

MINORITIES IN THE EURO-MEDITERRANEAN AREA:
THE PREREQUISITES FOR LAUNCHING A FRUITFUL
INTERCULTURAL DIALOGUE

ABSTRACT

This paper argues that a specific Euromed Intercultural Dialogue on Minorities (EIDM) is necessary to reinforce the participation and protection of minorities in the Euro-Mediterranean area. It identifies the challenges and opportunities surrounding such an undertaking. First, a comparative analysis of the existing practice at the international (UN) and regional (Council of Europe, OSCE and EU) levels reveals the different approaches and standards that can be used to circumscribe the concept of «minorities». Specific attention is devoted to the role of «citizenship» and the difficulties to identify various types of minority populations. In a second section, the promotion of respect for and protection of minorities is analysed from the EU's external relations perspective. In particular, the importance of this (emerging) value in the framework of the EU's pre-accession process, the European Neighbourhood Policy (ENP), and the Euro-Mediterranean Partnership (EMP) is taken into account. The final part of this paper tackles the question to what extent a specific EIDM could provide added value in comparison to the existing situation. It defines the specific objectives of increased attention to the issue of minority protection and participation in the Euro-Mediterranean area and takes into account the potential obstacles in launching such an intercultural dialogue. Proceeding from the observation that minorities are generally excluded from traditional dialogue channels, this study concludes with a number of operational recommendations.

INTRODUCTION

The Euro-Mediterranean area, in its large sense, is a mosaic made of minorities, be they «ethnic», «religious», «linguistic», «cultural», «national», «foreign», «new» or «old». Indeed, in every Mediterranean partner as well as in the wider European area different groups of people belonging to one or more of the above-mentioned types of minorities coexist. Sometimes the coexistence of these different groups is relatively harmonious, sometimes not. Today, the protection of minorities and their participation to the national, regional and Community institutional mechanisms is certainly one of the most complex and politically sensitive issues of the European and Euro-Mediterranean integration processes.

Whereas the EU has promoted minority protection as a real «political value» in the pre-accession process, the minority issue has not yet been properly addressed at the EU internal level. This is the result of a lack of legally binding provisions and consensus among the member states regarding a commonly accepted definition of minorities. The absence of legal competences to draft specific minority rights further explains the discrepancy between the rather restrictive significance of minority protection in the EU's internal legal order and its wider interpretation as part of the Copenhagen pre-accession criteria¹. After the tragedies of the ethnic cleansing experienced in the Balkans, the last pre-accession processes brought the issue of minority protection on top of the EU agenda even if the legal situation regarding the protection of minorities is far from being satisfactory, especially without the ratification of a Constitutional Treaty recognising for the first time respect for the rights of persons belonging to minorities as a foundational value of the EU.

Recently, the minorities' issue has also been taken into account, at the external level, within the framework of the European Neighbourhood Policy (ENP) – covering the countries of the Southern Caucasus, the Mediterranean partners as well as Moldova and Ukraine² – and in the EU's relations with the Western Balkans³. In contrast, the Barcelona Process achieved very little during the last decade. It is, therefore, time to launch a constructive intercultural dialogue on an issue at the heart of the identities of the peoples of the Euro-Mediterranean area.

I. A DIALOGUE WITH WHOM AND ON WHAT LEGAL AND POLITICAL BASIS?

The first step in this research is to circumscribe the minority concept. In this respect, potential legal bases and useful political references at the international and European level are taken into account⁴, together with the identification of the potential interlocutors for launching a fruitful dialogue on minority issues. Secondly, this section examines whether «minority protection» can be seen as an EU value.

1.1. Defining and Identifying the Potential Interlocutors and Dialogue Topics

Until today, no legally binding document has formulated a proper definition of the term «minorities». Nevertheless, there have been some attempts, notably by the United Nations (UN), the Council of Europe (CoE) and the Organisation for Security and Cooperation in Europe (OSCE), to identify «constitutive elements» of the minority concept. In addition, the academic community and a number of experts provided food for thought in this regard⁵.

1.1.1. The UN Approach: Minority Protection as a Universal Value

With Article 27 of the Covenant on Civil and Political Rights of 1966 (CCPR), the UN elaborated the first universal norm⁶ concerning minorities. This article is generally considered as the «minimum international standard» in this regard. Article 27 of the CCPR stipulates that «in those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language». It is noteworthy that the scope of the UN approach was originally restricted to three general rights and to «ethnic, religious or linguistic» minorities. In other words, «national minorities» were not yet mentioned as such in this 1966 UN document.

The second text of interest is the Declaration on the Rights of Persons Belonging to National *or* Ethnic, Religious and Linguistic Minorities⁷ adopted by the UN General Assembly in 1992. This document lists, in the framework of 9 articles, a number of rights such as the right of minorities to «*enjoy their own culture, to profess*

and practise their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination» (Article 2, para. 1), the right to *«participate effectively in cultural, religious, social, economic and public life»* (Article 2, para. 2) and the right to *«participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation»* (Article 2, para. 3). This non-exhaustive list, clearly illustrates the evolution of the perception of minority rights and their protection between 1966 and 1992, especially at the level of participation in decision-making processes.

One can also refer to the general comments produced by the Office of the United Nations High Commissioner for Human Rights and to the first 2006 Report of the Independent Expert on minority issues (cf. *infra*) to understand the current perception of the minority issue in the UN context. Three elements of these comments and reports are worth being mentioned.

First of all, the existence of an ethnic, religious or linguistic minority in a state «does not depend upon a decision by the State party» but requires to be established by objective⁸ and subjective criteria, in «accordance with the principles of international law»⁹:

- the «subjective criterion» implies that the principle of belonging to a minority is a «matter of a person's choice and [...] no disadvantage may arise from the exercise of such a choice»¹⁰;

- «objective criterion» entails, among other things, «belonging to a group and sharing a common culture, a religion and/or a language»¹¹. In other words, the objective criterion is linked to the existence of constitutive elements of an «identity» that distinguishes this group from others. The fact that the group wants (or is in a position) to defend and promote this specific «identity» is also taken into account.

Second, the numerical size of a population group and the fact that this group has a dominant position or not is, in itself, insufficient to determine a minority¹².

Third, there seems to be a growing tendency to disregard the condition of «citizenship» of the state of residence as one of the characteristics for determining a minority population in that state. The traditional understanding of minorities clearly included this requirement¹³ but there is increasing criticism concerning this

narrow view, mainly because states can adopt restrictive citizenship legislation and because of the problematic situation in case of disintegration of states¹⁴. «Newly resident minority groups», «migrant workers», «non-citizens» or even «visitors in a State party constituting such minorities» are also, according to some interpretations, entitled to minority rights protection¹⁵. It is, however, recognised that «old» minorities can have stronger entitlements than the «new» ones¹⁶. Hence, the question arises on what basis the differentiation between old and new minorities can be made¹⁷.

In other words, even without a proper definition, the UN bodies circumscribed quite precisely the minority concept with a number of criteria and constitutive elements, even if some of the above mentioned are still criticised. Remarkably, these constitutive elements also reflect the evolution of the perception of the minority concept by the Council of Europe and the OSCE (cf. *infra*). It is also significant that the UN secured a «minimum standard approach» regarding the protection and promotion of «specific minority rights», which are clearly identified in the 1992 Declaration.

The definition of specific minority rights as universal values is of fundamental importance for the Southern and Eastern non-European Mediterranean partners because for those countries references to pure European conventions or charters constitute an important dilemma (cf. *infra*).

Finally, at the operational level, the establishment in 1995 of the United Nations Working Group on Minorities¹⁸, and the appointment of an independent expert¹⁹ are two other important aspects of the development of an expertise on minority issues that could potentially be used in an intercultural dialogue (see recommendations made in this regard at the end of the study).

1.1.2. *The Council of Europe: A Normative Approach*

The Council of Europe and its Parliamentary Assembly are, since the beginning of the 1990s, playing a leading role in minority protection. The most important documents to be taken into account, apart from the Convention for the Protection of Human Rights and Fundamental Freedoms²⁰, are: the Charter for Regional or Minority Languages (CMRL), the Framework Convention for the Protection of National Minorities (FCNM) and Recommendation 1201 (1993) of the Parliamentary Assembly.

The 1992 Charter for Regional or Minority Languages²¹ is designed to protect and promote minority languages as a threatened element of Europe's cultural heritage and to enable speakers of a regional or minority language to use it in private and public spheres. Its purpose is thus mainly cultural, covering «regional» and «minority» languages but excluding, for example, languages used by recent immigrants. The Charter provides also a number of cooperation sectors to protect and promote minority languages²². Also, as we will see hereinafter, the CRML is one of the references used in the pre-accession process while also now being considered as a benchmark in evaluating progress achieved by the EU's European partners within the framework of the European Neighbourhood Policy.

The adoption of the Framework Convention for the Protection of National Minorities (FCNM)²³ in 1995 was another step forward. This Convention is now clearly the major European reference for the protection of national minorities²⁴. Its legally binding nature²⁵ explains the fact that Belgium, Greece and Luxembourg have not yet ratified this Convention whereas France has not even signed the document. Numerous countries also made interpretative declarations concerning the application of the Convention²⁶. Latvia, for instance, which is the only new member state that ratified the FCNM after accession (October 2005), restricts the application of Articles 10, para. 2, and 11, para. 2, dealing with the use of minority languages in communication with the authorities and for the designation of topographical indications. It is also significant that, given the absence of a definition of the term «national minorities», a number of members provided their own interpretation of this concept. Obviously, the divergent approaches and interpretations raise questions as to the applicability of the FCNM as a standard reference document for non-European countries. Of interest for the Mediterranean partners of the EU is, however, that at the OSCE Budapest Summit in 1994, the participating states recalled that the Framework Convention on the Protection of National Minorities, which «builds upon CSCE standards in this context» was «also open – by invitation – to signature by States which are not members of the Council of Europe and they may consider examining the possibility of becoming parties to this Convention»²⁷.

The Council of Europe's Parliamentary Assembly, for its part, proposed a definition of the minority concept in its Recom-

mendation 1201 (1993). Article 1 of the Recommendation stipulates that «[f]or the purposes of this Convention [European Convention on Human Rights], the expression “national minority” refers to a group of persons in a state who:

- reside on the territory of that state and are citizens thereof;
- maintain longstanding, firm and lasting ties with that state;
- display distinctive ethnic, cultural, religious or linguistic characteristics;
- are sufficiently representative, although smaller in number than the rest of the population of that state or of a region of that state;
- are motivated by a concern to preserve together that which constitutes their common identity, including their culture, their traditions, their religion or their language»²⁸.

Unfortunately, this Recommendation has never been adopted²⁹ and therefore no legally binding definition on minorities can be found at the Council of Europe level neither in the case-law of the European Court of Human Rights³⁰. The reference to the citizenship criterion was the subject of intensive discussions. It is now generally admitted at the Council of Europe level that non-citizens can also benefit from specific minority rights³¹. The territorial criterion is also, in some cases, problematic notably within newly independent countries and given the displacement of borders. Despite these uncertainties, Recommendation 1201 (1993) is considered by several EU institutions and a number of experts as a major source of reference. The European Parliament (EP), in June 2005 (that is to say in an EU of 25 member states), stated in a «resolution on the protection of minorities and anti-discrimination policies in an enlarged Europe», that a definition of the term «should be based on the definition laid down in Council of Europe Recommendation 1201 (1993)»³². This opinion is shared by the EU Network of Independent Experts on Fundamental Rights (CFR)³³, that again referred to this definition to describe the group of persons that should enjoy the prohibition of discrimination on the ground of membership of a national minority, as guaranteed by Article 21 para. 1 of the Charter of Fundamental Rights of the EU³⁴ (see *infra*). The experts however added that «the definition relied upon by states should not lead to arbitrary distinctions being introduced, which would be the source of discrimination»³⁵. Here, the Network follows the reasoning of the UN bodies and of the Advisory Committee of the Framework Convention on the Protection of National

Minorities that a state cannot make a difference between citizens and non-citizens when it comes to qualifying them as a minority. It is, in other words, another confirmation that the requirement of «citizenship» of Article 1 a) of Recommendation 1201 (1993)³⁶ has to be abandoned.

Finally, one should draw the attention to the fact that the Recommendation contains a Section 2 on «General principles»³⁷ and a third one on «Substantive rights» containing six articles relevant for the present analysis³⁸.

1.1.3. *The CSCE/OSCE: A Proactive Approach*

The work of the OSCE related to minorities results directly from the 1975 Helsinki Final Act, which states that «the participating States on whose territory national minorities exist will respect the right of persons belonging to such minorities to equality before the law, will afford them the full opportunity for the actual enjoyment of human rights and fundamental freedoms and will, in this manner, protect their legitimate interests in this sphere» (Point VI)³⁹. Fifteen years later, with the Charter of Paris for a New Europe, the wording was stronger: «we affirm that the ethnic, cultural, linguistic and religious identity of national minorities will be protected and that persons belonging to national minorities have the right freely to express, preserve and develop that identity without any discrimination and in full equality before the law»⁴⁰. One should stress here again the link established between the notion of (ethnic, cultural, linguistic and religious) «identity» and «national minorities».

With the collapse of the USSR and its implications for the reinforcement of the human security concept, the OSCE has increased its activities in the field of minority protection⁴¹. At the beginning of the 1990s, two important conferences on the Human Dimension, held respectively in Copenhagen (1990) and Moscow (1991), confirmed and extended the role of the OSCE as one of the main actors promoting the protection of minorities at the European level⁴². In the Copenhagen Declaration on Human Rights and Fundamental Freedoms, Articles 30 to 40 are exclusively devoted to «questions relating to national minorities». One of the most interesting aspects is that Article 32 lists a number of specific minority rights:

– «to use freely their mother tongue in private as well as in public»⁴³;

«– to establish and maintain their own educational, cultural and religious institutions, organizations or associations [...];
 – to profess and practise their religion, including the acquisition, possession and use of religious materials, and to conduct religious educational activities in their mother tongue;
 – to establish and maintain unimpeded contacts among themselves within their country as well as contacts across frontiers with citizens of other States with whom they share a common ethnic or national origin, cultural heritage or religious beliefs;
 – to disseminate, have access to and exchange information in their mother tongue;
 – to establish and maintain organizations or associations within their country and to participate in international non-governmental organizations».

Compared to previously analysed documents the last point is certainly the most innovative. It should be noted that this Article 32 has been used by the European Commission in the framework of the pre-accession process (cf. *infra*). It is also of interest for this study that, as far as dialogue is concerned, Article 33 stresses that the participating States will take the necessary measures to promote and protect national minorities rights «after due consultations, including contacts with organizations or associations of such minorities, in accordance with the decision-making procedures of each State». This type of approach should, in our opinion, be an inspiration for a fruitful «Euromed Intercultural Dialogue on Minorities» (see recommendations).

The third article interesting for the purpose of our analysis is Article 35, which states that the participating States will «respect the right of persons belonging to national minorities to effective participation in public affairs, including participation in the affairs relating to the protection and promotion of the identity of such minorities. The participating States note the efforts undertaken to protect and create conditions for the promotion of the ethnic, cultural, linguistic and religious identity of certain national minorities by establishing, as one of the possible means to achieve these aims, appropriate local or autonomous administrations corresponding to the specific historical and territorial circumstances of such minorities and in accordance with the policies of the State concerned»⁴⁴. In other words, to institutionalise the promotion of national minorities participating in public affairs.

One must finally mention that the post of High Commissioner on National Minorities (HCNM) was created in 1992 as «an instrument of conflict prevention at the earliest possible stage»⁴⁵. The HCNM is also playing a major role in the evolution of the perception and understanding of the minority concept. According to him, for example, the main features or «parameters» of a «national minority» are: «a collection of individuals, who share linguistic, ethnic or cultural characteristics, which distinguish them from the majority. These individuals, acting alone or together, usually not only seek to maintain their identity, but also try to give stronger expression to those ethno-cultural and linguistic characteristics that give them a sense of individual and collective identity»⁴⁶. The HCNM clearly places the «identity» parameter at the heart of the constitutive elements of a national minority. It is noteworthy that he clearly recognises that, even if his mandate was conceived to focus on «established minorities», attention should also be paid to «non-citizens» and so-called «new minorities» and this within the remit of his mandate⁴⁷. In other words, minority rights should be guaranteed to everyone⁴⁸ and belonging to a minority or not is an individual choice of the person concerned⁴⁹. However, although there is a great deal in common between «new» and «established» minorities in the problems they face and in the means of resolving them⁵⁰, he recognises that there are also real differences⁵¹.

