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New Democracies in the Old World: Remarks on Will Kymlicka's Approach to Nation-building in Post-Communist Europe

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The transition to liberal democracies and market economies in East Central Europe (ECE) seems to be accompanied by widespread illusions. After the collapse of the Communist empire—whose stability had been greatly exaggerated—the expectations for fast and successful democratic transformations in the newly independent European countries were unreasonably optimistic. The difficulties encountered in re-establishing democratic structures and civil societies turned out to be greatly underestimated. The capabilities of many of these states to handle emerging ethnic controversies and minority-related issues appeared particularly weak. As a result, various ethnic conflicts erupted in post-Communist Europe.

Liberal-democratic philosophy does not offer clear rules for handling ethnocultural diversity. Neither is it a panacea. As Will Kymlicka correctly states, 'controversies and conflicts over the management of ethnocultural diversity will not go away, or spontaneously resolve themselves'. Liberal-democratic values do, however, provide some clear markers for acceptable approaches to minorities policies, something that is lacking in ECE countries.

Peculiarities of Minority Related Conflicts in ECE

Similarities and Differences between Old and New Democracies

Why are the states that have clearly declared, albeit recently, adherence to basic liberal values so different from 'old' democracies in their

tackling of ethnocultural diversity? The explanation, in my view, is twofold.

First, cultural differences have been predetermined by the historical peculiarities of the nation-building process in the region—the Balkans give the most salient evidence of these differences. 'Ethnic nationalism has always been a dominant political philosophy in Eastern Europe.'[1] Historically, statehood was understood in ethnic rather than civic terms. Pal Kolsto has identified two interrelated historical factors to explain this: the conspicuous absence of the national bourgeoisie and a more prolonged dominance of an imperial, dynastic state.[2]

Second, the long-term consequences of the decades-long existence of East European nations under authoritarian Communist rule are yet to be fully realized. The distorted nature of intra-societal ties, the lack of civil society, and permanent ideological pressure, particularly against 'alien, capitalist' liberal values, greatly reinforced the dominance of ethnic over civic allegiances. Ethnic solidarity prevails over any other societal ties.

Nationalism of the Communist Kind

The legacy of the Communist concept of the so-called 'national question', with the 'ethnic' right to self-determination as a cornerstone, is a particularly important factor. This right was understood in a way similar to E. Gellner's definition of nationalism: the 'ethno-nation' was considered the right-holder, and self-determination implied the establishment of 'statehood'.[3] As a rule, though, this 'statehood' existed only in the decorative form of 'Soviet Socialist Republic', autonomous unit, or satellite.

A complicated, multilevel, ethnonational hierarchy had been elaborated. Communist federations 'were based on a sophisticated system of regionalisation based on nationality and ethnicity. In the USSR, different ethnic groups (nations or nationalities) were given status by being titular nationals of union republics, or autonomous republics, krais and okrugs. ... In reality, power remained within the centralised Communist party. The territorial division was not filled with democratic content but with status allocations. An elaborate arrangement involving selected representatives of the titular nationalities in the bureaucracies, the nomenklatura, gave the impression of ethnic and national power, which was fictitious.'[4]

Even after the Communist ideology as such lost its popularity—to the extent that the regeneration and recruitment of effective political

elites capable of keeping control over the states appeared impossible—the belief that the republics or autonomies 'belonged' to the titular ethnic group remained widespread. The switch to liberal values was understood by post-Communist ethnic groups not as the abandonment of Communist-type 'self-determination' and ethnonational hierarchy in favour of inclusive, non-ethnically-based democracy, but as the genuine implementation of nationalistic principles which had been hypocritically declared and not implemented by Communist leaders. Instead of perceiving newly independent and newly democratic states 'as a framework within which to build an inclusive democracy, involving all inhabitants residing there on an equal level, it has led to an exceptionally strong process of ethnic identification in many of the republics and the sub-units, with the corresponding quests for secession by those ethnic groups which did not belong to the dominant ethnos.'[5]

Dualism of Values

Adherence to liberal-democratic values by the world community came largely as a result of the horrors of World War II. An international legal framework based on the elaboration and adoption of a broad range of international human rights conventions started to take shape immediately after the end of the war. The nations of East Central Europe, which were then under Communist rule, did not participate in this process. Only in the late 1980s did they acquire these 'ready-made' legal instruments, as well as the basic values that lay behind them. Post-Communist nations were consumers, rather than co-authors, of this modern and generally accepted liberal-democratic political philosophy. As it happens, these new users were insufficiently qualified and did not always apply the obtained mechanisms in full compliance with the original objectives. Nor did they make full use of the opportunities provided.

