



**Department of Political and Social Sciences**

***Preventing Ethnic Conflict, Securing Ethnic Justice?***  
**The Council of Europe, the EU and the OSCE High Commissioner**  
**on National Minorities' Use of Contested Concepts in their**  
**Responses to the Hungarian Minority Policies of Hungary,**  
**Romania and Slovakia**

**Jakob SKOVGAARD**

Thesis submitted for assessment with a view to obtaining the degree of  
Doctor of Political and Social Sciences of the European University Institute

Florence, March 2007

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It goes (almost) without saying that any errors, inconsistencies or omissions that might be found in the following pages are my sole responsibility.

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Jakob Skovgaard

## **Abstract**

This thesis analyses the policies aimed at influencing the situation of the Hungarian minorities in Romania and Slovakia undertaken by three European organisations, the Council of Europe, the EU and the OSCE High Commissioner on National Minorities. The focus is on the way in which the organisations have conceptualised contested concepts concerning national minorities, minority rights and minority policy in general, when reacting to the policies of the Hungarian, Romanian and Slovak states that have been directed at the Hungarian minorities.

Starting with the assumption that many of the concepts upon which minority policies are based are essentially contested, the thesis sets up a framework for analysing the use of specific interpretations of such concepts in argumentation. More specifically, the framework makes it possible to look at how specific interpretations or conceptualisations of such concepts have been used as implicit warrants. By analysing the use of warrants in the texts issued by the organisations in the arguments reacting to the Hungarian minority policies of the three organisations, the thesis provides a picture of how the conceptualisations of different contested concepts developed.

Furthermore, by comparing the use of conceptualisations by the organisations, it is argued that although the organisations started out from different positions, they have gradually converged. And this convergence was centred on the emergence of an ideal minority policy which framed the minorities as unitary entities, which should have the right to influence decisions affecting them as minorities. This convergence was due to the appearance of the Framework Convention on the Protection of National Minorities, increased cooperation between the organisations and the reliance of the EU on the assessments of the other two organisations in the context of EU enlargement. Yet, the organisations have often been incoherent, and have treated different issues from very different perspectives.

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## **Introduction**

The breakdown of Communism and the wars in Yugoslavia led to a renewed interest in ethnic conflict and how to prevent it. Particularly Western governments, the EU and NATO worried that the former Eastern bloc would dissolve into ethnic strife; to them the three million Hungarians living in countries neighbouring Hungary, particularly Romania and Slovakia, seemed to constitute a potential cause of conflict. Yet the concern was also with fairness for the Hungarian minorities, especially those in Romania, who were emerging from a long period of repression. Therefore the Hungarian minorities became subject of much interest from Western and pan-European organisations, such as the Council of Europe, the EU and the newly created OSCE and its High Commissioner on National Minorities. However, the attempts of these three organisations to regulate the issue of the Hungarian minorities in Romania and Slovakia were not created out of the blue, but were to a great extent inspired by the theories and theoretical debates on ethnic conflict and multi-ethnic democracies. Intrinsic to these theories and theoretical debates were arguments about how to interpret contested concepts regarding national minorities.

The issue of the Hungarian minorities in the countries neighbouring Hungary was not a completely new item on the European agenda. After Hungary had lost two-thirds of its territory at the Treaty of Trianon following the First World War, the sizeable Hungarian minorities (who altogether numbered more than three millions) in its neighbouring states would be a returning issue in Hungary as well as in these states. The largest groups were in Romania (today 1.5-2 million) and in Slovakia (5-600.000). During the Second World War, Hungary had sided with the Axis powers and temporarily gained control over parts of the lost territories, but had to return them after the end of the war. During Communism, the issue went largely unaddressed by the national elites and was forgotten in the West, but after 1989 it began again to receive attention. In Romania, where the Hungarian minorities were increasingly repressed during the Eighties, the uprising against Ceausescu started with protests led by the Hungarian vicar Laszlo Tökes in December 1989. In March 1990 the Transylvanian town of Târgu Mures saw clashes between ethnic Hungarians and the Romanian army and police, leaving between three and ten people dead. This was at a time when the dissolution of Yugoslavia was only beginning.

In the early Nineties, as the Western states and the EU and the Council of Europe (CoE) began to focus on the national minorities in Central and Eastern Europe, different institutional initiatives were taken. Not only did the OSCE member states decide in 1992 to set up the office of the High Commissioner on National Minorities (HCNM), the Council of Europe also drafted an additional protocol to the European Human Rights Convention on national minority rights in 1992 and 1993. Furthermore, in 1993 the EU included “the respect for, and protection of, national minorities” in the so-called Copenhagen Criteria for accession to the EU. Each of these measures had consequences for the Hungarian minorities in Romania and Slovakia, as all three organisations would address the governments with recommendations concerning how to handle the issue of these minorities. Although the EU would not become directly involved until the first Accession Reports were issued in 1997, the other two organisations would pay a great deal of attention to the issue.

They did so with backing in a vaguely formulated set of international documents. The additional protocol to the European Human Rights Convention was never approved by the member states, but lived on as Recommendation 1201 of the Council of Europe Parliamentary Assembly. Instead, the Council of Europe introduced the less ambitious Framework Convention on National Minorities. It was left to the organisations analysed here to authoritatively interpret the norms inherent in these and other documents in order to establish a set of standards. Therefore, in their practice regarding the different national minorities, including the Hungarian ones, the organisations gradually defined such standards.

This was the case in the mid-Nineties when relations between the Hungarian minority parties and the governments of Romania and Slovakia respectively broke down, and the organisations became involved in issues such as minority education and the use of Hungarian language in public institutions. It was also the case when the same parties joined the governments of the two states in 1996 (Romania) and 1998 (Slovakia) respectively, and some of the same issues continued to play a role. Furthermore, it was also the case when the organisations turned their attention to the Hungarian government when it introduced the Status Law in 2001, which granted contested rights to ethnic Hungarians in the neighbouring states.

This project examines how these three European organisations, the Council of Europe, the EU, and the OSCE's High Commissioner on National Minorities (HCNM) have conceptualised contested concepts in their reactions to the issue of Hungarian minorities in Romania and Slovakia. The intention is to provide an understanding of how concepts concerning the nature of national minorities and their ideal treatment, have been used in a particular interpretation by the three organisations. These concepts, I will argue, are and have been fundamentally contested, and which interpretation or conceptualisation of them is used has far-reaching consequences. What interests me is not the underlying motives for doing so, but what is done by using these concepts in specific ways in argumentation (Skinner, 2002: 119-120).

This way I hope to provide an understanding of what the conception of the "right" or ideal minority policy held by the different organisations have looked like, and how these conceptions have developed over the years. Since the organisations have rarely intervened directly in the minority issue, but rather worked by influencing the governments, I will focus on their reaction to what I will refer to as the Hungarian minority policies of the governments of the three states. This refers to the policies of respectively the Hungarian, Romanian or Slovak State directed at the Hungarian minorities in Romania and Slovakia or policies which have had a significant impact on the conditions of these minorities. Thus it refers to all political actions undertaken by the three governments dealing with the minorities, from legislation and international treaties to statements.

## **Research Questions**

- 1. Which conceptualisations of contested concepts relating to national minorities have been used by the EU, the HCNM, and the Council of Europe to argue for the reactions to the policies of Hungary, Romania and Slovakia concerning the Hungarian minorities in the two latter states the last fifteen years, and which international documents have been used as backing for these conceptualisations?*
- 2. Have there been any differences in these conceptualisations over time or between policy areas or organisations?*
- 3. How do these differences relate to the overall discourse of the organisation and in the academic discourse on the subject?*
- 4. Are there patterns in the use of conceptualisations; does their use follow organisational culture, development over time including influence from academic debates, the warranting of basic concepts, or the country and the government which is being addressed?*

Answers to the **first question** relate to the reactions of the above-mentioned European organisations to how the Hungarian, Romanian and Slovak governments have handled of the issue of the Hungarian minorities in Romania and Slovakia. Simply declaring that a government's Hungarian minority policy was unacceptable and demanding change would not suffice, since the organisations in question would have to argue to the government and the international audience why this change was necessary. These arguments would involve specific interpretations or conceptualisations of concepts concerning national minorities and national minority policies, concepts which are "essentially contested", that is, concepts for which it is not possible to reach a final agreement on their application, characterisation and possibly also their praiseworthiness (for a discussion of contested concepts, see Connolly, 1983). An example is the concept of minority political participation, which can be conceptualised as the national minority members participating via an ethnic party, or, in more "republican" terms, as preventing exclusion of minority members from politics. It is important to keep in mind that the conceptualisations are used to frame rather than define the situation. In other words, a specific conceptualisation emphasises certain aspects of a situation or an entity and downplays others, but the conceptualisation does not warrant that the other aspects do not exist or are completely irrelevant. Thus, framing the Hungarian minority in Romania in terms of language does not mean that other aspects of the Hungarian minority such as

culture or political allegiances have been ignored, but it does draw attention to language on behalf of the other aspects.

Drawing on Stephen Toulmin's (2003) work on *warrants*, I will look at how these concepts have been employed in the documents reacting to the different Hungarian minority policies. By warrants I refer to the general hypothetical statements implicit in the arguments used to arrive at a conclusion, such as "this policy will cause unrest", where the warrant is that these kinds of policies generally cause unrest.

The use of these conceptualisations have often also involved backing in the form of references to international documents on national minority protection, such as the OSCE Copenhagen Document and Council of Europe Framework Convention on the Protection of National Minorities (FCNM). These references were often used to back their arguments, but at the same time would frequently interpret the often rather vague provisions in the documents. A "soft law" framework regulating the protection of national minorities in Europe has gradually emerged over the last fifteen years due to the interpretations of these documents by among others the HCNM (Thio, 2003). Here, I will look into how the interpretations of rules by the organisations have helped to create this framework in the cases regarding the Hungarian minorities.

One of the fundamental assumptions of this thesis is that language and politics are fundamentally intertwined. Thus, concepts are not merely descriptive, but constitutive of the actions of the actors analysed here. Another fundamental assumption is that it is only due to their symbolic power, as described by Pierre Bourdieu (1990; 1991), these organisations had the power to interpret not only concepts but also the very situation regarding the Hungarian minorities. And that the recognition necessary for this symbolic power has come not so much from the direct interlocutors (Hungary, Romania and Slovakia) as from the Western states.

The **second question** looks deeper into the findings of the first research question, in order to explore whether the importance or conceptualisation of one or more of the concepts analysed have changed, become more or less frequent, or appeared or disappeared over time or between policy areas or organisations. Sometimes it may have been the conceptualisation of a particular concept, such as the

Hungarian minority itself that has changed, at other times it is a whole concept which has disappeared or emerged. I will proceed by looking at the recommendations mentioned above and search for variations and regularities from period to period and between the organisations and policy areas. By comparing the findings from different texts, I am extracting the patterns and systems of similarity and difference.

First of all, this leads to an understanding of the differences in the use of conceptualisation between the different organisations. This would for instance be the case if the HCNM had framed the right national minority policy more in terms of ensuring integration than the Council of Europe has. Therefore I have first compared the responses of the three organisations to the Hungarian minority policy of a particular government of a country, for instance Slovakia's Meciar government, in order to isolate the case. In the conclusion, I have compared the conceptualisations of the same organisations over time and between countries, in order to end up with an overall picture. What is particularly interesting in this respect are the cases in which similar situations in different countries or at different times have led to different responses and conceptualisations from the same organisation, or when the same situation led to different conceptualisations from different organisations. Significant too is the importance given to different policy areas. Which policies were singled out for condemnation or appraisal also depends on how important the policy area was considered to be.

However, it is also necessary to take the difference in context into perspective. I will argue that for each situation or minority policy there has been a repertoire of possible responses each constituted by different conceptualisations. Therefore I am looking at the practices in the given situations (the reactions to a Hungarian minority policy), and arguing how it could have been different. One way of doing this is to argue counter-factually and look at which other policies that could have been possible as reactions to the situation. Furthermore, by comparing the Hungarian minority policies that the organisations reacted to with an overview of all larger events involving the Hungarian minorities, much can be said about what the organisation in question considered important at a given time, and what it did not consider important.

This leads us to **the third research question**, which aims at putting the findings of the two first research questions into a wider context. By comparing the conceptualisations and especially the developments over time with the more general discourse of the organisations, such as the numerous speeches of the HCNM, and with the academic literature on the subject, I intend to gain a better understanding of differences and developments. The intention is partly to show how other conceptualisations have been available in the “conceptual pool”, from which those employed have been picked, and partly to see how differences and developments within the organisations reflect wider differences and developments.

This might help to answer whether developments in the conceptualisations over time reflect developments in the discourse and position of the organisation(s). It is useful to analyse the findings in the light of academic theories on national minority politics, as they can be used as heuristic frames, making it easier to understand the organisations’ use of concepts in a wider perspective, as they constitute templates to which the findings can be compared. It is easier to define and describe the overall patterns in the findings if one has such theoretical templates to hold them up against and see which they fit the best and to which degree. This way, something important can be said which conceptualisations the organisations have picked up from the “conceptual pool”, and possibly also about the degree to which the organisations have been inspired by various theories.

These are questions which will make the answers to the two previous research questions more relevant. In order to provide further insights into this, more texts from the organisations speaking in more general terms about national minorities will be included. This is done in order to see if they can provide further understanding of the beliefs held in the organisations, or if there have at times been conflicts between the more general discourse and the conceptualisations used in the texts analysed.

The **fourth question** aims to clarify the patterns of conceptualisations by analysing the degree to which these may be described in terms of influence from various sources. Drawing on the findings from answering the three previous questions, it will establish which factors that best describe the pattern of conceptualisations used. For instance, why has theories of minority language education at times been conceptualised in terms of rights of minority members, and at other times in terms of the need for

integration? Several possible patterns of similarities and differences can be established theoretically. Thus, if the same conceptualisations are used constantly by a specific organisation but not by others, this indicates that organisational culture may have an influence on the choice of conceptualisations. Hence, it is impossible to talk about organisational culture as influential if the same organisation conceptualise the Hungarian minority situation in different and contrasting ways.

Rather than arguing that these factors determine the conceptualisations, I will argue that their influence can be evaluated and assessed. First and foremost, the factors provide blueprints which can be used as heuristic devices to analyse the findings. For instance in this way it is possible to analyse the character of the bureaucratic culture, and possibly also how this culture influenced the use of conceptualisations. It is important to stress that these alternative explanations are not mutually exclusive, but may have influenced conceptualisations under different circumstances and to a varying degree.

One such factor is the argument that in each organisation there has existed a specific discourse or view on national minorities, which has therefore led the organisation to conceptualise the concepts in a particular way. This organisational explanation is particularly inspired by Michael Barnett and Martha Finnemore's "Rules for the World – International Organisations in Global Politics" (2004), in which they argue that the bureaucratic culture of International Organisations to a large degree shape their actions. This explanation also operates with the possibility that differences in culture, power and authority between the organisations have led to one organisation influencing the others.

A second potential factor is the academic debates on national minorities and the developments in this debate. Here I will draw on the answers to research question three and also look for similarities between the developments in the academic literature and in the analysed material. The idea will be not only to get an overview of which academic theories that may have influenced the organisations, but also to compare this influence to other factors and see how they have interacted.

Third, there is the internal relationship between what I refer to as the "basic" and more "specific" conceptualisations. The idea is that certain basic conceptualisations, such as describing the Hungarian minority as a singular entity rather than being composed of individuals, tend to lead to certain specific

conceptualisations, such as the claim that minorities as groups have a right to cultural or territorial autonomy. The argument is that there is a certain path-dependency in the use of warrants, if the minority is conceptualised as a singular entity, then it is easier to argue for cultural or territorial autonomy than if it is conceptualised as individuals who happen to have Hungarian ethnicity.

The important question is whether the basic conceptualisations are chosen on the basis of context as warrants to argue more convincingly for a specific conceptualisation, or whether the basic conceptualisations form part of the organisation's fundamental outlook on national minorities, and thus lead to some specific conceptualisations rather than others. In the latter case, an organisation which tends to conceptualise the minority as a singular entity would also tend to conceptualise minority rights as encompassing a group right to autonomy.

This is investigated by seeing if there is consistency in the use of basic conceptualisations from each organisation, or if these vary according to the specific conceptualisations used or the issue addressed. In other words, if an organisation warrants the same basic conceptualisations irrespective of situation, it indicates that these basic conceptualisations are part of its fundamental perception of national minorities. If, on the other hand, an organisation uses different basic conceptualisations, but the same basic conceptualisations are used when warranting specific conceptualisations, it can be said to indicate a context-dependent use of basic warrants. It is important to note that a context-dependent use not necessarily is the result of a strategic and conscious choice, but often will be. As can be seen, this explanation is not a rival explanation to those mentioned previously, but rather may draw on and support them. This is most obvious in the case of the organisational culture-explanation, which is supported if it is found that the organisation consistently uses the same basic conceptualisations.

Finally, it is worth looking at the variations in the use of conceptualisations depending on who the interlocutor of the organisation is, i.e. see how different countries and governments have been addressed. There are two possibilities; the first is that the organisations have treated different countries differently even if the situations that the organisations have reacted to are similar. Thus, although an organisation may conceptualise the same contested concept, e.g. minority education rights, at the same time in its reactions to the governments of two different countries, it may use different

conceptualisations of the concept. The second option is that the same concept is conceptualised differently when reacting to the policies of different governments of the same country. The former indicates that countries are treated differently, the latter that governments are. Thirdly, there is the possibility that the organisations have treated all similar situations in a similar way. Of course it may be hard to separate general developments over time from differences between governments, but if sudden changes in conceptualisations following a change of government exist, it indicates that the government influences the reactions of the organisation. This is especially the case if there are no similar changes in the policies towards other countries.

### *Theorising European Organisations and Minorities in Post-Communist Europe*

Different approaches have been employed in order to analyse and theorise the way in which European organisations have handled the various national minority issues in Post-Communist Europe. Many have looked at the impact of the organisations, focusing either on the degree and shape of this impact on the national and local level (for the case of the Hungarian minorities, see among others Linden, 1999; Nelson, 1998; Saideman, 2003), or on the power of the organisations in a variety of cases (the foremost examples of this include Checkel, 2001; Kelley, 2004b; Schimmelfennig, Engert et al., 2006). As my concern in this thesis is for the argumentation and discourse of the organisations, and not their impact, the focus will clearly be on the organisations. Thus, in order to get the full picture of the “transmission” of standards to Post-Communist Europe, it is also necessary to look at how the organisations defined these standards.

Within the literature on the three organisations, and on international organisations in general, there has been a clear division between constructivists and rationalists (Schimmelfennig, Engert et al., 2006). Typically, the rationalists define actors as rational and utility-maximising, and define norms as merely constraining actors, whereas the constructivists argue that actors desire to live up to (certain) norms, as they see this as being intrinsic to having a particular identity (Schimmelfennig and Sedelmeier, 2002: 522). Much of the debate has been about whether the states in post-Communist Europe have adopted more minority-friendly policies because they knew it was a condition for membership in the EU and NATO, or because they were socialised by the OSCE and the CoE into believing that this was the right kind of behaviour and feared public “shaming” by these two organisations. However, I will argue that

the concept of “norms” often has been understood in a somewhat unhelpful way. In my view, it is a mistake to reduce the question of norms to a question of whether states have been socialised or not. Rather, norms are constitutive rules which the organisations have interpreted and based their policies upon.

Therefore the intention with this thesis is to provide an insight into how these norms, which constitute of a range of contested concepts, have been interpreted in practice. This is because looking at how the concepts have been conceptualised in practice reveals more about how they have been defined than looking at the more general statements the organisations have issued. Following Quentin Skinner (2002), what is interesting is not the intentions behind conceptualising a concept in particular, but what is done in conceptualising it in this way. And that best way to determine how this has been done is to look at the arguments that the organisations came up with when appraising or condemning a policy (Kratochwil, 1989: 18; Lerch and Schweltnus, 2006: 305-306).

Arguably, it is only a small part of the entire practice of the three organisations regarding national minorities that will be analysed here. Yet, by focusing only on the cases of the Hungarian minorities in Romania and Slovakia, I hope to be able to analyse the argumentation of all three organisations in detail, unlike much of the literature, which focuses solely on one organisation (see for instance Chandler, 1999; Flynn and Farrell, 1999; Hughes and Sasse, 2003; Manas, 1995; Thio, 2003). Many of these studies provide important insights into the organisations, and I will not argue that I provide an equally covering analysis of them, as I do not include all the various minority questions that the organisations have been involved in. On the other hand, I hope to be able to provide a full overview of the relations between the organisations, as I will argue that neither their discourse nor their influence can be fully understood in isolation. Also many of these theorists have also included other organisations in their perspectives than those upon which they have predominantly focused.

My hope is that by treating the organisations as bureaucracies with all that entails in terms of looking at organisational culture, different kinds of authority and inconsistencies, I will provide a fuller picture than that provided by looking at the organisations as rational actors (Barnett and Finnemore, 2004). Furthermore, by looking at the interactions between the organisations, I also hope to provide an insight

into how their positions have developed and how their relations of power and authority have shaped their argumentation.

Many of the above-mentioned texts have provided useful insights into the organisations, which should be taken into account. In the case of the HCNM, Li-Ann Thio (2003) has fruitfully described his “peace and security”-approach as mixing justice and security elements, and Gregory Flynn and Henry Farrell (1999) have described how the OSCE has created the normative framework for intervening in minority issues. In the case of the EU, Martin Brusis (2003) has, less convincingly in my view, argued that it has advocated power-sharing arrangements in Romania, Slovakia and Bulgaria.

One of the most common assumptions in the literature is that there is a distinction between the approach which has security or non-conflict as its end, and the approach(es) which aim to create a just society. I will go into more detail on this point in Chapter 1 (Kymlicka, 2004b; Sasse, 2005). However, I will argue that this is a mistake to reduce this distinction to a question of security or rights, as Gwendolyn Sasse (2005: 675) has done. It is a mistake because the justice perspective cannot be reduced to a question of rights (although rights are a very important aspect of this perspective), and because it is also possible to argue for rights from a security perspective. It is often argued that the HCNM and the EU have adopted a security perspective, whereas the CoE has adopted a more justice-oriented approach (Flynn and Farrell, 1999; Thio, 2003). On the other hand, the CoE and HCNM are often considered more “normative” in their strategies, as they have relied more on normative argumentation, shaming and socialisation, unlike the EU’s more direct conditionality-strategy (Kelley, 2004b; Schimmelfennig, Engert et al., 2006: 9). Thus, the HCNM appears as an institution which is security-oriented in approach, but uses justice arguments. This is something upon which this analysis hopes to shed further light.

### *Structure*

The thesis will start with a discussion of the theories on national minorities and how they should be treated. Following Gwendolyn Sasse (2005), these theories will be divided into three strands, namely those concerned with the use of political institutions to prevent ethnic conflict, those concerned with the creation of just political system in societies with multiple ethnic groups, and finally the legal

scholars concerned with questions of minority and group rights. Chapter 1 will discuss the first two, and will also include different theories of the causes of and solutions to ethnic conflicts as well as discussions of multiculturalism, language rights and self-determination and self-governance from a political theory-perspective. Chapter 2 will focus on the legal questions and the attempts to deal with national minority issues in post-1989 Europe, including international documents and organisations. Chapter 3 will move on to explain the theoretical background of the analysis as well as the methodology used. Here I will discuss the relationship between contested concepts, warrants, arguments and symbolic power with basis in theorists such as William Connolly, Stephen Toulmin and Pierre Bourdieu. Following this, I will use these theories to arrive at a methodological framework for studying the use of warrants in the texts of the three organisations addressing the Hungarian minority issue. This will be completed in Chapter 4, where the different contested concepts will be operationalised as frames which can be used for coding the afore-mentioned texts.

After this I will turn to the analysis in Chapter 5-7, in which the results of analysing the different periods will be compared with each other as well as with the academic literature in order to arrive at a full picture. This is organised according to country and government, so that the responses to the Slovak Meciar government are analysed first, followed by the responses to the Slovak Dzurinda government (both in Chapter 5), which is again followed by a chronologically proceeding analysis of the different the responses to the different Romanian governments (Chapter 6). The analysis is concluded by a chapter on the responses to the Hungarian Status Law (Chapter 7), which I deem crucial for understanding the organisations' treatment of the issue of the Hungarian minorities. This will be followed by the Conclusion in Chapter 8, which will bring the different findings from the analysis together and put them into a wider theoretical and empirical perspective, and finally sum up the answers to the research questions.

## 1 Theories of National Minorities

This chapter sets out to provide an overview of the most relevant academic debates and theories on national minorities over the last fifteen years. As this is an extensive subject, I will not claim that every theory or position has been covered, rather that I have picked those which I consider most relevant, both in terms of academic influence and relevance for the thesis. Furthermore, I will focus on the debates which have taken place within the disciplines of political science, political theory and nationalism studies, discussing the more legalistic debates later. Therefore the discussion of the legal definition of national minorities or the strictly legal aspects of group will not be dealt with here, but in chapter 2. Although a lot has been written on national minorities, relatively little has been written on the nature of national minorities beyond the attempts of coming up with a legal definition. Thus the discussion of what is meant by the term national minority will be based on the theories of nationalism and the nature of nations. As I will focus on the abstract aspects of the debates, I will not discuss concrete examples of ethnic conflict such as the wars in (ex-) Yugoslavia, although they have motivated many of the relevant debates. The intention is to provide an overview of the possible conceptualisations which have been available for framing the Hungarian minority issue. Therefore I will include both arguments for a specific minority policy and against it, in order to see if any of them have been employed by the organisations. Furthermore, I will also look at the more basic conceptualisations underpinning these arguments.

The debates and theories will be divided into two groups; those primarily concerned with the causes of and solutions to national minority conflicts<sup>1</sup>, and those primarily concerned with creating just political systems for countries with national minorities. The former have primarily been political scientists, concerned with the role of political institutions, whereas the later have predominantly come from political theory and political philosophy and have addressed the relationship between ethnicity, justice and democracy (Sasse, 2005: 677). I will refer to these approaches respectively as security and justice approaches. This is obviously a simplification, as theorists with a security approaches will rarely suggest solutions they consider unjust, and theorists concerned with political justice will practically never suggest solutions they admit will lead to an increased risk of violent conflict. Nevertheless, I

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<sup>1</sup> Conflict here refers not solely to outright war, but to all conflict situations between minority and majority or government which may escalate into violence.

think this distinction makes sense, as it not only highlights some of the differences and potential tensions within the literature, but also demonstrates two different perspectives existing in the literature on national minorities (see for instance Kymlicka, 2004b; 2006; Roe, 2004; Sasse, 2005). Each perspective leads to a specific way of framing the issues and concepts involved, for instance whether the same actors are framed as parties to a conflict from a security perspective, and as beneficiaries of justice from a justice perspective. Such differences occur because the questions these approaches attempt to answer are different, and there thus are different practical and theoretical challenges.

Regarding security approaches, I will first discuss the different explanations of ethnic conflict in Central and Eastern Europe, covering theoretical approaches such as constructivism, rational choice and structuralism as well as more area-specific explanations such as, transition problems and the notion of an “Eastern kind of nationalism”. Then I proceed to the proposed solutions to these problems, from partitioning over autonomy, power sharing and bilateral treaties with the kin-state to full integration. Evidently, there is a clear connection between the perceived source of conflicts and consequently the perception of which solution may be most effective in ending conflicts. Turning to the justice approaches, I will start from the works of Will Kymlicka and other proponents of (liberal) multiculturalism, using this and the relevant accompanying criticisms to provide an understanding of the debates concerning liberalism and ethnic identity, including a discussion of group rights. I proceed to two kinds of rights which have caused much debate in political theory, namely language rights as well as language policy in general, and the right to self-determination.

### **1.1.1 Security: Causes of Ethnic Conflict**

With the end of the Cold War, the wars in Yugoslavia and different Soviet successor states, and the emergence of nationalist politicians in most post-communist countries, many journalists, policy-makers and academics tried to explain the causes of this perceived resurgence of nationalist politics. Most of these explanatory theories were constructed with Yugoslavia in mind, but it was also intended that they cover other ethnic issues. It is important to keep in mind that not all of these explanations are clearly distinguishable theories, but rather explanations or notions that might appear in different works. What is interesting here is that all set up causal claims about which circumstances or actions by which actors that are likely to provoke ethnic conflict. Although ethnic conflict does not necessarily involve national

minorities, this has been the case with virtually all Central and Eastern European conflicts which have been labelled as ethnic conflicts.

One explanation that proved more popular among journalists and policy-makers than in academia was the *ancient hatred*-thesis, namely the idea that the conflicts were simply resurfacings of century-old conflicts which had been buried under the oppression of Communism (Jovic, 2001: 103-104; S. Kaufman, 2001: 3-7; Toft, 2003: 7-8). This approach emphasises previous conflicts between the same (or resembling) groups in order to argue that historical enmities are fundamental for the maintenance of (some) ethnic groups' identities. This explanation has often been criticised for not being able to explain why some ancient conflicts resurface and others, for instance in Western Europe, are replaced by cooperation (Jovic, 2001: 103-104; Toft, 2003: 7-8).

If we turn to the more academic explanations, these are often divided into four strands; rational choice, structuralism or realism, primordialism or essentialism, and constructivism (C. Kaufmann, 2005). This division can be found in slightly different versions in among others Stuart Kaufman (2001) and Dejan Jovic (2001). Fundamentally, the way in which each approach identifies the cause of ethnic conflict is determined by how the approach answers the questions of what an ethnic group is and what makes its members feel attached to it (S. Kaufman, 2001: 15; C. Kaufmann, 2005: 179-180).

If we turn to rational choice-approaches first, they start from the assumption that action can best be explained in terms of individuals' rational pursuit of their own interest (S. Kaufmann, 2005: 181-182). This means that ethnic attachment can only be explained in terms of the benefits it provides for individuals, either in terms of exchange of information or improved changes in the competition for scarce resources (S. Kaufman, 2001: 17; C. Kaufmann, 2005: 185-186). This leads to two different kinds of explanations of ethnic conflict: it is being caused by either miscommunication between different groups disturbing the cooperation that otherwise would be the norm (Fearon and Laitin, 1996), or by economic rivalry (Esman, 1990; S. Kaufman, 2001: 7-8; 18).

The economic rivalry thesis comes in to versions; the first focuses on the distribution of wealth and argues that the economically stronger ethnic groups will seek secession in order to avoid financing the

poorer groups, and that the poorer groups will seek secession because they feel discriminated against (see Huber and Mickey, 1999 for one example; S. Kaufman, 2001: 18). The second focuses on the relative deprivation and argues that ethnic conflict is more likely when a country is going through a period of prolonged recession, as Yugoslavia did in the early Nineties (see Toft, 2003 for examples; Woodward, 1995). Rational choice approaches are often criticised for failing to explain why people go to war when it is not economically rational, and for having a poor empirical record (S. Kaufman, 2001; C. Kaufmann, 2005). Often this criticism is based on the more fundamental criticism that rational choice cannot explain ethnic conflict as its individualist and rationalist ontology makes it ignore the non-rational attachments people feel to their ethnic group (C. Kaufmann, 2005: 179-180).

If we instead turn to what is mainly known as structuralism, and sometimes as realism, we find another approach which is based on the notion of the rational actor, although often less individualist than rational choice. The argument is that when a state fails to offer the protection and security guarantees it previously offered, the feeling of insecurity will lead members of ethnic groups to group together and try to guarantee their own security by arming themselves (C. Kaufmann, 2005: 199; see Toft, 2003: for an example). These moves will lead to increased insecurity among other ethnic groups which will again arm themselves in order to guarantee their own security. This negative spiral, borrowing a term from International Relations, is referred to as the security dilemma. The approach has been criticised for reversing the course of events (that in reality it is ethnic mobilisation that leads to breakdown of the state, rather than vice versa), and for failing to explain instances where no ethnic conflict has followed state breakdown (S. Kaufman, 2001: 9-10).

The two other approaches, ethno-symbolism<sup>2</sup> and constructivism, differ from the two previous approaches by addressing the existence of ethnic groups and conflicts not in terms of rationality but rather in terms of emotions and symbols (S. Kaufman, 2001: 15-27). If we start with ethno-symbolism, their main argument is that ethnic communities exist because they fulfil profound psychological and emotional needs for belonging to a group (Connor, 1994: 73; S. Kaufman, 2001: 23-24; C. Kaufmann, 2005: 195-196). These needs are satisfied through the use of symbols, myths and attachment to a

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<sup>2</sup> Ethnosymbolism shares many affinities with primordialism and essentialism, and much of what is said about ethno-symbolism here is also the case for primordialism.

homeland to produce a communal identity. Importantly, these attachments are not malleable but constant over generations, meaning that it is hard to forge new or overarching identities in multi-ethnic societies. This, combined with the desire to control one's own homeland, which may overlap with other ethnic groups' homelands may, easily leads to conflict in multi-ethnic societies (Connor, 1994: 77-83).

Whereas constructivists agree with the ethno-symbolists on the importance of symbols, they disagree strongly with them on the issue of the malleability of ethnic identity. To the constructivists<sup>3</sup>, ethnic identity is a construction created, re-created and shaped (intentionally or not) by nationalist leaders and intellectuals, and is thus subject to manipulation rather than being constant (C. Kaufmann, 2005: 196-197). Constructivism does not mean that ethnic identities can be created at will and out of the blue, but rather that their political salience and meaning can be manipulated. Thus leaders, especially those in power during transition, can use emotionally charged symbols to stir up the masses in order to keep themselves in power (Gallagher, 2005; S. Kaufman, 2001; Snyder, 2000). The emphasis on elites can also be seen in consociational approaches (although in a slightly different way) such as Arend Lijphart's (1990), which will be discussed below, and theories of the origins of nationalism such as Ernst Gellner (1997) and other modernists. Often it is argued that the insecurities of the dramatic upheavals and the economic transition help to make people more susceptible to such manipulation (Huber and Mickey, 1999: 20). It is important to keep in mind, that although nationalist politicians are often described as rational and maximising personal interest, constructivists fundamentally differ from rational choice theorists in emphasising identity and in predominantly framing individuals as non-utility maximising.

This leads us to the question of why exactly Central and Eastern Europe has faced such a nationalist revival (leaving the issue of violent conflict in Western Europe untouched). These can be divided into two strands: those who argue that there exists a particularly virulent kind of Eastern European nationalism, and those who argue that the legacy of Communism and the problems of transition are the causes of the rising nationalism. The former has its foundation in Hans Kohn's (2005) notion of the difference between Eastern and Western nationalism. Kohn argued that in Western Europe the state

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<sup>3</sup> In this context I refer to the so-called constructivists within the field of ethnic conflict studies, whom may differ from the so-called constructivists within International Relations as well as the epistemological position called constructivism.

pre-dated and determined nation-building, whereas it in Eastern Europe arose out of envy and resentment of the Western kind of nationalism at a later stage, but before the creation of states which could mould the nationalism. In its ideal-type form, civic nationalism creates a nation out of different groups based on loyalty to the state and its “civic” values via democratic participation and citizenship. It is thus ethnically and linguistically neutral, which means that anybody who is willing to share the values of the state and declare loyalty to it can become a member. This is an important concept for the case of the Hungarian minorities, as Romanian governments in particular often argued that Romania was based on republican civic nationalism, and thus should not accommodate ethnic nationalist claims from the Hungarian minority.

Eastern nationalism, on the other hand, emerged from the multi-ethnic empires of Eastern and Central Europe, where different language groups were declared to be nations by nationalists, who emphasised the cultural bonds and common origin that bound the members of the group together. Thus, whereas Western nationalism is civic and inclusive, Eastern nationalism is ethnic and hence open only to people born into the nation. Even if one does not accept Kohn’s linking of civic nationalism with the West and ethnic nationalism with the East, it is still possible to use the distinction between civic and ethnic nationalism, which is one of the fundamental tenets in nationalism studies (Brown, 2000; Brubaker, 1999).

Although Kohn’s theory has been much criticised for being “Orientalist”, there is a widespread notion that there are two kinds of nationalism, one benign and inclusive, the other malign and exclusive, and that the latter is connected with Eastern Europe (Brown, 2000: 54-56; Greenfeld, 2001). Thus the warrant that Eastern European nationalism is of a more ethnic and exclusivist kind often appears in literature on national conflict in Central and Eastern Europe, for instance in Schöpflin (1995; 2001) and Tsilevich (2001). Often this claim leads to arguments for making state boundaries follow national boundaries rather than attempting to build consociational or multicultural societies, as will be discussed below. Furthermore, the notion that the origins of nationalism in Central and Eastern Europe differs fundamentally from the origins of nationalism in Western Europe, both with regard to the period in which it emerged and the manner in which this occurred (bottom-up rather than top-down), is widely accepted within nationalism studies (see for instance Gellner, 1997).

Others argue that the legacies of Communism have mattered, among others in terms of the institutionalisation of nationalism. The foremost example of this is Rogers Brubaker's *Nationalism Reframed* (1996), in which it is argued from a constructivist point of view that the institutionalisation of nations in some Communist states formed the basis for nationalist conflict. This was especially the case in the three Communist federations, the Soviet Union, Yugoslavia and Czechoslovakia, in which all persons were classified according to their nationality, and a clear link between national identity and a national territory was established. This meant that each nation had a territory, a national elite and a cultivation of national culture and language, a scenario which is also referred to as nation-building (Brubaker, 1996: 29). This way institutionalised nations existed, but without their own state, at the collapse of Communism, ready to be mobilised by national elites (Brubaker, 1996: 41). Hence it was only the Communist "ethno-federations" which split up together with Communism. The argument that the existence of sub-state national states or territories was a necessary condition for the break-up of Yugoslavia and the Soviet Union can also be found in Snyder (2000: 273-274) and Cornell (2002).

The argument that the upheavals relating to transition may have made post-Communist countries more likely experience ethnic conflict is also widespread. Some argue, as Mickey and Huber (1999: 20) or Stuart Kaufman (Kaufman, 2001), that the insecurities relating to the period made people more susceptible to manipulation by the elite. Others again emphasise from a structuralist perspective that the diminishing power of the state in some cases, especially in ethno-federations, has led to security dilemmas (Toft, 2003).

A final factor often mentioned as important for ethnic conflict, and whether it turns violent or not, is the eventual presence of a kin-state; a state whose majority is of the same nation as the minority in the state in question. The description of the role of the kin-state has most influentially been undertaken by Rogers Brubaker (1996), who described the relationship between kin-state (referred to as homeland by Brubaker), national minority and nationalising state (the state in which the minority is resident, sometimes referred to by others as the home-state) as a triadic nexus. These three entities are interrelated so that a change in the stance of the kin-state will lead to changes in the stances of the nationalising state and the national minority and vice versa (Brubaker, 1996: 67-68). Thus, if a

nationalising state (basically a home-state engaging in nation-building policies) was to engage in policies perceived as damaging to the minority, it is likely both national minority and kin-state would adopt stances which would be perceived (in the nationalising state) as more radical. Brubaker shares the emphasis on perceptions with Snyder (2000) and on the role of the kin-state with Bloed and van Dijk (1999) and Huber and Mickey (1999).

### **1.1.2 Regulating Ethnic Conflicts**

As I have argued above, different connections exist between what one perceives to be important causes of ethnic conflict involving national minorities, and which solutions are proposed to regulate them. However, this is not a one-to-one relationship with each explanation of a cause having a corresponding solution, rather there is a wide range of solutions, and some are based on some of the above-mentioned causal explanations. It is useful to draw on John McGarry and Brendan O’Leary’s (1993) taxonomy of ways of regulating ethnic conflict in order to get an overview, but I will also draw on Jack Snyder’s (2000) somewhat similar and more recent taxonomy. McGarry and O’Leary make a very useful distinction between those solutions which attempt to eliminate ethnic differences and those which seek to manage the consequences of ethnic difference (McGarry and O’Leary, 1993: 5). I will argue that the approaches seeking to manage the consequences of difference conflicts are generally more oriented towards justice than those which seek to eliminate difference. The former can be said to constitute what Michael Walzer (1993) calls a “regime of toleration”, which provides a link to justice theories such as Kymlicka’s theory of ethno-cultural justice. Thus, although McGarry and O’Leary as well as Snyder, operate from a security point of view and aim to regulate societies with mixed ethnicity in order to avoid conflict, the solutions they suggest often overlap with solutions suggested by authors writing from a justice perspective.

If we start with the solutions which aim to eliminate differences, there are the (currently) ethically insupportable options of genocide and forced population transfers (McGarry and O’Leary, 1993: 6-10). The latter has to be distinguished from agreed population transfers, such as the Greek-Turkish 1923 “exchange” of Greeks living in Turkey for Turks living in Greece (McGarry and O’Leary, 1993: 9-10). Interestingly, a similar exchange was suggested by Slovak Prime Minister Meciar in 1997, causing much criticism from the Hungarian government and international and European actors.

Thirdly, there is the possible solution offered by partitioning or secession. This is not considered as unacceptable as the two previous ideas, although at the moment it is rarely considered the optimal solution (Snyder, 2000: 272-273). Suggested by Chaim Kaufman (1996) and in the concrete case of Bosnia by John Mearsheimer and Stephen van Evera (1996), this approach argues that the best way to stop fighting is to simply partition the territory the parties are fighting over, although not necessarily granting full statehood. One should note that this is mainly suggested as a solution to violent conflicts, not to non-violent ones. It is rarely argued that the costs of maintaining a country with no or little ethnic violence in one piece outweigh the cost of splitting it up. Partitioning as a practical solution shall not be confused with a moral right to secession, which will be discussed below.

The fourth way of eliminating ethnic difference according to McGarry & O'Leary is to attempt to assimilate all minorities into a transcendent identity, which can be civic or ethnic as well as previously existing or new (McGarry and O'Leary, 1993: 17-21; Snyder, 2000: 274-275). According to McGarry and O'Leary, this option is only viable if it is agreed upon by all parties and does not take place in contested homelands (McGarry and O'Leary, 1993: 17). Jack Snyder (2000) adds further requirements, arguing this is only an option for minorities which are culturally similar to the majority, and not engaged in any kind of violent hostilities and/or literary consciousness or political organisation, thus ruling out Romania and Slovakia. Will Kymlicka (2001: 24-26) is even more opposed to assimilation, arguing that besides being illiberal and morally wrong it also is counterproductive, as it will only make the minority fight even harder for secession. However, the idea that minorities can be incorporated into an overarching civic identity encompassing both minorities and majorities is not irrelevant in the case of the Hungarian minorities. This way, it could be argued, a political allegiance to the Romanian and Slovak state could be induced in the ethnic Hungarians, who could maintain their ethnic identities on a private level (for a discussion of the privatisation of identity in nation-states, see Walzer, 1993: 24-30). The Romanian governments often argued that rather than seeking to express their own identity, the members of the Hungarian minorities should be integrated into the (allegedly) civic Romanian identity, which is open to everybody irrespective of mother tongue.

If we turn to the solutions for managing ethnic difference rather than destroying it, the first example is of hegemonic control (McGarry and O'Leary, 1993: 22-26; Snyder, 2000: 270-271). This most common form of regulating ethnic differences is hegemonic in the sense that it makes violent ethnic contest over the state power unthinkable or unworkable, and is mostly, but not necessarily, carried out by the majority (McGarry and O'Leary, 1993: 22). The widespread knee-jerk rejection of this solution and even the refusal merely to consider it says a lot about the connection between justice and security in the discourse on conflict-management. Although many theorists, among others Lijphart (1990) and Kaufman (1996) clearly prioritise security, there is little desire to recommend a solution almost universally considered as unjust. Of course hegemonic control can also be criticised for not providing long-term stability, as McGarry & O'Leary argue (McGarry and O'Leary, 1993: 25-26). However, this criticism is also frequently directed at many other possible solutions, and it is hard to argue that hegemonic control has a worse historical record than for instance ethno-federalism (Snyder, 2000: 270-271). This seems to suggest normative reasons underpinning the rejection: people *do not want* to consider that hegemonic control may be able to provide stability, because it will include illiberal policies.

Second, there is arbitration by a neutral third party as a solution. The argument is that the disinterestedness of the third party makes it possible to come up with solutions acceptable for all parties, presupposing that they accept its claim to neutrality (McGarry and O'Leary, 1993: 27-30; Walzer, 1993: 14-18). Such a third party can be an agent external to the political system, such as the UN or internal to it, such as Tito, the former option being the relevant for this case (McGarry and O'Leary, 1993: 28-29).

Third, federalism, including autonomy and cantonisation, has also been suggested as a solution. Following McGarry and O'Leary, cantonisation differs from standard federalism by devolving power to the lowest possible level at which ethnically homogenous units can be found, whereas federalism tends to create one unit for each ethnic group (McGarry and O'Leary, 1993: 30-35). According to Snyder, federalism is popular among liberals because it allows national self-determination without the troubles of a fully-fledged partition (Snyder, 2000: 273-274). Nevertheless both Snyder and McGarry & O'Leary are quite sceptical of federalism (and cantonisation) due to its poor empirical record as a

conflict regulating device. We have discussed the arguments claiming that (ethno-)federalism causes ethnic conflict above, and will turn to the issue of self-determination in the section on justice approaches.

However, it is worth expanding a bit on both the concept of federalism and of autonomy as a solution, especially as the calls for autonomous Hungarian regions played an important role, especially during the administrative reforms, in both Romania and Slovakia. It is important to distinguish between constitutional federations, in which equal power is granted to all sub-federal units, e.g. the USA, and states with territorial autonomies, in which the autonomous regions have more power than other regions, e.g. Spain (Lapidoth, 1997: 50-51). In other words, territorial autonomy is characterised by asymmetry where constitutional federations are characterised by equality. Furthermore, territorial autonomy is mainly granted to regions with a specific ethnic character.

According to Lapidoth, the strength of autonomy is that it preserves “the unity of the state while respecting the diversity of the population”, although it is not always a success (Lapidoth, 1997: 3). There is a strong normative emphasis on respecting diversity in this argument, but also elements of a security concern, namely the need to respect the integrity of the state. Many scholars have also argued for territorial autonomy as a way of achieving self-determination for a minority (see for instance Kymlicka, 2001; 2006; Malloy, 2005), an issue I will return to below. A related and very common security argument for territorial autonomy is that if a minority constitutes a majority in a region, it will not be satisfied with self-determination short of autonomy and refusing this will only radicalise it (Lapidoth, 1997; Nordquist, 1998: 10). The argument rests on the notion that the minority politicians demand for self-determination will be satisfied by territorial autonomy, for instance because minorities are more concerned with not being ruled by others than engaging in foreign policy (Connor, 1994: 83). As seen above, opponents of territorial autonomy argue that the consequence of autonomy will be exactly the opposite, namely that the minority and the minority elite will become more self-conscious and distanced from the rest of society in case it is granted territorial autonomy (Cornell, 2002; Horowitz, 1990b; Snyder, 2000: 273-274).

I will argue that to a substantial degree these differences are down to how the minority and minority identity is perceived; if the minority on the one hand is seen as a rational, unitary actor with a rather constant identity and preferences, then territorial autonomy is a probably the most viable way of appeasing it. If the minority, on the other hand, is seen as a more volatile entity, whose identity and what it takes to express this identity are malleable, for instance by elite influence, then autonomy easily is seen as dangerous option, as the autonomous territory may become the basis for a separatist elite. Territorial autonomy is predominantly suggested for territorially concentrated minorities, which leaves it open to criticism that minorities which do not constitute a majority in any area will be left without any kind of self-government.

These criticisms have led many to support personal or cultural autonomy rather than territorial autonomy. Personal or cultural autonomy (from now on cultural autonomy) is the granting of control over cultural institutions such as schools, libraries, etc to communities irrespective of territory (Lapidoth, 1997: 37-40). That means that members of a minority elect a council that run these cultural institutions both on a national basis and in areas where there are enough minority members to create a need for such cultural institutions. It is important to keep in mind that cultural autonomy differs from minority rights in one important aspect: In a regime of cultural autonomy the state grants the minority representatives the right to take the necessary steps to protect and implement their rights, whereas in a minority rights regime taking these steps is the prerogative of the state itself (Lapidoth, 1997: 38). This means that when a minority has cultural autonomy, it decides itself (within certain limits set by the state) how to deal with the reproduction of its culture, rather than having the state doing it, as it is the case with minority rights. In other words, it is granted self-government over its culture. Obviously, one can also argue that the minority itself has a right to cultural autonomy, but this is a normative discussion to which I will return later.

In Romania, Slovakia and particularly Hungary the issue of cultural autonomy has been much discussed, with Hungary having one of the most elaborate systems of cultural autonomy in Europe (Pentassuglia, 2002: 235-236). The moral arguments for and against the personality principle vis-à-vis the territoriality principle will be discussed in more detail below. Here it suffices to say that two of the main arguments for cultural autonomy are that it grants the minority a degree of self-determination

without many of the dangers of territorial autonomy, and that it is a useful solution for minorities that do not constitute a majority in any part of the state territory (Pentassuglia, 2002: 37-40). The latter aspect opens up for a combination of territorial and cultural autonomy, so that the minority has territorial autonomy where it constitutes a majority and personal where it constitutes a minority (Lapidoth, 1997: 39; Lijphart, 1990: 502).

Fourth, there is consociationalism, often also referred to as power-sharing<sup>4</sup> (Lijphart, 1990; McGarry and O'Leary, 1993: 35-37; Snyder, 2000: 275-280). Consociationalism tries to prevent conflict by making the political elites of the different groups cooperate, so that no group can be excluded. Unlike in federal societies, where the power is divided vertically between the different levels, in consociational societies it is divided horizontally between different pillars encompassing different levels of government. According to Arendt Lijphart, the "inventor" of the consociationalism approach, it is the only viable alternative to partitioning, which is rarely desirable (Lijphart, 1990: 493-494). Consociationalism as a political system has four characteristics:

1. All significant ethnic groups participate in the government of the state. In parliamentary systems this means that the government is always a "grand coalition" with representatives of the different groups, in presidential systems that the presidency or the higher positions (president, prime minister) are shared.
2. A high degree of autonomy for each group, so that decisions which are not of common inter-ethnic interest are left to the respective groups in the shape of territorial or cultural autonomy, depending on the territorial distribution of the group.
3. Proportionality as the basic standard of political representation as well as of public appointments and funding. The former means that majoritarian parliamentary systems, such as the British first-past-the-post system are counter-productive if one intends to build a consociationalism system.
4. The possibility for a minority to cast a veto in case its vital interests are threatened (Lijphart, 1990: 494-495).

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<sup>4</sup> Power-sharing is usually used to denominate systems with participation of all groups (ethnic or not) in government (equal to Lijphart's first point), and will be used in this sense in this thesis, but has often been used in the sense in which consociationalism is employed here.

Of these characteristics, the first two are by far the most important. Whereas the second point has been discussed above, it is worthwhile to look into the first aspect. It presupposes ethnic parties, and in most cases takes the shape of a parliamentary system in which parties representing minorities always take part in the government. Another important aspect of consociationalism is that there need to be institutionalised (can be formal/constitutional or informal) guarantees of participation of all groups, so that just having minority representatives in government for one or two periods of government does not make the system consociational. It is therefore an open question whether Romania and Slovakia can be categorised as consociational states, as Martin Brusis (2003) has done.

Furthermore, it is important to stress that people participate politically as members of a specific ethnic group each represented by “their” ethnic political elite. As Snyder points out, Lijphart treats the politicisation of the ethnic groups as given, thus not operating with the possibility of cross-cutting cleavages and de-politicisation of ethnic relations (Horowitz, 1990b: 471-474; Snyder, 2000: 275). The emphasis on democratic elites is also according to Snyder problematic in democratising countries where there are no established elites among the different groups, but rather intense competition among elites about the power over the group, a competition that easily leads to radicalisation (Brubaker, 1996; Snyder, 2000: 275-277)<sup>5</sup>.

Finally, one approach included by Jack Snyder (2000), but not by McGarry and O’Leary, is what is referred to as the integrative approach. Based on the works of Donald L. Horowitz (Horowitz, 1990a; 1990b), Snyder describes an approach which seeks to depoliticise ethnic identity by the means of institutional arrangements creating incentives for political alignments based on cross-cutting cleavages. The intention is, as opposed to the consociationalism approach, to create bonds between the ethnic groups, rather than treating them as given and focusing on the elites. The institutional arrangements are mainly constitutional and electoral, for instance electoral systems creating incentives for the politicians to vie for votes from other ethnic groups (Horowitz, 1990b: 461-467; 2002: 22-23). Although Snyder much prefers Horowitz’s approach to those mentioned above, he argues that it is too narrowly focused on the constitutional and electoral system, and ignores civil society (Snyder, 2000: 277-278). Instead he

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<sup>5</sup> Here I focus on consociationalism as a prescriptive theory, not as an explanatory one. For a more in-depth overview, see Bogaards, M. (2000). "The Uneasy Relationship between Empirical and Normative Types in Consociational Theory." *Journal of Theoretical Politics* **12**(4): 395-423.

argues that one should also focus on “combating nationalist myths in the marketplace of ideas”, that is, making sure that false nationalist information is exposed as such in the media and in schoolbooks among others (Snyder, 2000: 278-283). This and the focus on “breaking down the barriers between *imagined communities*” (Snyder, 2000: 281) shows an (constructivist) emphasis on the role of media and education in creating and shaping national consciousness, which is indebted to Benedict Anderson (1991).

Furthermore, there is one group of solutions which goes unmentioned by both McGarry & O’Leary and Snyder, namely those involving kin-states and the “softening of borders” between kin-and host-states, in particular by bilateral treaties. As described above, people have argued for the importance of the policy of kin-states towards their kin in other states (see for instance Brubaker, 1996). Therefore many have (from a security perspective) welcomed bilateral treaties as a useful way of preventing escalating conflicts within the triadic nexus, especially by making kin-state recognise borders in return for better treatment of “their” minorities”. But it is also possible to argue for bilateral treaties from a normative perspective, as it also can be framed as a way of making the borders separating the minorities from their ethnic kin less “hard” and more penetrable, and thus remedying the injustice stemming from having incongruous borders between state and nation (Bloed and van Dijk, 1999; Huber and Mickey, 1999).

Interestingly, although a part of political practice for decades, the bilateral treaties as a way of managing national minority issues was somewhat neglected by academia until the EU’s 1995 Pact on Stability (Huber and Mickey, 1999: 17; Pentassuglia, 2002: 186-187). The Pact on Stability (or Balladur plan as it is often referred to) pushed for bilateral treaties between the kin-states and home-states in post-Communist Europe, and was (after some contestation) successful in establishing bilateral treaties between Hungary and Romania and Hungary and Slovakia (Nelson, 1998). As the name of the Pact indicates, the primary objective of bilateral treaties is to ensure stability, which clearly indicates a security focus (Bloed and van Dijk, 1999: 2).

According to Konrad Huber and Robert W. Mickey, who see bilateral treaties as an important tool for managing ethnic conflicts, the main objective for bilateral treaties is to improve transparency and thus

prevent misunderstandings between states, a common cause of conflict (Huber and Mickey, 1999: 44-49). The bilateral treaties should also both limit actions of the kin-state not respecting the integrity of the home-state, and ensure the full implementation of national minority rights in the home-state, including the right to cross-border contacts. Furthermore, the home state should promote media in the minority language. In return, the kin-state should recognise the territorial integrity of the home-state, and always consult the home-state before adopting any measures regarding the kin-minority. As we can see, great emphasis is put on territorial integrity, a common feature among the more security-oriented approaches.

However, not everybody sees bilateral treaties in such a positive light. Gudmundur Alfredsson (1999) argues that the disadvantages of such treaties in most cases outweigh the advantages. This especially as bilateral treaties often reflect political rather than legal objectives which often means that minorities without a kin-state are overlooked (Alfredsson, 1999: 168-170). Furthermore, in most cases the minorities are not involved in the negotiations, meaning that their interests may be overlooked if they differ from the kin-state's (Alfredsson, 1999: 170-171). These arguments are what I refer to as justice arguments, but Alfredsson also mentions one security argument, namely that bilateral treaties will give the kin-state a direct voice and interest in the affairs of the home state. This is potentially destabilising, as it may provoke people in the home-state and lead to more unrestrained kin-state interventions (Alfredsson, 1999: 173). Interestingly, it has been argued that this was exactly what happened during the Hungarian Status Law crisis (Deets, 2006b: 444-445).

**Table 1: Overview of theories of ethnic conflict**

General theories of ethnic conflict	Ancient Hatred
	Miscommunication
	Economic Rivalry
	Negative security spiral after break-down of state
	Fight over homeland
	Manipulation of nationalist symbols
CEE specific theories	Eastern Nationalism
	Communist legacy, transition
<b>Regulating Ethnic Conflict</b>	
Eliminating difference	Genocide/forced population transfer
	Secession or partitioning
	Assimilation
Managing difference	Hegemonic control
	Third party arbitration
	Federalism, including autonomy
	Consociationalism (Lijphart)
	Integration (Horowitz)
	Kin-state engagement/erosion of borders

### **Justice: Multiculturalism and Liberalism**

If we turn from the approaches emphasising security to those emphasising justice, the most important debate concerning the relationship between ethnicity and democracy has been the debate between the advocates and the opponents of multiculturalism. Although this debate started in North America as a debate over how to treat indigenous people, immigrants and black Americans, it has also been used in the context of national minorities in Central and Eastern Europe. In this context, Will Kymlicka has arguably been the most important figure when it comes to establishing a role for national minorities within political theory. Kymlicka has developed the concept of “ethno-cultural justice” as a standard with which to measure the treatment of minorities, including national minorities, and I will describe him and others similar positions as “liberal multiculturalists”<sup>6</sup> a phrase he himself has used (Kymlicka, 2000: 41-42; 2001: 21). However, before we go into detail about liberal multiculturalism, it is worth discussing how minority rights were conceived in political theory prior to the Nineties.

<sup>6</sup> I find that this term best captures the position of people such as Kymlicka, although multiculturalism is predominantly seen as being concerned with immigrants in Western societies.

Before 1989, few political philosophers or theorists were concerned with minorities or minority rights, and the little debate that existed mainly took place within the liberalism-communitarian debate (Kymlicka, 2000: 15-17). In the early Nineties, the debate over how to conciliate the group identities of minorities in the US and especially Canada (immigrants, Quebecois, religious groups, etc) with the culture of the majority and the individualist foundations of liberal democracy grew out of the liberalism-communitarian debate (May, Modood et al., 2004: 4). Communitarians such as Charles Taylor (1993) and Michael Walzer (1993) argued for making Canada and the US multicultural societies by recognising the different cultures existing within their borders, whereas their liberal opponents stressed the importance of equal rights for all individuals, a discussion which I will return to below. Kymlicka, while clearly writing within the tradition of multiculturalism, has tried to reconcile the theory with liberalism, stressing the importance of guaranteeing the rights of the individual (Kymlicka, 2001). This reflected that the debate over multiculturalism to a large degree was turning into an intra-liberal debate (Laitin and Reich, 2003: 80; May, Modood et al., 2004).

Roughly speaking, Kymlicka's position is that minority rights shall be seen as a (justified) response to the nation-building of the majority (Kymlicka, 2000: 21-23). According to this view, which appeared in the mid-Nineties, it is wrong to see liberal democracies as ethno-culturally neutral, rather they promote integration into specific cultures, in most cases the majority culture. This promotion takes place (implicitly) in the school system and other public institutions, where the majority language is the language of communication, thus forcing minority members to learn and use it (Kymlicka, 2001; Kymlicka and Patten, 2003a: 18-25). Kymlicka has been clearly inspired by Charles Taylor's *The Politics of Recognition* (1992), in which Taylor argued for an equal recognition of all individuals and all groups. This argument is based on the notions that recognition by others is an intrinsic part of identity, and that the identities of individuals and groups are constructed in the same way and have the same moral standing (Taylor, 1992: 25-42). Especially the latter has been deeply contested, particularly by liberals<sup>7</sup> such as Brian Barry, as will be discussed below. However, the right of all cultures to equal recognition is one of the fundamental tenets of multiculturalism.

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<sup>7</sup> For the sake of clarity I will refer to liberalists arguing on the basis of an individualist ontology as liberals, although multiculturalists such as like Kymlicka have also defined themselves as liberals. Although there are important differences between the liberal and republican conceptualisations of citizenship, here they will be treated as one, as they are united in their rejection of multiculturalism based on the principle of equal and individual citizen rights.

A related view can be found in Michael Walzer's *On Toleration* (1993), in which he argues that minority cultures and difference in general should be tolerated the same way that the government tolerates the opposition. The role of language will be dealt with in more detail in the section on minority rights, but it is important to stress the significance of language in Kymlicka's theory. Language is seen as the centre and binding kit of a "societal culture", which is a territorially-concentrated culture, centred on a shared language which is used in a wide range of societal institutions, in both public and private life (...) covering the full range of human activities" (Kymlicka, 2001: 18). Accordingly neither religious, sexual or lifestyle groups nor social classes are societal cultures. I will argue that it is possible to criticise Kymlicka for simply inventing a new term for that which has previously been referred to as ethnic or national groups and for over-emphasising the role of language<sup>8</sup>.

The close link between language and culture means that when the majority in a country promotes their own language, they simultaneously promote the integration of minorities into their own culture. This nation-building is according to Kymlicka an intrinsic feature of the above-mentioned privileged status of the majority language in the education system and the public sphere in general (Kymlicka, 2001: 18-23). The result is that other societal cultures, including national minorities, will seek to promote their own nation-building, which again requires group rights and political autonomy of some kind, in most cases territorial autonomy (Kymlicka, 2001: 24-26; 68-69). Thus the advocacy of autonomy is based both on a pragmatic security argument, namely that oppression of the demand for autonomy will only lead to radicalisation and claims for secession, and a justice argument, namely that the oppression of minority nationalism is unjust. This is because all ethnic groups have an equal right to express their culture and to engage in nation-building, and because such nation-building in the case of minorities is best expressed by territorial autonomy (Kymlicka, 2001; 2004a).

The important thing for Kymlicka is that the nation-building, whether undertaken by the majority or the minority, has to be liberal. That means that the dominant societal culture within an area, be it a state or

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<sup>8</sup> See also "Malloy, T. (2005). National Minority Rights in Europe. Oxford, , Oxford University Press." for a similar position on Kymlicka's equation of culture and ethnic groups.

an autonomous region, shall respect the nation-building of minorities, and that individual rights of the members of the culture shall be respected, for instance shall the right to leave or join a culture be respected. Thus the theory constitutes a decisive break with the (previously) dominant understanding of liberalism in which ethnic identity and cultural differences have been seen as obstacles to be overcome or ignored. Kymlicka's argument rests on the assumption that a truly liberal democracy cannot be blind to ethnic or cultural differences, as the culture constitutes the framework all individuals live their social life within (Kymlicka, 2001: 18-19). Thus it can be argued that Kymlicka, following Taylor (1995) holds on to the normative aspects of liberalism, but abandons the ontological individualism<sup>9</sup> otherwise characterising it. Therefore this approach is referred to "liberal culturalism" or "liberal multiculturalism" (Laitin and Reich, 2003: 88-92). The opposite position is civic republicanism, according to which politics should be ethnically neutral and identity should be based on belonging to a political community irrespective of ethnic background (Abizadeh, 2002: 496-497). In this way, to simplify things a bit, the civic republicans argue that the political participation should determine the limits of the community, whereas the (liberal) multiculturalists argue that political participation should be based on pre-existing communities.

This differs from the civic republican tradition which emphasises political participation and institutions as the basis of identity and solidarity, as they argue that identity and solidarity must be a prerequisite for political participation and institutions, thus reversing the causal relationship

If we turn to the critics of Kymlicka's approach and multi-culturalism in general, Brian Barry (2001) has argued the case from a liberal point of view. He particularly takes issue with Kymlicka and Taylor's support for group rights. First of all he argues that is based on a mistaken conceptualisation of ethnic groups as "self-evident, quasi-biological collectivities of a reified culture", thus making the groups seem internally homogenous, clearly bounded, mutually exclusive and possessing a specific set of interests (Barry, 2001: 11). It is this misconception, which according to Barry, leads Taylor (and Kymlicka) to claim that groups have the same right to recognition as individuals. This is, still according to Barry, a mistake as groups do not have any value besides their value to their members (Barry, 2001:

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<sup>9</sup> That Kymlicka abandons ontological individualism means that he (at least I will argue so) uses the culture or the group rather than the individual as the starting point, and places the life and the well-being of the individual within that culture. Yet he is "more individualist" than many communitarians.

123). Although he acknowledges that much of an individual's well-being derives from group membership, he argues that this needs to be weighed on a case-by case basis against a liberal commitment to protecting the individual against oppression from the same community (Barry, 2001: 117).

On a similar note, but reacting on a more concrete level to Kymlicka's suggestions for exporting liberal multi-culturalism to Central and Eastern Europe, Alexander Ossipov (2001) also criticises Kymlicka for treating the national minority as an actor possessing interests and free will. This conception, according to Ossipov, is a common, but nevertheless misleading and illiberal, conception, which ignores that an ethnic group has vague and moveable boundaries and is made up of individuals (May, Modood et al., 2004: 5-9; Ossipov, 2001: 172-173). This criticism is in line with Rogers Brubaker's argument that nations and national minorities are reified by the way they are referred to in the academic and political literature as acting, unitary entities, a reification which he refers to as "groupism" (Brubaker, 1996: 13-16; 2004).

Ossipov argues, in a similarly constructivist vein, that we should separate between those claiming to represent the ethnic group and the ethnic group itself, and, more importantly, that this (mistaken) conception of ethnic groups as collective individuals leads to arguments for group rights (Ossipov, 2001: 174). This is dangerous because, following Ossipov, it risks recasting all social relations as interethnic and compromising the legitimacy of the state (Ossipov, 2001: 182-184). Ossipov's argument is more security-oriented than Barry's, although it is also based on the traditional liberal conception of handling ethnic difference by relegating it to the private sphere and on a more individualist ontology. In a similar vein, David Laitin and Rob Reich have argued that the liberalist culturalists have a tendency to view ethnic groups as speaking with one voice, thus deciding on behalf of all group members what it is they want (Laitin and Reich, 2003: 89-91). Instead they propose a "liberal democratic" approach which emphasise democratic contestation, rather than "clean specifications from first principles" as the means to arrive at the preferred minority policy, thus opening up for the influence of context as well as reoccurring revisions (Laitin and Reich, 2003: 93-100).

Much of this relates to the debate of collective versus individual rights, which has also been an important and recurrent theme in the literature as well as in the case of the Hungarian minorities, as especially Romania has argued against group rights, which it claims contradicts its tradition of republican citizenship. In order to clarify, I will distinguish between different types of rights which are commonly referred to as collective or group rights (I will here use the former term) (Kovacs, 2000: 35-36). First of all, collective rights in its pure sense, that is, rights which are held by a group as a collective and qua its status as a distinct group (Kovacs, 2000: 35; Malloy, 2005: 88). This is the sense in which I will from now on use the term collective rights. The most obvious example of this the right to self-determination. Second, rights whose effective enjoyment presupposes the existence of a community sharing the same rights with whom one can enjoy the rights, for instance the right to minority schools or to worshipping minority religions (Kovacs, 2000: 35-36; Malloy, 2005: 87). Third and finally, group-differentiated rights held and enjoyed by individuals who are members of specific groups, for example the rights of male Sikhs in many countries to drive a motorcycle without a helmet, as they are obliged to wear a turban (Barry, 2001: 112-113). This type differs from the second type in that they are enjoyed by individuals alone and irrespective of whether other members of the group choose to enjoy these rights.

Brian Barry refused collective rights in the pure sense, partly because of the aforementioned risk of oppression of individuals by the group, and partly because he argued that they would destroy the liberal principle of equal rights for each individual (Barry, 2001). However, he accepted that affirmative action could be necessary for disadvantaged individuals until their disadvantages ceased to exist (Barry, 2001: 12-13). On the other hand, Charles Taylor (1992: 37-38) has argued that the universal principle that all citizens should simply have the same rights is misleading, as it obscures the fact that these rights are solely a reflection of the dominant culture. Drawing on this argument, Kymlicka has argued that it would be unfair to deprive the minority of the right to self-determination which the majority holds qua its position as majority in a democracy, and that minorities should hence hold the collective right to internal self-determination (Kymlicka, 2001). Yet, before we turn to self-determination, it is worth looking at the probably most important group of rights, namely language rights.

## **Language Policy and Language Rights**

Whether held or enjoyed collectively or individually, language rights have been extremely important over the last fifteen years, especially among theorists like Kymlicka who emphasise the role of language in maintaining the culture of a community and the community itself (Kymlicka, 2001: 18). Drawing mainly on the contributions to Kymlicka and Patten (2003b) and their joint introduction (Kymlicka and Patten, 2003a), I will attempt to provide an overview of the different distinctions and positions within language rights which are important for this thesis. However, first it is important to stress that just as minority policy cannot be reduced to minority rights, language policy cannot be reduced to language rights. Nonetheless, these rights play an important role within the field of language policy. Defining a government's language policy in terms of a set of rights is one of the most central ways of shaping and implementing language policy. This is especially the case because it commits government agencies and future governments to a set of objectives to a degree not otherwise possible (Kymlicka and Patten, 2003a: 26).

According to Kymlicka and Patten, the question of the language of the communication of public services to the citizens is important as it matters for a citizens' ability to enjoy public services, and on the other hand it is hard for a state to provide services in any language, anywhere and at any time (Kymlicka and Patten, 2003a: 18-20). This means that even if a state opts for multi- or bilingualism, it still has to settle on a set of principles for deciding when to use minority languages in public services, for instance whether this should be the case where a certain proportion are minority members. This has been the subject of much discussion in Romania and Slovakia, and relates to the question of the territoriality principle versus the personality principle, which will be discussed in detail below. Particularly the language of courts and legislatures, which are important as exclusion of a language might mean an infringement on a person's right to democratic participation or a fair trial, although these problems can often be solved by the availability of a translator.

Second, according to Kymlicka and Patten the issue of minority languages in the education system matters not only for the effective delivery of education but also for future language use (Kymlicka and Patten, 2003a: 21-22). Here several solutions are available, ranging from special immersion programs for minority children over transitional and maintenance bilingualism (in the former the minority

language education is phased out as the children learn the majority language, in the latter it is not) to parallel systems. This has also been an extremely important issue in Romania and particularly in Slovakia. Another question is whether minority language/bilingual education should solely be for those with problems with the majority language, for the minority members, or for everybody.

