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The "Idea of Europe" and the EU Minority Protection Conditionality

Banu Burns[*]

Minority protection entered into the corpus of a shared "idea of Europe" with the Copenhagen Council of 1993. Since, the EU rigour on minority protection has varied across member-states and applicant states as well as across applicant states. The present paper critically analysis the causes for this variation and, in particular, for the gap between the EU objective for minority protection conditionality in the context of enlargement and the policy outcomes through a comparison of internal and external strategies of the EU. In keeping with the standard driven international society paradigm of the English School of International Relations, the paper suggest that the EU minority protection conditionality is, in effect, a gate-keeping instrument which is utilised to include or exclude aspirant states on the basis of their perceived proximity to an underlying discursive understanding of the "idea of Europe".

Key Words: Minority protection conditionality, EU enlargement, the "idea of Europe", the society of states, the English School of International Relations

The Western European concern for minorities returned with the collapse of communist regimes in East Europe[1]. Re-establishing a minority rights regime became a Western European priority in response to what was perceived as the possibility of an inter-communal or international conflict in Eastern Europe[2], a concern that gained additional urgency with the outbreak of war in the former Yugoslavia (1991). Subsequently, the self-assumed "Europe as Democracy" required those newly emerging or reconstituted states in its eastern periphery to fulfil at least three conditions: secession by peaceful means, good neighbourly relations and safeguarding the rights and freedoms of minorities within their jurisdictions. Resonating greatly with the previous minority rights regimes, the "Europe as Democracy" offered these states, in return, their recognition as

independent sovereign states and/or their eventual integration into European regional institutions.

The EU-15 as the "archetype" of the "Europe as Democracy" has specified 'the protection of and the respect for minorities' in the Copenhagen Criteria[3] (1993) as a principle to which aspirant states should adhere before the opening of accession negotiations. The discursive logic behind the emergence of the EU minority protection conditionality was an imperative to diffuse what was presumably an inherent European norm across Eastern Europe. This so-called "Europeanization" process would transform the Eastern European understanding of national community from what was widely perceived as ethnic and monolithic with a potential to stir hostility between minorities and majorities to a more liberal and pluralistic understanding which comprised greater tolerance towards diversity.

Notwithstanding this Western European commitment to transform Eastern Europe by way of diffusing "European standards", the contemporary Western European strategy for minority protection has rested on at least two distinguishable patterns: an internal approach where Western Europeans have approached minority issues at "home" as a domestic matter within the competence of the nation state – a non-interventionist approach – and an external approach where Western Europeans have considered the 'question of minorities' in its eastern periphery as a matter of European international law – an interventionist approach. Largely as a consequence of this selective and differentiated treatment of minority issues, minority protection standards in Western Europe have remained essentially within the scope of a non-discrimination regime. Negative rights have guaranteed equal treatment of those members of minorities.

Contrariwise, most Eastern European states were coerced to undertake extra-European standards in the form of positive rights which has ensured minorities' right to remain different as a community. Crucially also, the rigour of these Western European requirements varied across Eastern European states.

It is widely maintained that democracy deficit, an assumed characteristic which is shared by most, if not all, Eastern European regimes, has paved the way for such selective and differentiated requirements (See K. Smith, 2001; Kymlicka; 2002). In this line of reasoning the 'question of minorities' in Eastern Europe is a potential source of conflict which could destabilise the entire European continent with mass immigration and warfare. Therefore, the gap between the East and the West has presumably justified the Western European requirements of this sort.

The gap between Western European strategies for protecting minorities in the East and the West, on the other hand, was linked to a discrepancy across member states which hindered a shared definition, standard and a position at the supranational level James (See Hughes and Sasse , 2003; Kymlicka , 2002). For others, this gap was a contemporary phenomenon which arose as a consequence of the 'ad hoc' and 'by default'[4] emergence of such policies in the contingency of events that followed the collapse of communist regimes (Sasse, 2005; Hughes and Sasse, 2003; Zielonka, 1998; Kymlicka, 2002). Managing conflicting demands by kin-states, minority groups and international law – which conventionally favoured maintaining existing international borders – proved a juggling act which led to infamous inconsistencies in the EU minority rights policies. Therefore, the EU concern for maintaining security and stability in the post-Cold War Europe largely explained 'inconsistent' EU policy-making in the policy

field of minority protection (See Sasse 2005; Kochenov, 2008; Schwellnuss, 2006; Weiner and Schwellnuss, 2004; Veermisch, 2003).

Alternatively, some have suggested that the EU strategy in this public policy field was hindered with an EU concern for precarious post-communist regimes; a heavy emphasis on democratisation could lead to disappointment with liberalism across the CEECs (K.Smith, 2001). This could potentially facilitate renunciation of liberal democracy and later return to the old Communist political systems. That is to say, domestic resonance in the CEECs influenced the rigour of EU requirements for minority protection.

An intriguing question in this regard is why this EU concern exclusively was limited to some Eastern European states and not extended to others such as Turkey and Serbia? By the same token, if minority rights are indeed a European norm, why have the EU member states have refrained from manifesting it through EU treaties, but instead have opted initially for lesser non-discrimination legislations and more recently for an ambiguous reference to minority protection in the Lisbon Treaty? What was the EU imperative for utilising two very different standards: an internal non-discrimination regime and external minority rights regime?

The present paper suggests that the infamous inconsistencies in the EU minority protection conditionality did not emerge precisely because Eastern Europe is a "peculiar" region where extra-European policies are expected to facilitate their alignment with "European standards" – a claim which is essentially self-contradictory in itself. In effect, these inconsistencies arose mainly because Western Europeans share a discursive understanding of the "idea of Europe and what it takes to be European" which has paved

the way for at least two different standards: an internal standard manifested as a non-discrimination regime and an external standard manifested as a minority rights regime. At odds with the official enlargement discourse which linked the progression of candidacy with proximity of applicant states *vis-à-vis* "European norms", an underlying discourse on the shared "idea of Europe" has effectively determined the rigour on the EU minority protection policies.

Normative Europe: A myth?