1.2. «Minority Protection»: The Progressive Recognition of an EU Value?

1.2.1. The Minority Protection Deficit under the Nice Treaty

The Nice EU Treaty does not include a specific reference to minority protection. Article 6 EU only refers to «human rights and fundamental freedoms». Arguably, a broad interpretation of this provision implies that the protection of minorities is also included⁵². The difference in formulation in comparison to the Copenhagen political pre-accession conditions remains, however, striking and has been criticised during the European Convention⁵³.

Regarding the EC Treaty, Article 13, para. 1, is of particular importance as it proclaims that «without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after

consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation». One should underline that this article does not refer to specific «minority rights» but is designed to combat discrimination as such. Even if it is impossible to artificially disconnect the fight against ethnic or religious discrimination from minority protection, Article 13 EC is not a comprehensive minority protection clause. Be that as it may, the importance of this article of the EC Treaty should not be underestimated as it served as a basis for the adoption by the Council, on 29 June 2000, of Directive 2000/43/EC designed to «combat discrimination based on racial or ethnic origin implementing the principle of equal treatment between persons irrespective of racial or ethnic origin»⁵⁴.

One could have expected an extensive interpretation of the jurisprudence of the European Court of Justice (ECJ) to fill the legal gap but, given the lack of legal competence of the Community⁵⁵ and the sensitive issue of the interrelationship between the respective jurisdictions of the ECJ and ECHR, the situation is that very few cases were brought before the Court concerning minorities⁵⁶ and the Court has never examined the minority concept as such. This is regrettable having regard to the leading role the ECJ has played and still plays in the evolution of the protection of human rights at the Union level.

1.2.2. The Charter of Fundamental Rights of the EU⁵⁷: A First Reference to «National Minorities»

Notwithstanding several proposals urging for the inclusion of a separate minority clause in the 2000 Charter of Fundamental Rights of the EU, this document is characterised by the absence of specific clauses devoted to positive minority rights or protection⁵⁸. Article 21 however states that: «1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features [⁵⁹], language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited». Whereas the explicit reference to «national minorities» is a key innovation, it cannot in itself be considered a major breakthrough in the member states' commitment to minority rights and protection.

First, Article 21 of the Charter draws on Article 13 EC Treaty and

resembles the wording of Article 14 and Protocol 12 of the European Convention on Human Rights, thus, reflecting the principles laid down in Article 6 EU. Second, non-discrimination is only one element of minority protection but is, generally, not in itself regarded as a sufficient basis for an efficient and comprehensive minority protection policy⁶⁰. Similar conclusions apply to Article 22 of the Charter devoted to «Cultural, religious and linguistic diversity» and stating that «the Union shall respect cultural, religious and linguistic diversity».

The absence of a clear enforcement mechanism has been identified as a major flaw of the Charter of Fundamental Rights. It remains a non-legally binding document until the still potential ratification of the Constitutional Treaty but might be used by the ECJ for interpretative purposes⁶¹. Nonetheless, it has been argued that the inclusion of «membership of a national minority» as a basis for non-discrimination «opens up opportunities for norm entrepreneurs to argue more convincingly in favour of a substantial minority standard than ever before, as well as a point of reference for the ECJ to extend its recognition of national minority protection and maybe even establish minority protection as a general principle of Community law»⁶². The European Convention preparing the treaty establishing a Constitution for Europe explicitly dealt with this question and decided to integrate the Charter as a specific part of the Constitutional Treaty. Hence, the question arises to what extent this step would change the legal basis for developing a policy on the protection of minorities.

*1.2.3. The Treaty Establishing a Constitution for Europe⁶³:
The «Respect for the Rights of Persons Belonging to Minorities»
as a Foundational Value, Common to the Member States*

First of all one should refer to the Preamble of the Constitutional Treaty because the member states, after a quiet passionate debate, rejected the inclusion of a reference to the «Christian heritage», which was perceived as a source of discrimination against the religious minorities living in the EU member states. The text adopted is the following: «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». This reference to the heritage of Europe is not

exclusive and cannot lead to discriminate the so-called «old minorities» who contributed to the cultural and religious inheritance of Europe. New minorities, for their part, could use the second paragraph referring to the need to «continue along the path of civilisation, progress and prosperity, for the good of all its inhabitants [and not citizens!⁶⁴], including the weakest and most deprived; that it wishes to remain a continent open to culture, learning and social progress; and that it wishes to deepen the democratic and transparent nature of its public life [...]».

The leitmotiv of the expected constitutional EU is also to be recalled: «convinced that, thus “United in diversity”, Europe offers them the best chance of pursuing, with due regard for the rights of each individual and in awareness of their responsibilities towards future generations and the Earth, the great venture which makes of it a special area of human hope». In fact «United in diversity» does not only refer to the relationships among the individual member states and between them and the Union, but must also be appreciated in the light of Article II-82 entitled «Cultural, religious and linguistic diversity» (cf. *infra*).

The most interesting provision dealing with the minority issue is the amended version of Article I-2⁶⁵, stating that 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»⁶⁶. In contrast to Article 6(1) EU, this new provision introduces «human dignity» and «equality» in the list of Union values whereas the expression «fundamental freedoms» has been removed. In addition, a completely new sentence has been introduced. It is arguable that the concepts of «pluralism», «tolerance» and «non-discrimination» indirectly relate to the objective of minority protection⁶⁷. Last but not least, Article I-2 explicitly refers to minority rights as an inclusive part of human rights⁶⁸. In other words, it seems that this provision merely codifies the broad interpretation of Article 6(1) EU, according to which the notion «human rights and fundamental freedoms» already included minority rights. From this perspective, the supplemented expression «including the rights of persons belonging to minorities» does not represent a revolutionary change. It is, however, an important signal

of the EU's commitment to minority rights which provides more consistency between the Copenhagen criteria for accession and the EU's foundational principles. For instance, the Council could sanction a state⁶⁹ for infringements of minority rights on the basis of Article I-59 of the Constitutional Treaty, which basically replaces Article 7 EU⁷⁰.

Whereas respect to minority rights is now defined as a «foundational value» of the EU, it is not expressly mentioned as one of the Union's objectives referred to in Article I-3. Article I-3 only refers to the objective to «combat social exclusion and discrimination» in general terms and specifically mentions the protection of the rights of the child. However, this article proclaims that the Union «shall respect its rich cultural and linguistic diversity», thus introducing an implicit reference to minority protection.

Apart from Article I-2, the only other direct reference to minority rights is included in Article II-81, which incorporates Article 21 of the Charter of Fundamental Rights and thus defines «membership of a national minority» as a ground for discrimination. Article II-81 also identifies «language» as one of the grounds on which discrimination is prohibited. Remarkably, no explicit references to «minorities» or «language» can be found in Articles III-118 and III-124, which retain the more limited grounds for discrimination mentioned in Article 13 EC (sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation). In addition, the unanimity requirement for the adoption of measures combating discrimination shall also apply after the entry into force of the Constitution⁷¹.

Given the limits to the scope of application of Article II-81, the Constitutional Treaty does not seem to extend the Union's competences with regard to the adoption of measures against discrimination of minorities. First, Article II-111 proclaims that the Charter of Fundamental Rights «does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union or modify powers and tasks defined in the other Parts of the Constitution». Second, the Charter's potential legally binding force is based on explanations that were added to each Charter article and explain their background and limitations. According to this explanation, Article II-81 «does not create any power to enact anti-discrimination laws in these areas of Member State or private action, nor does it lay down a sweeping ban

of discrimination in such wide-ranging areas. Instead, it only addresses discriminations by the institutions and bodies of the Union themselves, when exercising powers conferred under other articles of Parts I and III of the Constitution, and by Member States only when they are implementing Union law therefore [para. 1] does not alter the extent of powers granted under Article III-124 nor the interpretation given to that Article»⁷². From this perspective, the impact of Article II-81 will be rather limited and is clearly not sufficient to speak about a significant evolution in the EU's minority protection framework.

2. MINORITIES IN THE PRE-ACCESSION PROCESS, NEIGHBOURHOOD POLICY AND EUROMED PARTNERSHIP: A «MULTI-STANDARDS APPROACH»

2.1. *The Minority Factor in the Pre-Accession Process*

The ethnic composition of many Central and Eastern European applicant countries, as well as the outbreak of ethnic violence in ex-Yugoslavia, inspired the 1993 Copenhagen European Council to define «*respect for and protection of minorities*» as a specific political pre-condition for EU accession.

2.1.1. *The Copenhagen Criteria Regarding «Respect for and Protection of Minorities»*

The clarification of this concept constituted one of the main challenges for the European Commission, which elaborated the meaning of the pre-accession criteria in the Agenda 2000, the comprehensive document on enlargement of July 1997. Confronted with the difficult questions concerning the identified conceptual problems (cf. *supra*), the Commission avoided a rigid definition of minorities.

In its Opinions on the Estonian and Latvian membership applications, the Commission made clear that it would take into account the situation of «all the ethnic and cultural communities residing in these countries, irrespective of the nationality of the people concerned»⁷³. In this respect, the definition of the concept of national minorities adopted by Estonia in its Declaration to the Council of Europe Framework Convention⁷⁴ was called to be irrelevant. In other words, the Commission clearly preferred a rather

pragmatic interpretation of minority protection and defined the integration of minority populations into society as an essential prerequisite for democratic stability⁷⁵.

It is noteworthy, as already mentioned, that Article 6(1) EU, which basically transposed the Copenhagen political criteria into primary EU law, does not include a reference to minorities. This observation raised doubts about the EU's commitment to give minority protection a clear internal dimension⁷⁶ and seems to confirm the view that «for the European Union, concern for minorities is primarily an export product and not one for domestic consumption»⁷⁷. As mentioned earlier, it could, however, be argued that minority rights are included in the expression «human rights and fundamental freedoms»⁷⁸. Be that as it may, the absence of a well-designed internal EU policy in the field of minority protection implies that there is no clear EU catalogue of minority rights.⁷⁹ Hence, provisions such as Article 27 of the United Nations' International Covenant on Civil and Political Rights and Articles 31 and 32 of the OSCE Copenhagen Declaration on Human Rights and Fundamental Freedoms (see *supra*) deliver a minimum standard regarding the sort of rights that minorities should enjoy in a candidate country⁸⁰. In addition, the Commission's references to texts adopted by the Council of Europe, in particular the Framework Convention for the Protection of National Minorities and Recommendation 1201 (1993) of the Council of Europe's Parliamentary Assembly⁸¹, reveal a rather broad interpretation of minority protection as the Framework Convention, for instance, includes a number of specific minority rights, which cannot easily be reduced to the traditional list of general human rights⁸². Furthermore, the European Commission indicated that the sole formal recognition of minority rights would not be sufficient to pass the conditionality test. The focus on the «*effective implementation of minority rights*» was most obvious with regard to the situation in Slovakia⁸³.

2.1.2. *The Limits of the Pre-Accession Methodology: A Problem of Capacity and Consistency*

The European Commission opinions on the applications for membership and the regular reports on the progress towards accession contained a – sometimes rather modest – chapter on «minority rights and the protection of minorities»⁸⁴. On the basis of these reports, the Council adopted Accession Partnerships (APs)

laying down a number of priorities related to minority issues⁸⁵. The main problem for the EU, however, has been the absence of clear internal standards in this area. As a result, the Commission assessments essentially relied on documents of the OSCE and the Council of Europe. For instance, all Commission reports refer to the Council of Europe Framework Convention on National Minorities. The observation that several EU member states have not ratified this Convention, in combination with the weakly developed *acquis* in the field of minority protection, contributed to an unwelcome double standards' perception⁸⁶.

Moreover, a comparative analysis of the APs reveals a lack of consistency in the EU's approach. With regard to minority protection, for instance, the AP with Slovakia insisted on «the adoption of legislative provisions on minority language-use and related implementing measures»⁸⁷. This recommendation to promote the use of minority languages strikingly contrasts with the EU's almost exclusive focus on the proliferation of the official state language in the APs with Estonia and Latvia. The different demographic and geopolitical situation of the countries involved seems to explain the divergent positions but, from a legal point of view, this hardly justifies the EU's flexible approach *vis-à-vis* the interpretation of the pre-accession condition on «respect for and protection of minorities».

Finally, the observation that the European Commission reports essentially assess the implementation of the *acquis*, which is insufficient to evaluate the state of democracy, human rights and the rule of law, has been identified as one of the main weaknesses of the EU's pre-accession methodology⁸⁸. The EU lacks an independent monitoring mechanism or at least clear rules or guidelines for assessing the political criteria. The Commission reports refer to the candidate countries, the member states, European Parliament reports and conclusions of international as well as intergovernmental organisations as its main sources of information. In addition, the European Commission's delegations in the candidate countries have been consulted. It is, however, impossible to measure the relative weight of these various sources.

2.1.3. The Copenhagen Minority Criterion Applied: Russian-Speaking Minorities in Estonia and Latvia

The question of minority protection turned out to be particularly

relevant with regard to the membership applications of Estonia and Latvia. Both countries decided to restore their pre-war citizenship legislation after the dissolution of the Soviet Union. Accordingly, only citizens of the pre-war republics and their descendents were entitled to citizenship in 1991. Citizens of the former Soviet Union who had arrived during the Soviet era and their children had – and still have – to pass a process of naturalisation, including *inter alia* a language and national history test, to acquire an Estonian or Latvian passport. This situation, which was only clarified after an initial period of absolute legal uncertainty⁸⁹, implies that both Estonia and Latvia have to deal with a large number of stateless persons, called «non-citizens» or «aliens»⁹⁰. In addition to the citizenship question, restrictive language laws constitute the main problem for the approximately 800,000 Russian speakers in Latvia and 225,000 in Estonia⁹¹.

The pre-accession condition of «respect for and protection of minorities» provided the EU with a crucial instrument to monitor and influence the minority situation in Estonia and Latvia. The proclaimed impact of the EU's conditionality policy upon the situation of the Russian-speaking minorities in Latvia and Estonia is, however, very controversial. Whereas certain observers subscribe to the official stance that the prospect of accession contributed to significant improvements concerning the naturalisation procedure and the legislation on the use of minority languages in official procedures⁹², others have criticised the European Commission's flexible and favourable approach towards the restrictive policies of the Estonian and Latvian governments⁹³. In spite of the important drawbacks in the EU's political conditionality approach (cf. *supra*), it cannot be denied that the European Commission recommendations have contributed to important changes in Estonia's and Latvia's citizenship and language legislation. In 1998, for instance, Latvia abolished the so-called «window system»⁹⁴ and granted, upon request of their parents, citizenship to stateless children born in Latvia after 21 August 1991. Furthermore, the Latvian government eliminated restrictions preventing non-citizens from working as fire-fighters, airline staff, and pharmacists. «Non-citizens» could receive unemployment benefits without presenting certificates of Latvian language knowledge and the naturalisation procedures for people over the age of 65 and disabled persons were simplified⁹⁵. Similar amendments could be observed in Estonia. There is, therefore, little

doubt that the process of EU accession has been a force for improvement. It would, however, be a grave exaggeration to suggest that the Baltic States' accession to the EU automatically solved the problems of integration of the Russian-speaking population. Conclusions of the UN Human Rights Committee⁹⁶ and the Council of Europe⁹⁷ reveal the continued existence of numerous problems such as the slow naturalisation process and its consequences in terms of the enjoyment of political rights and the possibility to occupy certain positions in the public and private sectors.