The third issue concerns official language status. This is important, as making a minority language official automatically grant it a range of the language rights described below (Kymlicka and Patten, 2003a: 25). Furthermore, besides the practical aspects, Kymlicka and Patten argue that there lies an important symbolic recognition in granting a language official status. This points to what Daniel M. Weinstock (2003) has referred to as the three different functions of language, each underwriting a different set of language policies:

First, language as communication, which creates a need for policies ensuring that people can communicate with each other and with the government.

Second, language as a means to access to a particular culture, which creates a need for policies protecting languages of societal cultures in danger of being marginalised.

Third, language as an intergenerational carrier of identity, which may create a need for policies which protect ancestral modes of speech from assimilation (Weinstock, 2003: 250-251).

Whereas the last kind of policy is less relevant for the Hungarian minorities in Romania and Slovakia, the distinction between language as communicative and language as underpinning a societal culture may be. The latter lends itself more easily to arguments for supporting minority languages, while the former more easily lends itself to arguments for promoting the majority language. Nevertheless, it may also be used in arguments for bilingual communications between the minority and the government.

If we turn to the issue of language rights and the different approaches to them, Kymlicka and Patten set up a set of distinctions. The first is the distinction between tolerance- and promotion-oriented rights (Kymlicka and Patten, 2003a: 26-27). Tolerance-oriented rights protects people from government

interference with their private language choices, for instance in associations, at home or at work. Promotion-oriented rights, on the other hand, is the right to use a one's own language with public institutions, and thus encompasses most of the language issues discussed above. These rights are far more contested than tolerance-oriented rights.

The second distinction is the distinction between norm-and-accommodation rights regimes and official-languages rights regimes, which distinguishes between two sorts of non-tolerance-oriented rights (Kymlicka and Patten, 2003a: 27-29). Under a norm-and-accommodation rights regime, one (and in a few cases more than one) language, practically always that of the majority, is designated as the norm, and in case a public institution needs to communicate with a citizen with insufficient knowledge of the language, he/she is simply accommodated with a translation. This differs from the official-languages approach, in which one or more minority languages are designated as official, thus giving everybody a right to use them in communication with public institutions despite full proficiency in the majority language. This approach rests on an understanding of language as having value above and beyond the simply communicative.

The third distinction is between the personality and the territoriality principle which we have already touched upon in the discussion of territorial and cultural autonomy, although the territoriality and personality principles cannot be reduced merely to a question of autonomy (Kymlicka and Patten, 2003a: 29-30). The territoriality principle is based on the notion that each nation needs a territory to call its own, which, since nations are equated with language, leads to a choice between either adopting national unilingualism or dividing the country into unilingual regions (Réaume, 2003: 276-279). The personality principle, on the other hand, designates two or more languages which people have the right to use irrespective of where they are on the territory of the state *or* of a specific region, thus favouring bi-/multilingualism, although not necessarily in all of the state (Réaume, 2003: 271-289). This is very relevant for the case of the Hungarian minorities in Romania and Slovakia, as there have been prolonged debates in both countries over where and how members of the Hungarian minorities could exercise various language rights.

Before we turn to the subject of self-determination, it is worth considering three concepts which are important for language policy, and the arguments in favour of and against them.

The first is the concept of “benign neglect” as a principle of state non-interference in linguistic affairs, and is closely related to the idea that the state can and should be ethno-culturally neutral. The second is the concept of the imposition of the majority language, often referred to as the nation-building approach, which according to some will increase solidarity, social mobility and improve democratic deliberation. The third concept is the concept of preservation of languages from marginalisation. This is argued for on the grounds that language is a defining feature of identity and thus language recognition matters both for the recognition of the minority identity and the ability express one’s identity, for which see above (Kymlicka and Patten, 2003a: 43-46). This argument rests on the notion that there is an intrinsic value to the existence of a diversity of languages and cultures. The typical argument against language preservation is that it may cause disadvantages for the members of the minority. However, whether the minority should be able to decide itself, and how such a decision should be made, will be covered when we turn to the issue of self-determination.

### **Self-Determination and Self-Governance**

The concept of self-determination, its interpretations and whether people have a right to self-determination have been the subject of much contestation the last century, something which is due to the political importance of the concept (Buchanan, 1995). According to Antonio Cassese, since the First World War self-determination has had four different, but not necessarily contradictory, meanings (Cassese, 1995: 20-32):

First, self-determination as a criterion for territorial change, that is, the use of plebiscites to draw the borders between states. Self-determination in this meaning has been used primarily after wars or the collapse of a state or an empire, and is less relevant for the purposes of this thesis.

Second, self-determination can be understood as the principle that a people choose their own government, or in other words, the right to live under a democratic government, and is often referred to as internal self-determination (Horowitz, 2003: 7-8; Malloy, 2005: 137-138). The fundamental question

is whom exactly the people is: is it the citizens of a state (the civic nation) or those sharing an ethnic culture (the ethnic nation) (Malloy, 2005: 116)? The former conceptualisation lends itself to a French-inspired type of equal and ethnicity-blind republic, whereas the latter conceptualisation lends itself to arguments for autonomy or consociationalism as means to achieve internal self-determination (Malloy, 2005: 137-138).

However, according to Rainer Bauböck (2006), it is misleading to talk about internal self-determination in relation to most cases of autonomy (or consociationalism), as self-determination implies that it is solely the group which decides its own status, which rarely is the case. Instead he uses the term *self-government* to refer to the existence of political institutions which allow the members of a minority to collectively shape the future of the minority, i.e. autonomy (Bauböck, 2006: 88-90). This is a useful distinction which will be used henceforth. Although he argues for a right of self-government, Bauböck does not base this right on the right to internal self-determination. Self-governance in the shape of autonomy and power-sharing are both important to multi-culturalists such as Will Kymlicka and Tove Malloy, as it provides moral and social recognition of the minorities (Kymlicka, 2001; Malloy, 2005: 209-210).

Third, there is self-determination as freedom from colonial oppression, which is of less relevance here, but has also led to increased demands for secession from non-colonial minorities since the right was established in the Sixties (Cassese, 1995: 44).

Fourth, there is self-determination as a principle of freedom for nations, granting each of them the right to their own sovereign state and thus also a right to secession for nations or minorities without “their own” state (Cassese, 1995: 32). This is undoubtedly the most contested of the meanings of self-determination, sometimes referred to as the “pure self-determination argument” (Buchanan, 1995: 350-351). Although the right to secede is not recognised in international law, it has been much discussed the last fifteen years, especially in relation to the recognition of the (now former) Yugoslav republics (Horowitz, 2003: 7). It is important to stress that it is the *right* to secession which is controversial, not the idea that one region of a state might secede after mutual agreement with the state.

The concept of such a right is controversial, as most scholars agree that it would be damaging to international stability if every national group had the right to secede (Hannum, 1998: 13; Horowitz, 2003). Not only would it risk creating an endless chain of secessions and still leave national minorities on the territories of states, but according to Horowitz, it would also be based on a flawed analogy between the moral autonomy of the individual and self-determination of ethnic groups (Horowitz, 2003).

### Summary

In this chapter I have tried to discuss some of the various attempts to theorise the causes of and solutions to ethnic conflicts involving national minorities, as well as the normative theories about how to create just solutions in states with national minorities. In particular, I have tried to look at the foundations of some of the arguments and see which arguments shared the same foundations. There are too many similarities and differences to be discussed here in this summary, but it is important to note that whereas the conception of the national minority as a unitary, monolithic entity and actor has lent itself to such theories as consociationalism and liberal culturalism, the conception of national minorities as consisting of individuals has rather lent it itself to approaches advocating individual rights and cross-cutting cleavages.

**Table 2: Comparing the most important security and justice-oriented theories**

	<b>Conceptualisation of national minorities</b>	
	Individualist	Groups
<b>Security</b>	Integrative approach (Horowitz) Assimilation	Consociationalism (Lijphart) Federalism
<b>Justice</b>	Liberalism (Barry)	Multiculturalism (Kymlicka)

## **2 National Minority Protection in Europe – the International Framework**

As ethnic conflict has been a reoccurring issue in Europe in the 20th century, different attempts have been made to solve or regulate these conflicts and in general to create a framework for minority protection on the international level. These attempts can be divided into two periods: the Interwar period and post-1989. As the former provides an important pretext for understanding the latter, it will be briefly discussed below before I turn to the discussion of the post-1989 framework

### **2.1 A Prelude: Minority Protection in the Interwar Period**

After the end of the First World War there was a widespread belief among the Allied powers that the many new minority issues emerging with the redrawing of boundaries constituted a potential security threat. Unresolved minority issues were seen as one of the causes of the World War, and there was a desire to avoid similar situations in the future. At the same time, the principle of self-determination was gaining prominence, especially as many of the nations of the Russian, Austro-Hungarian and Turkish Empires were being granted their own nation-state (Cobban, 1969). This meant that many of the national minorities in the new states would argue for the principle of self-determination to be applied, either in order to argue for border-redrawing or increased autonomy. All of these were factors led the victors of the War to sign a number of minority rights treaties with the states of Central and Eastern Europe, and make the newly-founded League of Nations the guardian of these treaties. These minority treaties were concluded between the victors and the defeated states (including Hungary) as well as between the victors and the newly-created or drastically enlarged states (including Romania and Czechoslovakia (Claude, 1969: 16-17). Furthermore, newly created states which had not signed such treaties chose to put themselves under similar obligations by making binding declarations when entering the League of Nations. This meant that only CEE states were placed under scrutiny, which led to accusations of double standards, not unlike those voiced during the last fifteen years.

Although the existence of different treaties meant that there did not exist one document which would bind all these countries, the 1919 Polish Minority Treaty quickly became a model for these treaties (Krasner, 1999: 90-92; Pentassuglia, 2002: 27-29).

The Polish Minority Treaty contained a number of provisions, which would be repeated in other such treaties, including:

- Equality with other citizens regarding civil and political rights
- The unrestricted right to use minority languages in private, in commerce, media and public meetings
- The right to establish and run at own expense charitable, social and religious institutions, schools and other educational institutions, with the right to use their own language and to exercise their religion in these institutions
- The right to instruction in minority languages in public primary schools in areas with a “considerable proportion” of speakers of the minority language.
- The right to adequate facilities enabling speakers of minority languages to use their own language before court
- The right to an “equitable share” of public funds provided for charitable, educational and religious purposes (Polish Minority Treaty, 1919).

As will be discussed below, this treaty operated with many of the notions which would be found again in the documents on national minority protection from the Nineties. This includes the notion that linguistic rights could be exercised in areas where the minority constituted a “considerable proportion”, as well as the notion of a right to minority language education. The treaties and the League of Nations in general defined “national minorities”, until then a rarely used term, as synonymous with “racial, religious or linguistic minorities” (Claude, 1969: 16-17). If one substitutes “racial” with “ethnic”, we have the definition used in current minority protection documents such as the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. Interestingly, there was no role for or concept of the kin-state in the system, as the Allies did not advocate bilateral treaties (Claude, 1969: 16-17). Although groups were not legally recognised, some rights were only possible to exercise via minority organisations or associations.

The compliance with the obligations in these treaties was, as mentioned, monitored by the League of Nations or, more specifically, the League Council, which were intended to act as impartial umpires (Claude, 1969: 21). The treaties could not be altered without the consent of the League Council, which

consisted of four (later five and six) permanent members, namely the victors (and later also Germany and China) except the US, and four rotating non-permanent members. Council members could draw attention to non-compliance, and the Council could then decide whether or not to pass on the case to the Permanent Court of International Justice, another League institution which had the judicial competence to make binding decisions and to submit advisory opinions (Claude, 1969: 22).

Non-Council member states and minorities had the right to petition the Secretary General of the League, who would try to induce a friendly settlement by leaving the issue to a Council-appointed ad-hoc committee (Pentassuglia, 2002: 28-29). Only if this did not work, would the case proceed to the League Council and possibly the Permanent Court. As it often was the kin-state which petitioned the League, the issue would often be settled in bilateral fashion with the Council acting as a mediator (Claude, 1969: 22-23).

According to Inis L. Claude (1969), the underlying premise of the League system was that security and justice were correlative and interrelated. According to this view, it is not only possible to protect the minorities and their cultures while avoiding conflict over state territories, but ensuring the former would actually improve the chances of succeeding with the latter. On a similar note the Permanent Court in its 1935 advisory opinion on minority schools in Albania argued that the obligations of the treaties must ensure that minorities were able to live peacefully alongside the majority and cooperate with it, while still preserving their own culture (Pentassuglia, 2002: 28). This touches on some notions that also were also prevalent after the Cold War: namely that minorities are separate entities, who have a right to preserve their own culture, but also that their interaction with the rest of society constitutes an important end.

Nazi Germany's use of the protection of the German minorities in neighbouring countries as excuse for invading these countries meant that the notion of minority protection appeared to be discredited after the Second World War. In its place a new human rights regime was established, which protected individuals rather than groups and was "ethno-blind", which meant that the rights taking into account ethnic, linguistic or national differences between the citizens of a state were not included. Even the 1966 UN International Covenant on Civil and Political Rights from 1966, which did include such

rights, had little impact. Generally, national minority rights figured low on the international agenda until the end of the Cold War.

## **2.2 Minority Protection in Europe after the Cold War**

When the national minorities in Europe resurfaced as an issue at the international level after the end of the Cold War, due to the conflicts in Yugoslavia, no European “regime” or institutionalised discourse existed on the subject<sup>10</sup>. The legal, conceptual or institutional instruments necessary for dealing with this issue were not in place, so any concerted action between the European states, or for that matter the US, the EU or NATO was hard to implement. However, the states soon endeavoured to create a set of instruments, which would define how national minorities should be treated, and bind the states legally to comply with this ideal treatment. This gave the impetus to the establishment of the OSCE Copenhagen Document in 1990 and the OSCE High Commissioner on National Minorities (HCNM) in 1993, and the Council of Europe’s Framework Convention for the Protection of National Minorities in 1995. Nevertheless, the lack of consensus between the states meant that the both the Copenhagen Document and the Framework Convention are rather imprecise on several issues (Benoît-Rohmer, 1996). Their vagueness (probably unintentionally) left the institutions dealing with the national minorities, the HCNM, the Council of Europe and later also the EU, with significant discretionary powers as to how to interpret them and thus also regarding how to respond to issues relating to national minorities.

I will argue that the way in which an organisation reacted to a national minority policy, such as those of Hungary, Romania and Slovakia directed at the Hungarian minorities in Romania and Slovakia, was influenced by its interpretation of the minority-related concepts. It did so because the organisation would have to provide reasons for reacting this way rather than in another, in other words to argue its case. Since the interpretations of some of these concepts were limited by the Copenhagen Document and the Framework Convention (and to a lesser degree documents such as the UN’s Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities) there existed limits to which cases an actor could argue. However, these (often contested) concepts would be further

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<sup>10</sup> In many Western European countries had seen a trend towards more minority rights and territorial autonomy in the Eighties, yet this trend was not reflected on the European level.

defined and specified through their very application.<sup>11</sup> This is important, since a definition of a concept would shape the constitutive rules of action for the states as well as for other organisations.

With this in mind, I will discuss the various institutions which have dealt with national minorities, the texts with which they have had to work, and the main differences and contested concepts in this respect. Later I will turn to the issue of contested concepts, their definition and role in constitutive rules. The focus of this thesis is political as opposed to legal, but, as I will argue, in the case of minority politics, legal arguments are intrinsically bound up with political considerations and consequences.

### **2.2.1 The Organisations**

In the early 90s numerous discussions took place about how to organise collective action of the different European states in order to prevent conflict and great power competition. The wars in Yugoslavia and other ethnic conflicts meant that the issue of national minorities was seen as intrinsic to this conflict prevention. One existing organisation which already had experience in dealing with human rights from a legal perspective was the Council of Europe. The Council of Europe was founded in 1947 to promote democracy, the rule of law and human rights in non-communist Europe. It had already provided the source of one legal framework for the protection of human rights; the European Convention for Human Rights (ECHR). It also monitored whether states complied with the ECHR, and hosted the European Court of Human Rights, which addresses cases concerning the ECHR.

In connection with the focus on national minorities it was suggested that the ECHR should simply have an additional protocol on the rights of members of national minorities added (Benoît-Rohmer, 1996: 36). This way, protection of national minorities could use the existing framework for the protection of human rights, especially the right of all citizens of a signatory state to appeal to the European Court of Human Rights. The additional protocol was drafted by the Parliamentary Assembly of the Council, which consists of parliamentarians delegated from each member state. However, this draft protocol was more than the member states could agree on, and in 1993 it was abandoned (Pentassuglia, 2002: 132). Nevertheless, the draft protocol survived as Parliamentary Recommendation 1201, which will be discussed in more detail below. As a less binding alternative, the Framework Convention on the

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<sup>11</sup> This will be discussed in detail in Chapter 3.

Protection of National Minorities was written by an ad-hoc committee and opened for signatures in 1995. Hungary, Romania and Slovakia all became signatories within a few years. The Advisory Committee on the FCNM would then monitor the states' compliance with the Convention and issue reports on this compliance.

In the Council of Europe, the Committee of Ministers consisting of representatives from the different states has the final decision, but the Parliamentary Assembly nevertheless plays an important role. In relation to the national minorities in the post-communist countries, it has especially played a role concerning the accession of these states. The post-communist states joined the Council of Europe in the early Nineties, and in order to be accepted as members, they had to be approved by the Parliamentary Assembly. The Parliamentary Assembly sent delegations to the countries, who scrutinised the workings of democracy, the rule of law and the respect for human rights, which to a large degree meant national minority rights, in the country. The assessment of the treatment of national minorities constituted a new practice, as this had not been addressed previously. The Parliamentary Assembly then placed certain obligations on the country and recommended the Committee of Ministers to approve the accession. Two to six years later the same delegations again visited the country in order to assess whether it had honoured its commitments.

As Jean E. Manas (1995) and Li-Ann Thio (2003) have argued, the CoE was not intended for conflict prevention or – resolution, and placed the minority issues within the larger goal of fostering democracy and the rule of law. Manas has convincingly argued that while during the Cold War the CoE operated with a republican notion of citizenship that saw non-discrimination rights as the solution to minority problems, this changed with the wars in Yugoslavia (Manas, 1995). The wars, she argues, led the organisation to believe that a multicultural society was the best solution for the minority and most other people, as public life takes place via ethnicity, a view discussed above in Chapter 1. This led to a call for official mechanisms for recognition and protection of minorities, a call which rested on the notions that minority rights frameworks can satisfy all legitimate demands of minorities, and that state opposition to such legitimate demands are illegitimate (Manas, 1995: 122)

Attempts were also made to create a legal structure for the protection of national minorities within the OSCE framework. At the CSCE<sup>12</sup> Conference on the Human Dimension in Copenhagen 1990 an agreement was reached on a set of rights to be conferred on national minorities the states (Benoît-Rohmer, 1996: 24). This agreement was codified in what is known as the Copenhagen Document, which will be discussed below. However, the Declaration was not legally binding, and although a few attempts were made to produce a legally binding version of it, this was abandoned in 1992 in favour of the establishment of the post as High Commissioner for National Minorities (Vermeersch, 2003: 6). This happened simultaneously with the transformation of the Conference for Security and Cooperation in Europe into the permanent Organisation for Security and Cooperation in Europe. The first High Commissioner on National Minorities (HCNM) was the former Dutch diplomat and politician, Max van der Stoep. With a small staff and a mandate open for interpretation on many issues, van der Stoep set out to establish the post as an important actor and institution on the European level when it came to national minorities (Kemp, 2001: 21-24). After his resignation in 2001 (subsequent to having his mandate prolonged once), he was replaced by the Swedish diplomat Rolf Ekéus.

As a part of the OSCE the HCNM was more focused on conflict prevention and the political side of the different national minority issues than the Council of Europe, which tended to focus more on the legal aspects (Vermeersch, 2003: 5-6). However, what was meant by conflict-prevention, how this was best achieved, and its relationship with human and minority rights has been much discussed in the context of the HCNM and the OSCE. According to Gregory Flynn and Henry Farrell, the creation of the office of the HCNM reframed national minority issues as a security issue rather than a human rights issue (Flynn and Farrell, 1999: 525-528). However, according to most experts on the organisation, this did not mean that normative concerns were abandoned, as the violation of the human rights of the minority members were seen as constituting a security problem (Flynn and Farrell, 1999: 525-528; Thio, 2003: 121). OSCE defines it self as operating with a “comprehensive security concept”, which includes human rights including minority rights, democracy, the rule of law, economic stability and the environment (Buchsbaum, 2002). These elements are interrelated; if one is eroded, the others are also threatened. Michael Merlingen and Rausa Ostraskaite (2005), have defined this as making the rights,

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<sup>12</sup> At this time, it was still the *Conference* on Security & Cooperation in Europe without any real supporting bureaucracy, and had not yet turned into the *Organisation* on Security & Cooperation in Europe.

political participation, freedom and general well-being of the individual, including minority members, the reference point of security. Whether the above-mentioned framing of the rights and well-being of minorities as security concerns is due to such normative concerns or the belief that human rights violations would lead to conflict, rather than being a serious problem in itself, is hard to determine. Here it suffices to say that this shift was accompanied by a new approach to handling minority issues, which was quite different from both legal supervision of rights and the third-party mediation attempted by the EU, the UN and the more powerful states in conflicts such as the wars in Yugoslavia. This approach, described as “preventive diplomacy”, aimed at getting involved before the conflict became violent, and focused on altering the attitude of the parties rather than producing settlements (Chigas, McClintock et al., 1996: 29). As a part of these involvements, the HCNM has often been involved in the very policy-making processes (Chigas, McClintock et al., 1996: 49-50).

I argue that the differences between the CoE and the HCNM considering the authority to interpret legal texts was more of a difference of degree than of kind, since the HCNM would often argue on the basis of legal texts, and most CoE decisions were deeply political in character. As will be argued below, decisions with legal backing are intrinsically political. The lack of institutions which could judicially interpret the international standards left the HCNM considerably discretion to interpret, apply and amend rules for minority protection (Chandler, 1999: 62-63).

The HCNM’s task mainly constituted of visiting countries where national minority issues in his eyes could turn problematic, where he would have meetings with representatives from the government and the national minorities, which would be followed up by a written recommendation to the foreign minister of the country (Kemp, 2001: 52-57). The attention of the HCNM was almost solely focused on the post-communist states, whereas he avoided minority questions such as Northern Ireland, Corsica and the Basque Country. Interestingly, the HCNM has never used the instrument of “early warning”, that is publicly calling the attention of the OSCE to an emerging conflict. This is interesting given that this instrument was envisioned in his mandate. On the other hand, he has used policy recommendations as an instrument, although this was not envisioned in his mandate (Chigas, McClintock et al., 1996: 51-54).

A third relevant institution is the EU. Although the EU did not try to create any legal standards or other frameworks for the protection of national minorities, it nevertheless played an important role in convincing states in Central and Eastern Europe to change their minority policies. Already during the beginning of the wars in Yugoslavia it had made recognition conditional upon legal protection of minorities beyond basic human rights provisions, although this played little role in the course of events (Caplan, 2002: 167-170). At its summit in Copenhagen in 1993, the conditions, the so-called Copenhagen criteria, for EU accession were agreed upon. As something new, political criteria were now explicitly included, including “respect for and protection of minorities” (Council of the European Union, 1993). The assessment of the degree of compliance with this criterion would be included in the Opinions on applications of the different applicant states in 1997, and from then on in the annual Regular Reports on each country’s progress towards accession. Each Regular Report on a state would be written by the political desk officer of the unit (placed in Brussels and known as the country desk) dealing with the accession of that particular state.

### **2.2.2 The Documents**

The international adoption of different documents aimed to protect national minorities in Europe started before the end of the Cold War with Article 27 of the UN International Covenant on Civil and Political Rights from 1966. This stated that:

“In those States in which ethnic, religious or linguistic minorities, persons belonging to such minorities shall not be denied the right, in community with the other members of the group, to enjoy their own culture, to profess and practice their own religion, or to use their own language”

Importantly, it is the “*persons* belonging to the minority”, not the minority itself, which is the bearer of this right. This formulation has been repeated in subsequent declarations, charters and conventions, and is important in the discussion of collective and individual rights, which was very heated during the drafting of the Covenant and other national minority protection instruments (Benoît-Rohmer, 1996: 19-21; Pentassuglia, 2002: 100). This is an issue to which I will return later. The Covenant has since been criticised for being too imprecise, a reflection of the disagreements between the states during the drafting, and for more or less leaving it up to the states themselves to declare whether they have any

minorities (Pentassuglia, 2002: 98-99). The term national minority is not used, as it only became common in international texts in the Nineties. The Covenant is legally binding, and compliance with it is monitored by the Human Rights Committee, a committee of independent experts which is nonetheless of relatively little importance for this thesis. According to Will Kymlicka (2004a), Article 27 is too weak as it only guarantees the negative right to non-interference from the state, rather than the positive right to assistance from the state to the minority culture or language.

As an attempt to specify and remedy the protection provided in Article 27 on the global level, in 1992 the UN General Assembly adopted the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. Unlike the Covenant, it is not legally binding, in the sense that compliance can not be enforced, but it is still important as several states have obliged themselves to follow it (Benoît-Rohmer, 1996: 22-24). Furthermore, it can be used as an instrument to interpret the (legally-binding) Covenant as well as be incorporated with a binding status into other treaties, as was the case with the 1995 Treaty on Good Neighbourliness and Friendly Cooperation between Hungary and Slovakia (Pentassuglia, 2002: 114). Although not revolutionary, it goes further in specifying the obligations of states towards the minorities than the Covenant did. Thus it particularly emphasises that minority protection involves positive action by the state, and not just negative restraint on action, as well as specifies fields in which minority protection is particularly relevant, such as education (Benoît-Rohmer, 1996: 23).

On the European level, the attempts to build a system for the protection of minorities began with the CSCE Copenhagen Document of 1990. As was the case for the other documents, great disagreements among the states hindered a clearly defined set of instruments, and left many crucial points vague and open interpretation (Benoît-Rohmer, 1996: 24-25). Thus, the Declaration talks about “creating the conditions for promoting the minority identity” (paragraph 33) and “wherever possible and necessary”, “in conformity with national legislation”, and in this way leaves space for interpretation in each individual situation. Nevertheless, it contains several important developments compared to previous minority protection texts. Like the UN Declaration two years later, it stresses the importance of positive action by the states, which no previous internationally adopted document had done.

Furthermore, the Declaration grants *persons* belonging to national minorities several rights, including among others the right to:

- use their mother tongue freely in private and in public,
- establish and maintain their own educational, cultural and religious institutions, organisations and associations,
- establish and maintain cross-frontier contacts with citizens of other states with whom they have a common ethnic or national origin, cultural heritage or religious beliefs,
- disseminate, have access to and exchange information in their mother tongue (paragraph 32).

As can be seen, linguistic rights play have been emphasised among the rights of national minorities.

In addition to these and other rights, the Declaration also mentions various instruments for protecting a national minority and its identity. This includes a commitment to cooperation between states, and, more controversially, mentions territorial autonomy as a useful instrument in some cases (paragraph 35). As some states, especially France, Turkey, Romania, Bulgaria and Greece,<sup>13</sup> were deeply sceptical about recognising minorities and any kind of territorial autonomy (since they thought it would threaten territorial integrity), it was very difficult to agree on a more explicit recommendation. Furthermore, the respect for the territorial integrity of the state was also stressed (Paragraph 37). As mentioned before, the Copenhagen Document is not legally binding, but has been incorporated into other treaties, such as the bilateral treaties between Hungary and Slovakia and between Hungary and Romania (Gál, 1999: 17).

The diversity of opinions among the European states on national minorities and how to handle them has meant that texts drafted by representatives of the states end up rather vague, whereas those drafted by institutions without direct state involvement often end up with less effect, as is the case with Recommendation 1201. The Recommendation, drafted by the Parliamentary Assembly of the Council

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<sup>13</sup> All of whom have minorities, whom they are reluctant to recognise

of Europe in 1993, but rejected by the members states altogether the same year, probably went further than any other internationally adopted text on a number of issues.

The Recommendation actually included a definition of a national minority, which previous texts had not done (Benoît-Rohmer, 1996: 12-14). This is important, as it meant that it was no longer simply up to the state to define whether a group residing on its territory constitutes a national minority or not. Rather the definition would make it possible for an international institution or representatives of the group itself to bring the claim that they constitute a national minority to a domestic court or to the European Court of Human Rights. However, this is not possible today, as Recommendation 1201 was not included in the European Human Rights Convention. It was not even, as in the Copenhagen Document, adopted by the states, which then would have been bound by their own commitments to the text. On the other hand the Parliamentary Assembly does consider itself bound by the Recommendation in its assessments of the human rights situation in prospective or newly admitted member states (Benoît-Rohmer, 1996: 38). And it has also been incorporated into the bilateral treaties between Hungary and Romania and Hungary and Slovakia.

In addition to the definition of minorities, the Recommendation also went further than the other texts in making territorial autonomy (in the areas where a minority constitutes a majority) a right (Article 11), and not just a possible instrument for the state. Furthermore, it also recognised the right to use first and family names in a minority language (Article 7.1), as well as the right to have place names demarcated on signs and inscriptions in the minority language (Article 7.4). This is something new compared to the previous documents.

After the problems with the Recommendation, the Council of Europe Committee of Ministers had the Framework Convention on the Protection of National Minorities drafted (FCNM), which was opened for signatures in 1995, and came into force in 1998. Today it is widely considered the most important international text concerning the protection of national minorities in Europe. The fact that it is a framework convention means that it designates a set of principles, which have to be clarified and realised at the domestic level (Pentassuglia, 2002: 132). Thus, the provisions in the FCNM do not have direct effect when the Convention is signed, but have to be implemented by law. In other words, the

states commit themselves to some relatively elaborate “programme provisions”, which have to form the basis of various laws subsequently implemented. This leaves considerable discretion to the states concerning the concrete shape of the legislation protecting the national minorities. Yet the Council of Europe would monitor the implementation of the FCNM and have so far issued two sets of reports covering all signatory countries, with the second set having been issued in 2006, ie. after the period covered here. Although the FCNM, especially in the beginning, was criticised for only providing a minimum standard, it has also been argued that this provides increased flexibility and could be used as an argument against the states in order to make them go further than the FCNM suggested.

On several accounts the FCNM does not go as far as Recommendation 1201. It does not include a definition of national minorities, but leaves it up to the states to define which national minorities they have. Interestingly, rights are not granted to the members of the minorities or the minorities themselves, but instead are obligations placed on the states, which means that national minorities cannot use the FCNM in international or national courts (Benoît-Rohmer, 1996: 42-44). Thus, whereas the rights of an individual or a group usually have a corresponding set of duties placed on the state, and vice versa, in the case of the FCNM only state duties exist. On the other hand, the FCNM also drew on Recommendation 1201 and included various national minority “rights”, which were not common standard. This includes the right to use personal names in the minority language, to set up minority language schools, to set up topographical information in the minority language, as well as to “provide adequate opportunities for teacher training and access to textbooks” (Article 11, 12 & 13). It also constituted a break by referring solely to national minorities and not to “ethnic (sometimes “ethnic or national”, religious, or linguistic minorities”, a somehow less controversial notion (Benoît-Rohmer, 1996: 41). Furthermore, the FCNM, like the Copenhagen Document, the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities and Recommendation 1201, stresses the right to participate in public affairs, a right open to very different interpretations, and one to which I will return to later.

Another document on national minorities worth mentioning is the European Charter for Regional and Minority Languages, which does not aim to protect national minorities as such, but only minority languages. However, as all the national minority protection texts have a linguistic dimension, the

Charter is worth mentioning. It was created in 1992 and came into force in 1998. Listing different linguistic rights within fields such as education, administration and media on a “a la carte” menu, from which each signatory state can choose a minimum of 35 rights it will implement. Although it has not thus far proven extremely influential, it has nevertheless been used as a point of reference in various arguments.

Finally, the OSCE Hague, Oslo and Lund Recommendations, addressing respectively education rights, linguistic rights and effective participation, also deserve mention. Although they were created mainly as guidelines for the OSCE member states, it has not been possible for states to commit to them, either politically or legally, yet they have been relevant as they provided a normative framework for the HCNM and possibly also for other organisations. The recommendations were created at the request of the HCNM, who argued that he needed more precise guidelines, and therefore brought a range of experts on the subjects together. The experts based the recommendations on existing documents, predominantly those discussed above.

Starting with the Hague Recommendations on the Educational Rights of National Minorities (1996), the case was made for many of the above-mentioned educational rights, such as the right to receive education in the national minority language. Interestingly, it was emphasised that both state and minority languages should be taught, and the proportion of the classes taught in the state language should gradually increase over the years. The Oslo Recommendations (1998) dealt with the important issue of linguistic rights. Here the right to official recognition of personal and topographical names in the minority language, as well as the right to media and communication with public institutions in the minority language, were reiterated.

The Lund Recommendations (1999) on the effective participation of national minorities in public life differed from the other two sets of recommendations by being based on the 1991 Report of the CSCE (Geneva) Meeting of Experts on National Minorities, rather than the above-mentioned documents on national minority protection. The Geneva Report, unlike the above-mentioned documents but like OSCE Recommendations discussed here, is not something to which states can commit themselves either politically or legally. Thus, it is harder to argue that the Lund Recommendations represent

established standards. The Recommendations go quite far in recommending that minorities should participate in decision-making at national, regional and local level, as well as having the possibility of self-governance in the shape of territorial or cultural autonomy. Both these recommendations came with the qualifications that whether they applied depended on the context, and as they were not rights, this meant that the HCNM would have significant discretion in deciding when and to what degree they applied.

### 2.2.3 Contested Concepts and Issues

As can be seen, different themes and concepts have been the subject of contestation when trying to create a framework for protecting the national minorities in Europe. Already the idea of protecting national minorities rests on the claims that such a thing as national minorities exist, and that they deserve protection. These claims have not been universally accepted, for instance it has often been argued that in republican societies such as France with its *jus soli*, everyone is French and hence the existence of national minorities is an impossibility. Furthermore, even though many people accept the notion of national minorities, they may still argue that protecting them is the last thing the state should do, rather it should do everything to integrate them in society in order to avoid future conflicts. This is, it is argued, how the nation-state was built in the first place in Western Europe, and by forcing the states in Central and Eastern Europe to protect their national minorities, the process of nation-state formation is denied to them. However, here I will mainly look at the discussions *within* the national minority protection regime, as practically all European states subscribe at least officially to the idea of national minority protection, although they may deny the existence of national minorities on their own territory.

Within this framework, the meaning of ‘national minority’ has been discussed. Whilst the majority within the academic literature uses this term in the sense of a group belonging to a wider nation, different from the dominant nation in the state in which they reside and with its own kin-state<sup>14</sup>, dissident voices exist (Benoît-Rohmer, 1996: 14-15). In the tradition of republican citizenship, espoused especially by France, the adjective *national* denotes the relationship with the state, in other words, that the minority consists of citizens of the state as opposed to, for instance, immigrants. The

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<sup>14</sup> A kin-state is not regarded as a requirement in legal documents such as Recommendation 1201

other view, promoted especially by Germany and Hungary, rests on the notion of the nation as a linguistic and cultural community different from that of the state.

As mentioned before, it was only in the Nineties that the notion “*national* minorities” gained acceptance; previously international documents on minority protection had used the notion of “ethnic, religious or linguistic minorities”, sometimes adding “national” to these qualifiers. This changed who was covered; whereas most national minorities are also ethnic, linguistic or (sometimes) religious minorities, many ethnic, linguistic or religious minorities are not national minorities in the sense of “having” a nation-state beyond the borders of the state they live in. However, the older documents, such as the Article 27 of the International Covenant on Civil and Political Rights are still valid and used. Furthermore, these concepts are also often contested, for instance it is hard to define exactly what an ethnic minority is, and how ethnic identity can be distinguished from for instance regional identities. Nevertheless, many have preferred to talk about ethnic minorities rather than national minorities in order to include groups such as the Roma. The term “ethnic” often seems to imply that the group has less of a political or territorial dimension (see for instance Malloy, 2005: 23). Others have been reluctant to use it in order to avoid framing specific minorities as national, thus in their view granting them a status different from the “state-nation”.

As only Recommendation 1201 gives a definition of what is meant by “national minority”, this issue still remains open for interpretation. However, the focus on minorities with a nation-state “outside” their resident state, indicates a preoccupation with minority questions which might turn into a conflict. Many of the documents from the Nineties also emphasise the role of national minority protection in preventing ethnic conflict, besides stressing that the national minorities have a right to protection. This touches an important issue, which at times has constituted a dilemma for the European institutions, and which relates back to the distinction between justice and security theories in Chapter 1. If the purpose of the European regime for minority protection was to prevent conflict rather than to help the minorities as such, would there not be times where peace was better protected by ignoring the plight of the minorities? Most of the proponents of the national minority protection regime argued that a just system guaranteeing the protection of national minorities would be the best way to prevent conflicts, but others were less sure. To a large degree it was also a question of priorities and scarce resources: how much

attention should be given to those minorities which could not cause any kind of conflict? And which aspects of minority protection were to be given most attention?

One aspect where the dilemma between securing justice for the minority and preventing conflict surfaced was the issue of territorial autonomy (Benoît-Rohmer, 1996: 50). The arguments for and against territorial autonomy have been discussed in Chapter 1, here it suffices to say that it has only been included in Recommendation 1201, the Copenhagen Declaration and the Lund Recommendation, and in the latter only as a possible option. The reason for this has been the impossibility of getting states to agree on a right to, or even a recommendation of, territorial autonomy, as states with large minorities such as Turkey and Romania feared this could threaten their territorial integrity.

If territorial autonomy was deemed too dangerous and too unacceptable for the states with significant national minorities, other kinds of autonomy existed. During the Nineties, Hungary in particular introduced non-territorial kinds of autonomy. This meant that the members of the national minority would elect a council, which would have the authority over cultural public services of relevance to the minority, such as libraries, and often also over minority language schools (this was sometimes referred to as educational autonomy). This was at times suggested as a solution, but was also often criticised by both representatives of the minorities, who often found it insufficient, and by the states in which the minorities lived, who found that it prevented integration of the minorities into society.

All the international documents emphasised that the integration of the minority into society was desirable. But what exactly was meant by integration was somewhat undefined, and the same was also true about how it was to be reconciled with the other principles that all texts seemed to agree on, namely the preservation of and right to the development of the minority identity, including the language, and the right to equal treatment of individuals (Benoît-Rohmer, 1996). Could not the right to preserve the minority language by having it taught in schools damage the teaching of the majority language, so that minority children would not learn it sufficiently to be fully integrated in society? And if integration is taken to mean more than simply functional participation in economic and practical life, does the preservation and development of the minority identity not mean that the minority members will not be integrated, as they will focus solely on their own culture? These are difficult questions,

proving that according to perspective, the concepts in the documents can be interpreted differently, and these interpretations lead to very different conclusions.

A related concept is the concept of “effective participation in public life”. The subject of Article 15 of the FCNM and of the Lund Recommendation, this is one of the vaguest, yet also potentially influential concepts in the literature. In 1996, the CoE Venice Commission concluded that Article 11 of Recommendation 1201 did not establish a right to territorial autonomy, but encouraged states to “enable persons belonging to national minorities to participate effectively in decision-making concerning the regions in which they live or in matters affecting them” (Deets, 2006b: 436-437). With this, the focus started to move from self-determination to effective participation. According to Will Kymlicka (2004a), this right can be interpreted in three different ways. First, as a right not to face discrimination, e.g. when running for office (Kymlicka, 2004a: 18-20). Second, as also including a right to be represented, for instance by having seats in Parliament designated for minority representatives. Third, as a right to participation which has an effect, something which is achieved by power-sharing and/or self-government in the shape of autonomy. The last interpretation has been unpopular among states, as it seems to amount to a right to internal self-determination similar to those discussed in Chapter 1.

Another highly contested question was the issue of collective versus individual rights. Much has been written on this, also in the context of minority rights, and there seems to be relatively little agreement on where to draw the boundary, as can also be seen from the discussion in Chapter 1 (Donnelly, 2003: 23-25; Kovacs, 2000: 33-39; Pentassuglia, 2002: 47-49). This discussion is important for the protection of national minorities, as there has been a marked hostility towards collective rights in many European states, especially Romania and Slovakia (Kovacs, 2000: 45). As mentioned, most of the international documents on minority protection framed many minority rights as being exercisable “in community with other members of the same group”. The fundamental question is who is the beneficiary of the right, the minority as a group or the individual members of the minority? Contrarily, there is little doubt that the duty-holders (those who have the duty to respect the rights) in the texts are the states (Pentassuglia, 2002: 41).

On the more concrete level, the texts also diverge on which rights to grant the minorities. Whereas some (the FCNM and the Copenhagen Document) grant the minority the right to communicate with official institutions and put up signs with topographical information in the minority language where a substantial number of its members live, others do not. What constitutes a substantial number is not clarified, in other words, there is no clear threshold, designating when and where such rights should be implemented (Benoît-Rohmer, 1996: 16-18). Education is also a contested issue, as all texts mention the right to receive education in the mother tongue, but do not seem to agree on whether this includes the right to set up minority language schools or not. There is a potential conflict between this right and the often stated (in the texts as well as elsewhere) need to make sure that the minority master the state language.

### 3 Contested Concepts and their Role in Arguments- a Methodological Framework

The international documents on minority protection have provided the framework within which the three organisations would have to operate. However, this was a framework which was quite incoherent at times, and which left the organisations significant leeway when it came to choosing how to react to a minority policy. In order for this reaction to be effective, it would have to be based on a combination of argumentation and symbolic power. I will argue that in the argumentation different contested concepts would be *conceptualised*, that is specific understandings or conceptions of such concepts would be employed, but only thanks to the symbolic power of the organisations could these conceptualisations be authoritative.

In order to gain a deeper understanding of this process, I will first look at how reasoning and arguments form an intrinsic part of politics. Following William Connolly (1983) it will be maintained that a meaningful political argument depends on the use of concepts in ways that are commonly acceptable and which can be justified. These concepts can take the form of implicit warrants or claims, necessary in order to arrive at the conclusion of the argument. How a concept can be applied depends on what interpretations (or conceptualisations as they will be referred to here) of it are dominant at a particular time, thus allowing<sup>15</sup> for certain actions but not others. However, the structural limitations for action are not equally rigid for all actors. Following Pierre Bourdieu (1990; 1991), it will be asserted that some actors have the power to introduce new concepts and define hegemonic interpretations of existing concepts, which afterwards form part of the constitutive rules of action for themselves as well as for other actors. It will be argued that these interpretations have taken place among others in their concrete application in the responses to the Hungarian minority policies. This will be followed by a more methodological discussion of how Toulmin's work on warrants will be applied in the analysis, and a re-discussion of the research questions.

#### 3.1.1 Why Arguments Matter

Being able to argue one's case can be necessary in everyday life as well as in domestic and international politics. Although some of the theories discussed here have been developed on the basis of personal, everyday communication, while others have been developed on the basis of interaction

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<sup>15</sup> Both in the sense of making the action intelligible (constitutive rule) and making it acceptable (regulative rule)

between actors on the international level, I will argue that their theoretical arguments are complementary. Here the term argument will be used in a wide sense, namely to describe the reasons which are or can be provided in order to justify an assertion (Toulmin, 2003: 12). Thus an argument does not necessarily have two sides, that is, involve two contradicting opinions.

Whenever an assertion of this sort is made, the speaker is committed to it, and to providing reasons for it. As Frank Schimmelfennig (2001) has argued in the case of EU enlargement, actors are “obliged to justify their political goals on the grounds of the institutionalised identity, values and norms” in order for it to be considered legitimate. If these justificatory arguments differ from the action they are supposed to justify, the actor can be shamed by other actors, but can again use “rhetorical action” to avoid this by reinterpreting values or bringing competing values in, something I will return to below. As Schimmelfennig convincingly argues, it does not matter for the analysis of rhetorical arguments what the “true motivations” of an actor are, since actors will choose their arguments strategically (that is, with the expected reaction in mind), and will affect others, no matter whether the speaker believes in them or not (Schimmelfennig, 2001: 66). Following Quentin Skinner (2002), it can be said that this regards what the author intended to do *in* writing, for instance warning, praising, etc, but not what the motives *for* writing this is. In other words, what is interesting is which kind of action is being carried out, not why, for instance an organisation approves of a policy in its recommendation, and not whether the leaders of the organisation actually think that this policy is commendable (Skinner, 2002: 98). That Schimmelfennig speaks of *rhetorical action* demonstrates that it is *rhetorical*, i.e. about “the faculty of discovering the possible means of persuasion” (Aristotle, 1982: 1.2.1), and that it is an *action*, i.e. that something is done by coming up with these arguments.

As John Austin (1962) has emphasised, a sentence has to be meaningful in order to perform an action, and whether it is meaningful to a large degree depends on the context and the constitutive rules of communication. However, I will argue that Austin to some degree ignored how power relations form part of this context and grant certain speakers more possibilities than others when it comes to arguing. This criticism can be found in Bourdieu’s criticism of the speech act theory: The judge declaring: “I find you guilty” can only successfully do so because he is invested with the necessary powers by institutions such as the judiciary and the state (Bourdieu, 1991: 75; Bourdieu and Wacquant, 1992: 75).

Thus, the judge declaring: “I promise you are guilty” is uttering a sentence without force (according to the constitutive rules), but so is the court janitor saying “I find you guilty” (due to the context of institutional power). Although Searle and Austin and their followers acknowledged the power of context, they lack overall theoretical solutions concerning what it is that makes some positions more capable of certain speech acts than others.

As James Bohman (1999) has pointed out, the symbolic power of a person, including a judge, is never sufficient in itself. If a judge cannot come up with an argument as to why the defendant is guilty his decision will be declared void (Bohmann, 1999: 137-138). This brings us back to where we started, namely to reasons. I will argue that arguments and symbolic power are complementary, so that the more symbolic power that is vested in an actor, the less arguments it will need. Consider the example of a family being told that their newly bought house is not sufficiently secured against earthquakes. An employee at the local office for disaster prevention can simply tell them to have improvements done under the threat of a fine. An engineer from a private company will be listened to, but will generally need to have more convincing reasons if his advice is to be followed, and such reasons will be viewed with more suspicion if his company offers these improvements than if they do not (which brings us to the issue of neutrality, which will be discussed below). Finally, a random person passing by will often be warded off unless he produces extremely convincing arguments or a visiting card identifying him as Dr. Skjälrv, Professor of Seismology.

Altogether it can be said that in order for an assertion to be *acceptable* (although not necessarily universally *accepted*) it has to be meaningful, i.e. correspond with the constitutive rules, be made by an actor endowed with the powers to do so in the specific context, and if necessary be backed up by reasons. These are the criteria for a successful assertion.<sup>16</sup> Consequently, arguing and power are interwoven, and arguing takes place within these structures, and it is precisely the structures that determine who can argue what at which time. In the following, I will firstly go into depth with the issue

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<sup>16</sup> It is important to stress, that the notion of arguing used here is very different from the Habermasian notion of arguing as something happening outside of the structures of power, which has been promoted within International Relations by, among others, Thomas Risse. Risse, T. (2000). ""Let's argue!": communicative action in world politics." International Organisation 54(1): 1-39..

of arguments and their use of concepts and what this means for the success of an argument, and then secondly consider the issue of symbolic power.

### 3.1.2 Arguments, Warrants and Contested Concepts

When we talk about what makes a successful argument, it is important to look at the finer structure of that argument. In this respect, Stephen Toulmin's seminal work "The Uses of Argument" (Toulmin, 2003) proves very helpful. Toulmin argued that in order to arrive at an argued assertion developed on the basis of concrete data that everybody agrees on, the person putting forward such assertion will need to employ one or more general hypothetical statement to authorise this step. Toulmin refers to these statements as warrants (Toulmin, 2003: 91-92). His analysis can be illustrated by the example that: "Paul is born in Lyon (Data), so he is a French citizen (Conclusion)", the warrant being: "Since people born in Lyon are French citizens<sup>17</sup>". Warrants are hence the rules for moving from undisputable facts about particular cases to conclusions about them by the use of general assertions, which mainly are referred to implicitly.

Toulmin originally wrote within the tradition of logic, but has been adopted by scholars from the traditions of communication and rhetoric, an appropriation he himself approved of (Toulmin, 2003: vii-ix). Of key interest here is Toulmin's notion of warrants as general, hypothetical statements, certifying that similar assertions can be made in similar cases (Toulmin, 2003: 92). That they are general does not mean that they always are the case. The important aspect of Toulmin's theory is the notion that an argument consists of both undisputed facts/data and more abstract claims about the world, namely the warrants. It is important to stress that in real life these arguments are often more implicit, which is important for the analysis and will be discussed below.

I will argue that a warrant can concern how we classify a subject, the causal consequences of an action or the definition of a subject. In this respect William Connolly's (1983) notion of essentially contested concepts is instructive, since these can act as warrants or form part of a warrant. An essentially contested concept is a concept whose criteria for application cannot be agreed upon, but which depends upon differing normative points of view (Connolly, 1983: 10-29). An instructive example is

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<sup>17</sup> Obviously there can be exceptions to this example, but they are not relevant at this stage.

democracy; for some people the criterion for its application is effective and equal participation by all citizens in the ruling of the state, while for others its criteria are mechanisms ensuring the personal freedom of the individual. Hence differences arise regarding which countries to include under the heading “democracies”, and these differences reflect a disagreement between two normative points: whether individual freedom or political equality is the supreme good. This means that for each normative point of view regarding a range of criteria exists for its application, and this combination of points of view and criteria together will be referred to as one specific conceptualisation of the concept. Different conceptualisations of a concept then lead to different applications of the concept when it comes to defining situations or entities. I will use the term warrant to refer to the actual employment of one possible interpretation of a concept in an argument.

The conceptualisations of contested concepts clustered around the concept of ‘national minority policy’ in this way have been employed as warrants in the evaluations of the Hungarian minority policies of the governments of the three countries. In the way the terms are used here, a minority right can be a contested concept, such as the right to education in the minority language. These contested concepts may again build on other conceptualisations, such as the conceptualisation of national minorities as being defined by language. To return to the earlier discussion, it is an implicit warrant that language is an important aspect of the Hungarian minority. Warrants and conceptualisations are thus not the same, but a specific conceptualisation can be used as a warrant.

Concepts and conceptualisations never or rarely stand alone, but tend to make constellations constitutive of a discipline or a domain (Ball, 1988: 11; Farr, 1989: 33). I will argue that this also is the case for the domain of national minorities. And that in the case of this thesis, the conceptualisations seem to form a network-like structure with the most basic conceptualisations, such as those conceptualising the nature of the national minorities, at the centre, and the more specific conceptualisations of for instance marginal rights at the periphery. Often, a specific conceptualisation would depend on certain conceptualisations of more basic concepts. Thus, the conceptualisation of minority participation as being about having specific representatives in the Council for National Minorities rests on the conceptualisations of the Hungarian minority as being one unitary group with a specific set of interests, and of minority participation as being something positive. The latter involves

what Connolly termed the concept's normative point, the former the criteria for its application. However, it is a mistake to see the more basic conceptualisations as being the same as the more specific conceptualisations' normative point or criteria. Furthermore, some conceptualisations, such as those relating to causality, may connect several of the more specific conceptualisations.

Thus, all political arguments involve contested concepts of some kind.<sup>18</sup> This means that the argumentation process is about using the concepts in an understanding acceptable to the audience and especially its powerful members, and/or having the symbolic power to having one's understanding of the concept accepted. This does not mean that argumentation does not matter. In relation to this, Connolly provides insight into why some warrants<sup>19</sup> are more acceptable than others in political contexts, rather than simply referring to them as "general". Concepts can both constrain and enable action. As Connolly has pointed out, the language of politics is an institutionalised structure of meaning that channels political thought and action in certain directions, and not a neutral medium (Ball, 1988: 5-9; Connolly, 1983: 1). This means that each concept, or rather each understanding of a concept, operates as a constitutive rule making certain actions possible, in much the way that the notion of sovereignty makes the practices of modern inter-state relations possible. Concepts are used to describe the world, thus we repeatedly define objects in terms of which class of objects they belong to, or which concept describes them the best. This way the understanding of a concept held by the organisations in question will have shaped an organisation's response to the Hungarian minority policy of the Hungarian, Romanian or Slovak government.

When a conceptualisation is used to describe a situation, it can be said to "frame" the situation, or to define it in a particular way drawing attention to certain aspects of it (Goffman, 1986: 8-11). Frame analysis, as established by Erving Goffman (1986), is the analysis of how frames are applied to situations and the consequences of these framings. As Murray Edelman (1988) has argued, the uses of specific terms, or as I would argue, concepts, to frame a situation are strategies "for strengthening or

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<sup>18</sup> There is some disagreement concerning whether all political concepts are inherently contestable, or if the contestability can be "solved" one way or another (see Finlayson, A. (2004). "Political Science, Political Ideas and Rhetoric." Economy and Society 33(4): 528-549 for an example of the former view, and Birch, A. H. (1993). The concepts and theories of modern democracy. London ; New York, Routledge., for the latter).

<sup>19</sup> Connolly does not use the word "warrant" as such, but I will argue that there are great affinities between the theories.

undermining specific courses of action and for particular ideologies”. Strategies in this sense can be deliberate as well as unrecognised by the actor (Edelman, 1988: 11). Thus, when an actor frames the Hungarian minority for instance in terms of oppression, this framing will support arguments for granting them further rights. However, as discussed above concerning rhetorical action, according to Skinner from the text it is only possible to analyse what is being done *in* writing or framing the situation this way, not what the motives are for doing so, or, in other words whether or not this was a deliberate strategy (Skinner, 2002: 98). Here, the intention is to look at how conceptualisations were used in framings as parts of arguments for specific Hungarian minority policies. Depending on the conceptualisation used to frame a situation, different types of policies directed at the Hungarian minority would be constituted as acceptable, thus defining both what was considered acceptable as well as what was considered meaningful behaviour (on acceptability and meaning of behaviour, see Barnett and Finnemore, 2004: 32-33).

Here it is important to explain the distinction between constitutive and regulative rules. Constitutive rules define the kinds of actions that are possible and their meaning (Searle, 1969: 33-35). Using football as an example, one of its constitutive rules is that “a victory is when one team has scored more goals than the other at the end of the game”. This has to be separated from regulative rules, which regulate the behaviour made possible by the constitutive rules. If we again use football as an example, a regulative rule is that “the ball has to be thrown in if it has been outside the field”. Regulative rules are rules in the sense that the word “rule” is usually used in everyday language, whereas constitutive rules are of fundamental importance, since they define the very nature of the game. Hence it is possible, without changing football itself, to change the regulative rules and make four rather than three substitutions the maximum in a game. However, it is not possible to change, for instance, the definition of victory, so that the team first committing more than twenty fouls is the victor, without altering the game so that it is no longer football. Actions can transgress regulative rules and consequently be declared illegal or illegitimate, but actions not covered by constitutive rules are not condemned or punished, but simply considered meaningless. Any football team stopping a match after thirty minutes and declaring themselves victorious after committing twenty fouls will not only be considered to have acted nonsensically, but will also lose the game.

Thus, new concepts mean new practices, new institutions, new decisions (whether to engage in the practices or not) and new ways of evaluating practices, for instance when framing them (Connolly, 1983: 36-37). In this way the introduction of national minority rights on the international scene in the nineties made policies protecting national minorities possible, opened up areas of action for institutions such as the OSCE High Commissioner on National Minorities, and made it possible for states to decide whether to implement such policies or not, and to be condemned if not. If one word or phrase is adopted to describe a set of practices, and this will often mean that the idea behind the practices becomes more sharply defined as well as widely understood, then the new notion will to a large extent reconstitute the action it is describing (Connolly, 1983: 186-187). For example, the term “consociationalism” substituted a range of different terms for the various arrangements we today group together under the heading “consociationalism”.

Thus it can be argued that the different political concepts available for a given situation limit which reasons can be used, and thus also limit the assertions that can be made when framing a situation. Or, in other words, the choice of actions (in which an actor on the international scene can engage) depends on the political vocabulary available, since it will not be possible to justify actions unless concepts exist that can make such a justification meaningful. Likewise, if an actor is criticising or appraising the actions of another actor, as when the three organisations reacted to the Hungarian minority policies of the three states (on International Organisations' evaluation of other actors, see Barnett and Finnemore, 2004: 18-20). The rules of language are thus also rules of international politics. These rules can be both regulative, since the normative dimension of a concept will mean that certain behaviours will be condemned and others will not, as well as constitutive, since certain concepts only will make some actions meaningful and justifiable, while they leave others meaningless and consequently unjustifiable (Connolly, 1983: 6-7).<sup>20</sup> It is important to stress that this is not a causal, but a constitutive relationship. On the other hand, warrants can be about causal relationships, as will be discussed below.

According to this view, actors, including the ones discussed here, are not free to choose from all possible courses of action. On the other hand, the actors are not as constrained as it might seem. Not

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<sup>20</sup> In the literal sense: not possible to justify, as opposed to the normal sense: morally wrong. That it is not possible to justify the action is because there is no language for this justification.

only is a range of concepts available, but the existence of different conceptualisations means that there is more than one way to employ a given concept. Not surprisingly, different audiences often prefer different understandings of the same concept: the concept of minority rights, for example generates different understandings among different European states and among different groups within the states. Furthermore, and possibly most importantly, there is also the possibility for an actor to develop new concepts or new understandings of existing concepts. However, not every actor has the same capacity to do this. This depends on symbolic power and authority vested in the actor.

### **3.1.3 The Power to Conceptualise**

Concepts enable and constrain action, but in different ways for different actors. It would be a mistake to simply see the actors as rationally choosing whichever concept will allow the actions they intend to undertake. Rather, certain concepts and certain understandings of concepts have greater affinity with the views and beliefs of certain actors.

This way each actor holds (intersubjective) beliefs about the world, which can be more or less normative, but are to a certain degree shaped by the concepts available (Connolly, 1983: 2; Crawford, 2001: 39-49). These beliefs will shape the actions and how the actor would prefer to argue for them, including which warrants would be used in these arguments (Skinner, 1989: 6-7). Returning to Bourdieu and his works on symbolic power, we find a theoretical framework that is useful for understanding the relationships between the different actors. Although Bourdieu's works were based on French society, some of his findings have great relevance for other societies as well as for the international society.

Symbolic power, according to Bourdieu, is the power to define how the world should be interpreted and to impose these interpretations on others (Bourdieu, 1990: 133-135). An actor's ability to use symbolic power depends on his degree of symbolic capital, (i.e. the recognition he enjoys from other actors) as well as upon how close his particular interpretation is to social reality (Bourdieu, 1990: 137-138). Although the former element is the most interesting in this context, the latter also sets clear limitations on which arguments can be used, and moreover illustrates how events can undermine symbolic power as well as arguments. An actor's symbolic capital depends on the degree to which it is

recognised or authorised as an actor who is in some way qualified to speak on the subject and define it, just as the judge is recognised as having the ability to declare a person guilty, or a university professor is recognised as being qualified to talk about what the international system “really is like” (Harker, Mahar et al., 1990: 13).

We also might add to this that the degree of institutionalisation of the symbolic power also matters in this respect, so that an actor with a clearly institutionalised social role can exercise significant symbolic power within the confinement of this role. For instance, if we look at the difference in symbolic power when it comes to the field of national minorities, the HCNM had more power to interpret the events than the EU, due to his mandate as High Commissioner on National Minorities. Another aspect that also played a role was the independence of the HCNM with regard to other political power games. Since the HCNM’s role in European politics is restricted to minority politics, it was difficult to accuse him of having (personal) interests which determined his stance on a minority issue.<sup>21</sup> As Thomas Risse (2000) has argued, non-state actors can often play a more important role than states when it comes to agenda-setting and introducing new concepts.

As mentioned, due to their symbolic power some actors can impose their language, concepts and systems of evaluation on others. However, this imposition is never total in the international system. Among other reasons, this is because the international society is a lot less integrated than the state-societies it consists of, especially the French society described by Bourdieu (on the international system as a society, see Bull, 1977). Furthermore, in the field of international politics there are several actors with significant symbolic power, some of them non-state actors such as the UN or the OSCE. Such actors can make new concepts (that fit their interests and beliefs) established as acceptable as part of an argument, so that they can use them when arguing. Therefore it is useful to use Michael Barnett and Martha Finnemore (2004) and their writings on the kinds of authority that international organisations<sup>22</sup> hold and how this authority relates to their power to create rules that other international actors have to obey. Although Barnett and Finnemore are not always consistent in their use of the term, they define

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<sup>21</sup> This nevertheless happened, but was not taken seriously by the OSCE members states which had granted him his mandate.

<sup>22</sup> Here I will treat the EU as an international organisation, although it differs in some respects from the organisations described by Barnett & Finnemore (2004).

authority as “the ability of one actor to use institutional and discursive resources to induce deference from others” (Barnett and Finnemore, 2004: 5). Thus authority is conferred from others, who put themselves under the obligation to recognise and believe (but not necessarily to accept) the decisions and statements of the authority (Barnett and Finnemore, 2004: 20). Hence, authority, like symbolic power, is dependent on the recognition from others, but unlike symbolic power authority is not invisible to those affected by it. This way, I will argue that the CoE and the HCNM’s relationship with the EU is best understood in terms of symbolic power, whereas their relationships with the three states are best understood in terms of authority.

According to Barnett and Finnemore, international organisations can hold four kinds of authority. The first (and according to them most interesting kind) is the *rational legal authority* stemming from being a bureaucratic organisation acting according to a set of constant and impersonal rules in order to fulfil a socially valued purpose. Second, International Organisations can hold *delegated authority* granted to them over a specific issue area by their member states. Third, IOs can hold *moral authority* stemming from their role as embodiments of a particular set of values and being without interests to pursue. Finally, they can have *expertise authority* to speak on matters within their domain, due to the fact that they are often recognised as being one of the entities with most knowledge of the domain (Barnett and Finnemore, 2004: 20-25). These kinds of authority often work together, so that their expertise authority is reinforced by their status as independent and non-self-interested bureaucratic actors.

Moral authority is particularly interesting in the case of the organisations investigated here, as there has often been a strong moral dimension to many of their arguments. As Neta Crawford (2001) has shown in the case of the abolition of slavery, ethical arguments are often hard to argue against (particularly for actors with little symbolic capital), especially if such arguments fit with existing social structures. Since NGOs and IOs such as the UN and the OSCE have been known for promoting norms and “ethical behaviour” there is reason to believe that it is primarily within the introduction of regulative rules that such organisations have their greatest force. However, this does not mean that they cannot have an impact when it comes to introducing concepts forming part of constitutive rules.

If we look at the way in which the introduction of national minority rights in post-communist Europe has been advocated by the OSCE, but also by the Council of Europe, we find some instructive insights. The OSCE has used its symbolic capital to lecture both governments and leaders of the national minorities on how they should behave towards each other, thus defining certain kinds of behaviour as more or less appropriate (Merlingen, 2003). These regulative rules, however, would not be feasible if constitutive rules had not previously been formed around concepts such as national minorities, human rights and multiculturalism. Actors with significant symbolic power could pick concepts from this “conceptual pool” and introduce them to the European minority rights discourse, or they would take one of several interpretations of a concept and authoritatively define it as the valid one. How this was done in practice will be discussed below.

One of the reasons why Western European organisations, even relatively weak organisations such as the Council of Europe and the OSCE, could exert such leverage over the post-communist states, was their large symbolic capital as recognised members of “civilised, democratic Europe” (Burgess, 1997; 1999; Williams and Neuman, 2000). Often the Council of Europe and the OSCE worked to introduce and authorise concepts, which were then picked up by the EU. This use of symbolic capital reflected the fact that the organisations represented the part of Europe which was already recognised as being “properly” European and had seemingly come to acquire a monopoly on Europeanness (unlike the post-communist states) and which held significantly more economic and political capital. According to Bourdieu, it is possible to convert one kind of capital, for instance economic capital, into another, for instance symbolic capital (Harker, Mahar et al., 1990: 13). The metaphor of conversion is perhaps more telling than Bourdieu himself acknowledged, since a large amount of economic capital at times only can be converted into a relatively small amount of symbolic capital. As mentioned above, the institutionalisation of the minority rights regime and the independence of the HCNM and the Council of Europe also played a role in their being recognised as unbiased experts.

The symbolic power and the authority of organisations such as the OSCE and the Council of Europe, was not so much recognised by the post-communist states as by the Western European states and especially the EU, which could decide on the accession of the post-communist states. Thus it was the Western states rather than the post-communist ones that accepted the verdicts of the OSCE and the

Council of Europe as final and unbiased truths, whereas the post-communist states may have been considerably more sceptical. Nevertheless, the post-communist states were the states whose compliance with the rules for minority protection was most closely scrutinised. Or to phrase it differently, the authority of the organisations were delegated from all states, but on the initiative of the Western states who bestowed them with moral authority, and yet it was the post-Communist states that were the subjects of their power.

If an actor, especially a government, used concepts which were in direct conflict with those dominant in the Western organisations, such as “nation-building”, it would receive harsh criticism, as was the case for the Meciar government in Slovakia (Burgess, 1997: 47). If the governments of post-communist Europe wanted to talk with the Western organisations, they needed to start using the same concepts as their powerful interlocutors, and to adopt policies which were consistent with these concepts.

The concepts thus form a constitutive structure enabling and limiting argumentation, but this is a structure that leaves significant space for different rhetorical action, especially at the international level. Whereas this structure is an unchangeable given for most actors, some actors have the power to change it, although most of these changes are incremental and radical alteration is only possible in times of upheaval. It can be observed that actors with significant symbolic power not only have to argue less than other actors, but that they also can define the rules of argumentation for other actors. However, an actor’s ability to exercise symbolic power depends on the field, so that the Council of Europe might be able to exercise great power when it comes to interpret minority rights, but has little power to define or introduce concepts in the field of international trade. We now turn to the question of how concepts are authoritatively defined and introduced through concrete usage or speech acts.

#### **3.1.4 Definition through Application**

My concern, as mentioned in the beginning, is how the HCNM, the Council of Europe and (to a lesser degree) the EU concretely defined various concepts relating to national minorities in their reactions to the treatment of the Hungarian minorities by Hungary, Romania and Slovakia. I will argue that it is precisely through their application in cases like this that the contested concepts were authoritatively interpreted. However, these interpretations were not so authoritative that they could not be altered by

another authoritative interpretation, although such a re-interpretation would be harder (requires more argumentation and symbolic capital) than the original. Thus, it is easier to establish an interpretation of a concept or a rule if no authoritative interpretation exists, than in cases where an existing one has to be changed.

Since some of the adopted texts providing the very basis for the concepts are legally binding, for instance the Council of Europe's Framework Convention, it is relevant to look at the role of legality and legal norms. To do this it is useful to draw on Friedrich von Kratochwil's *Rules, Norms, and Decisions* (1989), which among other subjects deals with the interpretation of international law, and emphasises the aspects of reasoning and interpretation in law as opposed to the understanding of law as a set of clearly defined rules. Importantly, Kratochwil does not identify law in terms of a set of (legally binding) rules, but as a style of reasoning, namely legal reasoning (Kratochwil, 1989: 193-200). This implies that the commonly used sharp distinction between legal and non-legal texts vanishes, which is instructive in this context, where different types of texts, legally binding or not, have been used to provide the basis for argumentation in the responses to the Hungarian minority policies.

Rather than looking solely at codes and treaties, Kratochwil argues, we should also look at the "performance of rule-application to a controversy and the appraisal of the reasons offered in defence of a decision" (Kratochwil, 1989: 18). Whereas the latter relates to our discussion of reasons and arguments, the former highlights the importance of the actual application of the rules in defining the rules. This is, I will argue, is what has happened in the case analysed here: the exact meaning of the concepts have been defined not so much in general statements as in the concrete application of the terms when reacting to a minority policy, such as the Hungarian minority policies of the three states. Concepts have been defined by being used, defining the rules for minority policy increasingly more tightly, but not without ruptures and changes. Therefore I am looking at the practice of the organisations, rather than their general statements on national minorities, as it is to a large degree through this practice that the concepts have been defined.

The use of references to international treaties, conventions and documents as backing for the reactions of the organisations has also strengthened the arguments of the organisations. By referring to

documents signed by the states, the organisations could exercise considerable leverage over them. At the same time they could also interpret how they should be understood in the concrete situation, including contested concepts relating both to national minorities and other issues, such as “good neighbourly relations”. Thus, although the HCNM and the EU’s DG Enlargement are not legal institutions as such, they often used arguments of a legal character in their responses. The international documents discussed in Chapter 2 have provided a loose framework for argumentation, but only if they were actually referred to by the organisations. The organisations could decide which documents to refer to, but often they would have to stick to their decisions, so that there was a certain amount of path-dependency in the use of international documents on minority protection as backing.

In this way I will argue that to a large extent the contested concepts at play in the European minority rights “regime” were gradually defined, and at times re-defined through their practical employment in concrete situations. Moreover, that one distinguishable group of situations has been formed by the three organisations’ reactions to the Hungarian minority policies of Hungary, Romania and Slovakia. I will now turn to how this will be analysed.

### **3.2 Methods and Analytical Framework for Studying Argumentative Structures**

As mentioned, I will draw on Stephen Toulmin’s (2003) description of the finer structure of arguments and his notion of warrants for the analysis. Therefore it makes sense to look at his example again: “Paul is born in Lyon (Data), so he is a French citizen (Conclusion)”, the warrant being: “Since people born in Lyon are French citizens”. What is interesting here is his notion of warrants as the implicit claims warranting the move from the Data of the particular case to Conclusion without being argued for (Toulmin, 2003: 91-92). In this analysis warrants are understood as claims about how minorities should be treated or a specific right interpreted. It is important that a claim is a warrant qua its function in the argument, not due to an intrinsic aspect of its character. Hence I will look at the warrants which are conceptualisations concerning national minorities and national minority policies, and not all the warrants employed.

Here Toulmin's model will be used to analyse the arguments implicit in the texts responding to the Hungarian minority policies. The Hungarian minority policy of a state will thus be treated as the Data, whose factual elements different actors can agree on, although they have often differed over its interpretation, which involve using warrants. An example can be the Hungarian Status Law and its actual legal content, but also the treatment of it by the Hungarian, Romanian and Slovak governments, undisputable facts that are not however in themselves particularly relevant for this thesis. What matters here is rather which Hungarian minority policies the three organisations have chosen to react to and which emphasis they have given them, as well as how they have reacted to them, using which kinds of conceptualisations as warrants. Therefore, the reaction to a Hungarian minority policy in terms of legitimacy can be seen as the conclusion of the argument: it is liable to criticism, and if so, why? And the warrants are the conceptualisations used to frame the situation in order to arrive at the conclusion, such as "The Status Law is problematic, because it damages otherwise good neighbourly relations". As can be seen from this rather simplified example, there can be several claims at play in these arguments.

