Bilateral Agreements in Central and Eastern Europe: A New Inter-State Framework for Minority Protection?

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Bilateral Agreements in Central and Eastern Europe: A New Inter-State Framework for Minority Protection?[1]

Kinga Gál[2]

ABSTRACT

The practice of bilateral agreements on good neighbourly relations was 'reinvented' by Germany after 1991 to guarantee the frontiers resulting from World War II and to protect the minorities of German origin in Central and Eastern Europe. A similar policy was pursued by Hungary with five of its neighbours to deal with the problems of the Hungarian minorities. Parallel to this trend, the European Union has also promoted a policy aimed at guaranteeing stability in Central and Eastern Europe through bilateral agreements on good neighbourliness. The bilateral treaties follow each other in time, structure and content. They incorporate soft law provisions, especially with regard to their minority regulations, reflecting the strong influence of the political factor. They do not mention collective rights and fail to provide the national minorities concerned with any form of self-government. Furthermore, they were often negotiated in the absence of the minority communities they were designed to protect. As these treaties are politically highly motivated, the political aspects of the implementation mechanisms have received primacy over the legal possibilities. The treaties, and hence indirectly the provisions of international documents enshrined in them, have the same status as national legislation and could therefore be claimed before national courts. However, the joint intergovernmental committees monitoring implementation have the potential to become the most effective implementation mechanism. In conclusion, although these treaties have not significantly changed the existing practice of minority protection so far, their importance should not be diminished because they contribute to the construction of a new inter-state framework for minority protection.

[1] A shorter version of this paper was presented at the Fourth Session of the UN Working Group on Minorities in Geneva, 25-29 May 1998 under the title "The Role of Bilateral Treaties in the Protection of National Minorities in Central and Eastern Europe" (E/CN.4/Sub.2/AC.5/1998/CRP.2, 28 May 1998).

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I. Introduction and Brief Historical Overview

The treaties on good neighbourliness and friendly co-operation between neighbouring countries in Central and Eastern Europe are framework treaties which envisage a large field of inter-state co-operation (economic, commercial, cultural, environmental). On the one hand, they refer to the reinforcement of the existing state borders in an articulated way, in some cases accompanied by the explicit renunciation of the contracting parties to any future claims regarding each other's territory. On the other hand, they establish commitments regarding the protection of their national minorities on the basis of international documents of the United Nations (UN), the Organization for Security and Co-operation in Europe (OSCE) and the Council of Europe.

The protection of religious or national minorities through inter-state treaties does not constitute a new phenomenon in international law, as it had already been practised in previous centuries.[3] These treaties guaranteed religious liberties in exchange for territorial concessions.[4]

The tradition of protecting minorities by a treaty (religious rather than national minorities at that time), continued throughout the nineteenth century, and became important during the twentieth century. The treaties referred to situations predominantly in Central and Eastern Europe, and, according to Thornberry, "the terms were in the main not generous to minorities, and in some cases were extremely vague. (...) The texts occasionally recognised existing privileges of groups, but did not create them. (...) The principal failing was implementation; this negative 'tradition' has maintained itself in the twentieth century."[5]

[3] Patrick Thornberry, *International Law and the Rights of Minorities*, Oxford: Clarendon Press, 1994, as well as Dieter Blumenwitz, *Internationale Schutzmechanismen zur Durchsetzung von Minderheiten- und Volksgruppenrechten*, (Herausgegeben von der Kulturstiftung der deutschen Vertriebenen, Forschungsergebnisse der Studiengruppe für Politik und Völkerrecht, Band 24), Köln: Verlag Wissenschaft und Politik, 1997.

[4] We know about such treaties from the seventeenth century already (such as the 1660 Treaty of Oliva between Poland and Sweden or the 1879 Convention of Constantinople between Austria-Hungary and Turkey), in Thornberry, op. cit. pp.25-26 .

[5] in Thornberry, op. cit. p.32

After World War I, during the period of the League of Nations, the minority protection system was based partly on the idea of bilateralism. A whole system of bilateral or multilateral treaties was adopted, most of them incorporated in different peace treaties. These treaties both referred to the establishment of new borders as well as provided guarantees for the communities becoming minorities within newly-created states. The League of Nations undertook to guarantee these treaties in most of the cases and was also involved in their implementation mechanisms.[6] However, only the treaty between Finland and Sweden on the status of the Åland Islands (1921)[7] survived the League of Nations period.

The idea of minority protection through bilateral treaties reappeared after World War II in the less successful provisions of the peace treaties with Romania, Hungary and Bulgaria, as well as with greater success in the agreement on the status of South Tyrol. The status of South Tyrol (following the Gruber-de Gasperi Agreement of 1946, later annexed to the Peace Treaty of 10 February 1947),[8] as well as the situation of the minorities on both sides of the German-Danish border (following the unilateral declarations of 1955 by Germany and Denmark on the rights of the Danish and German minorities respectively) have their roots in bilateral negotiations. Nevertheless, the satisfying solutions in the situation of minorities concerned did not arise automatically. The circumstances prior to the agreements were tense with the possibility of escalating into ethnic conflicts and endangering stability in the respective regions. The often quoted models of ethnic accommodation in the Åland Islands, South Tyrol, or South and North Schleswig are the outcome of long debates and often criticised compromises.

