Evaluating the Minority Rights Regime in the Context of European Enlargement

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Introduction

The new controversial law in France banning overt religious symbols in public schools, notably the Muslim scarf, illustrates some fundamental points about the state of the minority rights regime in Europe: for encompassing the whole of Europe, it remains decidedly weak. That is, “minorities” have generally been defined to exclude the immigrants, guest workers, and refugees and asylees, who constitute substantial proportions of the population in cities across Western Europe, and who suffer from widespread institutionalized forms of discrimination. While scrutiny continues to be applied to the situation of the national minorities in the EU candidate countries of East Europe, few standards are then equally pressed upon the West for protection of their minorities, who arguably experience comparable circumstances. Because the debate about “minority rights” protections continues to rile member state leaders in the face of national identity crises, and because many of the problems associated with implementing such protections transcend borders, the issue of furthering the development of the minority rights regime in Europe demands a European solution. This paper presents a preliminary look at (1) the state of the European minority rights regime; (2) how the post-Cold War minority rights framework has been influencing policies and politics in East European states, particularly to a greater extent that in West European states, which has led to the claim that double standards exist; and (3) what this all may imply for the future of a more cohesive, stronger, justice-based minority rights regime in the new, enlarged European community of states.

The process of European Union enlargement has brought increased attention to the issue of minority rights, a topic which has not been taken up with as much enthusiasm since the creation of the post-World War I League of Nations system. Since the fall of communism and the East-West divide in 1989, increased concern, particularly in Europe, has arisen with the
treatment and protection of minorities, whether they be national, ethnic, religious, or cultural. But within Western Europe, since World War II and particular since the 1970s, a gradual change has occurred toward recognizing the rights of linguistic and cultural minorities and communities and in trying to find pragmatic solutions to the problems associated with increasingly multinational European states. More recently, the multi-ethnic nature and democratic transitions of the East European states has necessitated a debate about how to reconcile the rights of majorities with those of minorities, particularly in the areas of education, language, culture, as well as how to combat racially or ethnically-motivated violence and discrimination. The importance of supplementing individual human rights mechanisms with minority rights, has been recognized to some extent by the European human rights.

In the EU 1993 Copenhagen Criteria for accession, candidate states are required to protect minority rights, in addition to protecting human rights and maintaining democratic institutions. The inclusion of minority rights as a condition for membership was striking given the dominance of the individual rights framework within both the United Nations and EU human rights regimes. One of the most important rationales for the increased attention to minority rights has been a security-based argument: that is, the protection of human rights in general and minority rights in particularly is necessary to promote international and regional security and to

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1 We will not go into the large literature on the multiple meanings and definitions of minority (often called group/collective rights) here. Two main understandings of minority rights will be used here. First, primarily individual rights applied or accorded to members of minority groups (as articulated in Article 27 of the International Covenant on Civil and Political Rights and Article 14 of the European Convention on Human Rights). These can be seen as “non-discrimination” rights and relate primarily to issues of violence or discrimination against minorities or immigrants (which we classify as minorities, albeit not distinctly “national minorities”). Second, the rights dealing with language, education, and culture that may more properly be called “group rights” since they deal more with positive protection of the group and its members. Will Kymlicka’s understanding of this is helpful. See Multicultural Citizenship (1995).
prevent ethnic conflict and tensions.\textsuperscript{2} The EU made clear that it did not want to “import” border and ethnic conflicts into its organization.\textsuperscript{3}

Post-communist states have been reconfiguring their identities, guiding norms, and interests primarily motivated by the desire to “return to Europe.” A process of norm socialization whereby new ideas, values, and norms slowly diffuse throughout the domestic political and social realms of post-communist states has been evolving. The result is that EU member states (the “West”) have become the norm “pushers,” while the candidate countries in the East have become the norm “takers.” This is the position of the international diffusion of human rights norms as the West (i.e. Western Europe, Canada, and the United States) sees itself as creators of the norms to which other states are expected to accept and comply. The EU conditionality process, particularly on the point of minority rights, has been criticized of late, for engaging in what are considered to be double standards. Not only have some elites among the candidate states criticized the process by which they are expected to just do whatever the EU tells them to--sometimes despite the wishes of domestic constituencies--but some have pointed out that the candidate states are being asked to comply with minority rights norms that the EU member states themselves have yet to comply with.\textsuperscript{4} An examination of the strengths and weaknesses of EU conditionality regarding minority rights will give us some clues about the likelihood that the European minority rights regime will be strengthened. While a definitive answer about what the future holds for this very current topic evades us, this paper will attempt


\textsuperscript{4} Kymlicka and Opalski 2001; Hughes and Sasse 2003; Tressar 2001.
to evaluate the possibilities for change. Future research will have to be collected about the state of minority rights protections in the newly enlarged EU and once the EU constitution becomes a reality.

**The development of a post-Cold War European minority rights regime**

Minority rights is a relatively new concept despite the fact that as early as the 13th century, rulers claimed the right to protect their kin living in non-controlled territories. It is only within the last 80 years that international and European law has paid attention to the plight of minorities and taken steps to impact national minority policies. For instance, while the practice of genocide has occurred for centuries, it has only been since World War II that people have come to give the practice of destroying a group an official name and have made the crime of genocide a violation of international law.\(^5\) Thus, while there were attempts to protect the rights of minorities before World War I, it was only afterward that we spoke of it in such terms and made minority rights part of international law.

The most prominent period of minority rights protection is the current post-Cold War period in which the European minority rights regime has seen its greatest development.\(^6\) In the post-WWII period, the United Nations and European regional organizations such as the Council of Europe, the European Union, and the Organization for Security and Cooperation in Europe (OSCE) created through various treaties, documents, court cases, and state practice a weak set of norms regarding minority rights, which nevertheless fills a huge hole in the protection of minorities which would otherwise stand nonexistent, and which nevertheless has continued to be

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6 In considering how minority rights came to be a concern of international politics and law, three major periods (before the post-Cold War period) can be identified: 1.) an early period of non-systemic protection of minorities, primarily religious groups, through international treaties calling for humanitarian intervention; 2.) the system of the League of Nations following WWI that concluded special minority treaties; 3.) the United Nations period, with emphasis on Article 27 of the International Covenant on Civil and Political Rights (ICCPR) making specific reference to members of minority groups (in addition to European law which paralleled this).
strengthened since 1990. The primary impetus for the increased attention to minority rights norms was the integration of former communist states into a wider “Europe.” Given the heterogeneous populations and inter-ethnic tensions in the post-communist region already obvious by 1990, West European states and their organizations sought to forestall potential security threats.

This focus on possible security threats coming from the East has been the basis for the creation of new mechanisms and norms of minority rights. This has come in part from the broadening (particularly since 1990) of the concept of security to include the idea of “societal security,” and thus to include human rights violations (e.g. as part of internal conflict) as a potential security threat. The wars in the former Yugoslavia served as a potent example which lent credence to this belief that minority/human rights conditions and conflict are connected. In practice this has meant that the West does not wish to “import” border and/or ethnic conflicts into its sphere. EU members signed the Stability Pact in March 1995 that stated, *inter alia*, that EU membership would only be given to those states that concluded “good neighborly agreements” to settle any potentially destabilizing border conflicts which could threaten European security. As France’s European Affairs minister, Alain Lamassoure said, “No country with unsettled border or minority conflicts will be allowed to join [the EU].”

The consequence is that the focus on minority rights is now intertwined with a security approach which provided the justification for ad-hoc, selective monitoring and promotion of minority rights in post-communist countries, and at the same time, no monitoring or real concern

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8 Smith 1999. This requirement was a significant incentive for Romania and Hungary to sign a bilateral friendship treaty in 1996 and the subsequent cooling of relations between them.

9 Smith 1999, p. 160.
with minority rights issues in West European states. The conventional wisdom of good civic nationalism in the West versus bad, ethnic nationalism in the West appears to be at work here.\textsuperscript{10} Group rights theorist Will Kymlicka has perceptively described the current state of the European minority rights regime to be made up of:

(a) a very weak justice-based track, which defines a minimal set of universal minority rights that are weakly enforced in both the East and West; and

(b) a very powerful but selective security-based track which imposes minority rights of varying strengths solely on ECE (East Central European) countries as a condition of EU and NATO membership.\textsuperscript{11}

The justice-based track refers to the efforts to create and implement universal standards of minority rights that would be applicable to all European states, not necessarily as means to conflict prevention, but as standards of justice and equality for all members of minority groups. Currently the justice-based track imposes weak and ill-defined obligations on all countries, while the security-based track provides a justification for differential treatment of the East and the West. For example, the High Commissioner on National Minorities’ mandate to focus on minority issues in post-communist states which are potential security threats, leads to differential treatment and the promotion of different standards among East European states and between East and West European states. This illustrates the preference for a security-based approach over a justice-based one in terms of minority rights. But political reality means that both tracks are working simultaneously and that states will have to make pragmatic decisions to minority-majority issues that often combine elements of both power politics and justice. We will return to this point and the possible consequences it may have for envisioning a stronger minority rights

\textsuperscript{10} Stefan Auer, “Nationalism in Central Europe – A Chance or a Threat for the Emerging Liberal Democratic Order?” \textit{East European Politics and Societies} 14:2 (2000).

regime in a later section. First, a description of the actors and norms which make up the current minority rights regime is warranted.

