

REFLECTING ON THE FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES – THIRTY YEARS OF HUMAN RIGHTS LOGICS IN NATIONAL MINORITY PROTECTION

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Abstract: This study, marking 30 years since the adoption of the FCNM, situates the Convention within the long historical development of minority rights protection. It then elaborates on the fundamental premise that minority rights are human rights. In light of how contemporary human rights logic has permeated the concept of national minority protection, the study highlights three major risks: first, the fragmentation of human rights law; second, its moralizing approach; and third, the shift from a protective concept toward a state-centered, paternalistic model of “diversity management.” These dynamics can ultimately weaken the protection of national minorities as a distinct legal discipline and undermine the very substance of minority protection.

Resumé: Tato studie, která připomíná 30 let od přijetí Rámcové úmluvy o ochraně národnostních menšin, zařazuje tuto úmluvu do dlouhého historického vývoje ochrany práv národnostních menšin. Dále se zabývá základní premisou, že práva menšin jsou lidskými právy. S ohledem na to, jak současná logika lidských práv pronikla do konceptu ochrany národnostních menšin, studie upozorňuje na tři hlavní rizika: zaprvé fragmentaci práva lidských práv; zadruhé moralizující přístup lidskoprávní doktríny; a zatřetí posun od ochranného konceptu k státům řízenému, paternalistickému modelu tzv. „řízení rozmanitosti“ (managing diversity). Tato dynamika může nakonec oslabit ochranu národnostních menšin jako samostatnou právní disciplínu a zpochybnit samotnou podstatu ochrany národnostních menšin.

Key words: national minorities, Framework Convention, human rights logic, fragmentation, moralization, managing diversity, autonomy, paternalism.

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¹ *The views expressed in this article are solely those of the author and do not reflect the official position of any institution.*

Introduction

The year 2025 marks the 30th anniversary of the Framework Convention for the Protection of National Minorities (FCNM) which was originally developed in response to the political changes and the dramatic escalation of ethnic conflicts in Europe following 1989.² The drafting process was completed in October 1994, and the FCNM was subsequently adopted by the Committee of Ministers of the Council of Europe on 10 November 1994. It was opened for signature on 1 February 1995, and after receiving the required number of ratifications, entered into force in 1998.

Although the FCNM was built on a solid foundation of minority rights principles already established at the international level, most notably through the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Commission on Security and Cooperation in Europe 1990, also known as the CSCE Copenhagen Document,³ the 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities,⁴ and the ongoing work of the Parliamentary Assembly of the Council of Europe,⁵ its adoption represented a decisive step forward in the international protection of minorities. While the Convention ultimately reflects a series of compromises aimed at reconciling the diverse political and legal traditions of member states, its impact is widely acknowledged, as it remains the only international treaty devoted exclusively to the protection of national minorities.

Furthermore, the FCNM is regarded as one of Europe's major human rights treaties. According to Article 1 of the FCNM, the protection of national minorities and of the rights and freedoms of persons belonging to those minorities forms an integral part of the international protection of human rights. In other words, minority rights are human rights.

This new philosophy of minority protection contrasts with earlier conceptions that treated minority rights and human rights as separate or even conflicting fields, mostly due to tensions between the collective nature of some minority rights and the individual focus of human rights law. In the past, it was also argued that the codification of special privileges for minorities might conflict with the principles of equality and non-discrimination which are central to human rights protection.

This article examines how the recognition of minority rights as human rights influences the current interpretation of the FCNM's substantive provisions. It also considers whether the prevailing human rights logic, in certain cases, may inadvertently hinder rather than enhance the effective protection of minority rights.

² On the broader context of national minority protection in the 1990s, see e.g., PHILLIPS, Alan. *The Beginning*. In: MALLOY, Tove H. and CARUSO, Ugo (eds.) *Minorities, Their Rights, and the Monitoring of the European Framework Convention for the Protection of National Minorities: Essays in Honour of Rainer Hofmann*. Leiden, Boston: Nijhoff, 2013, pp. 15–42.

³ ZAAGMAN, Rob, BLOED, Arie. Die Rolle des Hohen Kommissars der OSZE für nationale Minderheiten bei der Konfliktprävention. In: Institut für Friedensforschung und Sicherheitspolitik (ed.), *OSZE-Jahrbuch 1995*, Bd. 1. Baden–Baden: 1995, pp. 225–240.

⁴ For more details on the Declaration, see THEUERMANN, Engelbert. Der außervertragliche Minderheitenschutz der Vereinten Nationen. In: HAFNER, Gerhard; PANDEL, Martin (eds.) *Schutz und Durchsetzung der Rechte nationaler Minderheiten*. Klagenfurt: Hermagoras/Mohorjeva, 2008, pp. 51–76.

⁵ See e.g., 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.

1. The Framework Convention in Brief

The primary objective of the FCNM is to establish a common standard of minority protection across Europe. While the Convention sets out general principles and objectives, it grants considerable discretion to individual states in determining how to implement its provisions through their legislation and legal practice. In this context, the Explanatory Report to the FCNM underscores that the Convention is based on ‘programme-type provisions setting out objectives which the Parties undertake to pursue’. The implementation of these provisions depends largely on the approach taken by each state party.⁶ Most provisions of the FCNM are not considered self-executing⁷ and therefore cannot be directly invoked in proceedings before national authorities. As such, they must be appropriately transformed into domestic law.

A certain paradox lies in the fact that, although the FCNM is dedicated to the protection of national minorities, it does not define what constitutes a “national minority” or who qualifies as a person belonging to such a minority. In practice, this lack of legal definition can lead to significant interpretative challenges. On the one hand, some contracting states have attempted to compensate for this gap through unilateral declarations which reflect their national understanding of the term and often include conditions such as citizenship or a long-standing historical connection to the state or its territory. On the other hand, the Advisory Committee on the Framework Convention for the Protection of National Minorities (ACFC), in its monitoring of states parties’ compliance with the FCNM, has consistently promoted a pragmatic approach that allows for the inclusion of so-called new minorities, which have emerged in European countries primarily as a result of recent migration.

