Minority Protection in International Law: 
From Standard-Setting to Implementation

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Abstract. In recent years, minority issues regularly feature on the international agenda, due to growing concerns for human rights and stability. Minority rights instruments are being multiplied accordingly. While this is no doubt a welcome development, the fact that the effectiveness of any (present and future) minority regime remains to be tested through an adequate implementation machinery should not be overlooked. The aim of this paper is to examine the international monitoring mechanisms which are relevant to minority protection, with a view to discussing the prospects for improving State compliance. An overview of such mechanisms and a focus on some basic, contemporary elements of the resulting monitoring process, afford the basis for a set of forward-looking reflections on the problem of the implementation of minority rights standards. An attempt has been made at analysing the relevant patterns of scrutiny within a broad perspective, namely in relation to their real and/or potential impact on minority protection as embraced by international law.

1. Introduction

Standards relating to the protection of minorities can be found in a variety of international human rights instruments. Equality of treatment and non-discrimination in the enjoyment of fundamental human rights on grounds related to such minority traits as national or ethnic origin, culture, language, etc., are basic prescriptions in numerous treaties as well as declarations (e.g. UN Charter, Universal Declaration of Human Rights, International Covenants on Human Rights, etc.). The core international legal protection of minorities goes beyond a non-discrimination-based approach in that it recognises the objective existence of groups whose members need special guarantees because

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of their ethno-cultural, territorial and personal situation. The widely known provision of Article 27 of the International Covenant on Civil and Political Rights, has broken new ground in this regard. In the last few years, it has been adopted many international instruments dealing with the various aspects pertaining to the protection of the minority identity (e.g. UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, Framework Convention for the Protection of National Minorities, European Charter for Regional or Minority Languages, CEI Instrument for the Protection of Minority Rights, etc.).

Far from showing a lack of minority rights standards, the current international scenario presents a large set of provisions relevant to the protection of minorities, couched in a plurality of forms and reflecting varying degrees of legal significance. Politically and legally speaking, they afford the basis on which further comprehensive standard-setting initiatives may build in the future. Respect for minority rights has been brought to the forefront due to a growing emphasis on cultural diversity in modern societies and concern for internal and international stability. Out of a number of issues to be dealt with, two basic points call for priority on the international agenda:

− rationalisation and strengthening of minority rights standards;
− enhancement of the effectiveness of the respective implementation machinery.

The focus of this article is on the implementation of minority rights as a key factor to the quest for effective protection under international law and durable peace between majorities and minorities within States. While the ‘further standard-setting dimension’ can probably be considered as a medium (or even short) term goal in the law-making process, the ‘effective implementation dimension’ stands out as crucial to any (present and future) minority regime. Existing international monitoring procedures are directly or indirectly connected with the implementation of most of the above-mentioned instruments. They highlight patterns of scrutiny, providing guidance to a forward-looking assessment.

We will sketch out the main approaches to the implementation of minority rights standards currently available (the references are not intended to be exhaustive) (Section 2) and identify some of their basic features (Section 3); then we will move to a specific discussion on the prospects for improving compliance with minority rights (Section 4).
2. Monitoring the Implementation of Minority Rights Standards: An Overview

A gamut of procedures are in use within the United Nations which are relevant to minority protection. The Commission on Human Rights and its Sub-Commission on Prevention of Discrimination and Protection of Minorities, basically employ the well-known ‘ECOSOC 1503 complaints procedure’ set up to identify situations amounting to consistent patterns of gross human rights violations, as well as other procedures consisting in appointing special rapporteurs or working groups with country-oriented or thematic mandates.

They result in a spectrum of ‘monitoring opportunities’, ranging from investigative and/or fact-finding activities to public debate with non-governmental organisations. In addition, good offices are sometimes undertaken by the Secretary-General or other leading figures within the Organisation (such as the High Commissioner for Human Rights), while advisory services and technical assistance programmes mainly point to the enhancement of co-operation among and within States. However, minority rights problems are often not addressed directly but in connection with other human rights issues.

By contrast, the UN Working Group on Minorities, formally established within the Sub-Commission on Prevention of Discrimination and Protection of Minorities under Resolution 1995/31 adopted by the ECOSOC in 1995, reviews the promotion and practical realisation of the 1992 UN Declaration, promotes dialogue between minorities and Governments, and recommends measures for minority protection in cases of risk of escalation or eruption of violence. It is a specific forum ‘for dialogue, the exchange of information, experiences and ideas’.\(^2\) In addition, a particular focus on minority issues is also provided by the work of the High Commissioner for Human Rights, mostly when considering issues of implementation of the 1992 UN Declaration as well as related initiatives of preventive diplomacy.\(^3\)


Independent expert committees established to monitor compliance with human rights treaties of a ‘universal’ character constitute an important resource for raising the profile of supervision. With regard to the International Covenant on Civil and Political Rights – to mention just the most important one relating to minority protection – States parties have to submit periodic reports to the Human Rights Committee on the measures taken to implement the Covenant (Article 40). Like other treaty-based independent expert committees, the Human Rights Committee has adopted detailed reporting guidelines with instruction to the reporting States. It is increasingly effective in questioning Government representatives about the situation of minority rights on their own territory, in connection with Article 27.

The case law of this Committee on Article 27 under the individual communications mechanism foreseen in the First Optional Protocol to the Covenant, has turned out to be of particular significance in that it has provided specific redress of minority rights violations. Complaints may be brought before the Committee also by a State party, vis-à-vis another State party under the (optional) interstate complaints procedure of Article 41, but to date States parties have not used such a tool, due to political considerations.

At the regional level, the OSCE and Council of Europe systems offer major opportunities to scrutinise the minority rights record of the participating States. The OSCE procedures – particularly the Vienna Mechanism of 1989 and the Moscow Mechanism of 1991 – create a sort of interstate monitoring process (initially involving the States concerned and, ultimately, all the participating States), directed at ensuring the implementation of the human rights commitments, including those concerning persons belonging to national minorities, undertaken within the framework of the Human Dimension. The Moscow Mechanism supplements the Vienna Mechanism in that,

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under certain procedural conditions, it allows the dispatch of expert missions in a particular country, even without the consent of the latter, while other kinds of in-country missions, recently developed within the OSCE and called ‘missions of long duration’, operate under target-specific mandates (somewhat permitting minority rights supervision) and are normally a tool of the political process. The possibility for them continuing work ‘on the spot’ depends on the continuing consent of the Government concerned. Admittedly, the need for State initiative to activate or support these procedures is often an obstacle to their substantial use in practice.

Perhaps the most interesting development of the OSCE monitoring system is the establishment of the Office of the High Commissioner on National Minorities. The Commissioner works as an instrument of conflict prevention, by providing early warning and, where appropriate, early action, so as to prevent tension from spilling over into violence. He may collect and receive information from any source, conduct fact-finding missions and suggest solutions with a view to fostering dialogue between Governments and national minorities. Despite his security rather than humanitarian functions, the Commissioner is also guided by the relevant OSCE (and other regional) human rights instruments as a framework of analysis. His basic strategy, however, remains one based on pragmatism and ‘quiet diplomacy’. So far, the High Commissioner has been actively involved in minority problems in numerous OSCE countries, obtaining productive and widely praised results.

Within the Council of Europe, the individual-centred mechanism under the European Convention on Human Rights is only partly of relevance to minority protection, due to an absence of specific minority rights provisions in the Convention. In X v. Austria, the European Commission found that ‘the Convention does not provide for any rights of a . . . minority as such, and the protection of individual members of such minority is limited to the right not to be discriminated in the enjoyment of the Convention rights on the

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8 For a survey of the relevant practice of the Human Dimension Mechanism, see Pentikäinen, supra, note 6, at pp. 99–102; on the increasing role of the Office for Democratic Institutions and Human Rights (ODIHR) in monitoring the implementation of OSCE human dimension commitments, as a new mode of tackling human rights concerns, see Pentikäinen, supra, note 6, at p. 104ff.


