

*Political aspects of the mandate
of the European Bank
in relation to ethnic minorities*



European Bank
for Reconstruction and Development

Introduction

This paper explores the political aspects of the Bank's mandate in relation to ethnic minority rights and suggests the Bank's future approach. It does so because of the threat to democratic and economic progress from increasing tension in the Bank's region of operations between many minority groups and their countries' governments, and also from threats to peace between separate countries.

The approach taken is to consider the status of international and regional protection of the human rights of individuals belonging to minorities, particularly through those bodies or instruments cited in the Agreement Establishing the European Bank and in the Bank's policy paper on Procedures to Implement the Political Aspects of the Mandate of the European Bank (BDS91-16) of 28 May 1991.

European Bank for Reconstruction and Development
One Exchange Square
London EC2 2JN
Telephone: +44 20 7338 6000
Fax: +44 20 7338 6100

Political aspects of the mandate of the European Bank in relation to ethnic minorities

Background

BDS91-16 interpreted the Agreement with reference to the European Convention on Human Rights; the Declaration on Principles of the Helsinki Final Act, cited in the preamble to the Agreement; the work of the Conference on Security and Cooperation in Europe (CSCE), including the Charter of Paris for a New Europe of November 1990; and the work of the United Nations (UN) Commission on Human Rights.

The paper also gave examples of reference criteria for assessment reports on democratic progress in countries where the Bank operates. Amongst these was one explicitly mentioning minorities:

“equal protection under the law, including for minorities”.

However, many of the others cited¹ could apply to minority groups as well as to individuals.

That last point is illustrative, as shown below, of long-standing debate in international fora about the extent to which there should be specific rights for minorities or whether the implementation of fundamental individual human rights should suffice.

1 International instruments

After the First World War the **League of Nations** established a system to protect minority rights, based on a series of bilateral agreements following major peace treaties, plus ad hoc resolutions.² There was a clear link here between these specific measures to protect minorities and the aim of preventing international conflict. The measures failed, as did the League.

Since the end of the Second World War **the UN** has been hesitant to introduce measures specifically to protect minority rights, mainly for three reasons. First, it was generally believed that minority rights' protection had been a pretext for German territorial expansion during the inter-war period 1919-1939. Second, many believed it more appropriate to protect the rights of the individual because individual rights could sometimes suffer at the expense of giving rights to minority groups. Finally, governments did not want to encourage the secession of distinct ethnic groups from existing states, sometimes the aim of such groups once they gain specific measures to protect them.

The UN, therefore, encouraged the universal application of individual human rights without discrimination, believing this would lead directly to the protection of the rights of individuals belonging to minorities. For these reasons, neither the UN Charter nor the Universal Declaration on Human Rights refers to minorities, nor has the UN or any other international body ever defined the term "minorities".³

On 13 December 1992 the UN General Assembly adopted the **Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities**. This Declaration does not define minorities and the degree of protection does not go further than existing CSCE standards.

Only a few other international instruments refer specifically to minority rights: including the **UNESCO Convention against Discrimination in Education**⁴; the **International Convention on the Elimination of All Forms of Racial Discrimination**⁵; and the **International Labour Organisation's Convention 107 (1957)** which applies to tribal and semi-tribal populations.⁶

International agreements to do with genocide are also relevant, because minorities are the usual victims of genocide. **The Convention on the Prevention and Punishment of the Crime of Genocide** of 1948 provided what might be termed a “right of existence” for human groups. It grew out of **Resolution 96 (I) of the General Assembly** of the United Nations, which described genocide as: “denial of the right of existence of entire human groups, as homicide is the denial of the right to live of individual human beings”.

Article 2 of the Genocide Convention specifies a range of acts which when committed: “with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such amount to genocide”.⁷

This classification of genocide covers physical and biological genocide. Cultural genocide is not included, except partially in the case of forced transfer of children. “Existence” is a somewhat circumscribed notion in this context. It is not genocide if a culture is destroyed but the carriers of culture are spared. Forcible assimilation is therefore not proscribed by this Convention. There is no such offence in international criminal law, though the term “ethnocide” has gained some intellectual currency, especially when applied to indigenous peoples.

