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Politics Versus Law
in the EU's Approach
to Ethnic Minorities

BRUNO DE WITTE

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Politics versus Law in the EU's Approach to Ethnic Minorities

Bruno de Witte

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Introduction

The notions of *ethnic minority* and *European Union* seem, at first sight, to belong to two different worlds. The contrast between these two worlds may be illustrated by several contemporaneous pairs of events that occurred during the first half of the 1990s:

- On 9 and 10 December 1991, the European Council met in Maastricht and managed, with some difficulty, to reach agreement on the Treaty of Maastricht establishing the European Union and providing, among other things, for the creation of a common European currency. I remember one American journalist, present at Maastricht, criticising the Heads of Government of the (then) 12 member states for squabbling endlessly over what, for her, were technical trifles while at the other end of Europe, she argued, something much more important for the future of the continent was happening: through the conclusion of the Minsk Agreement of 8 December 1991, the Russian Federation, the Ukraine and Belarus had created the Commonwealth of Independent States and proclaimed the end of the Soviet Union "as a subject of international law". Ethnic diversity had, of course, been one of the principal agents of the dissolution of the Soviet empire, whereas it had not played any role in the adoption of the Treaty of Maastricht.

- On 1 January 1993, the European Union witnessed an event which, at the time, was greeted by solemn statements and bonfires lit across Europe (although it seems almost forgotten today): the abolition of border controls on the trade in goods between the member states of the European Union and the official launch of the Single Market crowning an intensive period of legislative activity that had started after the European Commission had issued, in 1985, its White Paper on the completion of the internal market. On the very same day that border controls were lifted in Western Europe, new borders were drawn further East: the Czech and Slovak Federal Republic was dissolved into two new states: the Czech Republic and Slovakia. Again, cultural differences were among the principal causes of the separation.

- On 1 February 1995, the Framework Convention for the Protection on National Minorities was signed within the framework of the Council of Europe. This international treaty was the culmination of a five-year efforts (ever since the fall of the Berlin Wall) to set a pan-European standard on matters of minority protection; at the same time, it was clear to all that the Convention was primarily meant to deal with one particular part of Europe, namely the Central and Eastern part. The Convention was treading with care, as shown by its article 21, stating that "[N]othing in the present framework convention shall be interpreted as

implying any right to engage in any activity or perform any act contrary to the fundamental principles of international law and in particular of the sovereign equality, territorial integrity and political independence of States". No such precautions had been taken when drafting the Act of Accession by which Austria, Finland and Sweden had, just one month earlier, been admitted as new members of the European Union. It was clear to those countries' governments and populations that joining the EU implied a serious limitation of national sovereignty, which they accepted - with more or less enthusiasm - in view of the expected economic benefits of membership.

The three contrasting pairs of events described above evoke two very different trajectories: on the one hand, one finds countries of Western Europe that carry forward, or join, a process of intense economic and political integration called the European Union, for which they accept divesting themselves of certain paraphernalia of the traditional nation-state, and in which they are not hindered by ethnic minority questions. On the other hand, one finds countries of Central and Eastern Europe that remain outside this supranational integration process and many of which are marked by a revival of traditional questions of nationalism and ethnic conflict.

Today, however, the two trajectories have become tangential and even tend to overlap. This may again be illustrated by a pair of recent events that signal the emergence of the terms 'ethnic' and 'minorities' in the official vocabulary of the European Union. On 16 and 17 June 1997, the European Council reached political agreement on a document which was, some months later, formally signed as the Treaty of Amsterdam. This Treaty, among many other things, inserts into the EC Treaty a new Article 13 which will enable the Council of the European Union to "take appropriate action to combat discrimination based on sex, racial or *ethnic* origin, religion or belief, disability, age or sexual orientation". Less than a month later, the European Commission, in its opinion on the request for accession to the EU by a number of Central and Eastern European countries, insisted on the importance of what it called "respect for minorities" as one of the political criteria for membership of the European Union.¹

These two recent uses of the terms "ethnic" and "minorities" were made in two different contexts:

- the first was made in the context of the *internal* evolution of the European Union, in which the question of ethnic minorities has long occupied a very marginal place and is now finally recognised as a matter of concern, albeit with regard, primarily, to *immigrant* populations;

- the second was made in the *external* context of the relations between the EU and its Central and Eastern European partners and candidates for accession; in this context, the position of ethnic minorities has been a relevant factor for the last five years.

There is, thus, a chronological *décalage* between the internal and the external agenda of the European Union. I will, therefore, start by considering the role of the ethnic minorities question in the *external* relations of the EU with the Central and Eastern European countries (or "CEEC"). I will, then, examine more closely the reasons for the apparent absence, so far, of any *internal* European Union policy on ethnic minorities. In the final section, I will try to weave the two threads together and speculate about the way the European Union will be confronted with the ethnic minority question in future years, particularly after its projected Eastern enlargement.

The External Perspective: Double Standard or Common Standard?

The Double Standard Revealed: Two Meetings in Copenhagen and One in Amsterdam

For the European Union, concern for minorities is primarily an export product and not one for domestic consumption. This fact may be highlighted by looking at three political documents, adopted within one decade, each of which helped to define the fundamental values underpinning the European integration process.

a) The Conference on the Human Dimension of the CSCE adopted, at its meeting in Copenhagen on 29 June 1990, a text which became known as the Copenhagen Document and is sometimes referred to as a "European Constitution on Human Rights".² The Document affirms the link between democracy, the rule of law and human rights and also devotes, within this context, an extensive chapter to the protection of national minorities. This chapter, although cautiously worded and lacking binding legal force, was the first attempt at agreeing an all-European standard on the status and rights of minorities. In the euphoric post-Berlin-wall climate of 1990, the commitments contained in the Copenhagen Document were subscribed to by all countries of Europe, including therefore the member states of the European Union. These commitments continue to inspire, today, the activities of what is now called the OSCE, and, more particularly, of its High Commissioner on National Minorities.³

b) This common platform accepted by *all* European countries was transformed, at another Copenhagen summit some years later, namely the

European Council meeting of June 1993, into political criteria to be complied with by a particular set of countries, namely those of Central and Eastern Europe aspiring to membership of the European Union. According to the European Council conclusions, "membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities".⁴ Thereby, the complex set of interlocking principles contained in the Copenhagen Document of 1990 was translated into one synthetic formula with important political implications.

c) A slightly different formula was adopted, for the EU's internal usage, at the Amsterdam European Council of June 1997, as the new text of Article 6(1) of the EU Treaty: "The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States". If these are the principles on which the EU is founded, it is logical that they should also serve as conditions of membership. Indeed, the new text of Article 49 of the EU Treaty, as modified in Amsterdam, confirms that "[A]ny European State which respects the principles set out in Article F(1) may apply to become a member of the Union". Yet, as we have seen, the formula which was actually used for the purpose of the present enlargement process is more demanding, as it also includes protection of minorities as one of the indispensable premises for integration.