The practice of bilateral agreements on good neighbourly relations was 'reinvented' by Germany after 1991. The reasons are rooted in German reunification and the related need to guarantee the frontiers resulting from World War II, as well as in the presence of

[6] in Blumenwitz, op. cit. pp. 47-48.

[7] Agreement between Sweden and Finland placed on record and approved by a resolution of the Council of the League of Nations, June 1921, in Hannum (Ed.), *Documents on Autonomy and Minority Rights*, p. 115.

[8] in Blumenwitz, op.cit. pp. 66-68.

minorities of German origin in Central and Eastern Europe whose protection needed to be ensured. In addition to treaties on neighbourly relations with each of its Central European neighbours, Germany has also concluded treaties on friendly co-operation and partnership with Bulgaria (1991), Hungary (1992) and Romania (1992). A similar policy was pursued during this period by Hungary, which concluded bilateral agreements with five of its neighbours to deal with the problems of the Hungarian minorities.

Parallel to this trend, the European Union has also promoted a policy aimed at guaranteeing stability in Central and Eastern Europe through bilateral agreements on good neighbourliness. The aim of this initiative, named *Pact on Stability*,[9] was to improve neighbourly relations by avoiding the issue of borders and by establishing minority rights on the basis of existing international standards, with the prospect of accession to the European Union as an incentive. The Pact is a special political document without any concrete legal force. Its importance lies in the provisions that establish a system of guarantees for the bilateral norms by including the OSCE in the implementation mechanism of the treaties incorporated in the document (arts. 13, 15, 16 – Pact on Stability in Europe). As most of the bilateral treaties signed before, as well as after, 1995 have been included in the list of treaties incorporated in the Pact, its system of guarantees refers to all these treaties to the same extent.

The impact of the whole initiative is still not clear. It provoked a negotiation process between Hungary and two of its neighbours, resulting in a bilateral treaty with Slovakia on 19 March 1995 and later in a treaty with Romania on 15 September 1996, but the outcome of these treaties is controversial, both regarding the bilateral relations as well as the

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[9] The *Pact on Stability* (an initiative based on a proposal by French Prime Minister Edouard Balladur in 1993) was adopted by the representatives of 52 member states of the OSCE at the conference held in Paris on 20-21 March 1995. It concerned six Central and Eastern European countries (Bulgaria, the Czech Republic, Hungary, Poland, Romania and Slovakia) and the three Baltic states (Estonia, Latvia and Lithuania). The Pact consists of a Declaration and a list of agreements and arrangements which the participating states decided to include, agreements concluded between member states of the European Union and the nine candidates, as well as agreements concluded by these states with other countries invited to the roundtables.

situation of the national minorities concerned. As for the Baltic States, they consider that the negotiations with Russia have not resulted in a major change in the delicate relations with this powerful neighbour. One of the big weaknesses of the Pact, and of the negotiation process which preceded it, lies in the fact that, in most cases, the interested groups—the minority communities themselves—had been invited neither to the negotiations and adoption of the Pact by the international community nor to the bilateral talks between the governments. Once again, another important international document was adopted in the interest of, but without the participation of, national minorities.[10]

Nevertheless, the Pact can be considered as an important instrument of preventive diplomacy, demonstrating that the international community is aware of the positive role that the protection of national minorities plays in the reconciliation between neighbouring states in Central and Eastern Europe, thereby reinforcing the stability of the region. The political aim could still be met, but the legal realisation of the political idea has hardly fulfilled expectations so far.

Most of the bilateral treaties adopted after the changes in Central and Eastern Europe precede the Pact, as already mentioned above. This means that the question had been on the table before the principle was formulated as a diplomatic initiative of the European Union. The idea itself and its treatment as a European Union initiative certainly put much pressure on subsequent bilateral negotiations in the whole region.

II. The Treaties on Good Neighbourliness and Friendly Co-operation

The following sections will not give a comprehensive analysis of the individual treaties nor of the situation of minorities in Central and Eastern Europe; rather, they will be limited to a brief description of the agreements and a general comparison of their provisions concerning minorities.

[10] Memorandum of the Democratic Alliance of Hungarians in Romania, as well as Nyilatkozat/ Declaration, 9 September 1996, in Zellner/Dunay, *Ungarns Außenpolitik 1990-1997*, p. 292.

The treaties focused on in this paper are, among others, the treaties on good neighbourliness and friendly co-operation signed by Germany with Poland, the Czech and Slovak Federal Republic, the Soviet Union, Romania and Hungary.[11] Also examined are the treaties between Poland and its neighbours,[12] the treaties between Russia and the CIS states, such as Kazakhstan and Kyrgyzstan,[13] the treaties signed by Ukraine with Moldova and Lithuania,[14] as well as the bilateral treaties adopted by Hungary and its neighbours.[15] Most of these treaties were adopted between 1991 and 1992. They follow each other not only very closely in time, but in structure and content as well.

