations in Europe, the leading organizations of the European community drafted a number of declarations and conventions supporting the principles of minority protection. The Copenhagen criteria of 1993, which stipulate the conditions for European Union membership, explicitly included “respect for and protection of minorities” as one of their primary requirements, meaning that the European Union would require applicant states to fulfill certain criteria vis-à-vis the treatment and protection of their minorities. While this may appear to signify a new European-wide commitment to minority protection and the emergence of a universal minority policy, the reality is quite different. The criteria imposed on aspiring members of the EU have advanced norms that were, in fact, not supported by existing EU law and remain contested and controversial. Like the League of Nations’ minorities system, the application of these “norms” was geographically biased, as the Copenhagen criteria and the requirement of minority protection were disproportionately only applied to the Central and Eastern European states that applied for EU membership.

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The paternalism with which the western powers imposed minority protection obligations on the transitioning eastern states after the First World War re-emerged with the Copenhagen minority condition and overshadowed the ostensible objective of minority protection. In the League’s Minorities Treaties and the Copenhagen criteria, the western powers played a major role in imposing standards of protection on the transitioning states of Central and Eastern Europe. In both cases, the western states failed to submit themselves to the same standards, and the actual protection of minorities was hindered by ambiguity and political bias. To date, minority protection has not reached anything resembling universality.

This paper seeks to explore the role of western powers in the application of minority policy in Central and Eastern Europe, both in the precedents set by the League of Nations in 1919 and in the Copenhagen criteria for membership in the European Union in the 1990s. By examining the shortcomings of both systems, I argue that the implementation of minority protection policy was weakened by the underlying political pressures that drove it. The renewed attention to minority rights since the collapse of communism may have appeared to signal a new direction of international commitment to the protection of minority rights, but the greater priority was in fact the application of political pressures on potential EU members. By comparing the League of Nations Minorities Treaties and the Copenhagen minority condition, two different systems separated by half a century, it becomes clear that the externally imposed requirements from the western powers undermined the efficacy of minority protection, rendering the
League of Nations minorities system a failure and the EU minority condition as yet unsuccessful.
Historically Precedented Minority Management: the League of Nations Minorities Treaties

Despite claims to legitimacy based on the principles of national self-determination, the states that emerged from the defeated Ottoman, Russian and Austro-Hungarian Empires after the First World War were not nationally or ethnically homogenous. Instead, the rearrangement of territorial boundaries left many nations dispersed across state borders and enabled the contradictory establishment of multiethnic nation-states. The rhetoric of self-determination did not guarantee the successful achievement of independent statehood. Some nationalities (for example, Ruthenians) remained dispersed across other nations’ states, and other nationalities (for example, Slovenes and Slovaks) had to settle for inclusion in multiethnic federations such as Yugoslavia and Czechoslovakia.\(^\text{19}\) Additionally, many of the new states contained significant populations of Muslims, Hungarians and Germans, who until recently had belonged to the ruling majority.

In the interest of ensuring internal stability and international peace, the victorious powers devised a policy of minority protection at the Paris Peace Conference in 1919, which was guaranteed by the recently formed League of Nations.\(^\text{20}\) The newly independent or enlarged states – Poland, Czechoslovakia, Greece, Romania, and the

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\(^{19}\) Jackson Preece (1997), p. 82.

\(^{20}\) The Minorities States were placed under League guarantee by a provision in the Minorities Treaty itself. Article 12 of the Polish Treaty (after which the others were modeled) affirms that “Poland agrees that the stipulations in the foregoing Articles, so far as they affect persons belonging to racial, religious or linguistic minorities, constitute obligations of international concern and shall be placed under the guarantee of the League of Nations.” Treaty between the Principal Allied and Associated Powers and Poland, signed at Versailles, 28 June 1919, 112 Great Britain T.S. 232
Serb-Croat-Slovene State (later Yugoslavia) – were obliged to ratify treaties which committed them to the protection of minority groups within their territories. Austria, Hungary, Turkey and Bulgaria (as the losers of the war) undertook similar commitments to minority protection as conditions of the peace settlements. The Polish Minorities Treaty (known as the “Little” Treaty of Versailles, as it was signed the same day as the larger Versailles Treaty that negotiated the terms of peace) provided the template for the Minorities Treaties that followed. The text of many provisions was the same in all of the treaties:

(Article 7) All Polish nationals shall be equal before the law and shall enjoy the same civil and political rights without distinction as to race, language or religion… (Article 8) Polish nationals who belong to racial, religious or linguistic minorities shall enjoy the same treatment and security in law and in fact as the other Polish nationals. In particular they shall have an equal right to establish, manage and control at their own expense charitable, religious and social institutions, schools and other educational establishments, with the right to use their own language and to exercise their religion freely therein. (Article 9) Poland will provide in the public educational system in towns and districts in which a considerable proportion of Polish nationals of other than Polish speech are residents adequate facilities for ensuring that in the primary schools the instruction shall be given to the children of such Polish nationals through the medium of their own language…

Articles 7 and 8, *inter alia*, establish equality and measures of non-discrimination, while Article 9, *inter alia*, provides for special protections. Although there are some variations

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22 *Treaty between the Principal Allied and Associated Powers and Poland*, Articles 7, 8, 9.
among the Treaties, the provisions of non-discrimination and special protections included in the Polish treaty are replicated almost verbatim.

Following the formal establishment of the League of Nations in 1919, Albania, Latvia, Lithuania and Estonia undertook minority protection obligations as a condition for their membership in the League. These were unilateral declarations and not multilateral treaties such as those above, but they included the same basic provisions. Later, Germany (with regard to Upper Silesia) and Finland (with regard to the Aaland Islands) also undertook limited obligations to minority protection under the League of Nations system. By 1924, fifteen states had accepted minority protection obligations. Fifty different minorities including 30 million people were under the protection of the League of Nation’s system.

The ultimate demise of the minority protection regime was, in the view of many scholars, “inextricably linked to that of the League itself,” although as Veatch notes, the minorities protection system was the only major League of Nations process that was not continued under the United Nations. While there were some limited successes of the

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24 Agreement between Sweden and Finland regarding the Aaland Islands, 27 June 1921, 2 League of Nations Official Journal 701 (1921); Convention between Germany and Poland relating to Upper Silesia, signed at Geneva, 15 May 1922, 9 L.N.T.S. 466 (1922).

25 Fink, p. 279.


League Minorities system, it is widely held that the system was undermined by numerous deficiencies and shortcomings.\textsuperscript{28} The inability of the Minorities Treaties to prevent the violations of the rights of millions of people during World War II and well before attested to the system’s overall failure. The following sections examine the procedural deficiencies of the Minorities Treaties, their vague and insufficient provisions, inconsistent compliance and a lack of support for minority protection, and a lack of universality in the guarantees of minority protection.