As these claims are not only implicit, but also define the meaning of the situation and what should be done about it, together they can be said to constitute the framing of the situation at hand, and, on a higher level of abstraction, the whole Hungarian minority issue. As previously discussed, the conceptualisations, qua the use of them as warrants, frame a given situation, for instance in terms of rights or oppression. Following the most influential accounts of frame analysis (Edelman, 1988; Entman, 2004; Goffman, 1986:23-24; Rein and Schön, 1993), I will argue that framing is the interpretation and evaluation of a situation by the use of a set of identifying elements. According to this view, the answer to the question of "what is going on here?" depends on the frames applied, rather than on the situation itself (Goffman, 1986:8-11). Thus, whether the Hungarian Status Law is a violation of the sovereignty of the neighbouring states or a "post-modern" way of granting Hungarians (almost) the same rights irrespective of which country they reside in, depends on the perspective rather than on Law.

How the situation is interpreted has consequences for which actions are considered as the right thing to do, so that the framing of the Status Law as a violation of sovereignty will probably cause the organisation doing the framing to condemn the policy. As can be seen from the example, different

conceptualisations of (different) national minority concepts can be used to frame a given situation, and the best way to analyse this is to look at the use of different kinds of warrants. Nevertheless, although conceptualisations are used for framing, a conceptualisation is not the same as a frame, since many conceptualisations are used in one single framing of a situation. However, as framing involves different functions, I will divide the warrants into three overarching groups.

The first of these are what I will call factual warrants, that is claims to how things are as well as what matters, such as claiming that the neighbourly relations previously were good. A factual warrant can also be that it makes sense to describe the Hungarian minority as citizens of Slovakia, rather than emphasising other aspects. Thus, factual warrants are conceptualisations of contested but relevant concepts (such as national minorities, or the nation) which are used to describe the Hungarian minorities and their situation. Following William Connolly (1983) it can be argued, that the mere application of a specific concept can carry normative connotations, such as minority, which defines the group in question as having the need and right for protection. Thus it is possible to say something about the deeper-lying normative ideals and discourses from the way specific concepts are used, as well as studying changes in them over time, since a change in the application and definition of a concept will be part of changes in these discourses.

Here the focus will in particular be on warrants involving issues such as representation, autonomy and education, as these have been contested concepts on the international and theoretical level (this will be discussed in more detail in the following chapter). Most of these warrants will be general in the sense that they will hold for other national minorities in other countries, whereas a few will concern the specific nature of the Hungarian minority. Importantly, as mentioned in the previous chapter, some conceptualisations are more basic than others, for instance those concerned with the nature of national minorities. As will be discussed below, the relationship between the basic conceptualisations and the more specific ones is an important area to investigate.

Second, there is what I will refer to as a causal warrants, such as the claim in the example that it is the Status Law which destroys bilateral relations. Causal warrants are claims about which conditions or entities cause certain other conditions or entities, and such warrants have an important function in the

framing of a situation (Benford, 1987: 64-74; Entman, 2004: 23-24). In order to study these warrants it is important to include counter-arguments used by other actors as well as competing theoretical conceptualisations of causal relationships (Miliken, 1999: 237). An example of the former can be, as especially representatives of the Hungarian government have argued, that it was the neighbouring states' mistreatment of the Hungarian minorities, which made the Status Law necessary, and which caused strained relationships. Examples of the latter can be that conflict is primarily caused by other factors than unilateral state action. In this way many of the causal warrants concern conceptualisations of ethnic conflict that include claims about what the cause of such conflict is.

The purpose is not to argue for the true cause, but to show that other interpretations of cause and effect are possible. In many cases the causal warrants will be less related to concrete events and more hypothetical, such as arguing that territorial autonomy lessens the risk of inter-ethnic conflict. Since these causal warrants have the character of general theories about the world, it is easier to argue that they also have relevance for other cases than the Hungarian minorities. The causal warrants link to the factual warrants as well as the normative one, which will be discussed below. When the claim is made that "the Status Law destroys good neighbourly relations", a specific priority is given to the Hungarian government as actor, since it is implicitly asserted that the actions of the Hungarian government matter (again, this might be more important in other cases). Furthermore, it is also asserted that it is the deteriorated neighbourly relations that are the most important consequence of the Status Law, thus implicitly state relations are prioritised over other affected aspects of the Hungarian minority question.

Third, I will argue that there is a normative aspect to all these arguments, and this will be referred to as normative warrants. This is the final aspect of the argument, which "decides" whether the consequences of a policy shall be seen as positive or negative. This can be seen in the example, where the worsening of neighbourly relations is defined as problematic. That damaged neighbourly relations are problematic is probably not a very contested notion in itself, but the implicit notion that it is more important than, for instance, the plight of the Hungarian minority, probably is. Moreover, from the importance given to inter-state relations, it can be inferred that what matters is peace and security, rather than, for instance justice, for the minorities or others, a dichotomy discussed above. What is important here is the priority given to one objective vis-à-vis other potential objectives. As Robert

Entman (2004) has argued, in framing opposing views are omitted rather than argued against, and it is these omissions that I will look for. This is because without taking these opposing views into account, the positions chosen look evident, and this is the only way to unearth the choice between the different possible available positions which the organisations made.

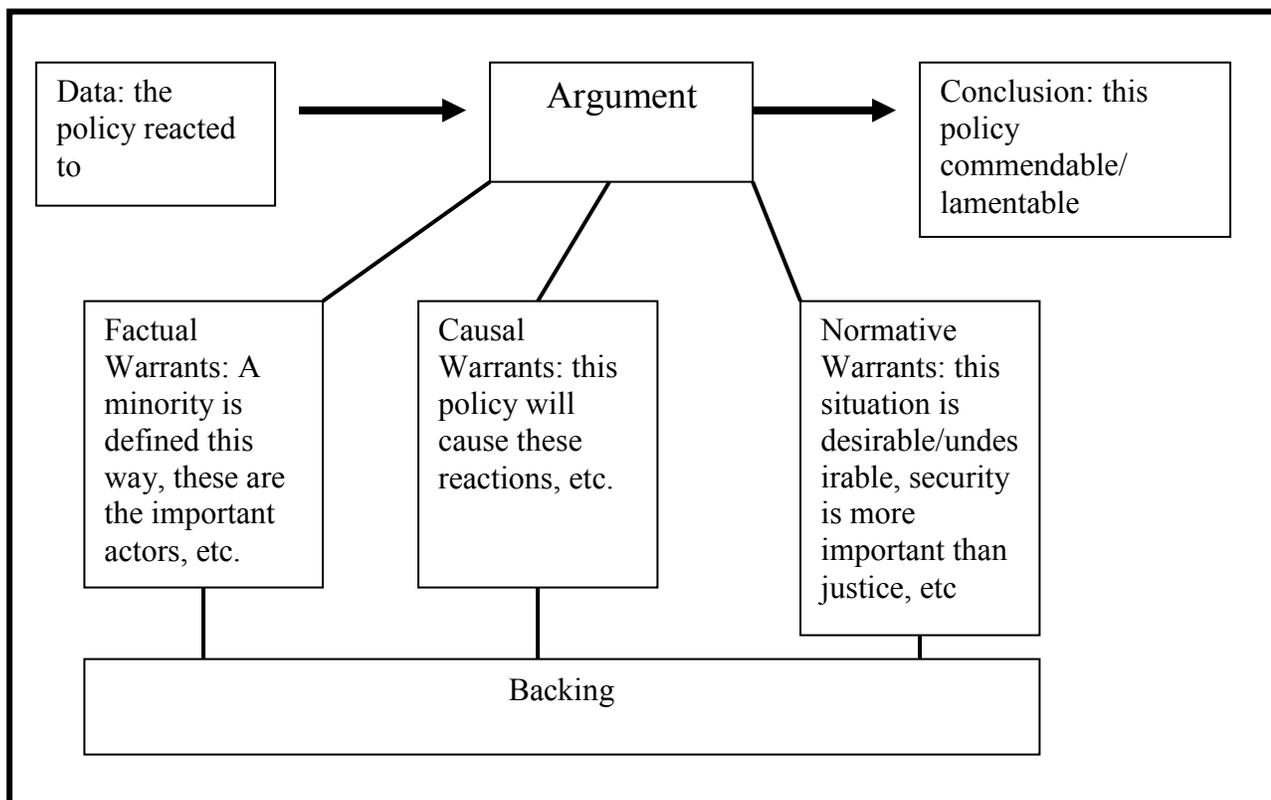
The normative warrants also include the conceptualisations of contested rights, such as the right to official communication in the minority language. The normative warrants not only link back to causal warrants (are the consequences of the action desirable or not), but also to the factual warrants, since the definition of what an entity *is* (what is a national minority) relates closely to the definition of what role it *ought* to play in society. This can take the form of calling for consociationalism as well as integration.

For each warrant there might exist backings of some kind: categorical statements of fact supporting the warrant, such as actual statements made by actors, international agreements and treaties, etc (Toulmin, 2003: 96-99). Backings are like Data facts that everybody can agree on, such as the concrete content of a piece of legislation or a statement. Here I will focus solely on the use of the international documents mentioned in Chapter 2 and statements from the organisations as backing, since they are the most relevant for this thesis, although also other sources have been used. It is important to state that backings only are relevant for this analysis qua their connection with the warrant, in other words it is the way they are brought in to support the warrant that is interesting here, not the backing in itself. This also includes the question of which of the three organisations have used which of the various mentioned international documents as backing. Many of these documents, such as FCNM, have been concretised and gained importance exactly by being referred to in situations like the ones concerning the Hungarian minorities. Thus a backing might not only lend strength to an argument, but also to the text, or for that matter the actor, which is referred to as backing. Therefore, I will also look at which international documents the different organisations have used, as well as developments over time. I will argue, that the more a document was used as backing, the more authoritative and influential it would become. This would make it harder to ignore. Obviously, the reactions to the Hungarian minority issue analysed here only constitutes a smaller part of the organisations' reactions to national minority policies. However, I

find it unlikely that the organisations would differ much in their use of international documents when it came to similar cases, as this could have caused much criticism.

This is a model of how the argumentative structure of the documents will be analysed

**Figure 1**



As mentioned before, warrants are more or less implicit, but it is possible to draw them out with a close reading. This will be done by coding the texts according to the model above, assigning each piece of text as Data, Conclusion, or Factual, Causal or Normative Warrant or Backing for one of the warrants. It is possible for a piece of text to be coded twice, in other words into two categories. Each category represents a variety of codes, each of them a conceptualisation of a concept (or a document or policy area in the case of Backings or Data), so that each time a national minority will be defined in a particular way, the same code will be used.

The conclusion is the actual reaction of the Hungarian minority policy, which often appears in the beginning of sentence and paragraphs, and then is followed by the argument, thus twisting the model above 180 degrees around. However, here it is not so much the conclusion as the conceptualisations at play as warrants which are interesting. The conceptualisations will be taken out of the context of the individual argument, grouped together depending on their object and their point of view on this object, so that for instance, all normative warrants claiming that minority members have the right to advocate territorial autonomy will be grouped together. I have chosen to work in a fashion somewhat similar to Grounded Theory, starting by coding a selection of texts inductively, in order to establish a set of basic codes, and then returning to the academic literature in order to put these codes into perspective. Based on my reading of the academic literature (discussed in chapter 1) I have created a set of more overarching codes, which will be discussed in more detail in chapter 4. This method differs from Grounded Theory in that I am not claiming to start from a clean slate, but acknowledge that the initial coding is based on theoretical understandings and assumptions stemming from the literature on national minorities. Furthermore, I will not continuously establish new codes and move back between the literature and the analysed material, but simply look at which of the conceptualisations discussed below are used and how.

These conceptualisations and groups of conceptualisations will then be used to compare the organisations and see if there are any differences in their uses of warrants, data or backing between them, as well as over time within the same organisation. The idea is to emphasise the differences as well as consistencies in the use of contested concepts or international documents, which have helped to make a particular interpretation of a concept or the document hegemonic. This will be done by looking at how many times a specific conceptualisation has been used by a particular organisation in connection with a particular issue area or in a particular period, as well as the importance accorded to it. Merely looking at the number of correlations between a conceptualisation and an organisation, policy area or period is insufficient; it is also necessary to interpret the importance given to the conceptualisation and consider the context. This can only be done by looking at the conceptualisation and its role in the text, and arguing, with a basis in the political context, that different conceptualisations could have been possible. The reason for this is that I find that the correlations on

their own do not provide sufficient information about the significance of using a conceptualisation at a given time.

This analysis will be undertaken by importing the texts into the textual analysis-software program WinMax, and coding them there within. As mentioned earlier, the same piece of text can be coded several times. The different codes will be organised in hierarchical categories according to their internal relationship, so that, for example, conceptualisations of the concept of minority educational rights will be grouped together. Moreover, these groups will be divided into higher-order groups, so that concepts of minority rights are grouped together. The same goes for the conceptualisations of basic concepts. The use of WinMax will make it possible to retrieve coded segments of different texts, as well as to look for co-occurrences between different warrants.

In order to analyse the use of particular warrants, I will look at the emphasis given to them in the writing, for instance by seeing whether the organisations use phrases such as strongly, importantly, etc, in connection with the warrant, or if the warrant or the issue has been used or addressed in conclusions or other statements summing up the position of the organisation. Furthermore, I will look at the number of times the warrant has been used, and how large a part of the text this use covers. The intention is not to say that the warrant that has been used the most times is the most important, but to be able to compare the use of warrants framing similar aspects of the situation, for instance by estimating whether the Hungarian minority has been predominantly framed as a unitary entity or actor in itself or as something to which individuals belong.

### *Research Questions*

If we return to the research questions, the analytical model described above will answer the first and the second research questions, which are:

- 1. Which conceptualisations of contested concepts relating to national minorities have been used by the EU, the HCNM, and the Council of Europe to argue for the reactions to the policies of Hungary, Romania and Slovakia concerning the Hungarian minorities in the two latter states the last fifteen years, and which international documents have been used as backing for these conceptualisations?*
- 2. Have there been any differences in these conceptualisations over time or between policy areas or organisations?*

In order to answer the third research question, “*How do these differences relate to the overall discourse of the organisation and in the academic discourse on the subject?*” I will compare the findings to academic texts and speeches and other statements from the organisations on the subject during that period. As stated in the Introduction, the hope is to put the findings of the analysis into a broader perspective, and see if the emergence of a specific conceptualisation in the texts corresponds with the emergence of it in the academic literature. Furthermore, the academic literature will also be used to determine which general discourses or meta-concepts, such as liberal multiculturalism, are most apt for describing the perspective of the organisation. I will also look at the relationship between the findings and the ideals and objectives put forward by the organisations in statements such as speeches, declarations and foundations, to see if the developments in two areas correspond.

The fourth research question is: *What has determined the use of conceptualisations; organisational culture, development over time including influence from academic debates, the warranting of basic concepts, or the country and the government which is being addressed?* This, I will argue, is best answered by looking at patterns in the use of conceptualisations, in order to clarify which factors determine their use. If, as argued in the Introduction, an organisation uses the same basic conceptualisations as warrants irrespective of the situation, I will argue that this supports the claim that the perspective of the organisation determines the use of warrants, especially if the basic

conceptualisations “fit” logically with the specific conceptualisations used. Also if more specific conceptualisations are used consistently by one organisation but not by others, this also indicates that the organisational perspective matters. On the other hand, if an organisation has used different basic conceptualisations, but the same ones consistently together with one set of specific conceptualisations, I will argue that this indicates a strategic use of the basic warrants by the organisation. As mentioned before, correspondence between the developments in the academic debate on the subject and the discourse of the organisations can be said to indicate an influence from the academic world. If the same policy area is framed by the use of different conceptualisations in different countries, I will argue that this indicates that the country being addressed is an influential factor. And finally, if the same policy area in the same country is framed differently during different governments, I will argue that it indicates that the government in question has influenced the use of conceptualisations.

### *Sources*

As mentioned before documents from the three organisations, the Council of Europe, the EU and the OSCE’s High Commissioner on National Minorities will be used. The HCNM documents are letters written to the foreign ministers of the three states, with the exception of one fax to Slovak Prime Minister Mikulas Dzurinda, one letter to Rector Andrei Marga of the Romanian Babes-Bolyai University, one statement made to Romania’s Council for National Minorities and two statements on the Hungarian Status Law. Hence the HCNM sources are relatively similar; all of them, except the statement on the Status Law, have been directed primarily to actors in the three countries. The rest were distributed to the OSCE delegations of the various OSCE member states a few months later and only made public years later. The statement on the Status Law differs by being a public statement, and thus addressed to a much wider audience than the Hungarian government, although I will argue that it was the primary addressee.

The EU sources, on the other hand, consist of sources primarily addressed at a wider audience, namely the Opinions and Regular Reports<sup>23</sup> on the accession process of the country. It is important to keep in mind that although these sources, especially the Opinions and Regular Reports, were used to send

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<sup>23</sup> The first set of written assessments of the applicant countries accession process was referred to as “Opinions”, the following ones as “Regular Reports”, apart from which there were few differences between them.

important signals to the three states, their public nature meant that the EU was unlikely to be as frank in its opinions as the HCNM. Generally, relatively little space is given to the subject of the Hungarian minorities, although this does not mean that it was not significant. I have deliberately chosen to analyse only texts from the Commission, leaving out statements by the Council or the European Parliament, as this allows for greater continuity and it is doubtful to which degree the Council (or for that matter the different Parliamentary Committees) can be said to constitute constant actors. Focusing solely on the Commission ensures that many intra-organisational differences or “intervening variables”, which could have obscured the picture, are left out. Since I am looking at organisational culture and the impact of an organisational perspective, this would be counter-productive.

The Council of Europe, unlike the other two organisations, are represented with sources from different instances within the organisation. These are the various parliamentary committees which assessed the membership applications of Romania and Slovakia as well as the Hungarian Status Law, the Advisory Commission on the Framework Convention on National Minorities, and the Venice Commission. The parliamentary committees are represented by their reports on the applications of Romania and Slovakia and the two countries honouring of their commitments as well as on the Status Law and on the Csango<sup>24</sup> culture in Romania, all of which were adopted by the Parliamentary Assembly, which also adopted a (critical) resolution on the Status Law. The Advisory Committee on the Framework Convention on National Minority (from now on the FCNM Advisory Committee) is represented by its opinions on Romania’s and Slovakia’s fulfilment of the obligations in the FCNM.

It may seem strange to choose such a variation within the CoE framework, when I have deliberately aimed at consistency and continuity in the selection of EU sources. This is partly because this is the only way of collating CoE texts representing the entire period, but also, more importantly, because I will argue that the CoE is more of a unitary institution than the EU. After all, the EU Council is represented by a troika which rotates every six months between the member states, which CoE institutions do not. And the European Parliament’s statements on the Hungarian minority have been far less regular than those of the CoE Parliamentary Assembly. However, most important is that the

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<sup>24</sup> The Csangos is an ethnic group which is often claimed to belong to the Hungarian minority, as many of them speak a Hungarian dialect.

different CoE actors have drawn on the same set of CoE experts, with many of them sitting in either FCNM Advisory Committee or the Venice Commission. Thus, I will argue that there has been more of an intra-institutional exchange of ideas than in the EU, which means that it makes more sense to talk about the CoE as one organisation. Nevertheless, it is important to be aware of variations between the different branches of the organisation.

#### **4 From Contested Concepts to Potential Frames -Operationalisation**

The academic and legal literature opens up for hundreds, perhaps even thousands, of conceptualisations within which the organisations could have chosen to frame the Hungarian minority situation. In order to narrow this down, I have created a list of codes which will be used for the analysis of the text, codes which have been gathered in an inductive pre-analysis of texts addressed to the Meciar and the first Iliescu governments, as well as the deductive reading of the academic and legal literature undertaken in chapters 1 and 2. These codes have been divided into the categories of Factual, Causal and Normative Warrants as well as Backing and Data, in an attempt to both create an overview of the latter and to provide a fuller understanding of what it is that is being warranted. A full list of all codes can be found in Appendix A. Here I will discuss mainly the tree types of warrants, as Data refers just to the policies reacted to and Backing to the use of international treaties and other external sources to support the warrants, and hence these do not involve conceptualisation.

I will not discuss every single code as there are more than two hundred, but will instead focus on the categories of codes, in which different conceptualisations of a contested concept that might have been used to frame the issue are grouped together. These categories are underlined in the Appendix, and are not in themselves applied as codes. One reason for the high number of codes is the division of the warrants into factual, causal and normative ones, which means that there is sometimes an element of duplication. However, the inductive method and the focus on conceptualisations is more important than overarching metaframes or discourses. I intend to create an overview of the organisations' handling of the Hungarian minority issue and what has shaped this, which I will argue is better done by moving from the very concrete level to the more abstract, or, in other words, to establish links between the individual conceptualisations and draw conclusions from this. This I think gives a more precise picture than applying four or five theoretically generated frames, especially as the organisations have been influenced by a variety of different influences, which cannot easily be categorised. With this in mind, I will first turn to the codes used for coding Data.

##### **4.1 Data**

As the Data is constituted by the various policies reacted to, it makes little sense to define the codes prior to the analysis, as they can be created along the way when I come across new issue areas to which

there were reactions. Nevertheless, on the background of the pre-analysis I have already established codes for Education, Administrative Reform and various other issue areas which have been important so far. The Data codes will be used to see if there are any differences between the organisations in which issue areas they have reacted to, and, more importantly, to see if there are any differences between the warrants used in relation to the different issue areas.

## **4.2 Factual Warrants**

The Factual warrants concern, as mentioned, the claims made about what things are and what matters. At the most basic level, what I will refer to as basic factual warrants concern the nature of the Hungarian minorities (code category 2.9.7, see Appendix). If we return to the academic literature discussed in chapter 1, I will argue that the way in which the nature of minorities were conceptualised influenced which solutions and causes to minority issues were suggested. Most importantly, this refers to whether the Hungarian minority is framed as being one homogenous entity (code 2.9.7.17) or as something individuals belong to, the expression used in the legal texts (code 2.9.7.12). Related basic warrants are the framings of the minorities as being a subgroup of citizens (2.9.7.1), belonging to the people (2.9.7.2), being Hungarians “abroad” (2.9.7.4), as well as having a territorial dimension (2.9.7.9) or a religious one (2.9.7.3). Also related are the warrants framing the minorities as being a kin-minority (2.9.7.5) or consisting of sub-groups (2.9.7.6). Also related are the basic warrants concerning their identity, framing it as just one aspect among many of an individual’s identity (2.9.7.8), or if the Hungarians first and foremost are Hungarians (2.9.7.14), and whether this identity is constant regarding existence (2.9.7.10.1) or group boundaries (2.9.7.10.2), or fluid regarding existence (2.9.7.11.1) or group boundaries (2.9.7.11.2). Finally, the warrant defining the Csangos, a partly Hungarian-speaking group in Northern Romania with much-contested origins, as a group separate from the Hungarian minority in Romania (2.9.7.7).

If we turn to the related sets of warrants, there is the category of political representation, where the warrants are that each minority is one entity with one specific set of politic representatives (2.9.8.4) or that each minority have different sets of representatives (2.9.8.1). This category also contains the warrants that minority members participate in politics as ethnic Hungarians (2.9.8.5), that Hungarians may vote for non-Hungarians (2.9.8.2), or that individuals participate in political life as individuals

irrespective of their ethnicity (2.9.8.3). In the category Minority rights, the two warrants concern whether the holder of the rights is the individual members of the minority (2.9.6.1) or the minority as one entity (2.9.6.2). This shall not be understood in the legal sense, since declaring the Hungarian minority as the right-holding entity would amount to declaring the right a collective right, which would have received little legal backing. Nevertheless, I will look at the degree to which framing it as being the right held by the minority as a group influenced other warrants, that is, whether it had any influence on the recommendations as a basic warrant. Also among the warrants framing the Hungarian minority are those concerned with discrimination (2.9.2), the warrant that the minority has different interests from the rest of the population (2.9.1), and those concerned with the link between the minority and the Hungarian state (2.9.5). Here we also find the warrant that minority politics is characterised by fear and mistrust (2.9.3), a notion common among structuralist theories of ethnic conflict (see Chapter 1).

Other warrants which relate to the Hungarian minority but also to ethnicity in a more general sense include those concerned with the role of symbols, names and identity (category 2.9.10). Here, national identity (Hungarian as well as other) can be framed as being civic (2.9.10.2), ethnic (2.9.10.3) cultural as opposed to political (2.9.10.4) or an instrument of the elite (2.9.10.1). These warrants are constructed on the basis of the theories of nationalism and ethnic conflict discussed in chapter 1. In this category there are also the warrants that identity needs protection (2.9.10.6) and/or promotion (2.9.10.5), and also that the narration of the past as (2.9.10.7) well as place names (2.9.10.8) matter, the two latter issues relating to constructivist and ethno-symbolist theories of nationalism (see Chapter 1). Another category concerned with ethnicity is that dealing with language and culture (2.9.4). This includes warrants that define language as access to a (national) culture (2.9.4.1), as communication (2.9.4.2), as a means to integration (2.9.4.3), and more specifically, language as an important aspect of Hungarian identity (2.9.4.4). It also includes the warrant that Hungarian speakers are not necessarily the same as Hungarians (2.9.4.1) and the warrant emphasising the support of cultural activities in Hungarian language (2.9.4.6).

When it comes to the warrants concerning the different issues and policy areas relevant, an important category is that of education-related warrants (2.6.2). This includes conceptualisations of the concept of education in the minority language as well as of the state facilitation of this. The former is relevant for

the concept of the right to education in the minority language, a concept whose meaning is much contested in the legal literature, the latter the duties the exercise of this right puts on the state, which has been even more contested. The latter includes the warrants defining the availability of text books and teaching aids in Hungarian (2.6.2.3.1) as well as the training of Hungarian language teachers (2.6.2.3.2) as the responsibility of the government. As for the other warrants, some of them define whether other issues can be said to belong to the concept of minority language education. The list of issues consists of curriculum (2.6.2.1), exams (2.6.2.2) as well as school certificates in Hungarian (2.6.2.5), tertiary education in Hungarian (2.6.2.4), and the training of social and cultural workers in Hungarian (2.6.2.9). The warrant that teaching of geography and history in Hungarian should also be included (2.6.2.7) is related to the conceptualisation of history and homelands as important for national identity. More fundamentally, it may also be warranted that teaching in Hungarian is as such important (2.6.2.6), yet also that Hungarian language schools shall include teaching in and/or of the majority language (2.6.2.8).

Another contested minority issue is local and regional government. This category contains first and foremost warrants concerned with autonomy, namely either cultural (2.6.4.2) or territorial autonomy (2.6.4.3), or the warrant that the latter is compatible with territorial integrity (2.6.4.3.1) or that different kinds of autonomy are possible (2.6.4.1). Besides the autonomy warrants, two other warrants frame respectively local elections as important (2.6.4.4) and the members of the majority nation (Romanian or Slovak) in areas with Hungarian majority as needing support (2.6.4.5). This leads us to the category of inter-ethnic relations (2.6.3), which can be framed as involving hate or conflict (2.6.3.1), as being between rational (2.6.3.5) or irrational actors (2.6.3.4), or being positive or negative on the government-minority level (2.6.3.2) or on the local level (2.6.3.3) respectively.

Also related is the category of history, in which different warrants can frame relations in the past in terms of co-existence (2.3.1), conflict (2.3.2), or discrimination of the Hungarian minority (2.3.3), as well as arguing that the Hungarian Minority has a specific individual history (2.3.4). A connected category is that framing the current developments regarding the Hungarian minority in terms of crisis (2.1.1), progress (2.1.3) or a need to act now (2.1.2). Finally, of additional relevance to the Hungarian minority there are the uncategorised warrants, including the framing of the financing of policies and

other economic factors such as the restitution of property as important (2.6.1), the territorial integrity of the state as important (2.8), and that the role of media as important (2.6.5). The latter links back to theories arguing for the importance of media in ethnic conflict, such as Kaufman (2001) and Snyder (2000).

If we turn from those warrants concerned with or directly relevant to the Hungarian minority and to those concerned with the country in question, different warrants are available for framing the states. These include the warrant that it is a democratic state (2.7.1) or a non-democratic one (2.7.6), a European state (2.7.5), a kin-state (2.7.4), a transition state (2.7.7), or an ethnically biased (2.7.2) or neutral (2.7.3) state. Whereas the three first options mainly appeal to or condemn the state, the latter three relate to the notion that transition states are more conflict-prone and to the discussions of whether states can and should be ethnically neutral.

Furthermore, there is the category of warrants concerned with democracy and its ramifications for the Hungarian minority (2.2). This includes warrants framing democracy as expressing the will of the people (2.2.2) or being dependent on a shared culture of some kind (2.2.4), but also those emphasising the importance of the electoral system (2.2.1), or the free choice between candidates (2.2.3), including the choice between candidates on the base of parties rather than ethnicity (2.2.3.1). If we move to the international scene, there is the warrant that frames the situation in terms of the end of the Cold War (2.4.1), whereas others emphasise the importance of bilateral treaties (2.4.3), international commitments (2.4.4), international law (2.4.5), the “watering down” of borders (2.4.6), or define Yugoslavia as a possible scenario for the state (2.4.7). A related warrant is the equation of the Hungarian minority in Romania or Slovakia with national minorities (particularly Romanians or Slovaks) in Hungary (2.4.2). Finally, there is the important warrant that interpretations are subjective (2.5), i.e. that perceptions of something may matter more than the objective truth, and that these perceptions should be taken into account. This claim is related to the warrants emphasising the role of media and narration of the past, and with constructivist theories of ethnic conflict (see chapter 1).

### 4.3 Causal Warrants

When it comes to the warrants concerning causality, I have chosen not to operate with any set of basic warrants, as there seems to be little support for such a move in the analysed material. Instead I will focus on the framings of causal agents and causes and solutions to minority problems and conflict, the latter being to a certain degree intertwined. As can be seen, the causal warrants have more to do with security than justice concerns.

At a somewhat basic and theoretically inspired level are the warrants dealing with the fundamental causes of ethnic conflict. This includes ancient hatreds (3.4.1), economic rivalry between different ethnic groups or changes in their relative wealth (3.4.2), the instrumental use of ethnicity by elites (3.4.3), the division of nations between several states (3.4.4), the role of symbols (3.4.5), including the homeland (3.4.5.1) and the narration of the past (3.4.5.2). These warrants are to a large degree based on the explanations discussed in chapter 1.1.

Turning to those warrants concerning autonomy, there are the dichotomous warrants that autonomy increases the risk of conflict (3.1.2), for instance by encouraging the minority elite to demand more and by hindering integration, and that autonomy decreases the risk of conflict (3.1.1). Both of these warrants have their base in the theoretical debates on autonomy, see chapter 1, but also on how national minorities are conceptualised. Furthermore, there is the warrant that *calls* for autonomy, not autonomy itself, do not constitute a security threat (3.1.3). Another related warrant is that decentralisation, which is symmetrically distributed across the country unlike autonomy, will lead to decreased risk of conflict (3.5). It is hard to distinguish exactly between whether these warrants concern the cause of conflict (not granting autonomy will increase the risk of conflict) or the prevention of it (autonomy should be granted in order to prevent conflict).

Like autonomy, the role of communication and cooperation between ethnic groups or the minority and the state concerns both the cause of and solution to ethnic conflict, and, like autonomy, is not just about security but also about justice. The warrants include the claim that the Hungarian minority's position is in itself improved by living in a democracy (3.7.2), that dialogue can solve the problems between the groups (3.7.3), that participation of a Hungarian party in government will lead to progress (3.7.4), and

that confidentiality is important (3.7.1). A subcategory concerns the more specific role of communication and miscommunication. It includes the warrants that one-sided action will cause problems (3.7.5.2), that fear of the government may restrain actions of minority members (3.7.5.1), and that rumours will cause mistrust which again may cause conflict (3.7.5.5), but also that openness will prevent rumours (3.7.5.3). Furthermore, it includes the more fundamental warrant that perceptions matter (3.7.5.4), a theme also discussed above.

Another category concerns the much-debated issue of integration, here understood as causal warrants about the process of integration as a solution. These warrants are that speaking the majority language is necessary for integration (3.9.2), that integration is a two-way process involving both minority and majority (3.9.3), and that integration and Hungarian identity are not mutually exclusive, but can be combined (3.9.1). Of these, the latter two are quite controversial and contested in many places. Other suggested solutions are the warrant that the depoliticisation of ethnicity (3.6) or the rule of law (3.12) will decrease the likelihood of conflict. Adopting a more international orientation, it can be argued that bilateral agreements is a solution (3.2), or that simply following the recommendations of International Organisations is (3.8), a warrant that conveniently justifies the intervention of the organisation. A little apart from the other warrants is the claim that preventive action is necessary (3.10).

Finally, we can turn to the entities framed as causal agents. The list consists of the Hungarian minority parties (3.3.1), the Hungarian minority as such (3.3.2), international organisations (3.3.4), nationalists of all ethnic groups (3.3.5), the Hungarian state (3.3.8), non-state actors in Hungary (3.3.6) and finally the state in which the minority is resident (3.3.7). A related category is that dealing with the responsibility for the Hungarian minorities, whether it belongs to the Romanian and Slovak states (3.11.2) or the Hungarian state (3.11.1), a question much discussed during the Status Law debate.

#### **4.4 Normative Warrants**

When it comes to normative warrants, there is the basic distinction between security and justice discussed above, which in this context means that the basic normative warrants are respectively that security (4.1.1) or that justice (4.1.2) constitute the main priority. The degree to which the framing of an issue in terms of security or justice have influenced the use of other warrants, including other

normative ones, will be analysed. However, it is important to stress that some of normative warrants discussed below have a stronger affinity with justice than security or vice versa.

One category of warrants more closely related to justice than security is that concerned with democracy and dialogue (4.2), where the role of ethnicity in politics is a dominant theme. On a very general level there is the warrant that the goal is good inter-ethnic relations (4.2.7), which only is interesting if seen as having priority over other imaginable goals, such as the absence of conflict. Moving to the warrants concerned with the role of the state, the question is whether the state should be multi-cultural in the sense of creating spaces for all ethnic groups (4.2.18) as discussed in Chapter 1, whether it should merely seek to reflect the balance of ethnic groups, so that each would have influence according to its size (4.2.16), or whether it should ethnically neutral (4.2.17). The latter is associated with the warrant that discrimination on the basis of ethnicity is wrong, also known as the principle of non-discrimination (4.2.13). This does not concern the everyday discrimination of minorities, but rather that legislation should not distinguish between members of ethnic groups, as for instance is the case with affirmative action.

Other related warrants are the claims that fixing politics along ethnic lines is a bad idea (4.2.6), which is a common criticism of multi-culturalism, and, on a different but not necessarily contrasting note, that minorities should be adequately represented in elected bodies (4.2.1) or in government (4.2.8). This concerns the degree to which the minorities should have a (special) say in decisions affecting them, as opposed to taking part in the government of the country as a whole or, as citizens similar to all other citizens, having the same chance or risk as any other group of affecting government decisions. The latter position can be described as republican and connected to the warrant that the state should be ethnically neutral. The former, consociational or multiculturalist, kind of warrants is divided into the warrant that giving the Hungarian minority authority over (some of the) decisions affecting them is practical (4.2.4.1), and the warrant that having a say in these decisions is intrinsically right (4.2.4.1). A related warrant is that legislative support of a law (affecting) from the Hungarian parties is something positive (4.2.8).

More rights-oriented warrants are that there should be an institution for arbitration of minority complaints (4.2.3), and the framing of media freedom as a minority right (4.2.9). There are also the warrants that affirmative action is desirable (4.2.2), that the effective, and not just formal, equality for members of the Hungarian minorities is the goal (4.2.5), that “post-modern” multiple identities should be an end for the Hungarian minorities (4.2.14), and that a specific minority law is needed (4.2.15). Finally, there are the warrants that mutual understanding enriches (4.2.11), thus defining this understanding as an end in itself rather than a means of decreasing the risk of conflict or protecting the minority, that nationalism is or can be something positive (4.2.12), and that transparency is desirable (4.2.20).

Here, five non-categorised warrants deserve mention. The first is that respect for the Hungarian minority is an end in itself (4.12), which I will argue is a justice-type of warrant. The second is that the historic discrimination of Hungarians should be removed (4.11), which can work both in a security and in a justice-context. The third and the fourth both concern the role of the state, the third by warranting that it should merely be responsible for the oversight of the plight of the Hungarian minority (4.14), and the fourth by warranting that the state’s minority policy should be substantial (4.15), and not restricted to implementing international legislation and not following up on it. In a similar vein to the causal warrants 3.7.4.1-6, there is also the warrant that uncertainty is negative (4.17). I will argue this a security-oriented warrant.

So far we have discussed warrants concerned with minority influence, but there is also the contested concept of integration, which is sometimes seen as running contrary to the idea of influence. The warrant here is that there should be a balance between the needs of Hungarian and of the state language (4.5.1), that similarly, it should be possible to integrate in society and still maintain the Hungarian identity (4.5.2), and that language is a way of integration.

If we turn to the more specific, issue-oriented warrants, starting with those concerned with the international level, there is the category of relations between the Romanian or the Slovak state on the one hand and Hungary on the other. This includes the warrant that avoiding inter-state conflict is an end (4.71.), emphasising this rather than intra-state conflict or injustice; that Hungarian support to

Hungarian parties is undesirable (4.7.3); and the somewhat divergent warrants that support from the Hungarian state to Hungarian minority culture is something positive (4.7.4), and has a role to play in preserving the minority identities (4.7.5). It also includes the warrants that the “watering down” or diminishing importance of borders as an end (4.7.8), and that “fuzzy” (meaning overlapping and “post-modern”) citizenship is something positive (4.7.2). The latter links back to theory discussed in chapter 1 that the part of the problem with national minorities is that borders are so decisive, if only they could be made less important the position of national minorities would improve and the conflict potential decrease. The other internationally oriented category is about which international organisations and norms the states should follow. It consists of the warrants that the state should follow the example of other European states (4.6.1) or another state with a Hungarian minority (4.6.5), e.g. mainly Slovakia if Romania was addressed or vice versa, the recommendations of the CoE (4.6.2), the EU (4.6.3) or the HCNM (4.6.4), or live up to international commitments (4.6.6) or set an example for other European states (4.6.7).

Turning from the international scene to the domestic, there is the category of education. Two warrants which can be seen as expressing contradictory logic are that everybody should learn the state language (4.3.1), and the fields taught in Hungarian should be expanded (4.3.4). The warrant that the state should facilitate teaching in Hungarian (4.3.5) can like the latter be seen as expanding the concept of a right to education. This warrant includes various sub-warrants (4.3.5.1-5) concerning what exactly should be done to facilitate this teaching, but as this corresponds to the factual warrants defining this facilitation, I will refer to the above section. The category also contains the warrants that education in Hungarian should be open to everyone (4.3.3), that education is best dealt with locally (4.3.2), that the majority language should not necessarily be the language of instruction in all fields (4.3.6), and that the curriculum should be multicultural, that is, it should reflect the perspectives of the different minorities (4.3.7).

Another category of warrants concerned with domestic issues is that to which I refer as the local and regional government level. Within this category there is the important sub-category of warrants that can be used for framing autonomy in normative terms. These are: personal or cultural autonomy as desirable (4.8.1.1), territorial autonomy as a possibility (4.8.1.2), territorial autonomy as not being

obligatory (4.8.1.4), territorial autonomy as undesirable (4.8.1.5), or as desirable (4.8.1.3). The latter two link back to the causal warrants defining autonomy respectively as a cause of and a solution to ethnic conflict. The local and regional government category also includes warrants such as the one claiming that symmetric devolution, not asymmetric autonomy, is positive (4.8.2), that the areas with a Hungarian population should be treated differently from other areas (4.8.3), and inter-ethnic relations on the local level should not be a zero-sum game, with Romanians or Slovaks losing what Hungarians gain (4.8.4). Furthermore, it also contains the warrant that the boundaries of regions should be drawn with the interests of the Hungarian minorities in mind (4.8.5), so that for instance, they would form a significant group and not be divided. However, this warrant can be qualified with the warrant that other considerations are more important (4.8.5.1).

There is also the category concerning the other national minorities and how they should be treated compared to the Hungarian minority. Here two warrants have been created, one which claims that all national minorities are equal irrespective of size (4.10.1), and one which argues that the relative size of national minority matters (4.10.2).

One of the most important set of normative warrants concerns rights, particularly national minority rights. These warrants are particularly important, as their use can make specific conceptualisations of contested right more authoritative. If we start with the very important question of individual and collective rights, there are the warrants that collective rights are possible (4.13.1.2), that they are not obligatory (4.13.1.1), and that individual rights are inalienable (4.13.1.3). Some may wonder why I have not included a warrant calling for collective rights. The reason is that such a warrant would have been impossible to employ given the hostility to the concept of collective rights in many European countries, including Romania and Slovakia, and the lack of backing for such rights in the international documents on national minority protection. Therefore, I will claim that it makes more sense to look at the degree to which individuals or the whole minority has been framed as the holder of the rights.

Different individual rights, which are not national minority rights but rather political or civil rights and which are available to persons irrespective of ethnicity, can also be used as warrants when framing the right way to treat the Hungarian minorities. This includes the right to freedom of expression (4.13.2),

the right to assembly (4.13.6), to work to change laws (4.13.7), to stand for office (4.13.8), and to participate in economic life (4.13.10). It also contains the qualifier that the concern of state security is a (the only) limitation on such rights (4.13.9). Furthermore, there is also the right to identify with ethnic groups, including the Hungarian minority (4.13.5), as well as the right not to identify with these groups (4.13.4).

If we focus on national minority rights, there are a couple of important conceptualisations that can be used as warrants, which require explanation. The first is the concept of benign neglect (4.13.3.1), or the idea that it is best if the state leaves national minorities to themselves and remains ethnically neutral, a right that goes very much against the whole notion of national minority rights. The second is the very opposite, namely that national minority rights are inalienable (4.13.3.4). And the third is the warrant that the most important end is to prevent discrimination (4.13.3.6), which is a significantly less far-reaching ambition than the warrant that national minorities have a right to express their own culture (4.13.3.2).

Other national minority rights warrants include the right to participate in politics and public life (4.13.3.5), to ask for autonomy (4.13.3.8), to appeal to international organisations (4.13.3.9), and to complain to Ombudsmen or similar institutions (4.13.3.10). It also includes the right not to indicate a minority identity when for instance dealing with public authorities (4.13.3.7), and, linking back to other warrants concerned with the importance of borders, the right to contact with co-nationals in Hungary (4.13.3.12) or the Hungarian state (4.13.3.11).

As language and ethnic or national identity are often closely linked, at least conceptually, it is perhaps not surprising that the bulk of national minority rights take the form of linguistic rights. The types of language policies in countries with national or linguistic minorities can be divided into two overarching regimes, namely promotion- (4.13.3.3.8.1) or toleration-oriented rights (4.13.3.3.8.2). Whereas the latter protects people from government interference with their language use, including their use of minority languages, the former actively promotes the use of minority languages by including them in public services (Kymlicka and Patten, 2003a:26-27). The latter can again be subdivided into the regimes where minority languages are elevated to the status of official languages (4.13.3.3.8.1.2) and

those where the majority language is the norm and minority language speakers are merely accommodated with translations of public communications (4.13.3.3.8.1.1). The right to use the minority language can even be framed as inalienable (4.13.3.3.6).

However, these are overarching warrants concerned with what the regime should ideally look like. On a relatively undisputed level, one right encompassed in all regimes is the right to private use of the minority language by individuals, associations and companies (4.13.3.3.2). If we move to the language used by public institutions, several rights can be warranted, including the right to use the minority language in court (4.13.3.3.9) and with social workers (4.13.3.3.7). Furthermore, there are the rights to use the minority language in official communications between citizens and public institutions (4.13.3.3.1), and on road signs and other topographical information (4.13.3.3.3). Both of these have the sub-warrants that this right only can be exercised when there is a sufficient proportion of minority language speakers, and I will look at what has been defined as a sufficient proportion in the individual cases. There is also the right to use personal names in a minority language version (4.13.3.3.5), which is important as minority members have earlier in Slovakia been forced to spell their names in ways consistent with the majority language as opposed to their own language.

Probably the most important set of linguistic rights concern the use of minority languages in the education system. These include the right to be taught in one's own language (4.13.3.3.4), which can be a warrant in its own right or further conceptualised in subwarrants such as parents' right to decide the language of teaching of their children (4.13.3.3.4.1), and the right to set up minority language schools (4.13.3.3.4.2).

If there are many warrants concerned with the rights of minorities, there are also a few concerned with their duties, claiming that they owed these to the state in which they are resident. These include, on a fundamental level, the warrant that minorities have rights as well as duties (4.9.4), duties which include integrating in society (4.9.5), obeying the laws (4.9.6), and respecting the territorial integrity of the country (4.9.3). Somewhat more contestable, it also includes the warrants that they have a duty to participate in politics (4.9.1) and that proclaiming autonomy (without consent from the government) is wrong (4.9.2).

#### 4.5 Backing

Finally, there is the category of the different sources as backing for warrants and arguments. A lot of different backings can be used, but in my selection of codes I have chosen to focus on the use of international documents and statements from international organisations. The intention is to see which differences exist between the different organisations and how they have developed over time. If we start with the former, a range of international documents have been used as backing. The list starts with the UN Universal Declaration of Human Rights (5.6.11), the UN International Covenant on Civil and Political Rights, especially article 27 (5.6.8), and the European Human Rights Convention (5.6.6), all concerned with human, not national minority, rights. Moving on to documents on national minorities, there are the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (5.6.10), the FCNM (5.6.7), and the CoE Recommendation 1201 (5.6.9). Among the more political and less legal documents, there are the OSCE/CSCE Copenhagen Document (5.6.4) and Paris Charter (5.6.5). Finally, there are the documents which are relevant but not directly concerned with national minorities, but which still can be relevant, namely the UN International Convention on the Elimination of all forms of Racial Discrimination (5.6.3) and the CoE Charter for Minority and Regional Languages (5.6.1).

If we turn to the use of statements or other material from the organisations, I have chosen to divide the backings according to the organisation which is the source of the statement, thus there is the Council of Europe (5.2), the EU (5.4), the CSCE/OSCE other than the HCNM (5.3), and the HCNM (5.5). Finally, I have also chosen to include the use of national constitutions (5.16) and the bilateral treaties between Hungary and Romania and Slovakia (5.2) as backing among my codes.

## **5 Analysis: Slovakia -The Historical Background**

When Slovakia became independent on the 1<sup>st</sup> January 1993, it could hardly draw on the legacies of previous Slovak states. A Slovak state under Slovak nationalist leadership had been created during the Second World War by the Axis powers, but its independence from Germany was questionable and its legacy was tarnished, although for some Slovaks it still represented something positive (Gyarfasova, 2001: 46). Since the Magyar invasions around 900 and until 1918, the area today known as Slovakia had been an integral part of the Hungarian Empire with no distinguishable border. The population was subsequently mixed, with Hungarians constituting a significant proportion. After the Trianon Treaty in 1920, in which Hungary ceded Slovakia, these people would constitute a sizeable national minority in the newly founded Czechoslovakia. Most of these people were concentrated along the southern border with Hungary and in the two largest cities, Bratislava and Kosice, but Hungarians could generally be found in all parts of the country, although mainly in the towns. Unlike the Hungarians in Transylvania, the Szekely, there was and is not a distinct Slovak Hungarian identity.

During the Second World War, Hungary was granted the parts of Southern Slovakia where most Hungarians lived, and the Slovaks in these areas faced forced Magyarisation. As a result of this and the Hungarians' collaboration with the German army, the so-called Benes-decrees made all Czechoslovak Hungarians (as well as Germans) bearers of "collective guilt", which stripped them of different rights and led to mass expulsions (Henderson, 2002: 74). However, in Communist Czechoslovakia the Hungarians were considered a relatively small issue, as they constituted less than 4% of the population and the Communist party did not occupy itself much with nationality. The Slovaks, on the other hand, often saw themselves as the ignored party in the constitutional marriage with the Czechs. Although the country was nominally a federation with a Slovak government and National Council (Parliament) in Bratislava, power was concentrated in Prague (Henderson, 2002: 22-26).

When the Communist government fell from power in 1989, various parties emerged on the scene in Slovakia as well as in the Czech Republic. Among them were different Hungarian parties, as well as Public Against Violence (VPN), the civil rights movement which had been the Slovak counterpart to the Czech Civic Forum when the Communist Party was brought down. VPN were invited to take part in an interim Slovak government together with the Slovak Communist Party, and among the VPN

ministers were Vladimir Meciar, who served as minister of the interior. The first democratic elections in June 1990 saw VPN win a majority in the Slovak National Council, and they chose Meciar as the new Prime Minister.

Meciar quickly started arguing against what many Slovaks perceived as Czech indifference towards Slovakia and the differences between the Slovak and Czech Republic. He, and others, argued for a looser confederation in which the Slovaks would have more space to pursue policies in the interest of Slovakia. At the same time Slovak nationalism, dormant since the Second World War, re-emerged in the shape of the Slovak National Party, which demanded outright independence and was outspokenly anti-Hungarian. As the relationship between Czech and Slovak leaders worsened during the so-called “war of the hyphen”, an intense debate over whether the state should be called Czechoslovakia, Czecho-Slovakia or something different, the nationalists held rallies for Slovak independence (Gyarfasova, 2001: 40). Newly founded nationalist newspapers and the cultural organisation Matica Slovenská were established to protect the Slovak language and argued for independence and against those Slovaks who wanted to stay in the Federation. Without directly arguing for independence, Meciar used a similar rhetoric directed against “bad Slovaks”, who were not sufficiently aware of their Slovak identity, and against Prague. When this rhetoric and the difficulties in controlling Meciar became too much for the VPN leadership, they removed him from the position as Prime Minister in April 1991, which led him to form the Movement for a Democratic Slovakia (HZDS).

VPN split into other parties, and at the elections in June HZDS became the biggest party and took hold of power with the Parliamentary support of SNS. Meciar soon started to negotiate a more confederal framework with Czech Prime Minister Vaclav Klaus, but lack of agreement between the two on the shape of this framework soon led to the decision to split up Czechoslovakia altogether. Whether this decision had the support of the two populations is questionable, as most opinion polls showed that a majority supported some kind of federation (Henderson, 2002: 35). However, a Constitution for an independent Slovakia was rather hastily written and adopted by the National Council, although with abstentions from the two Hungarian parties, the Hungarian Christian Democratic Movement and Coexistence. This abstention was due to dissatisfaction with the wording “We, the Slovak Nation” in the preamble to the constitution (Gyarfasova, 2001: 43).

Slovakia came into existence 1 January 1993 with several unsolved issues, especially regarding the Hungarian minority. This is not the only national minority, but numbering almost 600.000 out of a population of little more than 5 million (or about 11%), they are far more significant than Ruthenians, Ukrainians and Czechs, which each constitute about 1% of the population. The Roma minority, which tends to be treated as belonging to a separate class of minorities than the national minorities, constitute according to estimates between 5 and 10% of the population (Ibid: 72). However, as many Roma define themselves as Hungarians (for instance in censuses), but are often not regarded as such by non-Roma Hungarians, it is hard to draw any exact borders around any of these two minorities. Politically, the Hungarian minority is both the most important and the best organised of the minorities, but also the one which is most disliked (perhaps second to the Roma) among parts of Slovak society, where the (mainly inherited) memory of Hungarian suppression is strong. This is the context of the period to which we now turn.

#### **5.1.1. The Meciar Period 1993-1998 –an overview**

Meciar's first period as Prime Minister of an independent Slovakia did not last long. In March 1994 he resigned under the threat of a non-confidence vote. Before that the governing of Slovakia had become increasingly difficult as the economic situation worsened, defections from the HZDS made the government dependent on both the SNS and the Party of the Democratic Left (SDL) and the relationship with the President Michel Kovac, originally a HZDS-member, was increasingly strained (Henderson, 2002: 43). An interim government, consisting of the Christian Democratic Movement (KDH), SDL and defectors from HZDS and SNS, was formed in order to rule the country until the elections in September. This government reversed several of HZDS' policies and increased privatisation. In spite of or because of this, the elections returned HZDS as the biggest party and after long negotiations Meciar was able to form a coalition government with the SNS and the leftwing Association of Workers of Slovakia.

In 1995 the relationship between Meciar and President Kovac deteriorated further, as the government unsuccessfully proposed a vote of no-confidence in the President, and his son was abducted under unclear circumstances and brought to Austria, where he was wanted by Interpol. These and other

events led to increased criticism of Meciar abroad. In July 1997 Slovakia was denied access to the first rounds of accession negotiation for membership of NATO as well as the EU, as will be discussed below. In this period two coalitions started to form, one was the Party of the Hungarian Coalition (SMK) consisting of three smaller Hungarian parties, the other was the Slovak Democratic Coalition (SDK), consisting of KDH, the Democratic Union and smaller parties. At the elections in September 1998, HZDS was again the largest party, but the anti-Meciar parties, SDK, SMK, SDL and the Party of Civic Understanding (SOP) could form a coalition government with 60% of the seats in the National Council.

### *The Hungarian Minority*

Different issues relating to the Hungarian minority dominated the agenda in the Meciar years. Although the Hungarian minority was not, as mentioned above, the only national minority, it was *the* minority which mattered. As will be discussed below, many of the issues related to the use of the Hungarian language. In the beginning, the debate was mainly about personal and place names. According to Slovak law in the early 90s non-Slovak first names were not allowed and women's surnames had to have the Slavic suffix '-ova' attached, which was an issue for the Slovak Hungarians, as Hungarian does not have such a declination, but not for the Slavic-speaking minorities, which do. Much controversy surrounded the changing of this law, which took several years, but ended with the granting of the right to choose non-Slovak names and to drop the suffix.

Controversy also surrounded the right to use non-Slovak place names on road signs, where a significant minority population lived. As in the former case a draft law was introduced in 1993 that would grant villages and towns with at least a 20% minority population the right to have additional road signs in the minority language. However, this law did not pass Parliament due to objections from the Slovak National Party as well as the Hungarian parties, who thought the law was not sufficiently far-reaching. A law was passed in 1994 granting this right after intense discussions and without the support of the Hungarian parties. Twenty per cent was also the threshold when the Hungarian parties argued for the right to use Hungarian in communications with public authorities, another contested issue. In 1995 a draft language law was introduced, which would have made many of the provisions on language rights

of the minorities null and void. However, it was never ratified while Meciar was in power, and was dropped by the Dzurinda government.

Another issue which caused much debate between the Meciar government and the Hungarian parties was administrative reform. Most agreed that the old communist system with a division into four regions and little decision-making at the regional and local level had to be changed, but strong disagreements existed over what these regions should look like, how their leadership should be chosen and which competences they should have. The Hungarian parties wanted to have the areas in Southern Slovakia where most of the Slovak Hungarians lived as one region with an elected leadership, something which the government opposed. It preferred a solution which would split the areas with significant Hungarian majorities into several regions with a government-appointed leadership. Furthermore, although the Hungarian parties knew that it was hardly likely to be achieved, from time to time they argued for territorial autonomy for the areas with significant Hungarian population, although without any success.

A related issue is the introduction in 1998 by the government of a draft law in Parliament, which would have fixed electoral representation and participation in local elections along ethnic lines, so that a number of seats on local councils would be reserved for members of national minorities (depending on their proportion of the local population). Members of these national minorities (in most cases Hungarians) would then have to choose between a selection of candidates from their own national group to fill these seats. However, the law was deemed unconstitutional by the Constitutional Court before the elections, and after the elections the new government abandoned the law (Henderson, 1999: 58).

In March 1996 the Slovak Penal Code was amended, so that anyone organising public meetings “with the intention of harming the constitutional order, the integrity of the territory or of the defence of the Republic or undermining its independence” would be liable to punishment up to 3 years of imprisonment. Additionally, anyone who “intentionally disseminates false information abroad which harms the interest of the Republic” would be liable to up to 2 years of imprisonment. This was widely perceived as directed against the Hungarian minority, and caused serious discord (Henderson, 2002: 92-93).

Financial support for minority periodicals and cultural organisation and activities was another cause of contention. The government was often accused of cutting the support for these cultural activities while enlarging the overall contribution to cultural activities, and especially of discriminating against the Hungarian minority when allocating these contributions. The government, on the other hand, explicitly stated that it did not want to subsidise periodicals with a political character or which may cause “tensions among citizens”. The government was also criticised for subsidising Slovak newspapers which printed supplements in the minority languages, especially as the critics argued that especially pro-government newspaper were given these subsidies.

The last issue which proved very contentious was education. The public school system was dominated by the Slovak language, but Hungarian-language primary and secondary schools and kindergartens also existed and exist. The vast majority of Hungarian-language pupils (about 75-80 %) attended these Hungarian-language institutions. Except for a faculty for training teachers at the University of Nitra, no tertiary education in the Hungarian language has existed, and many Slovak Hungarians have chosen to study in Budapest..

In the beginning of its term of office, the HZDS-government introduced the concept of alternative schools, which would mix Hungarian-language and Slovak-language education, so that the teaching in the alternative schools would alternate between Slovak and Hungarian. These schools drew much criticism from the Hungarian parties, which saw them as an attempt to dilute teaching in Hungarian. On the other hand, the government argued that the command of Slovak among Hungarian-speakers was inadequate for integration in society, and that the concept of alternative schools was the best solution to this problem, and that the right of parents to choose the language of teaching of their children would not be interfered with. Another issue related to teaching in Hungarian was the training of teachers who could teach in Hungarian, as the Hungarian parties often argued that the above-mentioned faculty in Nitra could not meet the demand for these teachers. The Hungarian parties also argued that there was a serious lack of adequate teaching materials in Hungarian, and that the government did not want to close this gap.

### *The International Scene*

As mentioned above, the perception in Slovakia of Hungary was not always positive in the years following independence. Slovak nationalists often talked about the centuries of Hungarian domination. The Hungarian state, on the other hand, considered the plight of the Hungarian minorities an important priority in their foreign policy, and often intervened to improve their conditions. Furthermore, there existed an important dispute over the projected Gabčíkovo-Nagymaros Dam across the Danube, which had been agreed between the two Communist governments, an agreement upon which Hungary had reversed in the late 80s. Especially during the government of József Antall (1990-1994), who in his inauguration speech famously declared that “I want to be the Prime Minister in spirit of 15 million Hungarians” (Hungary has only 10 million citizens), Hungary was viewed with suspicion (Balogh, 2001: 75). The relations improved to a certain degree after the Socialist Gyula Horn came to power in Hungary in 1994. Most importantly a bilateral treaty on good neighbourly relations was signed in March 1995 between Horn and Mečiar. This treaty included not only provisions on trans-border co-operation and an official renunciation of any Hungarian claims on Slovak territory, but also provisions on the protection of the Hungarian minority in Slovakia and the smaller Slovak minority in Hungary (approximately 100.000 individuals). The Council of Europe’s Recommendation 1201 was a part of the treaty as the guideline for minority treatment. This text is quite far-reaching compared to other texts on national minority rights, which led to widespread protests from SNS and parts of HZDS. It took the National Council more than a year to ratify it.

The Treaty was a product of the EU’s Pact on Stability (also known as the Balladur Plan), which was an initiative of the EU member states in order to prevent conflicts in Central and Eastern Europe. The idea was that the Central and Eastern European states should meet at two different regional round tables, one of which included Hungary, Slovakia, Bulgaria, the Czech Republic, Romania and Poland, in order to create bilateral agreements between the states on national minorities and border recognition (Benoît-Rohmer, 1996: 30-36). After this the intention was that all would sign the Pact on Stability, which confirmed their dedication to good neighbourly relations and to several international legal texts on the protection of national minorities, including the Framework Convention. The different transnational projects that the countries had come up with together would then be eligible for EU

financial support. Although not legally binding, the OSCE would be given the task of monitoring the implementation of the Pact.

Being a signatory to the Pact was seen as a precondition for EU membership. Slovakia had handed in its application for EU membership in 1995, but the EU was far from positive in its assessment of Slovakia's credentials as a democratic country. Already in November 1994 and again in October 1995 the EU Council issued demarches criticising the developments in Slovakia. Nevertheless, it was to a larger degree the crisis between the President and Meciar, and the government's claimed lack of respect for the democratic process than the condition of the Hungarian minority, which was mentioned in this criticism (Henderson, 2002: 91-94). However, it was still an unpleasant surprise for the HZDS government when the EU Commission in July 1997 placed Slovakia in the second group of applicant countries, whereas countries such as Hungary, the Czech Republic and Poland were placed in the first group. This meant that Slovak EU membership might take a long time, as the negotiations with the first group of countries would have to be finished before proceeding with the second group<sup>25</sup>. Furthermore, Slovakia was the only country which fulfilled the economic criteria but not the political, meaning that it was effectively ruled out because of its democratic standard. Another hard blow had already been dealt Slovakia during the same month, when NATO decided to enlarge to include the Czech Republic, Hungary and Poland, but left Slovakia out for a later round. Slovakia had thus failed to achieve memberships of these two organisations, which had been the top priorities for its foreign policy since independence (Henderson, 2002: 101).

Slovakia had been a member of the OSCE and the Council of Europe almost since independence. It had taken up the commitments which had belonged to Czechoslovakia before, and applied almost immediately to both organisations. Whereas in the OSCE membership is granted almost automatically, in the Council of Europe it depends on the scrutiny of the state of the country's democratic system. This inspection, which also dealt with the plight of the Hungarian minority, forms part of the reactions to the Hungarian minority issue to which we now turn.

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<sup>25</sup> This division was later abandoned, so that Slovakia could join the EU in May 2004 together with all the other countries from the first and second group except Bulgaria and Romania.

### **5.1.2 The Analysis of the Period**

As we now turn to the concrete analysis of the responses to the Hungarian minority policy, a few things are worth mentioning. First, that the arguments analysed involve concepts of a legal character as well as of a more common political discourse character (whether the minority is described as a unitary entity or as consisting of individuals), as well as causal warrants about which conditions will cause which outcomes. The organisations' argumentation will be analysed one by one starting with the Council of Europe. I have chosen to focus on the comparative element, emphasising the differences between the organisations and eventual developments over time, but also including a few concepts which have been very important in the more theoretical debates in order to show how they have been applied in practice.

This is because a full overview would be both too extensive and contain too much information of a less interesting character. Second, although in the texts analysed there have often been references to the "national minorities", there are several reasons to believe that it is primarily the Hungarian minority to which they refer. First of all because the term "national minorities" seems to be used interchangeably with "Hungarian minority", so that a paragraph starting by referring to national minorities' role in the education system will mention the same problems later in the text but this time simply referring to the "Hungarian minority". Secondly, due to sheer size relative to the other minorities as well as the historically strained relationship with the Slovaks, the Hungarian minority clearly dominated the national minority agenda domestically as well as internationally (Henderson, 2002: 72). And thirdly, in the few cases where specific references have been made to the other national minorities, it has been in explicit comparison to the Hungarian minority. One can argue that it is exactly to avoid the controversy surrounding the Hungarian minority that such references are made to the broader and more neutral category of "national minorities".

#### **5.1.2.1 The Council of Europe**

The Council of Europe is represented with seven texts from the period 1993 to 1995, which means that it is hard to outline any developments over time. All of the texts relate to the Parliamentary Assembly's process of determining whether Slovakia was eligible for membership of the Council of Europe. This was done by sending representatives of the Committees on Legal Affairs and Human Rights, on Political Affairs as well as that for Relations with European Non-Member States to Slovakia on fact-

finding missions to Slovakia in early 1993. Here, like the HCNM, they had meetings with Slovak politicians and representatives from the NGO's, the judiciary, etc, and collected data. Each representative was to submit a report on his/her findings, which would be summed up in the Opinion (No. 175) of the Parliamentary Assembly on the application of the Slovakia Republic for Membership of the Council of Europe, which recommended accession on the condition that Slovakia would commit itself to certain obligations specified in the Opinion. The accession procedure then passed to the Committee of Ministers, which passed Resolution No. 93 (3) approving the accession of Slovakia on the said conditions. Later, in February 1994 and January 1995, the Committee on Legal Affairs and Human Rights and the Political Affairs Committee would report on Slovakia's honouring of the commitments, two reports which are also analysed here.

### *Data*

The dominant themes in the CoE texts have been the remains of the Benes Decrees, the administrative reform and the various language laws, which all have been addressed more than five times, the two latter areas nevertheless to a greater degree than the former. All three areas were addressed in at least three different CoE texts. Included under the heading of the Benes decrees are not only the decrees preventing from Germans and Hungarians holding specific offices, but also the question of restitution of property belonging to Hungarians and Germans expropriated after the Second World War in relation to the decrees. The language laws include the law on names concerned with the use of personal names, the law on bilingual signposting, and the law on the state language, but also the different draft laws which were proposed on these subjects. Education and the commitments entered into upon accession to the CoE were also addressed at length (and three and four times respectively), the latter only in 1995 in the follow-up reports on Slovakia's adherence to these commitments. Furthermore, the letter written to the Council of Europe by representatives of the Hungarian parties has also been addressed twice, and the role of the media once.

### *Backing*

In the argumentative structures in the texts analysed, the speakers have used various sources as backing for the arguments, from the Slovak Constitution to international treaties. They have been used as undisputed foundations for what they have wanted to say, lending an authority to the arguments which

they would not have on their own. Interestingly, when it comes to the use of international documents on national minorities, the CoE Rapporteurs have predominantly used the Parliamentary Assembly's own Recommendation 1201 (ten out of fifteen times). No references exist to the OSCE Copenhagen Document or the UN documents. Even the ECHR is only referred to three times, although it is a legal document created and upheld by the Council of Europe. This shows that the Parliamentary Assembly really has acted as bound by the Recommendation, and has to a large degree promoted it as the document that it was most important that the states complied with.

### *Factual Warrants*

The descriptions and definitions of the different entities, issues and concepts in the reactions to the Hungarian minority policies are here grouped together under the heading factual warrants. Obviously, it is hard to draw a clear line between normative and factual warrants, as there is a normative point to most of the concepts, for instance "minority protection" carries a positive connotation. Therefore, this separation is mainly for the sake of analytical clarity, and to separate where an entity is simply described in a specific way, and where it is claimed that such an entity should be treated in a specific way.

I will argue that it makes most sense to start with the most basic of factual warrants, namely those concerned with the nature of the Hungarian minority. At this level, there is a difference between referring to on the one hand the "persons belonging to this [the Hungarian, ed.] minority" (Council of Europe, 1994), and on the other the "Hungarian minority" (Council of Europe, 1995b). The former defines the persons making up the Hungarian minority as the subject, whereas the latter describes the minority as a subject in itself. Talking of the Hungarian minority as the subject makes certain possible arguments less likely, for instance it is more difficult to talk about different groups within the minority, or about members of the minority starting to identify themselves more as Slovaks than as Hungarians. On the other hand, talking about persons belonging to the Hungarian minority means that arguments about one particular Hungarian position on an issue seem less convincing. Two different pictures seem to emerge: in the first, Slovak society consists of persons, which may belong to different national or ethnic groups. In the second, society consists of different nations, which do not overlap or intersect.

Therefore it is interesting that the Hungarian minority has only been framed as something persons belong to five times, whereas it has been framed as a unitary entity no less than twenty-six times. The framing of members of the Hungarian minority as being first and foremost Hungarian, warranted for instance by referring to such people as “Hungarians” (rather than for instance “Slovak Hungarians” or the above-mentioned “persons belonging to the Hungarian minority”), has been used five times. As this warrant does not frame the Hungarian minority as such (unlike the two warrants above) but individual Hungarians, it is hard to compare it directly with them. However, I will argue that although this warrant emphasises the “Hungarianness” of the individuals in a way similar to the “unitary” warrant, it still frames the ethnic Hungarians in Slovakia in a more individual-centric manner, similar to the “individualistic” warrant.

Turning to the use of these warrants in connection with different Data categories or issue areas, the warrant framing the minority as a unitary entity has been the only warrant used when addressing the issue of administrative reform and the letter to the CoE from the Hungarian parties, and predominantly when addressing the language laws. When it comes to addressing education or the media however, it is harder to distinguish a pattern, whereas in connection to the Benes Decrees, the “individualist” warrant has been the only one used.

The predominance of the framing of the Hungarian minority in unitary terms is reflected on the political level, where it has been framed six times as an entity with one set of representatives and interests, and four times in terms of having different sets of representatives. The former can be seen in sentences such as “The intention...is seen by the Hungarian representatives” (Council of Europe, 1993b), the latter in references to the individual Hungarian parties or to “representatives of the Hungarian parties” (Council of Europe, 1993b). Whereas the former operates with the notion of the Hungarian representatives perceiving the world from one singular perspective, the latter includes the different Hungarian parties, and thus the possibility of different positions, in the frame. The existence of the three Hungarian parties (Coexistence, the Hungarian Christian Democratic Movement and the Hungarian People’s Party) makes the prevalence of the warrant that the Hungarian minority has one set of representatives more interesting and says a lot about the dominance of the perception of the Hungarian minority in unitary terms.

This can also be seen in the predominance of the warrant that it is the minority which is the holder of a right (used twelve times) over the warrant that it is the persons belonging to the minority which is the holder (used twice). The former appear in references to “the rights of minorities” (Council of Europe, 1993b), the latter in references to “the right for the persons belonging to this minority” (Council of Europe, 1993b). Again, this is surprising, perhaps even more so, as international legal and quasi-legal documents always operate with the term “the right of persons belonging to national minorities”. The term “national minority” rather than “ethnic minority” has been used constantly by all three organisations, in spite of it being relatively new to international minority protection documents.

When it comes to other ways of framing the Hungarian minority, it has to a large degree been framed as being territorially confined to certain parts of the country (twelve times), as when talking about “regions with a large Hungarian population” (Council of Europe, 1993d). This framing has to be contrasted with framing the Hungarian minority and the policies affecting it, in non-territorial terms, for instance by making a provision or a right applicable to all of Slovakia. The minority has slightly more often (fourteen times) been framed in linguistic terms, for instance when addressing linguistic rights or the use of Hungarian in education. Again this framing has to be contrasted with other potential ways of framing the minority when addressing the same issues, for instance framing minority education in terms of the teaching of minority culture rather than language. The framing also has to be compared with the fact that the Hungarian minority has only been framed twice in terms of culture during this period.