[11] Treaty between the Federal Republic of Germany and the Republic of Poland on Good Neighbourly Relations and Friendly Cooperation (17. 6.1991); Treaty of Good Neighbourliness and Friendly Cooperation between the Czech and Slovak Federal Republic and the Federal Republic of Germany (27.2.1992). After the split of the Czech and Slovak Federal Republic, Slovakia remained a party to the treaty in the framework of the Stability Pact, under the list of agreements and arrangements concluded between the interested countries and the Member States of the European Union. Also the Treaty between the Federal Republic of Germany and Hungary concerning Friendly Cooperation and Partnership in Europe (6.2.1992) and the Treaty between the Federal Republic of Germany and Romania concerning Friendly Cooperation and Partnership in Europe (21.4.1992). In: Fernand De Varennes, *Language, Minorities and Human Rights*, *International Studies in Human Rights*, The Hague/Boston/London: Martinus Nijhoff Publishers, 1996, pp. 365-380; Blumenwitz, op. cit. pp. 73-79; as well as Florence Benoit-Rohmer, op. cit. pp. 84-90.

[12] Treaty between the Republic of Lithuania and the Republic of Poland on Friendly Relations and Good-Neighbourly Cooperation (26.4.1994); Treaty between the Republic of Poland and the Republic of Latvia on Friendship and Cooperation (1.7.1992); Polish-Belorussian treaty on Good-Neighbourliness and Friendly Cooperation (23.6.1992); Treaty between the Republic of Poland and Ukraine on Good-Neighbourliness, Friendly Relations and Cooperation (18.5.1992); Treaty between the Republic of Poland and the Russian Federation on Friendly and Good Neighbourly Cooperation (22.5.1992). In: de Varennes, op.cit. pp.372-376.

[13] Treaty between the Russian Federation and the Republic of Kazakhstan on Friendship, Cooperation and Mutual Assistance (25.5.1992); Treaty between the Russian Federation and the Republic of Kirgizstan on Friendship, Cooperation and Mutual Assistance (10.6.1992); Treaty on Friendship, Good Neighbourliness and Cooperation between the Russian Federation and the Republic of Georgia (3.2.1994). In: de Varennes, op cit. pp. 376-377, 367.

[14] Treaty on Good Neighbourly Relations, Friendship and Cooperation between Ukraine and the Republic of Moldova (23.10.1992); Treaty on Friendship and Cooperation between the Lithuanian Republic and Ukraine (8.2.1994). In: de Varennes, op.cit., pp. 370, 366.

[15] Treaties between the Republic of Hungary and Ukraine: Treaty on the Foundations of Good Neighbourly Relations and Cooperation (6.12.1991); Croatia: Treaty on Friendly Relations and Cooperation (16.12.1992); Slovakia: Treaty of Good Neighbourliness and Friendly Cooperation (19.3.1995); Slovenia: Treaty on Friendship and Cooperation (1.12.1992); Romania: Treaty on Understanding, Cooperation and Good-Neighbourly Relations (16.9.1996). In: de Varennes, op.cit., pp. 365, 366, 368, and at: http://www.htmh.hu/bilat-frame.htm. (Note: The full text of these bilateral documents may also be found at this website.)

These treaties are largely modelled on the treaties signed by Germany, and in particular the German-Polish Treaty on Good Neighbourly Relations and Friendly Co-operation, which can be regarded as a model agreement. Therefore, these documents are often referred to as 'basic treaties', the name borrowed from the German *Grundlagenverträge*.

In the following section, the treaties will be compared according to four criteria: *structure*, *content*, *implementation* and *impact*.

1. Structure

The bilateral treaties adopt a similar structure and wording: the mutual recognition of borders and declaration of the common interests towards integration into NATO and the European Union, as well as the reinforcement of the mutual adhesion to the international standards are listed in the first half of the treaties. These are followed by measures regarding co-operation and mutual understanding. The provisions on the territorial integrity of states and reinforcement of the inviolability of borders are strongly symbolic in the sense that they reinforce binding commitments.[16] In addition, they focus on important social and economic problems, as well as on the protection of national minorities. The provisions regarding the protection of national minorities constitute the second part of these treaties, followed by provisions concerning implementation. However, it should be mentioned that the implementation system of the bilateral treaties is either non-existent or very vague.

