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EU and protection of minority rights in central and eastern Europe

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ABSTRACT

This article focusses on the role of international organisations in promoting respect for and compliance with minority rights legislation in Central and Eastern Europe. The primary focus remains on the pioneering work of the OSCE and Council of Europe (CoE). Drawing on leading works in the field, it also takes a look at the geopolitics involved and the more important and dominant role played by EU because of accession conditionality. It examines the causes and impact of EU' s accession criteria in promoting democracy, rule of law and respect for human rights esp minority rights in the region.

Key Words : EU, Protection of Minority rights, Council of Europe, OSCE

INTRODUCTION

The end of the Cold war and the resurfacing of ethnic conflicts coupled with emerging reports of genocides and expulsion led to an ever increased international concern with rights of minorities in the world at large and Europe in particular. The works of several international organisations such as Organisation For Security and Cooperation in Europe (OSCE16), EU and Council Of Europe (CoE) throughout the 90s led to the emergence of common European standards regarding minority rights (Ringold 2005: 19). The EU, historically not engaged in the field of minority rights and a late entrant, drew heavily from the work done by OSCE and CoE. This study therefore, attempts to look at the work done by these international organisations, the consequent emergence of international norms and key trends regarding minority rights. Furthermore, it looks at the role of EU conditionality in influencing minority rights policies in candidate states of CEE.

The collapse of the Soviet Union and transformations in Central and Eastern Europe were accompanied by an impetus on minority rights. Several reasons accounted for a heightened focus on minority rights in Europe. As mentioned in the previous chapter, Europe had witnessed serious cases of human rights violations and consequences of extreme nationalism and suppression of minorities. The continent comprises of states where political and ethnic borders are not coterminous rendering states vulnerable to conflicts and minorities

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to suppression and persecution. The collapse of the Iron Curtain and the ideological vacuum created by the demise of socialism in CEE countries led to the resurfacing of ethnic conflicts; Balkans was a bitter reminder of the consequences of extreme nationalism. Conflict in one country would also impact others through the outpour of refugees as observed in the Balkan crisis. Minority and human rights were also important from social justice perspectives. Furthermore, CEE countries were deeply divided by ethnicity and peaceful co-existence of minorities was essential to peace and stability in the post communist period.

This period, therefore, saw the emergence of three key trends: firstly, mounting international concern with minority rights issues. Secondly, a growing emphasis on minority group rights as opposed to individual rights model practised in Europe since Second World War. Minority rights approach had been abandoned after the Second World War due to inter war politics and failure of League of Nations in the favour of a new universalism to promote individual human rights (Hughes, Sasse 2003: 4). The resurgent minority rights approach acknowledges the legitimacy of group consciousness and focuses on the protection of the group rather than the individual. It stresses on the importance of cultural preservation. This approach is based on the premise that conditions of marginalised groups, such as Roma cannot improve merely with the integration policies followed since Second World War, they also need opportunities for group empowerment and cultural self-determination. Empowerment here refers to their capacity to participate in and negotiate with influence, control and hold accountable institutions that affect their lives (Ringold 2005: 19). Lastly, the security scenario described above led to a shift in the minority rights approach culminating in securitisation of minority issues. In other words, a shift from concerns of minority freedoms to security concerns posed by minorities could be discerned. This approach has been criticised for ignoring the genuine issue at hand and projecting a negative image of the minorities as a source of conflict (Chandler 1999: 4-7).

OSCE:

The OSCE, preceding the EU in this realm, is regarded to have been the most successful as far as norm setting in national minority rights was concerned. OSCE was also a leader as far as addressing the Roma issue was concerned. A concise look at some of the trends and norms set by OSCE in the field of minority issues in general and Roma issues in particular will help in better comprehension and contextualisation of EU activism in this realm.

The only provision in OSCE for national minorities before the end of the cold war was the Helsinki Act of the OSCE in 1975 that called for 'respect of minority rights, equality before law and full opportunity to enjoy human rights and fundamental freedoms'. A change in outlook came with the collapse of communism in Eastern Europe. OSCE, between 1989 and 1991, took qualitative steps towards norm setting in minority rights issues and their internationalisation. The Copenhagen document of the OSCE (1990) was a landmark in establishing normative standards of minority rights protection. Going beyond previous anti-discrimination and equal treatment provisions, it argued for positive rights such as autonomous administrations and the use of mother tongue in official matters (Chandler 1999: 3-4). States

[16]Referred to as Conference on Security and Cooperation in Europe, CSCE till 1994. In order to avoid confusion, the term OSCE has been used throughout.

were obliged to protect the 'ethnic, cultural, linguistic and religious identity of national minorities on their territory and to create conditions for the promotion of that identity' (par.33) including provision of instruction in mother tongue and the use of mother tongue `wherever possible or necessary' before public authorities' (par.34) (OSCE, 1995:9).