There is, therefore, a fundamental dualism of values in the reconstructed and newly constructed post-Communist societies of East Central Europe. Declared liberal-democratic values are eclectically combined with more authoritarian ones that are archaic in terms of liberal philosophy. In particular, substantively individual liberal values in a bizarre way coexist with strong nationalistic feelings that are based on the presumption of the predominance of one ethnic group.

This dualism of values is reflected in the emerging social and political frameworks. Generally recognized democratic procedures

are often combined with formal or informal mechanisms of an authoritarian, tribal, or criminal nature. Examples of deviations from the liberal nature of political systems include the overt denial of some basic principles of democratic government (as in Belarus), systematic violations of electoral procedures (in Kazakhstan), the coalescence with clan hierarchy (in Central Asia and the Caucasus), and rampant corruption. In other words, a visible gap often emerges between the rhetoric and practice. A frequent pattern that emerges is the declaration of liberal laws but the implementation of contradictory government regulations and the lack of efficient enforcement mechanisms.

The Role of Elites

The role of new political elites is of particular importance in the transition to liberal-democratic societies. Each of the post-Communist states has its peculiar and complex process for establishing new political elites. Common to most post-Communist states, however, is that the new elites broadly and effectively exploit nationalistic rhetoric to win over and mobilize their constituencies. In this respect, 'recirculated' old Communist elites are often more extreme and militant than the new ones. Their emphasis on ethnic solidarity and 'the rights of a nation' allowed them, in some sense, to justify their Communist past. Alignment with ethnic values is to a considerable extent a means of remaining in power. In any event, belonging to—or at least articulating one's loyalty to—the titular groups, the 'masters of their lands', seems to be a necessary prerequisite for becoming part of the new political elites in most of the post-Communist countries.[6] Instead of playing a role as the avant-garde of liberal principles, the new elites often stir up nationalistic emotions within their constituencies in order to stay on top of the nationalistic wave.

Of course, nationalist parties and political leaders enjoy popularity in 'old democracies' too. The difference, however, lies in the methods considered to be permissible, and the limits on expressions of nationalistic ideas. In Canada, for example, a popular premier of the province of Quebec had to resign immediately after his emotional speech, made in frustration after closely losing a referendum on sovereignty, wherein some statements were seen as insulting for some ethnic groups. In post-Communist countries, such a speech would only have enhanced a politician's popularity.

Minorities as 'Reversed Majorities'

It should be understood clearly that minorities themselves also act within the same distorted system of values as the titular nations. In spite of the growth of a culture of minority rights in society as a whole, there is virtually no minority rights-based political culture within the minorities themselves',[7] a prominent expert from the Balkans wrote. Indeed, claims of the 'post-Communist minorities' are rarely expressed in terms of non-discrimination or a modern approach to minority rights. They rely instead on an ethnic understanding of self-determination.

All these factors predetermine the strong politicization of ethnicity. Unlike in 'old democracies', the nation-building projects in post-Communist East Central Europe are, as a rule, of an 'ethnic' nature. Political leaders do not strive to turn 'peasants into Frenchmen', but rather aim to secure proper territory for the 'nation'—that is, ethnic group—which, in their view, already exists and for which possession of a certain, 'historically granted' piece of land is a necessary precondition for socio-economic development or even survival.