With the influence of scholarly writings on the traditional dichotomy between eastern and western halves of Europe along the lines of ethnic/cultural or civic/liberal understanding of nation[5], politicians and policy-makers in Western Europe have discursively constructed the Eastern part of the continent as essentially composed of ethnic nations[6]. Conversely, political culture in Western Europe is perceived as more tolerant in comparison to what has been the 'convention' amongst these "lesser Europeans" and Europe's "others" (Kymlicka, 2002). This Western European self-identification with the ideal type of good governance has been the principal facilitator of the imperative to export its values and norms across Eastern Europe.

Against this imagining of Eastern Europe, Western Europeans have identified themselves as the "archetype" of the "Europe as Democracy" whose common identity is marked by a shared commitment to democracy and fundamental rights and freedoms. This normative substance is perceived as constitutive of (or parts of) European identity which presumably not only defines relations between EU members states but more significantly between the EU and non-members. This is a particularistic self-identification of Western European states as separate political units which, however, are associated through a shared affiliation with a unique political and cultural European legacy. Still, inconsistencies in Western European conduct such as in the area of minority protection calls into question the extent to which European identity largely rests on civic norms and values and the degree to which design and delivery of various policies are primarily motivated by a concern to diffuse civic norms and values beyond "Europe".

Increasing reference to civic norms and values in the EU treaty-base and an emphasis on good governance and fundamental rights in its relations with the periphery and beyond have substantiated assumptions that European identity (partially) rests on a normative logic. The beginnings of a link between the EEC and democratic credentials of non-members can be traced back to the advocacy of the European Parliament (EP) for the promotion of European political norms in EU's external relations. The result was the publication of a report by the Political Committee of the EP which outlined the initial framework for political conditionality for membership. The report required that 'only states which warrant in their territories truly democratic practices and respect for fundamental rights and freedoms can become members of the community' (Stivachtis, 2008: 82). These recommendations materialized in the proceedings of the Copenhagen European Council (April 7-8, 1978) which validated that respect for and the maintenance of representative democracy and human rights as essential conditions for membership of the European Community[7]. This was later cemented in the Copenhagen Criteria (1993) which required those states lying at its eastern periphery to ascertain the 'stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities'. These criteria presumably correspond to the civic elements of a normative identity which applicant states should take on prior to becoming full members.

These civic elements have also been elaborated progressively in various EU treaties. Article 130 of the Maastricht Treaty (1992) outlined 'developing and consolidating democracy and the rule of law, and to that of respecting human rights and fundamental freedoms' as one of the objectives of the EU[8]. Amending this Treaty, Article 1 of the Amsterdam Treaty (1997) declared that the EU 'is founded on the principles of

liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States' while associated the Common Foreign Security Policy with an 'objective' 'to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms'[9]. In addition, the Amsterdam Treaty introduced also the idea of the suspension of membership in the event these principles are breached. Most recently, Article 10 of the Lisbon Treaty (2007) asserted:

> 'The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity and respect for the principles of the United Nations Charter and international law'[10].

This civic identity was increasingly linked to a primordial European legacy. The central feature of this narrative was an assumption that such universal European values and norms stemmed from a distinct European past. One illustration is the Preamble to the Charter of Fundamental Rights of the European Union (2002) asserted: 'Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law'[11]. This idea of 'spiritual and moral heritage' was strengthened and expanded in Article 1 of the Lisbon Treaty:

> 'DRAWING INSPIRATION from the cultural, religious and humanist inheritance of Europe, from which have developed the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law'[12].

Consequently, the EU discursive construction of a European identity, as manifested in the EU treaty base, has not been limited to a civic dimension, but also incorporated cultural undertones. As ambiguous as it may be, the official EU discourse is

underpinned, albeit to some extent, by increasing references to a certain "idea of Europe and Europeanness" which underscores its value as an organic community. References are made to a common past, present, future and a common heritage based on 'religious' and 'cultural' affinity: elements of ethnic nationalism which stands starkly paradoxical to the acclaimed civic identity. Therefore, EU discourse reveals an explicit normative understanding, but an implicit self-imagination as a primordial, cultural entity.

This implicit self-imagination as a cultural entity is also conspicuous in the EU conduct in a context where normative substance was endorsed. One of the most recent illustrations of this is recounted in the Dick Marty report where Western states – including some EU member states – are ascribed for turning a blind eye on the inhuman treatment of individuals by the Kosovar KLO guerrillas during and in the aftermath of the Kosovo War (1998-1999)[13]. The report fundamentally highlighted the role of ideas and pre-conceived perceptions as well as concerns for security and stability as the primary reasons in the formation of Western states' positions during the Kosovo War.

The Report's latter strategy-led Western European states hypothesis is informative, albeit to some extent, of the variation between normative objectives of such states and the design and delivery of external policies. As Frank Schimmelfennig has argued norms perhaps do not constitute the EU identity, but may be used as "instruments" by those actors who seek to maximize their interests (Schimmelfennig, 2001). Similarly, Merlingen et al. have explained the EU14's bilateral sanctions against Austria in response to the formation of a coalition government which included the extreme right FPÖ (1999) with "strategic action"(Merlingen et al., 2004). Accordingly, the party ideology dynamics – in other words strategic calculations – within the EU

explain the basis of the EU sanctions best; not the normative substance which was endorsed. In the meantime, those actors whose support for bilateral sanctions was not related to these party-ideology related calculations gave tacit support for these sanctions once they were identified as "legitimate shared norms".

Above and beyond strategy-led actor hypothesis, the Dick Marty Report more curiously underlined the influence of pre-conceived ideas– put more straightforwardly Western European bias – in the formation of external policy in a context where normative substance was endorsed. The lengthy involvement of Serbia in the civil war that followed the break-up of Yugoslavia is highlighted in the Report as a primary factor that contributed to the consolidation of Western European perception of Serbia as an aggressor and its eventual conduct to overlook atrocities committed by the KLO guerrillas. Clearly, preconceived ideas and hypothetical identities undermined the normative substance of Western European preferences.