2.1.4. *A New Differentiation After the Enlargement of the EU*

The Baltic States' EU accession has introduced a new differentiation between Estonian and Latvian citizens, on the one hand, and the «non-citizens» on the other. Whereas the former can rely on the rights connected to their status of EU citizens⁹⁸ and the extensive case law of the European Court of Justice in this respect, non-citizens are treated as third-country nationals under EU law. This difference in legal status has important consequences in terms of free movement rights. According to the ECJ's established case law, third-country nationals – including stateless persons – cannot autonomously rely on the provisions concerning free movement of persons⁹⁹. All rights they have in this area depend on a family relationship with a migrant national of an EU member state¹⁰⁰ or on an employment contract with an undertaking established in an EU member state, providing services in another member state¹⁰¹. Significantly, Council Directive 2003/109 concerning the status of third-country nationals who are long-term residents partly elevates this distinction¹⁰². The EC long-term resident status entails some important provisions protecting the rights of third-country nationals such as a right of equal treatment with the citizens of the member state, a right of residence in other member states and enhanced protection against expulsion. Directive 2003/19 introduces the possibility for non-citizens to acquire an EC residence permit after five years of legal residence and on the condition that they have a sickness insurance as well as stable and sufficient resources in order not to become a burden on the social security system of their member state of residence.

Importantly, Article 5(2) of the Directive further states that «Member States may require third-country nationals to comply with integration conditions, in accordance with national law». The

Directive does not contain any specifications concerning the permissible national integration conditions. Consequently, it seems that the member states retain a large freedom of appraisal. In Latvia, applicants for the EC long-term resident status have to pass a test in order to prove a basic knowledge of the Latvian language¹⁰³. The Estonian Parliament decided to introduce a similar language requirement only from June 2007 onwards. Accordingly, this condition is primarily targeted at new immigrants whereas non-citizens who have lived in Estonia for a long time and already hold an Estonian long-term resident permit are able to apply for an EC long-term resident permit without additional integration requirements¹⁰⁴.

Against the background of Directive 2003/109, it is also noteworthy that the European Commission has issued an important Communication on immigration, integration and employment, which not only called upon the member states to facilitate their nationality laws but also promoted the idea of «civic citizenship»¹⁰⁵. This concept entails the granting of «certain core rights and obligations to immigrants which they would acquire over a period of years, so that they are treated in the same way as nationals of their host state, even if they are not naturalised»¹⁰⁶. A consequence of this principle could be the granting of voting rights in local and European elections for long-term resident third-country nationals. This option is not included in Directive 2003/109. The proposal to link the rights of EU citizenship to stable residence in the Union rather than to the nationality of a member state has also not been withheld in the envisaged Constitutional Treaty but remains an interesting mindset¹⁰⁷.

2.2. The Minority Issue in the European Neighbourhood Policy Framework

After the «big bang» enlargement of 1 May 2004, the EU now faces the challenge to devise appropriate strategies for the spread of democracy and stability in its neighbourhood, in particular to countries that do not – or not immediately – have a prospect of accession. The gradual development of a European Neighbourhood Policy (ENP) constitutes one of the EU's answers to this challenge. In spite of the absence of any «immediate enlargement perspective» for its target countries, a reading of the Commission documents on the ENP immediately reveals the influence of the «pre-accession

methodology»¹⁰⁸. Without offering the big (or «golden») carrot of accession, attractive goals such as trade liberalisation and enhanced financial support are designed to stimulate a process of legislative approximation, political democratisation and economic development.

2.2.1. *The Progressive Inclusion of Minority Issues in the ENP Strategy Documents*

In its first so-called «Wider Europe» Communication on the topic, the Commission proposed a «differentiated, progressive and benchmarked approach», based upon action plans setting out the actions the EU expects from its partners and operating as a platform for assessing its implementation in ENP Country Reports (CRs)¹⁰⁹.

The entire strategy is based upon a commitment to «shared values» and «common interests». Significantly, the first Commission Communication on the ENP did not include any specific reference to minorities or minority rights and protection. It only indirectly referred to this issue when it defined the «values codified in the UN Human Rights Declaration, the OSCE and Council of Europe standards» as important benchmarks to evaluate progress in the implementation of the ENP Action Plans (APs)¹¹⁰. The subsequent 2004 ENP Strategy Paper clarified the importance of minority rights as a specific value of the ENP: «*the privileged relationship with neighbours will build on mutual commitment to common values principally within the fields of the rule of law, good governance, the respect for human rights, including minority rights, the promotion of good neighbourly relations, and the principles of market economy and sustainable development*»¹¹¹. Thus, the approach is apparently similar to Article I-2 of the Constitutional Treaty, with the noticeable difference that the ENP Strategy Paper seems to focus more on «specific» minority rights rather than on the notion of the «rights of persons belonging to minorities». This apparently innocent linguistic difference seems to imply that, in the ENP context, the EU not only aims at the protection of individual minority rights but also at rights of minority groups¹¹².

The Strategy Paper clearly states that the development of bilateral relations with the ENP target countries essentially depends upon «the extent to which common values are effectually shared»¹¹³. However, strong differentiation can be observed in the various ENP documents as far as minority rights and protection is concerned.

2.2.2. *The Country Reports: A Number of Minority Issues Highlighted*

The tables below illustrate that the European Commission adopted a similar approach to assess the protection of minorities in the Southern Caucasus and in the Eastern European neighbours. Essentially, the screening of the Commission is based on the state of ratification of the instruments of the Council of Europe (the «worse student» being Georgia) and on an analysis of the policy followed by the respective partners. The Council of Europe Framework Convention on National Minorities is the main point of reference, and was thus mentioned in all Commission's Country Reports (CRs) regarding European neighbours. It is noteworthy that the work of the OSCE High Commissioner for National Minorities is only mentioned with regard to Georgia.

Country	ENP Country Reports: Southern Caucasus countries
Armenia	– ratified the Framework Convention on National Minorities in 1998. According to the Council of Europe, insufficient attention and resources have been devoted, to date, to the promotion of minorities' linguistic and cultural heritage.
Azerbaijan	– has taken positive steps to combat racism and intolerance and to improve the protection of minorities <i>inter alia</i> by ratifying international conventions, such as the CoE Framework Convention for the Protection of National Minorities. The rights of national minorities are protected on the basis of the relevant constitutional provisions. [...] Despite these positive developments, discrimination is reportedly still present in Azerbaijan's society, as stressed by CoE's European Commission against Racism and Intolerance (ECRI). The rights of particularly vulnerable groups such as ethnic Armenians, refugees or small religious groups need more effective protection.
Georgia	– has yet to ratify the Council of Europe's Framework Convention on National Minorities or sign the European Charter for Regional or Minority Languages. The government has committed itself to developing a civic integration strategy and the authorities are working with the OSCE High Commissioner for National Minorities to implement a Conflict Prevention and Integration Programme in Samtskhe-Javakheti, a region where the Armenian-speaking community finds itself isolated from the rest of Georgia. Georgia also needs to comply with the commitment made on acceding to the Council of Europe to ensure the repatriation and integration of the Meskhetian population which was deported to Central Asia from Georgia during Stalin's era.

Regarding Eastern Europe, the considerations devoted to

minorities and minority rights are more developed. The screening is based on the achievements made by the partner country at the level of the Council of Europe and OSCE and on the state of the national legislations, the later being more detailed compared to those realised for the Southern Caucasus countries. The report on Moldova is most interesting given its references to the implementation of the national legislation and to comments made by the UN Human Rights Committee.

Country	ENP Country Reports: Eastern Europe countries
Moldova	<p>– ratified in 1996 the Council of Europe Framework Convention for the Protection of National Minorities. Legislation in Moldova attributes a special status to the Russian language of interethnic communications. [...] in areas where the Ukrainian, Russian and Bulgarian population or other ethnic minorities form a significant part of the population, it allows the use of minority languages in the public administration, as well as in the drafting of official acts. The law guarantees the right for pre-school, general, vocational, and higher education in Moldovan and in Russian, at the same time providing the possibility for members of other minorities to enjoy the right to education in their own language. However, according to the UN Human Rights Committee effective implementation is lacking. Concerns have also been raised about the situation of the Roma and the Gagauz communities that continue to face discrimination, mostly in rural areas.</p> <p>According to the OSCE, the human rights situation in the separatist region [of Transnistria] is unsatisfactory. Rights of minorities, in particular language rights, are not respected. A small group of schools in Moldovan language operate thanks to the efforts of the OSCE. Freedom of speech and diversity of opinion have been continuously under attack. So have associations and political parties that were not fully in line with the view of the ruling group.</p>
Ukraine	<p>– the Council of Europe Advisory Committee on the Framework Convention noted in November 2002 that Ukraine has, since its independence, taken a number of positive measures to protect national minorities. Nevertheless, particularly members of groups such as formerly deported persons (in particular Crimean Tartars), the Roma community, immigrants with or without legal status, asylum-seekers and refugees are reportedly faced by racism, direct and indirect discrimination, intolerance or disadvantage. The 1996 Constitution and the 1991 Law on Freedom of Conscience provide for freedom of religion and the authorities generally respect these rights in practice; however, a number of minority and non-traditional religions have reportedly experienced difficulties in registration and in buying and leasing property.</p>

As far as the Mediterranean partners are concerned, the Country Reports represent a giant step in recognising even the existence of minority issues, although it is true that the European Commission,

during the last decade, already briefly mentioned, in various documents, some of those issues (notably in the Israeli-Palestinian context). But, with the ENP Country Reports, the need to promote in the future specific minority rights is clearly a new topic on the agenda of a number of Mediterranean partners. Analysing the various CRs yet adopted, the first element to underline is the richness of the references devoted to minorities. On the other hand, there is a clear heterogeneity between the Mediterranean CRs. Also, compared to the CRs devoted to the Eastern European neighbours, there is no reference made to specific European instruments with the noticeable exception of the fact that it is mentioned that Morocco is an «OSCE Mediterranean partner for cooperation». It is however too early to say that this could serve as an example for other OSCE Mediterranean partners such as Algeria, Egypt, Israel, Jordan and Tunisia¹¹⁴. One must also underline the fact that the old idea of establishing an «Organisation for Security and Cooperation in the Mediterranean» has been recalled by the European Parliament in a Resolution adopted regarding the European Neighbourhood Policy¹¹⁵.

The ratification of UN Human Rights Conventions but also ILO's Fundamental Conventions is mentioned in certain cases (Morocco) but not systematically, which is regrettable particularly regarding UN instruments. Noteworthy is that state religion is a specificity of some of the Mediterranean partners. Also the main religious minorities are generally mentioned in the CRs.

Country	ENP Country Reports: Mediterranean countries
Egypt	<p>– Islam is the state religion and the principles of Islamic jurisprudence are the main source of law. The Constitution proclaims equality for all citizens, irrespective of religion, race or sex, the latter within the limits of Islamic jurisprudence;</p> <p>– the <i>Coptic community</i> is estimated to comprise around 10% of the population. Representatives of the <i>Coptic community</i> are present in Parliament and in the government. They are not, however, recognised as a «minority» and no special provision exists for their protection. There is a small and decreasing Egyptian <i>Jewish community</i> and a few <i>Baba'is</i>. Proselytising and conversion is not prohibited by either the Constitution or the Civil and Penal Codes. However, the Islamic Sharia prohibits conversion to Christianity and administrative obstacles have been reported in officially registering a change of religion from Islam to Christianity.</p>

MINORITIES IN THE EURO-MEDITERRANEAN AREA

Country	ENP Country Reports: Mediterranean countries
Israel	<ul style="list-style-type: none"> – the Declaration of Independence (DoI) proclaims equality for all citizens, irrespective of religion, race or sex. The DoI [...] guarantees freedom of religion. There is no official religion. But the orthodox Jewish law, Halakha, has an important role in Israeli legislation and public life. Matters of personal status are governed by the religious laws of the parties concerned who have their own courts. The recognised religions are <i>Judaism, Islam, ten Christian denominations, Bahai and Druze</i>; – Israel has ratified the core UN Human Rights Conventions, except the two Optional Protocols to the International Covenant on Civil and Political Rights; – the <i>Arab minority</i>, Muslim, Christian and Druze, makes up almost 20% of the Israeli population. Although the Declaration of Independence proclaims equality for citizens, Israeli legislation contains laws and regulations that favour the Jewish majority. In this respect, the UNHRC expressed its concern, in its conclusions on Israel's implementation of the «International Covenant on Civil and Political Rights», about the adoption in July 2003 of the «Citizenship and Entry into Israel» Law, in particular, the potentially discriminatory nature of its provisions. As highlighted by an Israeli Commission report presented in 2003, the <i>Arab minority</i> also suffers from discrimination in many areas including budget allocations, official planning, employment, education and health. In July 2001, the High Court ruled [...], that Israeli Arabs were entitled to fair and proportionate representation in governmental bodies [...]; – the <i>Arab minority</i> is severely affected by the Nationality and Entry into Israel Law of 2003, suspending for a renewable one-year period, the possibility of family reunification, subject to limited exceptions; – about 100.000 <i>Arabs (Bedouins)</i>, mostly in the Negev, live in villages considered illegal by the state. The Israeli government announced measures to close the gap between the living conditions of Jews and Bedouins in the Negev and approved a five-year plan, which consists among other measures of moving villages and destroying others; – access to justice: problems exist for migrant workers and for activities in the occupied territories. Appeal to the courts is the only recourse for Palestinians, in cases such as deportation, house demolition, damage, injury and land seizure [...]; – figures (regarding poverty rate) are higher among the <i>Arab minority</i> (where 45% of the families fell in the poverty category).
Jordan	<ul style="list-style-type: none"> – in the elections of June 2003, opposition parties that presented candidates included 31 political parties, including Islamists, tribal parties, communist, Baathist and liberal parties; – the judicial system consists of a complete hierarchy of tribunals including civilian courts (for civilian and criminal cases), religious courts (for private and familial matters concerning Muslims and non-Muslims); – Jordan has ratified the core UN Human Rights Conventions, except the two Optional Protocols to the International Covenant on Civil and Political Rights;

Country	ENP Country Reports: Mediterranean countries
	<p>– the state religion of Jordan is Islam and the overwhelming majority of the population are <i>Sunnis</i>. Ethnic groups, such as <i>Circassians</i> and Chechens, are <i>Hanafi Muslims</i>. There is, in general, no visible official discrimination against religious and minority groups and <i>Christians</i> who form about 4% of the population have the right to go to church and give their children religious education;</p> <p>– the constitution prohibits all forms of discrimination. Minorities, either ethnic or religious, suffer no obvious discrimination in Jordan. Minority ethnic groups, notably Circassians, Chechens and Armenians have their own self help organisations and social and cultural clubs which operate publicly and freely. Minorities are represented in government and in Parliament through quotas. The government has recently acknowledged that Palestinians constitute 40% of the population of 2 million. Other estimates, however, place that percentage higher;</p> <p>– estimates of the <i>number of foreign workers in Jordan vary significantly, between 350,000 and 1.5 million</i>. A large number of these work in the agricultural sector. Migrant women workers are predominantly employed as domestic helpers.</p>
Lebanon	<p>– political system characterised by power sharing between religious confessions. According to the Taëf Agreement Christians and Muslims are represented on a 50:50 basis in the Parliament, the Council of Ministers as well as in all high ranking civilian and military posts. All sub-communities Alawi, Druze, Shia, Sunni within the Muslim community, and Armenian Catholic, Armenian Orthodox, Greek Catholic, Greek Orthodox are represented as well;</p> <p>– Maronites and Protestants within the Christian community are represented in a «proportional» manner within this overall ratio. [...] The inter-communal political competition maintains a large space for political dialogue and no leader or group can dominate. Broad consent is required to pass important government decisions, decrees, or laws;</p> <p>– Lebanon has ratified the core UN Human Rights Conventions, except some of the Optional Protocols. It has not yet signed or ratified the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;</p> <p>– the Constitution provides for freedom of belief. There is no state religion in Lebanon. Every citizen must belong to a specific religious group. In order to seek official recognition as religious group, a dogma and moral principles are to be submitted for governmental review to ensure that they do not contradict the Constitution or popular values. State recognition is, however, not a requirement to practice religious rites. Lebanon is a mosaic of religious minorities with 18 officially recognised religious groups. No official census has been conducted since 1932. Baha'is, Buddhists and Hindus are not officially recognised, and are allowed to practice their religion freely, although their marriages, divorces and inheritance are not recognised under the law. No law in Lebanon provides for civil marriages. There has been a relatively successful effort to shape a united national armed force without consideration of religious affiliation;</p>