The emerging group rights approach was further stressed in the Paris Charter which stated that 'peace, justice, stability and democracy, require that the ethnic, cultural, linguistic and religious identity of national minorities be protected and conditions for the promotion of that identity be created'. The shift to a group rights formula was also apparent in the Opinions of the Badinter Arbitration Committee, which was established by the EU in August 1991 to provide a legal view on how the dissolution of Yugoslavia should be managed. Its emphasis on the rights of 'peoples and minorities' was affirmed by the EU Foreign Ministers' Declaration on the Guidelines on Recognition of New States in Eastern Europe and the Soviet Union and the Declaration on Yugoslavia of 16 December 1991, which made recognition conditional upon, amongst other things: "guarantees for the rights of ethnic and national groups and minorities in accordance with the commitments subscribed to in the framework of the OSCE (Hughe, Sasse, 2003: 6-9).

The divisive negotiations over the breakup of former Yugoslavia discouraged any further encouragement to national minorities in terms of assertion of their identities as well as recognition of existence of new 'nations' and renegotiating the boundaries of the East European states (Guerra, 1996:20). In terms of minority rights issues, the focus moved from standard setting to conflict regulation as a part of securitisation.

Therefore, the Copenhagen Document of 1990 was seen as the limit as far as minority rights were concerned. However, two important changes were noted in the next OSCE Meeting of Experts on Minorities in Geneva (1991): firstly, it was outlined that minority issues were an international concern, thereby increasing the regulative authority of international institutions. Secondly, it sought to rein in minority claims that threatened the geo-political status-quo of Europe. Therefore, provisions of the Copenhagen document such as autonomous administration were replaced by less threatening options (Chandler, 1999: 2).

The OSCE was also faced with the questions of double standards from the East as many of the norms were not applied to minorities in the western democracies. Western democracies on the other hand, raised objection to the increased regulative authority that restricted their sovereignty. Therefore, certain clauses were added which would exempt western states from many of these norms. For instance, Geneva Report had to include a statement that not all ethnic, cultural, linguistic or religious differences necessarily lead to creation of national minorities. Germany forced the exclusion of new minorities such as migrant workers to avoid questioning of its treatment of Turkish minority while United States added indigenous people to the list. Furthermore, minority question would be out of the remit of the OSCE where terrorism was involved, this put Irish, Kurdish or Basque questions off the international agenda (Chandler, 1999:4-6). With these clauses in place, it was clear that the focus of both the CoE and OSCE would be the East.

With Balkan wars, securitisation of minority issues entailed an increasing emphasis on maintenance of cordial inter ethnic relations in these post communist states out of concerns for international security. This was evident in the job profile of the HCNM (Helsinki Final

Act, 1992) which was not to focus on safeguarding minority rights or become an ombudsman on these issues which could encourage minorities to make greater demands leading to conflict. The HCNM was created to be an early warning mechanism through monitoring developments and select specific situations for preventative diplomacy and secondly, to facilitate appropriate 'early action' by OSCE. This mandate warranted that OSCE could be involved in the affairs of a state without the consent of the state thereby limiting challenging the concept of state sovereignty prevalent after the Second World War. Such a role for HCNM implied that minority rights issues were only paid attention when they had the potential to develop into violent conflict while minority rights issues in general became sidelined. There could be serious cases of minority rights violations which may not classify as potential conflicts but would not fall under the remit of the HCNM (Chandler, 1999: 4-7).

Council of Europe:

The council of Europe, an intergovernmental organisation, working to promote democratisation, human rights and rule of law, has also played a significant role in promoting awareness and encouragement of Europe's cultural identity and diversity. It seeks to find solutions to challenges facing European society, such as, inter alia, discrimination against minorities, xenophobia, intolerance, drugs, violence, HIV/AIDS and so on. It also promotes consolidation of democratic stability in Europe by backing political, constitutional and legislative reform. It earliest intervention in the field of human rights was in the form of the European Convention of Human Rights (ECHR) which was adopted by all CoE member states which included all the older members of the EU.

The CoE has been more successful in codification of minority rights in Europe than OSCE. The first step in this direction was the Council's European Charter for Regional or Minority Languages in 1992. It requires protection and promotion of regional or minority languages; the provision for inclusion of non-territorial languages, minority languages which cannot be identified with a particular region provides for some protection for minority groups such as the Roma[17].

In 1995, the CoE's Framework Convention on National Minorities (FCNM), the first legally binding multilateral document, was opened for signature and came into force in 1998. The EU with no uniform minority protection framework of its own encourages its existing as well as aspiring members to sign this convention. It was signed by all the ten member states from CEE that joined the EU in 2004 and 2007[18]. The Convention is largely derived from the 1990 Copenhagen Document of the OSCE. It is by far the most comprehensive standard setting document in the field of minority rights.

The Convention consists of principles and objectives that should guide states in protecting their minorities. The definition of "national minority" and groups that fall under this category was left to signatory states. The Convention provides for equality before law, non-discrimination (Art 4.1) and affirmative action for minorities.