Thus, among the famous "political criteria" set out by the European Union as conditions for the accession of the CEEC, or - more generally - for closer co-operation with the CEEC, the insistence on genuine minority protection is clearly the odd one out. Respect for democracy, the rule of law and human rights have been recognised as fundamental values in the European Union's internal development *and* for the purpose of its enlargement, whereas minority protection is *only* mentioned in the latter context. Therefore, its imposition on other countries may seem rather inconsistent or even "somewhat hypocritical",⁵ and the distinctive treatment meted out to them is strangely reminiscent of the infamous post-World War I minority protection regime, which collapsed, in part, because it was perceived as a set of unilateral obligations imposed on the newly created states of Central and Eastern Europe by the Western victors of that war.⁶

Stages in the EU's External Policy on Minorities

The commitments jointly undertaken by all CSCE states in the Copenhagen document of 1990 formed the basis from which the European Union, and its member states, gradually developed a set of requirements for groups of countries in Central and Eastern Europe which, taken together after some seven years'

experience, may be presented as an embryonic "common foreign minorities policy" of the European Union (although the EU member states notoriously have continued to have divergent views on the political situation in individual Central and Eastern European countries).

Minority Protection as a Criterion for the Recognition of New States (1991-1992)

In response to the eruption of violent conflict in Yugoslavia, the EC member states, within the framework that was then called European Political Cooperation (the forerunner of the Common Foreign and Security Policy), convened a peace conference at The Hague, and an Arbitration Committee was set up, also known as the Badinter Committee, from the name of its chairman. The Committee developed, through the opinions which it gave upon the request of the EC, a small body of doctrine on self-determination and minority rights.⁷ The Twelve (as they then were) also contributed more directly to international state practice in this field through the adoption, in December 1991, of a *Declaration on the Guidelines on Recognition of new States in Eastern Europe and the Soviet Union*. Recognition of new states in this area of the world was made conditional, by the Twelve, on a number of commitments from the side of the applicants, including respect for human rights and "guarantees for the rights of the ethnic and national groups and minorities in accordance with the commitments subscribed to in the framework of the CSCE".⁸

Putting conditions on recognition of new states was not unprecedented. What was striking was the specific mention made of *minority protection* as one of the conditions for recognition, particularly as it came from the side of a group of countries (the EC countries) which had never before taken, as a group, any internal or international action in the field of minority protection. In reality, the agreement on common conditions for recognition was a compromise designed to paper over the differences among European countries over the situation in Yugoslavia.⁹ Moreover, the minority protection criterion was applied inconsistently by the EC countries: Croatia was recognised on April 15, 1992, although the Badinter Committee had expressed reservations on its minority protection laws; whereas Macedonia complied with all the criteria, according to the Committee, but was not recognised at the time for other reasons dear to Greece.

The Pact on Stability in Europe (1993-1995)

One of the very first joint actions undertaken in the framework of the EU's Common Foreign and Security Policy, immediately after the entry into force of the Treaty of Maastricht, was the ambitious initiative, inspired by France, to convene an international conference at which the stability of Europe would be

ensured by means of a range of bilateral treaties and declarations establishing good-neighbourly relations between countries of Central and Eastern Europe. There is no doubt that the active role and apparent commitment shown by the European Union in this matter was a decisive factor in convincing some of the CEECs to start negotiations with their neighbours in preparation for the Stability Pact.¹⁰ The Pact, as eventually adopted at a conference in Paris in 1995, included only one important new instrument for minority protection, namely the bilateral treaty between Hungary and Slovakia, which was signed on the eve of the Paris Conference.¹¹ The negotiations on a similar treaty between Hungary and Romania were concluded only later, in 1996.¹² The Stability Pact was deposited with the OSCE, and that organisation was entrusted with monitoring the implementation of obligations contained in it. The European Union itself lost interest in the Pact, and now directs its efforts mainly at bringing about reforms in the *domestic* laws of the Central and Eastern European countries. Yet, the spirit of the Stability Pact is still reflected in the financial support given by the EC Phare programme to cross-border co-operation actions.¹³

The Opinions on Accession and the Accession Partnerships (1997-1998)

As mentioned above, the Opinions delivered by the European Commission in July 1997,¹⁴ as to whether the applicant Central and Eastern European countries fulfilled the conditions for being admitted to accession negotiations, devoted specific attention to the question of minority protection. Despite the unsophisticated and fragmentary nature of the Commission's analysis of the minority issues, two implicit positions can be derived from these Opinions. First, the Commission adopted its own definition of minorities; in commenting upon the situation in Estonia and Latvia, the Commission adopted a definition of minorities which includes all the communities residing in these countries, without distinguishing whether their members were nationals of the country or not. This is an approach which the Baltic governments had always taken care to reject in other contexts.¹⁵ Second, the Commission was apparently not content with the formal recognition of minority rights in national Constitutions and bilateral treaties, but made a full assessment based on its perception of law and practice. For instance, Slovakia has minority protection clauses in its Constitution,¹⁶ and had signed its bilateral 'Stability Pact' treaty with Hungary, but the European Commission nevertheless expressed dissatisfaction with the minority situation there. In the end, Slovakia was the only country which, in the Commission's view, failed to meet the political criteria, although the minority question was not the most important reason for that negative decision.¹⁷

Today, the policy of "conditionality" continues unabated with both the front-runners and the second-wave applicants, and, indeed, in the relations of the EU with the successor states of Yugoslavia. The Accession Partnerships adopted

in 1998 list a large number of "short term" and "medium term" priorities for the applicant states. These priorities include some items in the field of minority protection. The short term priorities for Slovakia include a reform of its laws on the use of minority languages, whereas Estonia and Latvia must urgently facilitate the conditions for the naturalisation of "non-citizens" (i.e., the Russian-speaking community) and improve their integration by offering them courses in the national language. In the medium term, four other countries (the Czech Republic, Hungary, Bulgaria and Romania) are expected to improve the integration of the Roma population.¹⁸

Latvia and Slovakia, in particular, although they were excluded from the first round of negotiations, continued to be the object of political pressure to improve their minority protection record. At a session of the EU/Slovakia Association Council in April 1998, the EU ministers reiterated their demand for the urgent adoption of a new law on the use of minority languages.¹⁹ A few days earlier, the European Union had expressed satisfaction over a new Action Plan of the Latvian government to accelerate the handling of requests for citizenship.²⁰ In the general reports on "progress towards accession", which the Commission adopted in November 1998,²¹ satisfaction was expressed about the legal reforms which Latvia had, in the mean time, enacted, whereas no significant improvement was found in the protection of minorities in Slovakia (but the change of government in that country was still too recent to be reflected in the Commission's findings). In its general assessment of the record of all applicant countries, the Commission continues to exert pressure on applicant states by referring critically to the situation of the Roma in several candidate countries, and by concluding: "Overall, the problem of minorities continues to raise concerns in the perspective of enlargement".²²

Elements of a Common European Standard

In international relations, there is no rule of formal reciprocity, whereby States are prevented from formulating rules of behaviour for other States which they are not prepared to follow themselves. Yet, if the European Union institutions evaluate the treatment of minorities in third countries, can they legitimately ignore the way in which similar groups are treated inside the European Union? Some years ago, a member of the European Parliament bravely stated: "we will be equally assiduous at identifying and following up instances of abuse within the European Community; (...) as well as examining the situation of the Greek minority in Albania, we also will take an impartial view of the situation of the Turkish minority in Komotini".²³ That may be the position of some members of the European Parliament, but it has never been endorsed by the Commission and the Council: what the member states do with "their" minorities is none of the EU's business.