The common feature of the articles concerning minorities is that they guarantee the rights of minorities *per se* and also set out commitments for governments. In general, the provisions regarding minorities consist of one or two comprehensive articles containing a whole 'law on minorities'. Only a few of these treaties refer to mutual agreements already

[16] For example the Final Act of Helsinki 1975, Basket I, in: Arie Bloed (ed.), *The Conference on Security and Co-operation in Europe / Analysis and Basic Documents, 1972 –1993*, Dordrecht/Boston/ London: Kluwer Academic Publishers, 1993, Part I, pp. 143-151.

concluded between Parties. This is the case of the Hungarian-Slovenian Treaty which refers to the "Convention on Providing Special Rights for the Slovenian Minority Living in Hungary and for the Hungarian Minority living in Slovenia" (6 November 1992). According to its Article 16, the Convention is a legally binding document. To the same extent, a joint Hungarian-Ukrainian "Declaration on the Principles of Co-operation on the Question of National Minorities" (31 May 1991) served as the basis for the provisions of the bilateral treaty concluded later. On the other hand, we also have examples of treaties where the provisions on minorities were later enlarged in a common, legally binding convention between the parties, such as the treaty between Hungary and Croatia, later complemented by a common convention (5 April 1995).[17]

No definition of minorities appears explicitly in most of the treaties, although in almost every case there is an underlying definition: the treaties refer in general to national minorities of the same ethnic origin as the majority in the neighbouring country. Therefore, the subjects of the minority-related provisions of the bilateral treaties are rather restricted, as they do not refer to all the minorities in the respective country. The only advantage of this restrictive perspective could be the possibility of taking into account the specific historical and traditional needs of the minority communities concerned more specifically, which is not the case in general minority regulations.

2. Content (see Appendix[18])

The bilateral treaties in Central and Eastern Europe, especially with regard to their minority regulations, incorporate soft law provisions, reflecting the strong influence of the political factor on the adoption of these agreements. Therefore, in most of the treaties, the actual

[17] Convention between the Republic of Hungary and the Republic of Croatia on the Protection of the Hungarian Minority in the Republic of Croatia and the Croatian Minority in the Republic of Hungary (5.4.1995) at: http://www.htmh.hu/bilat-frame.htm.

[18] The table in the Appendix compares the articles concerning minority protection of 15 different bilateral treaties, on the basis of the most often quoted provisions, based on data provided in the book by Fernand de Varennes, *Language, Minorities and Human Rights*, as well as by the Hungarian Government Office for National Minorities (http://www.htmh.hu/bilat-frame.htm).

political orientation of the states is reflected: the idea of co-operation towards integration is emphasised, as in the Hungarian-Slovakian or Hungarian-Romanian treaties which both state that co-operation in the field of protection of national minorities can significantly contribute to their integration into the Euro-Atlantic structures.

The minority provisions listed in the bilateral treaties can be grouped around some basic rights, such as the *right to free expression, right to maintain and develop one's ethnic, cultural, linguistic or religious identity* in general, and *linguistic rights, education rights, the right to profess and practice one's own religion, the right to establish organisations, the right to effective participation in the decision-making procedures*, in particular.

The importance of *linguistic rights* in the protection of national minorities can be emphasised by the fact that all minority provisions of the bilateral treaties refer, to some extent, to the *right to use one's mother tongue in private and in public.* This basic right is often complemented with a whole range of linguistic rights depending on the situation, number, tradition and claims of minorities addressed by these treaties: the free use of names, the use of language in the administration, the right to disseminate and receive information in the minority language, to have access to public media, education rights, the right to profess and practice religion in the minority language. The right to establish and run their own organisations, associations, as well as educational, cultural and regional institutions is also granted in most of the treaties. However, only a few of them include the right of minorities to establish political parties.

Most of the above-listed rights, as well as the basic *right to effective participation in the decision-making at the national and regional levels*, are closely related to the size of the minority population in a given country. These provisions appear in those treaties where strong minority communities exist on one side of the border at least. In other cases, some general statements refer to these rights.

In addition, it is worth mentioning the items which often do not appear under the specific minority provisions but may have a significant impact on the situation of minority communities. They refer, among others, to the *encouragement of transfrontier co-operation*, and readiness to open new border posts in order to increase the openness of the frontier, thus influencing the right of members of a minority to maintain contacts with the main body of their nation. To the same extent, the protection of monuments has to be mentioned, as the *right of national minorities to preserve their material and architectural heritage.* Separate items deal in general with the *recognition of school certificates and academic degrees* (eg Hungarian-Slovak Treaty, art.12.5).

Separate articles of certain treaties condemn xenophobia and manifestations of racial, ethnic or religious hatred and declare that the parties will take effective measures in order to prevent any such manifestations (eg Hungarian-Romanian Treaty, art.14).

Some of the treaties emphasise the importance of the duties of persons belonging to a minority. The wording of this principle is not an affirmative one in most cases, but is connected to some of the rights guaranteed. Thus, the right to education in the minority language is often followed by the sentence: " the exercise of (...) the right shall not detract from the obligation to learn the official language."[19]

Several provisions dealing with minority rights in the bilateral treaties strongly bear the imprint of international and regional instruments on minority issues. One can find in these treaties provisions quoted almost word by word from several documents on the rights of national minorities. However, the UN Declaration on Minorities (1992),[20] the CSCE Copenhagen Document (1990),[21] as well as the Council of Europe's Parliamentary

[19] See Appendix.