2 Regional instruments

The Council of Europe

The Council of Europe's contribution to the legal protection of minorities relies primarily on the achievements of the European Convention on Human Rights. Like the majority of international instruments, this Convention focuses on the protection of fundamental individual human rights, without discrimination, rather than on the specific protection of minorities. More recently, however, some work has been undertaken with a view to drafting new legal instruments designed to reinforce such protection. In addition, renewed consideration is to be given to possible modifications in the European Convention on Human Rights itself.

(a) The European Convention on Human Rights

The individual human rights recognised by the Convention are secured to all persons coming under the jurisdiction of one of the contracting states: the Convention therefore protects not only the nationals and citizens of the state, but also anyone affected by a measure taken by its authorities.

Several of the rights secured are of obvious interest for the protection of minorities: e.g. freedom of thought, conscience and religion (Article 9); freedom of expression, regardless of frontiers (Article 10); freedom of peaceful assembly and association (Article 11); and the right to education in conformity with religious and philosophical convictions (Additional Protocol, Article 2).

All rights in the Convention must be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status (Article 14). Also all of the rights should be guaranteed, whether individuals exercise them in isolation or in a community.

The Council of Europe has also established machinery to investigate and rule upon alleged violations of the Convention.⁸

(b) Possibilities of improving the European Convention on Human Rights

Following a recommendation by the Parliamentary Assembly of the Council of Europe, a committee of governmental experts on human rights concluded in 1973 that, from a legal point of view, there was no special need to make the rights of minorities the subject of an additional protocol to the Convention. If, however, for other reasons such a protocol was considered necessary, there appears to be no legal obstacle to prevent this.

Recently the Parliamentary Assembly reintroduced the idea of an additional protocol to the Convention, on minorities. Work on this is supposed to be finalised by the end of 1993.

Recently two other initiatives have been taken specifically to accommodate minority interests. The first was the **European Charter for Regional or Minority Languages**. After long debate this was adopted on 29 June 1992 by the Committee of Ministers of the Council of Europe and was opened for signature on 5 November 1992.⁹

The second initiative was taken by the European Commission for Democracy Through Law (Venice Commission) to draft a **European Convention for the Protection of Minorities**. The overall thrust of the Convention is to foster the protection and development of minority identity in cultural, religious and linguistic terms, free from attempts at forced assimilation. Minority participation in public, national and regional affairs is foreseen, as well as cross-border contacts between groups. Public use of minority languages under certain limitations is also referred to, as well as educational linguistic rights.

The draft was submitted to the Committee of Ministers of the Council of Europe, but encountered many political and technical problems which seem likely to delay or prevent its adoption.

The CSCE

The idea of minority rights protection appeared on the European scene for the first time after the Second World War in 1975, in the **Declaration of Principles of the Helsinki Final Act**. Principle VII states:

“The participating states on whose territory national minorities exist will respect the right of persons belonging to such minorities to equality before the law, will afford the full opportunity for the actual enjoyment of human rights and fundamental freedoms and will, in this manner, protect their legitimate interests in this sphere”.

The subsequent **Paris Charter for a New Europe**, signed on 21 November 1990, confirmed that: *“the ethnic, cultural, religious and linguistic identity of national minorities will be protected and that persons belonging to national minorities have the right freely to express, preserve and develop that identity without any discrimination and in full equality before the law”*.¹⁰

The positive approach to minority rights was reaffirmed in the Concluding Documents of later CSCE meetings on the Human Dimension – in Madrid (1982-1983), Vienna (1986-1989), Copenhagen (1990), Geneva (1991), Moscow (1991), and Helsinki (1992). Those documents recognised the right of minorities to preserve and develop their ethnic, cultural, linguistic or religious identity.

The Vienna meeting introduced a human rights supervisory mechanism, an important feature of which was that parties were obliged to respond.¹¹ The mechanism was tightened up at the Moscow Conference in 1991.¹² The mechanism is helpful in creating a basis for multilateral dialogue on minority questions. It does not, however, have the binding quality of a treaty and the CSCE has never defined the term “minority”.

Finally, at the 1992 Helsinki Summit the CSCE agreed to create a post of **CSCE High Commissioner on National Minorities**, appointed later that year. The High Commissioner is envisaged as “*an instrument of conflict prevention at the earliest stage*”. He or she will not be concerned with terrorism or with individual human rights violations.

The High Commissioner is mandated to consult relevant institutions as necessary. In the Helsinki Declaration’s **Decision on the Human Dimension**, the European Bank, as well as the Council of Europe, are specifically mentioned as relevant sources for human dimension activities.