Considering the framing of the situation in terms, I have, as mentioned above, defined three kinds of warrants; crisis, a need to act, or progress. Although it can be hard to determine exactly which warrant has been used to frame the situation, it can still give an idea of the degree to which the CoE has seen the developments as going in the right or the wrong direction, or whether there is “just” need for improvement. During the Meciar period, the CoE Rapporteurs have predominantly framed the situation in terms of progress (fifteen times), but also in terms of a need to act (eight times) and crisis (four times), meaning that the critical frames altogether almost equal the approving ones.

However, there are differences between the warrants used when it comes to the different issue areas. Whereas the administrative reform and education have been solely framed in terms of a need to act, the Benes Decrees and the language laws have predominantly been framed in terms of progress, thus approving the government's policy on these two areas. Finally, the letter written by the Hungarian parties to the Council of Europe has been framed exclusively in terms of crisis, expressing the CoE's condemnation of the Slovak government's harsh criticism of this letter.

If we turn to the framing of more concrete policy areas and issues, starting with education, teaching in Hungarian has been framed as important four times, and tertiary education in Hungarian and the facilitation of education in Hungarian have each been framed as important twice. This way, the concept of minority education has been conceptualised as including tertiary education as well as facilitating this education, for instance by providing books in the minority language. This has consequences for the right to minority education and the related duties of the government. Turning to the issue of administrative reform, local and regional government has not surprisingly been framed as important for the Hungarian minority (six times altogether). Road signs and other indicators of place names have only been framed as important four times.

Interestingly, inter-ethnic politics have been framed as involving fear and mistrust five times, for instance when stating that "there is a lack of mutual trust" (Council of Europe, 1993b) or talking about "the many accusations (Council of Europe, 1993b). This is a surprisingly pessimistic view, given the common framing of the situation in terms of progress. On a related note, the Slovak Hungarians have been framed seven times in terms as being victims of discrimination in the present, and seven times as having been victims of discrimination in the past.

Turning to the international level, the commitments of Slovakia to international treaties and standards have been warranted as important five times altogether. Also on this level, the ethnic Hungarians in Slovakia and the ethnic Slovaks in Hungary have twice been warranted as being of equal importance, at least politically if not morally.

### *Causal Warrants*

The implicit claims about causality come in different kinds, many of them concerning how to avoid or solve conflict, but also concerning the causes of conflict. As was argued in Chapter 1, these notions are often interrelated so that one perception of the causes of ethnic conflict often leads to a specific perception of the solutions to ethnic conflict. In the case of the CoE, a strong emphasis has been put on the role of perceptions (warranted five times), as can be seen in the sentence “It is natural that the Hungarian minority (or any other minority) should have its *own perspective* [my emphasis, ed.] on these issues” (Council of Europe, 1995b). A related warrant (used twice) is the warrant that rumours and mistrust are important factors in ethnic conflict, exemplified in the sentence “The Rapporteurs heard many allegations and rumours, both from the Slovak side about Hungarian intentions, and from the Hungarian side about Slovak intentions, the main reason of which was lack of mutual trust” (Council of Europe, 1993d).

However, as mentioned, these warrants have their counterpart in the warrants about how to solve conflict, namely the warrant that cooperation and dialogue is one of the best ways to solve problems between a national minority and the majority. This warrant has been used seven times, making it the most common causal warrant together with the above-mentioned “perceptions matter”. It is emphasised that “constructive dialogue is needed as an aid to mutual understanding” (Council of Europe, 1994). The warrant is used both to suggest new courses of action, to compliment the Government, or rather the President on its efforts such as “Slovakia is showing its good will by establishing the President’s Round Table...” (Council of Europe, 1994), and to criticise the lack of “badly needed official dialogue (Council of Europe, 1994). Finally, the causal warrant that legislation is affecting the situation of the Hungarian minority (used four times) deserves mentioning, as it frames legislation as the most important instrument. This can be opposed to hypothetical warrants emphasising implementation, or as mentioned above, that processes of dialogue are more important.

### *Normative Warrants*

Several implicit claims about how to treat certain issues, or normative warrants, have been employed in the texts analysed here. I will again start with the basic warrants; in this case those which frame the response in terms of either security or justice. The justice perspective can be seen when talking about

rights or the good of the Hungarian minority as ends in themselves. The security perspective can be seen when talking about conflict-avoidance, or when the proposed solutions are merely means to appease the Hungarian parties and not means in themselves. Although it often is impossible to determine whether a response to the Meciar government's Hungarian minority policy is framed from a security or justice perspective, it has been possible for me to assign such codes several times. I will argue that the justice perspective has been used six times and the security perspective five, a difference which is not large enough to really say anything about a dominance of the former perspective. It is noteworthy that the Benes Decrees have been framed solely from a security perspective, whereas the language laws have been framed from a justice perspective. It is not really possible to say anything about the other issue areas.

One of the most important and disputed normative aspects of the debate on national minority protection has been the issue of minority rights, especially concerning who are the holders of such rights. As discussed in the section on factual warrants, both the minority as a whole and the individuals constituting it have been framed as the holders of rights. The latter is the formulation used in the international documents on minority protection. The former does not as such amount to a collective right in the "hard" sense, as a way of describing the right-holder. To a large degree, talking about the "rights of minorities" (Council of Europe, 1993d) is not talking about collective rights in the legal sense, but rather emphasises the minority as a precondition for the existence of these rights, as discussed in Chapter 2. As mentioned earlier, there is little consensus on where to draw the dividing line between collective and individual rights. This framing of the minority as right-holder can be seen as a tendency to view some rights as occupying a position somewhere more toward the collective end of a continuum between purely collective and purely individual rights, at least compared to scenarios in which the right-holder is framed as individual.

Turning to the more concrete rights, linguistic rights have played a predominant role. Particularly the right to use first names in minority languages and surnames without the suffix –ova for women has been emphasised (eleven times). Although this is not a right inscribed in all international documents on minority rights, the Council of Europe Rapporteurs have advocated it persistently in the case of Slovakia with backing in the Recommendation 1201 (1993) and the commitments which Slovakia

entered into upon accession. In addition to this the right to road signs and other topographical information in Hungarian, much contested in Slovakia as well as in the drafting in the various international documents in national minority protection, was framed as being important no less than seven times, often with backing in Recommendation 1201. Interestingly, the right to be taught in one's mother tongue was only warranted once.

A set of normative warrants, which were not framed in terms of rights, are those warrants concerning the degree to which the new regions created by the administrative reform should reflect the geographical concentration of the Hungarian minority (warranted six times). If the Hungarian parties were unable to secure an autonomous region, they at least wanted a region (possibly two) with a Hungarian majority. This demand was adopted by the Council of Europe Rapporteurs, which made the Slovak government promise "that no matter which administrative divisions were introduced, the rights of minorities would be respected (Council of Europe, 1993d) or that "the legitimate interests of the minorities will be respected (Council of Europe, 1993b). Exactly which rights or interests they refer to are not specified, but the underlying warrant is that states should attempt to create regions with the minority as a majority, which would amount to some degree of self-determination.

Another way of arriving at (a low) degree of minority self-governance would be to let the representatives of the Hungarian minority have a say in decisions affecting them. This notion has been warranted as normatively attractive five times by the CoE. The Framework Convention on the Protection of National Minorities includes a vaguely worded obligation to ensure the effective participation of minorities in public affairs concerning them. It is apparently this obligation that is used in an argument for involving the Hungarian minority (and the others) in decisions affecting them.

Finally, there are the normative warrants establishing adherence to international norms, commitments and standards as something positive. The CoE has warranted that adhering to the international documents a state has committed itself to is something positive no less than fourteen times. As previously mentioned, this includes the CoE Parliamentary Assembly's own Recommendation 1201, but also other CoE documents such as the European Charter for Regional and Minority Languages. It also includes the commitments that Slovakia entered into upon accession, and which are the very raison

d'être of the two CoE texts from 1994 and 1995 (Council of Europe, 1994; 1995b). This reliance on their own sources has to be contrasted with the fact that the CoE Rapporteurs refer only once to the HCNM, in 1993 (Council of Europe, 1993d). Some of this is specific to time period, since in 1993 the Council of Europe Rapporteurs had few other actors to refer to, as the HCNM was only established that year. However, this does not explain why the CoE Rapporteurs did not refer to other actors more often in 1994 and 1995.

### **5.1.2.2 The High Commissioner on National Minorities**

The texts of the OSCE High Commissioner on National Minorities cover the whole period from 1993 to 1998, making it possible to delineate developments over time, which is not possible with the CoE or the EU. The texts from the HCNM consist of nine recommendations sent as letters or faxes to the different Slovak Foreign Ministers as reactions to developments concerning the Hungarian minorities. It is worth mentioning that the HCNM texts are generally longer than those of the Council of Europe and the EU. Therefore there are more warrants assigned to HCNM-texts. One to two recommendations were sent out each year, usually as a follow-up to a fact-finding mission to Slovakia, and usually followed by a response of some kind from the Foreign Minister

#### *Data*

Given the many and rather lengthy HCNM texts, it is not surprising that several issues have been addressed. Most predominantly the issue of language laws, which has been addressed eight times (covering five pages altogether), and in all years except 1998, although only rather briefly in 1993. This means that it is safe to declare it the most important subject on the HCNM's Slovakia agenda during this period. Education has been addressed six times (covering three pages), and more or less consistently throughout the years.

Cultural policy has been addressed three times (covering three pages), all in 1995-1996. To some degree this is a reflection that this was the period in which cultural policy was most intensely debated, although it does not explain why it was not mentioned at all before or after this period. Another issue which only has been addressed in the mid-nineties, in fact only in 1996, is the bilateral treaty with Hungary, something which to a large degree reflects the fact that it was signed in 1995 and ratified

after much debate in 1996. The proposed amendments to the Penal Code, criminalising among others public meetings calling for territorial autonomy or disseminating “false information” damaging the interest of the Slovak Republic, were addressed only in 1996 (twice, covering two pages). This again is a fair reflection of the debate, especially as the government decided to scrap the amendments during the winter 1996-1997 (Kelley, 2004a: 123-126). Similarly, in 1998 both the draft Law on Local Elections and the draft Language Law (proposed by the junior coalition partner the Slovak National Party), both of which were proposed that year but did not pass Parliament before the elections, were addressed.

What is more interesting are the issues addressed early during the period and then ignored, such as the Council on Minorities, which was only addressed in 1993 and 1994, although it continued to exist after that time. The HCNM’s relative lack of interest in the topic of administrative reform after 1995 is also a bit surprising, as it was continuously discussed until the Dzurinda government came to power in late 1998. Maybe van der Stoel felt it was covered by his earlier recommendation, or maybe that it was dealt with when territorial autonomy was discussed, although his responses on this subject do not cover the administrative reform. Furthermore, at least two recommendations gave the HCNM the opportunity to mention the Benes Decrees, but did not. This might be due to hesitance to get involved in a process that was already well under way, or because of a fear of keeping the discussions over the past alive by intervening. It is important to keep in mind that in 1993 and 1994 the HCNM was still a newly founded institution in the process of finding its role in international politics.

### *Backing*

Perhaps unsurprisingly, the HCNM refers most frequently (twelve times) to the OSCE Copenhagen Document, thus giving a text with no hard legal status a political significance by applying it as an authoritative document. The HCNM also made eight references to the Framework Convention on the Protection of National Minorities. Not surprisingly the majority of these references date from post-1995, since before February 1995 the FCNM was not open for signatures (it was however public from 1993). The European Convention on Human Rights (ECHR) is referred to five times, and the UN documents such as the International Covenant on Civil and Political Rights and the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities are referred to five times in total. The CoE Charters on Regional and Minority Languages and of Local

Self-Government are referred to respectively twice and once. Finally, the Recommendation 1201 of the Parliamentary Assembly of the Council of Europe is used as a backing once, but only because it has been incorporated into the bilateral treaty between Slovakia and Hungary (van der Stoel, 1996a).

### *Factual Warrants*

Starting with the most basic factual warrants, the Hungarian minority has, unlike the CoE, almost equally been framed as something to which individuals belong (40 times, covering 132 lines) and as a unitary entity (35 times, covering 130 lines). Looking into when these warrants have been used, it is hard to say much about any developments over time, except that the individual warrant was apparently more popular than the unitary in the mid-nineties, but not in 1998 and 1993, but this is probably more due to the more rights-oriented issues being addressed during this period. If we look more into which issues the two warrants have been used in connection with interesting patterns emerge. These patterns include that the individual warrant has been predominant when addressing the Basic Treaty with Hungary (used seven times as opposed to five for the other warrant), education (six times opposed to four), and the language laws (fourteen opposed to eight), and solely when addressing the amendments to the Penal Code. On the other hand, the unitary warrant has been the sole way of framing the Hungarian minority when addressing the issue of the Council of Minorities, and predominant when addressing cultural policy (used nine times as opposed to four). When it came to addressing administrative reform, the minority has been framed almost equally as individual or unitary.

There are also more co-occurrences between the individualist warrant and arguments concerning rights, than between the “Hungarian minority as one entity-“warrant and rights arguments. That the minority has tended to be framed in terms of individuals in arguments about rights is not surprising, considering the controversies surrounding collective rights. This can also be seen in the fact that the members of the Hungarian minority have been predominantly framed as the holders of rights (fourteen times), rather than the minority in itself (five times). There seems to be a development over time similar to that concerning the relationship between the individual and unitary framing of the Hungarian minority, in that the dominance of the “individuals as right holders”-warrant is most pronounced in the period 1995-1997.

Considering other ways of framing the Hungarian minority, it is striking that the Hungarian minority has been framed as citizens of Slovakia not less than ten times. This is particularly remarkable given that the other organisations have not used this warrant. The warrant can be seen in references to “every Slovak citizen belonging to a national minority” (van der Stoel, 1997), or, more implicitly, state that “persons belonging to national minorities..., like all other citizens of the State” (van der Stoel, 1996a). On the other hand, the warrants that members of the Hungarian minority are first and foremost Hungarians, and the warrant that being Hungarian is only one aspect of their identity, have been used only four times.

Also noteworthy is the way in which the Hungarian minority has often been framed in terms of language or a linguistic dimension to its identity (thirteen times, covering five pages). This is perhaps not that surprising given how often the issues of language laws or education have been addressed, but it is interesting when compared with how rarely the minority has been framed in territorial terms (four) and cultural terms (twice, but covering several pages).

Another related issue is that of political participation and the way in which the Hungarian minority has been framed in this respect. The dominant warrant is that the Hungarian minority is one entity with a particular set of representatives, in most cases the Hungarian parties/coalition, a warrant which has been used eight times. Thus, these representatives represent the minority in Parliament, the Presidential Round Table, the Council of the Government for National Minorities or in the public sphere as such. Sometimes it is implicitly argued that these representatives should simply be heard on issues which relate to the minority, such as education (“A major concern was voiced by the representatives of the Hungarian minority with regard to the availability of Hungarian language teachers” (van der Stoel, 1994b)). At other times calls are made for guaranteeing “adequate representation of minorities on deliberative and executive bodies” (van der Stoel, 1994b) or leaving the implementation of a policy to these representatives or “a committee of representatives of that minority” (van der Stoel, 1995b).

Besides resting on the warrant that the Hungarian minority and minorities in general are unitary entities, another implicit notion in this warrant is that there exists a specific minority point of view on these issues. And furthermore, that belonging to a minority matters more for the opinion held by the

individual member of the minority (at least on certain issues) than ideological beliefs, class or religion. The warrant, especially when talking about the representatives in the National Council or other elected bodies, gives the impression that minority members participate qua their nationality, an idea also present in consociationalism. The fact that three Hungarian parties existed until forced by the Meciar government's new election law to merge, thus indicating different opinions also among the Hungarians, is not mentioned, as the minority perspective seems to matter more.

When it comes to framing the situation, the warrant that there is a need to act has been prevalent, being used fourteen times compared to the three times the situation has been framed in terms of crisis, and the two times it has been framed in terms of progress. Additionally, rather lengthy parts of the texts have been framed in terms of a need to act or crisis, whereas the progress warrant has only been used for short bits, adding to the impression that the HCNM was very critical of the Meciar government. The debate over autonomy and the law on local elections (twice) are the only subjects to be framed as constituting or provoking a crisis.

Considering the framing of other issues, the HCNM has emphasised the financing of policies frequently (thirteen times), thus adopting a more policy-oriented perspective than the CoE, which has predominantly focused on legislation. Considerable attention has also been granted the discrimination of ethnic Hungarians in various fields, thus framing the minority as victims of discrimination (six times).

On a more specific level, the concept of minority education has been conceptualised to include tertiary education, as well as the duty of the state to facilitate this education by ensuring that not only teaching material, but also a sufficient number of Hungarian teachers, are available. This is different from the CoE, which did not include provision of the teaching material under the duties of the state. However, the HCNM, unlike the CoE, also stressed the teaching of Slovak in Hungarian- language schools, an issue which we will return to below.

Another important issue was territorial and other kinds of autonomy, which as mentioned above, was hotly disputed in Slovakia during this period. In this case the HCNM authoritatively conceptualised the

concept of autonomy to consist of dimensions other than just territorial autonomy, which was additionally conceptualised as being compatible with territorial integrity, a definition against which many voices in Slovakia had argued.

### *Causal Warrants*

The HCNM's use of causal warrants share many characteristics with the CoE's. First and foremost the belief that perceptions matter, which has been warranted five times, and the related warrant that dialogue can solve the inter-ethnic problems, used eight times. Besides simply stating that problems can be solved this way, it is also repeatedly stated that this goal can only be achieved "if both national minorities and Government choose a constructive approach" (van der Stoel, 1995b). Thus, although it is the government which is recommended to work for increased cooperation with the representatives of the national minorities, especially the Hungarian, they themselves also carry some responsibility. These warrants are hardly controversial in themselves, but it is interesting that this kind of warrant seems to have vanished since 1996, whereas it was used several times by the HCNM in 1993 and 1994. This indicates a change of emphasis away from cooperation as a solution to eventual problems and over to other instruments.

Two related warrants are that openness prevent rumours and mistrust, and that rumours and mistrust may cause conflict, as is argued in the HCNM statement: "rumours and speculations can be prevented from causing frictions and disputes if there is sufficient openness in the procedures followed" (van der Stoel, 1994b). They have been employed respectively four times (openness prevents rumours) and five times (rumours may cause conflict). Several hypotheses can be produced concerning the causes of conflict between ethnic groups, but here the HCNM (and also the Council of Europe) emphasises rumours, rather than for instance socio-economic conditions or the nation-building of the state, as a causal factor. This does not mean that other causal factors have not been considered important, but that greatest importance was given to the role of rumours. At the same time a relatively simple solution is suggested, as simply being more open and involving members of the Hungarian minority. Besides putting the main responsibility for these rumours on the government (as more openness could have prevented them), this also suggests that the problems are easy to solve, and that public perceptions of

the government/the majority plays an important role. Again, these two warrants are mainly used in the beginning of the period and not after 1996.

When it comes to solving conflicts relating to the Hungarian minority, other warrants, which have not been used by the CoE, are also at play. One of them is the claim that the Treaty on Good Neighbourly Relations and Cooperation, or the Basic Treaty, could be used as a tool for solving these issues, a warrant which has been used four times in the period 1994-1996. The HCNM expressed the hope that “the question of the import of text books and other educational material from Hungary will be solved in the spirit of Article 12.7 of the treaty concluded between Slovakia and Hungary” (van der Stoel, 1995b). These statements define Hungary, rather than representatives of the Hungarian minority, as the party the Slovak government should negotiate and cooperate with, and lifts the issue from the domestic to the international scene. This is important, since it definitely frames the minority issue as a security issue rather than an issue of justice.

Another warrant about the causes of a less conflictual situation, is the claim that following the recommendations of international organisations such as the three analysed here. It is suggested “that a meeting be convened...between experts from the Slovak Government, and the European Commission, the OSCE and the Council of Europe (van der Stoel, 1997). Used by the HCNM five times altogether in 1995 and 1997, this warrant strengthened his and similar actors’ (such as the CoE) position in the discussions concerning the Hungarian minority and defined them as neutral, problem-solving actors. Furthermore, it again frames the minority as an issue which has to be solved with international involvement.

Finally, there are the warrants concerning autonomy. These include the warrant, based on the 1991 Geneva CSCE Meeting of Experts on National Minorities, stating that “autonomy on a territorial basis... *could be* [my emphasis, ed.] helpful in improving the situation of national minorities”(van der Stoel, 1996a). This group also includes the warrant, used twice, that “It is difficult to see that a peaceful meeting supporting territorial autonomy...could constitute such a threat to national security” (van der Stoel, 1996a). This way calls for autonomy are declared legitimate, and a causal claim common in

Slovakia and Romania at that time (that calls for autonomy could lead to violent secessionist movements) is refuted.

### *Normative Warrants*

It is hard to argue whether a security or a justice perspective has been the dominant normative perspective used by the HCNM. I will argue that the justice perspective has been used thirteen times, framing six pages altogether, whereas the security perspective has been used ten times, framing a total of four pages. Nevertheless, as it often has been hard to assign either code, and texts excerpts framed from a justice perspective often contains security elements, and vice versa, it is difficult to argue that this constitutes a prevalence of the justice perspective. Furthermore, it is my impression that arguments have often been framed in terms of justice when the underlying intention was to avoid conflict. One example of this is the concern with the right of ethnic Hungarians to maintain cross-border contacts with people in Hungary (van der Stoel, 1996a). However, it may very well be an underlying desire to prevent antagonism between the government and the Hungarian parties, which is the main motive behind this concern, and the HCNM may just have framed it in terms of rights because it would make his case more convincing. Unfortunately, this is impossible to tell, but the point is to underscore that the use of a particular warrant only reveals what is done in this framing, not what motivates it (see also the discussion of Skinner in Chapter 3).

Turning to the patterns in the use of these two perspectives, I will argue that it is hard to distinguish any developments over time. However, when it comes to variations between the different issue areas, some clear patterns exist. Administrative reform, education, language laws, and the draft law on local elections have been solely framed from a justice perspective, whereas the Council of Minorities, cultural policy, the amendments to the Penal Code have been framed solely from a security perspective. Unexpectedly, bilateral relations have been framed both from a security (four times) and a justice perspective (twice), which is surprising given that these relations are usually framed in terms of security. The explanation may be, as mentioned above, that cross-border contacts have been framed in terms of rights and justice.

As was the case with the CoE, the warranting of rights has been dominated by linguistic rights, in most cases with backing in rather vaguely worded documents on national minority protections. If we take the issue of the right to use the minority language in official communication, the FCNM and the Copenhagen Document both grant this right where a “substantial number” of minority members live, whereas for instance the UN Declaration does not mention such a threshold. However, this right is used as a warrant by the HCNM (six times), with the substantial number defined as “if persons belonging to the minority constitute at least 20% of the population of a town or a village (van der Stoel, 1996a). The 20% threshold does not come from any international source, but from interwar Czechoslovak legislation, but it is possible to argue that it created precedence in other national minority questions, such as Romania, a point which will be discussed below.

The HCNM also emphasised the right to bilingual road signs (three times), but was mainly concerned with this right in 1993 and 1994, which reflects that he found the law that sanctioned the setting up of road signs with Hungarian translations of the Slovak place names underneath the Slovak name, satisfying. The Hungarian parties, on the other hand, had complained that this law did not allow for use of historical Hungarian place names, but merely translations of the Slovak name, but the HCNM authoritatively defined the government’s conceptualisation of this right as being the right one. This conceptualisation goes against the predominant international interpretation of the right as well as the notion of having the right to one’s own culture. Surprisingly, unlike the CoE, the HCNM only emphasised the right to personal names in Hungarian (and other minority languages) once, thus placing little emphasis on that right. Even that one time, it was merely referred to as “subjects of some of the recommendations by the Council of Europe which the Slovak Republic accepted as conditions for joining that organisation of democratic European states” (van der Stoel, 1994b).

A related set of rights used as warrants concerns the language of education, and appears in the shape of the right to be taught in one’s own language, and as parents’ right to choose the language of instruction of their children, or the “freedom of parental choice”, both used nine times (van der Stoel, 1996a). These warrants are used especially to argue against making the so-called “alternative school system” (where teaching in Hungarian and Slovak alternates) compulsory for Hungarian language pupils or in other ways force them into the alternative schools. “The system of alternative education cannot be

imposed on parents who object to it” (van der Stoel, 1998c), van der Stoel stated in 1998, not for the first time.

The normative warrants concerning education, but not framed in terms of rights, include the above-mentioned warrant that the government has a duty to facilitate minority education by ensuring that there are sufficient numbers of minority language teachers and teaching material. The former translates into an advocacy of expanding the teacher training facilities in Slovakia (warranted three times). Furthermore it is warranted (four times) that education is best dealt with locally, meaning that it would be a good idea to let the local governments have the responsibility for running schools. On a more integration-oriented note, it is warranted (five times) that everybody should learn the state language.

This relates to the concept of minority duties. Although the government is the addressee of the texts, the HCNM also brings attention to the concept of minority duties. The underlying warrant is that the minorities, besides being holders of rights, also are the bearers of duties. These include “Respect for territorial integrity” (van der Stoel, 1996a), “the willingness of the minority to consider itself an integral part of the State they are living in” (van der Stoel, 1996a), and that the “command of the main language in a state is essential to all citizens of that state” (van der Stoel, 1994b). Finally, “It goes without saying that citizens belonging to national minorities, just like the other citizens of Slovakia, have the duty to obey the laws of the country and are only allowed to try to change existing legislation by legal means” (van der Stoel, 1996a). The last point is interesting, partly because it actually says what it claims goes without saying and this way defines what it claims as an obvious truth, and partly because it emphasises the minority members’ character as citizens of Slovakia. This also relates to the warrants concerning integration, whose importance is emphasised three times. Integration is seen as a prerequisite for a minority’s functioning in society, and van der Stoel explicitly “rejects the notion that the minority can only maintain its identity by isolating itself as much as possible from the society surrounding it” (van der Stoel, 1996a).

This relates to a subject touched upon previously, namely the participation in public life as ethnic Hungarians. In spite of the framing of the political participation of Slovak Hungarians in terms of nationality, the HCNM nevertheless went out in 1998 and sharply criticised a draft law on Local

Elections, which would “fix the electoral participation along ethnic lines” (van der Stoel, 1998c). The argument against the law is based on the warrant that people in a democracy should have the freedom to vote for whichever candidate irrespective of nationality, or that democratic elections should not be about the nationality of either candidates nor voters. This seems to contradict the previous factual warrant claiming exactly that the political participation of the Hungarian minority is national by nature. However, this might illustrate why it can be fruitful to separate between factual and normative warrants, as the former describes how things are (democratic participation as Hungarians) and the latter how they should be (freedom to vote also for non-Hungarian candidates). It might seem pointless to advocate a freedom not likely to have any impact as only a handful of people would use it, but not only is this freedom important in itself (as freedoms tend to be), but it also avoids “fixing” people in their nationality. This can also be seen as establishing a limit to how fixed along ethnic lines politics should be, which is important when discussing consociationalism.

Also relating to consociationalism is the warrant that the representatives of the Hungarian minority should have a say in decisions affecting the minority, a warrant used often in the early nineties (fifteen times totally), especially in 1994 but not after 1996. This appears especially when discussing the Council of Minorities, and is also one of the more important normative tenets of consociationalism. The warrant that good inter-ethnic relations is the goal has, on the other hand, only been used six times, which is relatively few.

As mentioned above, different kinds of autonomy have been suggested as instruments for handling national minority issues. A cluster of warrants deal with the different kinds of autonomy has been employed in the HCNM’s recommendations from 1996, the only time in which autonomy is explicitly dealt with. The HCNM starts with commenting on the intense debate in Slovakia on territorial autonomy, being caused (in his view) by the Basic Treaty between Hungary and Slovakia and Recommendation 1201 (1993), which was incorporated into the treaty. Recommendation 1201’s Article 11, states that: “In the regions where they are in a majority the persons belonging to a 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”. This was seen by many as a right to territorial autonomy, but the

HCNM (van der Stoel, 1996a) authoritatively interpreted it as not creating a legal obligation, without giving any arguments for this interpretation. But in the same recommendation, as well as in the following one, van der Stoel went on to argue (with the Copenhagen Document as backing), that territorial autonomy is a “possible option” and that “territorial autonomy and territorial integrity are not incompatible” (van der Stoel, 1996a).

In the following recommendation (van der Stoel, 1996a) he develops the issue and states that “Apart from territorial autonomy, there are also other concepts like cultural autonomy and educational autonomy”. It is not specified precisely what these entail, but one can argue that “The decision on how to divide up the funds available of various cultural projects planned within each national minority could be left to a committee of representatives of that minority” (van der Stoel, 1995b) amounts to a kind of cultural autonomy. However, the HCNM is not very explicit on this. Nor does he say much about territorial autonomy, except that it is a possibility, which in the political context of Slovakia was and is the same as an acceptance of not introducing it.

There is also the related warrant that equal devolution to the local level would be the best solution (used three times), especially for the Hungarian minority. “It is my feeling that many concerns could be removed if local self-governing authorities throughout Slovakia were given the right and the ability, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population” (van der Stoel, 1994b). The importance given to the “many concerns” indicates that the HCNM is not only occupied with creating the best possible outcome for everybody, but also with solving disagreements. The HCNM puts special emphasis on giving “more responsibilities for the running of schools to municipalities”, thus again emphasising that he finds the educational system important for minority issues. Such devolution is similar to territorial autonomy in that it operates with territorial forms of government, but different in that it is not asymmetric. Thus it is also less “ethnic” and less threatening, as it does not carve out a part of the Slovak territory with a Hungarian majority and give it a specific status. A related warrant (also used three times) is that these regions should reflect the geographical distribution of the Hungarian minority, meaning that there should be one or two regions with, if not Hungarian majorities, then significant Hungarian populations and including the vast majority of Hungarians.

Concerning the international level, it has been recommended (twenty-two times, all years) that a law should be “in conformity with international standards accepted by Slovakia” (van der Stoel, 1995b). The implicit warrant is that following international documents and the recommendations of international governments (often based on these documents) is the right thing to do. At times the HCNM has been specific, mentioning all the international treaties and documents which Slovakia is party to and should base its minority policy on<sup>26</sup>, although not mentioning the Recommendation 1201. Most of the time, however, the HCNM either makes a general reference to “international norms”, “commitments” or “standards” (van der Stoel, 1997), or refers to the FCNM as the convention to which Slovakia should adhere. On the other hand, the HCNM also recommends more or less explicitly the recommendations from the EU (once) and especially the Council of Europe (seven times).

Finally, the HCNM has argued against uncertainties and for substantial policies in many situations, drawing on the warrants that uncertainties are negative (used sixteen times) and that it is the actual effects of the policies that matter (used six times). The former covers statements of the type “A number of provisions in the draft law could be interpreted in a way which might not be intended at all” (HCNM, 24/8/1995). Implicit in this sentence seems to be the indication that it is very likely that the government will prefer the “undesirable” interpretation, but it is called upon not to behave in such a way. What could actually amount to a change of the law is thus “disguised” as a clarification. Concerning the “substantiality” warrant, it is a signal to the government that merely paying lip-service and promising change is not sufficient, that concrete changes are needed, and that the HCNM will monitor that this is undertaken.

### **5.1.2.3 The EU**

The EU is only represented with two texts, namely the 1997 Opinion on the Application of the Slovak Republic and the 1998 Regular Report on the Slovak Republic’s Progress towards Membership. The two demarches issued in 1994 and 1995 are not included, as they represent the opinion of the EU

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<sup>26</sup> the FCNM, the Copenhagen Document and the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities

Council, which means primarily the Presidency, instead of the Commission (Henderson, 2002: 93). Therefore there are fewer assignments of codes to EU texts than to texts from the other two organisations. However, these two texts were of extreme importance for Slovakia and the Meciar government, as the texts told Slovakia and the world whether and when the EU wanted to have Slovakia as a member, and what Slovakia should do differently in order to become a member. This is especially relevant, since Slovakia was the only country to be defined as insufficiently ready due to lack of compliance with the political criteria. Although this was mainly due to problems in the democratic process between government and opposition, the Hungarian minority policy of the government is also commented upon, mostly critically.

### *Data*

Similarly to the HCNM and to a lesser degree the CoE, the EU has predominantly focused on the issue of the language laws, dedicating most of the space in both its Reports to this issue. The bilateral relations with Hungary were also addressed (both years), and education issues were addressed twice in 1998, the year when the controversial Law on Local Elections was also addressed at length.

### *Backing*

Generally the two EU texts are briefer and use less backing, except references to the HCNM (twice). The few references, it can be argued, is due to less of a need to justify their positions by references to institutions outside themselves, but also to the fact that they are not an institution with the capacity to interpret and apply international treaties.

### *Factual Warrants*

Starting, as before, with the basic factual warrants, it is interesting that the EU has framed the Hungarian minority as a unitary entity thirteen times, and only once as something individuals belong to (when addressing bilingual school certificates). Members of the minority are also only twice framed as being first and foremost Hungarian. This framing of the minority as a unitary, monolithic entity is to some degree reflected on the political level, where this unitary entity is framed twice as having one set of representatives, but once as having different sets of representatives in the three Hungarian parties. The predominance of the framing of the Hungarian minority in terms of language (used ten times),

rather than territory or culture (used twice each), reflects (or is reflected in) the emphasis on the minority language laws.

When it comes to framing the situation, the EU has adopted a highly critical stance, framing the situation in terms of crisis seven times, in terms of a need to act four times, and only once in terms of progress. The event framed as constituting progress was the rejection of Parliament of “the controversial Educational Act Amendment, which would have discriminated against ethnic minorities by prohibiting the teaching of subjects such as geography and history in languages other than Slovak” (EU Commission, 1998b). On the other hand, it is particularly the case that the lack of legislation regulating and allowing for the use of minority languages, also criticised by the HCNM, was framed as constituting a crisis. The lack of implementation of the Basic Treaty and the role of minority languages in the education system has also been framed in this way. Furthermore, the Law on Local Elections was framed as constituting a problem large enough to warrant a need to act.

The EU has dealt relatively little with education, as it chose to focus on the minority language laws. However, it managed to emphasise not only the teaching of history and geography, as mentioned above, but also the school certificates in minority languages. Additionally the discrimination of ethnic Hungarians, and to lesser degrees the financing of policies and international commitments have been framed as being important.

### *Causal Warrants*

Like the two other organisations, the EU has also emphasised that perceptions matter, which means that one-sided action or rumours may lead to an increased likelihood of conflict. Furthermore, it has also emphasised the role of bilateral treaties, as when it in 1998 stated: “Concerning the Hungarian minority, no progress has been made in the implementation of the Basic Treaty with Hungary because the two parties could not agree on the composition of the committee dealing with minority rights” (EU Commission, 1998b).

### *Normative Warrants*

The EU texts are characterised by an equal framing from a justice or security perspective (both three times), which means that it is hard to talk about a dominant perspective. It is more interesting that the security perspective is only adopted in 1997, and the justice perspective (although adopted both years) is the sole perspective in 1998. This can be seen in that the EU in 1997 primarily criticised policies for creating “tensions” (EU Commission, 1997a), whereas it in 1998 criticised policies for discrimination. Rather than indicating some radical change either in the organisation or the situation on the ground (which worsened rather than improved), this may indicate that the EU is emulating the HCNM’s more normatively-oriented approach to security.

Like the two other organisations, the EU has emphasised linguistic rights over other kinds of rights. Unlike the other organisations, it has not been very concrete, referring mainly to linguistic rights in the abstract (seven times). However, it has emphasised the right to be taught in one’s mother tongue (three times), and the right to official communications and road signs where a national minority constitute more than 20% of the population (once each). On a different note, the EU nine times warranted the importance of substantial minority policies rather than just passing legislation that is not followed up upon.

Concerning education, the EU has twice criticised the cessation of the bilingual school certificates. Furthermore, as mentioned above, the EU has fervently appraised the Parliament for rejecting a law prohibiting the teaching of history and geography in non-Slovak, declaring that the law would “have discriminated against ethnic minorities” (EU Commission, 1998b). Considering the relatively little space the EU reserved for minority rights in its two reports, this indicates a clear emphasis on policies not even implemented in all EU countries.

On the international level, the EU has emphasised the positive importance of adhering to international standards and commitments. Particularly, it has leaned heavily on the HCNM (four times), stating for instance that “the OSCE High Commissioner on National Minorities had indicated that the draft law violated a number of international principles and standards on free elections and individual human rights” (EU Commission, 1998b). Thus the HCNM is not only used as backing for the EU’s argument

own argument, but there is also the implicit warrant that HCNM recommendations should be followed, thus lending him some of the power of the EU, especially since this is written in the Report on Slovakia's Progress towards Accession. A kind of exchange is thus taking place, where the EU lends political importance to the HCNM, which in turn lends its symbolic power as a neutral, but authoritative interpreter of minority issues to the EU.

### **5.1.2 Comparisons**

When it comes to comparing the three organisations, it appears that differences as well as similarities exist (see Table 3 for an overview). One thing they all share is a great emphasis on the issue of the language laws, which has clearly been the most prominent issue for the HCNM and the EU, and (to a lesser degree) for the CoE. That it did not figure as prominently in the CoE texts as in the EU and HCNM texts, is probably due to the fact that the Law on the State Language, which declared a previous law containing minority language rights null and void, was only introduced in late 1995, too late for the CoE to react to it.

**Table 3: Comparison between Organisations**

<b>Predominant Warrant(s)</b>	<b>CoE</b>	<b>HCNM</b>	<b>EU</b>
Data	Language Law	Language Law Education	Language Law
Backing	Recommendation 1201	Copenhagen Declaration	HCNM
Basic Factual Warrant	Unitary entity	<i>Indistinguishable</i>	Unitary entity
Political Representation	One set of representatives	One set of representatives	One set of representatives
The Situation	Progress	Need to act	Crisis
Other Factual Warrants	Discrimination in the past Fear & mistrust in minority politics	Financing of policies Many kinds of autonomy, all compatible with territorial integrity	
Prevalent Causal Warrant	Dialogue solves problems	Dialogue solves problems	
Basic Normative Warrant	<i>Indistinguishable</i>	<i>Indistinguishable</i>	<i>Indistinguishable</i>
Prevalent Rights Warrants	Right to personal names in Hungarian -to topographical information in Hungarian	Right to be taught in Hungarian -to official communication in Hungarian	Linguistic rights in general Right to be taught in Hungarian
Other Normative Warrants	International commitments Let minorities have a say in decisions affecting them	International commitments Uncertainties as negative Say in decisions	Substantial minority policy Follow the recommendations of the HCNM

Other differences in the issues reacted to are probably also due to the difference in time; it was impossible for the CoE to address the Basic Treaty, the draft Law on Local Elections, the Slovak National Party's draft language law, and the proposed amendments to the Penal Code, as these issues only appeared after it started reporting. Similarly, it did not make much sense for the EU to address issues such as the Benes Decrees and the right to use personal names in minority languages, as these issues did not figure highly on the agenda in Slovakia, but were considered more or less solved. However, the difference in timing does not explain all differences between the organisations. First of all, it is interesting that the HCNM did not address the Benes Decrees at all. Second, it is also interesting that administrative reform was only addressed by him in 1994 and 1995, and not at all by the EU, when it continued to play a role in Slovak politics throughout the nineties. The same can be

said for the Council of Minorities. Third, the difference in timing does not explain the emphasis put by the HCNM on education.

Considering the use of backing, the CoE Rapporteurs drew mainly on their own Recommendation 1201, whereas the HCNM drew mainly on the OSCE Copenhagen Document. Thus a picture emerges, in which the two organisations have each their document which not only shapes their look on the Hungarian minority policy of the Meciar government, but which they also try to establish as the dominant international document on national minority protection. However, during the later part of the period, the HCNM drew increasingly on the FCNM, using it as the international standard. The EU used backing relatively rarely, but leaned on the HCNM, thus exchanging its political power for the HCNM's symbolic power and moral and expertise authority.

Significant differences also exist when it comes to the framing of the Hungarian minority. Whereas the CoE and the EU predominantly framed the latter as a unitary entity, the HCNM primarily framed it as something individuals belong to, although often framing it as being unitary. When it comes to framing the holder of minority rights, the CoE predominantly framed the Hungarian minority as a whole as the holder of rights, whereas the HCNM predominantly framed the members of the minority as the holders of the rights, the formulation used in international documents. Again, as mentioned above, to frame the minority as holder by talking about "the rights of national minorities" does not amount to a collective right. When it comes to framing the minority in terms of territory, language or culture, the CoE predominantly framed in terms of territory, whereas the HCNM and the EU predominantly framed in terms of language. However, it is hard to tell whether this difference is due to the issues addressed (language policies were addressed more by the HCNM and the EU than the CoE), or the perspective of the organisation. Only the HCNM paid attention to the cultural aspects of the minority, for instance advocating minority media.

The Coe has framed the situation more positively than the HCNM and especially the EU, which have predominantly framed the situation as constituting a crisis or calling for action and improvements. However, this is to a large degree due the difference in timing, as the relations between the government and the Hungarian parties deteriorated even further during the period, and, probably more important,

international and Western actors and media started paying more attention to this and the troubled political situation in Slovakia in general. Education has been a subject figuring prominently on the agenda of all three organisations (particularly the HCNM), but there are differences considering which aspects of the concept of minority education they have emphasised. Both the CoE and the HCNM have conceptualised the concept of minority education as including a duty (of the state) to facilitate minority education by ensuring that there are enough minority language teachers, and in the case of the HCNM, also teaching material. The EU, on the other hand, has conceptualised minority education as encompassing the teaching of history and geography in the minority language, and the bilingual school certificates, an issue also touched upon by the HCNM. However, these conceptualisations seem to have a strong normative content, making it hard to decide which category they belong to.

If we turn to the causal warrants, there are more similarities between the organisations. All of them have emphasised the role of perceptions in inter-ethnic politics, and have warranted that rumours and mistrust may lead to conflict, and that the best way to avoid this is dialogue between the different parties. However, unlike the CoE, both the EU and the HCNM have emphasised the importance of bilateral treaties for solving “ethnic problems”. The HCNM has also repeatedly warranted that following the recommendations from international organisations such as his own will lead to improved inter-ethnic relations, a warrant which, together with the above-mentioned bilateral treaty-warrant, has almost taken the place of dialogue as the solution from the 1995 and on.

The use of normative warrants, on the other hand, has been more varied. All three organisations have used security and justice perspectives, but there are significant differences in the use of rights-arguments. The CoE has emphasised the right to personal names and road signs in Hungarian over the right to mother tongue education, which on the other hand has been advocated strongly by the HCNM and the EU. Concerning road signs, the HCNM has interpreted the right as being met in the law providing signs with translations in Hungarian and other minority languages, and not encompassing a right to signs with the (eventual) historical Hungarian name of the place. Considering the threshold for how large a minority proportion a place should have in order to have the right to such signs or official communication in the minority language, all three organisations have endorsed the 20% threshold. This

is even though the international documents merely talk about “a substantial number”. Thus, the 20% threshold comes from interwar Czechoslovak legislation, and not from the international sphere.

Considering another important issue, administrative reform, both the HCNM and the CoE have stressed that new regions should reflect the geographical distribution of the Hungarian minority, although they have been rather vague concerning what this means in concrete terms. The HCNM has gone to great lengths to advocate devolution, especially considering his more lukewarm attitude towards territorial autonomy. On the one hand he conceptualised territorial autonomy as being compatible with the territorial integrity of Slovakia and a possible option, on the other he did not actually advocate it, but seems to have placed more emphasis on cultural autonomy. The CoE and the HCNM also put great emphasis on the notion that minorities should have a say in decisions affecting them, especially through the Council of Minorities. This can be said to amount to a diluted version of consociationalism, an issue to which I will return below. Here it suffices to say that the HCNM’s strong condemnation of the Law on Local Elections, which would have fixed ethnic representation and political participation along ethnic lines, drew a line in the sand setting a limit for the “ethnicisation” of politics, an important aspect of consociationalism.

Furthermore, the HCNM is the only organisation that stressed the importance of the concept of minority duties, which has been conceptualised as encompassing learning the state language, respecting the territorial integrity of the state and being willing to integrate and participate in public life. Finally, all three organisations stressed the importance of adhering to international commitments and norms, and the creation of a substantial minority policy (although this was stressed more by the HCNM and the EU than the CoE).

Concerning the impact of the organisations, I will argue that this impact has been rather limited. Although the Basic Treaty was established due to the EU’s pressure, there were clearly limits to how much the Meciar government actually was restricted by this treaty. Similarly, most of the recommendations of the HCNM were ignored, including those on the important subject of the nonexistent language law. When it comes to the CoE, their recommendations were often implemented, although it often is hard to tell whether this would have happened anyway (e.g. the Benes Decrees), and

often to a certain degree ignored after the entry to the CoE (Kelley, 2004a: 138-139). Nevertheless, it is possible to argue that the IOs influenced the government indirectly by making it refrain from certain actions, for instance curbing the Slovak National Party (SNS). An example of this can be the SNS draft language law from 1998, for which no attempt was made to introduce it in parliament, possibly due to the expectations of what the international reactions would be.

### **5.2.1 The Dzurinda Period 1998-2004 – an Overview**

After the turbulence during Meciar's period in government, things cooled down a little when a government lead by Mikulas Dzurinda took over after the elections the 25-26 September 1998. A coalition consisting of the Slovak Democratic Coalition (SDK), Dzurinda's party, the Party of the Democratic Left (SDL), the Party of the Hungarian Coalition (SMK), and the Party of Civic Understanding (SOP) was formed (Keesing's Record of World Events, 1998a, October). Of these, the SDK and the SMK were themselves coalitions formed by different parties. Although the HZDS was the biggest party in parliament, the coalition had the 3/5-majority necessary to alter the constitution. It took the collation more than a month to agree on the composition of the government, which included three SMK ministers, including Pál Csaky as Deputy Prime Minister for Human and Minority Rights and Regional Development (Keesing's Record of World Events, 1998a, October).

The new government constituted a sharp break from the previous in several ways. Not only did it adopt a very different stance towards the Hungarian minority, as will be discussed below, but it also embarked on a more-free-market oriented economic policy, cutting taxes and public spending as well as privatising. This was the cause of disputes within the government as well as increasing unpopularity in large parts of the population (Henderson, 2002: 52-53; 123-127). A third issue which caused disputes within the government was the changing of the constitution to a system with directly elected presidents, a change which was introduced in 1999. In the 1999 presidential elections Meciar and Rudolf Schuster of the Party of Civic Understanding made it to the second round, where Schuster beat Meciar with 57% to 43 (Henderson, 2002: 50). In spite of increasing unpopularity, the government was returned to power at the elections in September 2002, although setbacks for most of the coalition parties meant that the Alliance for New Citizens, a new party, had to be included in the government (Radio Free Europe/Radio Liberty, 2002a). Soon after, in the autumn of 2002, Slovakia received invitations to join both the EU and NATO to join the two organisations in May 2004 (Radio Free Europe, 2002a; Radio Free Europe/Radio Liberty, 2002b)

#### *The Hungarian Minority*

Although the inclusion of the SMK in the government led to an important change of policy towards the Hungarian minority, this policy was still much debated, even within the government, and many of the

contested themes of the Meciar Period continued to be contested. This includes the issue of the Law on the Use of Minority Languages, which caused much dispute within the government, and, when passed in July 1999, was criticised by the SMK which abstained during the parliamentary vote (Keesing's Record of World Events, 1999). The Law gave members of national minorities the right to use their own language in official communications in places where they constitute at least 20% of the local population (Henderson, 2002: 77-78). The 20% threshold had as mentioned its origins in previous Czechoslovak legislation. However, there were still uncertainties concerning the relationship between the Law on Minority Languages and the Law on the State Language introduced under the Meciar government, especially concerning which law that should be prevalent in case of conflict.

Another issue which continued to cause much debate was education, although the controversial “alternative” educational system (see above) had been abandoned and the government was more receptive to the demands of the SMK. One of the reasons for the SMK’s opposition to the minority language law was that it did not cover education, but only official communication (Radio Free Europe, 1999b). The syllabus, especially material which dealt with sensitive aspects of Slovak and Hungarian history, became a focus of attention, as did the decision to introduce bilingual degree certificates. The SMK also complained about the lack of tertiary education in Hungarian and the inadequacy of the faculty for training of teachers in Hungarian at the University of Nitra, which they argued did not produce a sufficient number of Hungarian-language teachers. However, in 2003 it was decided to establish a Hungarian language university in Komarno, a town on the Slovak side of the Danube with 60% Hungarian population (Radio Free Europe, 2003c). This university opened in January 2004 and is open to students from both Hungary and Slovakia, with Hungarian as the language of instruction.

The administrative division of Slovakia was another subject which, although significantly less disputed during the Dzurinda government than during the Meciar government, continued to cause friction. The SMK was not satisfied with the division of Slovakia into eight regions, with significant Hungarian populations in four of them, but no Hungarian majorities in any of them. This led the SMK in August 2000 to propose the establishment of a region with extended self-government covering the areas with most Hungarians (Radio Free Europe, 2000). This was rejected by the SMK’s coalition partners, which also rejected an SMK proposal to change the reference to “We the Slovak people” in the Constitution

to “We, the citizens of the Slovak Republic” (Gyárfásová, 2001: 43). This, together with the above-mentioned controversies, meant that in the summer 2001 the SMK was close to resigning from the government, something that they apparently refrained from doing only due to warnings from domestic allies and representatives of EU governments that this would damage the chances of Slovak EU membership (Brusis, 2003: 12; Henderson, 2002: 54). One area where the SMK was more satisfied was the development of the Council of National and Ethnic Minorities, which would be changed to include more minority members and play a bigger role in the decision-making procedure.

### *The International Scene*

The change of government not only improved the relations with the Hungarian minority domestically, but also with Hungary on the international scene. Hungarian Prime Minister Viktor Orbán, also elected in 1998, welcomed the improved relations between the two countries and the change in stance towards the Hungarian minority, and also supported Slovak NATO membership (Synovitz, 1999). The bilateral committees established under the Basic Treaty continued to work, producing greater results than before, such as the bridge across the Danube linking the Slovak town of Štúrovo with the Hungarian town of Esztergom (Henderson, 2002: 104). However, after the introduction of the Hungarian Status Law in spring 2001, relations quickly deteriorated and cooperation became harder. The Status Law and the responses to it will be discussed in detail in the chapter devoted to it below. Here it suffices to say that the Slovak government was highly critical of the Law, and that the dispute did not cease until an agreement was reached in December 2003 between the two governments concerning the implementation and interpretation of the Law (Radio Free Europe, 2003b).

A significant improvement in the relations with NATO and the EU also took place after the change of government (Henderson, 2002: 95-101). The EU, which in its 1997 Opinion on Slovakia’s accession application had declared that Slovakia did not fulfil the political criteria for accession, stated that Slovakia now met these criteria in its 1999 Regular Report on Slovakia’s application (EU Commission, 1999b). The more positive perception of Slovakia continued, and Slovakia was invited to join the EU at the Copenhagen summit in December 2002, although many expressed a worry that if a HZDS government had been elected in October 2002, Slovakia’s chances would have been dim. The same

goes for NATO membership, which was granted to Slovakia a month before it was asked to join the EU (Henderson, 2002: 100-101).

## **5.2.2 The Dzurinda Period Analysed**

As we turn to the analysis of the Dzurinda period, it is important to state that the comments made about the analysis of the Meciar period also hold true for this analysis. That is that references to “national minorities” in most cases can be taken to be references to the Hungarian minority, unless there is reason to think otherwise, for instance if it used in a context discussing the Roma minority. The latter minority is a subject which has grown in importance vis-à-vis the Hungarian minority since the Meciar years. Furthermore, I have emphasised the comparative element rather than coming up with a full description of all conceptualisations.

### **5.2.2.1 The Council of Europe**

The Council of Europe is represented by three texts representing different branches of the organisation. First, there is the 1999 Report 8496 of the Council of Europe Parliamentary Assembly on Slovakia’s honouring of the commitments it entered into upon accession. Included in this Report is a draft Resolution on Slovakia’s honouring of these commitments, but as the draft was adopted unamended, I see no reason for also including the Resolution in the analysis. This text has the same origin as those previously analysed coming from the CoE. Second, there is the 2000 Opinion on Slovakia of the Advisory Committee on the Framework Convention for the Protection of National Minorities. This is a body under the jurisdiction of the CoE Committee of Ministers, which was set up to monitor the implementation of the FCNM by the signatory states. Each state would submit a report on how they had tried to reach the targets set in the FCNM, which being a framework convention could not be implemented directly, but would bind the states to reach the specified targets. Third, there is the 2001 Committee of Ministers’ Resolution (2001) 5 on the implementation of the FCNM by Slovakia, which is based on the Advisory Committee’s Opinion as well as to some degree on the comments made by Slovakia and other states (including Hungary) on this Opinion. This variety of inputs, together with the fact that the Resolution is one-page condensation of an Opinion of 13 pages plus the comments means that it makes sense to treat the resolution as text separate from the Opinion. The differences in size

between the texts means that more codes have been assigned to the Opinion than the Parliamentary Assembly Report and especially the Committee of Ministers Resolution.

The fact that the three texts stem from different parts of the same organisation means that one cannot attribute differences between the texts to changes in the organisation. In spite of the different sources of origin within the CoE of the texts, I will argue that it makes sense to group them together, as they not only all speak on behalf of the CoE, but they would draw on the same sources and experts within the CoE. Nevertheless it is important to be aware of the differences between the texts, if there is significant variation. Especially when it comes to basic warrants, this is an indication that no common organisational culture covering all of the CoE exists.

### *Data*

If we look at which policies or situations concerning the Hungarian minorities have provoked responses from the CoE, the most important of these has clearly been the issue of the various language laws and the relationship between them (warranted eleven times). As mentioned above, the introduction of the Law on the Use of Minority Languages raised questions about its relationship with the earlier Law on the State Language, and it is this question, together with the question of the scope, content and implementation of the Law on the Use of Minority Languages, which has been the subject of most of the CoE's attention. This attention is divided between all three texts and is also shared with the EU and HCNM. The education policy has been the second priority of the FCNM Advisory Committee and the Parliamentary Assembly, whereas the Committee of Ministers does not mention it at all. Interestingly, the Advisory Committee is the only actor to address the issue of administrative reform, which was much debated in Slovakia, as well as the issues of census categories and discrimination, although these two categories rather address the Roma minority than the Hungarian minority. The Parliamentary Assembly, on the other hand, addressed the issue of the Law on Local Elections, the participation of the SMK in government<sup>27</sup> and the commitments that Slovakia entered into upon accession, issues which the AC did not address as such.

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<sup>27</sup> However, the AC did mention the SMK's participation when addressing other subjects.

### *Backing*

When it comes to the use of Backing for an argument, the CoE institutions use international treaties remarkably rarely. Obviously, both the Advisory Committee's Opinion and the Committee of Ministers' Resolution are based on the FCNM, but no references are made to other international texts and conventions, such as CoE's own European Charter for Regional and Minority Languages. The Parliamentary Assembly on the other hand referred to the European Charters for Regional and Minority Languages and for Local Self-Government as well as the FCNM and Recommendation 1201 in its Report.

### *Factual Warrants*

The most basic of factual warrants are those used to frame the Hungarian minority. The warrant framing it as something to which individuals belong has been used seventeen times, twelve by the Advisory Committee and five by the Parliamentary Assembly. On the other hand, the warrant framing it as one unitary entity has been used twenty-one times, including once by the Committee of Ministers and ten times by the Parliamentary Assembly. Not surprisingly, the latter warrant has been used six times in connection with the warrant that the Hungarian minority has one particular set of representatives (used nine times in total), which has not been used together with the warrant framing the minority as something individuals belong to. The warrant that the Hungarian minority is a unitary entity has also been used in connection with the two times the warrant framing the identity of the minority as a cultural identity has been used, again unlike the warrant that the minority is something individuals belong to. Also when talking about interethnic relations, the Hungarian minority has been framed as a unitary entity (four times). On the other hand, the "individualist" framing of the Hungarian minority appear more often (fifteen times) than the "unitary" framing (six times) in connection with warrants about rights, as was also the case during the Meciar period.

Turning to other warrants framing the Hungarian minority, the framing of it in terms of having a linguistic dimension has been used to frame it in large parts of all three texts (seventeen times, covering several pages). This is not surprising given that the language laws have been the subject that the texts elaborated on the most. Language is, as discussed in Chapter 1 drawing on Kymlicka Patten (2003a), a subject which can be framed in many different ways, especially when dealing with national minorities.

Particularly important in this respect is whether language is framed as a means to communication or as a means to provide access to culture. The former warrant lends itself more easily to arguments for policies aimed at eliminating lack of communication, for instance by supporting bilingualism, both among people and among official communications. The latter warrant lends itself more easily to arguments for policies preserving communication in the minority language within the minority, an often more controversial notion. Therefore it is interesting to see the CoE (or rather the Advisory Committee) use the latter warrant twice, when addressing minority language programmes on TV and radio as well as framing the Law on the Use of Minority Languages as providing “legal protection of minority languages”. This can be juxtaposed by the framing of language as ensuring communication between minority members and official instances, a warrant used once.

The framing of the Hungarian language as a means to access to culture relates to the warrant framing the Hungarian minority in terms of culture and cultural identity, such as the sentence “Slovakia has made valuable efforts to support minorities and their cultures” (Council of Europe, 2000). Used seven times in total, of which five times by the Advisory Committee, this highlights the cultural dimension of the minority, framing it as having a separate culture from the majority. This can be juxtaposed with warrants framing the minority in more political terms (used nine times split roughly equally between the Parliamentary Assembly and the Advisory Council), which might imply that it has any political rights to autonomy or other kinds of self-determination. Concerning identity, the Advisory Committee has three times framed the identity of the minority as needing promotion, e.g. “promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture”, a warrant lending itself to arguments for increased support to minority projects. This can be compared to the warrants framing the minorities as needing protection, as is done six times, and to the framing of it as being territorially confined (used five times).

A set of factual warrants that also work on a more basic level, but do not concern the nature of the Hungarian minority, are those framing the situation in terms of crisis, progress or a need to act in order to improve things. A situation (regarding the use of the –ova suffix) has only been framed once in terms of a crisis (“The Advisory Committee, however, has received *disturbing* [my emphasis] reports...”). The Advisory Committee (nine times) and the Parliamentary Assembly (four) have also

framed different situations, especially those concerning the language laws, in terms of a need for improvement (“further improvement is needed”, “the legislative framework touching upon minority languages still contain shortcomings”). However, the most common warrant has been the one framing the situation in terms of progress which has been employed seventeen times by all three CoE institutions, covering the bulk of the texts, for instance by stating “the Advisory Committee welcomes the fact...” (Council of Europe, 2000) or “Slovakia has made valuable efforts...” (Council of Europe, 2001b). This warrant has been employed both in relation to the Council of National Minorities and Ethnic Groups (three times) and education (five) thus framing them as areas in which the government has done what it was supposed to do. Interestingly, also the language laws, an issue which was also framed in terms of a need to do something, has also been framed in terms of progress, meaning that what the government has done is framed as a step in the right direction, but not sufficient.

On a more concrete level, the CoE has employed various factual warrants in order to frame different issues concerning the Hungarian minority. If we take the issue of minority education, it has been framed as including the facilitating of teaching in Hungarian by ensuring a sufficient number of Hungarian-language teachers are available, the curriculum, especially in history and the bilingual school certificates. Education in Hungarian has also been framed as being in general an important issue, but education will be dealt with in more detail below under the discussion of normative warrants.

### *Causal Warrants*

Many of the causal warrants used by the CoE, or rather the Advisory Committee (as it is the only CoE institution using these warrants), concern the role of perceptions in the relationship between ethnic Hungarians and ethnic Slovaks (used seven times in total). This category includes warrants concerning how negative perceptions are created, such as the assertion that the “textbooks (in particular those on history) and educational system in general do not foster negative stereotypes of national minorities” (Council of Europe, 2000). It also includes warrants about the causes of more positive perceptions of the Hungarians, such as “the attitudes of the majority towards the Hungarian minority are most positive where Hungarians constitute a relatively high proportion of the population and where there is a constant interaction between the majority and the said minority” (Council of Europe, 2000). Here the

warrant is that negative stereotypes become harder to sustain the more people from ethnic groups know about each other, which means that dialogue may solve problems.

A related warrant is the claim that dialogue will solve inter-ethnic problems, which has been used in some form or another six times by the Advisory Committee and four times by the Parliamentary Assembly, often in connection with the Council of National Minorities and Ethnic Groups. Together, these warrants form links back to the constructivist theories of ethnic conflict discussed in chapter 1, which emphasised the role of perceptions and constructions of the nation and of other nations in causing, but also remedying conflict. Whether it is deliberate elite manipulation or structures that are warranted as the driving force behind these constructions can not be told from the texts, but it suffices to say that economic or security factors have not been mentioned as causal influences. This does not necessarily mean that the very nation in itself is constructed, but that the negative constructions can be removed and be counteracted by making people engage with each other.

Rather than unsurprisingly considering the CoE's emphasis on the rule of law, the warrant that legislation and legislative guarantees is the best means to help the Hungarian minority has been used eight times. Finally, there are the framings of causal actors, where the Advisory Committee, not surprisingly, has emphasised the role and the responsibility of the Slovak government.

### *Normative Warrants*

Starting with the basic normative warrants, namely whether the issue is primarily framed in terms of achieving justice or security, the CoE (all three institutions) have framed the different issues primarily in terms of justice (nineteen times) and only four times in terms of security. This is hardly surprising given the CoE's traditional emphasis on justice. The justice approach is thus clearly dominant.

If we turn to the issue of rights, the Advisory Committee has obviously been limited by the provisions of the FCNM, but there are still some interesting aspects to how these provisions have been implemented in practice. Concerning the right of minority members to maintain and develop their own culture, enshrined in Article 5, the government is applauded for having "increased efforts...especially for the Hungarian minority". Regarding Article 9 which concerns the freedom of expression and right

of access to media in minority languages, it is interesting to see how the Advisory Committee has used the rather minimal provisions to advocate and endorse state support for minority print and electronic media as well as for broadcasts in minority languages on public radio and TV.

Article 10, which concerns the right to public and private communication in minority languages, is emphasised frequently, and used to discuss the language laws, especially criticising the insufficient implementation and the uncertainty regarding the relationship between the Law on the Use of Minority Languages and the Law on the state Language. Similar criticisms have been raised by the Parliamentary Assembly and by the SMK. In a similar vein, the provisions in Article 15 (“The Parties shall create the conditions necessary for the effective participation<sup>28</sup> of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them”) is used to advocate the Council of National Minorities and Ethnic Groups. Furthermore, it is also used to recommend that the administrative reform should facilitate minority participation in public affairs.

I will argue that the language policies recommended regarding the role of minority languages in official communications, the education system and media amounts to what is referred to as a “norm-and-accommodation rights regime”. According to Will Kymlicka and Allan Patten, this is a regime characterised by the designation of one language as the official norm and the subsequent accommodation of the needs of minority speakers who have problems speaking the official language (Kymlicka and Patten, 2003a: 27-29). This should be distinguished from the “official-languages-rights regime” in which several languages are designated as official granting anybody the right to receive information in any of those languages anywhere, and “toleration-oriented rights regimes” which simply aims at protecting people from interference with their private language choices. This regime also underlies the Parliamentary Assembly’s advocacy of the right to official communication and road signs in Hungarian.

From a more general perspective, good inter-ethnic relations are defined as the end eight times (seven times by the Advisory Committee, once by the Committee of Ministers). This goes beyond (but does not contradict) the relatively vague mentioning of it in the FCNM (Article 6) and is interpreted as an

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<sup>28</sup> See Chapter 2.2.2 for more on the concept of effective participation and the Lund Recommendations

overarching goal. This is, I will argue, coherent with the previously mentioned notions of inter-ethnic relations being good on the local level and dialogue between the groups being the tool to solve ethnic problems. Thus, a picture emerges in which the Hungarian minority and the Slovak majority can either be induced into antagonism via misleading perceptions of each other, or arrive at a harmonious way of living together by being willing to understand each other. It is worth noting that people in this picture interact qua their ethnicity, and that there thus is no notion of de-ethnicising the political sphere.

This is consistent with the warrant that minorities should have a say in decisions affecting them (used eleven times), which can be seen as creating a separate “minority sphere” of politics, over which the minority rule or at least exercise a large degree of control. I will argue that the vision inherent in the CoE discourse is one of a multinational polity based on the same premises as consociationalism, and can be seen as kind of “consociationalism light”. Regarding consociationalism, it is also interesting that the Parliamentary Assembly has emphasised that representatives of the Hungarian minority should have a say in decisions affecting it more frequently (seven times) than the Advisory Committee has.

Two normative warrants concern how this influence can be arrived at. The first is that a substantial minority policy is necessary, in other words that it is not sufficient to simply implement the required legislation but not care about whether the results are achieved, a warrant which has been employed six times. The second, and related, warrant (used thirteen times) is that uncertainties are negative, not only as they can create insecurity and may be used to undermine the rights of the Hungarian minority, but also in themselves.

Finally, when it comes to adhering to international texts and conventions on national minorities, the CoE institutions not surprisingly emphasise this (twelve times) as an important element of the right minority policy. Interestingly, the Parliamentary Assembly also emphasised the importance of following the recommendations of the HCNM and the EU (besides the CoE), a recommendation that constitutes a break with the previous emphasis on its own role during the Meciar period.

### 5.2.2.2 The HCNM

The HCNM is only represented by two rather short texts, namely his fax to Prime Minister Mikulas Dzurinda of the 4<sup>th</sup> of November 1998 and the press release on the Law on the Use of Minority Languages. This means that only the beginning of the Dzurinda period is covered, as the HCNM during the later years only dealt with the Hungarian minorities when reacting to the Status Law. It is worth bearing in mind that the press release was intended for a wider audience than most other HCNM texts (which were sent directly to Foreign or Prime Ministers), and that it therefore may differ from them in the use of some warrants. Unlike the CoE (and the EU) there is little focus on the Roma in these texts, which means that “national minorities” in practically all cases refers primarily to the Hungarian minority.

#### *Data*

The HCNM, like the CoE, pays most attention to the issue of the language laws, in fact to such a degree that one of the texts is issued solely to welcome the introduction of the Law on the use of Minority Languages. However, even before the Law on the Use of Minority Languages was introduced, the HCNM called for such legislation in his 1998 fax as well as in previous letters to the Foreign Ministers of the Meciar government. Thus the HCNM’s constant advocacy of such legislation can be said to have been successful, although other actors also have been influential, as will be discussed below, Dzurinda did at very minimum state that the government was looking into the possibilities and need for such a law (Dzurinda, 1998). Two issues which the HCNM also reacted to are cultural policy and the abolishment of the Law on Local Elections, which was introduced by the Meciar government, a move welcomed by the HCNM. Unlike the CoE, the HCNM did not address education policy directly.

#### *Backing*

In terms of backing, the HCNM referred to existing legislation and the Slovak Constitution, as well to international treaties in general without specifying which that he refers to. This makes the 1998 letter different from the previous letters, in which the HCNM often referred to various documents and treaties on national minorities which Slovakia (and Romania) was committed to in one way or another. That he

does not use such references in the press release is less surprising, given that the audience would be less acquainted with such documents.

### *Factual Warrants*

When it comes to the basic factual warrants, the warrant that the minority is something that individuals belong to is used once in each text, whereas the warrant that it is a unitary entity is only used in the fax (and there only once). Thus I will argue that the former has been prevalent. More interestingly, the HCNM in the fax frames the Slovak Hungarians (and members of other minorities as “those *citizens* who belong to national minorities”, those emphasising their relation to the Slovak state as citizens (van der Stoel, 1998b). Also of interest is the framing of the minorities in terms of culture when subsidies for minority cultural activities are advocated (van der Stoel, 1998b; 1999c). On the other hand it is hardly surprising that language is framed as an important aspect of the Hungarian minority (four times, covering much of the two texts) when the subject is language laws.

When it comes to framing the situation in terms of progress, crisis or a need for action, the HCNM in both texts adopts a positive view and frames the situation in terms of progress by stating for instance “I welcome the restoration of the use of minority languages” (van der Stoel, 1999c). This is a more optimistic stance compared to both the CoE and the HCNM’s previous writings.

One issue to which the HCNM has paid more attention than the CoE and the EU, is bilingual school certificates, which are mentioned in both texts. Also interesting is the way in which in the 1999 press release the HCNM frames it as one of “previous Government decisions in the field of *inter-ethnic relations* [my emphasis]” (van der Stoel, 1999c), thus framing it as being about relations between members of different groups. It is possible to imagine other ways of framing this, for instance as a relationship between those minority members demanding such a certificate and the state.

### *Causal Warrants*

If we turn to the causal warrants, the most important one (warranted twice) is the claim that following the recommendations of International Organisations (including the HCNM) will solve minority problems, which is employed twice. In more concrete terms, it is recommended that meetings between

a joint team of experts on minority from the CoE, the OSCE and the EU and the Slovak government should be repeated in the future. In general, the Slovak government is framed as the actor with the greatest influence on the Hungarian minority.

### *Normative Warrants*

In terms of the basic normative warrants providing the broad perspective, the HCNM has in his 1998 fax framed the issues of bilingual school certificates and the Law on Local Elections in terms of justice, for instance by defining the latter as violating international principles “concerning free elections and individual human rights” (van der Stoel, 1999c). As for the other subjects in this text and the press release, it is harder to claim that they have been framed in terms of either security or justice. Since there are only two instances of the use of basic normative warrants, it would probably be an exaggeration to claim that this constitutes a break with the HCNM’s previous security-oriented approach. Such a claim will need support from the material concerning Romania and Hungary.

As mentioned above, the HCNM has framed the Hungarian minority issue in terms of inter-ethnic issues, for instance by expressing the hope that “the Government will move without delay to settle other still unresolved inter-ethnic issues” (van der Stoel, 1999c). This frames good inter-ethnic relations as the goal, an end which the CoE also shares. Another similarity is the implicit advocacy of a norm-and-accommodation language rights regime, which is warranted twice as the preferable solution. This can for instance be seen in the statement that although school certificates according to law should be issued in the state language, there is “no provision prohibiting its issuance in a minority language as well” (van der Stoel, 1998b). Thus, rather than simply not interfering, the state should accommodate the needs of minority language speakers (primarily Hungarian-speakers) unless there exist very good reasons for not doing so. The HCNM generally places a lot more emphasis on the issuance of bilingual school certificates (twice employing the warrant that it is something positive) than the CoE, where only the Parliamentary Assembly endorsed it.