As Will Kymlicka rightfully points out, in the West, minority nationalism has been opposed when seen as running contrary to liberal-democratic principles or endangering 'societal culture'. In post-Communist East Central Europe, on the other hand, minority nationalism is perceived as a danger to the very existence of the state. Indeed, claims to retain a separate identity are viewed as a threat to nation-building. Political rhetoric to maintain a minority group's separate identity is seen as the first step along the road to secession—and not always groundlessly.

'Designated Areas' for Alternative Societal Cultures

As a result of the dualism of values mentioned above, a peculiar political system has emerged in post-Communist East Central Europe. Graham Smith defined post-Communist political regimes in Estonia and Latvia as 'ethnic democracies',[8] the model originally developed for Israel. It seems that this notion can be, to a greater or lesser extent, applied to many post-Communist ECE states. The essence of the 'ethnic democracy' model is a combination of certain principles of general democracy with elements of ethnic favouritism.

The peculiar feature of such regimes is that the general recognition of minority rights is accompanied with the identification of some

'designated areas' for minority cultures. As a rule, there are three such areas.

1. *Religious practices.* The political leadership of 'nationalizing' states tolerates the religious activities of 'traditional' faiths and, although it keeps an eye on them, does not actively interfere unless they become a real threat to the dominance of a titular group.
2. *Special ethnic cultural associations.* These are often not only tolerated but even promoted and financially supported. This may include the establishment of NGOs, although these may be more for form's sake. 'Acceptable' minority associations must explicitly limit their activities to singing ethnic folk songs, celebrating traditional holidays, maintaining Sunday schools, etc.
3. *The private sphere, but understood in a very restricted sense.* The controversy over what is private and what is public is clearly illustrated by the debates over language legislation in Latvia and Estonia. Legislatures insist that they have a legitimate right to prescribe the language to be used in private companies, NGOs, and at public gatherings, for example, as these venues are not considered to be only private.

These examples comply with the dominant model that outlines 'the correct behaviour' for minority groups in post-Communist states. It reflects the dualism of values: minorities should not be denied the right of enjoying their culture and using their language, but it must only be within their 'own', isolated environments. Everyone must have the right to sing his or her songs and to dance traditional dances, but at the public level everyone must fully accept the societal culture of the majority. This is neither a completely assimilationist model nor a 'two-way integration model' characteristic, as Will Kymlicka writes, of liberal democracies.

The Applicability of Will Kymlicka's Concept to ECE

The peculiarities of post-Communist societies necessitate a reconsideration of the ways to accommodate ethnocultural diversity as practised m 'old democracies'.

Controversies of Federalism and Autonomy

Federalism and territorial autonomy, proven to be successful in many Western countries, are perceived with great suspicion in post-

Communist ECE countries. This is not only because, as Kymlicka notes, 'federalism has become tainted with the abuses of Communism'. Under post-Communist circumstances, regional autonomous elites, as well as existing political and economic structures, can be easily and rapidly mobilized to serve a minority's secessionist attempts. Virtually all successful secessionist movements in the former Soviet Union—Nagorno-Karabakh, Transdniestria, Abkhazia, South Ossetia, and Chechnya—were based on some existing autonomous structures.

The abolition of autonomy, however, is not an answer. Instead of removing the separatist threats, it sharply escalates the conflict, as happened in all the cases just mentioned, as well as in Kosovo—the most recent, bloody, and large-scale conflict in post-Communist ECE. In this respect, the 'new democracies' seem not to differ much from the 'old' ones.

In principle, federalist arrangements can be at least as effective in ECE countries as they are in 'old democracies'. In some cases, establishment of federal arrangements appeared extremely efficient. For example, establishment of the Gagauz autonomy in Moldova practically removed the threat of violent conflict in this region—in sharp contrast with the situation in another part of the same state, Transdniestria, where prospects for peaceful settlement still remain very unclear.

The question is whether societies of the ECE countries will take advantage of the strong points of federal models, and refrain from abusing them. This is true for both ruling titular political elites and minorities. One can assume that federalism and autonomy will become more and more effective with the liberal-democratic development of the ECE societies. In the meantime, the premature introduction of these principles might discredit them.