So, is there a blatant double standard in the respect for minorities? Or could the EU's inactivity with respect to its own member states perhaps be justified by arguing that intervention is superfluous, in view of the perfectly adequate performance of each member state with regard to minority protection? That is not so evident, to say the least. When looking at the internal situation in the present 15 member state, one should certainly take into account the considerable diversity in the factual situations (ethnic minorities are not present everywhere), but there are also large differences in the willingness of the various states to recognise minorities, protect their rights and guarantee their political participation. There is, in fact, a sharp contrast between the common regime of protection of *fundamental rights* (where there is considerable similitude between Western European countries) and the special case of *minority rights* which are still very much an idiosyncratic feature of certain countries or parts of countries. The diversity is so great as to discourage any attempt at systematic comparison.²⁴ The academic pilgrims from the West who, in the early 90's, brought their "model constitutions" to Central and Eastern Europe, did not have a ready-made minority protection model in their first-aid kits,²⁵ because such a generally applicable model simply did not exist.

Yet, one should look beyond the domestic practices of states and also take into account the *international commitments* undertaken in recent years by all European states. A common European standard of minority protection may exist after all; it has been developed mainly outside the framework of the EU itself, but with the participation of its member states, and may therefore legitimately be used by the EU in its external activities, at least to the extent that the EU states effectively comply with that standard. The elements of the European standard will be briefly considered now.²⁶

Democracy and the Rule of Law

In the Copenhagen Document of 1990, the participating States recognised, in the first of the paragraphs dealing with minorities, "that the questions relating to national minorities can only be satisfactorily resolved in a democratic political framework based on the rule of law, with a functioning independent judiciary".²⁷ The consensus on this linkage was new at the time. In previous decades, many ethnic activists and academic experts failed to make a principled distinction between democratic and authoritarian states as far as the treatment of minorities was concerned. Often, even in western Europe, countries like the Soviet Union and Yugoslavia had been described as showing a better approach to the protection of ethnic diversity than Western European countries with their unilateral emphasis on *individual* human rights. Indeed, Yugoslavia had acted for a long time, on the international scene, as the champion of minority rights.

Although there may have been some empirical truth in those earlier views, they are now definitely *passé*. There is a European consensus, now, that in the absence of democratic elections, freedom of expression and an independent judiciary, there is no solid ground for the protection of ethnic minority values.

The Protection of Human Rights

The dichotomy, often made for the sake of convenience, between *human rights* and *minority rights* may be misleading if it hides the fact that a genuine measure of protection for minority interests can be brought about simply by applying and creatively interpreting the fundamental rights granted to all. In fact, European states, such as France, that do not have any special laws on minority protection, give implicit protection to minorities by adhering to general human rights standards as defined by their Constitution and by the European Convention of Human Rights (which they have all ratified). Two examples may illustrate this:

- The Canadian Supreme Court decided in a famous case that *freedom of expression*, a general fundamental right, entails the freedom to use the language of one's choice in private activities, and thereby limited the possibility for the Quebec provincial government to impose the exclusive use of French for outdoor commercial signs and, hence, protected the linguistic rights of the English-speaking minority in the province.²⁸
- The Turkish Constitutional Court had ordered the dissolution of the (Kurdish-leaning) Socialist Party because it advocated the transformation of Turkey into a federal state, which was found to be in contrast with long-established constitutional values. The Socialist Party complained in Strasbourg that this was a breach of its human rights as guaranteed by the European Convention of Human Rights. The European Court held, in its judgment of 25 May 1998, that "the fact that such a political programme is considered incompatible with the current principles and structures of the Turkish State does not make it incompatible with the rules of democracy. It is of the essence of democracy to allow diverse political programmes to be proposed and debated, even those that call into question the way a State is currently organised, provided that they do not harm democracy itself".²⁹ And the Court (unanimously!) concluded that the dissolution of the SP constituted a violation of the freedom of association as guaranteed by the European Human Rights Convention.³⁰

These examples could be multiplied. It will be interesting to observe the contribution of the European Court of Human Rights case-law in the years to

come, as more numerous applications on minority matters are likely to be lodged at Strasbourg from the CEEC. Yet, there are some inherent limits to the human rights approach. They may be exemplified by a recent Decision of the European Commission on Human Rights. There was a complaint by the *Südtiroler Volkspartei* (the main party representing the German-speaking population in South Tyrol) that the new Italian electoral law, by imposing a minimum threshold for the attribution of seats in Parliament, constituted discrimination against minority political parties. The Commission stated that the new electoral law applied equally to all parties and that “the Convention does not compel states to provide for positive discrimination in favour of minorities”.³¹ This interpretation is disputable; one could well argue that the principle of equal treatment *does* entail a duty for public authorities to differentiate among persons (or, as in this case, organisations) in accordance with objective differences among them, and therefore also a duty to enact special rules enabling the use of minority languages and, more generally, the development of minority cultures.³² But it certainly makes things much easier if such positive duties towards minority groups are laid down explicitly. This leads me to the third layer of the “European standard”.

Minority Rights

Despite the undeniable differences in the domestic arrangements of the various states in both East and West, a European standard in respect of minority rights has been emerging in the recent years. The *Framework Convention for the Protection of National Minorities*, adopted within the Council of Europe in 1995, entered into force on 1 February 1998. It has, to date, been signed by 13 member states of the European Union and ratified by seven of them. Only Belgium and France have neither signed nor ratified.³³

What is the content of this emerging minority rights standard? The Framework Convention contains, first of all, a number of general fundamental rights which can already be found in the European Convention on Human Rights but whose particular implications for the members of a national minority are emphasised. Yet, the main contribution of the Framework Convention lies in the formulation of a number of specific minority rights which cannot easily be reduced to the canonical list of general human rights³⁴, namely a qualified right for individual members³⁵ of a minority to use their language in dealing with courts, public authorities and in the public service media, and a right to receive instruction in that language in the public education system. Although the Framework Convention may seem overly cautious in its wording and too respectful of the states' sovereignty,³⁶ it does constitute an important stage in international standard-setting, to be used and taken further through international recommendations, bilateral negotiations, political pressure, and advocacy by NGOs.

The Right of Citizenship

Citizenship is sometimes presented as “the right to have rights”.³⁷ Whereas it is true that citizenship defines, in a fundamental way, an individual's membership to a state community, and serves as a criterion for the attribution of many rights, benefits and duties, it is also true that most human rights, as described in the relevant international and European treaties, apply to *all residents* of a particular country, whether or not they are nationals of that country. Therefore, the possibility for members of an ethnic minority to acquire, or keep, the nationality of the state where they live, ranks lower than the guarantee of human rights in the scale of minority protection instruments. At any rate, no clear Europe-wide (or universal) standard has emerged in this respect. The pressure exercised by the international community to relax the harsh conditions for naturalisation which, in countries such as Estonia and Latvia, make it difficult for Russian-speaking persons to acquire the nationality of the country, are primarily inspired by the will to prevent the escalation of inter-ethnic tensions and to appease the ire of the Russian government. Political pressure has not been backed by legal standard-setting in this field. There is no generally recognised right for all long-time residents in a particular State territory to be eligible for citizenship of that country. Indeed, such a standard would be hard to meet by many Western European countries (foremost of which is still, for the time being, Germany), whose legal regimes for the acquisition of citizenship are hardly less rigid than those of the Baltic states.

