Nations and Nationalism 3 (3), 1997, 345–64. © *ASEN 1997*

National minority rights vs. state sovereignty in Europe: changing norms in international relations?

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ABSTRACT. The 1990s debate on minority rights clearly indicates that minority issues are among the most controversial subjects of international relations. Questions concerning national minorities gained new prominence in international relations, especially in East Central Europe, following the end of the Cold War. Between 1990 and 1995 the formulation of international standards regulating state conduct towards national minorities was a priority for European organisations. This standard setting episode raises several important questions. Why did national minorities reappear on the international agenda after 1989? How were they responded to? Why did state sovereignty continue to take precedence over minority rights?

The 1990s debate on national minority rights confirmed yet again that national minority issues are among the most contentious subjects of international relations. There remains a fundamental difference of opinion on both the nature of the problem and the appropriate response to it. On the one hand, there are those who characterise the problem of national minorities as one of maintaining viable national minority communities within their historic territories and thus consider collective rights the only appropriate solution. On the other hand, there are those who consider the problem to be one of preserving the territorial integrity and stability of existing states and thus insist any response to it must put a premium on the rights and interests of states rather than their national minority citizens. Indeed, even the definition of a national minority remains a contested concept. At present it is not defined in any international human rights document – including those specifically addressing national minority concerns.

Yet despite these obvious difficulties, an international regime for the

I would like to thank William Wallace and the anonymous reviewers for their advice and comments. I would also like to acknowledge the support of the British Council and the Social Sciences and Humanities Research Council of Canada. An earlier version of this article was presented at the Seminar on Contemporary Research in International Political Theory, Bristol, 29 October 1994.

protection of national minorities in Europe – however limited – was nevertheless created between 1990 and 1995 as a result of several standard setting texts adopted by the Organisation for Security and Cooperation in Europe (OSCE) and the Council of Europe (COE) during this period. The aim of this article is twofold: (1) to assess the extent to which these European initiatives enlarged upon the existing global minimum requirements for state conduct towards national minorities; and (2) to offer some reflections on the significance of this standard setting episode for the primacy of sovereignty within Europe's nation-state system after the Cold War.

European minorities in international relations

The first comprehensive and significant historical example of European minorities on the international agenda was, of course, the League of Nations System of Minority Guarantees. The states which emerged out of the defeated Ottoman, Habsburg and Hohenzollern Empires in East Central Europe after 1919 were ethnographically diverse; contrary to the wartime rhetoric on national self-determination, international boundaries were not and probably could not have been drawn to create homogeneous nation-states. The great powers recognised the potential for ethnic dissatisfaction with the 1919 territorial settlement to escalate into domestic and even international violence – and feared this latter possibility. Consequently, they made the international protection of national minorities in the new states of East Central Europe a fundamental component of the collective security regime embodied by the League of Nations. By internationally bestowing civil and political equality and a minimal amount of cultural protection upon persons belonging to national minorities, it was believed that they would be less likely to pursue their own separate nationalist aspirations and instead would become contented and loyal citizens of the newly created political units. Furthermore, if minorities were content with their national position, any state where their ethnic group already formed the majority (henceforth referred to as kin-states) presumably would not be provoked to interfere in the domestic affairs of another state. Thus it was hoped that the post-1919 peace between states would not be threatened by questions of minority self-determination.

However, the consensual conflict resolution formula established by the League of Nations broke down because the international goodwill it relied upon was not forthcoming. The League of Nations System – in ironic contrast to its original purpose – soon became an instrument for furthering international rivalry and discontent. Treaty-bound states were openly critical of the League's refusal to apply a universal system of minority guarantees and resented their exceptional position in international law which resulted from it. Consequently, treaty-bound states sought to avoid

their minority responsibilities whenever possible. At the same time, national minority grievances (both real and contrived) were deliberately exploited by their revisionist kin-states throughout the 1920s and 1930s. As a result, far from being subjects of international cooperation, national minority questions degenerated into a political struggle: between, on the one hand, national minorities and kin-states with revisionist aims towards the international boundaries set by the treaties of 1919, and, on the other hand, those treaty-bound states that wished to preserve the territorial status quo where it was to their advantage: e.g. Germany vs. Poland, Germany vs. Czechoslovakia, Poland vs. Lithuania, Hungary vs. Romania, Hungary vs. Czechoslovakia, Yugoslavia vs. Austria, Bulgaria vs. Greece, Greece vs. Turkey, and Greece vs. Albania. Ultimately, national minority demands were used to justify the dismemberment of Czechoslovakia in 1938, the transfer of Southern Slovakia and half of Transylvania to Hungary in 1940, and the creation of the Slovak and Croat puppet states.

