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Minorities under International Law: How protected they are?

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Preface

The aim of this essay is to provide its readers with a substantial but yet critical analysis of the status of minorities under International Law. For that purpose the introductory part shall provide a general framework concerning the conception of minorities in general and a view on the International Law system. The first half of the main part shall contain –chronologically evolving- a historic perspective -as far as laws/law systems and politics are concerned- in relevance to minority protection and afterwards a focus on the leading thus most active international organizations and protective ''regimes'' –namely a) the Council of Europe, b) OSCE, c) United Nations and d) EU. The second half of the main part shall include some characteristic case studies, their judicial decisions and their impact. The last but not least part of the essay includes comments, critical evaluation and conclusion remarks.

Introduction

Minorities protection –an issue still evolving legally- is being enforced mostly by bilateral or multilateral international agreements. Under **international and domestic law** minorities indulge the opportunity for equal rights or even special protection in proportion to the majority. As the years go by, minorities' protection issues have succeeded in gaining constant attention and progress – at least at theoretical level. Four characteristic examples of that progress are the Council of Europe, OSCE and the relevant action of the United Nations and the European Union.

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The ''more theory than action'' framework reveals that the lack of central international governing system, the inadequacy of international law framework and simultaneously having nationalism being the dominant ideology which results in the inability to protect minorities and their rights.

Consequently, one of the substantial problematic of the international community is the fundamental concern to identify ways of enhancing the effectiveness of International Law in general and international human rights law in particular, in tackling the complexities of the minority question[2]. The notion of national minority is becoming more comprehensive, progressively expanding to new minorities under the influence of International Law.

In order to understand the terminology and the interaction among the actors, one can suppose that there is an existing interaction between the **majority**; the **minority**; and the **lobby actors**.

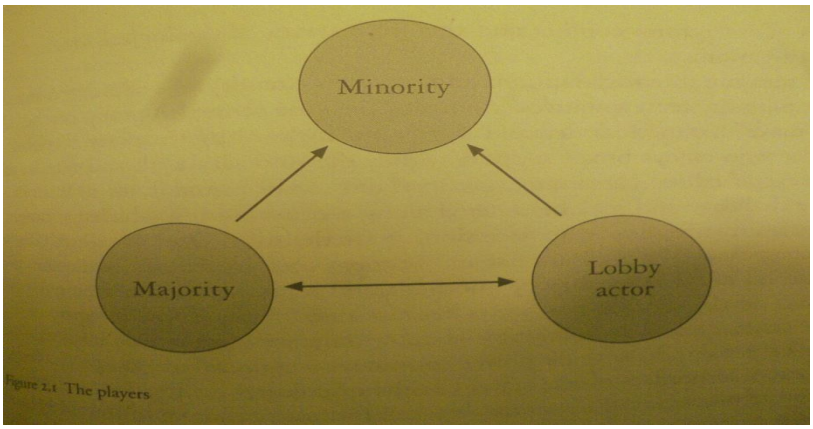

Figure 2.1 The players

As **minority** one can define that it is a non dominant group of citizens of a state that are usually numerically less and have different ethnic, religious or linguistic characteristics than the majority of the population, that are aware of having a different identity and are willing to prevail it. They are supporting each other, have common will for survival and aim at the substantial and legal equality of rights with the majority[3].

[2] Gaetano PENTASSUGLIA, ''Minorities in International law: An introductory study'', European Centre for Minority Issues, 2002
[3] M.KOPPA, ''Minorities in post-communist Balkans: central policies-minorities reactions'', IDIS Library, Athens, 1997

Majority, on the other end of the spectrum, refers to the group that exercises political dominance in the state- even if it is not in the numerical majority[4], while **lobby actors** are the internal and external pressures and factors that affect.

The concept of minorities has existed for time, and until the 1960s and 1970s the term generally referred to national, ethnic or religious minorities in heterogeneous nation-states. In the 1960s and 1970s, the range of characteristics used to identify minority groups widened (e.g., gender, disability, sexual orientation), and the practice of defining minority groups primarily on the basis of power and status disadvantages became common[5], as the world took the passage to Nationalism and state creation. Several other definitions than the one mentioned above though for the term minority have been shared over time.

At this point one should add that in its early years, the **United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities** attempted to agree a definition, but did not succeed. Its suggested definition in 1950 was as follows:

I ''-the term minority includes only those non-dominant groups in a population which possess and wish to preserve stable ethnic, religious or linguistic traditions or characteristics markedly different from those of the rest of the population;''
II ''-such minorities should properly include a number of persons sufficient by themselves to preserve such traditions or characteristics;'' and
III ''-such minorities must be loyal to the State of which they are nationals.[6]''

Latterly two other definitions have come to the fore. The first is that of Professor Capotorti, a special Rapporteur of the Sub-Commission.

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[4] E.K.JENNE, ''Ethnic Bargaining: The paradox of minority empowerment'', Cornell university press, 2007
[5] http://science.jrank.org/pages/10247/Minority-Widening-Definition.html
[6] UNDOC E/CN. 4/641 Annex I, Resolution II,
Dr Patrick Thornberry, A Minority Rights Group Report ***''Minorities and Human Rights Law''*** , 1991 pg. 6/7

He defined Minority as:''a group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members- being nationals of the State- posses ethnic, religious or linguistic characteristics differing from the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language.''

A revised version of this was submitted by Canada's Jules Deschenes to the Sub-Commission in 1985:

''a group of citizens of a State, constituting a numerical minority and in a non-dominant position in a State, endowed with ethnic, religious or linguistic characteristics which differ from those of the majority of the population, having a sense of solidarity with one another, motivated, if only implicitly, by a collective will to survive and whose aim is to achieve equality with the majority in fact and in law[7].''

''Old'' and ''New'' Minorities

Although the <<''old''-''new'' >> division of minorities doesn't exist formally, in the letter of law, and all minorities are equal in principle, it is very present in true social and political domain[8]. The concept of national minority is traditionally understood in a European context as referring to ethnic groups living in a state, that are linked to a nation that has constituted it's own state, so-called "kin-state". Since the Minority Treaties, the term was also used for the Jewish people and more recently for other groups. Whereas, numerous scholars have defined national minorities in opposition with immigrant ethnic groups as historical communities occupying a given territory or homeland and sharing a distinct language and culture. The term ''new'' minorities has been generally used in order to refer to the minority groups resulting from post World War II immigration.

It is of great interest to mention the theory of ''Multicultural citizenship'', that insists upon the distinction between national minorities -as autochthonous groups- and immigrant ethnic minorities, in arguing that assimilation was imposed upon the first but the latter have chosen to adopt a new language and culture[9].

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[7] UNDOC E/CN.4/ Sub.2/1985/31
Dr Patrick Thornberry, A Minority Rights Group Report ***''Minorities and Human Rights Law''*** , 1991 pg. 7

[8] http://www.mediaplan.ba/servis/servis03_en.pdf

[9] Will KIMLICKA (1995), ''**Multicultural Citizenship: a Liberal Theory of Minority Rights''**, Oxford University Press, p. 61

Having obtained a clearer picture over the term minority and a general view on the International Law system, it should be useful to present the historical perspective concerning the evolution of International Law over the minorities' issue. For that purpose, the laws/law's systems and politics framework shall be unfolded. This includes the most important international (multilateral) Treaties and an analysis on each of the most active and respectful international organizations that aim to serve minorities protection norm and their policies as well. In order to have a constructive insight to the minority issue today, selected relevant case studies and their impact shall follow in the second part of the analysis.

Part A

What has Law to do with Minorities?

Law and the legal system together provide an authoritative guide for human behaviour and provide for enforcement by official organs in society. In this respect Law and the legal system are mechanisms to ensure conformity by individuals and groups to the behavioural standards incorporated into the current rules. Law is therefore instrumental in character. It can be seen as the most formal mechanism of social control when compared with pressures to conformity with political ideals or with conventional behavioural standards supported by groups or individuals.