To sum up the argument so far, the EU has explicitly defined itself as a civic entity and placed a heavy accent on democracy and fundamental rights as components of a shared institutional identity. Against this civic self-understanding, an alternative "idea of Europe", which marks Europe as a cultural and primordial "home", is manifested through successive EU treaties. This primordial imagining of Europe rests on presumed common kinship elements such as cultural heritage and, at times, religion in exclusivist and particularistic terms. To this end, the EU narrative reveals an inconsistency between an explicit normative self-understanding as "archetype" of the "Europe as Democracy", but an implicit self-imagination as a primordial, organic society of states.

What Kind of Community?

Existing studies have argued that a new 'standard of civilisation' (See Donnelly, 1998; Fidler, 2001: 146; Kymlicka, 2002) replaced the old 'standard of civilisation'[14]. While recognising the recurrent 'Hobbesian' nature of international system, these studies have suggested a universal standard of human rights as the new norm of 'international society'. Accordingly, an international concern with 'the inherent equality of human beings, both as individuals and as peoples' has marked the "inclusive" and "universal" character of this period (Kymlicka, 2002). Thus, a state's adherence to democracy and fundamental rights constitutes the new benchmark of the inclusion/exclusion nexus; 'international society' judges inclusion/exclusion of a state on the basis of its degree of good democratic governance.

Consequently, the old categories of "civilised", "civilising" and "non-civilised" are the current departure points to identify a European state's level of commitment to civic values such as democracy, human rights and minority rights. Those states which illustrate poor democratic governance and violate human rights and minority rights are the new "lesser" and "other" of the new Europe. This overtly optimist and relativist view, represents Western Europe as a region which ardently seeks to diffuse what the convention is at "home" to the other parts of the world. Accordingly, the "Europe as Democracy" has taken democracy and fundamental rights to its heart above and beyond its predecessors with its ultimate manifestation as the essential attribute of Europe and European identity.

Somewhat paradoxical to these assumptions, the European society of states has increasingly evolved into an "exclusive club" with stringent inclusion/exclusion norms

since 1945 whereas international society has applied an almost universal norm of inclusion since 1989. The origins of this paradox lie at the nexus of internal developments that marked the transition of the European Economic Community (EEC) into the contemporary EU and the broader corpus of international events.

The collapse of bipolar system in Europe (1989) led to a shift in the Cold War nexus of inclusion/exclusion which had centred on a state's positioning along an East/West dichotomy. Subsequently, the then constitutive "other" of "Europe"; the "communist other" ceased to exist. Nonetheless, the autocratic, illiberal and undemocratic "other" was already at hand since the Cold War. This use was later revised and expanded with the post-communist states in Eastern Europe automatically reduced to the category of the "lesser" or "other" given their communist past. The Cold War ally, Turkey followed suit.

The EU developed a variety of Europeanization processes in the form of Association Agreements or Stabilisation and Association Partnerships for individual states or a group of states with an imperative to prepare these new "lesser" and "others" for EU membership. This so-called Europeanization process involved dispersing hypothetical European norms and values across the democratising states in East Europe. Europeanization would pave the way for their alignment with "European standards", thus facilitate a shift towards becoming "one of us". To this end, the EU has identified itself as a society of states whose common identity rested on civic norms inclusive of a shared adherence to democracy and fundamental rights.

This inclusive enlargement rhetoric maintained that membership applications from Eastern European states would be assessed on the basis of a state's distance to

Europe's normative substance. A state's compliance with this benchmark would ultimately determine its inclusion or exclusion. Those states which exhibited legitimate democratic governance and a respect for fundamental rights – inclusive of minority rights – would be admitted to the European society of states under the framework of the EU; those who showed willingness to transform would be "Europeanized"; and those that maintained undemocratic practices, thus failed to Europeanize would be excluded. Nonetheless, this official narrative of Europeanization had its drawbacks. The enlargement rounds since 1993 have revealed that those states which were admitted earlier, such as Cyprus Estonia and Latvia, or those that underwent a comparatively smoother Europeanization process such as Croatia did not essentially adhere to all components of the Copenhagen Criteria. The Baltic States; Latvia and Estonia were admitted despite persisting minority issues in relation to their Russophone minorities.

Theses inconsistencies in norm diffusion largely reveal an implicit cultural understanding of the "idea of Europe" which gained added prominence following the Cold War. Aforesaid, "cultural, religious and humanist" heritage of Europe were increasingly perceived as the building blocks of European identity. This vision of contemporary Europe was founded on the presumed inherent European values of a distant past. These inherent values linked the Europe of the past with the Europe of today and the Europe of future.

Consequently, an implicit inclusion/exclusion norm categorized members and non-members of "Europe" on the basis of their distance to a cultural understanding of the "idea of Europe". In other words, the departure point between members and non-members was not fundamentally based on the degree of a state's compliance with EU

norms such as commitment to democracy and fundamental rights. Instead, an exclusive cultural value-based judgement played a more conspicuous role in decisions to include/exclude Eastern Europeans. The CEECs's inclusion was legitimated on the basis of their previous membership to a distant European heritage while Turkey's membership credentials were questioned due to its religious, cultural and civilizational difference.

To this end, the EU is a society of states whose norms of inclusion/exclusion are not significantly far-flunked than that of old 'standards of civilisation'. An unofficial inclusion/exclusion norm in the form of a state's geographical location, cultural affinity, religious identity and so forth, hence its perceived proximity to a cultural understanding of the "idea of Europe", has been prominent in decisions to expand the society. On the other hand, an official inclusion/exclusion norm in the form of a state's adherence to civic norms has played a nominal role in these decisions. Therefore, the so-called new 'standard of civilisation' remained as official, but ineffective precisely because the presumed civic norms are not (or perhaps not yet) functioning as the sole determinants in facilitating the admission of outsiders into the "club". What we might be witnessing is the elevation of this standard, but for the moment, we conclude that the "Europe as Democracy" is analogous to the former standards with the prominence of an exclusive cultural logic over the inclusive normative logic.

