

The Use and Abuse of Minority Rights: Assessing Past and Future EU Policies towards Accession Countries of Central, Eastern and South-Eastern Europe

CARTER JOHNSON*

1. Introduction

With the exception of Belarus and Russia, all Central-East, South-East, and East European countries (CSEECs) have expressed their desire to join the European Union. Eight countries from the region joined the EU¹ in 2004, Romania and Bulgaria will almost certainly join in 2007, while another seven are currently under consideration.² As those seven future-accession CSEECs strive for membership, their governments increasingly look toward directives from the EU to adjust domestic policies; minority rights continue to play a key role in this process.

The issue of protecting minorities has received a great deal of attention since 1989, and was one of a select few accession criteria made explicit by the EU in 1993. Since that period, many policy-makers and academics have begun taking a closer look at this politically sensitive area. Nevertheless, minority protection has been and remains shrouded in confusion and misunderstanding: Slovakia's education minister was baffled in the 1990s by international criticisms of an education policy that resembled that of Ireland and Spain, or Estonian citizens exasperated by international criticisms of their citizenship laws which they deem more liberal than that of Germany, to name just two examples. This article seeks to clarify what is meant by the phrase 'protection of minorities' and to explore the EU's commitment to this

* The author is a PhD student at the University of Maryland, and the Project Coordinator of the Minorities at Risk Project (MAR). From 2000–2003, he was a fellow with the Civic Education Project at the National University of Uzbekistan and the State Pedagogical University of Moldova. The author received his MSc from the London School of Economics.

¹ For the sake of simplicity, throughout this article the 'EU' will be used for the European Union and its predecessors, regardless of time.

² The seven are Croatia, Serbia-Montenegro, Macedonia, Bosnia-Herzegovina, Albania, Moldova, and Ukraine. Only Croatia has formally begun membership talks; the EU has begun association negotiations with Serbia-Montenegro. E. Jansson and D. Dombe, "New dawn" for Balkans as EU promises talks with two states", *Financial Times*, 5 October 2005, p. 2. Ukraine, which is furthest from membership, has nevertheless been given tacit approval for eventual membership. 'Ukraine told that EU door is open', *BBC News World Edition*, 6 October 2005, <<http://news.bbc.co.uk/2/hi/europe/4313906.stm>>, visited 6 October 2005. While Turkey has also formally begun membership talks, this article will focus exclusively on the former Socialist Bloc states as they make up the vast majority of recent and future member states.

cause in order to understand which policies the future-accession countries of Europe need to implement in order to fulfil this commitment on their route to EU membership. Further, this article will challenge conventional wisdom on this issue, which claims the EU is motivated by a normative commitment to minorities, and proposes other factors instead; in particular, it identifies security concerns and fears of migration patterns.

The first criterion announced in Copenhagen in 1993 is that candidate countries demonstrate “stability of institutions guaranteeing democracy, the rule of law, human rights, and respect for and *protection of minorities*”.³ While many of the other accession criteria are either unambiguous or have an approximated understanding through an established history (e.g. adoption of the *acquis communautaire* or a functioning market economy), the issue of ‘minority protection’ remains novel and vague, despite the rhetorical outpourings from the EU’s organs and personnel promoting its cause. To demonstrate this position and clarify the underlying EU position on minorities protection, this article will begin by first exploring what type of minority rights were required of existing members of the Union before the recent wave of accession. It seems natural to look at the established EU-wide policies in order to ascertain what thresholds and precedents were established for other members. Second, the article will look at what forms of minority protection were (i) *promoted* in the most recent wave of accession countries and what were (ii) *required* for their acceptance in the Union. Put this way, we can view the path towards integration as linear, a path down which the new accession countries have travelled much further than the future-accession countries. What lessons can be learned from those accession countries in terms of demands made on them? What standards have been requested and *what is the minimal acceptable level of minority protection* for EU acceptance? By focusing on the minimal, we can separate preferences from requirements.

While the EU has established distinct criteria for potential members, this article will demonstrate that we can actually discover very few concrete policy measures specifically for the protection of minorities. In the first place, the article will demonstrate that the EU itself has lacked any common policies towards minority protection for extant member-states. In fact, as we will see from the following section, the only common and consistent policy linked to minorities found both inside the EU and its foreign policy is a broad commitment to certain *human rights*, such as non-discrimination. Second, the EU’s approach to minority protection in non-member states over the past 15 years has been and continues to be *ad hoc* measures applied inconsistently depending entirely on specific concerns related to individual countries and their minorities’ ability to mobilize.

This article will conclude by suggesting what *is* driving the EU’s policy of minority protection and what, therefore, the future-accession countries of Europe might expect in the future. It will suggest that ‘protection of minorities’ is not promoted across the region normatively as a good in and of itself, but rather is a tool used to

³ European Council, ‘Conclusions of the Presidency, Copenhagen’, 21–22 June 1993, DOC SN 180/93, para.7, emphasis added.

promote the EU's own, narrow self-interests of (i) continental stability and (ii) migration control. The future-accession countries of Eastern and South Eastern Europe should not expect the EU to take a firm stance with minority rights issues in the future unless those countries' minorities impact vital EU interests.

2. Experience of EU Member-States

The experience of the 15-member EU member states before the recent enlargement reveals a gross lack of consistency in policies directed at minorities. While there is no doubt that these countries have all chosen a liberal-democratic approach to governance that includes strong support for human rights, little uniformity can be drawn with respect to the region's various minority groups. As one scholar has stated:

“In sharp contrast to the principle of non-discrimination, the EU has neither developed a minority standard within the internal *acquis communautaire*, nor do the member states subscribe to a single European standard . . . a shared understanding of the norm of minority protection does not exist among the member states.”⁴

The focus on the individual as the sole bearer of rights has become increasingly clear inside the EU, and court rulings in the European Court of Human Rights on controversial policies by member-governments have continually re-confirmed only the need for nondiscriminatory legislation.⁵ Nevertheless, some norms have developed and they can be found in a variety of Euro-Atlantic and international documents. While this article looks specifically at the EU and its role in minority protection among CSEECs, this section includes the role of other organs, such as the Council of Europe and the OSCE. These organizations can be seen to represent core EU values, and the EU relies on these organizations to develop policies it favours in aspiring member-countries. It is widely known, for example, that membership in the Council of Europe is a *de facto* prerequisite for entry to the EU, and the OSCE administers agreements that are driven by policy initiatives stemming from the EU, such as the 1995 Pact on Stability.

2.1. *Documents Protecting Minorities*

Two of the most prominent documents related to the protection of minorities have been produced by the Council of Europe: the European Charter on Regional or Minority Languages and the European Framework Convention for the Protection of National Minorities.⁶ As we will see, while these documents are significant in many

⁴ G. Schwellnus, ‘Conditionality and its misfits: Non-discrimination and minority protection in the EU enlargement process’, unpublished paper presented at the UACES Annual Conference, Belfast, 2–4 September 2002, p. 17

⁵ One of the most famous being the 1968 Belgian Linguistics Case at the European Court of Human rights which set the precedent that governments do not have to provide positive benefits for minority groups, but must also allow them to associate freely in private institutions.

⁶ See <www.conventions.coe.int/Treaty/EN/CadreListeTraites.htm>, visited on 1 December 2005.

ways, both amount to very little substantively and neither is fully supported by all EU member-states. To be sure, there are other instruments outside the EU structures that have also influenced minority rights policies. These documents include, but are not limited to, the 1993 Recommendation 1201 of the Council of Europe's Parliamentary Assembly, relating to the additional protocol on minority rights for the ECHR; the 1990 CSCE Copenhagen Document;⁷ the 1998 Oslo Recommendations,⁸ related to linguistic rights of national minorities; the 1999 Lund Recommendations,⁹ related to the effective participation of national minorities; the 1992 UN Declaration of Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities; Article 27 of the International Covenant on Civil and Political Rights;¹⁰ the Convention concerning Indigenous and Tribal Peoples in Independent Countries;¹¹ and Article 30 of the Convention on the Rights of the Child.¹² For the purposes of this article, focus will be put on the Council of Europe documents as they are specifically European documents and have received the most attention vis-à-vis EU accession.

2.1.1. The European Charter on Regional or Minority Languages

The European Charter, for its part, does cover a broad area regarding languages. The charter lays out principles designed to protect and promote languages in public and private life, even moving beyond traditional state boundaries in some situations by encouraging "transnational exchanges".¹³ While the objectives sound encouraging, the document is actually extremely vague in wording and subjected to widely differing interpretations. For example, the Charter defines regional or minority languages as those "traditionally used within a given territory of a state" yet fails to define "traditionally used". There is, in fact, no specification as to what can and cannot be included, except to exclude "languages of migrants", a term which is again not defined.¹⁴ Estonia provides an example of how this can be manipulated because its law distinguishes between national minorities and ethnic minorities, specifying ethnic minorities as those who settled in Estonia "after the Second World War as a result of migration". This distinction is deliberately designed to discriminate against Russian and other russophone minorities that arrived in Estonia during the Soviet era.¹⁵

⁷ See A. Bloed, *The Conference on Security and Cooperation in Europe: Analysis and Basic Documents 1972–1993* (Dordrecht, Kluwer, 1993).