10 For an in-depth analysis of the role of the OSCE High Commissioner, see Estebanez, “The High Commissioner on National Minorities: Development of the Mandate”, in Bothe, Ronzitti and Rosas (eds.), *supra*, note 6, at p. 123ff.

11 This has been stressed by the European Commission of Human Rights in a number of cases (see, in particular, the following note).
ground of their belonging to the minority (Article 14 of the Convention). 
Nevertheless, as the States of central and eastern Europe are being increas-
ingly admitted to the Council of Europe and are acceding to the European 
Convention, more cases involving members of minorities may be coming un-
der the scrutiny of the Strasbourg bodies in the near future. In this connection, 
it may be interesting to notice that it is currently carrying out work on ‘the 
elaboration of a possible additional protocol to the European Convention on 
Human Rights, widening the scope of Article 14, which expressly refers to 
national minorities’. 

The 1994 Framework Convention for the Protection of National Minor-
ities and the 1992 Charter for Regional and Minority Languages are the 
Council of Europe treaties dealing with minority issues. The Committee of 
Ministers is entrusted with the task of monitoring the implementation of 
the Framework Convention by the States parties (Article 24, para. 1). It is 
assisted by an Advisory Committee, whose members have recognised expertise 
in the field of the protection of national minorities (Article 26, para. 1). 

On 17 September 1997, the Committee of Ministers adopted a Resolution 
concerning the rules on the monitoring arrangements under Articles 24 to 
26 of the Framework Convention (Resolution (97)10). It determines the role 
of the AC and, therefore, its relation with the Committee of Ministers. The 
Convention provides neither interstate nor individual complaints procedures. 
The mechanism, based on periodic State reporting (after initial transmission 
of full information according to Article 25, para. 1), in order to evaluate ‘the 
adequacy of the measures taken’, is basically aimed at encouraging States 
parties to implement the Framework Convention properly rather than at sanc-
tioning those States which breach it. No binding decision can be adopted by 
the monitoring body. The non-judicial character of the mechanism is clearly 
an off-shoot from States’ reluctance to secure enforcement procedures based 
on adjudication and redress.

12 See Application No. 8142/78, DR 18, p. 88. For a survey of the relevant case law, see, 
European Convention on Human Rights and the Protection of National Minorities, 1994 (Eng-
lish translation from Die Europäische Menschenrechtskonvention und der Schutz nationaler Minderheiten, DCM Druck Center Meckenheim, Bonn, 1993); Åkermark, Justifications of 

13 See the Appendix to the Reply of the Committee of Ministers to Parliamentary As-
sembly Recommendation 1345 (1997) – Opinion of the CDDH on Parliamentary Assembly 

14 For a comprehensive analysis of the mechanism, see Pentassuglia, “Monitoring minority 
rights in Europe: the implementation machinery of the Framework Convention for the Protec-
With regard to the 1992 Charter, aimed at protecting the ‘historical regional or minority languages of Europe’, it provides for an implementation mechanism operating in respect of those paragraphs or subparagraphs that each State party has chosen to apply among the operative articles. The latter envisage a variety of protections pertaining to language use (ranging from education to economic and social life). Each State party is allowed to have its own ‘tailored-made’ set of language rights, while at the same time determining the substantive scope of application of the monitoring mechanism. Compared to other procedures, including the Framework Convention’s, the ‘menu-of-options’ approach to implementation is innovative, but it remains to be seen how more appealing it will be to States (to date, the Charter has been ratified by a few States, while this has led to its entry into force as from 1 March 1998) and how more productive it will be in practice.

States parties have to submit periodic reports to an expert Committee (Article 15). Bodies or associations legally established in the party whose report is under consideration may provide the Committee with further information on matters relating to the party undertakings under the Charter, and the Committee may take account of this information in the preparation of its report (Article 16, para. 2). In addition, those bodies or associations may submit statements concerning the policy pursued by the party. While not setting up a complaints procedure, these guarantees enable individuals to get partly involved in the monitoring process. The Committee eventually draws up a report for the Committee of Ministers, containing proposals for recommendations of the latter body to one or more of the parties as may be required (Article 16, para. 4).

An interesting recent development within the Council of Europe is conditioning admission to the Organisation on compliance, not only with human rights generally, but also with the minority rights provisions foreseen in the Draft Additional Protocol on the Rights of Minorities to the European Convention on Human Rights, appended to Recommendation 1201 adopted by the Parliamentary Assembly in 1993. Respect for the principles endorsed by this Recommendation has been included as a ‘commitment’ in Assembly opinions on the admission of new member States. The prospect of join-
ing so prestigious a ‘club’ may be an important pull towards compliance to those States which have minority problems. Therefore, conditioning access on respect for minority rights may turn out to be an institutional incentive operating as an effective implementation mechanism. The key question is whether the competent body will really ‘make scrupulously sure’ that these rights are respected by the applicant States (Order No. 484 (1993), para. 2(ii)), and it will not be content with ‘paper commitments’. However, a follow-up mechanism has been set up by the Parliamentary Assembly to closely monitor the fulfilment of both the obligations assumed by the member States under the relevant Council of Europe treaty regimes, and the commitments undertaken by the authorities of member States on their accession to the Organisation. We will return later to this issue.

A variety of confidence-building measures – including those concerning human rights/minority rights education – are also offered under the umbrellas of specific programmes of the Council of Europe. It is a way of fostering tolerance and co-operation, as a precondition for obtaining implementation. This approach is confirmed in the Action Plan adopted by the 1997 Strasbourg Summit of the Heads of State and Government of the member States of the Council of Europe, which stresses the need for complementing the standard-setting achievements in this field ‘through practical activities, such as confidence-building measures and enhanced co-operation, involving both governments and civil society’.

Apart from the OSCE and Council of Europe contexts, implementation procedures may be embedded in ad hoc regimes – mainly bilateral treaties between ‘kin-States’ and States where minorities live, agreements under international supervision, or other case-specific or context-specific instruments. In the latter regard, models and experiences of the cited, most

For a possible extension of this approach to the Framework Convention’s principles, see Pentassuglia, supra, note 14, at Section III.


20 See, for instance, the Dayton Agreements signed on 14 December 1995. Furthermore, most of the bilateral treaties and declarations adopted in central and eastern Europe, dealing in whole or in part with minority issues, have been brought together under the broad supervisory umbrella of the 1995 Pact on Stability in Europe (see Gál, supra, note 19, at p. 8f. and infra in the text).

21 It is worth recalling the ‘mechanism’ set up on the basis of the 1991 EC Declaration on the Guidelines on the Recognition of New States in Eastern Europe and the Soviet Union and
involved international institutions, have set the framework for further productive steps at regional and sub-regional levels. We refer in particular to the recent EU’s conditioning of EU membership and – as part of a special strategy with certain countries of south-east Europe – trade preferences, financial aid, economic co-operation and contractual relations, on inter alia ‘respect for and protection of minorities’, its extensive use of a so-called ‘human rights clause’ in agreements with third countries, as well as the establishment of the Office of the Commissioner on Democratic Institutions particularly the 1991 EC Declaration on Yugoslavia, entrusting an Arbitration Commission with the task of verifying inter alia respect for the rights of minorities within newly emerging States which were candidates for recognition. We may also notice that within the specific EC framework a degree of minority rights monitoring might develop through the case law of the Court of Justice: see Estébanez, supra, note 18, at pp. 174–179. See further infra, notes 22 and 23.