MINORITIES IN THE EURO-MEDITERRANEAN AREA

Country	ENP Country Reports: Mediterranean countries
	<p>– there are around 250,000 Palestinian refugees in Lebanon, mostly living in one of twelve overpopulated refugee camps. In addition, it is estimated that Palestinian refugees face <i>de jure</i> and <i>de facto</i> discrimination as compared with other non-citizens, with regard to the right to own and inherit property, the right to work and social security, access to housing and social services, as well as the rights to effective remedies and are restricted from rebuilding or redeveloping refugee camps due to government-imposed restrictions. [...] Most Palestinian refugees are housed in 12 camps with poor living conditions and are barred from most forms of employment and economic activity. Only a few have been allowed to settle as legal residents.</p>
Morocco	<p>– Morocco’s constitution guarantees a multi-party system. There are currently 29 parties represented in Parliament. At present, the biggest parties in the ruling coalition are the Socialist Union of Popular Forces (USFP), the Istiqlal conservatives and the <i>Berber-speaking parties of the Popular Movement</i>;</p> <p>– Morocco has ratified the core UN Human Rights Conventions, except the two Optional Protocols to the International Covenant on Civil and Political Rights [...] ratified most of the ILO’s Fundamental Conventions [...], except Convention No. 87 on the freedom of association and protection of the right to organise. [...] Morocco is officially a Muslim country and Islam is the state religion, but the constitution guarantees freedom of religious worship. The <i>Jewish and Christian communities</i> are able to practise their faiths freely. Islamic law takes a harsh view of the conversion of a Muslim, hence to attempt to do so is a crime and proselytising can result in deportation. However, no deportations have been reported since 1998 and the government encourages tolerance and respect between religions;</p> <p>– Arabic is the only official language, despite the fact that some 60% of the population claim to have Berber origins and a significant proportion of the Berber-speaking population do not speak any other language. The various Berber dialects have no official status and use of the Berber language is very limited at all levels. Over the past few years, there have been a growing number of calls for full recognition of the Berberspeaking community’s cultural and linguistic rights. These are starting to be met: October 2001 saw the creation of the Royal Institute of <i>Amazigh</i> culture, which for the first time in 2004, proposed pilot projects for the teaching of Berber in schools;</p> <p>– Morocco is a member of the United Nations Organisation and an OSCE Mediterranean partner for cooperation;</p> <p>– Morocco claims sovereignty over the Western Sahara, which is also claimed by the Polisario Front. The conflict, which has been going on since 1975, has a negative effect on Morocco’s relations with other countries in the region, particularly Algeria.</p>
Palestinian Authority	<p>– a number of NGOs promotes intercultural dialogue based on equality and reciprocity between Arabs and Israelis, including the Arab Palestinian minority in Israel with the aim of working together for mutual benefit and tangible results. These initiatives are designed to help re-create the conditions among civil society for relaunching the peace process;</p> <p>– equality of all Palestinians under the Law and Judiciary is affirmed in the Basic Law which does not permit discrimination on the basis of race, sex, colour, religion, political views, or disability. The Palestinian Electoral Law sets a quota of representatives of religious minorities at the PLC.</p>

Country	ENP Country Reports: Mediterranean countries
Tunisia	<p>– the Penal Code punishes all ethnic and religious discrimination as well as public incitement to ethnic and religious discrimination. The Constitution lays down that political parties must respect and defend the country's Arab and Muslim identity. The Islamic party An-Nahda was dissolved on the basis of this Article in the Constitution;</p> <p>– Tunisia is an ethnically homogeneous country with small Berber and Amazigh minorities. The state religion is Islam (Article 1 of the Constitution) which is also the religion of the President of the Republic. There is a small Jewish minority. Despite the Constitutional primacy of Islam, state action is in practice based on secular principles. As regards international law, Tunisia has ratified the United Nations Convention on the Elimination of All Forms of Racial Discrimination.</p>

2.2.3. The Strong Differentiation Among Action Plans Regarding Minority Protection

Largely inspired by the pre-accession methodology, the ENP Country Reports form the basis for the adoption of specific Action Plans (APs) identifying, among other things, the priorities for future action in the ENP target countries. The priority areas and the correlated action of cooperation will be financed on the basis of the new European Neighbourhood and Partnership Instrument (ENPI). This also reflects the practice of the Accession Partnerships and of the pre-accession financing.

Given the fact that no Action Plans have yet been adopted for the Southern Caucasus' countries, our comparative analysis is more limited than for the CRs. Moreover, in comparison to the CRs the Action Plans' provisions devoted to minorities are not so developed.

For the European Eastern neighbours, ensuring effective protection of minority rights as well as compliance with regional instruments and policies, is a clear priority for action. It is noteworthy that the APs only refer to «national minorities» and to «European standards». This approach is in line with the specific attention devoted to the CoE Framework Convention on National Minorities in the CRs but raises questions concerning the protection of other than «national» minorities living in those countries.

MINORITIES IN THE EURO-MEDITERRANEAN AREA

Country	ENP Action Plans: Eastern European countries
Moldova	<p>Priorities for Action:</p> <ul style="list-style-type: none"> – ensure effective protection of rights of persons belonging to national minorities; – appropriate response to conclusions and recommendations of relevant Council of Europe structures and experts on state of compliance by Moldova with the Framework Convention for the Protection of National Minorities; put in place and implement legislation on anti- discrimination and legislation guaranteeing the rights of minorities, in line with European standards.
Ukraine	<p>Priorities for Action:</p> <ul style="list-style-type: none"> – ensure respect for rights of persons belonging to national minorities; – continue efforts in designing relevant legislation and effectively protecting the rights of persons belonging to national minorities, based on European standards; – continue close cooperation between government authorities and representatives of national minorities.

For the Mediterranean partners, protection of minority rights is apparently no priority for action. Promotion and protection of the rights of minorities is, however, mentioned as a «shared value» in the Israeli AP. There are strong discrepancies between the various APs, ranging from the absence of a specific clause on minorities in the APs with Jordan and Tunisia to clear commitments to the protection of minority rights in the Israeli and Palestinian APs. The Moroccan AP is situated at an intermediate level as it focuses only on «*cultural and linguistic rights of all peoples of the Moroccan nation*» (an implicit reference to Berbers peoples). It is striking that the rights of Moroccan workers in the EU (to be considered as a «new minority» in countries such as Spain, France, Belgium or the Netherlands) are also taken into account.

Country	ENP Action Plans: Mediterranean partners
Israel	<p>Shared Values:</p> <ul style="list-style-type: none"> – promote and protect rights of minorities, including enhancing political, economic, social and cultural opportunities for all citizens and lawful residents; – promote in Europe and in Israel education about the importance of tolerance and respect for all ethnic and religious groups; – promote cooperation in the field of cultural and linguistic heritage, including, where possible, protection of minority languages (e.g. Yiddish and Ladino).
Jordan	– no specific clause on minorities.

Country	ENP Action Plans: Mediterranean partners
Morocco	<ul style="list-style-type: none"> – promote cultural and linguistic rights of all peoples of the Moroccan nation; – pursue the dialogue on living conditions of Moroccan workers and their families legally resident in the EU with a view to identifying ways and means of achieving progress on equal treatment and improving social integration; – pursue the dialogue on improving the exchange of information on programmes and initiatives to facilitate social inclusion, the integration of disadvantaged groups in the labour market and combating discrimination and xenophobia.
Palestinian Authority	<p>Priorities:</p> <ul style="list-style-type: none"> – enhancing political dialogue and cooperation, based on shared values, including issues such as strengthening the fight against terrorism and incitement to violence, promoting the protection of human rights and the rights of minorities, improving the dialogue between cultures and religions, cooperating in the fight against racism and xenophobia, in particular anti-Semitism and Islamophobia.
Tunisia	– no specific clause on minorities.

On the basis of these comparative tables a number of general conclusions can be drawn. First, minority protection is mentioned in every ENP Country Report and Action Plan that has been adopted to date with the EU's Eastern European neighbours. As far as the Mediterranean partners are concerned, the situation is extremely heterogeneous. This issue is generally raised in the CRs but some of the APs do not contain any specific reference to minorities.

Second, ratification of the Council of Europe Framework Convention on National Minorities forms the primary benchmark for all European ENP target countries. In addition, the Commission refers to other CoE documents and to the monitoring activities of the OSCE. Only exceptionally reference is made to the UN Human Rights Committee. The situation is completely different for the Mediterranean countries. For them, the major references are the UN Human Rights Conventions.

Third, the ENP Action Plans contain rather general statements on the need of «effective protection of rights of persons belonging to national minorities». One can therefore expect, as in the pre-accession framework, some problems relating to the effectiveness of the methodology and tools to be used during the screening process of the European Commission¹¹⁶.

2.3. Minorities Within the Euro-Mediterranean Partnership Framework

Within the Euro-Mediterranean Partnership minority protection has not been, until now, considered as a specific domain for dialogue and cooperation.

2.3.1. The Failure to Introduce an Explicit Reference to Minority Rights in the Barcelona Declaration and the Absence of a Regional Dialogue on and with Minorities

The issue of the «protection of the rights of minorities» was originally introduced in the earlier versions of the Barcelona Declaration as it was foreseen to insert a paragraph mentioning the explicit commitment of the partners to guarantee the «legitimate rights» of peoples belonging to «ethnic, cultural, linguistic or religious minorities»¹¹⁷.

Discussions between member states, at the level of the COREPER, on this particular issue were difficult and a first proposal to refer to «national minorities» – like in the 1975 Helsinki Final Act, a major source of inspiration of the Barcelona Declaration – was introduced by Germany and Luxembourg. The proposal was, however, rejected and the member states reached a different compromise that was presented on 10 April 1995 to the Mediterranean partners for a first round of informal discussions¹¹⁸. In this version the word «minorities» had already disappeared. Instead, the new paragraph 5 was formulated as follows: «(Human rights) Commitment of the partners to respect human rights and fundamental freedoms and guarantee the exercise of such rights and freedoms, both individually and together with other members of the same group, without any discrimination on grounds of race, nationality, language, religion or sex». This quite ambiguous formula is identical to the one that was presented, as the official position of the EU, at the June 1995 Cannes European Council.

After the discussions held during the Barcelona Conference, the final version of the Barcelona Declaration is the following: «respect human rights and fundamental freedoms and guarantee the effective legitimate exercise of such rights and freedoms, including freedom of expression, freedom of association for peaceful purposes and freedom of thought, conscience and religion, both individually and together with other members of the same group, without any

discrimination on grounds of race, nationality, language, religion or sex». In other words, the second part of the proposed paragraph was not amended during the conference and the absence of an explicit reference to the protection of «minority rights» is therefore a decision taken by the member states themselves. However, one can assume that a minority clause would have been also very much discussed by the Mediterranean partners. One should note however, in this last version, the insertion of a reference to «freedom of thought, conscience and religion» before the ambiguous formula («exercise their rights both individually and together with other members of the same group, without any discrimination on grounds of race, nationality, language, religion or sex»), thus confirming an implicit reference to peoples belonging to different kind of minorities.

Of course, one could argue that the long developments of the Barcelona Declaration devoted to universal values and fundamental rights encompass minority rights. In this regard, one should recall that the United Nations Charter and the Universal Declaration of Human Rights, «as well as other obligations under international law, in particular those arising out of regional and international instruments to which [the participants] are party» are presented as the main references in the Barcelona Declaration. However, the UN Charter does not mention explicitly the minorities' issue and only sets out to promote universal «respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion», whereas the Universal Declaration of Human Rights proclaims that «all human beings are born free and equal in dignity and rights» without distinction of any kind¹¹⁹.

More interesting is therefore one of the following paragraphs stating that the participants should «respect and ensure respect for diversity and pluralism in their societies, promote tolerance between different groups in society and combat manifestations of intolerance, racism and xenophobia». The reference to «diversity» and to the «different groups in society» can also be interpreted as encompassing «religious, ethnic, linguistic minorities» but, in any case, the non-legally binding nature of the Barcelona Declaration limits indeed the possibilities of a teleological-type of interpretation. The lack of an explicit reference to «minorities» as such was therefore very damaging as far as dialogue and cooperation within the Barcelona Process were concerned.

At the multilateral level and as far as we know, minority protection was not taken into account within the framework of the Euromed Ministerial meetings nor at the level of the Euromed Civil Forum. The only explicit reference was made in the final Declaration of the 2003 Naples Euromed Civil Forum where it was stated that respect for human rights «implies the guarantee of the rights of minorities and refugees wherever they live as well as the fight against all kinds of racism and xenophobia»¹²⁰.

The Euro-Mediterranean Human Rights Network (EMHRN) also achieved little in this regard but an exception is to be pointed out. In the report entitled *A Human Rights Review on the EU and Israel*¹²¹ quite long comments are devoted to the Arab minority living in Israel. In this regard, the report, at the beginning of a section devoted to «Israeli Minority Rights, EC Agreements and Cooperation Agreements» quoted the «Declaration of the EU on the Fourth Meeting of the Association Council EU-Israel of 17-18 November 2003»: «The EU's bilateral relations are based on shared respect for human rights and democratic principles, an essential element of our association agreement as set out in Article 2. The EU seeks to uphold the universality, interdependence and indivisibility of all human rights. The promotion and protection of human rights including rights of persons belonging to minorities as well as fundamental freedoms constitute a major objective of the EU's external relations». This confirms the broader understanding of the essential element clause by the European Commission's services. According to the report: «in Israel, the absence of constitutional equality for the Arab minority and the fundamental definition of the state as Jewish have ensured a system of structural and institutional discrimination against the Arab citizens of Israel. The discriminatory educational and employment obstacles faced by the Palestinian Arab minority in Israel effectively limit their ability to participate in the EC Framework Programmes and to access financial instruments like the European Investment Bank's global loan programme»¹²². These issues, raised in 2004, are now taken into account within the ENP framework and one can expect that the EMHRN will develop its activities and notably its independent screening in this area.

In conclusion for the multilateral aspects, it seems now time to introduce the issue of minorities and minority protection in the Euromed arena. Until now, only Turkey has been evaluated as far as minority rights are concerned, due to its inclusion in the pre-

accession process. In the years to come other Southern and Eastern Mediterranean partners will also have to deal with regular ENP screening reports encompassing those sensitive issues. This is indeed an important asset of the ENP in comparison to the Barcelona Process.

2.3.2. *The Euro-Mediterranean Association Agreements (EMAAAs):
The Absence of a Specific Minority Clause*

As far as the EMAAAs are concerned one should refer to the well-known «essential element clause» but also to other provisions such as the Preamble and the Provisions devoted to the prevention of discrimination. If we take the example of the Moroccan agreement, a Preamble clause stresses the «importance which the Parties attach to the principles of the United Nations Charter, particularly the observance of human rights and political and economic freedom, which form the very basis of the association». This clause must be interpreted in the light of the legally binding «essential element clause» of Article 2 which, still in the case of Morocco, is formulated as follows: «Respect for the democratic principles and fundamental human rights established by the Universal Declaration of Human Rights shall inspire the domestic and external policies of the Community and of Morocco and shall constitute an essential element of this Agreement». All EMAAAs «essential element» clauses refer to the Universal Declaration of Human Rights with two exceptions: Israel and Tunisia. However, the same conclusions drawn from the analysis of the Barcelona Declaration regarding the UN Charter and the UDHR applies here with the difference that an explicit reference to minority protection, in the body of the EMAAAs, would have been legally binding as it is the case in other external agreements like the one concluded with Chile or in some PCAs for example¹²³.