⁸ See <www.osce.org/documents/henm/1998/02/2699_en.pdf>, visited on 23 January 2006.

⁹ See www.osce.org/documents/henm/1999/09/2698_en.pdf, visited on 23 January 2006.

¹⁰ <www.unhchr.ch/html/menu3/b/a_ccpr.htm>.

¹¹ No. 169, <www.unhchr.ch/html/menu3/b/62.htm>.

¹² <www.unhchr.ch/html/menu2/6/crc/treaties/crc.htm>.

¹³ See Article 7 of the European Charter for Regional or Minority Languages <www.conventions.coe.int/Treaty/EN/CadreListeTraites.htm>, visited on 01 December 2005.

¹⁴ For a recent discussion of the difficulties involved in separating 'old' and 'new' minorities, see G. Sasse, 'Securitization or Securing Rights? Exploring the Conceptual Foundations of Policies towards Minorities and Migrants in Europe', 43:4 *Journal of Common Market Studies* (2005) pp. 673–693. See esp. pp. 675–679.

¹⁵ See State Program of Estonia 'The education and culture of ethnic minorities' in *Integration in Estonian Society 2000–2007*, <www.riik.ee/saks/ikomisjon/programme.htm>, visited on 30 November 2005.

Other difficulties with Charter include the fact that the document protects languages and not individual users, leading one scholar to note that, “[the Charter] does not explicitly guarantee the right of any individual to use any language in any specific situation”.¹⁶ If we cannot provide any guarantees for any situation, what norm regarding minority language protection can we claim has been developed? Further, while the document was open for signature in 1992, by the end of 2005, four EU member-states had not yet signed the document and a further two had yet to ratify it.¹⁷ This lack of uniformity among member-states has been replicated by accession-countries: as of 2005, we find that the three Baltic republics have not signed, three other countries have yet to ratify, and only three have fully signed and ratified the Charter.¹⁸

2.1.2. The Framework Convention for the Protection of National Minorities

The Framework Convention, on the other hand, has been hailed as a milestone since its creation marked the first legally binding instrument devoted to the protection of minorities. According to its own words, the Convention, “seeks to promote the full and effective equality of national minorities by creating appropriate conditions enabling them to preserve and develop their culture and to retain their identity”.¹⁹ But what does it actually require governments to do? As Article 15 of the Framework Convention states: “The Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them”.²⁰ These objectives are certainly within the liberal-democratic framework and, in theory, are in full compliance of a multiculturalism policy.

The Framework Convention is also novel in the proactive position it assigns to states, requiring them to, “promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve . . . their religion, language, traditions and cultural heritage”.²¹ While these aspects create an encouraging appearance of the Convention, a more thorough look at the articles leaves one less optimistic of its efficacy. A detailed reading of the Framework Convention’s articles reveals that the actual wording is in fact so vague that it renders the document almost meaningless in a juridical sense. Many experts actually attribute the acceptance of the Framework Convention by so many European states

¹⁶ The author argues this is the case because the Charter only protects the languages themselves and not the individual users of the language. S. Deets, ‘Europe and the Politics of Minority Rights’ *East European Studies* (Woodrow Wilson International Center for Scholars, Washington, DC, March/April 2001) p. 6.

¹⁷ Yet to sign: Belgium, Greece, Ireland, Portugal; and yet to ratify: France, Italy <www.conventions.coe.int/Treaty/EN/CadreListeTraites.htm>, visited on 1 December 2005.

¹⁸ Yet to ratify: Romania, Czech Republic, Poland; signed and ratified: Slovakia, Hungary, Slovenia <www.conventions.coe.int/Treaty/EN/CadreListeTraites.htm>, visited on 10 December 2005.

¹⁹ Framework Convention for the Protection of Minorities, *Summary of the Treaty* (Strasbourg, 1995) <www.conventions.coe.int/Treaty/EN/CadreListeTraites.htm>, visited on 10 December 2005.

²⁰ Framework Convention for the Protection of Minorities, Article 15, Strasbourg (1995).

²¹ Framework Convention for the Protection of Minorities, Article 5, Strasbourg (1995).

to its “vagueness” and the resultant open interpretations that can be made by national parliaments; others go further and suggest it “leaves room for interpretation in a more *positive* direction”.²² Starting from the fundamental issue of what is a minority (the subject of the Convention is not defined), down to the very details of what persons belonging to minorities are entitled to and what governments must provide, there are, ultimately, no clear claimable rights against the state. Each of these aspects will be dealt with in turn.

In terms of the subject of the Convention, the fact that no definition of a ‘minority’ exists has permitted several CSEECs and EU member states to sign and ratify the convention but then to selectively define what their ‘national minorities’ are. As one scholar wrote:

“Countries such as Austria, Denmark, Estonia, Germany, Macedonia and Slovenia have added interpretative declarations by listing those ethnic groups that in the eyes of the governments in question are to be labeled ‘national minorities’. In this way they explicitly patronize some communities and implicitly exclude others from benefiting from the convention.”²³

Germany, for example, has included minorities such as the Danes and Sinti, but denied national minority status for those of Turkish or Polish origin.²⁴ This remains the case, despite opposition from the Advisory Committee on the Framework Convention, which encouraged Germany to broaden its definition of national minorities.²⁵ Slovenia provides national minority status under the Framework Convention for Italians, Hungarians and Roma (which collectively account for less than one percent of the population), yet denies this status for the more numerous Croats, Serbs, and Bosniaks.²⁶ In the case of Slovenia, as with many other countries that have signed or ratified the convention, the Advisory Committee has provided assistance in clarifying certain measures of the Convention, but has repeatedly failed to effect major changes in the groups included for protection by governments.²⁷

²² Stephen Troebst states, “[I]t is at the same time, however, exactly this high degree of vagueness in the Convention’s wording which leaves room for interpretation in a more positive direction. For example, there is no strict distinction between ‘traditional national minorities’ and so-called ‘new minorities’, and no nexus between citizenship and ‘national minority’ is defined.” S. Troebst, ‘Implementing the Framework Convention for the Protection of National Minorities’, ECMI Report #3. Flensburg: European Centre for Minority Issues 1999, p. 3.

²³ S.Troebst, ‘The Council of Europe’s Framework Convention for the Protection of National Minorities Revisited’ 14 *Speaking About Rights* (Canadian Human Rights Foundation Newsletter).

²⁴ Germany, ‘Second Report submitted by the Federal Republic of Germany under Article 25, paragraph 2, of the Council of Europe’s Framework Convention for the Protection of National Minorities’ 2004.

²⁵ See Advisory Committee (ACFC) ‘Opinion on Germany’ (CM(2002)43, no. 73).

²⁶ See ‘Declaration contained in a Note Verbale from the Permanent Representation of Slovenia’, dated 23 March 1998, handed to the Secretary General at the time of deposit of the instrument of ratification, on 25 March 1998. See Treaty Office at <www.conventions.coe.int>, visited on 20 November 2005.

²⁷ See, for example, the Advisory Committee’s ‘Second Opinion on Slovenia’ adopted on 26 May 2005 that encourages the Slovenian government to consider redefining groups from ‘economic immigrants’ to ‘national minorities’; see also ‘Opinion on Estonia’ that refers to the ‘restrictive nature’ of Estonia’s Declaration, which denies protection to non-citizens; Advisory Committee on the Framework Convention

As for the vague and unclaimable rights against the state, one can look at Article 14, covering the provision of minority language education. It states:

“In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if there is sufficient demand, the Parties shall endeavour to ensure, as far as possible and within the framework of their education systems, that persons belonging to those minorities have adequate opportunities for being taught the minority language or for receiving instruction in this language.”

Analyzing this text, one can find a plethora of phrases permitting states to restrict minority education provision. The state must provide education “as far as possible” and only “if there is sufficient demand” and the language can *either* be taught *in* the minority language or the minority can simply *be taught* the language; there are substantial differences here, and the discretion is up to the state.

