New Minorities:
Traditional Instruments?
Old - historical - traditional - autochthonous minorities

- Distinct language/culture/religion
- Redrawing int. borders/No statehood
- Part larger state(s)
- Indigenous People(s) (?)

New minority groups stemming from migration

Migrants/refugees/asylum seekers

Blurred lines with old minorities:
- Voluntary/unvoluntary decision?
- ´Long lasting ties´?
- Citizenship?
Old/New Minorities

International Instruments on Minorities
Personal Scope

Diversified positions

States

- fierce opposition
- pragmatic approach (article-by-article)

International bodies

- favour extension

would-be/possibilist position

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18 October 2011
Common Definition of Minorities?

International Law

No legally binding definition ‘minority’
Common Definition

Cons/Pros

CONs

Not useful/even harmful

Alignment by the lowest common denominator

Perceived as secondary citizenship
Common Definition

Cons/Pros

PROS

Clarify beneficiaries

Guarantee homogenous/consistent implementation
**Definition of Minorities: Attempts**


A group numerically inferior to the rest of the population of a state, in a non-dominant position, whose members - being nationals of the state - possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directing towards preserving their culture, traditions, religion or language.


A group of citizens of a state, constituting a numerical minority, (...) motivated, if only implicitly, by a collective will to survive and whose aim is to achieve equality with the majority in fact and in law.

**Council of Europe (PACE Rec. 1201 (1993))**

A group of persons in a State who:

a) reside in the territory of that state and are citizens thereof,

b) maintain long-standing, firm and lasting ties with that state,

c) display distinctive ethnic, cultural, religious or linguistic characteristics,

d) are sufficiently representative, although smaller in number than the rest of the population of the State or of a region of that State, and

e) are motivated by a concern to preserve together that which constitutes their common identity, including their culture, their traditions, their religion or their language.
Definition of Minority Elements

I. **Objective factors**

Ethnic, religious or linguistic characteristics
Citizenship/Residence
Numerical minority
Non-dominant position

II. **Subjective factors**

Sense of solidarity / Will to survive-preserve identity
Old/New Minorities

Proposal
Working (Common) Definition

A minority is any group of persons,

(i) smaller in number than the rest of the population of that state or of a region of that state,
(ii) whose members share common characteristics of an ethnic, religious or linguistic nature that distinguish them from the rest of the population, and
(iii) manifest, even only implicitly, the desire to be treated as a distinct group.
Rationale of Minority Protection

Peace and Security

Human Rights

Protection of Culture(s) and Cultural Diversity

Democratic Participation and Democratic Pluralism
Minority Protection

Common Claims

1. Right to existence
2. Non-discrimination
3. Preservation and development of identity/diversity
4. Effective participation in public life
Minority Protection

1. Right to existence

Recognition, physical existence, access to basic subsistence rights/economic resources, prohibition forced assimilation, deportation/forcible transfer of population

Issue
Recognition

State’s refusal: major lacuna international law

Indirect recourse to freedom of assembly/association/religion
Minority Protection

2. Equal treatment and Non-discrimination

Equal situations => treated equally
Unequal situations => treated differently
Objective and reasonable justification

Issue
Special measures/Affirmative action

Reasonable relationship of proportionality between means employed and aim sought to be realised

Time limit (?)
Minority Protection

3) Preservation and development of identity/diversity

Right to enjoy own culture/profess-practice religion/use language (UN/FCNM)
Prohibition of assimilation (FCNM)
Indirect provisions (ECHR)
Identity/diversity (EU Charter)

**Issue**

Risks behind protection
identity/diversity

`Museumification`
Arbitrary freezing evolutionary process

`Culturalisation`
problems and claims

`Internal cruelty`
Illiberal practices
Minority Protection

4) Effective participation in public life

Participation in cultural, social, economic life and public affairs

- Participation in decision-making
- Self-governance

**Issue**

Self-determination
only to ‘peoples’