There has been an attempt to create minority rights standards and elaborate them on a number of legal and political fronts. The main European documents and/or articles within treaties pertaining to minority rights are: Article 14 of the European Convention on Human Rights, OSCE Copenhagen Document (1990)\textsuperscript{12} (and subsequent meetings/documents at Geneva, Moscow, Helsinki in the early 1990s), European Charter on Regional and Minority Languages (1992), Council of Europe’s Framework Convention for the Protection of National Minorities (1995), Protocol No. 12 to the European Convention on Human Rights (2000) (not yet in force), and most recently the European Union’s Race Equality Directive (2000). The inclusion of the protection of minority rights as a condition for EU membership for candidate states outlined in the 1993 Copenhagen Criteria should also be included even though it is not a standard applied to current EU member states.

The Organization for Security and Cooperation in Europe (OSCE)\textsuperscript{13} has been the most active in standard-setting, monitoring of minority rights, institutionalizing minority rights within a European framework, and engaging in preventive diplomacy as a means of conflict resolution.\textsuperscript{14} These minority rights and conflict prevention activities of the OSCE have been

\textsuperscript{12} Article 14 reads: “The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”
http://conventions.coe.int/treaty/en/Treaties/Html/005.htm

\textsuperscript{13} The OSCE was born out of the Cold War CSCE (Conference on Security and Cooperation in Europe) which was a multi-dimensional diplomatic process between East and West that began with the Helsinki Summit of 1975. In January 1995, this process was turned into a formal organization (OSCE) with 55 members including all of Europe, Russia, the Soviet successor states, the United States, and Canada. For our purposes we will refer to all post-1990 activities as “OSCE” ones.

\textsuperscript{14} Swimelar 2001; David Chandler, “The OSCE and the internationalization of national minority rights,” In Ethnicity and Democratization in the New Europe, ed. Karl Cordell (London: Routledge), 1999; Jane Wright, “The OSCE and
applied only to post-communist states, not to West European states. The OSCE can be seen as one player in a network of European organizations that are part of the process of norm socialization and diffusion – that is, of aiming to inculcate new liberal norms and identities among East European states and leaders as they seek to “return to Europe.” The OSCE has chosen to socialize members from within, while the European Union on the opposite end of the spectrum socializes from the outside (requiring changes to be made before membership), and the Council of the Europe represents the middle ground between the two since it requires potential members to meet some criteria and expects them to continue to be socialized once they are members. Since the OSCE originated during the height of the Cold War and helped diffuse human rights norms to the East (through the Helsinki Final Act of 1975), the organization admitted post-communist states quickly after the fall of communism. The organization then aimed to inculcate norms of human rights, democracy, and minority rights among its new members.

The OSCE’s 1990 Copenhagen Document “became a landmark in establishing normative standards of minority rights protection.” It went further than previous provisions, such as the Helsinki Final Act of 1975 and Article 27 of the ICCPR by incorporating, in addition to a non-discrimination or equality clause for “rights of personals belong to such [national] minorities,” the notion of positive collective rights, such as allowing for the possibility of autonomy and minority language instruction and public use.

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17 Chandler 1999, p. 64.
Two of the main mechanisms by which the CSCE/OSCE have contributed to the creation of a European minority rights regime is through their in-country missions and through the work of the High Commissioner on National Minorities (HCNM). The HCNM uses quiet diplomacy and confidence building measures with local leaders to forestall conflict in potentially tense areas (e.g. Estonia, Albania, Slovakia). The commissioner acts as an “early warning mechanism.” \(^{19}\) The in-country missions consist of teams of experts that monitor OSCE member states particular concerning majority-minority relations. They complement the work of the HCNM and provide necessary local information. \(^{20}\)

The Council of Europe (CE), founded in 1949, is also within the nexus of European organizations that has contributed to an emerging minority rights regime, in addition to its promotion of democracy, human rights, and European cooperation. The CE represents the middle ground between the OSCE’s socialization from within and the European Union’s socialization from the outside (or an exclusive strategy versus an inclusive one). Working in conjunction with the other European organizations, the CE pressured post-communist states to promote human and minority rights before they gained entrance to the organization, though the conditions are not as strict as the EU. In the case of Romania, for example, the CE played an early and significant role in communicating to Romanian elites that human rights, democracy, and minority rights were critical criteria for Romania’s entrance into all Euro-Atlantic organizations. \(^{21}\) Not only did the CE assist Romania in drafting its liberal Constitution which

\(^{19}\) See www.osce.org/hcnm/


grants minority rights, it remained an important player in promoting minority rights early on, before EU pressure and compliance became more significant after 1994. A few key documents illustrate the standard-setting function of the CE within Europe. 

The European Convention on Human Rights (ECHR) of 1950 contains Article 14 which states that

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

This article is limited, however, because it only pertains to those rights guaranteed in the Convention. Therefore, in April 2000, Protocol No. 12 opened for signature. It furthers the goal of equality by providing for a general prohibition of discrimination and guarantees that no-one shall be discriminated against on any ground by any public authority. Yet, as of early 2004, only six states have ratified the Protocol (10 ratifications are required for its entry into force), while 26 have signed, but not ratified.22

The most comprehensive statement on European-wide norms of minority rights can be found in the CE’s Framework Convention for the Protection of National Minorities. As Gilbert notes, the convention is “the first concrete manifestation of a concern for the rights of minorities that the council of Europe has shown since its inception.”23 The norms which it embodies have been used to reinforce the recommendations made by the OSCE and the HCNM in particular. The Council of Europe’s mechanisms provides the legal backbone to the political efforts of the OSCE. In fact, the OSCE 1990 Copenhagen Document can be seen as the forerunner to the Framework Convention, illustrating the complementarity between European organizations in the

22 Ironically some of the states one might least expect to promote non-discrimination and minority rights are the ones that have ratified: Bosnia, Croatia, Serbia, in addition to Cyprus, Georgia, and San Marino. Some West European states such as France and Denmark have not even signed the protocol.

field of minority rights. As one author observes, “[a]s a political consensus has already been reached in the framework of the OSCE on the rights to be granted to minorities, the Framework Convention is designed…to translate political undertakings given within the CSE into legal obligations.”

The Framework Convention lays the main areas of minority rights protection such as: equality before the law; protection of persons subject to violence due to their identity; allowance and promotion of minorities’ culture and identity; right to use minority language in public and private; right to display minority language signs, right to create private educational facilities; rights of use of the media, and promotion of political participation of the minority group.

The fact that it is a “framework” convention illustrates the tenuous place of minority rights and the hesitancy of Western states to create a more enforceable convention. Governments are obviously concerned that strengthening minority rights could undermine the centrality of the state and lead to calls for autonomy or even secession. In addition to the legal weaknesses of the convention, there are numerous other problems that illustrate the overall limitations of the minority rights regime in general.

First, it provides no definition of national minority. This may be understandable since numerous organizations have wrestled unsuccessfully for years to come to agreement on the definition. That the former HCNM Max van der Stoel has said that he knows a national minority when he sees one, hardly provides assurance that none are left out. The convention mentions only national minorities, effectively excluding immigrants, guest/migrant workers, and refugees/asylum seekers. The already weak minority rights regime is weakened further by neglecting the needs and rights of these other categories of minorities whose great numbers make

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25 See Rohmer 1996.
them all the more significant to be ignored. It should also be noted that the Roma, who are often
not considered to be a national minority, also evade protection from the narrowly circumscribed
minority definition. It is unlikely that the Framework Convention (and subsequent domestic law
based on the convention such as the Czech Republic’s 2001 Law on National Minorities) will do
much to help them. Other weaknesses include the feeble wording of the articles, the lack of clear
monitoring procedures, and the lack of an enforcement mechanism.27 There also does not appear
to be much intra-European pressure to get intransigent states like France and Greece to ratify the
treaty.

The Framework Convention illustrates the twin goals of the current minority rights
regime. It supports both the justice-based and security-based framework for the protection of
minority rights and therefore could serve as a good springboard for further development of the
minority rights regime, despite its weaknesses. The Preamble for example speaks to security by
stating that “…the upheavals of European history have shown that the protection of national
minorities is essential to stability, democratic security, and peace on this continent,” but at the
same time “a pluralistic and genuinely democratic society should not only respect the ethnic,
cultural, linguistic, and religious identity of each person belonging to a national minority, but
also create appropriate conditions enabling them to express, preserve, and develop this
identity.”28 This latter justification supports the core idea of minority rights, that the preservation
of a group’s and individual’s identity is central to the protection of human dignity and self-
respect.29 So while the Framework Convention appears to be another weapon used by the West
to draw attention to the problems of minority rights in the East (East European states are

29 Will Kymlicka, Multicultural Citizenship (Oxford: Oxford University Press), 1995a; Will Kymlicka, ed. The
expected to ratify it before joining European organizations) while overlooking its own minority issues, it holds a promise for future development.

The process of EU conditionality is yet another facet of the current minority rights regime since the Copenhagen (political) Criteria of 1993 mandated that as a condition of membership EU candidate states must support not only democratic values and human rights, but “respect for and protection of minority rights.”30 Since its inception in 1950, the European Community, now Union, has evolved into a political and cultural union, in addition to an economic one. As one monitoring organization notes, “The accession process has done much to identify problems in thinking about the relationship of majorities to minorities, and to spur meaningful change. Yet the period of candidacy that marked the accession process is, for most states, coming to an end.”31 This process has also made it obvious that the EU’s own commitment to minority protection is inadequate and inconsistently applied. The conditionality process has also made clear the power asymmetries “whereby the EU can use conditionality as an instrument to exert political leverage on candidate states to ensure the requisite outcomes in policy or legislation.”32 The question will become to what extent will this concern with minority rights continue once the candidate states become new members. A new approach will undoubtedly need to be developed.