Even more important when assessing the existence of EU-norms, France has yet to sign the document, three of the 15 pre-accession states have yet to ratify, and the Netherlands ratified only in 2005, despite its opening for signature in 1995.²⁸ Meanwhile, virtually all of the former socialist-Bloc countries rushed to ratify the document in the mid-1990s after a consistent rhetorical message from the EU about the need to protect minorities.²⁹

2.2. *What Else is Missing from EU Norms?*

What is more telling, perhaps, are what these and other Euro-Atlantic documents do *not* cover: recognition of minorities, citizenship policies, and representation. Not one of these key concepts, each of which is inextricably connected to minorities and their protection, has yet to gain unanimous approval in the European Union. As Hughes and Sasse state, “[so far . . . the member states and the Commission appear to be opposed to any codification of minority protection into EU law”.³⁰

2.2.1. Recognition of Minorities

Recognizing minority groups is an unimaginably complicated theme and has the potential to render any European or international law powerless. Despite the wide

for the Protection of National Minorities, ‘Opinion on Estonia’, adopted on 14 September 2001, para. 15. Neither Slovenia nor Estonia nor other countries have changed their position, despite repeated pressure from the Advisory Committee and other organizations. For more information on the Framework Convention’s monitoring procedures, see G. Alfredsson, ‘A Frame an Incomplete Painting: Comparison of the Framework Convention for the Protection of National Minorities with International Standards and Monitoring Procedures’, *7:4 International Journal on Minority and Group Rights* (2000) pp. 291–304.

²⁸ Belgium, Greece, Luxembourg, and the Netherlands have yet to sign as of December 2005 <www.conventions.coe.int/Treaty/EN/CadreListeTraites.htm>, visited on 11 December 2005.

²⁹ Of the accession countries, only Latvia had not ratified at the time of accession; Latvia ratified the Convention in June 2005 <www.conventions.coe.int/Treaty/EN/CadreListeTraites.htm>, visited on 11 December 2005.

³⁰ J. Hughes and G. Sasse, ‘Monitoring the Monitors: EU Enlargement Conditionality and Minority Protection in the CEECs’, *Journal on Ethnopolitics and Minority Issues in Europe* 1 (2003) pp. 1–36. See p. 10.

use of the term ‘minority’ and a host of declarations, conventions, and other documents, there is, as yet, no agreed legal or conceptual definition of what constitutes a national minority.³¹ This allows for EU member-states to deny the existence of national minorities that exist on its territory. Indeed, an under-reported case specifically to this effect is Greece, an EU member-state since 1981. The Greek government has had a long-standing policy of not recognizing *any* ethnic, national or linguistic minority despite the presence of self-proclaimed Turks, Macedonians, Bulgarians, Albanians, and others living on its territory. The government has actually gone so far as to deny the ethno-national identity of minorities in some of its *neighbouring* countries despite the fact that those minorities *are* recognized by the corresponding neighbouring governments.³² As recently as 1999, the government debated reforms to allow for a more ‘multicultural’ approach to citizenship and identity, but vocal opposition by the public forced the government to abandon these proposed changes.³³

In effect, while rhetorical emphasis on minority protection may be present in the EU, without a definition for the term, the fundamental aspect of recognition can never be guaranteed. Various organizations and academics have created classifications for minorities, but none of these has yet proven politically acceptable to all EU member states. This raises further important questions about the efficacy of any legal document relating to national minorities: a country can perfectly well sign and ratify any convention into law but simultaneously deny that national minorities exist on its territory. Indeed, as the case of Germany and Slovenia demonstrate, this occurs with some frequency. As we will see below with the case of Estonia, states can sign the legally binding Framework Convention but resist providing even basic rights, such as citizenship, to portions of a minority group.

2.2.2. Citizenship

Citizenship laws have long remained controversial in several EU countries, most notably in Germany. German residents of Turkish origin have been living in Germany for decades but, due to restrictive German laws creating high obstacles to obtain citizenship, most have remained as ‘guest-workers’, including those who were born and lived their entire lives in Germany. While recent changes have reduced the requirements substantially, restrictions remain and do not contradict any EU-level laws, despite Germany being a signatory member of all major EU and international conventions and institutions addressing minority rights issues. Minority representation

³¹ As mentioned earlier, the Framework Convention contains no definition and this is the case internationally, this is exemplified by the UN Declaration on the Rights of Persons Belonging to National Minorities which does not define a ‘National Minority’. For further information, see J. Jackson-Preece, *National Minorities and the European Nation-State System* (Oxford University Press, Oxford, 1998) pp. 9–30.

³² P. Dimitras and N. Papanikolatos, ‘Reflections on Minority Rights Politics for East Central European Countries’ in W. Kymlicka (ed.), *Can Liberal Pluralism Be Exported? Western Political Theory and Ethnic Relations in Eastern Europe* (Oxford University Press, New York, 2001) p. 190.

³³ *Ibid.*, p. 193.

is also absent from any common legislation, with no EU-requirements in existence; member-states have diverse approaches to minorities in this sphere, including those assuring minority representation, those providing regional assemblies, and those requiring nothing at all.

As we begin to shift our focus towards the new accession members, it is worth highlighting one final aspect of EU-policy to demonstrate the hypocrisy between its internal and foreign policy. As we shall see, rhetorical prominence was given to minority protection in the former socialist-bloc countries with a continual message emphasizing the protection of minorities in the post-1989 era, and yet, during the same period, the EU provided no similar emphasis for its own members. In fact the first EU provision loosely related to minorities came with the Treaty of Maastricht in 1992, where a requirement was added for member states to respect “national and regional diversity” (Article 151), which is a far cry from assuring protection for minorities.³⁴ The EU, however, has gone even further to avoid minority protection legislation by going out of its way to *remove* any legal standards regarding minority protection from its own base in law. The most glaring example of this came in 1997, when the EU applied the accession criteria for candidate countries to its own members: the Amsterdam Treaty (TEU) transposed each condition from the Copenhagen Criteria into EU primary law *except* for the one concerning minority protection. This has legitimately opened the door to claims of a double standard. As was summarized by one European NGO dealing with minorities:

“The EU has been subjected to criticism because the emphasis given to the minority issue in external relations presents a kind of double standard as the Community still ignores, at least formally, the issue of minority protection within its own borders. Concern for minorities seems to be *primarily an export article and not one for domestic consumption.*”³⁵

As we have seen from the preceding section, the EU lacks a common internal position or norm specifically related to minorities: member-states have diverse policies and no EU or Europe-wide law exists to protect minorities specifically. Further, the EU has deliberately avoided subjecting its own member-states to demands it and other Euro-Atlantic structures have placed on accession-members. The essence of this double-standard has not gone unnoticed.³⁶ With this in mind, we turn to the experience of those accession countries that entered the EU in 2004, to investigate their treatment over the past 15 years. In a process often referred to as ‘external governance’, international organizations have had a direct and irrefutable influence on the restructuring of domestic political and economic policies of the former Soviet Bloc countries of Central and Eastern Europe. To what extent has this process been used to promote the protection of minorities among the accession countries? More importantly, what

³⁴ Hughes and Sasse, *supra* note 30, p. 9

³⁵ European Centre for Minority Issues, minutes from 1998 seminar, emphasis added.

³⁶ M. Johns, ‘Do As I Say, Not As I Do’: The European Union, Eastern Europe and Minority Rights’, 17:4 *East European Politics and Societies* (2003) pp. 682–699.

has been the minimum requirement? The following section begins with a brief look at the process of the EU's external governance on the CSEECs and then analyzes what minimum minority protection policies, if any, can be found from this process.

3. Experience of Accession Members

3.1. The EU's External Governance of CSEECs

There is extensive literature on how the EU effects change in other non-EU states. This process can occur through the EU's active role, where the initiative for rule adoption comes from the EU, or through the EU's passive role, where non-member states take the initiative themselves. In its passive role, rule-adoption by external states is motivated by perceptions of identification, and policies are adopted based on arguments about the 'appropriateness' of the rules for their country and the persuasive techniques of others. This format is emphasized by the 'Social Learning Model', drawn heavily from the work of social constructivists.³⁷ As Schimmelfennig and Sedelmeier state:

"In this perspective, the European Union is the formal organization of a European international community defined by a specific collective identity and a specific set of common values and norms. Whether a nonmember state adopts EU rules depends on the degree to which this state shares the collective identity, values, and norms of the EU and regards the EU rules and the EU's demands of rule adoption as legitimate."³⁸

This article, however, is more interested in examining the EU in its active role, referred to as 'conditionality', where rewards (or punishments) are delivered by the EU to rule-adopting states. Rewards (or punishments) are usually associated with the presence (or absence) of financial assistance, cooperation agreements, trade concessions, institutional ties, international recognition and, in the extreme form, membership invitation. By linking minority protection and conditionality, we can better understand what the minimum requirements necessary are to receive the ultimate 'reward' of membership.

The EU has used conditionality historically with Spain, Portugal, and Greece – deemed ineligible for membership until they began their democratization processes. However, conditionality was first used with the CSEECs only after 1992, when Europe Agreements and Partnership and Cooperation Agreements were made conditional

³⁷ J.Checkel, 'Why Comply? Social Learning and European Identity Change' 55:3 *International Organization* (2001) pp. 553–588. T. Borzel and T. Risse, 'Conceptualizing the Domestic Impact of Europe' in K. Featherstone and C. Radaelli (eds.), *The Politics of Europeanization* (Oxford University Press, Oxford, 2003), pp. 55–78.