Procedure of the Minorities Treaties

From the outset, the Minorities system was plagued with inefficiencies. At the first meeting of the League of Nations on February 13, 1920, the Council adopted a resolution that placed the provisions of the Minorities Treaties under the guarantee of the League.\textsuperscript{29} Many of the treaties had already been established, however, which led to ad hoc decisions about supervision and implementation. The treaties themselves contained no procedural method for handling claims of rights violations; thus, the council was left to draft the rules, and rather than establishing a consistent and uniform set of standards, the rules “evolved slowly and gradually to meet the requirements of actual experience.”\textsuperscript{30} As a result, the procedures that developed were inefficient and complicated.


\textsuperscript{29} Veatch, p. 369.

By 1921, a system was developed whereby petitions could be submitted to the Council of the League of Nations to communicate alleged violations of the Minorities Treaties. These petitions, submitted by individual members of a minority or on their behalf by organizations or other states, were communications only; it was ultimately at the Council’s discretion whether or not to take any action. The petitions were examined by the Minorities Section of the League’s Secretariat for admissibility and, if approved, sent to the minority state for comments and response. The petitions and responses were then passed on to a “Committee of Three,” a special committee comprised of the President of the Council and two other Council members, for investigation of the complaint. At this stage, the Committee could do three things: 1) dismiss the petition as unfounded; 2) initiate informal negotiations with the minority state; 3) formally recommend the matter to be addressed by the Council. In addition, the Permanent Court of International Justice had jurisdiction to resolve minorities disputes of a legal nature and could also provide advisory opinions to the League on controversial issues pertaining to minorities.

Many of the Minorities States judged the procedures of the League to be unfair. First, the League was often not an impartial judge of minorities complaints. The Council

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31 There were five requirements for a petition to be admissible. They: a) must have in view the protection of minorities in accordance with the treaties; b) in particular, must not be submitted in the form of a request for the severance of political relations between the minority in question and the State of which it forms a part; c) must not emanate from an anonymous or unauthenticated source; d) must abstain from violent language; e) must contain information or refer to facts which have not recently been the subject of a petition submitted to the ordinary procedure. See Pablo de Azcárate. (1967) “Protection of National Minorities.” Occasional Paper no. 5. New York: Carnegie Endowment for International Peace. p. 103-104; See also Jane Cowan. (2003) “Who’s Afraid of Violent Language?” Anthropological Theory, 3(3): 271-291.


33 Robinson (1941), p. 7-8.
was certainly more of a political body than a legal one, and consequently, they were
likely to compromise and negotiate with governments rather than formally admit
petitions for examination. The Permanent Court of International Justice operated with
more impartiality, but since most minority cases had to first be referred to the Court by
the Council, they were preliminarily subject to the Council’s scrutiny.\textsuperscript{34} Additionally, the
League effectively pursued minority petitions only after the interventions of states
powerful enough to do so. The important role of this advocacy by other states led to
minorities questions becoming political battles between Minorities States and their
minorities’ kin-states rather than objective investigations of minority protection and
alleged abuses.\textsuperscript{35} In Weimar Germany, for example, millions of activists and powerful
politicians lobbied for “toughening up” the minorities provisions in the treaties (to which
they were not bound) in the interests of ethnic Germans elsewhere in Europe.\textsuperscript{36}

Robinson argues that the League procedure was further damaged by the absence
of a time limit for investigations, which led to unreasonable delays in proceedings and
“deliberate procrastination” by states under investigation. Essentially, the procedure
enabled non-compliance by Minorities States. Additionally, many of the League’s
proceedings were confidential and never made public, thus keeping private many
complaints that would have drawn criticisms from the international community. This lack
of appeal to public opinion was another potential weakness of the League’s procedures
and perhaps an indication of the prominence of political factors.

\textsuperscript{34} Ibid, p. 9-10.
\textsuperscript{35} Jackson Preece (1998), p. 91.
\textsuperscript{36} Mazower, p. 383.
Provisions of the Minorities Treaties

The Minorities Treaties guaranteed rights in broad and generalized terms. Modeled almost verbatim after the treaty signed by Poland at Versailles, they required treaty-bound states to ensure equal civil and political rights to individuals “without distinction of birth, nationality, language, race or religion.” Additionally, group rights were also accorded, and minorities were given the right to maintain their own religious, educational, social and cultural institutions. However, the absence of a clear definition of “minorities” in the treaties made the guarantee of protection rather problematic. The term “national minority” was never used in the treaties; instead, they referred to “persons belonging to racial, religious and linguistic minorities” or to groups such as “Jews” or “non-Muslim minorities.” Thio notes that the difficulties in applying concepts such as “race” were insufficiently addressed, particularly given centuries of multi-racial cohabitation and intermarriage. Indeed, the criteria for membership in a minority group were poorly defined and poorly conceived. Without a clear concept of “minority,” providing and ensuring protection was complicated at best.

In a report to the Council in 1925, Afranio de Mello Franco, the Council’s representative of Brazil, attempted to clarify the definition of “minority”:

A minority as defined by the treaties assuring its protection is not only a racial group incorporated in the body of a nation, of which the majority forms a different racial unit. There is also a psychological, social and historical attribute,

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37 Treaty between the Principal Allied and Associated Powers and Poland, Article 7.
38 Treaty between the Principle Allied and Associate Powers and Romania, Article 12
39 Treaty between the Principal Allied and Associated Powers and Poland, Article 11
40 Treaty of Peace (Lausanne), Articles 38-44
41 Thio, p. 56.
constituting perhaps, for the purposes of the definition which we are seeking, its principal differential characteristic. The mere co-existence of groups of persons forming collective entities, racially different, in the territory and under the jurisdiction of a State is not sufficient to create the obligation to recognize the existence in that State, side by side with the majority of its population, of a minority requiring a protection entrusted to the League of Nations. In order that a minority, according to the meaning of the present treaties, should exist, it must be the product of struggles going back for centuries or perhaps for shorter periods between certain nationalities, and the transference of certain territories from one sovereignty to another through successive historic phases. 42

According to this definition, determining who constituted a minority was itself problematic. Considering that minorities were assumed to have had a perennially hostile relationship with the majority, it was this potential for hostility (and not the actual minority) that was emphasized in the Minorities Treaties. According to de Mello Franco’s definition, the mere existence of minorities was not enough to warrant their protection. This approach further limited the scope of minority protection and complicated the interpretation and implementation of the provisions.

Another major flaw in the Minorities Treaties was the broad and imprecise language of the provisions. Clauses such as “equal before the law”43, “considerable proportion”44, “adequate facilities”45, and “enjoyment of the same civil and political rights”46 left too much room for ambiguity. Jurist and League diplomat Jacob Robinson argued that “it was manifestly impossible to deal with those minorities consisting of millions living in compact masses… by the same methods that could be applied to the

43 Treaty between the Principle Allied and Associate Powers and Romania, Article 8
44 Treaty between the Principal Allied and Associated Powers and Czechoslovakia, Article 9
45 Treaty of Peace (Bulgaria), Article 53
46 Treaty between the Principal Allied and Associated Powers and Poland, Article 7
small and widely scattered minorities.” In other words, these catch-all phrases were simply inadequate to ensure that all minorities were sufficiently protected. However, some treaties did contain specific provisions for specific minorities. This was another deficiency of the treaties, in that they seemed to give priority or show preference to certain minorities above other minorities or, even more inconsistently, certain minorities in certain states. For example, the treaties with Poland and Romania stipulated certain provisions for the Jewish minority, and the treaty with Yugoslavia contained special provisions for the Muslim minority. The Polish Minorities Treaty qualified its provisions to “apply to Polish citizens of German speech only in that part of Poland which was German territory on August 1, 1914.” In other words, German speakers elsewhere in Poland were not afforded minority protections, despite their ostensible status as a minority and regardless of whether they constituted a “considerable proportion” of a population. Why these group-specific provisions were unfairly weighted in certain countries but not others was unclear and a source of resentment by many of the Minorities States.