The rules on the acquisition of nationality are relevant because the recognition of *minority rights*, in contrast to *human rights*, is often made dependent on having the nationality of the country concerned. That, at least, is the interpretation given by many states to the term “national minority” as used in the Framework Convention on National Minorities. Non-citizens are, in their view, not covered by this Convention.³⁸

Autonomy and Consociation

So far, I have considered “rights”, that is, instruments for the limitation of State power. A second type of often-used instruments for minority protection or of “group accommodation”³⁹ are those that involve the sharing of State power, either through the recognition of autonomous legislative powers to institutions representing ethnic minority interests (autonomy) or by organising the participation of ethnic minority groups in the decision-making processes at the central state level itself (consociation). Those are, arguably, the most advanced forms of minority protection. Regional autonomy is widely, and increasingly, used in Western Europe as a means of defusing ethnic minority conflicts, including in

such traditionally centralised countries as France and the United Kingdom.⁴⁰ Yet, Central and European Countries tend to be rather wary of federal or quasi-federal solutions in general, and special “asymmetrical” regimes of autonomy for parts of the country inhabited by minority populations are shunned by those states, for fear that this may be a prelude to secession. Currently, there is no clear obligation for States, in general international law, to establish regimes of autonomy for minority groups. Nor has a common European standard emerged in this respect, at least for the time being.

The Copenhagen Document of 1990 went some way in this direction by recognising the “right of persons belonging to national minorities to effective participation in public affairs, including participation in the affairs relating to the protection and promotion of the identity of such minorities”. This principle is now echoed in Article 15 of the Framework Convention. Yet, efforts to go beyond this general statement, by imposing a specific duty on states to create regimes of local or regional autonomy in areas inhabited by ethnic minorities, have not been very successful. The only text that goes that far is Recommendation 1201 (1993) of the Parliamentary Assembly of the Council of Europe which provides as follows in its Article 11: “In the regions where they are in a majority the persons belonging to a national minority shall have the right to have at their disposal appropriate local or autonomous authorities or to have a special status, matching the specific historical and territorial situation and in accordance with the domestic legislation of the state”. A Recommendation is, as the term betrays, a non-binding text. Yet, this particular Recommendation has quickly become famous because of the efforts made by the Hungarian government to incorporate it as a binding standard in the bilateral treaties which it negotiated with Slovakia and Romania. This issue was, indeed, the main stumbling-block during the negotiations, and although the reference to Recommendation 1201 was eventually inserted in both treaties, additional declarations specified that this reference did *not* imply any recognition of a right to a special status of territorial “autonomy” based on ethnic criteria.⁴¹ All in all, it is quite obvious that European states are still very reluctant to recognise any limits to their sovereign power to decide their country’s governmental structures.

An all-European consensus exists on the principle that the solution for ethnic conflicts involves the elaboration of *rules and institutions* that will allow for the preservation of both the *integrity of the state* and the *identity of the minority*. But what does this involve in practice? A major distinction should be made between instruments permitting a limitation of State power without affecting the institutional structure of the state (“rights”) and instruments which rearrange the State structures so as to allow for territorial autonomy or other forms of minority interest representation. On the former level, a European standard exists, though it is often vague and needs to be developed further. On the latter level, no such European standard has emerged.

The Internal Perspective: are Ethnic Minorities a Non-issue in the European Union?

In the terms of reference to the project for which this paper was drafted, it was stated: “The EU of 15 is not unfamiliar to tension caused by ethnically-inspired conflicts, but until today such questions have rarely been lifted up to the Union level”. This statement is quite correct and I shall attempt, in this section, to explain some of the reasons why this is so.

The *comparative politics* and *multi-level governance* approaches to the study of European integration, which are both currently fashionable political science theories, invite us to examine the EU by analogy with national political systems, and particularly those of federal states. Now, ethnic minority issues arise in federal systems in two different guises: either some or all of the component units act as institutions articulating the interests of particular ethnic groups; or the central government intervenes in order to protect ethnic minorities *within* some of the component units of the system. Both hypotheses could conceivably arise in the European Union as well.

Have the Member States of the EU Become “National Minorities”?

Let me start by considering the first hypothesis. It frequently happens in federal or regional states that one of the constituent units appears, to itself or to others, as the institutional representative of a distinct minority group. Thus, the Province of Quebec, one of the founding members of the Canadian federation, is perceived by many Canadians both inside and outside the province as the institutional spokesperson for the French-speaking community in Canada. In Spain, the Constitution recognizes Catalonia, Euskadi and Galicia as Autonomous Communities with legislative powers but also as “nationalities” with distinct histories and cultural characteristics, and the governments of those Autonomous Communities defend with pugnacity the cultural characteristics of their territory against the perceived dominance of the Castilian-speaking majority of the country. In Belgium, to take a final example, the *Communauté germanophone* is an autonomous unit with distinct legislative powers but also acts (as its name clearly betrays) as the spokesperson for the country’s tiny German-speaking minority.

There is no similar ethnic dimension in the relations between the European Union and its member states. Although each of the member states’ populations is, obviously, a numerical minority in relation to the European population as a whole, and although it frequently happens that individual countries are outvoted in the European Parliament and the Council and feel their interests are being neglected

in the European decision-making process, this does not mean that any of the member states has become a “minority”.

One reason for this is of a formal nature: all member states have preserved their status as independent, and equally sovereign, states, a status which finds practical reflection in the requirement of unanimity for all major decisions affecting the future of European integration (including any revisions of the founding treaties and any accessions of new states), in the paramount role of the principle of non-discrimination on grounds of nationality (Article 12 of the EC Treaty) and also, at a more symbolical but highly sensitive level, in the recognition of the various national languages as co-official languages of the European Union.

Beyond the formal institutional equality of all member states, there is also the happy political circumstance that no single country or coalition of countries has ever been able to dominate the others so as to impose its views and interests in the decision-making process. Coalitions between states keep shifting according to the particular subject matter; there are some stable sub-systems and the Franco-German tandem, in particular, may well play, from time to time, the role of the locomotive of EU politics, but it would not make sense to describe the political relations between member states of the EU in terms of a stable “majority” pitted against one or more structural “minorities”.⁴²

The most fundamental reason why none of the member state populations can be described as an “ethnic minority”, is the absence of a clearly dominant culture among either the original Six or the present Fifteen, and the firm but long unexpressed agreement that no such dominant culture should be allowed to emerge. When the European Community was founded, economic co-operation was launched against the background of major *political* objectives, such as the preservation of peace or the encapsulation of Germany, but aims of *cultural* expansion or assimilation were entirely absent. The European unification process, unlike earlier attempts at political and economic unification within the nation-state framework, was not thought to require cultural homogenisation. The guiding image of the future Europe was, and still is today, that of a federation of nation states respecting the existing cultural patterns of its members rather than replicating the nineteenth-century nation state model. In legal-institutional terms, this meant that education, culture and language were not listed among the policy areas falling within the competence of the European Community, and that the authority of the member states in these matters could be entirely preserved.

To conclude, there is no evidence so far that, by being part of the European Union, the French, or Danish, or Luxemburgian peoples have become “national minorities”.

A Minority Protection Policy of the European Union?

Let me now turn to the second hypothesis, namely that the European Union could be instrumental in protecting the position of ethnic minority groups *inside* its member countries, like the Canadian federal government protecting the position of Indians and Inuits living in the province of Quebec, or the Swiss federal government guaranteeing the rights of the Romansh-speakers who are outnumbered by the German-speakers in their home canton of Graubünden.

Again, this analogy does not hold. It was, and is, entirely unacceptable for the EU to interfere in the relations between the central governments of the member states and the ethnic minorities living within their borders. This can be seen both in the *institutional structure* of the EU and in the actual *policies* pursued by the Union.