Whereas the personal scope of the FCNM remains partly unclear and continues to be a subject of interpretation and disagreement between the ACFC and certain states parties, its material scope is very broad. It addresses a wide range of issues, including anti-discrimination measures, the protection of minority identity, minority media, linguistic rights, education, participation in public life, and transborder cooperation. In line with the spirit of the Convention, states are encouraged to adopt positive measures to promote tolerance and intercultural dialogue, as well as to protect individuals from hostility or violence based on their ethnic, cultural, linguistic, or religious identity.

In contrast to the FCNM’s broad substantive scope, its procedural provisions are relatively limited and modest in ambition. The Convention does not provide for judicial or quasi-judicial tools and relies solely on a state reporting procedure. This procedure involves the Committee of Ministers, the Council of Europe’s main political body, and an Advisory Committee composed of 18 independent experts. The delicate relationship between a political body, which mainly represents the interests of member states, and an independent expert body has been clarified through the Convention’s monitoring practice, affirming the ACFC’s autonomy in matters of fact-finding and interpretation. For most states parties to the FCNM, the Advisory Committee has already initiated its sixth monitoring cycle, which is currently ongoing.

⁶ See the Framework Convention for the Protection of National Minorities, Explanatory Report, para. 11.

⁷ HOFMANN, Rainer. The Framework Convention for the Protection of National Minorities. An Introduction. In: WELLER, Marc (ed.) *The rights of minorities. A Commentary on the Framework Convention for the Protection of National Minorities*. Oxford: Oxford University Press, 2005, pp. 1–24, 5.

Despite initial skepticism surrounding the preparation and adoption of the FCNM,⁸ this international treaty, along with its monitoring mechanism, has proven to be a significant component of European human rights protection. Following decades in which the Council of Europe largely displayed indifference, hesitation, or even open resistance to the very idea of minority rights, these rights are now firmly embedded within the broader human rights framework. As of today, the FCNM has 38 contracting parties, meaning that the vast majority of Council of Europe Member States have committed to adhering to its standards.

2. The relationship between minority rights and human rights from a historical perspective

While the League of Nations developed a relatively robust international system for the protection of national minorities, it did not establish any legal or political norms for the protection of general human rights applicable to all individuals. It was only with the creation of the United Nations in 1945 that a comprehensive concept of human rights began to take shape. This new field of law aimed to protect everyone ‘without distinction as to race, sex, language, or religion’.⁹ Thus, the protection of human rights, which had previously been regarded as a domestic matter, came to be understood as a new element, if not a new paradigm, within international law. In contrast, minority rights were increasingly viewed as outdated or even as a potential source of ethnic division.

Against this backdrop, the relationship between the emerging framework of universal human rights and the traditional concept of minority rights was initially quite problematic. Despite several proposals to include explicit provisions on the protection of national minorities in the Universal Declaration of Human Rights,¹⁰ the UN General Assembly ultimately dismissed this idea. In its Resolution 217 C (III) of 10 December 1948, entitled “Fate of Minorities”, the General Assembly acknowledged that the UN should not remain indifferent to the situation of minorities, but also noted that adopting a uniform solution of the issue appeared difficult. As a result, it was decided that the protection of minority rights would be excluded from the Universal Declaration.¹¹ Instead, the underlying idea was to protect persons belonging to national minorities through the Universal Declaration’s general non-discrimination clauses.

⁸ See also ALFREDSSON, Gudmundur. A frame with an incomplete painting: comparison of the Framework Convention for the Protection of National Minorities with international standards and monitoring procedures. *International Journal on Minority and Group Rights*. 2000, vol. 7, no. 4, pp. 291–304.

⁹ See Article 1(3) of the UN-Charter.

¹⁰ See e.g., the draft presented by the Sub-Commission on the Promotion and Protection of Human Rights: ‘The States inhabited by well-defined ethnic, linguistic or religious groups which are clearly distinguished from the rest of the population, and which want to be accorded differential treatment, persons belonging to such groups shall have the right, as far as is compatible with public order and security, to establish and maintain their schools and cultural and religious institutions, and to use their own language and script in the Press, in public assembly and before the courts and other authorities of the State, if they so choose.’ (Cited according to: UNITED NATIONS PUBLICATIONS. *Definition and classification of minorities, Memorandum submitted by the Secretary-General*. New York: United Nations, 1950, (Sales No. XIV.3), pp. 23–24)

¹¹ CAPOTORTI, F. *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities*. New York: United Nations, 1991, pp. 26–27.

In 1950, at the request of the Economic and Social Council,¹² the UN Secretary-General submitted a study examining whether the minority treaties and declarations of the League of Nations system should still be considered valid components of the international legal order.¹³ Although the Secretary-General concluded that the dissolution of the League of Nations did not automatically terminate the relevant obligations concerning minority protection, he found that the validity of those treaties and declarations needed to be assessed in light of fundamental changes of circumstances. In summary, he identified four major changes: first, the dissolution of the League of Nations; second, the failure of the interwar minority protection regime to achieve the expected outcomes; third, changes in the status of states bound by minority treaties adopted after WW I; and fourth, the emergence of the new concept of human rights, including the principle of non-discrimination as enshrined in the UN Charter.

Based on these findings, the Secretary-General concluded that the minority treaties and declarations from the interwar period had ceased to be valid. Only certain provisions of the previous protection system remained in force, such as those regarding the special status of the Åland Islands and their Swedish-speaking population, or the treaty-based regulation of national minorities in Greece and Turkey. Although a few new bilateral treaties on the protection of national minorities emerged after 1945,¹⁴ these no longer represented a comprehensive or cohesive protection model akin to that of the League of Nations.

To put it briefly, the new concept of UN-led human rights protection with its openly universal ambition largely replaced the old League of Nations model which focused primarily on the interests and experiences of Europe and European states. With the exception of Iraq, which, upon gaining independence in 1932, issued a declaration on the protection of national minorities, only European states were involved in the international minority protection system. Therefore, any attempt to establish a genuinely global mechanism for the protection of minority rights was difficult to reconcile with such a narrowly defined geographic framework.¹⁵ For these reasons, it can be said that the transition from the European model of minority protection to the universal human rights framework was marked by a significant discontinuity in the international legal order.

Regarding the ambivalent relationship between human rights and minority rights,¹⁶ the 1950 study by the UN Secretary-General acknowledged that respect for human rights and non-discrimination, on the one hand, and the protection of minorities, on the other, are not identical concepts. According to the study, minority protection is a broader concept than

¹² ECOSOC Res. 116 C (VI) of 1 March 1948.