Gate-Keeping through Norms of Inclusion and Exclusion

The English School of International Relations has associated the international society of states[15] with the manifestation of some collective attributes such as ideas, norms, values, belief systems, ways of doing things and a common identity among a number of states

(See Buzan, 1993; Wight, 1977; Bull, 1977; Gong, 1984). Drawing on commonalities, the members of this "imagined" collectivity may accentuate on their association with one another. Alternatively, falling back on discrepancies between "us" and the constitutive "other", the members may underline their commonness on the basis of a cognitive distance. Either way cognitive mapping in the form of defining "us" and/or the "other" is a crucial juncture in the emergence of the international society.

The construction of norms of inclusion and exclusion is another crucial juncture in the emergence of the society of states. Given that members share a degree of commonness, the admission of outsiders to any society of states including one made up of states will be determined on the basis of an aspirant's distance to such collective attributes. Therefore, the society of states will expand on the basis of an outsider's distance to these collective attributes. A state which meets these cognitive criteria; that is, it is perceived as a natural member of the society will be admitted on the basis of their sameness. Conversely, those who are partially or altogether distant from the cognitive centre will be denied entry.

In addition to its standard driven quality, the international society of states conducts different standards for "us" and the "other". This is arguably inconceivable from a rational choice perspective which associates political behaviour with material interests. In other words, selective and differentiated political behaviour on the basis of cognitive maps is not a valid explanatory model for rationalism. I would go so far as to suggest that the same may be said for social constructivism. As far as constructivism goes, international institutions may or may not construct inter-subjective identities through processes of social learning and socialisation. This paradigm does not take into

account, what Jonathan Mercer has forcefully argued, 'the mere perception of being in a group is sufficient to generate in-group favouritism and out-group discrimination' (Mercer, 1993). Consequently, it is not surprising that in-group develops and applies at least two very different standards, be these deliberate or inadvertent, in relations with other states: an internal standard which is based on previously established norms of behaviour and an external standard based on the presumption of 'anarchy' (Wendt, 1994) which prevails beyond the society level. At the latter level, the members of international society will seek to expand their interests *vis-à-vis* non-members, at least to a higher degree than they would in their relations with fellow members.

In the lack of commonalities between an in-group and peripheral states, it is, therefore, not unprecedented that the inclusion/exclusion norms of the society of states will include higher standards above and beyond those internal standards. We can further assume that the society of states subject peripheral states to extra-internal standards at different degrees. Whatever these norms of inclusion/exclusion may be, those states which are deemed more closely affiliated with the in-group will be pulled towards the centre with requirements that are relatively akin to internal standards. Conversely, those states which are considered relatively distant to inner-group will be subjected to comparatively rigorous requirements with an imperative to hinder their path to membership.

In effect, this variation in extra-internal standards across peripheral states will reinforce the gate-keeping mechanism of the society of states. In this point of view, gate-keeping is a premeditated utilization of various standards to conduct inclusion/exclusion of peripheral states on the basis of their presumed sameness or otherness. Rigorous

requirements effectively function as obstacles which could potentially hinder peripheral states' non-compliance as opposed to compliance and perhaps eventual self-exclusion. This is a consequential exclusion mechanism where the disadvantages of compliance outweigh the advantages of membership, thus imperatives for seeking membership are ruled out. On the other end, weaker requirements act as an inclusion mechanism where potential impediments on the path to membership are swept aside. Consequently, the rigour on membership requirements vary in correspondence with an applicant state's deemed proximity to common attributes of the society.

"Europe as Democracy": A pretext for gate-keeping?

Minority rights were internationalised – or put more accurately re-internationalised – with its recognition as a legitimate "international concern" in the aftermath of the Cold War (Kymlicka, 2002: 1). More significantly, minority protection re-entered into the corpus of "normative Europe", as a distinct component of European identity. Accordingly, the Western European accession criteria for various regional institutions or its prerequisite for the recognition of new states in Eastern Europe included adherence to minority rights. in the case of the EU, its "concern" for minority groups in Eastern Europe was made explicit with the assertion of "the respect for and protection of minorities" into the body of democratic criteria at the Copenhagen European Council (1993).

Against the EU representation of minority protection as an "inherent European norm" shared by all member states, minority rights lacked a firm foundation in the a*cquis communitaire* of the Union and a shared convention across the member states (See Kymlicka, 2002; Schwellnuss, 2006). In effect, within the EU minority protection was

subsumed to an American model of non-discrimination regime. The American model rests on a liberalist assumption that the state should be "neutral" to ethnic diversity (Kymlicka, 1996). Accordingly, either minority rights are subsumed to traditional human rights or individual rights of persons belonging to minorities are guaranteed under non-discrimination provisions. Conversely, minority rights provisions rest on a liberalist assumption that traditional human rights are not sufficient to address the specific needs of ethnic, national, cultural, and religious minorities (Kymlicka, 1996: 4). The underlying principle of group-specific rights is to guarantee minorities' right to maintain their differences *vis-à-vis* majorities. In this respect, the internal minority rights policies are akin to the American integrationist model.

As a result, a gap between internal integrationist model and external minority protection conditionality stands as a major EU anomaly. Article 151 of the Maastricht Treaty (1992) which required member states to respect 'national and regional diversity' was one of the early attempts to redress the gap between internal and external EU strategies for minority protection. The Treaty of Amsterdam (1997) which incorporated all components of external democratic criteria into the body of EU law, however, omitted minority protection. Instead, minority protection entered in the EU treaty base in the form of negative rights. To his end, Article 1a of the Lisbon Treaty was first in its reference to minorities:

> 'The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail'[16].

The Lisbon Treaty was manifestly a clear break from the EU tendency to address minority issues with negative rights. Shifting EU strategy towards the 'question of

minorities' was a milestone for two main reasons. Firstly, the term minorities entered into the EU treaty base for the first time. Secondly, the EU comparatively narrowed the gap between its external requirements and internal status quo within the Union. This reference to minority rights – albeit the rights of individuals who are members of minority groups – marked its departure from evading minority issues. Crucially also, its emergence as a presumed common attribute of member states matched – although only to limited extent – the EU's earlier claim which had designated minority protection as a shared norm. Nonetheless, three characteristics of the EU policy design in the area of minority rights remained: the EU ambivalence in its commitment to minority protection; persisting competence of nation-states and the EU emphasis on individual as opposed to group specific rights. Consequently, a convergence between external minority rights policies and internal EU standards – which might be in the making – failed to materialize.