Finally, there are the normative warrants which value following international commitments and the recommendations of International Organisations. The warrant that Slovakia should adhere to international norms and commitments is employed four times, three times with broad references to

“applicable international standards” (van der Stoel, 1999c) and once with reference to the European Charter for Minority and Regional Languages, which Slovakia is recommended to access (van der Stoel, 1998b). The HCNM uses the warrant that Slovakia should follow “specific recommendations from relevant international institutions, including my own office” (van der Stoel, 1999c) three times, a use which is consistent with previous HCNM recommendations.

### **5.2.2.3 The EU**

The EU is represented by the four annual Regular Reports on Slovakia’s Progress towards Accession covering the years 1999-2002, meaning that the whole Dzurinda period is covered. The regularity and little variation of the texts should make it possible to analyse developments over time, as differences between the texts should be attributable to either differences in the Hungarian minority policy of the Slovak government or in the outlook of the EU. The 2003 Regular Report did not contain any references to national minorities except the Roma, but as it was made after the decision to allow Slovakia’s accession at the Copenhagen Summit in December 2002, it is unlikely that it could have had much impact.

#### *Data*

Certain policies have been the focus of the EU’s attention for the whole period. This includes the language laws (addressed seven times, covering much more space than any other issue), which I will argue has been the most important issue for all three organisations. I base this finding on the amount of space all three organisations have devoted to the subject, as well as on the repetition of the recommendations concerning the subject in conclusions and other statements highlighting the most important issues, such as the CoE Committee of Ministers’ Resolution (Council of Europe, 2001b). The other issue which has been subject of attention in all four Reports is the Basic Treaty with Hungary that has been addressed in all four Regular Reports, which indicates a different perception of what is important, in particular if contrasted to the CoE<sup>29</sup>. The other issues which have been addressed are the Council of National Minorities and Ethnic Groups (1999), the SMK Deputy Prime Minister for Human Rights, National Minorities and Regional Development (1999), education (1999), discrimination

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<sup>29</sup> Although the HCNM did not make any references to the Basic Treaty, he had done so previously and would continue to do so during the Status Law dispute.

(2000) and the media (2000). Of these, it is hard to say to which degree the addressing of discrimination relates to the situation and to which degree it relates to the situation of the Hungarian minority.

### *Backing*

Concerning the sources used as backing for the arguments, the EU has referred once to the Opinion of the CoE Advisory Committee on the FCNM (in 2001b), and once to the Resolution of the CoE Committee of Ministers (in 2002c). Furthermore, twice in 2001 the EU used the European Charter for Minority and Regional Languages as backing. My opinion is that this shows a new importance of the CoE as a source of expertise authority and symbolic power, a position which previously had belonged almost solely to the HCNM.

### *Factual Warrants*

Starting with the most basic factual warrants, namely the framing of the Hungarian minority itself, the EU has, with one exception (in 1999b), framed the latter as being a unitary entity (sixteen times altogether, covering most of the reactions to the Hungarian minority policy of Slovakia). This is consistent with EU's previous framing of the minority, but means that the EU differ from the CoE and the HCNM. Considering this, it is not surprising that the EU has framed the political participation of Slovak Hungarians (four times) in terms of one entity with a specific set of representatives. This means, as discussed earlier that a picture emerges in which the different ethnic groups, particularly the Hungarian minority, participate qua their ethnicity and the political space is thus ethnicised. The warrant was used in 1999 and in 2001, thus not saying anything about a temporal development.

Unsurprisingly considering the emphasis given to the language laws, the Hungarian minority and other national minorities have over the years consistently (twenty-two times altogether) been framed as having a linguistic dimension. Interestingly, it was only in 2001 and 2002 that "The protection of the use minority of languages" (EU Commission, 2001b) and of minority rights was an issue, thus framing the minorities and their languages as needing protection, the normative implications of which I will return to below. This coincided with increasing criticism over the lack of effect of the Law on the Use of Minority Languages. The warrant framing the Hungarian minority in terms of culture, has also been

used consistently over the years (except 2001), especially in connection with the argument used in 1999 and 2000 for “legislation on the use of minority languages in other areas, notably education and culture” (EU Commission, 1999b). Thus minority language and culture were linked. However, support for minority culture could also be framed as consisting of “Minorities units...within the Ministries of Culture” (EU Commission, 1999b).

If we turn to the warrants framing the situation in terms of crisis, progress or a need to improve, the EU, like the CoE and the HCNM, is characterised by a rather optimistic tone. Whereas at no time has a situation been framed in terms of crisis, the warrant that the situation is characterised by progress has been used seventeen times. The warrant that the situation is such that the government needs to act has been employed eleven times. It is primarily inter-ethnic relations which have been framed in terms of progress, combined seven times divided between the years 2000, 2001 and 2002. Also the cooperation with Hungary under the agreements of the Basic Treaty, which has been framed in terms of progress, altogether three times, in 1999, 2001 and 2002, in spite of the Status Law crisis during the last two years. Education has also been once (1999) framed as progressing. On the other hand, the language laws have three times been framed in positive terms (twice in 1999 and once in 2000) as well as in terms of a need for improvement (1999, 2001 and 2002), thus both commending previous actions but at the same time calling for more of them. The Law on the Use of Minority Languages was, although considered a step in the right direction, criticised for not being properly implemented and insufficient (EU Commission, 2001b).

If a deeper look is taken into the framing of education issues, the EU has framed the issue of the faculty for Hungarian teachers at the University in Nitra as falling within the duty of the government (EU Commission, 2001b). This way, the concept of minority education rights is conceptualised in a way which makes it include a claim on the state to ensure that there are enough minority language teachers. The bilingual school certificates are also framed as an important aspect of minority education, if not an actual right (EU Commission, 1999b).

When it comes to inter-ethnic relations, the EU has generally framed relations on the local level as being positive, with the Hungarian minority “comparatively well integrated” (EU Commission, 2002c)

and “achievements made in improving inter-community relations, notably vis-à-vis the Hungarian minority” (EU Commission, 2001b). These warrants have been used three times, in 2001 and 2002. On the other hand, the problems regarding the faculty for Hungarian teachers at the University in Nitra are largely attributed to the University administration, thus placing the cause of the problem on the local level, although not at the level of interaction between members of the local population. Those warrants framing the inter-ethnic relations in terms of “intolerance” and “deep-rooted discriminatory attitudes” are most likely referring more to the attitude towards the Roma than the Hungarian minority, as few would argue that Hungarians suffer stereotyping to the same degree as the Roma.

Unlike the CoE and the HCNM, the EU framed the issue of media (2000) as a field which, together with education and culture, is important for the use of minority languages. As mentioned, also the Basic Treaty was given importance, thus framing the Hungarian minority as an international as well as a domestic issue.

### *Causal Warrants*

The two most common causal warrants (both used three times) are that legislation affects the situation of the Hungarian minority (EU Commission, 1999b; 2002c), and that bilateral treaties can solve the problems relating to the Hungarian minority (EU Commission, 1999b; 2000b; 2001b). The former warrant has been discussed above, but the latter has not been used by the other organisations in this period. It is interesting, because it not only reframes the Hungarian minority issue as an international rather than a domestic issue, but also because it is a solution which is fundamentally different from the other solutions, which usually involve some kind of interaction between representatives of the Hungarian minority and the government. One example of the latter kind of solution is the warrant that Hungarian members of the government constitute progress (used twice), something which was described thus: “The Slovak Authorities made significant progress in this area. A Deputy Prime Minister for Human Rights, National Minorities and Regional Development who belongs to the Hungarian Coalition was appointed” (EU Commission, 1999b). Another example is the related warrant that dialogue can solve the problems, which has been used twice, and has been discussed in the section on the CoE.

### *Normative Warrants*

Starting with the basic normative warrants, those concerning the framing in terms of security or justice, the EU, like the CoE and the HCNM, has primarily defined the situation in terms of arriving at a just solution. However, in many cases it has been impossible to tell whether the underlying conceptualisation of minority issues is justice or security-oriented. Nevertheless, I consider references to “the protection of minority languages” or “practical improvement in the daily life of minorities” as carrying an implicit notion that these ends have a value not because they prevent conflict, but because they in themselves are just. These justice warrants have been used in all four Reports, although only once in 1999 compared to three to four times the other years. Framing in terms of security has only taken place when the issue is the Basic Treaty, which nevertheless means that it has been employed in every report.

If we look at how rights have been framed, the EU has, like the other two organisations, emphasised linguistic rights (six times), especially in 2001. Similar to the CoE, it has operated with a “norms-and-accommodation rights regime” as the ideal, and has framed minority languages as needing protection in the process of promoting this ideal. The 20% threshold for the right to official communications in a minority language is endorsed. However, on a more general level it is also mentioned that “Continued efforts are needed...to protect minority rights” (EU Commission, 1999b).

Turning to the category of warrants concerned with democracy and dialogue, during this period the EU has, to a relatively larger degree than the other two organisations, emphasised (four times) the value of letting minority representatives have a say in decisions affecting the minority. Used in 1999 and 2001, this warrant underpins statements such as the endorsement of the designation of the “Council of National Minorities and Ethnic Groups with acting as the advisory body on the implementation of the Charter [for Minority and Regional Languages, ed.]”. The warrant is related to the causal warrant that Hungarian participation in government constitutes progress, and the normative warrant that the support of a law (concerning minority issues) from the SMK is something positive (EU Commission, 1999b; 2000b). Similarly to the other organisations, the EU has also framed good inter-ethnic relations as an end (five times), something which it has done consistently though the years.

When it comes to education, the EU, as mentioned above, advocated the creation of a faculty for Hungarian teachers at the University in Nitra (EU Commission, 2001b; 2002c) as well as bilingual school certificates (EU Commission, 1999b). Whereas the former warrant has also been employed by the CoE Advisory Committee (and may have its origin there), the latter has been very much emphasised by the HCNM and to a lesser degree the CoE Parliamentary Assembly (see above). Another warrant which has been used to a similar degree by the CoE and the EU is the warrant that the minority policy should be substantial, and that it should not only be about passing legislation, but also be concerned with the implementation of this legislation. Finally, there is the warrant that international regulations and commitments should be followed. Also used many times by the CoE, this warrant has been used all years except in 2000.

### **5.2.2 Comparisons**

I will argue that although differences have existed between the organisations, on the whole the organisations have more factors in common than separating them (see also Table 4). Amongst other reasons this is because they have all treated the issue of language laws as the most important subject and paid some attention to education, especially the faculty of training Hungarian teachers at the University in Nitra. Although differences exist concerning which other issues are important, with the EU's emphasis on the Basic Treaty as the most important example of an issue that has been the focus of one only organisation, most of these differences are relatively small.

**Table 4**

<b>Predominant Warrant(s)</b>	<b>CoE</b>	<b>HCNM</b>	<b>EU</b>
Data	Language laws	Language Laws	Language Laws
Backing	FCNM	Unspecified	CoE
Basic Factual Warrant	<i>Indistinguishable</i>	Something individuals belong to	Unitary entity
Political Representation	One set of representatives	Not mentioned	One set of representatives
The Situation	Progress Need to act	Progress	Progress
Other Factual Warrants	Language as an important aspect of the minority	Bilingual school certificates	State responsibility for training of Hungarian-language teachers
Prevalent Causal Warrant	Perceptions matter	Follow the IO's recommendations	Bilateral treaties can solve problems
Basic Normative Warrant	Justice	<i>Indistinguishable</i>	Justice
Prevalent Rights Warrants	Right to official communication		Linguistic rights
Other Normative Warrants	The right to effective participation/Say in decisions affecting them Good inter-ethnic relations an end	Follow the IO's recommendations Good inter-ethnic relations an end	Say in decisions affecting them Good inter-ethnic relations an end

If we turn to the organisations' use of backing, the CoE, especially the AC, has obviously based its argumentation on the FCNM, whereas the EU has only referred to the European Charter for Minority and Regional Languages and the HCNM only to unspecified international documents in general. It is also interesting that to a large degree the EU has referred to the Resolution of the CoE Committee of Ministers and the Opinion of the CoE Advisory Committee. This constitutes a change from the previous period, where it mainly used the HCNM as backing, and indicates, I will argue, a rise in the expert authority and symbolic power of the CoE in relation to the implementation of the FCNM.

Turning to the use of factual warrants, there are significant differences between the organisations when it comes to framing the Hungarian minority. Whereas the HCNM has predominantly framed the minority as something individuals belonged to, the EU on the other hand has almost solely framed it as a unitary entity, and the CoE has used the two warrants to more or less similar degree. This, I will argue, indicates differences in organisational cultures and especially in the conceptualisation of minorities. However, as many other subjects have been framed in similar ways by the different

organisations, the influence of these differences on conceptualisations of other concepts may be limited, although not negligible. For instance, when it comes to framing the situation in terms of progress or a need to act, the same issues are framed in similar ways by all three organisations: the Law on the Use of Minority Languages constitute progress, but more needs to be done and the same goes for education. Inter-ethnic relations have also been framed as improving by both the CoE and the EU. One difference is the EU's framing of the Hungarian minority issue as an international issue, which has been implicit in the references to the Basic Treaty.

When it comes to causal warrants, greater differences between to organisations exist. Whereas the CoE to a great degree emphasised the role of perceptions, the HCNM put greater weight on following the recommendations of IO's, and the EU emphasised the Basic Treaty with Hungary as an instrument for preventing conflict.

The category of normative warrants also contains differences as well as similarities between the organisations. Both the CoE and the EU (the HCNM was silent on this) have conceptualised the concept of state responsibility for education in minority languages so that it includes a duty to make sure that there is a functioning faculty training Hungarian language teachers. I will also claim that all three organisations are best understood as operating with what is termed a "norm-and-accommodation" approach to linguistic rights and policy as the ideal. However, the EU, unlike the other two organisations, has to a certain degree framed the Hungarian minority issue in terms of security, although here too justice has been the dominant frame. Furthermore, the EU also seems to have emphasised the valuable aspects of the both the participation of the SMK in government and the Council of National Minorities and Ethnic Groups more than the two other organisations. Nevertheless, for all three organisations, good inter ethnic relations have been framed as an end more than other possible ends. This is part of an overall vision which seems to be shared by all three organisations (or at least the EU and the CoE as the HCNM has spoken less); a kind of "consociationalism light" where the Hungarian minority (framed as one actor) is guaranteed if not a place in government and a veto, then a say in the decisions that affect it. In this view, politics is divided along ethnic lines, as it is in theories of consociationalism. The reason why I refer to this as consociationalism *light* is that it after all contains fewer provisions for the minority, and is a lot less institutionalised than the idealtypical

consociational system described by Arend Lijphart (1990). Therefore it is a mistake, made among others, by Martin Brusis (2003) , to equate the participation of minority parties in a government with consociationalism.

To sum up then, my argument is that the organisations adopted more similar stances during the Dzurinda period than during the Meciar period, although differences still exist. There do not seem to have been any changes over time, at least not in the EU, which is the only organisation whose material covers the whole period. One significant change is the new role of the CoE, which with the occurrence of the FCNM has taken on a more authoritative position when it comes to interpreting national minority policies.

If we finally consider the degree to which the recommendations of the organisations have been followed, two examples of adherence to the suggestions are relevant. The first is the Law on the Use of Minority Languages, which was advocated during the Dzurinda period by the all three organisations HCNM and during the Meciar period by both the HCNM and the EU. The second is the Hungarian language university in Komarno, which, although not directly recommended by the organisations, answers their call for more tertiary education in Hungarian and more training of Hungarian language teachers.

## 6 Romania - Historical Background

Romania's history as a sovereign state is, although longer than Slovakia's, rather short, since it does not date back longer than the late 19<sup>th</sup> century. The two principalities Walachia and Moldavia had been merged to form Romania in 1859, but did not gain full international sovereignty and independence from the Ottoman Empire until 1878 (Gallagher, 1995: 16). At that time the territory consisted of the Southern and Eastern parts of present-day Romania, and was relatively ethnically homogenous with Romanians constituting 92% of the population (Gallagher, 2005: 23). This changed drastically after the First World War, in which Romania participated on the side of the Entente. At the Versailles and Trianon treaties in 1919 and 1920, Romania acquired new territories almost doubling its size.

These territories included Transylvania and parts of the Banat, Maramures and the Crisana regions, all of which were previously Hungarian. Whereas Transylvania lies in the centre of Romania, the other regions lie in a crescent along the borders with Serbia, Hungary and Western Ukraine. Transylvania (Hungarian: Erdelyi, Romanian: Ardeal) has significant Hungarian and German minorities, and plays an important role in the historical consciousness of both the Hungarian and Romanian nations. Today, the other previous Hungarian regions have smaller proportions of ethnic Hungarians. Although many Hungarians left Romania in the inter-war period and during the Ceausescu years, they still number between 1.6 and 2 million people.

The Hungarians tend to be concentrated in the cities, except for the part of Transylvania known as Szekelyföld in Hungarian (English: the Szekler lands, Romanian Ținutul Secuiesc), where the so-called Szekely or Szeklers live in rural as well as urban areas. The Szekely have a traditional culture and identity distinguishing them from the other Hungarians in Romania and Hungary proper, and today Harghita and Covasna, the two Romanian provinces constituting Szekelyföld together with Mures county, are the only two provinces with Hungarian majorities. Transylvania's two biggest cities, Cluj-Napoca (Hungarian Kolozsvár) and Țirgu Mures (Hungarian: Marosvásárhely), which previously had Hungarian majorities, both have Romanian majorities today. One group whose status is hotly disputed, are the Csángós, who live in Central Moldova, and according to different sources number between 5.000 and 300.000. The Csángós conceive their group identity primarily in religious terms, and according to most sources only 20-30.000 speak a kind of medieval Hungarian, whereas the rest speak

Romanian as their primary language. There is a disagreement, both between the ethnic Hungarian and Romanian elite members and among the Csángós themselves, whether the latter belong to the Hungarian minority or form one or more separate group in themselves. This is why I have chosen to refer to the Hungarian *minorities* rather than the Hungarian *minority*.<sup>30</sup> Not counting the Roma, whose number is hard to gauge, the Hungarians constitute the biggest national minority in Romania, and the most controversial one. The second-biggest minority with a defined number, the German or Saxon minority, is concentrated in Southern Transylvanian towns and cities, and number today, after a massive exodus in the Eighties and early Nineties, less than 100.000. Interestingly many Roma define themselves as Hungarians (including in censuses), thus adding further uncertainty to who and how many the ethnic Hungarians are.

During the interwar period, the Romanian democratic system was under strain for a while, especially due to the emergence of the Fascist Iron Guard and radical nationalism in general. This led to an increased focus on Transylvania and the Romanian Hungarians, and their representatives complained to the League of Nations about their situation (Gallagher, 1995: 32-38). In 1940, Germany and the USSR, in the so-called Vienna Diktat, forced Romania to cede the Northern half of Transylvania to Hungary and Bessarabia to the USSR. Nevertheless, Romania, led by the nationalist dictator Antonescu who had taken power at a coup in 1940, sided with the Axis and took part in the attack on the USSR in 1941 in order to regain Bessarabia. When Soviet forces invaded Romania in 1944, King Mihail deposed Antonescu and formed a new government, which changed sides and joined forces with the Allies. Soon after Romanian forces controlled Northern Transylvania. The events which took place there during the Hungarian occupation and the Romania re-conquest have been the cause of much contestation since, with people from both sides accusing the other of ethnic cleansing and massacring civilians. Although claims from both sides seem to have some truth to them, the important aspect here is how they have influenced the atmosphere in Romania, Hungary and Transylvania since, being a touchy point for both sides.

The rather small Communist Party was installed in power by the Soviets soon after the end of the Second World War (Gallagher, 1995: 46). The Soviets had already allowed for Transylvania's return to

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<sup>30</sup> I am thankful to Enikő Horvath for pointing this out.

Romania, and Hungarians constituted a large part of the tens of thousands imprisoned in labour camps in the early years of communism. However, in 1952 a Soviet-inspired Hungarian Autonomous Region was set up covering Szekelyföld and encompassing a Hungarian population of 77%. Drawing on Stalin's ideas of nationalism and national minorities, it had at least nominal control over many policy areas. However, at the same time the Communist government under the leadership of Gheorghe Gheorgiu-Dej drew increasingly on nationalism as a source of mobilisation, a trend which increased when Nicolae Ceausescu took over after Gheorgiu-Dej's death in 1965. The Hungarian Autonomous region was abolished in a larger administrative reform in 1968, and Ceausescu started a policy of moving ethnic Romanians from other parts of Romania to the Transylvanian cities. This altered the ethnic composition of the cities and of Transylvania in general.

As the economic situation in Romania grew worse during the Eighties and the Ceausescu government increasingly played on nationalist and anti-Hungarian sentiments, Romanian Hungarians became increasingly frustrated. Many left for Hungary, but others, such as the controversial minister Laszlo Tökes in Timisoara, started to protest against the Ceausescu government. Timisoara, in the Banat, prides itself of being the most multi-ethnic and tolerant city in Romania, with its population a mix of ethnic Romanians, Hungarians, Germans, Serbs and other groups (Batt, 2002). When, in November 1989, Laszlo Tökes was removed from his parish church, people from other ethnic groups shortly after joined the Hungarian protesters, turning the protest into a protest against the system in general. When this protest was violently suppressed in December 1989, it sparked international and domestic protests, which ended with a military coup against Ceausescu and his wife and co-ruler Elena the 22<sup>nd</sup>. Behind the coup was the National Salvation Front, consisting mainly of military leaders and mid-level communist party officials, such as Ion Iliescu, who shortly after was sworn in as President.

### **6.1.1 The First Iliescu Period 1990-1996 - an Overview.**

The fall of Ceausescu meant a complete change for a country which had been one of the most closed in the world. Drastic reorientations within foreign policy, economics, law and the political system meant new possibilities but also new anxieties, perhaps even more for the Hungarian part of the population than for the rest. Ion Iliescu and his National Salvation Front started off as a politically neutral caretaker government, but soon transformed into a political force which stood in the presidential and

parliamentary elections in May 1990. These elections ended with Iliescu winning the presidency already in the first round with 85% and NSF winning 66% of the votes in the parliamentary election.

The 1990 elections were intended to provide Romania with a democratically elected government ensuring stability and legitimacy until a new constitution was in place. However, the early years of post-Ceausescu Romania were far from peaceful. Already in March 1990 violence had broken out with fatal consequences in the Transylvanian town of Târgu Mures between Romanian Hungarians and Romanians, an issue which will be returned to below. In Bucharest too, there was political violence several times in 1990 and 1991, when Iliescu called upon the miners of the Jiu Valley to help him create order. In September 1991 the miners attacked opposition groups and the Parliament, without much interference from the police (Gallagher, 1995: 116-117). This forced Prime Minister Petre Roman to resign. This led to the splitting of the FSN into two parts, one loyal to Roman, the other to Iliescu. The former sided with the opposition in the 1992 elections, but Iliescu's FSN, soon after to be renamed as the Social Democratic Party of Romania (PDSR), won the elections.

A new constitution had been approved by the electorate in December 1991 (Keesing's Record of World Events, 1991). It defined Romania as a national state and the official language of Romania as Romanian. It also continued the institution of a strong presidency elected over two rounds (in case no candidate won more than 50% in the first round) and a two-chamber Parliament electing a Prime Minister (Keesing's Record of World Events, 1992). Although the opposition grew stronger between the two elections, its candidate for the 1992 presidential elections, Emil Constantinescu, lost in the second round to Iliescu with 39% against 61% of the vote. The main opposition party was the Romanian Democratic Convention (CDR), an alliance between centre-rights forces opposed to Iliescu. Furthermore, there was the Democratic Union of Hungarians in Romania (UDMR), which will be discussed below, and Roman's FSN, which in 1993 changed its name to the Democratic Party (PD). Finally, there were also the two nationalist parties, the Great Romania Party (Romania Mare – RM) lead by Corneliu Vadim Tudor, and the Romanian National Unity Party (PUNR), lead by Gheorghe Funar, and two smaller ex-communist parties. The four latter parties backed the PDSR government of Nicolae Vacaroiu, and (in particular the RM and the PUNR) got positions as deputy ministers and prefects, especially in ethnically mixed areas, in return (Gallagher, 2005).

During Iliescu's second period in power dissatisfaction with his government grew due to falling standards of living and increasing corruption, and in the 1996 elections Iliescu lost in the second round to Constantinescu with 46 against 54% of the vote. At the same time, PDSR lost a third of its votes, and CDR and the PD-led Social Democratic Union (USD) gained a small majority in Parliament (Gallagher, 2005: 140-141). Constantinescu used this majority to form a government with participation of the CDR, the USD and the UDMR led by Bucharest mayor Victor Ciorbea.

### *The Hungarian Minority*

Already after two weeks in power, the 5<sup>th</sup> January, the FSN issued a declaration on national minorities. In this declaration, the national minorities were guaranteed the protection of their "individual and collective rights and liberties" (BBC World Service, 9/1/1990). Furthermore, the previous "chauvinistic policy of forced assimilation" and "attempts to defame neighbouring Hungary and the Hungarians in Romania", were sharply criticised (Ibid). However, three weeks later the FSN government and Iliescu would abandon the apologetic line and turn to criticism of what they defined as Hungarian nationalism and separatism, and explicitly declare the concept of collective rights unwanted (Gallagher, 2005: 82).

The Hungarian party (UDMR) was one of the first parties to be formed after the 1989 revolution (Keesing's, May 1990). Founded by Geza Domokos, it claims to speak for all ethnic Hungarians in Romania, although strong factions exist within it. The two dominant factions have for most of the existence of UDMR been centred around Belá Markó, leader since 1993, and the abovementioned Protestant minister Laszlo Tökes, who represents the more uncompromising wing. Tökes has several times called for a Hungarian autonomous region, which has been badly received by the other parties in Romania, whereas Markó's political line has been more acceptable. The UDMR officially abandoned its claims for territorial autonomy at its conference in January 1993 (Keesing's, January 1993). At the different parliamentary elections, it received 6-7% of the vote, roughly equivalent to the proportion of those declaring themselves Hungarian in censuses.

One issue that proved very contentious over the years was education, possibly even more so than in Slovakia. Already in January 1990 the restoring of teaching in Hungarian in primary and secondary

schools began, mainly by removing ethnic Romanian children from specific schools and replacing them with ethnic Hungarians (Gallagher, 2005: 77). This led to Romanian protests, especially in Cluj and Târgu Mures. Cluj was also the place where the UDMR and other Hungarian organisations wanted to reinstate the Bolyai University, which had existed there prior to 1920 and in the period 1940-59. This claim was, at least initially, not very well received by the other political parties. Instead, the teaching in Hungarian was restored at the Babes-Bolyai University, so-named since 1959 when it was merged with the Romanian-language Babes University. As in Slovakia, the question of teaching of history and geography in Hungarian as well as the importation of Hungarian school books have also been contested issues. In particular the 1995 education bill spurred many protests from the UDMR, which found it did not do enough for teaching in Hungarian.

If education in general and the demand for a Hungarian-language university in particular have been the most important issues relating to the Hungarian minority over the years, the most important event is probably the clashes in Târgu Mures the 19-20<sup>th</sup> March 1993. Whereas the actual course of events is hotly disputed, there is little disagreement that this conflict initially started with protest over ethnic Hungarians celebrating the Hungarian national day March 15, and ended five days later with the army moving into the city. Depending on the source, between three and ten people were killed, most of whom were Hungarians. The debate over the events were re-ignited when a parliamentary committee issued a report one year later, which put the blame equally on both sides (and set the number of killed at three), infuriating many Hungarians in Romania and Hungary. A constant source of complaints by the UDMR has been the long sentences given to certain Hungarian individuals arrested in connection with the clashes, as well as to ethnic Hungarians arrested for violence committed in Szekelyföld during the revolution, despite the fact that a general amnesty had been issued.

This was not the only instance where debates about the use of national and historical symbols turned sour. Several times the celebration of Hungarian national holidays, or the use of Hungarian symbols or flags, as well as the use of Romanian symbols and perceived lack of respect of Hungarian symbols, have caused tension. To prevent the former, in 1994 the parliament outlawed the flying of foreign flags and singing of national anthems and making such actions punishable with up to three years prison. The latter was especially the case in Cluj, where the PUNR's leader Gheorghe Funar became mayor in

1992, and had the city's pavements and benches painted in the colours of the Romanian flag and, more controversially, initiated excavations around the statue of the Hungarian King Matthias. Although the government intervened to stop the excavations, the project worsened relations between Cluj's sizeable Hungarian population and the Romanian majority. Funar also removed all Hungarian- or dual-language signs in 1992, and prohibited a Dutch-sponsored conference on local government.

This relates to another important subject, namely local and regional government. Romania has a strongly centralised system of regional government with government-appointed prefects. This led to much protest in 1990, when the government selected two ethnic Romanians for the positions of prefects of Harghita and Covasna, the two provinces constituting the bulk of Szekelyföld. The government in the end appointed two prefects for each province, one ethnic Hungarian and one ethnic Romanian. Also the removal of the UDMR candidate from the ballot by the (unelected) local officials in the 1992 Târgu Mures mayoral elections provoked much anger among the ethnic Hungarians in the city, causing the government to intervene and restore the original ballot.

In April 1993, the government set up the Council for National Minorities as a forum for dialogue between the government and the different minorities, irrespective of their size. However, the UDMR left the Council shortly later, and stated that this was due to dissatisfaction with the lack of political follow-up and interest from the government.

### *The International Scene*

Like many other post-communist countries, Romania sought membership in Western and Western European organisations. This started with the application for membership of the Council of Europe in February 1991. After a process of monitoring by the CoE Parliamentary Assembly, Romania was approved for membership by the CoE Council of Ministers (but with Hungarian abstention) at the recommendation of the Parliamentary Assembly in October 1993, in the same way Slovakia had been admitted four months before. This came at a time when the reputation of Romania in the West was improving after the condemnation of the miners' uprisings in 1990 and 1991.

The next step concerned EU and NATO membership. Already in November 1992 Romania and the EU had signed an association agreement, which aimed at preparing Romania for EU membership by making it meet EU standards. Thus the agreement focused mainly on technical matters and the annual meetings did not concern the plight of the Hungarian minority. However, the agreement mattered because it opened up the possibility for EU funding and possibly EU membership. The EU also played an important role in terms of the aforementioned Pact on Stability or the Balladur Plan, an attempt to solve potentially violent minority issues. At roundtable sessions in 1994 and 1995, the countries with Hungarian minorities and Hungary itself discussed how to create common understandings concerning the minorities and confirm these understandings in bilateral treaties<sup>31</sup>. Nevertheless, unlike Slovakia Romania did not manage to agree on a treaty with Hungary at the final session in March 1995, but agreed to continue the negotiations.

In August 1995 Iliescu offered a “historic reconciliation” to Hungary. Soon after the RM left the government, citing the government’s “too permissive” policy towards the Hungarian minority and Hungary as the reason. Nevertheless, a bilateral treaty was not agreed upon until the summer of 1996, when the two governments agreed upon a text in which Hungary renounced all territorial claims and Romania accepted that the CoE Recommendation 1201 was made legally binding by making it part of the treaty. However, a memorandum of understanding was attached to the treaty specifying that the Recommendation 1201 should not be understood as including collective rights or claims to autonomy . The treaty was criticised from different corners in Romania; the UDMR complained about not having been part of the negotiation process and the memorandum of understanding’s refusal of collective rights and autonomy, whereas the PUNR left the government arguing that the Romanian government had sold out to Hungarian interests. Some have argued that the bilateral treaty was signed due to the desire of both countries to be part of the forthcoming NATO enlargement, since NATO had declared it would not include countries with ongoing disputes with neighbouring countries (Linden, 1999). Others have also emphasised the role of the international criticism of Hungarian Prime Minister Gyula Horn’s endorsement of Transylvanian autonomy in the summer 1996, which, they argue, forced Horn to improve his credentials in the eyes of the West (Gallagher, 2005: 130-131).

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<sup>31</sup> Another round table dealt with the Russian minorities in the Baltic states.

Together with Russia, Hungary has historically been the most important of Romania's neighbours, and even more so since the fall of Ceausescu (Weiner, 2004). Hungary maintained a keen interest in the plight of the Hungarian minority, and very much welcomed the fall of Ceausescu. Thus the Hungarian government was the first to recognise the NSF government in 1989, yet the relationship quickly deteriorated in early 1990. Hungarian condemnation of the Romanian military's role in the violence in Târgu Mures and statements such as Foreign Minister Geza Jeszenszky's recommendation in 1990 that Romania should acknowledge it is a multinational state, were seen as provocative interference (Gallagher, 2005: 129). Nonetheless, relations between the two states' armed forces have been good at all times, independently of the relations between the two governments (Weiner, 2004: 496). The two countries have also co-operated in the Central European Initiative, which Romania joined in October 1995 and the Carpathia-Tisza Economic Working Community consisting of Hungary, Poland, Romania, Slovakia and Ukraine since January 1992.

### **6.1.2 The First Iliescu Period Analysed**

As has been the case with the analysis of the Hungarian minority policies of Slovakia, this analysis also involves legal as well as more political concepts, and will analyse comparatively by drawing out the differences and similarities between the organisations. As was also the case with Slovakia, in most cases it will be assumed that national minorities refer primarily and at times solely to the Hungarian minorities. Although non-Hungarian minorities, most notably the German and Roma minorities, are larger and have played a more significant role in Romania than in Slovakia, the Hungarian minority in Romania have been by the far most important minority.

#### **6.1.2.1 The Council of Europe**

Similarly to the analysis of the Meciar period, the CoE texts relate to the admission of Romania to the CoE. Members of the Parliamentary Assembly's Committees on Relations with European non-Member States and on Legal Affairs and Human Rights as well as the Political Affairs Committee acted as Rapporteurs for the PA, informing the other members about the situation in Romania. These three texts were summarised in the PA Opinion 176 on the application of Romania, recommending the Council of Ministers to invite Romania into the CoE. Opinion 176 will not be analysed, as its rather brief statements on national minorities were already included in the Political Affairs Committee's Report.

Interestingly, the Council of Ministers invitation mentioned neither the Hungarian minorities nor national minorities in general, in contrast to the case of Slovakia. This is in line with the general tendency that the Hungarian minority is given less emphasis in the case of Romania than in the case of Slovakia, something to which I will return below.

### *Data*

The CoE Parliamentary Assembly's Committees have been rather general in their assessment of the Romanian state's Hungarian minority policy, and have addressed specific policies relatively rarely. Nevertheless, there are some issue areas which they have addressed, most notably education and the proposed law on national minorities (both addressed three times), which has been strongly advocated. Also the Council of National Minorities and the commitments related to the CoE accession have been addressed (twice) whereas the issues of the imprisonment of ethnic Hungarians after the Târgu Mures violence and conflicts between the Romanian and Hungarian-dominated churches have been addressed only once.

### *Backing*

The CoE Rapporteurs used the CoE Parliamentary Assembly's Recommendation 1201 as backing six times, thus at the same time gaining support from and strengthening the importance of a text they themselves had helped to create. This was because by using the Recommendation as backing, the Rapporteurs attempted to establish it as an undisputed standard. A clear signal was also sent to the Romanian officials who followed the proceeding of their application that this Recommendation constituted an undisputed standard to be followed. The same can to a lesser degree be said about the Charter for Regional and Minority Languages, which was adopted by the CoE 1992, and used as backing three times.

### *Factual Warrants*

If we turn to the factual warrants other patterns emerge. Starting with the framing of the most basic entity, namely the Hungarian minority or the ethnic Hungarians themselves, it is interesting that it/they are predominantly referred to as one unitary entity. The CoE uses this description twenty-one times, which has to be compared to the fact that it did not once refer to the minority as "persons belonging to

national minorities”, the term used in the international documents on national minority rights. This is interesting, not only because it is surprising that the Rapporteurs use a term different from that used in the international legal regime, but also because this term omits the differences existing within the ethnic Hungarians, and emphasises the differences between them and the ethnic Romanian majority. This is more surprising in Romania than in Slovakia, as the ethnic Hungarians in Romania are more heterogeneous, with important differences existing between the Szekely (and the Csángó) and other Hungarians, as well as between the adherents to the Roman Catholic Church, the Greek Catholic (also known as the Uniate) Church and various Protestant Churches.

The warrant that the Hungarian minorities constitute one homogeneous entity itself easily leads to other warrants. In particular the warrant that the Hungarian minority is one entity with specific representatives stems from this warrant, and defines the minority as having one voice and one set of interests, and has been used six times. This warrant downplays the differences within the Hungarian minorities and makes the position of the UDMR as representative of the Hungarian minorities seem natural rather than the result of political processes. As noted earlier, the warrant is also a key element of consociationalism, namely that members of minorities participate in politics as one group one with specific interests. No mention is made of the Szekely or Csángó, but interestingly the CoE brought up the religious dimension to the relations between ethnic Hungarians and Romanians in Transylvania, thus framing the Hungarian minority in religious terms (Council of Europe, 1993c). Interestingly, the Hungarian minority has only been framed three times in terms of language and three times in terms of being territorially confined, and not at all in terms of having a cultural identity. This, especially the few linguistic framings, constitutes quite a difference to most other texts. The CoE also twice declares that the Hungarian minority numbers 1.6 million, thus accepting the official government number which has been disputed by the UDMR (Council of Europe, 1993a; 1993c).

Turning to the framing of the situation, the CoE has framed it not quite as many times (four) in terms of crisis as in terms of progress (six), and three times in terms of a need to act. Yet I will argue that the positive framing has dominated, as can be seen in statements such as “No doubt, Romania has done much for its minorities”, a statement with which many Romanian Hungarians and many international observers would disagree with at that time (Council of Europe, 1993a). Many of these framings of the

situation are quite general and do not concern specific developments, but the policies and rhetoric of the mayor of Cluj, Gheorghe Funar, and the dispute between the (predominantly Hungarian) Greek Catholic Church and the (almost solely Romanian) Orthodox Church have both been framed in terms of crisis. On the other hand, the Council of National Minorities as well as UDMR's representation in parliament has been framed in terms of progress.

If we move the focus to the warrants concerning other aspects of the Hungarian minority policy, it is noteworthy how seldom minority rights are mentioned when compared to the reactions to the Slovak minority policies. This can be seen in that for instance the question of the use of Hungarian in the educational system has only relatively rarely been framed in terms of rights, as opposed to how it was framed in the reactions to the Slovak minority policies. Also unlike Slovakia, tertiary education was given a great deal of emphasis compared to primary and secondary, a factor which to a large degree reflects the debates in Romania, and The CoE Committee on Legal Affairs and Human Rights considered the Hungarian demands for a purely Hungarian language university, a re-occurring theme the following decade (Council of Europe, 1993a).

The local and regional levels of governance are also emphasised, although not as often as was the case with Slovakia, which is understandable as Slovakia underwent a prolonged and much-disputed administrative reform. Basing its position on the warrant that local and regional government is a part of minority politics, the CoE has argued against the policies of Cluj mayor Gheorghe Funar (Council of Europe, 1993c) and the replacement of ethnic Hungarian prefects in Harghita and Covasna (Council of Europe, 1993a). Generally, inter-ethnic relations are often framed as involving conflict (five times), which is probably due to the violence in Târgu Mures in 1990, which is not directly responded to, but lies in the background of the reactions. The related warrant that fear and mistrust are common in minority politics has been used four times.

### *Causal Warrants*

Fear, mistrust and conflict also play an important role in the causal warrants. The most common causal warrant (used three times) is that perceptions matter, especially in inter-ethnic politics, as can be seen in the recommendation that President Iliescu should pardon Romanian Hungarians imprisoned after the

Târgu Mures clashes, as it “would certainly improve relations with these minorities” (Council of Europe, 1993c). Negative perceptions and conflict are to a large degree caused by “extremists from both sides” and “radical elements in Hungary”, which most likely refers to nationalist members of governing Hungarian Democratic Forum (Council of Europe, 1993c). Hence ethnic conflict is conceptualised as being caused by nationalist actors on both sides rather than for instance social or economic structures, ancient hatred or irreconcilable differences over Transylvania as the homeland (see the theories of ethnic conflict in Chapter 1). There is an element of elite instrumentalism in this when Gheorghe Funar, the mayor of Cluj, is singled out as a causal agent. Nonetheless, these tensions can be relieved if dialogue is used to solve the problems, a common warrant which was however used only once by the CoE during this period.

#### *Normative Warrants*

The issue of the Hungarian minority has been framed solely in terms of security (five times); at least it has not been possible to say that any issues have been framed in terms of justice. However, sometimes it has been impossible to say that an area has been framed from either of these two perspectives. This way, the security perspective clearly distinguishes these texts from other texts from other organisations and periods. Even issues such as minority education, which in other cases has been argued for by reference to the principle that it is fair (for one reason or another) to allow people to be educated in their mother tongue, is here argued for on the basis that it will appease the members of the Hungarian minority.

As mentioned before, the claims of the Hungarian minority representatives have to a lesser degree than in the case of Slovakia been framed in terms of rights. However, this does not mean that specific interpretations of rights have not been used as warrants. Both the right to non-discrimination and to mother-tongue education have been warranted once each. Concerning education, the CoE has also advocated that the Hungarian teaching should be expanded, as can be seen in its endorsement of the agreement providing for “more Hungarian teachers...and more elementary school classes in history and geography taught in the minority languages” (Council of Europe, 1993a).

Relatively few normative warrants, at least when compared to the texts concerning Slovakia, deal with the local and regional level or the duties of minority members or representatives. One important exception is the support of the UDMR demand for ethnic Hungarian prefects in Harghita and Covasna, in relation to which it was argued; “one can understand that they are concerned about...the fact that they no longer hold the post of governor of the two provinces, where they constitute 70%” (Council of Europe, 1993a). Thus it is implicitly claimed that the presence of a significant number of ethnic Hungarians in a given area should be reflected on the local administrative and political level.

On a more general level, the CoE (twice) clearly defined the good inter-ethnic relations as an end in itself, for instance by saying that “such a pardon [of ethnic Hungarians imprisoned after the 1989 revolution and the 1990 violence in Târgu Mures, ed.] would certainly improve relations with these minorities” (Council of Europe, 1993c). However, the CoE predominantly (five times) defined adherence to international commitments, such as the Recommendation 1201, as the end, thus granting it self importance by defining a CoE document as authoritative. Also following CoE recommendations have been defined as being something positive and important.

#### **6.1.2.2 The HCNM**

The HCNM is represented by four texts, the first two dating from 1993, shortly after Max van der Stoel had been installed in office. One comprises of the remarks made to the Romanian Council of National Minorities, including government officials and President Iliescu and another set of remarks, mainly directed at Iliescu, which were made on a fact-finding mission to Romania in 1995. The second text from 1993 is the letter to Romanian Foreign Minister Teodor Melescanu resulting from the fact-finding mission. These two texts were followed by another visit, which was followed by another statement and later another letter to Melescanu (in 1996). Slightly longer than the CoE texts, these four texts have more warrants assigned than the CoE texts. Since only the HCNM covers a longer period of time, it is only within the HCNM texts that developments over time will be looked at.

#### *Data*

Without doubt the dominant theme in the HCNM texts has been education. Not only is the 1995 statement and the letter of 1996 dedicated to this issue, but it was also discussed in the 1993 letter to

Foreign Minister Melescanu. This indicates a growing concern with education, which does not reflect an equal growing debate over education in Romania. It is also interesting that the two other subjects discussed in the two 1993 texts, namely the Council of National Minorities and the proposed Law on National Minorities, have not been mentioned the later years. The role of the Council of National Minorities as well as the continuing lack of such a law on national minorities could have been addressed by the HCNM, but was not.

Furthermore, some areas were not mentioned at all. Very interestingly, this includes the violence in Târgu Mures in 1990 and the following imprisonment of ethnic Hungarians and Roma involved. These prison sentences have been deeply contested by the UDMR, and it is surprising that this subject was not brought up once. Especially considering that this was the only event involving fatal violence, and the imprisonments could be seen as potentially leading to a violent escalation, and that the office of HCNM was established exactly to prevent conflict. This may be an indication that the HCNM may have seen prevention of ethnic conflict as being more about establishing long-term policies and institutions improving the relations between minority and majority members than about solving more immediate conflicts. Nor were local government issues such as Cluj mayor Funar or the debate over the prefects in Harghita and Covasna brought up, although they were a source of much contestation in Romania.

### *Backing*

Compared to the CoE, van der Stoel chose to draw more on OSCE documents, such as the Copenhagen Document (six times) and the CSCE Paris Charter (once). These were mainly used in the 1993 texts, and in the later texts mainly the Framework Convention for National Minorities or UN documents such as UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities were used (twice each). This has a lot to do with the dating of the texts, in 1993 the Framework Convention was not available, but in 1995 and 1996 it was and could take the place of the OSCE/CSCE documents. Thus, as it was the case with Slovakia, a picture emerges where each organisation promotes “its” documents as the international standard up until the emergence of the FCNM.

### *Factual Warrants*

When it comes to the basic factual warrants, the warrants that the minority is something that individuals belong to and that it is a unitary entity have been used almost equally. Although the former has been used only thirteen times compared to the latter's twenty-two, it has been used for some rather lengthy passages. Interestingly, the latter seems most prevalent in 1993 and the former in 1995 and 1996. Turning to the use of the basic warrants when addressing different issues, it is interesting that the individual warrant has been the predominant basic warrant when addressing education (used six times compared to the three times the other warrant was used), whereas the unitary warrant has been dominant when addressing the issue of the Council for National Minorities and the Law on National Minorities. The former matches the often used (six times) warrant that the Hungarian minority constitutes one entity with a specific set of representatives and interests.

The HCNM has emphasised the identity aspects of the Hungarian minorities, and defining it as needing protection (four times) and promotion (three times). However, this is mainly done when referring to the formulation in Article 6 of the Romanian Constitution, and thus not using a formulation created by himself. This means that the formulation does not reveal so much about how the HCNM conceptualises the concept of national minority as if he had chosen the expression himself. The HCNM has also emphasised the linguistic dimension to the Hungarian minorities no less than seven times, which is mentioned in particular relation to the education policy of the government and especially the law on Education. The minority has also been framed three times as being territorially confined and as being an ethnic group (as opposed to civic or national), and once in terms of culture and in terms of religion. This needs to be contrasted with the aspects of the Hungarian minority which are not mentioned but which have been mentioned by other actors, such as the desire to form a distinct political entity.

Unlike the CoE, the HCNM has only once framed the situation in terms of crisis, namely when talking about "the problems of national minorities in Romania" (van der Stoel, 1993a). Otherwise, the framing of the situation in terms of a need to act (seven times) or progress (five times) have been prevalent. It is hard to say anything decisive about which areas have been framed in which ways, except that education has been framed solely in terms of a need to act, which is not surprising given that the HCNM chose to address it to such length.

Turning to the important subject of education, the HCNM, unlike the CoE, has dealt more with the government's decision to make Romanian the obligatory language for entrance exams, and has also argued for making more university subjects available in Hungarian, especially "socio-economic subjects" (van der Stoel, 1995a). It can be argued that socio-economic subjects were seen as important for the same reasons that text books on the history of Romania and national minorities reflecting the views of national minorities were seen as important (van der Stoel, 1995a). Namely that the teaching and studying of such subjects are relevant for the construction of national identity, and by giving the ethnic Hungarians the opportunity to have "their version" of history, geography and the social sciences taught, Hungarian identity can be maintained. This again rests on a notion that the common narratives about the past and the territory of the nation, rather than for instance blood ties or shared political participation, are what creates and maintains a nation. Having socio-economic subjects taught in Hungarian also makes it easier to develop and maintain an ethnic Hungarian elite.

When it comes to teaching in Hungarian in general, it is the HCNM who has put most emphasis on this subject (addressing it five times), recommending the government to ensure the "adequate opportunities for instruction of their mother tongue or in their mother tongue" (van der Stoel, 1995a). As a precondition for this, it was warranted by the HCNM, it was necessary to train more Hungarian-speaking teachers. However, at the same time, "the need to learn the official languages" was also emphasised (van der Stoel, 1995a).

When it comes to warrants relating to the nature and current situation of Romania as a country, it is often defined in terms of being a transition country with a troubled past. Much more than Slovakia, Romania has been framed (twice) as being on its way to liberal democracy by the HCNM, which has even held up Yugoslavia as an example of the possible dangers facing Romania (van der Stoel, 1993a). The importance of the history of Romanian-Hungarian relations, domestically as well as internationally is also warranted (van der Stoel, 1995a). Hence, a picture is painted of Romania being at a crossroads in its history, where it has the opportunity to "do the right thing", and develop into a liberal democracy with good inter-ethnic relations, or choose the "illiberal path" with ethnic conflict as possible result.

### *Causal Warrants*

The prevailing causal warrant during the period, or rather in 1993, was that dialogue would solve inter-ethnic problems, a warrant used not less than eleven times, i.e. that cooperation between the government and minority representatives as the solution to problems relating to the Hungarian and other minority. This is done in relation to an endorsement of the Council of National Minorities, to which van der Stoel was issuing one of his two 1993 texts as a speech, but the warrants are also repeated in his subsequent letter to Romanian Foreign Minister Melescanu. A related warrant (used twice) is that democracy improves the situation of minorities, as can be seen in statements such as “The relevance of healthy and strong democratic structures for the position of minorities is evident” (van der Stoel, 1993b) and “This tolerance and understanding are fundamental in a multicultural society with a variety of different ethnic groups” (van der Stoel, 1993a). If the path of actively encouraging tolerance and openness would not be followed, the alternative would be a continuation of the situation where “walls of distrust...so often stand in the way of constructive dialogue”(van der Stoel, 1993b). Implicit in such statements is the warrant that rumours and mistrust would lead to conflict, which has been used four times by the HCNM and also used by the CoE. Underneath all these warrants is the previously discussed notion that perceptions matter in inter-ethnic relations.

In line with these warrants is the warrant that “it is not enough to react after the explosion has taken place, that it is necessary to take preventive measures (van der Stoel, 1993a). Used after a reference to the wars in Yugoslavia, the underlying assumption is that the establishment of institutions working for long-term understanding is better than last-minute diplomacy, but that “The longer they (problems over ethnic issues, ed.) remain unresolved, the more difficult it might become to find solutions” (van der Stoel, 1993b).

Additionally, two years after the HCMN had stressed the responsibility of the Romanian state for ensuring integration, he would twice use the causal warrant that “knowledge of the official language is a factor of social cohesion and integration” (van der Stoel, 1995a). That knowing the official language is necessary for integration is a warrant otherwise quite rarely used. The use of it places greater emphasis on the role and responsibility of the members of the Hungarian minorities to integrate, rather than just defining it as a problem of implementing the right minority policy.

### *Normative Warrants*

In the case of the HCNM the dominant perspective has also been security, as it covers more space than justice<sup>32</sup>, although justice has played a far greater role than in the case of the CoE. Whereas the justice perspective was used more or less consistently throughout the years, the security perspective can only be found in the 1993 texts. Not surprisingly considering previous findings, education has been framed solely in terms of justice, and rights have been framed predominantly in terms of justice. Inter-ethnic relations, and to a certain degree also the Council of Minorities and the law on minorities, have been predominantly framed from a security perspective, although in the latter two cases this may be coincidence.

When it comes to rights, particularly the right to be taught in one's own language has been used as a warrant (five times), and not only in the HCNM texts from 1995 which had education as its main topic. This warranting has been done with Backing in the Romanian Constitution (van der Stoel, 1993b), the UN Declaration (van der Stoel, 1995a) or the Copenhagen Document (van der Stoel, 1995a). The HCNM also once used the right to official communication in the minority language to argue for the possibility for ethnic Hungarians to communicate in Hungarian with the authorities in "regions in which substantial numbers" (van der Stoel, 1993b) are settled, without setting any threshold for what a "substantial number is. This is quite different from the responses to the Slovak policies, where a threshold was set at 20%.

However, in general the rights which have been used as warrants have predominantly been non-linguistic rights, especially the right to be free from discrimination (used four times). The government is called upon to do more; ranging from to preventing "violence and ethnic hostility and hatred" and implementing "effective and impartial supervision of public officials at the local, regional and national levels, including the prosecutors and the police" (van der Stoel, 1995a). This way, the government is warned that the responsibility for ethnic hostility will be put on its shoulders, and that the HCNM is monitoring the behaviour of the police and the prosecutors, two institutions often accused of discrimination. In a similar vein, the HCNM also twice emphasised ethnic Hungarians' right to

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<sup>32</sup> However, justice has been used as a frame more times (six) than security (three), yet security has been used to frame larger parts of the texts.

complain about discrimination, either to the Council of National Minorities or an Ombudsman (van der Stoel, 1993a).

If we turn away from the issue of rights and to the warrants which can be subsumed under the heading of democracy, dialogue and decisions, it can be seen that minority participation and mutual inter-ethnic understanding have been seen as important. Although these warrants have not been used to the same degree as in Slovakia, there is little doubt about their importance. The most important warrant (used seven times); that the minorities should have a say in the decisions affecting them, is employed mainly as a means to an end (“ensuring mutually acceptable formulas for the solution of a number of key minority issues”, (van der Stoel, 1993b)). However, it is also used as an end in itself, such as “In my view, this is an important element with regard to the participation of minorities”(van der Stoel, 1993a).

The HCNM goes a bit further than the CoE when twice emphasising “tolerance and mutual understanding” (van der Stoel, 1995a) as an end, compared to the one time “good inter-ethnic relations” were defined as an end. In 1993 he even envisioned an ideal future for Romania:

“To conclude, Mr. President, it is my conviction that this Council may play a decisive role in the promotion of mutual understanding and tolerance between different ethnic groups. This tolerance and understanding are fundamental in a multicultural society with a variety of ethnic groups, which live together in the spirit of mutual respect, understanding, and enrichment.(van der Stoel, 1993a)”

This is interesting, as it comes as a conclusion to a speech in which Yugoslavia was held up as a negative example of how ethnically mixed post-communist societies may go wrong, and in which Romania was been praised for its achievements in terms of democracy and minority participation. It thus clearly set up two alternatives; one leading to conflict, the other one to multicultural harmony (the metaphors “road” and direction are used a couple of times). This tells us a lot about which ideal is the goal for the HCNM’s policies. Multiculturalism is not only desirable in itself, but also means mutual enrichment of the different groups. There is reason to believe that many people in Romania, Romanian as well as Hungarian-speakers, saw things quite differently. It is also quite interesting that this version of multiculturalism is based on the notion of ethnic groups as distinct and separate entities, which

interact as Hungarians, Romanians etc. Multiculturalism is a subject to which we will return later, but it is noteworthy that it is set up as the only alternative to a purely negative scenario, and that it is *multiculturalism* rather than *multiethnicity* the HCNM talks about. In this way, ethnicity is equated with culture. Furthermore, the warrants concerning how to establish a just and desirable society with space for everybody, differ from the security warrants which define the Hungarian minority and the related issues simply as problems to be solved.

This leads to the warrants concerning integration. These warrants are all used by the HCNM in 1995 in relation to the issue of language in the education system. It is stated that “knowledge of the official language is a factor of social cohesion and integration”, thus defining integration as an end in itself and arguing (five times) that all should learn Romanian (van der Stoel, 1995a). It is also claimed that “an education system which would roster [sic] their [members of the minorities, ed.] identity at the same time as enabling them to learn the official language and participate in public life” is possible, hence defining integration as an end while maintaining the minority identity as a both possible and desirable option. At the same time, the HCNM called for more teaching in Hungarian (twice), especially for broadening the number of subjects taught in Hungarian in tertiary-level education, a subject which I will return to in the other parts of the analysis. The HCNM also called for not removing the possibility of taking university entrance exams in Hungarian.

When it comes to the international level, the HCNM has warranted that Romania should follow the recommendations of the OSCE (twice) as well as the CoE (once). Furthermore, adhering to international commitments and standards has been warranted as something positive three times, yet without specifying which international standards. Finally, returning to the domestic level, the HCNM has put a great deal of emphasis (four times) on ensuring that the minority policy is substantial, for instance when expressing the “hope that ways will be found to speed it [the Law on Education] up” (van der Stoel, 1996b).

### **6.1.2 Comparisons**

Generally speaking, similarities exist between the organisations, especially in 1993. After that year the HCNM texts develop in a direction away from the way he and especially the CoE Parliamentary

Committees' Rapporteurs used warrants in 1993. Thus, one may as well talk about developments over time as differences between organisations, as can be seen in the issues addressed. Whereas much attention was given to the Council of National Minorities and the proposed law on national minorities by both organisations in 1993, education became the sole issue of the HCNM's recommendations in 1995 and 1996. However, there were also differences in 1993, most notably that the HCNM did not address the issue of the Târgu Mures clashes and the subsequent imprisonment of ethnic Hungarians, nor mayor of Cluj Gheorghe Funar or the debate over the ethnicity of the prefects of Harghita and Covasna. This is, as mentioned above, all the more surprising as the HCNM was established in order to deal with security issues.

**Table 5: Comparison between Organisations**

<b>Predominant Warrant(s)</b>	<b>CoE</b>	<b>HCNM</b>
Data	Law on Minorities Education	Education
Backing	Recommendation 1201	Copenhagen Declaration
Basic Factual Warrant	Unitary entity	<i>Indistinguishable</i>
Political Representation	One set of representatives	One set of representatives
The Situation	Progress	Need to act
Other Factual Warrants	Hungarian tertiary education important Inter-ethnic relations involve hate and conflict	Teaching in Hungarian as important
Prevalent Causal Warrant	Perceptions matter	Dialogue solve problems
Basic Normative Warrant	Security	<i>Indistinguishable</i>
Prevalent Rights Warrants	Right to education in Hungarian -to non-discrimination	Right to education in Hungarian -to non-discrimination
Other Normative Warrants	Follow IO recommendations	Minorities should have a say in decisions

Regarding the use of backing, each organisation has predominantly (at least in 1993) used "its" documents on national minority protection as backing (respectively Recommendation 1201 and the Copenhagen Document). This way each organisation tried to establish its document (and to a lesser degree respectively the Charter for Regional and Minority Languages and the CSCE Paris Charter) as setting standards for minority protection. However, in 1995 and 1996 the HCNM predominantly used the FCNM, which had just been opened for signatures, thus promoting it as the European standard for national minority protection.

Concerning the use of factual warrants, the CoE has solely framed the Hungarian minority as being a unitary entity, whereas the HCNM has framed it as being something that individuals belong to almost as often as framing it as being a unitary entity. The former warrant was especially employed in 1995 and 1996. As the minority has predominantly been framed as something individuals belong to in connection with education, and predominantly as a unitary entity in connection with the law on national minorities and the Council of National Minorities, it is hard to say whether this is due to a change in the conceptualisation of the Hungarian minority or in focus on issue areas. Both organisations have framed the minority in terms of language and territory, but the HCNM is the only organisation to frame it in terms of culture. Whereas the CoE has framed the situation in terms of crisis to a larger degree than the HCNM, the HCNM has predominantly framed education in terms of a need to act, and both have framed the Council of National Minorities in terms of progress. Both organisations have also emphasised the importance of tertiary education, and placed little emphasis on local levels of government. Interestingly, the CoE has to large degree (unlike the HCNM) framed inter-ethnic relations involving conflict.

Causal warrants have been used in a much more similar way by the two organisations. Both have emphasised the role of perceptions, both in creating rumours and mistrust which may cause conflict, but also in improving relations via dialogue. However, the CoE has framed nationalists “on both sides” as well as “radical elements in Hungary” and Funar as potential causes of conflict, and in this way adopted something akin to an instrumentalist interpretation of ethnic conflict. On the other hand the HCNM has stressed the importance of knowledge of Romanian for integration in society.

When it comes to normative warrants, the CoE has seen the Hungarian minority question solely from a security perspective, whereas the HCNM has also adopted a justice perspective, especially when discussing education and rights. This means that on this point the HCNM’s 1993 texts resemble the CoE texts to a much greater extent than the 1995 and 1996 texts. Again it is hard to tell whether this change is due to a fundamental change of perspective in the HCNM or to the change in which issue is addressed. Both organisations have emphasised the right to be taught in one’s mother tongue, and that the number of fields taught in Hungarian should be expanded, particularly within university education.

Furthermore, the HCNM has emphasised the right to official communication in Hungarian in areas with a substantial number of Hungarians, although without specifying the threshold for a “substantial number”. Concerning non-linguistic rights, non-discrimination has been stressed by both organisations, and the HCNM has moreover stressed the right to complain over such discrimination.

When it comes to the ends aimed at, the CoE has stressed good inter-ethnic relations to a higher degree than the HCNM, which has placed more weight on the more far-reaching notion of mutual understanding, as well as the notion that minorities should have a say in decisions affecting it. This is combined with a vision for Romania as a multicultural society, understood as a society in which distinct ethnic societies interact on an equal footing, to create an ideal which, to a certain degree, resembles consociationalism. Finally, both organisations have stressed the importance of adhering to international norms and standards as well as themselves.

I will argue that the direct impact of the organisations on the Romanian minority policy in Romania was rather limited. The most obvious failure was the law on national minorities, which never came into being (Kelley, 2004b: 443). Concerning education, the HCNM also had relatively little impact, and the fact that it continued to be the focus of the HCNM’s attention for the entire period also demonstrates that he was relatively unsuccessful. The Council of National Minorities continued to exist, but had relatively little influence during the first Iliescu presidency.

### **6.2.1 The Constantinescu Period 1996-2000 –an Overview**

When the Constantinescu government took over in late 1996, it faced the important task of turning a troubled economy around and reducing corruption. A “shock therapy” plan was introduced, which included liberalisation of food and electricity prices and closure of (some of the) loss-making state companies (Gallagher, 2005: 230-231; Radio Free Europe, 1998c). Furthermore, an ambitious anti-corruption drive, one of the key points of Constantinescu’s election campaign, was launched. On the international level, the top priority was declared to be an invitation to join NATO at the June 1997 summit (Gallagher, 2005: 158-162). When this application was rejected, it was seen as a serious setback for the government. Romania’s application for EU membership was also rejected at the December 1997 Luxembourg summit, but the rejection was followed by substantial support programmes aimed at making Romania ready for EU membership.

On the domestic scene, protests emerged over the shock therapy, and increasing disagreements between the different parties, especially Petre Roman’s PD and Prime Minister Victor Ciorbea’s and Constantinescu’s PNTCD (the main party in the CDR) made policy making difficult (Busneag, 1997; Synovitz, 1998). In March 1998 Prime Minister Ciorbea chose to step down and was replaced by Radu Vasile (Radio Free Europe, 1998a). Vasile had previously been supportive of blocking laws granting the Romanian Hungarians education rights, and would quickly develop a strained relationship with Constantinescu (Gallagher, 2005: 170-171). Corruption scandals made the anti-corruption campaign look less credible in the eyes of the population and damaged Constantinescu’s approval ratings (Gallagher, 2005: 173-174). When the miners from the Jiu Valley in January 1999 marched towards Bucharest in order to protest against mine closures, Prime Minister Vasile chose to negotiate a deal with them, accepting most of their demands (Radio Free Europe, 1999a).

The EU decided to open negotiations with Romania (together with twelve other countries) at its Helsinki summit in December 1999, and on the same day Constantinescu dismissed Vasile, who was seen as being too maverick (Gallagher, 2005: 226-227). Instead, the governor of the Central Bank, Mugar Isărescu, was appointed Prime Minister. Nevertheless, the government remained unpopular, and in the November 2000 elections it was Iliescu and Corneliu Vadim Tudor from the nationalist Greater Romania Party (PRM) who received the most votes and continued into the second round. Here Iliescu,

who received the support of the outgoing government, won with 67% of the vote (Keesing's Record of World Events, 2000). Iliescu's PDSR also won the parliamentary elections, and formed a government relying on the support of the UDMR.

### *The Hungarian Minority*

The participation of the UDMR in government marked a significant change in the relations between the Romanian state and the Romanian Hungarian elite. The government started to pass legislation proposed by the UDMR, which included a law granting the right to use minority languages in official communications where a minority (in the vast majority of cases Hungarians) constituted more than 20% of the population (Blocker, 1997). The government also allowed the use of bilingual road signs and other topographical information in these areas (Gallagher, 2005: 153). However, many proposals for legislation granting the Romanian Hungarians more rights or opportunities were blocked in either one of the chambers of the Parliament, as was the case with the education laws, which also proved to be the most controversial subject in the Constantinescu years (Gallagher, 2005: 154-163; Radio Free Europe, 1998c). While it is too complicated to go into detail with the different legislative battles here, it suffices to say that teaching in Hungarian of geography and history (in primary and secondary level education) and, especially, Hungarian language tertiary education were the most controversial topics.

The discussion of a Hungarian language university had started already during the previous government, and had its roots in the forced merger in 1959 of the Hungarian-language Bolyai University with the Romanian language Babes University, both based in Cluj. The UDMR demanded a separate Hungarian university, and Ciorbea had in March 1997 proposed a two-stage process involving the establishment of a Hungarian section of the Babes-Bolyai University followed by the creation of a separate Hungarian university (Gallagher, 2005: 154). This proved very controversial and instead the government opted for only the first part of the process, the Hungarian section of the Babes-Bolyai University. During the negotiations over the status of tertiary education in Hungarian, UDMR Chairman Bela Marko was criticised by Bishop Laszlo Tökes, famous for his role in the early phases of the 1989 revolution, for abandoning previous promises and giving in to the Romanian parties in government (Radio Free Europe, 1997). Similar criticisms were raised at the Romanian parties in

government by politicians from PDSR and especially Vadim Tudor's PRM, but also from the within the government.

In the autumn of 1998, the UDMR was so dissatisfied with the rejection by the education commission of the Chamber of Deputies' proposal for a state minority language university, that it threatened to leave the government if no concrete action had been taken to establish such a university before September 30<sup>th</sup> (Keesing's Record of World Events, 1998c). However, the threat was withdrawn when the government agreed to establish a Hungarian and German-language university called the "Petőfi-Schiller University" (Keesing's Record of World Events, 1998b). Previously, the Minister of Education, Andrei Marga, who also was Rector of the Babes-Bolyai University, had proposed a Danube University financed by both the Romanian and the Hungarian government and with instruction in both languages, but this proposal was rejected by the UDMR (Keesing's Record of World Events, 1998c). However, the plans for establishing the Petőfi-Schiller University were never fully implemented, and the University still does not exist. Yet it is important to keep in mind that this was far from the only government crisis during the Constantinescu period, and that the PD not only threatened to leave the government, but actually did so for a period in order to protest against Ciorbea (Gallagher, 2005: 169).

The participation of the UDMR in government was criticised especially by the PDSR (until early 2000) and the PRM. Besides education, another controversial subject was the restitution of property expropriated during the Communist period, which the opposition argued would mean the eviction of Romanians from their houses to the advantage of Hungarians (Gallagher, 2005: 230-231). Another cause of controversy was the issue of UDMR Minister of Health Francisc Baranyi, who was forced to resign after the leaking of files documenting that he had been a Securitate informer (although only for a short period) (Radio Free Europe, 1998b). In addition to this the rumour that radical Hungarians had formed paramilitary units in Transylvania was aired among the more general accusations (mainly coming from PRM and PDSR politicians) that the Romanian Hungarians constituted a fifth column undermining the Romanian State (Gallagher, 2005: 221).

### *The International Scene*

The same way that relations improved with the representatives of the Hungarian minority after the change of government, relations also improved with the Hungarian government. Not only did 1997 see the first visits ever of a Romanian head of government to Hungary and a Hungarian head of state to Romania, but a bilateral committee monitoring the implementation of the Basic Treaty was also set up, and Hungary promised to support Romanian membership of EU and NATO (Blocker, 1997). Furthermore, an agreement between the two governments within the framework of the Basic Treaty increased the number of classes taught in Hungarian (in primary and secondary schools as well as the Babes-Bolyai University) and guaranteed student exchanges and the mutual recognition of diplomas (Radio Free Europe, 1999c). Nonetheless, relations between the Hungarian government (especially during the government of Viktor Orbán) and the Romanian opposition were often cooler, especially after Orbán during a visit to Romania expressed a strong support for a Hungarian language university (Radio Free Europe, 1998d).

Many of the most significant actors in the West welcomed the improved relations between the Hungarian and Romanian states and between the Romanian state and the representatives of the Romanian Hungarians (Linden, 1999). President Clinton used this improvement as an example of how to solve inter-ethnic disputes (Clinton, 1997). The EU also welcomed the improvement, as will be discussed below. However, other factors also shaped the relations between the Constantinescu government and Western actors. This was especially the case with the government's support for NATO's war in Kosovo and the decision to allow NATO aircraft the use of Romanian airspace, which increased Romania's standing in NATO and chances of NATO membership (Gallagher, 2005: 214-220; Gheciu, 2000). The relationship with the EU was dominated by the issue of membership, including the different aid programmes aimed at preparing Romania for membership.

#### **6.2.2 The Constantinescu Period Analysed**

In the case of Romania the Roma minority gained relative importance vis-à-vis the Hungarian minority during the late nineties, as it had done in the case of Slovakia. This means that here too, I have had to be careful when analysing references to "minorities" in general, as this may have been written with

both the Roma and the Hungarian minority in mind. Nevertheless, in most cases the subject has been relatively easy to assess this from the context

### **6.2.2.1 The Council of Europe**

The Council of Europe is represented by only one text, the 1997 Parliamentary Assembly Report on Romania's honouring of the commitments entered into upon accession. This was important, as it was in this Report that a recommendation was made to end the monitoring of Romania's honouring of its commitments. It is CoE practice to assess the degree to which a newly acceded state has honoured the commitments and obligations it put itself under upon accession four years later. It is usual that this assessment, which is carried out by a group of Rapporteurs from the Parliamentary Assembly similar to the group which drafted the pre-accession Reports, to conclude that the country in question live up to CoE standards and the monitoring should end. Therefore it is not surprising that the Rapporteurs concluded that this period of probation should finish, nevertheless it constituted an important approval for Romania's development within the fields of democracy, law and human rights, including its Hungarian minority policy. The Report was drafted by the representatives of the Committee on Legal Affairs and Human Rights, the Political Affairs Committee and the Committee on Relations with European Non-Member States and adopted by the Committee on Legal Affairs and Human Rights. It also contains a draft resolution on Romania's honouring of its commitments, a draft resolution which was adopted two weeks later in a slightly altered version as the above-mentioned Resolution 1123. As none of the provisions in the draft resolution on national minorities were altered in the adopted version, I see no reason for also including it in the analysis.