Since abstention from discrimination may not be enough and additional measures might be required to promote equality between different groups (Art 4.2). Such affirmative action

[17]http://conventions.coe.int/treaty/en/Treaties/Html/148.htm

[18]Latvia was the only candidate country that signed the FCNM after accession in 2005.

and measures are not tantamount to discrimination (Art 4.3). Signatories are obligated to take various other measures, such as (Article 5-17) promotion of minority cultures and identity, facilitate their access to mainstream media, promotion of minority languages through creation of minority media, classroom instruction in minority languages, minority educational institutions, use of minority languages in official communications and road signs, protection of their right to speech, association, expression, religion and so on (Art 5-17) [19]. FCNM also under articles 24-26, provided for a monitoring mechanism led by the Council of Ministers assisted by the Advisory Committees (ACs) whereby states have to submit periodic progress reports (Hofman, 2009: 46-47).

Although there are important differences in terms of strategy and aims between the initiatives of the OSCE and that of the Council of Europe, they have been part of the same trend in international politics to increase awareness of the predicament of minority citizens in Europe. Consequently, efforts of both the organisations have shared common trends and problems. The minority rights norms and legislation that emerged post 1989 did not lead to a consensus on what constitutes a minority. Also, the focus in legally binding documents continued to be persons belonging to minority groups rather than the group. However, their achievement lay in the fact that the norms and legislation that emerged due to the efforts of these organisations were pan-European in nature (Hughes, Sasse, 2003: 7-10). The works of both these organisations have been hampered by the reluctance of many states to set clear legal standards and subject themselves voluntarily to international monitoring (Vermeersch, 2003: 6).

Moreover, EU drew heavily from these organisations in terms of standard setting as it considered them to be best practices in this field. EU also relied on these organisations for evaluating and benchmarking of candidates. For instance, EU encourages all its member states to ratify Council of Europe's European Convention on Human Rights as well as Framework Convention on National Minorities. The Council of Europe verifies its members' constitutions, laws on human rights and record on minorities thereby performing a prior screening for EU candidates (Hughes, Sasse, 2003: 7-10). The overarching trends such as, inter alia, the securitisation of minority rights issues as well as focus on CEE region despite lack of such normative standards within Western Europe also informed EU's approach.

EU: Influencing Minority Rights Policies in CEECs

Before the end of the cold war and collapse of communism, concerns with minority rights in the EU were largely propelled by endogenous factors *i.e.* factors emanating from within the EU. This concern stemmed largely from groups within the European Parliament concerned with the destiny of minority cultures within the EU. However, this concern did not result in political instruments of minority protection at state level; few instruments were signed at the EU level and that too mainly in the field of minority language protection such as the EC budget line for minority languages, European Bureau for Lesser Used Languages and so on (Toggenburg, 2004: 6, Pentassuglia, 2001: 6). The factors driving EU's concern with minority rights protection after the collapse of communism has been largely been external

[19]Pamphlet No. 8 of the UN Guide For Minorities-The Council Of Europe's Framework Convention For The Protection Of National Minorities, pp-3-4.

and guided by EU's aims to enlarge eastwards and the security scenario mentioned above.

The EU, in the process of de-economisation, by establishing itself as a political and economic union and aiming at eastward enlargement, was entering the sphere of minority rights protection. The emerging standards of minority rights protection in Europe found expression in the EU's Copenhagen Criteria of 1993. The 'respect for and protection of minorities' acquired unprecedented importance as it became one of the core conditions for membership of the Union. The Copenhagen Criteria of 1993, required inter alia, stability of institutions guaranteeing democracy, rule of law, human rights and respect for and protection of minorities[20].

The next important step in minority rights legislation came with the Amsterdam Treaty of the EU. With the coming into effect of the Amsterdam Treaty (1997) in 1999, the EU Council acquired the competence to introduce legislation to combat discrimination on a number of grounds, including racial or ethnic origin[21]. Article 13 of the treaty authorised the Union to "take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation". Accordingly, in 2000, the 'Directive on Equal Treatment Between Persons Irrespective of Racial or Ethnic Origin' (Directive/2000/EC), popularly known as the Race Directive or the Race Equality Directive and the Directive 2000/78/EC- 'Framework Directive on Equal Treatment in Employment and Occupation' were adopted. These expanded the scope of anti-discrimination legislation in EU from gender and nationality to include, inter alia, ethnicity and race.

The Race Directive (2000) is the most important piece of legislation in EU law as far as minority rights protection is concerned[22]. It features detailed and innovative provisions, such as definition of direct and indirect discrimination, legal concepts of harassment, victimization, and instruction to discriminate and provisions regarding reversal of burden of proof and the creation of specialised bodies for equal treatment of all persons. This document, unlike the Framework directive, is not limited to employment and includes the fields of education, social protection and housing. It also encourages positive measures by the states to support or compensate disadvantaged groups. The Commission has shown a strong preference towards the adoption of unified comprehensive anti-discrimination legislation, although the Directive allows for adoption through several acts.

Lastly, the European Charter on Fundamental rights (2000)[23] lays down for the first time in the European Union's history, the whole range of civil, political, economic and social rights of European citizens and all persons resident in the EU. It states equality before law of all people and prohibits discrimination. It requests the EU to protect cultural, religious and linguistic diversity. This Charter became a binding document once the Lisbon Treaty was ratified in 2009.