[20] *United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, adopted by General Assembly resolution 47/135 of 18 December 1992.

[21] *Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE,* adopted on 29 June 1990.

Assembly Recommendation 1201 (1993)[22] are not legally binding documents, which probably explains the relatively generous rights granted by them to minorities.
The bilateral treaties give legal force to these documents through their incorporation into the agreements. For instance, the treaty between Germany and the Czech and Slovak Federal Republic of 27 February 1992 (art.20) declares that both parties will "fulfil as legal obligations the political commitments laid down in CSCE documents, and especially those laid down in the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE of 29 June 1990." Even more explicit is the wording of art.15 of the Romanian-German Treaty on Friendly Relations and Partnership in Europe of 21 April 1992 which declares that both parties should apply the minority rights laid down in the Copenhagen Document and other OSCE texts as legal obligations. Similar provisions were enshrined in the treaty between Hungary and Slovakia (arts.2 and 15): "in the interest of defending the rights of persons belonging to the Slovak minority living in the Hungarian Republic, as well as the Hungarian minority living in the Slovak Republic, shall apply as legal obligations the rules and political commitments laid down in the following documents (...)" The provisions then list the Copenhagen Document, Recommendation 1201 and the UN Declaration. The treaty between Hungary and Romania also refers to the same documents, providing them, here again, with legal force.

In the above-mentioned two cases, the incorporation of Recommendation 1201 led to long-lasting debates and endless interpretations. Article 11 of the Recommendation has been especially difficult to interpret and unacceptable for Slovakia and Romania. Article 11 states that "in the regions where they are in a majority, the persons belonging to a national minority shall have the right to have at their disposal appropriate local or autonomous authorities or to have a special status, matching the specific historical and territorial situation and in accordance with the domestic legislation of the state"; it includes a reference to special minority arrangements and makes allusion, according to some

[22] *Parliamentary Assembly of the Council of Europe Recommendation 1201 (1993) on an additional protocol on the rights of national minorities to the European Convention on Human Rights*, Assembly debate on 1 February 1993 (22nd Sitting).

interpretations, to different types of autonomies as well as collective rights. Therefore, the Slovak government attached an interpretation of this article to the treaty before its ratification, unilaterally amending the agreed text, insisting that "it has agreed to mention the Recommendation of the Parliamentary Assembly of the Council of Europe 1201/1993 exclusively with the inclusion of the restricting clause: (...) respecting individual human and civil rights, including the rights of persons belonging to national minorities."
The Romanian government did not accept the mention of Recommendation 1201 without attaching its own interpretation either. In a footnote to the annex of the treaty it states that "the Contracting Parties agree that Recommendation 1201 does not refer to collective rights nor does it impose upon them the obligation to grant to the concerned persons any right to a special status of territorial autonomy based on ethnic criteria." According to these interpretations, it is obvious that the states concerned were afraid to incorporate any reference to collective rights or the special status of national minorities in a bilateral agreement.

The bilateral treaties in the region do not mention collective rights at all and fail to provide the national minorities concerned with any form of self-government or autonomy (let it be cultural, personal, administrative or territorial). They speak of 'persons belonging to national minorities', and not of minorities as such. There are very few exceptions among the bilateral special agreements on minorities, but not among the treaties.[23]

The wording and terminology used in the 'minority provisions' of the treaties are very often limited by vague and difficult to interpret formulations, such as: *"in accordance with the domestic legislation"*, or "*within the framework of their domestic legislation"*. These vague expressions could hinder, to a large extent, the effective implementation of the provisions enshrined in these treaties.

[23] Such as the Hungarian-Slovenian Agreement on the Special Rights of the Slovenian Minority Living in Hungary and the Hungarian Minority living in Slovenia which followed the bilateral treaty ensuring "*special individual and common rights for the minorities"* (preamble), as well as the Hungarian-Croatian Convention on National Minorities which incorporates an explicit reference to cultural autonomy (art.9).

3. Implementation

The implementation of the bilateral treaties can be examined from two major perspectives: political as well as legal. In general, the lack of an effective legal protection mechanism seems to be characteristic of the bilateral treaties mentioned. As these treaties are politically highly motivated, the political aspects of the implementation mechanisms have received primacy over the legal possibilities.

Looking at the political perspective of the implementation, there is a possibility for the States Parties to request consultations if they deem it necessary. Or, as it is often stated, "*they accord special significance to contacts and co-operation between the legislative and administrative bodies"*. Annual meetings between the Prime Ministers are also often foreseen and the Foreign Ministers are charged with an annual review of the operation of the treaties.