As an agent of social control Law acts both **passively and actively**: passively in maintaining the existing order and conformity to traditional norms; and actively by providing a process for implementing goals and values of the past and present political power holders and for facilitating change. Legal laws can be described as management agents for suppressing, confining, limiting, guiding, directing, standardizing, integrating, adapting and changing behaviour.

At the same time the legal system provides machinery for groups and individuals to modify the system itself and the standards it incorporates.

One of the most important comments mentioned in the introduction, was the fact that although the perception of minorities existed before 60's/70's it mostly then was linked to ethnic/national and religious minorities.

Later on the range of characteristics used to identify minority groups widened (e.g., gender, disability, sexual orientation).

Under that conception of the term minority one can define a variety of minority groups even within the most conceptualised homogeneous nations, namely: women, indigenous people, children, persons with disabilities, refugees, migrant workers, prisoners, homosexuals etc. Under the wider conception of the term minority **all States have minorities**[10].

Table of International Conventions (till 1995)[11]

1899	Hague Convention
1907	Hague Convention
1910	Hague Convention concerning the Laws and Customs of War on Land (1910) UKTS
1947	Universal Postal Convention
1948	Convention on the Prevention and Punishment of the crime of Genocide
	ILO Convention concerning Freedom of Association and Protection of the Right to Organize
1949	Convention for the Suppression of the Traffic in persons and of Exploitation of Prostitution of others
1949	Geneva Convention for the Amelioration of the Condition of Wounded and Sick and Shipwrecked Members of Armed Forces at Sea
	Geneva Convention for the Amelioration of the Condition of Wounded and Sick and Shipwrecked Members of Armed Forces at Field
	Geneva Convention Relative to the Protection of Civilian persons in time of War
	Geneva Convention Relative to the Protection of Victims of War
1950	European Convention for the protection of Human Rights and Fundamental Freedoms

[10] Palley Claire, ''Constitutional Law and Minorities'', Minority Rights Group, 1982, pg .3
[11] R.Wallace, ''International Human Rights: Text and Materials'', London Sweet and Maxwell, 1997

1951 Convention relating to the Status of Refugees

1952 Convention on the political rights of women

1954 Hague Convention for the protection of Cultural property in the event of Armed conflict

1957 Convention on the Nationality of Married women

1960 Convention Against Discrimination in Education

1966 International Convention on the Elimination of all forms of Racial Discrimination

1966 International Covenant on Civil and Political Rights

International Covenant on Economic, Social and Cultural Rights

1968 Convention of the Non Applicability of Statutory Limitations of War Crimes Against Humanity

1974 Organization of African Unity Convention

1975 International Labour Conference Convention concerning Migrations in Abusive Conditions and the promotion of Equality of Opportunity and Treatment of Migrant workers

1979 Convention on the Elimination of all Forms of Discrimination Against Women

1980 Convention on Prohibitions or Restrictions on the use of certain Conventional Weapons which may be deemed to be excessively injurious Or to have indiscriminate effect

1984 Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or punishment

1987 European Convention on the prevention of Torture and Inhuman Or Degrading Treatment or Punishment

1989 Convention Concerning Indigenous and Tribal persons in Independent Countries

1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of their family

1993 Convention on Protection of Children and cooperation in Respect of Inter-Country Adoption

1993 Proposed Convention against Sexual Explanation Arts

1995 Convention on the Rights of the Child

Table of United Nations Declarations (till 1995)[12]:

1948	Universal Declaration of Human Rights
1957	Declaration of the Rights of the Child
1960	Declaration on the Elimination of All Forms of Racial Discrimination
1967	Declaration on Territorial Asylum
1970	Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations
1975	Declaration on the protection of all persons from being Subjected To Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
1976	International Covenant on Civil and Political Rights
1981	Declaration on the Elimination of all Forms of Intolerance and of Discrimination based on Religion or Belief
	Declaration on the Human Rights of Individuals who are not Nationals Of the country in which they Live
1985	Declaration on the right of Development
1990	World Declaration on Education for all
1992	Cairo Declaration of principles of International Law on Compensation To refugees
	Declaration on the protection of all persons from Enforced Disappearance
	Declaration on the rights of persons belonging to National or Ethnic, Religious or Linguistic Minorities
1993	Declaration on the Elimination of all Forms of Religions Intolerance
	Vienna declaration and Program of Action
1994	Declaration on the Elimination of Violence Against Women
	Draft Declaration on the Rights of Indigenous people
1995	Beijing Declaration of Human Rights and Women

The ones considered most important- due to the number of members recognizing them, their power of binding or/and originality- shall be analyzed.

[12] *R.Wallace,* ***"International Human Rights: Text and Materials"****, London Sweet and Maxwell, 1997*

1948 Universal Declaration of Human Rights

> The Universal Declaration of Human Rights (UDHR) is a milestone document in the history of human rights. Drafted by representatives with different legal and cultural backgrounds from all regions of the world, the Declaration was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 General Assembly resolution 217 A (III) as a common standard of achievements for all peoples and all nations. It sets out, for the first time, fundamental human rights to be universally protected[13].

Fifty years ago, the United Nations General Assembly adopted the Universal Declaration of Human Rights as a bulwark against oppression and discrimination. In the wake of a devastating world war, which had witnessed some of the most barbarous crimes in human history, the Universal Declaration marked the first time that the rights and freedoms of individuals were set forth in such detail. It also represented the first international recognition that human rights and fundamental freedoms are applicable to every person, everywhere. In this sense, the Universal Declaration was a landmark achievement in world history. Today, it continues to affect people's lives and inspire human rights activism and legislation all over the world.

The Universal Declaration is remarkable in two fundamental aspects. In 1948, the then 58 Member States of the United Nations represented a range of ideologies, political systems and religious and cultural backgrounds, as well as different stages of economic development. The authors of the Declaration, themselves from different regions of the world, sought to ensure that the draft text would reflect these different cultural traditions and incorporate common values inherent in the world's principal legal systems and religious and philosophical traditions. Most important, the Universal Declaration was to be a common statement of mutual aspirations -- a shared vision of a more equitable and just world.

The success of their endeavour is demonstrated by the virtually universal acceptance of the Declaration. Today, the Universal Declaration, translated into nearly 250 national and local languages, is the best known and most cited human rights document in the world.

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[13] http://www.ohchr.org/en/udhr/pages/introduction.aspx

The foundation of international human rights law, the Universal Declaration serves as a model for numerous international treaties and declarations and is incorporated in the constitutions and laws of many countries.

For the first time in history, the international community embraced a document considered to have universal value -- "a common standard of achievement for all peoples and all nations". Its Preamble acknowledges the importance of a human rights legal framework to maintaining international peace and security, stating that recognition of the inherent dignity and equal and inalienable rights of all individuals is the foundation of freedom, justice and peace in the world. Elaborating the United Nations Charter's declared purpose of promoting social progress and well-being in larger freedom, the Declaration gives equal importance to economic, social and cultural rights and to civil rights and political liberties, and affords them the same degree of protection. The Declaration has inspired more than 60 international human rights instruments, which together constitute a comprehensive system of legally binding treaties for the promotion and protection of human rights.

The Universal Declaration covers the range of human rights in 30 clear and concise articles. The first two articles lay the universal foundation of human rights: human beings are equal because of their shared essence of human dignity; human rights are universal, not because of any State or international organization, but because they belong to all of humanity. The two articles assure that human rights are the birthright of everyone, not privileges of a select few, nor privileges to be granted or denied. Article 1 declares that "all human beings are born equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood." Article 2 recognizes the universal dignity of a life free from discrimination. "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

The first cluster of articles, 3 to 21, sets forth civil and political rights to which everyone is entitled. The right to life, liberty and personal security, recognized in Article 3, sets the base for all following political rights and civil liberties, including freedom from slavery, torture and arbitrary arrest, as well as the rights to a fair trial, free speech and free movement and privacy.