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[20] The Conclusions of the Presidency —Copenhagen, June 21-23, 1993, pp-13.

[21]The Treaty Of Amsterdam: Amending The Treaty On European Union, The Treaties Establishing The European Communities And Certain Related Acts, 2 October, 1997.

[22]Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, Official Journal L 180 , 19/07/2000 P. 0022 —0026.

[23]Charter of Fundamental Rights Of The European Union: http://www.europarl.europa.eu/charter/default_en.htm

The international organisations mentioned in the previous sections, have employed a variety of techniques to influence policy direction in these Central and East European states. Dolowitz and Marsh (2000) have devised a framework to locate different types of policy transfers on a continuum from voluntary adoption (lesson-drawing) to coercive transfer (direct imposition). They argue that pure voluntary and pure coercive forms of policy transfer should be considered ideal-types; they are not expected to occur in reality. Lesson-drawing which might seem as a process of complete voluntary learning could, in practice, be driven by perceived necessity while, what appears to be a purely coercive transfer, on the other hand, is in reality very often the result of negotiation. While OSCE and CoE have largely focussed on voluntary adaptation, EU has relied on this approach coupled with direct imposition through membership conditionality late 1990s onwards (Vermeersch, 2003: 5-6).

Assessing EU Minority Conditionality :

Key trends and problems :

"The issue of minority protection is an extreme case for analyzing, the problem of linkage between EU membership conditionality and compliance by candidate countries. While EU law is virtually non-existent, EU practice is divergent, and international standards are ambiguous, the issue has been given high rhetorical prominence by the EU during enlargement" (Hughes, Sasse, 2003:1). The EU's inclusion of minority rights in the political criteria and the acquis, a set of non-negotiable conditions, resulted in making membership contingent on the fulfilling of these conditions. This coupled with financial resources at EU's disposaland strong motivation among Central and East European states to join the EU led to the latter acquiring a powerful mechanism in the form of membership conditionality to influence minority rights policies in these states. This section therefore, attempts to look at the various aspects of minority conditionality of the EU such as: trends, problems and transformative effect on candidate countries.

EU conditionality is set in a way that it contributes to EU's success in influencing policy. EU uses a merit based system and candidates move closer to membership on the basis of the progress achieved in meeting the membership criteria. The progress by candidate states in meeting the membership conditionality is monitored and evaluated through the Regular Reports of the Commission following the Opinion on membership applications. These reports are compiled from various sources such as the candidate countries, OSCE, CoE, international financial institutions, NGOs and assessments made by member states. Also, EU uses other mechanisms such as funding distribution, and specific programmes, to influence policy in candidate states. The Commission also encourages the acceptance of certain international norms and cooperation with other international organizations such as the OSCE and the Council of Europe in the area of minority rights provision (Spirova, Budd, 2008: 81-84). Conditionality, however, is widely regarded as the most potent instrument with the EU in influencing the domestic policies of the candidate states.

A succinct look at the key trends and problems in EU 's role in minority rights protection would help in better contextualization and comprehension of the EU's role in protection of Roma rights. EU's inclusion of the 'respect for and the protection of minorities' in its Copenhagen Criteria (1993) for accession gave rise to discussions about the EU's double

standards. There is discrepancy between the EU's promotion of minority rights norms in CEECs and their implementation within the older member states. Minority rights as a norm remains contested among the pre 2004 members of the EU and still lacks a firm foundation in EU law. Article 6 (1) of the 1992 Maastricht Treaty on the European Union lists the values of the political accession criterion with the notable exception of the reference to minorities. This implied settinga much higher standard for candidate countries than EU had ever been able to agree for its own members, (Hughes, Sasse, 2003: 10, Sasse 2009: 17, Toggenburg, 2004: 4). Such internal diversity entailed that minority rights continued to be in the remit of states and outside the reach of Commission.

Minority conditionality of the EU with regards to candidate states of the CEE region suffered from inherent problems that affected its success and credibility. Firstly, minority conditionality for candidate countries of CEE region can be studied under two themes: anti-discrimination measures and positive minority rights, which can be further differentiated into individual and collective minority rights. While only a formal and narrow interpretation of non-discrimination excludes special minority rights, a more substantive interpretation focusing on de facto equality allows for accommodation of special minority rights. They are complimentary and their simultaneous co-existence in the legal system of a country can ensure comprehensive protection for the minorities. However, in the European context, a tension is assumed between the two concepts so that those favouring anti-discrimination can be expected to he reluctant or negligent to develop norms of positive discrimination (Schwellnus, 2002: 8-13). The EU is perceived as promoting both antidiscrimination and minority protection objectives, but the extent to which anti-discrimination policies may achieve or replace sufficient minority protection is not clear. The EU does not expressly support group rights as an approach to minority protection, but does not show a clear preference for individual rights either (Brusis, 2003: 6). While there is overwhelming consensus on the principle of anti-discrimination, one of the cornerstones of EU community law and political conditionality in enlargement, positive minority rights are deeply contested within EU as well as some of the candidate states that joined EU in 2004 and 2007 despite increasing efforts by EU, OSCE, CoE and other international and regional organisations.