Lack of Universality

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49 Treaty between the Principal Allied and Associated Powers and Poland, Article 9
Perhaps the most criticized aspect of the Minorities Treaties was that minorities protection policy was applied to certain states and not others. Many of the states which were bound by the treaties were those who had been defeated, created or expanded at the close of World War I, but this distinction was not the sole factor in the application of minority protection policy. Germany, who had clearly been on the losing side of the war, was not required to undertake the general minority protection obligations imposed on other states, despite the clear presence of minorities.\(^{50}\) Thio argues that the selective application of minority obligations was based instead on a “big power/small power distinction” and Germany, while temporarily weakened after the war, was expected to eventually claim a position as a permanent Council member. This distinction divided Europe neatly into “West” and “East” and further characterized the divide based on “civilizational differences.”\(^{51}\) The “East” was regarded as less civilized than the Western European states. This dichotomy was articulated by Hans Kohn in 1944 who argued that two types of nationalism existed: civic/Western and ethnic/Eastern.\(^{52}\) According to this logic, it would follow that the less civilized and more “ethnic” Eastern European states would be in greater need of the League’s intervention than the more civilly oriented West. Switzerland’s delegate to the League effectively expressed this cultural bias when

\(^{50}\) Germany later signed a bilateral agreement with Poland regarding the partition of Upper Silesia that would bind them for 15 years. *Convention between Germany and Poland relating to Upper Silesia*, signed at Geneva, 15 May 1922, 9 L.N.T.S. 466 (1922).


he advocated for Minorities States to adopt the Swiss approach to nationality and
diversity, which was based on “a community of ideas, not on blood or language.”

Moreover, while the League’s founders discussed the creation of a universal
minority protection regime, it was never seriously pursued. The Great Powers that
devised the system:

had no intention of establishing a general jurisprudence applicable wherever
racial, linguistic, or religious minorities existed. They simply aimed at facilitating
the solution of the problems which might arise from the existence of racial,
linguistic or religious minorities in certain countries in which there was reason to
suppose that, owing to special circumstances, these problems might present
particular difficulties.

Many Minorities States advocated for the creation of a general convention, but a
universal minority protection regime was opposed by many of the more powerful states.

The Dutch delegate Baron von Hoogland expressed concerns that a universal system
could cause minority groups to “spring up where they were least expected [and] provoke
unrest.” Some states “resented” any possible attempt by the League to “interfere in the
internal affairs” of their own states. Certain states, such as Italy, maintained that their
domestic legislation was sufficient to protect the interests of their minorities, while

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53 Thio, p. 55.
55 In particular, Minorities States such as Poland, Lithuania, and Romania supported a general minority
protection convention. Germany, which was not bound by a Minorities Treaty, also favored a general
protection convention and was the only state to offer to submit to minority protection under such an
arrangement. Mazower, p. 383.
56 Dutch Senator Baron von Hoogland, quoted by Afranio de Mello Franco. Report to League of Nations
(W 11419/4965) “Protection of Minorities: Resolution of the Sixth Assembly of the 37th Session of the
Council of the League of Nations” December 14, 1925. in Beck, P (ed), British Documents on Foreign
57 Correspondence from Austen Chamberlain, British Foreign Secretary, to William Erskine, Ambassador
to Poland. February 16, 1929. in Beck, P (ed), British Documents on Foreign Affairs: Part II, Series, J,
France unambiguously denied the existence of any minorities within its territory. Other states, such as Canada and Switzerland, admitted to having minorities but denied any minority problems, thus rendering the need for minority protection unnecessary.\(^{58}\)

Understandably, many of the Minorities States opposed this imposition of unequal obligations and perceived it as a violation of the legal equality between states. A commentator in 1925 summarized the League’s estimation of the new states and the perceived need for League intervention:

If these minorities should be left to the tender mercies of nationalistic governments, addicted to the policy of assimilation, Europe would continue to ferment in conspiracies, making a stable peace impossible. It was just as essential for the Peace Conference to solve the problem of minorities as it was to set up new nation-states.\(^{59}\)

Some states (particularly those who had lost territory at the end of the war) did not pose any objections to the treaties. Austria, Bulgaria, and Hungary, expressing concerns about their own nationals who were now “minorities” in their new successor states, welcomed the addition of minority protection provisions under the condition that other states (particularly their respective successors) would be held to the same obligations.\(^{60}\) As victors, however, Romania, Poland and Yugoslavia particularly objected to the minorities clauses and repeatedly questioned why similar provisions were not made for minorities in Germany or Italy. The minorities provisions were viewed as a lack of confidence in their ability to manage their own affairs and a threat to their sovereignty if minorities were made to feel that they could rely on foreign states for

\(^{58}\) Thio, p. 52-54.


support. The imposition of minorities obligations did not follow a strict dichotomy between winners and losers in the war. Instead, the division originated from “imagined oppositions between a fragmented, multi-ethnic east and a homogenous and democratic west.” It was this east-west dichotomy that justified imposing minorities treaties on the eastern states and allowed the violation of their sovereignty.

Poland was the first to ratify a minorities treaty in 1919, signed under considerable pressure and after extensive negotiations. Ultimately, Polish Council President Paderewski was “cajoled and trapped” into ratifying the provisions that were imposed, and over the course of the next year, seven additional states accepted (with varying degrees of reluctance) similar obligations. This lack of acceptance and support for the minorities provision translated into a lack of compliance with the provisions in many states. The Minorities Treaties required states to incorporate minority protection policies into their domestic legislation. In particular, Poland, Yugoslavia, Bulgaria, Greece and Romania included provisions protecting minorities in their constitutions, but failed to effectively implement them. Some countries even passed discriminatory legislation despite their obligations to the contrary (for example, Hungary and its numerus clausus policy for Jews).

Finally, the unequal application of minority protection policy made many Minorities States uneasy with the potential exploitation of these obligations by states not

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62 Zahra, p. 146.
63 Fink, p. 237-267.
bound by minorities treaties. Poland repeatedly expressed concerns that Germany, who increasingly filed complaints to the League on behalf of the German minority in Poland, was abusing the system in pursuit of their own national agenda. Since Germany was not bound to a similar avenue of redress for Poland vis-à-vis the Polish minority in Germany, Poland was in a position of diplomatic vulnerability that it felt was easily exploitable.⁶⁴

In 1934, Poland announced that it would refuse to cooperate with the League’s minority system until the provisions of protection (and the obligations of Minorities States) were extended universally. Other League members remained disinclined to submit themselves to the provisions, and Poland effectively withdrew from the League’s proceedings, withholding information and refusing to comment on any complaints or petitions.⁶⁵ No other Minorities State explicitly followed suit, but activity in the minorities system steadily declined thereafter. By the Council’s final meeting in 1939, only seven petitions were pending, and the system had been rendered effectively impotent.