¹³ UN Doc. E/CN.4/367 of 7 April 1950.

¹⁴ One example is the so-called Gruber–De Gasperi Agreement of 1946, whose main objective was to regulate the status of the German-speaking minority in South Tyrol. In 1955, the victorious powers of the Second World War concluded an international treaty with Austria which, among other things, included provisions for the protection of the Croatian and Slovenian minorities in southern and southeastern Austria. Other treaties containing provisions on the protection of national minorities are the Italian–Yugoslav treaty of 1975 and the German–Danish treaty of 1971.

¹⁵ HAFNER, Gerhard. Die Entwicklung des Rechts des Minderheitenschutzes. In: HOFMANN, Rainer; ANGST, Doris; LANTSCHNER, Emma; RAUTZ, Günther a REIN, Detlev (eds.) *Rahmenübereinkommen zum Schutz nationaler Minderheiten: Handkommentar*. Baden-Baden: Nomos, 2015, pp. 27–45.

¹⁶ For potential conflicts between the protection of human rights and the protection of minorities, see SCHEU, Harald Christian. *Zákaz diskriminace a ochrana menšin*. [Prohibition of discrimination and protection of minorities] In: *Dny práva 2012 – Days of Law 2012*. Brno: Masarykova univerzita, 2012, pp. 186–200.

the protection of human rights, as it also includes specific privileges, such as those related to language rights and education. However, the Secretary-General also noted that respect for human rights and fundamental freedoms, along with the prohibition of discrimination, serves as a safeguard against persecution, restrictions, and discrimination faced by minorities.

According to the Secretary-General, another major difference is that unlike minority protection, which benefits only certain segments of the population, human rights protection applies to all individuals. Therefore, he concluded that the traditional system of minority protection was largely replaced by the new system of international human rights protection.¹⁷ In this sense, international law came to be understood not only as a legal order focused on regulating the rights and obligations of states and international organizations but also as a framework encompassing the inherent rights of individuals.¹⁸

However, although it may seem that the international protection of human rights was intended to fully replace the former protection of national minorities, from a conceptual perspective, certain elements of continuity still remained. Minority rights, which were not yet included in the 1948 Universal Declaration of Human Rights, were explicitly incorporated in 1966 into Article 27 of the International Covenant on Civil and Political Rights (ICCPR), one of the core universal human rights treaties. While, in principle, Article 27 ICCPR protects individual rights of persons belonging to minorities to enjoy their culture, religion, and language, the inclusion of the phrase ‘in community with others’ ties these rights to the survival of the group.¹⁹ In addition, the ICCPR Preamble, by explicitly referring to “inherent dignity” and “inalienable rights,” clearly suggests that minority rights, like human rights, are grounded in the same concept of human dignity.

3. Minority Rights as Human Rights

As a result of a complex historical development, today’s protection of national minorities must be understood as an integral part of international human rights protection. This reality is well reflected at the institutional level, as minority rights have been incorporated into international human rights treaties and interpreted by bodies such as the United Nations Human Rights Committee and the European Court of Human Rights. However, from a conceptual perspective, the consequences of merging minority rights with human rights go beyond mere institutional integration. The essential challenge lies in the fact that contemporary minority protection must now be interpreted through the lens of prevailing human rights logic.

This logic differs significantly from the approach that originally underpinned the development and implementation of minority rights. Historical frameworks for the protection of national minorities, particularly the so-called Versailles system established after the First World War, emerged mainly as instruments of political compensation. In exchange for the international recognition of their sovereignty, newly independent states were required

¹⁷ UN Doc. E/CN.4/367 of 7 April 1950, p. 41.

¹⁸ For more details, see SCHEU, Harald Christian. The heritage of the League of Nations’ minority protection system. *Hungarian Journal of Legal Studies*. 2022, vol. 61, no. 4, pp. 356–371.

¹⁹ According to the Human Rights Committee, ‘the protection of these rights is directed towards ensuring the survival and continued development of the cultural, religious and social identity of the minorities concerned’. See General Comment No. 23, para. 9, CCPR/C/21/Rev.1/Add.5, 1994.

to grant a range of specific rights to national minorities within their borders. These rights typically included access to citizenship, the use of minority languages, minority education, and in some cases, even the establishment of territorial autonomy.²⁰ In other words, minority rights were viewed as a political price that newly independent states had to pay in order to gain full international recognition.

A similar approach was adopted after the end of the Cold War. In response to the disintegration of former Yugoslavia and the Soviet Union, the international community, namely certain states and international organizations, signaled that the guarantee of minority rights would be a condition for recognizing political entities seeking full independence. In some cases, negotiators even proposed the granting of territorial autonomy to minorities in exchange for their loyalty to the territorial state. Unsurprisingly, the issue of autonomy continued to be discussed as a potential solution to armed conflicts, including in eastern Ukraine (Donbas).

From a historical and political perspective, the specific legal regulation of national minority protection has often been the result of compromise. It has been shaped not only by the codification of particular minority rights but also by the search for stable solutions to complex territorial and power-related conflicts. Consequently, the scope and practical implementation of minority rights have often depended on the broader geopolitical contexts.

In contrast, the logic underpinning human rights is grounded in the principles of equal dignity and the inalienable rights of every human being. The 1993 Vienna Declaration, adopted as the final document of the World Conference on Human Rights, affirms as a matter of principle that all human rights are universal, indivisible, and interdependent. It further emphasizes that the international community must treat all human rights globally in a fair and equal manner, on the same footing and with the same emphasis.²¹

The universality and indivisibility of human rights represent foundational elements of contemporary human rights logic. This includes the equality of all individuals as well as the irreplaceable role of the state, which has the primary responsibility for adopting concrete measures to ensure the full realization of all human rights.

In the following section, we will examine three key characteristics of the human rights system that inadvertently shape and, at times, complicate the contemporary understanding of minority rights. First, we explore how the fragmentation of international human rights standards affects the protection of minorities. Second, we consider the moral dimension of human rights law and its implications for the protection of minorities. Third, we will focus on how the application of human rights logic risks transforming the concept of “managing diversity” into a tool for paternalistic top-down approaches.