³⁸ F. Schimmelfennig and U. Sedelmeier, 'The Europeanization of Eastern Europe: Evaluating the Conditionality Model', Paper prepared for the 1st Pan-European Conference on EU Politics, Bordeaux 26–28 September 2002, p. 18. See also F. Schimmelfennig and U. Sedelmeier (eds.), *The Europeanization of Central and Eastern Europe* (Cornell University Press, New York, 2005).

upon human rights and democratic principles.³⁹ As we will see with the case of the current accession-members, conditionality has played a central role in promoting certain conditions for membership. In fact, the Copenhagen Criteria can be seen as an example of political conditionality; but, in order for this to succeed, the criteria must be *clear* and *repercussions* evident. As it will be argued here, for minority rights, these two conditions were not met. As Hughes and Sasse wrote in 2003:

“At best EU conditionality made minority protection a salient issue in the political agenda of the [Central and East European countries], but the fact that the EU had little to offer in terms of clarifying the issue, substantive measures and policy practice, allowed historical domestic precedents to resurface.”⁴⁰

For some South-East European countries, the prospect of membership acts as a strong incentive for conditionality to succeed. However, while there is little short-term prospect of accession for other countries in Eastern Europe (e.g. Moldova, Ukraine), there are still plenty of incentives to enable conditionality to work, such as the benefit of financial assistance and institutional ties from the EU itself.⁴¹ An extension of conditionality to the non-accession countries could be seen readily in the 1990s when the Commission proposed creating Stabilization and Association Agreements (SAAs) as a stepping stone to Europe Agreements for the South-East European states: while SAA negotiations with Macedonia were opened, negotiations with Yugoslavia under Milosevic’s rule were not permitted.⁴²

3.2. External Governance and Minority Protection

CSEECs began facing pressure for minority protection from the beginning of their transitions. Indeed, as Will Kymlicka has stated, “[c]ountries of post-communist Europe have been pressured to adopt Western standards or models of multiculturalism and minority rights . . . [and] candidate countries are evaluated and ranked in terms of how well they are living up to these standards”.⁴³ Indeed, by many accounts the EU has had remarkable success in influencing countries to adopt certain positions

³⁹ These did not include Europe Agreements signed with Poland, Hungary, and Czechoslovakia in December 1991, but did affect agreements with Albania (1992), Estonia, Latvia, Lithuania, Slovenia (1993), and all Europe Agreements concluded after 1992. F. Cameron, ‘The Impact of the EU on Human and Minority Rights: Central and Eastern Europe and the Newly Independent States’ (2001) pp. 81–82, taken from S. Crisen (ed.), *Minorities and Tolerance: Central and Eastern Europe and the NIS* (Conference Proceedings, Woodrow Wilson International Center for Scholars, Washington DC, April 24, 2001).

⁴⁰ Hughes and Sasse, *supra* note 30, p. 25.

⁴¹ As Schimmelfennig and Sedelmeier state, “[i]nstitutional ties start with trade and cooperation agreements, are intensified by association agreements, and reach their end-point with full membership. In addition to assistance, these institutional ties provide increasing inclusion in the EU market with the prospect of gains from trade and investment and increasing participation in EU decision-making”. Schimmelfennig and Sedelmeier, *supra* note 38, pp. 8–9.

⁴² Cameron, *supra* note 39.

⁴³ W. Kymlicka, ‘Multiculturalism and Minority Rights: West and East’, 4 *Journal of Ethnopolitics and Minority Issues in Europe* (2002) p. 2.

on minority affairs, even when they contradicted those of certain EU member-states. However, it is not clear that all of these ‘success stories’ can be attributed to the EU. More importantly, it will become clear that certain accession countries have *not* followed the EU’s preferred policy vis-à-vis minority protection; there are also some glaring examples of accession countries that have pursued policies deliberately punishing minority groups. Yet, since these countries were nevertheless invited for membership, and joined in 2004, it raises the question of whether conditionality for minority protection is present at all.

CSEECs are influenced via external governance in a number of ways; these include, among others, oral statements, financial aid, and promises of institutional integration. The European Parliament has adopted several resolutions related to the protection of minorities and is perceived as the most progressive in terms of supporting ‘minority rights’.⁴⁴ The Parliament has, at various times stressed, “the importance of EU support for the just treatment of minorities in Central and Eastern European countries, in strict observance of fundamental rights and freedoms and the principles of equality and citizenship and without undermining their identities, particularly in candidate countries”.⁴⁵ The Parliament also stated that accession would not be permitted for those CSEECs that, “do not respect fundamental human rights, and calls on the Commission and Council to lay particular stress on the rights of minorities at the time of enlargement negotiations”.⁴⁶ Pressure has also been created by consistent statements made by EU officials regarding the importance of minorities, minority languages, cultures, and most importantly, minority rights.⁴⁷

Once countries began official negotiations, the EU Commission began releasing regular reports (referred to initially as *Progress Reports* and later as *Regular Reports*) to analyze whether, with respect to the Copenhagen Criteria, reforms had been implemented.⁴⁸ The first such reports were released in 1998 and did contain specific mention of minorities. While it welcomed positive developments in Latvia

⁴⁴ For some examples, see: Resolution on Linguistic Minorities in the European Community (1994); Resolution on the Languages and Cultures of the Regional and Ethnic in the European Community (1987); Resolution on Measures in Favour of Linguistic and Cultural Minorities (1983); Resolution on a Community Charter of Regional Languages and Cultures (1981) and Resolution on a Charter of Rights of Ethnic Minorities (1981).

⁴⁵ Taken from the Parliament’s ‘Resolution on human rights in the world in 1997 and 1998 and European Union human rights policy’. See OJ 1999 No. C 98, p. 270.

⁴⁶ Taken from the Parliament’s ‘Resolution on human rights in the world in 1997 and 1998 and European Union human rights policy’. See OJ 1999 No. C 98, p. 279.

⁴⁷ A clear example is the 1998 declaration by representatives of the member states where they state, “Europe, characterised by solidarity and a rich cultural mix, is founded on respect for diversity and on tolerance. All Member States . . . are continuously striving to build and maintain a Europe based on . . . the diversity of its cultures and languages, a Europe where . . . rights of Minorities are protected”. See ‘Declaration by the Council and the representatives of the Governments of the Member States . . . on respecting diversity and combating racism and xenophobia’, OJ 1998 No. C 001, p. 1. Emphasis added.

⁴⁸ For the Regular Reports see <www.europa.eu.int/comm/enlargement/index.htm>, visited on 30 November 2005. See under point B.1.2 (Human rights and Protection of Minorities) for the new Commission’s views on the respective minority-situations in the applicant states.

and Romania, it singled out Estonia and Slovakia for deterioration in relations with its Russian-speaking and Hungarian-speaking minorities, respectively. The report also singled out Hungary, Slovakia, Bulgaria, and the Czech Republic for discrimination against its Roma population. In this first report, the Commission stated that, “overall, the problem of minorities continues to raise concerns in the perspective of enlargement”.⁴⁹ In 1998 the EU used the occasion of these *Regular Reports* to highlight priority areas in which countries needed to improve *en route* to EU membership. These priorities included treatment of minorities and included specific reference to countries such as Slovakia requesting it to adopt legislation on minority languages, as well as Estonia and Latvia to relax its naturalization process of non-citizens.⁵⁰

To support the theme of multiculturalism, and therefore encourage the development of minority cultures, the EU has also assisted minorities through aid money. Aid in the form of financial and technical assistance has been channelled to local NGOs in the countries of Eastern Europe through various programs, such as PHARE, the European Initiative for Democratization and Human rights and the TACIS Democracy Programme.⁵¹

These various pressures have played a direct role in shaping many governmental decisions within Eastern Europe. The evidence of influence has been well-documented by scholars from many countries and, as Melanie Ram neatly summarizes, “the protection of minority rights developed much more readily in European Union candidate states than in those for which EU membership was not an option”.⁵² Several CSEECs even formed an association, the Central European Initiative, which developed its own instruments on minorities.⁵³ As Ram, a scholar most familiar with Romania, has asserted, “the European Union has had a number of significant direct and indirect effects on the protection of minority rights in Romania”.⁵⁴ These policies have largely encouraged multiculturalism. In Romania, this has included the

⁴⁹ For the regular reports see *ibid*.

⁵⁰ G. Toggenbourg, ‘A Rough Orientation through a Delicate Relationship: The European Union’s Endeavours for (its) Minorities’, 4:16 *European Integration online Papers* (2000) p. 13, <<http://eiop.or.at/eiop/texte/2000-016a.htm>>, visited on 4 December 2005. For an explanation of the Accession Partnerships see Toggenbourg’s footnote 94, p. 31 and for the full text of the Accession Partnerships, see <www.europa.eu.int/comm/enlargement/docs/index.htm>, visited on 4 December 2005.