While by no means succeeding in their intentions of maintaining internal peace and stability, some historians maintain that the Minorities Treaties did constitute some improvement to previous eras of minority protection in Europe.⁶⁶ The elevation of minority protection policy to the level of international dialogue, the incorporation of minority protection provisions into domestic legislation (albeit in limited states), and the additions to international case law through the Permanent Court of International Justice

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⁶⁴ Ibid.
⁶⁵ Veatch, p. 380-381.
⁶⁶ See, for example, Veatch (1983) and Robinson (1943) for positive assessments. For a thorough review of literature on the efficacy of League programs, see Susan Pederson. (2007) “Back to the League of Nations.” *The American Historical Review*, 112:4 (pp. 1091-1117).
set precedents and standards that have influenced the development of minority protection through the 20th century. However, the fact that these treaties were bound by the League of Nations’ guarantee and imposed against varying degrees of resistance illustrates that the Minorities Treaties were a means by which, according to well-established European tradition, the powerful western states could exert a measure of control over newly established or independent eastern states. Critics of the system maintain that its only success was in “codifying the inferior and conditional status of the new democracies.”67 This element of geopolitical control ultimately undermined the process and substance of minority protection. The western powers’ resistance to creating a universal minority protection regime, the inconsistent application of minority protection, the political bias of League proceedings, and the Minorities States’ disillusionment with the Minorities Treaties policy weakened and eventually overcame the League’s minority system.

Minority Protection in the European Union

The Creation of International “Norms”

During the Cold War years, a variety of multinational organizations developed that brought some degree of influence to the re-emergence of collective minority protection. Chief among them were the United Nations, the Council of Europe and the Conference on Security and Cooperation on Europe. Among these bodies, the CSCE, which was concerned primarily with security issues and not individual human rights as such, was the only one to take a definitive step in giving attention to minority protection in the Helsinki Final Act of 1975. This document, emerging from an unprecedented multinational conference and signed by western and eastern European states, the United States, Canada and the Soviet Union, acknowledged that “participating states on whose territory national minorities exist will respect the right of persons belonging to such minorities to equality before the law, will afford them the full opportunity for the actual enjoyment of human rights and fundamental freedoms and will, in this manner, protect their legitimate interests in this sphere.” However, the Helsinki Final Act only contained provisions related to anti-discrimination and did not include any special provisions for the protection of minority groups as such. As a political statement and not a binding treaty, the Helsinki Final Act did little to further minority protection.

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68 The Conference for Security and Cooperation in Europe (CSCE) was renamed the Organization for Security and Cooperation in Europe (OSCE) in 1998.
70 Helsinki Final Act, 1975.
(particularly since it was largely ignored in follow-up sessions between 1975 and 1989), but it was nonetheless significant as it provided a framework for future declarations on minority protection.

Following the collapse of socialism in Central and Eastern Europe and the Soviet Union in 1989-1991, the question of minority rights reemerged from under the umbrella of general human rights amid renewed concerns of potentially destabilizing minority conflicts in the region. In the early post-Cold War period, a consensus rapidly developed among western states and organizations that issues related to national minority protection in the post-socialist states should be a matter of international concern and monitored by international organizations. However, any monitoring would have to be based on international norms or standards for minority protection, and there was a distinct lack of such standards. Indeed, minority rights were still rather undefined.\textsuperscript{71} To address this, the CSCE met in Copenhagen on June 29, 1990, and adopted a declaration that emphasized the rights of national minorities as essential to the promotion and maintenance of democracy. The Copenhagen Document for the first time since the League of Nations Minorities Treaties united the two principles of non-discrimination and special protections and articulated the nature of those rights and protections.

Persons belonging to national minorities have the right to exercise fully and effectively their human rights and fundamental freedoms without any discrimination and in full equality before the law. The participating States will adopt, where necessary, special measures for the purpose of ensuring to persons

belonging to national minorities full equality with the other citizens in the exercise and enjoyment of human rights and fundamental freedoms.\textsuperscript{72}

In 1991, a report for the CSCE Meeting of Experts on National Minorities in Geneva elaborated on the content of the Copenhagen Document and explicitly stated that “issues concerning national minorities, as well as compliance with international obligations and commitments concerning the rights of persons belonging to them, are matters of legitimate international concern and consequently do not constitute exclusively an internal affair of the respective State.”\textsuperscript{73} Thus, national minority issues were articulated as a matter of international interest and responsibility.\textsuperscript{74}

Once again, the east/west dichotomy became apparent, and the established European tradition of powerful western states wielding control over newly independent or democratizing eastern states reemerged. Many of the transitioning states in Central and Eastern Europe expressed interest in joining the European Union,\textsuperscript{75} and in response, in 1993 the European Union established a set of conditions to be fulfilled before a state could become a member. Based on the principles set down in the Copenhagen Document\textsuperscript{72} Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Conference on Security and Co-operation in Europe (1990), Articles 31. See also Articles 32, 33, 35.\textsuperscript{73} Report of the CSCE Meeting of Experts on National Minorities, Geneva 1991\textsuperscript{74} The United Nations also took an interest in contributing to the new international standards and issued the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities in 1992 (UN General Assembly, Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 18 December 1992, A/RES/47/135) followed by the Vienna Declaration and Programme of Action in 1993 (UN General Assembly, Vienna Declaration and Programme of Action, 12 July 1993, A/CONF.157/23). Both documents further codified the two facets of minority rights, emphasizing both the right to non-discrimination and the provision of special protection.\textsuperscript{75} Of the 12 candidates for membership in the fifth enlargement of the European Union, 10 belonged to post-socialist Central and Eastern Europe. Poland, Czech Republic, Slovakia, Hungary, Estonia, Latvia, Lithuania, Slovenia, Malta and Cyprus joined the EU in 2004; Romania and Bulgaria joined in 2007. The accession process for all states began in 1997, except for Malta, which began in 1998.
of 1990, the Copenhagen Criteria provide three conditions for membership in the European Union:

- political: stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities;
- economic: existence of a functioning market economy and the capacity to cope with competitive pressure and market forces within the Union;
- acceptance of the Community acquis: ability to take on the obligations of membership, including adherence to the aims of political, economic and monetary union.\(^\text{76}\)

The minority protection element of the Copenhagen criteria echoed the standards that are framed in international minority protection documents. However, existing EU members are not held to these standards by any enforceable mechanism and are largely exempt from protracted international scrutiny. Thus, the inclusion of a minority protection condition reveals a clear double standard: an important element of the accession/enlargement law is not applied internally to EU member states. Rather than indicating a commitment to collective minority protection, the inclusion of a minority protection clause in the Copenhagen criteria indicates the geopolitical interest in containing potential conflicts. In much the same way that states were pressured to undertake minority commitments as a condition of diplomatic recognition by the League of Nations, the democratizing states of Central and Eastern Europe were again obliged to commit to a policy of minority protection. For most states, the incentive of European Union membership was the ultimate bait. Vachudova states that while “the EU does not coerce candidates into meeting the membership requirements… the East European states

depended on integration for their economic survival and eventual prosperity.” In the same way that Minorities States were “cajoled and trapped” into committing to the Minorities Treaties after the First World War, EU applicant states had no choice but to follow the criteria that were laid out for them.