On the first level, the dominant principle is that of *institutional autonomy*: the way in which each member state of the European Union defines its own input in EU decision-making is an internal matter which depends only on the constitutional rules and political practices of that country. Whether ethnic minorities (or rather: the local and regional institutions representing their interests) should have a role either in defining the position taken by the member state in the EU policy process, or in implementing EU policies on the ground, is therefore a matter to be settled by each country separately. The legal system of the European Union only knows the “Member States”, an abstract denomination which covers bodies and civil servants acting at many different levels. The right to take part in EU decision-making bodies and the responsibility to comply with EU obligations is entrusted to whoever is, according to internal rules, entitled to act in the name of the state.

The exclusion of any direct participation of regional and local authorities in the EU decision making process became increasingly hard to maintain, as more and more member states developed advanced systems of regional or federal autonomy, and as the scope of the EU's activities spread ever wider, so as to interfere with the policies of those regions. After an energetic campaign conducted by the German *Länder* and the Belgian Communities and Regions, the Maastricht Treaty finally granted some institutional recognition to the regional layer of government by the creation of a *Committee of the Regions*, a consultative body consisting of representatives of regional and local bodies, and by allowing states to be represented in meetings of the Council of Ministers by regional ministers, an option which is currently used (in some policy areas) by Germany and by Belgium. Yet, what should be emphasised in the context of this paper, is that the regions, whenever they are mentioned in acts of Community law, are

mentioned as a global institutional category. There is no special status for regions that happen to be genuine member states of a federation (as in Germany), or regions that represent a constitutionally recognised “nationality” (like Catalonia, Euskadi or Galicia). Regions may therefore correspond to an ethnically or linguistically defined territory or not, and minority areas may have regional autonomy or not, and this choice is still entirely left to the member states' internal constitutional rules. In other words, the Maastricht Treaty did not introduce a European Union regime for territorial minorities, and the recent Treaty of Amsterdam has not brought any significant changes either.

The same agnostic attitude pervades the second level, that of the European Union's *policies*. The European Community, and now also the European Union, can only act within the fields and for the purposes that are defined in their founding Treaties. Whereas those fields encompass all types of economic policies and much more than that, culture, education, media and language policies were not transferred to the European level and remain basically controlled by the member states, even though there may be occasional interference between the requirements of economic integration and national (or regional) policies of minority protection.

Ethnic Minorities are not Entirely Ignored by the EU

To the basic picture drawn in the previous section, of ethnic minority questions being a non-issue for the European Union, I will now add a touch of nuance. I will, first, mention three specific cases (one might find a few more) in which the European Union has been *directly*, though modestly, involved with ethnic minorities, and then, second, three structural ways in which the European Union is having an *indirect* impact on ethnic minorities and their position within their respective states. First the three *specific cases*:

- The European Community budget is offering some financial support to an action programme for “the promotion and preservation of regional and minority languages and cultures”. The importance of this initiative should not be overrated. There is, so far, no firm legislative basis for it. The programme was started at the insistence of the European Parliament, but has never had the formal approval of the Council of Ministers. The actual amount of the subsidy is therefore decided year by year, as part of the precarious battle between the European Parliament and the Council on the EU budget, and there is no long-term guarantee for its continuation. Moreover, the size of this financial incentive scheme has always been quite modest.⁴³

- The EU has played a direct role in one of the main minority conflicts in Western Europe. The European *Initiative for Peace and Reconciliation* has provided some 234 million pounds between 1995 and 1997 on projects in Northern Ireland.⁴⁴ This ad-hoc project was launched, it should be emphasised, on the express invitation of the United Kingdom and Ireland, and should therefore not be seen as an attempt by the EU to interfere in the minorities policies of its member states. The European Union was absent from the “multi-party talks” which led to the conclusion of the Good Friday Agreement of 10 April 1998, and the European Union is hardly mentioned in the Agreement itself.⁴⁵ Yet, the EC peace and reconciliation programme, and its cross-border programme developed under the Structural Funds, were specifically mentioned by the British Secretary of State as having contributed to create the climate in which an agreement could be struck.⁴⁶
- The latest round of accessions to the European Union led to the inclusion, in the constitutional charter of the Union, of the first direct hint at the existence of ethnic minorities. Special Protocols to the Act of Accession of Austria, Sweden and Finland were adopted to preserve, against the impact of EU law, the special status of the Aaland Islands (within Finland) and the special rights of the Sami people (in Sweden and Finland).⁴⁷

In addition to these three specific references to minorities, which have limited importance, one can identify three *indirect channels* of EU influence on ethnic minority issues:

- a) European Community policies which do not have as their objective to affect the position of ethnic minorities, may nevertheless display such effects in practice.⁴⁸ This is most obviously so for the *cultural* and *educational* action programmes which the EC has launched in the last decade, particularly since an official green light for those programmes was given by the Maastricht Treaty. That Treaty provides that the cultural action of the EC shall “contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity” (Article 151 EC Treaty, as renumbered by the Treaty of Amsterdam). Regional diversity is thus recognised as a common European value worth preserving; this obviously includes territorially based cultural and linguistic differences, and one could therefore read in this phrase of the EC Treaty a veiled recognition of the role and place of ethnic minorities in the European integration project. In practice, the modest cultural programmes based on this Article 151 are not particularly aimed at minority cultures, although one may note that *Ariane*, the support programme in the field of books and reading,⁴⁹ lists, among its funding priorities, translations to and from lesser used languages - minority languages not excluded.

Similarly, the EC regional policy stimulates economic development in many parts of the European territory, among which are also areas inhabited by ethnic minorities. One particular regional development programme, *Interreg*, gives special support to cross-border co-operation schemes, and naturally acquires an ethnic minority dimension in some places along the intra-Union borders, such as between the Spanish and French Basque countries, or between South and North Tyrol.

b) More important, perhaps, is the role played by the European Union with regard to *immigrant minorities*.⁵⁰ Two categories of such immigrant groups need to be sharply distinguished here: European Union citizens (for instance: the Portuguese community living in Luxembourg) and 'third-country nationals' (for instance: the Turkish community living in Germany). Indeed, the very distinction between *privileged* and *ordinary* foreigners is a result of European integration. There are wide-ranging EC rules on the free movement of persons and non-discrimination on grounds of nationality, which has resulted in the fact that EU citizens from other countries (and also, their closest relatives irrespective of their nationality) have the right to be treated, with some minor exceptions, exactly like the host state's own nationals. They are the privileged category of foreigners. On a second level, some international agreements concluded between the EC and third countries such as Turkey or Morocco grant limited rights to the citizens of those countries in the employment sphere, but nothing is said about the cultural rights of immigrants from those countries. Other third-country nationals (for example those from sub-Saharan Africa) do not possess rights under Community law, whether or not they have a permanent residence permit in their host state. Of course, nothing prevents the member states from deciding, on their own behalf, to extend rights possessed by European Union citizens to non-EU nationals, but this only happens occasionally, and for limited purposes.

Therefore, the distinction between the two types of immigrant groups, although not directly *imposed* by Community law, is closely related to the central objectives of European integration and, to that extent, non-EU nationals may be called "Community minorities": their minority status is revealed by the existence of a class of "privileged" aliens who have extensive rights under Community law.⁵¹ In this respect, the Italian term *extracomunitari*, which is commonly used to describe migrants from third countries, is revealing: these persons come from outside the *European Community* (which is the literal origin of the term) but, for that reason, they also remain outside the national *community*.