The second cluster of articles, 22 to27, sets forth the economic, social and cultural rights to which all human beings are entitled. The cornerstone of these rights is Article 22, acknowledging that, as a member of society, everyone has the right to social security and is therefore entitled to the realization of the economic, social and cultural rights "indispensable" for his or her dignity and free and full personal development. Five articles elaborate the rights necessary for the enjoyment of the fundamental right to social security, including economic rights related to work, fair remuneration and leisure, social rights concerning an adequate standard of living for health, well-being and education, and the right to participate in the cultural life of the community.

The third and final cluster of articles, 28 to 30, provides a larger protective framework in which all human rights are to be universally enjoyed. Article 28 recognizes the right to a social and international order that enables the realization of human rights and fundamental freedoms. Article 29 acknowledges that, along with rights, human beings also have obligations to the community which also enable them to develop their individual potential freely and fully. Article 30, finally, protects the interpretation of the articles of the Declaration from any outside interference contrary to the purposes and principles of the United Nations. It explicitly states that no State, group or person can claim, on the basis of the Declaration, to have the right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth in the Universal Declaration[14].

International Covenant on Civil and Political Rights

Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March1976, in accordance with Article 49.

The Covenant follows the structure of the UDHR and ICESCR, with a preamble and fifty-three articles, divided into six parts.

Part 1 (Article 1) recognises the right of all peoples to self-determination, including the right to "freely determine their political status", pursue their economic, social and cultural goals, and manage and dispose of their own resources.

[14] http://www.un.org/rights/HRToday/declar.htm

It recognises a negative right of a people not to be deprived of its means of subsistence, and imposes an obligation on those parties still responsible for non-self governing and trust territories (colonies) to encourage and respect their self-determination.

Part 2 (Articles 2 - 5) obliges parties to legislate where necessary to give effect to the rights recognised in the Covenant, and to provide an effective legal remedy for any violation of those rights. It also requires the rights be recognised "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status," and to ensure that they are enjoyed equally by women. The rights can only be limited "in time of public emergency which threatens the life of the nation," and even then no derogation is permitted from the rights to life, freedom from torture and slavery, the freedom from retrospective law, the right to personhood, and freedom of thought, conscience and religion.

Part 3 (Articles 6 - 27) lists the rights themselves. These include rights to

- physical integrity, in the form of the right to life and freedom from torture and slavery (Articles 6, 7, and 8);
- liberty and security of the person, in the form of freedom from arbitrary arrest and detention and the right to *habeas corpus* (Articles 9 - 11);
- procedural fairness in law, in the form of rights to due process, a fai and impartial trial, the presumption of innocence, and recognition as a person before the law (Articles 14, 15, and 16);
- individual liberty, in the form of the freedoms of movement, thought, conscience and religion, speech, association and assembly, family rights, the right to a nationality, and the right to privacy (Articles 12, 13, 17 - 24);
- prohibition of any propaganda for war as well as any avocacy of national or religious hatred that constitutes incitement to discrimination, hostility or violence by law (Article 20);
- political participation, including the right to join a political party and the right to vote (Article 25);
- Non-discrimination and equality before the law (Articles 26 and 27).

Many of these rights include specific actions which must be undertaken to realise them.

Part 4 (Articles 28 - 45) governs the establishment and operation of the Human Rights Committee and the reporting and monitoring of the Covenant. It also allows parties to recognise the competence of the Committee to resolve disputes between parties on the implementation of the Covenant (Articles 41 and 42).

Part 5 (Articles 46 - 47) clarifies that the Covenant shall not be interpreted as interfering with the operation of the United Nations or "the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources".

Part 6 (Articles 48 - 53) governs ratification, entry into force, and amendment of the Covenant[15].

The most important though of the articles of the Covenant is Article 27: this Article concerns the obligation for all states to take all necessary measures to protect minorities. Nevertheless its weakness is that the decision whether a minority exists or not is up to the states judgement, a problematic which shall be criticised in the end of the essay.

Charter for Regional or Minority Languages

This Treaty –one of the most important texts out of the new international system- is open for signature by the member States of the Council of Europe, was signed in Strasbourg on 1992 and entered into force in 1998.

This treaty aims to protect and promote the historical regional or minority languages of Europe. It was adopted, on the one hand, in order to maintain and to develop the Europe's cultural traditions and heritage, and on the other, to respect an inalienable and commonly recognised right to use a regional or minority language in private and public life.

[15] Sieghart, Paul (1983). ''**The International Law of Human Rights''**. Oxford University Press. p. 25. http://en.wikipedia.org/wiki/International_Covenant_on_Civil_and_Political_Rights

First, it enunciates objectives and principles that Parties undertake to apply to all the regional or minority languages spoken within their territory: respect for the geographical area of each language; the need for promotion; the facilitation and/or encouragement of the use of regional or minority languages in speech and writing, in public and private life (by appropriate measures of teaching and study, by transnational exchanges for languages used in identical or similar form in other States).

Further, the Charter sets out a number of specific measures to promote the use of regional or minority languages in public life. These measures cover the following fields: education, justice, administrative authorities and public services, media, cultural activities and facilities, economic and social activities and transfrontier exchanges. Each Party undertakes to apply a minimum of thirty-five paragraphs or sub-paragraphs chosen from among these measures, including a number of compulsory measures chosen from a "hard core". Moreover, each Party has to specify in its instrument of ratification, acceptance or approval, each regional or minority language, or official language which is less widely used in the whole or part of its territory, to which the paragraphs chosen shall apply.

Enforcement of the Charter is under control of a committee of experts which periodically examines reports presented by the Parties[16].

Framework Convention on the protection of National Minorities

The Framework Convention on the protection of National Minorities, drawn up within the Council of Europe by Ad Hoc committee for the protection of National minorities (CAHMIN) under the authority of the committee of Ministers, was adopted on 1994 and opened for signature by the member States of the Council of Europe on 1995.

Non member States may also be invited by the Committee of Ministers to this instrument. It is the first binding multilateral instrument devoted to the protection of national minorities in general. Its aim is to specify the legal principles which States undertake to respect in order to insure the protection of national minorities.

[16] http://conventions.coe.int/Treaty/en/Summaries/Html/148.htm

It has thereby given effect to the Vienna Declaration's call for the political commitments adopted by the Organization on Security and Co-operation in Europe (OSCE) to be transformed, to the greatest possible extent, into legal obligations. It should be pointed out that the Framework Convention does not contain a definition of the notion of ''national minority''. Furthermore, the implementation of the principles the Convention sets shall be done through national legislation and appropriate governmental policies. The structure of the Convention is such: Apart from its preamble it contains an operative part divided into five sections:

Section I: contains provisions, which in a general fashion stipulate certain fundamental principles which may serve to elucidate the other substantive provisions of the Framework Convention.
Section II: contains a catalogue of specific principles.
Section III: contains various provisions concerning the interpretation and application of the convention.
Section IV: contains provisions on monitoring of the implementation of the Framework Convention.
Section V: contains the final clauses which are based on the model final clauses for conventions and agreements concluded within the Council of Europe[17].

The Charter of Fundamental Rights of the European Union

In June 1999, the Cologne European Council concluded that the fundamental rights applicable at European Union (EU) level should be consolidated in a charter to give them greater visibility. The heads of state/government aspired to include in the charter the general principles set out in the 1950 European Convention on Human Rights and those derived from the constitutional traditions common to EU countries. In addition, the charter was to include the fundamental rights that apply to EU citizens as well as the economic and social rights contained in the Council of Europe Social Charter and the Community Charter of Fundamental Social Rights of Workers. It would also reflect the principles derived from the case law of the Court of Justice and the European Court of Human Rights[18].