Non-Discrimination vs. Special Protection

The relevant conventions and declarations that provided the standards for minority rights in Europe that arose in the post-Cold War period overwhelmingly favor the individual and not the group, and the texts that do address the protection of minorities as a group are either non-binding or weakly enforceable. Within the Council of Europe, the framework for non-discrimination is rooted in the Convention for the Protection of Human Rights and Fundamental Freedoms (1953), to which all members of the European Union are party by default. Article 14 includes a general provision prohibiting discrimination according to “association with a national minority.” Violations of the European Convention can be brought before the European Court of Human Rights, but since the Convention only addresses non-discrimination, it stops short of providing full minority protection. These non-discrimination provisions were reinforced in 2000 by the Charter of Fundamental Rights of the European Union (Article 21.1).

79 Protocol 12, which entered into force in 2005, includes additional measures to protect against discrimination and has been ratified by only 17 countries.
In 1992, the Council of Europe adopted the European Charter for Regional or Minority Languages,\(^{81}\) expanding the measures of special protection offered to minorities by previous “norm-establishing” documents by delineating six categories of activities in which the use of minority language was to be protected. Jackson Preece notes that this marked “an important continuation of earlier League initiatives” which had been ignored until this time.\(^{82}\) Unfortunately, the Charter has not been ratified by many European states.\(^{83}\) In addition, since it is limited to only the linguistic aspect of minority protection, it does not cover the broad range of special protections delineated in the Copenhagen Document and other texts. As a result, the Charter’s actual impact on minority protection remains limited.

The Maastricht Treaty (or Treaty of the European Union, TEU), which established the European Union in 1992 and outlined procedures for accession and membership, made no mention of minorities.\(^{84}\) This was the context, then, in which the Copenhagen Criteria emerged in 1993. The minority protection condition reinforced a growing discourse on minority protection in Europe but was weakly supported by formally declared “norms” and unsupported by institutionalized standards. Conditionality is widely understood as a means of promoting democracy, and as Sasse notes, it is the primary mechanism for “Europeanization,” which in this context includes the incorporation of not only EU principles, but those of the CSCE and the Council of

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\(^{83}\) Half of the Council of Europe’s 47 states have not ratified it, including Belgium, Bulgaria, Estonia, France, Greece, Italy, Latvia, Lithuania, Portugal, Russia, Macedonia, and Turkey.

Thus, the inclusion of a minority protection condition was confronted with criticism and confusion.

The Framework Convention for the Protection of National Minorities

To address the absence of a pan-European minority protection treaty, the Council of Europe adopted the Framework Convention for the Protection of National Minorities in 1995. This Convention provides for the rights to non-discrimination and also offers protection to “persons belonging to national minorities” but, in its avoidance of the terms “group” or “collective”, it remains relatively ambiguous about the rights offered to minority groups as such. The Convention is programmatic in nature, and requires ratifying states to incorporate the provisions into their domestic legislation. Thus, the Convention is, by its nature, more legally binding than the previous documents on minority protection. Nominally, this would appear to be the major commitment to minority protection previously lacking in Europe. This is true, to a degree. Insofar as the Framework Convention articulated principles that had formerly been defined in non-binding Declarations and other political statements, it provided (hence the title) a legal framework for the protection of minorities beyond the well-established rights to non-discrimination.

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Unfortunately, the Framework Convention remained just a framework. The Convention has been widely criticized for its vague language and failure to provide a definition for “national minority.” This ambiguity has prompted many signatories to define, in their ratification and declarations, exactly who they understand to be included in that definition. Consequently, there is a wide degree of variance between states regarding who is protected under this Convention. Some of the states declared that they have no national minorities (Lichtenstein, Luxembourg, Malta, Portugal, and San Marino), and the Netherlands declared that the Convention is applicable only to the Frisians. Other states vary in their restrictions, and some remain vague even in their clarification of the definition. For example, Poland declared that it understands “national minority” as “national minorities residing within the territory of the Republic of Poland at the same time whose members are Polish citizens.” Such declarations have allowed states to nominally commit to the Framework Convention while only selectively undertaking real obligations, which further erodes the efficacy and intended universality of the Convention.

Another major criticism of the Framework Convention is the fact that it remains unratified by many of the major European players. Belgium, Greece, Luxembourg, and Iceland have signed but not ratified the Convention, and France and Turkey have done neither. While the EU encouraged ratification of the Framework Convention (as well as

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88 Hughes and Sasse, p. 6.

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the European Charter for Regional or Minority Languages), non-ratification did not prove
to be much of a barrier to accession negotiations. Many applicant states, including Latvia,
Lithuania and Poland, were allowed to proceed with their accession negotiations despite
the fact that they had yet to ratify the Convention. Consequently, even after the
adoption of the Framework Convention, the applicant states were still held to an
“international standard” that was not universal in its application within Europe.

A final criticism of the Framework Convention and its provisions as an effective
pan-European minority protection policy relates to its omission from further European
instruments or treaties. The Council of Europe rejected the addition of a protocol on
minorities to the European Convention on Human Rights, which would have
strengthened the supervisory and enforcement mechanism of the Framework Convention.
Instead, the principles and provisions outlined in the Convention are subject only to the
mechanism of state reporting, which is arguably the weakest system of international
supervision.

Thus, while the normative provisions for the protection of minorities existed in
various texts, declarations and conventions, the actual definition and practices of such
protection remained ambiguous and far from universal within the European context.
Against such indeterminate standards of minority protection, the monitoring and
application of the Copenhagen criteria’s minority condition has been tainted with

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90 Latvia, Lithuania and Poland ratified the Convention in 2005, 2000 and 2001, respectively. See: Council
of Europe Framework Convention for the Protection of National Minorities (Chart of Signatures and
Ratifications and Status of Monitoring Work – 1st, 2nd and 3rd Cycles) online at
http://www.coe.int/t/dghl/monitoring/minorities/6_Resources/PDF_Chart_Monitoring_en.pdf
Law International. p. 83.
inconsistencies and dwindling credibility as geopolitical agendas have often overseen the process.

Inconsistent Application of the Minority Protection Condition

The fifth enlargement of the European Union began in 1997 and included the Czech Republic, Slovakia, Hungary, Poland, Cyprus, Slovenia, Latvia, Lithuania, Estonia, Romania and Bulgaria, with Malta added to the process in 1998. All of these states joined the EU in 2004, except Romania and Bulgaria, which joined in 2007. Accession negotiations continue for the remaining candidate states, Croatia, Macedonia, Iceland and Turkey, and for potential candidates Bosnia, Montenegro, Serbia, Albania, and Kosovo.