For some these inconsistencies between internal and external policies of the EU are not a source of great concern. According to Bruno De Witte, minority protection is already a tacit EU norm which is embedded in domestic legislations of the member states although it has not entrenched in the community *acquis* (De Witte, 2000). A brief examination of the member states' approaches to minority rights presents a different picture. France and Greece with the most centralist forms of governments in the EU are the most notorious for refusing to recognize minorities in their territories. At the other end of the spectrum, the constitutions of the UK and Belgium guarantee positive rights for minorities within their jurisdictions. *G*iven the degree of discrepancy among member states (Hughes and Sasse, 2003: 9), a lack of EU standard in this public policy area is not unanticipated.

Consequently, the EU has refrained from direct intervention in minority issues at the member state level. Two exceptions to this rule were: the EU demarche in 1999 following the formation of a coalition government in Austria which included Jörg Haider's FPÖ as the junior partner and the recent critical approach by the European Commission to French mass deportation of the Roma people who originated from Romania and Bulgaria. In both instances, the EU did not address such issues as the 'question of minorities', but a reminder of Europe's terrible past in the first case and the infringement of freedom of movement in the second. It appears that the EU tends to circumvent addressing what is evidently related to minorities as the 'question of minorities'. Instead, the EU opts out for concealing those internal minority issues under other categories given that an interest in minority issues will be perceived as direct intervention in domestic affairs of members. A significant consequence of this conduct is that the members of the European society of states are exempted from external intervention.

This EU conduct is hardly unanticipated given that minority protection is not a preferred policy option for some member states. In Greece and France, the recognition of diversity problematizes understandings of the nation and the nation state. Both perceive recognition of minorities – rights for these minorities put aside – as a threat to their nation-building projects. That is to say, these member states would neither welcome supranational competence nor an intervention mechanism in the area of minority rights.

In the few instances where the EU spelled out an explicit concern for minorities in member states, it made overtly clear that its action was not intended as a direct interference in the domestic affairs of member states. The recent Roma initiative is the

latest instance of this kind.   Viviane Reding, the EU Commissioner for Justice, Fundamental Rights and Citizenship was careful to underline in April 2011 that the Commission wanted to give national governments 'a helping hand' in identifying problems and working together on implementing effective solutions (EurActiv, 2011) leaving policy implementation strictly within the nation-state domain.

In contrast to the prevailing non-discrimination regime within the EU, the applicant states were required to adhere to a minority rights regime since the Copenhagen Council (1993). From early days the EU minority rights conditionality was constrained by its selective and differentiated application across applicant states in East Europe. Firstly, the EU has focused selectively on a number of applicant states. A greater emphasis was made on minority issues in countries such as Romania, Bulgaria, Estonia, Latvia, Turkey, Slovakia, and Serbia. Comparatively, the minority issues in countries such as Slovenia, Poland, Czech Republic, Croatia, Cyprus and Malta received, if any at all, less scrutiny.

Secondly, the EU has coerced some states such as Romania, Slovakia, Bulgaria and Turkey to warrant group specific rights in the form of lingual and educational and/or political rights and freedoms for Hungarians in Slovakia and Romania, Turks in Bulgaria, and Kurds as well as other minorities in Turkey. In contrast, the EU endorsed policies in Lithuania and Estonia which were assimilatory in essence in the form of the integration of Russophones into majority.

Thirdly, the EU has focused on ethnic and national minorities across Eastern Europe with the exception of Turkey where the EU requirements extended to include the Christian and non-Christian religious minorities such as Alevis. This is particularly

curious precisely because thus far the EU concern for religious minorities was emphasized in the case of Bosnia-Herzegovina where the inter-communal conflict mainly ran along the religious divide between the three communities: Muslim Bosniacs, Orthodox Serbs and Catholic Croats. Aside from the cases of Turkey and Bosnia-Herzegovina, the EU concern for religious minorities has not been given an emphasis since 1993.

Lastly, the EU has selectively focused on some minorities such as Hungarians, Russophones, and Roma people whereas considerably lesser attention was given for other minority groups. The EU emphasis on the first two minority groups can be largely linked to kin-state advocacy and the latter can be related to Western European fears of mass immigration. Therefore, security and stability driven EU argument provides a valid explanation, albeit to some degree, for the selective EU emphasis on some minority groups in Eastern Europe. This argument underlined two variables: The diverse ethnic make-up of Eastern Europe and its potential to generate instability, conflict and mass migration as influential factors which had an impact on the EU policy-making. Hence, minority protection policies were conflict prevention instruments on the basis of an assumption that minorities with full rights and freedoms guaranteed in their homelands would not seek alternatives such as emigration or secession (Jackson-Preece, 2005). In this respect, the security-centred approaches elucidate how the EU focus on Hungarian, Russophones and Roma minorities can be linked to the Western European fears of mass emigration and conflict in Eastern Europe despite their heavy reliance on the traditional civic Western Europe versus ethnic Eastern Europe dichotomy. Nevertheless, such

arguments do not extent to explain the variation between the EU objectives for minority protection conditionality in the context of enlargement and the policy outcomes.

These inconsistencies in the EU minority protection strategies thus far can be best explained with a hypothesis which links such inconsistencies with an EU imperative for gate-keeping. Accordingly, the EU, as the contemporary European society of states, utilizes minority protection policies as inclusion/exclusion mechanisms when considering expansion. Given that the EU is explicitly a civic community while implicitly a cultural society, its membership criteria do not essentially rest on a state's proximity to "European norms and values" but on a presumed proximity to an underlying shared "idea of Europe". Subsequently, obstacles are created and maintained in the form of comparatively rigorous minority protection conditionality for those states which are considered far-flung from this shared "idea of Europe". In contrast, those states which are associated with the shared vision of Europe, the hurdles for membership are removed with superficial or nominal policies. To this end, the rigour of minority rights policies reinforces the discursive understanding of the "idea of Europe".