22 Conclusions of the Copenhagen European Council of 1993. On the basis of the ‘Copenhagen criteria’, the European Commission issued in 1997 its Opinions on ten central and eastern European candidates countries: COM(97) 2000 final, 1997, Vols. I and II (Agenda 2000); COM(97) 2001–2010 final, 1997. The ‘Copenhagen criteria’ have been recently confirmed within the framework of the pre-accession strategy (Council Regulation No. 622/98 of 16 March 1998 on assistance to the applicant States in the framework of the pre-accession strategy, and in particular on the establishment of Accession Partnerships, OJ 1998, 85, p. 1f.). See also the Council conclusions on the principle of conditionality governing the development of the European Union’s relations with certain countries of south-east Europe, adopted on 29 April 1997, Bulletin EU 4-1997, point 2.2.1. For a human rights approach to EU membership and the ensuing rights, see, generally, Articles 6, para. 1, 7 and 49 of the consolidated version of the Treaty on European Union.

23 Instruments resembling the ‘human rights clause’ are also being used within the context of specific assistance programmes (particularly, PHARE, TACIS, OBNOVA and MEDA); some such programmes include references to respect for minority rights. With regard to the applicant countries (PHARE countries), this approach is essentially instrumental in preparing for membership (see preceding note). On the ‘human rights clause’ and related issues, see generally, Brandtner and Rosas, “Human Rights and the External Relations of the European Community: An Analysis of Doctrine and Practice”, European Journal of International Law, Vol. 9, 1998, p. 468ff; Riedel and Will, “Human Rights Clauses in External Agreements of the European Communities”, in Alston (ed.), The European Union and Human Rights, Oxford University Press, 1999. Experience shows that, in the event of human rights violations in the country concerned, the ‘human rights clause’ (and somewhat similar instruments) may also be used to adopt positive measures aimed at helping restore human rights protection, as an alternative for immediate negative measures. Just as some other instruments mentioned in the preceding note, so the ‘human rights clause’ and somewhat similar clauses are formally EC instruments. However, such a wide range of instruments are being set up as basic components of ‘global approaches’, which combine tools operating under the general umbrella of the EU (see, generally, Smith, “The Instruments of European Union Foreign Policy”, in Zielonka (ed.), Paradoxes of European Foreign Policy, Kluwer Law International, The Hague, 1998, p. 67ff., at p. 68, note (8)). On the other hand, there remains the need to ensure that policies agreed upon under the various instruments are really consistent with each other (see, for instance, preambular para. 13 of the two Council Regulations referred to infra, note 55.
and Human Rights, Including the Rights of Persons Belonging to Minorities, by the Council of the Baltic Sea States.\textsuperscript{24} Basically, the CBSS Commissioner operates along the lines of the OSCE High Commissioner on National Minorities. However, he has a specific ‘ombudsman-mandate’ which enables him to receive complaints from, among others, both members of minorities and minorities themselves (including involved organisations).

3. Basic Elements of the Monitoring Process

Some general points can be made on the implementation of minority rights:

- Judicial review is scarce, if at all.\textsuperscript{25} Quasi-judicial review is being increasingly used but it is fundamentally confined to the individual complaints procedure under the First Optional Protocol to the International Covenant on Civil and Political Rights. As a result, the monitoring of minority rights compliance largely consists of varying degrees of resolution- and treaty-based non-judicial supervision, ranging from intense political pressure to independent expert scrutiny to a spectrum of ‘mixed’ options.

- The availability of pertinent information is central to all of those procedures.

  • Information through in-country fact-finding

    The sending of missions to examine the situation on the spot may be the best way of gathering first-hand information on minority problems. This option is being used mainly within the OSCE and the UN.\textsuperscript{26} As a rule,

\textsuperscript{24} Concluding Document of the Tallin Ministerial Session of the CBSS of 1994.

\textsuperscript{25} On the problematic extension of international judicial functions to the field of minority rights, see, for instance, Verhoeven, “Les principales étapes de la protection internationale des minorités”, Revue Trimestrelle Des Droits De L’Homme, 8ème année, 1997, p. 177ff. at p. 202, and further infra, Section 4.1. In this regard, a new, rather limited, contribution to protecting the right of existence of minorities (as implicitly recognised by the Convention on the Prevention and Punishment of the Crime of Genocide of 1948) may be made by the UN International Tribunals established to prosecute persons responsible for serious violations of international humanitarian law in the former Yugoslavia and Rwanda. As it has been pointed out, ‘their work may indirectly help foster a climate of tolerance for minorities by reaffirming the international community’s revulsion at activities such as ethnic cleansing’ (Wippman, supra, note 7, at p. 620). The same applies, \textit{mutatis mutandis}, to the International Criminal Court established in 1998.

\textsuperscript{26} See Section 2 for references. As to the UN, note that on-site-monitoring is gradually taking roots also in the practice of the treaty bodies (see infra, Section 4.3). On on-site monitoring see, generally, Ramcharan, “Fact-finding into the Problems of Minorities”, in Bröllmann, Lefeber and Zieck (eds.), supra, note 12, p. 239ff., at p. 246f.; Brody, “Improving UN Human Rights Structures”, in Henkin and Hargrove (eds.), supra, note 4, p. 297ff., at p. 304ff.
the consent of the State concerned is required to let the mission carry out its tasks.\footnote{See Section 2 for the OSCE context.} Good offices and advisory assistance are often combined with discreet fact-finding, with a view to promoting co-operation between the parties.

- **Information through the reporting practice**
  In addition to State reports under multilateral treaties, specialised agency, rapporteur, working group or research reports, there is a trend highlighting the importance of information about minorities from NGOs (including similar non-profit international bodies) and/or minorities themselves (including their organisations). The OSCE High Commissioner on National Minorities and a number of UN bodies dealing with minority issues are using this kind of information to a large extent. The CBSS Commissioner, too, is allowed to do so under the terms of his mandate. This outside information is being increasingly considered as a fundamental tool for improving the effectiveness of monitoring, in that it contributes to a comprehensive and realistic (as opposed to uncritical) perspective on the human rights/minority rights situation in the country concerned.

- **Information through participation**
  In connection with this trend, there has been an increase in the number of opportunities offered to NGOs and minority groups to provide information also through their direct access to the relevant bodies. When available, complaints procedures create a forum for members of minorities to articulate their grievances and provide pertinent information. Hearings with minorities to that effect are also available under other procedural umbrellas, as a means of fostering co-operation with the groups while, at the same time, increasing institutional pressure on the States concerned. Generally speaking, NGOs and/or minority organisations have been given access to a number of important fora where relevant issues are addressed (including the UN Working Group on Minorities, the UN Commission on Human Rights and its Sub-commission and some regional bodies\footnote{As to the participation of NGOs in OSCE meetings, see Pentikäinen, *supra*, note 6, at pp. 111f. and 115f.}). Furthermore, this participatory approach is indicated as an example to follow at the domestic level.

- Most of the measures which may be adopted under existing monitoring mechanisms are not legally binding. This clearly flows from the basic components of the supervision process, as described earlier. This is particu-
larly true with regard to those mechanisms whose mandates go beyond the traditional implementation procedure, basically consisting in (mainly State) reporting to a (mainly expert) body for consideration. Their dialogue, mediation, reconciliation, advisory and/or confidence-building additional purposes call for a comprehensive and flexible approach to the minority problems in the country concerned, so that a range of recommendatory rather than strictly binding measures are perceived to be more suitable. When it comes to other, case-specific-based, monitoring mechanisms, like quasi-judicial review, the non-binding character of the respective decisions is actually a limitation. On the other hand, a number of ‘institutional’ measures aimed at countering insufficient respect for, inter alia, minority rights (denial of membership, financial assistance or economic co-operation, suspension of a treaty, etc.), as recently made available within the context of some multilateral fora, amount to ‘sanctions’, the recourse to which rests on political as well as legal grounds.