This state of affairs implies that the European Union can no longer ignore the questions of immigration and integration of third-country nationals. More particularly, the creation of an internal market conceived as an area without frontiers would seem to imply the power, for the EU, to harmonise, and improve, the legal status of non-EU minority groups. Yet, the strong misgivings of most member states have until now blocked any major initiatives, except for the rather vague, and rather restrictive, measures taken within the context of co-operation in Justice and Home Affairs.⁵²

The Amsterdam Treaty may well give a new impetus to the development of a European Union migration policy. On the one hand, the Treaty recognises more firmly than before the EU's responsibility in matters of immigration, including questions relating to the status and rights of immigrants once they are on the EU territory. On the other hand, the new Article 13 introduced by the EC Treaty grants to the European Union the power "to take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation". The reference to "ethnic origin" must be seen as complementary to "racial origin": what is meant are persons targeted for discrimination on account of their cultural characteristics, whether or not they belong to a different race; indeed, *ethnic discrimination* is the proper word for what is popularly but incorrectly called *racial discrimination*. The measures to be adopted by the EU are clearly intended to benefit immigrant communities, but there do not seem to be good reasons why the Roma, or indeed the traditional territorially-based ethnic minorities, could not also invoke their protection. It remains to be seen whether the EU will actually use this new power in an effective manner; a serious constraint is the fact that European anti-discrimination measures will have to be decided unanimously by the Council of the European Union.

c) A third indirect effect (but one which is difficult to pin down) is caused by the *very existence* of the European Union as a plurinational and multicultural community of semi-sovereign states. Partly because of events in Central and Eastern Europe, separatism and secession are on the European agenda again, and have been advocated with some vigour by political forces in parts of Spain, Italy, Belgium and the United Kingdom. The European Union has, formally speaking, no part in these discussions, and its institutions have been careful not to appear to encourage separatist moves in any way. But the existence of the EU is an important variable in the separatism debates in Western European countries. From one side, it is argued that establishing nominal sovereignty by means of the creation of a new state is even less meaningful in the European Union than elsewhere in the world, because the scope for effective national autonomy is reduced anyway. From the other side, the reply is that the close insertion of the state within Europe also means that the nation-state can no longer deliver many

of the benefits it traditionally delivered, that national borders have become largely irrelevant and the political impulse towards secession need no longer be inhibited by the fear of economic or welfare costs involved in separation from an existing nation state. Scottish nationalists may argue that, if Ireland and Luxembourg can be member states of the European Union, why should Scotland be excluded? And if, in a few years time, Estonia may become a member state of the EU, why not Euskadi as well?

But there is another side to that coin. The European integration process, by promoting a habit of loyal co-operation, both in EU decision-making itself and in the related mechanisms for co-ordination at the national level, tends to blunt the sharper separatist feelings. More generally, one might consider that the capacity to generate sophisticated compromises on complex matters, which Western European politicians and officials have learned through their participation in the EU decision-making process, is fundamentally at odds with the radical and uncompromising attitudes traditionally displayed in ethnic conflicts within nation-states. The material and symbolic rewards offered by European bargaining processes, and the disciplining effect of those processes, may have contributed (although it would be difficult to prove this point) to pacifying ethnic minority conflicts in places like Catalonia, Wales, South Tyrol and Northern Ireland.

Conclusion: Ethnic Minorities in an Enlarged European Union

To conclude this paper, let me try to bring together the “external” and the “internal” stories and imagine what could be the place of ethnic minorities in a future and enlarged European Union. For the sake of the argument, I will briefly indicate two contrasting scenarios for the future.

Scenario 1. Phasing Out and Status Quo

References made by the European Union institutions, in their recent documents addressed to Central and Eastern European countries, to minority protection standards remain very generic. The actions expected from these countries is specified, but the instruments or standards, which serve as the basis of the EU’s exigencies, are not named, perhaps for fear that they could return as a boomerang against the EU states themselves. Minority protection is, then, an ill-defined political requirement with which the CEEC are expected to comply because of the considerable carrot of accession offered to them. In the recently adopted Accession Partnerships, there are even signs that the EU’s concern with minorities is sliding to the background, compared to the central issue of adjustment to the *acquis communautaire*. The pragmatic prospect could well be that the remaining sensitive issues (Hungarians in Slovakia, the Russian populations in the Baltic, and the treatment of the Roma in several countries) will gradually “solve

themselves” so that attention can be concentrated on the economic nuts and bolts of the negotiation process. Once a country will be accepted for membership, this will *ipso facto* mean that the minority question is settled as far as the EU is concerned. And if Central and Eastern European countries will join the EU with a clean slate in respect of their minorities, then there will be no need for the European Union itself to modify its “agnosticism” in respect of minority protection *inside* the Union. If one adds to that the strong mood of subsidiarity that pervades the EU at present, with member states being very reluctant to transfer new powers to the European level, then the *status quo* becomes a likely scenario: in the enlarged EU, ethnic minority questions would remain issues that are basically confined within the domestic jurisdiction and constitutional discretion of the states. A marginal supervision of the performance of all states will then be exercised, not by the European Union, but by the Council of Europe through the mechanisms provided under the European Convention of Human Rights and the Framework Convention on National Minorities.

Scenario 2: A Multicultural European Union

The second scenario is that the accession of Central and Eastern European countries will lead to a very different European Union in which ethnic minority questions will be more prominently present in the institutional system and in the policies of the EU. Once the European Union has let the devil escape from the bottle, through its activist minority policy towards the CEEC, it may be difficult to put it back in after accession. Furthermore, the EU itself may well, in the years preceding the next enlargement, see a greater salience of ethnic minority questions, in respect of both immigrant and territorial minorities. Indeed, there is a certain convergence of “traditional” ethnic minority issues and issues of multiculturalism arising out of immigration. There is a strong current in political philosophy pointing out that what is at stake, in both cases, and despite the many differences, is the *recognition of cultural differences* in society.⁵³ The reference to “ethnic discrimination”, now inscribed in Article 13 of the EC Treaty after the Amsterdam reform, is a perfect expression of this convergence, and means that ethnic minority questions will, one way or the other, remain on the European Union’s agenda for the years to come. By the next enlargement, the time may be ripe for a major reform which could make of the protection of various forms of cultural pluralism a central concern of the European Union.

Bruno de Witte
Vakgroep Internationaal en Europees Recht
Faculteit der Rechtsgeleerdheid
Rijksuniversiteit Limburg/Maastricht
6200 MD Maastricht

NOTES

¹ *Agenda 2000 - Volume I: "For a stronger and wider Union"* (15 July 1997), p.52.

² A. Bloed (ed.), *The Conference on Security and Co-operation in Europe. Analysis and Basic Documents, 1972-1993* (Dordrecht: Martinus Nijhoff, 1993), p.93. This book also contains the text of the Copenhagen Document, which can be found, as well, in 29 *International Legal Materials* (1990) 1306.

³ For an analysis of the functions and role of the High Commissioner, see V.-Y. Ghebali, (1996) *L'OSCE dans l'Europe post-communiste, 1990-1996*, Bruxelles: Bruylant, pp. 522-547; and M.A. Martín Estébanez, (1997) 'The High Commissioner on National Minorities: Development of the Mandate', in M. Bothe, N. Ronzitti and A. Rosas (eds), *The OSCE in the Maintenance of Peace and Security*, The Hague: Kluwer, 123.

⁴ Conclusions of the Copenhagen European Council, *Bulletin of the European Communities* 6-1993, point I.13.

⁵ A. Verhoeven, (1998), 'How Democratic Need European Union Members Be? Some Thoughts after Amsterdam', *European Law Review* 217, at 233.