The "Imagined Geography" of Europe and Minority Protection Conditionality

The variation in the rigour of minority protection conditionality is not unexpected when we consider the contemporary societal and political dynamics in Western Europe. As Gerard Delanty suggested, '(t)he present EU[17] is largely made up of cultures shaped by secular Latin Christendom and many still hold official state churches (such as the UK, Greece and Denmark)' (Delanty, 2003: 12). In addition, the Christian Democrat parties are mostly a predominant feature of domestic politics in Western Europe. This is

augmented by increasing references to the religious heritage of 'Europe' at supranational level[18]. In this respect, it is not unexpected to see implicit considerations of this kind emerge when the EU assesses the membership credentials of applicant countries *vis-à-vis* this "family-resemblance".

Western Europeans has considered a number of eastern European applicant states as "lesser" or constitutive "other" of "Europe" at one time or another in history. The lands between Germany and Russia are traditionally considered as the 'point of collision'[19] where the East and the West is divided along religious, cultural, and civilizational lines (Huntington, 1992). The Western European self-identification as the representative of Latin Christendom, high culture and "cradle of civilisation" has varied through time. However, the superiority of Western Europe is deemed irrefutable when juxtaposed with Eastern European periphery whose degree of Europenness is contested at varying degrees (Bugge, 1999: 49) since their cultural, civilizational and in some instances religious deficit hindered their European credentials. After the Cold War, the states which were more closely associated with Western Europe were re-defined as Central Europeans – 'Mittel Europa' – to mark their degree of departure from Eastern Europe (See Bugge, 1999). The Visagrad Countries[20], the Baltic States[21], Slovenia and Croatia were an easy fit in Central European identity given their religious, cultural and historical proximity to Western Europe.

Conversely, Bulgaria and Romania maintained their Eastern European and Balkan identity in Western European perception. This was largely due to their presumed departure from the shared "idea of Europe" on the grounds of religious, cultural and civilizational differences. The Balkans has been traditionally identified as a 'collision

point' of various religious, cultural and civilizational legacies, albeit to a higher degree. The region was marked as a battleground during the centuries-long rivalry between the Austria-Hungarian Empire and the Ottoman Empire, Latin Christendom and Orthodox Church as well as Christendom and Islam (Delanty, 1993: 52; Huntington, 1992: 30-31). In the early part of the 20th century, the region was designated as the 'Powder Keg of Europe' to signify the nationalistic antagonisms, turmoil and volatility which prevailed. Subsequently, after the Cold War, Bulgaria's and Romania's degree of European credentials were more intensely contested within the EU in comparison to Central Europeans.

Along this spectrum, the contemporary Turkish claims for European identity are hotly debated. The Turks have constituted the permanent "Other" of "Europe" since early Ottoman times. With the return of Turkey to this traditional status after the Cold War, the Turkish membership of the "thick" European society of states under the framework of EU seems undesirable once again. An evidence of this process is the emergence of Turkey's religious, cultural and civilizational otherness as a central theme in the EU deliberations on its membership application (Müftüler-Baç and McLaren, 2002).

Across this "imagined" European landscape, the modern Roman Catholic states such as the Visagrad countries, the Baltic states, Croatia and Slovenia are deemed more closely affiliated with Western Europe. These states are considered closely related to the Western European society of states while the Orthodox populated Bulgaria, Romania, Serbia and Macedonia which were, at one point or another, subjects of Ottoman rule and Turkey with a predominantly Muslim population are largely perceived as belonging to an Eastern European system of states. The point of departure between the two groups is their

degree of association with the two very different religious, cultural, and civilizational spheres: "Europe" and its constitutive "other".

The rigour on contemporary minority protection conditionality largely corresponds to this "imagined geography" of Europe. When those states which are considered "Christian", "civilised" and "democratic", thus "European", are knocking on the EU doors, minority protection do not appear as an EU priority. The recognition of Croatia against the recommendations by the Badinter Arbitration Committee first by Germany and later by the EU is illustrative of this tendency[22]. Different variables such as a large and well-organised Croatian minority in Germany with links to the ruling CDU and Croatia's presumed European credentials had played an essential role in Germany's recognition of Croatia. The latter was manifested in German media's representation of Croatian as "European" and Serbia as "non-European" in the days leading to the recognition of Croatia (Crawford, 1996).

In the context of enlargement, the strength of the EU "concern" for minorities has significantly risen when it was those states whose European credentials were contested within the EU. The different EU requirements which Romania and Slovakia were subjected illustrate this selective and differentiated EU approach. The EU coerced Romania to adopt relatively more extensive policies which included representative and educational rights of Hungarian and German minorities in comparison to that of Slovakia where the EU policy did not emphasize such rights. The inconsistency in EU minority protection requirements in this case was clearly linked to the different level of Europeanness attributed to Romania and Slovakia. Slovakia was previously subjected to the Austria-Hungarian rule, whereas Romania was created in the 19th century out of the

shrinking Ottoman Empire. Also, the two states are associated with different Christian belief systems; Romania has a large Orthodox population in comparison to Slovakia where the majority of the population is Roman Catholic. The same argument can be made to explain the aforementioned German differentiation between the Catholic, "European" Croatia and the Orthodox, "non-European" Serbia. Again Serbia and Croatia are associated with opposing sides of the traditional boundary between Orthodoxy and Latin Christendom and between the former Ottoman and the Austria-Hungarian spheres of influence. Therefore, Croatia's forecasted entry date in as early as 2013, although the return of Karajina Serbs remains an unresolved issue, does not come as a surprise.