The procedures by which the EU monitors candidate countries’ minority policies have come under scrutiny for being ad hoc, weak, and inconsistently applied. The measure of compliance used for transposing other chapters in the acquis communitaire are not very helpful in the case of minority rights since there is hardly any EU law on this issue and EU practice

30 http://europa.eu.int/comm/enlargement/intro/criteria.htm
varies in terms of minority rights. The primary monitoring instrument has been in the form of annual Regular Reports which both lay out the EU’s main expectations and the extent to which a candidate country is seen to be complying. According to Hughes and Sasse who have systematically examined the conditionality and reporting process, the reports illustrate the ill-defined nature of minority protection, a tendency to generalize, and a focus on formal changes:

The Reports illustrate that the EU lacks clear benchmarks to measure progress in the field of minority rights protection. The emphasis is on acknowledging the existence of formal measures rather than the evaluation of implementation…Reports are a patchwork of formulaic expressions and bureaucratic codes to encapsulate ‘progress’ by the CEECs on the ‘road map’ to membership…The reports do not systematically assess the structure and operation of institutional frameworks or policies for dealing with minority groups.

To make up for the lack of EU benchmarks for minority rights protection, the reports refer to ambiguous European or international standards which are never specified. As Hughes and Sasse again observe, “the EU itself is groping for international standards that do not exist.”

Moreover, the preoccupation in EU annual regular reports with certain minorities, such as the Roma and the Russophones, while neglecting others, illustrates the predominance of security concerns over more normative justice concerns, as well as a lack of standards across cases. The Roma have come to be seen as a “soft” security issue because of the West’s fear that Roma will migrate westward. This became particularly obvious in 1997 when thousands of Roma fled to Britain claiming asylum and were turned back; subsequently the British reinstated visa requirements for all Czechs and placed immigration officials at the Prague airport to prevent Roma from even leaving the country (this issue discussed further below). In the case of

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33 “Monitoring the Accession Process,” p. 19. The report adds that “despite its clear declaration at Copenhagen concerning the obligations on new candidates for membership, there is no consensus within the EU as to whether recognition of the existence of minorities is a sine qua non of membership, nor any clear EU standard in the area of minority rights. Even if they were applied clearly to candidate and member states, the Copenhagen criteria remain ill-defined, admitting of such broad and disparate interpretations as to render them of minimal utility in guiding states’ actions,” p. 19.

34 Hughes and Sasse 2003, p. 15-16.
Russophones, Hughes and Sasse suggest that “the EU is more concerned with its external relations with its most powerful neighbor and main energy supplier than with minority protection as a norm *per se.*” 35

Given some of the weaknesses and contradictions of the EU conditionality process, one could presume the process has had little effect on candidate countries’ minority policies. On the contrary, as discussed below, despite the unclear standards and the weak monitoring mechanisms, post-communist candidate states have made many policy changes toward better treatment and protection of minority groups. The resulting changes are not due entirely to the EU accession process; the OSCE and the Council of Europe, in addition to numerous non-governmental organizations have been promoting similar norms in post-communist countries. The membership incentives have been strong enough to persuade post-communist governments to comply with EU recommendations and standards, regardless of their lack of clarity and definition.

The latest effort by European states to promote minority rights as non-discrimination rights comes in the form of the Race Equality Directive (hereafter the Directive) established under the Treaty of Amsterdam in 1999 (Article 13). This put racially or ethnically-motivated anti-discrimination on the map for long-term development of the minority rights regime in Europe particularly because the Directive applies to all current and prospective EU members. Regarding candidate countries, the Directive has also been included as part of the *acquis communitaire* of the EU enlargement criteria. Without precedent the provision called for member states within three years, to adopt as national legislation, comprehensive anti-discrimination law coupled with establishment of a monitoring agency charged with promoting equality, providing independent assistance to victims of discrimination, as well as monitoring.

35 Hughes and Sasse 2003, p. 16.
reporting, and recommending actions. While making no specific reference to minorities, the Directive has been hailed as a “major advance in providing a framework for protection against ethnic discrimination across the EU.”\textsuperscript{36} The Directive applies to both public and private sectors, including access to employment, promotion, dismissals and pay, social security, health care, education, and access to goods and services “which are available to the public, including housing.”\textsuperscript{37} The Directive also specifically prohibits both direct and indirect discrimination and shifts the burden of proof in civil cases involving allegations of racial discrimination in that once a prima facie case of discrimination has been laid out, “it shall be for the [alleged discriminator] to prove that there has been no breach of the principle of equal treatment” (Art. 8). The support for this measure gave minority rights a whole new level of importance to the European Union. According to an official of the European Monitoring Center on Racism and Xenophobia which oversees the Race Directive, this measure would endow the EU with a soul: “the starting principle [for creating the Center] had been that the EU must not be a Europe merely for business, for finance, or for money, for defense or politics: it had to have a soul”\textsuperscript{38} This illustrates the possibility that the promotion of minority rights may not just be for self-interested reasons, but may also be in the name of justice and equality.

According to a press release in July 2003 by the European Network Against Racism (ENAR), only Belgium, Great Britain, Italy and Sweden have taken complete legislative measures for transposition of the requisite anti-discrimination laws to comply with the Race Directive by the deadline of July 19, 2003. Austria, Finland, Germany, Greece, Luxembourg and


\textsuperscript{38} Jean Kahn, Chair of Management Board of European Monitoring Center on Racism and Xenophobia. See European Conference on Combating Racism at the European Level, 24-25 February 2000 Report.
Spain, at the other extreme, have yet to undertake any steps to begin the legislative transposition process, according to ENAR. Meanwhile France notified the European Commission of partial transposition of the Directive.

Obviously, clearer, more consensual standards and a greater willingness by EU members to take minority rights seriously for themselves are needed to strengthen the regime. The multiplicity of organizations and actors within the field of minority rights, the development of new norms, and the attention that minority rights are now given (at least rhetorically) is nonetheless impressive considering the lack of concern before 1990. In the end, politics, bargaining, and context all matter immensely since the issue of minority rights is one that does not lend itself easily to universal solutions.

The effects of the emerging European minority rights regime on domestic minority policy in Central and East Europe

The eight post-communist states that will be entering the European Union this May (plus Romania and Bulgaria next in line) have all been seeking membership in European organizations and more generally all desire to become part of the democratic security community called “Europe.” These states aim to be seen as legitimate – hence liberal democratic players in the game of international and European politics. Moreover, these states are in the process of changing their identities through complex interactions with international society; their interests are not fixed but depend upon the social and normative context within which they interact. All of them are also struggling with issues of group identity, cultural pluralism, and minority rights.

Since the process of EU enlargement began in the early to mid-1990s, observers have been eager to evaluate how the process has affected (and is still affecting) domestic politics, specifically minority policy and what may be called the domestic “empowerment” of minority

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39 Poland, Hungary, Czech Republic, Slovakia, Slovenia, Latvia, Lithuania, and Estonia.
rights norms, that is, when “the prescriptions embodied in a norm become, through changes in
discourse or behavior, a focus of political attention or debate.”  
So the question is not just how
the diffusion of minority rights norms has led to tangible legal and policy changes, but the extent
to which (at least at the elite level initially) the norms are gaining strength as norms. Measuring
treaty ratification and the number of minority laws passed does not go far enough in
understanding the extent to which minority rights as a norm has taken hold in a society.
Engaging in public dialogue with opposition forces regarding the meaning and importance of
new norms is also an important indicator of the strength of minority rights.

Evidence shows that in numerous post-communist countries, the pressure and influence
of European organizations (particularly the EU, but also the combined pressure and activities of
non-governmental domestic and transnational actors) has led to improved human rights policies
toward minorities. Some have argued that the changes of minority policies in the candidate
countries have been weak, ad hoc, and have not appeared to make a significant difference for the

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40 Checkel 1999. Understanding norm socialization means not only determining the extent to which a state has complied with the international norm, but also determining, first, whether the norm has become “empowered” at the domestic level. This idea is also called the “domestic salience” of norms. See also Cortell and Davis 1996, 2000.  

The question of why states have altered policies, whether it be for more material and/or ideational interests has been a major concern of those applying constructivism to the question of Europeanization, but this question will not be taken up here. For more on this question, see Jeffrey T. Checkel, “Why Comply? Constructivism, Social Norms, and the Study of International Institutions,” ARENA Working Papers WP 99/24, University of Oslo; Linden 2002; Swimelar 2003.
daily lives of minorities. Nevertheless, if we look at the level of institutional changes and if we compare the small changes to the lack of policy that existed before, and if we include the “norm empowerment” variable and not just policy changes, then it is clear that European actors have influenced the new changes. A few examples from the region will illustrate the minority rights regime in action among post-communist states.