²⁰ For a more detailed discussion of the various models of territorial autonomy in international law, see HENDERS, Susan S. *Internationalized Minority Territorial Autonomy in Early Post-WWI Europe: The Limits and Possibilities of International Ethnic Diverse Governance*. In: BOULDEN, Jane, KYMLICKA, Will (eds.). *International Approaches to Governing Ethnic Diversity*. Oxford: Oxford University Press, 2015, pp. 262–298.

²¹ The World Conference on Human Rights: Vienna Declaration and Programme of Action, A/CONF.157/23, UN General Assembly, 12 July 1993 (Article 5).

3.1 The Fragmentation of Human Rights Standards as a Challenge for International Minority Protection

One of the problems of current international human rights law is its lack of clarity and coherence. Naturally, this issue also affects the international mechanisms for the protection of national minorities. One might ask whether, and to what extent, the hypertrophy of human rights institutions and documents, resulting from the post-World War II expansion of this legal domain, threatens not only the overall effectiveness and credibility of human rights protection in general, but also the clarity and enforceability of the rights of national minorities in particular.

International human rights protection is often perceived as confusing, if not at times even chaotic, largely due to the wide range of actors involved in the development of relevant standards. A number of international organizations, such as the United Nations (UN), the International Labour Organization (ILO), UNESCO, and the World Health Organization (WHO), are involved in codifying human rights at the universal level and, to varying degrees, monitoring their implementation. Within these organizations, a multitude of specialized human rights bodies and institutions have emerged that ideally complement one another, but often also overlap or even compete.²²

A prime example is the role of the UN General Assembly, supported by the Human Rights Council. This subsidiary body, composed of 47 member states, oversees a wide range of expert mechanisms, including special rapporteurs, working groups, and fact-finding missions. In parallel, key responsibilities are also carried out by the so-called treaty bodies, composed of independent experts and established under core international human rights treaties. Each of these bodies is responsible for interpreting and monitoring compliance with a specific legal instrument.

Amid this network of actors, some institutions are explicitly or implicitly focused on issues related to minorities. Within the thematic mandates of the Human Rights Council, for example, there are mechanisms such as the Working Group of Experts on People of African Descent (since 2002), the Special Rapporteur on Freedom of Religion or Belief (since 1986), the Special Rapporteur on the Rights of Indigenous Peoples (since 2001), the Special Rapporteur on the Human Rights of Migrants (since 1999), the Special Rapporteur on Minority Issues (since 2005), and the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia, and Related Intolerance (since 1993). Among the treaty bodies relevant to minority issues are the Human Rights Committee, the Committee on the Elimination of Racial Discrimination, the Committee on the Elimination of Discrimination against Women, and the Committee on the Rights of the Child. Questions concerning the protection of so-called “new minorities” may also fall under the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families.

In addition to universal human rights instruments, numerous regional organizations, such as the African Union, the Organization of American States, the Organization of Islamic

²² For a brief reflection on the fragmentation of international human rights law within the system of public international law and with a more detailed focus on jurisprudential conflict, see PAYANDEH, Mehrdad. Fragmentation within international human rights law. In: ANDENÆS, Mads Tønnesson a BJØRGE, Eirik. *A Farewell to Fragmentation: Reassertion and Convergence in International Law*. Cambridge University Press, 2015, pp. 297–319.

Cooperation, and the League of Arab States, have made the protection of human rights a central part of their agendas. Significant instruments include the African Charter on Human and Peoples' Rights (adopted in 1981), the American Convention on Human Rights (adopted in 1969), the Cairo Declaration on Human Rights in Islam (adopted in 1990), and the Arab Charter on Human Rights (originally adopted in 1994 and revised in 2004). The European model, developed mainly through the activities of the Council of Europe and the European Union, is often considered the most advanced. Its main strengths lie particularly in the case law of the European Court of Human Rights and the Court of Justice of the European Union.²³ In addition to the European Convention on Human Rights of 1950, the Council of Europe has adopted numerous other treaties addressing human rights protections, either directly or indirectly. These include the European Social Charter (1961, revised in 1996), the European Convention on the Legal Status of Migrant Workers (1977), the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987), and the Convention on Human Rights and Biomedicine (1997). At the EU level, the scope of fundamental rights protection was significantly expanded when the Charter of Fundamental Rights of the European Union became legally binding in 2009.

Regarding minority issues specifically,²⁴ several specialized institutions operate within the European human rights framework with mandates relating to the protection of national minorities. These bodies include the ACFC, the European Commission against Racism and Intolerance (ECRI), the European Commission for Democracy through Law (commonly known as the Venice Commission), and the Committee of Experts of the European Charter for Regional or Minority Languages (COMEX).

However, it is not only the institutional landscape of human rights and minority rights protection that suffers from fragmentation, the underlying body of relevant legal norms is equally affected. Alongside numerous human rights treaties, which bind only the respective states parties, there are also universally binding standards based on international custom. These include the general prohibition of discrimination as well as the right to a fair trial, and the prohibitions of torture, slavery, and genocide.

The situation is further complicated by the existence of peremptory norms of international law (*jus cogens*),²⁵ such as the prohibition of genocide. These are norms from which no derogation is permitted, not even by international treaties, and which are universally binding on all states.

²³ For a more detailed account of the current activities of relevant organizations in the field of human rights, see BOULDEN, J., KYMLICKA, W. *Introduction*. In: BOULDEN, Jane, KYMLICKA, Will. *International Approaches to Governing Ethnic Diversity*. Oxford: Oxford University Press, 2015, pp. 1–21.

²⁴ One should not forget that several important international and regional cultural conventions, while not specifically focused on national minorities, have an indirect impact on their protection by safeguarding cultural rights. Among these are the Council of Europe Framework Convention on the Value of Cultural Heritage for Society (Faro Convention, 2005) and the European Cultural Convention (1954), both of which promote inclusive access to cultural heritage and support cultural and linguistic diversity. At the universal level, the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage (2003) and the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005) provide frameworks for preserving and promoting various cultural expressions, benefiting also minority communities.

²⁵ On the quasi-mythical and symbolic dimension of *jus cogens* in relation to human rights, see BIANCHI, Andrea. Human Rights and the Magic of Jus Cogens. *European Journal of International Law*. 2008, vol. 19, no. 3, pp. 491–508.