The agreement concluded with Algeria is of special interest as it is one of the latest agreements signed and therefore includes new types of provisions compared to the first wave of EMAAAs. It includes notably an Article 88 entitled «Combating Racism and Xenophobia» stating that the parties agree to «take appropriate steps to prevent and combat discrimination in all its forms and manifestations, whether it be on grounds of race, ethnic origin or religion, particularly in the fields of education, employment, training and housing. Public information and awareness campaigns will be

organised to this end. The Parties shall in particular ensure in this context that all persons who consider themselves victims of such discrimination have access to judicial and administrative procedures. The provisions of this Article do not relate to differences of treatment based on nationality»¹²⁴. Like Article 13, para. 1, EC Treaty, this clause is not designed to protect or promote specific minority rights but minorities can and are actually often discriminated «on grounds of race, ethnic origin or religion, particularly in the fields of education, employment, training and housing». The insertion of this article reflects the internal evolution of EC competences and must also be studied in the light of the evolution of the European dual citizenship concept. In the case of Algeria one must also take into account the sensitive issue of the various Berbers communities.

In any case, there is no proper minority clause in the EMAAs, and one can therefore suggest the insertion, in the foreseen ENP European Neighbourhood Agreements, of new clauses including a clear commitment towards the recognition of the need to protect specific minority rights (see final recommendations).

Another element of the EMAAs to be mentioned in the perspective of launching a Euromed Intercultural Dialogue on Minorities is that, apart from the multilateral framework of the Barcelona Declaration, bilateral dialogue channels should also be used. Technically there is no major obstacle as the provisions of the EMAAs devoted to political dialogue are very open. Taking again the example of the Moroccan EMAA, Article 3 states that the regular political dialogue and cooperation are intended in particular to «facilitate rapprochement between the Parties through the development of better mutual understanding and regular coordination on international issues of common interest», and Article 4 states that this political dialogue «shall cover all issues of common interest to the Parties, in particular the conditions required to ensure peace, security and regional development». The recent establishment of new EMAAs sub-committees on human rights is therefore of interest in this regard.

2.3.3. The MEDA and MEDA Democracy Programmes: The Failure to (Properly) Address Minority Protection

The MEDA Programme covering the 1995-2006 was based originally on the MEDA I Regulation of which Article 3 states that

«this Regulation is based on respect for democratic principles and the rule of law and also for human rights and fundamental freedoms, which constitute an essential element thereof, the violation of which element will justify the adoption of appropriate measures»¹²⁵. The amendments introduced by the 1998 Regulation and MEDA II Regulation did not modify the conditionality clause itself. Therefore, as in the EMAAs there is no specific reference made to minorities as such.

In contrast to the MEDA Programme, the MEDA Democracy Programme – introduced in 1996 *via* a specific budget line adopted by the European Parliament¹²⁶ – dealt with minority issues. The «Final Report - Evaluation of the MEDA Democracy Programme 1996-1998»¹²⁷ is, in this regard, interesting for identifying the operational priorities and in order to evaluate what was actually achieved regarding minority protection during this period of time. First of all, it is said that: «four important minorities can be singled out: the Berbers in Algeria and Morocco, the Palestinians in areas still under Israeli military rule, Arab Israelis, and the Copts in Egypt. In Morocco, the “Amazigh” language of the Berbers is not included in the education of children, while in Algeria an “Arabisation” campaign has been launched in 1998 and threatens the cultural rights of the Berbers»¹²⁸. Second, it has been evaluated that «measures to protect minorities (average 4%) were a priority in Israel with 23% of all MDP (MEDA Democracy Programme) projects in this country. This corresponds to the second-class status of the Arab population inside Israel, one of the most pressing human rights issues in that country»¹²⁹. On the other hand, the evaluation clearly highlighted that the «intervention strategy failed to adequately address» the Berber minority issue in Morocco and Algeria¹³⁰. Nevertheless the MEDA Democracy Programme was indeed very innovative.

The MEDA Democracy Programme was then merged into the European Initiative for Democracy and Human Rights (EIDHR) on the basis of Regulation 976/1999¹³¹ stating, in its Preamble, that operations to be conducted should «focus on those discriminated against or suffering from poverty or disadvantage, children, women, refugees, migrants, minorities, displaced persons, indigenous peoples, prisoners and victims of torture» (Point 14). Article 3 furthermore stated that the European Community «shall provide technical and financial aid for operations aimed at: (d) Support for

minorities, ethnic groups and indigenous peoples; [...]

(j) Promoting and protecting the fundamental freedoms mentioned in the International Covenant on Civil and Political Rights, in particular the freedom of opinion, expression and conscience, and the right to use one's own language». The 2006 EIDHR Annual Work Programme for its part foresees, for example, a specific budget for projects aiming at «securing equal rights and treatment of persons and people belonging to minorities irrespective of racial, ethnic or caste origin, or of language and religion»¹³².

3. OBJECTIVES AND MOST IMPORTANT ISSUES AT STAKE FOR LAUNCHING A EUROMED INTERCULTURAL DIALOGUE ON MINORITIES (EIDM)

3.1. *The Main Objectives of a Euromed Intercultural Dialogue on Minority Protection and Participation*

3.1.1. *Minorities as a «Human Security» Issue: A Specific Dialogue for a Potential Belligerence Factor*

As mentioned on the OSCE website «ethnic conflict is one of the main sources of large-scale violence»¹³³. Accordingly, one of the main tasks of the OSCE High Commissioner is to provide «early warning» and, as appropriate, «early action» at the earliest possible stage «in regard to tensions involving national minority issues which have not yet developed beyond an early warning stage, but, in the judgement of the High Commissioner, have the potential to develop into a conflict within the OSCE area»¹³⁴. This preventive type of action could and should be developed in the Mediterranean area, more particularly in cooperation with the OSCE Mediterranean partners for cooperation.

The experience of the Pact on Stability in Europe provides another interesting example of preventive diplomacy. This originally French response to ethnic tensions in Central and Eastern Europe gave rise to an EU CFSP Joint Action as a result of the June 1993 Copenhagen European Council¹³⁵. Motivated by the conflict in Yugoslavia, the main objective of the Pact was to bring the countries of this region together in specific round tables in order to resolve the problems of minorities and to strengthen the inviolability of frontiers. The Pact on Stability, adopted on the occasion of the Paris Conference on 20-21 March 1995, included a declaration and a list

of bilateral and regional agreements. Significantly, all parties acknowledged their commitment to good neighbourly relations on the basis of regional treaties and conventions with a clear reference made to (specific) minority rights and protection as a shared value¹³⁶. Moreover, agreements on friendly relations and the establishment of joint projects dealing *inter alia* with questions relating to minorities illustrate the relevance of the Stability Pact as an important «confidence building measure» between the parties concerned. Given the specific mandate of the OSCE regarding borders and minorities, the 1995 Paris Conference transferred the responsibility for the implementation of the Stability Pact to this organisation¹³⁷.

It is clear that, in the Mediterranean region, a specific dialogue on the «security dimension» of minority issues could be conducted in parallel to a broader intercultural dialogue. In this respect, the still frozen «Euro-Mediterranean Charter for Peace and Stability»¹³⁸ could, in the future, provide an appropriate basis. In the meantime, the OSCE Mediterranean dialogue as well as the NATO Mediterranean initiative¹³⁹ and the Euromed dialogue and cooperation on the European Security and Defence Policy could serve as laboratories for developing innovative approaches based on human security, conflict prevention and confidence building measures.

3.1.2. Minority Protection and Participation as a Tool to Consolidate and Promote Democracy

The level of protection of minority rights is a clear benchmark for evaluating the general situation regarding human rights and participatory democracy in a given country. A country can respect its citizen's rights but deny them to «non- or second-rate citizens». As stressed by the Office of the High Commissioner for human rights «to be a citizen is a requirement for being able to participate in the democratic processes in the country concerned. When deprived of the possibility of voting and of being elected, significant groups have no satisfactory peaceful channel to advance their values and interests, and the risk is then high that their frustration may lead to undesirable forms of action»¹⁴⁰.

The limited possibilities of political participation for minorities contribute to a further alienation from the state institutions. The result is a vicious circle of self-segregation, a lack of motivation to pass the nationalisation procedure and the establishment of a

serious and long-term democratic deficit. It also seems obvious that, among the less represented groups, the lack of proportionate representation in state institutions contributes to an increasing distrust in the functioning of these institutions. In general, lack of national language proficiency and citizenship are two major factors restricting the opportunities for minorities to participate effectively in public life. This is particularly the case for representation in elected institutions such as parliaments and city councils.

It is noteworthy that a recent report of the European Parliament's Committee on Civil Liberties, Justice and Home Affairs, argued that minority groups such as Roma and non-citizens «must be granted equality in terms of social and political rights» and called upon the member states to draw up strategies to increase the involvement of minorities in elections (as both voters and candidates) at all levels¹⁴¹. It seems that the political participation and representation is more and more recognised as a fundamental prerequisite for the integration of minority populations. Accordingly, it forms a topic to be included in the «Euromed Intercultural Dialogue on Minorities» (EIDM).

3.1.3. Minority Protection as an Instrument to Ensure Social Cohesion and Prosperity

Even in cases where no evidence can be found of obvious discrimination, differences in legal status entail the risk of generating frustrations. The practical implementation of extensive language and citizenship requirements and its consequences on the availability of employment opportunities is of particular importance in this regard. It can be argued that an exclusive approach to citizenship is, in itself, already a form of exclusion. Lack of formal citizenship limits the permanent residents' political rights, reduces the opportunities to hold a number of public positions and to become integrated in the welfare state. It can therefore be concluded that the requirement of citizenship often has an important impact on job opportunities and integration into the labour market.

On the other hand it must be stressed that it is often education and not «ethnicity» or «citizenship» that is the most important variable in explaining social exclusion¹⁴². Concomitantly, education is sometimes recognised as the most appropriate tool for the preparatory stage in establishing the conditions for dialogue¹⁴³ and

plays as a consequence a key role in the intercultural dialogue¹⁴⁴. The better job opportunities for recognised citizens in comparison to «non-citizen» would then be the result of their higher education and not of their legal status. It is rather difficult to analyse the relative weight of the «citizenship» and «education» factors in explaining the backward position of minorities on the labour markets¹⁴⁵. In any case, the European Commission, in a 2004 Communication, stressed that «the risk of poverty is closely linked to unemployment and inactivity. Almost 40% of the unemployed had income below the poverty level in 2000, while the integration of people with disabilities, the long-term unemployed and ethnic minorities into employment remains a key challenge if the risk of poverty and social exclusion is to be reduced»¹⁴⁶.

As differences in the legal status between citizens and non-citizens and socio-economic consequences often provoke a feeling of discrimination among the minority populations¹⁴⁷, this phenomenon can have negative implications for the consolidation of the democratic system and the possibility to use existing human resources for further economic development. It is, therefore, clear that the avoidance of an ethnically and linguistically divided society between «haves» and «haves no» is one of the most important challenges of an intercultural dialogue.

In this regard, the European Commission recalled that «within the Social Inclusion Strategy, it was stressed in the 2003 Joint Inclusion Report the need to make a drive for reducing poverty and social exclusion among immigrants and ethnic minorities as one of the six critical priorities». This approach has been confirmed in the 2005 Joint Report on social protection and social inclusion. In this document, the Commission considered that societies will reap socio-economic benefits if they «create the necessary conditions for the integration of immigrants and ethnic minorities into the formal labour market and if they learn to manage inter-cultural tensions and are able to break down barriers to their economic and social integration»¹⁴⁸.

As far as the pre-accession strategy is concerned, the 2002 European Commission reports on the minority situation in Estonia and Latvia emphasized that any integration policy should ensure the awareness, consultation and involvement of all sections of the population¹⁴⁹. The lack of a constructive dialogue between minorities and state institutions, as well as the limited possibilities of

political participation and representation of minorities, can be identified as an important obstacle to integration¹⁵⁰.

3.2. *The Main Obstacles and Issues at Stake*

Minority protection can be a very sensitive issue in any of the countries covered by the analysis, be they «future», «new», «old» EU member states or partners located in EU's periphery.

3.2.1. *Challenges to Member States' and Partners' Sovereignty*

For countries having a strong history of centralisation, such as France and many countries covered by the ENP, or for certain Eastern European countries who just regained their sovereignty, the reluctance to increase territorial decentralisation is obvious.

In this respect, the Office of the UN High Commissioner for Human Rights stressed that «*effective participation by minority groups, and effective enjoyment of their cultural rights, may sometimes require territorial decentralization or local autonomy arrangements. This can be a good device in some circumstances, but can be extremely dangerous in others. If decentralization is to serve a useful purpose, it must be territorial, not ethnic; it must be a contribution to democracy, not ethnocracy*»¹⁵¹. The view of the High Commissioner seems excessively based on a «security threat perception», but it is true that the challenge is to find a balance between, on the one hand, the legitimate state sovereignty and, on the other hand, the necessity to open safely the public space to minority participation, particularly at local and regional levels¹⁵².

3.2.2. *Risks of Hijacking a Euromed Intercultural Dialogue on Minorities*

One of the main risks when launching an ambitious Euromed Intercultural Dialogue on Minorities is that it could be hijacked by extremists' groupings trying to use it for propaganda purposes. In the Euromed context one could however argue that there is already an embryo of Euromed religious dialogue that, as far as we know, did not generate noticeable problems. In any case, we saw through the analysis of the ENP CRs that numerous minority issues have a religious dimension in the Mediterranean area and it is clear that this should be very carefully handled given the present international context. Ethnic aspects are also not to be underestimated if we think

about the relationships between Arabs and the various Berbers communities living in North Africa including (semi-)nomads still crossing what they consider as artificial borders. A dialogue between certain ethnic tribes and the public authorities will hardly be balanced, at least at the beginning and it should be clear that raising minority issues in certain countries can lead to a much tensed confrontation.

Pragmatism and flexibility must therefore be the rules. Launching a dialogue with people often marginalised, and thus excluded from the traditional dialogue channels and political life, will certainly not be an easy task. A step by step approach seems therefore inevitable.

3.2.3. *The Choice of the «Minority Standard»: Universal versus Regional Values*

One of the first issues to address in an Euromed Intercultural Dialogue on Minorities will certainly be the debate on the choice of the reference standard or norm regarding minorities. Generally speaking, one should promote references to universal values but it will be difficult for the member states or European neighbours to avoid references to the Council of Europe or OSCE instruments and, accordingly, for Arab countries to avoid mentioning Arab or Muslim instruments and texts.

Another solution could be to combine multiple references to universal, European and Arab or even Muslim standards, the latter being however more problematic. Indeed, as a prerequisite, one should underline the fact that for a Muslim country any reference to a declaration on human rights will always state that the rights described must conform to Islamic law. That does not mean that non-European instruments should not be taken into account. On the contrary, in order to speak about «shared values», a comparison of all basic documents seems necessary in order to identify common denominators. This approach avoids perceptions of «double standards» or «unilaterally imposed Eurocentric norms» while enhancing a sense of joint ownership.

It is, therefore, indispensable to refer to certain major declarations such as the «Universal Islamic Declaration of Human Rights» of 19 September 1981. This Declaration includes a specific Article X on the «Rights of Minorities» according to which: «a) The Qur'anic principle "There is no compulsion in religion" shall govern the religious rights

of non-Muslim minorities. b) In a Muslim country religious minorities shall have the choice to be governed in respect of their civil and personal matters by Islamic Law, or by their own laws». Another interesting document is the «Cairo Declaration on Human Rights in Islam» adopted and issued at the nineteenth Islamic Conference of Foreign Ministers in Cairo on 5 August 1990¹⁵³ stating, in Article 1, that: «(a) [...] All men are equal in terms of basic human dignity and basic obligations and responsibilities, without any discrimination on the grounds of race, colour, language, sex, religious belief, political affiliation, social status or other considerations [...]». In other words, the issue of minorities has not been put aside in those declarations. History reveals that in countries such as Morocco, minorities were indeed better protected than in certain actual member states, the protection of the Moroccan Jewish minority, during WW II being a well-known example¹⁵⁴. On the other hand, recent developments, in a number of Mediterranean partners, are indeed worrying and illustrate the necessity of an intercultural dialogue.

CONCLUSIONS AND PROPOSALS

The protection of minorities is to be considered as a fundamental value of democratic societies. Moreover, the integration and participation of minority populations is a crucial condition for security, stability and even prosperity. Hence, the minority issue forms an increasingly important dimension of the EU's external relations. The proclamation of «respect for and protection of minorities» as a specific condition for accession and the inclusion of human rights clauses, with explicit or implicit references to minorities, in the EC's bilateral agreements illustrates this tendency. Arguably, the ENP confirms this evolution with specific references to the situation of minorities in the Country Reports and in most of the Action Plans.