Mobilization and Self-Assertion of Post-Communist Minorities

As Will Kymlicka mentions, many post-Communist minorities are potentially irredentist. Indeed, minorities with a neighbouring kin-state might be expected to cause the most 'trouble' for the new European democracies. In such cases, a triangular model—nationalizing states/national minorities/ethnic homeland—suggested by Rogers Brubaker[9] can be used to explain the development of the situation, although the lines along which a potential conflict might evolve vary significantly. In this model, the notion of diaspora is sometimes more

appropriate than minority or, as a rule, the groups can be defined as post-imperial minorities.

Hungarian minorities in Romania and Slovakia are usually mentioned as an example of a mobilized diaspora. Given the ramification of a strong framework of social, cultural, and political organizations, stable and active ties to the kin-state are typical of this minority. A consistent and persistent strategy of the well-organized political parties of the Hungarian minorities finally resulted in their joining ruling coalitions in both Romania and Slovakia. Of course, in no way can one declare that this fact alone resolved all problems related to these minorities. Nevertheless, the methods in which these problems are tackled—that is, through institutionalized dialogue with political parties representing minorities—seem to be efficient, despite reasonable doubts about the democratic nature of the ethnically-based political parties.

In contrast, Serbian minorities in the states of former Yugoslavia present a scary and tragic pattern of ethnocultural self-assertion. These groups, which strongly relied on the kin-state, in fact found themselves to be merely a tool for the implementation of aggressive nationalism by its political leadership.

Russian-speaking communities in the newly independent states of the former USSR represent another example. Not surprisingly, this issue in particular enjoyed the attention of political analysts. If these groups were to choose 'the Serbian pattern', it might undermine the stability of Europe. So far this does not seem to be the case.[10] Russian communities in the 'near abroad'—a characterization that is clearly disliked by the countries so labelled—are still in flux, and their methods of self-assertion are only in the process of taking shape.

The existence of a powerful 'external patron' able to effectively back the nationalistic aspirations of a minority increases the chances that separatist and/or irredentist claims will succeed. But the patron need not be the kin-state. It may instead be linked to the separatist group through religious, linguistic, or even commercial ties. Abkhazia, Transdniestria, and Chechnya are good examples of successful separatism without the presence of 'formal' kin-states.

Different Minorities—Different Rights?

The classification of minorities suggested by Will Kymlicka, as well as his propositions on the effective rights these groups can legitimately claim, are no doubt well-reasoned and persuasive. Nevertheless, it

is difficult to imagine how the distinction between, for example, 'national minority' and 'immigrant minority' can be established at the level of national or international law. Procedural difficulties—for example, the length of time an immigrant group must reside in a country to claim the status of national minority—are also very perplexing. In addition, the problem of discrimination persists. As soon as a person acquires citizenship, any differences between this person's and a native citizen's guarantees of human rights can be regarded as discriminatory. In the meantime, minority rights are definitely viewed as a part of human rights. However, an attempt to assign different status to different minority groups, with attendant minority rights, may appear as a breach of the basic principle of non-discrimination.

Virtually every Western democracy treats its national minorities differently from its immigrant groups, typically granting language rights and/or self-government rights to the former that are not granted to the latter. However, none of the Western democracies explicity assigns different categories to different minority groups in the law—that is, Western laws and constitutions do not define the terms 'national minority' and 'immigrant group', or list which groups which fall into which category. (Declarations made during ratification of the Framework Conventon for the Protection of National Minorities are the only exception, an issue discussed below). The question is whether this approach can also be effective in the ECE countries.

In my view, one should be rather cautious in extending this approach to post-Communist ECE states. As a rule, immigrant minorities in 'old democracies' are formed by people who consciously left their home countries for Western states—regardless of whether they immigrated legally or not. They were aware of the 'rules of the game' in advance, and arguably their decision to immigrate was based upon acceptance of these rules, including acceptance of the new societal cultures, and a readiness to integrate into their new societies. By contrast, typical immigrant minorities in the ECE countries found themselves in their countries of residence due to the collapse of empires, change of borders, involuntary population movements as a result of wars, etc. No doubt some immigrant minorities in the post-Communist countries—for example Vietnamese, Korean, Chinese minorities, and people from Arabic and African countries—also came in more 'traditional' ways. However, these groups—much less numerous than other minorities in the region—practically never demand recognition of their cultural and linguistic rights, or any form of officially recognized self-government. Thus, these groups behave rather like immigrant minorities in Western countries.