#### *Data*

Not surprisingly given its contestation in Romania, education is the issue to which most space and attention has been devoted in the Report. It is addressed four times, including comments and recommendations on tertiary education, religious teaching and the right to education in one's mother tongue. The issue of the Basic Treaty was also addressed at length, and that the UDMR participated in government and had a minister for national minority issues was also the subject of endorsement (three times). Another issue mentioned was the ratification of the European Charter for Regional and Minority Languages, which was a commitment accepted by Romania in order to gain membership of

the CoE. Finally, the issues of the laws on language of official communication and on national minorities were also addressed, although relatively briefly.

### *Backing*

Turning to the use of backing for arguments, as on previous occasions, the representatives of the CoE PA relied heavily on information gathered on their trips to Romania. This has to be contrasted with the use of international treaties as backing, more popular with the EU and especially the HCNM, but here only used when Romania was urged to ratify them or congratulated with having ratified them already. Interestingly, the Rapporteurs only refer to CoE treaties, namely the FCNM, Recommendation 1201 (once each), the European Charter for Regional and Minority Languages, and the European Charter of Local Self-Government (twice each). It is surprising that the FCNM and Recommendation 1201, which have otherwise been the most important CoE texts, have been used as backing fewer times than the other, less well known Charters.

### *Factual Warrants*

Starting with the most basic factual warrants, those defining the nature of the Hungarian minority, it is interesting that the warrant framing it as an unitary entity has been used twelve times, whereas the warrant framing it as something individuals belong to only has been used five times. Both have been used almost equally when addressing education issues (four respectively three times). These two kinds of basic warrants have been used equally when it comes to framing the Hungarian minority as having an important linguistic dimension. As it has been the case in other parts of this analysis, the Hungarian minority has almost solely been framed as a unitary entity when the issue is political participation, be it participation in government or the Council for National Minorities. Thus, in terms of political representation the Hungarian minority has here been almost solely framed as an entity with a specific set of interests and representatives (a warrant used five times).

Interestingly, the CoE has on four occasions framed the Hungarian minority as having a religious dimension, an otherwise quite rare warrant. That this warrant has been used when addressing Romania rather than Slovakia is not surprising, given that in Romania there is a religious divide between the (predominantly) Orthodox Romanians and the Catholic and Protestant Hungarians, which does not

have an equivalent in Slovakia. However, it is interesting that the CoE has emphasised this issue when other organisations have not. This has to be compared to the fact that the minority have been framed six times in terms of language, and only once in terms of territory and in terms of culture.

It is also interesting that the Hungarian minority has on six occasions been framed as the holder of rights, as can be seen in references to “the rights of minorities” (Council of Europe, 1997). However, it is never specified which rights the CoE refers to, and this warrant has not been used in connection with a particular issue. When it comes to language, it has been framed as a means of communication, rather than as access to culture, in connection with the issue of official communication, a subject which will be addressed below.

If we turn to the framing of the situation in terms of crisis, progress or a need to act, progress has been the most common warrant; it has been used nine times against “a need to act”, which has been used only four times, and crisis, which has not been used at all. Whereas the former has been used especially to endorse the participation of the UDMR in government, it is hard to say that the latter warrant has been used particular in relation to a specific issue.

One area which has been addressed to a large degree by the CoE Parliamentary Assembly Rapporteurs here, but rarely by other organisations, is the subject of restitution of property. The Report deals at length with the property which belonged to the Hungarian churches before Communism, and which in the Nineties it wanted to be returned to the churches. This property includes churches as well as religious schools, libraries, other kinds of real estate and works of art. It is an issue which has been largely ignored by other organisations, but which the CoE chose to take up.

Property restitution relates to the issue of education, but this issue was dominated by the issue of tertiary education in Hungarian, including the issue of entrance exams in Hungarian. However, the issue of education will be dealt with in more detail below. One final set of warrants also deserves mention, namely that the interpretation of an issue often is subjective and depends on the interpreter (used four times), as will be discussed under the heading of causal warrants.

### *Causal Warrants*

Of the few causal warrants the most important, as mentioned above, is that the perception of a subject matter for the relations between the ethnic groups and for the handling of the Hungarian minority issue (used only once, but given considerable emphasis). It is, as mentioned in previous parts of the analysis, a warrant which is related to theories of national minority conflict emphasising the role of perceptions of other groups in creating conflict. Other causal warrants are the rather unsurprising framings of the Romanian government as both the actor responsible for, and with the most influence on, the Hungarian minority. Slightly more surprising, it also involves the warrant framing the UDMR as a causal agent. Finally, there is the warrant that bilateral treaties can solve minority issues, a quite common warrant which is used once in this case, where it is defined as having “decisively and lastingly stabilised relations not only between the two countries in question but also among all the countries of the region” (Council of Europe, 1997).

#### *Normative Warrants*

Starting with the basic normative warrants, the CoE has framed all issues except the Basic Treaty with Hungary in terms of justice. This is rather unsurprising given the CoE’s emphasis on democracy and law. The justice perspective is evident not only when the Rapporteurs talk about rights or the restitution of property, but also about the UDMR participation in government. The Basic Treaty is very much approved, defining it, as mentioned above, as a “positive factor for regional stability” (Council of Europe, 1997).

Concerning rights, besides a few references to “the rights of minorities” without specifying any particular rights, all the rights mentioned have been linguistic rights of some sort. Not surprisingly, the right to “mother tongue instruction” is the most frequent; it is employed three times and is the only national minority issue to be approved in the Resolution. The Report particularly endorses the 1995 Education Act and the forthcoming amendments to it, which would enable students to use their mother tongue at all levels of education and in entrance exams. Nevertheless, there is no advocacy of the right to use the minority language in all subjects, just a call to introduce it at all levels of education. Thus, certain subjects can still be reserved for teaching in Romanian.

Another linguistic right advocated is the right to official communication in Hungarian (warranted once). Here the Report supports the demand of the UDMR, which according to the Rapporteurs aims at “facilitating its [Hungarian, ed.] use in regions, departments and municipalities with a large, or even a majority, Hungarian ethnic population” (Council of Europe, 1997). Interestingly, unlike the HCNM there is no mention of a threshold for what constitutes a “large Hungarian ethnic population”. I will argue that the emphasis on facilitating communication amounts to a “norm and accommodation”-regime, especially as it is also emphasised that the demand is “perfectly legitimate...since it is not aimed at making Hungarian a second official language but rather at facilitating its use in regions, departments and municipalities with a large, or even a majority, Hungarian ethnic population” (Council of Europe, 1997). This links back to the factual warrant that language is a means of communication, rather than for instance a means for preserving culture.

As for other normative warrants, adherence to international norms, commitments and conventions, especially those drafted by the CoE, has been promoted rather explicitly (seven times in total), as Romania has been urged to ratify those Charters it had not yet ratified, and praised for ratifying other treaties. Additionally, the participation of the UDMR in government is framed as being positive and important (on three separate occasions). A related warrant is the notion that the Hungarian minority should have a say in decisions affecting it, be it via government participation or the Council for National Minorities; also used three times. Finally, the importance of a substantial minority policy is also warranted (twice).

#### **6.2.2.2 The HCNM**

The analysis of the HCNM’s use of warrants is based on three texts; the letter to the Romanian Foreign Minister Andrei Plesu (2/3/1998), a set of recommendations on how to expand the concept of multiculturalism at the Babes-Bolyai University (17/2/2000), and a letter to Babes-Bolyai (BBU) Rector and Minister of Education Andrei Marga (30/3/2000). Whereas the first text is similar in kind to most of the other texts from the HCNM analysed here, the two others differ by being both more specific and by not being addressed to a Foreign or Prime Minister. The recommendations were addressed to the Senate of the BBU, and the letter to Andrei Marga was addressed to him as Rector of the BBU rather than Minister of Education, as it was a follow-up on the recommendations and

concerned solely the BBU. The fact that texts cover two years of the Constantinescu government's period in power makes it easier to say something about the whole period.

### *Data*

The HCNM has focused solely on the subject of education in all three texts, although not only tertiary education. This is interesting, as issues such as the use of Hungarian in official communication and property restitution were also discussed in Romania during that period, although education was by far the most important issue.

### *Backing*

Concerning backing, it is hard to say anything decisive, as the HCNM has relied on very little backing, that is, he only relied once on OSCE experts (who had joined on a visit to the BBU) and the OSCE Copenhagen Document.

### *Factual Warrants*

When it comes to the basic factual warrants, the HCNM has framed the Hungarian minority as a unitary entity seven times, but also as something individuals belong to once, thus putting clear emphasis on the former warrant. However, more interestingly, the HCNM has to a larger degree (eight times) than previously framed individual members of the Hungarian minority as being first and foremost Hungarian, for instance by referring to “Hungarian professors”(van der Stoel, 2000a). This has to be opposed to other ways in which the HCNM could have framed the same persons, for instance by referring to them as “professors belonging to the Hungarian minority” or “Romanian-Hungarian professors”. This way, although a relatively individualist approach is adopted, the “Hungarianness” of an individual becomes a quality defining the individual, so that he or she is Hungarian and perhaps also a student or a professor, but does not have an additional Romanian or Szekely identity. One of the few developments over time in the HCNM texts analysed here, is that this warrant is a lot more common in the two texts from 2000, whereas the warrant that the Hungarian minority is a unitary actor has been used more often in the 1998 letter.

Interestingly, no mention is made of the political representation of the Hungarian minority. On the other hand the cultural aspect of Hungarian identity is strongly emphasised when the University is defined as being multi-*cultural* due to the presence of different ethnic or national groups. This way, the Hungarian minority is framed as a culture, unlike if the university had been referred to as multiethnic. I will argue that the many references to the university as “multi-cultural and multi-lingual” (van der Stoel, 2000c) adds another dimension to the equation, so that a national group is equal to a culture which is in turn equal to a linguistic group. Equating linguistic group with national group is relatively uncontroversial in the case of Romania, and the warrant that there is a linguistic dimension to the Hungarian minority has been used to frame almost all of the content in the three texts. However, framing the Hungarian minority in terms of culture adds another dimension to the group and lends itself easily to arguments for protection of the minority and its culture. It also emphasises the distinctiveness of the Hungarians vis-à-vis ethnic Romanians and members of other groups, and relates to the theories of multiculturalism discussed in Chapter 1. Furthermore, it gives language a value beyond merely being a tool for communication, which is the way in which it has been framed on certain occasions in the texts. Language has also been framed as a means to integration, a conceptualisation that I will return to below.

I find it interesting that it is only in the letter to BBU Rector Marga I have found warrants framing the issue of tertiary education in Hungarian in terms of mistrust (twice), discrimination (once), or the Hungarian minority having different interests than the majority (three times) (van der Stoel, 2000a). This could indicate that the HCNM more or less consciously avoided such negative framings in the more public set of recommendations.

If we turn to the framing in terms of progress, crisis or a need to act, the HCNM has adopted a more critical stance than the CoE Rapporteurs, framing practically all of the recommendations to the BBU Senate and most of the two other texts in terms of a need to act. The framing of the situation in terms of progress has been relatively rare (only four times) and in terms of crisis non-existing. The warrant that things are progressing has been used to commend the developments which had already happened at the BBU, whereas the warrant that there is a need to act has been used to subsequently argue for further changes.

When it comes to the more concrete factual warrants, it is not a surprise that many of them concern education. Besides the rather detailed recommendation to the BBU Senate and to Rector Marga concerning how to expand the multicultural dimension of the university, in his 1998 letter the HCNM also suggested changes in the history curriculum in primary and secondary education. It was recommended that the Law on Education should be altered, so it referred to the history of Romania rather than the “Romanians” (van der Stoel, 1998a). This was done with reference to the “multi-ethnic character of Romania”(van der Stoel, 1998a), thus warranting that Romania is multi-ethnic, a warrant that many Romanians would not have used. Furthermore, it was also recommended that “the history and culture of national minorities” should be taken into account in the school curriculum and taught in the minority languages (van der Stoel, 1998a). Thus, history-teaching in particular and the curriculum in general was defined as being important for the Hungarian minority. The curriculum is also warranted as an important aspect of multiculturalism, in the sense that the different ethnic lines of study (Romanian, Hungarian and German) at the BBU should decide over their respective curricula (van der Stoel, 2000c). The way in which the HCNM has conceptualised multiculturalism will be discussed in more detail below under normative warrants, here it suffices to say that in this context it has been the concept which has framed how tertiary education is defined.

Finally, the HCNM has also stressed the importance of the financing of policies, including the multicultural programmes at the BBU (four times), as well as of how policies and other measures are interpreted by the various groups (once).

### *Causal Warrants*

The dominant kind of causal warrants used by the HCNM is that concerned with the role of perceptions in ethnic politics (used six times). These are warrants such as “multiculturalism can only come to full fruition if all sides feel confident that the interests of each line of study will be given equal weight” and “the mutual trust which is so essential for the further development of multiculturalism at the Babes-Bolyai University” (van der Stoel, 2000a). Implicit is the previously mentioned notion that how the members of an ethnic group perceive other groups and their attitude towards themselves determines how they will behave towards that group. A related warrant is (used three times), that if trust between the groups, or in an institution, breaks down, the groups are less likely to cooperate and conflict is more

likely. However, all of these warrants seem to appear in the letter to BBU Rector Marga, which may be because the letter is directed at one person, unlike the letter to the BBU Senate, which may have been seen as more likely to end up in the press. One explanation might be the HCNM's preference for "talking things down", leading him to avoid using phrases indicating that the situation was characterised by mistrust and hostility.

A causal warrant which has been used twice in the recommendation to the BBU Senate is the warrant that learning Romanian is an important way of integration (van der Stoel, 2000c). This places great emphasis on integration, an issue which to some degree was ignored by the CoE. Furthermore, in the 1998 letter to FM Plesu, it is stated that "it will also be necessary to allow more decentralisation in the system of tertiary education in general", thus warranting decentralisation as decreasing the risk of conflict (van der Stoel, 1998a).

#### *Normative warrants*

As all of the three texts seems to have been framed in terms of justice, there is little reason to go into detail about this here. There are also relatively few warrants concerning rights, but one of these is that official communication should be in Hungarian at the BBU. The right to express one's own culture is also warranted. At the same time, it was also stated that a Hungarian university would "have to be open for any student, irrespective of his or her ethnicity" (van der Stoel, 1998a), thus warranting the individual right to study at any state institution and the prohibition of ethnically "closed" institutions.

Although there is no reason to go into the details of the recommendation to the BBU Senate, certain aspects of the HCNM's conceptualisation of multiculturalism are definitively worth mentioning. These recommendations are repeated again in the letter to BU Rector Andrei Marga. First of all, the fact that the BBU, according to the HCNM, should be divided into three lines of study based on the three languages of the University (Romanian, Hungarian and German), each of them having considerable control over issues only relating to their line of study, including the curriculum (van der Stoel, 2000c). Second, that the head of each line of study, which should be elected by staff council of the line, should be vice-rector. Third, that if the inter-ethnic Teaching Council should wish to overrule a decision by the Council of a line of study, this would require a two-thirds majority. All of this can be said to amount to

a decision-making system for the BBU which is far more consociational than anything suggested for the rule of the state at any time.

However, multiculturalism is also conceptualised as entailing knowledge of the other ethnic groups' language and culture, and it was advocated that this be reflected in the curriculum. At the same time, teaching in Hungarian and German should be facilitated by providing more teaching materials and courses in those two languages. Interestingly, the conceptualisation of multiculturalism also includes an endorsement of affirmative action, so that hiring Hungarian- and German-speaking staff should be promoted, and not only within their respective lines of study (van der Stoel, 2000c). This is particularly interesting since prior to this point there had been no mention of affirmative action.

The HCNM defines the central aim of multiculturalism as “to serve the interests of all ethnic groups on the basis of complete equality” (van der Stoel, 2000a). It is worth paying attention to the fact that it is the *ethnic groups* which are equal, not the individuals, and thus the HCNM implicitly operates with a notion of the groups as the principal units and beneficiaries of justice. This is an issue which has been hotly contested within political theory. Another, more implicit aim of the HCNM's conceptualisation of multiculturalism is that the members of the different groups should learn more about each other, since this is not only enriching, but also diminishes the risk of conflict. This is an example of a conceptualisation which may look like it is framing the issue in terms of justice, but to a large degree also contains an element of the security-approach.

### **6.2.2.3 The EU**

The EU is represented with the 1997 Opinion on Romania's application for membership and the annual follow-up Reports on Romania's progress towards membership. This means that it is possible to analyse the developments over time in the EU's approach, but it is important to bear in mind that the 1997 Opinion dedicated more space to the Hungarian minority issue and minority issues in general than the following Reports, with the result that it has been assigned more codes.

### *Data*

The two dominant issues on the EU's agenda have been bilateral relations with Hungary (addressed five times) and Education (four times). However, bilateral relations are only addressed (as a minority issue) in 1997, whereas in the following years they are only mentioned briefly and not in connection with the Hungarian minority, although a later agreement with Hungary on education is mentioned in 1999, with education being the main issue. This, I will argue, indicates a shift in the framing of the Hungarian minority issue away from seeing it as a bilateral issue between Hungary and Romania, and towards seeing it as a domestic issue. Education, on the other hand, has been addressed continuously every year, but at greater length in 1999 and 2000, which indicates an increased focus on this issue. The issue of official communication has been addressed in 1997 and 1999, and issues such as the Council of National Minorities, the UDMR participation in government and the prohibition of foreign national anthems and flags have all been addressed in 1997, but only then. After 1997 the issues addressed more or less narrowed down to education, but with discrimination and the census on national minorities appearing as issues in 1998 and 1999.

### *Backing*

The EU has used backing to a very little degree compared to the other two organisations. Nevertheless, it did refer to the FCNM and the Recommendation 1201 in 1997, thus granting the CoE the status as a source of international norms.

### *Factual Warrants*

Starting with the most basic factual warrants, there is a clear dominance of the warrant framing the Hungarian minority as a unitary entity, which has been employed 21 times altogether. It has been employed in all four texts, but more in 1997 (nine) than the following years. On the other hand, the warrant framing the minority as something individuals belongs to has been used only twice, in 1997 and 1999, both times in relation to minority rights.

Interestingly, the Hungarian minority has been framed as needing protection six times, divided between all four years, and as a holder of rights three times, once in 1998 and twice in 1999. However, it is quite hard to say anything about under which circumstances these two warrants have been used. One

exception is a statement in the 1999 Report that “the Education Law... gives the right to the national minority to study in their mother tongue” (EU Commission, 1999a), thus framing of the minorities as such as the holders of educational rights, which is surprising, as these rights usually are framed as individual. Warrants framing the Hungarian minority in terms of having a linguistic dimension have been used all four years (six times altogether). Not surprisingly, these warrants have been used when talking about education and laws on official communication. As was the case with the HCNM, the Hungarian minority has been framed in terms of culture when addressing educational issues, especially the Babes-Bolyai University (three times altogether, in 1998 and 2000).

When it comes to framing the situation in term of progress, crisis, or a need to act, the EU, similarly to the CoE but differently from the HCNM, has adopted a positive stance and mainly framed the situations in terms of progress (eighteen times). On the other hand, the situation has only been framed in terms of a need to act four times. Both warrants have been used consistently throughout the years. Interestingly, whereas in 1997 it was the prohibition of foreign flags and national anthems which was framed in terms of a need to act, and in 1998 the census categories, in 1999 and 2000 it was the issue of Hungarian tertiary education.

As was the case with the two other organisations, education has been the far most important issue. Like the other organisations, this issue has been dominated by the question of tertiary education in Hungarian, although no mention is made of the BBU, but only of the projected Petöfi-Schiller University. The question of tertiary education in Hungarian is not mentioned at all in the 1997 Opinion and only once in the 1998 Report, whereas it received substantial attention in 1999 and 2000, adding to the impression that this issue only started to be considered important by the EU around 1999.

Unlike the two other organisations, the EU has, especially in the 1997 Opinion, focused on the history of the Hungarian minority, going back to World War One to explain the origins of the issue (EU Commission, 1997b). The emphasis is on conflicts such as the expropriation of “properties belonging to the national minorities” and the following debate over restitution of this property, an issue also addressed by the CoE (EU Commission, 1999a). It is interesting that it is the national minorities, rather

than persons belonging to them or the Hungarian churches, which are defined as the proprietor, thus framing it as an ethnic and a group issue.

The relations between the Hungarian minority on the one hand and the Romanian state or members of other ethnic groups on the local level on the other have (in the 1997 Opinion) been framed as positive (“the Hungarian minority seems well integrated in the light of recent improvements in their situation”)(EU Commission, 1997b). However, the statement that “Article 236 of the Criminal Code punishing any person singing a foreign national anthem or carrying a foreign flag has been seen as an attack on minorities” (EU Commission, 1997b) contains, in my view, the warrant that minority politics is characterised by fear and mistrust.

### *Causal Warrants*

Most of the causal warrants used by the EU within this period were also used in the 1997 Opinion, mainly due to the greater space devoted to the Hungarian minority issue in the Opinion. This is especially so for the warrant that bilateral agreements provide solutions, which has been used three times in 1997 and makes the EU stand out as the most bilaterally oriented of the three organisations. In 1997 Opinion the EU also (twice) conceptualised the participation of minority parties in government as constituting progress by endorsing the UDMR’s membership of government. Turning to the causal warrants concerned with the causes of conflict rather than the solutions to it, the EU has warranted the importance of symbols when it criticised the prohibition of foreign national anthems and flags (EU Commission, 1997b). It has also warranted the importance of the narration of the past when it commended the inclusion of minority history and traditions into the national curricula (EU Commission, 2000a). I will argue that this emphasis on the role of symbols can be seen as drawing on a constructivist (or possibly ethno-symbolist) understanding of ethnic conflict (see Chapter 1).

### *Normative Warrants*

Starting with the basic normative warrants, the EU has framed issues in terms of justice five times (all years except 1998, where no basic normative warrants were assigned as codes) and five times in terms of security (solely in 1997), but with justice framing a much larger part of the texts. This indicates a development away from the dominance of the security perspective and towards a more justice-oriented

approach. This is very much connected to the development away from the bilateral approach discussed above.

When it comes to rights, the EU has particularly emphasised the right to be educated in one's own language, which has been used as warrant all years except 1998, but particularly in 2000, reflecting the previously mentioned focus on education after 1998. The right to official communication in Hungarian was also emphasised in 1997 and 1999.

Turning to the warrants concerned with the more overarching aims, there has in 1998, 1999 and 2000 been a clear endorsement of multiculturalism in the university sector, similarly to the endorsement by the HCNM (EU Commission, 1998a; 1999a; 2000a). The use of this concept may have been inspired by the debates in Romania, or by the academic debates. Multiculturalism was also been endorsed (once) in the case of curricula (EU Commission, 2000a). Interestingly, the warrants that the Hungarian minority should have a say in decisions affecting it and that good-inter-ethnic relations should be the goal have only been used once each, both times in the 1997 Opinion, which makes the EU stand out in comparison with the other organisations.

If we look at the use of normative warrants concerning education, the EU has clearly commended the inclusion of tertiary education under the right to be educated in one's mother tongue, thus supporting the UDMR demand for university education in Hungarian. Interestingly, the agreement between the Hungarian and the Romanian state aimed at ensuring not only more university lectures taught in Hungarian, but also more student exchanges between the two countries, has been singled out for endorsement although it was overlooked by the other two organisations (EU Commission, 1999a). Implicit in this endorsement is the warrant that the watering down of boundaries is something desirable, a notion which has played a fundamental role in European integration, but has been used relatively rarely in this context. The use of the warrant underscores that the EU has to some degree continued to see the Hungarian issue through a bilateral, or at least an international, lens. However, the international perspective was strongest in 1997, where the EU endorsed the Basic Treaty as a cause of a diminished risk of conflict, thus defining conflict-avoidance as an end, and commended Romania for ratifying the FCNM.

## 6.2.2 Comparisons

When comparing the three organisations, similarities as well as differences appear. Many of the similarities are down to the fact that the issue of Hungarian-language university education in particular and Hungarian-language education in general has dominated the agendas of all three organisations. Especially the HCNM has focused on this issue, whereas other issues such as the participation of UDMR in government, the Council for National Minorities, the Basic Treaty with Hungary, the law on the language of official communication and the prohibition of foreign national anthems and flags have been picked up by the EU and the CoE.

**Table 6: Comparison between Organisations**

Predominant Warrant(s)	CoE	HCNM	EU
Data	Education	Education	Education
Backing	<i>Indistinguishable</i>	<i>Indistinguishable</i>	FCNM Recommendation 1201
Basic Factual Warrant	Unitary entity	Members of the Hungarian minority first and foremost Hungarians Unitary entity	Unitary entity
Political Representation	One set of representatives	None	One set of representatives
The Situation	Progress	Need to act	Progress
Other Factual Warrants	Restitution of property Tertiary education	Minority framed in terms of culture	Tertiary education Inter-ethnic relations good
Prevalent Causal Warrant	Perceptions matter	Perceptions matter	Bilateral treaties solve problems
Basic Normative Warrant	Justice	Justice	<i>Indistinguishable</i>
Prevalent Rights Warrants	Right to education in Hungarian	Right to express own culture	Right to tertiary education in Hungarian
Other Normative Warrants	Follow IO recommendations Say in decisions affecting them	Establish a multicultural BBU with consociational system of governance	Multiculturalism desirable in tertiary education

All three organisations have used backing relatively rarely, and the HCNM and the CoE have drawn on documents from their respective organisations, whereas the EU has referred to Recommendation 1201 and the FCNM. Turning to the factual warrants, it is remarkable that in the case of all three

organisations the warrant that the Hungarian minority is a unitary entity has prevailed over the warrant that it is something to which individuals belong. This is probably because the latter warrant mainly appears in connection with the discussion of rights, and this has not been discussed much in the texts analysed here. Political representation, when it has been discussed by the CoE and the EU (the HCNM did not discuss this subject), has been based on a framing of the Hungarian minority with one specific set of interests and representatives. The CoE is the only organisation which has framed the minority in terms of religion when talking about the Hungarian churches. The HCNM, on the other hand, has to a large degree framed the minority in terms of culture by advocating *multi-culturalism* rather than multi-ethnicity at the BBU.

When it comes to framing education, the most important subject, all three organisations have emphasised Hungarian-language university education, but interestingly the EU did not start to pay much attention to this issue until 1999. This seems to indicate that the EU did not consider this important until 1999, when it possibly became inspired by the CoE and the HCNM. This shift can also be seen in that Hungarian tertiary education is the only subject framed in terms of a need to act by the EU in 1999 and 2000. Generally, the EU and the CoE have framed most issues in terms of progress and only a few in terms of a need to act. This is unlike the HCNM, which has framed the minority education largely in terms of a need to act. Another difference between the CoE and the EU and HCNM, is their approach to property restitution and the laws on the language of official communication, which have figured on the agenda of the two former, but not the HCNM.

Causal relations are perceived more similarly between the organisations. Both the CoE and the HCNM have emphasised the importance of how groups perceive other groups as well as their own role in society and common institutions. This has some similarities with structuralist theories of ethnic conflict, which emphasise the need for trusted common institutions. It is worthy of note that the HCNM has mainly done so in his letter to BBU Rector Andrei Marga and not to the BBU Senate, which, arguably, is an example of the HCNM's way of deliberately "talking things down", or avoiding the use of negative language in public. In a not entirely dissimilar way, the EU has emphasised the role of symbols and history teaching in conflict, warrants which have also to some degree been employed by the CoE and the HCNM. This warrant has some similarities with constructivist theories of ethnic

conflict. Both the CoE and the EU have warranted bilateral agreements as a solution, with the EU also warranting the participation of minority parties in government as a solution. Finally, the HCNM has also used the warrant that learning Romanian leads to integration in society.

When it comes to normative warrants, justice has been the dominant frame for all three organisations, with security mainly being used by the EU in 1997. I will argue that there has been a shift in the approach of the EU, as it started to see the Hungarian minority issue more as a domestic issue and less an international one in 1998-1999. However, many of the justice-frames have had an element of security thinking in them. This is the case with the notion of integration. Rights have been mentioned relatively rarely, and when they have, they have concerned the right to education in one's mother tongue and to official communication in the mother tongue. Concerning the former, the extension of the right to encompass tertiary education has been endorsed. This means that the UDMR's demands for Hungarian-language tertiary education, as well as for official communication in Hungarian, have been supported.

One conceptualisation that deserves special mentioning is the conceptualisation of the contested concept of multiculturalism. This concept has been defined by the HCNM in ways very similar to consociationalism, with equal ethnic entities as both the main actor and beneficiary of justice. Multiculturalism in the educational system has also been endorsed by the EU. Finally, among the more important normative warrants is the commending of the participation of the UDMR in government, and the notion that minorities should have a say in decisions affecting them, a warrant employed by the EU and the CoE.

Considering the impact of these recommendations, it is worth looking into two subjects. First and foremost the issue of the Hungarian university education, in which the government to a large degree followed the demands of the UDMR and the organisations, but which often became stranded in one of the chambers of Parliament and never really came into being. The difficulties encountered in the implementation of this are also a reason why Hungarian tertiary education continued to be the most important issue; nothing concrete ever really happened. This seems to suggest that although it was possible to influence the government, this did not always suffice. Secondly, there is the issue of the

UDMR participation in government. Here it is interesting to note how Iliescu and his PDSR chose to form a government supported by the UDMR, although they had close to a majority in both chambers of Parliament and in spite their previous hostility towards the UDMR. This, I will argue, supports claims for the influence of the three organisations.

### **6.3.1 The Second Iliescu Period 2000-2004 - An Overview**

As Ion Iliescu moved back into the presidential palace, he enjoyed a strong backing from the population and from the West, which was happy to see Corneliu Vadim Tudor defeated. An agreement was made between the PDSR and the UDMR, which promised the parliamentary support that was necessary, as the PDSR fell just short of a majority in both Chambers, in return for the much-delayed ratification of the Law on Public Administration. This law guaranteed the right to use minority languages in communication with public authorities in areas where minorities constitute at least 20% of the population (Gallagher, 2005: 319-320). Adrian Năstase was appointed Prime Minister, and developed his own power base within the government and the PDSR independent of Iliescu (Gallagher, 2005: 309-311). The economy improved in 2001 and the following years after many years of virtually no growth, and the privatisation process and the closing of continuously loss-making state-companies continued (Mato, 2002). The government was very popular up until mid-2003, when its standing started to decline, but it still retained a strong position. This position was also strengthened by defections of mayors and members of Parliament from other parties to the PDSR, which in 2001 changed its name to the Social Democratic Party (PSD) and declared itself a Western European Social Democratic Party.

During the first years of Iliescu's presidency, except for the Greater Romania Party and the UDMR, the opposition was in disarray. However, the formation of the Alliance Truth and Justice by the merger of the National Liberal Party and the Democratic Party in 2003 led to a renewal of its forces (Pop, 2004). Together with the growing unpopularity of the government, this meant that the opposition candidate, Bucharest Mayor Traian Basescu, would win the presidential elections in December 2004 after a second round of voting. In the same period, Corneliu Vadim Tudor had tried to reinvent himself as a more pro-Western and moderate candidate and abandoned the more nationalist rhetoric, but nevertheless failed to get more than 13% of the vote (Mungiu-Pippidi, 2005). One of the causes of the dissatisfaction with the government was corruption and the impression that rather little was done to prevent it (Mungiu-Pippidi, 2005). Nevertheless, the government also had its successes, most importantly the economy, the decision of NATO in 2002 to include Romania in its 2004 enlargement, and the decision of the EU, also in 2002, to accept Romania for EU accession in 2007 or 2008 (Mato, 2003).

### *The Hungarian Minority*

The dominant issue concerning the Hungarian minority in the first half of the Iliescu presidency was the Hungarian Status Law, which will be discussed in a separate chapter. Here it is enough to say that it was a strain on the relations between the UDMR leadership and the government without causing a serious rift between them (Mato, 2002). However, the lack of an adamant UDMR opposition to the government's rejection of the Status Law is likely to have contributed to the later split in the UDMR.

The UDMR had the agreement with the government that the latter would be provided with the necessary votes on most of the issues not touching on the Hungarian minority in return for government support on specific issues that were important for the UDMR. This agreement was renewed once every year. In return for its support the UDMR obtained the mentioned ratification of the Law on Public Administration, the right to use Hungarian and other minority languages in court and with police officers were the minority languages speakers constitute 20% of the population, and the right to use foreign flags and symbols (Radio Free Europe, 2001b; 2003d). The government also opened up for school textbooks printed in Hungary, as long as these were approved by the relevant Romanian authorities (Radio Free Europe, 2001c). However, the UDMR no longer held any position in government, which was a deterioration of their influence compared to the previous government. The number of Hungarians in Romania was in decline according to the 2002 census, which put their number at 1,4 million, 200,000 down from ten years earlier (Radio Free Europe, 2002b). However, disagreement existed over whether this was due to an actual decrease or flawed census categories under-reporting the number of Hungarians.

Certain issues continued to be contested, including the issue of a state-funded Hungarian university (Radio Free Europe, 2001a). Although private Hungarian-language universities existed, a state-funded one continued to be seen as important by the UDMR. Another issue provoking controversy was the so-called "Liberty Statue" representing 13 Hungarian generals executed by the Habsburg Empire after the 1848-1849 Hungarian Revolution, and its proposed inclusion in a new "Romanian-Hungarian reconciliation park" in Arad close to the Hungarian border (Radio Free Europe, 2003e). This was controversial as according to many Romanians, these same generals had participated in atrocities against the Romanian population.

However, the most important issue was the call by some politicians from the Hungarian minority, including Laszlo Tökes, for an autonomous province in the Szekler lands or Szekelyföld, covering the provinces of Harghita and Covasna; the only larger areas with a Hungarian majority (Radio Free Europe, 2003a). This region was to have its own president, council and police force in an area of central Romania without access to the Hungarian border (Radio Free Europe, 2004b). This proposal was immediately rejected by all non-Hungarian parties. As disagreement grew between Tökes and his followers and UDMR chairman Bela Marko and his “moderate wing” throughout 2003, the result was that the Hungarian Civic Union (representing Tökes’ wing) decided to run a separate list in the 2004 local and national elections (Radio Free Europe, 2004a). However, this party did not manage to get any significant share of the votes at the two elections, and the UDMR made the 5% threshold in the parliamentary elections.

### *The International Scene*

As mentioned above, the Romanian state had several successes on the international level during Iliescu’s second presidency. However, its relationship with the Hungarian state was tarred by the Status Law dispute, although relations improved when a Socialist government came to power in Hungary in 2002 (Mato, 2003). Nevertheless, the dispute halted work in the commissions under the Basic Treaty. Later, the Hungarian opposition party Fidesz supported Tökes and the Szekely National Council’s demand for autonomy, which led to criticism from both the Hungarian and Romanian governments (Radio Free Europe, 2003f).

When it comes to the international organisations, the government’s endeavours were more successful. Already in 2001 the government held the rotating chairmanship of the OSCE for one year, a prestigious although not necessarily influential position (Mato, 2002). The government chose to align itself closely with the US on many international issues. It sent troops to Afghanistan and Iraq and also signed a bilateral agreement with the US guaranteeing US soldiers immunity from rendition to the International Criminal Court as long as they are on Romanian territory (Gallagher, 2005: 324). This stance was a factor leading to the decision in 2002 to grant Romania NATO membership, but also caused problems between Romania and some of the less pro-American EU states. Nevertheless, the EU in 2002 first decided to lift the visa requirement for Romanian citizens, and later 2007 was given as the date for

Romanian EU accession (Mato, 2003). At the Laeken summit in December 2000 the EU heads of state had already given 2007 as a provisional accession date for Romania, and after the Commission had expressed support for Romanian membership from 2007 in their 2003 Regular Report, it was up to the EU Copenhagen Council in December 2002 to take the final decision. The Commission had already declared that Romania fulfilled the political criteria in 1997, and in 2002 it stated that Romania was so close to fulfilling the economic criteria and implementing the *acquis communautaire*, that EU membership in 2007 should be a possibility. Before that, the EU had not only financed several projects in Romania, but also exercised pressure on the Romanian government, among others in the case of a restrictive law on state secrets, which the EU opposed (Gallagher, 2005: 319-320). A critical European Parliament Report, which particularly criticised the level of corruption and which was issued in March 2004, also led to a series of rapid changes in specific areas such as orphanages.

### **6.3.3 The Second Iliescu Presidency 2000-2004 Analysed**

The attention of the three organisations in the period after the elections in 2000 was primarily focused on the Hungarian Status Law. This is particularly the case with the HCNM, which did not issue any recommendations to the Romanian or Slovak governments that did not concern this law. As the Status Law will be discussed in a separate chapter, the HCNM will not be discussed in this section. However, the two other organisations will. Concerning the content of their recommendations, the focus on the Roma continued to play a role, and it is important to distinguish between references to the Roma and to other national minorities. However, one minority which is more important for this thesis appeared on the agenda of the EU and the Council of Europe during this period, namely the Csango. The Csango are, as mentioned above, a much-disputed group, both when it comes to numbers, origin and relation to the (other) Hungarian minorities. The official Romanian position is that the Csango constitute a small, primarily religious minority of Romanian origin, whereas Romanian Hungarian groups argue that the Csango are in fact a separated group of Hungarians, who are losing their Hungarian language and identity. Interestingly, the organisations did not mention the Csango prior to 2001, when the issue was taken up by a Report from the CoE Parliamentary Assembly. However, as the CoE as well as the EU consistently have framed the Csango as a group which is distinct from the Hungarian minority, I have not found it relevant to include the recommendations concerning the Csango in the analysis, but only to mention the developments briefly.

### **6.3.2.1 The Council of Europe**

The Council of Europe is represented with two texts, namely the 2001 Opinion of the Advisory Committee on the FCNM, and the resulting Resolution of the Committee of Ministers from 2002. Whereas the former is rather long (22 pages), the latter is rather brief (only one page actually concerned with the recommendations to the government), which means that by far the most codes have been assigned to the Advisory Committee's Opinion. Although the Committee of Ministers' Resolution is based on the Opinion, the Committee had the authority to decide which of the recommendations of the Advisory Committee it would mention.

#### *Data*

The Advisory Committee reacted to a range of issues, whereas the Committee of Ministers was so general in its statements that I have not found it possible to assign any Data codes to them. The issue which has been granted most space is discrimination in various forms; this was addressed over several pages and eight times altogether. However, as discrimination has been addressed in connection to various other issues, and often without specific reference to the Hungarian minorities, it is a much less homogenous category than for instance education. Education has been addressed over almost as much space, whereas the Council of National Minorities, the media and laws on official communication have been addressed over more than one page, and all in the context of several articles of the FCNM. Finally, issues such as bilateral relations, the census and the Csango have also been addressed, although more briefly than other issues and only one or two times.

#### *Backing*

Concerning backing, the FCNM has implicitly been used as backing for every argument, as it is on the basis of this convention that both the Opinion and the Resolution have been made. If we turn to other kinds of warrants, no references have been made to other conventions or treaties. I will argue that the most important source of backing has been the State Report that the Romanian state had to issue some years after ratifying the FCNM, and in which the state had to give details on its efforts to implement the FCNM. This report is important as it is hard for the government to reject the facts included in it, but also because the Advisory Committee had the opportunity to hold the government to its word, an opportunity which nevertheless was not used. Generally, it is interesting that the Advisory Committee

has not used the State Report more than four times, but has rather relied more on information it itself gathered.

### *Factual Warrants*

Starting with the most basic factual warrants, the warrant that the Hungarian minority is a unitary entity has been used twenty-seven times (once in the Resolution), whereas the warrant that it is something that individuals belong to has been used fourteen times (all in the Opinion). Another basic warrant that deserves mentioning is the warrant that members of the Hungarian minority are first and foremost Hungarian, which is used implicitly in references to “Hungarians”, a warrant that has been used three times (Council of Europe, 2001a). If we look deeper into when the two frequent basic warrants have been used, the “unitary” warrant has been used more times in connection with education (four times) than the “individual” warrant (twice). The same goes for the laws allowing for the use of Hungarian in contact with public institutions, policemen and the judicial system, in which the unitary warrant has been used twice and the individual one not at all. Unsurprisingly, the individualist framing has also been used more times than the unitary when addressing the census. Furthermore, the unitary warrant has been used five times in addresses to the Council of National Minorities, a context in which the individual warrant has not been used at all.

This leads to the issue of political representation. Interestingly, although the warrant that the minority is one entity with a specific set of representatives and interests has been used on seven different occasions, the Advisory Committee has also explicitly framed the Hungarian minority as having different sets of representatives. This is done (four times altogether) by referring to “other organisations [than the one sitting in the Council of National Minorities, ed.] representing that minority” in connection with the recommendation that these other organisations should not be excluded from political influence and various resources, a theme which will be discussed below (Council of Europe, 2001a). Furthermore, the Advisory Committee also stated that “effective participation of persons belonging to national minorities requires that Council of National Minorities...” thus framing the minority as consisting of individuals while discussing political representation, something which has been unusual in the texts analysed so far (Council of Europe, 2001a).

Also of interest is the framing of the Csango minority as being a separate group, as well as warrant that the group boundaries of the Hungarian minority are fluid, which has been used three times, for instance when talking about the “freedom to identify, or not to identify” with a minority (Council of Europe, 2001a). The warrant framing the Hungarian minority as needing protection by referring to the “protection of national minorities” has been used twice (Council of Europe, 2001a). The Hungarian minority has been framed nine times in terms of having a cultural identity, whereas it has been framed ten times (in passages covering large parts of the Opinion) in terms of having a linguistic identity. It has also been framed (twice) in territorial terms, both in relation to discussing linguistic rights in areas where ethnic Hungarians constitute more than 20% of the population. It also deserves mention that Romania has twice been framed as being multicultural when referring to “Romania’s ethnic diversity” (Council of Europe, 2001a).

Turning to the framing of the situation in terms of progress, crisis or a need to act, the latter has been dominant, being used twenty-four times, compared with the fifteen times for progress and nil for crisis. However, this does not fully reflect the extent to which the CoE has framed issues in terms of a need to improve, as segments of the texts framed in terms of a need to act have been far longer than those framing it in terms of progress. Generally, a pattern has been followed, in which the Romanian government is first commended for improvements within the field being addressed, which is followed by lengthy recommendations for further improvements. However, not all issues have been framed equally in terms progress and a need to act. Discrimination is an issue which has been framed solely (seven times) in terms of a need to act but not at any time in terms of progress, which is less surprising considering the nature of the issue; discrimination only can be framed in terms of progress in cases where it is successfully removed. The opposite is the case with the laws granting the right to use Hungarian with various public institutions in areas with significant Hungarian populations, this issue has been framed three times in terms of progress, but only once in terms of a need to act.

When it comes to the framing of more concrete subjects, education has, as in previous periods, received substantial emphasis. Interestingly, the issue of Hungarian-language universities is dealt with rather briefly, whereas the teaching in and of Hungarian has been granted more attention. Unusually, the CoE has distinguished between the teaching of a minority language, and the teaching of various subjects in

this language. Furthermore, the teaching of the “literature, history and traditions of national minorities”, irrespective of the language in which this takes place, is also addressed three times, this way framing the national minorities as having separate histories, traditions and literatures (Council of Europe, 2001a).

Another issue whose importance has been emphasised (five times altogether) is the media, which has been addressed both in terms of being a means through which the Hungarian minority and other minorities can communicate and express their culture, and as a forum for stereotyping of ethnic Hungarians. An example of the former is when the Advisory Committee states that “the time slots allocated for minority radio and television programmes do not make it possible to reach a maximum number of listeners and viewers in the target audience” (Council of Europe, 2001a). This way radio and TV are framed as an important way of keeping the national minority together, something which is being framed as a right with backing in the FCNM, as will be discussed below. I will argue that implicit in this framing, and in the right more generally, is a conceptualisation of language as access to culture (used twice), rather than (merely) as a means of communication. If the purpose of language, including minority languages, is to communicate, then it might make sense to provide information in minority languages in order to make sure that the message is understood, but there is little reason to have specific TV and radio programmes in the language. I will argue that such programmes only make sense if the purpose is to reproduce a culture and a community.

Turning to the other way in which media has been framed, namely as a forum for “strengthening existing negative stereotypes associated with certain minorities, in particular the Hungarians, the Roma and the Jews”, the emphasis is on the creation of stereotypes (Council of Europe, 2001a). Implicit in this framing is the conceptualisation of media and perceptions of other groups as being important for inter-ethnic relations, something which will be discussed in detail in the section on causal warrants below. A similar warrant can be found in the condemnation of the “introduction of a nationalist and xenophobic rhetoric by one political party [the Greater Romania Party, ed.] drawing attention to anti-minority sentiments” during the presidential elections in 2000 (Council of Europe, 2001a). Implicit in these two examples, as well as the one above, is the warrant that discrimination is important. The same can be said about the criticism of the low number of ethnic Hungarians employed in the public sector,

especially “sectors like the police and the army, but also other institutions in the field of justice and education” (Council of Europe, 2001a). Nevertheless, in spite of the emphasis on discrimination, inter-ethnic relations on the local level have been framed five times as positive. At no time have they been framed as negative.

Finally, turning to the international scene, the importance of the Basic Treaty with Hungary has been emphasised once, and of the international commitments in the FCNM twice. This is relatively little considering the length of the Opinion.

### *Causal Warrants*

I will argue that the majority of the causal warrants used have concerned the role of the perception of other groups and the forces that shape these perceptions. First and foremost there is the warrant that the perception and the representation of a national minority matters (used five times), a warrant which is present in the above-mentioned statements on negative stereotypes in the media and in the presidential campaign. Implicit in these statements is also, I will argue, the warrant (used four times) that this is caused by a more or less deliberate manipulation by journalists and politicians, thus drawing on the conceptualisation of ethnic conflict as being caused by elite manipulation (see Chapter 1). However, dialogue is able to solve these problems, as it is warranted (nine times) in statements of the kind “the Romanian authorities should explore, in consultation with representatives of the national minorities” or “a continuing dialogue between Romanian authorities and those concerned that could help to find a solution” (Council of Europe, 2001a). Finally, there are the warrants concerned with the role of openness as preventing rumours and other problems (used twice), as can be seen in the statement that “It is also important for minorities to be informed of the works of this institution [the People’s Advocate, a kind of ombudsman]” (Council of Europe, 2001a).

### *Normative Warrants*

Starting with the most basic normative warrants, the CoE continues to frame issues in terms of justice (eighteen times) more often than in terms of security (six times). Interestingly, the Committee of Ministers has solely framed issues in terms of justice, thus giving it a clearer emphasis than the Advisory Committee. However, it has often been impossible to establish if an issue is framed in terms

of justice or security, and thus no codes have been assigned. Turning to the question of which issues have been framed in terms of justice and which that have been framed in terms of security, it is interesting to see the way in which both the media and discrimination have been framed in terms of security (twice in both cases) rather than justice (respectively once and nil times). This can be seen in the above-mentioned criticism of the stereotyping of and attacks on Hungarians and other national minorities, as well as in the criticism of the lack of Hungarians in the army and police. Less surprisingly, the bilateral relations with Hungary have also been framed in terms of security. On the other hand, education has been framed solely in terms of justice.

Rights have been mentioned by the Advisory Committee relatively rarely considering that the FCNM was to a large degree written in order to provide a framework of national minority rights. The most important right (in terms of space devoted to it) has been the right of non-discrimination, which is in itself hardly controversial. Nevertheless, it is interesting to see how the Advisory Committee conceptualised this right to include proportionate representation in public institutions such as the army and the police. When it comes to another set of linguistic rights, namely those concerning the public use of minority languages, the Advisory Committee defines rights in more concrete terms. It also endorses the 20% threshold for when members of national minorities can exercise this right, a threshold which does not exist in the FCNM, but which is also endorsed as threshold concerning the use of bilingual road signs.

Three non-linguistic rights have further consequences. First and foremost the right of “members of national minorities to preserve and develop their culture” (Article 5), which has been warranted three times, and which defines the preservation of a culture as an end in itself. In this way, the minority is not only framed in terms of a cultural component, but also as having a right to its own culture, which it is the state’s duty to protect; here the notion that the state should be “ethno-blind” is decisively abandoned. Second, is the right to identify, or not to identify with the Hungarian and other minorities, which has not been discussed much in previous texts, but is mentioned here three times. As mentioned above, this right is based on the conceptualisation of the boundaries of a minority as being fluid, and on the basis of this, certifies the right of an individual to decide which side of the boundaries he or she wants to belong to. Third, the right to “effective participation” in Article 15, the far-reaching

interpretation of which I have already discussed above in the section on Slovakia. Also in the case of Romania Article 15 has been interpreted in a far-reaching manner<sup>33</sup> in order to endorse the Council of National Minorities, as well as calling for a higher proportion of ethnic Hungarians (and Roma) in public institutions such as the police and the army. Thus, effective participation is interpreted as including not only a right to representation, but also that this participation will have some kind of effect, or at least that the government should seek the minority's consent on issues affecting them. This will be returned to below. That this right is also interpreted as stipulating that important public institutions should have a certain proportion of minority members as employees is surprising given that this aspect of effective interpretation is not mentioned in the FCNM or the Commentary on the FCNM. The fact that the AC interpreted effective participation in this far-reaching manner shows the discretionary powers of the Committee. The interpretation also shows that there is a strong emphasis on the effects of this participation, i.e. that rather than participation being an end in itself it is the effects of this participation that matters.

Another set of rights are the linguistic rights concerned with the right to be taught various subjects *in* one's mother tongue, as well as being taught the mother tongue *itself*. Interestingly, the Advisory Committee emphasises both aspects (on three occasions), so that it is not sufficient that pupils can be taught how to read and write their mother tongue, it is also necessary to offer instruction in this language in other subjects. In a less rights-based language, the Advisory Committee has (three times) welcomed the expansion of teaching in Hungarian and other minority languages, and recommended further expansion. Interestingly, concerning Hungarian university education, the Advisory Committee merely commends the teaching in Hungarian and German at the BBU and the fact that it is possible to set up multilingual institutions, and briefly suggests dialogue between the government and the representatives of the minorities on the subject. Thus, demands for a separate Hungarian university are not endorsed. On the other hand, the Advisory Committee has twice strongly emphasised that the curriculum, especially in history, should "reflect Romania's ethnic diversity", a theme discussed above (Council of Europe, 2001a).

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<sup>33</sup>See also discussion of the interpretations of "effective participation" in Chapter 2.2.3

Turning to the objectives of the CoE and what it has seen as the aim of its interventions, it is not surprising that good inter-ethnic relations have been defined as an aim eighteen times, significantly more than other potential aims. This constitutes more or less a continuation of the previous texts, which have also emphasised good inter-ethnic relations. What is more interesting is that the Committee has emphasised this in its rather brief Resolution (later ratified by the Committee of Ministers), which gives a good indication of how important it was understood to be by this institution. Another objective or more general normative warrant is the claim that minorities should have a say in decisions affecting them, which has been used eleven times altogether. This is connected to the far-reaching interpretation of effective participation discussed above, as effective participation was interpreted as including that the minorities should have a say in decisions affecting them. But this takes the shape of an endorsement of the Council of National Minorities, rather than the agreement between the government and the UDMR, as the CoE urged the government to make sure different kinds of representatives of the minorities were included in the Council. This is a normative notion not previously stressed by any organisation. The warrant that the state should be “ethnically balanced”, i.e. that it should reflect the distribution of national minorities among the population has been used six times, including once by the Committee of Ministers. In comparison, the warrant that the state should be multi-ethnic has only been employed once. The warrant that mutual understanding enriches has been used twice.

Finally, considering the international level, both the Advisory Committee and the Committee of Ministers have twice stressed the importance of adhering to international norms and commitments, especially the FCNM. The “softening” of borders via cooperation with Hungary has also been defined as something positive, although rather briefly and only by the Advisory Committee.

### **6.3.2.2 The EU**

The EU is represented by the three Regular Reports from respectively 2001, 2002, and 2003. This, as previously, makes it possible to study developments over time.

#### *Data*

Several issues have been addressed all three years. These issues include the laws on the language of public and administration and official communication, which were warranted seven times; three times

in 2001 and 2002 and once in 2003, thus indicating a decreasing interest in the issue. They also include education, which was warranted four times (twice in 2001, once the following two years), and the cooperation in Parliament between the UDMR and the government (once every year). Bilateral relations with Hungary, or more precisely the Status Law, were addressed in 2001 and 2002, and the Csango minority in 2002 and 2003, probably as a result of the CoE Parliamentary Assembly's Report on the issue. Finally, legislation allowing for the use of foreign national anthems and flags was addressed in 2002. Thus, unlike the CoE, discrimination has not been addressed.

### *Backing*

Concerning backing, the EU has only used the CoE Committee of Ministers' Resolution on Romania's ratification of the FCNM (in 2002). This is in line with the EU's previous use of backing, which has also been rather sporadic.

### *Factual Warrants*

The use of the most basic warrants is dominated by the conceptualisation of the minority as a unitary entity, which has been used more or less consistently over the years, twelve times altogether. The warrant that the minority is something that individuals belong to has been used only four times (all years), and the warrant that members of the minority first and foremost are Hungarians have been used twice (in 2001 and 2002). Looking into how these warrants have been used in connection with various issues, it appears that the unitary warrant has been used five times when the EU has addressed the language of public institutions, whereas the individual warrant has only been used twice. Education, on the other hand, is an issue in which the Hungarian minority has been framed solely as consisting of individuals.

The Hungarian minority has also been framed in terms of territoriality, seven times altogether, more or less evenly throughout the years, and upon all of these occasions in connection with the 20% threshold for the use of Hungarian in official communication or on road signs. This means that this focus on the territorial aspect of the minority is down to a focus on the language laws. More surprisingly, especially when compared to the CoE, the minority has been framed only once in terms of cultural identity. Also surprisingly, given the emphasis on the cooperation between the government and the UDMR, the latter

has only once been framed as being the representatives of the Hungarian minority. In the other cases where this cooperation has been mentioned, the UDMR has simply been referred to by its name, and it has been impossible to argue that this involved some kind of framing. However, the most common way of framing the Hungarian minority has been in terms of language, which has been done twelve times, divided between five times in 2001, five in 2002 and two in 2003. Language has been framed twice both as access to culture as well as a means of communication, the former in connection with education, the latter in connection with official communication.

When it comes to the framing of the situation in terms of progress, crisis or a need to act, the EU distinguishes itself from the CoE by framing the situation mainly in terms of progress (seventeen times). This was done seven times in 2001, six times in 2002 and only four times in 2003. The situation was framed in terms of a need to act only three times, twice in 2001 and once in 2002. The issues framed in terms of a need to act are the Petöfi-Schiller University, financial support for minority programmes, all in 2001, and the Csango minority in 2002. The issue of Hungarian university education was later framed in terms of progress, among others due to the establishment of the private Sapienta University.

Education, and particularly tertiary education, was emphasised all three years. Especially the numbers of minority language students studying was given much attention all years, thus equating “the number of mother-tongue educational units and the number of students being educated in their mother tongue” with the status of minority education (EU Commission, 2003). Attention has also been paid to the textbooks in Hungarian and other minority languages.

Finally, the financing of minority policies was warranted twice in 2001 and once in 2002, for instance by talking about “improving the adequate financial support to minority programmes” (EU Commission, 2002b). The bilateral relations with Hungary and the Memorandum of Understanding agreed upon between the two states have also been framed as important.

### *Causal Warrants*

When it comes to causal warrants, the EU has used rather few. It has used the quite common warrant that legislation affects the situation of the Hungarian minority twice, and has, more controversially, stated that the Hungarian state also has some responsibility for the Hungarian minority, as can be seen in the mentioning of its financing of the Hungarian university (EU Commission, 2001a). More interesting, the EU implicitly warrants the importance of symbols as a potential cause of conflict, when it discusses the importance of allowing the use of foreign national symbols at official gatherings. This change in legislation was introduced after suggestion by the UDMR, and mainly affected the Hungarian minority, as it was the only minority who controversially used national symbols at gatherings. The underlying conceptualisation underlying the welcoming of this new legislation is, in my view, that allowing the Hungarians to use these symbols will defuse the situation and the importance of the symbols, whereas forbidding the symbols will charge them with increased importance.

### *Normative Warrants*

As it was the case with the CoE (and with the EU and other organisations in previous periods), the situation has mainly been framed in terms of justice (eight times) compared with security (twice), a frame which has been used only in connection with the Status Law. Most other issues have been framed in terms of justice.

Turning to the field of rights, the right which has been emphasised most is the right to communication with public institutions in Hungarian in areas with at least 20% Hungarians, whose importance has been warranted all years (twice in 2001, three times in 2002, and once in 2003). The expansion of this right to include the use of Hungarian (and other minority languages) with police officers in these areas and in court in all areas has also been welcomed by the EU. In addition to this, the right to be taught in one's mother tongue (warranted twice) and to have bilingual signs in areas with 20% Hungarians (once) have also been emphasised. Altogether I will argue that this amounts to an advocacy of a norm and accommodation-regime of language policy.

If we turn to the normative framing of education more generally, the EU has clearly (twice) conceptualised the right to minority language education as encompassing a duty on the state to facilitate this education by providing or financing textbooks in these languages. When it comes to tertiary education, the EU in 2001 criticised the lack of developments regarding the Petöfi-Schiller University, yet it did not mention this issue the following years, but instead commended the existence of private Hungarian universities. In this way, the EU conceptualised the existence of Hungarian-language university teaching and separate universities as something positive, but did not conceptualise it as placing any duty on the state to finance it.

When it comes to more general warrants concerning the aim of the EU, it is interesting to see that on only a single occasion have good inter-ethnic relations been defined as the goal, which is quite unlike the CoE. Also unlike the CoE, the EU has (twice) welcomed the cooperation between the government and the UDMR. Furthermore, the EU has also, from a security perspective in relation to the Status Law dispute, twice framed avoiding conflict between Romania and Hungary as an end. Additionally, respecting the identity of the Hungarian minority has also been emphasised, as can be seen in its mentioning of the importance of “respect for and protection of minorities” (EU Commission, 2001a). Finally, adhering to international standards, both generally and more specifically the FCNM, has (twice) been framed as something important.

### **6.3.3 Comparisons**

Some of the differences and the similarities between the CoE and the EU are due to the differences in timing. For instance, the Opinion of the FCNM Advisory Committee was issued before the Status Law as well as some of the changes in the language laws, which means that it was only the EU which had the possibility to address these issues. If we look at the issues addressed, the CoE has addressed discrimination of various kinds as well as the role of the media, whereas the EU has ignored both. On the other hand, the EU has emphasised the use of Hungarian in public institutions to a much larger degree than the CoE, but since this has largely been in reaction to developments in Romania, it does not necessarily tell us much about a difference in the priorities of the two organisations. The CoE has also been very interested in the Council of National Minorities but has not focused the cooperation between

the UDMR and the government, whereas the opposite can be said for the EU. However, education has figured equally high on the agendas of both organisations.

**Table 7: Comparison between Organisations**

<b>Predominant Warrant(s)</b>	<b>CoE</b>	<b>EU</b>
Data	Discrimination Education	Language laws Education
Backing	FCNM	CoE Committee of Ministers
Basic Factual Warrant	Unitary entity	Unitary entity
Political Representation	<i>Indistinguishable</i>	<i>Indistinguishable</i>
The Situation	Need to act	Progress
Other Factual Warrants	Media important for reproduction of minority culture, but also for negative stereotyping of Hungarians	Education, especially the number of students in minority education
Prevalent Causal Warrant	Dialogue solves problems	Symbols important for ethnic conflict
Basic Normative Warrant	Justice	Justice
Prevalent Rights Warrants	The right to non-discrimination -to effective participation	Right to official communication in Hungarian
Other Normative Warrants	Good inter-ethnic relations the end Say in decisions affecting them	Cooperation between UDMR and government positive Avoid conflict with Hungary

The use of backing is harder to compare, as the EU has used little backing except the CoE Committee of Ministers' Resolution, thus continuing to use the CoE as an authoritative source. Hence, to some degree, however indirectly, both organisations used the FCNM as backing.

Considering the use of factual warrants, during this period the warrant that the Hungarian minority is a unitary actor also dominated in both organisations. This is especially the case when the use of Hungarian in public institutions is addressed, whereas rights, as was the case in previous periods, have involved framing the minority as something individuals belong to. When it comes to framing the minority in terms of culture, language or territory, this has to a large degree depended on the issue addressed, so that the minority has been framed in terms of language when discussing education, or in terms of territory when addressing the language of public institutions in minority areas. One of the most remarkable aspects of the CoE Opinion is the emphasis on the different organisations representing

one minority and that the state should avoid dealing with only one of these organisations. This constitutes a break with the warrant that the Hungarian minority has one set of representatives and interests, which also has been used by the CoE to roughly equal degree, and also by the EU.

When it comes to framing the situation, the EU has generally struck a more optimistic note than the CoE, framing issues mainly in terms of progress, whereas the Coe has framed them mainly in terms of a need to act. Both have framed the laws granting the right to use Hungarian in communication with public institutions in areas with 20% Hungarians predominantly in terms of progress. Concerning education, both organisations have emphasised the importance of curricula, especially in history, which take into account the perspectives of the minorities. This way minority education is conceptualised as not only being about teaching in the minority language, but also taking the minority culture into account.

As mentioned above, the CoE has emphasised discrimination and media, whereas the EU has not. Implicit in the CoE's framing of these issues is, among others, a set of causal warrants that include conceptualising ethnic conflict as being primarily caused by negative constructions of the other groups. Also included in this conceptualisation of the causes of ethnic is the warrant that it is mainly politicians, journalists and other members of the elites<sup>34</sup> who use these negative stereotypes or symbols to incite inter-ethnic hatred. However, there is also an implicit solution, namely dialogue, so that if persons from one group get to know persons from another and their views, the issues of contention can be solved. The EU has not used such elaborate conceptualisations of ethnic conflict, but has emphasised the role of symbols, such as flags, national anthems and coats of arms in inter-ethnic relations.

Concerning the normative warrants, justice has been the dominant perspective in both organisations, but security has also played a role, and often it has been hard to distinguish whether the justice or security perspective was dominant. As a general rule, the security perspective has been adopted when

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<sup>34</sup> One can always discuss whether journalists are members of the elite, but I will argue that according to the view described here they constitute a group different from the masses and capable of stirring them.

discussing bilateral relations, but also, in the case of the CoE, when discussing the media and discrimination. Most other issues, especially education, have been framed mainly in terms of justice.

When it comes to rights, both organisations have conceptualised vaguely defined rights to encompass areas which they not necessarily are seen as encompassing. The CoE has conceptualised the right to effective participation to include a duty (of the state) to ensure that Hungarians are proportionally represented in institutions such as the army and the police. The EU has conceptualised the right to official communication with public institutions in the minority language to include communication with the police and the judicial system. Furthermore, the EU has conceptualised the right to minority education as including a duty of the state to provide textbooks in minority languages.

Interestingly, none of the organisations have endorsed the UDMR's claim that the Hungarian minority has a right to its own state-funded university, and the EU has accepted that the private Hungarian universities and the Babes-Bolyai fulfil the needs for Hungarian tertiary education. In this way, a limit is set to how multi-ethnic/-cultural the state should be within the field of education: it should make primary and secondary minority education possible and not prevent tertiary minority education, but the minorities do not have a claim to the same treatment as the majority when it comes to funding of tertiary education. I will argue that whereas primary and secondary education in Hungarian is important in order to avoid placing the ethnic Hungarians in an unfavourable position, tertiary education in Hungarian is primarily important because it allows for the reproduction of a Hungarian minority elite and the reproduction of Hungarian minority culture. Hence, minorities do not have a full right to have the existence of a separate culture and community maintained, or at least they do not have a guarantee that this maintenance will be funded. On the other hand the advocacy by both organisations of multi-ethnic/-cultural state curricula does indicate that the state has some duty to make sure that minority cultures are maintained.

Considering the overall aims of the organisations, there are greater differences. Whereas the CoE has warranted good inter-ethnic relations as the primary aim, the EU has focused more on conflict-avoidance in relation to the Status Law. The two organisations also differ in the conceptualisation of how the Hungarian minority's representatives should have a say in decisions affecting the minority.

The CoE has conceptualised this as taking place via the Council of National Minorities, whereas the EU has conceptualised it as taking place via the agreements between the UDMR and the government.

When it comes to the impact of the recommendations, I will argue that the continued expansion of rights to use Hungarian and other minority languages in contact with various public instances is to a large degree due to the pressure of these two organisations. The EU's support for the Romanian position during the Status Law crisis is also likely to have encouraged the government to hold its ground, but this will be discussed in the following chapter. However, the case of the Hungarian university demonstrates that when the organisations do not advocate something sufficiently strongly, the Romanian state is unlikely to follow recommendations. Finally, it is important to keep in mind the issues that the organisations, especially the EU, did not address. First and foremost amongst these is autonomy, which was discussed increasingly during the period. Second, is the case of the Liberty Statue in Arad, which was much debated in 2002, but did not figure on the EU's agenda.

## 7 The Hungarian Status Law – An Overview

The Hungarian Act LXII on Hungarians Living in Neighbouring States, otherwise known as the Hungarian Status Law, has undoubtedly been the most controversial issue concerning the Hungarian minorities in Romania and Slovakia since its passing by the Hungarian Parliament in June 2001. The Status Law was introduced by the centre-right government led by Viktor Orbán, and passed by all parties in Parliament except the liberal Free Democrats, who argued that the law might damage relations with neighbouring states (Ieda, 2006). The government consisted of Fidesz (the Young Democrats), which was Orbán's party, and their junior partners the MDF (the Hungarian Democratic Forum) and the FKGP (the Independent Smallholders Party). The opposition consisted of the successor of the Communist party, the MSZP (the Hungarian Socialist Party), which had converted itself into a Social Democratic Party, and the much smaller Alliance of the Free Democrats (the SZDSZ), a liberal party committed to free-market policies and civil rights. Since the first democratic elections, centre-left and centre-right governments had alternated, with a centre-right coalition led by Jozsef Antall from MDF in power 1990-94, a centre-left coalition led by Gyula Horn from the MSZP 1994-98, and Orbán's government from 1998.

The issue of the Hungarian minorities in the neighbouring countries had figured prominently on the domestic scene throughout this period. In his inauguration speech Jozsef Antall had already declared that he "wanted to be the Prime Minister in spirit for 15 million Hungarians", which was controversial as Hungary has only 10 million inhabitants, but there are close to 5 million ethnic Hungarians living outside Hungary (Balogh, 2001: 75). Since then, the various Hungarian governments have operated with support for the Hungarian minorities as one of their three main foreign policy objectives, the other two being integration into European organisations and good neighbourly relations (Balogh, 2001). However, the emphasis put on the three objectives had varied; with the centre-right governments prioritising the Hungarian minorities the most, and vice versa with the centre-left governments. This often led to accusations raised against the MSZP and particularly the SZDSZ for being unpatriotic.

The concern for the plight for the Hungarian minorities led to interaction with Romania and Slovakia, an interaction which since 1996 took place in the bilateral committees set up according to the bilateral treaties. Nevertheless, there existed a pressure to do more, and in 1999 the Standing Committee for

Hungarians (MAÈRT), a political body consisting of representatives of all political parties in Hungary, the Hungarian minority parties in neighbouring countries and diaspora organisations, suggested that Hungary introduced a law granting preferential treatment to kin-minorities, a so-called status law.

A status law was considered preferable to a law allowing for dual citizenship for the kin-minorities, as most parties in Hungary were afraid that such a law would lead to an undesired migration to Hungary. Status laws had already been introduced by other European countries, particularly in Central and Eastern Europe, and when drafting the law, MAÈRT and later the Hungarian government looked particularly at the Bulgarian, Romanian and Slovak laws for inspiration. Thus, the Hungarian Status Law was not the first of its kind, as it has sometimes been claimed, and the states which opposed it the most had themselves introduced status laws. However, the controversies over the Hungarian Status Law centred on the ways in which it broke with previous practice and went further than other status laws.

The law grants a number of rights to persons of Hungarian ethnicity, who are citizens as well as residents of neighbouring countries (2001b). Several aspects of the first version of the Law were considered controversial, most notably that some of the articles of the Law only have effect in the neighbouring countries, and not in the kin-state (Hungary) as is the case with most other status laws (Fowler, 2001: 206-212). These articles include the right to a benefit for parents sending their children to Hungarian-language schools and for students of higher education in Hungarian (Art. 14), as well as assistance to institutions of higher education (Art. 13) and to organisations providing for the preservation of Hungarian traditions, culture, higher education, disadvantaged areas, etc (Art. 19). Other articles, which have effect in Hungary alone, include Article 4-7 and 9-10, which grant members of the Hungarian minorities the same rights as Hungarian citizens when it comes to use of cultural services, higher education and academia, and the social and health services). Furthermore, the Law include articles which make cross-border contacts easier, for instance by granting travel benefits within Hungary (Art. 8) or granting the right to a three month work permit (Art. 15). Additionally, Articles 11-12 entitle ethnic Hungarian teachers (irrespective of which subjects they teach) to teacher training and other benefits in Hungary.

In order to be able to enjoy these rights and benefits, a person would need to possess a “Certificate of Hungarian Nationality”, which would again require a recommendation from a recommending organisation in the homeland (Art. 19-20). These organisations were supposed to be “representing the Hungarian community living in the given country in its entirety”, i.e. it would be a Hungarian NGO. This caused much controversy, as did the “Certificate for Dependents of Persons of Hungarian Nationality”, which would grant the same rights to the non-Hungarian spouses or dependent children of the holder of the “Certificate of Hungarian Nationality”. Also controversial was the part of the preamble which stated that one objective of the Law was to “ensure that Hungarians living in neighbouring countries form part of the Hungarian nation as a whole”. Thus the law operated with an ethnic conceptualisation of the nation, and not a political one as is common in international law (Kántor, 2006: 41-43). This ethnic conceptualisation can also be seen in the very scope of the law and of the Hungarian Certificates. Another source of controversy was the geographical scope of the Law, which applied to all neighbouring countries except Austria. This led to accusations that Austria was excepted as the Hungarian state feared a clash with the EU and with EU law on the issue of non-discrimination.

### *Controversies over the Status Law*

As mentioned above, the main controversies caused by the Status Law centred on its extra-territorial effects, but many different arguments have been in play for and against the Status Law. These arguments are summarised in Table 8 below.