[17] http://www.coe.int/t/dghl/monitoring/minorities/default_en.asp
''about FCNM''
[18] http://europa.eu/legislation_summaries/justice_freedom_security/combating_discrimination/l33501_en.htm

These rights are divided into six sections:

- Dignity
- Freedoms
- Equality
- Solidarity
- Citizens' rights
- Justice[19]

The charter was drawn up by a convention consisting of a representative from each EU country and the European Commission, as well as members of the European Parliament and national parliaments. It was formally proclaimed in Nice in December 2000 by the European Parliament, Council and Commission. In December 2009, with the entry into force of the Lisbon Treaty, the charter was given binding legal effect equal to the Treaties. To this end, the charter was amended and proclaimed a second time in December 2007.

Having gone through a brief historic background and a short analysis on each of some of the most important Covenants, it should be useful to underline and know better the background/action on the leading thus most active international organizations and protective ''regimes'' –namely a) the Council of Europe, b) United Nations, c) OSCE and d) EU.

The Council of Europe (COE)

The Council of Europe, based in Strasbourg (France), now covers virtually the entire European continent, with its 47 member countries. Founded on 5 May 1949 by 10 countries, the Council of Europe seeks to develop throughout Europe common and democratic principles based on the European Convention on Human Rights and other reference texts on the protection of individuals[20]. Human Rights-Democracy-Rule of Law are values for the foundations of a tolerant and civilised society and indispensable for European stability, economic growth and social cohesion. On the basis of these fundamental values, COE tries to find shared solutions to major problems such as terrorism, organised crime and corruption, cyber-crime, bioethics and cloning, violence against children and women, and trafficking in human beings.

[19] http://www.europarl.europa.eu/charter/default_en.htm
[20] http://www.coe.int/aboutCoe/index.asp?page=quisommesnous&l=en

Co-operation between all member states is the only way to solve the major problems facing society today[21].

Its activities concern a variety of issues: Human rights and Legal affairs, Democracy and Political Affairs, a Treaty Office, International Law, Terrorism, Social cohesion, Education, culture and heritage, youth and sport, Partial agreements, ransversal projects and Joint programmes with the European Union[22]. COE's operating institutions are: the Committee of Ministers, a Parliamentary Assembly, Congress of Local and Regional Authorities, theEuropean Court of Human Rights, a Commissioner for Human Rights and Conference of INGOs[23].

To have an insight of COE's action let us go through some key dates and events[24]:

5th May 1949: Creation opf the COE with the Treaty of London signed by ten (10) States (Benelux, Denmark, France, Ireland, Italy, Norway, Sweden, UK)

4th Nov. 1950: Signature in Rome of the Convention for the Protection of Human Rights of COE, first international legal instrument safeguarding human rights.

19th Dec. 1954: Signature of the European Cultural Convention, forming the framework of the COE's work in education, culture, youth and sport.

16th April 1956: Creation of the resettlement Fund (which is noe COE's development Bank), intended to help member States to finance social projects.

12th Jan. 1957: Creation of the Standing Conference of Local and Regional Authorities of Europe since 1994.

20th April 1959: Inauguration of the European Court of Human Rights.

18th Oct. 1961: Signature of the European Social Charter in Turin, as the economic and social contrepart of the European Convention on Human Rights.

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21 http://www.coe.int/aboutCoe/index.asp?page=nosObjectifs&l=en
22 http://www.coe.int
23 http://www.coe.int
24 http://www.coe.int/aboutCoe/index.asp?page=datesCles&l=en

28th Apr. 1983: Signature of the additional protocol for the abolition of death penalty.

28th Apr. 1987: Signature of the European Convention for the prevention of torture and inhuman or degrading treatment or punishment.

10th May 1990: Creation of the European Commission for Democracy through law.

8th Oct. 1993: First Summit of the COE's heads. The adopted declaration confirms the pan-European calling of the organization and defines new political priorities including the protection of national minorities, and the fight against all forms of racism, xenophobia, anti-Semitism and intolerance.

4th Apr. 1997: Signature of the European Convention on Human Rights and biomedicine.

1st Nov. 1998: Set up of a single permanent European Court of Human rights in Strasbourg under Protocol 11, replacing the existing system.

23rd Nov 2001: Signature of the Convention on Cybercrime, open for signature to non-European States. An additional protocol outlaws acts of racism and xenophobia through computer systems.

3rd May 2002: Protocol of abolishing death penalty under any circumstances.

3rd May 2005: Adoption of three major Conventions: Convention on the prevention of terrorism, Convention on laundering, search, seizure and confiscation on the proceeds from crime and on the financing of terrorism, Convention on action against trafficking in human beings.

25th Oct. 2007: Signature by 23 COE's members of the Convention of the protection of children against Sexual Exploitation and Abuse.

ECRI (European Commission

against Racism and Intolerance): is a body of the Council of Europe entrusted with the task of combating racism, racial discrimination, xenophobia, antisemitism and intolerance in greater Europe from the perspective of the protection of human rights, in the light of the European Convention on Human Rights, its additional protocols and related case-law. It shall pursue the following objectives:

- to review member states' legislation, policies and other measures to combat racism, xenophobia, antisemitism and intolerance, and their effectiveness;
- to propose further action at local, national and European level;
- to formulate general policy recommendations to member states;
- to study international legal instruments applicable in the matter with a view to their reinforcement where appropriate.

- One member of ECRI shall be appointed for each member state of the Council of Europe;
- The members of ECRI shall have high moral authority and recognised expertise in dealing with racism, racial discrimination, xenophobia, antisemitism and intolerance;
- The members of ECRI shall serve in their individual capacity, shall be independent and impartial in fulfilling their mandate. They shall not receive any instructions from their government[25].

The United Nations

The United Nations is an international organization founded in 1945 after the Second World War by 51 countries committed to maintaining international peace and security, developing friendly relations among nations and promoting social progress, better living standards and human rights. Due to its unique international character, and the powers vested in its founding Charter, the Organization can take action on a wide range of issues, and provide a forum for its 192 Member States to express their views, through the General Assembly, the Security Council, the Economic and Social Council and other bodies and committees.

[25] http://www.coe.int/t/dghl/monitoring/ecri/about/ECRI_statute_en.asp

The work of the United Nations reaches every corner of the globe. Although best known for peacekeeping, peace-building, conflict prevention and humanitarian assistance, there are many other ways the United Nations and its System (specialized agencies, funds and programmes) affect our lives and make the world a better place. The Organization works on a broad range of fundamental issues, from sustainable development, environment and refugees protection, disaster relief, counter terrorism, disarmament and non-proliferation, to promoting democracy, human rights, gender equality and the advancement of women, governance, economic and social development and international health, clearing landmines, expanding food production, and more, in order to achieve its goals and coordinate efforts for a safer world for this and future generations[26].

Some of the actions that United Nation takes concerning our topic are[27]:

Promoting Human Rights

Since the General Assembly adopted the Universal Declaration of Human Rights in 1948, the United Nations has helped to enact dozens of comprehensive agreements on political, civil, economic, social and cultural rights. By investigating individual complaints, the UN human rights bodies have focused world attention on cases of torture, disappearance, arbitrary detention and other human rights violations, and have generated international pressure on Governments to improve their human rights records.

Promoting Self-Determination and Independence

When the United Nations was established in 1945, 750 million people—almost a third of the world population—lived in non-self-governing territories dependent on colonial powers. The UN played a role in bringing about the independence of more than 80 countries that are now sovereign nations.