Another threat concerns the peculiarities of the perception of nation-building and the dual nature of the basic values of the new political elites, as mentioned above. In 'old democracies', when the status of a minority is determined, the view of that minority is taken into account to a greater or lesser extent. By contrast, in the ECE countries, minority groups are often perceived as a threat to nation-building projects. Titular political elites tend to exclude minorities, and are inclined to classify minorities into 'national' (traditional) and immigrant groups on the basis of arbitrary—ideological and politicized—criteria. In other words, this classification may appear as a distinction between 'good' and 'bad' minorities from the point of view of the current political regime, regardless of how rooted they are in the society and other objective factors.

Granted and Demanded Rights

It is difficult to claim that there are clear, formal standards in the field of implementation of minority rights. However, there are some clear, basic principles derived from liberal theory and included into basic international instruments on minority rights: non-discrimination, the right to preserve one's identity, and prohibition of forced assimilation. These goals can be achieved in different ways in different countries.

Some documents—first of all, the European Framework Convention for the Protection of National Minorities—were criticized for overly vague provisions. Many articles of this Convention contain numerous reservations—such as 'where appropriate', 'if necessary', or 'if there is a real demand'. However, this vagueness reflects a very important feature of minority rights, which makes them different from the rest of human rights. The crucial aspect is whether there is a real demand for minority rights, as well as an objective opportunity to meet these demands.

For example, there is little sense in financing a school to provide instruction in a minority language if the minority does not want their children to receive education in this language—this is the case for most Belorussian minorities in the former USSR. Besides, peculiarities of this or that minority should be taken into account. For example, the Jewish identity is based primarily on religion, while language is of much lesser importance. This is why Jewish schools usually adopt a state's official language as the language of instruction for all subjects not directly connected with Jewish religion or history. In contrast, language is at the core of the Russian minorities' distinct

identity, while religion is much less important. Russian minorities are therefore very sensitive to linguistic limitations and prescriptions. Because different minority rights are of varying importance to different minorities, demands are also diverse.

To sum up, Will Kymlicka's classification of national and immigrant minorities, which proved to be appropriate in practically all 'old democracies' can also, in principle, be applied in the ECE countries. However, because of the low level of development of civil society and democratic traditions, the lack of effective mechanisms of dialogue between titular elites and minorities, and the tendency to perceive minorities as a threat to nation-building and to exclude them from this process, there is a high probability that this model will be applied in an abusive way. Thus, this approach may be dangerous. The formal recognition and legitimization of some minorities, while denying others, can even aggravate conflicts, instead of ameliorating them.

Values of Liberal Democracy and the International Legal Framework

The Impact of the 'Old Democracies'

Nation-building in post-Communist East Central Europe can not be adequately understood without taking into account external factors, the first of which is the attitudes and activities of what we call the international community. The (re)construction of democratic institutions in post-Communist Europe is often described as a 'return to the civilized world community'. New political elites articulately express their adherence to international norms and standards. In addition to some pragmatic considerations—such as access to loans and financial assistance—this attitude seems to have a highly symbolic value for newly democratic European countries. Post-Communist political elites want to be, or at least to appear as, 'good pupils'. This goal is difficult to achieve, however, if the lessons are worded in a vague and ambiguous manner. In this regard, the point made by Will Kymlicka about the lack of clear-cut rules and practices for handling ethnocultural diversity and the claims of non-dominant groups is of particular importance.

The lack of clarity in 'old' liberal democracies regarding the treatment of minorities is not a crucial problem for them. As a rule, customary traditions, experiences, and precedents, based on a broad

consensus of the spirit of liberal values, allow these societies to find solutions to conflict on a case-by-case basis. In contrast, for the 'new democracies', the ambiguity represents a serious impediment to the 'return to the civilized world'.

