

Introduction: The 1990 CSCE Copenhagen Document, East-West encounters and evolutions of the minority regime in Europe

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The five articles included in this issue of the Journal on Ethnopolitics and Minority Issues in Europe are based on presentations given at the multidisciplinary conference held by the European Centre for Minority Issues (ECMI) in Sankelmark (Flensburg) on 5-7 June 2015. The conference was timed to coincide with the 25th anniversary of the 1990 Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE. The event was dedicated to the inception of the European minority rights regime at the end of the Cold War; the regime's subsequent evolutions, affected by the re-drawing of the dividing lines in Europe; and the new challenges created by the recent turmoil in Eastern Europe.

The Copenhagen Document constitutes a landmark and in some respects a starting point in the development of the European minority rights regime. Part IV of the Document regards minority protection as a part of the human rights agenda and contains numerous innovative concepts – such as ‘full equality’, ‘effective participation’, ‘autonomy arrangements’, ‘proportionate measures’ and so forth – that provided an impetus for further political and scholarly debates and have since become central for minority protection in the framework of the OSCE, CoE and UN, as well as in national legislations in Europe and beyond.

The Document was a byproduct of the cooperation between the West and the East at the end of the Cold War. The still underexplored contributions of the USSR, Czechoslovakia, Hungary and East Germany to the drafting and adoption of the Copenhagen Document were in part inspired by the resurgence of ethnic claims and ethnic conflicts in the former

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communist states and the energetic attempts of the ruling elites in the countries of 'real socialism' to cope with the new challenges in the framework of democratization processes. These transformations of the previously closed decision-making of the communist party apparatus into public politics, the related new institutional set-ups, and the legacies of this period deserve a thorough analysis.

The recent turbulent political developments in Europe prompt an examination of the achievements and failures of the last 25 years, particularly of the loopholes in the international and domestic normative regulations of minority issues and the destructive effects they can generate. Broader challenges that the minority rights regime in Europe faces today and possible remedies to these issues shall be also addressed.

The five contributions included in this issue in part cover major issues pertinent to the formation and development of the European minority regime. The focal topics for the conference and this issue include the conceptual evolution of the minority regime in Europe and North America and the impact of the 1990 Copenhagen Document; communist conceptual and institutional legacies in the international and domestic minority regimes; institutional underpinnings of ethnic politics and diversity policies at the domestic and international levels; and merits and flaws of the European minority rights regime.

The first article by Elizabeth Craig entitled "Who Are the Minorities? The Role of the Right to Self-Identify within the European Minority Rights Framework" examines the implications of both individual and collective dimensions of the right to self-identify. The article argues that the status of the right to self-identify as a fundamental right remains unclear, even a quarter of a century after its inclusion in the CSCE Copenhagen Document. The article revisits some of the 'justice-oriented' arguments of the early 1990s about the need for group-differentiated rights in order to highlight the importance of the right to self-identify as an integral part of the European minority rights framework. The author then argues that the case for giving greater prominence to this right is strengthened if the challenge of cosmopolitanism, or freedom to select identities beyond ascribed and fixed group affiliations, is also considered. The second part of the article is focused more specifically on the challenges to the enjoyment of this right, particularly in its collective dimension. It argues that this can be attributed to the continued deference to states in relation to the scope of application of the Framework Convention for the Protection of National Minorities and that there needs to be a greater focus on clarification and internalisation of the right at the domestic level.