The (re-)emergence of minority problems in numerous countries, coupled with social tension and even violence, has prompted the international community to tackle the issue more constructively than in the past. However, despite some important gains, the implementation system of minority rights is still largely inadequate, obviously in connection with the shortcomings of the whole minority rights architecture. State reluctance on these issues is apparent, due to their real or potential implications at the domestic level. Therefore, no wonder that States have been cautious in assuming international obligations. In Europe a number of normative instruments have been proposed in the last few years to raise to the highest degree possible the profile of the protection and monitoring of minority rights. Some of them have served as valuable reference texts. The 1994 Framework Convention is one of the concrete results of the 1993 Vienna Summit of the Heads of State and Government of the member States of the Council of Europe.29

4. Reflections on the Problem of Implementation

4.1. On the Nature of Monitoring

Since the early 1990s, the ‘model’ of minority protection, basically in relation to judicial or non-judicial implementation options has been intensively discussed. Some have argued in favour of the (non-judicial) pattern of the 1994 Framework Convention, by stressing that the Convention largely consists of

29 In Appendix II of the Vienna Declaration, the Committee of Ministers was instructed, inter alia, ‘to draft with minimum delay a framework convention specifying the principles which contracting States commit themselves to respect, in order to assure the protection of national minorities. This instrument would also be open for signature by non-member States’. 
programme-type provisions and, as a result, a flexible and comprehensive approach to implementation is needed. Others have observed, in more general terms, that the judicial model of enforcement is at present impractical, even within Europe, while the option of non-judicial scrutiny may be more productive and more responsive to political circumstances. By contrast, the Parliamentary Assembly of the Council of Europe – conscious of the ‘topical nature and the urgency of minority problems’ as well as ‘the need for a truly binding instrument’ – submitted in 1993 the already cited Draft Protocol on the Rights of Minorities to the European Convention on Human Rights, which combined detailed and affirmative standards with a mandatory system of judicial enforcement. The 1993 Vienna Summit Declaration decided not to pursue the Assembly’s proposal, due basically to a lack of political will. As previously noted, however, Recommendation 1201 serves as a valuable reference text. The resulting 1994 treaty regime has been harshly criticised by the Parliamentary Assembly because of its content – referred to as being ‘weakly worded’ and consisting of ‘vaguely defined objectives and principles’ – and monitoring procedure as well. According to the Assembly:

[The] implementation machinery [of the Framework Convention] is feeble and there is a danger that, in fact, the monitoring procedures may be left entirely to the governments.30

In our view, evaluating implementation mechanisms in the light of the general debate on the ‘ideal’ approach to the monitoring of minority rights compliance is misleading. Both judicial and non-judicial mechanisms have an important role to play; complementarity should be the key to a comprehensive system of monitoring. As to the Framework Convention, its drafters were probably right in choosing a non-judicial mechanism, due to the programme-type character of most of the treaty provisions. For this same reason, we also believe that the Parliamentary Assembly is consistent in submitting a mandatory system of judicial adjudication coupled with a more detailed (and ‘closed’) legal instrument; shifting to this solution at a later stage should not be ruled out. This may be also suggested by the increasing integration of central and eastern European States into the Council of Europe, which is being paralleled by the decreasing significance of an ‘open’, less stringent instrument such as the Framework Convention.

Yet all that said, at least three points should be made within a broad perspective:

– To provide for a non-judicial procedure inspired by the content of the instrument whose implementation is at issue is one thing, to shape its functioning in such a way as to create real or potential obstacles to a satisfactory monitoring is quite another. In reality, this has little to do with the (judicial or non-judicial) character of the procedure, but rather with the fact that such a procedure is a ‘good’ or ‘bad’ one. As we have demonstrated elsewhere,31 the implementation mechanism of the Framework Convention is hardly satisfactory in many respects.

– Stressing the need for precise standards as a precondition for turning to a judicial model of minority protection is appropriate but the issue should not be overestimated. Programme-type elements and/or flexible wordings can be found in a large number of human rights instruments, including the European Convention on Human Rights. The European Court of Human Rights has long tackled this state of affairs by highlighting the crucial interpretative role of its case law. With particular reference to minority issues, we should bear in mind that the tentative language of Article 27 of the Covenant has not prevented the ‘justiciability’ of the respective rights, while proceeding through the avenue of ‘quasi-judicial’ scrutiny under the First Optional Protocol. In addition, it is worth noting that a possibility to make recourse (also) to judicial means of implementation is mentioned in paragraph 16 of the Declaration of the 1995 Pact on Stability in Europe with regard to the implementation of the various bilateral agreements incorporated in the Pact. As it is well known, a number of them deal wholly or partially with minority issues and draw upon or even incorporate a large set of international standards presently available, mostly at the European level. Under paragraph 13 of the Declaration, the OSCE is instructed to follow the implementation of the Pact. Within this framework, paragraph 16 states:

We acknowledge that the States party to the Convention establishing the International Conciliation and Arbitration Court may refer to the Court possible disputes concerning the interpretation or implementation of their good-neighbourliness agreements, according to the procedures defined in the said Convention.

Admittedly, this option is open to States – not to members of minorities or minorities themselves – within the context of disputes affecting the functioning of carefully negotiated bilateral regimes. Furthermore, it is too early to say whether or not the States concerned will pursue such settlement path. Still, a judicial (arbitral) approach is not excluded when interpreting and applying a bilateral treaty referring to the often-flexible international

31 See supra, note 14.
minority rights standards.

- On the other hand, experience shows that a model of implementation based on adjudication and redress, while of great importance to strengthening the Rule of Law and (in standard cases) providing responses to autonomous grievances, has difficulties in handling claims going beyond the confines of individual protection. In *Bernard Ominayak, Chief of the Lubicon Lake Band v. Canada*, the Human Rights Committee, made the interesting procedural point (in connection with claims falling within the scope of Article 27) that there was:

  No objection to a group of individuals, who claim to be similarly affected, collectively to submit a communication about alleged breaches of the Covenant.32

However, even the efforts of the Committee within the framework of ‘quasi-judicial’ review, would not be sufficient to transcend substantive limitations (namely concerning the content and nature of the rights protected33) when tackling long-standing group issues strictly linked to social and political problems. Hence, the need for complementary mechanisms, devised to provide differentiated degrees of protection and monitoring for differentiated minority issues.

4.2. *A Bilateral Approach?*

As hinted earlier, bilateral treaties have in recent years turned out to be a frequently resorted means of protecting minority rights, mostly in central and eastern Europe. Although the bilateral pattern is not new in the history of the international protection of minorities, its current re-emergence is different in scale from the limited number of post-1945 agreements. So far, the ‘new’ bilateral treaties have been entered into basically by so-called ‘kin-States’ and States where minorities live. The treaty approach enjoys increasing support at the political level and is expressly encouraged by a number of international instruments relevant to minority protection. An issue arising out of this trend concerns the problematic-seeming relation between the objective need for rationalising and ‘universalising’ minority rights standards and the goal of differentiating the treatment of minority groups through the ‘bilateralisation’ of the protective regimes. Its analysis is obviously beyond the scope of this article. Nevertheless, a question is relevant to our purposes: what is the con-

33 On the holding of the rights protected under Article 27 of the Covenant, see, generally, Pentassuglia, *supra*, note 5.
tribution of the contemporary bilateral approach to the implementation of minority standards?

Whatever view on the capability of the recent bilateral treaties of providing adequate protection to minority groups one may take, it is sufficiently clear that they are not playing any significant role in devising efficient means of implementation. As it has been pointed out with regard to such treaties, a common feature lies in ‘the lack of effective legal protection mechanism’.34 Some treaties provide the possibility for States parties to request consultations when they believe it to be necessary, as well as according ‘special significance to contacts and co-operation between the legislative and administrative bodies’. Other treaties set up joint intergovernmental committees entrusted with the task of monitoring the implementation of the provisions; however, the composition and precise mandate of these committees are still being discussed at the political level, so that very few of them are really active at present. A number of bilateral treaties do not provide any implementation mechanisms. The use of internal judicial remedies remains problematic, due to the difficulty to identify rights whose ‘self-executing’ character enables their claim in domestic court proceedings.