Interpreting and applying provisions derived from dozens of international treaties and customary norms also requires taking into account the jurisprudence of international courts and quasi-judicial bodies, as well as resolutions and recommendations issued by intergovernmental organizations. In addition, human rights doctrine and the positions of non-governmental actors may influence the development of legal interpretation. In other words, international hard law is supplemented by a highly complex and disorganized body of soft law, which originates from diverse sources and carries different legal and moral authority.

Metaphorically speaking, there is a risk that the small fish of minority protection may be lost in the turbulent ocean of human rights. Our aim here is not to provide a comprehensive analysis of the diverging and sometimes contradictory standards emerging at different levels. It is, however, evident that, for example, the consistency in interpreting key principles of human rights protection, such as the prohibition of discrimination, can suffer significantly when the same issue is addressed slightly differently by various UN treaty bodies and regional mechanisms. For example, in the context of protecting religious minorities, the European Court of Human Rights and the UN Human Rights Committee have taken notably different positions on whether bans on face coverings (such as burqas or niqabs) comply with the principle of non-discrimination.²⁶ Another example is the differing approaches of UN treaty bodies and the European Court of Human Rights to hate speech against religious and other minorities.²⁷

Beyond the practical challenges of implementation lies a more striking paradox. On the one hand, contemporary human rights protection is grounded in the principle of equality and equal rights for all individuals, regardless of ethnicity, gender, origin, or other protected characteristics. On the other hand, it simultaneously recognizes certain groups whose members shall be entitled to specific protections. Alongside the fundamental rights and freedoms of all individuals, everybody's rights, which are enshrined in documents such as the 1948 Universal Declaration of Human Rights, the 1966 International Covenants, and the 1950 European Convention on Human Rights (ECHR), a range of legal frameworks has gradually emerged to benefit, for example, ethnic minorities, women, children, immigrants, and persons with disabilities. This evolution has significantly contributed to the growing fragmentation of the international human rights system.

The driving force behind this development was the legitimate effort to identify particularly vulnerable groups whose specific needs and interests had often been neglected within the general framework of human rights. This process may well be commendable, as it has led to more effective safeguards for individuals and communities historically marginalized or excluded. However, the continuous search for ever more vulnerable groups may, at least in part, be influenced by lobbying efforts promoting narrow group interests, aligned with specific economic motivations, funding priorities, or institutional PR strategies. As a result, the coherence and functional integrity of the broader human rights system may be undermined.

In this context, it appears that current human rights logic follows the assumption that codifying ever more rights, establishing ever more international human rights bodies, and financially supporting ever more projects and non-governmental organizations will

²⁶ For an analysis of the respective case law, see CLEVELAND, Sarah H. Banning the full-face veil: Freedom of religion and non-discrimination in the Human Rights Committee and the European Court of Human Rights. *Harvard human rights journal*. 2021, vol. 34, no. 2, pp. 217–229.

²⁷ For more details, see TEMPERMAN, Jeroen. *Religious hatred and international law: the prohibition of incitement to violence or discrimination*. Cambridge: Cambridge University Press, 2016, pp. 122–160.

automatically lead to a higher level of human rights protection. In practice, however, this assumption proves questionable.²⁸ The further the human rights doctrine, as advanced by an expanding network of more-or-less independent actors and institutions, drifts away from the realities of everyday life and the needs of the broader population, the more it risks losing public support, credibility, and normative authority.

Therefore, from the perspective of national minority protection, it is worth recalling that the interwar model of minority protection, developed after World War I, took a different approach. It relied on specific treaty-based arrangements tailored to the conditions of individual states and the particularities of national minorities within their borders. While the texts of these treaties and declarations were broadly similar, they granted sufficient flexibility to accommodate distinct historical and cultural contexts. In retrospect, this more pragmatic, context-sensitive approach might ultimately lead to more satisfactory and enduring solutions in the field of national minority protection than the current maximalist strategy in the field of human rights law.

3.2 Protection of National Minorities Between Pragmatism and Morality

The second conceptual challenge in contemporary minority protection lies in the increasing moralization of the human rights discourse, which affects how the claims of various minorities are assessed and prioritized. Particularly in its most progressive form of anti-discrimination law, the system of international human rights protection seeks to identify disadvantaged and vulnerable groups²⁹ and to introduce compensatory measures in their favor. Besides traditional national minorities, which maintain long-standing ties to specific states or territories, so-called “new minorities” are increasingly asserting their rights. These groups often result from recent migration and define themselves by distinct ethnic, religious, or linguistic characteristics, which form the basis of both their objective minority identity and internal solidarity.³⁰

The term “new minorities” is sometimes applied more broadly to include groups that differ from the majority based on characteristics other than ethnicity, religion, or language. For instance, Article 21 of the Charter of Fundamental Rights of the European Union prohibits discrimination on grounds such as genetic features, disability, age, or sexual orientation, among others.

The core challenge, however, goes beyond categorizing or labeling such minority identities. In practice, the ideology of “all rights for all” clashes with natural limitations, notably in

²⁸ On the concern that the proliferation of human rights instruments, often driven by what Eric Posner terms “rule naïveté”, may undermine the quality and coherence of protection, see POSNER, Eric A. *The Twilight of Human Rights Law*. Oxford: Oxford University Press, 2014. On the related critique that the human rights project risks being “corrupted” by overextension, see BEITZ, Charles R. Human Rights as a Common Concern. *The American Political Science Review*, 2001, vol. 95, no. 2, pp. 269–282.

²⁹ For a detailed introduction to the concept of vulnerability in international human rights law, see TIMMER, Alexandra; BAUMGÄRTEL, Moritz; KOTZÉ, Louis a SLINGENBERG, Lieneke. The potential and pitfalls of the vulnerability concept for human rights. *Netherlands quarterly of human rights*. 2021, vol. 39, no. 3, pp. 190–197. See also the contributions in: IGLESIAS SANCHEZ, Sara a IPPOLITO, Francesca (eds.) *Protecting Vulnerable Groups: The European Human Rights Framework*. Oxford, United Kingdom: Hart Publishing, 2015.