As most of the treaties referred to in this study have been incorporated in the Stability Pact, the provisions on the implementation of bilateral agreements of the Pact (arts. 13, 15, 16) can also be relevant. Article 13 of the final document of the Pact on Stability in Europe refers to Article 27 of the Budapest Summit Decision on strengthening the OSCE and transmits the Pact to the OSCE, instructing it with following its implementation. At the same time, art.16 declares that *"We acknowledge that the States party to the Convention establishing the International Conciliation and Arbitration Court may refer to the Court possible disputes concerning the interpretation or implementation of their good-neighbourliness agreements, according to the procedures defined in the said Convention."*

Another possibility could be the use of domestic remedies in the form of court proceedings. In order to initiate court proceedings, two different requirements have to be fulfilled: on the one hand, the countries concerned must have a constitutional system which allows treaty rules to operate directly in domestic law. On the other hand, the provisions have to contain 'self-executing rights', i.e. concrete rights which can be claimed before national courts and

not only soft law provisions which have no legal force. In addition, the formulation of the rights have to be clear enough in order to be claimed before courts.

The new constitutions of the States Parties to bilateral agreements accept, in general, the primacy of international law over national legislation. The bilateral treaties, hence indirectly the provisions of international documents enshrined in these treaties, have the same status as national legislation. On the basis of constitutional provisions, most of the treaties could be claimed before national courts. However, it is difficult to find self-executing rights, and not only soft law provisions, among the articles concerning minority protection. The soft law provisions have to be interpreted through national legislation in order to be applicable in practice for members of minorities. Despite the possibility to use domestic remedies, the probability that the enshrined provisions will be invoked by persons belonging to minorities before courts, and even if they do invoke them, the probability that the procedure will be effective, is almost minimal for the time being.

The joint intergovernmental committees monitoring the implementation of the provisions enshrined in these documents could therefore become the most effective implementation mechanism. Originally, these committees were entrusted with the task to inform the relevant partners of the implementation of the treaty, to address concrete situations involving minorities, as well as to prepare recommendations for the respective governments on the further implementation, realisation and/or modification of the provisions of the treaty. An often debated question regarding the work of these committees refers to the involvement of the minorities in the implementation mechanism as well as in the work of the committees. States with a larger minority community are reluctant to involve the minorities in this work, while the kin-states expressly enforce their involvement. The composition of these committees is often debated between the governments to such an extent that it even hinders their convocation. Therefore, we have very few examples of well organised and active joint committees at the moment, such as the case of the Hungarian-Slovenian and Hungarian-Croatian, as well as the recently established

Hungarian-Slovakian joint commissions, where the minority members of the commissions are appointed following a proposal by their organisation.

The case of the Romanian-Hungarian Treaty provides a good illustration of how delicate the question of joint committees can be. Until the Hungarian party proposed the name "intergovernmental joint commission", the Romanian side argued for an "expert working group". The substance of the debate has been over the composition and authority of the commission. In the end, the following compromise was reached: the Treaty speaks of an "intergovernmental expert commission" without any reference to the composition and competency of the commission (art.15.10). On the other side, according to the treaty between Hungary and Slovakia, the parties *"shall set up an intergovernmental joint commission, entitled to make recommendations, consisting of sections whose composition will be determined as they seem necessary"* (art.15.6). This formulation offers the possibility to include also representatives of minorities into the work of the joint commission.

The Treaty on Good Neighbourly Relations and Friendly Cooperation between Germany and Poland does not contain any provisions on its implementation. Although in an attached letter a commission for national minorities was established, it does not have the mandate to monitor implementation of the Treaty. Therefore, this Treaty, contrary to some of the other bilateral agreements signed by Germany or Poland, does not envisage the implementation of the provisions on the national level. The only possibility left regarding the enforcement of its implementation is connected to the OSCE procedures, as this bilateral treaty has also been included in the Pact on Stability.

4. Impact

Factors influencing the outcome and importance of any of the bilateral treaties can be discussed on four distinct levels: the need for bilateral treaties from the historical-political perspective; provisions established by these treaties; the context of these treaties; and

Parties to these treaties. States (government and opposition) and minorities rarely hold a consensual view on these perspectives.

Certainly, all the governments had to make more or less decisive compromises in order to reach an agreement and to include satisfactory minority protection clauses in the treaties. These concessions have been heavily criticised by all sides in the countries where long-lasting historical and political grievances existed. Tensions between the parties do not automatically cease by signing a treaty on good neighbourly relations. Historical grievances are very hard to overcome without a decisive commitment to reconciliation.

The Hungarian-Slovak and Hungarian-Romanian treaties respectively contain minority provisions (art.15 in both). While the minority rights enshrined in the Hungarian-Slovak Treaty have been considered the most detailed and far-reaching regulations of minority protection in international law, the Hungarian-Romanian Treaty is considerably weaker in guaranteeing minority rights. Events in Slovakia and Romania respectively proved that the implementation of the treaties, as well as the fulfilment of the obligations under international law, depend above all on the democratic order of the state concerned. In Slovakia, restrictive laws have been adopted in the fields of language use, administration, education and culture since the signing of the treaty. Although the Treaty guarantees a large scale of minority rights, the actual political situation in Slovakia up to now has not been favourable to the implementation of the provisions.[24] In contrast to the situation in Slovakia, the political changes favourable to democratisation in Romania (1996) have contributed to the realisation of the minority provisions enshrined in the Hungarian–Romanian Treaty.[25]

To the same extent, the tensions in German-Czech relations have to be mentioned, despite the signature of a bilateral treaty, due to the decision of the Czech Constitutional Court to

[24] The new government in Slovakia (formed after the elections in September 1998) has initiated new politics towards its neighbours and towards its national minorities. The Slovakian-Hungarian Joint Committee has been set up and has already started its work in January 1999.