The Czech Republic, for instance, has been long criticized for its harsh treatment of the Roma and particularly its inaction in punishing individuals for abusing and violating the rights of the Roma. From 1990 until the present, every major European organization (in addition to the UN and the United States) have pressured the Czech government to change a discriminatory citizenship law that rendered thousands of Roma stateless, to take action against skinhead

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42 Hughes and Sasse 2003.
43 For a full discussion of the history, treatment, and policies of the Roma in East Europe see Zoltan Barany, The East European Gypsies (Cambridge: Cambridge University Press), 2002.
44 After the break-up of the Czech and Slovak Republics in January 1993, the Czech government placed restrictions on the citizenship of former Czechoslovaks who were technically citizens of the Slovak federation, but who were permanent residents on Czech territory at the time of the separation. Therefore, about 350,000 former Czechoslovak citizens, about 90% of which were Roma, became stateless or were denied Czech citizenship. Czech Helsinki Committee Report on the State of Human Rights in the Czech Republic in 1997 (Prague, 1998) and CSCE Report, Implementation of Helsinki Accords: Human Rights and Democratization in the Czech Republic, “A Litmus Test: Treatment of the Roma Minority,” September 1994. Even if a Slovak (Roma) had never set foot in Slovakia and her children had been born in the Czech Republic, she had to apply for citizenship in the new Czech Republic. In addition, the law stipulated that Slovaks had to prove permanent residency in the Czech Republic and have a clean criminal record over the previous five years. The stipulation of indemnity was called “the Gypsy condition” in administrative circles (Czech Helsinki Committee annual report, 1997). It was widely understood that the citizenship law was created in an effort to leave many Roma stateless and to encourage them to move to Slovakia. An internal document leaked to the press stated that, “We should use the process [of the division of the Czechoslovak republic] for the purpose of the departure of not-needed persons from factories, especially for the reasons of structural changes, and for the departure of people of Roma nationality to the Slovak Republic (Quoted in Human Rights Watch, Roma in the Czech Republic (New York: Human Rights Watch), 1996, p. 19). The following are examples of the international pressure and criticism of this law: OSCE Document, Human Rights and the Process of NATO Enlargement. Chairman of U.S. Helsinki Commission Christopher Smith sent letters to both President Havel and Premier Klaus concerned that the citizenship law could result in the largest denaturalization in Europe since World War II. U.S. State Department report on Human Rights in the Czech Republic (www.state.gov), 1996, 1997, 1998; The Czech and Slovak Citizenship Laws and the Problem of Statelessness, The Office of the United Nations High Commissioner for Refugees, February 1996; Council of Europe report, 1996 and Reports of Experts of the Council of Europe on the Citizenship Laws of the Czech Republic and Slovakia and their Implementation, (Council of Europe: Strasbourg, April 1996); Human Dimension seminar on Roma in the OSCE region, organized by Office for Democratic Institutions and Human Rights and the High Commissioner on National Minorities, in Cooperation with the Council of Europe, Warsaw, September 20-23, 1994; Human Rights Watch, Roma in the Czech Republic: Foreigners in Their Own Land, (June 1996). As an additional note, the U.S. Helsinki Commission stated that the
attacks upon the Roma, to create a long-term Romani integration plan, and to end segregation of Roma into special schools, just to name a few.

The discriminatory citizenship law is the clearest example of how external pressure created incentives for change. While many NGOs criticized the citizenship law in 1994, the government began to consider its discriminatory effects only after the recommendation of the Council of Europe and other international bodies.\textsuperscript{45} In response to the criticisms of the international community and to maintain their otherwise good standing regarding human rights, the Czech government amended the law in April 1996, waiving the clean criminal record requirement, but “on an individual basis for Slovaks who had been resident in the Czech lands before the 1993 split” (U.S. State Department 1996). This change, however, did not remove all of the discriminatory aspects of the law; in addition, the government failed to inform Roma communities about the revisions, leaving it up to local NGOs to take on the burden of helping Roma through the application process. Upon increasing pressure from European and international organizations, the citizenship law was once again amended on 23 September 1999\textsuperscript{46} and is now in compliance with the recommendations of both international and domestic organizations. One author notes on this point: “A precedent had been set: if any change was to occur in Czech policy towards Roma, it would stem more from international pressure than any innate attempt at -rectifying the situation.”\textsuperscript{47} Human Rights Commissioner Jan Jarab estimates that about 75 percent of the credit for the amended citizenship law can be attributed to outside, 

\textsuperscript{45}Siklova and Miklusakova, p. 184. Members of the Czech Helsinki Committee also communicated this to me; so did current human rights commissioner Jan Jarab.
\textsuperscript{46}Lidove Noviny, 10 July 1999. See also U.S. State Department Report, 1999.
international pressure. Jarab also believes that the process of domestic actors taking in and reacting to “foreign messages” takes a long time which might explain why it has often taken years for the Czech government to acknowledge and respond to external criticism. According to a CHC lawyer, this new law will solve most of the problems of Roma statelessness and loss of citizenship.

It is not merely coincidence that some of the most significant changes to the domestic minority rights regime come upon the heels of the start of EU negotiations. While NGOs, such as the ERRC and Human Rights Watch had been criticizing the treatment of the Roma since 1990, it appears that EU criticism had a larger impact on the government’s willingness to make changes. The EU appears to have greater normative power and its recommendations resonate stronger with CEE states such as the Czech Republic. This power originates from the EU’s authority as an IGO and of the legitimacy of the general norms that they propagate.

Some of the other policy changes geared toward improving the situation of the Roma minority that were related to recommendations and pressure by European organizations such as the Council of Europe, OSCE, and the EU (among others) include: the passage of hate crimes legislation and increasing judicial seriousness in prosecuting violent crimes against Roma; comprehensive government report on situation of Roma in which government accepts a great deal of blame for current problems between majority and minority; ratification of the Framework Convention on National Minorities; approval of a Law on National Minorities; government

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48 Interview with Jan Jarab, Prague, 29 July 1999. At the time of the interview, Jarab was a member of the Council of Human Rights.
49 General information on amended law from Petra Tomaskova, lawyer for CHC, Interview, 27 July 1999.
sponsored education and tolerance media campaigns, parliamentary approval of a long-term plan for Romani integration, and signing of ECHR’s Protocol No. 12 on non-discrimination.  

Romania, next in line to join the European Union after the initial eight post-communist countries, has also been the focus of European scrutiny for its policies and treatment of both the Roma minority and the Hungarian national minority. The improvement over the past 14 years in the relationship between the Romanian majority and the Hungarian minority is quite remarkable. In 1990 there were violent clashes between the two groups and nationalist politicians made efficient use of the Romanian fear of Hungarian irredentism; chauvinist rhetoric was high and the neo-communist government under Ion Iliescu was hesitant to promote minority rights in practice. Just 5-6 years later, the Hungarian political party, the UDMR, was in coalition government with the democratic opposition and a controversial education law was passed. As in the Czech case, many observers have noted how the chronology of events in Romania along with the statements of elites that the moderation of nationalist rhetoric, the cooperation with the UDMR, and the passage of numerous minority rights laws was in large part due to the combined pressure of EU conditionality, OSCE/HCNM recommendations, Council of Europe influence, and the effects of transnational and domestic NGOs. For example, just one month after Romania submitted its formal application for membership to the EU in June 1995, Parliament passes the Law on Education (No. 84) which gives members of national minorities the right to instruction in their mother tongue at most levels of schools (with some qualifications which were later almost entirely removed in subsequent amendments in 1997 and 1999). Moreover, the conclusion of a

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51 Swimelar 2003.
52 Ram 2001a; Swimelar 2003.
Romanian-Hungarian bilateral friendship treaty in 1996 that included minority rights provisions was seen as vital to the two countries aspirations to join the EU and NATO. 53

In addition to the Czech Republic and Romania, other post-communist states such as Hungary, Slovakia, Estonia, and Latvia have passed minority rights legislation and have in general responded favorably to recommendations by organizations such as the EU, Council of Europe, and OSCE (albeit with clear variation in the strength of these changes, e.g. Hungary having supported more liberal policies (and earlier) than Slovakia). 54 For instance, the desire for Council of Europe motivation motivated Latvia to reform a discriminatory citizenship law and the promise of EU admission led Latvia and Estonia to grant citizenship to stateless children. 55 But variation still exists of course: Baltic states with large Russian minorities have favored linguistic integration over the protection of linguistic rights. And while most East European states are in the process of creating legislation to comply with the Race Directive, to date only Romania and Slovenia have actually done so. 56

Research has shown that conditionality (i.e. material pressures) has been the primary mechanism for minority policy changes in countries such as Romania, the Czech Republic, Slovakia, Estonia, and Latvia, and that norm socialization can be seen as a secondary mechanism. 57 European organizations, therefore, as norm-pushers promote minority rights

54 Tessar 2001; Kelley 2000. See also EU Annual Reports on each country for more details on the changes that have been made. The claim of “success” for minority rights in post-communist states should not be taken to mean that leaders easily accepted recommendations and made the appropriate changes. Careful study of the specific cases reveals that in many cases governments passed highly qualified laws and made cosmetic changes, and these changes came after much debate and opposition from nationalist leaders. In many areas, such as the passage of comprehensive anti-discrimination legislation, many countries have not made the requisite changes. Two authors have illustrated that the changes have been very weak and have for the most part been cosmetic and have not included implementation of laws or real changes in the lives of members of minority groups. See Hughes and Sasse.
policies in the East for seemingly self-interested, instrumental reasons, both to prevent future
security threats and also to prevent monitoring of their own policies, and the norm takers also
appear to be supporting minority rights for self-interested instrumental reasons. These two
factors do not bode well for imagining a stronger minority rights regime that will be based
equally on ideational and normative concerns. Nevertheless, research in the constructivist vein
has illustrated that states tend to make human rights policy changes for instrumental reasons at
first, but that with time, elites get caught up in a socialization process that incorporates social
learning through involvement with European organizations, strategic bargaining, argumentation
and dialogue, persuasion, and eventually the institutionalization of norms that can be seen as an
outcome of both power and norms, not one or the other.58 Power appears to be most important at
the beginning of the norm socialization process, but ideas are the framework for material
pressures and become more important to the process later. In the case of many post-communist
states, government leaders became entrapped in a persuasive dialogue with transnational actors
and were pressured by their own minorities and by local NGOs to make good on the promises
they had made to the international community. This complex process is a combination of social

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58 One of the most prominent studies using constructivism to explain human rights norm socialization is Thomas
Risse, Stephen C. Ropp, and Kathryn Sikkink, Power of Human Rights: International Norms and Domestic Change
(Cambridge: Cambridge University Press), 1999. Swimelar 2003 applies the model and framework of this work to
the study of minority rights in post-communist Europe. Constructivism takes its cue from the weaknesses of neo-
realism/neo-liberalism. Its fundamental claims are that actors’ realities and identities are socially constructed and
that interests and identities of states and actors are endogenized and not taken as given. As Alexander Wendt argues
“ideas determine the meaning and content of power, the strategies by which states pursue their interests and interests
themselves. Note that this is not to say that ideas are more important than power and interests, but rather that they
constitute them.” (Social Theory of International Politics (Cambridge: Cambridge University Press), 1999, p. 309.
Some of the main texts dealing with the constructivist approach in international relations are: John Gerard Ruggie,
Exploration and Contestation in the Study of World Politics, ed. Peter Katzenstein, Robert Keohane, and Stephen
Security 20, 1, (Summer): 71-81; Alexander Wendt, Social Theory of International Politics (Cambridge: Cambridge
mobilization both “above” and “below” the state and elite social learning.\(^{59}\) These elites are induced to make positive changes (to create and maintain a domestic minority rights regime) for instrumental reasons, that is their desire to become members of European institutions, and for normative reasons, that is their desire to return to Europe and be considered part of a European collective identity that values human rights, democracy, and the protection of minorities.