Since the minority protection condition lacked a clear foundation in European law and few mechanisms exist to monitor the implementation of minority policy in Europe, monitoring its implementation in the context of conditionality compliance was fraught with difficulty. Consequently, the accession process created a challenge for both the European Union and the applicant states to decide how and when the criteria for membership had been fulfilled.

The responsibility of monitoring compliance fell to the European Commission, which designed accession negotiations to assess compliance with the acquis of the European Union. The existing body of EU law is subdivided into 35 “chapters,”
categories that describe standards and provide benchmarks. The Commission evaluates the applicants annually for compliance with each of the chapters (and the corresponding EU standards) and submits recommendations and progress through annual official documents: Regular Reports, which are issued separately for each applicant state; and Strategy Papers, which provide a summary for each year's accession progress.

In addition to evaluating compliance with the EU acquis, the Regular Reports evaluate compliance with the three Copenhagen conditions. Many of the requirements of the Copenhagen criteria correlate well with existing EU laws, and therefore, establishing a baseline condition and benchmarks for improvements is somewhat straightforward (for example, the existence of a functioning market economy). However, since the Copenhagen condition of minority protection is not explicit and unambiguous within European law, it does not merit its own subject chapter. Instead, minorities issues (typically those related to discrimination) are addressed variably under the categories of Education and Training (Chapter 18) and Social Policy and Employment (Chapter 13).

Adding to the ambiguity surrounding norms and benchmarks, the Regular Reports have been chronically plagued with unclear and imprecise language. Phrases such as “sends a positive signal”, “has further progressed in the integration of non-citizens”, and “notwithstanding the positive steps taken” show that some improvement has been

92 During the accession process for the fifth enlargement (2004 and 2007), only 31 chapters were used. These were expanded and reorganized for negotiations with Turkey, Croatia, Iceland and Macedonia. 93 Hughes and Sasse, p. 12. 94 Composite Paper on the Commission Reports 1998. EU Enlargement Key Documents. All documents related to the EU Enlargement process are available online: http://ec.europa.eu/enlargement/key_documents/index_en.htm 95 Strategy Paper 2000, EU Enlargement Key Documents. 96 Regular Report for Slovakia 1998. EU Enlargement Key Documents.
made but does not locate it on any measurable scale. The 1998 Regular Report for the Czech Republic noted that the situation of the Roma minority “had not really improved,”\textsuperscript{97} and the Report for Slovakia the same year recommends that “efforts need to be continued and even reinforced” to address the disadvantages of their Roma minority. Romania was advised to “step up its efforts to improve the situation” of the Roma.\textsuperscript{98} Reminiscent of the vague language in the provisions of the League of Nations’ Minorities Treaties, these phrases are not precise enough to achieve quantifiable improvements in the broad scope of minority protection.

Throughout the accession process in 1997-2006, the Regular Reports and recommendations cautiously avoided the language of collective rights. Indeed, the emphasis on minority integration indicates that there may in fact be a preference for assimilation in certain cases. Many of the Reports stress the importance of social and political integration of the Roma, and others promote linguistic integration by recommending that minorities are made proficient in the official language of their state.\textsuperscript{99} Not only does this contribute to the ambiguity of minority protection goals in the accession process, but it obscures the objectives of minority protection in general.

Like the Framework Convention, the Copenhagen condition for minority protection failed to sufficiently define who is considered a minority and further failed to equitably address minority issues in each state. Of course, many of the countries of Central and Eastern Europe have significant minority populations and often multiple

\textsuperscript{97} Regular Report for the Czech Republic, 1998, EU Enlargement Key Documents.
\textsuperscript{98} Composite Paper on the Commission Reports 1998. EU Enlargement Key Documents.
\textsuperscript{99} Hughes and Sasse, p.16.
different minorities. Despite this, the EU accession documents (the Regular Reports and Strategy Papers) focused disproportionately on certain minorities above others. In the first reports on Hungary, Bulgaria, Romania, Slovakia and the Czech Republic in 1997, comments were exclusively devoted to the Roma minority, even though there are greater minority populations in many of these countries. Later reports include mention of the Hungarian minority in Romania and Slovakia and the Turks in Bulgaria, but the focus remained squarely on the Roma. The political context of the application of minority protection is particularly significant to the selection of certain minorities and issues and the disregard of others. This inconsistency varies not only from country to country but also from one annual round of reporting to the next. Sasse notes that focusing on an internally diverse and non-territorialized minority such as the Roma is “politically less sensitive” than politically mobilized and territorialized minorities such as the Hungarians. By allowing certain groups to be favored over others in the accession documents, the European Commission is able to sidestep potential political friction that might be caused by drawing attention to the treatment of certain minority groups. These political factors further complicate the standardization of monitoring and assessing compliance with the minority condition.

Although the majority of Roma live in Central and Eastern Europe, they also live in other EU member states, where they face similar problems of discrimination and social exclusion. The disproportionate attention they have received in Central and Eastern

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Europe during the accession process has eclipsed the difficulties they face elsewhere. It is interesting to note how this weighted interest in Roma issues has translated into post-accession projects. The Decade of Roma Inclusion: 2005-2015, a multilateral initiative of governments, non-governmental organizations and European institutions, includes, with the sole exception of Spain, only countries in Central and Eastern Europe.  

The Regular Reports for Estonia and Latvia singled out the “Russian-speaking minority” and focused exclusively on this group for the duration of the accession process. Hughes and Sasse have argued that this hierarchy of minority interests was motivated by political concerns about relations with Russia, Europe’s “most powerful neighbor and main energy supplier.” This suggests that the EU’s interest in maintaining good external relations outweighs its concerns for the objective protection of minorities. Sasse suggests that a lack of commitment to the improvement of minority concerns is evidenced by insufficient financial support. The PHARE Program (Poland and Hungary: Assistance for Restructuring their Economies), established in 1989 to assist Poland and Hungary with their economic development, was expanded in 1997 to fund pre-accession priorities and objectives in all ten of the Central and Eastern European applicant states. PHARE was the main financial instrument by which applicant states funded and implemented pre-accession policy. Sasse’s analysis of PHARE funding shows that during the enlargement, less than one percent of the total funds distributed were applied to the implementation of minority protection policy. Thus, while the EU

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102 For information on the Decade of Roma Inclusion, see [http://www.romadecade.org/](http://www.romadecade.org/)
103 Hughes and Sasse, p. 16.
105 Ibid.
made a nominal commitment to minority protection, it stopped short of allocating the funds which would have allowed the policies to be effectively implemented.