There is now a clear, but slow, convergence between international and regional instruments even if major discrepancies still exist between them. The challenge is to find a common basis for dialogue within the patchwork of political declarations and conventions at the international and regional levels. Furthermore, the absence of a clear-cut definition of what constitutes a minority remains problematic and it is doubtful that a solution could be

reached in the near future. The same applies to the adoption of an international (or regional) legally-binding instrument defining a minimum standard of minority protection in the form of a list of «specific minority rights».

Whereas the increased attention to the protection of minorities in the EU's neighbourhood is understandable and can only be welcomed, the EU faces a number of conceptual problems. The work of the EU is further complicated due to the absence of a comprehensive internal EU policy on this question, which is in its turn again related to a lack of legal competences. The divergent practices and internal sensitivities of the EU member states imply that no common EU standard can be expected in the immediate future. The potential adoption of the treaty establishing a Constitution for Europe will not fundamentally alter this situation.

The complexity of the minority issue becomes obvious in the ENP framework. A comparative analysis of the various Country Reports and Action Plans reveals that the EU applies multiple standards and frameworks for assessing the state of play in the ENP target countries. On the one hand, a certain differentiation is natural and logical given the different political and legal situations in the countries concerned. On the other hand, exaggerated differentiation can lead to perceptions of discrimination. There is, therefore, a strong need for more consistency to increase the legitimacy of the Commission's work. A common understanding of the so-called «shared values» is indeed a crucial prerequisite for launching a fruitful intercultural dialogue with the ENP partners. This is particularly important for the Euro-Mediterranean area, given the different cultural, political and legal background of the countries concerned.

According to the European Commission, one of the overall objectives of the European Year of Intercultural Dialogue shall be to contribute to «raising awareness [...] of the importance of developing active European citizenship which is [...] based on the common values in the European Union of [...] respect for human rights, including the rights of persons belonging to minorities»¹⁵⁵. In our opinion, this dialogue should be fully extended to the Euromed area as a whole and should not avoid the issue of the so-called «new minorities».

On the basis of our study, the following suggestions have come to the fore:

1. The establishment of a network of Euro-Mediterranean experts, on the basis of UN and EU good practices, seems a prerequisite to identify the main issues at stake and priorities to be discussed in multilateral and bilateral Euromed dialogue frameworks;

2. The minority issue should become a priority of the dialogue conducted within Human Rights sub-Committees. In this respect the civil society should contribute actively and at all levels to the debates, as the «Euromed Intercultural Dialogue on Minorities» (EIDM) should be a dialogue between (group of) people(s) (and not only citizens) and between (group of) people(s) and institutions;

3. The Euromed Parliamentary Assembly as well as the Euromed Civil Forum and the Euromed Trade Union Forum should therefore address the issue to stimulate further reflection in order to reinforce the sense of ownership and directly encourage participatory democracy;

4. The work already achieved in the OSCE framework with the OSCE Mediterranean partners should be valorised and further developed. It provides an interesting platform for further synergies between regional and universal standards and practices and, as such, has the potential for identifying common denominators and «shared values»;

5. Approximation of references to minorities included in the various EU's proximity strategies and instruments is a matter of credibility and consistency;

6. ENP European Neighbourhood Agreements should introduce new clauses on clear commitments towards the recognition of the need to protect specific minority rights;

7. Cross-border cooperation, a key element of the ENP¹⁵⁶, is also to be promoted notably in the case of minority groups living in different countries and across regional groupings¹⁵⁷;

8. In the absence of a formal definition of what constitutes a minority, a pragmatic position should be adopted. Proceeding from the objective of democratic stability, the situation of the various communities residing in a given territory, irrespective of the nationality of the people concerned, has to be taken into account;

9. The issue of «new minorities» should be taken into account at EU level¹⁵⁸ but also in the ENP countries becoming not only «transit» and «readmission» countries but progressively «final

destination countries» of new flows of illegal migrants trying to reach the Fortress Europe;

10. A better coordination of OSCE, ESDP and NATO Mediterranean initiatives regarding the development of a specific security dialogue on «minority protection», in parallel to a more general Euromed Intercultural Dialogue on Minorities should be promoted.

¹ See C. Hillion, *Enlargement of the European Union: The Discrepancy between Membership Obligations and Accession Conditions as Regards the Protection of Minorities*, in «Fordham International Law Journal», vol. 2, 2003, pp. 715-740; G. Schweltnus, *Double Standards? Minority Protection as a Condition for Membership*, in H. Sjurson (ed.), *Questioning Enlargement. Europe in Search of Identity*, London-New York, Routledge, 2006, pp. 186-200.

² Belarus is also an ENP target country but largely remains outside this framework as long as the authoritarian regime of President Lukashenko is in place. Today, Libya is neither a Mediterranean partner nor an ENP beneficiary.

³ This specific framework is not taken into account in the analysis. For an analysis see D. Analis, Y. Plasseraud and G. Chaliand, *Les minorités dans les Balkans*, Paris, Groupement pour les droits des minorités, 1993, p. 88; P. Radan, *The Break-Up of Yugoslavia and International Law*, London, Routledge, 2002, p. 278.

⁴ References to Arab and Islamic instruments are also introduced in the third section.

⁵ According to J. Yacoub: «Une communauté autonome ethnoculturelle (entendue dans un sens large) structure, minorisée sur place ou à distance, de dimension variable, à échelle large ou réduite, à l'intérieur même de son territoire national, ou au-delà dans des États divers sous lesquels ses membres vivent depuis des générations, et dont ils sont citoyens et partie intégrante, en position vulnérable, et qui malgré l'exil interne ou externe, la marginalisation et l'oppression, maintiennent une conscience collective identitaire, sont animés par un vouloir-vivre ensemble, veulent conserver leur cohésion, leur continuité et leurs traits propres (langue, religion, culture, moeurs, foi, mode de vie...) qui les distinguent du groupe dominant, de la majorité nationale comme des autres minorités, dans un espace géographique et une société politique indivise. Elles cherchent à maintenir, préserver et exprimer leurs spécificités, individuellement aussi bien qu'en commun, dans une égalité de droits (sociaux, juridiques et économiques), sous différentes formes et par des canaux institutionnels, à entretenir des liens au-delà des frontières avec des membres de leur communauté citoyens d'autres États, et établir, pour les communautés diasporées, des contacts avec leur pays d'origine», J. Yacoub, *Les minorités dans le monde. Faits et analyses*, Paris, Desclée de Brouwer, 1998, p. 128. For an extensive academic analysis, see A. Fenet, G. Koubi and I. Schulte-Tenckhoff, *Le droit et les minorités*, Brussels, Bruylant, 2000, pp. 392-428. According to F. Capotorti: «A group numerically inferior to the rest of the population of a state, in a non-dominant position, whose members – being nationals of the state – possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity directed towards preserving their culture, traditions, religion or language», F. Capotorti, *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities*, New York, United Nations, 1991, para. 568. According to J. Deschênes: «A group of citizens of a state constituting a numerical minority and in a non-dominant position in that state, endowed with ethnic, religious or linguistic characteristics which differ from those of the majority of the population, having a sense of solidarity with one another, motivated, if only implicitly, by a collective will to survive and whose aim is to achieve equality with the majority in fact and in law», J. Deschênes, *Proposal Concerning the Definition of the Term «Minority»*, E/CN.4/Sub.2/1985/31, 14 May 1985. See also R. Riddell, *Minorities, Minority Rights and*

Development, Issues Paper, Minority Rights Group International, 2002, p. 7.

⁶ More than 140 states signed the CCPR. It is important to note that France made a reservation to this article and declared that this article is not applicable so far as the French Republic is concerned.

⁷ Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities adopted by General Assembly Resolution 47/135 of 18 December 1992 (emphasis added).

⁸ Office of the High Commissioner for Human Rights, General Comment n. 23: The Rights of Minorities (Article 27), CCPR/C/21/Rev.1/Add.5, April 1994, para. 5.2.

⁹ Report of the Independent Expert on Minority Issues, Gay McDougall, C/CN.4/2006/74, 6 January 2006, para. 23.

¹⁰ *Ibidem*. In the explanatory report to the FCNM it is said that it is «an individual choice to be treated or not to be treated as a person belonging to a national minority. But this individual subjective choice can not be made arbitrarily, but is inseparably linked to objective criteria relevant to the person's «identity» (Framework Convention for the Protection of National Minorities, Explanatory Report, paras. 34 and 35).

¹¹ Office of the High Commissioner for Human Rights, General Comment n. 23: The Rights of Minorities (Article 27), CCPR/C/21/Rev.1/Add.5, April 1994, paras. 5.1 and 5.2.

¹² Report of the Independent Expert on Minority Issues, Gay McDougall, C/CN.4/2006/74, 6 January 2006, para. 24.

¹³ See the definitions of Capotorti and Deschênes at note 5.

¹⁴ K. Henrard, *Charting the Gradual Emergence of a More Robust Level of Minority Protection: Minority Specific Instruments and the European Union*, in «Netherlands Quarterly of Human Rights», vol. 4, 2004, p. 561.

¹⁵ Office of the High Commissioner for Human Rights, General Comment n. 23: The Rights of Minorities (Article 27), CCPR/C/21/Rev.1/Add.5, April 1994, paras. 5.1 and 5.2; Report of the Independent Expert on Minority Issues, Gay McDougall, C/CN.4/2006/74, 6 January 2006, para. 25.

¹⁶ Commentary of the Working Group on Minorities to the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, E/CN.4/Sub.2/Acc.5/2005/2, 4 April 2005, para. 11.

¹⁷ This question is, for instance, highly relevant for the protection of the Russian-speaking minorities in Estonia and Latvia. Persons who settled in the latter countries during the Soviet period are considered as «soviet era immigrants» in contrast to other minority groups that already lived in this area before the incorporation into the Soviet Union. See M. Maresceau, *Quelques réflexions sur l'origine et l'application de principes fondamentaux dans la stratégie d'adhésion de l'Union européenne*, in *Liber Amicorum en l'honneur de Jean Raux. Le droit de l'Union européenne en principes*, Rennes, Apogée, 2006, pp. 77-81. More complex problems can also be raised within the Israeli-Palestinian context or regarding the situation of the different «categories» of Palestinian refugees living in neighbouring Arab countries, «non-citizenship» being one of the common denominators of these highly sensitive questions.

¹⁸ Working Group Established Pursuant to Economic and Social Council Resolution 1995/31 of 25 July 1995, as a «subsidiary organ of the Sub-Commission on the Promotion and Protection of Human Rights (previously called the Sub-Commission on Prevention of Discrimination and Protection of Minorities). The Working Group on Minorities meets in Geneva, once a year, for five working days [...]. Some of the issues discussed in its meetings which may interest its various partners are: multicultural and intercultural education – recognition of the existence of minorities – participation in public life, including through autonomy and integrative measures – inclusive development – conflict prevention», at www.unhchr.ch/minorities/group.htm.

¹⁹ In 2005, the Commission on Human Rights adopted Resolution 2005/79, which requested the High Commissioner for Human Rights to appoint, for a period of two years, an Independent Expert on minority issues.

²⁰ The Convention for the Protection of Human Rights and Fundamental Freedoms includes an Article 14 on «Prohibition of discrimination» stating: «The enjoyment of the

rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status», Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4 November 1950. However, the principle of non-discrimination of Article 14 has no existence on its own. It can only be invoked in combination with other rights and freedoms of the Convention. The Protocol 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 2000 includes also a reference to national minority in Article 1 «General prohibition of discrimination»: «The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status», Council of Europe, Rome, 4 November 2000, at www.echr.coe.int/.

²¹ European Charter for Regional or Minority Languages, Strasbourg, 5 November 1992, available at <http://conventions.coe.int/treaty/en/treaties/html/148.htm>.

²² For a detailed analysis see P. Thornberry and M. Martin Estébanez, *Minority Rights in Europe: A Review of the Work and Standards of the Council of Europe*, Strasbourg, Council of Europe, 2004, pp. 137-168.

²³ Framework Convention for the Protection of National Minorities, Strasbourg, 1 February 1995, available at <http://conventions.coe.int/treaty/en/treaties/html/157.htm>.

²⁴ It is important to take into account the Opinions of the Advisory Committee, in which it evaluates the adequacy of the implementation of the FCNM, for the interpretation of the Framework Convention. According to the Advisory Committee, for example, «The parties have a margin of appreciation in defining the concept national minorities», but that «this margin of appreciation has to be exercised in accordance with general principles of international law and the fundamental principles set out in article 3 of the FCNM». The implementation of the FCNM should not, also according to the Advisory Committee, «be a source of arbitrary or unjustified distinctions». See for example: Opinion on Bulgaria, ACFC/OP/I(2006)001, 27 May 2004, para. 14; Opinion on Malta, ACFC/INF/OP/I(2001)006, 30 November 2000, para. 11; Opinion on Russia, ACFC/INF/OP/I(2003)005, 13 September 2002, para. 18; Opinion on Sweden, ACFC/INF/OP/I(2003)006, 25 August 2002, para. 14.

²⁵ However, the FCNM does not recognise directly applicable specific rights to minorities and leaves a big margin of appreciation to the member states.

²⁶ Interpretative declarations concerning the FCNM are available at <http://conventions.coe.int/Treaty/Commun/ListeDeclarations.asp>.

²⁷ Budapest Summit in 1994, Declaration *Towards a Genuine Partnership in a New Era*, part VII, point 22.

²⁸ Recommendation 1201 (1993) on an additional protocol on the rights of national minorities to the European Convention on Human Rights, 1 February 1993, available at <http://assembly.coe.int/main.asp?link=/documents/adoptedtext/ta93/erec1201.htm>.

²⁹ The Committee of Ministers noted that «an approach to an additional protocol [...] has proved not to be feasible for several reasons, *inter alia* because it contains certain elements (the definition of a national minority), [...] which do not muster the general support of all member states», Rights of Persons Belonging to National Minorities - Parliamentary Assembly Recommendations 1134 (1990), 1177 (1992), 1201 (1993), 1255 (1995), 1285 (1996), 1300 (1996) and 1345 (1997), 19 January 1999.

³⁰ The ECHR observes that «such a definition would be very difficult to formulate», ECHR, 17 February 2004, 44158/98, *Gorzelik and other v. Poland*, para. 67.

³¹ According to the Advisory Committee assisting the Committee of Ministers in the evaluation of the adequacy of the implementation of the FCNM a «generally applicable citizenship criterion can be a legitimate requirement in relation to certain measures taken in accordance with the principles of the FCNM for example as regards provisions guaranteeing minority representation in the legislature in accordance with the constitutional law of the party concerned, but, by contrast, a generally applicable citizenship criterion is problematic

in relation to guarantees in some other key fields covered by the FCNM, such as non-discrimination and education, especially when some groups have difficulties in acquiring citizenship», Opinion on Croatia, ACFC/INF/OP/II (2004)002, 1 October 2004, para. 29.

³² European Parliament Resolution on the Protection of Minorities and Anti-Discrimination Policies in an Enlarged Europe, A6-0140/2005 of 8 June 2005, para 7. It should be pointed out that the EP reproduced the definition of Recommendation 1201 (1993) without reference to the citizenship criterion. The EP gives no justification why it let out this reference.

³³ It concerns a network set up by the European Commission upon the request of the European Parliament.

³⁴ Report on the Situation of Fundamental Rights in the European Union in 2003, January 2004, p. 100.

³⁵ EU Network of Independent Experts on Fundamental Rights, Thematic Comment No. 3: The Protection of Minorities in the European Union, 25 April 2005, p. 10.

³⁶ «A group of persons in a state who: a. Reside on the territory of that state and are citizens thereof».