This section has shown how the pressure and influence of organizations (and their attendant norms) such as the OSCE, Council of Europe, and the European Union has been a strong motivating factor for many Central and East European states to make positive changes to their minority policies. Minority rights norms have not only become empowered at the domestic level, but tangible policy changes and new institutions can be seen in numerous states. These effects illustrate that there is a European minority rights regime in action, that the expectation and demand for compliance with norms is structured uni-directionally from West Europe to East Europe, and that the primary impetus for Western monitoring is security-based, with justice concerns being secondary. Moreover, many post-communist governments and elites were intransigent in making the recommended changes, appeared only to make changes when pressure was continuous and extended over a period of many years (and often when it was combined with strong domestic pressure from, for example, the Hungarian minority in Romania, or from a kin-state such as Hungary), and also were more willing to make changes that were tied directly to membership incentives. It should therefore be no surprise that East European states, similar to West European states, are not too keen on having their minority policies scrutinized by outsiders and would probably prefer that the minority rights regime remain weak and more symbolic than real.

West European Approaches to Minority Rights: A Case of Double Standards?

It is beyond the scope of this paper to provide a full and systematic comparison of the minority policies of West Europe and East Europe. One cannot make a general claim that minority policies are better in one region than another – the variations are just too different and, as one of the weaknesses of the minority rights regimes reveals, there are no universally-accepted standards by which to compare and measure state progress. Solutions to meet the demands of the Flemish in Belgium will differ from those required in the case of the Hungarians in Slovakia or the Roma in the Czech Republic; and the case of Muslims, who are not even recognized as a minority in Germany and France, for example, would add yet another different and more complex dimension to our efforts to compare.

In this section we will briefly note the positive steps that many West European states have taken to protect national minorities, to dispel the myth that some East European leaders claim that the East actually has stronger minority rights protections than the West. Former Slovak leader Vladimir Meciar, for example, argued that Slovakia had granted more rights to its Hungarian minority than any Western country; he also demanded a report on that status of minority rights in EU countries. Kymlicka correctly notes that the perception that the West as a whole does not protect the collective rights that CEE states are being asked to protect is flatly incorrect:

> If such a report [on minority rights in EU countries] were written, it would show that wherever national minorities in Western democracies are as numerically or proportionally significant as the Albanian minority in Macedonia, or the Russian minority in Latvia, or the Hungarian minority in Romania or Slovakia, they have far greater minority rights, including territorial autonomy, equal or even dominant official status for the language within that territory, and higher education in their own language (2001, 384).

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60 Kymlicka and Opalski 2001, p. 384. A group of ethnic Macedonians also appealed to the OSCE saying that their country had done more for the Albanian minority than any West European country had done for their minorities. See Kymlicka and Opalski 2001, p. 384.
A case could be made, however, that the West has been thwarting efforts to strengthen the minority rights regime, has not been living up to the same standards as they are asking the East to live up to, and that the claim of double standards may be partially true in following cases: (1) if one accepts the security-based approach to minority rights protection in the East then it is justified that potential security threats in the West (e.g. Northern Ireland, Basque region) should also be subject to scrutiny. (2) if one is measuring support for minority rights by ratification of treaties such as the Framework Convention where more East European states have signed than West European states; (3) if one broadens the definition of minority to include ethnic minorities, immigrants, guest workers, and refugees, then West European states are not as protective of minority rights as they claim to be; and (4) if one is comparing the situation of the Roma minority, then East European states are singled out for the negative treatment of the Roma and the lack of policy, but West European states’ Roma problems are equally significant, yet they are not scrutinized or addressed.

Moreover, despite the fact that many West European states have positive minority policies in practice, the fact remains that they are reluctant to allow external scrutiny and to further institutionalize and codify minority rights norms at the European level. Will Kymlicka’s position on this situation best illustrates the problem:

France, Greece, and Turkey remain adamantly opposed to the very idea of self-government rights for national minorities, and indeed deny the very existence of national minorities. And even those Western countries that accept the principle do not necessarily want their laws and policies regarding national minorities subject to international monitoring. This is true, for example, of Switzerland and the United States. The treatment of national minorities in various Western countries remains a politically sensitive topic, and many countries may not want their majority-minority settlements, often the result of long and painful negotiation processes, reopened by international monitoring agencies. In short, while they were willing to insist that ECE [East Central Europe] states be monitored for their treatment of minorities, they do not want their own treatment of minorities examined.\(^{61}\)

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\(^{61}\) Kymlicka and Opalski 2001, p. 372.
Evidence also shows that in multiple OSCE meetings of the early 1990s where minority rights norms were being codified, West European states took efforts to define minority rights and to propose frameworks that would reduce external influence upon its own policies and problems. For example, at the Meeting of the Experts on National Minorities in Geneva in 1991, France and Switzerland, “after fierce discussion, forced the Geneva Report to include the statement that ‘not all ethnic, cultural, linguistic, or religious differences necessarily lead to the creation of national minorities.”’

Furthermore, France, which has not ratified the Framework Convention and is noteworthy for its claim that it does not have any national minorities, has even refused to recognize the cultural pluralism of its polity. Also during OSCE meetings, Germany “forced the exclusion of ‘new’ minorities such as migrant workers, to avoid the question of its treatment of the Turkish minority.”

At the Helsinki II meeting in 1992 where the mandate and purpose of the High Commissioner on National Minorities was discussed, Chandler illustrates that justice-based approach to minority based protection was clearly eschewed for a security-based approach whereby Western states would define what is meant by a “security threat:”

The Helsinki discussions were to make the OSCE claims to universal commitments on national minorities ring hollow. When OSCE influence in western states could not be negated throughout the denial of the existence of national minorities a second rider was proposed. The United Kingdom and Turkey, supported by Spain, insisted that the HCNM could not intervene in national minority issues where terrorism was involved, effectively taking the Irish, Kurdish, and Basque questions off the international agenda. This provoked uproar due to the restrictive nature of the proposal, which meant that existing national minority conflicts (in the West) were excluded, while only potential conflict (in the East) became a focus of concern.”

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64 Chandler 1999, p. 67.
65 Chandler 1999, p. 67-68. While it appears that some form of the Al-Qaeda network may have been responsible for the train bombing in Madrid on March 11, the Basque ETA organization is still suspected by the government. Even if it turns out the ETA was not responsible, the fear and concern of the elites and populace in Spain of the ETA suggests that it is surely false to assume “security threats” only come from the East.
Even a cursory examination of the minority issues in the East that the High Commissioner and other actors such as the EU are concerned about, reveals weak to non-existent security threats particularly as could be compared to the Basque minority or the problems in Northern Ireland. Of course this depends on how broad one is willing to define “security.” The High Commissioner talks of “tensions” between majorities and minorities as a rationale for involvement, even though these will most likely not reach the level of violence. But nevertheless, while there are sporadic violent attacks against the Roma, the tensions between them and the dominant majority do not rise to the level of a security threat. The case of the Hungarians in Romania and Slovakia and the Russophones in the Baltics are also not squarely security issues. If “tensions” are the requisite criteria for OSCE and High Commissioner involvement, then West Europe has its fair share of tensions between Austria and Italy over the rights of German speakers in South Tyrol, between the Catholics and Protestants in Northern Ireland, and between Flemish and French speakers in Belgium.\footnote{See Kymlicka and Opalski 2001, p. 377-379.} In short, security is defined differently in the East versus the West. In the West it implies war between states, while in the East it is much broader, encompassing what may be called “societal security” as discussed above.

As noted above, \textit{today} West European states have a strong record in terms of treatment, protection, and policies toward \textit{national minorities}, but they are more reluctant to acknowledge the similarities between them and immigrants and refugees. In fact, West European practice regarding minority rights is much more protective than international and regional law since territorial autonomy is not considered a recognized minority right in any document. In many countries such as Belgium, Italy, Switzerland, Spain, England, and Germany, national minorities have rights to mother tongue use and education, rights to cultural protection, and rights to some...
form of territorial autonomy or self-government. Multinational federalism in general is not seen as threatening as it once was.\textsuperscript{67} In Belgium, for example, each of the three linguistic communities, Dutch, French, and German have personal jurisdiction over their members and the different regions have territorial competence.\textsuperscript{68} Substate national identities are seen as legitimate and enduring and their aspirations have been accommodated by creating federal or quasi-federal sub-state units where the minority forms a local majority and the use of the minority language is guaranteed.\textsuperscript{69} Autonomy has become one practical option for protecting minority rights in the cases of the Swedish-speaking Aland Islands in Finland after World War I, South Tyrol in Italy after World War II, for Catalonia and the Basque Country in Spain in the 1970s, for Flanders in the 1980s, and for Scotland and Wales in the 1990s.\textsuperscript{70}

This generally positive view of ethnocultural diversity has not always been the standard in Western Europe. In all the cases mentioned, the dominant states and national groups have suppressed the demands for minority rights. Demands for sub-state governance and minority language rights were seen as threatening (just as they are today in East Central Europe). But over time, and due to changing demographics, an increasing human rights’ consciousness, and the process of democracy, states have come to see multiculturalism (at least in terms of national minorities) as a natural part of democratic politics.\textsuperscript{71} Immigrants, guest workers, and refugees now comprise the next group of “difference” that tends to be seen as threatening and whose demands are not taken as seriously as those of national minorities. Kymlicka, who does not see

\textsuperscript{67} Nevertheless, there are still secessionist threats from Flanders, Scotland, and Catalonia (and Quebec in Canada).