Many have criticized the accession process for its reliance on external organizations to clarify standards and make recommendations. In particular, the OSCE has played a major role in providing information to the European Commission for its Regular Reports. This collaboration in and of itself is certainly not the source of contention; the OSCE’s High Commissioner on National Minorities mandate is specifically to monitor and communicate issues regarding national minorities and security concerns. Rather, the concern lies with the potential that political actors may have too much influence in the accession process. The Regular Reports combine information received from a number of European sources, including the Council of Europe, the OSCE, non-governmental organizations, and EU member states. There is a lack of transparency in the incorporation of these sources into the monitoring reports and the weight given to each. Thus, the actual importance of the assessment of the OSCE or the Council of Europe is unknown, but political agendas can and do play a major role in these organizations’ recommendations.

Michael Johns notes that the OSCE has developed a tendency of focusing its investigations exclusively on Central and Eastern Europe. All of the recommendations for specific countries made by the high commissioner on national minorities have been from that region in particular. He suggests that this imbalance is due precisely to the fact that,

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107 Hughes and Sasse, p. 15.
through the accession process, the OSCE has established greater influence in that region than in Western states. Johns further suggests that the OSCE is unwilling to establish permanent missions for investigation in Western states (by whom it is largely funded) in order to avoid “biting the hand that feeds it.”\textsuperscript{108} Thus, the role of political actors and organizations has not only distorted the assessment of minority issues during the accession process, but has also skewed the direction of future monitoring and investigation.

Deciding when a candidate has satisfactorily fulfilled the negotiation requirements should be, in theory, the point at which the EU acquis has been fully adopted by the state. Of course, this is impossible due to the weaknesses of the process discussed above. Ultimately, negotiations are only concluded when a political decision is made by EU leaders that a candidate has “done enough”, and until that decision is made, the European Union and other political actors in Europe have considerable leverage over the affairs of that state.\textsuperscript{109} The process of assessing compliance with the minority condition illustrates precisely how the politicized structure of EU accession has overshadowed the alleged objective of minority protection.

Minority Protection Post-Accession

It has been demonstrated that the impact of “Europeanization” through conditionality has primarily been effective only in states where external pressures

\textsuperscript{108} Johns, p. 689.
\textsuperscript{109} Vachudova, p. 125.
coincided with internal support for the changes. In the case of minority protection, this was rarely the case due to the incoherence and inconsistency of the external pressures. After the enlargement in 2004 and 2007, it was unclear whether the commitment to uphold the new “norms” of minority protection would continue in the new member states. Scholars and legal experts predicted two possible scenarios. One possibility is that the new member states, free from formal (and frequent) scrutiny and no longer held to higher standards than their western neighbors, will lapse into more laissez-faire policies and less actively promote the protection of minorities. The alternative is that the standards advocated throughout the accession process and articulated repeatedly in the Regular Reports will actually cause a “boomerang effect” wherein standards throughout the European Union will actually improve based on greater international attention and increased dialogue about the importance of minority protection. Indeed, the scrutiny of the Central and Eastern European states has led some in Europe to question the existing standards for protection. In a speech in 2002, the former High Commissioner on National Minorities Rolf Ekeus declared that “the standards on which the Copenhagen criteria are based should be universally applicable within and throughout the EU, in which case they should be – equally and consistently – applied to all Member States.”

111 As of this writing, the accession negotiations with the current candidates (Croatia, Iceland, Macedonia and Turkey) and potential candidates (Bosnia, Montenegro, Serbia, Albania and Kosovo) continue to investigate and report on issues under the minority protection condition.
It is still too early to adequately assess how the new member states have continued the promotion of minority protection. As Sadurski suggests, it may well be that future developments in minority protection may not take either extreme.\footnote{Sadurski (2008)\@} Nevertheless, there have been many examples of states failing to follow through with commitments made during the accession process. Latvia was repeatedly criticized in the Regular Reports for restrictive citizenship and language laws that denied certain rights to “Russian-speakers.” These policies were gradually amended during the accession process and ultimately did not prohibit Latvia from becoming a member of the EU in 2004. However, as of 2007, a full 17\% of the residents in Latvia were not citizens, suggesting that the actual impact of European pressures was limited.\footnote{Sasse (2008), p. 848.\@} Sasse notes that the adoption of Slovakia’s language law in 1999 was a solid example of the successful implementation of recommendations in the Regular Reports. In 2009, however, the law was amended to regulate the use of the state language (thereby restricting the use of others) at the risk of steep penalties.\footnote{Vaskova, Zuzana. (28 September 2009) “Slovakia’s Controversial Language Law.” EU Reporter.\@} This amendment has been sharply criticized by international observers (as well as Slovakia’s Hungarian minority) as a violation of EU standards, but it was dismissed by the European Parliament as a “bilateral” issue.\footnote{Press Release. (22 September 2009). “Buzek discusses Slovak language law with Pavol Paška.” The President of the European Parliament.\@} Thus, not only is Slovakia backsliding on earlier commitments to minority protection, but European leaders are either indifferent or simply choosing not to get involved. Unfortunately, it appears that international interest in minority protection has waned significantly post-accession.
The attention to minority issues during the European Union’s eastward enlargement led many to interpret the move as a new commitment to minority protection in Europe.\textsuperscript{118} However, despite the emphasis on minority protection during the accession process, the European Union has consistently failed to promote similar standards of minority protection in European-wide treaties. Significantly, in the Treaties of Accession in 2003 and 2005 which offered EU membership to the candidate countries, there was no mention of minority protection, in spite of its considerable importance during the accession process.

Perhaps the greatest failure to establish minority protection as an internal European priority came with the adoption of the Treaty of Lisbon, which entered into force in December 2009 and amended the Treaty of the European Union. Article 1a declares that “The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.”\textsuperscript{119} Thereafter, there is no mention of minority rights or minority protection. Article 6 “recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union” and makes them legally binding within the Treaty. The Charter includes provisions that protect against discrimination on any grounds including membership in a national minority and respect for cultural, linguistic, and religious diversity.\textsuperscript{120} These statements affirm general EU

\textsuperscript{120} Charter of Fundamental Rights of the European Union, Articles 21.1 and 22.
policies of equality and respect, but go no further. Thus, the Treaty of Lisbon failed to provide anything relevant to minority protection that could be legally translated into practice. This substantiates allegations that the protection of minorities remains a low priority for internal European Union policy.

After losing the leverage of accession in 2004 and 2007, the EU has had no formal role in setting standards for minority protection in the new member states, and what role they should and will play in the future is uncertain. Bruno de Witte argues that the EU should have no role in “detailed standard-setting” in the future. Aside from the provisions outlined by other organizations (for example, by the Council of Europe’s Framework Convention), states should be left to define their own minority policy. Despite this, he maintains the EU still holds considerable “constitutional resources” that can exert influence on member states. With the provisions of the Charter on Fundamental Rights as a legal basis (now recognized in the Treaty of Lisbon), the EU has some support for a broad agenda of minority protection though the incorporation of minority concerns into cultural diversity and educational policies. However, this does little for the promotion of a well-defined universal framework of minority protection. The advancement of minority protection policy under the umbrella of the EU’s general human rights policy is controversial. The European Union was not envisioned as a human rights organization, and its interest in human rights developed alongside its political interests. Moreover, as this paper has shown, the attention to minority rights during the accession

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121 von Toggenburg, p. 103.
process has been primarily of a political nature and often not driven by human rights concerns.
Conclusion

The League of Nations devised the Minorities Treaties at the end of World War I in an attempt to pre-empt hostilities resulting from the redrawing of European borders. The European Union established the minority condition for European membership for the same reason. In both cases, the concerns about minority conflicts were certainly not unwarranted and were in fact reinforced by contemporary regional minority conflicts (for example, the Russian Civil War and the 1990s Yugoslav Wars). Despite the good intentions of the great powers (and later the EU), the provision of minority protection became a means by which the more powerful western states could exert control over the newly established or independent eastern states, and the minority protection policies that developed were weakened by various elements of this arrangement. By comparing the two periods, we see a pattern of deficits that resulted from the external application of minority protection policy.