Initiatives by the European Community and its Member States

- the **European Council** adopted a Declaration on Human Rights, which also addresses minority rights, in June 1991. The Declaration underlines the importance of safeguarding cultural identity and the exercise of collective rights of minorities as a prerequisite for political, social and economic development. Following this Declaration, the guidelines on recognition of new states in eastern Europe and the USSR, as adopted by EC Foreign Ministers on 16 December 1991, make the guarantee of minority rights a condition of recognition by EC member states.
- The **European Parliament** adopted a resolution on a Charter of regional languages and cultures and on a Charter of rights of ethnic minorities in 1981. In 1987 it adopted a resolution on the languages and cultures of regional and ethnic minorities within the European Community. Specific cases of ill-treatment of minorities are regularly debated in Parliament.
- In the past, the **Council** has acted in two cases to help protect the cultural identity of specific groups of people within the European Community. In 1977 it adopted a directive on the education of the children of migrant workers; in 1989, Council and EC Ministers of Education agreed, in a joint resolution, on school attendance for Gypsy children.

- Apart from following the relevant work undertaken in the Council of Europe and in the CSCE framework, **the Commission** actively supports measures to protect minorities. It has special budget lines for that purpose, e.g. to further the language and cultures of minorities within the European Community (ECU 2,500,000 in 1992) or to improve the situation of migrant workers (ECU 5,650,000 in 1992). Furthermore, humanitarian aid provided by the Commission often helps minorities threatened by suppression or natural disasters to survive.

General

A particular feature of both the Council of Europe's and the CSCE's work at the moment, in addition to traditional human rights monitoring and standard setting, is an increasing emphasis on fostering inter-state dialogue on minorities issues and on contributing to transfrontier and regional cooperation projects that have a positive impact on the situation of minority groups.

European Bank approach

Within the framework of the overall policies described in BDS91-16 and the specific mention of minorities in section III b of that document, the European Bank's approach should be prudent, aiming to promote stability and should include:

- monitoring events concerning the rights of persons belonging to a minority in the countries where the Bank operates, covering both the implementation of international human rights' obligations and standards as outlined in section 2 above and governments' actions in respect of actual or potential conflicts related to ethnic tensions, including actions to implement such rights;
- maintaining appropriate links with relevant international fora, e.g. Council of Europe, CSCE and, as appropriate, with the CSCE High Commissioner on National Minorities and relevant UN meetings, to share information and to contribute to the evolution of international thinking on these matters;
- monitoring and participating in the relevant work of regional groupings, such as the Central European Initiative and the Black Sea Economic Cooperation;
- ensuring Bank operational and other staff as necessary are kept informed of issues concerning ethnic minorities during identification and preparation of projects and programmes;
- reporting to the Board of Directors on ethnic minorities issues in country strategy assessments of democratic progress and otherwise, as provided in BDS91-16;
- deepening the Bank's understanding of minorities issues through holding appropriate consultations with concerned persons and participating in relevant activities such as seminars or conferences.

References

1 *Factors relevant to the political aspects of the Bank's purpose:*

- *free elections;*
- *representative government in which the executive is accountable to the elected legislature or the electorate;*
- *duty of the government and the public authorities to act in accordance with the constitution and law, and availability of redress against administrative decisions;*
- *separation between the State and political parties;*
- *independence of the judiciary;*
- *equal protection under the law, including for minorities;*
- *fair criminal procedure;*
- *freedom of speech, including the media, of association, and of peaceful assembly;*
- *freedom of conscience and religion;*
- *freedom of movement;*
- *the right to private property; and*
- *the right to form trade unions and to strike.*

The list is only indicative, and is not presented in order of importance nor intended to be exhaustive. (Extract from page 4 of BDS91-16 (Final).)

2 *Minorities protection under the League of Nations took four different forms:*

- five Minorities Treaties concluded in 1919-1920 in conformity with the provisions of the peace treaties between the Allied and Associated Powers and Eastern European and Balkan States;*
- four special chapters of the peace treaties of 1919-1923 imposed on the vanquished States;*
- four subsequent treaties; and*
- five unilateral declarations, signed by various States between 1921 and 1932 upon their admission to the League of Nations, of which the Council of the League of Nations took note in an ad hoc resolution.*

3 *After years of debate, the Sub-commission on Prevention of Discrimination and Protection of Minorities of the UN Commission on Human Rights agreed that:*

- (i) the term minority includes only those non-dominant groups in a population which possess and wish to preserve stable ethnic, religious or linguistic traditions or characteristics markedly different from those of the rest of the population;*
- (ii) such minorities should properly include a number of persons sufficient by themselves to preserve such traditions or characteristics;*
- (iii) such minorities must be loyal to the State of which they are nationals.*

On that basis, the UN adopted in 1966 Article 27 of the International Covenant on Civil and Political Rights, which stipulates:

“In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language”.