Such a scenario has multiple implications: first is the full acceptance of the anti-discrimination clause by all the then candidate states of the CEE. All the ten states have transposed the anti-discrimination legislation of EU such as the Race Directive and the Framework Convention on National Minorities of the CoE into their national legal systems. Secondly, the internal diversity and contestation on the issue of positive minority rights within the EU led to not only accusations of double standards but also resulted in EU's reluctance in promoting specific models when it comes to its fundamental political criteria, especially minority rights. EU's condition on minority protection is vague and open to interpretation; most of the acquis law that needs to be transposed consist of economic and administrative law. There is a need for explicit demands, concrete solutions or specific models that candidate countries should be emulating. The thinness of the acquis in terms of political criteria has given the states plenty of freedom to interpret the accession criteria therefore, limiting the success of conditionality in terms of ensuring norm compliance and policy convergence. Conditionality is then effective in only checking blatant violations and deciding when it comes

to actual accession. In a nutshell, such vagueness makes real changes difficult to effectuate (Schwellnus, 2002: 3-4).

Regular Reports of the EU, aimed at monitoring and evaluating the progress of candidate countries in meeting the accession criteria focussed on two aspects: focus on the adoption of requisite laws mentioned in the acquis and monitor systemic adoption by assessing implementation and capacity of the candidate states to meet the obligations of membership. A thorough analysis of these reports by Hughes and Sasse (Hughes, Sasse, 2003: 14-20, Sasse, 2009: 20-24) reveals key elements of the EU's minority conditionality. Regular reports of the EU highlight a hierarchy in minority issues. There were significant minority groups in all the candidate countries that joined EU in 2004 and 2007 however, EU Reports stressed particularly on the conditions of the Russophone minority in Estonia and Latvia and the Roma minorities in Czech Republic, Hungary, Romania and Slovakia. This hierarchy reflects the EU's interest in maintaining good relations with Russia, its most powerful neighbour and energy supplier and its own concerns with migration. Otherwise, a territorially marginalised group like the Roma is a less politically sensitive group to focus on. Also, The Roma face severe problems of systematic discrimination, political and social exclusion, segregation, and poverty but this is not a feature specific to candidate countries. This serves to illustrate that EU's concerns with minority rights issues is heavily influenced by its hard and soft security concerns rather than with norm protection per se. EU's minority conditionality and pressures for compliance on states has differed across states and intra state as well depending upon the political sensitivity of the minority question at hand (Vermeersch, 2003: 10). The change in EU attitude towards the Roma question mentioned in the next section is an apt illustration of this trend.

An analysis of Regular Reports reveals that these reports often take the progress in candidate countries at face value and offer generic praise to countries through vague statements such as 'considerable progress' and 'continuing commitment to protection of minority rights'. The countries were evaluated on the basis of transposition of the acquis rather than proper implementation of those measures. The reports were designed to make each case seem like a cumulative success story and positive developments were recorded even if no problems were detailed these areas in the previous reports. Economic and administrative changes were easier to track but the thinness of the acquis with regards to the political criteria led to EU's difficulties in evaluation in the absence of clear benchmarks. Reports tracked the adoption and amendment of laws on citizenship, naturalisation, language and elections, establishment of institutions to manage minority issues and launch of government programmes to address minority needs. Trends are evaluated by numerical benchmarks, such as the number of requests for naturalisation, pass rate for language or citizenship tests, number of schools or classes taught in state or minority languages, number of teachers trained to teach in minority languages, extent of media broadcasting in minority languages. Rather than setting benchmarks, these reports make references to international or European standards without proper elaboration and cross reference to recommendation, activities and documents of CoE and OSCE.

Often these reports gloss over cases of weak or non-compliance, for instance, the Report on Latvia in 2001 noted EU and OSCE concerns over naturalisation and effective

political participation by minorities due to restrictive language laws, including the fact that Latvia was found in violation of ECHR during 2001. Yet, the report concluded that Latvia "has made considerable progress in further consolidating and deepening ... respect for and protection of minorities".

EU funding for candidate states to aid them in meeting accession criteria is largely channelled through PHARE programme as mentioned above. But statistics reveal that the realm of minority issues and programmes has been a low priority area for EU funding. There was no separate budget line for these issues and it was subsumed under the heading of 'civil society and democratisation'. Regular reports state most states as fulfilling EU conditionality except in the field of minority issues especially in the case of Roma community. Such a scenario demonstrates the lax attention paid to minority issues during accession negotiations.