Tilman Lanz, in his article “Minority Cosmopolitanism. The Catalan Independence Process, the EU, and the Framework Convention for National Minorities”, stresses that minorities are often seen and portrayed as unable to successfully navigate the global politics. This article posits the notion of minority cosmopolitanisms as a viable alternative for minorities for the articulation of their collective identity in a globalized era. The author shows how this development might look using the case of Catalonia. The article’s focus is how the Council of Europe and the European Union have interacted with various Catalan publics and governmental bodies. The article entertains a provoking hypothesis that Catalonia’s success in approaching full independence might be due to the fact that it does not follow the guidelines of the Framework Convention for the Protection of National Minorities (FCNM), but has instead chosen to develop its very own mode of what one can call minority cosmopolitanism. The author provides two relevant examples from the domain of popular culture to illustrate the scope and trajectory of minority cosmopolitanism. Dr Lanz traces minority cosmopolitanism through the history of the Spanish-Catalan conflict, dating back to 1714 but with a focus on the 20th and 21st centuries, when the older notion of Catalanism was gradually replaced by Independentism as a result of cosmopolitan practices, or public activities resulting from the desire to view and to make Catalonia an open society and a part of Europe. The conclusion is that certain lessons can be drawn from Catalonia’s refusal to partake in the FCNM for reconsidering the current minority regime’s role in the changing political landscape of Europe. In addition, relations between Catalonia and the EU are also discussed. Based on the analysis of Catalan relations with the EU and the FCNM-related settings of the CoE, the authors suggest a few measures on how such transnational bodies can respond to engagements by minority groups.

The next article by Alexander Osipov is entitled “The background of the Soviet Union’s involvement in the establishment of the European minority rights regime in the late 1980s”. The author recalls that the USSR played a significant role in the adoption of the first CSCE instruments pertinent to minority protection, particularly the 1990 Copenhagen Document. He suggests an explanation as to why this East-West encounter was possible and why the two blocs were able to speak a common language on ‘nationalities’ issues. The author demonstrates that the communist party leaders of the Soviet Union managed to put forward a renewed doctrine of nationalities policy that included such elements as framing the country as a union of self-determining ‘peoples’; asymmetric federation; recognition of all ethnicities’ right to ‘develop’ their cultures and languages; protection of ‘non-titular’ ethnicities; and the

opportunity for people to organize themselves for the maintenance of their cultures and languages. This approach appears to have much in common with the new European minority rights regime, particularly because the underlying principles were open to *ad hoc* interpretations and both systems provide the governments with broad margins of discretion. The similarity between the ‘Western’ and ‘Eastern’ approaches can be explained by the fact that both were operating in the framework of modernist social engineering and the understanding of ethnicities as internally cohesive building blocks of society. The combination of symbolic policy and weak institutionalization of instrumental measures allows for an explanation of the viability of the established system in Eastern Europe and the broader post-Soviet space.

Stephanie E. Berry’s article “The Continuing Relevance of the Copenhagen Document – Muslims in Western Europe and the Security Dimension” touches upon the increasing relevance of minority rights to Muslims in Western Europe. The Copenhagen Document was adopted in the wake of the Cold War and was implicitly targeting the situation of ‘national minorities’ in Central and Eastern Europe as well as in the former Soviet Union. Notably, by recognising that the violation of human rights potentially leads to conflict, the Copenhagen Document remains relevant to minority situations throughout the world. This article argues that if Western European States wish to proactively prevent conflict with their Muslim populations, lessons can be learnt from the approach adopted in the Copenhagen Document. In particular, the emphasis on encouraging societal cohesion in order to reduce the potential for conflict through effective participation in public affairs combined with intercultural dialogue and tolerance is a message that must be heeded by Western European countries.

Ulrike Barten’s article entitled “The EU’s Lack of Commitment to Minority Protection” analyses an uneasy relationship between the European Union and national minorities in Europe. The EU claims to make life better for all by all means in all spheres of life. It does not, however, want to engage very much with national minorities. This is puzzling, as respect for minority rights has found its way into article 2 of the Treaty on the European Union which lists the common values upon which the Union is founded. It is furthermore puzzling, as the EU member states in other fora have recognized the vulnerability of minorities and the necessity of their special protection. On the other hand, the EU might be the wrong one to blame. EU institutions are limited in their competences to act when it comes to areas of importance to minorities. In addition, minorities are protected through other international organizations. It is argued that it is unlikely that the EU will become a significant minority

actor playing out its strength as a supranational force, and therewith create a truly coherent minority rights regime in cooperation with the OSCE and the Council of Europe.

All five articles raise questions about the merits and deficiencies of the current minority regime in Europe and about its origins and future evolutions. We expect that this special issue will be a contribution to further multidisciplinary international discussion which will involve scholars and policy-makers and focus on minority-related conceptual and practical challenges that the European and universal mechanisms already experience.