**Disclaimer:**
Sovereignty and territorial integrity
Minority Protection

Most provisions (FCNM)
Every persons belonging to national minorities

Exceptions
Areas inhabited by minorities `traditionally` or in substantial numbers/real need/sufficient numbers `wherever possible`

Use of minority language with PA
Topographical indications
Minority language(s) in education
### A Common but Differentiated System of Protection

<table>
<thead>
<tr>
<th></th>
<th>OLD MINORITIES</th>
<th>NEW MINORITIES</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Justiciable Rights (ECHR)</td>
<td>Legitimate Claims</td>
</tr>
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<td>Legitimate Claims</td>
</tr>
</tbody>
</table>

#### Language

<table>
<thead>
<tr>
<th>Use of minority language in elected bodies</th>
<th>no</th>
<th>yes (but knowledge of the official language may be required)</th>
<th>no (not reasonable/feasible)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Use of Minority Language with PA</td>
<td>no</td>
<td>yes</td>
<td>no</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(not reasonable/feasible)</td>
<td></td>
</tr>
<tr>
<td>Use of Minority Language in judicial proceedings</td>
<td>Yes/no (but no if there is sufficient knowledge of the official language - apart from the basic right to be informed of the reasons of arrest/charges/hearing itself in a language he/she understands)</td>
<td>yes (even in case of knowledge of the official language)</td>
<td>Yes/no (but no if there is sufficient knowledge of the official language)</td>
</tr>
</tbody>
</table>

18 October 2011

Roberta Medda-Windischer
### Political Participation

<table>
<thead>
<tr>
<th></th>
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</thead>
<tbody>
<tr>
<td><strong>Electoral Rights</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(active/passive rights)</td>
<td>yes (on the basis of citizenship)</td>
<td>yes (in case of individuals without citizenship of the country of residence)</td>
</tr>
<tr>
<td></td>
<td>yes (on the basis of citizenship)</td>
<td>yes (at least at local level)</td>
</tr>
<tr>
<td>Participation in decision-making (reserved seats/quota, advisory bodies)</td>
<td>no (but no interference from international courts if forms of participation - exemptions from thresholds/quota - are recognised)</td>
<td>yes (empirical evidence (precedents at local and national level))</td>
</tr>
<tr>
<td></td>
<td>yes (empirical evidence)</td>
<td>no (but no interference from international courts if forms of participation - exemptions from thresholds/quota - are recognised)</td>
</tr>
<tr>
<td></td>
<td>yes (empirical evidence)</td>
<td>yes (at least at local level)</td>
</tr>
<tr>
<td>Autonomy (local/territorial/regional)</td>
<td>no</td>
<td>no</td>
</tr>
<tr>
<td></td>
<td>yes (empirical evidence)</td>
<td>no</td>
</tr>
<tr>
<td></td>
<td>no (no empirical evidence as well as Strasbourg case-law)</td>
<td>18 October 2011</td>
</tr>
<tr>
<td>A Common but Differentiated System of Protection</td>
<td>OLD MINORITIES</td>
<td>NEW MINORITIES</td>
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<td>Legitimate Claims</td>
</tr>
<tr>
<td><strong>Education</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Publicly funded education in minority language/religion</td>
<td>no (unless provided for other groups)</td>
<td>yes (states may legitimately require respect for certain principles/values in the curricula)</td>
</tr>
<tr>
<td>Use of Minority Language at School</td>
<td>no (unless initially provided and then abrogated)</td>
<td>yes (empirical evidence in different forms /contexts) (More emphasis on the knowledge of minority language)</td>
</tr>
</tbody>
</table>
Majority-Minority Relationship

Asymmetrical balance

Majority

New minority

Old minority

Majority

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18 October 2011
Minority Protection

Great variations minority situations

Pragmatic criteria to differentiate minority groups/rights

Living compactly or dispersed

Legacy colonisation
Past discrimination

Settled before foundation nation state / recently arrived

Article-by-article approach contextual scope of rights

Roberta Medda-Windischer 18 October 2011
Thanks!

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