After 1945, national minority rights lost their hitherto independent standing in international relations and were subsumed within the newly created universal human rights regime. Minority rights had largely been discredited and the national minorities themselves tended to be viewed with suspicion owing to the wartime complicity of certain minority leaders with Nazi aims in East Central Europe – though it should also be pointed out that these aims cleverly exploited minority fears and aspirations within the region. Consequently, minority rights were considered contrary to international peace and security. For the remainder of the Cold War, very little international attention was given to the problem of national minorities and what, if any, rights they might legitimately claim.

The global standard on national minorities

Prior to 1992, the global minimum standard on state conduct specifically directed at national minorities was outlined in Article 27 of the International Covenant on Civil and Political Rights (ICCPR) (Thornberry 1991: 141–248). Article 27 stipulated:

> 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 other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

This provision had several limitations from the perspective of those who advocated the necessity of collective national minority guarantees. The rights recognised in this article were not fully collective rights. Even so, the French government officially denied its applicability in France while other governments have adhered to their own definitions of what constitutes a minority. Some states have evaded their obligations by using different

designations for groups that could be considered minorities, such as 'aboriginal', 'immigrant' or whatever (Thornberry 1991: 154–8).

The priority of sovereign state rights over those of national minority rights was further strengthened in Section 1.2 of the 1970 Declaration of Principles on Friendly Relations Between States. Thus:

> nothing . . . shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples . . . and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or color.

Neither the lack of special provisions for minority rights nor any claim the minority might make for national self-determination could legitimately be used to justify secession or irredentism. The inviolability of existing borders was paramount.

A major development in global standards on minority rights took place in 1992 when the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities was officially proclaimed by the General Assembly. This declaration was noteworthy in the history of international human rights since it was the first such instrument devoted exclusively to minority concerns.

The preamble and nine articles in part reiterated those rights already recognised in Article 27 of the ICCPR. Thus, persons belonging to minorities were recognised as having rights to existence, identity and the enjoyment of culture, religion, language, social affairs, the economy and public life. These basic provisions were supplemented by minority rights to participate in relevant national and regional decisions, to establish and maintain associations, and to have contact both within and across international frontiers. Moreover, the 1992 formulation reinforced a certain collective element by again acknowledging that these rights could be exercised individually as well as in community with other members of the group. It went on to remedy the earlier 1966 failure to specify state measures aimed at the promotion of minority rights. Henceforth, states were required to adopt provisions for minority language instruction and the promotion of knowledge concerning minority cultures and languages amongst the majority population. At the same time, minority concerns were to be taken into consideration in both domestic programmes and international cooperation.

Yet despite its achievements in broadening minority rights provisions, the 1992 declaration nevertheless also reiterated the traditional international position which held that minority rights were not intended as vehicles to further minority secession or irredentism. Article 8 was therefore concerned not with the rights of minorities but with the sovereign rights of states including their sovereign equality, territorial integrity and political indepen-

dence. At the same time, the text was replete with vague or negative wording such as 'appropriate measures', 'where appropriate', 'where possible', 'where required' and 'in a manner not incompatible with national legislation'. These phrases continued to give state signatories a degree of manoeuvrability sufficient to avoid or at least to limit those new minority rights obligations they considered most detrimental to their sovereign powers and prerogatives.

Nevertheless, the significance of these UN standards should not be underestimated. Despite their various shortcomings, Article 27 of the International Covenant on Civil and Political Rights and the Declaration on the Rights of Persons Belonging to National, or Ethnic, Religious and Linguistic Minorities – with their global applicability – constituted a floor for international thinking on minority questions in the first half of the 1990s. Other regional organisations – whether in Europe or indeed elsewhere – might agree on something better than this basic code of state conduct towards minorities, but they could not go beneath it.

European standards

The 1945 settlement did not resolve the problem of national minorities in Europe, and the Cold War merely concealed it by silencing those who in less confined international and domestic circumstances might have made minority political demands. The breakup of the Soviet Union, Czechoslovakia and Yugoslavia in the early 1990s involved the reawakening of minority and other nationalisms not only in these countries but throughout East Central Europe: Romania, Bulgaria, Slovakia, Serbia, Croatia and Ukraine – to name but a few other cases. At the same time, a new found freedom of mobility made it possible for members of national minority groups to join their ethnic kin in those states where they already formed the majority. Many thousands chose to make this move, and consequently the early 1990s saw the greatest movement of peoples in Europe since the end of the Second World War. Germany, Hungary and Turkey received the largest numbers of such ethnic migrants but significant numbers also fled to Austria, and the civil wars in Croatia and Bosnia dispersed huge numbers of ethnically cleansed refugees throughout the former Yugoslavia and beyond. For these reasons, the domestic condition of national minorities was identified as a potential threat to European order and stability between 1990 and 1995.