On the other hand, the bilateral pattern is not being seen as foreign to multilateral scrutiny. Quite the contrary, as previously noted, the OSCE has been entrusted with monitoring the implementation of the Stability Pact, including ‘the implementation of the agreements and arrangements’ incorporated therein. To this end, the OSCE, particularly when respect for OSCE principles and commitments is involved, is allowed to make use of its instruments and procedures, ‘including those concerning conflict prevention, peaceful settlement of disputes and the human dimension’. In addition, we have already noticed the possibility of resorting to the International Court of Conciliation and Arbitration. While the impact of such monitoring is likely to be assessed in the long run, the indication is provided that the implementation of the bilateral regimes endorsed by the Pact is not confined to the mere goodwill of States parties but it stands out as an important component of a multilateral initiative of preventive diplomacy mainly directed at integrating central and eastern European States into the human rights and institutional framework of the larger Europe.35 This should partly remedy the lack of effective protection mechanisms in the relevant (minority) treaties, while at the same time high-

34 Gál, supra, note 19, p. 8.
35 See also the Annex to the Stability Pact, concerning accompanying measures supported by the European Union; and further the OSCE Lisbon Declaration on a Common and Comprehensive Security Model for Europe for the Twenty First Century, 1996, para. 10, 1st and 2nd subparagraphs and infra, note 53.
lighting the need for monitoring minority rights compliance within a broad (regional) context.

4.3. The Contribution of Some ‘Traditional’ Implementation Patterns

A problem to be faced is how to enhance the effectiveness of existing monitoring mechanisms relevant to minority protection. Some of them are clearly underused or their role is difficult to assess due to the fact that their functioning is basically under State control. The gist of the ‘ECOSOC 1503 complaints procedure’ is confidential and its outcomes are extremely flexible, ranging from discontinuing the examination of the case, to keeping the situation under review (with the possible appointment of independent experts), to raising the case in public. Obviously, each of these options is open to a number of political considerations. The case referred to the Commission on Human Rights by its Sub-Commission may not be the subject of an investigation if, *inter alia*, it relates to a matter which is being dealt with under other UN and specialised agency procedures or regional conventions, or the State concerned ‘wishes’ to submit the case to other procedures under separate international agreements to which it is a party.36 Note that the procedure deals with cases of possible consistent ‘patterns’ of gross violations of human rights as opposed to individual cases, while the State concerned, apart from expressly non-consenting to an investigation, may avoid scrutiny by simply manifesting its ‘wish’ to submit the case to other procedures: one may wonder whether better, constructive interaction of such a procedure with the said ones would be more appropriate. A communication may in principle be submitted against any State irrespective of human rights treaty ratifications. In spite of the ‘collective’ dimension of the ensuing scrutiny, the minority rights component is less visible than in other procedures.

A more consistent and widespread coverage of minority concerns is probably needed when it comes to the role of UN special rapporteurs and working groups with thematic mandates. A view has been expressed to the effect that all the rapporteurs and working groups should be instructed to cover minority issues, bearing in mind that minorities are frequently victims of a vast range of human rights violations, whose investigation falls within the scope of many thematic mandates.37 At present, minority issues are being examined within the context of activities on religious intolerance and freedom of opinion and expression.38 Certain political and procedural constraints tend to limit the

36 See also UN Doc. E/CN.4/Sub.2/1998/18, para. 78.
effectiveness of this work.\textsuperscript{39} Ways of getting special rapporteurs and working groups more actively committed to a broad UN strategy of ethnic conflict prevention should be explored.

UN treaty bodies have, over time, become more demanding towards Governments with a view to making them (or some of them) aware that their functions do not amount to a pro forma exercise. The most recent practice of such bodies shows a number of important achievements (mainly in relation to the reporting procedures): from inviting State representatives to respond to questions by committee members, to reviewing the situation in a State party failing to report, to extending the range of sources of information available for consideration, to broadening the substantive scope of scrutiny, to the most recent undertaking of some on-site missions for fact-finding purposes.\textsuperscript{40} Despite this state of affairs, much more should be done. The competences of such bodies still fall short of legally binding powers nor may they lead to restrictive measures against non-co-operative Governments. It is to be hoped that certain interesting, groundbreaking options (such as on-site missions) will be consistently resorted to and will gain acceptance from States.

As we have seen, the Human Rights Committee has taken the lead in monitoring minority rights compliance, within the framework of Article 27. In 1995, it organised an on-site-mission to a State party, obtaining concrete results. Here again, there is very much room for improvement. Some points can be made in this regard:

\begin{itemize}
  \item As far as State reporting is concerned, the bodies supervising the treaties relevant to minority protection (the two Human Rights Covenants, the Convention on the Elimination of All Forms of Discrimination, the Conventions on the Rights of the Child, etc.) should consider whether or not the respective reporting guidelines fully meets the need for dealing with minority issues within the scope of application of the treaty. This is particularly important in respect of those regimes which do not contain specific minority guarantees but whose implementation nevertheless affects the treatment of minority groups.
  \item If the purpose is to be seriously pursued to counter inadequate State reports on relevant minority issues, then the above-mentioned trend highlighting the importance of information from minorities and involved NGOs must be consolidated by establishing a new pattern of scrutiny based on the systematic availability and consideration of non-State
\end{itemize}


sources. In addition to the Human Rights Committee, other expert bodies such as the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Racial Discrimination and the Committee on the Rights of the Child, can contribute to this effect by consistently seeking first-hand information from minorities and/or their organisations. Note, however, that in contrast to the practice of the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child, concerned NGOs may not officially participate in the monitoring procedure of other UN treaty bodies. Therefore, in such cases, the possibility should be considered to elaborate procedural rules in order to avoid the request for outside information being left to the initiative of committee members *uti singuli*.41

− As regards the various (optional) treaty-based complaints procedures, it is crucial to disseminate knowledge about their possible use by minority members. The case law of the Human Rights Committee is of great importance but it is currently confined to a scatter of leading cases. Many areas of protection under Article 27 remain basically unexplored (e.g. linguistic and religious rights, possible forms of cultural autonomy, etc.). It is interesting to note that most cases have been brought to the attention of the Committee by members of indigenous peoples, whose standard claim is to be treated as ‘more than’ minorities: apart from the well known overlap issue, there is apparently a lack of complaints from individuals belonging to groups constituting ‘only’ minorities. Such a state of affairs should be contrasted with the increase in the number of States which have acceded to the mechanism. Other complaints procedures, such as the one under the Convention on the Elimination of All Forms of Discrimination, remain underutilised, if at all. On the other hand, additional procedural avenues for ‘collective’ communications are available under the latter Convention (Article 14, para. 1) and, as previously noted, the First Optional Protocol to the International Covenant on Civil and Political Rights; in principle, they may lead to extend the scope of monitoring when it comes to minority issues.

− The UN Working Group on Minorities should act as a source of advice and inspiration for the treaty-bodies to bring about developments

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41 A remarkable guidance in this regard is offered, for instance, by the Committee on Economic, Social and Cultural Rights, which has officially invited ‘all concerned bodies and individuals to submit relevant and appropriate documentation to it’ (Committee on Economic, Social and Cultural Rights, Report on the Sixth Session. Economic and Social Council, Official Records, 1992, Supplement No. 3, E/1992/23, p. 100, para. 386), and has substantiated this step by providing NGOs with specific procedural entitlements (Rule 69, para. 3 of the Rules of Procedure).
in the said direction. It can foster co-ordination and stronger ‘minority awareness’ among them.