⁵¹ Specifically financed projects include: a co-financing of a programme entitled ‘*Minorities in Central European Countries*’ by the Commission and the Council of Europe; regular meetings of representatives of Governmental Offices for National Minorities (Project MIN I); various study visits for representatives of Offices for National Minorities to similar institutions in other countries (Project MIN II). See the Council of Europe’s Final Report to the European Commission on the implementation of the Joint Programme with the Council of Europe entitled ‘*Minorities in Central European Countries*’ (April 1998). *Ibid.* pp. 8 and 26–27.

⁵² M. Ram, ‘Minority Relations in Multiethnic Societies: Assessing the EU Factor in Romania’, 1:2 *Romanian Journal of Society and Politics* (2001) pp. 63–90, see p. 64.

⁵³ Central European Initiative, *CEI Instrument for the Protection of Minority Rights* CEI Center for Information and Documentation, Trieste; adopted in 1994 <www.ceinet.org/home.php>, visited on 8 December 2005.

⁵⁴ Ram, *supra* note 52, p. 88.

High Commissioner for National Minorities encouraging, with EU support, a proposal not to build a separate Hungarian-language university in Transylvania but rather to expand the existing state-funded university in Cluj-Napoca to offer more courses in Hungarian.⁵⁵ Similarly, in Macedonia the HCNM and the EU encouraged and began funding not a separate university for Albanians, but rather a new university offering schooling in five languages, including Albanian and Macedonian.⁵⁶

As mentioned in the introduction, one widely cited example of perceived successful pressure applied by EU organs comes from Slovakia. In 1994, the Slovak Minister of Education announced a new policy, primarily focusing on more subjects being taught in the Slovak language within Hungarian schools, which was roundly criticized both internally and internationally.⁵⁷ The criticisms remained in spite of the fact that, as mentioned earlier, the Charter on Regional and Minority Languages contains no specific guarantees of language use for individuals. Further, the Ministry publicly defended its policies as modelled on the West European examples of Spain and Ireland and therefore in full compliance with European norms, a claim that was confirmed by the HCNM.⁵⁸ The Meciar government of that period also redesigned electoral districts (1996) deliberately to prevent Hungarians from forming majorities,⁵⁹ and introduced a broader ‘Language Law’ (1995) and other legislation that was perceived to strengthen the Slovak language and culture at the expense of Hungarian.⁶⁰ Due to these policies and others deemed unacceptable by the EU, Slovakia was denied first-wave status for entry to the EU at the Luxembourg Council in 1997, and excoriated the country in its regular report of 1998. In fact, this period in Slovakia’s history has been interpreted by some to be a crucial test of EU conditionality – a test

⁵⁵ OSCE High Commissioner on National Minorities, ‘Recommendations on Expanding the Concept of Multi-culturalism at the Babes-Bolyai University, Cluj-Napoca, Romania’ (2000) <www.osce.org/documents/hcnm/2000/02/2744_en.pdf>, visited on 2 December 2005.

⁵⁶ See OSCE press release, ‘New university project unveiled in Tetovo, former Yugoslav Republic of Macedonia’ (12 February 2001) <www.osce.org/item/5714.htm> visited 5 December 2005.

⁵⁷ For a discussion of the changes in education and other policy realms affecting the Hungarian minority, see M. Brusis, ‘Ethnic Rift in the Context of Post-Communist Transformation: The Case of the Slovak Republic’, 5 *International Journal on Minority and Group Rights* (1997) pp. 3–32, see especially pp. 11–17. See also: BBC Summary of World Broadcasts, ‘Education Ministry pressing ahead with preparations for “alternative” education’ *Czechoslovak Press Agency*, 22 June 1995. For OSCE Criticism see BBC Summary of World Broadcasts, ‘OCSE minorities representative sends letter of criticism to authorities’, 14 November 1996.

⁵⁸ The final plan closely resembles policies in the Basque region and Ireland. S. Deets, ‘Europe and the Politics of Minority Rights’ *East European Studies* (Woodrow Wilson International Center for Scholars, Washington DC, March/April 2001) p. 6.

⁵⁹ S. Wolff ‘Bilateral’ Ethnopolitics after the Cold War: The Hungarian Minority in Slovakia, 1989–1999’, 2:2 *Perspectives on European Politics and Society* (2001) pp. 159–195, esp. pp. 174–179. See also Brusis, *supra* note 57, pp. 17–24 on administrative reform; M. Rhodes, ‘National Identity and Minority Rights in the Constitutions of the Czech Republic and Slovakia’, 29:3 *East European Quarterly* (1995) pp. 347–369.

⁶⁰ For an overview of the 1995 Language Law, see G. Edwards, ‘Hungarian National Minorities: Recent Developments and Perspectives’, 5 *International Journal on Minority and Group Rights* (1998) pp. 361–362.

that demonstrates a failure of EU power vis-à-vis national sovereignty. As Schimmelfennig states, “[i]n spite of the unambiguous EU warnings and the high stakes of membership involved, EU conditionality had no major or lasting impact on the behaviour of the Meciar government”.⁶¹

Nevertheless, after Meciar’s government left office in 1998, the new education minister announced major changes that brought them praise from European organs.⁶² This law has been credited, by some, with salvaging Slovakia’s membership prospect: “The new [language] law placed Slovakia back into the first wave of the candidate countries”.⁶³

However, it is far too crude to conclude from this that the Slovak affair was a success of EU policy or indeed that this indicates requirements for minority protection. Importantly, there is no firm evidence that Slovakia’s policy changes were driven more by international and not domestic pressures. Slovakia’s Hungarian minority party, the SMK, was a part of the coalition government in the post-Meciar era and the changes made can certainly be interpreted as a concession to the SMK. Further, there is nothing to indicate that the change in minority educational policy itself was the determining factor – or even a critical factor – in the EU’s policy reversal. It is far more plausible that the change in leadership away from Meciar’s broader anti-democratic policies was decisive to the EU’s decision. In fact, the EU Progress Report does not single out the language law but concludes more broadly that, “thanks to changes introduced since September 1998, Slovakia now fulfils the Copenhagen political criteria”.⁶⁴ Second, the electoral law redistricting in Slovakia was not returned to their original form in the post-Meciar era, despite this law’s effect of punishing minority electoral gains; this was not highlighted by the Commission. Third, the HCNM indicated that the minority language law in Slovakia was insufficient and that further legislation would be required.⁶⁵ Fourth, the position of the Roma in Slovakia had been repeatedly condemned by the Commission from 1998 through to Slovakia’s membership invitation: as late as the 2001 regular report, Slovakia was strongly criticized

⁶¹ F. Schimmelfennig, S. Engert and H. Knobel, ‘Costs, Commitment and Compliance: The Impact of EU Democratic Conditionality on Latvia, Slovakia and Turkey’, 41:3 *Journal of Common Market Studies* (2003) p. 504.

⁶² These changes included changes to legislation permitting school reports in two languages, resolution to the conflict over two ethnic Hungarian principals that were dismissed under the previous regime, and resolution to proposed changes to secondary school’s Board of Governors. See interview with the Slovak Education Minister in the Hungarian newspaper *Nepszabadság* 17 November 1998 as reported in BBC Summary of World Broadcasts, ‘Official promises quick changes in regulation on minority education’ 19 November 1998.

⁶³ Hughes and Sasse, *supra* note 30, p. 26.

⁶⁴ 1999 Regular Report from the Commission on Slovakia’s Progress Towards Accession, 13 October 1999, p. 70 <www.europa.eu.int/comm/enlargement/report_10_99/pdf/en/slovakia_en.pdf>, visited on 10 December 2005.

⁶⁵ The Slovak-language *Pravda* wrote, “Van der Stoel pointed out that a separate law will be needed to regulate regional and local television, as well as radio broadcasts, and that legal obstacles still restrict the native-language use at civil ceremonies, such as weddings and funerals, along with and cultural events”. As reported in the *Hungarian Minorities Monitor*, 6 September 1999.

for its policy implementation failures in this regard.⁶⁶ Unemployment rates among Roma remain extremely high (70–90 percent) and Roma children make up almost 70 percent of students in schools for the mentally challenged.⁶⁷ Despite these continuing problems, Slovakia was invited to join the EU in 2002.

Many CSEECs that were invited to join the EU in 2004 did not bow to West European demands and instead pursued policies unpopular in Western institutions; these continue to be crucial to our understanding of the EU's policy *preferences* versus its *requirements*. These examples demonstrate that, while the EU and other Euro-Atlantic structures would *prefer* a more inclusive minority policy involving multiculturalism, they are prepared to settle for much less. The example of Slovakia demonstrates that, while significant changes were implemented vis-à-vis the Hungarian minority after 1998, they did not go as far as the HCNM would have liked. The following examples from Estonia and Latvia are even more illustrative of this thesis.