The situation of national minorities in East Central Europe and the former Soviet Union thus became a major focus of European international relations (Gottlieb 1993: 48–88; Miall 1994: 1–7, 112–20; Moynihan 1993: 143–74). For example, the Badinter Commission – which was convened to establish a common policy for the European Union (EU) member states' recognition of the break-away Yugoslav Republics – identified the guarantee of minority rights as a fundamental requirement that would have to be

satisfied before recognition could take place. In the event, of course, Germany's determination to recognise the independence of Croatia and Slovenia sooner rather than later made the Badinter Report redundant. Nevertheless, the practical difficulties associated with establishing a common EU policy on this issue do not diminish the significance of the Badinter Commission's findings. Indeed, the continued importance of the national minority problem in East Central Europe at this time was confirmed by the former's inclusion as one of the five main components of the EU's 1993 Stability Pact. The European Council of 29 October 1993 decided that the Stability Pact would be a staple component of a joint action to promote stability and peace in Europe by tackling the problem of national minorities, strengthening the inviolability of frontiers, and reinforcing the democratic process and regional cooperation in Central and Eastern Europe.

Also by 1993 minority rights provisions were recognised as criteria for membership in the Council of Europe. Prior to admitting a new member state, the COE conducted an intensive examination of an applicant's constitution and laws as well as the conduct of its various officials to ensure that all of these gave due regard to minority rights. The significance of this assessment was further enhanced by the fact that membership in the COE had become a tacit precondition for membership in the EU. The tripartite Council-Commission-European Parliament Declaration of 1977 on Human Rights required EU applicant states to be parties to the European Convention on Human Rights (ECHR) – which was only open to COE member states – and to accept the right of individual petition under the ECHR. This fundamental component of the *acquis communautaire* was reaffirmed in the Maastricht Treaty and the various Europe Agreements concluded with East Central European states in the 1990s. However, the specific task of formulating European standards of minority rights during 1990–5 was taken on by the Organisation for Security and Cooperation in Europe and the Council of Europe rather than the European Union.

The OSCE was concerned with formulating codes of state conduct towards national minorities both as way of preventing the oppression of individual members of minority communities and as a way of minimising minority/majority conflicts. The OSCE therefore included statements of national minority rights in all of those official documents which formed the basis of the organisation's activities at this time. These included the main OSCE human rights standard setting text of this period, the Copenhagen Document (1990), as well as the Charter of Paris for a New Europe (1990), the Geneva Report on National Minorities (1991), the Moscow Document (1991), the Helsinki Document (1992) and the Budapest Document (1994). Moreover, in December 1992 the OSCE created the office of High Commissioner for National Minorities (HCNM) to assist in member states' implementation of minority standards and to help resolve minority/majority conflicts.

At the same time, the condition of national minorities was also examined by the COE as a potential obstacle to the democratic development of former communist states in the region and as an economic and social problem in those kin-states that were on the receiving end of minority migrations. Various COE bodies including the Parliamentary Assembly, the European Commission for Democracy Through Law, the Steering Committee on Human Rights and the Committee of Ministers examined national minority rights proposals between 1990 and 1995. The member states of the COE decided at their Vienna Summit Meeting on 9 October 1993 to adopt both a national minorities protocol to the European Convention on Human Rights (ECHR) that would be open to ECHR signatories and a separate convention on national minorities which would be open to both members and non-members of the COE. The Committee of Ministers, at its 93rd Session, adopted terms of reference instructing an *ad hoc* committee of experts to draft by 30 June 1994 a framework convention and by 31 December 1994 a framework protocol. The Convention on the Protection of National Minorities was opened on 1 February 1995 and immediately signed by twenty-two countries. These were Austria, Cyprus, Denmark, Estonia, Finland, Hungary, Iceland, Ireland, Italy, Liechtenstein, Lithuania, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland and the United Kingdom. As of 1 June 1995 no protocol had yet been adopted. In November 1992, however, the European Charter for Regional or Minority Languages was made public. The charter was initially signed by eleven member states: Austria, Denmark, Finland, Germany, Hungary, Liechtenstein, Luxembourg, Malta, the Netherlands, Norway and Spain. As of 31 January 1995, however, it had been ratified only by Norway and Finland and therefore still required three more ratifications in order to enter into force.

National minority rights versus sovereign state rights

The main public policy problem in adopting international standards of national minority rights – whether in the interwar period or the 1990s – has unavoidably centred upon the need to determine whose rights – those of states, national minorities or individuals – should have priority in any given situation where they might come into conflict. Should minority rights be claimed by individuals or by groups? Should the content of these rights reiterate traditional human rights or should they specify something new? How might these alternative provisions affect the rights and responsibilities of states and the obligations of their minority citizens? Today, as in the past, there are no easy answers to these questions. Indeed, there remains a fundamental split amongst states as to the appropriate form and content of minority rights.