\textsuperscript{70} Hannum 1990; Kymlicka 2002.

\textsuperscript{71} Kymlicka 2002, p. 4.
as many similarities between national minorities and immigrants as we do, nevertheless believes that a shift is occurring regarding the perceived rights of these typically excluded groups.

Despite general positive practice regarding national minorities, the record of compliance with minority rights standards as understood in regional treaties is not as good. This seems to suggest that West European states see the necessity and pragmatism of resolving minority conflicts within their borders, but they are less willing to have these issues subject to external scrutiny and turned into legally-binding norms. Many West European states have not ratified or complied with the Framework Convention, the European Charter on Regional and Minority Languages, Protocol 12 to the European Convention on Human Rights on non-discrimination, and the stronger EU Race Directive related to non-discrimination. In some cases, such as the Framework Convention and Protocol 12, more East European states have complied than West European states.

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The distinction between national minorities and immigrants warrants additional scrutiny in practice. An examination of the situation of immigrants in Germany casts doubt on the merit of separating the two groups. The popular distinction holds that national minorities and immigrants bring different expectations and demands to the state in which they reside. While national minorities have a reasonable claim and right to preserve their culture, language, history and traditions, coupled with regional autonomy and/or representation in the national legislature, immigrants largely waive such claims voluntarily by leaving their country of origin and instead may be reasonably expected to integrate into the host society. Not only does this distinction fail to hold for refugees, whose impetus for leaving is far from voluntary, but for the majority of today’s minority groups in Europe, the second and third generation descendants of immigrants face many of the same social and legal hurdles which their parents and grandparents faced in the pursuit of equal protection. The question arises at what point after immigrants and their descendants comprise the same kind of close-knit ethnic minority with their own religion and language which national minorities make up, do the immigrant groups and their descendants deserve the same kind of group rights protections? The situation for ethnic minorities in Germany, in particular, warrants this question.

Germany itself has long been concerned with the state of its own national minorities outside German borders (one of the principle reasons cited by the Third Reich for invading Czechoslovakia in World War II was the presence of a large marginalized German minority). An open immigration policy for the “return” of ethnic-Germans or Aussiedler, which was implemented in the 1950s and has enjoyed renewed emphasis after the Soviet collapse, reflects this sentiment. Until very recently, this policy allowed persons of German descent—“no matter
how feeble their ‘ethnicity’ in terms of culture or language” to emigrate and take up new lives fairly quickly as German citizens. Descendants of the Turkish guest workers who arrived to work in labor-strapped postwar Germany, however, face more restrictive criteria to qualify for social welfare programs, integration-related benefits and citizenship, not to mention more institutionalized racial discrimination, than many recent arrivals from Russia whose last names happen to be German. Despite the virtual halt in the flow of ethnic-Germans due to the 2002 adoption of a much stricter requirement that ethnic-Germans demonstrate persecution based on their ethnicity, little has been done to fill in the gaps between ethnic-German immigrants and their non-German counterparts’ longtime residents.

While the officially recognized minorities of Danes, Sorbs, and Friesians, who number in the thousands, receive considerable government-funded protection, language rights, religious and cultural freedoms, and regional autonomy, the nation’s 7.3 million immigrants, many of whom are left largely unprotected from institutionalized discrimination. Germany’s immigrant population is the largest in Europe. Although national minorities make up only a tiny fraction of the population, immigrant minorities now comprise 9 percent of the population with a promise to continue to grow in the foreseeable future--particularly if Germany, like the rest of Europe, is to sustain economic growth by employing foreign workers to offset the shift in European demographics. Also important, the average immigrant to Germany, as to the rest of Europe, is increasingly nonwhite and Muslim, so that the real test for the anti-discrimination regime in Germany is posed not by the national minorities whose sociopolitical, religious and

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76 Ibid.
ethnic backgrounds differ marginally from those of their German neighbors, but by the Turkish immigrant majority whose rights to basic equal protection have yet to be realized\textsuperscript{77} (Roma and Sinti minorities to be discussed later).

The German government has yet to pass comprehensive anti-discrimination legislation.\textsuperscript{78} While the government has adopted some measures to comply with the European Council Race Equality Directive, the essential 2003 deadline for passing the mandatory measures was missed.\textsuperscript{79} Several discrepancies in the legislation adopted thus far, are of note. Although the German Constitution or \textit{Grundgesetz} outlaws discrimination based on sex, parentage, race, language, homeland and origin, belief, religious or political opinions, the law is only binding to protect against discrimination by public authorities, and not by private citizens.\textsuperscript{80} No act specifically deals with nondiscrimination, despite criticism in 1997 from the UN Committee on the Elimination of Racial Discrimination that Germany failed to adopt comprehensive legislation to comply with Articles 2 (1) (d) and 5 (e) (i) of the International Convention on the Elimination of All Forms of Racial Discrimination in the private sector.\textsuperscript{81} While the Works Council Constitutions Act (\textit{Betriebsverfassungsgesetz}) requires employers and work councils to treat employees equally and to prevent discrimination, no provision yet deals with protection against discrimination in the hiring process.\textsuperscript{82}

The Federal Ministry of Justice has recently determined that the Section of the Civil Code aimed at compensating victims of an intentional, unethical injury at work, is insufficient for preventing racial discrimination and has prepared a Draft Law on the Prevention of

\textsuperscript{77} ENAR Shadow Report 2002, p. 5.
\textsuperscript{78} Selbman, p. 10.
\textsuperscript{79} Ibid.
\textsuperscript{81} Selbman, p. 4.
\textsuperscript{82} Ibid.
Discrimination in the Private Sector to comply in part with the Race Directive. The draft law consists of five sections, all applied to the Civil Code. This method is undesirable for the potential gaps, overlaps and confusion which a similar set of acts of anti-discrimination laws in Australia proved.\textsuperscript{83} A preferable action would have been to adopt a single Anti-Discrimination Act to implement not only the minimum requirements of the Race Directive, but also the Protocol 12 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and the International Convention on the Elimination of All Forms of Racial Discrimination. Precedents for such comprehensive acts are found in several other countries which the German drafters failed to examine. According to Frank Selbman of the European Centre for Minority Issues in Flensburg, reviewing other countries’ comprehensive discrimination acts is key: “it is not possible to draft an anti-discrimination law without studying regulations and practices elsewhere [. . .] One example, which could have been taken into account, is the Race Relations Act 1976 of the United Kingdom, which is, according to the European Commission Against Racism and Intolerance, one of the most comprehensive pieces of legislation dealing with racial discrimination.”\textsuperscript{84}

Anti-discrimination NGOs voiced this very concern and voted for the adoption of such a single act against discrimination. Other groups opposed even the Draft Law, on the ground that it violated the Constitution. The Federal Ministry of Justice prepared a revised Discussion Draft, which was subsequently put on hold for review by the Federal Council and Parliament due to the 2002 election campaign. As yet, Germany has also failed to develop the monitoring body to comply with Article 13 of the Race Directive, to promote equal treatment, provide independent assistance to victims of discrimination, monitor, report, and recommend actions. Following the

\textsuperscript{83} Selbman, p. 7.
\textsuperscript{84} ENAR Shadow Report 2002, p. 7.
2002 elections, the Government again proclaimed its intention to transpose the directives, but as of October 2003, no new draft bill had been presented. A transposition is foreseen by May 2004, according to Matthia Mahlman.

Considerable gaps in enforcing existing anti-discrimination law also exist. Racial discrimination complaints must be brought by the person aggrieved to the institutions of law enforcement, and sometimes to the criminal, administrative or civil courts, and in the case of administrative grievances, the person aggrieved must initiate administrative proceedings to review the administrative decision before going to court. No right to representative action exists for NGOs, for example, to bring action to court. Legal advice is likewise restricted to legal authorities. Although the shift of the burden of proof exists for sex or disability related discrimination, no such regulation protects victims of discrimination based on race or ethnic origin. In the words of Mahlman, “very little case law--apart from criminal proceedings concerning hate crimes--deal with discrimination on the basis of race and ethnic origin.”