At the regional (European) level, reference is to be made to the role of the Advisory Committee in the implementation machinery of the Framework Convention for the Protection of National Minorities. As hinted earlier, the politico-technical nature of the mechanism appears as hardly adequate in many respects.\textsuperscript{42} It is the Committee of Ministers, not the Advisory Committee, which has been given a general power to request information about the implementation of the Convention. Under Resolution (97)10 of the Committee of Ministers, the evaluation, election and appointment process relating to the Advisory Committee’s membership fully lies in the hands of Governments. Additional, ‘national’ membership is provided (primarily) during the consideration of a report from a party in respect of which there is no ordinary member of the Advisory Committee. In contrast to other international monitoring procedures, the availability of non-State sources of information is subject to restriction.\textsuperscript{43} Once received the opinion of the Advisory Committee, the Committee of Ministers shall adopt its own ‘conclusions’, while it may also adopt ‘recommendations’; in principle, such deliberations may play a distinct role in shaping the outcomes of the monitoring process. The involvement of the Advisory Committee in the follow-up to the deliberations of the Committee of Ministers, will occur ‘on \textit{ad hoc} basis, as instructed by the Committee of Ministers’.

With a view to ensuring that the monitoring of implementation be as effective as possible, a ‘strong’ Advisory Committee is no doubt necessary. This implies at least the following:

\begin{itemize}
  \item Governments should abstain from negatively influencing the composition of the Advisory Committee and making pressure on its members (particularly on ‘their’ experts) during the process of monitoring.
  \item The Committee of Ministers should let the Advisory Committee do the essential work and should support it. Therefore, it should normally avoid restricting the access of the Advisory Committee to the non-State
\end{itemize}

\textsuperscript{42} See Pentassuglia, \textit{supra}, note 14.

\textsuperscript{43} See \textit{supra}, note 16, at para. 1.2(iii). Note that the Parliamentary Assembly promptly urged the Committee of Ministers to reconsider its decision on the implementation mechanism of the Framework Convention in relation to the rules for the election of the Advisory Committee and the ways it may seek and obtain information (Recommendation 1345 (1997), para. 5). However, the Committee of Ministers has recently replied by confirming its stand on both issues, while at the same time stressing that the procedure will not hinder the effectiveness and efficiency of the Advisory Committee (Reply of the Committee of Ministers to Parliamentary Assembly Recommendations 1134 (1990), 1177 (1992), 1201 (1993), 1255 (1995), 1285 (1996), 1300 (1996) and 1345 (1997), (GR-H (98) 20 Corrigendum revised), Chapter B). Only the concrete functioning of the mechanism will show whether or not this latter assertion is warranted.
sources of information under the pertinent Rules of Resolution (97)10. This is for the sake of the credibility of monitoring, which otherwise might turn out to be biased and probably doomed to be devalued in practice, in comparison with other monitoring procedures relevant to minority protection.

− Within this framework, cases of conflicting conclusions of the Committee of Ministers and the Advisory Committee should be avoided and dealt with in any rate, as constructively as possible. As a rule, the Committee of Ministers should endorse the conclusions of the Advisory Committee as well as adopt recommendations along comparable lines.

− Involvement of the Advisory Committee in the follow-up process should in practice occur on a regular basis because of the expertise needed to evaluate the progress made by a State party in implementing the Convention. The Committee of Ministers should not be content with a ‘political reading’ of the situation, which may lead to self-serving information, on the one hand, and uncritical follow-up, on the other.

− Finally, the Advisory Committee should be strongly supported from within the Council of Europe44 and in its relation with external bodies; this may also encourage exchange of information and mutual technical assistance.

4.4. A Growing Focus on Prevention

As noted, a marked preventive content characterises some contemporary approaches to minority issues, in view of the recognition of a linkage between respect for human rights, including minority rights, and the maintenance of peace and both international and internal security. This connection was explicitly made by UN Secretary-General Boutros Boutros-Ghali in his well known 1992 Report on an Agenda for Peace.45

The OSCE High Commissioner on National Minorities has clearly taken the lead in promoting a comprehensive approach to security as based on the close interrelationship ‘between peace and security and respect for democracy, the rule of law and human rights, or, in short, the human dimension of the CSCE’.46 The flexibility of the High Commissioner’s mandate, coupled with a number of operational tools he has developed over time, are at the

44 In spite of suggestions made, Resolution (97)10 contains no explicit undertaking to provide the Advisory Committee with the necessary financial and technical resources to carry out its work.
45 UN Doc. A/47/277-S/24111, para. 18.
basis of a constructive way of tackling situations involving potential minority/majority conflicts. This is illustrated by such relevant cases as those concerning the Russian-speaking groups in the Baltic States and Ukraine and the Hungarian minorities in Romania and Slovakia. The High Commissioner’s recommendations with regard to possible solutions of minority problems are not legally binding. Therefore, their effectiveness ultimately rests with the willingness of the parties involved to co-operate. Furthermore, the High Commissioner is one ‘on’, not ‘for’, national minorities and his activities are based – at least to a certain extent – on a fundamental, classic principle of diplomacy, namely confidentiality.

At the global level, the UN High Commissioner for Human Rights and the UN Working Group on Minorities are basically inspired by the experience of the OSCE High Commissioner. As hinted earlier, the work of UN special rapporteurs and working groups can and should amount to an additional path to addressing minority concerns for the sake of conflict prevention. The UN High Commissioner for Human Rights has been entrusted, inter alia, with co-ordinating an early warning mechanism aimed at preventing racial, ethnic or religious tensions from spilling over into open conflicts. As noted, in 1994 a CBSS Commissioner came along with such developments within the OSCE and UN contexts, at sub-regional level. It is worth observing, however, that while the OSCE High Commissioner’s main function is to recommend ‘tailored-made’ solutions applicable to the case at issue, the UN and CBSS mechanisms mostly aim at ensuring a progressive, general implementation of existing international standards. For instance, the preventive functions of the UN Working Group and UN High Commissioner are being channelled into a normative discourse based on the implementation of the UN 1992 Declaration and other relevant international instruments. The goal of encouraging compliance with existing standards is evident under the CBSS’s mandate. To date, the CBSS Commissioner has received around 150 communications from individuals or groups bringing up a variety of human rights issues. In the majority of these cases, a solution has been found. While the role of the OSCE High Commissioner must be further strengthened for conflict prevention purposes, it is submitted that greater attention should be paid to standard-implementation, which provides the only real guarantee of stability in the long term. Where necessary, however, efforts should be made to avoid duplication of preventive tasks.

48 “Minority Rights”, supra, note 3, at p. 358. For further elements of a conflict prevention approach to minority issues within the UN context, see the cited Eide’s 1993 Report, supra, note 2.
An implementation-oriented pattern of prevention is shown by the recent use of multilateral and bilateral programmes of technical co-operation and advisory services. Within the context of the United Nations, such programmes are being offered by the Office of the UN High Commissioner. The basic aims are to assist States in the process of drafting and reviewing their constitutions and/or pieces of legislation in view of the relevant international human rights standards, as well as supporting the setting up of adequate national institutions responsible for implementation. The organisation of training seminars on minority rights and inter-cultural dialogue and the dissemination of knowledge about, including translation of, international instruments and other texts are considered as important components of such preventive strategy. This approach calls for a co-ordinated effort among the various UN agencies and organisations in conformity with Article 9 of the 1992 UN Declaration, as far as the implementation of the latter is concerned.

At European level, similar issues have been tackled through a broad spectrum of activities, operating between primary implementation concerns (mostly in connection with the Council of Europe and OSCE minority standards) and recognition of the need for developing dialogue involving Governments, minority representatives and civil society. At the intergovernmental level, a new source of information about, inter alia, ‘policies and good practices for the protection of national minorities at the domestic level and in the context of international instruments’, is represented by the Committee of Experts Relating to the Protection of National Minorities (DH-MIN), set up as a permanent body by the Committee of Ministers of the Council of Europe in December 1997 (Resolution (97)105). Admittedly, it is difficult at present to assess the effectiveness of this newly established preventive approach; still, it merits particular attention due to its attempt at injecting security and practical


considerations into the general framework of the implementation of minority rights under international law.