During the standard setting period of 1990–5, those who characterised

the problem of national minorities as one of maintaining viable ethnic communities within their historic territories – which included kin-states like Germany, Austria and Hungary as well as Italy and the Netherlands, among others – argued that the only appropriate and indeed necessary political response to national minority demands was the international recognition of collective minority rights to autonomy in cultural, educational and religious affairs, and to self-government in those areas where minorities predominated. This formula was considered the best means of making national minority communities vigorous and affluent, thereby rendering immigration to kin-states a comparatively less attractive alternative.

For example, both Hungary and Germany advocated collective guarantees to ensure the preservation of Hungarian and German minority communities in East Central Europe. Thus, at the 1990 OSCE Copenhagen Conference Hungary was the joint sponsor of a minority rights code that recognised the claims of both national minorities and the persons belonging to them. Indeed, this particular proposal began with the declaration that national minorities have the right to be recognised as such by the states in which they live and to exist as a community. At that same meeting, Germany proposed an amendment that would have granted national minority communities rights to autonomous administrations in certain circumstances.

To support their case, the advocates of collective minority rights vigorously condemned policies of forced assimilation and population transfer in East Central Europe, and vociferously asserted the desire of minority members to preserve their minority communities *in situ*. By calling attention to incidents like ethnic cleansing in Bosnia and Croatia, as well as other less violent assimilationist campaigns conducted by communist regimes against ethnic Turks and Moslems in Bulgaria and against ethnic Hungarians and Germans in Romania, these states sought to demonstrate that individual human rights were not by themselves sufficient to prevent such atrocities.

The net result of this agenda – were it to have been implemented – arguably would have been the creation of some intermediate form of collective existence for those nations which for various reasons could not form their own independent states or unite with those states where their ethnic community formed the majority. Such an outcome would have been a significant departure both from previous international practice on this issue – which between 1945 and 1989 tended to view minority problems as matters of domestic rather than international politics – and from earlier human rights guarantees which recognised individual rather than collective claimants.

During this same period, however, other states advocated an opposing definition of the national minorities problem. From this perspective, what was at issue was not so much the preservation of national minority communities but rather the maintenance of the territorial integrity and

political stability of states that possessed significant minority populations. Thus, it was argued that national minority rights should remain subservient to sovereign state rights and, whenever possible, should continue to be a preserve of domestic politics. If, however, the international recognition of minority rights could not be avoided then the advocates of sovereign state rights – which included Bulgaria, France, Greece, Romania, and Slovakia among others – sought to ensure the content of such guarantees merely reiterated those human rights already enshrined in international texts such as the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), the European Convention on Human Rights (1950) and the Helsinki Final Act (1975), thereby placing no new limits on state sovereignty. In other words, they were grudgingly prepared to accept minority rights defined in terms of individual human rights but would not sanction the creation of collective rights, especially those which would have created international requirements for devolution, thereby challenging the concept of state sovereignty as it was understood within the post-1945 UN nation-states system.

Proposals for collective national minority rights were thus greeted with scepticism and sometimes even suspicion by those states that possessed substantial minorities, particularly when the proposal originated with a kin-state who might be thought to harbour irredentist or at least interventionist aspirations. Thus, for example, Romania – which possessed both ethnic Hungarian and ethnic German minorities – responded to German and Hungarian sponsored collective minority rights proposals by arguing that rights properly understood

> are best thought of as inherent in each individual human being . . . it is not pure chance that minorities as such are recognized neither in international law nor in internal law as subjects or legal persons and, therefore, possess no legal capacity to acquire rights and obligations. (Mastny 1992: 238)

Romania went on to claim that behind the various proposals for collective minority rights lay the implicit assumption 'that a state would have the right to protect the rights of minorities in other states with which it shares the same language, culture, or ethnic origin' (Mastny 1992: 237). This assumption would, of course, be contrary to international law both as it was historically defined in *cujus regio ejus religio* and in its post-1945 embodiment as Article 2 of the UN Charter.

Romania was not alone in voicing reservations about national minority rights. Greece, worried about its Slavic (Macedonian) population in the north – which it refused to recognise as a minority – demanded that a definition of the term 'national minority' be established before any consideration was given to determining what, if any, international rights such communities might legitimately claim (Mastny 1992: 240). Bulgaria – with its substantial Moslem minority – at various times refused to accept the applicability of any minority provisions it deemed 'political rather than

humanitarian in nature': namely, those guarantees related to organisations or associations as collectivities, local or autonomous arrangements for minority communities, and any requirements of public assistance for these groups (Mastny 1992: 243).

As these examples illustrate, the advocates of sovereign state rights evidently construed the international recognition of collective rights for territorially concentrated minorities as implying an international requirement for devolution to national minority communities. This threat in itself was seen as a major trespass on the right of states to choose their own form of political organisation. More than that, however, there was in some quarters also the suspicion that devolution however defined might be a precursor to secession or perhaps even irredentism and – more importantly – could be a sign of international willingness to recognise such acts of national self-determination as legitimate were they to occur at some future date.