Impact :

The success of EU conditionality, its linkage with domestic policy outcomes has been a vigorously debated concept within the scholarship on the subject. Bernd Rechel points out the theoretical divide between the rational choice and the constructivist approaches in the discussion of conditionality. Schimmelfennig elucidates that in a rational choice approach, actors are rational, goal-oriented and purposeful and conditionality only works when it brings benefits to national governments (Rechel, 2009: 3, Schimmelfennig and Trauner, 2009: 1). His prominent 'external incentives model', built on rationalist cost-benefit calculations relates 'effective conditionality' to basic requisites such as: consistent and credible conditions and low domestic adoption costs (Sasse, 2009: 18). The constructivist approach, on the other hand, emphasizes the processes of persuasion and socialisation and the sharing of norms and values. At times, these different types of influences were complimentary, such as the EU conditionality was often tied to the socialisation based efforts of the OSCE and CoE providing these organisations with additional leverage. The policy solutions promoted by EU were often shaped by OSCE and CoE. Scholars such as Schimmelfennig and Kelley emphasise the viewpoint that socialisation without conditionality may not be able to overcome domestic opposition. However, socialisation is important in guiding policy change in these states. Without socialisation based efforts, the implementation of rationally adopted laws and policies conditionality may remain patchy (Sasse, 2009:28).

The rationalist external incentives model is contested in a discussion of minority conditionality because it assumes that domestic adoption costs are always more than zero. High adoption costs according to this model prevent rule adoption while moderate political costs may result in compliance due to effective conditionality. It is assumed that governments are not expected to gain from rule adoption in absence of external incentives. This model acknowledges domestically driven rule adoption but only in countries where conditions were favourable before the onset of EU conditionality however, it is based on the premise that candidate countries incur atleast moderate costs for compliance. This model might lead to overestimation of effectiveness of minority conditionality in cases where it was applied and rule adoption took place, but where domestic change led to conditions with positive gains for rule adoption. Positive gains might arise for governments representing national minorities or government that view them as an important electorate or ideologically lean towards a pro-

minority position. Domestic factors can inhibit or promote such rule adoption through three conditions: first, the government position which can be in favour, indifferent or in opposition to minority protection measures, second, the existence of veto players that might depending on their policy preferences, block either positive proposals or attempt revocation of existing rules. Thirdly, the size of minorities can be interpreted as an indicator of the salience as well as financial implications of minority protection (Schwellnus, Balazs, Mikalayeva, 2009: 1-2). This approach therefore, considers domestic factors as the most important in rule adoption, complimented by external incentives as a necessary condition.

Minority policies and politics in the member states were shaped by a complex set of domestic and international factors. At domestic level, these factors include the historical legacy, the pattern of transition from communism, domestic political scene, process of state nation building, state capacity, public attitudes towards minorities and minority rights, political organisation and representation of minorities. International factors include conditionality, interest and pressure of Western organisations, minority kin states and international NGOs. International factors do not directly influence minority rights policies and politics in the region but are mediated and filtered by domestic politics, which themselves can be influenced by international factors (Rechel, 2009: 5-6).

Scholars are divided on the impact EU accession has had on the minorities in the region. For scholars like Bokulic, research shows that "EU accession process has induced change and served as a catalyst at a domestic level in candidate states and has had a positive impact on the status of minorities". Kelley (2004), as pointed out earlier, argues that socialisation based efforts of EU without minority conditionality would not have made the EU policy a successful one. Based on her research, she concludes that instances where EU bodies used merely socialisation based efforts rarely altered government behaviour in the candidate countries (Spirova, Budd 2008: 85-86).

Melanie H. Ram's (2003: 28-52, 2009:180-192) study of democratisation through European integration in Czech Republic and Romania demonstrates how EU pressures for reforms and repealing of discriminatory laws have been successful despite tremendous domestic opposition. The repeal of discriminatory clauses of Citizenship Law in Czech Republic and reforms in the Education Law in Romania are glaring illustrations of the impact of EU conditionality. Further, she adds that domestic factors have an important role to play and they can either limit or enhance EU's impact. In her research on minority rights regime in Czech Republic, Sobotka (2009: 90-101) offers a somewhat different analysis. While domestic factors have been important in limiting the impact of external factors such as EU, CoE and OSCE, the role of EU policy in Czech Republic suffers from certain defects that have impacted its success. For instance, conditionality has worked only when it was seriously pursued and in several cases the implementation and transposition of the acquis as well as anti-discrimination measures remains incomplete or limited. There is immense scope for improvement, especially with regards to the conditions of the Roma minority.

Similarly, Bernd Rechel (2009: 78-86) as pointed out earlier, argues that minority policies in candidate countries were shaped by a mix of both domestic and external factors. Based on a case study of Bulgaria, Rechel argues that most of the policy changes in Bulgaria happened in early 90s without the influence of EU and were guided by internal factors. One

of the most restrictive minority regimes in new member states, Bulgaria accords no positive minority rights and no minority rights at all to its Macedonian and Pomak minorities. This illiberal regime was largely due to an illiberal past and the reliance on assimilationism under the communist regime which "shaped public attitudes, minority rights demands, and accommodations by the state in the post-communist period". However, since 1990s, external pressure by EU conditionality led to Bulgaria signing key instruments of minority rights protection by the country such as the re-introduction of minority language education, the ratification of the Framework Convention for the Protection of National Minorities in 1999, the adoption of a programme for the integration of the Roma minority (the 'Framework Programme') in 1999, and the adoption of a comprehensive anti-discrimination law in 2003. A number of issues are highlighted by the Bulgarian case: on one hand, it points to EU's success in pressurising Bulgaria to sign several anti-discrimination measures as well pro-minority reforms. On the other hand, it reveals the limitations of EU policy in absence of popular domestic support and political will. For instance, Bulgaria, despite tremendous international criticism, refused to amend its constitutional provisions directed against political participation of the minorities. The success of EU conditionality was also affected by its flaws mentioned in the section above such as, ignoring weak or non-compliance with EU conditionality as well as public attitudes towards minorities, focus on security concerns rather than a genuine concern with minority rights and lack of positive rights for minorities. The EU focussed only on formal compliance and often ignored their implementation as substantive changes in domestic policies.