While set in a broad perspective, the preventive content revealed by a number of so-called institutional ‘incentives’ to the implementation of human rights, including minority rights, should be seen against this background. We have noticed that the Council of Europe and the European Union have taken steps in such a direction, either in connection with the acquisition of membership and/or within the context of a coherent strategy based on the principle of conditionality. Political, economic, and legal considerations have been brought to the fore in a comprehensive effort to consolidate peace, democracy and human rights. The 1995 Pact on Stability in Europe well illustrates this approach. The ensuing, often flexible, new tools are intended to help, not to obstruct, the process of implementation; hence, their being referred to as ‘incentives’. Generally speaking, the monitoring of implementation of, inter alia, minority rights standards, is being carried out on the basis of internal reporting and/or reporting from other relevant international organisations or bodies. Depending on the initiative pursued, a number of ‘sanctions’ (operating, by contrast, as ‘disincentives’) are provided for against non-complying States, ranging from suspension or termination of the relevant agreement to other ‘appropriate steps’, including suspension of financial assistance and/or trade preferences, to denial of membership. In principle, they show a complementary, reactive approach to implementation by providing the competent bodies with a degree of (direct or indirect) coercive power over the States concerned.

On the other hand, the minority rights component of this preventive pattern is being basically highlighted in relation to the dynamics of accession to European institutions by central and eastern European States (with particular reference to the prospects for the further EU enlargement). While probably necessary in the short term, the maintenance of such a limitation in scope may

52 See supra, Section 2. For a harbinger of such approach, see further supra, note 21.
53 Note that, along comparable lines, the European Union (within CFSP) has recently convened a conference on south-eastern Europe aimed at adopting a Stability Pact for such region (Common Position of 17 May 1999 adopted by the Council on the basis of Article 15 of the Treaty on European Union, concerning a Stability Pact for South-Eastern Europe, 1999/345/CFSP, OJ 1999, L 133, p. 1f.). The basic aim of this Stability Pact (to be implemented in close association with the OSCE) will be to help stabilise (and democratise) the area by incorporating bilateral and multilateral agreements as well as domestic arrangements covering the whole range of regional crisis factors, with a special emphasis on human rights/minority rights issues.
54 For some pertinent cases, within the EU context see Nowak, “Human Rights ‘Conditionality’ in Relation to Entry to, and Full Participation in, the EU”, in Alston (ed.), supra, note 23, at p. 691; Brandtner and Rosas, “Trade Preferences and Human Rights”, in Alston (ed.), supra, note 23, at p. 712f. See also, generally, supra, note 23.
turn out to be insufficient in the long term, prompting complaints of differential treatment and eventually undermining the credibility of monitoring. In this regard, we should learn from the shortcomings of the League of Nations machinery.\textsuperscript{55}

The effectiveness of such procedures may be pursued on the condition of minimising realpolitik considerations when dealing with the granting of membership or the concession or suspension of financial and/or economic benefits. Note that responsibility for action rests with political bodies. The

\textsuperscript{55} In particular, we believe that the European Union should develop a more general and prominent preventive approach focused on the monitoring of minority rights compliance both internally and externally. As regards the external dimension, the systematic inclusion, for instance, of a specific ‘minority rights clause’ (coupled with references to international minority rights standards) in the instruments governing the EU’s relations with (all) third countries, as well as the development of coherent minority rights policy within the framework of the Common Foreign and Security Policy, might be extremely helpful to that effect (on the potential role of CFSP in relation to human rights issues see, generally, Alston and Weiler, “An ‘Ever Closer Union’ in Need of a Human Rights Policy”, \textit{European Journal of International Law}, Vol. 9, 1998, p. 658ff., at pp. 706–709). For the present, increased attention to the protection of minorities in a progressively broader perspective might derive \textit{inter alia} from the enactment of two important Council Regulations concerning the financing and administering of Community action to promote respect for human rights and consolidate democracy and the rule of law (Council Regulation (EC) No. 975/1999 of 29 April 1999 laying down the requirements for the implementation of development cooperation which can contribute to the general objective of developing and consolidating democracy and the rule of law and to that of respecting human rights and fundamental freedoms, OJ 1999, L 120, p. 1ff.; Council Regulation (EC) No. 976/1999 of 29 April 1999 laying down the requirements for the implementation of Community operations, other than those of development cooperation which, within the framework of Community cooperation policy, contribute to the general objective of developing and consolidating democracy and the rule of law and to that of respecting human rights and fundamental freedoms in third countries, OJ 1999, L 120, at p. 8ff.). In the Preambles to both Regulations, a focus on, \textit{inter alia}, minorities and indigenous peoples is called for in relation to the objectives of Community action within the scope of application of such Regulations (preambular para. 14 of both instruments). Furthermore, with a view to pursuing the main objectives of the implementation of international human rights standards and strengthening democracy, reference is made — in the operative part of both Regulations — to Community technical and financial aid aimed, \textit{inter alia}, at supporting ‘minorities, ethnic groups and indigenous peoples’ (Article 3, para. 1(d) of both instruments) as well as conflict prevention measures designed to deal with group issues (Article 3, paras. 3(d) and (c) of both instruments). With regard to the European Parliament, it has recently advocated an EU external human rights policy based on a broad standard-implementation strategy, in connection with the use of instruments for conflict prevention; see Resolution A4-0409/98 of 17 December 1998 on the communication from the Commission to the Council and the European Parliament on ‘The European Union and the external dimension of human rights policy: from Rome to Maastricht and beyond’ (COM(95) 0567-C40568/95), OJ 1999, C 98, p. 267ff., especially at paras. 18–20 and 30–31; and Resolution A4-0410/98 of 17 December 1998 on human rights in the world in 1997 and 1998 and European Union human rights policy, OJ 1999, C 98, p. 270ff., at paras. 20–26.
Parliamentary Assembly of the Council of Europe has undertaken a number of fact-finding missions to applicant States, focusing on minority issues within the broad institutional framework of human rights protection. Its recommendations for constructive approaches to minority problems obviously serve conflict prevention and resolution purposes. Still, the admission, for instance, of Russia and Croatia in 1996 to the Council of Europe came at a time when the minority rights record of these States was still far from satisfactory (especially in connection with, respectively, the Chechnya and Krajina issues).

Looking ahead, the above-mentioned new Assembly follow-up mechanism, set up by Resolution 1115 (1997), can constitute an additional resource to monitor the implementation of (Council of Europe) minority standards by member States. Basically, the Assembly procedure is based on reports of a Monitoring Committee, leading up to restrictive measures of the Assembly (and, ultimately, of the Committee of Ministers) in case of a member State persistently failing to comply with the relevant obligations and/or commitments. The procedure involves member States generally, but it is clear that special attention is paid to the situation of new members.