³⁰ See e.g., SCHEU, Harald Christian (ed.). *Migrace a kulturní konflikty* [Migration and cultural conflicts], Praha: Auditorium, 2011.

the form of limited financial resources.³¹ The issue, therefore, is not merely about the legal recognition of specific rights but about competing for the allocation of public funding. Compensatory measures linked to vulnerability and marginalization often entail substantial costs. As a result, not only public budgets, but also the sense of intergroup solidarity may be strained. This dynamic can foster direct or indirect competition between traditional and new minorities for political and financial support.

In this sense, human rights forums have become increasingly competitive arenas in which groups must convincingly demonstrate a need for heightened protection based on a narrative of increased vulnerability. The European Court of Human Rights, for example, has introduced a vulnerability-sensitive approach, particularly in cases concerning Article 3 of the European Convention on Human Rights, which prohibits torture and inhuman or degrading treatment. In its jurisprudence, the Court has emphasized the need for heightened sensitivity toward certain categories, such as minors, pregnant women, and individuals with physical or mental health conditions.

However, critics rightly argue that the judicial practice of assessing and comparing vulnerability can create implicit hierarchies among minority groups. A framework based on quantifying suffering risks reducing vulnerability to a set of stereotypes and emotions.³² Regardless of whether certain minority groups are more or less successful in securing stronger legal protection or more generous funding, national minorities often find themselves disadvantaged in this competitive human rights arena. With the notable exception of Roma communities, most national minorities in Europe are not generally perceived as sufficiently vulnerable in terms of measurable “suffering” or social marginalization.

In this context, media-oriented activism adds another layer of competition between minority groups. Media attention tends to focus on issues that provoke strong emotional reactions, particularly those involving clear moral outrage.³³ Therefore, topics such as migration and asylum often dominate the headlines through dramatic narratives of war, persecution, and human suffering, especially when children are involved. Gender equality and violence against women also may evoke strong emotions, driven by high-profile campaigns like #MeToo and firsthand testimonies of systemic abuse. The vulnerability of victims, typically women and girls, intensifies the emotional appeal of such stories.³⁴ Similarly, issues such as LGBTQ+ rights and racial justice have become focal points of mobilization, supported by well-organized campaigns such as Pride and Black Lives Matter. These movements effectively deploy symbols, narratives of violence, and expressions of collective anger to gain public support and political action.

³¹ On the problem of human rights ideology, see DAVID, Lea. Human Rights as an Ideology? Obstacles and Benefits. *Critical Sociology*. 2020, vol. 46, no. 1, pp. 37–50; THERIEN, Jean Philippe & Philippe JOLY, “All Human Rights for All”: The United Nations and Human Rights in the Post-Cold War Era, *Human Rights Quarterly*. 2014, vol. 36, no. 2, pp. 373–396.

³² HAMEL, Jakob. The Evolving Nature of the Vulnerability Concept in European Union Asylum Law. 13. April 2024. Charles University in Prague, Faculty of Law Research Paper No. 2024/1/3. Available at: <https://ssrn.com/abstract=4796488>.

³³ For more details, see BURKE, Roland. Emotional Diplomacy and Human Rights at the United Nations. *Human rights quarterly*. 2017, vol. 39, no. 2, pp. 273–295.

³⁴ For a more detailed account of the significance of personal storytelling as a key element in human rights campaigns, see SCHAFFER, Kay a SMITH, Sidonie. Venues of Storytelling: the circulation of testimony in human rights campaigns. *Life writing*. 2004, vol. 1, no. 2, pp. 3–26.

Consequently, contemporary human rights advocacy has become increasingly dependent on emotional appeal and sophisticated media strategies. Vulnerable groups seeking recognition and support have to navigate a media environment that calls for emotional resonance and professionalized campaigning. Those unable or unwilling to participate in this competition risk marginalization, regardless of how legitimate their claims are.

In this light, the agenda of national minorities may appear less competitive in the marketplace of human rights,³⁵ for several reasons. Unlike the objective vulnerability claimed by other groups, the distinct ethnic identity that lies at the core of national minority protection is, in itself, often regarded as problematic. In an era of globalization and individualization of social relations, efforts to preserve collective ethnic identity are often seen as an anachronism, if not suspicious, as a dangerous form of nationalism and extremism.

While criticism of nationalism is usually directed at majority populations that discriminate against and suppress national minorities, the term “nationalism” is sometimes used also in reference to minorities that assert distinct ethnic interests in opposition to the principles of multiculturalism and diversity.³⁶ Emphasis on collective ethnic identity can be seen as an obstacle to building inclusive societies in which various ethnic and other identities coexist in harmony and equality.

In this context, it is not crucial whether accusations of nationalism directed at certain national minorities are justified or not. What matters is that groups openly invoking distinct ethnic identities and pursuing political or cultural goals based on ethnicity are unlikely to rank very high in the prevailing hierarchies of vulnerability. In contemporary Europe, violations of the rights of traditional national minorities rarely provoke widespread moral outrage among the broader public or trigger high-profile campaigns. It seems that, according to the prevailing logic of human rights, persons belonging to traditional minorities can hardly attract the same level of attention or support as professional activists advocating for the rights of women, migrants, or LGBTQ+ communities.

There are two notable exceptions to this general pattern. The first concerns the Roma, whose vulnerability is rooted in long-standing economic and social marginalization across much of Europe. The second concerns indigenous communities. The moral dimension of their recognition and protection is well illustrated by the United Nations Declaration on the Rights of Indigenous Peoples, adopted by the UN General Assembly in 2007. Its preamble explicitly acknowledges that ‘indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests’.³⁷

While such an assessment is likely not far from the truth it raises significant questions regarding the appropriate scope and nature of compensation. How should contemporary

³⁵ In academic literature, the term “marketplace of human rights” is sometimes used. See, for example DAHRE, Ulf. There are no such things as universal human rights – on the predicament of indigenous peoples, for example. *The International Journal of Human Rights*, 2010, vol. 14, no. 5, pp. 641–657.

³⁶ For the concept of multiculturalism and multicultural citizenship, see especially the works of Will Kymlicka, such as: *Multicultural Citizenship within Multination States, Ethnicities*, 2011, vol. 11, no. 3, pp. 281–302; and *Liberal Multiculturalism as a Political Theory of State–Minority Relations, Political Theory*, 2018, vol. 46, no. 1, pp. 81–91.