³⁷ Article 2: «Membership of a national minority shall be a matter of free personal choice. No disadvantage shall result from the choice or the renunciation of such membership». Article 3: «Every person belonging to a national minority shall have the right to express, preserve and develop in complete freedom his/her religious, ethnic, linguistic and/or cultural identity, without being subjected to any attempt at assimilation against his/her will. Every person belonging to a national minority may exercise his/her rights and enjoy them individually or in association with others». Article 4: «All persons belonging to a national minority shall be equal before the law. Any discrimination based on membership of a national minority shall be prohibited». Article 5: «Deliberate changes to the demographic composition of the region in which a national minority is settled, to the detriment of that minority, shall be prohibited».

³⁸ Articles 6 to 11. Among them, Article 6: the right to «set up their own organisations, including political parties [...]». Article 7: the right «freely to use his/her mother tongue in private and in public, both orally and in writing, apply to the use of his/her language in publications and in the audiovisual sector». Article 8: the right to «set up and manage their own schools and educational and training establishments within the framework of the legal system of the state». Article 9: «If a violation of the rights protected by this protocol is alleged, every person belonging to a national minority or any representative organisation shall have an effective remedy before a state authority». Article 10: «The right to have free and unimpeded contacts with the citizens of another country with whom this minority shares ethnic, religious or linguistic features or a cultural identity». Article 11: «In the regions where they are in a majority the persons belonging to a national minority shall have the right to have at their disposal appropriate local or autonomous authorities or to have a special status, matching the specific historical and territorial situation and in accordance with the domestic legislation of the state».

³⁹ CSCE 1975 Helsinki Final Act, available at www.OSCE.org/documents/mcs/1975/08/4044_en.pdf.

⁴⁰ The Charter of Paris also stated: «Determined to foster the rich contribution of national minorities to the life of our societies, we undertake further to improve their situation. We reaffirm our deep conviction that friendly relations among our peoples, as well as peace, justice, stability and democracy, require that the ethnic, cultural, linguistic and religious identity of national minorities be protected and conditions for the promotion of that identity be created. We declare that questions related to national minorities can only be satisfactorily resolved in a democratic political framework. We further acknowledge that the rights of persons belonging to national minorities must be fully respected as part of universal human rights», Charter of Paris for a New Europe, 21 November 1990, available at www.OSCE.org/documents/mcs/1990/11/4045_en.pdf.

⁴¹ It must be recalled that the Charter of Paris has been used extensively by the EU as a major reference in a number of agreements concluded by the EC and its member states with its Eastern neighbours.

⁴² See Article 37 of the 1991 Moscow OSCE Conference, Document of the Moscow Meeting of the Conference on Human Dimension of the CSCE, available at www.OSCE.org/documents/odhr/1991/10/13995_en.pdf.

⁴³ Article 34 is more precise: «The participating states will endeavour to ensure that persons belonging to national minorities, notwithstanding the need to learn the official language or languages of the state concerned, have adequate opportunities for instruction of their mother tongue or in their mother tongue, as well as, wherever possible and necessary, for its use before public authorities, in conformity with applicable national legislation. In the context of the teaching of history and culture in educational establishments, they will also take account of the history and culture of national minorities».

⁴⁴ Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, available at www.OSCE.org/documents/odhr/1990/06/13992_en.pdf.

⁴⁵ CSCE Helsinki document 1992, *The Challenges of Change*, Chapter II, para. 2.

⁴⁶ HCNM, *The Relevance of International Standards for Minority Protection*, Speeches, 20 September 2000, pp. 2-3.

⁴⁷ «The methods and practices traditionally employed by the HCNM within its remit of operations could also be usefully applied in these new minority situations. This of course does not exclude the HCNM from continuing to direct its main attention and responsibility, in accordance with its mandate, towards the large number of questions concerning established national minority issues», HCNM, Remarks to the 2005 Human Dimension Implementation Meeting Opening Session, 19 September 2005, p. 2.

⁴⁸ «Minority rights are an integral part of human rights and as such are to be enjoyed by everyone. [...] that protection is afforded to all persons and not just citizens of the state. [...] I suggest to drop the requirement of citizenship in the definition so far included in the draft law [Draft Constitutional Law on National Minorities of Croatia]», HCNM, *Building a Solid Foundation: Minority Rights and Their Implementation*, address to the international conference «Challenges of the Minority Policy in Croatia Today», 5 April 2001, p. 3.

⁴⁹ HCNM, Speeches, 18 October 1998, p. 6.

⁵⁰ Like for example their concerns about political, economic and social exclusion and the maintenance of their own culture. See HCNM, Statement to the 13th Meeting of the OSCE Economic Forum on «Demographic Trends, Migration and Integrating Persons Belonging to National Minorities: Ensuring Security and Sustainable Development in the OSCE Area», 23-27 May 2005, p. 1.

⁵¹ The HCNM «considers the level of expectations of members of a new minority of benefits from a state to which they have recently moved are likely to be lower and issues which threaten fundamental national concerns like territorially based claims are unlikely to arise», HCNM, Speech at the 4th Winter Meeting of the OSCE Parliamentary Assembly, 25 February 2005, p. 1.

⁵² The European Commission recognises this explicitly (Answer given by A. Vitorino on behalf of the Commission to a Written Parliamentary Question by Hans Modrow to the Commission, E-2538/01, 23 November 2001). See also F. Hoffmeister, *Enlargement. Changing Requirements for Membership*, in A. Ott and K. Inglis (eds.), *Handbook on EU Enlargement. A Commentary on the Enlargement Process*, The Hague, Asser Institute, 2002, pp. 94-95.

⁵³ The Hungarian representatives, having in mind the presence of considerable Hungarian minorities in its neighbouring countries, heavily criticised this differentiation. P. Balázs, for instance, referred to the necessary addition of «the missing element of the Copenhagen criteria, which makes an important part of the acquis», available at <http://european-convention.eu.int/docs/treaty/pdf/2/art%202%20balázs.pdf>.

⁵⁴ Council Directive 2000/43/EC of 29 June 2000, Implementing the Principle of Equal Treatment between Persons Irrespective of Racial or Ethnic Origin, O.J. L 180/122 of 19 July 2000. For comments, see e.g. G. Toggenburg, *The Race Directive: A New Dimension in the Fight against Ethnic Discrimination in Europe*, in «European Yearbook of Minority Issues», 2001/2002, pp. 231-244.

⁵⁵ ECJ, 28 March 1996, Opinion 2/94 on Accession by the Community to the ECHR, [1996] ECR, I-1759, para. 27.

⁵⁶ One of the most important one is the *Bickel and Franz* case concerning the German speaking minority in the Italian province of Bolzano; ECJ, 24 November 1998, C-274/96, *Bickel and Franz*, [1998] ECR, I-7637.

⁵⁷ Charter of Fundamental Rights of the European Union, O.J. C 364/1 of 18 December 2000.

⁵⁸ G. Schweltnus, *Much Ado about Nothing? Minority Protection and the EU Charter of Fundamental Rights*, Constitutionalism Web-Papers, Conweb 5/2001, available at <http://les1.man.ac.uk/conweb>.

⁵⁹ See Article 11 of the Convention on Human Rights and Biomedicine, available at <http://conventions.coe.int/treaty/en/treaties/html/164.htm>.

⁶⁰ See e.g. Open Society Institute, *Monitoring the EU Accession Process: Minority Protection in the EU Accession Process*, Budapest, OSI, 2001, p. 16, and the Bolzano Declaration on the Protection of Minorities in the Enlarged European Union, available at www.eurac.edu/org/minorities/eld/prO.J.ects/pecede/policy_recommendations.htm.

⁶¹ In case C-540/03, the ECJ concluded that the Charter «is not a legally binding instrument» but nevertheless an important document reflecting *inter alia* «the constitutional traditions and international obligations common to the member states» (ECJ, 26 June 2006, C-540/03, *Parliament v. Council*, not yet published, para. 38). Accordingly, the Court follows the reasoning of Advocate-General Kokott that «while the Charter still does not produce binding legal effects comparable to primary law, it does, as a material legal source, shed light on the fundamental rights which are protected by the community legal order» (para. 108).

⁶² G. Schweltnus, *Much Ado about Nothing?...*, cit., p. 20.

⁶³ Treaty Establishing a Constitution for Europe, O.J. C 310/1 of 16 December 2004, Article I-2.

⁶⁴ This reference to «inhabitants» is very unusual contrary to the traditional references to «peoples of Europe» or the «citizens of the Union».

⁶⁵ No references to minority rights were made in the Draft Constitutional Treaty as presented in July 2003. It is in fact the Hungarian government that «strongly insisted on the inclusion of minority rights in the introductory articles of the constitution», B. De Witte, *The Constitutional Resources for an EU Minority Protection Policy*, in G. Toggenburg (ed.), *Minority Protection and the Enlarged European Union: The Way Forward*, Budapest, Open Society Institute, 2004, pp. 110-111. The position of the Hungarian government is due to the complex situation of the numerous Hungarian communities living in several neighbouring East European countries.

⁶⁶ Emphasis added.

⁶⁷ C. Hillion, *Enlargement of the European Union...*, cit., p. 733.

⁶⁸ According to B. De Witte: «The wording of that reference is highly ambiguous: it could be read either as stating that the (general) human rights of members of minorities must be respected like those of everyone else (a redundant statement) or as stating that additional rights are in order for minorities», B. De Witte, *The Constitutional Resources...*, cit., p. 111.

⁶⁹ By adopting a «European decision suspending certain of the rights deriving from the application of the constitution to the member state in question, including the voting rights of the member of the council», Article I-59, para. 3.

⁷⁰ Arguably, in theory this is already possible under the current provisions. The Constitutional Treaty will, in this perspective, only contribute to the objective of more transparency and clearness.

⁷¹ Without harmonising national laws and regulations, incentive measures can be taken on the basis of qualified majority voting (Article III-124, para. 2).

⁷² Declaration Concerning the Explanations Relating to the Charter of Fundamental Rights, CIG 84/04, Add 2, p. 37.

⁷³ Commission Opinion on Latvia's Application for Membership of the European Union, COM(97) 2005, pp. 15-16; Commission Opinion on Latvia's Application for Membership of the European Union, COM(97) 2006, p. 13.

⁷⁴ The Republic of Estonia understands the term «national minorities», which is not defined in the Framework Convention for the Protection of National Minorities, as follows:

«Are considered “national minority! those *citizens of Estonia* who:

- reside on the territory of Estonia;
- maintain longstanding, firm and lasting ties with Estonia;
- are distinct from Estonians on the basis of their ethnic, cultural, religious or linguistic characteristics;
- are motivated by a concern to preserve together their cultural traditions, their religion or their language, which constitute the basis of their common identity». See the list of declarations made with respect to Treaty n. 157, available at <http://conventions.coe.int/treaty/commun/listedeclarations.asp>.

⁷⁵ Agenda 2000, For a Stronger and Wider Union, COM(97) 2000 final, p. 45.

⁷⁶ G. Toggenburg, for instance, argued that «the fact that the minority issue was kept separate appears to indicate that its inclusion – whereby it would have assumed a clear binding force and an internal dimension – was not desired», G. Toggenburg, *A Rough Orientation through a Delicate Relationship: the European Union's Endeavours for Its Minorities*, in S. Trifunovska and F. De Varennes, *Minority Rights in Europe: European Minorities and Languages*, The Hague, Asser, 2001, pp. 208-213.

⁷⁷ B. De Witte, *Politics versus Law in the EU's Approach to Ethnic Minorities*, in «EUI Working Papers», n. 4, 2000, p. 3.

⁷⁸ F. Hoffmeister, *Enlargement. Changing Requirements for Membership*, in A. Ott and K. Inglis (eds.), *Handbook on EU Enlargement...*, cit., pp. 94-95.

⁷⁹ P. Van Elsuwege, *Minority Protection in the EU: challenges ahead*, in A. Ott and K. Inglis (eds.), *The Constitution for Europe and an Enlarging Union: Unity in Diversity?*, Groningen, Europa Law Publishing, 2005, pp. 259-278.

⁸⁰ F. Hoffmeister, *Enlargement...*, cit., p. 95.

⁸¹ Agenda 2000, For a Stronger and Wider Union, COM(97) 2000 final, p. 44; see also answer given by G. Verheugen on behalf of the Commission on Written Parliamentary Question by R. Paasilinna to the Commission, E-1927/99 of 2 December 1999.

⁸² B. De Witte refers to «A qualified right for individual members of a minority to use their language in dealing with courts, public authorities and in the public service media, and a right to receive instruction in that language in the public education system», B. De Witte, *Politics versus Law...*, cit., p. 3.

⁸³ Here, the Commission observed that «Where such rights are in principle recognised, the Hungarian minority faces a number of problems in exercising its rights», Agenda 2000, For a Stronger and Wider Union, COM(97) 2000 final, p. 45.

⁸⁴ Remarkably, the European Commission's 2003 comprehensive monitoring reports on the ten acceding countries did not contain a specific chapter on minority issues, which contributes to the perception that the minority questions are settled as far as the EU is concerned.

⁸⁵ For instance, the 1999 Accession Partnership with Slovakia called for strengthened implementation of the Roma integration strategy, measures aimed at the fighting against discrimination and implementation of the minority language legislation, Council Decision of 6 December 1999 on the principles, priorities, intermediate objectives and conditions contained in the accession partnership with the Slovak Republic, O.J. L 335/22 of 28 December 1999.

⁸⁶ C. Hillion, *Enlargement of the European Union - The Discrepancy between Membership Obligations and Accession Conditions as Regards the Protection of Minorities*, in «Fordham International Law Journal», vol. 2, 2004, pp. 715-740.

⁸⁷ Council Decision 98/262/EC of 30 March 1998 on the «principles, priorities, intermediate objectives and conditions contained in the accession partnership with the Slovak Republic», O.J. L 121/16 of 23 April 1998.

⁸⁸ D. Kochenov, *Why the Promotion of the Acquis Is Not the Same as the Promotion of Democracy and What Can Be Done in Order to Also Promote Democracy Instead of Just Promoting the Acquis*, available at www.inter-disciplinary.net/aud/aud2/kochenov%20paper.pdf.

⁸⁹ The Latvian Citizenship Law has been adopted on 22 June 1994, the Estonian

Citizenship Act on 19 January 1995.

⁹⁰ According to the latest figures (January 2006) 418,400 non-citizens live in Latvia (18.3% of the entire population), whereas in Estonia 124,681 people belong to the category of «residents with undetermined citizenship» (9% of the entire population); official statistics provided by Latvia's and Estonia's citizenship and migration board, available at www.np.gov.lv and www.vm.ee/estonia/kat_399/pea_172/4518.html.

⁹¹ The term «Russian-speaking minorities» is used because not all of the people affected by citizenship and language dilemmas are ethnic Russians, yet the vast majority speaks Russian as their first language.

⁹² See e.g. M. Jubulis, *The External Dimension of Democratization in Latvia: The Impact of European Institutions*, in «International Relations», vol. 13, n. 3, 1996, pp. 59-73; N. Gelazis, *The Effects of EU Conditionality on Citizenship Policies and Protection of National Minorities in the Baltic States*, in V. Pettai and J. Zielonka (eds.), *The Road to the European Union (vol. 2). Estonia, Latvia and Lithuania*, Manchester, Manchester University Press, 2003, pp. 46-74; J. Dorodnova, *EU Concerns in Estonia and Latvia: Implications of Enlargement for Russia's Behaviour towards the Russian-Speaking Minorities*, in «EUI Working Papers», n. 40, 2000, p. 45.

⁹³ J. Hughes and G. Sasse, *Monitoring the Monitors: EU Enlargement Conditionality and Minority Protection in the CEECs*, in «Journal of Ethnopolitics and Minority Issues in Europe», n. 1, 2003, available at www.ecmi.de/jemie/download/focus1-2003_hughes_sasse.pdf, pp. 1-36; M. Marescau, *Quelques réflexions...*, cit., pp. 69-98.

⁹⁴ Within this system, potential candidates for Latvian citizenship were divided into groups according to age and status. The right to apply for citizenship was spread over seven years, beginning with the youngest age group (persons aged 16-20) in 1996. In practice, this implied that numerous non-citizens would never have a chance to apply for citizenship.

⁹⁵ N. Gelazis, *The Effects of EU Conditionality on Citizenship Policies...*, cit., p. 67.