⁶ The one-sided nature of the minority protection commitments is not due to the activity of the European Union alone. The work of the High Commissioner for National Minorities, mentioned above, has also been exclusively concerned with Central, Eastern European and former Soviet countries. This is not due to any geographical limitation of the scope of his activities, but to the fact that his office was set up as an instrument of *conflict prevention*. It so happens that minority issues in the West have not been perceived, rightly or wrongly, as a source of violent conflicts threatening international stability.

⁷ See the text of the Opinions in *International Legal Materials* 31 (1992) 1494, and the comments by A. Pellet, 'The Opinions of the Badinter Arbitration Committee - A Second Breath for the Self-Determination of Peoples', *European Journal of International Law* (1992) 178. See also the detailed study by M. Craven, (1995) 'The European Community Arbitration Commission on Yugoslavia', *British Year Book of International Law* 333.

⁸ See the analysis by J. Charpentier (1992) 'Les déclarations des Douze sur la reconnaissance des nouveaux Etats', *Revue générale du droit international public* 343; for the full text of the Declaration, see C. Warbrick, (1992) 'Current Developments: Public International Law', *International and Comparative Law Quarterly* 473, at 477-478.

⁹ See R. Kherad, (1997) 'La reconnaissance des Etats issus de la dissolution de la République Socialiste Fédérative de Yougoslavie par les membres de l'Union Européenne', *Revue générale de droit international public* 663.

¹⁰ F. Benoît-Rohmer, (1994) 'Le Pacte de Stabilité: la première action "diplomatique" commune d'envergure de l'Union européenne', *Revue trimestrielle de droit européen* 561, at 574.

¹¹ For the text of the Pact on Stability in Europe, with the full list of "agreements, arrangements and political declarations" annexed to it, see F. Benoît-Rohmer, (1996), *The Minority Question in Europe - Texts and Commentary*, Council of Europe Publishing, at 81.

¹² Treaty on Understanding, Cooperation and Good Neighbourliness between Hungary and Romania of 16 September 1996, 36 *International Legal Materials* 340 (1997).

¹³ Within this cross-border cooperation framework, the actions eligible for EU financing include "cultural exchanges" and "the development or establishment of facilities and resources to improve the flow of information and communications between border regions, including support for cross-border radio, television, newspapers and other media" (Commission Regulation No 2760/98 of 18 December 1998, *Official Journal of the European Communities* 1998, L 345/49 (replacing an earlier Regulation of 1994).

¹⁴ The Opinions were published as Supplements to the *Bulletin of the European Union*, 1997.

¹⁵ For instance, when ratifying the Framework Convention on National Minorities, Estonia submitted a Declaration stating that it understood the term "national minorities" as referring only to citizens of Estonia. It should be noted, however, that the High Commissioner on National Minorities has repeatedly dealt with the position of the Russian-speaking communities of the Baltic countries, without first wondering whether they really were "national minorities" in the sense of his mandate, and the Baltic governments did not object to his visits.

¹⁶ Indeed, a member of the Slovak Constitutional Court concluded his comparison of Slovak minority legislation with that of other European countries by stating: "L'analyse comparative des législations internes des pays membres du Conseil de l'Europe portant (...) sur les droits des minorités nationales, démontre que la législation de la République slovaque relative à la question étudiée, est entièrement compatible avec les autres législations". (J. Klucka, [1996] 'Etude comparative des ordres juridiques internes des pays membres du Conseil de l'Europe en matière de protection des minorités nationales (avec un accent particulier mis sur la législation de la République slovaque)', in E. Decaux et A. Pellet (dir.), *Nationalité, minorités et succession d'Etats en Europe de l'Est*, Paris: Montchrestien, 189, at 205 (the emphasis is put by the author himself).

¹⁷ See the conclusion of the Opinion on Slovakia: "In the light of these considerations, the Commission concludes that Slovakia does not fulfill in a satisfying manner the political conditions set out by the European Council in Copenhagen, because of the instability of Slovakia's institutions, their lack of rootedness in political life and the shortcomings in the functioning of its democracy". (*Bulletin of the European Union*, Supplement 9/97, p.19).

¹⁸ All these points can be found in the Partnership Decisions adopted by the Council on 30 March 1998, *Official Journal* 1998, L 121.

¹⁹ *Agence Europe*, 29 April 1998, p.7.

²⁰ Declaration by the Presidency on behalf of the European Union on Latvia, 17 April 1998, 7676/98 (Presse 101).

²¹ The text of the reports can be consulted on the website of the European Commission's DG IA: <http://europa.eu.int/comm/dg1a/enlarge/report_11_98_en>.

²² <http://europa.eu.int/comm/dg1a/enlarge/report_11_98_en/composite/210.htm>.

²³ 'Human rights in the world for the years 1989 and 1990 and Community human rights policy', Report of 5 August 1991, submitted by Mr Ken Coates on behalf of the Political Affairs Committee of the European Parliament, *Human Rights Law Journal* (1991) 380, at 401.

²⁴ But see the typology proposed by N. Rouland, S. Pierré-Caps and J. Poumarède, (1996) *Droit des minorités et des peuples autochtones*, Paris: PUF, pp.261-305; and by R. Toniatti, (1995) 'Minorities and Protected Minorities: Constitutional Models Compared', in M. Dunne and T. Bonazzi (eds), *Citizenship and Rights in Multicultural Societies*, Keele University Press, 195.

²⁵ The expression is borrowed from Y. Mény, (1993) 'Introduction: La greffe et le rejet', in Y. Mény (dir.), *Les politiques du mimétisme institutionnel*, Paris: L'Harmattan, 7, at 33.

²⁶ For a more elaborate analysis, see S. Pierré-Caps, (1994) 'Peut-on parler actuellement d'un droit européen des minorités?', *Annuaire français de droit international* 72; and P. Thornberry, (1997) 'Minority Rights', in *Collected Courses of the Academy of European Law*, Volume VI, Book 2, 307.

²⁷ Copenhagen Document, cit. above, paragraph 30.

²⁸ *Ford v Quebec*, [1988] 2 Supreme Court Reports 712. For an exploration of the protection of language use through freedom of expression, see F. de Varennes, *Language, Minorities and Human Rights* (The Hague: Martinus Nijhoff, 1996), pp.33-53.

²⁹ European Court of Human Rights, *Case of the Socialist Party and Others v Turkey*, judgment of 25 May 1998 (paragraph 47), 27 *European Human Rights Reports* 51, at 85.

³⁰ A similar, somewhat earlier case, involved a member state of the EU. In Greece, a politician had been convicted for referring to the minority in Western Thrace as "Turkish" rather than "Muslim", which is its official denomination according to Greek law. In that case, however, the European Court of Human Rights did not reach the question of whether a violation of freedom of expression had occurred, for purely procedural reasons (*Case of Ahmet Sadik v Greece*, judgment of 15 November 1996, in 24 *European Human Rights Reports* 323 - but see the Dissenting Opinion of the judges Martens and Foighel who do discuss the merits of the case).

³¹ Application No. 25035/94, *Silvius Magnago and Südtiroler Volkspartei v Italy*, Decision of 15 April 1996, *Decisions and Reports of the European Commission of Human Rights* 85-A, p.112.