In sum, the real politik of national minority rights between 1990 and 1995 was one of differing state interests utilising different rhetorics appealing to different propositions of international law. Those concerned to prevent the international disorder caused by mass minority migrations to kin-states invoked both the principle of national self-determination as well as human rights to identity and existence in order to justify the collective formulation of national minority guarantees. Whereas those concerned for the territorial integrity and political stability of states that possessed significant minority populations appealed to sovereign equality and non-intervention in order to forestall or limit the recognition of international guarantees for the autonomy of national minority communities.

Achieving an appropriate balance between national minority rights and sovereign state rights was therefore the main challenge confronting both the OSCE and COE in their efforts to elaborate a European standard of minority rights. The compromise that was eventually adopted recognised individual rather than collective rights, made the content of minority provisions largely reflect the post-1945 human rights status quo and explicitly acknowledged that such provisions were constrained by the traditional statist tenets of international relations such as state sovereignty, territorial integrity, non-intervention and the like. Yet the priority accorded to state rights within this formula nevertheless did not deter the recognition of two new norms regulating state conduct towards minorities and the emergence of recommendations in favour of minority autonomy and self-government.

Collective rights vs. individual rights

As in the 1992 UN declaration, the bearers of these OSCE and COE minority rights of the 1990s were unquestionably individuals. The relevant

texts referred only to persons belonging to national minorities rather than the national minorities themselves – despite initial proposals to the contrary. This individual rights formulation was made necessary by the continued refusal of sovereign rights advocates to accept any minority guarantees that might be abused by disgruntled minorities to further their own secessionist or irredentist aspirations – as, of course, was the case during the interwar period.

The history of the COE's 1995 Convention on the Protection of National Minorities reveals the increasing resistance towards collective minority guarantees within international organisations at this time. For example, in Recommendation 1134 (1190) On the Rights of Minorities, the Parliamentary Assembly advocated the recognition of four rights belonging to national minorities as distinct from the members of national minorities. National minorities as a whole, it was suggested, should be given the right to be recognised as such by the states in which they live, to maintain and develop their culture, to maintain their own educational, religious and cultural institutions and to participate fully in decision-making about matters which affected the preservation and development of their identity. Yet four years later the Assembly's draft convention referred only to individual rights of persons belonging to national minorities.

A telling political explanation for this change of course between the initial recommendation of 1990 and the draft convention of 1993 was offered by the Assembly's Rapporteur, Mr de Puig of Spain, in the opinion of 1 February 1993 which accompanied the proposal. His comments are an important reminder of the primacy of realist considerations in international organisations.

> There can be no doubt that especially states with a centralist form of government are very critical of the notion of collective rights. This attitude explains for instance why bodies such as the Conference on Security and Cooperation in Europe have so far been unable to adopt a binding instrument on the issue. It also explains to some extent the problems in our Committee of Ministers. Whatever our personal views on this subject, experience and realism require us to seek a consensus. It would be irresponsible to try and give the (minority rights) convention an unrealistic content which would have no chance of enjoying majority support. (Council of Europe, 1993. Parliamentary Assembly Opinion on the Rights of Persons Belonging to National Minorities: 8)

And yet although sovereign state rights did win out over collective national minority rights this was not a total triumph. While both OSCE and COE texts of this period recognised only individual claimants in order to satisfy the defenders of state rights, they nevertheless also acknowledged a certain, minimal collective or communal element to the exercise of minority rights following the example set by the United Nations. The Copenhagen Document, for example, specified that persons belonging to national minorities could exercise their rights individually as well as in community with other members of their group. Article 3(2) of the Convention on the

Protection of National Minorities did likewise. Thus, those states hostile to collective guarantees did not entirely escape the more rigorous duties these entailed – even if as yet it remains unclear just how much of a check on state sovereignty these clauses represent.

The status quo

The content of the 1990–5 European minority rights texts was also indicative of the priority accorded to sovereign state rights at this time and the general unwillingness to recognise many national minority rights provisions that deviated radically from previous human rights norms. Thus, by far the most prevalent provisions in these texts were those which reiterated but did not go beyond the global minimum standard of state conduct towards minorities. For example, of the 12 articles pertaining to minorities in Section IV of the Copenhagen Document 8 merely restated the provisions of earlier human rights texts such as the ICCPR and the 1992 Declaration. Similarly, of the sixteen articles outlining minority rights in the Convention on the Protection of National Minorities, ten echoed the global minimum.