⁹⁶ Concluding observations of the Human Rights Committee: Latvia, CCPR/CO/79/LVA, 6 November 2003; Concluding observations of the Human Rights Committee: Estonia, CCPR/CO/77/EST, 15 April 2003.

⁹⁷ Report of the Advisory Committee on the Framework Convention for the Protection of National Minorities, ACFC/INF/OP/II(2005)001, Strasbourg, 22 July 2005.

⁹⁸ EU citizenship notably implies a right to move and reside freely within the territory of the EU member states (Article 18 EC); a right to vote and to stand as a candidate at municipal elections in the member state of residence under the same conditions as the nationals of this state (Article 19 EC) and a right of protection by the diplomatic or consular authorities of any EU member state in third countries (Article 20 EC).

⁹⁹ ECJ, 5 July 1984, 238/83, *Meade*, [1984] ECR, 2631, para. 7.

¹⁰⁰ See Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on «the rights of citizens of the Union and their family members to move and reside freely within the territory of the Member States», O.J. L 158/77 of 30 April 2004.

¹⁰¹ ECJ, 27 March 1990, C-113/89, *Rush Portuguesa*, [1990] ECR, I-1417, para. 12; ECJ, 9 August 1994, C-43/93, *Vander Elst*, [1994] ECR, I-3803, para. 21.

¹⁰² Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, O.J. L 16/44 of 23 January 2004.

¹⁰³ The required knowledge corresponds to stage B of the first level, which is the second lowest level of state language knowledge, at www.ocma.gov.lv/?_p=454&menu_id=124.

¹⁰⁴ Estonian Ministry of the Interior, *Permanent Residence Permit-Holders not Affected by Long-Term Resident Language Requirements*, Press release n. 59, 7 April 2006, available at www.sisemin.gov.ee/atp/?id=17509.

¹⁰⁵ Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on Immigration, Integration and Employment, COM(2003) 336 final of 3 June 2002.

¹⁰⁶ *Ibidem*, p. 2.

¹⁰⁷ See e.g. N. Reich, *The Constitutional Relevance of Citizenship and Free Movement in an Enlarged Union*, in «European Law Journal», vol. 11, no. 6, 2005, pp. 675-698.

¹⁰⁸ See E. Lannon and P. Van Elsuwege, *The EU's Emerging Neighbourhood Policy and Its*

Potential Impact on the Euro-Mediterranean Partnership, in P.G. Xuereb (ed.), *Euro-Med Integration and the Ring of Friends - The Mediterranean's European Challenge vol. IV*, Malta, EDRC, 2003, pp. 21-84. Documents on the ENP are available at www.eu.int/comm/world/enp/document_en.htm.

¹⁰⁹ Communication from the Commission to the Council and the European Parliament, *Wider Europe - Neighbourhood: A New Framework for Relations with Our Eastern and Southern Neighbours*, COM(2003) 104 final of 11 March 2003, pp. 15-17.

¹¹⁰ *Ibidem*, p. 16.

¹¹¹ Communication from the Commission, «European Neighbourhood Policy. Strategy Paper», COM(2004) 373 final of 12 May 2004, p. 3 (emphasis added).

¹¹² This differentiation can be attributed to the fact that the ENP Strategy Paper is drafted by the European Commission, which is usually more open to a wider interpretation of minority protection than the EU member states.

¹¹³ *Ibidem*, p. 13.

¹¹⁴ It is interesting to note down that during the third preparatory seminar for the 13th Economic Forum: «Integrating Persons Belonging to National Minorities: Economic and Other Perspectives», that was held in Kiev, Ukraine, 10-11 March 2005, the Mediterranean partners for cooperation were engaged in discussions. Furthermore, at the OSCE Mediterranean seminar on «The Security Model for the Twenty-First Century: Implications for the Mediterranean Basin», held in Cairo on 3-5 September 1997, the Adviser to the OSCE High Commissioner on National Minorities raised the issue mentioning notably that «the idea of preserving ethnic homogeneity was at the basis of many conflicts, both the state and the minority in question each being considered a threat to the other. The historical roots of conflicts should be carefully studied so that parties to a conflict might be persuaded to cooperate for the common good. In that connection, economic development, the establishment of the rule of law and the strengthening of democratic institutions made it possible to avoid recourse to more risky solutions for the state and for the minority in question».

¹¹⁵ European Parliament Resolution on the «European Neighbourhood Policy», 16 January 2006, PE.368.362.

¹¹⁶ J. Hughes, G. Sasse, *Monitoring the Monitors...*, cit., pp. 12-13.

¹¹⁷ E. Lannon, *La politique Méditerranéenne de l'Union européenne*, Thèse de doctorat, Université de Rennes I, mars 2002, pp. 104-106.

¹¹⁸ Report of the Council on the relations between the European Union and the Mediterranean countries in preparation for the conference to be held on 27-28 November in Barcelona, Agence Europe, Europe Document n. 1930/31, 27 April 1995.

¹¹⁹ Article 2 of the UDHR states «everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status [...]» and Article 7 that «all are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this declaration and against any incitement to such discrimination», UDHR, adopted and proclaimed by General Assembly Resolution 217 A (III) of 10 December 1948, available at www.un.org/overview/rights.html.

¹²⁰ Final Declaration of the Euromed Civil Forum, Naples, 28-30 November 2003, available at www.euromedi.org/forumcivile2003/finalen.htm.

¹²¹ S. Rockwell and C. Shamas, *A Human Rights Review on the EU and Israel - Relating Commitments to Actions*, Copenhagen, Euro-Mediterranean Human Rights Network, 2004, available at www.euromedrights.net/english/engelsk.html.

¹²² *Ibidem*, p. 34.

¹²³ In the PCAs concluded with Armenia, Uzbekistan, Kazakhstan or Tajikistan, for example, one can find a clause formulated as follows: «The political dialogue [...] shall foresee that the Parties endeavour to cooperate on matters pertaining to the strengthening of stability and security in Europe, the observance of the principles of democracy, and the respect and promotion of human rights, particularly those of persons belonging to minorities and shall hold consultations, if necessary, on relevant matters. Such dialogue may take place on a

regional basis, with a view to contributing towards the resolution of regional conflicts and tensions». In the association agreement concluded with Chile, Article 38 devoted to «Education and training» states that: «1. The Parties shall significantly support, within their respective competencies, pre-schooling, basic, intermediate and higher education, vocational training and life-long learning. Within these fields, special attention shall be paid to access to education for vulnerable social groups, such as the disabled, ethnic minorities and the extremely poor». Agreement establishing an association between the European Community and its member states, of the one part, and the Republic of Chile, of the other part, O.J. L 352/3 of 30 December 2002.

¹²⁴ Proposal for a Council Decision on the conclusion of a Euro-Mediterranean association agreement between the European Community and its Member States and the People's Democratic Republic of Algeria, O.J. C 262/55 of 29 October 2002.

¹²⁵ Council Regulation (EC) No. 1488/96 of 23 July 1996 on «Financial and technical measures to accompany (MEDA) the reform of economic and social structures in the framework of the Euro-Mediterranean Partnership», O.J. L 189/1 of 30 July 1996.

¹²⁶ See K. Chamhari and C. Stainier, *Guide to Human Rights in the Barcelona Process*, Copenhagen, Euro-Mediterranean Human Rights Network, 2000, p. 109.

¹²⁷ Final Report - Evaluation of the MEDA Democracy Programme 1996-1998, prepared by N. Karkutli and D. Bützler, Brussels, April 1999, available at <http://ec.europa.eu/comm/europeaid/evaluation/reports/med/951460.pdf>.

¹²⁸ «The Palestinians in areas under Israeli military rule are limited in their freedom of movement and the Palestinian prisoners do not have access to the same rights of the defendant as Israeli citizens. Palestinian refugees in the region and beyond continued to suffer from the consequences of the inability to exercise the right to a nationality. Palestinian refugees served by the united nations relief and works agency for Palestinian refugees in the near East (UNRWA) did not enjoy international refugee protection available to all other refugees because the 1951 Convention relating to the status of refugees and its 1967 protocol specifically did not apply to those who continued to receive protection or assistance from other organs or agencies of the UN. Over 300,000 Palestinian refugees in Lebanon, many of them living in conditions of extreme poverty, experienced sharp restrictions on their freedom of movement and right to work. Arab Israelis have Israeli passports and enjoy de jure equality, but de facto they are discriminated on various levels and are basically second-class citizens. The Copts in Egypt are much more discriminated in the countryside than in the cities. They experience legal restrictions in their Christian faith and personal status matters», *Ibidem*, p. 27.

¹²⁹ *Ibidem*, p. 8.

¹³⁰ *Ibidem*.

¹³¹ Council Regulation (EC) n. 976/1999 of 29 April 1999 laying down the requirements for the implementation of community operations, other than those of development cooperation, which, within the framework of community cooperation policy, contribute to the general objective of developing and consolidating democracy and the rule of law and to that of respecting human rights and fundamental freedoms in third countries, O.J. L 120/8 of 8 May 1999, as amended by Regulation n. 2242/2004 of 22 December 2004, O.J. L 390/21 of 31 December 2004.

¹³² EIDHR Annual Work Programme 2006, available at http://ec.europa.eu/comm/europeaid/projects/eidhr/pdf/eidhr_annual_work_programme_2006_en.pdf.

¹³³ OSCE minority rights, available at www.OSCE.org/activities/13045.html.

¹³⁴ Mandate of the OSCE High Commissioner, available at www.OSCE.org/HCNM/13022.html.

¹³⁵ The June 1993 Copenhagen European Council «welcomed the idea of using the instrument of “joint action” in accordance with the procedures provided for in the Common Foreign and Security Policy». Accordingly, the Council adopted Decision 93/728/CFSP of 20 December 1993 concerning the Joint Action adopted by the Council «on the basis of Article J. 3 on the Treaty on European Union on the inaugural Conference on the Stability Pact» (O.J. L 339/1 of 31 December 1993) and reported to the December Brussels European Council. On

14 June 1994 the Council adopted Decision 94/367/CFSP on the continuation of the Joint Action, O.J. L 165/2 of 1 July 1994.

¹³⁶ Reference is made to the CSCE 1975 Helsinki Final Act; the OSCE 1990 Charter of Paris for a new Europe; the OSCE 1990 Copenhagen Document; the OSCE 1992 Helsinki document; the OSCE 1994 Budapest documents and relevant treaties and conventions of the Council of Europe, including the 1994 Framework Convention for the Protection of National Minorities and the 1993 Vienna Declaration of the Council of Europe Summit.

¹³⁷ T. Ueta, *The Stability Pact: From the Balladur Initiative to the EU Joint Action*, in M. Holland (ed.), *Common Foreign and Security Policy. The Record and Reforms*, London-Washington, Pinter, 1997, pp. 92-104.

¹³⁸ For the guidelines of the Charter see «Rapport d'information n° 1737 de l'Assemblée Nationale Française sur le Partenariat Euro-Méditerranéen», présenté par M. Vauzelle, 23 juin 1999, available at www.assemblee-nationale.fr/rap-info/i1737.asp.

¹³⁹ See S. Larrabee, J. Green, I. Lesser and M. Zanini, *NATO's Mediterranean Initiative Policy Issues and Dilemmas*, available at www.rand.org/pubs/monograph_reports/mr957/index.html.

¹⁴⁰ Working Paper containing suggestions for a comprehensive programme for the prevention of discrimination and protection of minorities, prepared by A. Eide, E/CN.4/Sub.2/1994/36, 6 July 1994, point 27.

¹⁴¹ European Parliament, Committee on Civil Liberties, Justice and Home Affairs, Report on «Non-discrimination and equal opportunities for all», Rapporteur: T. Zdanoka, A6-189/2006, 18 May 2006.

¹⁴² A. Aasland and T. Flotten, *Ethnicity and Social Exclusion in Estonia and Latvia*, in «Europe-Asia Studies», vol. 53, no. 7, 2001, p. 1028.

¹⁴³ Report by the High-Level Advisory Group established at the initiative of the President of the European Commission, *Dialogue between Peoples and Cultures in the Euro-Mediterranean Area*, Brussels, European Commission, 2003, p. 25.

¹⁴⁴ Conclusions of the Symposium on Intercultural Dialogue, Brussels, 20-21 March 2002, p. 8.

¹⁴⁵ Both elements are mutually reinforcing because people lacking sufficient education will face more difficulties in passing the naturalisation procedure. In addition, they will be less proficient in the national language, which is often a basic requirement to acquire citizenship and to apply for many jobs in both the public and the private sector. Consequently, «language proficiency» could also be identified as a main variable in explaining the differences on the labour market. This, in turn, can be related to the difficulties in finding the right balance between the promotion of the national language on the one hand and respect for minority languages on the other.

¹⁴⁶ Commission Communication, *Third Progress Report on Economic and Social Cohesion*, COM(2004) 107 final.

¹⁴⁷ V. Poleshchuk, *Social Dimension of Integration in Estonia and Minority Education in Latvia*, available at www.ecmi.de/doc/download/report_8.pdf, p. 11.

¹⁴⁸ Communication from the Commission, *Joint Report on Social Protection and Social Inclusion*, COM(2005) 14 final of 27 January 2005, p. 4. The Commission also stressed that «the definition and content of integration policies differ widely in terms of scope, target groups and actors. Some Member States are combining both actions targeted specifically on migrants and a mainstreaming approach; others have a less comprehensive, more fragmented strategy, which is often project-based. For long-term resident immigrants, ethnic or national minorities and asylum seekers, the policies carried out differ significantly from one Member State to another», Communication from the Commission, *First Annual Report on Migration and Integration*, COM(2004) 508 final of 16 July 2004, point 3.

¹⁴⁹ 2002 European Commission Regular Report on Latvia, p. 32; 2002 European Commission Regular Report on Estonia, p. 32.

¹⁵⁰ Open Society Institute, *Monitoring the EU Accession Process: Minority Protection. (vol. D) An Assessment of Selected Policies in the Candidate States*, Budapest, OSI, 2002, p. 350.

¹⁵¹ Office of the High Commissioner for Human Rights, General Comment No. 23: The

Rights of Minorities (Article 27), CCPR/C/21/Rev.1/Add.5, April 1994, point 31. See also the Opinion of the Economic and Social Committee on Regional Integration and Sustainable Development, O.J. C 241/34 of 28 September 2004, point 5.3.

¹⁵² A. Papisca, Working Paper, *Starting Conference on Intercultural on Intercultural Dialogue and Human Rights: Inclusive Cities in an Inclusive Europe*, Padua, 23-26 March 2006, pp. 1 and 6-7.

¹⁵³ See www.religlaw.org/interdocs/docs/cairohrislam1990.htm.

¹⁵⁴ One could also refer in this respect to the rules adopted during the Ottoman Empire period. See Wikipedia Encyclopedia, *Millet (Ottoman Empire)*, at [http://en.wikipedia.org/wiki/Millet_\(Ottoman_Empire\)](http://en.wikipedia.org/wiki/Millet_(Ottoman_Empire)).

¹⁵⁵ Proposal for a Decision of the European Parliament and of the Council concerning the European Year of Intercultural Dialogue (2008), COM(2005) 467 final of 5 October 2005, Article 2, para. 1.

¹⁵⁶ European Commission Proposal for a Council Regulation on «the establishment of a regime of local border traffic at the external land borders of the Member States», and Proposal «on the establishment of a regime of local border traffic at the temporary external land borders between Member States», COM(2003) 502 final of 14 August 2003.

¹⁵⁷ The Hungarian minorities living in the Balkan area or the Polish minorities in Ukraine, as well as nomads in North Africa and the Middle East, provide good examples in this regard. The result is a very complex situation of persons with transnational identities and dual or multi-citizenship.

¹⁵⁸ As highlighted in the 1999 Tampere special European Council «The European Union needs a comprehensive approach to migration addressing political, human rights and development issues in countries and regions of origin and transit. This requires combating poverty, improving living conditions and job opportunities, preventing conflicts and consolidating democratic states and ensuring respect for human rights, in particular rights of minorities, women and children», Presidency Conclusions, October 1999, Tampere European Council, at point 11.