³⁷ United Nations Declaration on the Rights of Indigenous Peoples, A/RES/61/295, 13 September 2007.

human rights mechanisms address injustices that occurred decades or even centuries ago? What specific forms of moral or material redress should be granted to affected communities or individuals? In this sense, the moral logic underpinning the modern human rights discourse intersects not only with complex notions of vulnerability and emotional appeal, but also with difficult questions of legal responsibility and practical implementation.

In the field of national minority protection, the use of moral arguments can sometimes obscure a clear and realistic assessment of the situation in a given country. In this respect, the model of minority protection developed in the aftermath of World War I offers a valuable historical point of comparison. That model was primarily conceived as a pragmatic tool to stabilize the newly created states that emerged from the dissolution of multiethnic entities such as Austria-Hungary and the Ottoman Empire. Given the presence of numerous and often discontented national minorities within these successor states, the enshrinement of minority rights in international treaties was designed mainly to reduce ethnic tensions. Although humanitarian and moral arguments, particularly those reflecting the horrors of the First World War and expressing hopes for a more just international order, were part of the broader discussion, minority protection at that time was not regarded as an end in itself, but as a means to serve a higher goal: the preservation of international peace and stability.

Therefore, moral considerations aimed at ensuring the broadest possible rights for individuals and the most extensive positive measures for vulnerable groups were not at the forefront. This is not to suggest that pragmatic solutions are inherently superior to those grounded in the principles of human rights and equality. Nor is it the intention here to advocate a return to the interwar system of minority rights protection. In principle, the integration of minority protection into the broader human rights framework offers significant potential for national minorities and persons belonging to them. In this sense, a human rights perspective can clearly be beneficial to minority protection. However, at the same time, the practice of minority protection must continue to be guided by an ongoing effort to balance moral and pragmatic considerations.

3.3 The pitfalls of managing diversity

As a further example of human rights logic underpinning the protection of national minorities, we may look to the ACFC's Fourth Thematic Commentary of 2016, which signals a significant shift in the interpretation of the Framework Convention. In this Commentary, the FCNM is explicitly framed as 'a key tool for managing diversity through minority rights'.³⁸

The ACFC's core assumption is that European societies have undergone profound transformations in recent decades. While, at the time of the FCNM's adoption, 'the concept of minority rights was mainly associated with the preservation of minority identities and with their protection from assimilation during partially violent state-formation and nation-building processes', today's context is shaped by increased global and regional mobility. These demographic changes, coupled with 'migratory movements of an unprecedented scale', recurring economic crises, and growing security concerns, are said to be 'destabilising societies and altering the manner in which minority rights are perceived in society and by policy-makers.'

³⁸ The Framework Convention: a key tool to managing diversity through minority rights, ACFC/56DOC(2016)001.

In light of this, the ACFC identifies a new challenge which is to form ‘integrated and inclusive societies where diversity is acknowledged and welcomed as their integral feature’.³⁹

In other words, the FCNM’s original protective logic, viewing minority rights as a safeguard against erasure and oppression, is to be replaced by a new logic that instrumentalizes these rights as a normative tool for managing diversity and promoting democratic resilience. To support this interpretive shift, the ACFC emphasizes the FCNM’s role as a “living instrument” whose application must evolve in response to changing societal contexts.

While the emphasis on “managing diversity” may reflect a forward-looking and inclusive vision,⁴⁰ it also entails a number of conceptual and practical risks. First, the term itself remains notably vague. Although the ACFC repeatedly invokes principles, such as the idea that minority protection is essential to stability, democratic security, and peace, or that free self-identification should not be constrained by categorization based on predetermined characteristics, it fails to provide concrete procedures for implementing these principles in practice. As such, the concept of “managing diversity” reads less as a guide for interpreting and applying enforceable legal rights, but more as an elite socio-political vision of how societies should function.

Furthermore, it remains unclear how the term diversity applies to concrete societies. In its 5th opinion on Armenia, the ACFC expressed concern about the view held in parts of Armenian society that the country is essentially homogeneous, both ethnically and in terms of religion, ‘because this does not accurately represent Armenia’s ethnic and religious diversity’.⁴¹ From this, it appears that a diverse society has to be constructed in contrast to a homogeneous one. At the same time, according to the 2011 census to which the ACFC opinion refers, more than 98% of the population declared themselves ethnic Armenians. It is difficult to imagine a country to which the term “homogeneous population” fits better. Of course, this homogeneity does not preclude some degree of ethnic diversity. However, the ACFC’s finding that the term “homogeneous” does not accurately represent the character of Armenian society seems objectively incorrect. This example also reveals an ideological perspective in which homogeneous societies are viewed with suspicion, whereas diverse societies shall be regarded as the norm.

As for the concept of managing diversity, it should therefore be clarified whether the terms “homogeneous” and “diverse” are truly opposed categories. If so, when would it be legitimate to use the term “homogeneous”, if not in Armenia? Given the varying ethnic compositions of FCNM States Parties, should we differentiate levels of diversity and tailor diversity management tools accordingly – for instance, based on whether 30%, 10%, or only 2% of the population belong to national minorities? In other words, should societies that are less homogeneous be subject to more intensive management than those that are more homogeneous? Ultimately, the concept of diversity management will inevitably lead to similar discussions about numbers and representation

More seriously, the Fourth Thematic Commentary designates the state as the principal actor responsible for managing societal diversity. This responsibility includes creating

³⁹ ACFC/56DOC(2016)001, para. 84.

⁴⁰ Some authors view diversity management as a way to overcome the dichotomy between “old” minorities and “new” minorities. See e.g., MEDDA-WINDISCHER, Roberta. New minorities, old instruments? Diversity governance from the perspective of minority rights. *Migration letters*. 2016, vol. 13, no. 2, pp. 178–192.

⁴¹ ACFC/OP/V(2022)01, para. 77.

conditions in which differences can be expressed, ensuring equal access to rights and resources, and fostering interaction and inclusion across diverse social groups. However, this state-focused approach risks recentralizing authority and disempowering minority communities. Rather than enabling bottom-up participation or creating autonomous spaces for minority expression, the model advanced by the ACFC reinforces top-down governance structures. Diversity management, in this vision, becomes a state-led project that may negatively affect national minorities who do not conform to the dominant ideological commitment to “diverse societies.”