[25] The Democratic Alliance of Hungarian in Romania has been a part of the Romanian governmental coalition since 1996. Although the most important claims of the Hungarian minority in Romania have not been satisfied yet, the Joint Intergovernmental Committee is functioning and the relations between the two states have greatly improved.

declare still legally valid the expropriation of the *Sudetendeutschen* by the Beneš Decrees of 1945.[26]

In addition, the outcome and importance of these treaties will always be influenced by the fact that, in most cases, the negotiations were conducted and concluded with the consultation, in some cases, but without the participation of the minorities concerned. Therefore, the aims of the minority communities have been reflected in these treaties in a rather ad hoc way.

Nevertheless, these agreements can have a number of advantages for the states and for the minority communities as well:

- A new approach appeared in some of these treaties according to which minority issues cannot be regarded as exclusively falling within the scope of internal affairs of the state.
- The general non-binding provisions of international and regional instruments included could be tailored to the specific needs of those communities, and could be transferred into binding internal documents.
- It could be possible to clearly state the obligations of each of the parties.
- Provisions extended to minorities could be generally broader and better adapted to the particular historical, cultural and political context; in this way, they could strengthen the rights of persons belonging to minorities. At the same time, they could focus on problems involving minorities at the local level.
- The minority communities have seen a possibility in these treaties that an effective protection system following international standards could be 'imposed from the outside' in countries where the situation between the majority and minority populations is tense.

[26] An important step in the improvement of German-Czech relations has been the visit of Czech Prime Minster Zeman to Bonn. See: *Reuters*, as well as *Spiegel*, 8 March 1999, at: http://www.spiegel.de.

At the same time, the disadvantages of these treaties must also be pointed out:

- There is no possibility of effective sanctions if one side refuses to implement the content of the treaties. Hence, the situation of the minority communities depends directly on the goodwill and stance of the governments.
- Bilateral treaties cannot solve the problems caused by the lack of effective national legislation in this regard; states may consider that they are no longer under pressure to adopt real protective laws.
- They are very often negotiated in the absence of the minority communities they were designed to protect.
- They might have been drafted too hastily, thereby leading to deficiencies from a technical aspect.
- The treaties can lower existing standards. (For example, by referring to the Framework Convention for the Protection of National Minorities in certain cases where it contains much lower standards than existed before in the respective countries' domestic legislation.)
- They could create tensions among minority groups within the given country.

III. Conclusion and Recommendations

That the respect for the rights of national minorities in a given state is primarily a matter of political will is the most obvious conclusion reflected by the bilateral treaties. Where real political will to deal effectively with the question existed, appropriate legal arrangements were successfully worked out at the bilateral, inter-governmental and national levels.

Even well-functioning models of ethnic accommodation have their roots in bilateral agreements negotiated with much difficulty. The treaty on the status of the *Åland Islands* has often been quoted as model treaty. The positive image of this treaty has its roots to the same extent in the national legislation concerning the special status of the Åland Islands

and the legislation concerning the Swedish-speaking community in Finland,[27] as well as in the bilateral treaty itself. The political will and the geopolitical situation of both countries contributed to a large extent to maintain this treaty in force. The difficulties in developing the *South-Tyrol arrangement* from 1946 to 1992 proves that protection of minorities in the framework of a bilateral treaty without a clear implementation mechanism can only be satisfying as long as the implementation of the treaty is not questioned by one of the parties. The example of the *German-Danish declarations* shows that political will can help settle a debate even without a legally-binding treaty to back it.

The main differences between the earlier treaties on minorities (following World War I and World War II respectively) and the recent bilateral treaties are of a conceptual nature. Whereas the former refer to minorities as such and include different concepts and provisions of autonomy, the treaties in Central and Eastern Europe explicitly provide individuals belonging to national minorities with certain individual rights and do not envisage autonomies as a means of protecting minority rights. However, the examples of the Åland Islands and South Tyrol prove that bilateral agreements may be suitable for establishing autonomies and/or special statuses for regions inhabited by national minorities, or for establishing personal autonomy where the minorities live dispersed.

Nevertheless, it must be kept in mind that every minority situation presents its own particular characteristics. There is consequently no standard means of resolving the multitude of concrete problems which each case presents in a national context. Models which might be directly 'exportable' from one context to another are difficult to find. Yet, the context of each bilateral agreement can serve as a source of inspiration for effective standard-setting for others.