**Table 8**

<b>Arguments Against</b>
Extra-territorial effects
Support to individuals, not institutions
Establishment of a bond between the Hungarian state and Hungarian minorities
The role of Hungarian NGOs in the implementation is too significant
Discrimination on ethnic basis
Against good neighbourly relations
Unilateral action
Disturbing relations between states
Disturbing majority-minority relations
Certificates use nationalist symbols
Reference to the unified Hungarian Nation in the preamble
Certificates issued by NGOs
Already covered in bilateral treaties
<b>Arguments For</b>
A contribution to minority protection, which is a positive-sum game
Minority protection is no longer a prerogative of the state
Not different from other Status Laws
Ensures effective equality
In many cases simply an institutionalisation of existing rules
Laws with extra-territorial effect are not forbidden according to international law
Does not discriminate, as only similar persons should be treated similarly
It is just framework legislation
Only ensures the same assistance for the Hungarian Minority as for the national minorities in Hungary are granted by their kin-states
Establishes a Europe of the Nations without borders

As can be seen, many of the arguments against the Law had to do with its effects on the territory of neighbouring states. This is not only the case with the strictly legal argument against extra-territorial effects, but also the argument that the Law will create an undesirable bond between the Hungarian state and ethnic Hungarians, who are citizens and residents of other states. On a more concrete level, the opponents have argued that the support should not be given to individuals, but to institutions such as schools, and that the Hungarian NGOs play too significant a role in the issuing of the Hungarian Certificates.

This bond between the Hungarian state and its kin constitutes, as Brigid Fowler (2002) has argued, a twin challenge to the notions of the state's sovereignty over its territory and over its citizens. Nonetheless, this challenge has been framed as something positive, rather than something negative, by

some actors, particularly members of the FIDESZ-led government such as Foreign Minister János Martonyi and Prime Minister Viktor Orbán (Fowler, 2002: 220). Their argument is that the erosion of borders intrinsic to European integration creates new and legitimate possibilities for ethnic nations to unite across borders, and re-establish links previously severed by territorial borders, thus creating a “Europe of the Nations”.

The intention behind the Status Law is to create such a community, which will not compete with the community created by the relation between the citizens of the neighbouring states and their state (the republican or civic conceptualisation of the nation), but will rather merely supplement it. This important argument for the Status Law, I will argue, is a justice argument, resting on a conceptualisation of the nation as ethnic. In the words of Brigid Fowler (2002), the relation established by the Status Law between Hungary and its ethnic kin amounts to a post-modern or “fuzzy citizenship”, called so because it is neither a full citizenship (as it would have been if Hungary had introduced a dual citizenship law instead), nor does it coincide with existing legal relations between the state and individuals (Fowler, 2002: 183-184). Furthermore, it has been argued that laws with extra-territorial effects are not forbidden according to international law, as they do not necessarily infringe on sovereignty, at least according to Balázs Májtényi (2006: 10).

A related argument for the Status Law is that there is no reason to worry about the Hungarian state getting involved in minority protection on the territory of neighbouring states, as the minority protection remains the responsibility of the home-state, and minority protection is a positive-sum game. Thus, the minority protection offered by the Hungarian state in the Status Law does not threaten the neighbouring states’ relationship with the minorities, nor relieve it of its duties to protect them, but merely creates additional assistance to the minorities (Stroschein, 2006: 61). Furthermore, it is argued, with the growth of the international minority protection regime, minority protection is no longer the sole prerogative of the state.

Other, more explicitly security-oriented arguments against the Status Law, criticise its unilateral character. It is argued that it destroys good neighbourly relations because the Hungarian state chose to adopt it without prior consultation in the bilateral committees. In a similar vein, it is argued that the

concerns that led to the Status Law had already been covered to a satisfying degree with the bilateral treaties with Romania and Slovakia (Deets, 2006a: 31-33). However, what constitutes a satisfying degree obviously depends on the point of view of the spectator. Kinga Gál has argued that the bilateral treaties were functioning unsatisfactorily, and that the Status Law only helped to bring the Hungarian minorities back on the agenda (Gál, 2002). Furthermore, it has been argued, especially from the Hungarian government, that the Law only codified existing practice, and that it a mistake to criticise it, as it was only a piece of framework legislation, it would be a mistake to criticise it before the implementing decrees were issued<sup>35</sup> (Kemp, 2004: 9-13).

It has also been argued that the Status Law destroyed the good relations between the Hungarian minorities, particularly the Hungarian parties, and the majority and the government in the home-state, as it brought back memories of past conflicts and suppression (Deets, 2006a: 25-30; Kemp, 2004 constitutes an example). Against this, it has been argued that the Hungarian Status Law is not different from other status laws, including the Romanian, Slovak and Slovene ones, which grant “their” kin-minorities in Hungary the same rights as the Hungarian Law grants the Hungarian minorities in these countries (Gál, 2002: 163). However, many do not see this as a valid argument, as these laws do not have the same direct financial support to kin-minority members (Fowler, 2002; Hornburg, 2006: 140-146).

Also in a security vein it has been argued against the use of nationalist symbols and language, especially in the preamble and the Hungarian certificate (see for instance Kemp, 2004: 12-13). When the Hungarian Certificates were introduced in January 2002, the use of Saint Stephen’s Crown, a symbol of Hungary also used on Hungarian passports, on its front caused an outcry as it is highly controversial in neighbouring countries due to its associations with the pre-World War I Hungarian Empire. Many, among them the governments of Romania and Slovakia, argued that the Hungarian Certificates, which look quite similar to passports, would create a bond between the Hungarian state and the Hungarian minorities drawing on nationalist symbols. The reference to the “Hungarian nation as a whole”, including the minorities, was similarly accused of drawing on irredentist sentiments and damaging the loyalty of the Hungarian minorities to their home-state. The Hungarian Dependant

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<sup>35</sup> This argument was obviously only used in 2001 and early 2002, before the implementing decrees were actually issued.

Certificates were also criticised as a means to “lure” non-Hungarian spouses or children of mixed origins into the Hungarian minorities. This criticism was countered with the argument that the Hungarian government did not want to break up families, which were seen as the basic unit of society.

Finally, a more justice-oriented argument which was used against the Law, was that it would discriminate between the citizens of the neighbouring states on the basis of ethnicity, as ethnic Hungarian citizens would receive benefits that other citizens could not receive (Deets, 2006a: 25-30). It is argued that this contradicts the principle of equal treatment of all citizens, especially as some of these benefits fall beyond the subjects of education and culture (for instance the support to disadvantaged areas). Against this, it has been argued that the benefits only aim to achieve effective equality, since the ethnic Hungarians are disadvantaged because the state is primarily the state of and for the ethnic majority (Gál, 2002: 165-166). Thus, only people in similar positions should be treated equally. This has been countered with the argument that preferential treatment should be the exclusive prerogative of the home-state.

#### *Development of the Status Law Debate*

As mentioned, the Hungarian Status Law was immediately received with criticism from the neighbouring states. Already two days after its passing in Parliament the Romanian Prime Minister Adrian Nastase requested the European Commission for Democracy through Law (also known as the Venice Commission) the CoE’s advisory body on constitutional affairs, to assess the compatibility of the Law with international law. On the request of Hungarian Foreign Minister Martonyi, the Venice Commission turned this into a study of status laws in general, a hitherto unanalysed subject (Kemp, 2004: 6). The Commission published its report on the subject 10 October 2001 after unprecedented heated discussions within the Commission, especially concerning the issue of the Hungarian Certificates and their possible use as ID cards and the financial support to students of Hungarian ethnicity (Interview with Simona Granata-Menghini, 2005).

The Report, which will be discussed in more detail in the section on the CoE below, did not comment on the Hungarian Status Law directly, but commented that although status laws in general constituted

“a positive trend” in minority protection, they still had to operate within the confinements of international law. These were specified as the principles of:

1. the territorial sovereignty of states,
2. *pacta sunt servanda* (existing treaties should be respected and performed in good faith),
3. friendly relations among states, and
4. the respect of human rights, particularly the prohibition of discrimination (The Venice Commission, 2001, Section D).

Under the heading of 1), it was argued that a state could only adopt laws with effects on the citizens of other states, if these effects were within fields covered by international treaties or custom, or the state had the consent of the home-state. In an example with direct relevance for the Hungarian Status Law, it was stated that scholarships granted to kin-minority members, who do not study a subject relating to the minority as such (the minority language for instance), would require the consent of the home state. However, this notion remained vague, as the Committee members did not agree on the issue. More importantly, it was also argued that respecting the territorial sovereignty of other states meant that a state can not operate on the territory of another state unless international custom or convention, or the home-state permits it (The Venice Commission, 2001, Section D.a). Again, an example relevant for the Hungarian Status clarifies that the granting of “administrative, quasi-official functions” to NGOs in the home-state is declared beyond limits. Again, this was deliberately kept somewhat vague due to the disagreements within the Committee.

Concerning 2), it is stated that states should not act unilaterally in areas covered by bilateral treaties, as this would be a break of the performing treaties in good faith (The Venice Commission, 2001, Section D.b). Regarding 3), it is argued that states should abstain from unilateral measures, which would risk damaging inter-state relations. Documents certifying membership of the kin-minority containing photographs and personal data, which hence have the features of an ID document, are criticised for creating a political bond between kin-state and kin-minority (The Venice Commission, 2001, Section D.c). The Hungarian Status Law lives up to this description, as does the Greek one (The Venice Commission, 2001, Section B). Concerning 4), the prohibition of discrimination, argues that different

treatment of persons in similar situations may be acceptable within the areas of culture and education, or in exceptional cases, in which case the aim has to be to maintain links between kin-state and minority and which are proportionate to that aim (The Venice Commission, 2001, Section D.d).

Thus, the Venice Commission's Report, although clearly defining the limits for status laws, was sufficiently vague to allow Hungary as well as its neighbouring states to claim victory (Kemp, 2004: 7-9). The Hungarian government seized upon the definition of status laws as constituting a positive trend", and promised to make the necessary adjustments. Part of the Report's vagueness was due to the little time granted the Venice Commission, but more important was that the Commission was given a political case to solve by legal means (Interview with Simona Granata-Menghini, 2005). In the Commission, there was a clear perception that while the Hungarian Law was problematic in some respects, laws of this kind were to be seen as an alternative to simply granting dual citizenship (Interview with Simona Granata-Menghini, 2005). A Hungarian dual citizenship law would be perfectly compatible with international law, but was perceived in the Commission to have far worse political consequences for inter-state relations in the area.

Four days after the issuing of the Venice Commission report, the HCNM issued a statement which was highly critical of status laws (this will be dealt with in detail below), but again without specific reference to the Hungarian Status Law. This led Hungarian Foreign Minister Martonyi to declare that the statement did not concern Hungary (BBC Monitoring Service, 2001). The Romanian state, and to a lesser degree the Slovak one, continued to be vocal critics of the Law. The Slovak government emphasised the dangers of creating a political bond between the Hungarian state and its kin-minorities, especially the role of the Slovak Hungarian NGOs, and the preferential treatment on the basis of ethnicity. The Romanian government objected more to the nationalist symbols and discourse and the granting of benefits from the Hungarian state to Romanian citizens (Kemp, 2004: 12-13). Nonetheless, as the date of implementation (1 January 2002) approached, the Romanian government proved the most compromising, and managed to agree with the Hungarian government on a Memorandum of Understanding 27 December 2001. This Memorandum extended employment rights to all Romanian citizens irrespective of ethnicity, changed the locus of the issuing of Hungarian certificates to Hungary,

and included a review after 6 months (Memorandum of Understanding between the Hungarian and Romanian states, 2001a).

On the other hand, Hungarian-Slovak relations worsened, especially after the passport-like design with Saint Stephen's Crown on the front was revealed in January 2002 (Kemp, 2004: 17). However, the Hungarian elections in April 2002 brought the Socialist-Liberal coalition back in power, and the new Foreign Minister Laszlo Kovács promised amendments to the Status Law. In August 2002 a group of Hungarian legal experts from the Foreign Ministry and international experts came up with a draft for a revised Status Law at a meeting in Nordwijk in the Netherlands under the auspices of the HCNM. The new draft took into account criticisms of ethnic discrimination, changed the recipients of the financial support from individuals to institutions (in order to avoid a political bond) and included references to territorial sovereignty. When a slightly amended version of the draft was made public in October the same year, the Hungarian government expected support from the HCNM, who nevertheless demanded new revisions in the draft (Kemp, 2004: 21-23).

In December 2002, new amendments to the draft Law were made which largely satisfied the international organisations, but still required the approval of the MAÈRT. When this was achieved, the government introduced the new draft law in Parliament on 28 May 2003, where it was passed 23 June. Meanwhile, pressure had increased on the Hungarian government by the adoption of a highly critical CoE Parliamentary Assembly Report on the issue. However, the revised Status Law was accepted by international organisations (perhaps reluctantly in some cases) and reduced the disagreements with the neighbouring states significantly. In September, a renewed and revised agreement was signed between Hungary and Romania, and in December a Hungarian-Slovak agreement was signed on mutual support of national minorities in the fields of education culture. This way most of the controversies concerning the Status Law on the international level were eliminated. However, some of the issues returned to the surface in December 2004 when a referendum (proposed by the World Federation of Hungarians) was held on whether to grant dual citizenship to the members of the Hungarian minorities in the neighbouring states. Yet, the issue did not become as important as the Status Law, as the referendum failed due to an insufficient number of voters.

## **7.1 The Responses to the Hungarian Status Law Analysed**

The Status Law was undoubtedly the dominant issue on the agenda of the three organisations when addressing the Hungarian minority issue. To some degree it stands out compared to the other parts of the analysis as it is defined by the subject addressed, and not the period, which means that there is no variation in the subject addressed. This makes the analysis more focused. It also makes it possible to establish an overview of which organisations used which of the arguments in Table 7, as can be seen in the conclusion. The Status Law debate is an example of the concerted influence of the three organisations, as Hungary chose to amend the Law due to their reactions. It is also a good example of how the organisations worked together (Interview with former employee in DG Enlargement Bernd Biervert, 2005; Interview with Simona Granata-Menghini, 2005).

### **7.1.1 The Council of Europe**

I have chosen to include only two texts from the CoE, namely the Parliamentary Assembly Resolution 1335 on the Status Law and the accompanying Explanatory Report by Assembly Member Erik Jürgens, and not the Venice Commission Report. The reason for this choice is that the Venice Commission Report does not address the Hungarian Status Law directly, but merely as one out of many status laws. On the other hand the Venice Commission Report played an important role in framing the response to the Hungarian Status Law, as it provided the loose framework within which the other organisations could criticise the law as well as the foundation for many of their arguments. It is for this reason that I discussed the conclusions of the Venice Commission Report in detail above. The two analysed texts are closely interrelated, as the one is the Explanatory Report of the other, and hence it does not make sense to treat the texts as two distinct entities, which can be compared. Rather they constitute one entity or speech act, which must be analysed as a whole. It is important to keep in mind that the texts were drafted before the final amendments to the Law were ratified 23 June 2003, but adopted two days after the ratification.

#### *Backing*

Not surprisingly, the Venice Commission Report is the most frequently used source of backing, being used five times, for instance when arguing against the extra-territorial application of the Law.

Interestingly, there also two instances of the use of references to EU law and the statements of the HCNM as backing.

### *Factual Warrants*

Concerning the framing of the Hungarian minorities, it is interesting that two not previously used conceptualisations have been the most common. It is respectively the framing of the minorities as kin-minorities and as Magyars as opposed to Hungarians (both used nine times). Especially the latter deserves some explanation. It is explained in the Explanatory Memorandum as a way of distinguishing between citizens of Hungary (referred to as “Hungarians”) and people of Hungarian ethnicity (referred to as “Magyars”). This distinction, which is also used in the Resolution, is based on the claim that “the noun “Hungarian” in English and French means “citizen of Hungary”, and the adjective means pertaining to the state of Hungary” (Jürgens, 2003). This claim ignores that “Hungarian” in English and most other languages can also mean “member of the Hungarian (ethnic) nation” or “pertaining to the Hungarian (ethnic) nation”. The word Magyar has the same dual meaning in Hungarian. To distinguish between “Hungarian” and “Magyar” therefore makes as much sense as to distinguish between “German” and “Deutsch”.

Yet, the distinction points to an important and more fundamental distinction, namely the distinction between “civic” and “ethnic” nations and nationality. This distinction lies at the heart of the Status Law debate. I will argue that the Hungarian government wanted to create a legal status for members of the ethnic nation, similar but less important than the legal status of members of the civic nation. In this respect it is interesting that the CoE texts use the conceptualisation of identity as being ethnic fourteen times, but the conceptualisation of it as being civic only seven times (framing half of the space of the other warrant). This implies that although the CoE argued for the primacy of the civic nation (as will be discussed below), the conceptualisation of the nation as ethnic was prevalent. It is important to note that these two warrants are not mutually exclusive.

Concerning the warrant framing the minorities as kin-minorities, I will argue that it conceptualises the minority as being intrinsically related to Hungary, and thus makes the notion of cross-border interaction seem logical and natural. It might be expected that such a factual warrant would lend itself

more readily to arguments *for* than *against* the Status Law, but as the CoE Resolution was critical of the Law, the use of the conceptualisation has probably more to do with the context and the discourse at the moment than profound beliefs in the CoE. Relating back to the discussion of ethnic and civic nationality, the members of the Hungarian minorities have been framed as citizens of their respective homelands six times, thus emphasising the civic elements of their identities. This constitutes a break with previous texts, where this warrant was a lot less common. This is more striking when one considers that the previously dominant warrants framing the minorities, namely those framing it as unitary entities or as something individuals belong to, have been used respectively five and nil times.

Furthermore, the Hungarian minorities have been framed as having a cultural dimension eight times and a linguistic one five times, whereas the framing of them as being territorially confined, unlike previous periods, is absent. Both the cultural and the linguistic framing is in line with the ethnic conceptualisation of nationality, emphasising culture and language, rather than political participation, as what binds the Hungarian minorities together. The Hungarian minorities have also been framed as needing protection five times.

When it comes to the framing of the situation in terms of progress, crisis or a need to act, the negative warrants are clearly dominant. Only once is a situation framed in terms of progress, namely when it is stated that “The Assembly notes with satisfaction that on 23 June 2003, the Parliament of Hungary amended the law in question on several points...” (Council of Europe, 2003). Most of the rest of the texts are framed in terms of a need to act (warranted five times, covering several pages) or crisis (warranted twice). However, it can be hard to differentiate between when the CoE warns about an impending crisis or simply strongly emphasises the need to act. Nevertheless, this does not change the impression that the CoE Parliamentary Assembly saw the situation as critical, and wanted the Hungarian government to change its course immediately.

Other factual warrants which deserve mentioning include the emphasis on bilateral treaties (whose importance has been warranted five times) and international law (warranted seven times). This reveals a framing of the issue as an international issue which should be dealt with accordingly. A final factual

warrant that deserves mentioning, is the warranting of the territorial integrity of states as being important (used eleven times).

### *Causal Warrants*

Undoubtedly the most common causal warrant has that been bilateral treaties will solve the issue (used thirteen times). This can be seen in claims such as “The Assembly is convinced that the other points at issue...could possibly have been accepted [by the neighbouring states, ed.] or modified had they been preceded by bilateral discussions and agreements...” and the criticism of the lack of bilateral discussions prior to the amendment of the Law (Council of Europe, 2003). The latter is interesting as it declares the bilateral agreements to have an importance in their own right, since the Hungarian government is criticised for not having discussed the amendments with the neighbours prior to the adoption of the Law, even in the instances when the Law is declared to meet the criticisms of the neighbouring countries and the international organisations. Thus, it does not suffice simply to follow the suggestions from neighbouring countries, as the whole process of dialogue and the mutually binding commitment have values in themselves.

This warrant is related to the warrant that one-sided actions cause problems (used eight times). It is warranted that most of the problems surrounding the Status Law could have been avoided if only the Hungarian state had consulted its neighbouring states during the drafting of the Law. This is to a large degree because perceptions matter (a warrant used four times), as the unilateral adoption of the Law led to suspicions in the neighbouring states.

Concerning the deeper underlying causes of ethnic conflict, the CoE texts place great emphasis on the role of elites and their instrumental use of nationalism (used six times), for instance when talking about “populism and nationalistic rhetoric” (Jürgens, 2003). The role of symbols and particularly the homeland in ethnic conflict have been emphasised (three times altogether), especially when describing the emotional ties that bind the ethnic nation to the homeland or the problems caused by having Saint Stephen’s Crown on the cover of the Hungarian certificate (Jürgens, 2003). Violations of sovereignty (for instance by a kin-state such as Hungary) have twice been defined as a more concrete cause of conflict.

### *Normative Warrants*

Unlike in the previous periods analysed, the basic normative warrants of the CoE are dominated by the security perspective, which is all-pervasive except for a couple of references to the desirability of kin-state assistance (Council of Europe, 2003). This is somewhat surprising given the CoE's original emphasis on the justice perspective. In a similar vein, avoiding conflict between states has been warranted as an important end twenty-two times, covering several pages. In comparison, warrants defining good inter-ethnic relations in the various states as an end, a warrant which has been very common in the previously analysed CoE texts, has only been used once. Thus, the over-arching purpose is to prevent the Status Law controversies from developing into conflict between the states.

In relation to this, the warrant that territorial sovereignty should be respected has been used altogether twelve times when arguing against the extra-territorial effects of the Status Law. Similarly, the warrant that creating a political bond between Hungary and the members of the Hungarian minorities is undesirable and hence demands respect of a state's sovereignty over its citizens has been used seven times to argue against the references to the Hungarian nation in the preamble to the Law and the role of Hungarian minority NGOs in the issuing of the Hungarian Certificates. Implicit in this warrant is the claim that the only the civic nation can be the basis for political and legal relationships, and that the ethnic nation shall remain a sphere of cultural relations. Whereas the warrant that territorial sovereignty should be respected, dealt with the territorial aspects of the state's sovereignty, this warrant deals with its sovereignty over its citizens. As Brigid Fowler (2004) has pointed out, both aspects of sovereignty have been challenged over the last twenty to fifteen years, but here are solidly reaffirmed.

However, this does not mean that conflict prevention and the maintenance of sovereignty were the only concerns of the CoE. Importantly, the CoE also argued against what it saw as the discrimination on the basis of ethnicity inherent in the Status Law. With the Venice Commission Report used as backing, this warrant (used eight times altogether) declared the Status Law contradictory to the principle of non-discrimination, as it went beyond what was necessary to assist the minorities in preserving their identities. This is for instance the case with the opportunity for ethnic Hungarians to obtain work

permits more easily than their co-nationals.<sup>36</sup> Considering that the Venice Commission was relatively vague on this and allowed for preferential treatment of co-ethnics in extraordinary cases (without specifying what constituted such cases), the CoE Parliamentary Assembly uses its discretionary powers fully to interpret the principle of non-discrimination. Interestingly, it also authoritatively interprets EU law (whose position on preferential treatment also is unclear) in order to provide backing for its arguments against ethnically-based preferential treatment.

In the CoE texts there are also a set of warrants which run contrary to the dominant discourse of territorial and citizenship sovereignty. These warrants are used (fewer times than those emphasising state sovereignty) when it is admitted that kin-states can play a positive role in the protection of the identity of their kin-minorities (used once), and that softening borders (three times) and even “fuzzy citizenship” or legal relations based on ethnic nationality may have positive effects (three times). However, the limits of any steps in this direction are clearly delineated, as it not only has to be subordinate to the principles of “sovereignty and statehood”, but is also dependent on a suggested CoE report on the subject and possibly also bilateral agreements. Furthermore, the notion of the multi-ethnic state has also been advocated (four times), thus arguing for a separation between the members of different ethnic nations within the civic nation.

Finally, the CoE texts also stress the importance of keeping international commitments (used eight times), including the various multi- and bi-lateral treaties, and following the recommendations of international organisations. Interestingly, the warrant that OSCE recommendations should be followed has been used as many times (three) as the warrant that CoE recommendations should be followed, thus granting the two organisations more or less equal importance.

### **7.1.2 The HCNM**

The HCNM is represented by twelve texts, including eight letters sent to the Hungarian Foreign Ministers Martonyi and Kovacs (three to the former and five to the latter), two public statements on status laws, one letter to the Romanian Foreign Minister Geoana and one note on the Issuing of

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<sup>36</sup> This was changed in the 2003 version of the Law, so that ethnic Hungarians would no longer get a preferential treatment when applying for work permits (2003). Act on Amendments of the Act LXII of 2001.

Hungarian Certificates, attached to a 2001 letter to Hungarian Foreign Minister Martonyi. The first statement from 26 October 2001 was a general comment on the phenomenon of status laws, not directly addressing the Hungarian one but written with the intention of sending a clear and public signal to the Hungarian government. On the other hand, the second statement from 24 June 2003 was directly addressing the Hungarian Status Law and the recent amendment of it, warning other states against following a similar path. Thus the HCNM texts cover the whole period analysed, making it possible to track developments over time. It is important to keep in mind that the post as HCNM in July 2001 had changed from Max van der Stoep to the Swedish diplomat Rolf Ekéus.

### *Backing*

Like the CoE, the HCNM has relied heavily on the Venice Commission Report, using it as backing twelve times altogether. Unlike the CoE, it has also drawn heavily (six times) on the draft of an amended Status Law made by the international and Hungarian experts at the meeting in Nordwijk in the Netherlands arranged by the HCNM. This draft was written so that it would be in compliance with international norms and standards, and the HCNM placed great emphasis on it, as he used as the blueprint for what the Status Law should look like (given that there had to be a Status Law, as he may probably have preferred to see the Law scrapped).

### *Factual Warrants*

Unlike the CoE, the HCNM framed the Hungarian minorities in ways very similar to the previously analysed periods. Here the most common warrant has been that the minorities are something which individuals belong to (thirteen times), followed by the warrants that the members of the Hungarian minority are first and foremost Hungarians (used eleven times) and that the minorities are unitary entities (nine times). In comparison, the two of the warrants framing the minorities which were most common in the CoE texts, namely that the minorities are citizens of the home-state or kin-minorities, were used only once each.

More in line with the CoE approach, the HCNM has used the conceptualisation of nationality as being ethnic fifteen times altogether, defining the Hungarian nation as an ethnic nation, but without the CoE's

emphasis on the civic nation. Unlike the CoE, the HCNM has also to a large degree framed the minorities as having a linguistic and a cultural dimension (both fourteen times).

In terms of framing the situation, the predominant warrant has clearly been that there is a need to act, which has been used as the frame for the bulk of the texts. That the situation constituted a crisis has been used a couple of times (in 2001 and 2002), whereas the warrant that progress is happening has been used mainly to frame smaller developments (although ten times altogether), when the overall frame has been that more action is needed. Thus the warrant that certain incidents constitute progress has been used to encourage the Hungarian government to continue in this direction, and has not surprisingly been used increasingly as the Status Law debate developed and the Hungarian government became more willing to amend the Law.

Several other factual warrants have been used during the period, without any developments to speak of. This includes a constant emphasis on international law (warranted fifteen times) as well as international commitments in general (warranted three times), both framing the issue as an international one and defining the parameters within which the Hungarian government would have to act. In a similar vein, it also includes the warrant framing bilateral treaties as important (used nine times), a theme which has played a prominent role and to which I will return below. The importance of territorial integrity has also been stressed repeatedly (thirteen times) and has been one of the main tenets of the HCNM's arguments against the Status Law. On a more concrete level, the issue of education, especially the benefits for students of Hungarian ethnicity and the training of Hungarian teachers, has also been addressed at length.

### *Causal Warrants*

As was also the case with the CoE, the predominant causal warrant in the HCNM texts has been that bilateral agreements will solve the issue, used no less than thirty-one times. In 2001, the HCNM criticised the government heavily for not discussing the Law with its neighbouring states before and after the adoption of the Status Law, whereas later the Government was also complimented on the ongoing talks with Romania and Slovakia, and the Memorandum of Understanding between the Hungarian and the Romanian governments from December 2001 was held up as an example. As with

the CoE, the bilateral talks have a value in themselves, so that as long as the neighbouring states agree, anything, including extra-territorial effects and preferential treatment on the basis of ethnicity, is acceptable. However, the HCNM does not go as far as the CoE and criticise the Hungarian government for its lack of bilaterality also after the adoption of the amended Status Law in June 2003. In a related vein, it has also been argued that dialogue will solve the problems between the states (eleven times). Great emphasis has also been placed on the role of perceptions (warranted seven times), as the Hungarian government has been warned that although it may have the best of intentions, these can easily be misunderstood. This is one reason why bilateral discussions are important. Furthermore, the warrant that rumours or mistrust may lead to conflict has also been used (four times).

Concerning the causes of conflict, the HCNM, has emphasised (three times) the potency of symbols including the Saint Stephen's Crown on the cover of the Hungarian Certificates. Unlike the CoE, he has also warranted (nine times) that following the recommendations of International Organisations, including the OSCE, will solve the problems relating to the Status Law.

#### *Normative Warrants*

When it comes to the basic normative warrants, the HCNM has clearly adopted a security perspective, framing arguments from a justice perspective only three times, each briefly. This can also be seen in that the avoidance of conflict between states has been defined as an end no less than thirty-eight times. The opposition to the Status Law concentrated on several issues. Firstly, as mentioned above, he objected to the unilateral character of the Law. Secondly, he also criticised it for its extra-territorial effects, using the warrant that territorial sovereignty should be respected (used twenty-two times).

Thirdly, he objected to the creation of a political bond between citizens of other states and the Hungarian state, thus challenging the neighbouring states' sovereignty over their citizens (warranted seventeen times). Argument against the symbols on the cover of the Hungarian Certificate and the references to the "Hungarian nation" was also based on this warrant. This protection of the state sovereignty over its citizens can also be seen in the claim that financial support to Hungarian minority education should be given as aid to the institutions teaching Hungarian language or culture, rather than a benefit granted to ethnic Hungarians (warranted nine times). This notion only appeared after the

Nordwijk meeting in August 2002, indicating where the idea came from. However, on a similar note the HCNM had previously argued that education in Hungarian should be open to everybody and therefore that students studying Hungarian language or culture should be eligible for financial support irrespective of ethnicity (a warrant used five times).

Fourthly, he also argued against what he defined as the discrimination or preferential treatment on the basis of ethnicity, basing his argument on the principle of non-discrimination (a warrant used twenty-seven times altogether). The argument was that the Status law would differentiate between ethnic Hungarians and other citizens of the neighbouring states, as they would not be able to enjoy the same privileges as the ethnic Hungarians. Such preferential treatment could be acceptable when the goal was to compensate for disadvantages inherent in belonging to a minority, but is the prerogative of the home-state to decide whether this is necessary (a warrant employed seven times). Instead, the support was to be limited to Hungarian culture and language, areas in which preferential treatment was acceptable according to the Venice Commission Report. Interestingly, this support was framed as something positive (ten times).

In this respect it is also worth mentioning that the HCNM three times warranted the “softening” of the borders separating the Hungarian minorities from Hungary, for instance through cross-border exchanges and interaction, as something positive. Thus, as was the case with the CoE, there has also existed a “counter-current” discourse in the HCNM texts, running counter to the dominant discourse of territorial and citizenship sovereignty. Nevertheless this “counter-discourse” has been much weaker in the case of the HCNM than in the case of the CoE.

Fifthly, Ekéus also argued against a role for Hungarian NGO’s in the issuing of Hungarian Certificates. However, he did so only in 2001, as the Hungarian government quickly accepted amendments on this point.

Other normative warrants have also played a role. Interestingly, the HCNM, unlike the CoE, emphasised the importance of letting the representatives of the Hungarian minorities in the Hungarian Standing Committee have the right to approve amendments to the Law (six times). However, this is

probably due to Foreign Minister Laszlo Kovacs promise that the support of the Hungarian standing Committee would be a requirement for any amendments to the Law, at least the warrant has not been used before Kovacs became Foreign Minister.

The HCNM also emphasised that Hungary should keep the commitments and treaties it had entered into, be they bilateral treaties with the neighbouring countries or pan-European multilateral treaties. This was stressed in all twelve texts, thirty-three times altogether. He also advocated that Hungary should follow the recommendations of the CoE (warranted five times) and himself/the OSCE (warranted thirteen times). Finally, the HCNM has also repeatedly declared uncertainties to be an important problem, as he had also done previously. However, to a large degree this has probably been a rhetorical device to persuade the Hungarian government not to use the space of manoeuvre a deliberately vague wording in the Status Law had given them.

It is also worth considering which arguments against the Status Law the HCNM chose to ignore. The Romanian complaints that the Status Law would create a pool of cheap labour for Hungarian companies to use due to easily obtained work permits is not mentioned. The same goes for the Romanian complaint that the Status Law would deliberately expand the Hungarian minorities by the inclusion of spouses and dependent children of non-Hungarian origin. Finally, the HCNM did not address the exclusion of Austria from the scope of the Law.

### **7.1.3 The EU**

The EU is here represented by four texts, namely the Regular Reports of 2001, 2002 and 2003 on Hungary's accession process, and a letter written by enlargement Commissioner Günther Verheugen to Hungarian Prime Minister Péter Medgyessy 5 December 2002. The letter explains the EU's position on the Status Law and the reason for its objections to particular aspects of it. The Regular Reports both address the Status Law in various sections. As the text parts dealing with the Status Law are relatively short, far fewer warrants have been assigned than was the case with the two other organisations.

### *Backing*

Like the two other organisations, the EU has used the Venice Commission Report as backing (five times altogether), but unlike them it has not been the most important source of backing. Instead, that role has been fulfilled by EU legislation (used as backing nine times). More particularly it is the *Acquis Communautaire* which has been used as backing, as all Hungarian legislation would have to be in line with this upon accession.

### *Factual Warrants*

The dominant warrant when it comes to framing the Hungarian minorities has been that it constitutes one unitary, homogenous entity (used five times), a warrant which was also previously dominant in the EU texts. The warrant framing the Hungarian minority in terms of culture has also been used five times, as opposed to only once for the warrants framing it in terms of language. Thus the trend of framing the Hungarian minority and its identity as cultural issues is dominant in the EU texts as it was in the texts of the other organisations. This warrant lends support to the argument that the Status Law should only deal with cultural issues, and presents the minority in depoliticised terms. Interestingly, the framing in terms of language has, unlike the other organisations, only been used once. Furthermore, the Hungarian minorities have been framed three times as needing protection, and twice as being a kin-minority.

When it comes to framing the situation, it has again been almost solely been framed in terms of a need to act, and only twice framed in terms of progress.

Turning to the more concrete factual warrants, much emphasis has been placed on the importance of the benefits granted to ethnic Hungarians in other states (warranted four times). Education was also addressed (twice). The importance of the international commitments of Hungary and of international law has also been emphasised (three times altogether). Finally, the importance of territorial integrity was stressed four times.

### *Causal Warrants*

The EU stressed the importance of bilateral agreements for a solution eleven times. This has been done equally in the three Regular Reports and in the Verheugen letter. Additionally, in the Regular Reports the EU also stressed the undesirability of Hungary's unilateral actions, implicitly claiming that the latter cause problems.

### *Normative Warrants*

Considering the basic normative warrants, the EU has solely viewed the issue from a security perspective, although there are large parts of the letter to Prime Minister Medgyessy which are not possible to put under the heading of a "security-" or "justice"-perspective (Verheugen, 2002). This emphasis can also be seen in the definition of avoiding inter-state conflict as an important goal (a warrant used six times).

If we look at which arguments the EU used against the Status Law (and it did not really use any in favour of it), the EU has placed significant emphasis on territorial sovereignty (warranted five times) and the Status Law's alleged infringement of this, for instance within the field of education. However, the implementation decrees from December 2001 and January 2002 do, according to the EU Commission, remedy some of the extra-territorial effects, especially concerning the issue of the Hungarian Certificates. Second, it is in the letter from Verheugen also emphasised that the state's sovereignty over its citizens should be respected, and hence that a political bond between the Hungarian state and ethnically Hungarian citizens of other states is undesirable (Verheugen, 2002). Third, the EU has argued against the preferential treatment of ethnic Hungarians, which it considers contradictory to the "anti-discrimination provisions enshrined in the EC Treaty", a warrant used five times (EU Commission, 2002a). This way the EU authoritatively interpreted an issue (whether the Status Law was in breach of the anti-discrimination provisions in EU law) in such a way that the Hungarian government had to accept it. In this vein the EU has also argued, like the HCNM, for changing the financial support to members of the Hungarian minority communities into a financial support for institutions promoting Hungarian culture and language in the neighbouring states, making access to these institutions possible for people irrespective of ethnicity.

Finally, the EU has, like the other two organisations, stressed the importance of adhering to international commitments (warranted ten times). Similarly, it has also argued that Hungary should follow the recommendations it itself made (warranted three times) or those made by the CoE, more specifically the Venice Commission (warranted twice). Interestingly, these warrants do not appear in the letter from Verheugen to Medgyessy, indicating that it is only when the EU expresses itself in public that it feels the need for this support.

## **7.2 Comparisons**

One of the more striking aspects about the three organisations' reaction to the Hungarian Status Law is their similarities. This is perhaps not that surprising given the close interaction between the organisations and the fact that all three organisations relied on the Venice Commission Report, but it does indicate that the organisations had a shared view of the issue. It also demonstrates the importance of this interaction. As mentioned, all three organisations have relied heavily on the Venice Commission Report for backing, and upon EU law (in the case of the CoE and the EU). The draft of an amended Status Law resulting from the expert meeting in Nordwijk (in the case of the HCNM) has also been used as backing. Thus the Venice Commission Report played an important role in creating a framework and legal basis for the arguments against the Law, but also became more important as the actors referred to it. The authority of the Venice Commission stems from being, even more than the HCNM and the rest of the CoE, an independent organisation, which (unlike the HCNM and other parts of the CoE) would argue only on the basis of legal rules, thus increasing its expert authority. Its restraint when it came to speaking on issues beyond its legalistic jurisdiction also increased its status as an independent moral authority.

**Table 8: Comparison between organisations**

<b>Predominant Warrant(s)</b>	<b>CoE</b>	<b>HCNM</b>	<b>EU</b>
Data	Status law	Status Law	Status Law
Backing	Venice Commission	Venice Commission	EU law
Basic Factual Warrant	Kin-minority Magyars as opposed to Hungarians	Minority something individuals belong to. Members of the minority first and foremost Hungarians	Unitary entity
Political Representation	None	None	None
The Situation	Need to act	Need to act	Need to act
Other Factual Warrants	Territorial integrity important	International law, bilateral treaties and territorial integrity important	Hungarian minorities framed in terms of culture Territorial integrity important
Prevalent Causal Warrant	Bilateral treaties the solution	Bilateral treaties the solution	Bilateral treaties the solution
Basic Normative Warrant	Security	Security	Security
Prevalent Rights Warrants	None	None	None
Other Normative Warrants	Avoid inter-state conflict Respect territorial and citizenship sovereignty	Avoid inter-state conflict Keep international commitments Non-discrimination Respect territorial and citizenship sovereignty	Avoid inter-state conflict Keep international commitments Respect territorial sovereignty Non-discrimination

Turning to the factual warrants, there are more differences between the organisations. Concerning the framing of the Hungarian minorities, the HCNM and the EU continued to use the same sets of warrants as previously, whereas the CoE used two new warrants, defining the minorities as respectively kin-minorities and “Magyars”. Leaving the oddity of distinguishing between “Hungarians” and “Magyars” aside, this pointed at the important distinction between civic and ethnic national identities. This is especially important as the intention behind the Status Law, at least in my view, was to create a legal relationship between state and individuals based on ethnic nationality similar to, but weaker, than the legal relationship between state and individuals based on civic ethnicity. All three organisations have emphasised ethnic nationality as well as the cultural dimensions of the identity of the Hungarian minorities. The rather contestable concept of “ethnic identity” is being defined as being about culture

and language. This quite handily leaves politics in the space of civic nationality, an issue examined in greater detail below.

When it comes to framing the situation, all three organisations have done so predominantly in terms of a need to act or possibly in terms of crisis. A clear message is being sent to the Hungarian government: the current situation is not acceptable, and the government needs to act in order to amend this. There are also great similarities concerning which elements have been defined as important. All three organisations have emphasised the importance of bilateral treaties, international law and international commitments, thus defining the Status Law as an international issue as well as the parameters within which the Hungarian government could act. The importance of territorial integrity has also been stressed by all three organisations.

The parallels between the warrants used by the organisations become even stronger when it comes to the causal warrants. Here the predominant warrant in the reactions of all three organisations has been that bilateral agreements are the way to solving the problems concerning the Status Law. Then the EU and the CoE have stressed the problematic aspect of unilateral actions more than the HCNM, which on the other hand has emphasised the role of perceptions and mistrust more, and has claimed that following the recommendations of international organisations will solve the issue. Turning to the more fundamental causes of ethnic conflict, both the CoE and the HCNM have stressed the role of symbols, but the CoE has also placed a great deal of emphasis on elites.

Concerning the overall perspective of the organisations, there is little doubt that security has been the main frame. If we instead look at the arguments used against the Status Law by the organisations, slightly more variation appears. Looking at the arguments against and for the Status Law discussed in the beginning of the chapter, Table 9 is intended to give an overview of the arguments as well as showing which of the actors opposed to the Status Law that used which arguments.

**Table 9: The Use of Arguments by the Various Actors**

<b>Argument\Actor</b>	<b>HCNM</b>	<b>CoE</b>	<b>EU</b>	<b>Romania</b>	<b>Slovakia</b>
<i>Against</i>					
Extra-territorial effect	<b>X</b>	<b>X</b>	<b>X</b>		
Support to individuals, not institutions	<b>X</b>		<b>X</b>	<b>X</b>	
Establishing a bond between the Hungarian state and the Hungarian minorities	<b>X</b>	<b>X</b>	<b>X</b>		<b>X</b>
Role of Hungarian NGOs in the implementation	<b>X</b>				<b>X</b>
Discrimination on ethnic basis	<b>X</b>	<b>X</b>	<b>X</b>		<b>X</b>
Against good neighbourly relations	<b>X</b>		<b>X</b>		
Unilateral	<b>X</b>	<b>X</b>	<b>X</b>		
Disturbing relations between States	<b>X</b>				
Disturbing majority-minority relations					
Certificates use nationalist symbols	<b>X</b>			<b>X</b>	
Reference to unified Hungarian Nation in the preamble	<b>X</b>	<b>X</b>		<b>X</b>	
Certificates issued by NGOs	<b>X</b>				
Already covered in bilateral treaties	<b>X</b>				
Creates pool of cheap labour				<b>X</b>	
Expand Hungarian Nation				<b>X</b>	
Austria excluded					<b>X</b>

I will not go into detail concerning the arguments used by Romania and Slovakia, since these are not relevant for the scope of this thesis and are only included above to show how some arguments were left out by the three organisations.

All three organisations have placed great importance on the respect for territorial sovereignty and (slightly less so) the state’s sovereignty over its citizens. This way the notion of “fuzzy citizenship” is rejected, as it challenges these two fundamental rules of international politics. This is interesting, as the sovereignty over territory and citizens were challenged before and after the Hungarian Status Law,

among others by the very organisations that criticise it and by the international minority rights regime (Fowler, 2004: 186-187). It is also slightly ironic that the organisations lectured Hungary on the importance of sovereignty, when they themselves were intervening in the sovereign affairs of Hungary, as they had been doing previously with Romania and Slovakia. However, these interventions were “vertical” interventions from actors on a higher level, whereas the Status Law was a “horizontal” intervention from another state (Deets, 2006a: 19-20). The conclusion is that some international organisations have the authority to intervene in the sovereign affairs of another state, especially concerning minority rights, but a neighbouring state does not, as it is potentially more dangerous.

According to the organisations, there are two ways of making the involvements of a kin-state on the territory of another state or concerning the citizens of another state acceptable. One is via bilateral agreements between the states, thus maintaining the sovereignty of the home-state. The HCNM also argued that the protection that the Status Law offered could also be or had already been granted through the bilateral treaties. The other is to concentrate the involvement on the protection of the kin minority’s culture or language. This argument has its roots in the above-mentioned distinction between ethnic and civic nationality, in which culture is linked to ethnic identity. This way the notion of a legal relationship based on ethnic nationality is trounced, and ethnicity is de-politicised and reduced to the cultural sphere, where the kin-state is allowed to play a role. This ideal has some similarities with the multi-cultural ideal discussed in the previous parts of the analysis, a parallel to which I will return in the following chapter. This is also a reason for arguing against the use of Hungarian national symbols on the Hungarian Certificates and references to the Hungarian nation in the preamble to the Law, an issue which however has not been emphasised as much as other arguments against the Status Law. Another reason for opposing the use of symbols is that it may sour inter-state relations more directly, as neighbouring states see it as a provocation.

The other important argument used by all three organisations (although to a larger degree by the HCNM and the EU) against the Status Law is that it contradicts the principle of non-discrimination. According to the HCNM, the decision when preferential treatment on the basis of ethnicity is acceptable is a prerogative of the sovereign home-state (obviously given that the decision does not contradict the rules of the international community). This way the argument that minority protection is

a positive-sum game is countered (although it has not been directly addressed in any of the texts). This is because preferential treatment not only may challenge the balance between the ethnic groups and discriminate against the majority (a rather under-developed issue in legal theory and international law), but also because it may also threaten sovereignty, which is in most interpretations not a positive-sum game.

Interestingly, there are also several arguments against the Status Law which have not been considered, but which were raised by Romania and Slovakia. One is that the Status Law would make it too easy for Hungarian companies to attract cheap labour from neighbouring States, especially those such as Romania which were significantly poorer than Hungary. Second, there is the argument against the provisions in the Law which included the non-Hungarian relatives of ethnic Hungarians, and which Romania saw as a ploy to expand the numbers of the Hungarian minorities. However, in the case of Romania, these objections were cleared off the table with the Memorandum of Understanding between Hungary and Romania from December 2001. Third, there is the argument against the exclusion of Austria from the scope of the Law, which was criticised for being a ploy to conceal the Law's incompatibility with EU Law. None of these arguments were employed by the three organisations, as they chose to base their objections to the Law on the Venice Commission Report.

Finally, considering the impact of the organisations, there is little reason to doubt their influence. It is highly unlikely that the Status Law would have been amended if the pressure from the organisations had been absent. The neighbouring states on their own could probably not have obtained more than a few minor alterations. Rather, it is necessary to consider the context: in 2002 the EU would decide which states that would be included in the enlargement, and the Hungarian state was expecting to be in the first accession wave. Therefore the harsh criticisms from the EU probably surprised all the major Hungarian parties, and the newly-elected Socialist-led government chose to commit itself to bring the Law in line with the demands from all three organisations. Again, the previously described exchange of different kinds of power between the organisations played a very significant role. One question is why the Hungarian state did not turn around and forgot its promises after it had been declared fit for EU membership. After all it was unlikely that the EU would re-open a very contentious and prolonged debate by postponing or annulling Hungary's accession. One explanation could be that the Hungarian

government was nevertheless afraid that this might have happened. Another is that the pressure from the CoE and the HCNM mattered after all, and that the government feared being “shamed”. A third explanation is that the government was afraid of losing credibility by backtracking on previous promises. These explanations do not exclude one another, and may each have played a role as a factor.

## **8 Conclusion**

In this chapter I will provide an overview over the findings of the analysis and place these within a wider perspective. Therefore I will firstly discuss the use of the different warrants, kinds of Backing and Data as I have done after each analysis of a period. Secondly, this will be followed by an overview of the organisations' developments and power over time and a discussion of the impact of organisational culture on the use of warrants. Thirdly, I will turn to the developments of the responses to the different governments of the countries, and discuss whether the government or the country addressed has affected the use of warrants. Fourthly, I will discuss the relationship between basic and specific warrants and the issue addressed, discussing whether there is a path-dependency in the use of warrants, or if they have simply been used strategically. After this I will compare the findings for each organisation with the general discourse of the organisation on national minorities, in order to see if they diverge or concur and if this discourse can provide a fuller picture. I will then draw historical parallels between the discourse and practice of the organisations and previous periods, especially the interwar period. Thereafter, the theoretical literature discussed in Chapter 1 will be used to shed light on the findings. Then I will discuss the theoretical implications of the findings concerning the symbolic power of the organisations, concerning their role as norms-makers and concerning the national minority rights regime in Europe. Finally, the research questions will be revisited and the findings of the Conclusion will be summarised.

### **8.1.1 The Use of Warrants**

If we look at the issues addressed, there have been reoccurring themes as well as issues which have been on the agenda only briefly. The two predominant topics have been education as well as the different language laws regulating the use of Hungarian and other minority languages on road signs, in official communication, etc. Whereas the former, especially the issue of a Hungarian-language university, was the most important issue when addressing Romania, the latter prevailed in the case of Slovakia. However, education also played an important role in Slovakia and official communication in Romania. Also the issues of the Councils of National Minorities, local government (mainly in the case of Slovakia) and after 1995 the Basic Treaties with Hungary, the participation of Hungarian parties in government and the Status Law have figured prominently on the agenda of all three organisations.

Importantly, there has been a growing convergence between the organisations, so that they have increasingly addressed the same issues.

The HCNM has (especially in the case of Romania) emphasised the importance of education to a greater degree than the other two organisations. On the other hand, the other two organisations have stressed the importance of the participation of the UDMR and the SMK in government to a larger degree than the HCNM. Also of interest are the topics which have not been addressed. Particularly interesting is the fact that the HCNM did not address the 1990 violence in Târgu Mures, the debate over the ethnicity of the prefects of Harghita and Covasna and over the behaviour of Cluj mayor Gheorghe Funar, nor the Benes Decrees. This is probably due to his and the OSCE's conceptualisation of security as involving long-term perspectives and a wider range of issues, a conceptualisation which will be discussed in more detail below. The EU has also placed more emphasis on the Basic Treaties than the other organisations.

Turning to the use of backing, four themes emerge. The first is that in the beginning the CoE and the HCNM relied almost solely on documents from their respective organisations, so that the CoE relied on Recommendation 1201 and to some degree other CoE documents, whereas the HCNM relied mainly on the Copenhagen Document. The second is that from 1995 the FCNM gradually became the authoritative document on national minority protection, referred to by all three organisations. The third is that the EU relied heavily on the other two organisations as backing, establishing a kind of exchange of power, something which I will return to below. The fourth is the decisive role that the Venice Commission Report played in providing backing for the arguments of the three organisations against the Status Law, a role so decisive that I will argue that the Report provided the very framework for these arguments.

When it comes to the basic factual warrants framing the Hungarian minorities, the warrant that it is a unitary homogenous entity has been the most common, followed by the warrant that it is something that individuals belong to. One interesting difference is that the HCNM has used the two warrants equally, whereas the other two organisations have used the former much more. However, to a large degree the use of one warrant in place of another has depended on the issue addressed. This can be seen

in that the “unitary” warrant has been used much more frequently when the organisations addressed issues such as administrative reform, the councils for ethnic minorities, the participation of Hungarian minority parties in government and the proposed Romanian Law on Minorities. On the other hand, the “individual” warrant has been used often when addressing the rights of minorities. Perhaps not surprisingly, the warrant conceptualising the minorities as “kin-minorities” have only appeared in connection with the Status Law. The existence of different framings of the Hungarian minorities, in most cases within the same texts and even paragraphs, reveals that the argumentation of the organisations have been, if not inconsistent, then at least incoherent. And that two different perspectives or discourses on the Hungarian minorities have run through the argumentative practice of the organisations though all the years. Which one has been predominant depends a lot on the context, which means that the organisations to a large degree took the situation into account when choosing which conceptualisation to use. This could indicate that the organisations were aware of the importance of how they framed the Hungarian minorities, but also that the context may have mattered more than the perspective of the organisations

The Hungarian minorities have also been framed in terms of culture, territory and language, but these warrants have been used equally by the three organisations, except that the HCNM has at times stressed the cultural aspects of the minorities to such a degree that the culture and the ethnic identity of the minorities seems to be equated. In this view, what separates the minority from the majority is culture, and language to the extent that it is connected to culture. This framing can differ from the framing of the minorities which emphasise their political aspect, for instance political participation. However, the political participation of the minorities has also been addressed, and the clearly predominant warrant has been that each Hungarian minority has one set of representatives and one set of interests. That this conceptualisation has been clearly dominant is less surprising given the framing of the minority as a unitary entity, but interesting as important cleavages have existed within the Hungarian minorities in both countries, something which will be returned to later. The dominance of the conceptualisation is also important as it demonstrates why the unitary framing of the Hungarian minorities is important, namely because it lends itself to arguments for letting the representatives of the Hungarian minorities participate in important political decisions. Thus, I argue that the unitary conceptualisation has been used in a more politically important context than the individualist conceptualisation.

Although there are differences between the warrant framing the minorities in terms of culture and the warrant framing it as having one set of political representatives, the two warrants do share a framing of the minority as a homogenous entity separated from the rest of society by their ethnicity or culture. Hence, the two warrants do not contradict each other, but rather “foreground” different aspects of the Hungarian minorities. Importantly, there is a difference between the organisations in that the HCNM has stressed the cultural aspects of the minorities more than the other two organisations, which have emphasised the political aspects more, something which I will return to below. Yet, the “cultural” framing differs from the political in that culture has predominantly been conceptualised in instrumental terms, i.e. in a way that does not support calls for self-governance, but rather for more limited claims such as those for Hungarian education. Thus, it is important to keep in mind the intrinsic incoherencies in much of the texts, as much of the argumentation has been contradictory in its use of warrants.

Considering the framing of the situation, it is hard to discern a pattern, except that the situation in Romania and Slovakia during the first Iliescu government and the Meciar government were predominantly framed in terms of crisis or a need to act, whereas during the following governments it was framed more positively. Nonetheless was the Status Law primarily framed in terms of crisis or a need to act, underscoring how seriously it was taken. The differences between the different governments addressed far outweigh the differences between the organisations (the HCNM has been slightly more critical than the other two organisations), but interestingly there also seems to be a slight difference between the treatment of the first Iliescu and the Meciar government. The Meciar government seems to have been treated more harshly, something I will return to in section 6.1.3

The organisations have been more similar in their use of causal warrants. All three of them have at all times framed perceptions as playing an important role in inter-ethnic relations, so that the way in which members of the minority and other actors perceived themselves and their role in the country, the government, etc has been warranted as an important causal factor. The warrants that rumours and mistrust can easily lead to conflict, but dialogue can lead to détente, are part of this understanding. At times, particularly the CoE has emphasised the role of actors such as nationalist parties or the media, seeing ethnic conflict in a rather instrumentalist way. For its part, the EU has stressed the importance of symbols and the narration of the nation’s past in history teaching on different occasions, thus adopting

a more constructivist or possibly ethno-symbolist perspective<sup>37</sup>. It has also framed government participation of the UDMR and the SMK and bilateral treaties as solving the problems more often than the other two organisations.

The HCNM has stressed many of the same issues as the other two organisations, but has to a larger degree than the other two organisations stressed the importance of mutual understanding, as well as following the recommendations of international organisations for conflict resolution. Furthermore, the HCNM has placed great emphasis on the importance of learning the state language for integration. During the Status Law debate, the warrant defining bilateral agreements was the most common causal warrant for all three organisations, indicating how differently this issue was handled from other issues.

Regarding the basic normative warrants, namely the framing from a justice or a security perspective, it is harder to discern organisational patterns or developments. That it is harder is to a certain degree because it can be hard to separate justice from security concerns, as discussed above. However, some issues have clearly been framed more from one perspective than the other, such as the Status Law and bilateral relations in general, which have predominantly been framed from a security perspective. The same is the case with education, the draft Slovak Law on Local Elections and the language laws, which have primarily been framed from a justice perspective. Again, this has predominantly been the case, and it is important to stress that the use of basic normative warrants has often been incoherent and hard to determine.

If we turn to some of the more contested national minority rights and their conceptualisation by the organisations, one of the most contested rights in both countries has been the right to communication with official instances in Hungarian. All three organisations have strongly advocated this right, but they have also conceptualised it in two important ways. First of all, the organisations have conceptualised the numeric threshold for exercising this right, which is described as “where a substantial number of minority members live” in the international documents, as 20%. In fact, what they have done has been to endorse claims in Slovakia for reintroducing the old Czechoslovak interwar threshold, but

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<sup>37</sup> Although very different theories, ethno-symbolism and constructivism share an emphasis on the importance of symbols and the narration of the history of the nation.

interestingly, they have also endorsed this threshold in the case of Romania, where no such precedent exists. Second, the organisations (or rather the CoE and the EU) have conceptualised this right to include communication with the police and judicial institutions in Hungarian, and to include a duty of the state to ensure that a sufficient number of policemen and other public employees speak Hungarian in these areas.

Other linguistic rights which were strongly advocated include the right to personal names and road signs indicating place names in Hungarian. Interestingly, the HCNM conceptualised the latter right to include only a right to use a Hungarian translation of the place name, and *not* to use older Hungarian names. This way, the right was conceptualised as being a right to communication in one's own language, not to preserve cultural heritage.

Education was another subject which caused much dispute, especially in the case of Romania. Besides continuously recommending expanding the fields taught in Hungarian and emphasising the right to mother tongue education, the importance of having Hungarian education on university level has also been stressed. However, this has not meant that any of the organisations have advocated the minority's right to have a state-funded Hungarian-language university. The EU has warranted that the right to Hungarian tertiary education is being met by the existence of the private Hungarian universities. And the HCNM has argued that the Babes-Bolyai University should be more *multicultural* in order to accommodate the need for Hungarian tertiary education. Considering the right to mother tongue education, all three organisations, especially the HCNM and the EU, have emphasised that this places a duty on the state to provide text books, and facilities for the training of Hungarian teachers. The teaching of minority history and culture has also been emphasised, particularly by the EU. Interestingly, support for the teaching of Hungarian culture and language is one of the few areas within which the three organisations accepted that the Status Law could play a role within the territories of other states.

The importance of territorial integrity and respect for territorial sovereignty<sup>38</sup> has been stressed much by the three organisations during the Status Law controversy, the period during which the argumentation of the organisations seem to have converged the most. Previously, only the HCNM has stressed territorial integrity and sovereignty, when addressing territorial autonomy and minority duties. Concerning the former, he placed more emphasis on cultural autonomy and particularly devolution. Concerning minority duties, they include, according to the HCNM, the duty to learn the state language, to integrate in society and the aforementioned respect for territorial integrity.

Concerning the normative ends, all three organisations, but the HCNM more than the others, have stated that the representatives of the Hungarian minorities should have a say in decisions affecting them. This can be brought about via the Councils of National Minorities (emphasised by the CoE and the HCNM) or via the participation of the minority parties in government (emphasised particularly by the EU). All three organisations have also operated with good inter-ethnic relations as an end. Nevertheless, whereas this has been the predominant end for the CoE and the EU, the HCNM has to a larger degree stressed mutual understandings, and as mentioned before, that the minority should have a say in decisions affecting it, as ends. Interestingly, the CoE (or rather the FCNM Advisory Committee) has conceptualised the vague provisions on effective participation in Article 15 in a rather far-reaching manner, something I will return to below. Yet all three organisations have stressed the importance in adhering to international standards and documents.

In many ways the responses to the Status Law constitute a break with or at least a change of perspective from the responses to the Hungarian minority policies of Romania and Slovakia. Previously, the softening of borders, the creation of spaces for people of a specific ethnicity and the protection of minorities had been framed as something positive, but with the reactions to the Status Law the organisations clearly signalled that there were limits to how far these developments should go. More specifically, it was stated that the softening of borders should neither go as far as kin-state involvements on the territories of neighbouring states nor the creation of a political bond between kin-state and kin-minority. Nor should the creation of ethnic spaces for minorities include spaces that crossed state borders, so that the ethnic nation had its own political space the same way the civic nation

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<sup>38</sup> And to a lesser degree sovereignty over the citizens of the state.

has. Multi-ethnicity or multiculturalism, two notions I will return to below, would have to be confined by the borders of the state. Furthermore, protection of national minorities and their cultures and the special treatment of minority members it entails, although important, were not important enough to overrule the principles of territorial and citizen sovereignty. In other words, minority protection was not simply a question of more is better.

It is hard to say whether the reactions to the Status Law constituted a correction of previous policies, meaning that the organisations “realised” that they had gone too far in recommending that the Hungarian state should have a say regarding the Hungarian minorities<sup>39</sup>, or if the organisations simply oscillated from one perspective to another depending on the case. In other words, did the organisations gradually focus their policies by a process of trial-and-error, or did they pursue one path (that of cross-border involvement) merely to be surprised by its consequences and to reverse policies completely? This leads to the question of the degree to which the organisations had clearly defined policies, and indeed whether their reactions to the Hungarian minority policies were created on a more ad-hoc basis.

### **8.1.2 The Organisations**

The three organisations started out from different perspectives and followed different paths. In the beginning of their involvement each had to establish a role for themselves (in the early Nineties in the case of the HCNM and the CoE, 1997 in the case of the EU), and this to some degree lasted for the whole period, as can be seen in the reactions to the Status Law. However, for all three the first years were definitely the most important ones. At the end of the Cold War the CoE was an organisation which aimed at promoting democracy and civil rights, and thus operated from a justice perspective. Nevertheless the CoE Parliamentary Assembly used security arguments already in its early recommendations to the Romanian and Slovak governments. It is also surprising how quickly the CoE adopted the very concept of specific rights for national minorities or the members of national minorities, which contradicted its previous republican emphasis on equal rights for all citizens.

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<sup>39</sup> By advocating that bilateral committees should deal with the issue of the Hungarian minorities, and thus legitimising the involvement of the Hungarian state in the situation of the Hungarian minorities. See also the criticism of bilateral treaties regarding national minorities in Alfredsson, G. (1999). Identifying Possible Disadvantages of Bilateral Agreements and Advancing the 'Most-Favoured-Minority-Clause'. Protection of Minority Rights Through Bilateral Treaties. A. Bloed and P. van Dijk. The Hague, Kluwer Law International.

Therefore the CoE did not behave the way one would expect, if one believes in the impact of organisational culture; it did not treat the issue of national minorities and national minority rights reluctantly, but rather wholeheartedly. Yet, this is not so strange considering the upheaval after 1989, during which many European actors had to redefine themselves. The CoE continued to seem somewhat unfocused in the early years after 1993, probably a result of the different members of the Parliamentary Assembly who drafted the Reports and Resolutions.

Yet with the FCNM and the FCNM Advisory Committee the CoE became more focused. This poses the question of the degree to which the CoE can be treated as one actor, as differences exist between the Parliamentary Assembly and the FCNM Advisory Committee (the Council of Ministers is represented by too few and too brief texts to make it possible to say anything). This includes addressing the issue of discrimination, the framing of the Hungarian minorities as being represented by different sets of representatives, and the normative emphasis on good inter-ethnic relations, which all have been warranted solely or predominantly by the Advisory Committee.

However, the CoE institutions also have their similarities which to some degree set them apart from other organisations, indicating an influence of organisational culture, particularly an emphasis on the role of elite instrumentalism in provoking ethnic conflict. If we consider the periods in which there have been texts from the Parliamentary Assembly as well as the Advisory Committee, more similarities occur, indicating the impact of an organisational culture, although this impact may not have been very strong. The CoE texts (from the Advisory Committee as well as from the Parliamentary Assembly) also seemed to move more and more in the same direction as the texts from the other two organisations from the late Nineties and onwards. They increasingly addressed the same issues in the case of each country (education, laws on official communication, etc) and adopted positions similar to the other organisations, which best can be seen in the case of the Status Law.

Considering the influence of the CoE on the Hungarian minority policies, there is little doubt that it increased significantly with the advent of the FCNM, which ended up having the role as the framework for national minority protection that Recommendation 1201 was intended to have. It also gave the CoE a role as interpreter (and thus as a norm-maker) of the Framework Convention, and the Advisory

Committee's role in monitoring the states' compliance with it granted the CoE significant leverage over the states. Also the Venice Commission had a significant role as interpreter of international law in the case of the Status Law. Drawing on the distinctions between different kinds of authority established by Michael Barnett and Martha Finnemore (2004), I will argue that the CoE gained more symbolic power from the expertise authority of the Advisory Committee (and the Venice Commission) as interpreter of international norms and rules than from its moral authority as the embodiment of democratic values, which was more or less constant over the years. Also the delegated authority stemming from the states' delegation of authority over national minority issues in the context of the FCNM played a significant role for the CoE in the later years, as did the rational legal authority that was a consequence of the bureaucratic character of the Advisory Committee. More important, probably, was the role of the EU, which I will return to below.

The HCNM is an altogether different story. First and foremost it was established with security as its sole objective, which nevertheless did not prevent it from use justice arguments more or less from the start. One should keep in mind that the use of justice arguments does not necessarily say anything about the reasons for using these arguments, just the way in which it was chosen to argue. It is interesting that a "security-oriented organisation did not address issues such as the clashes in Târgu Mures or the disputes over the actions of Cluj mayor Gheorghe Funar. A likely explanation is that van der Stoel needed time to develop the mandate, but the ad-hoc nature of the responses and especially the change in discourse in relation to the Status Law indicates that this mandate has never been coherently developed. As the organisation consisted of one person and his staff, it is hard to point at differences within the organisation, except for the fact that Rolf Ekéus took over from Max van der Stoel in 2001. As the only texts from the Ekéus period are those concerning the Status Law, which differed in many respects from the other issues analysed, it is hard to tell whether the relative turn-around that the HCNM's reaction to the Status Law constituted was due to the changes in circumstances or in the person occupying the position of HCNM. It is likely that van der Stoel would have adopted a similar, yet perhaps less adamant position. Nonetheless the result is the same; the reactions to the Status Law, in which the HCNM played a leading role, constituted a "re-securitisation" of the Hungarian minorities.

As mentioned, the HCNM placed great emphasis on the issue of minority education, and has primarily framed the Hungarian minorities as something that individuals belonged to and also to a large degree framed them in terms of culture. When it comes to normative warrants, he has stressed that mutual understanding should be an end and that the representatives of the minorities should have a say in decisions affecting them, but also that the minorities have duties, especially the duty to integrate. Finally the HCNM has also - to a larger degree than the others - stressed the importance of following the recommendations of international organisations. I will argue that the HCNM's, or perhaps rather Max van der Stoep's, understanding of his own mission was to establish the long-term conditions for peace, namely a society where each ethnic group could express its own culture and have a say in decisions affecting it. This explains why he did not always address immediate security problems (except the Status Law), and often tried to de-securitise issues by addressing them in a technocratic fashion, so that they were framed rather as practical problems needing a solution than as divisive political issues. Examples of this include the use of experts in the drafting of recommendations for the Babes-Bolyai University in Romania and in the drafting of a revised Status Law proposal. This is in line with OSCE's concept of comprehensive security (Buchsbaum, 2002), which I will return to below.

His predominant vision, I will argue, for the above-mentioned society rested on the notion of minorities as unitary entities<sup>40</sup>, which solely are cultural and linguistic entities, and which should have the right to control their affairs within these fields. His framing of the minorities in terms of culture and language, and less in terms of politics (compared to the other two organisations) can also be seen as an attempt to make minority politics less of a "high politics"-issue. Each ethnic group should interact with other unitary groups on an equal footing, especially in political life, but there should be no attempts of integrating the groups or creating cross-cutting cleavages. Although the HCNM often talked about minorities as something which individuals belonged to, this conceptualisation did not have any impact on how the role of minorities was envisioned. Furthermore, I will argue that this vision was not so different from that of the other two organisations, except perhaps for the emphasis on culture, and had a strong justice-oriented perspective to it, as it was not just about creating peace, but also about creating a just peace. This vision was to a large degree the result of a "learning process", in which the HCNM gradually came to define what he saw as the ideal solution. This learning process involved charting a

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<sup>40</sup> When the HCNM addressed the role of the minorities in society, he predominantly framed them as unitary entities.

(sometimes irregular) course between various normative ends such as national minority rights protecting their culture, recognition, political participation of the national minorities and conflict prevention. In this course, the HCNM clearly prioritised political participation and the protection of minority cultures over outright recognition, a theme to which I will return later.

Whereas the HCNM in the early Nineties relatively unsuccessfully tried to promote the OSCE Copenhagen Document as the standard for national minority protection, he turned to the FCNM in the mid-to-late Nineties and used it as his predominant source of backing<sup>41</sup>. Thus he did not have the same expertise authority to interpret it as the CoE Advisory Committee had, although he did interpret it as well as the Venice Commission Report. Rather he derived expertise authority from the above-mentioned involvement of experts, and the moral authority stemming from being a small actor with no personal interest to pursue. It probably helped that the two HCNMs have been elderly statesmen without careers to pursue, originating from respectively the Netherlands and Sweden, two small countries generally perceived to be beyond power politics. Furthermore, the HCNM also held a certain delegated authority as he was appointed by the member states of the OSCE to take care of the national minority issues (although Slovakia was not an independent state when the decision to establish this office was taken). Concerning rational legal authority, the HCNM probably had less than the CoE Advisory Committee, as he hardly constituted an impersonal bureaucratic organisation, but he could still draw on experts in order to de-securitise issues by making them technical problems.

If we turn to the EU, there is also little variation within the organisation, as all texts emanated from the DG Enlargement. As the country desks<sup>42</sup> within DG Enlargement responsible for respectively Hungary, Romania and Slovakia worked closely together (Interview with former employee in DG Enlargement Bernd Biervert, 2005), there is little reason to believe that there have been differences within the organisation, which is supported by the lack of variation between the reactions to the policies of the three states.

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<sup>41</sup> This was not necessarily the result of a deliberate choice.

<sup>42</sup> The DG Enlargement was divided into country desks, each responsible for one accession country.

During the early years of its involvement (1997-1999) the EU's treatment of the issue has been characterised by an emphasis on the Basic Treaties as solutions and treating the Hungarian minorities as an international issue. This gave way to an approach more focused on domestic issues, probably due to increased reliance on the other organisations, especially the CoE FCNM Advisory Committee's Report. Like the other organisations, the EU has had to establish a role for itself in the field of minority issues through a cumbersome learning process. However, through all the years the EU has been characterised vis-à-vis the other organisations by its framing of the Hungarian minorities as unitary entities, emphasising the role of symbols in ethnic conflict, endorsing the participation of Hungarian parties in government and predominantly framing it as a security issue. In the case of the Status Law, the EU adopted a position very close to the other organisations, especially the HCNM, although slightly less critical. That the EU has sometimes used justice rather than security arguments has probably put the EU in a weaker position, as security was the only way the EU could justify the double standards between what it demanded of the accession states and the situation in most EU member states (Lerch and Schweltnus, 2006: 315).