The broad diversity of practices in 'old' democracies—all of which used to be recognized as legitimate and corresponding to liberal-democratic standards—creates confusion for those diligently working to build ethnic policies in accordance with 'civilized Western patterns'. Ironically, it also provides radical nationalists with good pretexts for avoiding the fair treatment of minorities. They often ridicule those in the West for being mere proselytizers, and tend to challenge the West: 'Why don't you take these aliens and treat them as you admonish us to do?' In fact, though, minority activists easily find much more generous practices in the West—for example full bilingualism in Finland, or 'dual monolingualism' in Belgium. Thus, both sides use references to the 'experience of old democracies' in a broad sense, and often speculatively, to meet their own needs.

Values and Policies: the Case of Asylum Seekers

In terms of its role as a model for new democracies, the dilemma the West faces can be described as 'moralizing vs. burden-sharing'. The policies of most West European states towards asylum seekers illustrate this dilemma. On the moralizing side, these countries declare full adherence to the obligations of international conventions and urge the newly democratic states of East Central Europe to undertake similar obligations as soon as possible. With a policy objective of burden-sharing, the Western countries also want the new democracies to accept as many refugees as they can.

Meanwhile, the old democracies are in the process of strengthening 'fortress Europe' and implementing increasingly restrictive policies towards asylum seekers.[11] In these circumstances, even honest attempts to share good practices can understandably be perceived by the newly democratic European states as a way to make the poorer ECE countries accept refugees whom the West itself is trying to get rid of. Thus, one might claim, the Western countries are preserving their 'societal cultures', using Kymlicka's term, and defending them from culturally different asylum seekers, while denying the same possibility to ECE countries.

International Legal Instruments and Institutions

The vague nature of liberal standards of minority treatment is clearly reflected at the level of international legal instruments. In fact, prior to the collapse of the Communist system, neither the United Nations nor the Council of Europe had adopted special conventions aimed at the protection of minorities. Although the inclusion of minority rights provisions had been discussed in the context of the *Universal Declaration of Human Rights,* the proposition was finally rejected. Instead, the General Assembly adopted a special resolution saying that while the United Nations cannot remain indifferent to the fate of minorities, 'it is difficult to adopt a uniform solution of this complex and delicate question, which has special aspects in each State in which it arises' and therefore 'decides not to deal in a specific provision with the question of minorities in the text of this Declaration'.[12]

Article 27 of the *International Covenant on Civil and Political Rights* does oblige the state parties, in a very general form, to respect the minorities' right 'to enjoy their own culture, to profess and practice their own religion, or to use their own language.' This provision says nothing about how this right must be practically guaranteed, or which implementing institutions and arrangements must be created. Although the UN Human Rights Committee has occasionally handled individual complaints related to alleged violations of Article 27, and although the Committee's judgements are meaningful as precedents, one can hardly claim that implementation of the Covenant has established clear 'rules of the game'.

In 1992, the United Nations adopted the *Declaration on the Rights of Persons belonging to Ethnic, National, Religious or Linguistic Minorities.* Although the Declaration defines much more clearly a set of provisions regarding what minorities can claim, it is not a legally binding document, and does not provide for monitoring mechanisms. As a result, it cannot be effectively applied.

Only in the 1990s did the Council of Europe adopt two basic legal instruments related to minority rights. The *European Charter for Regional and Minority Languages* was opened for signature in 1992 and the *Framework Convention for the Protection of National Minorities* in February 1995. The former instrument entered into force on 1 March 1998 and the latter on 1 February 1998. Some experts believe that the Charter, elaborated before the eastward expansion of the Council of Europe, was based predominantly on the experience of Western states. Nevertheless, it recognizes different practices for

handling ethnocultural diversity. The so-called 'a la carte' principle allows state parties to choose different options, ranging from 'weak' to 'strong', from the list of provisions.