The clearest evidence of this unwillingness to move beyond the global status quo can be seen in those provisions that gave members of minorities rights to freedom of expression, freedom of association and freedom from discrimination. These three basic rights were, of course, a standard feature of international human rights texts during the Cold War. All three can be found in previous OSCE and COE agreements such as the 1975 Helsinki Final Act and the 1950 European Convention on Human Rights as well as the UN texts already cited above. Nevertheless, as those states who viewed the problem of national minorities as one of maintaining viable minority communities pointed out – both in Europe and at the UN – such general provisions did not prevent the selective curtailment of these rights between 1945–89. So, for example, despite numerous international guarantees recognising a minimal standard of conduct with regard to freedom of expression, Moslems in Bulgaria after 1985 were subject to an official name changing campaign in which force was used to gain consent for the 'Bulgarisation' of traditional Moslem names. Similarly, the Ceausescu regime denied Hungarians in Transylvania the right to display Hungarian language signs. In certain areas – such as Tirgu-Mures – these restrictions continued into the early 1990s. As a result, it became established practice to reassert rights to freedom of expression, freedom of association and freedom from discrimination in international texts specifically aimed at minorities.

The Copenhagen Document, for example, recognised the right to use minority languages in private and in public, to profess and practice religion and religious education in minority languages, and to disseminate, have

access to and exchange information in them as well. Similarly, the Convention for the Protection of National Minorities recognised rights to use minority languages in private and public both orally and in writing, in surnames and first names, in local names, signs and inscriptions, and in contacts with administrative bodies and the courts whenever possible. Yet none of these provisions went much beyond the standard already defined by the United Nations in 1992.

It should be pointed out, however, that the same cannot be said of the COE's Charter for Regional or Minority Languages (1992) which contained more extensive provisions for the use of minority languages in six general categories of activity – education, judicial and administrative authorities, the media, cultural activities and facilities, economic and social life, and transfrontier exchanges. Each party undertook to apply a minimum of thirty-five paragraphs or sub-paragraphs from the section of the charter which lists various measures to promote the use of regional or minority languages; of these thirty-five, at least three paragraphs must refer to educational provisions, another three to cultural activities and facilities, and one each to judicial authorities, administrative authorities, the media, and economic and social life. The charter's provisions were therefore an important advancement in the formulation of minority language rights.

Affinities with the global minimum standard were also evident in OSCE and COE provisions for freedom of association and freedom from discrimination. Once again following on from the United Nation's example, the European texts acknowledged that freedom of association included the right to form minority organisations or institutions and to associate with co-ethnics both within and across international boundaries. Similarly, these texts also emphasised that minority rights may be exercised without any interference or any form of discrimination. Interestingly, both the Copenhagen Document and the Convention for the Protection of National minorities gave added emphasis to this point when they went on to state that national minority membership was a matter of free personal choice and no disadvantage should result from it. Thus, the formulation of these freedom from discrimination clauses within the European standard setting documents of 1990–5 was, perhaps, somewhat more emphatically spelled out. However, in spirit and intent they were identical to that of the already recognised global code of conduct.

New norms?

Despite the obvious importance of the global minimum standard in these various European minority texts, the 1990s European response to national minority problems arguably also included the formulation of rules with no clear precedent in previous human rights agreements and to this extent should be regarded as furthering the global minimum. Such innovations

were most evident in the prohibitions against forced assimilation and population transfer and in the suggestions for various forms of autonomy which were also incorporated into the Copenhagen Document and the Convention on the Protection of National Minorities.

The right to freedom from assimilation and forced population transfer was a direct European response to situations like ethnic cleansing in Bosnia as well as other less violent assimilationist campaigns such as those carried out by the old communist regimes against Moslems in Bulgaria, and against ethnic Hungarians and Germans in Romania. There was of course a precedent in international agreements for sanctions against assimilation in its most violent or extreme form, namely extermination or genocide. Genocide was prohibited in international agreements such as The Convention on the Prevention and Punishment of the Crime of Genocide (1948). Similarly, the UNESCO Declaration on Race and Racial Prejudice (1978) stated that all individuals had the right to be different, to consider themselves as different and to be regarded as such. Importantly, this 1978 text affords evidence of a movement towards the prohibition of forced assimilation and population transfer in international thinking on minorities and related matters. Its preamble notes that racism is manifested through unjust practices amongst which are the forced assimilation of members of disadvantaged groups. However, no precedent existed for the explicit prohibition of forms of assimilation intended to alter an individual's language, culture and ultimately his or her ethnic or national identity or to transfer an individual from one locale to another on the basis of ethnic or national identity. Explicit prohibitions against these sorts of government practices were not incorporated into the main body of any human rights agreement prior to 1990.

The Copenhagen Document went beyond the international status quo in this regard when it stated in Section IV (32) that 'persons belonging to national minorities have the right freely to express, preserve and develop their ethnic cultural, linguistic or religious identity . . . free of any attempts at assimilation against their will'. Similarly, the Convention on the Protection of National Minorities specified in Article 5 (2) that states shall refrain 'from policies aimed at the assimilation of persons belonging to national minorities against their will' and 'shall protect these persons from any action aimed at such assimilation'.