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56 See Huber and Zaagman, supra note 39, at p. 64.
58 This Resolution abrogates Order No. 508 (1995). In addition, the Committee of Ministers has set up an intergovernmental mechanism to follow up the same kinds of legal instruments as the ones referred to under Resolution 1115 (1997) (Declaration on compliance with commitments accepted by member States of the Council of Europe, adopted on 10 November 1994 (7 December 1994, FDOC 7200). Basically, the mechanism rests on constructive dialogue with the member States regarding appropriate measures to be considered for adoption. For an overview of such a mechanism in the light of the 1995 Resolution of the Committee of Ministers concerning the modalities of its implementation, see Unité de ‘monitoring’ du Secrétariat Général du Conseil de l’Europe, Strasbourg (Monitor/Inf (98), 2, 23 novembre 1998), Respect des engagements pris par les Etats membres: Evolution de la procédure de suivi du Comité des Ministres, reproduced in Revue Universelle Des Droits De L’Homme, Vol. 10, 1998, pp. 371–382.
59 Resolution 1115 (1997), para. 12. Note also that, within the EU context, restrictive measures relating to membership rights are now permissible under the procedure provided for by Article 7 of the Treaty on European Union, in the event of a serious and persistent breach of principles mentioned in Article 6, para. 1 (including respect for human rights). Such a procedure, with a prominent monitoring role of the European Commission, might gain practical significance as a result of increasing human rights/minority rights concerns within this framework.
60 For an overview of the current activities of the Monitoring Committee (including references to minority issues), see its first two Progress Reports contained in Doc. 8057 of 2 April 1998 and Doc. 8359 of 19 March 1999.
As previously noted, minority groups and involved NGOs are being increasingly given access to human rights fora with a view to supplementing the information about the situation of minorities as provided by State sources. From a prevention-oriented perspective, minority participation is obviously crucial. This is particularly true when it comes to encouraging States to comply with minority standards. Special mention should be made of the issue being currently debated of whether or not minority representatives are to be involved in the work of the joint intergovernmental committees set up under some of the bilateral treaties which have been incorporated in – or spurred on by – the 1995 Stability Pact. For instance, while the Treaty between Hungary and Slovakia seems to keep this possibility open, the Treaty between Hungary and Romania contains no reference to the composition of the respective committee. It is submitted that the involvement of minorities in the implementation of such treaties may contribute to fostering a climate of dialogue at the domestic level, while at the same time offering further opportunities for making the various bilateral regimes effective.

4.5. A Brief Look at (UN) Conflict Management

The monitoring of minority rights is obviously more problematic when confronting with situations where the short term priority is to stop and/or impede violence on the ground. The latter usually falls beyond the (medium/long term) operational reach of the above-mentioned preventive tools. In his cited Report on an Agenda for Peace, the UN Secretary-General specifically called on the UN bodies to a stronger commitment to human rights with a special sensitivity to minority rights, with a view to enhancing the situation of minorities as well as the stability of States.

In terms of UN peace-keeping operations, human rights (including minority rights) considerations have not yet been channelled into a coherent pattern for dealing with situations of strong ethnic tension. The deployment of UN monitoring personnel in the Former Yugoslav Republic of Macedonia (FYROM) in order to defuse minority tensions in the border areas with Albania and the Federal Republic of Yugoslavia (Serbia and Montenegro) is no doubt an interesting development. As part of their visiting programme, such observers have inter alia received complaints from members of minority groups about alleged discriminations by the authorities. Where appropriate, some complaints have been submitted to the internal and/or international

61 Gál, supra, note 19, at p. 10.
63 Alfredsson and Türk, supra, note 49, at pp. 175–177.
competent bodies for consideration. To date, this case remains quite isolated in UN practice.

At the time of writing, the escalation of violence in Kosovo gives further reason to believe that the UN should take further steps for improving its capability of conflict management. Under Article 24 of the UN Charter, the Security Council has primary responsibility for the maintenance of international peace and security, in accordance with the principles and purposes of the Charter. In recent years, the concept of ‘threat to the peace’, under the terms of Article 39, is being increasingly associated with non-military sources of conflicts, basically amounting to internal situations where a range of human rights issues are at stake. In a number of cases involving minorities the Security Council has acted under Chapter VII (e.g. Iraq, former Yugoslavia, region of Kosovo). Depending on the case, it has, inter alia, condemned gross violations of human rights (with particular reference to the policy of ‘ethnic cleansing’), demanded a ceasefire and a peaceful solution ensuring protection for the groups involved, appealed to all States and humanitarian organisations to contribute to relief efforts, called for the establishment of in-country missions, decided measures not involving the use of armed force under Article 41, and/or authorised some coercive (military) actions. At present, it is not possible to establish any consistent Security Council approach to ethnic conflicts. Rather, we may notice an increasing ‘dialogue’ with special rapporteurs and the Secretary-General for fact-finding purposes. The Special Rapporteurs on Iraq and former Yugoslavia were invited to discuss their reports before the Council. Furthermore, the latter has supported and/or requested fact-finding (including good offices) initiatives of the Secretary-General as a means of coping with some serious minority problems (Bulgaria, region of Nagorno-Karabakh, etc.). It would be desirable to build on such precedents by involving the UN Working Group on Minorities and/or the UN High Commissioner in regular consultations with the Council when addressing pertinent situations. By so doing, concerns for the implementation of human rights (at least in cases of gross abuses amounting to international crimes) may be more firmly embedded in the peace-enforcement functions of the Security Council. A more proactive ‘ad-

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66 See, for instance, the Kosovo Verification Mission set up on the basis of an agreement between the OSCE and the Federal Republic of Yugoslavia (Serbia and Montenegro) (for the text, see International Legal Materials, Vol. XXXVIII, 1999, p. 24ff.), pursuant to a resolution of the Security Council calling upon the OSCE to establish the Mission, in order mainly to verify compliance with SC Resolution 1199 of 23 September 1998 on the Kosovo crisis.
visory’ role of such human rights bodies may also trigger further initiatives from member States, the General Assembly, regional arrangements or agencies, or the Secretary-General, in conformity with the Charter (particularly under Articles 10, 11, 14, 35, 53 and 99).  

5. Concluding Observations

The analysis presented above reveals a variety of mechanisms focused on, or relevant to, the implementation of minority rights standards. We all know that the ultimate responsibility for standard implementation rests with States at the domestic level. However, a growing international concern for minority issues is gradually expanding the range of ways and means of committing States to effective protection. While direct interstate confrontation on such issues remains problematic (as vividly illustrated by the fact that no interstate complaint has ever been brought under any of the UN treaty-based procedures), some international institutions have intensified their activities in the field of the promotion and protection of minority rights. There is no single approach to implementation, but rather a spectrum of differentiated methods. In addition to the traditional, procedural paradigm of State reporting, other paths are emerging or being strengthened. Some of them amount to new institutional devises basically serving conflict prevention purposes. At the European level, such a process is part of a policy to promote stability in those States of central and eastern Europe in transition towards democracy.

As noted, the complex of mechanisms to monitor minority rights compliance must be evaluated in terms of complementarity. This, in turn, calls for stronger attention to enhancing the co-ordination of such mechanisms. However, we should also caution that varying degrees of overlapping in minority rights monitoring appear as hardly avoidable. Furthermore, ‘horizontal complementarity’ among the bodies which have been entrusted with monitoring functions of the same (or comparable) type, may lead to establish patterns of constructive competition, providing a strong pull towards increasing the effectiveness of such functions. Therefore, the challenge is to strike a balance between the need for ‘vertical’ co-ordination (focusing on the nature of minority problems) and the one for preserving the dynamic and evolutive character of the entire system of monitoring.

In the medium term, the prospects for improving compliance with minority rights standards may be strengthened by at least:

68 The question of whether it may be established a right to the use of force on humanitarian grounds irrespective of the UN Charter, namely under general international law, is beyond the scope of this article.

69 See on the point Huber and Zaagman, supra note 39, at pp. 65–67.
— increasing access to, and dissemination of, pertinent information in general and ensuring equality of treatment of State and non-State sources in particular;
— increasing the use of existing resolution- and treaty-based mechanisms, with a special emphasis on those which remain underutilised to date;
— increasing consistency and follow-up capabilities, especially when deploying preventive patterns of implementation;
— increasing the effectiveness of the normative and operational framework of conflict management functions.

Flexibility and reasonableness are needed in dealing with the implementation of minority rights but all the actors of the supervision process should never forget that standard-implementation is a matter of international law and cannot be left to the realm of short term political concessions.