[26] http://www.un.org/en/aboutun/index.shtml
[27] http://www.un.org/un60/60ways/index.html

Ending Apartheid in South Africa

By imposing measures ranging from an arms embargo to a convention against segregated sporting events, the United Nations was a major factor in bringing about the downfall of the apartheid system. In 1994, elections in which all South Africans were allowed to participate on an equal basis led to the establishment of a multiracial Government.

Promoting Women's Rights

A long-term objective of the United Nations has been to improve the lives of women and empower them to have greater control over their lives. The UN organized the first-ever World Conference on Women (Mexico City, 1975), which, together with two World Conferences during the UN Decade for Women (1976-1985) and the World Conference in Beijing (1995), set the agenda for advancing women's rights and promoting gender equality. The 1979 UN Convention on the Elimination of All Forms of Discrimination against Women, ratified by 185 countries, has helped to promote the rights of women worldwide.

Promoting the Rights of Persons with Disabilities

The United Nations has been at the forefront of the fight for full equality for persons with disabilities, promoting their participation in social, economic and political life. The UN has shown that persons with disabilities are a resource for society, and has negotiated the first-ever treaty to advance their rights and dignity worldwide: the Convention on the Rights of Persons with Disabilities, which entered into force in 2008

Improving the Plight of Indigenous People

The United Nations has brought to the fore injustices against the 370 million to 500 million indigenous peoples who live in some 90 countries worldwide and who are among the most disadvantaged and vulnerable groups of people in the world. The 16-member Permanent Forum on Indigenous Issues, established in 2000, works to improve the situation of indigenous peoples all over the world in development, culture, human rights, the environment, education and health.

Providing Humanitarian Aid to Refugees

More than 50 million refugees fleeing persecution, violence and war have received aid from the Office of the UN High Commissioner for Refugees (UNHCR) since 1951, in a continuing effort that often involves other agencies. UNHCR seeks long-term or "durable" solutions by helping refugees repatriate to their homelands, if conditions warrant, or by helping them to integrate in their countries of asylum or to resettle in third countries. There are more than 25 million refugees, asylum-seekers and internally displaced persons, mostly women and children, who are receiving food, shelter, medical aid, education and repatriation assistance from the UN.

Strengthening International Law

Over 510 multilateral treaties—on human rights, terrorism, global crime, refugees, disarmament, trade, commodities, the oceans and many other matters—have been negotiated and concluded through the efforts of the United Nations.

Helping to Resolve Major International Disputes

By delivering judgments and advisory opinions, the International Court of Justice (ICJ) has helped to settle international disputes involving territorial questions, maritime boundaries, diplomatic relations, State responsibility, the treatment of aliens and the use of force, among others.

Combating International Crime

The UN Office on Drugs and Crime (UNODC) works with countries and organizations to counter transnational organized crime by providing legal and technical assistance to fight corruption, money-laundering, drug trafficking and smuggling of migrants, as well as by strengthening criminal justice systems. It helps countries to prevent terrorism, it is a leader in the global fight against trafficking in persons and, together with the World Bank, it helps countries to recover assets stolen by corrupt leaders. It has played a key role in brokering and implementing relevant international Treaties, such as the UN Convention against Corruption and the UN Convention against Transnational Organized Crime.

OSCE: Organization for Security and Co-operation in Europe

With 56 participating States from Europe, Central Asia and North America, the Organization for Security and Co-operation in Europe (OSCE) forms the largest regional security organization in the world. The OSCE is a primary instrument for early warning, conflict prevention, crisis management and post-conflict rehabilitation in its area. It has 18 missions or field operations in South-Eastern Europe, Eastern Europe, South Caucasus and Central Asia.

The Organization deals with three dimensions of security - the politico-military, the economic and environmental, and the human dimension. It therefore addresses a wide range of security-related concerns, including arms control, confidence- and security-building measures, human rights, national minorities, democratization, policing strategies, counter-terrorism and economic and environmental activities. All 56 participating States enjoy equal status, and decisions are taken by consensus on a politically, but not legally binding basis.

The OSCE traces its origins to the détente phase of the early 1970s, when the Conference on Security and Co-operation in Europe (CSCE) was created to serve as a multilateral forum for dialogue and negotiation between East and West. Meeting over two years in Helsinki and Geneva, the CSCE reached agreement on the Helsinki Final Act, which was signed on 1 August 1975. This document contained a number of key commitments on polito-military, economic and environmental and human rights issues that became central to the so-called 'Helsinki process'. It also established ten fundamental principles (the 'Decalogue') governing the behaviour of States towards their citizens, as well as towards each other.

Until 1990, the CSCE functioned mainly as a series of meetings and conferences that built on and extended the participating States' commitments, while periodically reviewing their implementation. However, with the end of the Cold War, the Paris Summit of November 1990 set the CSCE on a new course. In the Charter of Paris for a New Europe, the CSCE was called upon to play its part in managing the historic change taking place in Europe and responding to the new challenges of the post-Cold War period, which led to its acquiring permanent institutions and operational capabilities.

As part of this institutionalization process, the name was changed from the CSCE to the OSCE by a decision of the Budapest Summit of Heads of State or Government in December 1994[28].

Some of the actions that OSCE takes concerning our topic are:

Anti-Trafficking

Human trafficking is a serious crime that violates human dignity and poses a threat to human security in our societies. The OSCE, on the basis of its comprehensive and multidimensional approach to security, its unique geographical representation and the substantial framework of its political commitments, plays an important role in combating trafficking in human beings[29].

Gender Equality

The OSCE aims to provide equal opportunities for women and men, as well as to integrate gender equality into policies and practices, both within participating States and the Organization itself[30].

Human Rights

The OSCE's human rights activities focus on such priorities as freedom of movement and religion, preventing torture and trafficking in persons. The OSCE monitors and reports on the human rights situation in each of its 56 participating States, particularly in the areas of freedom of assembly and association, the right to liberty and to a fair trial, and in the use of the death penalty. It provides training and education across the field of human rights, including for government officials, law-enforcement officers, rights defenders and students. The organization also responds to issues affecting the lives of individuals today, helping to ensure, for example, that human rights are protected in the global fight against terrorism and taking active steps to combat racism, discrimination and related forms of intolerance[31].

[28] http://www.osce.org/about/19298.html
[29] http://www.osce.org/activities/18805.html
[30] http://www.osce.org/activities/13041.html
[31] http://www.osce.org/activities/13042.html

Minority Rights

Ethnic conflict is one of the main sources of large-scale violence in Europe today. The OSCE's approach is to identify - and seek early resolution of - ethnic tensions and to set standards for the rights of persons belonging to minority groups. A special focus is to advance the political rights of Roma and Sinti in the OSCE area, to prevent acute crisis and to manage crisis in post-conflict areas of South-Eastern Europe as well as to foster and support civil society development among Roma communities in the Balkans[32].

Tolerance and Non-Discrimination

The OSCE actively supports its 56 participating States in combating all forms of racism, xenophobia, anti-Semitism and discrimination. It co-operates and co-ordinates its activities in this field with other European and UN organizations such as the European Commission against Racism and Intolerance, the European Monitoring Centre on Racism and Xenophobia, and the UN Committee on the Elimination of Racial Discrimination.

OSCE institutions promoting tolerance and non-discrimination include the Warsaw-based Office for Democratic Institutions and Human Rights (ODIHR), which:

- Collects and distributes information and statistics on hate crimes in the participating States;
- Promotes best practices and disseminates lessons learned in the fight against intolerance and discrimination;
- Provides assistance to participating States in drafting and reviewing legislation on crimes fuelled by intolerance and discrimination[33].

[32] http://www.osce.org/activities/13045.html
[33] http://www.osce.org/activities/13539.html

EU

The European Union (EU) is a union of twenty-seven[34] independent states based on the European Communities and founded to enhance political, economic and social co-operation. EU was formerly known as European Community (EC) or European Economic Community (EEC). Date of foundation: 1st November, 1993[35].