Access to citizenship in Germany is also an important area of concern for the country’s 7.3 million immigrants, as well as significant numbers of the German Roma and Sinti population. A 2000 change to Germany’s citizenship law brought long overdue improvements, such as relaxing the legal minimum residence period to qualify for citizenship from 15 years to 8, and departing from the out-moded system of ethno-cultural notion of citizenship based on one’s descent to a more inclusive concept common throughout Europe. The new law allows

87 The similarities between the Czech Republic and Germany on the question of citizenship are noticeable. Both states tended to define citizenship in ethnic, as opposed to civic terms. They defined a citizen as one whose parents were of Czech or German ethnicity. In both cases, the way in which the law was drafted resulted in many members of minority groups who arguably are entitled to citizenship were left out. The German citizenship law, however,
for children of non-German parents in Germany to receive German citizenship if “(a) one parent has a minimum legal residence period of eight years and (b) has held either an unlimited residence permit (unbefristete Aufenthaltserlaubnis) for at least three years, or holds a residence entitlement (Aufenthaltsberechtigung)”\(^{88}\). Preconditions for citizenship are knowledge of the German language (no exceptions for the elderly as in U.S., Canada, and UK) and acceptance of the Constitution. The trouble with the new law lies in the fact that very few foreigners with eight years residence hold a residence entitlement, and even fewer have the unlimited entitlement. Figures from the Federal Commissioner on Foreigners’ Issues hold that, of the 2.05 million Turks in Germany at the end of 1999, 744,500 had limited residence permits, 619,000 had unlimited and only 476,000 had the right to unlimited residence.\(^{89}\) By those estimates, Christian Lemke concludes: “a reasonable estimate is that any children born to around two-thirds of all foreigners in Germany will not benefit from this provision.”\(^{90}\)

Dual citizenship may be granted at the discretion of the government, albeit no legal right to it exists. That dual citizenship remains formally excluded leads some to raise doubts about the ability of the new provisions in the citizenship law to “effectively depart from the ethno-cultural notion of citizenship.”\(^{91}\) Low rates of naturalization are also of particular concern to Germany’s minorities. The Aliens Act of 1991 held that citizenship rights could be granted to non-ethnic Germans by discretion. Yet between 1994 and 1998 only some 17 percent of all naturalizations were discretionary; more than 75 percent were granted to ethnic Germans.\(^{92}\)

\(^{88}\) Lemke, p. 7.
\(^{89}\) Lemke, p. 8.
\(^{90}\) Ibid.
\(^{91}\) Ibid.
\(^{92}\) Ibid.
Considering such low rates of naturalization by non-ethnic Germans, this privileged access to citizenship based on ethnicity stands clearly at odds with the notion of equal treatment by the law.

Another case for increased attention to the protection of minorities in the West, however recent they may have arrived, are the stresses placed upon governments to recognize and attend to the unique demands of the growing Muslim populations in major European cities. A rough estimate holds that there are some thirteen or more million Muslims living in Europe. 93 Belgium, the Netherlands, France, the Nordic states and particularly Germany, have long served as “labor catchment areas” for Turkish immigrants; France and the Benelux saw the largest numbers of Moroccans; Indian, Pakastani, Bangledeshi, and Caribbean Muslims have largely settled in Britain; the whole of Western Europe has also taken in a significant number of refugees and asylum seekers from an array of Muslim countries, Iraq, Somalia, Eritrea, Afghanistan. 94 It is important to note that many of the Muslims who now live in Europe were the subjects or descendants of the subjects of the British, French or Dutch colonial regimes of recent decades. The characterization of the change in demographics as the “new Islamic presence,” then, is misleading, says Frank Buijs. This representation is incorrect from a historical point of view and also somewhat Eurocentric, especially if applied to postcolonial societies […] Until the demise of the colonial project, millions of Muslims were subjects of British, French, or Dutch regimes, albeit domiciled outside Europe. The very fact that many migrated to the European centers is part and parcel of the same historic process. This again diminishes the stark line between the

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state’s obligation to protect the rights of national minorities, versus the rights of their immigrant
and immigrant-descendant population.

In addition, the line between the national minorities whose lives inside their host nation
span generations and the descendants of the immigrants who comprise the majority of non-ethnic
Europeans in member states, is increasingly blurred. This is particularly applicable to Muslims in
Europe whose largest numbers arrived in the 1950s: “by now, the Muslim communities have
developed in such a way--in most countries they encompass a number of generations--that if the
use of the term ‘immigrant’ becomes increasingly debatable [. . . ] in Britain the term
‘immigrant’ is no longer current; instead the term ‘ethnic minority’ has become de rigueur.”

Yet Islamophobia appears to be on the rise as public distrust mounts in response to
arrests of Islamist extremists on terror-related charges: “alarmed by rising Islamist
fundamentalism, the Dutch lower parliament last year demanded an investigation into the
activities of the Muslim population.” A Vienna-based European Monitoring Center on Racism
and Islamophobia (EUMC) May 2002 report found an increase in attacks against Muslim groups
and individuals in EU member states. EUMC Bob Purkiss notes that “a greater sense of fear
among the general population has exacerbated existing prejudices and fueled acts of aggression
and harassment across Europe.” The failure of French educational authorities this year, to
accommodate the religious observances of Muslim girls which other groups are afforded, most
clearly illustrates the inattention on the part of such authorities to appreciate the unique concerns
Muslims present to upholding religious freedom and tolerance. To many Muslims, the
importance of the practice lies in their ability to practice their religion as they see fit: “wearing

97  http://www.lebanonwire.com/0205/02052916DS.asp
98  http://www.lebanonwire.com/0205/02052916DS.asp
the veil is a personal choice and a religious obligation that does not pose any harm or threat to anybody,” says a 21-year old Egyptian Muslim woman. For many Muslim women, having the choice to wear the veil is exactly the kind of freedom which they sought in leaving their home countries where such practices may be compulsory.

The record of viewing Muslims as members of minority communities thus requiring minority rights is weak across Western Europe. States such as Italy give rights to traditional national minorities such as the French, German, and Slovenian minorities, but Muslims and Roma communities are excluded. In Germany, national minorities and the Roma/Sinti are recognized minority groups, but again the Muslims are not. In the UK where minority rights tend to be strong, the definition of minority rights also excludes Muslims and member of other faith communities. Since France does not accept the presence of minorities, then Muslims are seen as a threat to their model of a civic Republican secular state.

The case of the Roma minority that exists throughout East and West Europe illustrates the differential treatment between East and West concerning minority rights. As discussed earlier, since 1990 European organizations and non-governmental organizations have declared that the Roma issue is of international concern and have therefore put pressure upon East European states to first recognize the Roma as a distinct ethnic minority and more importantly to implement policies and action plans to reduce discrimination, promote tolerance, promote integration, and also to protect their culture. While the West European Roma population is less than in the East and the level of violence directed at them may not be as harsh, the policies do not appear to be any different. Nevertheless, there is little to no discussion or

101 For a full treatment of the position of Muslims in EU member states see the EUMAP report, “Monitoring Minority Protection in EU Member States,” at http://www.eumap.org/reports/2002/content/09
attention to the Roma in the West. The issue comes up only when East European Roma try to emigrate and seek asylum in the West – then it becomes a Western “problem” as well.

The case of the British response to Romani asylum seekers from the Czech Republic this point and the fact that a “security” framework regarding minorities is still at work. The widely controversial and publicized events of 2001 regarding British checks of potential Romani asylum seekers at Prague’s airport illustrate some of the difficulties of a norm socialization model that assumes that Western governments and organizations are the “nannies,” “teachers,” and norm-givers and the target states are the “students” and norm-receivers. With the consent of the Czech Cabinet, British immigration officials began in July 2001 screening Czech passengers headed to the UK in order to weed out potential Romani asylum seekers. Human rights activists and many others condemned the British policy as unlawful and discriminatory since they were both infringing upon the right of peoples to seek asylum and because their airport checks appear to stop almost exclusively Romani passengers.¹⁰² Not only were domestic and international human rights NGOs protesting the checks, members of the Czech government also proclaimed the checks were discriminatory and called for their end.¹⁰³

The British policy of preventing potential Romani asylum seekers from leaving the Prague airport for Britain illustrates that the UK may be pressing Czechs to protect the Roma out of their own self-interests in not having to deal with the Roma in their own country, that is they


¹⁰³ The airport checks were in response to a continue flow of Czech Romani asylum seekers in the UK. Already in 1999, two years before the checks began, Czech Airlines admitted that it had been marking the airline documents of Roma with a “g” for “Gypsy” in order to help British immigration officials at Heathrow Airport identify Romani passengers even before their arrival. See Erika B. Schlager, “Human Rights Deteriorate in Czech Republic,” CSCE Digest, v. 22, no. 11, 11 November 1999. While the British claim that the checks are not discriminatory since everyone must go through them, human rights monitors and the Czech government argue the contrary since only Roma are prevented from traveling. This became obvious when two undercover reporters for Czech Television, one Roma and one non-Roma, tried to board a UK flight. The Roma was not allowed to fly and was questioned for 25 minutes, while the non-Roma was allowed onboard. This entire incident was secretly filmed and broadcast on Czech television. See Human Rights Watch, 2002; The Guardian, “Airport Colour Bar,” 30 July 2001.
see the Roma as a “security risk” in terms of unwanted immigration, which they have been under pressure recently to curtail. Two scholars bemoan that “EU and candidate countries sometimes appear to be jointly acting out a charade on Roma policy” (Hughes and Sasse 2003, 17). In short, this example suggests that the West (in this case the UK) pressures East European states to better protect the Roma so that they will not be forced to flee to their own countries. In 2002, the EU agreed that they would not accept any asylum seekers from the candidate countries since doing so would imply significant differences in standards of democracy and human rights protection that should not exist now that many East European countries are at the edge of EU membership.