Soon after achieving independence, Estonia invoked very restrictive citizenship laws that effectively excluded most of the Russian-speaking population. Specifically, these laws require evidence of pre-World War II historical roots in Estonia in order to obtain Estonian citizenship, even for residents born on the territory or having lived there for several decades. Initially, according to the Aliens Act (1993, section 6(1)), application for citizenship required passing a language exam and demonstrating sufficient knowledge of Estonian history.⁶⁸ Far from 'protecting' minorities, as demanded, these citizenship policies were designed to *punish* a certain minority group: the Russian-speaking population that arrived after World War II. While resident non-citizens are allowed to vote in local elections, this citizenship policy denied a large portion of the Russian-speaking community an ability to stand for high-office, to vote in national elections, and has adversely affected the group's educational and occupational opportunities.⁶⁹ These policies were criticized directly by the EU and other Euro-Atlantic Structures but, far from reversing its policies, the government defended its position as in-line with European norms, citing the example of Turks in Germany.⁷⁰ In fact, as one Estonian participant at a 1998 seminar suggested, it was then easier for a Russian resident to gain citizenship in Estonia than for a Turkish migrant worker in Germany to get a German passport.⁷¹ Further, the Estonian government *has* signed and ratified the European Framework Convention

⁶⁶ 2001 and 2002 Regular Report on Slovakia's Progress Towards Accession; 2001: <www.europa.eu.int/comm/enlargement/report2001/sk_en.pdf>, visited on 10 December 2005; 2002: <www.europa.eu.int/comm/enlarge/report2002/sk_en.pdf>, visited on 10 December 2005.

⁶⁷ Cameron, *supra* note 39, p. 89.

⁶⁸ Minorities at Risk Project, 'Russians in Estonia' Analytic Summary (2005) <www.cidcm.umd.edu/inscr/mar/assessment.asp?groupId=36601>, visited on 26 November 2005. See also 'Concluding Observations by the Committee on the Elimination of Racial Discrimination: Estonia' CERD/C/304/Add.98, 19 April 2000 <www.hri.ca/fortherecord2000/documentation/tbodies/cerd-c-304-add98.htm>, visited on 26 November 2005.

⁶⁹ MAR, *supra* note 68.

⁷⁰ S. Crisen, *supra* note 39, p. 11.

⁷¹ ECMI Conference 1998, p. 31.

for the Protection of National Minorities, but is not in breach legally because it simply does not include its Russian minority as a ‘National Minority’, despite the fact that Russians account for almost 30 percent of the population. The Estonian government has gone out of its way to both acknowledge that minority rights will be restricted to those with citizenship, and to justify this practice by citing multiple precedents in international and especially EU law and practice. The government stated, in reference to its Declaration accompanying ratification of the Framework Convention that, “there are many and persuasive examples of limiting minority rights to citizens”.⁷²

The case of Latvia is similar to Estonia, and also demonstrates a lack of minority protection. One scholar, commenting on both Estonia and Latvia, stated, “[i]n both states, nationalizing projects were formulated around regimes of discrimination intended to subordinate the large Russophone minorities to titular hegemony”.⁷³ Latvia’s policies concerning citizenship were initially, and remain, more restrictive: citizenship laws explicitly excluded categories of individuals, such as many who served in the Red Army and Soviet police forces; citizenship policies initially established a ‘window’ system during which only certain individuals could apply for naturalization; and non-citizens could not vote in local elections.⁷⁴ In addition, Latvia did not even ratify the Framework Convention until after it was accepted into the EU.⁷⁵ In fact, Lithuania is the only Baltic state to adopt a more inclusive and liberal approach to citizenship, providing citizenship to virtually all residents on its territory after the (re)establishment of independence. As Gelazis wrote:

“Certainly, the international community would have wished that all three Baltic States had taken the Lithuanian course in resolving the citizenship issue. While countless states and international organizations criticized Latvia and Estonia’s citizenship laws, there was very little that the international community could do in terms of finding international law backing for their largely ethically-based arguments for why the resident Russian populations ought to be granted full political and social rights through citizenship.”⁷⁶

The international pressure that was applied did have some effect. For example, an ‘integration’ policy was introduced by the Estonian government in 1998 with the full encouragement of the EU. In addition, some adjustments have been made to both

⁷² See section 2 of ‘Comments on the Declaration to Accompany the Ratification of the Framework Convention for the Protection of National Minorities of 01.02.1995’ (http://www.osce.org/documents/hcnnm/1997/01/2710_en.pdf – accessed 12/01/05).

⁷³ J. Hughes, ‘Exit’ in Deeply Divided Societies: Regimes of Discrimination in Estonia and Latvia and the Potential for Russophone Migration’, 43:4 *Journal of Common Market Studies* (2005) pp. 739–762, pp. 739–740.

⁷⁴ Estonia’s restrictions were vaguer, preventing citizenship for those who, “acted against the Estonian state and its security”. For a comprehensive look at the different citizenship policies in the Baltics, see N. Gelazis, ‘The European Union and the Statelessness Problem in the Baltic States’, 6:3 *European Journal of Migration and Law* (2004) pp. 225–242, esp. pp. 226–232.

⁷⁵ Latvia ratified the Framework Convention in 2005.

⁷⁶ N. Gelazis, *supra* note 74, p. 232.

Latvia's and Estonia's naturalization process over the past eight years, but the governments have explicitly not changed their initial restrictive, non-liberal approach to citizenship.⁷⁷ As a result, over 500,000 residents of Latvia (22.4 percent) and over 170,000 residents of Estonia (12.5 percent) did not have citizenship in 2001.⁷⁸ Further, the Council of Europe's Advisory Committee in 2001 criticized Estonia for minority protection failure in a broad number of areas, such as minority language broadcasting and access to higher education.⁷⁹ Nevertheless, and very significantly, membership to the EU was offered to both countries in 2002.

The preceding paragraphs have suggested that, while the EU has certain preferences, there are no clear policy obligations vis-à-vis minority protection for countries wishing to enter the EU. While there were examples of EU pressure to alter policies on minority affairs, states were accepted for membership that maintained policies counter to minority interests. The only strict political criteria appeared to be democracy and human rights, with minority protection unclear. We now turn to the next section of this article, which will offer some tentative hypotheses in an attempt to explain the EU's actions and to help us predict how the EU will orient itself towards potential members in the future. Part of the explanation can be found if we untangle the reasons for EU pressure and separate those of *normative justice* from those of *European security*.

4. What is the Point of Protecting Minorities?

The drive for greater protection of minorities has received growing international attention over the past two decades, especially since the end of the Cold War. Abandoned at the end of World War II after their perceived failure and manipulation during the inter-war period, 'minority rights' were replaced by a universalism embodied in the UN Declaration of Human Rights. The focus on human rights continued during the Cold War, and the Conference for Security and Cooperation in Europe continued this formulation in the Helsinki process beginning in 1975. With the intensification of ethnopolitical conflict well documented in the late 1980s and early 1990s,⁸⁰ greater concern for minorities worldwide arose. It is during this period that we find the establishment of the UN Declaration of Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992), the two Council of Europe documents previously mentioned relating to minorities, the Oslo (1998)

⁷⁷ James Hughes states that, "[w]hile the modifications [to the process of naturalization] had a significant impact on policy in Estonia, the situation in Latvia was much less affected". Hughes, *supra* note 73, p. 746.

⁷⁸ Figures from the Commission's 2002 Regular Report on Latvia and Estonia.

⁷⁹ Concerns of minority language broadcasts in Article 9; access to higher education in Article 12. See Advisory Committee on the Framework Convention for the Protection of National Minorities 'Opinion on Estonia', adopted on 14 September 2001 <www.humanrights.coe.int/Minorities/Eng/FrameworkConvention/AdvisoryCommittee/Opinions/Estonia.htm>, visited on 27 November 2005.

⁸⁰ T. Gurr, *Peoples Versus States: Minorities at Risk in the New Century* (United States Institute of Peace Press, Washington DC, 2000).

and Lund (1999) Recommendations, and various other CSCE/OSCE foci on minorities, such as the establishment of the High Commissioner for National Minorities.⁸¹

The motivation for minority protection however, as with the protection of human rights, is not at all clear. Two disparate motivations will be examined here: the first is based on normative assertions of human values, and invokes the use of the word 'justice'. Theoretical work behind human rights is now well documented, with an extensive literature that has evolved particularly over the past half-century.⁸² However, justice, as it relates to ethno-cultural identity in liberal democratic theory, remains young and relatively unexplored. There have certainly been academics and lobby-groups that continue to find theoretical underpinnings for group rights within a liberal-democratic framework, but its position is not widely accepted and still far from secure.⁸³ While greater recognition for minorities has been gaining strength, policy-makers remain apprehensive about the practical implementation of group rights in any European-wide setting. As we saw in the brief look at member-states, there are still countries denying the existence of ethnic minorities, much less providing rights for them. The second purpose for promoting Human rights or minority protection can be seen from a more strategic perspective, derived from (i) a need for regional stability and (ii) a concern over migration patterns.