The *Framework Convention* took into account situations typical of the new ECE member states of the Council of Europe. Although heavily criticized by human rights lawyers for its numerous reservations, vague nature and possibilities for the broad interpretation of its provisions, the *Framework Convention,* as 'a document of principles', sets forth a range of standards on the rights of minorities. In particular, for the first time in history the *Framework Convention* overtly prohibits the forced assimilation of minorities. It remains to be seen whether a special body—the Advisory Committee for monitoring the implementation of the *Framework Convention*—will be effective.

In the meantime, several attempts to add a special minority rights protocol to the *European Convention of Human Rights*—thus enabling minority representatives to bring individual complaints of minority rights violations before the European Court of Human Rights—have so far been unsuccessful. A recommendation of the Parliamentary Assembly[13] of the Council of Europe was in fact suspended.

Somewhat paradoxically, the most efficient mechanism for handling minority issues in Europe has been created not within the Council of Europe, which claims to be a leading European institution to protect human rights, but within the Organization of Security and Co-operation in Europe (OSCE). Officially, the mandate of the OSCE High Commissioner on National Minorities has little to do with human rights, *per se,* focusing instead on diplomatic and political methods for the early warning and prevention of conflict. This is why important recommendations, elaborated in recent years under the auspices of the High Commissioner,[14] have no legal force and are not binding. This means that the High Commissioner must intervene when a real threat of violent conflict emerges, but not in all cases when the rights of minorities are neglected.

With this mandate in mind, one can claim that for minorities 'bad behaviour is rewarded'. For example, when municipalities in the north-east of Estonia, inhabited predominantly by ethnic Russians, organized a referendum on *de facto* secession, the High Commissioner, backed by the Council of Europe, put considerable pressure on Estonian central authorities to make them reconsider the *Law on Aliens,* the main cause of the Russian minority's dissatisfaction. It is not obvious that if Russians had used only 'fully

legitimate' means, the efforts to protect their interests would have been as forceful.

To sum up, two main trends are evident in the elaboration of international legal standards for handling ethnic diversity. First, since the 1990s new instruments on minority rights have been and are being elaborated. On the other hand, the 'old' and 'new' democracies only half-heartedly embrace this effort. To put it simply, nation-states realize the urgency of acting on these issues, but are clearly not eager to undertake serious obligations towards their minorities. The old democracies react, if at all, to the potential for a proliferation of ethnic-related violence rather than to violations of liberal principles in the treatment of minorities.

The Definition of a Minority

Problems related to the classification of minorities—see the preceding section on 'Different Minorities—Different Rights?'—are probably the main reason why there is still no universally accepted juridical definition of a minority. Somewhat surprisingly, the working definition adopted within the framework of the United Nations[15] is much broader and more generous than the one informally—though not legally—accepted by the Council of Europe in the above-noted Recommendation 1201 of the Parliamentary Assembly.

Indigenous peoples are the only group explicitly singled out in international law. However, an obvious trend emerged in elaborating international instruments to determine the rights of indigenous peoples: these instruments are not included in the general framework of instruments on minority rights but are dealt with separately. In other words, the rights of indigenous peoples make up a separate area of human rights law, and are considered as substantially different from 'common' minority rights.

As already mentioned, the state parties of the Framework Convention are free to determine the groups to which they will grant the minority rights enshrined in the Convention. For example, some states—Germany, Denmark, Slovenia, Former Yugoslav Republic of Macedonia—list the groups eligible for those minority rights guaranteed by the Convention. Many other state parties have adopted very restrictive definitions. For example, to claim minority rights in Estonia and Switzerland, persons must, in addition to possessing citizenship of the state, also 'maintain longstanding, firm and lasting ties' with that state. In Luxemburg, persons must have 'settled for numerous generations on its territory'. Others, such as Liechtenstein and

Malta, when ratifying the Framework Convention, overtly declared that there are no minorities at all within their territories.[16]