The impact of EU conditionality on Estonian minority policy evokes varied responses among scholars. For those like Papagianni, Estonia and Latvia represent cases with substantial evidence to link the progress in minority policy with EU conditionality (Spirova, Budd, 2008: 85-86). Estonia followed a logic of legal restorationism in its redefinition of the Estonian statehood which pre-defined a number of fundamental conditions with regards to its Russian speaking minority including citizenship and collective minority rights. The post Second World War Russian speaking minority became illegal settlers who could only be naturalised on terms set by the Estonian state. It encouraged emigration of Russian speaking minority to Russia and other republics while simultaneously tightening the naturalisation requirements. Many refer to this as the evolution of Estonian state into an ethnic democracy; the state offered individual civil rights without recognition of minorities. The minority integration policy followed after 1997 has focussed on integration with a strong emphasis on things in common and Estonian language. EU rather than altering Estonia's fundamental policies has backed OSCE's assertion of softening the state's stance towards its minorities. It has focussed on pressurising Estonia into repealing laws or clauses that are found in violation of international and European norms and standards, for instance, the language requirements for employment in the public and private sector. EU guidelines have stressed on facilitating the naturalisation process and better integration of non-citizens. This coupled with the funding EU provided for such programmes played a key role in moderating the ethnopolitical situation (Pettai, Kailas, 2009: 104-115). The EU played a similar role in liberalising minority policy of Latvia where the state followed an almost identical restorationist logic (Galbreath, Muiznieks, 2009: 135-147).

Another important case is that of Hungary, a front runner among the new member states in ensuring legal protection for its minorities. The Minority Law passed in 1993 grated a broad range of rights to the minorities. By passing its minority law in 1993, Hungary was not only providing an institutional structure for its own minorities but also a political justification for its support to the Hungarian minorities in other countries. EU conditionality, though not consistent, played a key role in influencing policies towards the Roma as well as the adoption of anti-discrimination legislation. The lack of a legal basis for minority rights within EU and low priority accorded to it during the accession process meant that EU added little in terms of direct policy or norm transfer. Also, EU conditionality shaped government priorities in the field; in the first half of 190s there was pressure for improving specific minority rights and their implementation while during the accession period greater emphasis was laid on integration of the Roma (Vizi, 2009: 119-132).

Vermeersch (2003: 21- 24) argues that though EU conditionality has led to limited forms of policy transfer in case of Hungary, Poland and Czech Republic, minority policies have largely been motivated by short term political and regional considerations.

EU did not play a major role in shaping minority rights policy of Lithuania which had largely been instituted before it applied for EU membership. Lithuania's Language Law which declares Lithuanian as the national language, provides for protection of constitutional guarantees for all minorities and promised state support for teaching minority languages. The communist era policy provides cultural rights largely to the Russian and Polish minority. Limited cultural rights also fail to address the issues of discrimination and ethnic intolerance. EU has raised the question of discrimination and minority rights of Lithuania's Roma and Jewish community; EU influence can be seen in implementation of programmes for alleviation of the conditions of the Roma and in the transposition of the anti-discrimination clauses of the acquis and the Race Directive. However, various flaws in the programmes implemented to address Roma issues have led to persistent discrimination, poverty and social exclusion among this group. This can be attributed to the lax attitude of the EU with regards to the minority conditionality, lack of domestic political will, funding and prosecutions in cases of discrimination and violence. Also, important are the lack of effective consultation with the Roma community as well as a vague minority conditionality which leaves substantial room for interpretation. The EU's power to influence the development of Lithuania's minority rights regime is limited as the domestic refusal to include sexual orientation in the Law on Equal Opportunities illustrated. It is difficult to integrate EU norms into the national legal system if there is no social culture supporting such norms (Budryte, Sotirovic, 2009: 151-163).

EU conditionality in Poland provided the minority groups with an important tool to pressurise the country into making the demands of minority groups a political priority. EU conditionality succeeding in making Poland sign a number of legally binding texts such as the FCNM, European Charter on Regional and Minority Languages which in turn put a moral pressure on the state to develop its domestic minority protection framework. The small number of the country's minorities and the low potential for ethnic violence meant that the EU's role in Poland was rather low key. EU was critical of Poland largely due to the conditions of its Roma minority; its influence can be discerned clearly in the response of the Polish state

which came up with special programmes to address the needs and issues of the Roma. However, EU did not specify clear policy solutions or engage in substantive criticism of the Polish approach. Other organisations such as OSCE identified the flaws in the Polish response which was seen as incoherent and lacking consultation with the Polish Roma (Vermeersch, 2009: 166-177).