Again along the enlargement spectrum Turkey whose distance to the cultural understanding of the "idea of Europe" has been most pronounced is coerced to implement group specific rights for a wider number of minorities. In contrast, Latvia whose extent of minority problems was no less substantial was required to adopt an integrationist model. What's more, Latvia was admitted to the EU notwithstanding it had not signed the Council of Europe's Framework Convention for the Protection of National Minorities (FCNM)[23]. In the meantime, minority protection conditionality was clearly superficial in the case of Slovakia where problems concerning the Hungarian minority resurfaced following its accession. However, Hungarian advocacy for the rights and freedoms of its kin in neighbouring countries necessitated EU action, albeit superficial.

In this regard, the selective EU requirement for relatively integrationalist policies in some CEECs signifies a minimalist approach where minority issues could not be overlooked. Despite both Slovakia and Latvia were closely affiliated with "Europe", the Russian and Hungarian pressure elicited the EU requirements. In the lack of such kin-

state support for minorities in Turkey, the EU requirements have been comparatively more rigorous. One of many illustrations of such EU anomalies is an emphasis on religious rights in Turkey. In this respect, the EU concern for the rights and freedoms of these minorities cannot be explained with the traditional normative or security paradigms.

In effect, the differentiated and selective treatment of the applicant countries can be substantiated with the "imagined geography" in the European mental map. In the cases of the CEECs, the EU made frequent references to a presumed earlier affiliation with the CEECs during the 2004 enlargement round. Accordingly, the CEECs were formerly a part of a "Europe proper" and were unwillingly torn away from it (Sjursen, 2002). They were 'coming (back to a European) home' of which they were an integral part. The EU rhetoric mirrored its assumption that the CEECs shared a common European heritage with the existing members of the EU. In contrast, moving away from its Cold War status as a "Western" and "European" state, Turkey was increasingly represented as the constitutive "other" of "Europe". Its Muslim identity and the presumed level of its cultural backwardness (Müftüler-Baç and McLaren, 2002) in relation to "Europe" qualified it as a point of departure for harmonising otherwise diverse Europeans.

To conclude, the correlation between the rigor of external minority protection policies and the EU perception of a state's distance to a shared "idea of Europe" suggests that enlargement dynamics is not primarily determined by the official enlargement criteria – adherence to the EU requirements for minority protection – but largely by accession politics in the form of an unofficial criteria – a state's proximity to a cultural understanding of the "idea of Europe". The implementation of the official criteria would necessitate inclusion/exclusion of states on the basis of their compliance with the civic

dimension of European identity. In effect, the enlargement related data reveal that comparatively more rigorous minority conditionality have been designed and delivered for those states which are considered relatively distant from a cultural understanding of the "idea of Europe" while those states which are deemed more closely associated with "Europe" have been subjected to comparatively superficial or nominal requirements.

Conclusion

This paper undertook a critical analysis of the EU minority protection policies since 1989 with a special focus on the EU enlargement conditionality. It raised a number of important arguments regarding the design and delivery of these policies. In effect, in the "Europe as Democracy", the EU membership was associated with changing at least one, albeit crucial, aspect of state identity: ethnic, cultural, monolithic and illiberal understandings of national community. Heavily influenced by existing literature on the East/West dichotomy along the civic/ethnic lines, Western Europe designated East Europe as a region where the ethnic and monolithic structure of the nation-state has a potential to stir hostility between majorities and minorities

The EU minority protection policies were expected to facilitate a shift in what was considered an ethnic Eastern European understanding of national community to a more civic, liberal and pluralistic understanding which arguably comprises greater tolerance towards diversity. Against this normative rhetoric, the design, delivery and outcome of minority protection policies reveal instead an implicit and exclusive understanding of the "idea of Europe" which underpins EU enlargement. That is to say, an unofficial enlargement criterion; a state's proximity to discursive understandings of the "idea of Europe and what it takes to be European", has largely determined the

strength of the EU minority rights policies across members and non-members and across applicant states.

In this respect, the EU minority protection policies have reinforced the EU's discursive understandings of "the idea of Europe". Put differently, these policies have been utilized deliberately or intuitively to create obstacles for those states which are deemed the "lesser" or the "other" of "Europe". In contrast, those applicant states who are affiliated more closely with "Europe" are pulled towards the centre with superficial or normative requirements. The former are required to adopt relatively more rigorous policies whereas the latter are subjected to comparatively superficial criteria. The underlying assumption in the utilization of minority rights policies as a gate-keeping mechanism is based on the traditional assumption which associates Eastern Europeans with ethnic nationalism. With respect to minority rights policies, the strong emphasis is expected to diminish the willingness of applicant states to Europeanize precisely because the EU policy-makers are sentient of traditional approaches which regard group-specific rights as a potential threat to nation-state sovereignty. Minority rights also fall in the domain of domestic affairs where nation states, by and large, resent external interference. It is clearly evident to EU policy-makers that initial non-compliance and later self-exclusion from enlargement process may follow considerably rigorous policies.

Consequently, minority rights requirements are utilized to create obstacles for accession of those applicants which are perceived distant from the discursive understandings of the "idea of Europe" with a presumption that either these states would rule out enlargement as a preferred option or this would at least stall their accession to the EU. Therefore, an assumption that accession of those states which are subjected to

rigorous requirements would remain at least as a distant possibility underlies the selective and differentiated strategies. When the membership path is hindered with such policies, gaining membership may no longer present itself as an advantageous option. Subsequently, those states which are applied comparatively rigorous requirements may self-exclude themselves from the membership bid. The rigorous minority protection requirements in this respect are instruments of exclusion mechanism. An instructive illustration of this process is the Turkish candidacy. Clearly, the extensive minority protection requirements – as well as other issues – turn Turkish candidacy into a cumbersome process which problematizes its eventual membership.

On the other hand, the superficial and nominal strategies facilitate the removal of hurdles on the path to membership. Accordingly, those applicant states, whose membership is considered desirable, are either exempted from such requirements or subjected to minimal requirements. In these cases, a state's compliance with such requirements does not impinge on enlargement dynamics. A clear illustration of this pattern is Latvia's accession to the EU in 2004 even though it had not signed the FCNM. A relatively more extensive requirement in the form of group specific rights would clearly hinder Latvia's membership prospects since accommodating Russophones through positive rights was strongly contested in Latvia. Consequently, the EU focused on Latvia's naturalization policy which endorsed the integration of Russophones into the Latvian majority. To his end the EU minority protection conditionality for Latvia is largely informative of the inclusion mechanism.