Conclusions

Conflicts over the handling of ethnocultural diversity are no doubt the main threat to the peaceful and democratic development in East Central Europe. In the event of a large-scale explosion, the West will hardly be able to hide behind a new 'iron curtain'. Thus, the problems of the 'new democracies' pertain, in essence, to the 'old democracies' too. The West's vital interests in elaborating effective rules and mechanisms to cope with these threats are motivated by 'selfish reasons', not out of pure humanism. So far, 'the international community's reaction [has] oscillated between persistent under-reaction (like in Chechnya and Bosnia) and belated overreaction (like in Kosovo).[17] Accordingly, greater understanding of the peculiarities of post-Communist nation-building is of pivotal importance. The approach developed by Will Kymlicka offers an appropriate foundation for this understanding. Transferring the basic principles and values of liberal democracy into legal provisions and enforcement mechanisms must be the next—and perhaps much more complicated—step.

NOTES

1. Richard Rose, 'Rights and obligations of individuals in the Baltic states', *East European Constitutional Review,* 1, Winter 1997, 35-43.
2. Pal Rolst0, 'Nations and Nation-Building in Eastern Europe', in *Nation-Building and Ethnic Integration in Post-Soviet Societies. An Investigation of Latvia and Kazakhstan* (Boulder, CO: Westview Press, 1999) 56.
3. Sec, for example, Ernest Gellner, *Nations and Nationalism,* Basil Blackwell, 1983.
4. Asbjorn Eide, 'Minorities in a Decentralized Environment', in *The New Yalta: Commemorating the 50th Anniversary of the Declaration of Human Rights in the RBEC Region* (New York, NY: Regional Bureau for Europe and the CIS of the UN Development Programme, 1998) 55-67.
5. Ibid., 59
6. On the formation of new elites in the Baltic states, see Anton Steen, 'The new elites in the Baltic states: Recirculation and exchange', *Scandinavian Political Studies,* 2C/1, 1997, 91-112. The actual merger of pro-Communist and nationalistic political groups in Russia is also revealing.
7. Panayote Elias Dimitras, 'The Minority Rights Paradox', *War Report,* 58, 1998, 64-66.

8. Graham Smith, 'The Ethnic Democracy Thesis and the Citizenship Question in Estonia and Latvia', *Nationalities Papers,* 24/2, 1996, 199-216.
9. Rogers Brubaker, *Nationalism Reframed. Nationhood and the National Question in the New Europe* (Cambridge: Cambridge University Press, 1996).
10. Anatol Lieven suggests an interesting explanation for the low level of mobilization among the 'new' Russian minorities. Anatol Lieven, 'The Weakness of Russian Nationalism', *Survival, AMI,* 1999, 53-70.
11. For a detailed discussion of this problem, see Natalie Zend, 'Hungary's Migration Policy, 1987-1996. External Influences and Domestic Imperatives', in Magda Opalski (ed.) *Managing Diversity in Plural Societies. Minorities, Migration and Nation-Building in Post-Communist Europe* (Ottawa: Forum Eastern Europe, 1998) 208-28. See also Boris Cilevics, 'Restrictions on asylum in the member states of the Council of Europe and the European Union', Doc. 8598, Report to the Parliamentary Assembly of the Council of Europe on behalf of the Committee on Migration, Refugees and Demography, 1999 (http://stars.coe.fr/doc/doc99/edoc8598.htm).
12. 'Fate of minorities', UN General Assembly Resolution 217 C (III), 1948.
13. 'On the additional protocol on the rights of minorities to the European Convention on Human Rights', Parliamentary Assembly of the Council of Europe Recommendation 1201, 1993.
14. *The Hague Recommendations Regarding the Education Rights of National Minorties,* 1996, and *The Oslo Recommendations Regarding the Linguistic Rights of National Minorities,* 1998.
15. UN Human Rights Committee, *The rights of minorities* (Article 27: General comment 23) 4 August 1994.
16. The list of ratifications, as well as reservations and declarations made *by* the state parties, are available at http://www.coe.int/tablconv/157t.htm.
17. Panayote Elias Dimitras, 'The Minority Question in Europe', *Speaking about Rights* (Canadian Human Rights Foundation Newsletter, Montreal), 14/2, 1999,2.