The European Union (EU) is not a federation like the United States. Nor is it simply an organisation for co-operation between governments, like the United Nations.

It is, in fact, unique. The countries that make up the EU (its 'member states') remain independent sovereign nations but they pool their sovereignty in order to gain a strength and world influence none of them could have on their own[36].

EU and its action on Human Rights area:

The European Union sees human rights as universal and indivisible. It therefore actively promotes and defends them both within its borders and in its relations with outside countries. At the same time, the EU does not seek to usurp the wide powers in this area held by the national governments of its member states. The focus of the Union's human rights policy is on civil, political, economic, social and cultural rights. It also seeks to promote the rights of women and of children as well as of minorities and displaced persons. Embedded in its founding treaty, they have been reinforced by the adoption of a Charter of Fundamental Rights.

Although the EU has, on the whole, a good human rights record, it is not complacent. It is fighting racism, xenophobia and other types of discrimination based on religion, gender, age, disability or sexual orientation, and is particularly concerned about human rights in the area of asylum and migration. The Union has a long tradition of welcoming people from other countries – those who come to work and those fleeing their homes because of war or persecution.

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[34] Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom

[35] http://userpage.chemie.fu-berlin.de/adressen/eu.html

[36] http://europa.eu/institutions/index_en.htm

To promote human rights around the world, the EU funds the European Initiative for Democracy and Human Rights. The initiative, with a €1.1 billion budget for 2007-2013, puts respect for human rights and democracy into a global context and focuses on four areas:

- strengthening democracy, good governance and the rule of law (support for political pluralism, a free media and sound justice system);
- abolishing the death penalty in countries which still retain it;
- combating torture through preventive measures (like police training and education) and repressive measures (creating international tribunals and criminal courts);
- fighting racism and discrimination by ensuring respect for political and civil rights.

The initiative also funds projects for gender equality and the protection of children. In addition, it supports joint action between the EU and other organisations involved in the defence of human rights, such as the United Nations, the International Committee of the Red Cross, the Council of Europe and the Organisation for Security and Cooperation in Europe.

All that can be presented in this essay is the effort to have a clear overview on the international system supporting minority rights, since each topic –from the definition of the term ''minority'' and the international Covenants to the international mechanisms supporting them- is a huge topic itself and each separately could be a topic for an essay. Of course one should note at this point that there are dozens of other international organizations and forums concerning minority and human rights issues such as: Minority Rights Group (MRG), (ECMI) European Centre For Minority Issues etc. As mentioned in the introductory part, in theory there has been great progress the last decades. Especially after the fall of Berlin in 1989 –thus Communism- and the dissolution Yugoslavia the minorities' protection issue took a new course and became a headache for the international community- a burning issue. Nevertheless, in order to cover all the aspects of the topic, it is crucial to point out the issue of the penalty mechanisms of the international system today as well. In simpler words: who punishes those who violate the rights –as described in the International Covenants- of a minority?

International Courts

If one excludes the ad hoc courts under the authority of the United Nations (Nyremberg/ Tokyo after second WW), the penalty system at international level is a relatively modern achievement. In this system one can include:

a. International Court of Justice-UN

The ICJ continues the work of the PCIJ, as the principal judicial organ of the United Nations (UN). Established in June 1945 by the Charter of the United Nations, it began work in April 1946. The Court's responsibility is to settle, in accordance with international law, legal disputes that have been submitted to it by States and to provide advisory opinions on legal questions that have been referred to it by authorized United Nations organs or specialized agencies.

The Court is composed of 15 judges, who are elected for terms of office of nine years by the United Nations General Assembly and the Security Council. It is assisted by a Registry, which is its administrative organ. Its official languages are English and French.

When deciding cases, the Court applies international law as summarised in Article 38 of the ICJ Statute provides that in arriving at its decisions the Court shall apply international conventions, international custom, and the "general principles of law recognized by civilized nations". It may also refer to academic writing ("the teachings of the most highly qualified publicists of the various nations") and previous judicial decisions to help interpret the law, although the Court is not formally bound by its previous decisions under the doctrine of stare decisis. Article 59 makes clear that the common law notion of precedent or *stare decisis* does not apply to the decisions of the ICJ. The Court's decision binds only the parties to that particular controversy. Under 38(1)(d), however, the Court may consider its own previous decisions. In reality, the ICJ rarely departs from its own previous decisions and treats them as precedent in a way similar to superior courts in common law systems. Additionally, international lawyers commonly operate as though ICJ judgments had precedential value.

If the parties agree, they may also grant the Court the liberty to decide *ex aequo et bono* ("in justice and fairness"),[37] granting the ICJ the freedom to make an equitable decision based on what is fair under the circumstances. This provision has not been used in the Court's history. So far the International Court of Justice has dealt with about 130 cases[38].

b. The European court of Human Rights;

Entered into force the 1st November of 1998. The ECHR should not be confused with the ECJ or Court of Justice. It is an international court set up in 1959. It rules on individual or State applications alleging violations of the civil and political rights. Its responsibility is to rule on applications from either individuals or states concerning alleged violations of either civil or political rights created by the European Convention on Human Rights[39]. In almost 50 years the court has delivered more than 10,000 judgements.

These e binding for the countries concerned and have led governments to alter their legislation and administrative practice in a wide range of areas.

Its objectives are as follows:

- Defending Human Rights, multi-party democracy and the rule of law
- Raising consciousness about and developing the European cultural identity
- Searching for solutions to social issues (minorities' rights, racism, intolerance, environment, bioethics, AIDS, drugs, etc.)
- Developing political partnerships with the new democratic nations of Europe
- Helping central and East European countries in their political legislative and constitutional reform programmes[40]

The Court is based in Strasbourg.

[37] Statute of the International Court of Justice, Article 38(2)
[38] http://en.wikipedia.org/wiki/International_Court_of_Justice
[39] http://law.harvard.libguides.com/content.php?pid=100079&sid=754879
[40] http://www.strasbourg.info/echr

c. The American court of Human Rights (Costa Rica);

The Inter-American Court of Human Rights, in San José, Costa Rica, is an autonomous judicial institution of the Organization of American States established in 1979, and whose objective is the application and interpretation of the American Convention on Human Rights and other treaties concerning this same matter. It is formed by jurists of the highest moral standing and widely recognized competence in the area of Human Rights, who are elected in an individual capacity[41].

One could also refer at this point to the **European Court of Justice**:

The European Court of Justice is the highest court within the European Union where community law is concerned (but not in terms of national law). Its responsibility is to interpret EU law and ensure that it is applied fairly within the EU member states. Based in Luxembourg, it was established in 1952, by the Treaty of Paris of 1951, and includes one judge from each member state of the EU. Officially, the ECJ's name was changed in December 2009 by the entry into force of the Treaty of Lisbon. Its new official name is the "Court of Justice."[42]

Part B

B1: Selected Case(S) Concerning Minorities under ECHU

- **Sejdic and Finci v. Bosnia and Herzegovina** (application nos. 27996/06 and 34836/06), Strasbourg, 2006

Prohibiting a Rom and a Jew From Standing for election to the House of Peoples of the parliamentary assembly and for the state presidency amounts to discrimination and breaches their electoral rights.

Violation of Article 14 (prohibition of discrimination) of the European Convention on Human Rights taken together with Article 3 of Protocol No. 1 (right to free elections)**, and** Violation of Article 1 of Protocol No. 12 (general prohibition of discrimination) to the Convention.

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41 http://www.corteidh.or.cr/index.cfm?CFID=701564&CFTOKEN=73012812
42 http://law.harvard.libguides.com/content.php?pid=100079&sid=754878

Decision of the Court

In the first place, the Court considered that, given the applicants' active participation in public life, it was entirely coherent that they would have considered running for the House of Peoples or the Presidency. The applicants could therefore claim to be victims of the alleged discrimination. The fact that the present case raised the question of the compatibility of the national Constitution with the Convention was irrelevant in this regard.