In the meantime, a principle of non-intervention curbs the EU intervention in the minority issues within the member states. This rests on a reciprocal understanding among

Western European states to respect nation-state sovereignty of the other members of the European society of states. Consequently, minority issues in Western Europe fall within the competence of nation-states and are outside the remit of Western European international relations. In effect, the member states are exempted from any direct intervention in domestic issues related to minorities. Subsequently, an internal non-discrimination regime prevails at the supranational level which places minority issues under individual human rights.

To conclude the contemporary minority rights strategies of Western Europe have been utilised as inclusion/exclusion mechanisms to integrate or distance applicant states in East Europe. These Western European policies have not arisen exclusively because all Eastern regimes have radically different standards in comparison to those in Western Europe in safeguarding the rights of those minority groups which reside within their borders. Quite the opposite, the paper proposes that the greater emphasis which has been designated on the protection of minorities in Eastern Europe can be best explained with an underlying discourse on the shared "idea of Europe" which underpins the design and delivery of selective and different standards across member and applicant states. Consequently, the EU minority protection policies are, for the most part, instruments of inclusion/exclusion mechanisms to integrate or distance applicant states on the basis of their proximity to the common understanding of the "idea of Europe".

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[1] For the duration of the Cold War, the minority rights regime of the League of Nations was subsumed to an international human rights regime.

[2] Eastern Europe is an umbrella term which covers Central Eastern Europe, South Eastern Europe, the Balkans and Turkey.

[3] The Copenhagen Criteria entail political and economic criteria that candidate countries are required to take on prior to becoming full members of the EU. The political criteria

include four areas of EU concern: democratic stability, the rule of law, human rights, and the protection of and respect for minorities.

[4] Jan Zielonka (1998) has suggested that all EU policies designed for Eastern European states were 'without strategy' while according to Will Kymlicka (2002), minority rights policies were developed 'almost in panic'.

[5] This dichotomy is based on Hans Kohn's ideal types of nationalism: ethnic nationalism *versus* cultural nationalism (1944) in *'The Idea of Nationalism: a study of its origin and background'*. In this seminal book, he has argued that ethnic/cultural nationalism is a characteristic of East Europe and civic/liberal nationalism is specific to West Europe. Recently Kohn's ideal types have been challenged by Anthony Smith (2000) in *'Theories of Nationalism'*; Will Kymlicka (2001) in *'Politics in the vernacular: Nationalism, multiculturalism, and citizenship'*; (2002) ibid; Rogers Brubaker (1999) in *'The Manichean myth: Rethinking the distinction between 'civic' and 'ethnic 'nationalism'*; Stephen Shulman (2002) in *'Challenging the Civic/Ethnic and West/East Dichotomies in the Study of Nationalism'*; Taras Kuzio, (2002) in *'The myth of the civic state: a critical survey of Hans Kohn's framework for understanding nationalism'*; Bernard Yack (1999) in *'The myth of the civic nation'* on the grounds that nations are not constructed on the sole basis of ethnic or civic dimension, but amalgamate elements of both types. Nevertheless, Kohl's ideal types are still extensively used by scholars – most prominently by Ernest Gellner in his *'Nations and Nationalisms'* – and policy-makers alike as a reference point.

[6] For further into debates on the influence of such academic arguments both on journalists and policy-makers, see Rogers Brubaker (1999) and Taras Kuzio (2002)

[7] See http://aei.pitt.edu/1440/1/Copenhagen_1978.pdf

[8] See http://eur-lex.europa.eu/en/treaties/dat/11992M/htm/11992M.html

[9] See http://eur-lex.europa.eu/en/treaties/dat/11997D/htm/11997D.html

[10] See http://europa.eu/lisbon_treaty/full_text/index_en.htm

[11] See
http://europa.eu/legislation_summaries/justice_freedom_security/combating_discrimination/l33501_en.htm

[12] See http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2007:306:SOM:EN:HTML

[13] See www.assembly.coe.int/CommitteeDocs/2010/ajdoc462010prov.pdf

[14] According to Jack Donnely (1998), the old 'standard of civilization' which rested on power politics and the 'Burkean' assumption that some civilizations were superior to others lasted till the Second World War. Therefore, in the area of human rights and freedoms a code of conduct persisted where the 'superior civilization' that is, Western European civilization sought exclusive guarantees for their citizens who traveled or resided in what they perceived in the 'non-civilized' part of the world in the form of extraterritorial rights and freedoms. This is contrary to the new 'Lockean' idea of international standard which coerces human rights standards universally.

[15] The English School of IR classifies three types of international institutions: International system, international society and world society. This paper focuses on the 'thick' aspect of inter-state relations; the so-called international society. This is precisely because the 'Europe as Democracy' defines its identity on the basis of a shared understanding of the 'idea of Europe'.

[16] See http://europa.eu/lisbon_treaty/full_text/index_en.htm

[17] Gerard Delanty (2003) in *'The Making of a Post-Western Europe: A Civilizational Analysis'* has referred to the EU-15, however Greece is a clear exception to his generalisation.

[18] See http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2007:306:SOM:EN:HTML

[19] In the words of Peter Bugge (1999) in *'The Use of the Middle: Mitteleuropa vs. Stredni Evropa'* it is a 'shatter zone of instability and backwardness' p.45

[20] Czech Republic, Slovakia, Hungary and Poland

[21] Lithuania, Latvia, Estonia

[22] The findings of the Committee had indicated that minority protection in Croatia had not met the international requirements.

[23] The signature of the FCNM was frequently cited in the European Commission's country reports as one of the benchmarks for compliance. James Hughes (2005) in *''Exit'in Deeply Divided Societies: Regimes of discrimination in Estonia and Latvia and the Potential for Russophone Migration'*.

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