In suggesting various forms of autonomy for minority communities, the European minority rights texts moved still further away from established human rights traditions in international relations and appeared to be refining the right of nations to national self-determination by advocating minority self-government within existing states where the minority's outright independence could not be realised. Thus in the Copenhagen Document reference was made in Section IV (35) to 'appropriate local or autonomous administrations corresponding to the specific historical and territorial circumstances of . . . minorities'. The draft minorities protocol put forward

by the Parliamentary Assembly of the COE in 1993 would have taken this development still further. Article 11 of this proposal recognised the right of persons belonging to minorities to have at their disposal appropriate local or autonomous authorities or a special status matching the specific historical and territorial situation. It must be pointed out, however, that this proposal was merely one of several draft protocols under consideration by the COE during 1990–5.

Needless to say, such suggestions were and indeed remain highly controversial since empowering minority communities through the concession of self-government was perceived to have the corresponding effect of diminishing or disempowering existing governmental bodies. As a result, all suggestions of autonomy for minority groups specifically acknowledged the state's right to determine how or even if autonomy would be implemented. So, for example, the Copenhagen Document identified autonomy as only one of the possible means to achieve the promotion of minority identities and acknowledged that all such measures must be in accordance with the policies of the state concerned. Likewise, the Parliamentary Assembly's proposed draft minorities protocol also deferred to domestic legislation in its characterisation of minority autonomy. It remains to be seen how much if any effect such provisions will have on the global minimum standard of state conduct towards minorities or on the redefinition of traditional understandings of state sovereignty. Undoubtedly the proponents of sovereign state rights will try to forestall further movement in this direction.

The most important development to take place on minority matters in the 1990s is, however, perhaps the most easily overlooked; following 1989, national minority questions were once more legitimate subjects of international relations both at the United Nations and within European regional organisations. It should again be emphasised that this was not always the case. Between the years 1945 and 1989, national minority questions were by and large considered to be a province of domestic politics and very little international attention was given to standard setting in the area of minority rights.

Confirmation of a post-Cold War normative shift on this issue was explicitly stated in both United Nations and European texts dating from 1990–5. However, whereas the preamble of the 1992 UN declaration simply acknowledged that the United Nations had an important role to play regarding the protection of minorities, the various European minority rights documents went on to make more emphatic statements about the role of minority questions in international relations generally. The OSCE Geneva Report (1991), for example, categorically 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'. This

acknowledgement was later reiterated in texts such as the Moscow Document (1991) and the Helsinki Document (1992). Article 1 of the COE's 1995 Convention for the Protection of National Minorities was equally emphatic; it maintained that 'the protection of national minorities and of the rights of persons belonging to those minorities forms an integral part of the international protection of human rights and as such falls within the scope of international cooperation'.

As a result of such acknowledgements, by the mid 1990s it was no longer possible for those states accused of mistreating their national minorities to defend themselves against international criticism by arguing that minority matters were strictly subjects of domestic politics. The state rights discourse could still effectively be used to trump certain minority provisions, but the more fundamental point – i.e. that minorities did indeed possess legitimate international rights of some kind – was no longer denied; that was itself a significant normative development even if it fell short of the more radical outcome advocates of collective minority rights would have preferred.

Enforcement measures

In addition to these innovations in standard setting, the various enforcement measures of the 1990s European minority texts also improved upon the global minimum as outlined by the 1992 UN declaration. The declaration itself contained no specific measures for enforcement despite initial proposals to do so (Alfredsson and de Zayas 1993: 3). Article 9 merely indicated that the UN system as a whole was expected to contribute to the fulfilment of the minority provisions. There were several existing UN bodies whose monitoring activities with regard to human rights treaties already gave them some role to play in scrutinising the condition of minorities. These included the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Racial Discrimination (CERD) and the Committee on the Elimination of Discrimination against Women (CEDAW). Similarly, the ongoing activities of the Subcommittee on the Prevention of Discrimination and Protection of Minorities were also an important arena for the scrutiny of international minority standards. Moreover, the provisions of the Optional Protocol to the International Covenant on Civil and Political Rights (which entered into force in 1976) provided a means of recourse for some persons who believed that their governments had failed to protect their Article 27 rights. If the state in which an aggrieved person resides has recognised the competence of the Human Rights Committee to examine complaints, he or she can submit a 'written communication'. The Committee considers this, together with representations from the state, and then issues an opinion. Though this is not legally binding many states have felt obliged to amend their laws or practices to bring them into line with the Committee's views. In contrast,

the OSCE and COE minority standards were supported by explicit formal procedures aimed at producing state compliance.