First, both systems were undermined by a lack of universality because the imposing powers never consented to submit themselves to the same standards and mechanisms for compliance. The great powers of the League of Nations viewed themselves as more civilized than the emerging eastern states and maintained that, where they existed, their own minorities were sufficiently managed without the meddling of the international community. Likewise, many members of the EU refuse to make even minimal commitments to minority protection and have still not ratified the Framework Convention on National Minorities. The procedures for assessing compliance with the
EU minority criteria was judged by states that were not held to the same standards or the same level of scrutiny. Similarly, under the League of Nations system, states that were not held to any standards of minority protection could make complaints about the treatment of minorities in a Minorities State. In this way, in both systems it was possible for more powerful states to utilize the asymmetrical standards of minority protection as political leverage.

Second, because the provisions of minority protection were not universal, they lacked existing standards and benchmarks for performance. As a result, their efficacy was hindered by vague and imprecise language. The term “minority” was not adequately defined in the League of Nations Minorities Treaties or the Copenhagen criteria. In addition, what was intended by “protection” of minorities is not sufficiently defined. As a result, assessments of compliance were made ad hoc and varied significantly. The provisions in the League’s Minorities Treaties contained indeterminate phrases that did not provide specific objectives, and the European Commission’s Regular Reports contained similarly ambiguous phrases that did not quantifiably evaluate compliance with the minority condition.

Third, both of the minorities protection systems were influenced to varying degrees by political interests. Consequently, the application of minority protection was inconsistently applied even among the states that were bound by it. The EU Regular Reports focused on minorities who were less sensitive politically, such as the Roma, or on minorities with whose powerful kin-states good relations were important. Specific minority groups were similarly designated in the League’s Minorities Treaties, making
the protection of a certain minority variable even from one Minorities State to another. In
the same way, certain issues (such as language rights or education) were given specific
precedence over others in both the Minorities Treaties and the Regular Reports.
Consequently, minority protection under both systems varied widely according to the
directives of the systems’ creators.

The League of Nations minorities system was a failure.\textsuperscript{123} This was not only due
to the collapse of the League itself, but also because the structure imposed by the western
powers was inadequate and fell short of providing a stable system for the protection of
minorities. On the other hand, minority protection in the EU is still very much evolving.
At this point, one could speculate on its potential failure or applaud it for its potential
success, but both would be premature. The achievements of the EU in promoting the
protection of minorities since 1990 have been unprecedented in their scope and have, at
the very least, contributed to a greater awareness of minority issues in the international
sphere. This being said, minority protection has still not reached anything resembling
universality. No major national conflicts have erupted under the EU system since it
began, but that in and of itself is not necessarily a testament to its success. The minority
condition of the accession criteria is no longer applicable to the new member states in
Europe. However, the past influence of the greater European community will continue to
affect the arena of minority protection, both through the policies adopted during the
accession process and through the dynamics that were established between the new
members and the European Union.

\textsuperscript{123} See, for example: Fink (2004); Jackson Preece (1998); Raitz von Frentz (1999)
So, what has the politicized incentive structure of the EU accession process done to address minority concerns in Central and Eastern Europe? Will Kymlicka notes:

These minimal international standards are not being treated as the preconditions to negotiate the forms of power-sharing and self-government appropriate to each state democratically but are viewed instead as eliminating the need to adopt – or even to debate – forms of power-sharing and self-government. When minority organizations raise questions about substantive minority rights, post-communist states respond: ‘we meet all international standards’, as if that forecloses the question of how states should treat their minorities.124

Indeed, meeting “international standards” became the priority and has subverted more productive debates on how to adequately address minority issues related to rights and status. At the EU level, as it was at the League of Nations, the promotion of minority rights has typically been concerned with the maintenance of democratic stability and internal security, and for the EU candidate states, the concern was compliance with the prescribed conditions; consequently, the human rights based agenda has often been overlooked in the process.

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51


*Treaty between the Principal Allied and Associated Powers and Poland*, signed at Versailles, 28 June 1919, 112 Great Britain T.S. 232.

*Treaty between the Principle Allied and Associate Powers and Romania*, signed at Paris, 9 December 1919. 5 L.N.T.S. 335 (1921).


Appendix A: Timeline of Events, Treaties, Declarations and Documents

1919:  *“Little” Treaty of Versailles (Polish Minority Treaty), LoN
        *Treaties of St Germain-en-Laye (Czechoslovakia, the Serb-Croat-Slovene State, Austria), LoN
        *Treaty of Neuilly-sur-Seine (Bulgaria), LoN
        *Treaty of Paris (Romania), LoN
1920:  *Treaty of Trianon (Hungary), LoN
1921:  *Declaration Concerning the Protection of Minorities in Albania, LoN
        *Agreement between Sweden and Finland regarding the Aaland Islands, LoN
1922  *Declaration Concerning the Protection of Minorities in Lithuania, LoN
        *Convention between Germany and Poland relating to Upper Silesia, LoN
1923:  *Treaty of Lausanne (Turkey; binding Greece to reciprocal obligations), LoN
        *Declaration Regarding the Protection of Minorities in Latvia, LoN
        *Declaration on Minorities by the Representative of Estonia, LoN
1939:  *Final meeting of the League of Nations Council
1945:  *Charter of the United Nations
1948:  *Universal Declaration on Human Rights, UN
1975:  *Helsinki Final Act, CSCE
1990:  *Copenhagen Document, CSCE
1992:  *Treaty of the European Union (Maastricht Treaty); no mention of minority protection

*European Charter for Minority Languages, COE

*Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, UN

1993:  *Vienna Declaration and Programme of Action, UN

*Copenhagen Criteria established as requirements for EU membership


1997:  *Negotiations began for the fifth enlargement of the European Union

2000:  *Charter of Fundamental Rights of the European Union, EU

2003:  *Treaty of Accession signed, EU; no mention of minority protection

2004:  *Poland, Czech Republic, Slovakia, Hungary, Estonia, Latvia, Lithuania, Slovenia, Malta and Cyprus joined the EU

2007:  *Romania and Bulgaria joined the EU

2009:  *Treaty of Lisbon, amended the previous Treaties of the European Union; no mention of minority protection

COE: Council of Europe

CSCE: Conference on Security and Co-operation in Europe

EU: European Union

LoN: League of Nations

UN: United Nations