4.1. *Regional Stability*

Early scholarship on the importance of minority rights and minority protection for the purposes of conflict regulation and political stability can be seen in Arend Lijphart's work on consociationalism. Lijphart's approach emphasizes the need for explicit rights for communal groups in deeply divided societies, such as veto power over sensitive political issues.⁸⁴ Other scholarship has presented empirical evidence of the conflict-reducing ability of certain minority rights; most recently Nancy Bermeo (2002) and Stephen Saideman *et al.* (2002) have shown the effectiveness of territorial autonomy to reduce ethnic rebellion.⁸⁵ By this reasoning, it is through the protection of minorities that the world can best prevent violent conflict within and

⁸¹ Already by 1990 the CSCE held a significant meeting in Copenhagen to discuss minority protection.

⁸² See, for example, J. Donnelly, *Universal Human Rights In Theory And Practice* (Cornell University Press, Ithica, New York, 2003); H. Steiner and P. Alston, *International Human Rights In Context: Law, Politics, Morals* (Oxford University Press, New York, 2000); S. Shute and S. Hurley (eds.), *On Human Rights: the Oxford Amnesty Lectures* (Basic Books, USA, 1993).

⁸³ Most famously is Will Kymlicka's assertion that, for ethnocultural justice to take place, "national minorities should have the same tools of nation-building available to them as the majority nation, subject to the same liberal limitations". From his edited volume *supra* note 32. There are also critiques from authors across Eastern Europe such as Romania (Gabriel Andreescu) and Ukraine (Volodymyr Fesenko).

⁸⁴ A. Lijphart, *The Politics of Accommodation: Pluralism and Democracy in the Netherlands* (University of California Press, Berkeley, 1968); for a more recent look at Lijphart's approach to divided societies, A. Lijphart, 'Constitutional Design for Divided Societies', 15:2 *Journal of Democracy* (2004).

⁸⁵ N. Bermeo, 'The Import of Institutions', 13:2 *Journal of Democracy* (2002); S. Saideman, D. Lanoue, M. Campenni and S. Stanton, 'Democratization, Political Institutions, and Ethnic Conflict: A Pooled Time-Series Analysis, 1985–1998', 35:1 *Comparative Political Studies* (2002).

between states, increase security and economic prosperity, and potentially create a stable international order. However, due to the intense difficulties of implementing such rights for minorities, international actors such as the EU would only work towards such ends when faced with a specific threat, a threat to the regional stability of Europe. Worse, sometimes such ends are compromised by other forms of power-politics. As Dimitras and Papanikolatos, longstanding supporters of minority rights and founders of a Helsinki Monitor Office, commented:

“The apparently widespread interest in human and minority rights is rarely devoid of ulterior motives and thus subjected to ensuing limitations. It would be naïve to believe that any country views respect for civil rights as a priority at home and abroad, and does not subjugate them to stability or narrow-minded national interests.”⁸⁶

To draw on one example, in 1991 EU member-state Foreign Ministers made a declaration within the framework of European Political Cooperation, which set forth guidelines for political recognition of new states. One condition was, “guarantees for the rights of ethnic and national groups and minorities in accordance with the commitments subscribed to in the framework of the CSCE”.⁸⁷ However, as one observer noted, Macedonia was *not* initially recognized, despite its full compliance with this criterion, whereas Croatia *was* recognized in 1992, despite an Arbitration Committee’s expressed reservations regarding its minority protection laws.⁸⁸ Macedonia had been denied recognition due to other political issues related to stability, namely Greece’s fear of the potential effect an independent Macedonia could have on its borders, whereas Croatia had been recognized due to political pressure from member-states, namely Germany.

It seems highly probable, judging by the evidence, that similar objectives – objectives developed in the search for a stable European order – have been the overriding factor in the EU’s policy towards CSEECs. If we view the promotion of minority protection through this lens, we begin to see a different picture as to what the accession countries actually faced in the past decade, and indeed what the future-accession countries might face in the coming years.

For example, a detailed examination of the EU’s Regular Reports for the accession countries reveals significant bias towards certain minorities than others that smack of *realpolitik* rather than any normative concern for minority protection. First, these reports do not systematically analyze policies or institutional structures dealing with the protection of minorities. It is in fact unclear what the EU is assessing and what criteria is being applied. However, with the attention placed on the Russian and Roma minorities, there is an impression that the EU is, “more concerned with its

⁸⁶ Dimitras and Papanikolatos, *supra* note 32.

⁸⁷ Declaration on the Guidelines on Recognition of New States in Eastern Europe and the Soviet Union and the Declaration on Yugoslavia (1991). See EC Bulletin 1991/12, p. 119. Full text in C. Warbrick, ‘Current Developments: Public International Law’, 41 *International and Comparative Law Quarterly* (1992), p. 473.

⁸⁸ B. De Witte, ‘Politics versus Law in the EU’s Approach to Ethnic Minorities’, EUI working paper, RSC No 2000/4, p. 173.

external relations with its most powerful neighbour and main energy supplier, and its own narrow soft security migration problems, than with minority protection as a norm *per se*.⁸⁹ The creation of the European Stability Pact (1995) demonstrates the lack of normative commitments to minority protection and emphasises the impact of security concerns. This Stability Pact, while particularly concerned with minorities, was originally designed to promote good behaviour *between* CSEECs countries, suggesting stability as its goal.⁹⁰ As one minority rights expert stated, the Stability Pact, "showed that minority issues are of crucial importance for European politics . . . The European Council saw in the Pact . . . a means by which to exercise some influence on the candidate countries in the political sphere".⁹¹ Of specific concern when this pact was created were both the Hungarian diaspora in Eastern Europe and the Russian diaspora in Latvia and Estonia.⁹² These diasporas were critical because of neighbouring kin-states which had the potential to destabilize the region if inter-state tensions rose. However, as the case of Estonia and Latvia demonstrated, once stability had been achieved, the importance of minority protection became of secondary importance. By early 2000, despite discriminatory legislation that remained in place, tension had subsided significantly between Russia and the Baltic states and therefore membership in the EU was able to be offered. The EU and its partner organizations are far less concerned about the implementation of normative standards.

4.2. Migration

In terms of migration, Euro-Atlantic structures demonstrated concern over this topic from the beginning of the transition process. As early as 1992 the European Council, meeting in Edinburgh, "noted the pressures on Member States resulting from migratory movements, this being an issue of concern for Member States, and one which is likely to continue into the next decade . . . It recognized the importance of analyzing the causes of immigration pressure and analyzing ways of removing the causes of migratory movements". These concerns were in large part derived from refugee flows from the conflict in the former Yugoslavia, but it reflects a broader trend of general migration concerns absorbing EU members from the early 1990s.

More explicitly, we can examine the early work of the High Commissioner on National Minorities, whose specific function at its foundation in 1992 was to be "an instrument of conflict prevention" and be concerned with cases that could have a bearing on security.⁹³ Despite the focus on conflict prevention, the HCNM began focusing attention on the Roma almost immediately after its establishment. There is

⁸⁹ Hughes and Sasse, *supra* note 30, p. 16.

⁹⁰ J. Cook, 'Stability Pact Tries Hard to encourage Good Behaviour between Neighbors' in *European Dialogue*, No.1 (March/April, 1995).

⁹¹ Toggenbourg, *supra* note 50, p. 12.

⁹² M. Arnould, 'Stability Pact: Reassuring Minorities, Guaranteeing Frontiers' in *Forum*, No. 2 (June 1995) p. 18.