Scholars present differing opinions on whether EU conditionality in Slovakia was a success or a failure. EU's influence proved extremely limited till the end of Meciar's regime (Until, 1998); however, Meciar's downfall is also attributed to his defiance of and criticism from the EU. EU exercised much more influence in the period from 1998-2006 when its salience on the governing political parties and their electorate was high. A strong support for EU membership has ensured that the populist and nationalist government of Fico has not gone back on Slovakia's commitment to European norm regarding fundamental human rights and rights of the minorities. However, EU membership and influence has not been successful in preventing the entry of nationalist and xenophobic elements in the political scene of Slovakia.

Slovenia offers better protection and more clearly defined rights to its Italian and Hungarian minorities than the Roma groups in the country. Unlike the Italian and Hungarian minorities, Roma are not accorded the status of a national minority but recognised only as an ethnic community. Slovenia also has new minorities from the former multinational state of Yugoslavia. Its minority policies are shaped by the legacy of minority policies of erstwhile Yugoslavia and policies of the new Slovene state which developed in the context of accession to the EU and a feeling of anti Balkanism (discrimination against and marginalisation of individuals from the former Yugoslavia). A strong support for EU membership among all major parliamentary parties and majority of the populace ensured that the country signed all the major European documents on human rights and rights of minorities. EU accession reports highlight key problems with the Slovene minority policy; they identified discriminatory clauses in the Citizenship law, the discrimination and exclusion of the Roma and the lacking protection of minorities from former Yugoslavia and the status of refugees from Bosnia and Herzegovina. It is noteworthy that Slovenia acquired EU membership in 2004 and gained Presidency in 2008 without fully complying with most issues mentioned in the Regular Reports (Zorn, 2002: 210- 221).

A different analysis is offered by Brusis (2003) in a study of evidence from Bulgaria, Romania and Slovakia. He argues that the European accession process has promoted consociational power-sharing arrangements regarding minority protection in accession countries since the minority policy has been guided by a security approach that prioritizes consensual settlement of disputes over application of universalist norms. Guglielmo points to the great potential of the EU in influencing change in domestic policies towards minorities but remains doubtful about its lasting effect 'unless corresponding changes in contextual attitudes, behaviors, social norms, and political culture take place.

Post accession compliance :

The accession of the ten CEE countries into EU in 2004 and 2007 has raised the issue of post accession compliance with minority conditionality of the EU. Pre accession compliance, as mentioned earlier, is largely understood through the lens of rational choice

approach; states are 'rational utility-maximisers calculating the material as well as political costs and benefits of adopting and implementing new rules'. Therefore, according to Schimmelfennig's external incentives model based on rationalist calculations, sizable and credible external EU incentives were necessary to overcome domestic opposition to EU rules and costs from rule adoption. The carrot of membership was attractive and indispensable for these CEE countries thereby giving EU the required bargaining power to dictate the terms of accession as well as enforce conditionality. Selective invitations for accession negotiations in late 90s gave credibility to EU's accession conditionality as it sent a message that non-compliant applications would not be considered. Therefore, EU was able to overcome opposition and enforce pervasive rule adoption in all CEE candidate countries. Accession, in that sense, has challenged compliance because the lack of external incentives now leads to bleak prospects for successful implementation and sustainability of adopted rules (Schimmelfennig, Trauner, 2009: 1-3). Also, the lack of a legal base for minority rights in EU law other than non-discrimination implies that minority rights are not enforced by EU law once conditionality has ceased to exist.

Initial records show that formal compliance with EU rules is better in the new member states than the older ones; this is true in cases of infringement as new member states settle such cases faster than the old members. Scholars such as Sedelmeier caution that this good compliance behaviour could be due to habits and routines developed during pre accession period which might disappear over time and also undetected non-compliance in Commission data might not give an accurate picture. Decent transposition of acquis law in most of these new member states is often followed by a neglect of practical implementation.

A multitude of reasons account for the continued compliance with minority conditionality of the EU. The pre accession period had weakened non conforming parties and groups and led to the creation of parties and interest groups that benefitted from EU's legislation. Scholars such as Epstein, Sedelmeier and Schimmelfennig point out compensatory mechanisms that, in the absence of external incentives, have ensured that compliance with EU conditionality has not suffered across the board. Such mechanisms include, the presence of post accession conditionality, such as the monetary free movement of persons, as membership did not directly entitle them for participation in the EMU and Schengen regime. The sanctioning and monitoring mechanism of EU and support by other international organisations in the same are also important factors. Also, the presence of other external influences, such as financial and technical support can help in administrative and judicial capacity building and can prevent involuntary non-compliance and strengthen domestic compliance capability. Even the external incentives model, in the absence of external incentives, does not predict complete revocation of externally induced rules because firstly, it will depend on domestic political constellation such as the coming to power of political forces opposed to the rule. Conditionality also may induce changes that cannot be reversed by simple majorities and are upheld by domestic control mechanisms such as constitutional courts, acting as veto players. It may be less costly to uphold legislations and keep institutions in place but then undermine implementation through cuts in funding or restrictive regulations.

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