I will argue that the EU had little authority or symbolic power, but held significant leverage over the three states as EU membership was the item highest on their agendas. Therefore it could influence the states directly, but had to rely on the other organisations for the necessary authority. Simply ordering the states to do as told would contradict its own declared values. This way, I will argue, a kind of exchange took place, in which the EU could use the symbolic power which the CoE and the HCNM had due to their above-mentioned kinds of authority, and the two latter organisations could use the political power or direct leverage the EU had over the two states. Hence the Council of Europe and the High Commissioner could point to the EU's adoption of their assessments and argue that if the Hungarian, Romanian or Slovak government did not follow their recommendations, their chances of EU membership would be diminished (for a similar argument regarding the OSCE, but not the CoE, see Sasse, 2005). On the other hand, the EU lacked both the expertise and the moral authority (as it was not seen as a disinterested party) to define the norms and assess the compliance with them. That the EU after 2000 relied heavily on the declarations of the CoE underscores that the CoE, after a period with relatively little authority, more than regained previous authority by the monitoring of compliance with the FCNM. Furthermore, the DG Enlargement had limited knowledge and expertise of the field, which

is one reason why it cooperated closely with the CoE and the HCNM and held annual meetings with them concerning the Hungarian minorities (Interview with former employee in DG Enlargement Martijn Quinn, 2005). Another reason is that the organisations this way could present a common position which would improve their situation vis-à-vis the states.

Thus, I will argue that it is possible to argue that taken together the recommendations of three organisations did have an impact. This can best be seen when comparing the situation in 1993 with that of 2004. It is clear that the two countries have moved in the direction recommended by the three organisations, although it is hard to tell to which degree this is due to the influence of the organisations and to which degree it is due to other factors. Even though the impact seems to have grown after the EU entered the picture, I will argue that it is a mistake to see the EU as the only organisation which mattered. Not only did the CoE and the HCNM establish the norms according to which the EU would later assess the states' compliance, but the former two also undertook a lot of this assessment themselves and worked closely with the EU on this. Additionally, it would not have been possible for the EU to have established these norms itself or to assess the compliance on its own, as it did not have the neutral status or moral and expertise authority of the CoE and the HCNM. Therefore, my argument goes, it would be a mistake to try to separate the influence of the three organisations. Rather, this interpretation of the relationship between the organisations tells a lot about how different types of organisations hold completely different kinds of power. Additionally, that the power that the HCNM and the CoE held as makers and interpreters of norms meant that they would establish the structures for the argumentation and practice of the EU.

Furthermore I will argue that organisational culture did have an impact, especially in the early years and more so in the case of the HCNM and the EU than in the case of the CoE. However, over the years the organisations cooperated more and more closely, culminating with the Status Law (Interview with former employee in DG Enlargement Bernd Biervert, 2005).

### **8.1.3 The States and the Governments**

If we first consider whether there are any significant variations between the use of warrants when addressing the different states, it is important to keep in mind that the case of the Hungarian Status Law

differs on too many accounts to be compared to the responses to the Romanian and Slovak governments. It has been rather hard to identify any differences between the treatment of Romania and Slovakia, except the obvious differences in the issues addressed. However, I find that the Meciar government was treated somewhat more harshly than the contemporary first Iliescu government. This is surprising, as Iliescu's first presidency saw ethnic violence and discrimination of the Hungarian minorities at a level which did not exist in Slovakia. One reason for this may be that Romania was considered more of a hopeless case, whereas Slovakia was held to a higher standard. Furthermore, Meciar had a more defiant attitude towards outside pressure, whereas Iliescu often paid lip-service to the demands of the international organisations and then ignored them.

Considering the variations between the treatments of the different governments, there are remarkable differences between the way in which the above-mentioned Meciar and Iliescu governments have been treated, and the way in which later governments have been treated. This is in part due to the fact that new issues appeared on the agenda and old ones faded away. Yet it is even more due to that these new governments included parties representing the Hungarian minorities and were a lot more understanding concerning their demands. That the organisations were more positively inclined towards governments which were willing to meet the demands of minority representatives is not surprising, but it is worth paying attention to the importance given to the minority participation in government. This was seen as something positive beyond the concrete results in terms of improvements for the Hungarian minorities. Interestingly, it seems that the organisations were willing to grant Iliescu the benefit of the doubt in the beginning of his second presidency in spite of his previous record, something which was probably due to his agreement with the UDMR. However, apart from this it is hard to argue that the government or the state addressed had a significant impact, except for the stricter treatment of Meciar than Iliescu, simply because no clear patterns in the use of warrants emerge.

#### **8.1.4 The Relationship between Basic and Specific Warrants**

Concerning the relationship between the basic and the more specific warrants, it is also hard to discern a specific pattern. One problematic aspect is that it has often been hard to distinguish whether an organisation has argued from a security or a justice perspective. On the other hand it has been easier to tell which basic factual warrant has been in play. In this case I will argue that which basic warrant that

has been used has a lot to do with which is issue that is being addressed and less to do with which organisation that is speaking. Thus, the use of basic factual warrants seems to be “determined” more by the issue addressed than by the organisation in question. In this way, the warrant that the Hungarian minorities are unitary entities has been used frequently when the political participation of these minorities has been addressed.

The same can be said for the competing factual warrant; that the Hungarian minorities constitute something which individuals belong to, this warrant has been the predominant warrant when education or other “rights”-oriented issues. This seems to indicate that the basic warrants have been used contextually, perhaps even strategically, so that the organisations have talked about “persons belonging to national minorities” when addressing issues concerning rights, as any formulation with a hint of collective rights would have been flatly rejected by Romania or Slovakia. On the other hand the organisations have differed in their use of the basic factual warrants, which seems to indicate that the use of basic factual warrants is due to organisational culture. Yet this variation in the use of basic factual warrants may also be due to the variation in the issues addressed, which again may reflect the organisational culture. Thus it is hard to say anything decisive about the use of basic factual warrants, except that context seems to have played a role in the choice of conceptualisations. That the context mattered does not mean that the organisational perspective did not matter, which it did for instance in the choice of which issue to address, but that the organisations, deliberately or not, let the context determine how the minorities should be framed.

In addition to this the basic normative warrants, however hard it may be to differentiate between them on some occasions, seem to follow a pattern in which there is a relationship between the warrant used and the issue being addressed, although in many cases it has been impossible to argue whether security or justice perspectives have been used. Thus the justice perspective has been the predominant basic normative warrant when issues such as education have been addressed, whereas the security perspective has been predominant in the case of issues involving inter-state affairs. However this is probably due to the nature of these issues, so that merely to address an issue such as the Basic Treaties indicates a security perspective. Yet I will argue that the fact the EU has addressed security issues more than others reveals a lot about the general perspective of the organisation. Thus, organisational culture

can be said to have a significant impact, especially in the choice of issues addressed. Yet it is also possible to over-emphasise the importance of the distinction between justice and security arguments, as the organisations often arrived at similar conclusions irrespective of their perspective, as has been the case with the political participation of the members of the minorities.

### **8.2.1 Perspectives – the General Organisational Discourse**

The three organisations have, besides addressing concrete national minority issues such as the Hungarian ones, also spoken on national minority issues in general. This has served to explain and justify the intention behind their policies, as well as to argue for their roles. Therefore I have looked at some of the texts on national minorities emanating from the organisations in order to investigate whether they can shed a light on the findings from analysis, and whether there have been any discrepancies between the general discourse and that dealing with the Hungarian minorities. As there is an abundance of texts, I have chosen to focus on those I find the most relevant.

To begin, the CoE can be characterised by a general consistency between its general discourse and its use of warrants when addressing the issue of the Hungarian minorities. The general discourse was very abstract in the beginning and, like the Hungarian minority-specific discourse, became more focused with the advent of the FCNM. Already from the beginning of the Nineties there was a new interest in national minorities, which to a large degree was a reaction to the wars in Yugoslavia and the (ex-) Soviet Union. The 1993 Vienna Summit Declaration, signed by the Heads of State of the CoE member states, emphasised the importance of protecting national minorities (Council of Europe, 1993e). As was the case with the HCNM, the prevention of conflict was linked to democracy and human rights, which meant that justice and security concerns were also intertwined (Council of Europe, 1993e; Lalumiere, 1993). Unlike the HCNM, the CoE solidly placed the issue of national minorities within its pre-existing human rights umbrella. Right from the beginning there was an emphasis on dialogue and mutual understanding, which was probably emphasised even more than in the texts analysed here (Council of Europe, 1993f; 1993e; 1995a; Lalumiere, 1993).

However, with the FCNM the discourse of the CoE became more focused. I have already dealt with how the FCNM Advisory Committee has authoritatively interpreted and to some degree expanded the

rather vague provisions of the FCNM. Here it suffices to say that the FCNM provides basis for the CoE's emphasis on education and the use of Hungarian in official communication, as well as the endorsement of bilateral treaties and trans-border cooperation, while insisting on the respect for territorial integrity and sovereignty (Council of Europe, 1993e). The emphasis on good inter-ethnic relations has also been emphasised by the CoE in its general discourse as well as the Hungarian minority specific discourse. Yet it is also interesting to see how the very vague endorsement of "effective participation in public life" in the FCNM has led the FCNM Advisory Committee to endorse the participation of Hungarian minority parties in the governments of the two countries (Council of Europe, 1995a). This is a departure from the emphasis on merely protecting the minorities and their culture, which has characterised its general discourse (Council of Europe, 1993e; 1995a). To a certain extent it can be said that the CoE conceptualised the right to "effective participation" as a collective right, which contradicts the official emphasis on avoiding collective rights (Council of Europe, 1995a).

Also in the case of the HCNM, I will argue that there has generally been consistency between the general discourse and the argumentation employed in the texts addressing the Hungarian minorities, yet in both cases there have been inherent contradictions. The consistency can be seen in the emphasis on the role of dialogue in solving problems between the minority representatives and the government (van der Stoel, 1994a; 1999a; 2000b; Zaagman, 1995). The same goes for the broad understanding of security, including individual freedoms, human rights and democracy in what is known as the OSCE's comprehensive concept of security. According to this conceptualisation, justice concerns such as democracy, individual human rights and minority rights, etc are mutually interdependent with conflict prevention, and should therefore also be addressed (Buchsbaum, 2002: 13-14). However, whereas it is clear that in his practice the HCMN often included issues not considered as relating to security, he has not (at least not in the case of the Hungarian minorities) included such topics as economics or the environment (van der Stoel, 1994a; 1999b; Zaagman, 1995). This relates to a theme common for both the analysed texts and the for the concept of comprehensive security, namely the interweaving of security and justice elements, although with the former as dominant, which is unsurprising, as the HCNM was created as a security institution. In both kinds of texts have (liberal) democracy and human rights have been seen as fundamental for solving minority issues. According to Gwendolyn Sasse, the OSCE's comprehensive security concept places itself right between security and rights/justice

concerns, thus underscoring that the security-justice distinction should not be seen as establishing discrete categories (Sasse, 2005: 681).

Another common theme has been the long-term prevention of conflicts, which has meant that the HCNM would address issues not directly relevant for a potential conflict (Kemp, 2001: 33-34). This is also part of the HCNM mandate, but interestingly the HCNM has in practice downplayed much of the more short-term conflict prevention (for instance avoiding the issue of the Târgu Mures violence) and also the possibility of early warning, which was part of the mandate, has been left unused. The best way to see this is probably as an attempt to avoid securitising the issue. Concerning causal warrants, the HCNM has in his general discourse always adopted an instrumentalist view of national or ethnic conflict, seeing it as the result of manipulation by elites during times of turmoil and insecurity (Kemp, 2001: 30; van der Stoel, 1994a; 1999a). The solution is to make people realise their shared interests, provide for the protection of minority rights and de-securitise issues by framing them as practical and concrete rather than ethno-political issues, conceptualisations which have also been employed when addressing the Hungarian minority issues.

However, on some counts there also exist inconsistencies. Some of these concern the conceptualisation of the self-government of minorities. Although the HCNM has in practice advocated granting the Hungarian minorities some degree of self-government on different occasions, the advocacy has never amounted to the advocacy of non-territorial and even territorial autonomy of van der Stoel's addresses to the Pazmany Peter University in Budapest and to the international seminar on "Legal Aspects of Minority Rights" held in Zagreb (van der Stoel, 1999a; 2000b). On the former of these occasions, as he had done on other occasions, the HCNM also talked about the erosion of the nation-state and the positive value in moving beyond it towards "integrated societies within and beyond States" (van der Stoel, 1999a). It can be argued that this is at odds with the reaction to the Hungarian Status Law, where the HCNM very much defended the territorial state, but in that case it was Rolf Ekéus who held the post of HCNM. Whether the reaction to the Status Law is at odds with the notion of "integrated societies within and beyond the States" depends also on whether the Status Law is seen as creating a fuzzy citizenship where ethnic Hungarians hold allegiances to the Hungarian state and their home state at the same time, or as re-establishing a Greater Hungary.

The fact that van der Stoel was addressing a Hungarian audience may also have mattered when it comes to the integrated societies beyond the state, yet he advocated territorial autonomy both to the Hungarian audience in Budapest and the international audience in Zagreb<sup>43</sup>. As Ekéus took over as the Status Law controversy unfolded, no statements exist from which to glean his position before the Status Law changed the situation. Yet, on the basis of some of his later statements, I will argue that he prioritised the more justice-oriented aspects of minority politics lower than van der Stoel had (Ekeús, 2002a; 2002b).

In some cases the developments in the practice directed at the Hungarian minorities and the general discourse seem to follow the same pattern. It is not surprising that the concept of effective participation became more focused after the 1998 Lund Recommendations on that subject, although some of the ideas inherent in the notion had been used previously, especially in connection with the minority councils or the electoral process. Interestingly, the Lund Recommendations and the HCNM in more general speeches interpreted effective participation as including full self-governance (also in the shape of territorial autonomy), an interpretation which has not informed the HCNM's reaction to the Hungarian minority issue (Foundation on Inter-Ethnic Relations, 1999; van der Stoel, 1999b; 2000b).

A related development is the warranting of multiculturalism as an ideal in both concrete recommendations to the Romanian and Slovak governments and official discourse (van der Stoel, 1999a). However, van der Stoel also talked about this in terms of multiple identities at the Pazmany Peter University, something which can not really be seen in his recommendations to the governments. These discrepancies reveal an important inconsistency between the official discourse of the HCNM and his argumentative practice.

Concerning the EU, there has been much less of an overarching perspective on minorities. The Copenhagen Criteria from 1993 did include “human rights and the respect for and protection of minorities” (Council of the European Union, 1993). Here, as it was the case with the CoE, minority policies were framed as being about protecting minorities. The Copenhagen Criteria placed minority on

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<sup>43</sup> The seminar in Zagreb had participants from a range of different OSCE countries.

the EU agenda, more specifically the enlargement agenda, but the Balladur Plan clearly adopted the security perspective on national minorities and introduced bilateral treaties as an instrument for dealing with minority issues. This is in line with the perspective adopted in the texts analysed, where the security perspective and emphasis on bilateral treaties were also predominant, at least until the EU started to rely more on the other two organisations and especially the CoE.

### **8.2.2 Perspectives – Comparison with the Interwar Period**

As the return of national minority rights to the international scene in the Nineties bears many similarities to the interwar period, it is worth investigating the extent of these similarities when we include the practice of the organisations. When comparing these two periods, the commonalities between them become more evident when comparing both of them to the 1945-1990 period, especially the period prior to the 1966 UN International Covenant on Civil and Political Rights. The most important similarity is the very concept of national minority rights, which contradicts the predominance of individual rights in the Cold War period. Furthermore, the monitoring of these national minority rights by international institutions is another similarity, although there is a difference between the monitoring by one organisation (the League of Nations) and the interaction between three monitoring organisations in the analysed period. I will also argue that the fact that the monitoring was focused solely on Central and Eastern European states during the interwar period, and predominantly during the post-Cold War period constitutes a similarity. The fact that in both periods a legal and a political dimension to the monitoring existed also constitutes a likeness, which is also the case with the interweaving of justice and security arguments (see for instance Claude, 1969).

Importantly, as discussed previously, many of the rights have been the same in both periods, including the linguistic rights to use the minority languages in the education system and before the courts. However, the national minority rights as conceptualised by the three organisations go further than those from the interwar period, by for instance conceptualising communication with the authorities in the minority language as a right, and by placing a duty upon the state to ensure that there is a sufficient number of minority language teachers and teaching material. Yet there is also a fundamental similarity between the two periods: the minorities are framed as homogenous entities which are distinct from the

rest of the population due to a different culture which should be preserved, nonetheless integration is also an important end.

Nevertheless it would be a mistake to see the two periods as completely similar. First of all I will argue that the League of Nations was relatively less influential than the three organisations analysed here, although, as Inis L. Claude (1969: 29) has argued, it is a mistake to judge the League of Nations solely on its failures and ignore its role in establishing international norms (for a conflicting view, see Krasner, 1999). The lack of impact, I will argue, was mainly due to the absence of conditionality and incentives during the interwar period, in which there was no equivalent to the incentive of EU membership. On the other hand, the treaties between the Central and Eastern European states and the Allied powers which constituted the framework for minority protection in the interwar period had a status of fundamental law, unlike the FCNM, which is merely a framework convention. Today this gives the signatory states larger discretion concerning which legal rights they choose to grant their national minorities. Another difference is the right to petition, which existed in the interwar period (for kin-states and to some degree national minority representatives), but does not exist as a legal right today, although the Hungarian state's complaints over the treatment of its kin-minorities have occasionally been listened to. Additionally, the letter from the Slovak Hungarian parties in 1994 was addressed by the CoE Parliamentary Assembly. Finally, although the protection of the Hungarian minority cultures has been an important end for the organisations, they have gone further than this, as they have argued for the effective participation and even sometimes for the (limited) self-governance of the Hungarian minorities. This can be seen in the support for the participation of Hungarian minority parties in government.

### **8.3 The Findings in a Theoretical Perspective**

I will argue that the use of warrants by the organisations and the developments over time described above are best understood in the light of the theories described in chapter 1. Therefore I will use the same structure as in chapter 1, and discuss which of the theories best fit the emerging picture, and to which degree they can have informed the policies of the three organisations.

*The Causes of Ethnic Conflict*

Starting with the warrants concerning the causes of ethnic conflict, the emphasis on perceptions and dialogue seem to fit with constructivist theories in their emphasis on the amendable character of relations between groups and their role in society. However, at times the use of these two warrants has born some resemblance to structuralist or realist theories, which emphasise the importance of the feeling of insecurity and of the negative spiralling of relations between groups. There has also been an emphasis on the role of elites, especially in CoE texts, indicating a rather instrumentalist view, according to which conflict is caused by the manipulation by politicians trying to create or maintain a power-base. This is also in line with the argument, used many times by the Max van der Stoel (van der Stoel, 1994a) and also by theorists such as Konrad Huber and Robert W. Mickey (1999), that the insecurities and upheavals of the transition from Communism have made people more susceptible to manipulation. Thus, there has been an affinity with, and possibly an inspiration from, the literature arguing that transition has been an important causal factor in ethnic conflict, a causal explanation which leaves unexplained the ongoing conflicts in Northern Ireland, the Basque Country and other places in Western Europe. In general, the claim that Eastern Europe is different when it comes to nationalism and ethnic conflict seems to lie beneath many of the organisations' arguments and their overall focus on Central and Eastern Europe, although no direct comparisons are made with Western Europe in the texts analysed. Yet, it is the Communist past and the transition, rather than the origins or nature of Eastern nationalism which is warranted as the reason for this difference.

At the same time, the EU has stressed the importance of symbols and the narration of the past in the EU texts, something which is compatible with seeing manipulative elites and transition as causal factors. In fact, these causal factors come together in many constructivist works, such as Stuart Kaufman (2001) and to a lesser degree Jack Snyder (2000) and Rogers Brubaker (1996), but can also be seen in primordialist theories such as Walker Connor's (1994; see also Kaufmann, 2005). As the EU has warranted that the identities of the ethnic Hungarians (and Romanians and Slovaks) are constant, it is possible to argue that the approach of the EU is better described as being ethno-symbolist than constructivist. All three organisations, but especially the EU, have also emphasised the role of the kin-state as a potentially conflict-provoking factor.

Turning to the causal theories which have clearly not inspired the three organisations, there has been little use of arguments which operate with ancient hatred as a cause of ethnic conflict (with the exception of a few of the early reports from the CoE Parliamentary Assembly). Furthermore, rational choice-theories which operate with economic rivalry as a cause of conflict (such as Esman, 1990) have not been warranted much either, which is interesting, as there are significant economic disparities between the Hungarian minorities and the majorities, particularly in Romania, making this a potentially important causal factor. Yet it is possible to argue that rational choice-theories which view miscommunication between the ethnic groups as a causal factor (see e.g. Fearon and Laitin, 1996), to a certain degree fit some of the discourse of the three organisations, and may have been some inspiration, even if this is somewhat difficult to demonstrate.

### *Regulating Ethnic Conflict or Difference*

Understandably, the organisations have addressed the issue of how to prevent violent ethnic conflict, although often in a rather implicit way, as they feared mentioning conflict would increase this likelihood. First and foremost, it is easy to see that the organisations have urged the states to manage the consequences of ethnic difference rather than eliminating these differences. More specifically, the organisations have advocated that the representatives should have a say in the decisions affecting their own situation, either through minority councils or participation in government. I will argue that this advocacy of power-sharing together with other factors indicates that the ideal held by the organisations amount to a kind of consociationalism “light”. As mentioned in chapter 1, a fully consociational system has four characteristics, of which the first two are by far the most important (Lijphart, 1990: 494-495):

1. The participation of all significant ethnic groups in the government of the state, which I will refer to as power-sharing.
2. Autonomy or self-government for each group, be it territorial if the group is concentrated, and cultural if it is dispersed
3. Proportionality as the standard for political representation as well as public appointments and funding.
4. Minority veto in case its fundamental interests are threatened

Considering power-sharing, the organisations have stressed the importance of the minority participation in government. This can be seen in the endorsement of this participation by all three organisations and the interventions of the EU and the HCNM in order to ensure that the SMK stayed in the Slovak government during a serious crisis in 2001 over administrative reform and changes to the Constitution. It can also be seen in the EU's worry that a split in the UDMR might mean that there would be no Hungarian parties in parliament, thus making inter-ethnic power-sharing impossible (Interview with former employee in DG Enlargement Martijn Quinn, 2005). Also the HCNM's advocacy of what he refers to as "multi-culturalism" at the Babes-Bolyai University is an example of this (van der Stoel, 2000c), as I find that the system for running the university amounts to a kind of "consociationalism-at-university-level". Nevertheless it would be a mistake to equate the participation of minority parties in government with a consociational system, and the advocacy of this kind of participation with consociationalism. A consociational system requires some kind of institutionalisation of the guarantee for this participation. And an outright institutionalisation of this power-sharing has not been advocated. Furthermore, the endorsement of power-sharing has been reactive (it only happened after the Hungarian parties were included in government), and the HCNM has to a large degree ignored it (although he placed much emphasis on the Councils of National Minorities).

Autonomy was given even less attention by the three organisations. The concept of territorial autonomy was either ignored (the EU and the CoE) or treated as one possibility among many (HCNM). Personal or cultural autonomy was at times mentioned, but due to the unpopularity of the concept of autonomy in Romania and Slovakia (where it was equated with territorial autonomy), it was advocated explicitly relatively rarely, except for a few HCNM recommendations in the mid-Nineties to the Meciar government. Nonetheless, great importance was granted to the notion of letting minorities have a say in decisions affecting them, something which will also be discussed under the heading of self-determination. The endorsement of the fact that the Hungarian parties held the post of Minister for National Minorities both in the 1996-2000 Romanian and in the 1998-2006 Slovak governments, says something about the perceived importance of this Hungarian influence over own affairs. One can imagine other ways of perceiving the fact that members of the UDMR and the SMK held these posts, including the idea that representatives of minorities are exactly those who should not have control over minority issues, as it may create small minority "fiefdoms" within the state. Furthermore, it could be

argued that it is preferable to give the minority parties “ethno-neutral” ministries, as it “de-politicises” ethnicity and “de-ethnicises” politics.

The same criticism can be directed at the other, less important, way of letting minority representatives have a say in decisions affecting “their” minorities, namely the Councils for national and ethnic minorities existing in both countries. The councils have been consulted on issues relating to minorities, but have not had any veto rights or other possibilities for altering legislation. In these councils, the Hungarian representatives sit together with representatives of other national minorities, which altogether give the Hungarian representatives less power. These councils have been endorsed by all three organisations, and particularly the HCNM has suggested expanding their influence. Hence, I will argue that the organisations’ endorsement of the granting of authority over decisions affecting the Hungarian minority, and other minorities, to representatives of the Hungarian parties again amount to a diluted version of consociationalism.

The third, and relatively less important, aspect of a consociational system, a political system of proportional representation, has on the other hand not been addressed, as it already existed in Romania and Slovakia. Considering the fourth aspect of consociationalism, the veto, the organisations, especially the HCNM, have stressed the importance of consulting the representatives of the minorities on issues affecting them, particularly through the Councils of national minorities. This far from amounts to a veto, but it makes it slightly harder to push through legislation that a minority has come out against, especially given the international scrutiny.

Yet the most important reason why I argue that it makes sense to talk about “consociationalism light” as the underlying norm of the three organisations (possibly more in the case of the EU and the CoE than the HCNM) is the fundamental conceptualisation of issues such as the Hungarian minorities and their participation in politics. The political participation of ethnic Hungarians in Romania and Slovakia has almost solely been framed in terms of being one entity with a specific set of representatives. This is done by referring to the Hungarian parties as “the representatives of the Hungarian minority” or “the party of the Hungarian minority” as all three institutions have done often. This framing excludes not only the possibility of depoliticising the Hungarian minority, but also seeing the ethnic Hungarians as

part of a wider civic community encompassing all Romanian or Slovak citizens. Additionally, this frame does not allow for politicising, or merely taking into account, the differences existing within the Hungarian minorities in Romania and Slovakia, or seeing an individual's identity as ethnic Hungarian as one identity among many, such as class or religious identity.

The argument is not that the political participation of members of the Hungarian minorities necessarily should have been framed in a different way, but to demonstrate that this framing can tell us a lot about how political participation of ethnic minorities was conceptualised in the argumentation of the three organisations. And that this conceptualisation is similar to the perspective espoused in consociationalism: political participation happens via the interaction of ethnic elites, and there is, at least in the case of minorities, one specific ethnic point of view and one specific set of interests. This can also be seen in the causal warrants emphasising the role of elites.

This has to be compared to the integrative approach advocated by Donald L. Horowitz (1990a; 1990b). This approach, which has been the arch-rival of consociationalism in the academic debates, does not start with the ethnic groups as givens, but adopts a more individualistic approach, and calls for the promotion of cross-cutting cleavages. However, with the exception of the HCNM no organisation has stressed the importance of integration. And even he conceptualised it as the functional integration of minority members, who are framed as being primarily Hungarian, into political and economic life, rather than establishing political bonds encompassing or criss-crossing different ethnic groups. Thus, ethnicity is far from de-politicised. Rather, it is possible to argue, following Rogers Brubaker, that the organisations' framings constitute groupism, that is, the treatment of ethnic groups as substantial entities to which interests and agency can be attributed and thus ignoring that they consist of individual agents with distinct interests (Brubaker, 2004: 50). Furthermore, according to Brubaker it is a mistake to equate actors claiming to represent groups with the groups themselves (Brubaker, 2004: 57). Yet it would be a mistake to argue in this case, that the groupism of the organisations has played an important role in creating the Hungarian minorities, as there already existed strong group identities (possibly the result of earlier reification) and institutionalisation when they entered the scene. The existence of these group identities probably meant that the organisations would not have come very far with promoting any kind of ethno-blind solutions, or that the promotion of such solutions most likely would have been

used as cover for majority nation-building. However, integrative solutions which do take the existence of ethnic groups into account, such as those suggested by Horowitz (1990a; 1990b) or Snyder (2000), could have been plausible as suggestions from the three organisations.

Another theoretical approach which deserves mentioning, is that which advocates the “watering down of borders” between kin- and home-states, i.e. some kind of “post-modern” fluid and border-crossing political spaces. Interestingly, whereas the organisations have repeatedly called for using the bilateral treaties and co-operation for solving disputes, thus often advocating that Hungary should be granted a say in matters concerning the Hungarian minorities, a clear line in the sand was drawn when reacting to the Hungarian Status Law. Thus, bilateral co-operation between the states as well as (some) interaction between ordinary people was defined as acceptable, but kin-state involvement going beyond this was conceptualised as infringing on the territorial sovereignty of the home-state. Hence, although the organisations advocated creating “ethnic” spaces within the territory of the state (something which will be discussed below in relation to multiculturalism), these spaces should not cross the borders of the state and create a pan-Hungarian ethnic space, as the Hungarian government desired. In other words, territorial sovereignty was given primacy over both ethnicity and the process of making borders less important, which is interesting, as the EU has often defined itself exactly as being about softening the borders between the European states. Bilateral treaties are often criticised for granting kin-states a de facto influence on the territories of other states (Alfredsson, 1999; Deets, 2006b). This raises the question of whether the organisations went down the path of bilateral treaties only to discover its pitfalls and make a full u-turn, or as Stephen Deets puts it, to be “pulled back from neo-medievalism” (Deets, 2006a). This again raises the question of how much the organisations have learned from the interwar period, as it was exactly the misuse of bilateral treaties (especially by Nazi Germany) which led the international society to abandon them post World War II.

### *Ethno-Cultural Justice and its Alternatives*

If we turn to the justice-oriented theories, it is interesting to see that the organisations’ use of justice-arguments resemble their use of security-arguments, as both kinds of arguments often pointed to similar kinds of society. This was namely one in which the principal entities are ethnic groups, not individuals, and in which each group should have its own space, although other underlying discourses

have also existed. This shares many fundamental tenets with the notion of (liberal) multiculturalism, although there are also significant differences (Kymlicka, 2000; 2001; Malloy, 2005; Taylor, 1993; Walzer, 1993). The similarities all rest on the emphasis on culture and language, which are intrinsically linked in among others Kymlicka's works as well as with most of the texts of the organisations. There is also a rough correspondence (although with a slight time-lag) between the point at which the multiculturalism-debate emerged in academia and the moment when the HCNM started to talk about multiculturalism.

According to Kymlicka (2001), language is the centre and binding kit of a "societal culture", a concept which in this context can be equated with the minorities or the majority nations. This constitutes a fundamental difference from "civic" theories of citizenship, which emphasise that the polity should establish its own community and create a sense of identity and belonging. Instead, according to Kymlicka and others advocating multiculturalism, the polity should be based on pre-existing communities of people with the same language and culture. However, this does not mean that each ethnic group/societal culture should have its own state, rather that the state should be acknowledged as an instrument of the majority, and those issue areas which affect the reproduction of minority cultures should be left to them, whereas other areas should be dealt with collectively under the umbrella of the state. This has many similarities with the normative ideal held up by the organisations, here too, there has been a clear distinction between the ethnic/cultural level and the civic/state-level. This can be seen in the way they have talked about preserving and promoting minority culture, and giving the Hungarian minorities a say in decisions concerning minority culture, and, in a different vein, the way they have framed minority participation in political life (qua Hungarian minority parties). It can also be seen in the advocacy of liberal rights, such as the right to leave the group, which has been stressed by Kymlicka in theory as well as by the HCNM in practice.

Nonetheless, there are also significant differences in that the organisations, even when they were in their most "multiculturalist mood", conceptualised culture as something which should be tolerated and preserved rather than recognised (for a discussion of toleration and recognition, see Walzer, 1993). This can be seen in that they promoted rights which would ensure the preservation of the Hungarian minority cultures, such as the right to minority language education, but not the recognition of the

Hungarian minorities as constituent nations in the constitution, or the recognition intrinsic in autonomy, in granting Hungarian the status of official language, or in institutionalising power-sharing (for more detailed discussions of these kinds of recognition, see Deets, 2006b; Malloy, 2005). In this manner culture was de-politicised by the organisations, something which runs counter to the very premise of multiculturalism.

According to multiculturalists, each group then has the right to engage in nation-building, that is, the promotion of the group's culture and language and the integration of individuals into this culture and language. Here a fundamental difference exists between the ideal of the organisations and Kymlicka's notion of liberal multiculturalism. Whereas both define the preservation of minority culture as one of the most important ends, the organisations saw this end achieved primarily by (rather limited) minority rights, whereas Kymlicka argues that this can only be achieved by giving them full control over the means of cultural reproduction, i.e. autonomy. And although the organisations did suggest that the minorities should have significant influence over decisions affecting minority culture, they did not advocate autonomy, particularly not the territorial autonomy that Kymlicka argues is the right solution for territorially concentrated minority groups. Hence the organisations have not linked culture and politics in the same way as multiculturalists. Although this is to some degree due to the previously mentioned hostility towards autonomy in Romania and Slovakia, I will argue that the organisations have emphasised the promotion and preservation of minority culture primarily via minority rights. This differs from preservation of minority culture by autonomy in that it does not grant the minority the right to decide how to develop and preserve the culture, but instead leaves it up to the state. Culture is framed as something to preserve rather than as the basis a claim to self-governance, something which I will return to below. Altogether, although the organisations, most explicitly the HCNM, share some of the premises in their argumentation with liberal multiculturalism, they do not go anywhere as far when it comes to suggesting concrete policies as multiculturalists have suggested (see among others Kymlicka, 2001).

### *Language Policy and Rights*

The linkage of language and ethnicity can also be seen in the focus on language rights and policy. Considering Daniel Weinstock's (2003) three functions of language discussed in chapter 1, namely

communication, access to culture and carrier of identity through generations, I will argue that the organisations have predominantly conceptualised language usage in terms of access to culture. This is because the organisations have focused their attention on issues such as education and the teaching of history as well as Hungarian media and place and person names in Hungarian.

Yet, the emphasis on official communication in Hungarian and (primarily in the case of the HCNM) on the duty to learn the state language are both founded on a conceptualisation of language as being about communication, although the former also amounts to a limited kind of symbolic recognition. However, if this conceptualisation had been dominant, more emphasis would have been placed on learning the state language, as many of the policies advocated by the organisations have been probably detrimental to communication (and thus possibly also to inter-ethnic understanding). For instance the existence of teaching in Hungarian at all levels of the educational system (instead of merely having introduction classes in Hungarian) has most likely inhibited students in learning Romanian and Slovak. Therefore such policies would make little sense from a perspective conceptualising language as communication, but a lot of sense from a perspective conceptualising it as fundamental for the preservation of the Hungarian minority cultures in the two states. Concerning the conceptualisation of language as the carrier of identity over the generations, Weinstock had in mind the use of language to pass knowledge which depends on specific words and terms between generations in cultures “threatened” by assimilation, such as Native Americans or Australians. As the Hungarian minorities are in little danger of being assimilated as a whole by the Romanian and Slovak nations, this has little relevance for this thesis.

If we look at the principles according to which the language rights have been implemented, it is clear that some rights (those concerning official communication and place names) have been conceptualised as best implemented according to the territoriality principle (Kymlicka and Patten, 2003a: 29-30; Patten, 2003; Réaume, 2003). This means that the rights should only be exercisable in specific parts of the two states, more specifically where the minority population constitutes more than 20% of the population. Other rights, such as most notably those concerning minority education, have been conceptualised as best implemented according to the personality principle, that is, they should be exercisable by individuals irrespective of where they are on the state territory (although there may be

practical limitations). This has backing in international documents such as the FCNM and the Copenhagen Document, but does not exist in other. It is interesting that both the right to receive education in the minority language and to official communication in it can be applied according to both principles, which means that there is no definitive reason why they have been conceptualised as they have. Additionally, as Gwendolyn Sasse has argued, the right to use minority language in public moves culture from the private to the public and political sphere, thus adding a (relatively insignificant) political dimension to an otherwise apolitical conceptualisation of culture (Sasse, 2005: 681). Yet this is far from the politicisation of culture that multiculturalists have argued for (Kymlicka, 2000; 2001; Taylor, 1993).

Generally, the language regime advocated by the three organisations is best described as one of norm-and-accommodation. This means that the Hungarian language should not merely be tolerated as a means for private usage, but should be promoted by being used in public institutions (Kymlicka and Patten, 2003a: 27-29). On the other hand, it has never been argued that Hungarian should have official status, but rather that Romanian and Slovak should be the norm, and Hungarian speakers should be accommodated when interacting with public institutions. Thus, the organisations have not argued for the recognition of Hungarian culture and language, but merely conceptualised language and culture as instruments to preserve and tolerate the Hungarian culture. Concerning collective rights, the organisations have followed the compromising line of the FCNM and talked about the rights “of persons belonging to national minorities may exercise the rights...individually or in community with others” (Council of Europe, 1995a). This way they have avoided provoking Romania or Slovakia by referring to collective rights, but have nevertheless advocated rights with strong collective aspects, such as the right to place names in Hungarian or, on a more abstract level, the right to promotion of the Hungarian minority culture.

### *Self-Determination and Self-Governance*<sup>44</sup>

As mentioned above, the organisations have not advocated self-governance in the shape of autonomy. On the other hand, I will argue that in advocating that the minorities have a say in decisions affecting

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<sup>44</sup> I here rely on Rainer Bauböck's (2006) distinction between self-determination and self-governance, according to which self-determination includes a right to determine the group's relationship with the state and other states, whereas self-governance merely consists of the group governing itself.

them amounts to a somewhat diluted version of self-determination. Furthermore, I will also argue, following Kymlicka (2006), that the concept of “effective participation” can be conceptualised so that it not only includes the right to participate on an equal footing with others in political life or to be represented in elected bodies, but also the right to be ensured that this participation has effects. Thus, according to Kymlicka, the concept of effective participation can be conceptualised in an extensive fashion that makes it similar to self-determination or rather self-governance. I will argue that this has been the case in some of the instances (the organisations have not been fully consistent here) where the organisations have argued that the minorities should have a say in decisions affecting them, either via minority councils or government participation.

Whether this has been deliberate or not is hard to say, but undoubtedly arguments based on the concept of effective participation have been more acceptable to the Romanian and Slovak governments than arguments based on the concept of self-determination. The use of the far-reaching conceptualisation of effective participation is not so surprising given the Lund Recommendations, which among others advocated effective minority influence at national level and defined (territorial and cultural) autonomy as possible forms of minority self-governance (Foundation on Inter-Ethnic Relations, 1999). In fact, it is surprising that the HCNM did not argue more strongly for effective participation as self-governance, nor refer once to the Lund Recommendations, something which is probably due to security concerns.

Yet it is also worth considering the conceptualisations of self-determination which have not been considered at all. Not only has territorial autonomy as mentioned been more or less ignored, but the same has also been the case with any arguments claiming that the Hungarian minorities deserved self-determination due to past injustices or in order to preserve their culture (as suggested by Kymlicka, 2001). Thus, the self-determination of the members of the Hungarian minorities are conceptualised by the organisations as taking place via the democratic political system. Yet, according to this conceptualisation the participation of the minority members is neither similar nor equal to the participation of other citizens, as the system is not blind to ethnicity. This means that there is a need for not only “levelling the playing field”, but for letting the minority members participate as one entity representing the specific minority interests. This has been done by arguing for effective participation in the “strong” sense, which is one way of handling the issue of the relationship between culture and

politics, as people participate qua their ethnic group which is defined by culture. Yet this does not mean that each ethnic culture has a claim to its own political space as multiculturalists would argue, merely that they have a right to “ethnified” outcomes.

### **8.3 Theoretical Implications**

If we turn to the implications of the findings for the theoretical literature, it makes sense to start with the literature which deals with the organisations themselves and their minority policies. One of the most important distinctions within this literature is the distinction between constructivists and rationalists. According to the standard description of this distinction, constructivists have emphasised the importance of norms and argued that actors’ internalisation of Western norms have led to changes, whereas rationalist have emphasised self-interests and argued that only EU (and NATO) membership conditionality has brought about change (Schimmelfennig, Engert et al., 2006: 2-5; Schimmelfennig and Sedelmeier, 2002).

This has led Judith Kelley (2004b) in one of the most important texts on the subject to test the impact of respectively the normative persuasion of the CoE and the HCNM, and the conditionality of the EU and the CoE. Her conclusion is that the membership conditionality of the EU has been the decisive factor, and the CoE’s and the HCNM’s moral attempts to install the right norms in the CEE states have been largely without effect<sup>45</sup>. This leads her to argue that norms, and organisations such as the CoE and the HCNM which primarily are “norm-makers”, hold little power. However, she leaves the possibility open that the CoE and the HCNM have had indirect leverage in shaping the policies of the EU, yet without developing much on this (Kelley, 2004b: 449-450). This is exactly where the findings of this thesis fit in, as they not only describe how the CoE and the HCNM have had significant influence thanks to the exchange of power between the organisations, but also address how norms have structured the policies of the organisations. Thus, it is wrong to say that norms do not matter, although they may matter in a very different way than most of the literature has treated it. That is, they have not played a role in altering the identities of members of the CEE elites, but by making certain of the actions of the three organisations intelligible and possible (Flynn and Farrell, 1999: 509-511).

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<sup>45</sup> Frank Schimmelfennig et.al. (2006) arrive at a similar conclusion when analysing a broader spectrum of policy areas.

As part of my argument is that the power of the CoE and the HCNM was power beyond conditionality, it is possible to argue that it is not only the concept of norms which is slightly misleading in much of the literature, but also the concept of power. Instead of looking solely at power in the traditional sense of power as making actors do what they would not otherwise have done, it makes sense in this context to include notions of symbolic power. I hope to have demonstrated that power is not necessarily power in Robert Dahl's sense, that is, something which one actor holds over another actor and uses to make the other actor do something it would not otherwise have done (Dahl, 1957). This is indisputably an important kind of power, but power can be more than just direct and causal (Barnett and Duvall, 2005).

That power can have different aspects can also be established from the findings of the thesis. First of all, power does not have to concern a direct relationship, something which can be seen in that the HCNM and the CoE held power over the three states, but this was most of the time an indirect relationship, as the power was exercised via the EU. Whereas the EU held direct power over the three states qua its conditionality, it would be misleading to say that the HCNM and the CoE held direct power over the EU. Rather, they held a kind of symbolic power to have their interpretations of the world and the rules governing the world accepted by the EU. This symbolic power concerns the second lesson concerning power to be learned from the thesis, namely that power does not have to be causal. The HCNM and the CoE did not cause the changes in the policies of the three states, but they shaped and made possible the EU conditionality that was an important causal factor in many of the changes. By bestowing legitimacy on the demands of the EU, which otherwise would have appeared illegitimate and hypocrite, the HCNM and the CoE made it possible for the EU get involved and have an impact. And by interpreting the norms and evaluated whether the states were in compliance with these norms, the two organisations guided the EU's involvement. Yet the EU itself could decide whether to follow the recommendations of the two organisations, and from time to time the emphasised other issues than them.

On a related note, it also makes sense to look at the different kinds of authority which the organisations have held, such as expertise and moral authority (Barnett and Finnemore, 2004). The thesis has focused on the significant power that the organisations have as bureaucracies in authoritatively defining the world. The understanding of the organisations as bureaucracies, an approach inspired by Michael

Barnett's and Martha Finnemore's "Rules for the World" (2004), have also contributed to an understanding of how the organisations have, rather than acting consistently, continuously sought to define their roles, and reacted to issues such as the Status Law.

The finding that the organisations have not only cooperated, but also converged in their positions, is also theoretically relevant. Whereas much of the literature has focused solely on one organisation, for instance the EU (e.g. Hughes and Sasse, 2003; Johns, 2003) or the HCNM (e. g. Chandler, 1999; Thio, 2003), I argue that the findings of this thesis give a fuller picture. That the organisations are converging and have at times been rather inconsistent in their use of discourse indicates that it is a mistake to see the organisations as rational and independent actors, rather they are bureaucracies within a system of governance, as described by Webber et. al. (2004) in the case of the European security agenda, but this is a subject for further theorising and analysis. The growing convergence seems to contradict Barnett and Finnemore's (2004) emphasis on organisational culture, as the importance of such culture have decreased over the years as the organisations increasingly adopted similar policies and benefited from their different positions. The notion that the organisations benefited from their different positions runs counter to the claim that the existence of three organisations, rather than one, dealing with the national minority issues in Post-Communist Europe meant a less effective minority protection (see among others Malloy, 2005).

The focus on the concrete arguments grants the possibility of seeing how what has otherwise been referred to as relatively unspecified "Western" or "European" norms have been authoritatively interpreted by the organisations. As the organisations, or rather the CoE and the HCNM, had the power to interpret these norms, it is relevant to look at how they did this rather than just referring to Western or European norms. However, the analysis here only covers a part of these two organisations' activities within the field of minority policy, which again only is a relatively small (although important) part of the overall relations between the Western/European organisations and the Central and Eastern European states.

This also tells us something important about the relationship between the European norms regarding minority policy and the codified minority rights. In the cases of the HCNM and the EU, the distinction

between hard and soft law does not make much sense, as they have used all kinds of sources as backing, referring also to “good practice” and “international standards” (see also Thio, 2003: 129). This has wider perspectives; the constitutive norms of the European minority protection “regime” cannot be reduced to mere written rules, as all kinds of sources have been applied when the organisations have assessed the Hungarian minority policies of the three states. This means that focusing purely on the legal norms will not provide a full picture (see also Kratochwil, 1989: 18).

If we turn to another issue in the theoretical literature and in the analysis, namely the distinction between security and justice as goals, I argue that the findings show that this distinction is less important in practice than often thought (see for instance Sasse, 2005). Rather, as among others Li-Ann Thio (2003: 120-126) and Michael Merlingen (2003) have argued, especially in the case of the OSCE/HCNM is the distinction more blurred, as the OSCE’s concept of comprehensive security as well as the arguments of the HCNM combine security and justice. It is important to keep in mind that I am talking about security and justice in terms of arguments, not reasons for choosing these arguments. When an organisation used justice arguments to argue its case, it committed (at least in that case) itself to justice as an end, and became more vulnerable for normative criticism. Similar mechanisms were at play when it used security arguments. The organisation may very well have had security concerns in mind when using justice arguments (although the opposite has probably not been the case), yet this is very difficult to analyse.

Finally, there have been voices from different positions criticising or appraising the organisations for what they have done. Whereas Will Kymlicka (2004b) criticises particularly the HCNM for not advocating territorial autonomy, Martin Brusis (2003) has commended the EU for helping to induce consociationalism in among others Romania and Slovakia. My argument has been that although the organisations in overall terms have shared many premises with Kymlicka’s theory, they remain a substantial distance from what he and like-minded people would have wanted. However, I agree with Kymlicka that the HCNM’s (and for that matter also the EU’s and the CoE’s) approach has at times been inconsistent, as the various concerns of each case has meant that states and minorities (and here I am not only thinking of the Hungarian minorities, but also of similar minorities) have been treated differently. Kymlicka’s criticism (2004a; 2004b) of the HCNM for not being oriented towards justice,

is, I argue, directed at the alleged ends (security rather than justice) of the HCNM's recommendations, and not the HCNM's choice of arguments, which is what have been analysed here.

## 8.5 Summary

In order to sum up, it is useful to turn to the research questions posed in the introduction. Research question one was:

*Which conceptualisations of contested concepts relating to national minorities have been used by the EU, the HCNM, and the Council of Europe to argue for the reactions to the policies of Hungary, Romania and Slovakia concerning the Hungarian minorities in the two latter states the last fifteen years, and which international documents have been used as backing for these conceptualisations?*

It would be too complicated to sum up all the findings from the analysis here. Instead it suffices to focus on those which have further consequences. This is first and foremost the predominant framing of the Hungarian minorities as unitary entities, which have one set of political representatives and goals, and characterised by a language and a culture different from the majority populations. However, this framing has to a large degree been dependent on which issue that has been addressed. Of the many possible issues, especially education and official communication have been emphasised as important. Many contested rights relating to these issues have been authoritatively conceptualised by the organisations, but here it is not possible to discuss these in full.

Considering the normative warrants it has often been hard to distinguish between justice and security perspectives, which reveals how interwoven these perspectives have been. Good inter-ethnic relations, conflict avoidance, mutual understanding between the ethnic groups, the recommendation that minorities have a say in decisions affecting them, and the protection of minority cultures and rights have all been warranted as desirable ends. With the Status Law the limits for minority protection and the softening of borders were clearly defined, as it was declared that the respect for citizenship sovereignty and particularly territorial sovereignty always should prevail. Concerning the use of backing, in the early Nineties the HCNM and the CoE primarily drew respectively on the Copenhagen Document and Recommendation 1201. However, after the introduction of the FCNM in 1995, it

quickly gained the status of the authoritative document on national minorities, being used by the HCNM and the EU as well as the CoE.

The second research question was:

*Have there been any differences in these conceptualisations over time or between policy areas or organisations?*

This relates very much to the mentioned emergence of the FCNM. Whereas the organisations in the early and mid-Nineties conceptualised many issues differently, there has been an increasing convergence between the organisations from the late Nineties and onwards. I will argue that this was to a large degree due to the emergence of the FCNM, which provided a framework within which the organisations could argue. Yet also other factors played a role. The organisations cooperated more and more, holding many meetings, especially in the context of EU enlargement. EU enlargement also played a role in a different way. My argument is that the organisations engaged in an “exchange of power”, in which the EU drew on the arguments of the CoE and the HCNM, as they held the moral and expertise authority, which the EU lacked. Without them, it would have been much harder for the EU to argue against or for minority policies as it has done. On the other hand, the HCNM and the CoE would have had relatively little leverage over the states, had their arguments not been picked up by the EU. Furthermore, they could simply point to their influence with the EU, meaning that the states would have to comply as doing otherwise could damage their chances of EU membership. This also explains why the states complied significantly more with the demands of the HCNM and the CoE once EU started its accession process in 1997 (see also Kelley, 2004b).

The differences between policy areas have been significant. Generally speaking, the policy areas can be divided into two groups: the first of these, such as education, have been framed in terms of rights. In this context the minorities have been framed as something individuals belong to. The second, which include administrative reform, bilateral relations and government participation, in connection with which the minorities have been framed as unitary entities. Hence, the use of warrants has not been

consistent at all times, or rather, they have been consistent when addressing specific issues, but not between issues.

The third research question was:

*How do these differences relate the overall discourse of the organisation and in the academic discourse on the subject?*

The answer to the first part of this question is that in general there has been consistency between the overall discourses of the organisations and their use of conceptualisations, although some differences do exist, for instance in the case of the HCNM. If we put this into a wider context, I will argue that the organisations have developed a more or less shared ideal, best understood as a kind of consociationalism light (seen from a security perspective) or multiculturalism light (if seen from a justice perspective). It is to a large degree because the organisations share the conceptualisation of fundamental concepts with these theories that they conceptualise the minorities as unitary entities (when addressing political issues) with one set of interests or goals, and see these entities as the basic entities in inter-ethnic interaction. However, the organisations do not go as anywhere far as the theories discussed above in recommending (territorial) autonomy or official recognition of the minorities as constituent nations. This, I will argue, was because the organisations did not conceptualise minority culture as the foundation for a legitimate claim for a political space, but merely as something which distinguished the minority from the majority and which the minority had the right to have preserved. This at least has been the dominant strand of argument in the organisations' reactions.

The fourth research question was:

*Which patterns are there in the use of conceptualisations; does the use follow organisational culture, development over time including influence from academic debates, the warranting of basic concepts, or the country and the government which is being addressed?*

The answers to this question depend to a large degree on the answers to the previous questions. Organisational culture has clearly had an impact, yet the convergence between the organisations means that this impact has decreased over time. The CoE has been the organisation least characterised by organisational culture. Furthermore, I will also argue that the academic debates have had a clear influence on the developments over time. This can be seen in the organisations' use of concepts such as multiculturalism as well as of multiculturalist-inspired arguments which seem to correspond to the emergence of the debate over the concept in academic circles. On a more basic level, the organisations' conceptualisations of contested concepts such as autonomy or education rights also seem inspired by theoretical debates. This is no surprise given the many seminars and conferences involving academics as well as practitioners from the organisations. Concerning the use of basic warrants, it is a lot harder to say anything decisive, as it to some degree seems contextual, but also seems to reveal something about the perspective of the organisations. The latter is especially the case with the framing of the minorities as unitary entities. Finally, it is hard to argue that it has been significant which country the organisations have addressed, except that Romania in the early Nineties seems to have been treated slightly more leniently than Slovakia. Which government the organisations addressed has mattered more, although this is probably due to the fact that the Iliescu and Meciar governments were followed by governments with participation of Hungarian minority parties.

**Thus,** my argument is that although differences exist between the organisations, they have grown to share the same fundamental view of minorities and their role in society, a view which informs their treatment of the Hungarian minority issue. This understanding seems to have emerged in the late Nineties, to a certain degree due to the introduction of the Framework Convention, but also the frequent meetings and interaction between actors from the three organisations may have played a role in forming an epistemic community. Due to this shared understanding, the organisations would suggest similar solutions and work towards the same goal, irrespective of whether they were viewing the issue from a security or justice perspective. Therefore multiculturalism and consociationalism, two theories with different starting points, seem to converge, in diluted versions, in the vision of Romania and Slovakia as multi-ethnic states in which people cooperate and interact as members of different ethnic groups. Yet there have also been deviations from this, most notably the treatment of the Status Law, where the organisations emphasised territorial sovereignty above everything else.

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## **Appendix: Code list**

This is the list of codes and the numbers assigned to them. Categories of codes or warrants are underlined, and shall thus not be included in the number of codes.

### **1. Data**

- 1.1. Administrative Reform
- 1.2. Benes Decrees
- 1.3. Bilateral Relations, except the Status Law
- 1.4. Census
- 1.5. Commitments of the Accession to the Council of Europe
- 1.6. Council for Ethnic Minorities
- 1.7. The Csango Minority in Romania
- 1.8. Cultural policy
- 1.9. Education
- 1.10. Hungarians Abroad Conferences
- 1.11. Imprisonment of Ethnic Hungarians
- 1.12. Language Laws/Official Communication
- 1.13. Law on Local Elections
- 1.14. Law on Minorities
- 1.15. Laws on National Security
- 1.16. Media
- 1.17. Hungarian Minority Parties Participating in/Cooperating with the Government
- 1.18. Policy Statement
- 1.19. Religious Tensions
- 1.20. Letter from the Hungarian Parties of Slovakia to the Council of Europe
- 1.21. SNS Draft Language law

## 2. **Factual warrants**

### 2.1. Current developments

- 2.1.1. Crisis
- 2.1.2. Need to act now
- 2.1.3. Progress

### 2.2. Democracy

- 2.2.1. Electoral System as Important
- 2.2.2. Expressing the Will of the People
- 2.2.3. Free Choice between Candidates
  - 2.2.3.1. Choice between Parties, not Nations
- 2.2.4. Shared Culture Necessary for Democracy

### 2.3. History

- 2.3.1. Co-existence
- 2.3.2. Conflict
- 2.3.3. Discrimination of Hungarian Minority
- 2.3.4. Specific Hungarian Minority history

### 2.4. International scene

- 2.4.1. End of Cold War/Communism
- 2.4.2. Equality between the Hungarian Minorities and National Minorities in Hungary
- 2.4.3. Bilateral Treaties as Important
- 2.4.4. International Commitments
- 2.4.5. International Law
- 2.4.6. Making Borders more Penetrable
- 2.4.7. Yugoslavia as a Possible Scenario

### 2.5. Interpretations as Subjective

### 2.6. Minority issues

- 2.6.1. Economic Affairslovak/Romanian restitution of Property/Financing of Policies
- 2.6.2. Education
  - 2.6.2.1. Curriculum
  - 2.6.2.2. Entrance Exams

- 2.6.2.3. Facilitate Teaching in Hungarian
  - 2.6.2.3.1. Language of Text Books/Teaching Aids
  - 2.6.2.3.2. Training of Hungarian-Language Teachers
- 2.6.2.4. Hungarian University
- 2.6.2.5. Language of School Certificate
- 2.6.2.6. Teaching in Hungarian as Important
- 2.6.2.7. Teaching of Geography and History
- 2.6.2.8. Teaching of Slovak/Romanian in Hungarian-Language Schools
- 2.6.2.9. Training Hungarian Language Social and Cultural Workers
- 2.6.3. Inter-Ethnic Relations
  - 2.6.3.1. As Involving Hate/Conflict
  - 2.6.3.2. Between State and Minority
    - 2.6.3.2.1. As Positive
    - 2.6.3.2.2. As Negative
  - 2.6.3.3. On the Local Level
    - 2.6.3.3.1. As Negative
    - 2.6.3.3.2. As Positive
  - 2.6.3.4. Relation between Irrational Actors
  - 2.6.3.5. Relation between Rational Actors
- 2.6.4. Local and Regional Government
  - 2.6.4.1. Different Kinds of Autonomy
  - 2.6.4.2. Cultural
  - 2.6.4.3. Territorial
    - 2.6.4.3.1. Compatible with Territorial Integrity
  - 2.6.4.4. Local Elections
  - 2.6.4.5. Support Romanian/Slovak Identity in Hungarian Minority Areas
- 2.6.5. Media
- 2.7. Nature of the Countries
  - 2.7.1. As a Democratic State
  - 2.7.2. As Ethnically Biased

- 2.7.3. As Ethno-Culturally Neutral
- 2.7.4. As Kin-State
- 2.7.5. As a European State
- 2.7.6. As Non-Democratic
- 2.7.7. As a Transition Country
- 2.8. Territorial Integrity
- 2.9. The Hungarian Minority
  - 2.9.1. Different Interests from Majority
  - 2.9.2. Discrimination
  - 2.9.3. Fear and Mistrust in Minority Politics
  - 2.9.4. Language & Culture
    - 2.9.4.1. Hungarian Speakers not the Same as Hungarians
    - 2.9.4.2. Language as Access to Culture
    - 2.9.4.3. Language as Communication
    - 2.9.4.4. Language as Way of Integration
    - 2.9.4.5. Language Important Aspect of Hungarians
    - 2.9.4.6. Support of Hungarian Cultural Activities
  - 2.9.5. Links between Hungarian State and Hungarian Minorities
  - 2.9.6. Minority Rights
    - 2.9.6.1. Hungarian Minority as entity holding Rights
    - 2.9.6.2. Minority Rights as individual
  - 2.9.7. Nature of the Hungarian Minority/Basic Warrants
    - 2.9.7.1. A Subgroup of Citizens
    - 2.9.7.2. As Belonging to the People
    - 2.9.7.3. As Having a Religious Dimension
    - 2.9.7.4. As Hungarians "Abroad"
    - 2.9.7.5. As Kin-Minority
    - 2.9.7.6. Consisting of Sub-Groups
    - 2.9.7.7. Csangos as a Separate Group
    - 2.9.7.8. Hungarian Identity one Aspect of Individual

- 2.9.7.9. Hungarian Minority Territorially Confined
- 2.9.7.10. Identity as Constant
  - 2.9.7.10.1. Regarding Existence
  - 2.9.7.10.2. Regarding Group Boundaries
- 2.9.7.11. Identity as Fluid
  - 2.9.7.11.1. Regarding Existence
  - 2.9.7.11.2. Regarding Group Boundaries
- 2.9.7.12. Individuals Belonging to Minority
- 2.9.7.13. Magyars as Opposed to Hungarians
- 2.9.7.14. Members of the Hungarian Minorities foremost Hungarian
- 2.9.7.15. Needing Protection
- 2.9.7.16. Number of Members
- 2.9.7.17. One Unitary and Homogenous Entity
- 2.9.8. Political Representation
  - 2.9.8.1. Different Sets of Representatives
  - 2.9.8.2. Hungarians may Vote for Non-Hungarians
  - 2.9.8.3. Individual Political Participation
  - 2.9.8.4. One Entity with Specific representatives
  - 2.9.8.5. Political Participation as Ethnic Hungarian
- 2.9.9. Romania/Slovakia as Multinational
- 2.9.10. Symbols, Names and Identity
  - 2.9.10.1. As Instrumental
  - 2.9.10.2. Civic Identity/Nationalism
  - 2.9.10.3. Ethnic Identity/Nationalism
  - 2.9.10.4. Hungarian Identity as Cultural Identity
  - 2.9.10.5. Identity Needing Promotion
  - 2.9.10.6. Identity Needing Protection
  - 2.9.10.7. Narration of the Past
  - 2.9.10.8. Place Names

### **3. Causal Warrants**

#### 3.1. Autonomy

- 3.1.1. Autonomy => Diminished Risk of Conflict
- 3.1.2. Autonomy => Increased Risk of Conflict
- 3.1.3. Autonomy Calls not a Security Threat

#### 3.2. Bilateral Agreements => Solutions

#### 3.3. Causal Agents

- 3.3.1. Hungarian Parties
- 3.3.2. Hungarian Minority Community
- 3.3.3. International Organisations
- 3.3.4. Nationalists
- 3.3.5. Non-State Actors in Hungary
- 3.3.6. Slovakia/Romania most Influential on Hungarian Minority
- 3.3.7. The Hungarian State

#### 3.4. CaUses of Conflict

- 3.4.1. Ancient Hatred
- 3.4.2. Economic Rivalry
- 3.4.3. Elite Instrumentalism
- 3.4.4. The Division of Nations between Different States
- 3.4.5. Symbols
  - 3.4.5.1. Homeland
  - 3.4.5.2. Narration of the Past

#### 3.5. Decentralisation => Less Conflict

#### 3.6. Depoliticise Ethnicity

#### 3.7. Dialogue & Openness

- 3.7.1. Confidentiality Important
- 3.7.2. Democracy => Hungarian Minority Position
- 3.7.3. Dialogue Solve Problems

- 3.7.4. Hungarian Party in Government => Progress
- 3.7.5. Miscommunication
  - 3.7.5.1. Fear of the State as Restraining
  - 3.7.5.2. One-sided Action => Problems
  - 3.7.5.3. Openness Prevents Rumours
  - 3.7.5.4. Perceptions Matter
  - 3.7.5.5. Rumours and Mistrust => Conflict
- 3.7.6. Recognition of Minorities Will Solve the Problem(s)
- 3.8. Follow IO Recommendation => Solve Problem
- 3.9. Integration in Society
  - 3.9.1. Integration and Hungarian Identity not Mutually Exclusive
  - 3.9.2. Speaking Slovak/Romanian => Integration
  - 3.9.3. Two-Way Process
- 3.10. Legislation Affecting the Situation of the Hungarian Minority
- 3.11. Preventive Action Necessary
- 3.12. Responsibility for Hungarian Minority
  - 3.12.1. Hungarian government
  - 3.12.2. Slovak/Romanian Government
- 3.13. Rule of Law => Problems Solved

#### **4. Normative Warrants**

- 4.1. Basic
  - 4.1.1. Justice
  - 4.1.2. Security
- 4.2. Democracy, Dialogue & Decisions
  - 4.2.1. Adequate Representation in Elected Bodies
  - 4.2.2. Affirmative Action
  - 4.2.3. Arbitration of Hungarian Minority Complaints
  - 4.2.4. Decisions Affecting Hungarians

- 4.2.4.1. Hungarian Minority Authority Practical
- 4.2.4.2. The Minorities Should Have a Say in Decisions Affecting Them
- 4.2.5. Effective Equality
- 4.2.6. Ethnically Fixed Politics Negative
- 4.2.7. Good Interethnic Relations the Goal
- 4.2.8. Hungarian Support of Laws Positive
- 4.2.9. Media Freedom
- 4.2.10. Minority Participation in Government Position
- 4.2.11. Mutual Understanding Enriches
- 4.2.12. Nationalism as Something Positive
- 4.2.13. Non-Discrimination
- 4.2.14. Post-Modern Multiple Identities Positive
- 4.2.15. Specific Minority Law Needed
- 4.2.16. State Should be Ethnically Balanced
- 4.2.17. State Should be Ethnically Neutral
- 4.2.18. State Should be Multiethnic
- 4.2.19. State Should be Ethnically Neutral
- 4.2.20. Transparency Desirable
- 4.3. Education
  - 4.3.1. All Should Learn State Language
  - 4.3.2. Education Best Dealt with Locally
  - 4.3.3. Education in Hungarian Should be Open to Everybody
  - 4.3.4. Expand Fields Taught in Hungarian
  - 4.3.5. Facilitating Hungarian Minority Education
    - 4.3.5.1. The Possibility of Hungarian School Certificates is Positive
    - 4.3.5.2. The possibility of entrance exams in Hungarian is Positive
    - 4.3.5.3. School Curricula State Issue
    - 4.3.5.4. Teacher Training
    - 4.3.5.5. Universities Have the Right to Employ Foreign Teachers
  - 4.3.6. Majority Language not Necessary in all Fields

4.3.7. Multicultural/-Ethnic Curriculum

4.4. Hungarian Minority Issues Problems to Be Solved

4.5. Integration

4.5.1. Balance between Hungarian & State Language

4.5.2. Integration and Maintaining Hungarian Identity

4.5.3. Language as a Way of Integration

4.6. International Institutions

4.6.1. Behaviour like European States

4.6.2. Follow Council of Europe Recommendations

4.6.3. Follow EU Recommendations

4.6.4. Follow OSCE Recommendations

4.6.5. Follow Slovak/Romanian example

4.6.6. International norms and commitments positive

4.6.7. Set Example for Europe

4.7. Inter-State relations

4.7.1. Conflict-Avoidance Important

4.7.2. Fuzzy Citizenship

4.7.3. Hungarian Support to Hungarian Party Undesirable

4.7.4. Hungarian Support to Hungarian Minority Culture Positive

4.7.5. The Kin-State Has a Role in Preserving Identity

4.7.6. Respect for Sovereignty over Citizens

4.7.7. Respect for Territorial Sovereignty

4.7.8. Softening of Borders an End

4.7.9. State Prerogatives within Territory

4.7.10. Support to Organisations, not Individuals

4.7.11. Wrong to Seek to Expand the Hungarian Minorities

4.8. Local/Regional Level

4.8.1. Autonomy

- 4.8.1.1. Cultural Autonomy Desirable
- 4.8.1.2. Territorial Autonomy a Possibility
- 4.8.1.3. Territorial Autonomy Desirable
- 4.8.1.4. Territorial Autonomy not Obligatory
- 4.8.1.5. Territorial Autonomy Undesirable
- 4.8.2. Equal Devolution, not Autonomy
- 4.8.3. Ethnicity matter in Hungarian Majority Area
- 4.8.4. Inter-Group Relations not Zero-Sum
- 4.8.5. Regions Should Reflect the Distribution Hungarian Minority
  - 4.8.5.1. Other factors more Important
- 4.9. Minority Duties
  - 4.9.1. Participate in Politics
  - 4.9.2. Proclaiming Autonomy Wrong
  - 4.9.3. Respect Territorial Integrity
  - 4.9.4. Rights as well as Duties
  - 4.9.5. To Integrate in Slovak/Romanian Society
  - 4.9.6. To Obey the Law of Slovakia/Romania
- 4.10. Other Minorities
  - 4.10.1. All Minorities are Equal
  - 4.10.2. Relative Size of a Minority Matter
- 4.11. Remove Historical Discrimination
- 4.12. Respect Hungarian Identity
- 4.13. Rights
  - 4.13.1. Collective & Individual Rights
    - 4.13.1.1. Collective Rights not Obligatory
    - 4.13.1.2. Collective Rights Possible
    - 4.13.1.3. Individual Rights as Inalienable
  - 4.13.2. Freedom of Expression
  - 4.13.3. National Minority Rights
    - 4.13.3.1. Benign Neglect

- 4.13.3.2. Express own Culture
  - 4.13.3.2.1. Including Flags and Anthems
- 4.13.3.3. Linguistic Rights
  - 4.13.3.3.1. Official Communication
    - 4.13.3.3.1.1. When Substantial Number
  - 4.13.3.3.2. Private Language Use
  - 4.13.3.3.3. Right to Hungarian Road Signs
    - 4.13.3.3.3.1. When a Substantial Number
  - 4.13.3.3.4. To Be Taught in Own Language
    - 4.13.3.3.4.1. Maintenance Bilingualism
    - 4.13.3.3.4.2. Parents' Right over Education Language
    - 4.13.3.3.4.3. To set up Minority Schools
    - 4.13.3.3.4.4. Transitional Bilingualism
  - 4.13.3.3.5. To Use Hungarian Names
  - 4.13.3.3.6. To Use own Language Inalienable
  - 4.13.3.3.7. To Use Own Language with Social Workers
  - 4.13.3.3.8. Type of Regime
    - 4.13.3.3.8.1. Promotion
      - 4.13.3.3.8.1.1.1. Norm & Accommodation
      - 4.13.3.3.8.1.1.2. Official Status
    - 4.13.3.3.8.2. Toleration
  - 4.13.3.3.9. Use of own Language in Court
- 4.13.3.4. National Minority Rights Inalienable
- 4.13.3.5. Participate in Politics/Public Life
- 4.13.3.6. Prevent Discrimination
- 4.13.3.7. Right not to Indicate Hungarian Identity
- 4.13.3.8. Right to Ask for Autonomy
- 4.13.3.9. To Appeal to International Organisations
- 4.13.3.10. To Complain
- 4.13.3.11. To Contact with the Hungarian State

- 4.13.3.12. To contact with People in Hungary
- 4.13.4. Right not to Identify with the Hungarian Minority
- 4.13.5. Right to Identify with the Hungarian Minority
- 4.13.6. Right to Assembly
- 4.13.7. Right to Change Laws
- 4.13.8. Right to Stand for Office
- 4.13.9. State Security only Restriction
- 4.13.10. To Participate in Economic Life
- 4.14. State only Oversight Hungarian Minority Issue
- 4.15. Substantial Minority Policy
- 4.16. Uncertainties as Negative

## **5. Backing**

- 5.1. Bilateral Treaty
- 5.2. Council of Europe
- 5.3. CSCE/OSCE
- 5.4. EU
- 5.5. HCNM
- 5.6. International treaties and documents
  - 5.6.1. Charter for Minority & Regional Languages
  - 5.6.2. Charter of Local Self-Government
  - 5.6.3. Convention on Racial Discrimination
  - 5.6.4. CPH Document
  - 5.6.5. CSCE Charter of Paris
  - 5.6.6. Eur Human Rights Convention
  - 5.6.7. Framework Convention
  - 5.6.8. Int covenant on civ&pol Right
  - 5.6.9. Recommendation 1201
  - 5.6.10. UN Declaration on national Minority Rights
  - 5.6.11. Universal Declaration of Human Rights