The Court also noted that the Constitution of Bosnia and Herzegovina was an annex to the Dayton Peace Agreement, itself an international treaty. The power to amend it was, however, vested in the Parliamentary Assembly of Bosnia and Herzegovina, which was clearly a domestic body. In addition, the powers of the international administrator for Bosnia and Herzegovina (the High Representative) did not extend to the State Constitution. Accordingly, the contested provisions came under the responsibility of the respondent State. The Court reiterated that discrimination occurred every time that persons in similar situations were treated differently, without an objective and reasonable justification[43].

- Leyla Zana vs Turkey (application no.18954/91), Strasbourg 1997

Prison sentence imposed by Diyarbakır National Security Court on account of a statement to journalists (Articles 168 and 312 of the Criminal Code) – accused unable to appear at hearing in that court (Article 226 § 4 of the Code of Criminal Procedure in force at material time) – length of criminal proceedings against him.

Violation of Art. 6-1 ; Violation of Art. 6-3-c ; No violation of Art. 10[44]

A female politician of Kurdish descent from Eastern Turkey, who was imprisoned for 10 years for speaking her native language of Kurdish in the Turkish Parliament after taking her parliamentary oath and for her political actions which were claimed to be against the unity of Turkey.

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[43] http://www.coe.org.rs/eng/news_sr_eng/?conid=1545

[44] http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=695992&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649

The court decided that Turkey has violated the right to free elections and freedom of expression and must pay over 700,000 Euros[45].

B2: Selected Case(S) Concerning Minorities under ICJ

- Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro) **Summary of the Judgment of 26 February 2007, Hague[46].**

Decision of the Court:

The Court finds that Serbia has not committed genocide, through its organs or persons whose acts engage its responsibility under customary international law, in violation of its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide; Finds that Serbia has not conspired to commit genocide, nor incited the commission of genocide, in violation of its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide; Finds that Serbia has not been complicit in genocide, in violation of its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide; Finds that Serbia has violated the obligation to prevent genocide, under the Convention on the Prevention and Punishment of the Crime of Genocide, in respect of the genocide that occurred in Srebrenica in July 1995; Finds that Serbia has violated its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide by having failed to transfer Ratko Mladić, indicted for genocide and complicity in genocide, for trial by the International Criminal Tribunal for the former Yugoslavia, and thus having failed fully to co-operate with that Tribunal; Decides that Serbia shall immediately take effective steps to ensure full compliance with its obligation under the Convention on the Prevention and Punishment of the Crime of Genocide to punish acts of genocide as defined by Article II of the Convention, or any of the other acts proscribed by Article III of the Convention, and to transfer individuals accused of genocide or any of those other acts for trial by the International Criminal Tribunal for the former Yugoslavia, and to co-operate fully with that Tribunal;[47]

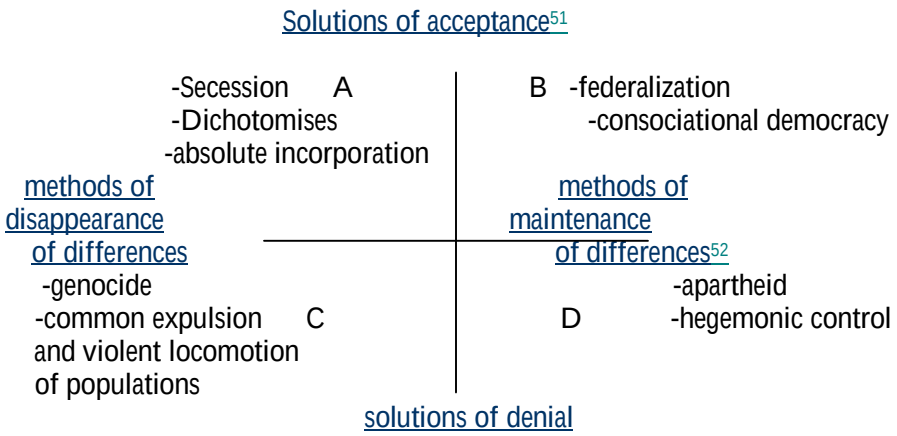
[45] http://www.khrp.org/khrp-news/news-archive/2002-news/216-european-court-of-human-rights-rules-in-leyla-zana-and-kurdish-mps-case.html
[46] http://www.icj-cij.org/docket/index.php?sum=667&code=bhy&p1=3&p2=2&case=91&k=f4&p3=5
[47] http://www.icj-cij.org/presscom/index.php?pr=1897&pt=1&p1=6&p2=1

Comments / Critical Evaluation / Conclusion Remarks:

The evolution of the minority protection issue can be divided in different stages a. as far as the international community approach is concerned b. as far as the state approach is concerned.

a. One can observe throughout the years that the ''burden'' of the protection of minorities is being carried by different actors as years go by: therefore there can be observed four generations 1-the 1st generation where individuals are the main actors 2-the 2nd generation that society is the main actor 3-the 3rd generation where people as a unity play the major role and 4-the 4th generation where humanity as a whole dramatizes the main role, as the carrier of the right to protect and support human rights worldwide. It is obvious that responsibilities – as international law evolves- are being transferred from the individual to the community as a whole. It could be said that there has been an ''internationalization'' of the matter. Another comment is that after the fall of the Berlin wall in 1989, there has been a re-shaping of the international community policy since the issue of minorities passed onto another level of significance. A new system has arose and the only remnants of the system before can be tracked in two international Covenants that are still covering two very sensitive minority issues: the Treaty of Lausanne[48] and the status concerning the Aalen Islands[49].
b. State on the other end of the spectrum, has developed its own reaction-mechanisms. These mechanisms can be summarized in the board below[50]:

[48] 1924, concerning the protection of the Greek Orthodox Christian minority in Turkey and the mainly ethnically Muslim minority in Greece.
[49] Concerning the autonomous status of the Aland region in Sweden, a region of Finnish minority.
[50] Marilena Koppa, **''Political authority and minorities in the Balkans in Post-communist era''**, Greek inspection on Political Science, vol.4, Athens, 1994, pg.73-74



One could make analysis based on specific case studies but this would need a separate essay, therefore a sole but important comment will be made: that the complexity of reality is such that usually the States do not enforce an ''A'' or ''B'', ''C'', or ''D'' type but a combination of them.

Out of the most important discussions is **WHO DECIDES which are the minorities and therefore what language they speak in order to protect them**? The answer is easy –but yet hard to accept when considering the length of theoretical and practical trial all these years- if one takes into account that we still live in the nationalist era where states are the dominant actors. In legal terms the answer is given by the article 27 of the International Covenant on Civil and Political Rights[53].

[51] Solutions of acceptance are those that the political center accepts the existence of the other population as a separate ethnicity or minority and confesses that this is the other part which takes part in the conflict for political control and is a legal interlocutor. Solutions of denial on the other side are those that reject the rival part as a separate ethnicity or different part in the conflict.
Alexis Heraclides, ***''The self Determination Of Minorities In International Politics''*** , Frank Cass Publishers (Oct 1991) pg.11
Alexis Heraclides , ***''Conflict Resolution, Ethnonationalism and Middle East Impasse''***, Journal of Peace research, vol.26, pc.2, pg.197-212

[52] John Mc Garry- Brendan O'Leary, ***''The macro-political regulation of ethnic conflict''***, The politics of Ethnic conflict Regulation (case studies of protracted ethnic-conflict), Routledge, London,New-york, 1994. pg 4

[53] Under UN, adopted on 1966, entered into force 1976.
http://www2.ohchr.org/english/law/ccpr.htm

'' In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.''[54]

State is the one that decides if there is a minority within its own territories and thus decides its language and rights status. States throughout the years have decided to avoid an internationally accepted definition, as analyzed in the introductory part. Every state though is most of the times and in accordance to its national interests reluctant to recognize a minority, even more to provide the minority with its rights. The analysis of the existing literature reveals two main schools of interpretation of Article 27: the **minimalist or passive school** is represented by Modeen, Tomuschat, Nowak and perhaps Higgins[55] -who have adhered a careful and restrictive interpretation over the Article- and the **radical or activist school**, whose representatives are Capotorti and Thornberry maybe Sohn, Ermacora and Cholewinski as well.