[27] The autonomy of Åland was guaranteed by Finland in the "Guarantee Law" of 6 May 1920 and the 27 June 1921 resolution of the League Council , accepted by both Finland and Sweden. The autonomy was expanded after World War II and revised by the Autonomy Act of 28 December 1951. A new autonomy statute was adopted in 1991, to take effect in 1993 (in Hannum, *Documents on Autonomy and Minority Rights*, pp. 115-116).

Taking into account the realisation and implementation of the treaties, the balance is not too favourable. For the time being, these treaties have not significantly changed the existing system and practice of minority protection: domestic legislation on education and use of language has not been amended as a reaction to these treaties. Overall, however, the importance of these treaties should not be diminished: they contribute to the construction of a new inter-state framework of minority protection, resulting in a more flexible approach by national and international law and to increased mobility between the two levels. However, there is still a lot to do in order to make bilateral minority protection effective:

- 'Bilateralism' can become an effective form of minority protection only if both sides refrain from blocking the realisation of the principles enshrined, and in particular if they are ready to apply the implementation mechanism.
- It is important to involve minorities not only in the implementation of the above treaties but also in the debates over forthcoming ones. In addition, it would be desirable to include the representatives of minority organisations in the work of the joint intergovernmental committees with a full mandate.
- The rather vague terminology used in some of the treaties has to be clarified by the joint inter-governmental committees where they exist, or with the help of international organisations (OSCE, Council of Europe) in all other cases. Clearer concepts and terms could help the implementation of these treaties on both sides.

As the protection of minorities at the level of international organisations will most probably not develop radically in the near future, it is possible that standard-setting and implementation on the national and bilateral levels will further improve. Therefore, clear and legally-binding provisions in bilateral treaties may contribute to the improvement of minority protection. The opportunities deriving from these treaties might have more importance than the actual provisions. They could therefore serve as models for other situations and thereby contribute to the resolution of existing and prevention of future ethnic conflicts in different parts of the world.

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APPENDIX

	Treaties on Good Neighbourliness and Friendly Cooperation																	
Provisions on the rights of national minorities enshrined in bilateral treaties	Germany-Poland 1991 (arts.20,21,22)	Germany-Hungary 1992 (arts.19, 22)	Germany-Romania 1992 (arts.15,16,17)	Germany-Czech and Slovak Fed. Rep. 1992 (arts.20, 21, 25)	Poland-Ukraine 1992 (art.11)	Poland-Russia 1992 (art.16)	Poland-Latvia 1992 (art.15)	Poland-Lithuania 1994 (arts.13,14,15)	Poland-Belarus 1992 (arts.14, 15, 16)	Russia-Kazakhstan 1992 (arts.14, 15, 27)	Ukraine-Moldova 1992 (arts. 7, 8)	Ukraine-Lithuania 1994 (art. 6)	Hungary-Ukraine 1991 (art. 17)	Hungary-Slovenia 1992 (art. 16)	Hungary-Croatia 1992 (arts. 17, 19)	Hungary-Slovakia 1995 (arts. 14, 15)	Hungary-Romania 1996 (art. 15)	Romania-Slovakia 1993 (art. 20)
"persons belonging to national minorities shall have the right, individually or in community with other members of their group, to express, maintain and develop their ethnic, cultural, linguistic or religious identity"	X	X	X	X	X	implicitly	X	X	X	X	X	X	X	X	X	X	X	implicitly
"shall have the right to use, orally and in writing, their minority language both in private and in public"	X	X			X		X	X	X					X	X	X	X	
"shall have the right to register and use their first names and surnames and to display topographical indications and inscriptions in their minority language"	X				X		X	X	X							X	X	
"shall have the right for being taught the minority language or for receiving instruction in this language"	X	X	implicitly	X	X	X	X	X		X	X	X				X	X	
"shall have the right to disseminate and receive information in minority language; have access to public media and their own media"	X	X			X	X	X	X	X		X	implicitly		X		X	X	
"shall have the right to establish and run their own organisations, associations, as well as educational, cultural and regional institutions"	X				X		X	X	X		X	X				X	X	
"shall have the right to profess and practice their religion, including acquisition, possession and use of religious material and the conduct of religious educational activity in minority language"	X				X	X	X	X	X			X						
"shall have the right to effective participation in the decisions at the national and, where appropriate, at the regional level and affecting the minorities or the regions inhabited by the minorities"	X							X	X	X						X	X	
"shall have the right to establish and maintain undisturbed contacts across the border with citizens of other states, with whom they share a common national origin "	X	X	implicitly	implicitly	X		X	X	X									
Duties and loyalty towards the state	X			X	X		X	X	X								X	X
"fulfil as legal obligations the political commitments laid down in CSCE documents, and especially those laid down in the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE of 29 June 1990."	X	X	X	X										X	X	X	X	
Implementation			OSCE mecha-nisms						domestic remedies	X						X	X	
Definition of the subjects of the minority provisions	X	X	X	X	X	X	X	X	X			X		X	X	X	X	X