⁹³ CSCE, 'Helsinki Document 1992: Challenges of Change', p. 8 <www.osce.org/documents/mcs/1992/07/4046_en.pdf>, visited on 9 December 2005.

nothing *a priori* wrong with this, yet if we look systematically at the CSEECs' Roma populations during the late 1980s and early 1990s, we discover that, according to the Minorities at Risk Project (MAR), *no Roma population had ever undertaken violent action against the state* and had only undertaken mild levels of protest, suggesting little evidence of immanent conflict conflagration.⁹⁴ However, while there was little evident conflict that would have a bearing on regional security, there were clear migration concerns. In 1993, the HCNM produced a report, at the behest of the OSCE (then CSCE), that examined concerns over Roma migration to Western Europe. The report states:

“The aim, in short, should be to improve the ‘quality of life’ in migration-producing countries . . . for the sake of such improvements, but also for the reduction in pressures on international migration. In addition to commerce, investment, and development assistance leading to economic opportunity, efforts at addressing the specific problems of the Roma, including discrimination and violence against them, will contribute considerably to improving their quality of life. *Such efforts are likely to encourage people to continue their lives where they already are.*”⁹⁵

During the 1990s, these concerns manifested in a variety of ways, most notably in projects deemed priorities for Euro-Atlantic structures. As two scholars in the field note, “the Phare programme’s funding pattern suggests an identification of Roma minority issues with socio-economic concerns and a persistent if unvoiced preoccupation with migration – a conclusion supported by the comments of CEE officials and parallel patterns of bilateral assistance”.⁹⁶ The 1999 Accession Partnerships continued to press accession countries over the need to integrate Roma populations,⁹⁷ and the Commission’s *Regular Reports* frequently highlighted the disadvantaged position of Roma.⁹⁸

5. What can Future-Accession Countries Expect?

If the EU is concerned with its own vested interests, such as continental stability and westward migration, a very different set of expectations awaits future-accession countries. What becomes clear is that no existing body of European or international

⁹⁴ MAR records both violent and non-violent action on an ordinal scale. Roma recorded 0 for violent action from 1987–1995 in all countries that include at least 100,000 Roma and the highest protest score was a ‘3’ which means “small demonstrations”. Minorities at Risk Project (2005) Center for International Development and Conflict Management (University of Maryland, College Park) <www.cidcm.umd.edu/inscr/mar/>, visited on 29 November 2005.

⁹⁵ Emphasis added; OSCE, ‘CSCE HCNM Report On Roma’ (1993), taken from *Minority Electronic Resources* at <www.minelres.lv/osce/hcnmroma.htm>, visited on 29 November 2005.

⁹⁶ R. Guglielmo and T. Waters, ‘Migrating Towards Minority Status: Shifting European Policy Towards Roma’, 43:4 *Journal of Common Market Studies* pp. 763–786.

⁹⁷ See 1999 Accession Partnerships at <http://europa.eu.int/comm/enlargement/report_10_99/acc_partn.htm>, visited on 27 November 2005.

⁹⁸ See archive of Regular Reports at <<http://europa.eu.int/comm/enlargement/intro/criteria.htm>>, visited on 27 November 2005.

conventions, covenants, or declarations would ensure the satisfaction of the EU or its member-states. While vague formulas exist in such documents as the Framework Convention, the UN Declaration on the Rights of Minorities, the CSCE Copenhagen Declaration of 1990, these are only *guidelines*, and much more or less may be needed depending on the threat a minority group can pose to the EU: the only clear and overriding principle for Europe is protecting its own interests. In fact if we look at Euro-Atlantic policy over the past 15 years, we can find a wide diversity of policies promoted in non-accession countries. Examples from the region demonstrate EU foreign policy encouraging anything from consociational approaches (Bosnia-Herzegovina), to partition (Kosovo), to multiculturalism (Macedonia), to federalism (Moldova).⁹⁹

If we view the EU and Euro-Atlantic Community's role in the CSEECs essentially as one of an international role in conflict prevention, then we need to separate two different approaches that serve that end. The first can be seen as based on evolving law and has three components: standard setting, supervision of implementation, and settlements over disputes arising from the implementation of those standards. The second is based on diplomacy, and involves preventative diplomacy, peace making and peacekeeping.¹⁰⁰ These two aspects are, of course, interrelated and involve an attempt by the international community to maintain and strengthen peace.¹⁰¹

The first approach, as this article demonstrated, has been present but lacks any real substance beyond human rights. Standards for the protection of actual minorities remain in the realm of individual rights based on non-discrimination. Legally binding and clearly delineated rights, meanwhile, are unconvincing in their strength and unaccepted even by some EU member-states themselves. Nevertheless, most of what was demanded of CSEECs, including the non-accession countries, was already achieved by 2000. In fact several non-accession CSEECs began signing bilateral treaties with their neighbours that often used provisions word-for-word from several documents on the rights of national minorities, including the Framework Convention.¹⁰² Further, all East European countries' legislation regarding the protection of minorities mostly follows requirements set out by the Council of Europe and the OSCE.¹⁰³ In addition,

⁹⁹ Bosnia's consociational approach as detailed in the Dayton Accords; Kosovo's partition from Yugoslavia after NATO's 1999 bombing campaign; Macedonia's multiculturalism policy as evidenced by the EU's support for a multi-lingual university including the use of Albanian and Macedonian languages, in addition to territorial changes mandated in the 2001 Ohrid Framework Agreement; and federalism in Moldova as evidenced by the EU's support for the OSCE-Russia-Ukraine federalization plan presented in July 2002.

¹⁰⁰ A. Eide 'Ethnic conflicts and minority protection: Roles for the international community' in Rupesinghe and Tishkov (ed.), *Ethnicity and power in the contemporary world* (United Nations University Press, New York, 1996) p. 182.

¹⁰¹ *Ibid.*, p. 183.

¹⁰² Also the CSCE Copenhagen Document (1990), Council of Europe Parliamentary Assembly Recommendation 1201 (1993) and the UN Declaration of Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992).

¹⁰³ K. Gal, 'The Council of Europe Framework Convention for the Protection of National Minorities and its Impact on Central and Eastern Europe', *Journal on Ethnopolitics and Minority Issues in Europe* (Winter, 2000) p. 7.

all constitutions deal with the status of minorities covering both non-discrimination and identity protection.¹⁰⁴ As Moldova's very liberal 'Law on Minorities' (2001) and its wide-ranging autonomy of 1994 for the Gagauz minority reveal, many countries have actually gone considerably further than any minimum standards suggested by European standards.¹⁰⁵

The second approach, dealing with diplomacy to diffuse situations of conflict, has been far more evident in Eastern Europe to date, and we can expect this to continue into the future. From the examples of both high-tension crises in Macedonia and Estonia, the EU and the Euro-Atlantic Structures worked hard to find compromises between disputing parties. However, it was only when the spectre of civil war was very real, that the EU lobbied extensively for recognition of minority rights; this was evident in Macedonia in 2001. This was also evident in 2002 when the EU and the Council of Europe increased resources directed at Moldova during mass demonstrations that threatened that country's organs of power. The conclusions drawn from this suggest that future-accession countries can expect increased pressure to adjust legislation only if state-stability becomes an issue. As with Estonia or Latvia, where stability is no longer seen to be at risk and with other accession criteria met, the EU is prepared to offer membership applications where a lack of minority protection legislation (and even *discriminatory* citizenship legislation) exists. Currently, the only openly unresolved conflict area is Moldova's Transnistria separatist republic, although tensions remain in Bosnia, Serbia and Montenegro, and Macedonia. Ukraine could also be the focus of attention in the future with its multitude of divisions along ethno-cultural, linguistic, regional, and religious lines.¹⁰⁶ The case of Crimea, where the OSCE has stationed a mission office, is also of evident concern.

6. Conclusion

This article has outlined what policy decisions need to be taken by the future-accession countries of CSEECs regarding minority rights and minority protection. The article began with a look at EU member states and found no consensus on minority policies; as the example of Greece revealed, some states even refuse to acknowledge the *existence* of ethnic or national minorities. The article then looked at the recent and current accession countries and found that pressures to alter domestic policies and create more inclusive policies did exist and were relatively effective. However, the article also highlighted counter examples from these accession countries, which suggested compliance with this pressure was *not* a pre-requisite for membership.

¹⁰⁴ For an in-depth cross-national comparison of constitutions in Eastern Europe, see S. Deets, 'Nationalism and Constitutionalism in Eastern Europe', in Crisen, *supra* note 39.

¹⁰⁵ Закон Республики Молдова о Приватных Правах на Национальном языке № 382-XV от 19.07.2001 Мониторинг Официальный Р.Молдова № 107/819 от 04.09.2001.

¹⁰⁶ V. Fesenko, 'Perspectives on a Liberal-Pluralist Approach' in Kymlicka, *supra* note 32, p. 283–285.

Next, the article examined potential motivations underlying the EU's 'commitment' to minority protection. It appears the EU is concerned far more with its own narrow self-interests, such as migration and continental stability, than any normative values it is assumed to hold regarding the protection of minorities. It was suggested that in cases of heightened tension, the EU and other Euro-Atlantic Structures have demonstrated their preparedness to follow virtually any policy measure to create stability, as long as they are in accordance with liberal-democratic principles; absence of a threat to self-interest, no minority protection is required.

The conclusion for countries hopeful of EU membership appears to be that CSEECs only need to maintain relations with their minorities that are consistent with liberal-democratic values. The base line appears to be the protection of human rights alone, but there is much leeway in the interpretation of these values. In terms of legislation, all non-accession countries have in fact achieved minimum levels and most have legislated significantly more protection of minorities than many of the accession countries and indeed than many EU member-states themselves; the focus here will remain on implementation. Of greater concern is stability, and where this is lacking, membership will be elusive. However, as the case of Cyprus's accession reveals, even the understanding of 'stability' appears muddled by the world *realpolitik*.

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