The OSCE adopted three institutional arrangements aimed specifically at the enforcement of human and minority rights commitments: (1) annual implementation review conferences wherein participating states collectively examined how agreed-upon standards were being implemented; (2) an intergovernmental complaints procedure known as the 'human dimension mechanism' which could be utilised in crisis situations; and (3) the High Commissioner on National Minorities (HCNM) whose mandate was to provide early warning and, where appropriate, early action with regard to tensions involving national minority issues that had the potential to develop into conflict situations. Up to September 1993 the human dimension mechanism had been activated four times: (1) by the UK regarding attacks on civilians in Bosnia and Croatia; (2) by Russia regarding Estonia's citizenship law; (3) by Moldova to invite an expert mission to Moldovan territory; and (4) by the Senior Council of the OSCE with regard to alleged human rights violations by Serbia-Montenegro. Meanwhile, the HCNM was involved in a number of potential minority/majority conflicts in East Central Europe during 1992–5 including, among others, those concerning the Russian minority in Latvia, Lithuania, Estonia and Ukraine, the Hungarian minority in Slovakia and Romania, the Slovak minority in Hungary, the Albanian minority in Macedonia, and the Greek minority in Albania.

In addition, there were by 1995 four other OSCE institutional arrangements relevant to minority standards though they had not been adopted specifically to enforce these or other human rights commitments: (1) OSCE missions of long duration intended primarily to prevent the spread of an existing conflict; (2) the Valletta Mechanism, a non-binding procedure for dispute settlement; (3) the Optional Convention on Conciliation and Arbitration which included both non-binding and binding dispute resolution procedures; and (4) the Senior Council which could order action by other OSCE bodies when it deemed appropriate.

The COE included specific enforcement measures in its European Charter for Regional or Minority Languages and its Convention on the Protection of National Minorities. Each of these involved the regular submission of reports by signatory states on their implementation activities and their review by both a committee of independent experts and the Committee of Ministers of the COE. The proposed minorities protocol to the ECHR would, of course, have made use of the already well-established judicial procedures of the European Court of Human Rights and thus – if adopted – would have constituted the most rigorous system of minority rights enforcement of this period. It should, however, be pointed out that the Court of Human Rights itself had no direct powers of enforcement and that responsibility for implementing its judicial decisions ultimately rested with the Committee of Ministers of the COE. If a political resolution between

the parties concerned could not be reached, there remained one final enforcement mechanism at the ministers' disposal – expulsion from the organisation itself. History has proven that expulsion is not an idle threat, as both Greece and Turkey were in previous years suspended from the council for human rights violations. As COE membership was considered an indispensable proof of democratic credentials – especially for prospective EU members –the threat of expulsion or suspension remained a powerful means of ensuring compliance with human rights standards in the 1990s.

Conclusion

What does this standard setting episode of 1990–5 suggest about the theory and practice of Europe's nation-states system after the Cold War? Some commentators have suggested that the 1990s European response to national minority questions reveals a post-Cold War movement away from the more traditional elements of international relations that privileged state actors and defended their sovereign state rights from incursions by rival, non-state claimants – national minorities being one example. This may indeed have seemed the case during 1989–90 at which time only those advocates of collective minority guarantees were making their opinions heard within international organisations like the OSCE and COE. Collective minority rights formulations – especially those which included rights to regional autonomy or self-government – did appear to undercut the concepts of state sovereignty and national self-determination as they were traditionally understood in the post-1945 UN nation-states system. But here, too, it is important to remember that the advocates of these proposals were none other than traditional state actors – Hungary and Germany, for example – who were motivated in large measure by traditional concerns, namely their own national interest in ensuring that mass migrations of their ethnic cousins did not take place.

By the time those states that possessed substantial national minorities began to make their opinions heard, it had become apparent that the idea of state rights was not at all in decline; on the contrary, as I have indicated in this paper, the principle of state sovereignty could still be used to muster powerful and ultimately persuasive arguments against many of the minority rights proposals examined between 1990 and 1995, particularly those which challenged established orthodoxies about the rights of states to choose their own form of political organisation and to maintain supreme political control over the territories and peoples within their jurisdictions. State sovereignty was unquestionably the trump card in the national minority rights game being played in Europe at this time.

Thus far from undermining the traditional tenets of international relations, the national minority rights texts of 1990–5 explicitly affirmed the inviolability of existing boundaries within the nation-states system and the

supreme authority of states over their citizens regardless of whether or not those citizens were members of national minorities. For the time being, at least, minority rights continued to be held in check by the traditional principles of international relations – state sovereignty, territorial integrity, inviolability of borders and the like. This fact was not merely presumed but made explicit both within the global minimum standard on minority rights and in the various European minority texts herein examined. Consequently, any international relations theory which suggests that state sovereignty was being undermined by national minority rights between 1990 and 1995 has failed to take into account the very important and telling evidence of this recent standard setting activity in Europe and elsewhere. At a time when many international relations scholars are inclined to think that state sovereignty is on the decline, this episode is an important reminder of just how vital that fundamental principle of international relations still is.

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