Thus, the ACFC’s approach favors societal cohesion over genuine minority autonomy, shifting from a rights-based protective logic to a new human rights logic in which rights serve the higher goal of managing society, at times resembling a form of well-intentioned social engineering. The contemporary minority rights discourse as defined by the ACFC’s Thematic Commentary No. 4 may, perhaps unintentionally, reproduce hierarchies of legitimacy and state-supported narratives of diversity over the lived realities and choices of minority communities. To put it bluntly, in the context of managing diversity, concrete forms of minority self-governance risk being replaced by a more diffuse model of governance where states, supported by progressive social engineers from international and national expert bodies, private organizations, and academia, shape society according to their noble ideals.

Perhaps nowhere is the shift toward “managing diversity” more evident than in the ACFC’s approach to minority education.⁴² In its Fourth Thematic Commentary, the Advisory Committee asserts that it has ‘strongly condemned all instances of segregated education’ and has ‘urged States Parties to take all necessary measures to ensure equal access to integrated education for all children.’⁴³

However, in its monitoring practice, the Advisory Committee has not consistently applied a clear concept of segregated education. For example, schools in South Tyrol or Carinthia, where instruction is provided in minority languages to pupils belonging to national minorities, are not classified as segregated. The term “segregation” is reserved for cases such as special schools or special classes for Roma and Sinti children. This distinction is also reflected in the Advisory Committee’s Fifth Opinion on Romania, which dedicates a specific chapter to the segregation of Roma children, while Hungarian-language schools or classes, where Hungarian-speaking children stay largely among themselves, are not condemned as segregated.⁴⁴

From a terminological perspective, this practice suggests a need to distinguish between acceptable forms of separate education and impermissible forms of segregated education. The key question, then, is under what conditions separation in education is lawful, and when it constitutes unlawful segregation.

In its more recent practice, the ACFC has sought to clarify the concept of segregation by linking it to social and economic exclusion as well as to inferior educational quality. Accordingly, segregation is treated as a form of discrimination because it violates children’s

⁴² For more details on the problem of minority education from the perspective of the Framework Convention for the Protection of National Minorities, see SCHEU, Harald Christian. *Die Minderheitenschule zwischen Trennung und Integration. Zur Rolle der Elternrechte im Diversitätsmanagement. Europa ethnica*. 2024, vol. 81, no. 1–2, pp. 48–58.

⁴³ ACFC/56DOC(2016)001, para. 73.

⁴⁴ ACFC/OP/IV(2022)5.

right to equal access to quality education, perpetuates social stigmatization, and limits future opportunities.⁴⁵ By contrast, separate minority-language schools that do not result from socio-economic exclusion and provide a comparable level of education are considered to be in compliance with the FCNM.

Nevertheless, such clarification leads to a paradoxical situation. The Advisory Committee's reasoning can be interpreted to suggest that the consent of parents and others concerned is irrelevant in distinguishing between permissible separation and unlawful segregation. Instead, the key factors are whether parents and children objectively find themselves in a "precarious situation" and whether the educational standard is objectively lower than that offered in other schools.

This tension between objective standards of integration and the subjective rights of parents and children was clearly illustrated in *D.H. and Others v. the Czech Republic*, where the European Court of Human Rights addressed ethnic segregation in education for the first time.⁴⁶ Crucially, the Court held that even informed parental consent could not justify educational segregation, as such arrangements would undermine the overriding public interest in preventing racial discrimination. In a notable dissent, Judge Borrego criticized this approach as paternalistic, warning that it could violate the dignity of Roma parents by implying they lacked the capacity to make valid educational choices for their children.

The Court's human rights logic has since influenced the ACFC and has been uncritically incorporated into its own monitoring work. Thus, the underlying dilemma remains: to what extent should the legitimate aim of addressing structural exclusion outweigh the right of parents and children belonging to national minorities to make imperfect but autonomous decisions?

Ultimately, while fostering intercultural understanding is a legitimate and important objective, promoting uniformity in education under the banner of human rights may risk undermining the very foundations of minority protection. If "managed diversity" translates into reduced autonomy for minority communities and the marginalization of their traditional concerns, the discourse may inadvertently become paternalistic, paradoxically conflicting with the very principles of human rights and minority protection it aims to uphold.

4. Conclusions

National minority protection has come a long way since the system of minority treaties was established after World War I. It evolved from a fragmented regime focused on a limited number of countries, through a period of neglect and rejection after World War II, into an integral part of contemporary human rights law. The Framework Convention for the Protection of National Minorities illustrates this shift by explicitly integrating minority rights within the broader human rights framework. Minority rights shall not be viewed as exceptional safeguards for separate communities but are linked to the broader principles of equality and social cohesion.

⁴⁵ See paras. 59–60 of the Advisory Committee's revised Thematic Commentary No. 1 on Education, launched in 2024. Available at: <https://www.coe.int/en/web/minorities/thematic-commentaries-of-the-advisory-committee>.

⁴⁶ *D.H. and Others v. the Czech Republic*, Application no. 57325/00, Grand Chamber, Judgment of 13 November 2007.

However, integrating minority rights into the human rights paradigm has not been without complications. This study has demonstrated that the growing influence of human rights logic in minority protection brings new risks, especially regarding the effectiveness, credibility, and distinctiveness of minority rights protection.

Three major risks have been identified. First, the fragmentation inherent in universal and regional protection regimes creates a paradox. While more codified rights and expanded monitoring mechanisms may improve formal standards, they risk becoming detached from the everyday realities of minority communities as well as the wider society.

Second, the tension between minority rights and general human rights is intensified by the universal moral imperatives underlying the human rights discourse. These moral claims often stand in contrast to the need for pragmatic, context-sensitive solutions that take into account the specific political, social, and cultural dynamics of individual states, majority populations, and minority communities.

Third, and most importantly, the transition from minority empowerment to a centralized, often paternalistic model of “diversity management” opens the door to increased state intervention and a form of social engineering led by progressive elites. By prioritizing top-down governance over authentic participation and self-determination, this approach risks weakening small and marginalized groups. Although the integration of minority protection into the mainstream human rights framework has been beneficial in some respects, it has also, at times, diminished the distinctiveness of minority rights and, paradoxically, worked against the interests of many communities it seeks to protect.