4 *Article 5 of the UNESCO Convention against Discrimination in Education states that:*

“It is essential to recognize the right of members of national minorities to carry on their own education activities including the maintenance of schools and, depending on the educational policy of each State, the use or the teaching of their own language, provided however:

- (1) that this right is not exercised in a manner which prevents the members of these minorities from understanding the culture and language of the community as a whole and from participating in its activities, or which prejudices national sovereignty;*
- (2) that the standard of education is not lower than the general standard laid down or approved by the competent authorities; and*
- (3) that attendance at such schools is optional”.*

5 *Article 1 para. 4 of the International Convention on the Elimination of All Forms of Racial Discrimination states that:*

“Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals ‘shall not be deemed discriminatory’ provided... that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved”.

- 6 *The International Labour Organisation's Convention 107 (1957) states that:*
“(a) members of tribal or semi-tribal populations in independent countries whose social and economic conditions are at a less advanced stage than the stage reached by the other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations; (b) members of tribal or semi-tribal populations in independent countries which are regarded as indigenous on account of their descent from the population which inhabited the country, or a geographical region to which, irrespective of their legal status, live more in conformity with the social, economic and cultural institutions of that time than with the institutions of the nation to which they belong”.
- 7 *The acts specified in Article 2 of the Genocide Convention are:*
(a) *killing members of the group;*
(b) *causing serious bodily or mental harm to members of the group;*
(c) *deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;*
(d) *imposing measures intended to prevent births within the group;*
(e) *forcibly transferring children of the group to another group”*
- 8 *This machinery can function in two ways. Under the first, any State Party may apply to the European Commission of Human Rights if it considers that another State Party is not fulfilling its commitments. Under the second method, any person, non-governmental organisation or group of individuals claiming to be a victim of a violation of the rights set forth in the Convention may apply directly to the European Commission of Human Rights. In the case of each application which is declared admissible by the Commission, the quasi-judicial or, when it comes to the European Court of Human rights, even fully judicial proceedings will result in a binding decision, in the form of either a judgement by the Court or a decision by the Committee of Ministers of the Council of Europe which, in addition, supervises the enforcement of these decisions by the States concerned.*

9 *The Charter defines its terms in Article 1: “For the purposes of this convention:*

- a) *‘regional or minority languages’ means languages belonging to the European cultural heritage that are:*
 - (i) *traditionally spoken within a territory by nationals of the state who form a group numerically smaller than the rest of the state’s population; and*
 - (ii) *different from the official language(s) of that state*
- b) *‘territory in which the regional or minority language is spoken’ means the geographical area in which the said language is the mode of expression of a number of people justifying the adoption of the various protective measures provided for in this convention.*
- c) *‘non-territorial languages’ means languages belonging to the European cultural heritage... which, although traditionally spoken within the territory of the State, cannot be identified with a particular area thereof”.*

10 *Article 35 added:*

“The participating States note the efforts undertaken to protect and create conditions for the promotion of the ethnic, cultural, linguistic and religious identity of certain national minorities by establishing, as one of the possible means to achieve these aims, appropriate local or autonomous administrations corresponding to the specific historical and territorial circumstances of such minorities and in accordance with the policies of the State concerned”.

11 *The mechanism comprised four stages. First, participating states had the right to exchange and request information on questions relating to the human dimension. Second, they could hold bilateral meetings with other states in order to examine questions in this area with a view to resolving them. Third, they could bring cases to the attention of other states through diplomatic channels. Fourth, they could provide information on the responses to their requests to further CSCE meetings.*

12 *Now a participating state may, with the support of at least nine other participating states, use the procedure for a CSCE mission, if the state considers that another CSCE-participating state poses a serious threat to the fulfilment of the CSCE human dimension provisions. Any participating state may itself also invite independent experts to help resolve its human rights problems.*