A comparison of the protection of and policies toward the Roma in Germany and Spain, where Roma communities are more prominent reveals significant weaknesses and similarities with the lack of Roma policy that existed in post-communist countries in the early 1990s. As in East Europe, the level of public awareness of Roma problems is low, the level of intolerance is high, and discrimination in many areas of life is pervasive. Given the history of persecution of the Roma all across Europe and the pervasive negative stereotypes that exist throughout the world about them, it is not surprising that there are similarities between West and East Europe. But in many ways the East European states are progressing faster than West European states in terms of protecting the Roma – states such as Hungary, Bulgaria, and the Czech Republic have created long-term integration programs, have stepped up anti-discrimination legislation, and have promoted social programs in the fields of education and media to improve images of the Roma and their relationship to the majority. Germany, for example, has not taken any steps toward creating a government program to deal with Roma concerns and discrimination, and the Roma language, Romanes, is not protected as other national minority languages are. Moreover, in both

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Spain and Germany, the government has discouraged the development of minority rights for the Roma. By contrast the Czech Republic has (albeit after a great deal of external pressure) come to promote publicly the importance of both the protection of Roma rights and their integration into Czech society. The Roma are also not well represented in public administration or in governmental bodies that protect minorities in Germany and Spain. Although the same criticism can be leveled against East European governments, there appears to be greater attempt to include Roma in government minority commissions, for example.

While the protection of national minority rights is quite strong in West Europe, we argue that when the understanding of minority is broadened to include immigrants, for example, there is insufficient concern and protection, and therefore the need to promote greater European cooperation on this issue facing all European states. Moreover, there do appear to be double standards in the way that West Europe and the organizations it dominates have framed the minority rights debate, thus leading to differential treatment and supervision of the East compared to the West. In some cases, similar problems exist in both regions (e.g. Roma policy and illiberal citizenship policies in the Czech Republic and Germany), yet attention has overwhelming been focused on the East.

**Conclusion: The Prospects for a Stronger European Minority Rights Regime**

In contrast to the League of Nations systems when states were forced to accept minority rights, the current system is voluntary, whereby both current and prospective EU member states choose to be bound by the norms. One could argue that in the current period, West European states now have greater moral authority to promote or even require minority rights protection upon prospective members of European organizations than during the inter-war period, since they too

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are bound by the same obligations as their neighbors.\textsuperscript{107} However, the power imbalance between West and East and the process of conditionality does put a greater burden on post-communist candidate states to ratify European treaties such as the Framework Convention (all of them have done so except Latvia), when a number of West European states have failed to do so.\textsuperscript{108} Given the vagueness of minority rights norms (especially those outlined in the Framework Convention), each state can determine the form and content of minority rights protection and legislation; that is, the unique characteristics of majority-minority relations in each state should determine the policies more than European laws. The lack of specificity of minority rights norms has led to criticism, but at the same time, can also be seen as a pragmatic solution to a very complex problem.

One could argue then that the conditionality process is one of Western hegemony (once again) upon neighbors to the East. The history of East Central Europe is literally one of domination by larger powers and empires either East or West so it should not be too surprising that we may be witnessing a liberal, milder form of hegemony.\textsuperscript{109} Andrew Janos observes that “[B]enign or not, the present relations between East Central Europe and the West are clientele relations and not those of equals.”\textsuperscript{110} But reality shows it is not just a question of power. Two processes are currently at work in the East-West relations regarding minority rights: hegemony as power (e.g. material incentives) and ideas (e.g. norm socialization). The use of coercion or material force often associated with hegemonic power is clearly not at work here, thus the term

\textsuperscript{108} Belgium, Finland, France, Greece, and the Netherlands have not ratified the Framework Convention.
\textsuperscript{109} See Andrew Janos, “From Eastern Europe to Western Hegemony: East Central Europe under Two International Regimes, East European Politics and Societies 15:2 (2001), pp. 221-249.
\textsuperscript{110} Janos 2001, p. 247.
“soft” hegemony.\footnote{Janos, for example, calls the political and financial conditionality upon East European states “soft hegemony.” (2001, p. 237).} The constructivists within the field of international relations have got it right when they have shown and argued that the process of norm socialization is not a question of power versus ideas, but of the force of power and ideas.\footnote{Risse, Repp, and Sikkink 1999; Wendt 1999. For a practical example of this in explaining changing global norms of racial discrimination, although not explicitly a constructivist approach, see Paul Gordon Lauren, Power and Prejudice: The Politics and Diplomacy of Racial Discrimination (Boulder: Westview Press), 1988, 1996.}

Our examination of the development of the European minority rights regime and a cursory look at its operation in East Europe and West Europe leads us to make the following four concluding points, particularly as they relate to the prospects of a broader, stronger minority rights regime.

First, comparing the minority rights regime today with just 15 years ago reveals drastic differences; this itself an impressive achievement. During the Cold War, not only were human rights often relegated to power politics, but global or regional attention to the rights of minority communities was nearly non-existent. The fundamental shift, both geographical and ideological, in the European landscape after 1989 allowed for “new” issues such as minority rights to gain the increased attention of all major European organizations (OSCE, Council of Europe, EU, and even NATO to some extent). These organizations, for example, became involved in norm creation, norm diffusion, and monitoring. With the EU Race Directive, attention started to shift to EU-wide obligations, and not just requirements on East European states.

Second, the quick and numerous improvements to the minority rights regime did not mean that the regime was strong, fair, or adequate. As has been discussed, even after over a decade of treaty-creation, standard-setting, and European cooperation on the issue, roadblocks remain. There is still debate and disagreement on the following: the definition and scope of the term “minority”; the standards which should be promoted and applied to both East and West
European states; how much external scrutiny and monitoring is acceptable and necessary; how to define “security” threats in terms of majority-minority conflicts; and how to find a balance between state sovereignty (over these particularly sensitive issues) and protection of human rights.

The kind of regime then that currently exists is weak in terms of universally applicable standards of justice, but relatively strong in terms of applying ad hoc principles selectively to prevent potential conflict and security risks. This is primarily due to the hegemony of West European states in creating the minority rights regime in such as way as to prevent oversight of their minority issues, in limiting the definition so as to include numerous minorities such as immigrants, in framing the regime in terms of security over justice thereby allowing for international supervision of East Europe, but not of West. These factors have so far resulted in a weak, unfair, and limited promotion and protection of minority rights. They also suggest that the prospects for a stronger regime are problematic.

Third, the current focus on minority rights as a means to conflict prevention rather as an end in itself presents problems for a stronger more equitable regime based on justice. As we discussed, the assumption that the Roma or the Russian minority in East Europe and the Baltics presents a greater security threat than the Basques in Spain or the Northern Ireland question is unfounded. Not only is this view not reflected in reality, but the “securitization” of identity and of minority rights presents problems in itself. As Kymlicka observes, “this new security track may simply be reproducing the beliefs and assumptions that were the cause of the problem in the first place. That is, it does not challenge the idea that minorities in ECE (East Central Europe) are first and foremost a security issue.”

If East European states continue to view minorities

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113 Kymlicka in Kymlicka and Opalski 2001, p. 383. For instance, nationalists (such as in Romania) already have the misguided view (long gained from history) that the Hungarian minority is disloyal and is a security threat. The
“in the framework of loyalty/security, they are unlikely to understand or act upon notions of fairness or justice.” The solution is to frame minority-majority claims as part of, and essential to, normal democratic politics in a multi-ethnic, multi-nation state. The need to debate and reconcile competing claims by different groups in society also suggests that it will be difficult to create a more consensual, institutionalized minority rights regime since the circumstances of majority-minority relations across Europe are so divergent.

Fourth, the prospects for a broader, stronger, fairer minority rights regime hinge on a number of factors. (1) The justice-based track that focuses on universally applicable norms needs to be strengthened. This means that current EU states need to make minority rights a priority at the European level and not see this issue as one only suited for their East European neighbors. This implies a weakening or at least a more universally applied understanding of the security-based motivations for minority rights as discussed above.

(2) The concept of “minority” should be broadened to include the many members of minority communities in Europe that face many of the same problems as traditional national minorities. While national minorities will have greater demands for self-government rights or territorial autonomy, both groups may suffer from discrimination and may be in need of protection of their language and their cultural and religious practices. This is all the more important if one believes that the ability of a group and its members to express its identity is fundamental to the respect and dignity of the person, which is the fundamental rationale for universal human rights. Our discussion of immigrants in Germany and Muslims across Europe illustrate that these “new” minorities are part of the long-term fabric of Europe and that, despite

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Hungarians, like other minorities, are often seen as working for “foreign” powers seeking to undermine the unity of the dominant group and “its” state.

Ibid.
the current resistance in many states, it is only a matter of time before they too will need to be recognized as deserving of equal rights and perhaps protection.

(3) East European states, leaders, and peoples should be more involved in the process of creating, promoting, and monitoring minority rights across Europe. The current power asymmetries have resulted in differential treatment and the domination of the minority rights “frame” by the West. As many of the contributors in the recent volume *Can Liberal Pluralism be Exported* suggest, West European academics, policymakers, and leaders cannot simply assume that models and standards used in the West can be easily transplanted eastward. The history, symbolism, subtleties, and practicalities of ethnic relations in East Europe all must be taken into account and described and analyzed by East Europeans themselves. If the new EU members from the East become more involved in the development of the minority rights regime as equal partners then there is a possibility for a more equitable and stronger promotion and protection of minority rights.

(4) Given that the EU conditionality process regarding minority rights already suffers from a number of weaknesses and inconsistencies which suggest that the EU is not that serious about minority protection, it is unlikely that, once this process ends and candidate members became regular members that minority rights promotion and monitoring will continue. Could it be that both East and West are actually carrying out a grand charade about minority rights? For the minority rights regime to become stronger, the attention given to minority rights during the accession process should continue. We believe that the EU Race Directive holds the potential for a European-wide focus on non-discrimination as one aspect of minority rights since compliance is required by all European states.
In sum, until some significant changes occur in the scope, definition, attention, and institutionalization of minority rights and until the differential treatment between East and West disappears, it is unlikely that the European minority rights regime will advance beyond its current weak stage. Further research as European enlargement continues should shed more light on this question.