Modeen is of the view that the article cannot be interpreted as affording any collective rights and that minority states are not required to enter any commitment to protect their minorities, beyond avoiding hindrances on the minority group employing their own language and developing their own culture. Tomuschat notes the negative formulation of the Article. Nowak emphasises the duty of states to refrain from certain types of action which threaten the way of life and culture of a minority. Higgins observes that though the Article is written in negative terms and that the protection it provides are very modest, it does not necessarily requires to be interpreted as placing no positive obligations (Tomuschat thesis as well).

The radical or activist school on the other side, is in favour of ''active and sustained'' measures. Capotorti abandons the historic interpretation and emphasizes on the effectiveness of the rule.

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[54] http://www.minorityrights.org/555/international-instruments/international-covenant-on-civil-and-political-rights-article-27.html

[55] T.Modden, ''The protection of national minorities in Europe'',1989, pg 108-109, Tomuschat, ''Protection of minorities under article 27 of the ICCPR'', pg. 949-979, M.Nowak, ''The evolution of minority rights on international law'', 1993 pg. 480-505, R.Higgins, ''Minority Rights: Discrepancies and divergencies between the international covenant and the COE system'', R.Lawson-M.de Blois (eds), 1994 pg. 195-210

Thornberry notes that under the Article not much light is thrown as far as the obligations of a state. He also finds that there is no unanimity of approach and discusses the issue of state expenditure in support of minority activities. Cholewinski chooses to use summary records for his study for examining the nature of states obligation towards minorities. This way he reports ways on which states take measures to protect minorites[56].

To sum up, the protection of minorities has been the subject of several international bilateral treaties and other international instruments. The effects of international treaties (multilateral or bilateral) in the domestic legal order essentially depend upon the status conferred to international law in the State concerned. As regards provisions protecting minorities included in international instruments which are considered as being self-executing, these are directly applicable in the domestic legal order. Moreover, where the provisions protecting minorities are contained in international treaties which are not considered as being self-executing, a contracting state is expected, in accordance with Article 27 of the Vienna Convention on the Law of Treaties, to amend its legislation to make it compatible with the international treaty and with the international obligations deriving therefrom for the state concerned. The provisions protecting minorities in international law have thus a considerable influence on domestic law.

Among several international treaties and other international instruments, note must particularly be made of the conventions relating to human rights which, although looking to confer a first measure of protection on the individual as a human being, also confer protection on persons belonging to minorities. Work on instruments relating to minorities is under way in the OSCE and in the Council of Europe, while the UN adopted on 18 December 1992 a Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. Yet, in express terms, the question of minorities is addressed only in the provisions set out below.

[56] Athanasia Spiliopoulou-Akermark***, ''Justification of Minority Protection in International Law''***, vol.50, Kluwer Law, London-Hague-Boston,1997, pg. 123-127

In addition, under Article 14 of the European Convention on Human Rights, and the similar provisions in Article 2 (1), of the 1966 International Covenant on Civil and Political Rights and Article 2 (2), of the 1966 International Covenant on Economic, Social and Cultural Rights, the enjoyment of the rights and freedoms set forth in these treaties must be secured without discrimination on any ground, including association with a national minority. But in contrast to the separate equality clause in the first International Covenant mentioned above (Art. 26), these provisions are not independent and can only be invoked in relation to the enjoyment of one of the rights and freedoms guaranteed by the Convention. The European Charter for regional or minority languages aims at protecting these languages mainly for cultural reasons.

As regards the OSCE, note must be particularly made of points 18 and 19 of the Concluding Document of the Vienna Meeting on the Follow-up to the Conference (15 January 1989), points 30-32 of the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the OSCE (29 June 1990), the report of the meeting of experts of the OSCE on National Minorities of 19 July 1991 and the Charter of Paris for a New Europe (21 November 1990). In particular, the Copenhagen Document provides for the right of persons belonging to a national minority "to exercise fully and effectively their human rights and fundamental freedoms without any discrimination and in full equality before the law" (point 31), for a free choice in the matter of belonging to a national minority and for certain cultural linguistic and religious rights (point 32), and for the protection by States of the ethnic, cultural, linguistic and religious identity of national minorities on their territory (point 33).

Alongside such treaties, there exist multilateral instruments which particularly aim at the protection of the rights of minorities. Examples are the 1948 Convention for the Prevention and Punishment of the Crime of Genocide - which does not refer expressly to minorities but which is applicable to them - the 1965 International Convention for the Elimination of all Forms of Racial Discrimination, ILO Convention N. 111 (1958) concerning Discrimination in Respect of Employment and Occupation and the 1960 Unesco Convention against Discrimination in Education. Bilateral agreements also address the question of minorities.

As examples one may note the Gruber-De Gasperi Pact of 1946, which seeks to protect the German-speaking minority in Italy (in South Tyrol), the 1954 Treaty of London between Italy and Yugoslavia on the Slovene minority of Trieste, and the 1955 Declaration of Bonn and Copenhagen on the protection of Danish and German minorities in Germany and Denmark respectively[57].

The importance of the question of the protection of minorities is today beyond dispute. The currency of the issue is reflected on the international level, where the different types of initiatives (declarations, resolutions, conventions, etc.) designed to improve the protection of minorities in state level. It must nevertheless be borne in mind that every minority situation presents its own particular characteristics. There is consequently no standard means of resolving the multitude of concrete problems which each case throws up in a national context. Solutions to the problems of minorities lie in, on the one hand, the respect of the principles of non-discrimination and, on the other, positive action such as proclaiming collective and individual rights. The rights which should be recognised include the right to identify, the right to preserve one's own culture, the right to education, the right to use one's own language and the right to practice one's own religion, but it is also important to regulate relations between the minority and the State.

Though the endless bibliography, the numerous Treaties and all the theory developed in thousands of books and essays concerning minorities that the modern world can be proud of, in reality and action the situation remains still disappointing. This evaluation can be easily excused if one takes under consideration that there is:

- first and foremost lack of an international authority to handle such matters;
- second that though the treaties- multilateral and bilateral- show a considerable progress still not all countries are members to those treaties and consequently under no obligation;
- even for the countries being members of the relevant treaties, it is up to the states itself opinion and interest to decide about a minority's future (as described according to article 27 above)
- even for the countries being members of the relevant treaties, in case of mistreat of a minority, the non-binding norm from one side and the lack of a real penalty system makes clear the international system's inadequacy.

[57] http://www.venice.coe.int/docs/1994/CDL-STD%281994%29009-e.asp

So how protected are minorities in reality? No matter how much theory we develop in a State-dominant world and no matter how proud we can be of that theory, there will always be the potential for a dominant majority to look down and take advantage of a ''different'' minority within its territory. Protecting minorities is more than theory: it's a matter of a complete and affective international system and a matter of real-life education, a matter of res, non verba.

''The test of courage comes when we are in the minority. The test of tolerance comes when we are in the majority.''

Ralph W. Sockman

'' I am involved in a freedom ride protesting the loss of the minority rights belonging to the few remaining earthbound stars. All we demanded was our right to twinkle.''

Marilyn Monroe

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