³² For further elaboration of this point, see B. de Witte, (1992) 'Le principe d'égalité et la pluralité linguistique', in H. Giordan (ed), *Les minorités en Europe - Droits linguistiques et droits de l'homme*, Paris: Kimé, 55; F. de Varennes, (1996) *Language, Minorities and Human Rights*, The Hague: Martinus Nijhoff, cit., at 77-89; J. Marko, (1995) *Autonomie und Integration - Rechtsinstitute des Nationalitätenrechts im funktionalen Vergleich*, Wien: Böhlau, 172-194 and 276-296.

³³ Framework Convention for the Protection of National Minorities, 1 February 1995, *European Treaty Series* No.157. The state of ratifications is taken from the website of the Council of Europe (as updated on 21 January 1999): <<http://www.coe.fr/tablcom>>. Apart from Spain, which ratified in 1995, the other six EU countries (Austria, Denmark, Finland, Germany, Italy and the UK) all ratified during 1997 or 1998. The other parties to the Convention are: Croatia,

Cyprus, Czech Republic, Estonia, Hungary, Liechtenstein, Malta, Moldova, Romania, Russia, San Marino, Slovakia, Slovenia, Switzerland, FYROMacedonia and Ukraine.

³⁴ For this distinction between the rights borrowed from the European Convention on Human Rights and the specific rights added *ex novo* by the Framework Convention, see F. Benoît-Rohmer, (1995) 'La Convention-cadre du Conseil de l'Europe pour la protection des minorités nationales', *European Journal of International Law* 573, at 589-595.

³⁵ Note that the Framework Convention is careful to recognize rights to *individuals*, rather than to *minority groups* as such. This is perfectly in line with the West European human rights tradition.

³⁶ The Convention was harshly criticized by the Parliamentary Assembly of the Council of Europe which, in its Recommendation 1255 (1995), included the following paragraph: "The Convention is weakly worded. It formulates a number of vaguely defined objectives and principles, the observation of which will be an obligation of the Contracting States but not a right which individuals may invoke. Its implementation machinery is feeble and there is a danger that, in fact, the monitoring procedure will be left entirely to governments". Similar criticism was expressed by G. Gilbert, (1996) 'The Council of Europe and Minority Rights', *Human Rights Quarterly* 160 - see particularly his conclusion on p.189.

³⁷ As in the title of an article by E.B. Schlager, (1997) 'The right to have rights: Citizenship in newly independent OSCE countries', *Helsinki Monitor* 19.

³⁸ See the separate Declarations submitted, upon ratification of the Convention, by Austria, Estonia, Germany and Switzerland (to be consulted on: <<http://www.coe.fr/tablcom/reserve/decl/dr157e.htm>>). This is a very controversial point, because the text of the Convention does not specify what must be understood by the term "national minority". In fact, providing a clear definition might well have prevented the emergence of an agreement on the Convention's text! For the view that the term national minority, as used in the Convention, should be understood more broadly as including immigrant communities (and Roma and Sinti as well), see J. Murray, (1997) 'Should Immigrants or Roma and Sinti be Regarded as Minorities?', in F. Matscher (ed), *Vienna International Encounter on Some Current Issues Regarding the Situation of National Minorities*, Kehl: N.P. Engel Verlag, 219.

³⁹ This is the comprehensive concept proposed by A. Eide, 'Group Accommodation: National Policies and International Requirements', in F. Matscher (ed), *Vienna International Encounter*, cit., 103.

⁴⁰ For some general considerations, see V. Bogdanor, (1997) 'Forms of Autonomy and the Protection of Minorities', *Daedalus* (Spring), 65; for more detailed examination of single cases of autonomy regimes established in the course of this century, see R. Lapidot, (1997) *Autonomy - Flexible Solutions to Ethnic Conflicts*, Washington: United States Institute of Peace Press. A recent collection of papers offering a complete *tour d'horizon* is M. Suksi, ed., (1998) *Autonomy: Applications and Implications*, The Hague: Martinus Nijhoff. A number of reports on single countries of Western, Central and Eastern Europe were published in *Local Self-Government, Territorial Integrity and Protection of Minorities*, Conference Proceedings, Lausanne, 25-27 April 1996 (Council of Europe Publishing, 1996).

⁴¹See, for more details, P. Thornberry, 'Images of Autonomy and Individual and Collective Rights in International Instruments on the Rights of Minorities', in M. Suksi (ed), *Autonomy: Applications and Implications*, cit., 97, at 112-116.

⁴²See the analysis, written in 1990, but still broadly valid today, by Ph. de Schoutheete, (1990) 'The European Community and its sub-systems', in W.Wallace (ed), *The Dynamics of European Integration*, London: Pinter Publishers, 106.

⁴³ In the EU budget for 1998, 3.600.000 Ecu were allocated to this programme (budget line B3-1006). Compare, for instance, with the 987.000.000 Ecu allocated to subsidies for tobacco production.

⁴⁴ See C. McCall, (1998) 'Postmodern Europe and the Resources of Communal Identities in Northern Ireland', *European Journal of Political Research* 389; and, for the general context of the EU's role in Northern Ireland, J. Goodman, (1996) *Nationalism and Transnationalism: The National Conflict in Ireland and European Union Integration*, Aldershot, Avebury.

⁴⁵ Agreement between the Government of the United Kingdom and the Government of Ireland, with (in Annex 1) the 'Multi-Party Agreement', 37 *International Legal Materials* 751 (1998). The minority protection aspects of the Agreement are discussed by G. Gilbert, (1998) 'The Northern Ireland Peace Agreement, Minority Rights and Self-Determination', *International and Comparative Law Quarterly* 942.

⁴⁶ Cf. the speech by Mo Mowlam, British Northern Ireland Secretary, in the European Parliament on 29 April 1998, as reported in *Agence Europe* 30 April 1998, p.2.

⁴⁷ Protocols 2 and 3 to the Treaty of Accession, *Official Journal of the European Communities* of 29 August 1994, C 241/352.

⁴⁸On what follows, see also M.A. Martín Estébanez, (1995) 'The Protection of National or Ethnic, Religious and Linguistic Minorities', in Neuwahl and Rosas (eds), *The European Union and Human Rights*, The Hague: Kluwer Law International, 133, at 142-154.

⁴⁹*Official Journal of the European Communities* 1997, L 291/26.

⁵⁰The question whether immigrant populations can, for some of them at least, be defined as "ethnic minorities" is not uncontroversial. That definition is used in the legal and administrative language of some countries (e.g. the United Kingdom and the Netherlands) but not of others (France and Germany). In the social science literature, though, the use of the term "ethnic minorities" for migrant communities is generally accepted; see, among others, S. Castles and M.J. Miller, (1998) *The Age of Migration - International Population Movements in the Modern World*, London: Macmillan, 2nd ed, Chapter 2.

⁵¹See T.K. Hervey, (1995) 'Migrant Workers and their Families in the European Union: The Pervasive Market Ideology of Community Law', in J. Shaw and G. More (eds), *New Legal Dynamics of European Union*, Oxford: Clarendon Press, 91, at 95-102.

⁵²See the analysis of this cooperation within the EU's 'third pillar' by S. Peers, (1998) 'Building Fortress Europe: The Development of EU Migration Law', *Common Market Law*

Review 1235.

⁵³See, among others: Ch. Taylor, (1992) "The Politics of Recognition", in A. Gutmann (ed), *Multiculturalism and the Politics of Recognition*, Princeton University Press, 25; W. Kymlicka, (1995) *Multicultural Citizenship - A Liberal Theory of Minority Rights*, Oxford University Press, 1995; P. Keller, (1998) "Re-thinking Ethnic and Cultural Rights in Europe", *Oxford Journal of Legal Studies* 29.

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